DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–588–804, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders.

SUMMARY: On February 28, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Japan, Singapore, Sweden, Thailand and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof, as described in more detail below. The reviews cover 29 manufacturers/exporters. The review period is May 1, 1992, through April 30, 1993.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms for each class or kind of merchandise are listed below in the section entitled ''Final Results of Review.''

The Department also is revoking the antidumping duty orders with respect to the following companies and merchandise:

Spherical plain bearings from France—SKF
Spherical plain bearings from Japan—Honda
Ball bearings from Japan—Honda
Cylindrical roller bearings from Japan—Honda

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

France

Jacqueline Arrowsmith (SKF, SNR), Kris Campbell (SNFA), Matthew Rosenbaum (Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine), or Michael Rill.

Germany

Jacqueline Arrowsmith (SKF), Kris Campbell (FAG), Carlo Cavagna (NTN Kugellagerfabrik), Davina Friedmann (INA), Charles Riggle (Fichtel & Sachs, GMN), Matthew Rosenbaum (Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine), or Michael Rill.

Japan

Carlo Cavagna (Honda, Nachi, NTN), William Czajkowski (Takeshita), J. David Dirstine (NSK, Koyo), Joseph Fargo (Nankai Seiko), Michael Panfeld (IKS, NPBS), or Richard Rimlinger.

Singapore

William Czajkowski (NMB/Pelmec), or Richard Rimlinger.

Sweden

Matthew Rosenbaum (SKF), or Michael Rill.

Thailand

William Czajkowski (NMB/Pelmec), or Richard Rimlinger.

United Kingdom

Jacqueline Arrowsmith (RHP/NSK), Kris Campbell (Barden/FAG), or Michael Rill.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1994, the Department published in the **Federal Register** the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Japan, Singapore, Sweden, Thailand and the United Kingdom (59 FR 9463). We gave interested parties an opportunity to comment on our preliminary results.

At the request of certain interested parties, we held a public hearing on general issues pertaining to all countries on March 28, 1994, and hearings on case-specific issues as follows: Germany on March 29, 1994; and Japan on March 30, 1994.

We are terminating the administrative reviews initiated for General Bearing Corp., SST Bearing Corp., and Peer International (Peer) with respect to subject merchandise from Japan. General Bearing Corp. and SST Bearing Corp. informed us that they neither produced AFBs in Japan nor exported Japanese-produced bearings to the United States. Peer informed us that although it is a reseller of Japanese-made bearings, all of its suppliers had knowledge at the time of sale that the merchandise was destined for the United States. Consequently, Peer is not a reseller as defined in 19 CFR 353.2(s) because its sales cannot be used to calculate U.S. price (USP).

Revocations In Part

In accordance with § 353.25(a)(2) of the Department's regulations (19 CFR 353.25(a)(2)), the Department is revoking the antidumping duty orders covering the following companies and merchandise:

Spherical plain bearings from France—SKF
Spherical plain bearings from Japan—Honda
Ball bearings from Japan—Honda
Cylindrical roller bearings from Japan—Honda

All of the above firms have submitted, in accordance with 19 CFR 353.25(b), requests for revocation of the orders with respect to their sales of the merchandise in question. They have also demonstrated three consecutive years of sales at not less than foreign market value (FMV) and have submitted the required certifications. All of these firms have agreed in writing to their immediate reinstatement in the order, as long as any producer or reseller is subject to the order, if the Department concludes under 19 CFR 353.22(f) that the firm, subsequent to the revocation, sold the merchandise at less than FMV. Furthermore, it is not likely that they will sell the subject merchandise at less than FMV in the future. Therefore, the Department is revoking the orders with respect to the indicated companies.

Scope of Reviews

The products covered by these reviews are AFBs, and constitute the following ''classes or kinds'' of merchandise: Ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix'' which is appended to this notice of final results.

Best Information Available

In accordance with section 776(c) of the Tariff Act of 1930, as amended (the Act), we have determined that the use of the best information available (BIA) is appropriate for a number of firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our application of BIA, see the ''Best Information Available'' section of the Issues Appendix.

Sales Below Cost in the Home Market

The Department disregarded sales below cost for the following firms and classes or kinds of merchandise:

Country	Company	Class or kind of merchandise
France	SKF	BBs, SPBs.
	SNR	BBs, CRBs.
Germany	FAG	BBs, CRBs.
	INA	BBs, CRBs.
	SKF	BBs, CRBs, SPBs.
Japan	Koyo	BBs, CRBs.
	Nachi	BBs, CRBs.
	NPBS	BBs.
	NSK	BBs, CRBs.
	NTN	BBs, CRBs, SPBs.
Singapore	NMB/Pelmec.	BBs.
Sweden	SKF	BBs, CRBs.
Thailand	NMB/Pelmec.	BBs.
United Kingdom	RHP	BBs, CRBs.
	Barden/FAG.	BBs.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

- Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Issues Appendix.
- Pursuant to the decision of the United States Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (CAFC 1994) (*Ad Hoc Comm.*), we have allowed a deduction for pre-sale inland freight in the calculation of foreign market value only as an indirect selling expense under 19 CFR 353.56(b), except where such expenses have been shown to be directly related to sales.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these 15 concurrent administrative reviews of AFBs are addressed in the ''Issues Appendix'' which is appended to this notice of final results.

Final Results of Reviews

We determine the following percentage weighted-average margins to exist for the period May 1, 1992, through April 30, 1993:

Company	BBs	CRBs	SPBs
France			
Franke & Heydrich	66.42	(2)	(2)
Hoesch Rothe Erde	(1)	(2)	(2)
Rollix Defontaine	(1)	(2)	(2)
SKF	3.45	(1)	0.00
SNFA	66.42	18.37	(2)
SNR	1.91	2.58	(2)
Germany			
FAG	11.80	19.64	18.79
Fichtel & Sachs	14.83	(2)	(2)
Franke & Heydrich	132.25	(2)	(2)
GMN	35.43	(2)	(2)
Hoesch Rothe Erde	(1)	(2)	(2)
INA	29.80	10.88	(2)
NTN	8.41	(1)	(1)
Rollix Defontaine	(1)	(2)	(2)
SKF	15.53	11.16	22.44
Japan			
Honda	0.37	0.01	0.01
IKS	8.72	(2)	(2)
Koyo	39.56	3.55	(1)
Nachi	12.46	1.03	(2)
Nankai Seiko	1.08	(2)	(2)
NPBS	18.00	(2)	(2)
NSK	10.47	9.10	(1)
NTN	13.90	13.71	4.97
Takeshita	14.58	(2)	(2)
Singapore			
NMB/Pelmec	4.84		
Sweden			
SKF	16.41	13.02	
Thialand			
NMB/Pelmec	0.01		
United Kingdom			
Barden/FAG	4.86	8.22	
RHP/NSK	14.57	19.71	

[1] No U.S. sales during the review period.
[2] No review requested.

Cash Deposit Requirements

To calculate the cash deposit rate for each exporter, we divided the total dumping margins for each exporter by the total net USP value for that exporter's sales for each relevant class or kind during the review period under each order.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the USP of PP sales and ESP sales, respectively, as the weighting factors). To accomplish this where we sampled ESP sales, we first calculated the total dumping margins for all ESP sales during the review period by multiplying the sample ESP margins by the ratio of total weeks in the review period to sample weeks. We then calculated a total net USP value for all ESP sales during the review period by multiplying the sample ESP total net value by the same ratio. We then divided the combined total dumping margins for both PP and ESP sales by the combined total USP value for both PP and ESP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of AFBs 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 reviewed companies will be the rates shown above, except that for firms whose weighted-average margins are less than 0.50 percent, and therefore *de minimis*, the Department shall not require a deposit of estimated antidumping duties; (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 this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit

rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant class or kind and country made effective by the final results of review published on July 26, 1993 (see *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729, July 26, 1993). These rates are the ''All Others'' rates from the relevant LTFV investigations.

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

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of antifriction bearings.

1. Purchase Price Sales

With respect to PP sales for these final results, we divided the total dumping margins (calculated as the difference between FMV and USP) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer'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 under each order for the review period will be almost exactly equal to the total dumping margins.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. 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 entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the period of review (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.

In the case of companies which did not report entered value of sales, we calculated a proxy for entered value of sales, based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the ''Roller Chain'' rule, are included in the assessment rate denominator to avoid over-collecting. (The ''Roller Chain'' rule excludes from the collection of antidumping duties bearings which were imported by a related party and further processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. See the section on Further Manufacturing and the ''Roller Chain'' Rule in the Issues Appendix.)

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

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

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

Dated: January 31, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

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Scope Appendix

A. Description of the Merchandise

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050,

8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

3. *Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element, and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

The HTS item numbers are provided for convenience and Customs purposes. They are not determinative of the products subject to the orders. The written description remains dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the orders. The following is a compilation of the scope rulings and determinations the Department has made.

Scope determinations made in the *Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (AFBs Investigation of SLTFV),* 54 FR 19006, 19019 (May 3, 1989):

Products covered:

- Rod end bearings and parts thereof
- AFBs used in aviation applications
- Aerospace engine bearings
- Split cylindrical roller bearings
- Wheel hub units
- Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination. See *International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom,* 54 FR 21488 (May 18, 1989).
- Wave generator bearings
- Bearings (including mounted or housed units, and flanged or enhanced bearings) ultimately utilized in textile machinery

Products excluded:

- Plain bearings other than spherical plain bearings
- Airframe components unrelated to the reduction of friction
- Linear motion devices
- Split pillow block housings
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
- Thermoplastic bearings
- Stainless steel hollow balls
- Textile machinery components that are substantially advanced in function(s) or value
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions

Scope rulings completed between April 1, 1990, and June 30, 1990. See *Scope Rulings,* 55 FR 42750 (October 23, 1990):

Products excluded:

- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope rulings completed between July 1, 1990, and September 30, 1990. See *Scope Rulings,* 55 FR 43020 (October 25, 1990):

Products covered:

- Rod ends
- Clutch release bearings
- Ball bearings used in the manufacture of helicopters
- Ball bearings used in the manufacture of disk drives

Scope rulings completed between April 1, 1991, and June 30, 1991. See *Notice of Scope Rulings,* 56 FR 36774 (August 1, 1991):

Products excluded:

- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope rulings published in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I),* 56 FR 31692, 31696 (July 11, 1991):

Products covered:

- Load rollers and thrust rollers, also called mast guide bearings
- Conveyor system trolley wheels and chain wheels

Scope rulings completed between July 1, 1991, and September 30, 1991. See *Scope Rulings,* 56 FR 57320 (November 8, 1991):

Products covered:

- Snap rings and wire races
- Bearings imported as spare parts
- Custom-made specialty bearings

Products excluded:

- Certain rotor assembly textile machinery components
- Linear motion bearings

Scope rulings completed between October 1, 1991, and December 31, 1991. See *Notice of Scope Rulings,* 57 FR 4597 (February 6, 1992):

Products covered:

- Chain sheaves (forklift truck mast components)
- Loose boss rollers used in textile drafting machinery, also called top rollers

- Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope rulings completed between January 1, 1992, and March 31, 1992. See *Scope Rulings,* 57 FR 19602 (May 7, 1992):

Products covered:

- Ceramic bearings
- Roller turn rollers
- Clutch release systems that contain rolling elements

Products excluded:

- Clutch release systems that do not contain rolling elements
- Chrome steel balls for use as check valves in hydraulic valve systems

Scope rulings completed between April 1, 1992, and June 30, 1992. See *Scope Rulings,* 57 FR 32973 (July 24, 1992):

Products excluded:

- Finished, semiground stainless steel balls
- Stainless steel balls for non-bearing use (in an optical polishing process)

Scope rulings completed between July 1, 1992, and September 30, 1992. See *Scope Rulings,* 57 FR 57420 (December 4, 1992).

Products covered:

- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
- Model 15BM2110 bearings

Products excluded:

- Certain textile machinery components

Scope rulings completed between October 1, 1992, and December 31, 1992. See *Scope Rulings,* 58 FR 11209 (February 24, 1993).

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products excluded:

- Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings

Scope rulings completed between January 1, 1993, and March 31, 1993. See *Scope Rulings,* 58 FR 27542 (May 10, 1993).

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope rulings completed between April 1, 1993, and June 30, 1993. See *Scope Rulings,* 58 FR 47124 (September 7, 1993).

Products covered:

- Certain series of INA bearings

Products excluded:

- SAR series of ball bearings
- Certain eccentric locking collars that are part of housed bearing units

Scope rulings completed between October 1, 1993, and December 31, 1993. See *Scope Rulings,* 59 FR 8910 (February 24, 1994).

Products excluded:

- Certain textile machinery components

Scope rulings completed after March 31, 1994.

Products excluded:

- Certain textile machinery components

Issues Appendix

Company Abbreviations

Barden—The Barden Corporation (U.K.) Ltd.; The Barden Corporation
FAG-Germany—FAG Kugelfischer Georg Schaefer KGaA
FAG–UK—FAG (UK) Ltd.
Federal-Mogul—Federal-Mogul Corporation
Fichtel & Sachs—Fichtel & Sachs AG; Sachs Automotive Products Co.
GMN—Georg Muller Nurnberg AG; Georg Muller of America
Hoesch—Hoesch Rothe Erde AG
Honda—Honda Motor Co., Ltd.; American Honda Motor Co., Inc.
INA—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
IKS—Izumoto Seiko Co., Ltd.
Koyo—Koyo Seiko Co. Ltd.
Nachi—Nachi-Fujikoshi Corp.; Nachi America, Inc.; Nachi Technology Inc.
Nankai—Nankai Seiko Co., Ltd.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.; NMB Thai, Ltd.; Pelmec Thai, Ltd.
NPBS—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK-Europe—NSK Bearings Europe, Ltd.
NTN-Germany—NTN Kugellagerfabrik (Deutschland) GmbH
NTN—NTN Corporation; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corporation
Peer Int'l—Peer International, Ltd.
RHP—RHP Bearings; RHP Bearings, Inc.
Rollix—Rollix Defontaine, S.A.
SKF-France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF-Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF-Sweden—AB SKF; SKF Mekanprodukter AB; SKF Sverige
SKF–UK—SKF (UK) Limited; SKF Industries; AMPEP Inc.
SKF Group—SKF-France; SKF-Germany; SKF-Sweden; SKF-UK; SKF USA, Inc.
SNFA—SNFA Bearings, Ltd.
SNR—SNR Roulements; SNR Bearings USA, Inc.
Takeshita—Takeshita Seiko Company
Torrington—The Torrington Company

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
ESP—Exporter's Sales Price
FMV—Foreign Market Value
HM—Home Market
HMP—Home Market Price
OEM—Original Equipment Manufacturer
POR—Period of Review
PP—Purchase Price
USP—United States Price
DOC—Department of Commerce

AFBs LTFV Investigation—Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 19006, 19019 (May 3, 1989)

AFBs I—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991)

AFBs II—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992)

AFBs III—Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993)

1. Annual POR Averaging

Comment 1: NSK contends that, when comparing annual average FMVs with PP transactions, the Department should include in such FMVs only those HM models that match to PP sales, rather than HM models that match to both PP and ESP sales. That is, the Department should calculate two separate annual average FMVs, one based only on HM models that match to PP sales, and one based only on HM models that match to ESP sales. This would involve conducting a separate price stability test on HM models that match to PP transactions. NSK notes that the Department treats PP transactions differently than ESP transactions, that FMVs are computed separately for ESP

and PP sales, and that different COS adjustments are made depending on whether FMV is matched to PP or ESP transactions. NSK requests that, if the Department is unwilling to conduct a separate price stability test on all HM models matched to PP transactions, the Department should use the monthly, rather than annual, weighted-average FMVs for PP matches.

Department's Position: We disagree. The HM price stability test, which allows for limited price fluctuations on a model-by-model basis, measures the overall stability of HM prices for the class or kind of merchandise under consideration over the POR (see *AFBs III* at 39734). The test is designed for determining whether HM sales prices during the POR are stable enough to allow the use of annual average, rather than monthly average, HM prices as the basis of FMV. There is no reason to take into consideration whether particular HM models are matched to PP or ESP transactions as the type of U.S. sale is not relevant to the question of whether HM prices are stable. Furthermore, the fact that PP sales are distinguishable from ESP sales, that ESP sales may be sampled while PP sales are not, and that different COS adjustments are made when comparing to PP and ESP sales are not relevant to whether the HM prices underlying FMVs are stable. In deciding whether to calculate POR weighted-averaged FMVs we performed the tests outlined in our preliminary results on HM sales databases to determine whether: (1) There was a minimal variance between monthly and POR weighted-average prices; and (2) there was any significant correlation between fluctuations in price and time. Thus, we conclude that our price stability test, performed on a class or kind basis, does not need to be modified to distinguish between HM models matched to PP sales and those matched to ESP sales.

2. Assessment and Duty Deposits

Comment 1: The FAG Group (Barden, FAG-Germany, and FAG–UK) and NSK contend that the Department's assessment rate methodology is flawed, and state that the Department acted contrary to law in basing assessment rates on the Customs entered values of those sales reviewed by the Department for the POR, because the sales actually reviewed by the Department for the POR may have involved merchandise entered before the POR. Instead, respondents claim that the Department should base assessment rates on the Customs entered values of merchandise actually entered during the POR, as submitted by respondents. Respondents maintain that the Department should determine assessment rates by dividing total antidumping duties due (calculated as the difference between statutory FMV and statutory USP for the sales reported for the POR) by the entered values of the merchandise actually entered during the POR (not by the entered values of the merchandise actually sold during the POR). Respondents argue that the Department's current methodology can lead to a substantial overcollection of dumping duties.

Both Torrington and Federal-Mogul argue that the Department's methodology is valid. Torrington notes that the Department concluded that the current methodology is reasonable and that it constitutes an appropriate use of the Department's discretion to implement sampling and averaging techniques as provided for in section 777A of the Tariff Act. See *AFBs I* at 31694. Torrington states that since the U.S. sales used to calculate the dumping margins are only a sample of the total U.S. sales during the POR, application of FAG's proposed methodology would lead to substantial undercollection of antidumping duties, unless the Department adjusts that methodology to take into account all U.S. sales during the POR.

Torrington also states that both the Department's current methodology and FAG's proposed methodology are deficient in that neither method ''ties entries to sales.'' Torrington proposes two methods for dealing with the problem of reviewed sales that do not match to particular entries during the POR. First, Torrington suggests that the Department review entries rather than sales. Torrington points out that this method is not ideal because it could place the Department in the position of reviewing entries made during the POR that contained merchandise that was sold after the POR. Second, Torrington proposes that the Department require respondents to submit adequate information to trace each entry directly to the sale in the United States. Torrington observes that at present this method would be impossible because the administrative record in this review does not permit tracing each sale to the entry.

Federal-Mogul states that the Department's methodology is logical because it establishes a link between the values calculated on the basis of the sales analyzed and the actual assessment values over time and, therefore, avoids the distortions that FAG's alternative would engender.

Department's Position: We disagree with the FAG Group and NSK. As stated in *AFBs III* (at 39737), section 751 of the Tariff Act requires that the Department calculate the amount by which the FMV exceeds the USP and assess antidumping duties on the basis of that amount. However, there is nothing in the statute that dictates how the actual assessment rate is to be determined from that amount.

In accordance with section 751, we calculated the difference between FMV and USP (the dumping margin) for all reported U.S. sales. For PP sales we have calculated assessment rates based on the total of these differences for each importer divided by the total number of units sold to that importer. Therefore, each importer is only liable for the duties related to its entries. In ESP cases, we generally cannot tie sales to specific entries. In addition, the calculation of specific antidumping duties for every entry made during the POR is impossible where dumping margins have been based on sampling, even if all sales could be tied to specific entries. Hence, for ESP sales, in order to obtain an accurate assessment of antidumping duties on all entries during the POR, we have expressed the difference between FMV and USP as a percentage of the entered value of the examined sales for each exporter/importer (ad valorem rates). We will direct the U.S. Customs Service to assess antidumping duties by applying that percentage to the entered value of each of that importer's entries of subject merchandise under the relevant order during the POR.

This approach is equivalent to dividing the aggregate dumping margins, *i.e.*, the difference between statutory FMV and statutory USP for all sales reviewed, by the aggregate USP value of those sales and adjusting the result by the average difference between USP and entered value for those sales. While we are 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 that would have been determined if we had reviewed those sales of merchandise actually entered during the POR.

Comment 2: Federal-Mogul and Torrington object to the Department's policy of calculating the cash deposit rate as a percentage of statutory USP. They claim that this practice results in a systematic undercollection of duty deposits. Federal-Mogul and Torrington propose that the Department base its deposit rate methodology on Customs entered values because duty deposit rates are applied to entered value. Torrington states that the legislative

history requires that the estimated antidumping duty deposit rate be as accurate and as close to actual duties as possible, given the information available. Hence, if the Department has the entered value data available for calculating the assessment rates, it should use this data.

Torrington contends that it is important to focus on the difference between the entered value used by Customs to collect duties and the ESP calculated by Commerce. Entered value is different from ESP because ESP includes expenses, such as the value added tax, that are excluded from entered value.

RHP, Koyo, FAG, NTN, NSK, and SKF disagree with Torrington and Federal-Mogul. Respondents argue that it has been the Department's consistent practice to use USP as the denominator in calculating the cash deposit rate and to apply this rate to the entered value of future imports of the subject merchandise. In support of this argument, NTN notes that the Court has repeatedly upheld the Department's methodology as reasonable and in accordance with the antidumping statute. NTN cites *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 866–67 (CIT 1993) (*Federal-Mogul*) , in which the Court ruled that the antidumping statute does not specify that the same method should be used for calculating both assessment rates and cash deposit rates, and that the Department's methodology is ''reasonable and in accordance with the law.'' Thus, NSK states that the Department should adhere to its established practice and calculate separate assessment and deposit rates.

Respondents contend that Torrington's and Federal-Mogul's arguments fail to adequately take into account that, under any method of calculating cash deposit rates, cash deposits are unlikely to equal the amount by which FMV exceeds USP. Furthermore, if any difference between the deposit rate and the ultimate antidumping liability results, the Department will instruct the Customs Service to collect or to refund the difference with interest.

Respondents assert that Torrington has failed to demonstrate that its methodology would result in a more accurate estimation of the duty. Torrington's claim is premised on the assumption that the information on the record will remain constant from review to review. Respondents hold that this is incorrect because even the record for a single POR reveals fluctuations in pricing and expenses and, therefore, in margin calculations. For example, indirect selling expense factors during the POR can and have changed significantly from the first part of the period to the second part. SKF claims the CIT recognized this situation in upholding the Department's methodology in *Federal-Mogul; Zenith Electronics Corp.* v. *United States,* 770 F. Supp. 648 (CIT 1991) and *Daewoo Electronics Co.* v. *United States,* 712 F. Supp. 931 (CIT 1989).

SKF argues that Torrington's illustration that ESP will always be greater than entered value is speculative. SKF points out that while ESP includes additions for elements which are not included in entered value, certain expenses are subtracted from ESP which are included in entered value.

Department's Position: We disagree with Torrington and Federal-Mogul. First, as we stated in the final results of *AFBs I* and *AFBs III,* we do not accept the argument that the deposit rate must be calculated in exactly the same manner as the assessment rate. Section 751 of the Tariff Act merely requires that both the deposit rate and the assessment rate be derived from the same FMV/USP differential. Furthermore, under any method of calculating cash deposit rates, there would be no certainty that the cash deposit rate would cause an amount to be collected that is equal to the amount by which FMV exceeds USP. Duty deposits are merely estimates of future dumping liability. If the amount of the deposit is less than the amount ultimately assessed, the Department will instruct the U.S. Customs Service to collect the difference with interest, as provided for under sections 737 and 778 of the Tariff Act and 19 CFR 353.24.

Comment 3: Torrington and Federal-Mogul contend that the Department should deduct from ESP any antidumping duties ''effectively'' reimbursed by foreign producers to their U.S. affiliates. Torrington argues that in past administrative reviews it has identified and reviewed evidence of reimbursement of antidumping duties. Torrington argues that the Department's decision not to deduct antidumping duties from ESP in the previous review was contrary to the regulations and the law. Torrington finds justification for removing antidumping duties from ESP under 19 CFR 353.26, the Department's reimbursement regulation, stating that by its own terms, it applies generally ''[i]n calculating the United States price.'' Torrington maintains that if the reimbursement regulation is not applicable in ESP situations, a foreign producer can reimburse its related U.S. subsidiary for duties and continue dumping in the United States.

Torrington and Federal-Mogul also argue that the amount of antidumping duties assessed on imports of subject merchandise constitutes ''additional costs, charges, and expenses, * * * incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States,'' as provided in section 772(d)(2)(A) of the Tariff Act. Furthermore, Torrington and Federal-Mogul contend, the Department's regulations recognize that such duties, when reimbursed by a foreign producer or exporter, constitute a selling expense that must be deducted from USP.

NTN, RHP, SKF, and the FAG Group contend that Torrington and Federal-Mogul have not provided credible arguments as to why the Department should alter its position on this issue. The FAG Group states that the reimbursement regulation cannot apply to ESP sales because in an ESP situation the importer is the exporter. Hence, one cannot reimburse oneself. The FAG Group also states that Torrington's and Federal-Mogul's arguments are premature at best because respondents have not yet been assessed with actual antidumping duties—liquidation of all entries from November 1988 to date has remained suspended, and the only payments made so far have been of estimated antidumping duties. Thus, none of the reported ESP sales made by FAG (or any other principal respondent) could have included in the resale price amounts for assessed antidumping duties.

Koyo, NTN, and the FAG Group argue that there is no legal basis for Torrington's and Federal-Mogul's argument that the Department should treat antidumping duties as selling expenses to be deducted from USP. Furthermore, respondents state that a deduction of antidumping duties paid would violate Department and judicial precedent. FAG notes that, in *Federal-Mogul* v. *United States,* Slip Op. 93–17 at 40 (CIT 1993), the Court held that deposits of antidumping duties should not be deducted from USP because such deposits are not analogous to deposits of ''normal import duties.''

FAG and NSK contend that it is clear that, in accordance with 19 USC 1673, which states that the purpose of antidumping law is to measure the amount by which FMV exceeds USP, antidumping duties should not be deducted from USP. Respondents claim that making an additional deduction from USP for the same antidumping duties that correct discrimination

between the price of comparable goods in the U.S. and the foreign markets would result in double-counting.

FAG argues that, if the Department agrees with Torrington's position, it should, to preserve comparability, add to USP the amount of any antidumping duties, plus interest, that are refunded to respondents.

Department's Position: We disagree with Torrington and Federal-Mogul that the Department should deduct from ESP antidumping duties allegedly reimbursed by foreign producers to their U.S. affiliates. In this administrative review neither party has identified record evidence that there was reimbursement of antidumping duties. Evidence of reimbursement is necessary before we can make an adjustment to USP. This has been our consistent interpretation of 19 CFR 353.26, the reimbursement regulation, and was upheld by the Court in *Otokumpu Copper Rolled Products AB* v. *United States,* 829 F.Supp. 1371 (CIT 1993).

As stated in *AFBs II* (at 28371) and *AFBs III* (at 39736), the antidumping statute and regulations make no distinction in the calculation of USP between costs incurred by a foreign parent company and those incurred by its U.S. subsidiary. Therefore, the Department does not make adjustments to USP based upon intracompany transfers of any kind.

We also disagree with Torrington and Federal-Mogul that the amount of antidumping duties assessed on imports of subject merchandise constitutes a selling expense and, therefore, should be deducted from ESP. Our position was upheld in *Federal-Mogul* v. *United States,* Slip Op. 93–17 at 40 (CIT 1993).

We agree with respondents that making an additional deduction from USP for the same antidumping duties that correct for price discrimination between comparable goods in the U.S. and foreign markets would result in double-counting. Thus, we have not deducted antidumping duties or antidumping duty-related expenses from ESP in this case.

3. Best Information Available

Section 776(c) of the Tariff Act requires the Department to use BIA ''whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation.'' In deciding what to use as BIA, the Department regulations provide that the Department may take into account whether a party refuses to provide requested information. See 19 CFR 353.37(b). Thus, the Department may determine, on a case-by-case basis, what is the BIA.

For the purposes of these final results of review, in cases where we have determined to use total BIA we applied two tiers of BIA depending on whether the companies attempted to or refused to cooperate in these reviews. When a company refused to provide the information requested in the form required, or otherwise significantly impeded the Department's proceedings, we assigned that company first-tier BIA, which is the higher of: (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or a prior administrative review; or (2) the highest calculated rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

When a company has substantially cooperated with our requests for information including, in some cases, verification, but failed to provide complete or accurate information, we assigned that company second-tier BIA, which is the higher of: (1) The highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin. See *Allied-Signal Aerospace Co.* v. *United States,* Slip Op. 93–1049 (June 22, 1993 CAFC). We applied this methodology to the companies discussed below for certain classes or kinds of merchandise.

Results Based on Total BIA

(1) Franke & Heydrich (Ball Bearings from France and Germany): We used first-tier BIA because Franke & Heydrich failed to respond to the Department's questionnaire. In this case, the rate used was the highest rate in the LTFV investigation, which was the highest rate ever found for each relevant class or kind of merchandise in the country of origin.

(2) SNFA: We used first-tier BIA because SNFA failed to respond to the Department's questionnaire. The rate used was the highest rate in the LTFV investigation which was the highest rate ever found for each relevant class or kind or merchandise in the country of origin.

(3) GMN: Because GMN had substantially cooperated with our requests for information, but was unable to complete verification, we used second-tier BIA. The rate used was GMN's highest previous rate, which in this case was the rate from the LTFV investigation.

Partial BIA

In certain situations, we found it necessary to use partial BIA. Partial BIA was applied in cases where we were unable to use some portion of a response in calculating a dumping margin. The following is a general description of the Department's methodology for certain situations.

In cases where the overall integrity of the questionnaire response warrants a calculated rate, but a firm failed to provide certain FMV information (*i.e.,* corresponding HM sales within the contemporaneous window or CV data for a few U.S. sales), we applied the second-tier BIA rate (see above) and limited its application to the particular transactions involved. See *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.,* 58 FR 39729, 39739 (July 26, 1993).

Where any deductions to HM prices or CV, such as freight or differences in merchandise, were not reported or were reported incorrectly, we have assigned a value of zero. For comparisons of similar merchandise, if adjustment information for differences in merchandise was missing from the U.S. sales listing, we used the second-tier BIA rate to determine the margins for these particular transactions. If other U.S. adjustment information such as freight charges was missing, we used other transactional information in the response for these expenses (*i.e.,* freight charges for other sales transactions). Where respondents did not establish that expenses were either indirect in the U.S. market or direct in the HM, we generally treated them as direct in the U.S. market and indirect in the HM. See *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.,* 58 FR 39729, 39739 (July 26, 1993).

We received the following comments concerning BIA issues:

Comment 1: GMN asserts that use of ''second-tier'' BIA for GMN is not supported by substantial evidence and is contrary to law.

GMN states that it promptly filed its questionnaire responses, thoroughly answered all supplemental questions,

and passed the HM sales verification because no discrepancies were found in any of the items verified. GMN asserts that only a small number of items were not verified, mainly due to GMN's manpower shortage and the absences of certain key personnel during portions of the verification. It claims that because it could not complete the sales verification, the Department cancelled the cost verification. GMN believes it is being penalized for the Department's decision not to conduct a cost verification. GMN argues that as a worst case analysis, the Department should calculate a margin by applying partial BIA only to those items which were not verified.

Department's Position: We disagree with GMN. GMN did substantially cooperate with our requests for information. However, we were not able to complete sales and cost verifications of GMN's response successfully. As stated by GMN, ''the company made every attempt to complete this review and has * * * now found that its resources are so diminished * * * that it is unable to proceed further in the sales verification or to prepare for and conduct the cost verification.'' See GMN letter dated January 13, 1994: *Withdrawal of Request for Review*. Consequently, we were unable to satisfactorily verify GMN's response, and therefore we have used second-tier BIA. The second-tier BIA rate was GMN's highest previous rate, which was from the LTFV investigation.

Comment 2: Torrington asserts that NPBS failed verification, and as such, the Department should apply a first-tier BIA rate to the entire NPBS response. Specifically, Torrington cites the NPBS Sales Verification Report dated March 1, 1994, and claims that, taken as a whole, the following seven deficiencies represent failure of verification: (1) Failure to report certain HM sales, which the Department has referred to as ''zero-priced sales'' (*NPBS Sales Verification Report*), (2) failure to report HM billing adjustments, (3) a slight overstatement of domestic inland freight expenses, (4) a discrepancy between its reported interest rate and its verified discount rate, (5) an overstatement of indirect advertising and sales promotion expenses, (6) an overstatement of export selling expenses for U.S. sales, and (7) an overstatement of other indirect selling expenses. Additionally, Torrington asserts that NPBS's actions in this review are egregious, given that they failed to report all HM sales in the second administrative review.

NPBS argues that deficiencies three through seven are of the types of discrepancies which typically arise at verification. As for the unreported billing adjustments and unreporting of certain HM sales, NPBS asserts that their effect is insignificant and that the Department disregarded these in the previous review. Furthermore, NPBS asserts that its omission of HM sales (which caused a failure of verification) in the second administrative review is under appeal and is not relevant to the facts in this case.

Furthermore, NPBS asserts that the Department should consider the unreported billing adjustments to be insignificant under 19 CFR 353.59 and to disregard these. At the least, NPBS argues, the Department should disregard those unreported billing adjustments for which the *ad valorem* effect is less than 0.33 percent. As for the unreported sales, NPBS contends that, had the sales been reported, the net effect would have been to lower FMV for all but two of the models. Therefore, the Department should disregard these sales.

In response to NPBS, Torrington argues that since the billing adjustments were never reported, there is no basis for determining their insignificance. Furthermore, the *ad valorem* effect is above 0.33% for a significant number of models. As for the omission of ''zero-priced'' sales (*i.e.*, certain HM sales), Torrington contends that the Department cannot allow NPBS to customize its HM database by not reporting sales and then manually changing the price.

Federal-Mogul states that the Department correctly and reasonably applied a second-tier BIA to those affected transactions in light of the seriousness of the omissions.

Department's Position: We disagree with Torrington that we should reject NPBS' response and use BIA for all U.S. sales. Although we did find a number of deficiencies at verification, as a whole, those deficiencies do not warrant the application of total BIA. Instead, for deficiencies three through seven, we have adjusted the data accordingly. For those U.S. sales whose matching FMV was based on transactions affected by either the unreported billing adjustments or the unreported ''zero-priced'' sales, we applied a second-tier BIA rate of 45.83%. The full extent of the ''zero-price'' sales, which does not significantly impact the overall integrity of the response, is documented on the record. As for the unreported billing adjustments, we agree with Torrington in that these should not be considered separately in terms of their *ad valorem* effect, but rather their effect taken as a whole. NPBS cooperated fully with all aspects of the verification. Although NPBS neglected to report the billing and quantity adjustments due to the labor intensive task of matching them to a sale, its response was otherwise useable.

Comment 3: NSK claims that because it fully cooperated with the Department's requests for information, the Department should not apply a punitive BIA to a few unmatched transactions that were incorrectly reported.

Torrington contends that the Department reasonably invoked an adverse presumption that the margins on these few unmatched sales would have been higher than the margin on remaining sales or the prior margin, and should continue to apply the current BIA margin for the final results.

Department's Position: We agree with Torrington. Since NSK did not provide the correct information to match the U.S. and the HM transactions, we have applied a second-tier BIA rate to those few unmatched sales in calculating the final dumping margin. We have made the adverse assumption that the margins on unmatched sales would have been higher than the margin on the remaining sales and have therefore applied a partial BIA to these unmatched transactions.

4. Circumstance-of-Sale Adjustments

4A. Advertising and Promotional Expenses

Comment 1: Torrington states that NMB/Pelmec failed to demonstrate that its reported U.S. advertising and sales promotion expenses were indirect in nature. Torrington believes that the Department should reclassify certain of the reported expenses as direct selling expenses. In rebuttal, NMB/Pelmec argues that at verification it provided the Department with sample advertisements demonstrating that they were indirect in nature.

Department's Position: We agree with NMB/Pelmec. At the U.S. verification, NMB/Pelmec provided samples of its U.S. advertisements and sales promotions and demonstrated that they were not product specific or directed at a specific customer.

Comment 2: Torrington alleges that Koyo failed to demonstrate that all of its reported U.S. advertising and promotion expenses were indirect in nature. Torrington cites *Timken Company* v. *United States*, 673 F. Supp. 495, 512–13 (CIT 1987), to argue that the burden is on respondents to demonstrate that U.S. expenses were indirect and to support Torrington's position that the Department should treat Koyo's U.S. advertising expenses as direct selling expenses.

In rebuttal, Koyo argues that the Department explicitly verified Koyo's

advertising expenses, and the verifier considered not only the amount of the expenses incurred, but also their indirect nature.

Department's Position: At verification, we examined examples of Koyo's advertising and sales promotions, and conclude that these expenses were institutional in nature and correctly classified as indirect.

Comment 3: Torrington argues that the Department should reclassify Nachi's U.S. advertising expenses as direct expenses because Nachi has not demonstrated that its U.S. advertising was indirect in nature. Torrington states that, according to a Court decision (See *Timken,* 673 F. Supp., at 513), if respondents do not explain the exact nature of U.S. advertising expenses, the Department must treat them as direct.

Nachi argues that it submitted sample advertisements that satisfy the definition of indirect advertising in that they were general advertisements aimed at promoting the Nachi brand name as opposed to specific bearing products.

Department's Position: We agree with Nachi. The sample advertisements submitted by Nachi promote the Nachi brand name in trade publications and not specific bearing products. See Nachi Section B response, at attachment 20 (September 21, 1993). Therefore, we have treated Nachi's U.S. advertising expenses as indirect selling expenses.

Comment 4: Torrington maintains that the Department should reclassify NPBS' U.S. indirect advertising expenses as direct selling expenses. NPBS argues that it has documented its indirect selling expenses and that it has complied fully with all reporting requirements. NPBS argues that the Department should continue treating these expenses as indirect.

Department's Position: We agree with NPBS. NPBS has fully complied with all reporting requirements and has separated its direct and indirect advertising and promotional expenses. Furthermore, at verification we specifically examined NPBS' export selling expenses and verified their indirect nature. See *Nippon Pillow Block Verification Report,* at 10 (March 1, 1994).

Comment 5: Torrington argues that NTN-Germany improperly failed to report direct advertising expenses in the United States. According to Torrington, NTN-Germany's statement that most of its U.S. advertising expenses were indirect expenses implies that some of these expenses are directly related to the sales subject to this review. Therefore, Torrington concludes that the Department should draw an adverse inference and reclassify all of NTN-Germany's U.S. advertising expenses as direct selling expenses for the final results.

NTN-Germany refutes Torrington's arguments on the grounds that it provided evidence demonstrating that NTN-Germany's U.S. advertising expenses are indirect selling expenses. According to NTN-Germany, the sample advertisements that it submitted promote the company in general, rather than specific products. NTN-Germany further argues that under identical factual circumstances, the Department refuted Torrington's arguments in the final results of *AFBs III.* Accordingly, NTN-Germany concludes that the Department should treat NTN-Germany's U.S. advertising expenses as indirect selling expenses for the final results of this review.

Department's Position: We agree with Torrington. In stating that most of its U.S. advertising expenses were indirect in nature, NTN-Germany tacitly acknowledged that it incurred direct advertising expenses in the United States. Nonetheless, NTN-Germany chose not to provide data on its direct advertising expenses. Because NTN-Germany elected not to provide information that it possessed regarding direct advertising expenses, we have drawn the appropriate adverse inference and treated all NTN-Germany's reported U.S. advertising expenses as direct selling expenses for these final results.

Comment 6: Torrington argues that Koyo's HM advertising expenses must have been incurred on behalf of purchasers of the merchandise to be permitted as an adjustment for differences in COS, citing 19 CFR 353.56(a)(2). Torrington contends that Koyo should segregate such expenses between sales to OEMs and sales to the aftermarket. Torrington argues that it is implausible that a purchaser of an automobile or an appliance would be the target of an advertisement of Koyo's bearings and that only properly substantiated advertising expenses incurred with respect to aftermarket sales should be permitted as a COS adjustment.

In rebuttal, Koyo argues that the regulation cited by Torrington to support its argument governs direct expenses under the COS provision. Because the HM advertising expenses reported by Koyo are indirect, the Department properly deducts these expenses under the ESP offset provision, 19 CFR 353.56(b)(2), which contains no requirement that the expenses be incurred on behalf of the purchaser.

Department's Position: We agree with Koyo that the advertising expenses in question were indirect in nature because the sample advertisements submitted by Koyo appeared in trade publications and were designed to promote the Koyo name. Therefore, because these expenses were used only to offset indirect selling expenses deducted from ESP transactions, there is no requirement that they be incurred on behalf of a customer.

Comment 7: Torrington states that the Department should not accept NMB/Pelmec Singapore's reported indirect sales promotion expenses because they were incurred in order to promote future sales. Torrington argues that expenses associated with future sales are not expenses incurred with respect to sales of subject merchandise during the POR and should not be accepted as an adjustment to FMV.

NMB/Pelmec Singapore argues that the expenses in question were incurred in bringing certain OEM clients from Singapore to Thailand on a tour of Minebea's facilities. NMB/Pelmec argues that these clients could have made additional purchases during the POR. Therefore, NMB/Pelmec concludes that its sales promotions did not relate exclusively to future sales.

Department's Position: We agree with NMB/Pelmec. Advertising and promotional expenses which are incurred during the POR are, by Department practice, associated with POR sales because they cannot be directly linked to particular sales. Also, as NMB/Pelmec explains, the expenses were incurred in promoting local sales and did relate to sales of subject merchandise during the POR. As a result, we have not changed our preliminary determination to make an adjustment to FMV for NMB/Pelmec Singapore's reported indirect sales promotion expenses.

Comment 8: Torrington argues that the Department failed to deduct from USP advertising expenses that INA incurred in Germany for export sales. Torrington notes that, in addition to U.S. advertising expenses, INA also identified certain indirect advertising expenses, incurred in Germany, that related to both domestic and export sales. Torrington states that the Department should allocate to U.S. sales a portion of the advertising expenses that INA incurred in Germany and deduct them from USP for the final results.

INA responds that deducting the advertising expenses at issue from ESP would result in an overstatement of INA's advertising expenses. INA contends that it incurs the HM advertising expenses at issue for selling merchandise to customers for whom it

has direct selling responsibility. Furthermore, INA asserts that its U.S. subsidiary incurs similar advertising expenses in selling to unrelated customers for whom it has direct selling responsibility. Because both INA and its U.S. subsidiary incur advertising expenses in making sales to their unrelated customers, INA argues that the HM advertising expenses at issue are not related to U.S. sales made by its subsidiary. Accordingly, INA concludes that the Department should not deduct these expenses from ESP for these final results.

Department's Position: We agree with INA. During our verification at INA's U.S. subsidiary, we confirmed that the subsidiary incurred advertising expenses for U.S. sales. Conversely, we found no evidence during our verification of advertising expenses at INA's headquarters in Germany that INA incurred any expenses for advertising directed toward customers in the United States. Therefore, we have not deducted these expenses from INA's USP for these final results.

4B. Technical Services and Warranty Expenses

Comment 9: Torrington argues that Koyo should reallocate U.S. technical service expenses over only non-aftermarket sales because service expenses are normally not incurred in the after-market. Torrington claims that Koyo allocated service expenses over total American Koyo Corporation sales, which would include both OEM and aftermarket sales. Furthermore, Torrington contends that, because Koyo failed to segregate service expenses into direct and indirect components, the Department should continue its preliminary treatment of considering all such expenses as direct expenses.

In rebuttal, Koyo argues that it allocated its service expenses over all of its sales, including sales to both aftermarket and OEM customers, because the services it provides to its aftermarket customers are essentially the same as those it provides to its OEM customers.

Department's Position: As set forth in *AFBs II* (at 28408) and AFBs III (at 39743), we have accepted Koyo's allocation methodology because Koyo provided the same technical services to all customers that requested them, including aftermarket customers. Also, based on our review of Koyo's response, we are satisfied that Koyo properly separated its direct and indirect expenses.

Comment 10: Torrington argues that the Department should not accept Koyo's reported HM direct warranties, guarantees, and servicing expenses because Koyo calculated its expense factor by dividing total warranty claims expenses by total bearing sales instead of quantifying expenses on the basis of class or kind of merchandise or by customer.

Koyo responds that the Department has verified and accepted its warranty expense methodology in previous reviews of both AFBs and TRBs and that the Department should continue to treat Koyo's direct warranty expenses as it did in the preliminary results and in all prior AFB reviews.

Department's Position: Although Koyo calculated a warranty expense factor based on the ratio of total warranty claims to total bearing sales, there is no evidence on the record that the calculated warranty expense factor would vary by class or kind of bearing or by customer. Therefore, as in *AFBs III* (at 39743), where Koyo used the same allocation methodology, we find that Koyo reasonably allocated direct warranty expenses, and we have accepted them for the final results.

Comment 11: RHP argues that the Department should not have treated RHP's U.S. technical service expenses as direct expenses, because they were reported as indirect expenses in both the U.S. and home markets. RHP states that the Department treats technical service expenses as direct selling expenses only when such expenses are directly related to sales under review.

RHP claims that it does not maintain records that tie the expenses of its technical service engineers located in the United Kingdom directly to particular products, customers or markets. Therefore, RHP allocated the expenses over its total sales volume. RHP argues that while the Department requested a breakdown of fixed and variable costs, RHP could not have provided such information, and that the Federal Circuit has disallowed the Department's use of BIA when the respondent could not have provided the information requested under any circumstances.

Torrington argues that some of RHP's reported technical service expenses, such as expenses for vehicle leasing and travel, are clearly direct and should have been reported as such. Torrington claims that the Department requires respondents to separate technical services into direct and indirect portions. Torrington claims that when respondents fail to separate these expenses, the Department treats the entire expense as direct in the case of U.S. sales and indirect in the case of HM sales. Similar to Torrington, Federal-Mogul agrees that the Department's treatment of RHP's technical service expenses is correct and should not be changed for the final results.

Department's Position: We agree with Torrington and Federal-Mogul. Our questionnaire specifically requests respondents to separate fixed and variable portions of technical service expenses because we treat fixed servicing costs as indirect expenses and variable servicing costs as direct expenses. Based on RHP's questionnaire response, we determine that RHP reasonably could have separated direct and indirect technical service expenses. As RHP stated in its questionnaire, ''[t]he costs in question include such items as salaries, travel expenses, vehicle leasing, etc.'' See RHP's Section B Response at 56 (September 21, 1993). Generally, we consider salaries fixed expenses because they are costs that would have been incurred whether or not sales were made. By contrast we generally consider travel expenses to be directly related to sales, because technicians are visiting customers to help them with specific problems. See *Roller Chain, Other Than Bicycle, From Japan; Final Results of Administrative Review and Partial Termination,* 57 FR 6810 (February 28, 1992) (*Roller Chain*).

Because RHP described both direct and indirect technical servicing costs in its questionnaire response, RHP should have reported each type of expense separately. The statute and the Department have a preference for respondents to provide actual expense information as opposed to allocated expense information. Because RHP did not distinguish between the direct and indirect portions of its technical service expenses in either market, we made an adverse inference and considered the entire U.S. technical service expense as direct and the entire HM technical service expense as indirect. Allocated expenses in the U.S. market are treated as direct expenses because direct expenses will be deducted from all USP transactions and will, therefore, reduce USP and potentially increase dumping margins. If these expenses were treated as indirect expenses, they would only be deducted from USP in ESP situations and would, therefore, reduce USP and potentially increase dumping margins only in ESP situations. Treatment of these expenses as indirect expenses would remove any incentive a respondent has to provide the Department with actual expense information. See *The Torrington Company* v. *United States,* 832 F. Supp. 365, 376 (CIT 1993); and *Timken* v. *United States,* 673 F. Supp. 495, 512–13 (CIT 1987). The fact that RHP chooses to keep its financial records in such a

way as to not tie its technical service expenses to specific sales does not relieve it of its responsibility to provide the Department with actual expenses information. See also *AFBs II* (at 28408) and *AFBs III* (at 39742).

Comment 12: Federal-Mogul argues that the Department incorrectly treated SNR's reported U.S. warranty costs as an indirect expense because SNR did not support its claim that warranty costs were fixed, and thus should be treated as an indirect expense. As respondents have an incentive to report U.S. expenses as indirect in nature, Federal-Mogul argues that they bear the burden of proving that U.S. expenses are indirect. Federal-Mogul concludes that because SNR has failed to show that its warranty expenses were indirect in nature, the Department should deduct the expenses directly from USP.

SNR responds that it reported its total U.S. warranty costs as indirect in nature because the cost ''relates to in-house service, rather than outside contractors.'' SNR further stated that the expense was clearly indirect because it could not be tied to specific sales.

Department's Position: We agree with Federal-Mogul that SNR failed to demonstrate the indirect nature of all its U.S. warranty costs. The fact that SNR's warranty services were performed in-house does not preclude direct expenses from being incurred. SNR did not separate its warranty costs into fixed and variable portions, as required by the questionnaire. Therefore, for these final results, we have reclassified SNR's U.S. warranty costs as a direct expense, and we have deducted them directly from USP. See also *Department's Position* to *Comment 11,* above.

Comment 13: Torrington contends that because SKF-France did not separate SARMA's U.S. technical service expenses into direct and indirect portions, the Department acted improperly by classifying the expenses as indirect. Torrington notes that it is the Department's policy to classify as direct any U.S. expenses that the respondent has not separated into direct and indirect portions. Torrington notes that in prior reviews SKF reported SARMA's technical service expenses in the same manner and the Department responded by substituting SARMA's reported technical service expenses with SKF-USA's direct technical service expenses as BIA. Torrington contends that the Department's response should remain consistent with prior reviews.

SKF-France notes that its U.S. sales response explained that SARMA provides the U.S. market with only general design and quality control advice for future bearing development. SKF-France contends that since such expenses do not constitute direct technical assistance, the Department properly treated the expenses as indirect.

Department's Position: We agree with Torrington that when respondents fail to report technical service expenses in direct and indirect portions, it is our practice to treat the expenses as direct in the United States. See *Department's Position* to *Comment 11,* above, and *AFBs III* (at 39742). However, for this particular company the issue is moot because the technical service expenses SARMA reported as indirect export selling expenses have been reclassified as research and development expenses. In its response SARMA classified all technical service expenses as indirect selling expenses and allocated these expenses across HM and export sales. However, verification of SKF-France's COP response revealed that SARMA's technical service expenses should have been classified as research and development expenses. For the preliminary results we included all technical service expenses reported by SARMA in the calculation of general and administrative expenses for the purposes of calculating COP and CV. However, we only removed from SARMA's reported selling expenses those technical service expenses SARMA classified as HM indirect selling expenses. We inadvertently failed to remove those technical service expenses incurred on behalf of U.S. sales that SARMA classified as indirect export selling expenses. Therefore, in order to avoid double counting expenses, we have removed technical service expenses from the indirect export selling expense adjustment because they are included in the calculation of COP for these final results.

Comment 14: SKF-Germany asserts that the Department made a programming error in its analysis. SKF contends that the Department treated U.S. technical service expenses as indirect selling expenses in the analysis memorandum, but treated them as direct selling expenses in the computer programming. Federal-Mogul and Torrington state that SKF's reported technical expenses are properly treated as direct selling expenses.

Department's Position: We agree with Torrington and Federal-Mogul. The computer program correctly deducted these expenses from USP as direct selling expenses. However, there was a discrepancy between the preliminary analysis memorandum and the computer program due to a clerical error: The analysis memorandum incorrectly indicated that the expenses in question were indirect.

Comment 15: Torrington contends that INA improperly reported its indirect warranty, guarantee, and servicing expenses in the home market. According to Torrington, the amount reported by INA includes both actual expenses paid and accrued expenses. Because accrued expenses will also be reflected among actual expenses paid, Torrington asserts that INA's claim is overstated. Accordingly, Torrington requests that for the final results, the Department limit INA's claimed indirect warranty, guarantee, and servicing expenses to amounts actually paid.

According to INA, the amounts that it reported for these expenses were the total amounts recorded in the relevant expense accounts. These amounts represent neither cash payments of warranty claims nor accruals of contingent liability. Because INA reported the amounts that it recorded as expenses during the review period, INA rejects Torrington's claim that it double-counted its indirect warranty expenses.

Department's Position: We agree with INA. The record contains no evidence that INA failed to report accurately and completely the data recorded in its warranty expense accounts. We verified that INA reported its indirect warranty expenses and found no evidence of double-counting. Accordingly, we have treated INA's reported indirect warranty, guarantee, and servicing expenses as indirect selling expenses for the final results.

4C. Inventory Carrying Costs

Comment 16: Torrington argues that the Department should abandon the practice of calculating inventory carrying costs (ICCs) and instead impute credit costs on ESP transactions starting from the point of shipment. Torrington contends that prices should be compared on an ''f.o.b. origin'' basis and neither HM or PP sales require a deduction of pre-sale ICCs to arrive at f.o.b. origin prices. In ESP sales, so-called ICCs should be viewed as a financing cost assumed by the exporter on behalf of the related importer, which must be deducted, while no comparable expense exists in the HM.

Torrington contends that adjustment to FMV for ICCs misconstrues the statutory scheme and the nature of price comparisons in ESP calculations. According to Torrington, the Department has misinterpreted the purpose for deducting financing charges from ESP and makes an offsetting deduction from FMV that is not permitted by the statute. Also, the fact that the foreign manufacturer and U.S.

importer are related is irrelevant to the requirement under 19 USC 1677(e)(2) that expenses incurred for the account of the importer by the manufacturer must be identified and deducted from ESP.

Finally, even if a comparable HM ICCs expense is incurred, Torrington argues no adjustment should be made to FMV. In contrast to its treatment of ESP, the statute provides no parallel adjustment in calculating FMV. Where the statutory scheme is clear, the Department may not create adjustments in misguided attempts to make ''apples-to-apples'' comparisons. Torrington claims that, just as in *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement v. United States,* No. 93–1239, Slip Op. (Fed. Cir. Jan 5, 1994) (*Ad Hoc Committee*), in which the CAFC reversed the Department's allowance of a deduction of pre-sale inland freight expenses in calculating FMV, the statute does not provide a basis for making an ICC adjustment to FMV.

Respondents argue that the Department should again reject Torrington's argument that ICCs should not be calculated in the HM and that imputed credit costs on ESP transactions should start from the point of shipment. NSK argues that the most obvious reason for calculating ICCs from the date of production, rather than the date of shipment, is that ICCs are incurred from the date of production forward. See *Certain Internal Combustion Forklift Trucks from Japan,* 53 FR 12552 (April 15, 1988). Moreover, because ICCs represent the ''opportunity cost of holding inventory,'' NSK holds that it is appropriate to calculate such costs from the time a product is placed in inventory—the date of production. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Review,* 57 FR 28369, 28410 (June 24, 1992). In addition, respondents argue that the Department's adjustment of FMV for ICCs is reasonable and supported by the antidumping statute. RHP argues that the *Ad Hoc Committee* case referenced by Torrington is not on point and that Torrington has not provided a new reason for the Department to stop recognizing ICCs in the HM. Nachi argues that the Department has consistently applied this practice in all of the administrative reviews of the antidumping duty orders against AFBs in order to make fair ''apples-to-apples'' price comparisons. This practice also has been upheld by the CIT. See *The Torrington Company v. United States,* 818 F. Supp. 1563, 1577 (CIT 1993) (*Torrington I*).

Department's Position: We disagree with Torrington. We calculate ICCs from the date of production because the date of production, not the date of shipment, is when the item becomes a part of the company's inventory. Merchandise destined for the United States and merchandise destined for the HM are not necessarily held in inventory from the date of production to the date of shipment for equal lengths of time. Therefore, in general, an accurate accounting of ICCs in each market requires beginning at the date on which production is completed. See AFBs III. The Department's practice in this regard has been upheld by the CIT: ''Given its new point of reference for measuring ICCs, the Department was correct to include home market ICCs incurred after the time of production of the merchandise as part of the pool of indirect selling expenses for which adjustment to FMV can be made subject to 19 CFR 353.56(b)(2) in those situations where AFBs produced for the home market were held in inventory.'' See Torrington I, 818 F. Supp. at 1577.

Furthermore, with respect to adjustments to FMV for imputed ICCs, the CIT has supported the Department's methodology in calculating ICCs in both the United States and the HM. In *Torrington I,* the CIT found that ''the Department's adjustment to FMV for imputed ICCs pursuant to 19 CFR 353.56(b)(2) was a reasonable exercise of the Department's discretion in implementing the antidumping duty statute and is affirmed.'' *Id.* As stated in the original investigation and the first three reviews of this proceeding, in order for comparisons to be fair, it is necessary to make ICC adjustments to both FMV and USP. See *AFB LTFV Investigation,* 54 FR 19050 (May 3, 1989); *AFBs I* and *AFBs II.* That the foreign seller chooses to sell from inventory in the HM is no different from the seller's decision to undertake ESP transactions in the United States. The Department imputes ICCs because the actual financial cost of holding inventory after production is not recorded in the financial records of the company.

Moreover, the Department's treatment of ICCs complies with *Ad Hoc Committee.* There, the CAFC held that an adjustment may not be made to FMV if the statute explicitly provides for such an adjustment to USP, but not to FMV. Because the statute explicitly provides for an adjustment to USP for pre-sale movement expenses but not for an adjustment to FMV, the CAFC held that the Department cannot adjust FMV for the pre-sale movement expenses without any other authority. *Id.* Unlike the situation with movement expenses, however, the statute does not contain a specific provision for deducting imputed ICCs for either USP or FMV. Rather, the Department's authority to deduct imputed ICCs derives from the Department's authority to deduct indirect selling expenses. This authority stems from the general language contained in section 772(e)(2) of the Tariff Act, which authorizes the Department to deduct selling expenses in ESP transactions, and from the Department's authority to make fair comparisons between USP and FMV, which allows the Department to deduct indirect selling expenses from FMV pursuant to the ESP offset. See *Smith-Corona,* 713 F.2d at 1578–79.

Finally, as recognized by the CIT in *Torrington I,* the intent of the antidumping statute and the Department's practice with respect to ICCs is to remove certain expenses from FMV and ESP in order to derive an FMV and ESP at a comparable point in the stream of commerce to achieve the so-called ''apples-to-apples'' price comparison. The Department properly carried out that intent by adjusting FMV pursuant to the ESP offset in those situations in which AFBs produced for the HM were held in inventory. The nature of the expense incurred for ICCs holds true regardless of whether the expense was incurred in the U.S. market or in the HM. Because the seller incurred the opportunity cost of holding inventory in both markets, the Department properly adjusted for the cost in the U.S. market as well as in the HM.

Comment 17: Federal-Mogul claims that the Department's approach to calculating ICCs is biased in favor of respondents and presents respondents with an opportunity to manipulate and distort these expenses. First, the calculation of the adjustment relies upon transfer pricing. Transfer pricing between related parties is inherently suspect and was the reason that provisions for ESP were written into the antidumping law. Second, there is no relation between the price at which the merchandise is sold and the theoretical cost of holding such merchandise prior to sale. Thus, the only reliable means by which ICCs can be quantified is on the basis of costs, rather than prices. Since not all firms submitted the data necessary to do this, however, the Department should at least ensure that the sales prices used are reliable and consistent for both markets, and prices used should only be derived from sales made to unrelated purchasers. Finally,

the Department should eliminate variations in the adjustments due to the interest rates employed, and should recognize that a firm is likely to borrow in the market where it can obtain the lowest interest rate. Because these costs are imputed and speculative, a uniform interest rate should be applied. Federal-Mogul cites *LMI-La Metalli Industriale, S.p.A v. United States*, 912 F.2d 455 (Fed. Cir. 1990) (LMI), in which the Federal Circuit noted that in *LMI-La Metalli* ''the ITA presumed that LMI would borrow in Italy to finance its United States receivables, no matter how unfavorable the rate and whatever the available alternatives. Such a presumption does not withstand scrutiny.''

In response to Federal-Mogul, Nachi argues that transfer price is a reliable price that is reported to and accepted by the United States Customs Service in valuing imports. Nachi claims that the Customs Service would require a different price, or cost, for its valuation purposes if transfer prices were subject to ''unchecked manipulation.'' RHP notes that the Customs Service can investigate transfer prices to determine whether such prices are too low. Furthermore, in response to Federal-Mogul's argument that the Department should use uniform interest rates, Koyo notes that the Department used actual, reported interest rates in calculating ICCs, and argues that it is absurd to suggest that the Department should reject such evidence of actual borrowing expenses (and the associated interest rates) and use instead a fictional rate (the ''most favorable rate available to a respondent in either market'').

Department's Position: ICCs measure the imputed cost incurred by a firm for storing AFBs in inventory. As the Department stated in the third review, the transfer price reflects the cost of the merchandise as it is entered into inventory and therefore is an accurate basis upon which to calculate the cost to the subsidiary of holding inventory prior to the sale to an unrelated U.S. customer. See *AFBs III* (at 39744); see also *Portable Electric Typewriters From Japan: Final Results of Antidumping Duty Administrative Review*, 53 FR 40926, (October 19, 1988). Furthermore, Federal-Mogul has not shown that any prices used in the calculation of ICCs are unreliable and inconsistent, nor that any transfer prices used are distortive.

We cannot calculate actual ICCs because these costs are not found in the books of respondents. Thus, we must impute the financing cost of holding inventory. The cost to a company of holding inventory is best measured by the time it must finance such inventory and its actual short-term borrowing rate. Accordingly, in calculating such an expense, we use the appropriate interest rate actually realized by the entity financing the inventory (*i.e.*, the HM interest rate for the HM entity and the U.S. interest rate for the U.S. affiliate). This means that the same interest rate is used to calculate HM ICCs and U.S. ICCs to the extent that the same company is financing the investment in inventory. When a U.S. affiliate finances the investment in inventory, its actual short-term borrowing rate is used because that reflects the cost to the company. *LMI* is not relevant to the calculation of ICCs in these cases, because only actual short-term borrowing rates have been used. In *LMI*, the respondent had no short-term borrowings and the CAFC found it improper to choose a higher rate over a lower rate. However, when there exist actual borrowings by a company, it would be unreasonable to conclude that a company would borrow at a rate other than its actual rate. Moreover, the actual rate at which a company obtains short-term funds depends on many factors, of which available rates is only one. The conditions of available loans may compel a company to choose a loan at a higher rate than another at a lower rate. Therefore, we impute financing costs based on each company's actual borrowings where possible. If a company did not have actual short-term borrowings, financing costs are imputed using the lowest rate the company demonstrates was available to it during the POR.

Comment 18: NSK claims that because the Department lowered NSK's short-term borrowing rate at verification to take into account short-term commercial paper borrowings, the Department must also reflect this change in the U.S. ICCs.

Torrington agrees with NSK's proposed modification but states that the Department must apply the revised home market rate only to the correct portion of the inventory period.

Department's Position: We agree with Torrington. We have amended the HM ICCs and the HM portion of U.S. ICCs to reflect the short-term interest rate determined at verification.

Comment 19: Torrington argues that if the Department decides to allow an adjustment to NSK's FMVs for ICCs, then a recalculation is necessary, because NSK provided in its section C response an example of one shipment in which the actual time in inventory varied from the reported average time in inventory.

NSK argues that the Department discovered nothing at verification to undermine NSK's claim regarding the average time spent in the HM inventory.

Department's Position: We disagree with Torrington. During verification we found NSK's ICC averages to be reasonable and adequate.

Comment 20: Torrington contends that INA improperly calculated per-unit ICCs incurred in Germany. Torrington alleges that INA allocated ICCs incurred in Germany over a sales amount that included the resale prices of INA's U.S. subsidiary, and then understated the per-unit expense by multiplying the resulting adjustment factor by the reported per-unit Customs value rather than the resale price. For the final results, Torrington requests that the Department revise the calculation of INA's per-unit German ICCs by multiplying the reported adjustment factor by the price to the first unrelated party in the United States.

INA rejects Torrington's argument, arguing that the sales values it used in calculating its allocation factors did not include resales by INA-USA. Rather, the U.S. sales included were INA's sales to its U.S. subsidiary at transfer prices. Therefore, INA concludes that it properly multiplied the adjustment factor for ICCs by the transfer price to calculate per-unit ICCs.

Department's Position: We agree with INA. During verification, we examined the total HM sales values that INA used to allocate various charges and expenses. We were able to desegregate the total HM sales values into their constituent elements and trace these elements to the audited financial statements of the various INA entities subject to this review. During this process, we found a separate account that INA uses to record sales to its U.S. subsidiary. We saw no evidence to suggest that INA recorded anything other than its transfer prices to its U.S. subsidiary in this account. Accordingly, we determine that the total sales value that INA used to allocate its ICCs included only INA's transfer prices to its U.S. subsidiary. As a result, we have accepted INA's use of transfer prices to calculate per-unit ICCs for these final results.

4D. Post-Sale Warehousing

Comment 21: Torrington contends that the Department should treat Nachi's claimed post-sale warehousing expenses as indirect selling expenses. Torrington argues that these warehousing expenses are not direct because they were incurred prior to date of shipment, which Nachi has identified as being the same as date of sale. Torrington states that warehousing expenses are allowed

as direct adjustments only when the expenses are incurred after the sale.

Nachi contends that this issue has been considered by the Department in the past three reviews and decided in Nachi's favor. Nachi argues that the circumstances under which it incurs warehousing expenses have not changed and that the expenses are incurred after the sale took place. Nachi contends that the warehousing expenses were direct because they were incurred only on sales to specific customers and would not have been incurred if the sales had not taken place.

Department's Position: We agree with Nachi that the Department has already evaluated this issue in the past three reviews and determined the expenses to be direct expenses. See *AFBs I* (at 31692); *AFBs II* (at 28415); and *AFBs III* (at 39745). Nachi's section C response and the verification report clearly show that the expenses in question were incurred directly on sales to specific customers. See *Nachi Section C Response*, at 35–36 (September 28, 1993) and *Nachi-Fujikoshi Home Market Sales Verification Report*, at 9–10 (February 28, 1994). In particular, the verification report states that ''[o]nce quantity is confirmed, the warehouse delivers the desired quantity immediately to the customer and collects a fee from Nachi for its services.'' See *Verification Report*, at 9. Although the verification report shows that merchandise is shipped and stored in the warehouse before ordered quantities are confirmed, merchandise is sent to the warehouse only after customers have entered into a formal agreement to purchase bearings from Nachi, after they have provided Nachi with estimates of the quantities they will order, and after sales prices are confirmed. The warehouse also delivers the bearings on Nachi's behalf, and thus, the incurred expenses include post-sale movement charges. Because Nachi is charged for the warehouse's services only if, and after, a bearing is sold, Nachi incurs no expenses unless a sale takes place. Therefore, we conclude that the expenses in question varied directly with sales volume to specific customers and would not have been incurred if sales had not taken place. As a result, we have continued to treat the expenses as a direct adjustment to FMV.

4E. Commissions

Comment 22: Torrington asserts that at verification the Department learned that one of NMB/Pelmec's salesmen stopped receiving commissions after August 22, 1992. Therefore, Torrington claims the Department should not accept the reported commission rates and should apply partial BIA.

According to NMB/Pelmec, the Department officials ''verified the accounts payable and the sales commissions paid for this salesman and tied this amount to the G/L (General Ledger).'' NMB/Pelmec concludes that because the Department verified all financial data related to commissions, there is no basis to apply partial BIA.

Department's Position: We agree with NMB/Pelmec. We verified commissions in the United States, including the fact that no commissions were paid to this salesman after August 22, 1992. Since there were no discrepancies in the information we verified, we have no basis for using a BIA rate for NMB/Pelmec's U.S. commissions. See *ESP Verification Report for NMB/Pelmec*, February 10, 1994.

Comment 23: Torrington states that the Department should disallow Koyo's HM adjustment for commissions paid to purchasing agents acting on behalf of Koyo's customers because such payments do not affect the HM price obtained by Koyo. Torrington argues that, although Koyo claims that it enters into contracts with these agents, no contracts were submitted on the record. Torrington also argues that Koyo failed to demonstrate how these commissions differ from rebates paid to unrelated customers. Further, Torrington asserts that, since Koyo has not tied such payments to specific sales of merchandise, the payments should at least be reclassified as indirect selling expenses.

In rebuttal, Koyo states that the purchasing agents of Koyo's customers are not the customers themselves, nor do they act in any capacity other than as the representatives of Koyo's customers. Also, the contracts into which Koyo enters with these agents specify the payment of commissions.

Department's Position: We disagree with Torrington. Consistent with the three previous administrative reviews, we have accepted Koyo's commissions, including commissions paid by Koyo to purchasing agents that act on behalf of its customers, as direct selling expenses. *See AFBs I* (at 31719); *AFBs II* (at 28407); and *AFBs III* (at 39746). As we stated in the third administrative review, since Koyo pays commissions to purchasing agents that act on behalf of its customers, Koyo's HM sales qualify for the commission adjustment submitted. Koyo's commissions are distinct from rebates because they are paid to intermediaries for providing services. We consider rebates to be discounts which are granted to the purchaser after the delivery of merchandise to the customer.

Comment 24: Torrington states that with respect to RHP the Department failed to deduct related-party commissions on the U.S. side in the preliminary results. Torrington claims that the Department has generally treated such commissions as direct expenses, citing *AFBs III*, and concludes that the Department should classify all of RHP's U.S. commissions as direct expenses.

RHP claims that the Department failed to deduct related-party commissions in both the U.S. and home markets, but did not provide an explanation for this treatment. RHP states that the Department adjusts for related-party commissions when they are determined to be directly related to the sales in question and at arm's length. RHP states that its sales data showed that commissions were directly related to the sales on which they were paid. RHP further contends that it submitted additional information, including information on unrelated-party commissions in the United States, to support its claim that related-party commissions in the United States were negotiated at arm's length. RHP argues that the Department should conclude that the commissions it paid to related parties were negotiated at arm's length in both the U.S. and home markets.

RHP contends that, because the situations in both markets are similar, the Department can only justify making an adjustment for related-party commissions in one market if it makes an adjustment for such commissions in the other market. Accordingly, if the Department decides to treat related-party commissions as direct selling expenses in the U.S. market, related-party commissions in the HM should be treated the same way.

Torrington counters that the Department should not deduct commissions paid to NSK Europe by RHP in the HM because the commission payments were made between related parties, and the Department determined that RHP did not demonstrate the arm's-length nature of these transactions. Torrington states that because RHP did not provide a factual basis for the Department to reverse its decision, the Department is justified in disregarding the commissions RHP paid to NSK Europe.

Department's Position: In the home market RHP paid commissions to employees of NSK Europe, an affiliated company which the Department considers part of the same entity as RHP for purposes of these administrative reviews. In the U.S. market RHP paid

commissions to its employees and independent sales agents. The commissions RHP paid both to independent agents and to employees were expenses directly tied to sales. Therefore, for these final results, we treated these expenses as direct selling expenses by deducting commissions from both the FMV and the USP. See *Final Results of Antidumping Duty Administrative Review; Porcelain-on-Steel Cookware From Mexico,* 58 FR 43330 (August 16, 1993). See also *Final Determination of Sales at Less Than Fair Value; Industrial Forklift Trucks from Japan,* 53 FR 12552 (April 15, 1988) and *Final Results of Administrative Review of Antidumping Finding; Drycleaning Machinery from West Germany,* 50 FR 32154 (August 8, 1985).

Comment 25: Torrington argues that the Department erred in treating NTN's commissions on HM sales as direct selling expenses. According to Torrington, NTN's method of calculating commission rates by allocating total commissions paid to a commission agent over total sales by that agent provides no indication that the reported commissions are directly related to HM sales of subject merchandise. As a result, Torrington requests that the Department either deny an adjustment to FMV for NTN's HM commissions, or treat them as indirect selling expenses for the final results.

NTN responds that it reported commissions by applying a specific rate for each commissionaire to sales that NTN made through that commissionaire. NTN further argues that the Department confirmed at verification that NTN reported commissions only on sales of subject merchandise. Therefore, NTN argues that the Department should continue to treat NTN's reported HM commissions as direct selling expenses for these final results.

Department's Position: We agree with NTN. At verification, we examined documents that confirmed that NTN paid commissions on sales of subject merchandise and that NTN's method of reporting commissions reflected the commissions that NTN actually paid. Accordingly, we have treated NTN's reported HM commissions as direct selling expenses for the final results of this review.

Comment 26: Torrington and Federal-Mogul argue that certain expenses that NTN classified as related-party U.S. commissions appear to be directly related to PP sales to one U.S. customer. Citing *LMI-La Metalli Industriale S.p.A.* v. *United States,* 912 F.2d 455, 459 (Fed. Cir. 1990), Torrington and Federal-Mogul contend that the Department must examine the circumstances surrounding related-party commissions before determining that they should not be used in the Department's analysis. In this regard, Torrington states that NTN incurred the expenses at issue for activities similar to those made by unrelated commission agents, and that the rates NTN paid to related agents are comparable to the rates that NTN paid to unrelated U.S. commission agents. Accordingly, Torrington and Federal-Mogul conclude that the Department should consider these expenses to be direct selling expenses in the U.S. market. Federal-Mogul further contends that, because NTN failed to report commission rates paid to the related party, the Department should resort to BIA in determining the commission amount to be deducted.

NTN responds that there are no facts that distinguish this review from the three previous reviews of this case in which the Department rejected Torrington's and Federal-Mogul's arguments concerning related-party commissions in the United States. NTN further argues that Torrington overstated the alleged commission rate that NTN paid to a related company in the United States. Accordingly, NTN supports the Department's preliminary determination that the expenses are not direct selling expenses for PP sales.

Department's Position: We disagree with Torrington and Federal-Mogul. NTN stated that it made commission payments to its U.S. subsidiary, NTN Bearing Company of America (NBCA), for expenses that NBCA incurred with respect to sales to a specific PP customer. In its questionnaire responses, NTN provided specific data on the expenses that NBCA incurred with respect to the sales in question. Accordingly, rather than use the commission, which is the transfer payment between NTN and NBCA, we have used the actual expenses incurred by NBCA with respect to these sales. Further, an examination of the specific types of expenses that NBCA incurred with respect to the sales in question shows that the expenses are those that we typically consider to be indirect expenses incurred by sales organizations. Therefore, we have used the actual expenses that NBCA incurred with respect to the sales in question in our analysis, and have treated them as indirect selling expenses.

4F. Credit

Comment 27: Torrington notes that at verification the Department discovered that Nachi did not report actual dates of payment for its HM sales, but had estimated dates of payment based on each customer's terms of payment. Therefore, Torrington asserts that Nachi's calculation of HM credit expenses is not based on actual credit experience. As a result, Torrington argues that Nachi's HM credit expenses claim should be denied.

Nachi responds that although it does not keep invoice-specific records of when it receives payment, its credit expenses were calculated on an average customer-specific credit period derived from actual experience. Therefore, Nachi concludes the Department should continue to deduct HM credit expenses from FMV.

Department's Position: At verification, the Department discovered that Nachi did use estimated dates of payment based on each customer's terms of payment. However, the payment records reviewed suggested that Nachi was understating its HM credit period in most cases, which resulted in a higher FMV. Therefore, the Department accepted the payment dates submitted by Nachi and will continue to do so for the final results, and has deducted HM credit expenses from FMV. See *Nachi-Fujikoshi Home Market Sales Verification Report,* at 10–11 (February 28, 1994).

Comment 28: Torrington argues that the Department should not accept NPBS's credit expense methodology because NPBS reported payment dates based on the maturity date of the promissory notes, not the actual payment date per transaction. Torrington further argues that the Department should reject credit expenses that are not based on actual payment dates or on average customer-specific credit periods, and that NPBS's credit expenses should be rejected because it failed to report its short-term interest rate accurately.

NPBS responds that its credit expenses are properly reported and suggests that sampling error could account for a discrepancy between the reported interest rate and the discounted rate for a few sales. NPBS notes that it inadvertently included two long-term loans in the calculation of short-term interest. These loans were later deleted and short-term interest was recalculated. Finally, NPBS argues that the firm's short-term interest rate provides the best estimate of the discount rate. The exact discount rate is nearly impossible to calculate since each NPBS branch discounts numerous notes each week at varying rates.

Department's Position: The Department agrees with NPBS. The Department verified NPBS' credit

methodology and found only minor discrepancies in the application of its payment date formula. We did not find that these minor discrepancies resulted in either a systematic over- or under-reporting of the credit period for PP sales. Furthermore, NPBS' discount rate was lower than the reported interest rate. This minor discrepancy has been corrected by the Department.

Comment 29: Torrington claims that NTN-Germany improperly calculated its U.S. credit expenses. According to Torrington, NTN-Germany determined U.S. credit expenses using interest rates that appear to have been determined on borrowings made outside of the United States. Because NTN-Germany has submitted no evidence that it finances its accounts receivable using funds borrowed outside the United States, Torrington urges the Department to reject NTN-Germany's reported interest rate and use the highest U.S. interest rate reported by a German respondent to calculate NTN-Germany's U.S. credit expenses.

NTN-Germany responds that Torrington's argument appears to be based on the fact that many of the banks from which NTN-Germany borrowed money during the POR have foreign names. NTN-Germany states that it determined the U.S. interest rate that it submitted in its questionnaire response based on its short-term borrowing. As a result, NTN-Germany urges the Department to disregard Torrington's arguments.

Department's Position: We agree with NTN-Germany. The record contains no evidence to suggest that NTN-Germany calculated its U.S. interest rate based on borrowing outside the United States. Therefore, for these final results we have used the U.S. interest rate that NTN-Germany reported in its questionnaire response to calculate credit expenses for U.S. sales.

Comment 30: NTN-Germany states that its reported U.S. credit expense was reasonable because it was based on customer-specific information. Accordingly, NTN-Germany contests the Department's recalculation of the firm's reported U.S. credit expenses. If the Department determines not to use NTN-Germany's reported U.S. credit expenses, however, NTN-Germany asserts that the Department should correctly calculate the credit period. According to NTN-Germany, the Department determined the credit period as the number of days between the sale date and the payment date. NTN-Germany requests that, if the Department continues to calculate sale-specific credit periods, the Department calculate the credit period as the number of days between shipment and payment, as specified in the Department's questionnaire.

Torrington responds that NTN-Germany's concerns are unclear because of the manner in which NTN-Germany determined shipment and sale dates for its U.S. sales. Torrington further argues that NTN-Germany has provided no evidence that the Department's method of calculating the credit period for NTN-Germany's U.S. sales is unreasonable. Accordingly, Torrington concludes that the Department should not amend its calculation of NTN-Germany's U.S. credit expenses for these final results.

Department's Position: We agree in part with NTN-Germany. Based on a comparison of NTN-Germany's reported terms of payment, the actual number of days between shipment and payment for U.S. sales and the credit period reported by NTN-Germany in its questionnaire response, we have determined that NTN-Germany's reported credit period does not accurately reflect the credit that NTN-Germany granted on the U.S. sales subject to this review. Specifically, NTN-Germany's reported credit period does not comport with its stated terms of payment or with the sale-specific credit period calculated using actual shipment and payment dates for each sale. Because NTN-Germany's reporting method is not representative of the actual credit period for its U.S. sales, and because our questionnaire specified the actual, sale-specific credit period as preferential to an aggregate credit period for each customer, we have imputed the actual credit period for NTN-Germany's U.S. sales for these final results. We agree with NTN-Germany, however, that we should calculate the sale-specific credit period according to our longstanding practice of using the shipment date, rather than the sale date, as the beginning of the credit period, and have revised our calculations accordingly for these final results.

Comment 31: Federal-Mogul claims that the Department should not allow SARMA to apply a late payment factor to each customer's terms of payment to establish a payment date for HM sales. Furthermore, Federal-Mogul argues that the Department should disallow any additional credit expenses attributed to late payments made by SARMA (SKF-France) HM customers. Citing *Federal-Mogul Corp.* v. *United States,* 824 F. Supp. 223 (1993), Federal-Mogul argues that, since COS adjustments are only allowed for those factors which affect price or value, additional credit expenses incurred from a purchaser's unexpected failure to pay within the agreed-upon period cannot affect the price which was set specifically in contemplation of payment being made at the end of the agreed-upon credit period.

SKF-France contends that its credit expense calculations, which are based on the actual payment date, are consistent with Departmental policy. SKF-France cites the Department's position in *Final Results of Antidumping Administrative Review; Certain Welded Carbon Steel Pipe and Tube Products from Turkey,* 55 FR 42230, 42231 (1990), and *Final Determination of Sales at Less than Fair Value; Certain Tapered Journal Roller Bearings and Parts Thereof From Italy,* 49 FR 2278, 2279–80 (1984), to support its position. SKF-France states that Federal-Mogul's reference to a recent Department redetermination on remand is inapposite (see *Federal-Mogul Corp.* v. *United States,* 824 F. Supp. 223 (1993)). Additionally, SKF-France contends that it updated SARMA's payment dates and recalculated credit expenses using actual dates of payment.

Department's Position: The Department disagrees with Federal-Mogul. Consistent with Departmental policy, we adjust for credit expenses based on sale-specific reporting of actual shipment and payment dates. See *Final Results of Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Republic of Germany,* 56 FR 31724 (July 11, 1991). This policy recognizes the fact that all customers do not always pay according to the agreed terms of payment and that respondent is aware of this fact when setting its price. Therefore, it would be inappropriate to make a COS adjustment for credit based entirely on the agreed terms of payment, since it would not take into account all of the circumstances surrounding a sale. Furthermore, the Department agrees with SKF-France that SARMA reported its actual payment dates in its supplemental response.

4G. Indirect Selling Expenses

Comment 32: Torrington argues that Koyo incorrectly included among its total indirect selling expenses amounts charged to a reserve account established for doubtful debt. Torrington states that Koyo conceded in its deficiency response that this reserve allowance was not an expense, but a provision for future expenses. As a result, Torrington maintains that the Department should exclude this allowance from Koyo's pool of indirect selling expenses for the final results.

Citing *AOC Int'l.* v. *United States,* 721 F. Supp. 314 (CIT 1989) and *Daewoo Electric Co.* v. *United States,* 712 F. Supp. 931 (CIT 1989), Koyo responds

that the Department should allow Koyo's reported allowance for doubtful debt as a HM indirect selling expense. Alternatively, Koyo maintains that if this expense is excluded from Koyo's pool of HM indirect selling expenses, then the Department should exclude it from the calculation of USP as well in order to ensure an apples-to-apples comparison of FMV and USP.

Department's Position: We agree in part with Koyo. As stated in *AFBs II* (at 28412), the Department considers bad debt that is actually written off during the POR to be either a direct or an indirect selling expense depending on the relationship between the bad debt expense and the sale. In *AOC* and *Daewoo,* respondents reported data on bad debts actually written off during the relevant review periods. In contrast, although Koyo claimed as an expense an amount set aside in reserve in the event that its customers fail to pay outstanding charges in the future, Koyo failed to demonstrate that it actually wrote off any bad debts during the review period. In the absence of data on actual bad debt that Koyo wrote off during the review period, we cannot conclude that there is a relationship between Koyo's reported doubtful debt reserve and actual sales. Therefore, for these final results we have disallowed Koyo's reported doubtful debt reserve as a HM indirect selling expense.

Because we do not consider Koyo's doubtful debt reserve to be an actual HM selling expense, we agree in principle with Koyo that doubtful debt reserves should not be treated as U.S. selling expenses either. After examining Koyo's financial statements, however, we found that Koyo did not quantify its doubtful debt reserve for U.S. sales. Accordingly, for these final results we were not able to exclude doubtful debt reserves from Koyo's pool of U.S. indirect selling expenses.

Comment 33: Koyo maintains that the Department's computer program contains an error that sets the value of HM indirect selling expenses to zero whenever the Department resorts to CV as the basis for FMV. Koyo asserts that because it reported indirect selling expenses for CV, the Department should revise its computer program to deduct these expenses from CV for these final results.

Torrington rejects Koyo's argument because deducting indirect selling expenses in certain instances would yield distorted results. Torrington further argues that Koyo has not alleged or demonstrated that the Department committed a clerical error in making adjustments to CV. Therefore, Torrington concludes that the Department should not adopt Koyo's proposed revision to the Department's computer program for these final results.

Department's Position: We agree with Koyo. When we created new cost and expense variables to recalculate COP pursuant to our verification findings, we inadvertently did not include the variable for indirect selling expenses in the margin section of the computer program. Because we verified the data that Koyo provided on indirect selling expenses for CV, we have revised our computer program to deduct these expenses from CV for these final results.

Comment 34: Torrington believes that the Department should disallow Nachi's claim for indirect selling expenses that were incurred by NFC on HM sales made through NBC. Citing AFBs I (at 31720), Torrington states that the Department consistently has rejected claims for selling expenses incurred by parent companies on sales made by subsidiaries. Furthermore, Torrington argues that there is no evidence on the record that shows that the expenses claimed by NFC were incurred exclusively to support NBC sales and asserts that it is reasonable to assume that NFC's selling expense were incurred to support all aspects of sales.

Nachi contends that the Department thoroughly verified the fact that NFC incurred indirect selling expenses to support sales made by NBC and that Torrington has not presented any evidence to contradict the Department's findings. Accordingly, Nachi concludes that the Department should allow Nachi's claimed indirect selling expenses for these final results.

Department's Position: We disagree with Torrington. In *AFBs I,* we denied as HM indirect selling expenses the parent company's selling expenses because it did not incur the expenses in question specifically on sales to its HM subsidiary. In contrast, in this review we verified that NFC incurred the indirect selling expenses in question on behalf of NBC and that these expenses supported NBC's sales to its HM customers. Accordingly, we have allowed NFC's reported selling expenses for its sales to NBC as HM indirect selling expenses for these final results.

Comment 35: Nachi argues that in recalculating Nachi's export selling expenses incurred in Japan on U.S. sales, the Department mistakenly treated all transfer prices as being reported in U.S. dollars despite the fact that Nachi reported certain transfer prices in yen. Therefore, Nachi requests that the Department make the necessary exchange rate conversions for those transfer prices reported in yen.

Torrington responds that before making a correction to Nachi's export selling expense calculation, the Department should confirm that Nachi reported transfer prices in both dollars and yen.

Department's Position: We agree with Nachi. We confirmed that Nachi reported transfer prices in dollars for sales made through certain channels and in yen for sales made through other channels. Accordingly, we have made the appropriate exchange rate conversions to Nachi's yen-denominated transfer prices for these final results.

Comment 36: Torrington argues that the Department failed to deduct from USP all export selling expenses that INA incurred in Germany. Torrington notes that, in addition to export selling expenses that INA incurred specifically for U.S. sales, INA also reported and identified certain expenses related to all export sales, and certain other expenses related to both domestic and export sales. Torrington requests that the Department deduct these additional export selling expenses from USP for the final results.

INA objects to Torrington's request on the grounds that deducting the indirect selling expenses at issue from ESP would result in an overstatement of INA's U.S. indirect selling expenses. INA contends that it incurs the HM indirect selling expenses at issue for selling the merchandise to customers for whom INA has direct selling responsibility. INA further contends that its U.S. subsidiary incurs similar expenses in selling to unrelated customers for whom it has direct selling responsibility. Because both INA and its U.S. subsidiary incur indirect selling expenses in making sales to their unrelated customers, INA asserts that the HM indirect selling expenses at issue are not related to U.S. sales made by its subsidiary. Accordingly, INA concludes that the Department should not deduct these expenses from ESP for these final results.

Department's Position: We agree with INA. During our verification at INA's headquarters in Germany, we found that INA properly reported all expenses that it incurs specifically for export sales to its U.S. subsidiary. Further, we found no evidence that INA incurred the indirect selling expenses at issue to support sales to unrelated customers in the United States; rather, INA incurs these expenses in Germany in making sales to customers outside the United States. Therefore, we conclude that the indirect selling expenses in question are not related to U.S. sales. Accordingly,

we have not deducted these expenses from INA's USP for these final results.

Comment 37: NTN and NTN-Germany contest the Department's rejection of NTN's claimed reduction to NTN's reported total U.S. indirect interest expenses for that portion of the total interest expenses attributable to cash deposits of estimated antidumping duties. NTN and NTN-Germany argue that the Department's failure to provide an explanation for its decision to deny their claimed reduction to U.S. interest expenses violated the Department's regulations by prohibiting NTN and NTN-Germany from effectively commenting on the methods that the Department used to calculate NTN's and NTN-Germany's preliminary dumping margins. NTN and NTN-Germany further argue that the Department's denial of this adjustment contravenes the Department's established practice of permitting this adjustment in previous reviews of the antidumping duty orders on both AFBs and tapered roller bearings. Citing *Shikoku Chemicals Corp.* v. *United States,* 795 F. Supp. 417 (CIT 1992), NTN and NTN-Germany assert that it has the right to rely on the Department's established practice in preparing its questionnaire responses. Accordingly, NTN and NTN-Germany conclude that the Department's failure to adhere to its regulations and its violation of judicial precedent in not allowing NTN and NTN-Germany to rely on established calculation methods require the Department to allow NTN's and NTN-Germany's claimed reduction to total U.S. interest expenses.

Torrington and Federal-Mogul support the Department's rejection of NTN and NTN-Germany's claim. Federal-Mogul contends that because the Department considers cash deposits of estimated antidumping duties to be provisional in nature, any interest expenses that NTN and NTN-Germany incurred on money borrowed to make cash deposits of estimated duties are also provisional in nature, and could ultimately be offset by interest received on refunded cash deposits. Torrington adds that interest expenses, including any incurred on financing cash deposits, are related to all NTN and NTN-Germany's U.S. sales and, therefore, should be treated like other types of indirect selling expenses. Torrington further argues that even if NTN and NTN-Germany's claimed offsets were permissible, they failed to demonstrate that they actually incurred interest expenses on borrowing to finance cash deposits of estimated antidumping duties. Finally, Torrington and Federal-Mogul reject NTN and NTN-Germany's procedural arguments. Torrington states that the Department always amends its calculation methods when existing methods are found to be inaccurate, while Federal-Mogul states that the Department has not denied NTN's and NTN-Germany's right to participate in the proceeding because they may still seek judicial review of the Department's final results. Accordingly, Torrington and Federal-Mogul conclude that the Department properly denied NTN's and NTN-Germany's claimed adjustment to U.S. indirect selling expenses for interest paid on borrowing to finance cash deposits of estimated antidumping duties.

Department's Position: We disagree with NTN and NTN-Germany. Cash deposits of estimated antidumping duties are provisional in nature, because they may be refunded, with interest, to respondents at some future date. Because the cash deposits are provisional in nature, so too are any interest expenses that respondents may incur on borrowing to finance cash deposits. To the extent that respondents receive refunds with interest on cash deposits, the interest that respondents receive on the refunded deposits will offset any interest expenses that respondents may have incurred in financing the cash deposits. Therefore, we did not allow NTN's and NTN-Germany's claimed offsets to reported interest expenses in the United States to account for that portion of the interest expenses that respondents estimate to be related to payment of antidumping duties.

Further, we reject NTN's and NTN-Germany's arguments that we cannot deny their claimed adjustment because we deprived them of their right to participate in this proceeding. The Department has the authority to revise the methods that it uses to calculate dumping margins when it determines that existing methods yield inaccurate results. In addition, NTN and NTN-Germany had the opportunity to make affirmative arguments in support of their claimed offsets in the case briefs that they submitted subsequent to our issuance of the preliminary results of these reviews. Therefore, we are not constrained by prior practice to grant NTN's and NTN-Germany's claimed adjustment to U.S. interest expenses for interest incurred to finance cash deposits of antidumping duties, and have rejected the claim for these final results.

Comment 38: Torrington objects to NTN's claimed reductions to U.S. indirect selling expenses. According to Torrington, NTN has provided no evidence that the expenses that it has excluded from its reported U.S. indirect selling expenses are not related to sales of subject merchandise. Accordingly, Torrington requests that the Department deny NTN's claimed reductions to U.S. indirect selling expenses for the final results.

In response to Torrington's arguments, NTN states that the Department has verified NTN's method of reporting these adjustments in previous reviews, and has accepted NTN's claimed adjustments in each of the previous reviews of AFBs. NTN further argues that the record supports its contention that the expenses in question are not related to sales of subject merchandise. Accordingly, NTN concludes that the Department should grant NTN's reported adjustments to U.S. indirect selling expenses for these final results.

Department's Position: We agree with NTN. The record contains no evidence to refute NTN's claims that NTN incurs the expenses in question almost exclusively for sales of non-subject merchandise, and that any such expenses that NTN may incur on sales of subject merchandise are insignificant. Therefore, we have permitted NTN to deduct these expenses from its total pool of U.S. indirect selling expenses for these final results.

Comment 39: NTN and NTN-Germany object to the Department's determination to re-allocate their reported U.S. selling expenses using their resale prices to the first unrelated customer. NTN and NTN-Germany argue that because the Department failed to articulate reasons for its rejection of their allocation method, the Department deprived them of the opportunity to comment on the Department's determination. NTN and NTN-Germany further argue that the Department violated judicial precedent by abandoning the method of allocating U.S. selling expenses that it used in the three previous reviews of AFBs. Moreover, NTN and NTN-Germany claim that there is no evidence that the Department's method of allocating U.S. selling expenses over resale prices is more accurate than NTN's and NTN-Germany's allocation of these expenses over transfer prices. Accordingly, NTN and NTN-Germany request that the Department use in its analysis NTN's and NTN-Germany's U.S. selling expenses as they reported them in their questionnaire responses for these final results.

In response, Torrington and Federal-Mogul state that transfer pricing is suspect because it is completely within the control of respondents and, therefore, subject to manipulation. Torrington further argues that the

Department's reallocation is rational because there is no correlation between the selling expenses in question and NTN's transfer prices. As a result, Torrington and Federal-Mogul support the Department's reallocation of NTN's and NTN-Germany's U.S. selling expenses on the basis of resale prices to the first unrelated customer in the United States.

Department's Position: We agree with Torrington and Federal-Mogul. First, we disagree with NTN's and NTN-Germany's arguments that we denied them the opportunity to comment on our rejection of their allocation method and violated judicial precedent in reallocating the expenses in question. As stated above, NTN and NTN-Germany had the opportunity to make affirmative arguments in support of their allocation methods in the case briefs that they submitted subsequent to our issuance of the preliminary results of these reviews. Further, as stated above, we have the authority to revise our calculation methods when we determine that existing methods yield inaccurate results.

When allocating expenses over sales value, we attempt to use the most accurate measure of that value. Although in certain instances we permit respondents to allocate certain types of expenses using transfer prices, we prefer to allocate expenses using resale prices to unrelated parties because such prices are not completely under respondents' control and, therefore, provide a more reliable measure of value that is not subject to potential manipulation by respondents. Thus, although we have no evidence that NTN systematically manipulated its transfer prices, our allocation of the specific expenses in question using resale prices provides a more reliable measure of per-unit expenses than does an allocation using transfer prices. Further, the allocation of the expenses in question using resale prices to unrelated customers is appropriate in this instance because the U.S. affiliate of NTN and NTN-Germany incurred these expenses in the United States making U.S. sales to unrelated customers. It is not appropriate to allocate these expenses on the basis of the U.S. affiliate's purchase costs; rather, the expenses should be allocated over its sales. Because we prefer to allocate expenses using resale prices, and because the expenses in question are attributable to U.S. sales to unrelated customers, we have allocated the expenses in question over resale prices for these final results.

Comment 40: Torrington asserts that the Department erred in failing to reallocate expenses that NTN and NTN-Germany incurred on U.S. sales prior to importation on the basis of resale prices to the first unrelated U.S. customer. According to Torrington, because respondents control transfer pricing, allocation of expenses based on transfer prices affords respondents the opportunity to manipulate the Department's analysis by shifting expenses away from certain U.S. products. In this context, Torrington states that its own analysis of NTN's and NTN-Germany's transfer prices and production costs suggests that their transfer prices may not be reasonable. Therefore, Torrington requests that the Department reallocate the remainder of NTN's and NTN-Germany's U.S. selling expenses on the basis of resale prices for the final results.

In rebuttal, NTN and NTN-Germany assert that Torrington's analysis fails to demonstrate that their transfer prices are unreasonable. NTN further argues that the pre-sale expenses that it incurred in Japan are attributable to sales by NTN to its U.S. subsidiary. Therefore, NTN and NTN-Germany assert that the Department should accept its allocation of these expenses using transfer prices for these final results.

Department's Position: We agree with NTN and NTN-Germany. Although we prefer to allocate expenses using resale prices to unrelated parties, we may permit respondents to allocate expenses using transfer prices when it is reasonable to do so. In this instance, such an allocation is reasonable because the expenses at issue are movement charges that NTN and NTN-Germany incurred on sales, made at transfer prices, to a related party in the United States. Further, because Torrington's analysis does not focus on the transfer prices and costs of specific products, we find that the analysis fails to demonstrate that NTN's and NTN-Germany's transfer prices are unreasonable or that they systematically manipulated their transfer prices to shift expenses away from certain U.S. sales. Therefore, we have not reallocated the expenses in question for these final results.

Comment 41: Torrington challenges the method that NTN used to allocate to U.S. sales the export selling expenses that NTN incurred in Japan. According to Torrington, NTN's method of allocating these expenses according to salaries of export department personnel appears to understate the amount of export selling expenses attributable to U.S. sales. Specifically, the allocation ratio that NTN developed using salaries is significantly less than the ratio that would be derived by comparing U.S. export sales to total export sales. Because the record contains no evidence explaining or supporting the difference between the allocation ratios, Torrington suggests that the Department consider for the final results allocating the export selling expenses incurred in Japan to U.S. sales using a ratio based on sales.

NTN rejects Torrington's argument, stating that the Department verified the accuracy of NTN's reported export selling expenses, and that the Department has accepted NTN's allocation method in each of the previous AFB reviews. Therefore, NTN concludes that the Department should not reallocate its export selling expenses for these final results.

Department's Position: We agree with NTN. Torrington's analysis is suspect because it appears to be based on sales of only one class or kind of merchandise and on NTN's U.S. resale prices rather than the value of NTN's exports to the United States. Further, Torrington has provided no evidence that its proposed allocation method yields a more accurate measure of the amount of NTN's export selling expenses that are attributable to U.S. sales. Because NTN is able to identify specific employees who are responsible for export sales to NTN's U.S. subsidiary, NTN's allocation method yields a reasonable measure of the export selling expenses attributable to U.S. sales. Therefore, in the absence of evidence that the salary data that NTN used in its allocation are inaccurate, we have accepted NTN's allocation method for these final results.

Comment 42: Federal-Mogul questions NTN's classification of ''warehouse expenses'' and ''miscellaneous expenses'' incurred in the United States as indirect selling expenses. Federal-Mogul argues that, although warehouse and miscellaneous expenses may be indirect selling expenses, NTN failed to provide any evidence to substantiate its claim that these expenses were not directly related to U.S. sales. Accordingly, Federal-Mogul requests that the Department treat these expenses as direct selling expenses for the final results of this review.

NTN responds that it provided detailed explanations of all its expenses in its questionnaire responses, and that the Department has accepted NTN's classification of miscellaneous and warehouse expenses as indirect selling expenses in each of the previous AFB reviews. Therefore, NTN concludes that the Department should continue to treat miscellaneous and warehouse expenses as indirect selling expenses for these final results.

Department's Position: We agree with NTN. The record contains no evidence that these expenses are directly related to specific U.S. sales. Therefore, we have continued to treat them as indirect selling expenses for these final results.

Comment 43: Torrington maintains that NPBS' allocation of export selling expenses based on the number of personnel responsible for export sales is unreliable. Torrington argues that the Department should reallocate these expenses based on the relative value of U.S. sales to total export sales, as it did in the final results of *AFBs III* (at 39749).

NPBS responds that its allocation method is reasonable. According to NPBS, it allocates expenses incurred in Japan to all export sales based on the number of personnel responsible for export sales, and then allocates the export selling expenses to U.S. sales based on the ratio of U.S. sales to total export sales. Therefore, NPBS contends that its allocation method is reasonable and consistent with the Department's position in the final results of *AFBs III.* As a result, NPBS concludes that the Department should not reallocate its export selling expenses for these final results.

Department's Position: We agree with NPBS. To the extent that NPBS is able to identify specific employees who are responsible for export sales, it is acceptable for NPBS to determine that portion of its total pool of indirect selling expenses attributable to export sales based on the ratio of export-related employees to total employees because it provides a reasonable measure of the selling effort that NPBS devotes to export sales. Further, because NPBS used the ratio of U.S. export sales to total export sales to allocate export selling expenses to U.S. sales, we find that NPBS' allocation method is reasonable and consistent with *AFBs III.* Therefore, we have used NPBS' reported export selling expenses in our calculations for these final results.

Comment 44: Federal-Mogul questions NSK's classification of ''warehouse expenses'' incurred in the United States as indirect selling expenses. Citing *Nihon Cement Co., Ltd.* v. *United States,* Slip. Op. 93–80 (May 25, 1993), Federal-Mogul contends that warehouse expenses may be movement expenses under certain circumstances. In this context, Federal-Mogul argues that although warehouse expenses may be indirect selling expenses, NSK failed to provide any evidence to substantiate its claim that these expenses were not movement expenses. Accordingly, Federal-Mogul requests that the Department treat these expenses as movement expenses for the final results of this review.

NSK responds that the Department has no obligation to presume that warehouse expenses are movement expenses. NSK further argues that the Department never challenged NSK's claim that the warehouse expenses at issue were indirect selling expenses. Therefore, NSK concludes that the Department should continue to treat warehouse expenses as indirect selling expenses for these final results.

Department's Position: We agree with NSK. The record contains no evidence that NSK incurred the warehouse expenses in question for storage of merchandise in transit from one location to another, as was the case in *Nihon.* Moreover, Federal-Mogul has provided no evidence that any other circumstances are present that would warrant treating the warehouse expenses in question as movement expenses. As a result, we cannot conclude that these expenses are movement expenses. Accordingly, we have continued to treat them as indirect selling expenses for these final results.

Comment 45: Torrington challenges two aspects of NSK's claimed HM indirect selling expenses. First, Torrington argues that NSK improperly claimed deductions from FMV for indirect selling expenses incurred by NSK's HM subsidiaries as well as by NSK. Citing *AFBs I,* Torrington argues that the Department previously has rejected respondents' attempts to claim deductions from FMV for indirect expenses incurred by both the parent company and its sales subsidiary. Torrington further argues that NSK has not demonstrated that the research and development (R&D) expenses that comprise a significant portion of NSK's HM indirect selling expenses are actually related to NSK's selling functions. Therefore, Torrington concludes that the Department should eliminate R&D expenses from NSK's claimed HM indirect selling expenses or, at a minimum, allow as a HM indirect selling expense only that portion of R&D expenses attributable to HM sales.

NSK responds that because the Department considers NSK and its related distributors to be one entity, the indirect selling expenses of both NSK and its related distributors are properly attributed to the HM sales subject to this review. NSK further argues that the Department has accepted NSK's method of reporting indirect selling expenses in previous AFB reviews, and that the Department verified NSK's reported indirect selling expense data in this review. Moreover, NSK argues that it reported its general R&D expenses in accordance with the statute and the Department's instructions. According to NSK, it incurs general R&D expenses in analyzing domestic customers' intended uses of bearings or in assisting them in identifying the appropriate product for a particular application; because of the need to work directly with customers in providing general R&D services, NSK states that it does not provide such services to export customers. Thus, because NSK incurs general R&D expenses for domestic customers only, and because the expenses are related to NSK's selling function, NSK concludes that the Department should deduct them as indirect selling expenses from FMV for these final results.

Department's Position: We agree with NSK. We consider NSK and its related distributors to be one company for purposes of this review and, therefore, consider all indirect selling expenses incurred by NSK and its related distributors for the distributors' sales to unrelated customers to be related to these sales. Further, we verified that NSK incurs general R&D expenses to support NSK's overall sales and marketing efforts, and that NSK does not incur general R&D expenditures for export customers. Accordingly, we have included all expenses that NSK incurred in making sales to its related sales companies in Japan, and all of NSK's claimed general R&D expenses, among NSK's HM indirect selling expenses for these final results.

Comment 46: Torrington asserts that NSK should not allocate indirect selling expenses and G&A expenses for ESP sales on the basis of resale prices. According to Torrington, NSK's reallocation was not in compliance with the Department's instructions in its supplemental questionnaire to NSK. Torrington further argues that NSK's allocation method distorts the Department's calculations by assigning the highest deductions for such expenses to sales with the highest per-unit resale prices. Therefore, Torrington believes that the Department should use the highest amount deducted for any U.S. sale to make these adjustments for all U.S. sales. Alternatively, Torrington argues that the Department should reallocate indirect selling expenses and G&A over the cost of goods sold, in order to ensure that the expenses in question are allocated to each part number without distortion.

Citing *Nacco Materials Handling Group, Inc.* v. *U.S.,* Slip Op. 94–34 (March 1, 1994), NSK argues that the Department should continue to accept its method of reporting these expenses because, as explained in NSK's

supplemental questionnaire response, it is accurate and reliable. NSK further argues that the Department accepted NSK's allocation method in previous AFB reviews, and verified the expenses in question in this review. Therefore, NSK concludes that the Department should not reallocate NSK's indirect selling expenses and G&A for these final results.

Department Position: We agree with NSK. In its response to our supplemental questionnaire, NSK explained in full the sales price-based method that it used to allocate the expenses in question. As in previous reviews, we find that NSK's allocation method is reasonable. Further, there is no evidence that an allocation of indirect selling expenses based on cost of goods sold, as proposed by Torrington, is any more accurate or reasonable than a sales price-based allocation. Therefore, consistent with past AFB reviews, for these final results we have accepted NSK's indirect selling expenses as NSK reported them in its questionnaire responses.

4H. Miscellaneous Charges

Comment 47: RHP contends that the Department erred in using Federal Reserve exchange rates rather than RHP's reported exchange rate in recalculating RHP's claimed currency hedging adjustment. RHP states it provided all the information that the Department requested regarding RHP's hedging adjustment, and that RHP's reported exchange rates accurately reflect the rates that RHP received. RHP further argues that the Department provided no justification for its determination not to use RHP's actual exchange rates. Therefore, RHP asserts that the Department should use the data that RHP submitted concerning its actual corporate exchange rates to calculate its currency hedging adjustment for these final results.

Torrington and Federal-Mogul argue in rebuttal that the Department must apply the exchange rate specified by the Department's regulations. Torrington continues that it is the respondents' burden to demonstrate their entitlement to an adjustment. In this context, Torrington argues that the Department did not verify RHP's corporate exchange rates, and that RHP did not explain how its reported corporate rates would result in a more precise adjustment than those that the Department used in its calculations. Therefore, Torrington and Federal-Mogul conclude that the Department should not modify its calculation of RHP's currency hedging adjustment for these final results.

Department's Position: We agree with Torrington and Federal-Mogul. The Department is required by 19 CFR 353.60 to make currency conversions in accordance with Customs procedures established by section 522 of the Tariff Act. This section states that ''(t)he Federal Reserve Bank of New York shall decide the buying rate and certify the rate to the Secretary (of the Treasury).'' Therefore, we have used the Federal Reserve Bank's exchange rates as the basis for RHP's currency hedging adjustment for these final results.

5. Cost of Production and Constructed Value

5A. Research and Development

Comment 1: Torrington contends that, although RHP treated all R&D as G&A expenses, these expenses were at least in part product-specific. Torrington references two response exhibits listing product R&D expenses for new products to support its view that the Department should reject RHP's argument that it was unable to report product-specific R&D. Torrington notes that developing new products is clearly a product-specific activity and should have been reported as such. Torrington concludes that the Department should reclassify all R&D expenses and include them in the total for the COM for the final results.

RHP explains that while its R&D facility was responsible for developing new products, no new products were sold during the POR, and thus, there is no basis for adjusting RHP's reported R&D costs.

Department's Position: We disagree with Torrington. The exhibits in RHP's cost section show general areas of R&D directed at the development of new bearings and general improvements to certain aspects of all bearings. The exhibits do not indicate that R&D costs were incurred for any specific bearing.

Comment 2: NMB/Pelmec argues that the R&D expenses that are not related to the subject merchandise should not be added to the COP and CV. In its Section D response to the Department's questionnaire, NMB/Pelmec explained that R&D expenses were reported as part of factory overhead. The only R&D activities noted in the 1992 Minebea Co.'s annual report relate to ''Rod-End, Spherical and Journal Bearings.'' These types of bearings are manufactured at facilities in the United Kingdom, the United States and Japan, and are not manufactured by the same facilities that produce the subject merchandise. Therefore, these expenses should not be included in the COP and CV.

Torrington rebuts NMB/Pelmec's argument by stating that R&D expenses incurred by the parent company in Japan should be allocated to the Thai operations. According to Torrington, there is no merit to NMB/Pelmec's argument that the R&D expenses identified by the Department at verification are not related to the subject merchandise and should not be added to COP and CV. The record does not support NMB/Pelmec's contention that the unreported R&D costs were incurred solely for rod-end, spherical and journal bearings.

Torrington further contends that, even if NMB/Pelmec's unsubstantiated factual contention were correct, it is irrelevant whether or not these types of bearings are presently being manufactured in the Thai facilities. It is recognized that the same basic technology and production processes are utilized for the various types of bearings. For the final results, Torrington argues that the Department should include the allocated portion of the R&D expenses in question.

Department's Position: The Department agrees with Torrington's argument that the respondent failed to demonstrate that the benefits of Minebea Japan's R&D efforts are limited to nonsubject merchandise. NMB/Pelmec's argument that the financial report only discusses R&D that relates to nonsubject products is flawed. The same report discusses how the Minebea Group developed a new washing system for ball bearings that it intends to have installed in all their plants worldwide by the end of March 1993. Furthermore, we find irrelevant NMB/Pelmec's argument that the list of current R&D projects that the Department reviewed did not contain R&D specifically related to bearings. We verified through Minebea Japan's financial statements that it amortizes the cost of its R&D over a 5-year period. Accordingly, the current list of R&D projects does not reflect the capitalized costs of prior year projects currently being expended as an operating cost. Therefore, it is appropriate to allocate R&D costs to NMB/Pelmec and we have included these expenses in the COP and CV.

5B. Profit for Constructed Value

Comment 3: Torrington argues that sales to related parties that are not at arm's length should be excluded for purposes of calculating statutory profits. Torrington cites *Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Wire Rods from France,* 58 FR 68865 (December 29, 1993), where the Department held that ''all home market sales to related parties that fail the arm's-length test'' should be excluded from the profit calculation.

Torrington claims that the change in approach was prompted by the fact that related-party sales are excluded when FMV is based on HM sales. Torrington also cites *Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled, Cold-Rolled, Corrosion-Resistant and Cut-to-Length Carbon Steel Flat Products from Korea,* 58 FR 37176 (July 9, 1993), as a recent example of this practice. Finally, Torrington contends that this exclusion is in accordance with 19 U.S.C. 1677b(e)(2).

Respondents assert that sales to related parties which are not at arm's length are in the ordinary course of trade and should be included in the calculation of the profit component of CV. They also contend that the Department has consistently rejected Torrington's argument in prior AFB reviews. FAG argues that, although the Department has reconsidered this issue in *Certain Stainless Steel Wire Rods from France* and declined to include such related-party sales in the profit component of CV, such change in policy is unwarranted given the lack of any statutory mandate to disregard related-party sales that are in the ordinary course of trade. FAG argues that should the Department reject such related-party sales, the Department should then perform the equivalent of a ''10–90–10 test,'' as it does in disregarding below-cost sales where FMV is based on price.

Department's Position: We agree in part with Torrington. Contrary to Torrington's contention, there is no basis for *automatically* excluding, for the purposes of calculating profit for CV, sales to related parties that fail the arm's-length test.

Section 773(e)(2) of the Tariff Act provides that a transaction between related parties may be ''disregarded if, in the case of an element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration.'' The arm's-length test, which is conducted on a class or kind basis, determines whether sales prices to related parties are equal to or higher than sales prices to unrelated parties in the same market. This test, therefore, is not dispositive of whether *the element of profit* on related party sales is somehow not reflective of the amount usually reflected in sales of the merchandise under consideration. However, related-party sales that fail the arm's-length test do give rise to the possibility that certain elements of value, such as profit, may not fairly reflect an amount usually reflected in sales of the merchandise. We considered whether the amount for *profit* on sales to related parties was reflective of an amount for profit usually reflected on sales of the merchandise. To do so, we compared profit on sales to related parties that failed the arm's-length test to profit on sales to unrelated parties. If the profit on sales to related parties varied significantly from the profit on sales to unrelated parties, we disregarded related-party sales for the purposes of calculating profit for CV.

We first calculated profit on sales to unrelated parties on a class or kind basis. If the profit on these sales was less than the statutory minimum of eight percent, we used the eight percent statutory minimum in the calculation of CV. If the profit on these sales was equal to or greater than the eight percent statutory minimum, we calculated profit on the sales to related parties that failed the arm's-length test and compared it to the profit on sales to unrelated parties as described above. Based on this methodology, we found only one instance in which the profit on sales to unrelated parties was greater than eight percent—specifically, sales of CRBs by INA.

Profit on INA's sales of CRBs to unrelated parties varied significantly in comparison to profit on its sales of CRBs to related parties. Therefore, we conclude that the profit on INA's sales to related parties did not fairly reflect the amount usually reflected on HM sales of this merchandise. Accordingly, we used INA's profit on sales to unrelated parties in the calculation of profit in determining CV for CRBs.

With regard to FAG's contention that the Department should apply a 10–90–10 test in this situation, we note that the 10–90–10 test is a practice we established to implement the statutory requirement, as provided in section 773(b) of the Tariff Act, that HM sales at less than COP be disregarded if, among other things, they have been made in substantial quantities. The 10–90–10 test is not germane to the issue of whether the element of profit fairly reflects the amount usually reflected in sales in the market under consideration, which is provided for under section 773(e) of the Tariff Act. Furthermore, we have not based our determination to disregard related-party sales that fail the arm's-length test for the purposes of calculating CV on whether such sales are in the ordinary course of trade. Rather, as discussed above, our decision to disregard such sales is based on whether, pursuant to section 773(e)(2) of the Tariff Act, the amount for profit on such sales was reflective of an amount for profit usually reflected on sales of the merchandise.

Comment 4: Torrington contends that below-cost sales should be excluded for purposes of calculating statutory profits. Torrington argues that the same rationale for the decision in *Certain Stainless Steel Wire Rods from France* applies equally to below-cost sales that are disregarded under 19 U.S.C. 1677b(b) and contends that if sales below cost are excluded for price-to-price comparisons, these sales cannot be included for determining profit for the calculation of CV.

Torrington also argues that below-cost sales excluded under 19 U.S.C. 1677b(b) are not in the ordinary course of trade. The petitioner contends that the definition of CV specifies that statutory profits should be calculated on the basis of sales in the ordinary course of trade. 19 U.S.C. 1677b(e)(1)(B). Thus, below-cost sales, when made in substantial quantities over an extended period of time, must be disregarded in calculating CV profit.

Torrington further points out that the United States has taken the position that disregarded below-cost sales are not to be considered sales in the normal course of trade as referred to in Article VI of the General Agreement on Tariffs and Trade (GATT) and the Antidumping Code. Finally, Torrington maintains that its view of ordinary course of trade conforms to international practice and is supported by the Final Act of the Uruguay Round, dated December 15, 1993, in which parties to the negotiation agreed to the principle that CV should incorporate actual profits earned on sales in the ordinary course of trade.

Respondents maintain that it would be incorrect for the Department to disregard below-cost sales in the calculation of CV because such action is not supported by a proper reading of the statute. Furthermore, respondents maintain that the international agreement cited by Torrington is not relevant to the administration of current U.S. antidumping law. Respondents claim that the statute and Departmental practice implicitly recognize that sales below cost are in the ordinary course of trade and should be included in calculating profit for CV.

Department's Position: We disagree with Torrington's contention that the calculation of profit should be based only on sales that are priced above the COP. Section 773(e)(1)(B) of the Tariff Act specifically imposes a variety of requirements on the calculation of profit in determining CV. Namely, the profit should be equal to that usually reflected in sales: (1) Of the same general class or kind of merchandise; (2) made by producers in the country of exportation; (3) in the usual commercial quantities;

and (4) in the ordinary course of trade. Thus, the statute does not explicitly provide that below-cost sales be disregarded in the calculation of profit. The detailed nature of this sub-section suggests that any requirement concerning the exclusion of below-cost sales in the calculation of profit for CV would be explicitly included in this provision. Accordingly, it would be inappropriate for the Department to read such a requirement into the statute. See *AFBs III* (at 39752).

Furthermore, contrary to Torrington's assertions, under current law, as expressed in section 771(15) of the Tariff Act, the definition of ''ordinary course of trade'' does not exclude or even mention sales below-cost. Until the changes resulting from the GATT 1994 agreements are implemented by the United States, we must follow the above section of the Tariff Act.

Consequently, we have used the greater of the rate of profit provided in the response or the statutory minimum of eight percent unless we applied a different profit rate resulting from calculations in those situations where HM related-party sales were found not to be at arm's length. See *Comment 3*.

Comment 5: Torrington argues that since the Department requested profit data for total sales made during the POR and for the sample sales, it should compute respondents' profits on the basis of the sample sales reported or the average profit on all sales, whichever is greater. Torrington states that given that the Department has relieved respondents of reporting all sales for the period through the use of sampling, it is appropriate to use the higher of the two available rates. However, Torrington argues that if a single rate is adopted, it should be the sample sales profit rate since this rate is a representative profit tailored to the U.S. sample weeks.

Torrington further contends that for respondents that withheld data, the Department should apply the highest profit rate earned by any other respondent during the POR. For respondents that did not provide data, Torrington believes the Department should apply 19 U.S.C. 1677e(c) to supply the missing information. Alternatively, Torrington argues that for all sales that would otherwise be compared with CV, the Department should apply the dumping margin calculated in the original LTFV investigation as BIA.

Respondents maintain that profit on any sample of sales, including sales of such or similar merchandise, is not representative of profit on a general class or kind of merchandise and, therefore, should not be used as profit for CV.

Department's Position: With the exception of those firms which had related-party sales at prices which were less than arm's-length prices, we disagree with Torrington's contention that profit should be computed on the basis of the sample sales reported or the average profit rate of all sales, whichever is greater. We requested information only on sales of such or similar merchandise. Because the profit on the sales of such or similar merchandise may not be representative of the profit for the general class or kind of merchandise, we requested profit information based on the class or kind of merchandise.

In the case of firms which needed profit adjustments to eliminate sales made to related parties which were not at arm's length, we found it necessary to make the adjustment based on the reported HM sales, which was the only information available.

With respect to Torrington's proposed BIA applications for firms that withheld profit data in this review, we found no cases where respondents withheld such data.

5C. Related-Party Inputs

Comment 6: NSK and Koyo claim that the Department violated the antidumping law by never establishing the grounds for collecting cost data from related-party suppliers. NSK argues that the Department must have a specific and objective basis for suspecting that the transfer price paid to a particular related supplier for a major input is below that supplier's costs before the Department can collect cost data from that party. Citing 19 USC 1677b(e)(3), NSK claims that the Department violated the antidumping law by not establishing ''reasonable grounds to believe or suspect'' that the transfer price paid to related-party suppliers was below cost. NSK claims that the quoted language of this provision matches 19 USC 1677b(b), which grants the Department the authority to conduct cost investigations. On this premise NSK argues that the ''same threshold standard must be applicable to both provisions.'' Koyo argues that not only did the Department not have any statutory authority to request COP information for inputs that it purchased from related suppliers, but also that there have been no allegations by petitioners in this review, or in any prior AFBs proceeding, that such parts were purchased at less than COP. NSK and Koyo claim that since the Department has violated the antidumping law, all cost data for parts purchased from related suppliers must be removed from the administrative record. NSK further requests that counsel for Torrington and for Federal-Mogul return this information to counsel for NSK.

Torrington and Federal-Mogul argue that the Department properly applied 19 U.S.C. 1677b(e)(3) by collecting cost data from related-party suppliers. Torrington and Federal-Mogul maintain that because respondents engaged in below-cost sales, the Department had reasonable grounds upon which to collect cost data from related suppliers. Torrington argues that given that the foreign producers do sell below cost, it is reasonable to infer that their losses are passed back to related-party suppliers, who are forced to transfer materials and components at a loss. Torrington argues that 19 U.S.C. 1677b(b), which provides the standard for analyzing below-cost sales, does not imply that any particular party has to submit the evidence of below-cost transfer prices of inputs and, therefore, does not suggest that the burden of proof should be placed upon the petitioner, as suggested by NSK. Federal-Mogul and Torrington claim that the best evidence concerning related-party production cost is not accessible to domestic parties and that the burden to submit the evidence should be placed upon the respondents. Torrington and Federal-Mogul maintain that NSK's position would essentially nullify 19 U.S.C. 1677b(e)(3).

Department's Position: We disagree with NSK and Koyo that the Department violated the antidumping law by requesting cost data from related suppliers. In calculating CV, the Department does not necessarily accept the transfer prices paid by the respondent to related suppliers as the appropriate value of inputs. Related parties for this purpose are defined in section 773(e)(4) of the Tariff Act. In accordance with section 773(e)(2) of the Tariff Act, we generally do not use transfer prices between such related parties unless those prices reflect the market value of the inputs purchased. To show that the transfer prices for its inputs reflect market value, a respondent may compare the transfer prices to prices in transactions between unrelated parties. A respondent may provide prices for similar purchases from an unrelated supplier or similar sales by its related supplier to unrelated purchasers. If no comparable market price for similar transactions between related parties is available, we may use the actual COP incurred by the related supplier as an indication of market value. If the transfer price is less than

the market value of the input, we may value the input using the best evidence available, which may be the COP.

NSK provided no information regarding prices between unrelated parties for inputs it purchased from related suppliers. Therefore, in accordance with section 773(e)(2) of the Tariff Act, we required the actual COP of those inputs to determine whether the transfer prices between NSK and its related suppliers reflected the market value of the inputs. Where the transfer prices were less than the COP (*i.e.*, market value), we used the COP as the best evidence available for valuing the input. Similarly, Koyo did not provide information regarding prices between unrelated parties for some inputs it purchased from related suppliers. In those instances we also required the actual COP of those inputs to determine whether the transfer prices reflected the market value of the inputs. Where the transfer prices were less than the COP, we used the COP as the best evidence available for valuing the input.

Under section 773(e)(3) of the Tariff Act, if the Department has reason to believe or suspect that the price paid to a related party for a major input is below the COP of that input, we may investigate whether the transfer price is in fact lower than the supplier's actual COP of that input even if the transfer price reflects the market value of the input. If the transfer price is below the related supplier's COP for that input, we may use the actual COP as the value for that input.

We found in the previous review that both companies had purchased major inputs from related parties at prices below COP. Therefore, in accordance with normal practice, we determined that we had reasonable grounds to believe or suspect that both NSK and Koyo purchased major inputs from related suppliers at prices below the COP of those inputs during this review period. See *AFBs III* (at 39754).

Comment 7: NSK argues that the Department should use NSK's purchase price for parts purchased by NSK from each related supplier. NSK claims that, according to section 773(e)(2) of the Tariff Act, the Department should reject prices for parts purchased from related suppliers only when it appears that these prices have been manipulated and that ''* * * the amount representing that element does not fairly reflect the amount usually reflected in sales in the home market under consideration.'' Given the discretionary language of section 773(e)(2), NSK contends that the Department should not reject every transaction that simply falls below an unrelated supplier's price, but instead should accept all transactions between related parties when the business pattern demonstrates a competitive relationship.

Alternatively, if the Department concludes that it may determine the market value at which parts should be purchased from related suppliers simply on price-to-price comparisons, then NSK argues that it cannot be penalized to the extent that its related supplier costs exceed an unrelated supplier's price. Under section 773(e)(2) of the Tariff Act, the Department cannot require that a related supplier's price be above its COP if the fair market value established by an unrelated supplier's price is below the related supplier's COP. Therefore, under those circumstances in which both the related and unrelated suppliers' prices fall below the related supplier's costs, the Department should adjust the related party's price only to the extent it falls below fair market value measured by the unrelated supplier's price.

NSK further argues that if the Department determines market value at which parts should be purchased from related suppliers on a price-to-cost comparison when price-to-price comparisons do not exist, then the Department should adjust NSK's costs for only those parts purchased at prices below the COP. In these instances, NSK claims that the Department's current adjustment is too broad and that the Department should use the related supplier's actual COP submitted to the Department. Finally, NSK contends that if the Department continues to disregard the related supplier's cost data, the Department should amend its adjustment to exclude finished bearings purchased from other suppliers from the adjustment equation.

Department's Position: Under section 773(e)(2) of the Tariff Act, the Department is directed to disregard a transaction between related parties ''if the amount representing an element of value, required to be considered in the calculation of CV, does not fairly reflect the amount usually reflected in sales in the market under consideration.'' Given this requirement, we disagree with NSK that we should not reject every transaction in which the prices from the related supplier do not reflect the amounts usually reflected in sales between unrelated parties. Although competitive factors may temporarily force related suppliers to sell below market value, this does not relieve us of our responsibility to capture the full market value usually reflected in sales of the input. Lacking information as to what the market value is, we rely on the related supplier's cost as a measure of the commercial value of that input. In the case of major inputs, section 773(e)(3) of the Tariff Act requires the Department to use the COP of that input if such cost is greater than the amount that would be determined for such input under section 773(e)(2).

We agree with NSK that, under section 773(e)(2) of the Tariff Act, the Department should only adjust related suppliers' prices in situations in which there were no arm's-length prices available and the price-to-cost comparisons (in lieu of price-to-price comparisons) reveal that the suppliers' costs exceed its prices. NSK did not provide any comparable arm's-length prices. Therefore, for these final results, we have compared the reported transfer price of complete bearings and components purchased from related suppliers with the actual COP and used the higher of the two for CV.

Comment 8: Torrington alleges that NMB/Pelmec Singapore has not demonstrated that arm's-length prices were paid to Minebea Japan for the equipment used by NMB/Pelmec Singapore. Therefore, the Department should not use the prices reported by NMB/Pelmec for the final results.

NMB/Pelmec Singapore states that it reported in the supplemental Section D response that machinery manufactured by Minebea Japan is purchased at market value, and gave an example of how the price for one of the machines was determined. NMB/Pelmec Singapore claims that there is no reason to reject the prices paid by NMB/Pelmec Singapore for the machinery from Minebea Japan.

Department's Position: NMB/Pelmec Singapore was unable to provide prices between related parties for sales of identical equipment. As an alternative, it submitted with its response to the Department's Section D supplemental questionnaire copies of documents illustrating the COP and sales information on the transfer of five inner-ring raceway grinding machines to Pelmec Singapore. The information submitted indicates that the machines were transferred from Minebea Japan to NMB/Pelmec Singapore at a mark-up in addition to COP. Therefore, the Department has concluded that NMB/Pelmec Singapore's related-party equipment purchases can be considered arm's-length transactions.

Comment 9: NMB/Pelmec Thailand states that the Department's conclusion that transfer prices for bearings components are below cost is based on numerous errors. The Department stated in its analysis memorandum for the preliminary results dated February 28, 1994, that, based on a sample of four

bearing components, it determined that related-party transfer prices ''may not be reflective of fair value.'' As such, the Department increased NMB/Pelmec's COP and CV data by the amount by which it determined that the bearings component transfer prices were below cost. NMB/Pelmec Thailand argues that before comparing transfer prices to costs, the Department increased the reported costs for four items: interest, R&D, headquarters expense, and Karuizawa's G&A expenses.

NMB/Pelmec Thailand argues that its Karuizawa plant's G&A costs and its Minebea headquarters expenses should not be added to the component costs because these expenses have already been taken into account. Since the Department adds the headquarters expenses when calculating CV value, a downward adjustment needs to be made at this stage to account for the fact that some of the component costs have already been increased by this amount. Similarly, NMB/Pelmec Thailand argues that if the Karuizawa plant's G&A expenses are added to component costs, then the markup should be deducted from the reported costs. NMB/Pelmec further argues that since the Department increased the reported costs for bearing components by the amount of Minebea Japan's consolidated interest costs, the Department has double-counted this expense because these costs were already included in the reported CV figures. Finally, NMB/Pelmec states that R&D has also been double-counted since these costs were included in CV.

Torrington states that the Department properly concluded that transfer prices for NMB/Pelmec's bearing components are below cost. Torrington states that there is no merit to NMB/Pelmec's contention that the Department committed numerous errors. The verification team determined that as Kuruizawa is involved with these purchases, its G&A costs must be included in the COP along with the additional general expenses incurred by Minebea. According to Torrington, the respondents failed to provide calculations to illustrate that the Department's methodology results in double-counting and that adding R&D expenses was unjustified.

Department's Position: We found at verification that related parties supply the majority of materials used by NMB/Pelmec Thailand in its production of the subject merchandise. It was also shown at verification that a sample of related-party transfers either did not match the price from an unrelated party or were below the COP. Additionally, Minebea Japan purchases NMB/Pelmec Thailand's finished bearings for sale to the United States. As a consequence of the Minebea Group's practice of purchasing and reselling materials and bearings for the benefit of NMB/Pelmec Thailand, Minebea's reported sales and cost of sales account for the cost of these related-party material purchases twice. When Minebea Japan sells component parts to NMB/Pelmec Thailand, it records a sale and cost of sale in its financial statements. Then, correspondingly, when Minebea Japan repurchases and sells the finished bearings which include the previously transferred components, it records a sale and cost of sale in its financial statement. This sequence of events constitutes double-counting in Minebea Japan's own financial statements, *i.e.*, sales of components and finished bearings. Such double-counting occurs because Minebea Japan does not consolidate its financial statements with those of NMB/Pelmec Thailand. Therefore, the Department has adopted a similar methodology in applying its adjustments to rectify the transfer price deficiencies it found during verification.

Comment 10: Torrington argues that certain related-party transfer prices that NTN reported in its CV questionnaire response do not constitute a permissible basis for calculating CV. For the final results, Torrington urges the Department to calculate ''arm's-length'' prices for certain inputs using information that NTN provided or, if the Department is unable to do so, to reject NTN's CV data in favor of BIA.

NTN responds that it provided all the information that the Department requested regarding related-party inputs, and that it indicated the products that contained inputs purchased from parties related to NTN. Therefore, NTN concludes that the Department should not use BIA to determine the dumping margins for any U.S. sales that are matched to CV for these final results.

Department's Position: We agree with NTN. NTN provided the data that we requested for related-party inputs and the information necessary to make any adjustments to related-party prices. Further, we find that adjustments to NTN's related-party prices are unnecessary. Although certain purchases that NTN made from related-parties were not at arm's-length prices, these inputs represent a small fraction of NTN's total inputs and, therefore, have an insignificant effect on the submitted CV data. As a result, we have used NTN's related-party prices in our CV calculations for these final results.

5D. Inventory Write-Off

Comment 11: Torrington states that RHP had write-offs and write-downs during the POR, and that the company charged these costs to all RHP stock instead of to the particular models involved. Torrington suggests that write-offs and write-downs of ball bearing models may have been charged to non-scope merchandise. Torrington notes that write-downs and write-offs are by nature model-specific and should be charged to specific models. Torrington argues that the Department should reallocate these costs by charging all costs to the bearing model with the highest sales revenue in the United States during the POR for which CV serves as FMV.

RHP agrees with Torrington that inventory write-offs and write-downs occurred during the POR. RHP states, however, that it acceptably charged these write-offs and write-downs against a reserve on its financial reports.

Department's Position: We agree with RHP. RHP accounted for the write-downs and write-offs in accordance with GAAP in the United Kingdom. GAAP does not require that companies write down or write off inventory on a model-specific basis. RHP appropriately off-set the reserve rather than recognize an additional expense. In addition, RHP realized a miscellaneous gain due to an overaccrual for write-downs and write-offs in previous periods.

5E. Interest Expense Offset

Comment 12: Federal-Mogul argues that SNR's claim for an interest income offset to financing expenses in the CV and COP calculations should be disallowed because SNR failed to distinguish between interest income from bearing manufacturing and interest income from investments. In this respect, Federal-Mogul argues that SNR's interest earned from ''late payment for goods'' is properly classified as ''interest revenue'' and should thus be used to adjust sales price upwards or to offset credit expenses. Further, Federal-Mogul asserts that SNR's claim for interest on advance payments to suppliers is not interest earned from bearing manufacturing operations.

SNR responds that its reported interest income was all derived from operations, specifically short-term deposits, interest on late payment for bearings, and interest on advance payments to suppliers. SNR states that it did not derive any of its interest income from non-operational activities such as the sale of land or negotiable securities. Accordingly, SNR claims

there is no basis to deny its reported offset.

Department's Position: We agree with SNR. The interest earned on short-term deposits, on advance payments to suppliers and on late payments is derived from manufacturing and sales operations. The Department's practice is to accept a reduction of total interest expense by such short-term interest income because such income is earned from working capital, which by definition is related to manufacturing and sales operations. Therefore, we accepted the interest offset as reported by SNR.

Comment 13: Federal-Mogul claims SKF's interest income offset should be disallowed because the source of this offset was not provided. Federal-Mogul asserts that the interest income qualifying as an offset to interest expense must be derived from bearing manufacturing operations.

SKF argues that total interest expense was reduced by interest income earned solely on short-term investments (cash and marketable securities). In addition, SKF argues that it illustrated its interest calculation and the details were verified by the Department. SKF asserts the Department's practice is to require a respondent to show that interest income used to offset interest expense in the calculation of COP relates to a firm's general operations, and that this practice was affirmed by the CIT in *The Timken Co.* v. *United States*, Slip Op. 94–1 at 12–20 (January 3, 1994).

Department's Position: We agree with SKF. The Department verified that the interest income offset was attributed to short-term investments of its working capital. Therefore, interest expense was appropriately reduced by this amount.

Comment 14: Torrington observes that NPBS reported interest expenses for COP net of interest income. Torrington claims, however, that NPBS failed to demonstrate that the interest income in question was derived from short-term investments directly related to production of merchandise. Accordingly, Torrington asserts that the Department should recalculate NPBS' interest-expense factor without including interest income.

NPBS responds that its interest income offset includes income derived from short-term investments related to the production of subject merchandise and income from investments of working capital. Accordingly, NPBS argues that its offset is properly supported.

Department's Position: We agree with NPBS. NPBS reported that it has investments in several types of securities and real estate, but has not reported any interest income from these activities. Therefore, we are satisfied that the interest income is related to production activities and the investment of working capital.

5F. Other Issues

Comment 15: NMB/Pelmec Thailand argues that the Department improperly recalculated the G&A expenses portion of the reported COP and CV data to include additional Minebea Japan headquarters expenses. According to NMB/Pelmec, some of these expenses were unrelated to the production of the subject merchandise. Accordingly, these expenses should not be included in the COP and CV calculations.

Torrington rebuts NMB/Pelmec's argument by stating that the Department found at verification that Minebea Japan's G&A expenses incurred were not fully allocated to the Thai operations. Torrington asserts that the evidence on the record does not support NMB/Pelmec's contention and that the Department has improperly allocated G&A expenses to the Thai operations.

Department's Position: It is appropriate to allocate a portion of the total headquarters expenses to NMB/Pelmec Thailand. NMB/Pelmec lists headquarters expense as a general expense, which are period costs that relate to the operation as a whole. We agree with Torrington that the record evidence does not support the respondent's contention that some of the accounts that make up headquarters expense should not be allocated to the Thai operations.

Comment 16: NMB/Pelmec Thailand argues that the Department incorrectly adjusted G&A expenses for certain extraordinary expenses which were unrelated to the ordinary operations and should not be included in the COP and CV calculations. According to NMB/Pelmec, these extraordinary expenses consisted primarily of expenses related to the company's 10th anniversary celebrations in Thailand and should not have been added.

Torrington asserts that NMB/Pelmec's argument that the firm's 10th anniversary celebration was an extraordinary loss is incorrect since by the nature of the expense, it will recur in the future. In addition, such events are typically an occasion to promote products and develop customer relationships. Thus, this expense does not constitute an extraordinary item and, at the very least, should be deemed a selling cost.

Department's Position: We agree with Torrington that these expenses are not extraordinary expenses. We find no merit to NMB/Pelmec's arguments that these expenses do not relate to the ordinary operations of the company. Since such activities and related expenses at a minimum promote NMB/Pelmec's name, we have revised NMB/Pelmec's calculation of G&A expenses to include these costs.

Comment 17: Torrington argues that the Department found at verification that certain expenses, *i.e.*, bonus for directors, bonus for auditors, exchange loss and miscellaneous expenses, were not included in the costs submitted by Koyo. Torrington contends that the Department should make the appropriate adjustments to COP and CV for the final results.

Koyo argues that the Department improperly reclassified its non-operating expenses and payments out of retained earnings as production expenses. Specifically, the Department incorrectly reclassified bonus payments to auditors and directors paid out of retained earnings, exchange losses, and all expenses booked as ''miscellaneous non-operating.'' The reclassification of bonuses for directors and auditors contradicts prior Department treatment of these expenses. Koyo states that the Department in four previous tapered roller bearing (TRB) reviews found that bonuses for directors and statutory auditors' fees were similar to a dividend payment and, accordingly, not a production cost. Koyo also argues that the Department erroneously reclassified the exchange losses included in Koyo's non-operating expense account as production costs. Koyo contends that its exchange losses are related to international sales operations, not domestic production. Since all production expenses are incurred and paid in yen, there can be no production-related exchange losses.

Department's Position: During verification, Koyo's management provided explanations of the costs that were included as certain non-operating expenses on the financial statements. Based on the discussions, we found that certain general expenses were not included in the submission. These costs included miscellaneous expenses and bonuses for the board of directors and auditors which are normal costs incurred by companies. With respect to foreign exchange losses, these costs were also considered to be a general expense because they did not relate to sales.

Comment 18: Torrington argues that the Department noted at verification that Koyo under-reported certain other expenses when it individually adjusted factory overhead expenses allocated through its cost centers based on an efficiency variance. Torrington contends

that the Department's verification team observed that the efficiency variance had a direct effect on the specific product costs that are processed through Koyo's cost centers and that application of this favorable variance resulted in lower factory overhead expenses allocated to the subject merchandise. Torrington argues that the Department should make the appropriate adjustments to COP and CV in the final results.

Koyo argues that the Department erred in inflating Koyo's COP because of the existence of efficiency variances in Koyo's basic labor cost. Koyo contends that the Department's decision to adjust its reported costs is the result of a misunderstanding of the manner in which Koyo's basic cost is calculated and the role of the efficiency variance in those calculations. Koyo explains that its basic cost system employs a two-step process to determine as accurately as possible the actual labor hours used to produce a given product in a given period. First, Koyo's production engineers determine the amount of time, *i.e.*, the ''basic hours'' theoretically required to perform each process at each cost center on the basis of time and motion studies. Second, at the end of a given period, Koyo's cost accountants compare the number of hours theoretically necessary to operate a particular cost center, based on that period's ''basic hours,'' to the number of hours actually required to operate that cost center during that period. The ratio of actual to basic hours is the so-called ''efficiency variance,'' which is used to calculate the labor cost element of the model-specific basic costs for the next period. Koyo explains that dividing the previous period's basic hours by the efficiency variance simply derives the number of actual hours incurred in the previous period, which is then used to calculate the labor cost for the next period. Koyo maintains that its method of updating its models' basic cost has been repeatedly verified by the Department without any suggestion that its method of capturing and updating the costs at its cost centers fails to identify accurately the actual costs incurred at those cost centers. Accordingly, there is no justification for modifying this calculation in the review.

Koyo further argues that the Department's position that the efficiency variances adjust a model-specific standard by an overall rate which may or may not accurately state the individual model's standard cost is wrong. The efficiency variances are not an ''overall rate''—to the contrary, they are specific rates for groups of cost centers that are used to calculate the basic cost of individual models produced at those cost centers.

Koyo further contends that because the manufacturing variance is used to adjust for the difference between the basic costs of the models produced at a given plant and the actual costs incurred there, if the Department decides to reject one element in the calculation of the basic costs (in this case, the adjustment to reflect the difference between standard and actual labor hours), then that element must be included instead in the calculation of the manufacturing variance. In summary, Koyo argues that the fact that a variance calculated on a plant-wide basis was used to adjust expenses for individual models does not support rejection of the manufacturing variance and that the Department should eliminate its revision of Koyo's reported costs of production.

Department's Position: We agree with Koyo. As this efficiency adjustment attempts to determine more accurately the amount of labor costs associated with individual cost centers based on actual experience, we find that Koyo's adjustment was reasonable. Accordingly, the Department accepted Koyo's submitted data with respect to the labor efficiency adjustment.

Comment 19: Federal-Mogul claims that F&S failed to respond adequately to requests for HM cost data. When the Department requested COP data following Federal-Mogul's allegation of below-cost sales, F&S did not provide adequate COP data for all sales. Federal-Mogul states that, as partial BIA, the Department treats sales with missing COP data as sales below cost. However, Federal-Mogul contends that F&S' failure to provide adequate COP data at the Department's request warrants application of total BIA.

F&S argues that, with regard to HM cost data, it provided COP and CV information for all models sold in the U.S. market. F&S claims that it has been responsive to all requests by the Department for information.

Department's Position: We disagree with Federal-Mogul. F&S has provided sufficient and complete COP data. There were identical HM model matches for all U.S. sales. Because F&S provided COP data for all HM models used for comparison purposes, and we had no need for COP data for other models sold in the HM which were not used for comparison, we accepted F&S' response.

Comment 20: Torrington contends that the Department found at verification that expenses for training personnel in the use of certain testing machinery should have been included in technical service expenses, but that Koyo included this expense in SG&A expenses. Torrington argues that the Department should reclassify this expense as a technical service expense.

Department's Position: We disagree with Torrington. Since the training of personnel cannot be tied directly to sales, it was appropriately included as part of SG&A.

Comment 21: Torrington argues that the questionnaire requires respondents to report a weighted-average manufacturing cost when the subject merchandise is produced at more than one facility. Torrington contends that since Koyo deviated from the questionnaire instructions, the Department should apply the highest prior margin to all sales of those part numbers manufactured by more than one supplier.

Koyo claims that it reported the weighted-average COM for all of the models in its responses. Koyo also states that all of the information requested by the Department has been provided and that there is no basis upon which to apply BIA.

Department's Position: We agree with Koyo that it reported its weighted-average COM for all of the models in its supplemental response.

Comment 22: Torrington argues that the Department should reject FAG-Germany's cost data because FAG only provided costs for completed bearings and not for the individual material elements as required by the questionnaire. Torrington further argues that FAG/Barden did not provide cost data for all models sold in the HM. Torrington argues that while CV data were provided for Barden-made models sold in the United States, COP data for Barden's HM sales were not provided. Torrington argues that since the Department initiated a COP investigation regarding FAG, it should have included its affiliate Barden.

FAG argues that its cost responses were accurate and acceptable as reported because its model-specific COPs and CVs were correctly reported in accordance with Departmental precedent. Also, FAG argues that no below-cost allegation has been made against Barden, and the Department did not request COP data from Barden.

Department's Position: We agree with respondents. We have accepted FAG's cost data in the format provided for this review, because we were reasonably able to use the data for our analytical purposes in this review. Also, petitioner has provided no other basis for the Department to reject FAG's cost responses.

With respect to Torrington's argument concerning a below-cost test for products produced by Barden, the Department did not formally request the COP data from Barden. The original below-cost allegation was made before the companies were collapsed for the purposes of these reviews, and only involved products produced by an unrelated company and sold by FAG U.K. The Barden HM sales are distinct in that they are sales of self-produced merchandise, not resales of purchased products. Furthermore, none of the products purchased by FAG is similar to those produced by Barden. Accordingly, if sales by FAG U.K. were disregarded because they were sold below cost, there is no possibility that HM sales of Barden-made products will be matched to a U.S. sale in place of the product purchased and resold by FAG.

Comment 23: NTN objects to the Department's preliminary decision to increase NTN's reported COM. NTN argues that the Department's analysis memorandum contains certain factual errors and misinterprets certain information in the record. Specifically, NTN contends that: (1) The Department's findings are based on information that does not pertain to the COM data subject to this review; (2) the Department relied on general information when more specific information was available; (3) the Department applied findings based on data from one factory to all of NTN's other factories; (4) the Department's conclusions regarding standard costs for subject and non-subject merchandise are not supported by record evidence; and (5) the non-subject merchandise that the Department examined at verification does not represent a significant portion of NTN's costs. For these reasons, NTN asserts that the Department should not make any adjustments to its reported COM.

NTN further argues that in the event that the Department determines to adjust NTN's reported COM, it should revise the methodology that it used in the preliminary results. NTN contends that the Department's revision artificially increases the adjustment to NTN's reported COM because the Department reallocated certain costs as a percentage of non-subject merchandise only, rather than as a percentage of all products. NTN further contends that the evidence in the record does not warrant the Department's adjusting NTN's total reported COM, because the Department's verification report and exhibits demonstrate the accuracy of certain portions of NTN's reported COM. As a result, NTN requests that the Department revise its adjustment to NTN's COM by reallocating certain costs to all products, and by adjusting only certain portions of NTN's reported COM.

Torrington responds that NTN is improperly attempting to revise the Department's verification report and to raise issues that the Department did not examine at verification. Torrington further argues that the Department's verification report identifies significant flaws in NTN's reporting methods, and concludes that these methods do not accurately capture cost differences across NTN's product lines. Finally, Torrington argues that the Department would be justified in rejecting NTN's COP and CV responses if they contained the factual errors that the Department found at verification. Given the Department's verification findings, Torrington rejects NTN's arguments and supports the Department's revisions to NTN's reported COP and CV.

Department's Position: We disagree with NTN. First, the COM information that NTN challenges does pertain to cost information which is subject to this review. NTN argues that the information used to support the adjustment to COM was from outside the POR. The information referred to by NTN supports the standard costs used during the POR and is the underlying data for certain aspects of the submitted costs. Therefore it is relevant to this review. NTN relied on pre-POR costs as the basis for revisions to its standard costs. NTN revised certain elements of its standard costs for certain product types during the POR, but not for all product types. The majority of standard costs that remained unchanged were for non-subject merchandise. Since standard cost revisions are based on pre-POR costs, we tested selected non-subject costs versus actual costs for the pre-POR period. We found that the non-subject standard costs were overstated when compared to actual costs. NTN applied a non-product-specific plant-wide variance to all products. The application of a plant-wide variance shifts costs between products. We adjusted the submitted costs for subject merchandise to account for the inaccurate standard costs of non-subject merchandise.

Second, NTN's allegation that we ignored specific information in favor of more general information is unfounded. We found at verification that NTN routinely calculates actual costs in a more specific manner than that used to calculate costs in its questionnaire responses. Because we prefer to use the most specific information possible to determine a respondent's costs, our use of NTN's own method of calculating actual costs, as examined at verification, to calculate COP and CV for these final results is appropriate and supported by substantial evidence.

Third, our limited resources prohibit verification of all the data submitted by respondents. Verification is intended to provide an examination of representative data rather than a complete review of all submitted data. Therefore, it is our longstanding practice to verify selected information and draw general conclusions regarding all respondents' data based on our verification findings. We followed this longstanding practice in conducting our COP and CV verification at one of NTN's factories. Moreover, NTN has failed to provide any evidence to suggest that the data obtained from this factory is not representative of manufacturing costs at NTN's other plants. In the absence of such evidence, we conclude that our verification findings from the selected NTN factory provide a reasonable basis for reaching conclusions regarding NTN's COP and CV data.

Fourth, NTN misrepresents our findings regarding standard rates. Our findings relate to the input factors used in the standards, not the rates applied to the input factors. Although NTN has revised some input factor amounts associated with the production of subject merchandise, we found at verification that NTN has not revised these amounts for the majority of the inputs used for the subject merchandise, while it has revised the input amounts for non-subject merchandise. As demonstrated by our verification findings, the practice of revising input amounts for only certain parts creates distortion when allocating costs. Accordingly, we have adjusted NTN's submitted data to eliminate these distortions.

Fifth, although the non-subject merchandise in question may only represent an insignificant portion of NTN's costs at the selected plant, our verification findings regarding non-subject merchandise are relevant because they reveal two flaws in the methods that NTN used to calculate COP and CV. As described above, our examination of subject and non-subject merchandise revealed that NTN had available cost information that was more accurate and specific than the information that NTN elected to submit to the Department. Our comparison of subject and non-subject merchandise also revealed that NTN's standard costs contain distortions because NTN has updated only portions of the standard input amounts. The relative significance of the costs that NTN incurred for the non-subject merchandise at issue does

not obscure the significance of the distortions that we found in NTN's method of reporting costs for subject and non-subject merchandise. Based on these findings, we conclude that an adjustment to NTN's reported COP and CV is warranted for these final results.

Finally, we disagree with NTN's contention that our adjustment to COP and CV is excessive. As described above, we determined that it was appropriate to adjust NTN's reported COP and CV to correct a misallocation of costs between subject and non-subject merchandise. Further, our calculation of the adjustment reflects the methods that we used in conducting our verification and is based on data obtained from NTN during verification. Accordingly, we find no basis for revising our calculation of the adjustment to NTN's reported COP and CV for these final results.

Comment 24: NSK contends that the Department departed from well-established agency practice by revising NSK's reported net financing expense. NSK claims that the allocation methodology used to determine its reported net financing expense conforms to the methodology used to calculate NSK's net financing expense as outlined in a memorandum issued by the Office of Accounting for the final results of the 1990–1991 AFBs administrative review. NSK also cites *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Administrative Review,* 56 FR 34,180, 34,184 (July 26, 1991) and *Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 32,095, 32,100 (June 8, 1993).

Federal-Mogul contends that NSK failed to substantiate its short-term interest income offset claim. Therefore, the Department's decision to revise NSK's net finance expense claim is reasonable and consistent with past Department practice in AFBs reviews. See *AFBs III* (at 39756–57).

Department's Position: The Department has not departed from its well-established practice of determining financing costs. NSK constructed short-term interest income by calculating a ratio based on consolidated short-term investments to total investments and applying the resultant percentage to interest income. This methodology may not reflect actual short-term interest income, because the interest rates earned on short-term investments may differ from those earned on long-term investments. Additionally, NSK did not demonstrate that the reported short-term interest income was derived from business operations. We therefore used total interest expense as a percentage of cost of sales in our calculations.

6. Discounts, Rebates and Price Adjustments

As a general matter, the Department only accepts claims for discounts, rebates, and price adjustments as direct adjustments to price if actual amounts are reported for each transaction. Thus, discounts, rebates, or price adjustments based on allocations are not allowable as direct adjustments to price. Allocated price adjustments have the effect of distorting individual prices by diluting the discounts or rebates received on some sales, inflating them on other sales, and attributing them to still other sales that did not actually receive any at all. Thus, they have the effect of partially averaging prices. Just as we do not normally allow respondents to report average prices, we do not allow average direct additions or subtractions to price. Although we usually average FMVs on a monthly basis, we require individual prices to be reported for each sale.

Therefore, we have made direct adjustments for reported HM discounts, rebates, and price adjustments if (a) they were reported on a transaction-specific basis and were not based on allocations, or (b) they were granted as a fixed and constant percentage of sales on all transactions for which they are reported. If these adjustments were not fixed and constant but were allocated on a customer-specific or a product-specific basis, we treated them as if they were indirect selling expenses. We did not accept as direct deductions discount or rebate amounts based on allocations unless the allocations calculate the actual amounts for each individual sale, as in the case with a fixed percentage rebate program. This is consistent with the policy we established and followed in the second and third reviews. See *AFBs II* (at 28400) and *AFBs III* (at 39759). In addition, the Department does not accept a methodology which allows for the inclusion of discounts, rebates, and price adjustments paid on out-of-scope merchandise in calculating adjustments to FMV. See *Torrington I,* at 1579.

For USP adjustments, we deducted all U.S. discounts, rebates, or price adjustments if actual amounts were reported on a transaction-specific basis. If these expenses were not reported on a transaction-specific basis, we used BIA for the adjustment and treated the adjustment as a direct deduction from USP.

Comment 1: Torrington alleges that NMB/Pelmec Singapore and Thailand did not fully report HM billing adjustments. Adjustments were only reported up until June 1993 due to time constraints. Torrington states that the Department should apply a partial BIA rate, *i.e.,* the Department should not adjust FMV for the reported price ''decreases.''

NMB/Pelmec Singapore and Thailand argue that they reported billing adjustments up until June 1993 since the deadline for Section A of the questionnaire was August 10, 1993, and the response had to be prepared prior to that date. The respondent states that it was unlikely that any significant quantity or billing adjustments relating to sales during the POR after June 1993 occurred. In addition, even if there were such adjustments, they could have served as decreases or increases to the overall margin. In sum, NMB/Pelmec argues that their method for reporting quantity and billing adjustments was reasonable and accurate.

Department's Position: We agree with respondent. The reporting of all HM billing adjustments during the POR was not possible because the billing adjustments had not yet occurred by the deadline for filing the response. We verified NMB/Pelmec Singapore's reported billing adjustments and found them to be reported in accordance with our questionnaire instructions, and therefore have accepted the billing adjustments as reported.

Comment 2: Torrington argues that NMB/Pelmec's quantity and billing adjustments for the United States should not be accepted for purposes of the final results. Torrington states that since sales adjustments were only reported through June 1993, a partial BIA rate should be applied. In addition, at verification, the Department discovered a ''special billing which did not reflect total purchases and was not offset by a billing adjustment credit memo.''

NMB/Pelmec states that for the same reasons BIA is not justified with regard to the calculation of FMV, it is not justified with respect to USP. This special billing involved a relatively small amount, and there is no justification for applying the BIA rate as proposed by Torrington.

Department's Position: We verified quantity and billing adjustments in the United States. We found that quantity and billing adjustments were properly reported, with one exception. At verification, we discovered a discrepancy regarding a relatively small billing adjustment. However, because the discrepancy involved was an isolated incident, we have accepted NMB/Pelmec's quantity and billing adjustments as reported. See *NMB/*

Pelmec ESP Verification Report, February 10, 1994.

Comment 3: Torrington asserts that NMB/Pelmec was unable to trace early payment discounts to particular sales invoices for its ESP sales, because these discounts were unknown at the time of sale (*i.e.,* NMB/Pelmec did not know which customers were going to pay early and thus receive this discount) and were credited to the customer's accounts receivable balance only at the time payment was received. Since early payment discounts should be tied to each specific invoice, Torrington argues that they should not be allowed. Torrington also believes that NMB/Pelmec may have allocated early payment discounts on out-of-scope merchandise. Therefore, the Department should apply a partial BIA rate to all U.S. sales for which an allocated discount was reported.

NMB/Pelmec claims that the record does not support Torrington's statement. The ESP verification report demonstrates that the Department officials examined the early payment discounts and determined that they were properly allocated to scope merchandise.

Department's Position: We agree with NMB/Pelmec. We verified early payment discounts and determined that NMB/Pelmec accurately reported and properly tied the discounts to particular invoices and to in-scope merchandise. See *NMB/Pelmec ESP Verification Report,* February 10, 1994. Therefore, we have adjusted ESP for early payment discounts.

Comment 4: Torrington contends that RHP stated that it sometimes paid ''incentive rebates''—rebates for sales lower than the prearranged targets on HM sales. Referencing the Department's Antidumping Manual, Torrington states that to qualify for an adjustment, rebates ''must be contemplated at the time of sale.'' Torrington argues that RHP did not demonstrate that these rebates met this standard. Torrington suggests that the Department identify these rebates and disallow any adjustment. If the Department is unable to identify these rebates, Torrington suggests that the Department should reject ''all home-market incentive type rebates,'' because it was an error to report the ''uncontemplated amounts'' without distinguishing them from the ''allowable amounts.''

In its rebuttal brief RHP offers a clarification of its rebate program: ''In the U.K. home market, RHP pays 'incentive rebates' to distributors that meet agreed sales targets. These 'incentive rebates' are calculated on an annual basis. On occasion, rebates are paid out for sales lower than prearranged targets if it is considered essential to maintain the customer relationship.''

RHP notes that for the POR, all but one distributor met its sales targets in the United Kingdom. RHP states that this distributor just missed its target, and that RHP decided to pay an ''incentive rebate'' anyway. RHP suggests that the ''radical adjustments'' proposed by Torrington are inappropriate given the fact that the amount RHP paid to this one distributor is a *de minimis* amount of the total ''incentive rebate'' paid.

Department's Position: We agree with RHP. As required, RHP reported transaction-specific rebates. Torrington's allegation that the ''incentive rebate'' that RHP paid for one distributor who just missed its sales target was not ''contemplated at the time of sale'' is not accurate. Our general policy is to allow rebates only when the terms of sale are predetermined. This is to prevent respondents, after they realize that their sales will be subject to administrative review, from granting rebates in order to lower the dumping margins on particular sales. We are satisfied that RHP is not engaged in this practice. First, RHP establishes the terms of the rebates for each distributor that is eligible for this type of rebate before the sales are made. Second, all but one customer met their sales targets, while one customer very nearly met its sales target. Third, as RHP explains, competitive pressure drives the rebate program, which explains why RHP's rebated policy is that ''[r]ebates are paid out for sales lower than the prearranged targets if it is considered essential to maintain the customer relationship.'' See RHP's Supplemental Questionnaire Response to Sections A–C at 10 (December 17, 1993). RHP granted this customer a rebate as part of its normal business practice, because this customer had virtually met the pre-established sales target and because of the competitive pressure of the industry. Thus, we are allowing this adjustment for the final results.

Comment 5: Torrington contends that RHP claimed adjustments to price for certain post-sale price adjustments which the Department should not have allowed as direct adjustments for the preliminary results. Torrington considers these adjustments to be rebates and notes that all rebates in the HM must be contemplated at the time of sale. Torrington contends that RHP did not demonstrate that these post-sale price adjustments were ''contemplated at the time of sale,'' and thus should not be allowed. Torrington further states that post-sale price adjustments must be tied to in-scope merchandise as determined by the CIT. See *Torrington I.* Torrington argues that RHP did not demonstrate these rebates pertained to in-scope merchandise. Torrington concludes that the Department should disallow all downward billing adjustments because the record is not clear.

RHP responds that it reported all billing adjustments as requested by the Department. RHP reiterates its assertion that billing adjustments occur for a variety of reasons, and that billing adjustments are generally corrections of data input errors. RHP also states that they can ''reflect retroactive price adjustments in response to market conditions.'' RHP claims that these price adjustments were compatible with its continuous negotiations with HM customers. RHP concludes that since all of the price adjustments were made in the normal course of trade, and incorporated in RHP's response on a transaction-specific basis, the Department should not question RHP's billing adjustments.

Department's Position: We agree with RHP and have allowed the claimed billing adjustments. First, RHP reported both positive and negative billing adjustments on a transaction-specific basis and on in-scope merchandise only. Second, most of these billing adjustments reflect corrections of data input errors, not post-sale discounts or rebates. Finally, the remaining billing adjustments reflect RHP's normal business practice of conducting ongoing price negotiations with its HM customers.

Comment 6: Torrington states that RHP claimed HM discounts in the OTHDISH field that were actually rebates, because these ''discounts'' were negotiated subsequent to shipment. Torrington notes that the Department did not make a deduction for these alleged ''discounts'' in the preliminary determination. Torrington further states that the Department was correct in denying this adjustment, because HM rebates must be ''contemplated and quantifiable'' at the time of sale, and RHP's alleged HM discounts were not.

RHP states that only zeros appear in OTHDISH field, and therefore, that no adjustment was warranted.

Department's Position: We agree with RHP that no adjustment is warranted because no values were reported in this field.

Comment 7: Torrington argues that since Koyo's HM billing adjustments are directly related to particular invoices and specific models, and Koyo failed to report these adjustments on an invoice-

and product-specific basis, and because Koyo's reporting did not permit the Department to determine whether the billing adjustments related solely to subject merchandise, the Department should deny these adjustments entirely instead of allowing them as indirect selling expenses.

Koyo responds that it reported its post-sale price adjustments as indirect selling expenses in accordance with the Department's policy as explained in the final results for the fourth administrative review.

Department's Position: We agree with Torrington and have disallowed Koyo's post-sale price adjustments because Koyo did not demonstrate that the allocated price adjustments pertained to subject merchandise only. See *Torrington I.* Although we verified that Koyo's billing adjustments were reported on a customer-specific basis, Koyo provided no means of identifying and segregating price adjustments paid to those customers on out-of-scope merchandise.

Comment 8: Torrington argues that the Department should disallow several of Nachi's HM rebate claims, classified as rebates 3, 5, 6, and 7, because the Department cannot use rebates paid on out-of-scope merchandise to adjust FMV. Torrington contends that it is not clear from Nachi's responses or from the Department's verification report that these rebates were calculated only on the basis of sales of in-scope merchandise.

Nachi responds that it reported all rebates on a customer-specific basis for eligible products only. Furthermore, Nachi contends that the Department thoroughly verified all Nachi's HM rebate programs and found no discrepancies. Therefore, Nachi concludes that, as in past reviews, the Department should continue to allow Nachi's rebate claims.

Department's Position: We agree with Nachi with respect to rebates 3, 6, and 7. We thoroughly verified each of these rebate programs. Rebate 3 was granted as a fixed percentage of price and reported on a transaction-specific basis. Rebates 6 and 7 were granted as fixed percentages of price. We found no rebates reported on sales that did not incur rebates, and no rebates incurred on sales of out-of-scope merchandise allocated to sales of scope products. See *Nachi-Fujikoshi Home Market Sales Verification Report,* February 28, 1994.

We agree with Torrington with respect to Rebate 5. This rebate was reported on a monthly- and customer-specific basis (rather than a transaction-specific basis) by dividing the total amount of that customer's rebate by the total customer-specific shipments, including shipments of out-of-scope merchandise. Therefore, we have disallowed this rebate. See *Torrington I.*

Comment 9: Torrington argues that if the Department allows Nachi's rebates 3, 6, and 7 as adjustments to FMV, then the Department should at least treat these rebates as indirect expenses. In addition, Torrington asserts that the Department should treat rebate 4 as an indirect expense. Torrington states that the Department only treats rebates as direct adjustments to price if they were calculated on a transaction-specific basis or if they were granted as a fixed percentage of sales on all transactions for which they were reported. Torrington contends that rebates 3, 4, 6, and 7 do not meet the Department's standards for direct adjustments to FMV. Finally, Torrington notes that the Department treated rebates 3, 6, and 7 as indirect expenses in the previous review.

Nachi argues that the Department correctly treated rebates 3, 4, 6, and 7 as direct adjustments to price. With regard to rebate 3, Nachi points out that the Department's verification report described the rebate as ''a fixed percentage of price and * * * reported on a transaction-specific basis.'' See *Nachi Verification Report,* at 7 (February 28, 1994). With regard to rebate 4, Nachi states that the rebate was paid on sales of specific models and allocated over all sales of a specific model to the same customer in a given month. Nachi claims that it had to perform this minor allocation because there was no way to determine which particular sales of a specific model were subject to the rebate. However, the rebate was not allocated across different models, different customers, or different months. Therefore, Nachi argues that, at a minimum, if rebate 4 does not qualify as direct adjustment to price, it should qualify as a direct selling expense because it was directly related to sales.

With regard to rebate 6, Nachi argues that the Department has verified that the rebate was granted as a contractually fixed percentage of sales covered by the agreement. With regard to rebate 7, Nachi also argues that it was granted as a fixed percentage of invoice price. Therefore, Nachi believes that the Department should continue to classify all four rebate programs as direct adjustments to price.

Department's Position: We agree with Nachi that rebates 3, 6, and 7 were reported, as they were granted, either on a transaction-specific basis, or as a fixed percentage of price. We verified that rebate 4 was paid on sales of specific models and allocated over all sales of a specific model to the same customer in a given month. The rebate was not allocated across different models, different customers, or different months. We have accepted this rebate as a direct adjustment to price because the limited allocation Nachi performed has no distortive effect on FMV because HM prices are weight-averaged by month and model.

Comment 10: Torrington argues that the Department should disallow entirely SKF-Germany's reported HM billing adjustment number two, which is ''not associated with a specific transaction.'' While it was proper, according to Torrington, for the Department not to treat the adjustment as direct, Torrington holds that the Department must disregard these billing adjustments entirely because they may not be exclusively associated with subject merchandise. Torrington maintains that SKF has had ample opportunity to demonstrate the sale-specific nature of this claimed adjustment, yet has failed to do so. Alternatively, Torrington asserts that if the Department treats billing adjustment number two as an indirect selling expense, the Department should reduce the pool of the billing adjustments by a factor representing the ratio of in-scope to out-of-scope merchandise during the POR.

SKF-Germany holds that its HM billing adjustment number two should be treated as a direct adjustment to price. If the Department does not agree with this categorization, SKF-Germany argues that HM billing adjustment number two should be treated as an indirect selling expense, as the Department has done in the preliminary results of this review and in the final results of the past two administrative reviews.

SKF specifically argues that Torrington's arguments are contradictory. Having acknowledged that billing adjustment number two captures adjustments concerning multiple invoices, Torrington then complains that SKF-Germany has not reported this adjustment on a sale-specific basis. SKF-Germany, as it has held since the inception of this review, argues that it cannot report this adjustment on a sale-specific basis, and has therefore reported it on a customer-specific basis. SKF-Germany states also that the Department verified this adjustment to its satisfaction and found no discrepancies. SKF-Germany concludes that Torrington's arguments ignore *Koyo Seiko Co.* v. *United States,* 796 F. Supp. 1526 (CIT 1992) (*Koyo Seiko*), in which the CIT specifically affirmed the Department's methodology of including customer-specific

adjustments in indirect selling expenses.

Department's Position: We agree with Torrington and have disallowed SKF's billing adjustment number two claim because SKF did not demonstrate that the allocated billing adjustments pertained to subject merchandise only. See *Torrington I.* SKF provided no means of identifying and segregating billing adjustments paid on non-scope merchandise.

SKF's reliance on *Koyo Seiko* is misplaced. In that case the CIT upheld the Department's treatment of certain allocations as indirect selling expenses. The CIT in *Koyo Seiko* was not presented with and did not address the issue of the proper treatment of allocations which may include out-of-scope merchandise. The CIT in *Torrington I* did address this issue and held that the Department could not properly use a methodology which included discounts, rebates, and price adjustments ''on out of scope merchandise in calculating adjustments to FMV and ultimately the dumping margins.''

Comment 11: Torrington argues that the Department should disallow entirely SKF-Germany's reported HM early-payment cash discounts because they were not reported on a transaction-specific basis. Torrington holds that the Department must disregard these billing adjustments entirely because they may not be exclusively associated with subject merchandise.

SKF-Germany maintains that the Department should treat the HM cash discount as a direct adjustment to price. Alternatively, SKF-Germany argues that the Department, in accordance with *Koyo Seiko,* should continue to treat these cash discounts as indirect selling expenses. SKF-Germany states that, as noted in the Department's verification report, HM cash discounts were reported on a customer-specific, not sale-specific, basis.

Department's Position: We agree with Torrington and have disallowed SKF's cash discounts because SKF did not demonstrate that the allocated price adjustments pertained to subject merchandise only. See *Torrington I.* See our discussion of this issue at *Comment 10.*

Comment 12: Torrington argues that the Department should disallow entirely SKF-Germany's reported HM rebate number two because this rebate is neither transaction-specific nor product-specific but customer-specific, and may thus include amounts associated with non-subject merchandise. Alternatively, Torrington argues that the Department should treat this adjustment as an indirect selling expense, rather than a direct selling expense.

SKF-Germany argues that in the preliminary results of this review the Department properly treated SKF's HM rebate number two as a direct adjustment to price, just as in each of the three prior reviews. SKF-Germany contends that no new evidence exists which would cause the Department to depart from its established practice. SKF-Germany maintains that rebate two, which guarantees a specific reseller profit, is paid on the basis of the resale performance of SKF-Germany's customers. Because rebate two, as verified by the Department, is paid as a fixed percentage of all resales by SKF-Germany's customers, SKF-Germany calculated customer-specific factors for each rebate to a customer by allocating actual rebates paid over SKF-Germany's sales to its customer.

Department's Position: We agree with Torrington and have disallowed SKF's billing adjustment two because SKF did not demonstrate that the allocated billing adjustments pertained to subject merchandise only. See *Torrington I.* See our discussion of this issue at *Comment 10.*

Comment 13: Federal-Mogul urges the Department to apply BIA to SKF-France's HM billing adjustments. Federal-Mogul notes that SKF-France considered any billing adjustments which amounted to less than five percent of the gross unit price or 1000 French francs to be insignificant and did not report such adjustments. Federal-Mogul argues that SKF-France cannot take upon itself the authority to determine what constitutes an insignificant adjustment to FMV. Federal-Mogul suggests that a proper BIA would be to increase FMV by 4.99 percent of the HM price.

SKF-France contends that based on the verified record, neither an adjustment to SKF's prices nor use of BIA is warranted. SKF-France argues that according to Departmental regulations insignificant adjustments which have an *ad valorem* effect of less than 0.33 percent may be disregarded (19 CFR 353.59(a)). SKF-France asserts that the Department verified that unreported billing adjustments are insignificant, and in fact *de minimis,* under the Department's regulations. Additionally, SKF-France notes that since all unreported billing adjustments represent credit memos to the customer, the unreported adjustments had a detrimental rather than beneficial effect on SKF-France's margin calculations. Therefore, SKF-France contends that the Department should continue to accept its billing adjustments for these final results.

Department's Position: We agree with Federal-Mogul that SKF-France cannot take upon itself the authority to determine what constitutes an insignificant adjustment to FMV. However, at verification we confirmed that the billing adjustments in question represent decreases to FMV. Therefore, we agree with SKF-France that the omission of these billing adjustments had a detrimental affect rather than beneficial effect on its margin calculations. Thus, we have accepted SKF-France's billing adjustments for these final results.

Comment 14: Torrington argues that the Department's preliminary decision to deny FAG-Germany an adjustment for 1993 HM rebates based on the fact that FAG failed to report either actual or estimated 1993 U.S. corporate rebates is insufficient. Torrington argues that FAG's failure to report 1993 corporate rebates is a fundamental deficiency which calls for the application of a ''second-tier'' BIA to those U.S. transactions in which FAG failed to properly report a corporate rebate. Torrington contends that the Department's preliminary response may reward FAG for its failure to report 1993 U.S. corporate rebates if the HM rebates denied do not apply to the same types of sales as those found in the U.S. market or are not of the same magnitude as the U.S. corporate rebates which went unreported. FAG-Germany granted HM rebates to only a small number of customers and generally at lower rates than the U.S. corporate rebates. Finally, Torrington asserts that when deciding what BIA approach to use for the final results, the Department should also consider the fact the FAG never clearly stated in its responses that it had not reported estimated 1993 corporate rebates.

FAG-Germany asserts that its rebates were accurately reported given the nature of the rebate programs in each market and that the use of BIA is unwarranted. The companies reported estimated 1993 rebates differently for the HM and U.S. market because clear differences exist between their HM and U.S. rebate programs. Therefore, the Department erred in denying rebate adjustments in the HM on 1993 sales in order to remain consistent with FAG-US' methodology of not reporting 1993 rebates.

Department's Position: We agree with Torrington that disallowing an adjustment for FAG-Germany's estimated 1993 HM rebates is not the most appropriate means to account for respondents' failure to report estimated

1993 U.S. rebates. Accordingly, as BIA for these final results we used the highest 1992 U.S. corporate rebate rate to calculate corporate rebates for 1993 U.S. sales to customers that received rebates in 1992. We also made adjustments to FMV for estimated 1993 HM rebates as reported by respondents.

Comment 15: FAG-Germany argues that the Department improperly treated certain HM expenses which FAG had reported on a customer-specific basis—namely third-party payments, early payment discounts and negative billing adjustments—as indirect selling expenses. FAG-Germany maintains that it calculated and reported these expenses in the same manner that it did in previous reviews and the LTFV investigation and that its allocations are reasonable and accurate. The Department has a longstanding policy of allowing a respondent to report expenses using a reasonable allocation methodology when the respondent does not maintain records enabling it to conform with preferred Departmental methodologies and the methods employed are rational. The Department's treatment of billing adjustments is particularly unjust in that only negative billing adjustments were treated as indirect selling expenses while positive billing adjustments were left as direct adjustments to price.

Torrington maintains that the Department acted properly in treating these expenses as indirect selling expenses because FAG reported them on a customer-specific basis only.

Department's Position: We disagree with FAG-Germany. FAG-Germany does not dispute the fact that these expenses were allocated and reported on a customer-specific basis. The rationale for the treatment of customer-specific allocations as indirect adjustments was set forth in *AFBs III* (at 39759), and reiterated in the statement of our policy at the beginning of this section. This rationale applies to third-party payments as well as discounts and billing adjustments.

We note that FAG-Germany originally did not describe its methodology for reporting HM billing adjustments. See *FAG section C response.* When asked about the HM billing adjustment reporting methodology in the supplemental questionnaire, FAG-Germany inaccurately responded that ''[b]illing adjustments were reported on a transaction-specific basis.'' See *FAG section A–C supplemental response* (at 49). The fact that the majority of HM billing adjustments were not reported on a transaction-specific basis but were instead reported using customer-specific allocations was not discovered until verification. See *FAG KGS Germany verification report* (at 7). Since we cannot distinguish which billing adjustments were reported on a transaction-specific basis, we treated all negative billing adjustments as indirect expenses.

With respect to FAG-Germany's additional arguments concerning differences in the treatment of positive and negative billing adjustments, we disagree that both must be treated in the same manner. The treatment of positive billing adjustments as direct adjustments is appropriate, because treating these adjustments as indirect would provide an incentive to report positive billing adjustments on a customer-specific basis in order to minimize their effect on the margin calculations. That is, by treating positive billing adjustments, which would be upward adjustments to FMV, as indirect expenses, there may be no upward adjustment to FMV. Consequently, respondents would have no incentive to report these adjustments as requested (*i.e.,* on a transaction-specific basis).

Comment 16: FAG argues that the Department erroneously excluded 1993 rebates granted in the HM from the margin calculation and that these rebates should be included in total indirect selling expenses.

Federal-Mogul and Torrington assert that the Department was correct in disregarding FAG-Germany's HM rebates because, as FAG-Germany has itself acknowledged, FAG-Germany did not report estimated corporate rebates for 1993 U.S. sales. Torrington and Federal-Mogul assert that the Department should in fact resort to second-tier BIA margins for 1993 transactions.

Department's Position: For these final results, we have made adjustments for FAG's 1993 HM rebates. See response to *Comment 14.*

Comment 17: Torrington maintains that the NPBS case-by-case (CBC) rebate is not directly tied to a sale and, as such, should be reclassified as an indirect expense.

NPBS rebuts that the results of the last review should stand as precedent, and that the Department should continue to classify these rebates as direct expenses.

Department's Position: We agree with Torrington. Although NPBS and its customers agree on an absolute amount for the CBC rebate *before* the sale (which is the numerator in their formula), neither knows the exact amount of sales that will be made that month (the denominator) until after the fact. As such, the rebate is an allocated amount and not directly tied to a particular sale. Although this adjustment was erroneously treated as a direct deduction to FMV in the previous review, we have reclassified NPBS' CBC rebate as a HM indirect selling expense.

Comment 18: Torrington argues that INA calculated improperly several of its adjustments to HM price. According to Torrington, although INA calculated adjustment factors for certain expenses by dividing the total expense by a total sales value that was net of discounts and rebates, INA then multiplied this adjustment factor by a price that was not net of discounts and rebates to calculate per-unit expenses. Because the sales amounts used to calculate expense adjustment factors do reflect discounts and rebates, Torrington concludes that multiplying the adjustment factor by a price which does not reflect discounts and rebates overstates the per-unit adjustments to HM price. Accordingly, Torrington requests that the Department recalculate per-unit amounts for the expenses in question by multiplying the adjustment factors by a price net of all discounts and rebates.

INA responds that Torrington's argument is based on the incorrect assumption that the sales figures that INA records in its accounting system are net of all discounts, rebates, and price adjustments. According to INA, the sales amounts that it records in its accounting system are not net of cash discounts and rebates, which are recorded separately from sales in different accounts. INA states that it used the sales amounts from its accounting system to allocate the expenses at issue. Because these sales amounts are not net of cash discounts and rebates, INA concludes that its calculation of per-unit expenses using net invoice prices, which are not reduced by amounts for cash discounts and rebates, is appropriate.

Department's Position: We agree with INA. At verification, we confirmed that INA records in its accounting system sales values that are not reduced by cash discounts and rebates. Cash discounts and rebates are recorded separately in INA's accounting system. Therefore, we determine that the sales values that INA used in its allocations capture HM prices that are not reduced by discounts and rebates. Accordingly, we determine that INA properly calculated per-unit expenses by multiplying its reported allocation ratios by sales prices that are not reduced by cash discounts and rebates.

Comment 19: Torrington asserts that the Department should revise NTN-Germany's reported HM rebates. Torrington argues that the Department should recalculate NTN-Germany's rebates, based on the Department's

finding at verification that NTN-Germany's method of calculating rebates results in rebate percentages that differed from those stipulated in NTN-Germany's rebate agreements. Torrington further argues that the Department should deny NTN-Germany's claimed rebates for 1993, because the Department found at verification that certain customers would not qualify for the reported rebates based on 1993 sales.

NTN-Germany replies that its reported rebates are reasonable, because it calculated rebate percentages based on information available in its accounting records at the time that it prepared its questionnaire response. NTN-Germany further argues that the Department was able to verify the additional data on rebates that NTN-Germany did not have at the time that it prepared its questionnaire responses. As a result, NTN-Germany argues that even if the Department does not accept NTN-Germany's reported HM rebates for these final results, the Department should revise NTN-Germany's calculations rather than reject NTN-Germany's claim in its entirety.

Department's Position: We agree with NTN-Germany. We verified that NTN-Germany's reported data on HM sales and rebates were accurate, complete and contemplated at the time of sale. Further, because NTN-Germany did not have data on calendar year 1993 sales and rebates at the time that it prepared its questionnaire response, we find that the method that it used to report its HM rebates was reasonable. Accordingly, for these final results we have used in our analysis the data that NTN-Germany reported for rebates on HM sales.

Comment 20: Torrington argues that the Department should revise its treatment of NTN-Germany's HM discounts, because NTN-Germany improperly calculated its discounts. According to Torrington, NTN-Germany's calculation of average discounts per-customer is inappropriate, given the Department's finding at verification that NTN-Germany paid discounts on an invoice-specific basis. As a result, Torrington requests that the Department deny entirely NTN-Germany's claim for HM discounts or, at a minimum, treat them as indirect selling expenses for the final results.

Department's Position: Because we verified the accuracy and completeness of the customer-specific data that NTN-Germany used to calculate its reported HM discounts and because the discounts pertain to subject merchandise only, it would be inappropriate to deny the adjustment to NTN-Germany's HM prices for discounts. In the preliminary determination we treated these discounts as indirect selling expenses. In accordance with our discount and rebate policy discussed at the beginning of this section, we have continued to treat NTN-Germany's HM discounts as indirect selling expenses for the final results of these reviews.

Comment 21: NTN asserts that the Department erred in classifying NTN's HM discounts as indirect selling expenses. According to NTN, it did not report its discounts by aggregating discounts granted on specific sales and then allocating them over all sales to a particular customer. Rather, NTN states that it reported its discounts on both a product- and customer-specific basis. As a result, NTN requests that the Department treat its reported discounts as direct adjustments to price for the final results of this review.

Torrington and Federal-Mogul reply that NTN's method of reporting HM discounts does not satisfy the Department's criteria for considering discounts to be direct adjustments to price. Torrington states that the Department's verification report indicates that NTN allocates discounts to AFBs and non-subject merchandise. Similarly, Federal-Mogul asserts that NTN did not report discounts on a transaction-specific basis, and provided no evidence that it granted discounts as a fixed percentage of all HM sales. As a result, Federal-Mogul claims that NTN may have overstated its reported HM discounts for certain sales. Because NTN's method of reporting home market discounts was not sufficiently specific, Torrington and Federal-Mogul conclude that the Department properly treated NTN's HM discounts as indirect selling expenses.

Department's Position: We agree with Torrington and Federal-Mogul. According to the policy stated above and in previous reviews in these cases, we will treat discounts as direct adjustments to price only if they are reported on a sale-specific basis or if they are granted as a fixed and constant percentage of all sales. Because NTN's reported HM discounts are reported on a product- and customer-specific basis, and pertain only to scope merchandise, we have treated them as indirect selling expenses for the final results of these reviews.

Comment 22: NTN argues that the Department made a clerical error in failing to consider billing adjustments when calculating per-unit U.S. and HM selling expenses. According to NTN, the sales amounts over which the Department allocated certain U.S. and HM selling expenses were net of billing adjustments. Accordingly, NTN requests that the Department calculate per-unit U.S. or HM selling expenses by deducting billing adjustments from the sales prices that it uses to calculate per-unit expenses.

Torrington responds that the record does not specifically demonstrate that the U.S. and HM sales amounts used in the Department's allocations are net of billing adjustments. Therefore, Torrington requests that the Department modify its calculations as requested by NTN only if the Department is able to determine that the sales amounts at issue are net of billing adjustments.

Department's Position: We agree with Torrington. There is no evidence in the record of this review that describes the manner in which NTN recorded billing adjustments in its accounting system. In the absence of such information, we cannot confirm that the sales values that NTN used to allocate its expenses were net of billing adjustments. As a result, we have not deducted billing adjustments from the sales prices that we used to calculate per-unit expenses for these final results.

Comment 23: Torrington argues that NTN-Japan failed to report all HM billing adjustments on a transaction-specific basis. Citing *Torrington I* at 1579, Torrington contends that adjustments to FMV must be tied to sales of subject merchandise, rather than merely allocated over all sales. Because NTN-Japan used an aggregate method of reporting some billing adjustments, Torrington concludes that the Department should deny NTN's claims for HM billing adjustments or should, at a minimum, treat billing adjustments as indirect selling expenses.

NTN responds that it complied, to the extent possible, with the Department's instructions for reporting billing adjustments, and that there is no evidence that any deviations from this reporting method had any impact on the Department's calculation of NTN's dumping margins. NTN further argues that it did not report any billing adjustments made for sales of non-subject merchandise. Therefore, NTN concludes that the Department should continue to treat NTN's reported billing adjustments as direct adjustments to price for these final results.

Department's Position: We agree with NTN. During our verification of NTN's HM sales, we found no discrepancies in NTN's reporting of billing adjustments to home market sales. Thus, we have no reason to believe or suspect that NTN failed to report accurately or completely its HM billing adjustments, or that NTN's method of reporting may have included billing adjustments made on

sales of non-subject merchandise. Accordingly, we have treated NTN's reported HM billing adjustments as direct adjustments to price for these final results.

Comment 24: NSK claims that certain rebate, discount and commission programs should be treated as direct expenses and not as indirect expenses because they either meet the Department's definition of a direct expense of the sales in question (see *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order,* 58 FR 39729, 39759 (July 26, 1993)) or they meet the ''reasonable relationship'' requirement for a deduction in price in calculating FMV (see *Smith-Corona Group, SCM Corporation* v. *United States,* 713F.2d 1568 (Fed. Cir. 1983)). These adjustments should be accepted as direct adjustments to price for the following reasons: (1) Post-sale price adjustments (PSPAs), reported as REBATEH3, are reported on a part-number and customer-specific basis; (2) lump sum post-sale adjustments (REBATEH4) are reported on a customer-specific basis and adjustment rates have been demonstrated to be the same for scope and non-scope merchandise; (3) early payment discounts (OTHDISE) are reported on a distributor-specific basis, and each customer that receives the discount typically pays within the same number of days each month. Therefore, the discount is equally applicable to both scope and non-scope products throughout the POR. (4) Stock transfer commissions (COMMH2) are reported on a distributor-specific basis and the commission rate is a fixed percentage for all products and all customers.

Torrington contends that: (1) PSPAs reported as REBATEH3 are not reported on a transaction-specific basis and therefore do not qualify as a direct adjustment to price (see *Antifriction Bearings,* 58 Fed. Reg. at 39,759), and that because of certain reporting errors by NSK, the Department should not make any adjustment for REBATEH3; (2) although NSK claims that customers receiving lump-sum PSPA rebates, reported as REBATEH4, purchase virtually the same proportion of scope merchandise to total purchases, NSK has not provided any evidence that lump sum rebates are related to in-scope products. Therefore, the Department should make no adjustment for REBATEH4; (3) the Department has neither the assurance that the amounts claimed for OTHDISH are related to sales of in-scope merchandise or specific invoices that were paid early, nor the basis that the transactions uniformly involved sales of in-scope merchandise; (4) because NSK allocated stock transfer commissions (COMMH2) over all sales, the Department has no assurance that the commissions paid with respect to non-scope merchandise are not allocated to subject sales; therefore, this adjustment should not be treated as a direct expense. Federal-Mogul argues further that the Department should treat NSK's reported return rebates (REBATEH1) and distributor incentive rebates (REBATEH2) not as direct adjustments to FMV, but rather, as indirect selling expenses because they were not reported on a transaction-specific basis.

Department's Position: We agree with Torrington with respect to REBATEH4, COMMH2, and OTHDISH and have disallowed these adjustments because we do not accept adjustments to FMV which include discounts, rebates, or commissions paid on out-of-scope merchandise. See *Torrington I.* See also *Comment 10.* Although NSK supplied information in its December 16, 1993, Supplemental Response, at 7–8, demonstrating that early payment discounts (OTHDISH) granted for four distributors had remained relatively stable during the POR, NSK did not demonstrate that early payment discount percentages were stable for all customers for which an early payment discount was reported. Similarly, with respect to lump-sum rebates (REBATEH4), NSK submitted information in its December 16, 1993, Supplemental Response, at 14–16, indicating that the percentage of scope merchandise sales to total sales for five customers remained stable during the POR and, therefore, lump-sum rebates have been reasonably allocated to scope merchandise. However, an analysis of five customers' sales does not sufficiently demonstrate that all customers for which lump sum rebates were reported had stable purchasing histories with respect to scope and non-scope merchandise.

With respect to Torrington's claim that PSPAs, reported as REBATEH3, should be rejected because of reporting errors, we determined at verification that the value of unreported PSPAs which were unfavorable to NSK (a reduction of FMV) was more than 50 percent greater than unreported price increases. Furthermore, the value of the unreported price increases was an insignificant percentage of total bearings sold in the HM during the POR. Because this error in computer logic used to compile PSPA data affected an insignificant portion of total HM sales, we have accepted NSK's REBATEH3. REBATEH3 has been treated as an indirect selling expense because it was not reported on a transaction-specific basis.

We agree with Federal-Mogul's claim that REBATEH1 and REBATEH2 should not be considered as direct adjustments to HM price. Because REBATEH2 was reported as a customer-specific allocation of all distributor incentive rebates paid on all sales, NSK has not demonstrated that the reported REBATEH2 does not include rebates paid on non-scope merchandise. Therefore, we have disallowed this adjustment. REBATE1H was reported on a product- and customer-specific basis, not on a transaction-specific basis. Therefore, we have treated this rebate as an indirect adjustment to HM price.

Comment 25: Petitioner claims that NSK's method for estimating after-sale rebates for 1993 U.S. sales fails to account for the fact that customers purchase a greater volume of merchandise during the final months of a program year to qualify for a sales-volume rebate. Petitioner contends that NSK should have compared data for the eight months of 1992 to the data for the same eight months of 1993, or alternatively, could have reported full-year 1993 actual rebates. With this in mind, Torrington holds that the Department should assume that all eligible customers qualified for 1993 rebates and should make adjustments to all U.S. sales.

NSK contends it properly reported U.S. rebates. Torrington cites no support for its statement that ''customers often purchase a greater volume of merchandise during the final months of a program year in order to obtain a sales volume rebate.'' NSK claims there is not support on the record for this statement. Additionally, NSK notes the Department has a regulation prohibiting the voluntary submission of new information following verification. See 19 CFR 353.31(ii). NSK Corp., was verified on December 7 through December 9, 1993, and could not submit new information following the preliminary determination.

Department's Position: We agree with NSK. Torrington has provided no evidence on the record that supports its claim that customers purchase a greater volume of merchandise during the final months of a program year. We have accepted NSK's estimation methodology for 1993 rebates as reasonable and accurate.

7. Families, Model Match and Differences in Merchandise

Comment 1: Federal-Mogul states that, after finding that the most similar HM model was sold below cost in more

than 90 percent of the HM sales of that model, and over an extended period of time, the Department may not resort to CV without first determining whether there are other similar models to serve as a price-based comparison. This position results from the fact that the statute expresses a preference for price-based comparisons over CV.

Department's Position: We disagree with Federal-Mogul. Although section 773(a) of the Tariff Act expresses a preference for using the price of such or similar merchandise as the FMV before resorting to CV, section 773(b) directs the Department to resort immediately to CV if, after disregarding sales below cost, the remaining sales of a particular model or family are inadequate as the basis of FMV. Contrary to Federal-Mogul's assertions, therefore, the statute does not require the exhaustion of all possible family matches (similar merchandise) before resorting to CV. See *AFBs III* (at 39765).

8. Further Manufacturing and Roller Chain

Comment 1: Torrington contends that the Department should reconsider and discontinue the practice, known as the ''Roller Chain'' rule, whereby antidumping duties are not assessed on U.S. imports of subject merchandise used by a related party as a minor component (less than one percent) in a further manufactured article which is then sold to an unrelated party. See *Roller Chain, Other Than Bicycle, from Japan,* 48 FR 51801 (November 14, 1983). Torrington argues that whether or not a significant percentage of the finished product is accounted for by the subject import, a USP can reasonably be determined from the transfer price or by other means (*e.g.,* the ESP on sales to other customers, or the lowest export price to any U.S. customer). Additionally, Torrington contends that Congress did not intend to limit the antidumping law to imports accounting for a ''significant percentage'' of the value of the completed product.

Torrington argues that the Department has broad authority, under the antidumping statute, to ensure that imports of bearings incorporated into further processed articles in the United States do not escape the imposition of antidumping duties. According to Torrington, the ''Roller Chain'' rule has created a substantial vehicle for circumvention of the antidumping duty order and should be abandoned.

Torrington argues that, assuming the Department continues to apply the ''Roller Chain'' test, it should change the methodology used for applying the one-percent test to avoid illogical and improper comparisons between the entered value of the bearings and related party transfer prices. Torrington contends that, instead, the value of imported bearings should be based upon the ESP or PP of such or similar bearings sold at arm's length. This value would then be compared to the resale price of the finished merchandise, which is not subject to manipulation by related parties. Where the importer does not resell bearings, or resells only a small quantity, the U.S. prices for the model in question should be based on sales by another manufacturer or the manufacturer who produced the model in question.

Koyo argues that the Department should reject Torrington's arguments. Koyo contends that Congress recognized that there would be situations in which the value added in the United States would be so great that it would be inappropriate to apply the further-processing provision of the antidumping law (19 USC 1677a(e)(3)). This exception is clearly authorized by the legislative history of the antidumping statute, and there is no evidence on the record to demonstrate that the Department's application of the ''Roller Chain'' rule in this review is improper.

Koyo also disagrees with Torrington's argument that the Department should not use the entered value of the subject merchandise in applying the ''Roller Chain'' test. The entered value (rather than the resale value of the bearings in the United States, as suggested by Torrington) provides the correct basis for the one-percent test because the purpose of that test is to determine the value of the subject merchandise as imported in relation to the value of the finished product as finally sold to an unrelated party in the United States.

FAG argues that, contrary to Torrington's opinion, imports of subject merchandise do not escape the antidumping duty order. Full antidumping duties are deposited on the full value of the entered (subject) merchandise. This differs significantly from exempting a respondent from reporting sales of such merchandise. FAG contends that the only time a respondent might not pay antidumping duties on imported merchandise further processed in the United States occurs when certain operations are undertaken in an FTZ, which does not apply to FAG.

NSK argues that the Department cannot arbitrarily adopt a numerical standard for evaluating whether an imported component in a further manufactured product is significant. NSK claims the Department must analyze all relevant factors before determining whether an imported part is significant for purposes of 19 USC 1677a(e)(3). NSK states that if the Department wishes to use a rigid quantitative test to determine whether the imported content is significant, then it must publish, for public comment, a proposed rule to that effect. Until such a rule is properly adopted, the Department must analyze, prior to performing a section 772 analysis, all relevant factors to determine whether the imported amount contained in non-scope and in-scope finished products is significant. NSK further argues that where the finished product is merchandise of the type covered by the order, the Department should use the weighted-average margin for the imported finished product as the margin for insignificant imported parts.

NMB/Pelmec argues that Torrington is missing the point of the Department's one-percent test and its use of the entered value and the resale price. NMB argues that the Department established the one-percent test as a ''bright-line'' standard for determining whether the further-manufactured product contains more than an ''insignificant amount'' of the imported in-scope merchandise. NMB contends that using a different value, other than entered value, would not increase the accuracy of the one-percent test. NMB further asserts that if the Department should change the threshold, it should increase it from one percent to a more realistic level.

Department's Position: Section 772 (e)(3) of the Tariff Act requires that, where subject merchandise is imported by a related party and further processed before being sold to an unrelated party in the United States, we reduce ESP by any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after importation but before its sale to an unrelated party. In ESP transactions, therefore, we typically back out any U.S. value added to arrive at a USP for the subject merchandise. See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Korea,* 54 FR 53141, 53143 (December 27, 1989).

The legislative history of this provision suggests that the practice of subtracting the value added by the further processing operations in the United States should be employed only where the manufactured or assembled product contains more than an insignificant amount by quantity or value of the imported product. See S. Rep. No. 1298, 93d Cong. 2d Sess. 172–73, 245, *reprinted in* 1974 U.S.C.C.A.N.

7185, 7310. Conversely, when the quantity or value of the imported product is insignificant in comparison to that of the finished product, we are not required to calculate a USP for the imported merchandise. Therefore, we conclude that Congress did not intend that a USP be calculated in these situations and hence that no dumping duties are due. See H. Rep. No. 571, 93d Cong. 1st. Sess. 70 (1973).

Based on section 772(e)(3) of the Tariff Act (19 USC 1677a(e)(3)) and the applicable legislative history, we developed a practice whereby we do not calculate and do not assess antidumping duties on subject merchandise imported by a related party and further processed where the subject merchandise comprises less than one percent of the value of the finished product sold to the first unrelated customer in the United States. See *AFBs III* (at 39732, 39737). See *Roller Chain I* at 51804. In situations such as this one, in which the statute provides general guidance and leaves the application of a particular methodology to the administering authority, we are given significant discretion in determining the precise methodology to be applied in each case. Inasmuch as our statutory interpretation is not an unalterable rule, it does not constitute rule-making without compliance with the Administrative Procedure Act. See *Zenith Elec. Corp.* v. *United States,* 988 F.2d 1573, 1583 (Fed. Cir. 1993). The application of a one-percent threshold, based on a comparison of entered value of the imported product to the sale price of the finished product, constitutes such a use of the Department's discretion.

We disagree with Torrington's assertion that the ''Roller Chain'' rule has created a vehicle for circumvention of the antidumping duty order. The antidumping statute provides for the assessment of antidumping duties only to the extent of the dumping that occurs. If there can be no determination of any dumping margin where the imported merchandise is an insignificant part of the product sold in the United States, then there is no dumping to offset and, therefore, antidumping duties are not appropriate. Furthermore, the ''Roller Chain'' principle acts only to exclude subject merchandise from assessment of antidumping duties during the POR. We continue to require cash deposits of estimated antidumping duties for all future entries, including entries of bearings potentially excludable from assessment under the ''Roller Chain'' principle. This is because we have no way of knowing at the time of entry whether the ''Roller Chain'' principle will operate to exclude any particular entry from assessment of antidumping duties. Any decision to exclude subject merchandise from assessment of antidumping duties based on a ''Roller Chain'' analysis is made on a case-by-case basis during administrative reviews. See *AFBs I* (at 31703).

In order to apply the ''Roller Chain'' principle, we must examine ESP transactions involving subject merchandise during the POR to determine whether the amount of the subject merchandise is an insignificant part of the amount of the finished product sold to the first unrelated customer in the United States. We agree with Koyo that the entered value, rather than the resale value of the bearings as suggested by Torrington, provides a more appropriate basis for the one-percent test. Although resale prices of identical models sold to unrelated parties could be used in some instances in the numerator in place of entered value, such prices are not always available for each model, nor for all companies. In those instances where no resale price is available, we would have to rely on entered values anyway.

Moreover, we formulated the one-percent ''Roller Chain'' threshold based on the ratio of the entered value to the resale price of the further-manufactured item. If we had chosen to use the resale price in calculating this ratio, we might have chose a ratio higher than one-percent. This is because the resale price will normally be higher than the entered value, as it would include the mark-up of the related importer. Regarding Torrington's claim that the transfer price can be manipulated, we note that the U.S. Customs Service must ensure that such price represents a reasonable commercial value. Thus, we conclude that our use of entered value in the ''Roller Chain'' ratio is reasonable.

Comment 2: Torrington argues that NMB/Pelmec-Singapore and NMB/Pelmec-Thailand's (NMB/Pelmec) ''Roller Chain'' sales databases are inaccurate. Torrington states that the U.S. sales verification report indicates that ''the invoice does not always show the correct country of origin.'' See *NMB/Pelmec ESP verification report,* February 10, 1994. Furthermore, Torrington alleges that the Department discovered at verification that a bearing manufactured in Singapore was incorrectly reported in the Thai response. Torrington argues that during the POR, NMB/Pelmec had only one ''Roller Chain'' sale of the subject merchandise. Therefore, the evidence on record, as indicated by the transaction randomly selected at verification, reveals that NMB/Pelmec's ''Roller Chain'' database is inaccurate.

The NMB/Pelmec refutes Torrington's argument by stating that it provided the Department with all the information necessary to perform the appropriate dumping comparison for further-manufactured sales. In addition, the Department did not ''discover that a bearing manufactured in Singapore was incorrectly reported in the Thai response.''

Department's Position: We agree with respondent. Although the invoice did not always show the correct country of origin, the shipping document did. We verified country of origin during the ESP verification and found it to be correctly reported. In addition, contrary to Torrington's allegations, we did *not* discover that a bearing manufactured in Singapore was incorrectly reported in the Thailand response. See *NMB/Pelmec ESP verification report,* February 10, 1994.

Comment 3: Torrington argues that by manipulating transfer prices, NMB/Pelmec could create exclusions from the antidumping duty order based on the ''Roller Chain'' analysis. Torrington contends that it is inappropriate to use entered value as the basis for valuation of subject merchandise. Instead, the value should be derived from the ESP, less any value added. 19 USC 1677a(e)(3). Torrington states that the Department should use the average ESP by part number for purposes of the one-percent ''Roller Chain'' test.

NMB/Pelmec argues that using a value other than the entered value would not make the one-percent ''Roller Chain'' test any more accurate.

Department's Position: We disagree with Torrington. The use of entered value is appropriate because it is the best indication of the imported value of subject merchandise included in the finished product, and the purpose of the ''Roller Chain'' test is to determine the value of the subject merchandise as imported in relation to the value of the finished product as finally sold to an unrelated party in the United States. See *comment 1.* In addition, Torrington's concerns about manipulation of transfer prices are unfounded. The U.S. Customs Service will not accept transfer prices as entered value if these prices do not reflect the commercial value of the merchandise.

Comment 4: Torrington argues that the Department should reject Koyo's request for exclusion under *Roller Chain I* since the company reported estimated resale prices of finished and further processed products without providing supporting documentation. Torrington further contends that Koyo used weighted-average entered values for its ''Roller Chain'' calculations without

demonstrating that the use of weighted-average values is reasonable. Also Koyo did not indicate that only in-scope merchandise was included in its calculations.

In rebuttal, Koyo contends that it provided in its submission of November 23, 1993, a detailed explanation of its methodology for determining whether the weighted-average entered values of Koyo's in-scope products that were incorporated into non-scope products by its affiliates exceeded one percent of the sales value of the non-scope merchandise.

Department's Position: We agree with respondent. Koyo provided sufficient information in its letter of November 23, 1993, to demonstrate the applicability of the ''Roller Chain'' rule to certain identified sales. Notably, Koyo submitted examples of all calculations necessary to determine the one-percent threshold. Furthermore, there is no evidence on the record to indicate that the estimated resale prices submitted by Koyo are unreliable. In addition, while the best evidence of the value of the finished product sold to an unrelated party is the actual price, an estimated price is suitable if verified, as was done in this instance. See *AFBs III* (at 39766).

Comment 5: Torrington claims that Koyo reported only those imported in-scope products that were further-processed into merchandise within the scope of the order and that Koyo did not report any sales of products further processed into non-scope merchandise. Torrington contends that the Department should continue to apply a partial BIA rate for any model that exceeds the one-percent ''Roller Chain'' rule, as well as apply the highest margin calculated for Koyo in the LTFV or prior reviews for any sale that has not been reported.

Department's Position: We disagree. There is no evidence on the record to suggest that Koyo has failed to report any sales of in-scope merchandise further-processed into non-scope merchandise.

Comment 6: Torrington objects to the fact that the Department has excluded the vast majority of Honda's imports based on the ''Roller Chain'' rule. Torrington states that, in Honda's case, the dumping law is not ensuring that Japanese-origin AFBs used in U.S. automobile production are sold at fair value. Instead, Torrington contends that the order is merely guaranteeing that Honda's ''aftermarket'' spare parts sales in Japan and the United States are made at comparable prices since spare parts are the only non-''Roller Chain'' sales made by Honda. As a result, Torrington claims that the Department is not effectively administering the antidumping duty order with respect to Honda.

Honda states that Torrington has not offered any specific data to support its contention and that Torrington's arguments have been previously rejected by the Department. Honda argues that an antidumping duty order is clearly not meant to apply to parts imported by a company for use in its own manufacturing operations unless the imported parts constitute a significant amount of the value of the products manufactured in the United States.

Department's Position: We agree with Honda. The majority of Honda's imports constituted less than one percent of the value of the finished product sold to the first unrelated customer in the United States. The ''Roller Chain'' standard is clearly established (see *Comment 1* of this section) and, by this standard, the majority of Honda's imports will not be assessed antidumping duties for entries during the POR. Furthermore, Torrington has provided no specific evidence demonstrating that circumvention is occurring.

Comment 7: NMB/Pelmec-Thailand states that the Department should not use BIA for its further-manufactured sales. NMB/Pelmec sold a small number of bearings to a related company, which were further manufactured. The companies reported CV data for the bearings that were further manufactured and, therefore, the Department should not use BIA.

Torrington argues that respondents did not submit complete and accurate information, and, as such, it is irrelevant whether or not CV was provided for the further-manufactured models. In light of the evidence on record, the Department should not accept the contentions of NMB/Pelmec for purposes of the final results.

Department's Position: We agree with respondent. For our preliminary results, we incorrectly assigned a BIA margin to two further-manufactured sales due to a program error. For the final results, we corrected the margin program. Since NMB/Pelmec properly reported CV data for the bearings that were further manufactured, we did not use BIA for these transactions.

Comment 8: NPBS requests that the Department correct the omission of variable COPFM (home market cost of production) used in allocating profit to further-manufactured bearing units by modifying several lines of the computer program. NPBS states that, due to differing product codes, the margin program failed to recognize this variable in the further-manufactured data file.

Torrington argues that, although NPBS' suggested correction seems reasonable, they have failed to demonstrate that the data are comparable. Instead, Torrington offers an example demonstrating that the CV and COP data are not comparable.

Department's Position: We agree with Torrington. Although Torrington cites an example allegedly showing that the CV data and COP data are not comparable, Torrington fails to realize that the example is based on data from the wrong files and is cited from the wrong submission (October 19, 1993, versus corrected data from December 30, 1993). Notwithstanding these facts, Torrington is correct in asserting that the data are not compatible without modification. See NPBS Final Analysis memo, June 2, 1994.

These modifications, made for the final results, are necessary to account for a difference in interest expenses and the exclusion of packing expenses. The difference in interest expenses can be corrected by multiplying it by a certain ratio. The exclusion of packing expenses cannot be corrected but, since it results in a lower COPFM, it increases the dumping margin. This is to the detriment of NPBS. Therefore, we are satisfied that modifying the CV data in the aforementioned manner will result in an acceptable surrogate for COPFM.

Comment 9: Torrington explains that NSK used a FIFO system to link imported bearing parts to finished bearings. Thus, imported parts could be matched to a finished bearing that was sold even before the parts were imported. This created a situation whereby imported parts were assigned resale prices and an ESP was calculated regardless of whether those parts were actually consumed during the POR.

Torrington notes that the only solution to this problem is to trace parts directly to finished bearings or to take account of the entire inventory of parts from all sources, applying the FIFO method to parts inventory until all of the parts are used up. The prices for finished bearings should be based upon the BIA, which is the lowest USP for each relevant part number.

NSK states it formulated its methodology for reporting Section E data in conjunction with the Department's Office of Accounting. This methodology was fully disclosed in the second, third, and present reviews. NSK notes that the Department has accepted as reasonable and proper NSK's assumptions and methodology in the second and third reviews. See *AFBs III*, 58 FR 39766.

Department's Position: We have concluded that NSK's FIFO

methodology used for reporting Section E data is in accordance with the U.S. GAAP, and thus, an appropriate method of valuation. This methodology was reviewed during the further-manufacturing verification of NSK's Section E response and was found to be acceptable.

Comment 10: NSK contends that the Department should have based the dumping margin for imported parts ''further manufactured'' in the United States on the margin for imported finished bearings of the same class or kind. NSK states the imported content contained in the bearings sold in the United States does not justify requiring NSK to respond to Section E of the Department's questionnaire, nor does it support the Department's calculating margins for these imported parts.

NSK asserts that the Department's use of an arbitrary one-percent threshold for analyzing further manufactured products is unlawful rulemaking. The Department may only reduce ESP by the value of further-manufacturing performed in the United States if ''the product ultimately sold to an unrelated purchaser contains a significant amount by quantity or value of the imported product.'' See S. Rep. No. 1298, 93d Cong. 2d Sess. 172–73, *reprinted in* 1974 U.S.C.C.A.N. 7185, 7310. In most cases, the imported content is a very small percentage of the total manufacturing cost, and thus NSK believes the imported portion of its U.S.-produced bearing is insignificant.

NSK maintains the Department has not provided guidance as to the standards that it follows when determining whether the imported content is significant in the context of further manufactured in-scope products. NSK claims that since the Department has not lawfully promulgated a rule codifying the ''Roller Chain'' principle, it must examine each factual situation on a case-by-case basis. NSK further argues that in this review the Department has not addressed any qualitative or quantitative factors to support its decision to compute margins on NSK's further-manufactured product.

NSK states that the Department should not perform a further-manufactured analysis of imported parts that are not subject to a process of further-manufacturing in the United States. Section 772(e)(3) of the Tariff Act (19 USC 1677a(e)(3)) only authorizes a further manufacturing analysis where ''a process of manufacture or assembly is performed on the imported merchandise'' in the United States. Many of the parts imported by NSK are merely ''applied'' or ''attached'' to finished parts and are not subject to a process of further manufacturing in the United States. Therefore, NSK contends that the Department should use the weighted-average margin for complete imported bearings to determine the margin for these parts.

Torrington responds that the Administrative Procedure Act permits agencies to promulgate ''interpretative rules'' without formal rulemaking, citing 5 USC 553(b). Because the ''Roller Chain'' test is clearly an interpretative rule, there is no prohibition against applying the one-percent test on a case-by-case basis in this proceeding.

Department's Position: We disagree with NSK that the Department should not calculate dumping margins for merchandise further manufactured in the United States by NSK. As explained in previous reviews (see *AFBs II* at 28360 and *AFBs III* at 39737), the Department disregards antidumping duties on those parts and bearings that comprise less than one percent of the value of the finished product sold to the first unrelated customer in the United States. However, NSK's data indicate that the subject merchandise sold to its related party in the United States comprises more than one percent of the value of the finished good produced by the related party. Because this imported merchandise is subject to antidumping duties, the Department cannot disregard sales of this merchandise in its analysis or the adjustments to USP provided for in section 772(e)(3) of the Tariff Act. Thus, we reject NSK's claim that NSK's imported parts and bearings should not be subject to further-manufacturing analysis, or any analysis at all. We also disagree with NSK's argument that the one-percent threshold is arbitrary and that it represents unlawful rule-making. See *Comment 1*.

We further disagree with NSK's argument that the imported parts are not subject to a process of assembly or manufacture. Because the addition of a part to an otherwise unfinished bearing constitutes a process of assembly, we have adjusted ESP sales prices by the amount of value added, in accordance with section 772(e)(3) of the Tariff Act (19 USC 1677a(e)(3)).

Comment 11: NSK claims that the Department incorrectly classified its repacking material and labor costs as costs of U.S. manufacturing, a methodology which conflicts with the Department's previous rulings wherein movement and packing expenses have been classified separately from the cost of manufacture in determining the value added to a product in the United States. See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France,* 58 FR 68865 (December 29, 1993). Torrington argues that in the third review, NSK made the same claim, which the Department rejected because of lack of supporting evidence on the record. Torrington suggests that the Department should reject the claim now for the same reason.

Department's Position: Cost of manufacturing includes materials, labor, and overhead associated with producing the product in question. Repacking material and labor costs associated with packing or movement are not considered part of manufacturing costs. Therefore, we have not classified NSK's repacking expenses as a cost of manufacturing for the final results.

Comment 12: Torrington notes that changes to FAG-Germany's packing labor and material expense factors outlined in the analysis memo were not included in the margin program used to calculate the preliminary results. In addition, Torrington contends that the exchange rate factor was applied twice to the adjustment for marine insurance.

FAG-Germany contends that the preliminary computer program does contain the appropriate adjustment factors for FAG's U.S. packing labor and material expenses. Additionally, FAG-Germany notes that the double application of the exchange rate to the adjustment for marine insurance was necessary to correct a conversion error committed by FAG in its computer response.

Department's Position: We agree with FAG-Germany. We included in the margin program the necessary corrections to FAG-Germany's packing expenses. In addition, we intentionally applied the exchange rate to the marine insurance adjustment twice to compensate for an exchange rate error committed in FAG-Germany's submitted data.

9. Level of Trade

Comment 1: NTN and NTN-Germany argue that the Department incorrectly reallocated their reported U.S. selling expenses to all U.S. sales without regard to level of trade. NTN further argues that the Department's reallocation of HM selling expenses without regard to level of trade was erroneous. According to NTN and NTN-Germany, certain expenses that are incurred only for sales to specific customer categories are not applicable to all sales. As a result, NTN and NTN-Germany contend that the Department's reallocation of these expenses across all levels of trade improperly allocates certain expenses to sales for which NTN and NTN-Germany did not incur such expenses. Therefore, NTN and NTN-Germany request that the

Department abandon its reallocation and use instead, in its final analysis, the expenses as reported by NTN and NTN-Germany in their questionnaire responses.

In rebuttal, Torrington and Federal-Mogul respond that NTN and NTN-Germany failed to provide any evidence to justify their method of allocating expenses according to levels of trade. According to Torrington, NTN and NTN-Germany should have justified their method because it differs from the Department's customary practice and appears to shift expenses away from sales at certain levels of trade. This reallocation of U.S. expenses also conflicts with NTN's failure to allocate its HM expenses according to levels of trade. Federal-Mogul argues that the U.S. expenses that NTN allocated were indirect selling expenses that apply equally to all sales. Federal-Mogul further argues that the Department's verification report indicates that NTN's identification of certain HM indirect selling expenses with sales to certain levels of trade may be inaccurate. Accordingly, Torrington and Federal-Mogul support the Department's reallocation of NTN's and NTN-Germany's U.S. selling expenses, and NTN's HM selling expenses, without regard to level of trade.

Department's Position: We agree with Torrington and Federal-Mogul. The methods that NTN and NTN-Germany used to allocate the expenses in question bear no relationship to the manner in which they incur them. Such expenses are fixed period costs that do not vary according to sales value or the number of employees who allegedly sell each type of merchandise. Further, we find NTN's and NTN-Germany's allocations according to levels of trade to be misplaced because the types of expenses that they allocated are indirect selling expenses that typically relate to all sales. In this context, NTN and NTN-Germany failed to demonstrate that they incur any specific types of expenses that are unique to a particular level of trade. Further, as stated in the verification report, certain Japanese indirect selling expenses that NTN claimed apply to sales to a specific level of trade apply to other sales as well. Because we have no evidence that NTN and NTN-Germany incur different selling expenses for different levels of trade, we have not revised our reallocations of their selling expenses for these final results.

Comment 2: NTN argues that the Department should compare U.S. and HM sales at the same level of trade. According to NTN, comparing sales at different levels of trade distorts the calculation of dumping margins because prices differ significantly for each level of trade. NTN further argues that if the Department decides to compare sales across levels of trade for the final results, then the Department should alleviate the distortions caused by such comparisons by making a level-of-trade adjustment based on differences in prices or, alternatively, differences in indirect selling expenses for each level of trade, as set forth by NTN in its questionnaire responses.

In rebuttal, Torrington and Federal-Mogul assert that the CIT has upheld in numerous instances the Department's selection of the most similar merchandise without regard to levels of trade. Torrington and Federal-Mogul further argue that NTN has no basis for its claim for a level-of-trade adjustment. Federal-Mogul contends that NTN has not demonstrated that it is entitled to a level-of-trade adjustment because it has failed to establish that price differentials are due to differences in levels of trade. Federal-Mogul further contends that NTN's methods of quantifying level-of-trade adjustments are inappropriate because NTN cannot determine the amount of price differentials or selling expenses attributable to differences in levels of trade. Torrington adds that the manner in which NTN reported its HM indirect selling expenses nullifies the effect of any level-of-trade adjustment. As a result, Torrington and Federal-Mogul conclude that the Department's comparison of sales across levels of trade and denial of NTN's request for a level-of-trade adjustment are reasonable.

Department's Position: We agree with Torrington and Federal-Mogul. As we stated in *AFBs III* (at 39767), we are required by 19 CFR 353.58 to compare merchandise at different levels of trade if sales at the same commercial level of trade do not permit an adequate comparison. Accordingly, when we were unable to compare NTN's U.S. sales to HM sales at the same level of trade, we attempted to find matches at the next most similar level of trade.

We also reject NTN's request for a level-of-trade adjustment. In order for the Department to make a level-of-trade adjustment, respondents must quantify any price differences that are attributable to differences in levels of trade. NTN has failed to demonstrate what portion, if any, of those price differences is attributable to differences in levels of trade. Further, we reject NTN's claim that we should use differences in indirect selling expenses to make a level-of-trade adjustment. NTN allocated a common pool of expenses to all sales, irrespective of levels of trade, using relative sales values. This demonstrates that such expenses were not unique to, nor disproportionally attributable to, any level of trade. Because NTN failed to adequately quantify its claim for a level-of-trade adjustment, we have not made any such adjustment for these final results.

Comment 3: Torrington objects to NTN's claim that ''aftermarket'' customers constitute a distinct level of trade. First, Torrington argues that NTN's selling expenses do not vary across levels of trade. Torrington further argues that the results of the Department's comparison of weighted-average prices at different levels of trade is insufficient to conclude that NTN makes sales to customers at three distinct levels of trade, and that NTN has failed to provide any evidence demonstrating a correlation between prices and selling expenses. Finally, Torrington argues that because of the limited number of U.S. aftermarket sales, the majority of NTN's HM aftermarket sales are not matched to U.S. sales. As a result, Torrington concludes that the Department should reject NTN's classification of certain sales as aftermarket sales, and should reclassify these sales as either OEM or distributor sales for the final results.

NTN responds that the Department examines the function of the class of customer in reaching conclusions regarding a respondent's identification of levels of trade. According to NTN, Torrington provided no evidence regarding customer function or other factors that would preclude the Department from accepting NTN's classification of certain customers as aftermarket customers. NTN further argues that the number of sales made to customers at a particular level of trade is irrelevant in identifying levels of trade because the Department's regulations mandate comparisons of sales made at the same level of trade.

Department's Position: We agree with NTN. As we stated in the final results of the previous administrative review of this case, we initially base our level-of-trade classifications on the function of the class of customer reported by respondents. See *AFBs III* (at 39767). These classifications may be rebutted by such other factors as differences in prices that discredit a respondent's classifications. NTN submitted information in its questionnaire responses for this review that explained the differences in the function of its OEM, distributor and aftermarket customers. Torrington offered no evidence that NTN's aftermarket customers did not perform functions distinct from those of NTN's other classes of customers, or that NTN's

prices to aftermarket customers did not differ from NTN's prices to other classes of customers. Further, because we examine customer function and other factors in determining levels of trade, we agree with NTN that the number of sales to customers at a given level of trade is irrelevant to rendering determinations regarding the existence of distinct levels of trade. Therefore, we conclude that NTN's aftermarket customers constitute a distinct level of trade and have compared aftermarket sales in the United States first to aftermarket sales of such or similar merchandise in Japan.

Comment 4: NSK argues that the Department incorrectly classified customer category 4 sales—sales through distributors to OEMs for OEM use—as sales to the aftermarket level-of-trade. According to NSK, category 4 sales should be matched to OEM level of trade sales under either of the methods of analysis used by the Department: (1) Correlation of price to level of trade; or (2) function of the first unrelated customer. NSK contends that these distributors act as purchasing agents for large OEM corporations and purchase bearings for immediate resale to OEMs, and in some cases NSK ships directly to the OEM. In addition, NSK claims that the price to level of trade comparison submitted in the Section C response confirms that category 4 sales are at the OEM level of trade. Finally, NSK argues that, in the TRB reviews, the Department correctly recognized that category 4 sales were at the OEM level of trade and accordingly matched them to OEM U.S. sales.

Torrington contends that NSK's sales designated as category 4 meet neither of the two tests cited by NSK as relevant. Torrington claims that the Department requested that NSK substantiate its claim that it sells at four different levels of trade and that pricing is reflective of the different levels of trade. According to Torrington, NSK submitted an analysis which collapsed the four levels of trade into two levels, but did not demonstrate that pricing and selling practices differed among four individual levels of trade. Furthermore, Torrington contends that the Department should retain the level-of-trade classifications from the preliminary results because NSK failed to demonstrate the first unrelated customer in category 4 sales is the OEM customer.

Department's Position: We agree with NSK. We initially consider customer function to determine our level-of-trade classification. In its section C response, NSK provided an analysis of quantities and weighted-average prices by customer category and model and by customer category and class (BBs and CRBs). This analysis revealed that the quantities and weighted-average prices for sales to customer category 1 (sales directly between NSK and OEM customers) are similar to sales to customer category 4 (sales to distributors for resale to OEMs) but significantly different from the quantities and weighted-average prices of sales to aftermarket customers and distributors (customer category 2 and 3, respectively). Therefore, based on this data, we have collapsed sales to customer categories 2 and 3, and collapsed categories 1 and 4, to form two levels of trade for HM sales.

10. Packing and Movement Expenses

Comment 1: Torrington and Federal-Mogul argue that FMV should not be adjusted for pre-sale inland freight costs, whether compared to PP sales or to ESP sales. Torrington contends that movement expenses should be deducted from FMV only if they are directly related to home market sales. Torrington claims that the Department has begun to allow home market deductions for all inland freight expenses without distinguishing between pre- and post-sale expenses. Therefore, Torrington concludes that the Department's approach is without statutory basis and has been found unlawful by the U.S. Court of Appeals for the Federal Circuit (CAFC).

Torrington and Federal-Mogul also maintain that there is no basis for treating pre-sale inland freight differently when FMV is compared to ESP than when FMV is compared to PP. They point out that the CAFC has disallowed deduction of pre-sale transportation costs from FMV in PP comparisons, and they argue that the Court's decision also applies to ESP comparisons because the statute does not provide for an adjustment to FMV in ESP comparisons that would distinguish the rationale applied in *Ad Hoc Committee*. Furthermore, Federal-Mogul argues that pre-sale transportation costs cannot be linked to particular sales, and that the Department lacks the authority to adjust FMV for such expenses under the ESP offset provision.

Nachi, Koyo, NSK, SKF, NPBS, and NMB/Pelmec argue that the Department should continue its practice of treating pre-sale inland freight charges as a direct adjustment to FMV in ESP comparisons. They contend that the Federal Circuit's opinion in *Ad Hoc Committee* does not apply when FMV is compared to ESP transactions because the CAFC made only a limited ruling on the Department's authority to adjust for pre-sale inland freight in PP situations. In support, Nachi cites *The Torrington Company* v. *United States,* No. 94–38, Slip Op. at 8 (March 4, 1994), where the CIT held that in *Ad Hoc Committee,* the CAFC ''limited its decision to the calculation of FMV in purchase price situations only.'' In addition, Nachi notes that *Ad Hoc Committee* leaves undisturbed the Department's previous practice of treating pre-sale inland freight charges as indirect selling expenses. Therefore, Nachi states that if the Department incorrectly determines that pre-sale inland freight should not be directly deducted from FMV, the Department should at least treat this expense as an indirect selling expense.

FAG also contends that the Department properly adjusted FMV for pre-sale inland freight. FAG points out that while the CAFC held that the Department improperly rationalized its adjustment to FMV for pre-sale freight on its inherent authority to fill gaps in the statute, the CAFC in *Ad Hoc Committee* did not rule as to whether the Department could have justified its deduction to FMV under some other statutory authority or whether the statute permitted an adjustment to FMV for pre-sale freight where USP was based on ESP. FAG argues that the CIT has also rejected Torrington's contention that pre-sale freight expenses are neither selling expenses nor indirect expenses. In addition, FAG maintains that if the Department decides in Torrington's favor on this issue, then the Department should also exclude pre-sale movement charges as an adjustment to USP. SKF argues that the Department must maintain its practice of deducting HM pre-sale inland freight from FMV when USP is based on ESP, which has similarly been reduced by pre-sale inland freight.

FAG, NTN, and NMB/Pelmec state that the Department's decision to adjust FMV to account for pre-sale inland freight costs is supported by the recent CIT decision in *Federal-Mogul* v. *United States,* 17 CIT _____, Slip Op. 94–40 (March 7, 1994). Given the Department's broad authority to make circumstance of sale (COS) adjustments, FAG, NTN, NSK, and NMB/Pelmec argue that the Department may legitimately make COS adjustments to FMV to account for pre-sale inland freight costs. NSK adds that the Department's regulations do not require that all adjustments to FMV be related to particular sales. See 19 CFR 353.56(a)(1).

Department's Position: We have determined that, in light of the CAFC's decision in *Ad Hoc Committee,* the Department no longer can deduct home market pre-sale movement charges from

FMV pursuant to its inherent authority to apply reasonable interpretations in areas where the antidumping law is silent. Instead we will adjust for those expenses under the COS provision of 19 CFR 353.56 and the ESP offset provision of 19 CFR 353.56(b) (1) and (2), as appropriate, in the manner described below.

When USP is based on PP, we will only adjust for home market movement charges through the COS provision of 19 CFR 353.56. Under this adjustment, we capture only direct selling expenses, which include post-sale movement expenses and, in some circumstances, pre-sale movement expenses. Specifically, we will treat pre-sale movement expenses as direct expenses if those expenses are directly related to the home market sales of the merchandise under consideration. Moreover, in order to determine whether pre-sale movement expenses are direct, the Department will examine each respondent's pre-sale warehousing expenses, because the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, inextricably linked to pre-sale warehousing expenses. If the pre-sale warehousing constitutes an indirect expense, the expense involved in moving the merchandise to the warehouse must also be indirect; conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense. We note that although pre-sale warehousing expenses in most cases have been found to be indirect expenses, these expenses may be deducted from FMV as a COS adjustment if the respondent is able to demonstrate that the expenses are directly related to the sales under consideration.

When USP is based on ESP, the Department uses the COS in the same manner as in PP situations. Additionally, under the ESP offset provision set forth in 19 CFR 353.56(b) (1) and (2), we will adjust for any pre-sale movement charges found to be indirect selling expenses.

We have followed the above methodology for these final results. However, in the case of NPBS, pre- and post-sale inland freight expenses were not distinguished. Rather, NPBS reported both expenses as post-sale inland freight. Therefore, for the final results, we have treated all of NPBS' inland freight expenses as pre-sale movement charges.

Comment 2: Torrington asserts that NMB/Pelmec Thailand and NMB/Pelmec Singapore failed to report air and ocean freight expenses on a product- and invoice-specific basis for ESP transactions. In addition, Torrington contends that NMB/Pelmec failed to separate air freight expenses from ocean freight expenses. Therefore, Torrington argues that the Department should resort to BIA by applying the highest U.S. movement expenses reported by respondents.

NMB/Pelmec states that it is not possible to link specific air and ocean shipments to individual U.S. transactions because all merchandise goes into U.S. inventory before it is sold.

Department's Position: We agree with NMB/Pelmec Thailand and Singapore. In the case of ESP transactions made by NMB/Pelmec, there is often no direct link between shipments and resales. Therefore, because we verified NMB/Pelmec's air and ocean freight expenses and found them to have been reasonably allocated, we have accepted NMB/Pelmec's freight expense calculations.

Comment 3: Torrington states that the Department's verification report confirms that NMB/Pelmec Thailand reported movement expenses incurred on bearings shipped to Singapore and re-entered in Thailand (termed ''Route B'' sales in the response). Torrington argues that freight expenses incurred in transporting bearings to Singapore and then back to Thailand should not be allowed as an adjustment to FMV because such transportation expenses are by definition ''pre-sale'' freight costs. Torrington also contends that the ''Route B'' sales should be excluded from the home market database.

NMB/Pelmec Thailand responds that only part of the freight expenses incurred on ''Route B'' sales are pre-sale expenses because freight charges incurred for shipping merchandise back to Thailand are incurred after sales are made. Furthermore, NMB/Pelmec Thailand argues that the *Ad Hoc Committee* decision does not preclude the deduction of pre-sale freight expenses. See *Comment 1* above.

Department's Position: We agree with NMB/Pelmec Thailand. As we found in *AFBs II* (at 39770), ''Route B'' sales (*i.e.*, bearings shipped to Singapore and then back to Thailand) are home market sales made in the normal course of trade. As verified by the Department in this review, ''Route B'' sales incur both pre-sale freight expenses (to ship the merchandise to Singapore) and post-sale freight expenses (to return the merchandise to Thailand). Therefore, we have deducted NMB/Pelmec's post-sale movement expenses from FMV for the final results. For our treatment of pre-sale freight expenses, please see the *Department's Position* to *Comment 1*, above.

Comment 4: Torrington states that RHP reported a single amount for domestic inland insurance, marine insurance, and U.S. inland insurance. Torrington notes that RHP allocated aggregate amounts across RHP's sales on the basis of value and contends that RHP allocated marine insurance and U.S. inland insurance to home market sales. Torrington argues that this allocation decreases home market prices while increasing USP. Torrington recalls that its October 1, 1993 comments noted this deficiency and that RHP failed to correct its error. Torrington asserts that this failure alone justifies the use of BIA. Torrington suggests two possible applications of BIA: the Department could use the amounts reported by another U.K. respondent, or the entire amount could be allocated to U.S. sales. Torrington justifies the second alternative by stating that it would be fair to allocate nothing to home market sales as the home market expenses were overstated because marine insurance was included.

RHP responds that it purchases a single freight insurance policy that covers its shipments world-wide, regardless of destination, and that this insurance covers all production and acquisitions until the time of delivery. RHP notes that while Torrington argues that RHP should not have allocated the fixed insurance expense based on its sales turnover, the Department has verified and accepted RHP's practice in the past three administrative reviews. RHP concludes that there is no reason to modify well-established practice.

Department's Position: We have accepted RHP's reported freight insurance expenses—which cover domestic inland insurance, marine insurance, and U.S. inland insurance—for the final results. Because RHP purchased a single policy that covers all shipments world-wide, RHP allocated the expense over all of its sales activities, based on sales value. We find RHP's allocation methodology to be reasonable.

Comment 5: Torrington argues that the Department incorrectly made adjustments for Koyo's ocean freight and U.S. inland freight from port to warehouse because Koyo reported these expenses on a customer-specific basis rather than tying them to specific transactions.

Department's Position: We accepted Koyo's allocation of these expenses as reasonable. We verified these expenses and found no evidence that Koyo's allocation methodology is unrepresentative of its actual

experience. In the case of ESP transactions, there is often no direct link between shipments and resales. See the *Department's Position* to *Comment 2*, above.

Comment 6: Torrington argues that since Koyo allocated air freight expenses over all bearings shipped from Japan rather than reporting them on a per-unit and transaction-specific basis, the Department should apply a partial BIA rate, *i.e.*, the highest movement expenses reported by Japanese respondents.

In rebuttal, Koyo argues that the Department has accepted its allocation of air freight expense in prior reviews. Koyo maintains that the Department accepted these expenses because there was no evidence on the record to suggest that Koyo's allocation methodology was not representative of its actual experience.

Department's Position: We disagree with Torrington. As stated in the *Department's Position* to *Comment 2*, above, there is often no direct link between shipments and resales in the case of ESP transactions. The expenses in question were verified by the Department and were found to have been reasonably allocated.

Comment 7: Torrington argues that the Department should disallow Nachi's home market ''other direct expenses,'' which the Department has treated as indirect expenses for the preliminary results. Torrington claims that Nachi's reported expense, the cost of operating the fleet of vans owned by Nachi's national sales subsidiary, Nachi Bearing Company (NBC), is a part of general overhead that Nachi has not shown relates entirely to customer deliveries. Furthermore, Torrington states that Nachi has not identified which NBC sales were shipped via the van fleet, or even demonstrated that any bearings at all were shipped via the van fleet. Finally, Torrington argues that Nachi has failed to segregate the expenses incurred on shipments of subject merchandise and those incurred on non-subject merchandise.

Federal-Mogul argues that Nachi has double-counted home market inland freight expenses because ''other direct expenses'' (which include the cost of customer deliveries made with NBC's van fleet) and ordinary inland freight charges are both reported for several transactions. Therefore, Federal-Mogul asserts that Nachi's home market freight claims should be denied.

Nachi states that the Department verified that its ''other direct selling expenses'' consist of the cost incurred by NBC in renting vans and purchasing gasoline for deliveries of bearings to certain customers. Therefore, Nachi asserts that the cost in question is clearly a selling expense. Furthermore, Nachi contends that by dividing NBC's total expenses by total NBC sales, only that portion of NBC's expenses attributable to deliveries of subject merchandise was allocated to sales of subject merchandise. With regard to Federal-Mogul's argument, Nachi argues that it has not double-counted NBC's van expenses because they were not reported elsewhere in Nachi's response and because they were pulled out of Nachi's indirect selling expense calculation along with other freight charges.

Department's Position: Although we disagree with Torrington and Federal-Mogul's reasoning, we agree that Nachi's ''other direct selling expenses'' should be disallowed. NBC's van fleet expenses, which Nachi has categorized as ''other direct selling expenses,'' are more accurately described as home market freight expenses. Even though they are in-house freight costs rather than movement services purchased from an independent contractor, they are nonetheless movement expenses. Thus, Nachi has categorized its home market freight expenses as either ''other direct selling expenses'' or domestic inland freight expenses. Both categories of transportation expenses were incurred on NBC sales.

Because NBC is unable to identify which particular sales were transported by van and which were transported by contractors, Nachi has allocated each category of expenses over total NBC sales and applied the resulting factors to each reported NBC sale. Normally, this would be no different from the net effect that would have resulted if Nachi had pooled all NBC movement charges under the same category of expenses. However, Nachi allocated its van fleet expenses over NBC sales by sales value rather than by bearing weights. In the case of movement charges that cannot be traced on a transaction-specific basis, the proper way to allocate the expenses between shipments of subject and of non-subject merchandise is by the weight of the merchandise, unless a respondent can show that the expenses were incurred on a different basis. Because Nachi allocated home market inland freight charges based on bearing weights, we have accepted Nachi's reported home market inland freight charges. However, Nachi's allocation of NBC's van fleet expenses based on sales value distorts the actual amount of expense incurred on each transaction. Therefore, we have not adjusted FMV for Nachi's reported ''other direct selling expenses'' for the final results.

Comment 8: Federal-Mogul claims that the Department erroneously deducted packing from SNR's home market sales. Federal-Mogul asserts that SNR's General Conditions of Sale stated that terms of sale were ex-factory, packing excluded, except by special agreement. Federal-Mogul further states that the Department should not deduct packing costs, material or labor, from SNR's home market prices. Federal-Mogul argues that SNR did not describe any special agreements which would demonstrate that packing was included.

SNR responds that the General Conditions of Sale referenced by Federal-Mogul were only basic terms and conditions, and that SNR has allocated its packing costs only across sales where packing was included, as in previous reviews. Thus the Department's calculation, which deducted home market packing, was correct and the Department should not make any changes for the final results.

Department's Position: We disagree with Federal-Mogul that packing was erroneously deducted from SNR's sales. Although SNR's General Conditions of Sale state that prices were ex-works and that packing was not included, this is not inconsistent with SNR's reported terms of sale. SNR reported two categories of home market terms of sale in both the narrative response and the computer database. For the first category, SNR stated that its customers pay for packing. For the second category, SNR stated that it incurs the packing costs. See SNR's *Section C Response* (September 21, 1993). Because there is no evidence on the record to indicate that SNR's reported terms of sale are not reflective of the actual terms of its sales, we are continuing to deduct HM packing for the final results.

Comment 9: Torrington argues that the Department should resort to BIA because RHP failed to report all relevant packing expenses in its questionnaire response. Torrington notes that the amounts RHP reported in its supplemental questionnaire response were estimates and appear to be standard costs. Torrington contends that standard costs are not acceptable for dumping calculations. Torrington concludes that the Department should apply BIA to RHP's U.S. packing expenses.

RHP responds that contrary to Torrington's allegations, the packing costs reported in its supplemental response were actual costs, and thus, no adjustments to RHP's packing expenses are warranted.

Department's Position: While we agree with Torrington that there were gaps in RHP's original questionnaire

response, RHP provided a full explanation and quantification of its packing material and labor costs in the supplemental questionnaire response. See *RHP Section B Response* (September 21, 1993) and *RHP Supplemental Questionnaire Response* (December 16, 1993). We agree with RHP that it reported its actual packing materials and labor costs. Torrington has not provided any support for its allegation that RHP reported standard costs and not actual costs. Therefore, there is no need to apply BIA to RHP's packing expenses.

Comment 10: Torrington and Federal-Mogul argue that INA's method of calculating per-unit ocean freight, U.S. inland freight, and U.S. brokerage and handling charges understates the per-unit amounts incurred for each expense. Specifically, Federal-Mogul contends that INA's calculation of per-unit expenses using a simple average obscures the fact that INA must have incurred significantly higher per-unit expenses for air shipments than for sea shipments. Torrington states that INA's method of calculating average charges is based on shipments that are not representative of all INA's sales, and understates per-unit charges by giving disproportionate weight to high value shipments with low per-unit freight costs. In order to account for this disparity, Federal-Mogul requests that the Department revise INA's calculation of per-unit amounts for these expenses by using a single weighted average derived from the per-unit amounts for air shipments and for sea shipments, respectively. Alternatively, Torrington requests that the Department revise INA's reported per-unit movement charges by calculating a simple average of the per-unit charges for each shipment in INA's sample.

INA responds that the Department has accepted in each previous review the method used in this review to calculate the per-unit movement charges at issue. INA further argues that the Department concluded that INA's reporting method yielded representative results after conducting two separate tests at verification to determine whether INA's methodology was reasonable. Finally, INA contends that Federal-Mogul has not demonstrated that the methodology that it proposes would yield more accurate results than the methodology used by INA, and that Torrington's method of calculating a simple average would result in a per-unit expense that, when multiplied by the weight of the shipments, would yield total charges far in excess of those actually incurred. Therefore, INA concludes that the Department should not modify INA's method of calculating the per-unit movement charges at issue for these final results.

Department's Position: We agree with INA. At verification, we conducted two separate tests of INA's method of reporting per-unit movement charges on U.S. sales, and determined that INA's method yielded representative results. Further, neither Torrington nor Federal-Mogul has demonstrated that its proposed calculation method would yield more accurate results than INA's method. Accordingly, we have used the per-unit charges reported by INA in our calculations for these final results.

Comment 11: Torrington objects to the method used by INA to calculate per-unit amounts for packing material and packing labor expenses incurred in Germany. Torrington states that the record does not clearly indicate whether the sales amount over which these expenses were allocated includes INA's prices to its U.S. subsidiary or the U.S. subsidiary's resale prices. If the sales amount includes the subsidiary's resale prices, then Torrington argues that INA improperly calculated per-unit expenses using its transfer prices to its U.S. subsidiary. If the sales amount includes transfer prices, then Torrington challenges INA's calculations on the grounds that transfer prices are subject to manipulation and, therefore, do not form an appropriate basis for the allocation of expenses. In either case, Torrington requests that the Department revise INA's calculations of per-unit packing materials and labor expenses for the final results.

INA responds that the sales amount used to allocate the packing expenses in question included INA's sales to its U.S. subsidiary at transfer prices. INA further asserts that its allocation of expenses over its total sales value represents a quantifiable and verifiable basis for allocating the expenses in question. As a result, INA concludes that the Department should accept the packing material and packing labor expenses as reported.

Department's Position: We agree with INA. At verification we examined the total home market sales values that were used to allocate various charges and expenses. We were able to disaggregate the total home market sales values into their constituent elements and trace these elements to audited financial statements. During this process, we found a separate account that INA uses to record sales to its U.S. subsidiary. We saw no evidence to suggest that INA recorded anything other than its transfer prices to its U.S. subsidiary in this account. Accordingly, we have determined that the total sales value used to allocate its packing costs included INA's transfer prices to its U.S. subsidiary. Further, Torrington failed to demonstrate that INA's transfer prices were unreasonable or that INA systematically manipulated its transfer prices to shift expenses away from certain U.S. sales. In the absence of such evidence, INA's allocation of packing expenses over transfer prices is reasonable. As a result, we have accepted INA's use of transfer prices to calculate per-unit packing material and labor expenses incurred in Germany.

Comment 12: Federal-Mogul contends that NTN improperly calculated charges for shipping merchandise from Japan to the United States. According to Federal-Mogul, NTN combined ocean freight and air freight expenses that it incurred for shipments to the U.S., and allocated these expenses over all U.S. sales. Federal-Mogul states that because air freight is more expensive than ocean freight, NTN's calculation method understates the shipping charges for certain U.S. sales. Therefore, Federal-Mogul concludes that the Department should separate ocean freight and air freight charges and allocate them to the respective sales to which they apply.

NTN rejects Federal-Mogul's argument on the grounds that it is impossible to trace specific ESP sales to specific air or sea shipments from Japan. As a result, NTN concludes that the Department has no basis for revising NTN's reported air and ocean freight charges for ESP sales for these final results.

Department's Position: We agree with NTN. Because we do not require respondents to tie individual ESP sales to specific shipments, we also do not require respondents to report sale-specific air or ocean freight expenses for individual ESP sales. In the absence of the information required to tie air freight charges to specific U.S. sales, we have accepted for these final results the air and ocean freight charges as reported by NTN.

Comment 13: Torrington argues that NSK repackaging expenses were improperly allocated to all sales because NSK has admitted that repackaging does not occur on all orders. NSK Supplemental Response, at 6 (December 3, 1993). Citing *Timken,* 673 F. Supp. at 512–513, Torrington asserts that the Department should not permit respondents to achieve a reduction of USP if they have withheld data. Therefore, Torrington contends that the Department should allocate repacking expenses over sales at the distributor level for the final results.

NSK maintains it properly allocated repackaging expenses to all U.S. sales.

NSK reported that ''the expenses accumulated * * * included bar code labels, shrinkwrap and other materials generally consumed in NSK's warehouses for both OEM and distributor orders.'' NSK's Supplemental Section B Response, at 6. NSK states all sales receive some sort of repackaging. However, NSK states that if the Department finds that NSK's repackaging expenses were not properly allocated to all sales, NSK would not object to the Department yielding to Torrington's request that such expenses be allocated only to aftermarket sales.

Department's Position: The repackaging expenses reported by NSK include materials consumed in the repackaging of both OEM and aftermarket sales. Therefore, we consider NSK's allocation of such expenses as reasonable and accurate and have accepted them as reported.

Comment 14: NSK claims that the Department incorrectly classified its repacking material and labor costs as costs of U.S. manufacturing, a methodology which conflicts with the Department's previous rulings wherein movement and packing expenses have been classified separately from the cost of manufacture in determining the value added to a product in the United States. See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France,* 58 FR 68865 (December 29, 1993).

Torrington argues that in the third review, NSK made the same claim, which the Department rejected because of lack of supporting evidence on the record. Torrington suggests that the Department should reject the claim now for the same reason.

Department's Position: Cost of manufacturing includes materials, labor, and overhead associated with producing the product in question. Repacking material and labor costs associated with packing or movement are not considered part of manufacturing costs. Therefore, we have not classified NSK's repacking expenses as a cost of manufacturing for the final results.

11. Related Parties

Comment 1: Torrington states that at verification of NMB/Pelmec Thailand the Department determined that there was not a sufficient basis to test whether HM related-party sales were made at arm's length. Therefore, Torrington argues, because the Department must rely on a small portion of reported HM sales, *i.e.,* sales to unrelated parties, as the basis of FMV, the Department should use third-country sales for determining NMB/Pelmec Thailand's FMV.

NMB/Pelmec Thailand does not dispute Torrington's allegations that there was not a sufficient basis to test whether HM related-party sales were at arm's length. However, NMB/Pelmec Thailand rebuts Torrington's argument that the Department should have used third-country sales as the basis for FMV. NMB/Pelmec explains that HM viability was accurately calculated on a weight basis for complete bearings and bearing parts as instructed by the Department's questionnaire.

Department's Position: We agree with Torrington that NMB/Pelmec Thailand's related-party sales in the HM should not be used in the calculation of FMV. However, we do not agree with Torrington that NMB/Pelmec Thailand did not have a viable home market and that we should therefore use third-country sales as the basis for FMV.

NMB/Pelmec Thailand properly reported that its HM was viable using sales to both related and unrelated parties as requested in our questionnaire. See the Department's questionnaire at 104. Although certain HM sales may ultimately be determined to be unusable for comparison purposes, such as when sales made to related parties are not made at arm's-length prices, the arm's-length test is separate from the HM viability test. That we cannot use NMB/Pelmec Thailand's related-party sales does not change the fact that the HM was viable. We establish viability once at the beginning of our analysis, before the arm's-length test for related-party sales, based on the response to Section A of the questionnaire. If we establish that the HM is viable, we instruct respondent to furnish HM sales.

It would be administratively infeasible to reestablish the appropriate market for purposes of calculating FMV each time we determine a group of HM sales to be unsuitable for comparison. If we were to retest for viability after determining that certain related-party sales were unsuitable, we would cause undue delays in the completion of the review. This problem would be exacerbated when we consider other reasons that HM sales may be unsuitable for comparison, such as when there are models sold below cost or when the adjustment for differences in merchandise (difmer) exceeds the 20-percent cap. The determinations of whether models are sold below cost or whether they exceed the 20-percent difmer cap are made at a more advanced stage of our analysis than the HM viability test. Thus, we have no basis to disregard NMB/Pelmec's HM sales, and, accordingly, for these final results we used NMB/Pelmec's HM as the basis for the calculation of FMV.

Comment 2: RHP contends that the Department should not have collapsed RHP and NSK Europe during the POR and that the use of BIA with respect to the U.S. sales of NSK Europe products was not appropriate. RHP argues that the Department has been unwilling to collapse companies in the past except where the relationship is considered so significant that price manipulation may exist. RHP notes that the Department will not generally collapse entities which have separate manufacturing facilities and sales operations. RHP contends that since it became affiliated with NSK Europe in 1990, RHP has maintained the arm's-length relationship that they had before they became affiliated. RHP notes that during the POR, RHP and NSK Europe were ''separately managed and administered, maintained separate facilities and operations and did not share significant pricing information or marketing strategies.'' RHP maintains that both RHP and NSK Europe have remained independent despite common parentage, which is why RHP contends that this situation does not present ''a strong possibility of price manipulation.'' RHP argues that it is a common practice within the bearing industry for manufacturers to purchase products from other manufacturers to expand their product line. RHP contends that its purchases of bearings from NSK Europe is not inconsistent with their separateness, because these dealings were at arm's length.

Torrington states that RHP essentially has restated the same arguments that the Department rejected in prior reviews and has not provided ''new'' information to refute the Department's previous findings. Torrington contends that RHP and NSK Europe should continue to be collapsed for the final results. Torrington further argues that the Department was justified in imposing BIA on RHP's sales of NSK Europe products in the United States, because both RHP and NSK Europe possess information crucial to the analysis of these transactions, and NSK Europe failed to provide section C and D information for this administrative review.

Department's Position: We agree with Torrington. As we have stated in both *AFBs II* and *AFBs III,* our usual practice is ''to collapse related parties if the nature of their relationship allows the possibility of price and cost manipulation.'' See *AFBs III* at 39772. RHP has provided no new information in this review to suggest that the nature of its relationship with NSK Europe has

changed. Therefore, we have determined that RHP and NSK Europe have a significant financial relationship, and that the nature of their relationship with their parent company, NSK-Japan, permits the price and cost manipulation that requires that we consider these companies as a consolidated entity. See *AFBs II* (at 28393) and *AFBs III* (at 39772).

Because NSK Europe did not provide the sales and cost information (Sections C and D) necessary for this review, we were unable to properly calculate the FMVs for particular RHP U.S. sales. Because we know that RHP reported the entire universe of U.S. sales, we applied BIA to those U.S. sales for which the FMVs were potentially affected by the lack of information concerning NSK Europe's HM sales and cost. See *AFBs III* (at 39773). As the BIA rate we applied RHP's highest rate for each class or kind: 48.14 percent for BBs, which was RHP's BB margin from the third administrative review, and 48.29 for CRBs, which was RHP's CRB margin from the second administrative review.

Comment 3: SKF-Sweden argues that the Department eliminated a number of HM transactions based on the erroneous conclusion that such transactions reflected preferential prices to related parties. SKF asserts that there is no direct or indirect ownership or control between the companies, and that the relationship between the parties noted by the Department at verification has no influence on price. SKF also states that the Department's comparison of average prices is insufficient to test the arm's-length nature of the transactions because the Department included companies with no common ownership interests and companies with ownership interests of less than 20 percent, did not individually analyze the companies involved, and did not consider the relative quantities involved.

Torrington maintains that the Department will use sales to related parties as a basis for FMV only if it is satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to unrelated parties, and that the only valid criterion in this determination is price. Torrington argues that there is a regulatory presumption that related-party sales should be excluded in a calculation of FMV. Federal-Mogul and Torrington state that the burden is on the respondent, not the Department, to overcome this presumption by demonstrating affirmatively that related-party transaction prices are comparable to prices to unrelated parties.

Torrington also asserts that SKF has failed to submit any data demonstrating that its prices to related and unrelated parties are comparable and thus has not met its burden. Torrington and Federal-Mogul further point out that SKF has provided no evidence on the record regarding any particular related-party sales or the price comparability of its related-party sales.

Department's Position: We disagree with SKF. 19 CFR 353.45 provides that the Department ordinarily will include related-party sales in the calculation of FMV only if it is satisfied that the sales were made at arm's-length prices, *i.e.*, that the prices of such sales are comparable to the prices at which the seller sold such or similar merchandise to unrelated parties. For purposes of applying this provision, § 353.45 also refers to section 771(13) of the Tariff Act for the definition of related parties. We preliminarily determined that SKF-Sweden made HM sales to customers related to it as described in section 771(13)(D) of the Tariff Act. Accordingly, we conducted an analysis to determine whether these sales were made at arm's-length prices. Because we determined that these sales were not made at arm's-length prices, we excluded them from our calculations of FMV. (We note that SKF-Germany also made HM sales to related parties, but that we determined these sales were made at arm's-length prices. Therefore, we did not exclude them from our calculation of FMV for SKF-Germany.)

On reexamination of the evidence on the record, however, we determined that one of these HM customers in fact did not meet the definition of a related party as specified in section 771(13) of the Tariff Act. Therefore, for these final results we retained sales to this customer by SKF-Sweden in calculating FMVs and did not include these sales in our arm's-length analysis for related-party sales.

In determining whether prices to related parties are in fact arm's-length prices, we rely on a comparison of average unrelated-party prices for each model to average related-party prices for the same models. When average prices to unrelated parties are predominantly higher than average prices to related parties for the class or kind of merchandise, we disregard sales to related parties for that class or kind. Because SKF has provided no evidence to refute our findings that the average prices of certain models sold to related parties are not comparable to the average prices of these models sold to unrelated parties, other than reference to statements by company personnel at verification that these companies were not related, we have continued to exclude these sales for the final results. See *SKF Sverige AB Verification Report,* February 23, 1994, and *Rhone Poulenc Inc.* v. *United States* 899 F. 2d 1185 (Fed Cir. 1990).

Comment 4: NTN challenges the Department's decision to exclude from its analysis certain HM sales to related parties. According to NTN, the Department excluded related-party sales from its analysis without having first articulated any standard for determining whether sales prices to related parties were comparable to sales prices to unrelated parties. NTN also objects to the Department's use of weighted-averages in its comparison of sales prices to related and unrelated parties because weighted-average prices to related and unrelated parties can differ even if the per-unit invoice prices are identical. Finally, NTN argues that the Department failed to account for the impact of different payment terms and differences in sales quantities on sales prices to related and unrelated parties. As a result, NTN concludes that the Department should revise its test for determining whether related party prices are comparable to unrelated party prices for the final results.

Torrington and Federal-Mogul claim that NTN has failed to meet its burden of proving that sales prices to related parties are comparable to those to unrelated parties. Torrington further argues that the Department's method of comparing weighted-average prices to related and unrelated parties is a reasonable and efficient method of comparing prices given the large number of respondents and HM sales transactions. Moreover, Torrington asserts that NTN failed to demonstrate that payment and quantity terms would have any effect on the Department's analysis, while Federal-Mogul argues that the Department's arm's-length test accounts for the additional factors cited by NTN. As a result, Torrington and Federal-Mogul request that the Department continue to exclude HM sales of BBs and CRBs to related parties from its analysis for these final results.

Department's Position: We agree with Torrington and Federal-Mogul. Because we deduct credit and conduct our analysis by level of trade, our arm's-length test accounts for differences in payment terms and, to the extent that they are reflected in sales to different levels of trade, differences in quantities of sale. Further, our use of weighted averages in our comparisons of sales prices to related and unrelated parties is warranted because it provides the most accurate means of measuring, for each model, NTN's preponderant pricing

practices for related and unrelated customers. The failure to weight our test by quantity would give disproportionate weight to sales of small quantities, which would result in distortions. Therefore, we have not revised our arm's-length test for these final results.

Finally, we reject NTN's arguments that we have not established any standard for assessing the comparability of sales prices to related and unrelated parties. As discussed in *Comment 3* above, our longstanding practice has been to exclude related-party sales from our analysis if the sales prices to related parties are lower than those to unrelated parties. See *AFBs III.* Because NTN's sales prices to related parties for BBs and CRBs were lower than sales prices to unrelated parties, we have excluded sales of these products to related parties from our calculation of FMV for these final results.

12. Samples, Prototypes, and Ordinary Courses of Trade

Comment 1: NTN argues that the Department should not use sample sales or sporadic, small quantity sales of certain products in its calculation of FMV. NTN states that these sales are not in the ordinary course of trade. NTN further states that the Department verified NTN's recording of sample sales in its accounting system, and the sales data that NTN used to classify certain other sales as being outside the ordinary course of trade. Because the Department excluded sample sales and sporadic, small-quantity sales from its analysis in *Final Results of Antidumping Duty Administrative Review; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan,* 57 FR 4960 (February 11, 1992), NTN urges the Department to exclude such sales from its analysis in the final results of this review.

Torrington and Federal-Mogul reject NTN's argument regarding sample sales because NTN has provided no evidence regarding the circumstances surrounding the sample sales in question. In the absence of such evidence, Torrington and Federal-Mogul assert that NTN has failed to meet its burden of proof in demonstrating that such sales fall outside the ordinary course of trade. Similarly, Torrington and Federal-Mogul assert that a pattern of infrequent sales of small quantities of specific products is insufficient to establish that such sales fall outside the ordinary course of trade. In this context, Torrington and Federal-Mogul note that the Department's verification of NTN's claims focused solely on the method that NTN used to prepare its response rather than NTN's sales practices. Accordingly, Torrington and Federal-Mogul support the Department's exclusion from its calculation of FMV of NTN's sample sales and sporadic, small-quantity sales.

Department's Position: We agree with Torrington and Federal-Mogul. As we stated in the final results of the previous review, the fact that NTN identified sales as sample sales does not necessarily render them outside the ordinary course of trade. Thus, our verification of the designation of certain sales as samples merely demonstrates that NTN recorded such sales as samples in its own records. This designation, however, does not indicate that NTN made such sales outside the ordinary course of trade. We also reject NTN's claim that small quantity sales of products with sporadic sales histories fall outside the ordinary course of trade. Infrequent sales of small quantities of certain models is insufficient evidence to establish that NTN made these sales outside its ordinary course of trade because such sales histories are typical of certain types of products. Therefore, because NTN failed to demonstrate that samples and sporadic, small-quantity sales fall outside the ordinary course of trade, we have included them in our analysis for these final results.

Comment 2: FAG-Germany and FAG-UK contend that the Department improperly used zero-priced U.S. sample and prototype sales in the calculation of USP because such sales are not made in the ordinary course of trade and are therefore similar to the type of sales the statute permits the Department to exclude in the HM. Additionally, FAG claims the Department is not required to review each and every U.S. sale.

Alternatively, FAG argues that if the Department compares the U.S. zero-price sample sales to HM sales in which value was received, the Department should make a COS adjustment to account for the different circumstances under which the sales were made. FAG argues that the Department should adjust FMV in the amount of the expenses directly associated with the U.S. sample sale and suggests reducing FMV by the amount of the COP of the U.S. sample sale.

Federal-Mogul and Torrington contend that, in order to assure the validity of the Department's sample, the Department must not drop these U.S. sample and prototype sales from its analysis. Federal-Mogul and Torrington further maintain that the arguments regarding the ordinary course of trade are completely irrelevant because the ordinary course of trade provision applies only to the calculation of FMV, not USP. Section 751(a)(2)(A) of the Tariff Act (19 USC 1675(a)(2)(A)) requires the Department to calculate the amount of duty payable on ''each entry of merchandise'' into the United States. Torrington states that this provision should be compared with section 773(a)(1)(A) of the Tariff Act (19 USC 1677b(a)(1)(A)), which requires FMV to be calculated on the basis of sales in the ''ordinary course of trade.''

Federal-Mogul also rejects the idea of a COS adjustment, arguing that the cost to produce the merchandise cannot reasonably be used to quantify any difference between a sample sale and a sale with a price because the cost to produce the merchandise remains the same whether the producer sells it at a profit, sells it at a dumped price, or gives it away.

Department's Position: The Department agrees with Federal-Mogul and Torrington. As set forth in *AFBs II* (at 28395), other than for sampling, there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review. The Department must examine all U.S. sales within the POR. See *Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea,* 56 FR 12701, 12709 (March 27, 1991).

Although we have made COS adjustments as required by section 773 of the Tariff Act and 19 CFR 353.56, we disagree with FAG's argument that a further COS adjustment should be made if the U.S. sample sales are not excluded from the analysis. This adjustment is not warranted under sections 772 and 773 of the Tariff Act. FAG's argument that a COS adjustment should be made when a zero-price U.S. sale is compared either to HM sales in which value was received or to CV, which includes profit, suggests that a COS adjustment should be made because of the marked difference in the prices of the U.S. sale ($0) and the comparable HM sale. However, differences in prices do not constitute a *bona fide* difference in the circumstances of sale. Furthermore, it would clearly be contrary to the purpose of the dumping law to make a COS adjustment in order to compensate for price discrimination. Moreover, we do not deduct expenses directly related to U.S. sales from FMV either in PP or ESP comparisons. In making COS adjustments in PP comparisons, U.S. selling expenses are *added to* FMV, while in ESP comparisons U.S. selling expenses are neither added to nor deducted from FMV; they are deducted from USP. Finally, regarding FAG's argument that we should use the COP of U.S. merchandise (SAMPCOPE) as the basis for such an adjustment, the difmer

methodology accounts for appropriate differences in merchandise.

Comment 3: NSK asserts that zero-price samples and prototype sales should be excluded from the U.S. sales database because the record demonstrates that the provision of these samples are not sales but rather promotional expenses. NSK contends that the ''ordinary course of trade'' analysis has been applied by the Department to exclude certain U.S. sales from its analysis, citing *Ipsco, Inc.* v. *United States,* 714 F. Supp. 1211, 1217 (CIT 1989). NSK contends that if the Department does not exclude zero-price samples from the U.S. sales database, then the Department should deduct the cost of these samples from NSK's indirect selling and G&A expenses.

Torrington argues that the statute requires analysis of each U.S. entry in the context of administrative reviews. Section 1675(a)(2)(A) of the Tariff Act (19 USC 1675(a)(2)(A)) and the *IPSCO* decision, which NSK cites to support its claim, did not exclude all sales from USP which are made outside the ordinary course of trade. Federal-Mogul argues that the Department should continue to reject exclusion of NSK's zero-value U.S. transactions as it has done in the last two AFBs administrative reviews. Torrington also contends that the Department should not deduct the cost of these samples from NSK's indirect selling and G&A expenses because NSK has not provided support on the record for the amounts that it claims should be deducted.

Department's Position: As set forth in *AFBs II* (at 28395) and *AFBs III* (58 FR at 39744), other than for sampling, there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review. The statute requires the Department to analyze all U.S. sales within the POR. See 19 USC 1675(a)(2)(A). See also *Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea,* 56 FR 12701, 12709 (March 27, 1991). The Department agrees with Torrington that *Ipsco* is inapplicable to this case because that case concerns a LTFV investigation in which the Department has the discretion to eliminate unusual U.S. sales, as opposed to an administrative review in which section 751(a)(2)(A) of the Tariff Act (19 USC 1675(a)(2)(A)) requires analysis of ''each U.S. entry'' except in cases where the agency utilizes ''averages or generally recognized sampling techniques'' pursuant to section 777A of the Tariff Act (19 USC 1677f–l). As a result, we have not excluded any of NSK's U.S. sales. However, the Department also agrees with NSK that the costs of these samples should not be included as part of NSK's indirect selling expenses because we are considering these transactions as sales and are comparing them to FMV. Therefore, we have deducted the costs of samples from NSK's indirect selling expenses.

13. Taxes, Duties and Drawback

Comment 1: Federal-Mogul maintains that the Department's new tax methodology is still legally flawed in that it fails to ''cap'' the amount of tax added to USP at the amount of tax added to or included in the price of the foreign market comparison model. Federal-Mogul cites 19 USC 1677 (d)(1)(C), which requires that forgiven taxes be added to USP ''but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation,'' and claims that this provision explicitly requires such a cap. Federal-Mogul further argues that if the addition to USP is not capped by the amount of tax paid on HM sales, a situation could arise where the tax added to USP exceeds the actual taxes paid on HM sales.

FAG, SKF, and RHP contend that if the Department were to add the actual amount of taxes paid on HM sales to the net U.S. invoice price, a ''cap'' would not be necessary. SKF further argues that under the Department's current method of accounting for taxes, the tax added to USP exceeds that added to FMV only when USP itself is higher than FMV. Therefore, SKF concludes that capping is unnecessary because the Department's method does not reduce dumping margins. Finally, Koyo argues that if the Department accepts Federal-Mogul's argument that the tax added to USP should be capped, the Department also should cap the amount of tax attributed to the adjustments to USP.

Department's Position: We disagree with Federal-Mogul. The Department's methodology consists of applying the home market tax rate to the U.S. price at the same point in the chain of distribution at which the home market tax base is determined and then reducing the tax in each market by that portion of the tax attributable to expenses which are deducted from each price. For example, because we deduct ocean freight from U.S. price, ocean freight is also eliminated from the U.S. tax base. This is consistent with the decision of the CIT in *Federal-Mogul* v. *United States,* 834 F. Supp. 1391 (CIT 1993). The effect of these adjustments is the same as initially calculating the tax in each market on the basis of adjusted prices.

The ''cap'' was devised at a time when the Department was not effectively calculating the tax in each market on the basis of adjusted prices. It was intended to keep differences in expenses which were eliminated through adjustments to the price in each market from continuing to affect the dumping margin by remaining in the basis upon which the tax in each market was determined. The Department's current practice of effectively using adjusted prices in each market as the tax base automatically achieves this purpose. The imputed U.S. tax will exceed the tax on the home market sales to which they are compared only where the adjusted U.S. price is higher than the adjusted home market price—that is, for non-dumped sales. A tax cap is irrelevant for such sales, because no duties are assessed upon them. Consequently, the absolute margins obtained under the Department's current approach are identical to those which would be obtained after imposing a tax cap.

Although applying a tax cap may affect weighted-average margins, and hence deposit rates, we decline to re-apply the tax cap solely to achieve this additional purpose. The Department includes U.S. prices that exceed foreign market prices in the denominator of the deposit rate equation. It would be inconsistent to include that portion of the U.S. price that exceeds the home market price in that denominator, but to remove the tax on this amount. Just as we treat the tax on ocean freight consistently with ocean freight itself, where we include the full adjusted U.S. price in the denominator of the deposit rate equation, we must also leave the tax on that full U.S. price in that denominator.

Comment 2: FAG, SNR, SKF, RHP, NSK, and Koyo contend that the method that the Department used to account for VAT in the preliminary results of this review is improper.

FAG argues that the Department's methodology violates statutory and judicial requirements because the VAT rate is not applied to USP and FMV where the HM tax authorities apply the VAT to home market sales. FAG claims that all laws governing the assessment of the VAT require that the tax be applied to the net invoice price of goods sold in the HM. Therefore, FAG contends that the Department should apply the VAT amount collected in the foreign market to a net U.S. invoice price instead of applying VAT to an ex-factory price in both the U.S. and home markets. U.S. invoice price is at the same point in the stream of commerce

as the price to which VAT is applied in the HM.

SKF, RHP, SNR, Koyo, and FAG claim that the current methodology is flawed because it results in the so-called ''multiplier effect'' through which absolute dumping margins are increased solely because USP is adjusted by the rate of the VAT tax instead of the amount. Thus, respondents propose that the Department adjust USP by the amount of the VAT applicable to the relevant HM sales and then add this amount to both FMV and USP, as instructed by the CIT in *Hyster Co., a.k.a. Nacco Handling Group Inc., et. al.* v. *United States, 848 F. Supp. 178 (CIT 1994) (Hyster*).

NSK contends that the Department should add taxes to USP whenever such taxes are assessed in the HM, but that it should not add taxes to FMV or otherwise calculate FMV so as to include taxes whether FMV is based on HM price, third-country sales, or CV. NSK argues that the ''plain language'' of the statute does not define FMV to include taxes imposed in the home market. Furthermore, NSK states that if Congress had meant to include taxes in every calculation of FMV, the statute at a minimum would have defined third-country prices and CV to include such taxes.

Federal-Mogul and Torrington contend that the Department's current method of accounting for VAT is lawful. Federal-Mogul maintains that respondents have not provided any basis for the Department to change its position on this issue. According to Federal-Mogul, the CIT ruled unequivocally in *Federal-Mogul Corp.* v. *United States,* 834 F. Supp. 1391 (CIT 1993), *appeals docketed,* Nos. 94–1497, 1104 (Fed. Cir. 1994), that the Department may not make the statutory tax adjustment by adding the foreign market tax amount to USP. Federal-Mogul further argues that the CIT found that any suggestion to the contrary in footnote 4 of *Zenith Electronics Corp.* v. *United States,* 988 F.2d 1573 (CIT 1993) (*Zenith*) ''was *dicta* and was at odds with both the body of the appellate court's opinion and with the statute.''

Torrington states the Department should not adjust for VAT by adding the amount of the foreign market VAT to USP. Torrington contends that the Department has correctly applied the VAT that would have been applied to a HM sale, by determining what tax rate would be applied to an f.o.b origin, ex-factory price. Torrington maintains that the Department's methodology is consistent with section 1677a(d)(1)(C). In this context, Torrington argues that *Hyster* does not require the Department to add actual amounts of foreign market taxes to USP. According to Torrington, the CIT in *Hyster* simply instructed the Department to ''consider'' adjusting USP for taxes in a manner ''consistent with *Zenith* and title 19.'' Therefore, Torrington concludes that the method that the Department used to account for taxes in the preliminary results of these reviews is consistent with judicial precedent.

Department's Position: We disagree with respondents' contentions that we violated current administrative practice and recent judicial precedent by failing to apply the VAT rate to USP and FMV at the same point in the chain of commerce. We made an addition to USP for VAT in accordance with section 772(d)(1)(C) of the Tariff Act. In making this adjustment, we followed the instructions that the CIT issued in *Federal-Mogul.* Specifically, we added to USP the result of multiplying the foreign market tax rate by the price of the U.S. merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales.

Contrary to respondents' claim that we did not apply the foreign VAT rate to the USP at the same point in the stream of commerce as applied by the foreign market authority, we in fact did apply the tax rate to USP at the same point in the chain of commerce, that is, the invoice price net of price adjustments such as discounts and rebates. We also adjusted the tax amount calculated for USP and the amount of tax included in FMV. Specifically, we deducted those portions of the foreign market tax and the hypothetical U.S. tax that are the result of expenses that are included in the foreign market price used to calculate the foreign market tax and in the USP used to calculate the U.S. tax. Because these expenses are later deducted to calculate FMV and USP, these adjustments are necessary to prevent our new methodology for calculating the USP tax from creating dumping margins where no margins would exist if no taxes were levied upon foreign market sales. By making these adjustments to the taxes added to USP and included in FMV, margins are not dependent on differences in expenses.

We agree with petitioner that *Hyster* does not order the Department to adjust for VAT by applying the absolute amount of the HM VAT to USP. Rather, *Hyster* states that *Zenith* ''permits Commerce to adjust USP by the amount of the *ad valorem* tax,'' and directs the Department to ''consider any further adjustments to USP consistent with *Zenith* and title 19.'' The CAFC in *Zenith* held that ''[b]y engaging in dumping, the exporters themselves are responsible for the multiplier effect. The multiplier effect does not create a dumping margin where one does not already exist.'' See *Zenith Electronics Corp.* v. *United States,* 988 F2d at 1581–82 (1993). Furthermore, in *Federal-Mogul Corp.* v. *United States,* 834 F. Supp. 1391 (October 7, 1993), the CIT held that *Zenith* made clear that tax neutrality is irrelevant to the proper application of the statute. Therefore, the Department is under no obligation either to adjust for VAT by the absolute amount of VAT that is assessed in the HM or to make the VAT adjustment tax neutral.

We determine that our calculation of the amount of tax added to USP is appropriate. Applying the rate to USP simply calculates the amount of tax that would be applied in the HM if the product were sold in the HM at the same price as it is in the United States. The ''multiplier effect'' only occurs if FMV is higher than USP. We are under no obligation to change our method of adjusting for VAT in order to account for a firm's pricing practices when they differ between the HM and the United States.

We disagree with NSK's argument that the Department should not add taxes to FMV or otherwise calculate FMV so as to include taxes when FMV is based on HM price. Taxes imposed in the foreign market are an integral part of the final price paid by the customer and are only ''added'' when reference is made to a tax-exclusive price. Furthermore, section 772(d)(1)(C) of the Tariff Act directs us to adjust for any taxes which are rebated or uncollected by reason of exportation to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation. This direction can only imply that taxes would be included in the prices used by the Department in its calculation of FMV. For the foregoing reasons, we have not amended our treatment of U.S. and HM taxes for these final results.

Comment 3: FAG-Germany contends that the Department improperly applied a VAT rate of 14 percent, instead of 15 percent, for 1993 sales.

Department's Position: We disagree with FAG. We correctly applied the 15 percent VAT rate for 1993 sales in the preliminary calculations. See FAG KGS preliminary margin program at lines 1370–1372.

Comment 4: Torrington alleges that NMB/Pelmec made ''Route B'' and bonded warehouse sales in order to avoid the payment of import duties on

imported raw materials. Torrington argues that to the extent that the Department relied on bonded warehouse or ''Route B'' sales, no adjustment should be made to USP for duty drawback. In addition, even with respect to actual local sales, Torrington asserts that the Department should disallow NMB/Pelmec's claimed adjustment since NMB/Pelmec failed to demonstrate that: (1) It imported sufficient inputs to account for the alleged rebates of import duties that it received; (2) it actually paid, and received rebates of, import duties on these inputs, and (3) it actually paid import duties on merchandise sold in the HM and passed the duties on to customers in the form of increased HM prices during the POR. Therefore, Torrington concludes that the Department should disallow NMB/Pelmec's claim for a duty drawback adjustment to USP.

NMB/Pelmec states that it did not claim a duty drawback adjustment for those U.S. sales that were compared to bonded warehouse or ''Route B'' HM sales. With respect to direct HM sales, NMB/Pelmec asserts that the Department verified that NMB/Pelmec made duty payments on imported components used to manufacture merchandise sold in the HM. Therefore, NMB/Pelmec concludes that the Department should allow NMB/Pelmec's claimed adjustment to USP for duty drawback for these final results.

Department's Position: We disagree with Torrington. We apply a two-pronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment. In accordance with section 1677a(d)(1)(B) of the statute, a duty drawback adjustment will be made if the Department determines (1) import duties and rebates are directly linked to and dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. The CIT consistently has accepted this application of the law. See *Far Eastern Machinery,* 688 F. Supp. at 612, *aff'd. on remand,* 699 F. Supp. at 311; *Carlisle Tire & Rubber Co.* v. *United States,* 657 F. Supp. 1287, 1289 (1987); *Huffy Corp.* v. *United States,* 10 CIT 215–216, 632 F. Supp. (*Huffy*).

The Department's two-pronged test meets the requirements of the statute. The first prong of the test requires the Department ''to analyze whether the foreign country in question makes entitlement to duty drawback dependent upon the payment of import duties.'' *Far East Machinery,* 699 F. Supp. at 311. This ensures that a rebate is received by the manufacturer only if import duties were paid or accrued. The second prong requires the foreign producer to show that it imported a sufficient amount of raw materials (upon which it paid import duties) to account for the exports, based on which it claimed rebates. *Id.* Under this prong, the duty drawback adjustment to USP is limited to the amount of duty actually paid.

At verification, we determined that NMB/Pelmec satisfied both prongs of our test. Specifically, we verified (1) that Thailand's duty drawback system makes rebates of import duties dependent upon payment of these duties, and (2) that NMB/Pelmec paid import duties on materials incorporated into subject merchandise, and that it imported a sufficient amount of raw materials to account for the amount of duty drawback claimed.

Further, in *Huffy,* the CIT held that section 1677a(d)(1)(B) allows the Department to presume that HM prices include the cost of import duties. See *Avesta Sheffield* v. *United States,* Slip Op. 93–217 (CIT 1993). Therefore, when, as in this case, the record demonstrates that import duties were paid on raw materials, the Department is not required to determine whether duties were passed on to customers in the form of increased HM prices.

Finally, NMB/Pelmec did not claim an addition to USP for duty drawback for those U.S. sales that were compared to FMV based on HM ''Route B'' sales or bonded warehouse sales. Therefore, we have allowed NMB/Pelmec's claim for a duty drawback adjustment to USP for these final results.

14. U.S. Price Methodology

Comment 1: Torrington asserts that resale profits should be deducted from ESP. Torrington contends that the intent of exporter's sales price is to determine the net amount returned to the foreign exporter. Torrington asserts that, under the Department's interpretation of ESP, related parties receive special advantageous treatment that is contrary to Congressional objectives and purpose. For example, in the case of an unrelated reseller, the Department deducts the full commissions paid, which must cover the agent's expenses and a reasonable profit. However, in the case of a related reseller, the Department deducts the selling expenses associated with the resale, but not a reasonable profit earned on the transaction.

RHP points out that partly due to Torrington's efforts, several bills have been introduced in Congress in recent years to amend the antidumping law to provide for the deduction of resale profits from ESP sales. However, not one has become law. RHP feels this is an issue of fundamental importance and should only be modified by statutory amendment.

Koyo, NTN, and FAG argue that Torrington's claim that the Department should deduct resale profits from ESP must be rejected. The three respondents point out that the CIT has already repeatedly rejected the argument, noting that the Department's practice of refusing to deduct profits from ESP is in accordance with the antidumping law. *See Timken Co.* v. *United States,* 673 F. Supp. 495, 518–21 (1987). Additionally, the same arguments were rejected in previous reviews by the Department. FAG also states that in *Federal-Mogul* v. *United States,* 19 CIT, Slip Op. 93–17 at 23, the CIT stated, ''It is well established that profit is correctly a part of the ITA's calculation of USP.'' Thus, FAG argues that these judicial decisions do not give the Department the discretion to deduct resale profits from ESP.

NSK contends that the Department appropriately declined to deduct profit on resale transactions in calculating ESP. NSK asserts that the literal language of the statute does not permit the deduction of so-called resale profit. NSK also holds that retention of so-called profit in calculating ESP leads to a fair result. Even if the Department disregarded both the statute and case law, NSK claims strong reasons remain for not deducting purported resale profit from ESP. Profit is included in the FMV side of the antidumping equation. To deduct profit from the USP side would lead to a disequilibrium and result in a false comparison as the CIT recently observed. See *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 866 (CIT 1993).

SKF argues that resale profits should not be deducted from USP on ESP sales, and that Torrington's argument has been consistently rejected by the Department, the CIT, and Congress. SKF maintains that the relevant section of the Act does not include an adjustment for resale profits, and that Congress has recently specifically rejected an attempt to provide for such a deduction. See H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 629, *reprinted in* 1988 U.S.C.C.A.N. 1547, 1662. Therefore, one cannot infer that Congress intended to include this provision in the statute.

SKF also claims that there is no evidence supporting Torrington's theory that resale profits must be deducted in order to equalize PP and ESP. SKF contends that such a deduction would penalize importers who raise their

prices in order to eliminate dumping. SKF holds that the CIT has upheld the Department's practice of not deducting resale profits on ESP sales. See *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 866 (1993).

Department's Position: As stated in *AFBs III* (at 39777), we disagree with Torrington that resale profits should be deducted from ESP. We find no statutory authority for making this adjustment. Furthermore, the CIT has upheld the Department's practice of not deducting resale profits on ESP sales. See *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 866 (1993).

Comment 2: Koyo, RHP, SNR, NSK, and FAG claim that the Department's practice of deducting U.S. direct selling expenses from USP, in ESP situations, instead of adding them to FMV is unlawful. Respondents cite judicial precedent in support of their position that direct selling expenses should be added to FMV. For example, NSK maintains that the Department's methodology violates the ruling of the CIT in *NSK Ltd.* v. *United States,* Slip Op 93–216 (CIT 1993). Respondents claim that the Department should treat direct selling expenses as COS adjustments to be added to FMV in order to comply with recent CIT rulings.

Department's Position: The CAFC has upheld the Department's practice of deducting U.S. direct selling expenses from USP in ESP situations. See *Koyo Seiko Co.* v. *United States,* 36 F.3d 1565 (Fed. Cir. 1994). Therefore, we have continued to deduct direct selling expenses from ESP in these reviews.

Comment 3: Koyo contends that the Department's failure to average USPs in the same manner as it averaged FMV was an abuse of discretion and contrary to law. Koyo argues that the Department has distorted the dumping margins through its comparison of single transaction prices in the United States with average prices weighted over the entire review period in the home market. Koyo maintains the ''inequity'' of this methodology is largely attributable to the Department's practice of not crediting manufacturers with negative dumping margins on U.S. sales at prices ''above those in the foreign market.'' Koyo states that pursuant to 19 U.S.C. 1677(f)(1) the Department is required to use averaging to establish both USP and FMV when such averaging techniques yield fair and representative results. Koyo notes that the Department used weighted-averaged U.S. prices in *Final Results of Administrative Review; Certain Fresh Cut Flowers from Mexico,* 55 FR 12696, 12697 (April 5, 1990). Koyo requests that the Department use its annual average methodology for both USP and FMV in order to achieve representative results as required by the antidumping law.

Torrington and Federal-Mogul disagree with Koyo's argument that comparing weighted-average USPs with a weighted-averaged FMV is reasonable and in accordance with Departmental precedent and the law. Torrington's reasoning is that averaging U.S. price would ''encourage and reward price discrimination, the very practice that antidumping law is designed to combat.'' In response to Koyo's argument that the Department should credit foreign manufacturers for ''negative dumping margins,'' Torrington argues that this ''would allow dumping to continue so long as other sales were made at prices sufficiently high to mask dumped sales.'' In support of this position Torrington cites the ruling in *Serampore Industries Pvt., Ltd. et al.* v. *United States,* 11 CIT 866, 874, 675 F. Supp. 1354, 1360–61 (1987). Torrington also maintains that the Department generally only averages USPs in the case of perishable products or other merchandise characterized by price volatility. Torrington notes that AFBs are not perishable; therefore, Koyo's citation to the Fresh Cut Flowers from Mexico case, a precedent with respect to perishable goods, is inappropriate. Federal-Mogul maintains that the Department should not average USP in this review because it has rejected Koyo's request to do so in the past and Koyo's arguments have not changed.

Department's Position: As stated in *AFBs III* (at 39779), we disagree with Koyo's assertion that we must average USPs on the same basis as FMV to ensure an ''apples-to-apples'' comparison. In addition, we agree with Torrington that averaging USP is unacceptable in most cases because it would allow a foreign producer to mask dumping margins by offsetting dumped prices with prices above FMV. For example, a foreign producer could sell half its merchandise in the United States at less than FMV, and the other half at more than FMV, and arrive at a zero dumping margin while still dumping.

Except in limited instances in which we have conducted reviews of seasonal merchandise with very significant price fluctuations due to perishability (see, *e.g., Final Results of Administrative Review; Certain Fresh Cut Flowers from Mexico,* 55 FR 12696, 12697 (April 5, 1990)), we have not averaged U.S. prices. See *Final Results of Antidumping Administrative Review; Pressure Sensitive Plastic Tape from Italy,* 54 FR 13091 (March 30, 1989). Since the merchandise under review is not a perishable product, there is no reason to change our current methodology, which has been upheld by the Court of Appeals. See *Koyo Seiko* v. *United States,* 20 F.3d 1156 (Fed. Cir. 1994).

Comment 4: Torrington argues that the Department should reclassify Honda's sales to the United States as PP transactions, rather than treating Honda as a reseller of AFBs. Although Torrington acknowledges that the Department found no evidence at verification that Honda's suppliers were aware of the ultimate destinations of their merchandise, Torrington asserts that Honda's Japanese suppliers must have known that Honda had substantial manufacturing activities in the United States and that, therefore, many of their AFBs were destined for the United States.

Honda responds that it is a reseller of AFBs, rather than a manufacturer, and that Honda's suppliers in Japan did not know, or have reason to know, that specific AFBs were ultimately destined for the U.S. market. According to Honda, no AFBs were ordered directly by any of its U.S. affiliates from its Japanese suppliers. Furthermore, Honda states that its orders of AFBs from its suppliers did not indicate, by way of timing of shipments or orders, the terms of sale, or any other factors, the ultimate destination of the AFBs. Honda also contends that these conclusions were fully verified by the Department and confirmed in the Department's verification reports.

Honda notes that Torrington does not dispute Honda's statements or the Department's findings. Honda further points out that the standard for suppliers' knowledge concerning the ultimate destination of merchandise ''is high.'' See *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Administrative Review,* 58 FR 11216 (February 24, 1993). As a result, Honda states that the fact that Honda's suppliers were aware that some AFBs would be exported to the United States because Honda has U.S. manufacturing operations is insufficient to justify reclassifying Honda's sales as PP transactions.

Department's Position: We agree with Honda that it should be treated as a reseller. This issue was examined extensively at verification. See *Honda Motors Verification Report* at 3 and 4, March 4, 1994. The standard for the ''knowledge test'' is high. See *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping*

Administrative Review, 58 FR 11216 (February 24, 1993). Based on this standard, we concluded that Honda's suppliers did not have reason to know that their sales to Honda would be exported to the United States. Therefore, we continue to classify Honda as a reseller.

15. Accuracy of the Home Market Database

Comment 1: Torrington argues that all reported HM sales destined for export should be purged from respondents' HM sales listings. Citing 19 U.S.C. 1677a(b), (section 772(b) of the Tariff Act), Torrington claims that sales by foreign manufacturers or producers that result in exports to the United States are by definition PP transactions and that there is no requirement in the statute that the foreign manufacturer knew, or should have known, that the sale was an export sale. The statute only refers to the knowledge of a manufacturer or producer in the context of sales to a ''reseller'' for exportation to an intermediate country. In addition to identifying reported HM sales which were destined for the United States, Torrington holds that it is equally important to ensure that FMV is based only on sales for consumption in the HM. Therefore, where there is evidence that particular sales were not for HM consumption, such sales should be purged from the HM sales listing even if there is insufficient evidence to suggest that the sales were for export to the United States. Torrington further argues that, at the least, the Department should adopt presumptions that shift the burden of establishing whether sales are for exportation from the Department to respondents.

Torrington argues in particular that all reported HM sales which were made to known German wholesalers/exporters, also referred to as ''indirect exporters,'' should be disregarded in calculating FMV. Torrington claims it has made a substantial effort to demonstrate to the Department a pattern whereby German producers sell bearings at lower prices to German resellers who are exporters. The inclusion of such sales in the HM database tends to lower FMV. Furthermore, the Department should assume the questionable sales were actually sales to the United States.

Torrington claims that FAG was uncooperative in this proceeding or may have even impeded the Department's search for truth in this matter, and urges the Department to apply BIA to FAG's entire response. Torrington contends that FAG continued to claim a complete lack of knowledge of sales to exporters until just several days before the preliminary results were issued. Torrington cites evidence discovered by the Department at verification, such as the fact that FAG sold to one exporter from its export, rather than domestic, price list, and other information provided for the record by the petitioner that implies that the inclusion of these sales in the HM database would be improper. Torrington further argues, however, that if the Department declines to reject FAG's response and use punitive BIA, the Department should at least reclassify as U.S. sales all FAG HM sales to customers fairly known to export AFBs.

Torrington also argues that the Department acted properly in excluding certain FAG sales to such HM customers. Torrington contends that the Department has a statutory basis for this action and that the Department established the validity of its factual findings at verification. See *FAG Verification Report*, February 23, 1994. Torrington maintains that the preliminary results call into question all sales to German wholesalers/exporters and contends that the Department should presume all sales to such customers are destined for export, adding that the Department has the discretion to exclude all questionable sales.

FAG maintains that the Department unlawfully removed sales to two HM customers from FAG's HM database, and that FAG properly reported all HM sales. FAG argues that the Department's test for determining whether FAG should have known that such sales were for export, and not for HM consumption, was arbitrary and capricious. This test involved telephone interviews with customers to determine whether FAG had knowledge that the merchandise sold to those customers would be exported. FAG contends that HM sales can be excluded only under section 772(b) of the Tariff Act (19 USC 1677 a(b)). Under that provision, the Department must first establish that the respondent had knowledge at the time of the sale that the merchandise was intended for export, then must determine that the United States was the destination of the export sale. FAG further argues that the Department has consistently maintained that the standard for imputed knowledge is high. FAG cites *Fuel Ethanol From Brazil: Final Determination of Sales at Less Than Fair Value*, 51 FR 5572 (February 14, 1986) (*Fuel Ethanol*), in which the Department imputed knowledge to the supplier that exports were destined for the United States because the reseller did not sell in the HM and the United States accounted for 100 percent of the export market for the in-scope product.

FAG notes that, where the Department cannot say with objective certainty that 100 percent of a reseller's goods go to a known destination, the Department has not determined that the supplier ''should have known'' the disposition of the goods. FAG argues that even beyond having a high standard for imputing knowledge, the Department requires objective information that can be corroborated by the administrative record, citing *Television Receivers, Monochrome and Color, From Japan: Final Results of Antidumping Administrative Review*, 58 FR 11211 (February 24, 1993) (*Television Receivers*) and *Oil Country Tubular Goods From Canada: Final Results of Antidumping Duty Administrative Review*, 55 FR 50739 (December 10, 1990) (*OCTG*). FAG claims that the Department cannot satisfy the high burden of proof for imputing knowledge by means of telephone calls to customers. FAG maintains that the information gathered from these phone calls amounts to hearsay, and that the information cannot be corroborated by the administrative record.

FAG contends that its test for determining whether a sale should be classified as a HM sale, which involves checking whether VAT was charged and paid on the sale, is the most objective method for making such a determination, and is the best indication of what FAG knew at the point of sale regarding the destination of the merchandise. FAG argues that the Department verified that all HM sales reported by FAG included VAT.

FAG also argues that the term ''exporter'' has been so loosely used as to have no meaning, and further argues that, even if sales to these alleged exporters can be isolated, it is unclear whether all such sales were actually exported. FAG maintains that the method proposed by Torrington, as well as the one utilized by the Department, is subjective and unverifiable.

SKF argues that its data have been thoroughly verified and that there is no compelling evidence on the record to indicate that any of its HM sales were made at low prices to German resellers known to export.

INA noted that HM sales which it claimed as export sales were made to companies that were known by INA to be exporters and were classified as such in INA's records. INA states that the Department verified that such sales were not included among INA's reported HM sales. INA noted, however, that two customers classified as exporters also resell within Germany.

All sales to these two customers were reported as HM sales because INA had no way of knowing which particular bearings were resold in Germany and which were exported.

Department's Position: In accordance with section 772(b) of the Tariff Act, transactions in which the merchandise was ''purchased * * * for exportation to the United States'' must be reported as U.S. sales in an antidumping proceeding. However, we have not found in this review sufficient evidence to conclude reasonably that any alleged HM sales are in fact U.S. sales under section 772(b). Therefore, we have not reclassified any respondent's HM sales as U.S. sales in these reviews.

Section 773(a) of the Tariff Act provides that FMV be based on sales ''for home consumption.'' Therefore, sales which are not for home consumption, even if they are not classifiable as U.S. sales under section 772(b), are not appropriately classified as HM sales for antidumping purposes. In these reviews, except for certain sales reported as HM sales by one company, we did not find sufficient evidence to conclude reasonably that reported HM sales were not ''for home consumption'' as required by section 773(a).

With respect to German wholesalers/exporters specifically, at verification we determined that, except for certain FAG sales, there were no distinguishing characteristics by which to differentiate sales by German manufacturers to alleged exporters from other HM sales, and we found insufficient evidence to indicate that respondents' HM sales to customers that Torrington alleges to be wholesalers/exporters were destined for export.

We do not agree with Torrington's argument that all sales made to so-called wholesalers/exporters should be treated as U.S. sales, because we do not have sufficient reason to conclude that such sales were for export to the United States, nor even that they were for export at all. We also do not agree that rejection of FAG's response and use of BIA is warranted. However, we do agree that there is sufficient evidence to conclude that certain sales reported by FAG as home market sales were in fact export sales.

With respect to FAG, for these final results we excluded reported HM sales to two customers. For these sales, the evidence indicates that the merchandise in question was destined for export and thus not for home consumption. We found at verification that FAG referred to these customers as ''indirect exporters'' and that FAG excluded sales to other ''indirect exporters'' based on its conclusion that these were export sales. In addition, one FAG subsidiary sold to one of these two ''indirect exporters'' from its export, rather than domestic, price list. We also visited and interviewed one of these resellers and found that it only sells in export markets. This reseller claimed that its suppliers, including FAG, know that it does not resell within Germany. For these reasons, we conclude that these sales were for export and not for domestic consumption. Therefore, these sales cannot be included in FAG's HM sales.

We do not agree with FAG's assertion that the collection of VAT is confirmation that a sale is for HM consumption. Collection of VAT on the sale between FAG and its customer does not preclude the customer from reselling the merchandise for exportation and ultimately receiving a VAT rebate on the resale of the merchandise. Thus, collection of VAT by FAG is not a determinant of the ultimate destination of the merchandise.

FAG's reference to *Fuel Ethanol* is only relevant to the question of whether certain sales should be regarded as U.S. sales. We agree with FAG that there is not sufficient evidence to reclassify any of its reported HM sales as U.S. sales. However, this does not mean that such sales are automatically sales ''for home consumption'' as required by section 773(a) of the Tariff Act. Furthermore, *Television Receivers* and *OCTG* also concerned the issue of whether certain sales should be regarded as U.S. sales, not whether certain sales should be regarded as sales for home consumption.

In *Television Receivers* and *OCTG*, the unrelated reseller sold the product in both Canada and the United States. Therefore, the producer did not know the ultimate destination of the merchandise at the time of sale to the unrelated reseller. *OCTG* at 50740. In this case, where unrelated German resellers both export and resell within Germany, we determined that the manufacturer did not know the ultimate destination of the merchandise. Such sales were retained in the HM database.

Therefore, based on the above circumstances, no further changes have been made to either the HM or the U.S. databases with regard to HM sales to alleged wholesalers/exporters.

Comment 2: Torrington argues that U.S. dollar- or Singapore dollar-denominated HM sales in Singapore and/or Thailand should be excluded from the HM database, because such sales are not HM sales.

The NMB/Pelmec companies rebut Torrington's argument by stating that it is not unusual for multinational companies in developing countries sometimes to conduct business in foreign currencies. Further, the NMB/Pelmec companies claim that nothing has changed since *AFBs III* (at 39783), when the Department determined that there was no evidence that the NMB/Pelmec companies had any reason to know that U.S. dollar-denominated sales, or sales to Thai affiliates of U.S. companies, consisted of merchandise destined for the United States. In addition, the NMB/Pelmec companies note that where they knew that a sale to a domestic customer was actually destined for export, the Department verified that such sale was excluded from the HM database.

Department's Position: We agree with the NMB/Pelmec companies. We verified sales made in U.S. dollars and Singapore dollars, and found no evidence to indicate that the NMB/Pelmec companies had any reason to know or to believe that its U.S. dollar- or Singapore dollar-denominated transactions were destined for the United States.

Comment 3: Torrington claims that NMB Pelmec/Thai's bonded warehouse sales and Route B sales of AFBs should be excluded from the HM sales listing because the Department determined in the original investigation that such sales properly represented third country sales. Torrington states that due to the exemption of VAT and import duties, it can be inferred that all such sales are ultimately being exported. Finally, Torrington argues that such sales are not in the ordinary course of trade.

NMB/Pelmec Thai states that the Department has consistently treated bonded warehouse sales as HM sales since *AFBs I.* Further, NMB/Pelmec asserts that the Department has treated Route B sales as HM sales in the past three administrative reviews. It claims that such sales fit the statutory definition of sales made in the ordinary course of trade. NMB/Pelmec also claims that Torrington has not offered any new evidence as to why the Department should treat Route B sales differently than it has in the past.

Department's Position: We agree with NMB/Pelmec Thai. We have treated such sales as HM sales consistently in the past three reviews, and find the facts in this review to be the same. With respect to the sales in question, we find that the first sale to an unrelated party occurred in Thailand. Route B sales are sales made through NMB/Pelmec Thai's related selling agent, Minebea Singapore Branch (MSB). We verified that MSB's sales, which represent the first sale to an unrelated party, are to customers in Thailand. Therefore, we conclude that

they are properly classified as HM sales. See *AFBs II* (at 28422) and *AFBs III* (at 39783). We also verified NMB/Pelmec Thai's reported home market sales and find that such sales were in the ordinary course of trade. See verification reports for NMB/Pelmec Singapore and Thailand.

Comment 4: Referring to Nachi's supplemental questionnaire response (at 4), Torrington notes that Nachi has admitted to assisting certain customers in obtaining Japan Bearing Institute (JBI) Inspection certificates for a portion of Nachi's HM sales. Torrington claims that JBI inspection certificates are prepared for merchandise destined for export. Thus, all sales for which JBI inspection certificates were completed should be deleted from the HM database. Further, Torrington asserts that JBI certificates may identify destinations which would serve as additional evidence that JBI inspected-merchandise is destined for export.

Nachi contends that simply because merchandise is JBI inspected does not necessarily mean it is destined for export, and that Nachi has no way of knowing which, if any, JBI-inspected bearings were exported.

Department's Position: We agree with Nachi. We previously determined that JBI inspection certificates merely attest to the quality of the inspected merchandise. See *Final Results of Redetermination Pursuant to Court Remand, Federal-Mogul Corp. and the Torrington Company* v. *United States*, Slip Op. 93–180 (September 14, 1993). We thoroughly examined the Japanese laws that mandated which information was to be included on the certificates. Reporting the final destination was only required for certain commodities for which quality standards are applied based on destination. AFBs were not included among such commodities. The certificates are not country-specific nor sale-specific. Inspection certificates indicate brand, model number and quantity inspected, but are of no help in determining whether sales reported as HM sales were destined for export. Torrington has presented no new evidence to indicate that respondents knew, or should have known, that reported HM sales were destined for export because JBI inspection certificates were completed.

Comment 5: Torrington asserts that INA's HM sales database is incomplete. Torrington states that the Department found at verification that HM models for which INA failed to report dynamic load ratings (DLRs) were not reported in their proper families and were deleted from the HM sales listing. Torrington further alleges that the Department's verification report demonstrates that the HM models for which INA failed to provide DLRs not only belonged to the same family, but were, in fact, identical to the bearings for which INA reported DLRs. Finally, Torrington asserts that the Department's verification findings support Torrington's allegations that INA reported models whose characteristics are not listed in INA's catalogs and that do not appear to be logical. For these reasons, Torrington concludes that INA deliberately attempted to manipulate the Department's analysis and, therefore, that the Department should determine INA's dumping margins using first-tier BIA for these final results.

INA acknowledges that it improperly created certain bearing families as a result of a computer programming error. According to INA, however, this error has an insignificant impact on the Department's calculations. First, INA asserts that the matches for the specific models that the Department examined at verification were not affected by missing load ratings, because the Department made identical rather than family matches for one of the products at issue, and because INA made no sales of the other product during the sample weeks. INA further argues that its own analysis demonstrates that only a handful of U.S. sales were matched to HM families for which INA failed to report certain bearings. Finally, INA provides explanations of each product for which Torrington challenged INA's reporting of physical characteristics. For these reasons, INA contests Torrington's request that the Department reject INA's reported HM sales and use BIA to determine INA's dumping margins for this review.

Department's Position: We agree in part with Torrington. At verification, we found that INA failed to report DLRs for certain bearings that it sold in the HM. INA subsequently acknowledged that it improperly created certain bearing families in responding to the HM sales portion of our questionnaire. Accordingly, we have identified the bearing families that INA created incorrectly by matching models reported without DLRs in INA's summary HM sales database with models reported in INA's HM sales database that we determined to be in the same family based on family characteristics excluding DLRs, and used BIA to determine the dumping margins for those U.S. sales that we compared to those families. There is no evidence in the record, however, to support Torrington's arguments that other aspects of INA's reporting of physical characteristics are erroneous and that INA deliberately manipulated its reporting of the physical characteristics of its bearings in order to lower its dumping margins. Accordingly, we have not rejected INA's reported HM sales database for these final results.

16. Miscellaneous Issues

16A. Verification

Comment 1: Federal-Mogul challenges the Department's statement that it found no discrepancies during the verification that it conducted at INA's U.S. subsidiary. According to Federal-Mogul, certain data contained in the verification exhibits do not correspond with those contained in INA's questionnaire responses. Specifically, Federal-Mogul states that: (1) The Deutsche mark values of certain shipments differ from those in the responses; (2) the gross and net weights of one shipment differ from those in the responses; and (3) the per-unit freight charge for the one sea shipment that INA included among the sample used to calculate per-unit movement expenses during the verification is less than the per-unit amount that INA reported in its questionnaire response for the same shipment. As a result, Federal-Mogul requests that the Department increase INA's reported ocean freight expenses by the percentage difference between the ocean freight charge contained in the verification exhibit and that contained in INA's questionnaire response.

INA explains that differences in the Deutsche mark values reported in the verification exhibits and the questionnaire responses are the result of rounding, and are insignificant. In explaining the discrepancy between the gross and net weights reported in the verification exhibits and the questionnaire responses, INA acknowledges that it incorrectly calculated the total gross and net weights reported in the verification exhibits. According to INA, however, the weights reported for this shipment in the questionnaire response are accurate. Finally, INA explains that the difference between the freight charges reported in the verification exhibits and the questionnaire responses is the result of the fact that the charges shown in the verification exhibit include harbor maintenance and merchandise processing fees, which are not included in the freight charge reported in the response. Because the information reported in INA's responses is accurate, INA concludes that the Department is not required to make any adjustments to INA's reported freight charges.

Department's Position: We agree with INA. During our verification at INA's U.S. subsidiary, we examined numerous documents relating to INA's reported movement charges, and found no discrepancies between the source documents and the information reported in INA's questionnaire responses. Further, although there may be minor discrepancies between the source documents and the worksheets that INA prepared for us at verification, the worksheets are merely prepared for the verifier's convenience. As the actual source documents and the questionnaire responses were in agreement, errors in the worksheets are irrelevant to the adequate verification of INA's movement expenses. Further, regarding the differences in Deutsche mark values, we note that the difference is small and the result of rounding. Finally, with respect to the freight charge at issue, we verified that the difference was due to harbor maintenance and merchandise processing fees which were included in the verification exhibit. These fees were not included in the freight charges reported to the Department, but rather were broken out and reported separately. As a result, we have not made any adjustments to INA's reported freight charges for these final results.

16B. Database Problems

Comment 2: Nachi argues that in the Department's recalculation of its export selling expenses incurred in Japan on U.S. sales, the Department mistakenly treated all transfer prices as U.S. dollar values when certain transfer prices were reported in yen.

Torrington responds that before making a correction to Nachi's export selling expense calculation, the Department must determine which transfer prices were reported in dollars and which transfer prices were reported in yen.

Department's Position: We agree with Nachi that some transfer prices were not properly treated. We have been able to determine which transfer prices were reported in dollars and which were reported in yen by using the codes reported in Nachi's currency variable field on the computer tape. We have made the appropriate corrections for these final results.

Comment 3: Koyo maintains that after reviewing the preliminary results of review, it found that it had made a clerical error in reporting the family name for one cylindrical roller bearing (CRB) transaction. The other seven transactions of this CRB model correctly list the family name.

Torrington argues that Koyo's proposal constitutes untimely, new information, which should be rejected. The Department should not correct the alleged error unless it is apparent from the record that it existed prior to the preliminary results.

Department's Position: The Department agrees with Koyo. We reviewed the record and found that the typographical error was in the database at the time of its submission. Therefore, the error has been corrected for these final results.

Comment 4: FAG-Germany requests that the Department exclude from the final margin calculations U.S. sales to related customers which they inadvertently reported. FAG-Germany identified the sales in question and noted that information already on the record supports its position that these sales are to related U.S. customers and therefore should not be included in the Department's final margin calculations.

Torrington contends that such revisions are allowable only where the underlying data have been verified and the changes are small.

Department's Position: The customer codes already submitted on the record by FAG-Germany support the position that these sales were made to related U.S. customers. While the specific sales in question were not examined at verification, we did verify randomly chosen sales made by FAG-Germany and found no discrepancies which would undermine our confidence in the accuracy of the reported customer codes. We also note that FAG-Germany properly reported all subject resales made by related customers in the U.S. during the POR.

We note that the CIT has upheld the Department's authority to permit corrections to a respondent's submission where the error is obvious from the record, and the Department can determine that the new information is correct. See *NSK Ltd.* v. *United States,* 798 F. Supp. 721 (CIT 1992). Adopting Torrington's argument would amount to a rule that such corrections can never be made after verification. This is clearly inconsistent with our practice and the holdings of the CIT.

FAG-Germany's errors were obvious from the record once brought to our attention. It is in accordance with our longstanding practice to exclude U.S. sales to related customers in favor of resales by such customers to unrelated parties. Therefore, we have removed FAG-Germany's sales to related U.S. customers from the margin calculations for these final results.

Comment 5: Torrington argues that NSK's response indicates that ''almost all'' bearings that meet the ITA's definition of CRBs were produced by a certain company related to NSK, and were not sold in the U.S. market during sample weeks. Torrington alleges the database used by the Department and the entries suspended by Customs may be unreliable if NSK identified something less than all CRBs. Also, Torrington claims NSK was required to report all sales of CRBs and to implement a reporting methodology that systematically identifies and tracks those entries.

Torrington contends that because of the alleged misreporting, the ITA should base its final determination on BIA. The best information should be the highest rate calculated for NSK in any prior review or the original LTFV determination.

NSK argues that Torrington has misquoted NSK's response. NSK's response actually states that almost all bearings classified as CRBs, but which NSK considers needle roller bearings, were produced by the related party in question. NSK asserts that it properly reported all U.S. sales of CRBs with a ratio of length to diameter of less than four to one.

Department's Position: We agree with NSK. NSK's response does not give any indication that its reporting of CRB sales in the United States was incomplete. Moreover, the Department verified the completeness of NSK's U.S. database, and is satisfied with the reliability and completeness of the database.

16C. Home Market Viability

Comment 6: Torrington states that the Department discovered at verification that NMB/Pelmec Singapore and NMB/Pelmec Thailand submitted sales in third countries rather than to third countries. For purposes of the final results, ITA should ensure that the HM is viable based on NMB's revised data.

NMB/Pelmec argues that it reported sales in third countries rather than to third countries due to the Department's instructions in prior reviews.

Department's Position: We determined at verification that both NMB/Pelmec Singapore and NMB/Pelmec Thailand reported sales in third countries rather than to third countries due to prior instructions from the Department. We verified that there was only a minor difference in the number of sales made to third countries versus in third countries and ensured that the HM was viable in both Singapore and Thailand based on the revised data.

Comment 7: Torrington alleges that NMB/Pelmec Thailand's questionnaire response reveals that the ratio of total HM sales quantity of AFBs to the total number of AFBs sold in third countries only shows a viable HM when sales of

parts are excluded. In addition, it is less than the five percent threshold if parts are included. Torrington states that the Department should separately calculate the viability for ball bearing parts.

NMB/Pelmec states that their HM is viable according to the methodology which was outlined in the Department's questionnaire. In the supplemental questionnaire, NMB/Pelmec was instructed by the Department to calculate HM viability on a weight basis, if using quantities of complete bearings yielded a different result than using quantities of complete bearings and parts. Following the Department's instructions, NMB/Pelmec reported a viable HM using this calculation methodology.

Department's Position: We agree with NMB/Pelmec. NMB/Pelmec was instructed by the Department in the supplemental questionnaire to calculate HM viability on a weight basis, if using quantities of complete bearings yielded a different result than using quantities of complete bearings and parts. NMB/Pelmec reported a viable HM using this calculation methodology. Moreover, we verified the information used in this calculation. See *NMB/Pelmec Thailand Verification Report,* February 10, 1994. Thus, Torrington's allegation that NMB/Pelmec Thailand did not demonstrate that the HM is viable is inaccurate. We determined that the HM was viable based on a weight basis, since using quantities of complete bearings yielded a different result than using quantities of complete bearings and parts.

We note that our methodology implements the ruling of the CIT in *NMB Singapore Ltd.* v. *United States,* 780 F. Supp. 823, 826 (CIT 1992). The CIT held that the Department must take into account the difference between complete bearings and bearing parts in determining viability. The CIT noted that while bearings of different sizes are comparable, bearing parts are not similar to complete bearings of any size (*Id.* at n.2). The Department implements this decision by basing viability on weight where sales of parts are sufficient to affect viability.

16D. Scope Ruling

Comment 8: Torrington argues that individual components of disassembled bearings, such as locking collars and housings, are within the scope of the antidumping duty order. However, petitioner asserts that prior scope rulings have created a situation wherein bearing accessories, when imported separately from a bearing, are excluded from the order, while those same accessories are included in the order when imported attached to a bearing. Thus, when accessories are imported separately, the antidumping duty is applied only to the value of the bearing, and not to the value of the entirety as it is sold in the U.S. market. Torrington notes that SKF in particular takes advantage of this distinction by importing housed bearing units in disassembled form. Torrington also specifically points out NPBS as one of the companies importing housings and ball bearing inserts separate from its bearings in order to evade the order.

Torrington makes the point that by simply changing the packaging of the shipment, and assembling the various accessories on the bearing after entry, SKF avoided the antidumping duty order insofar as it applies to housed bearings. Torrington claims that when such parts are imported together, the clear implication is that the importer is attempting to evade the antidumping duty order. The CAFC sanctioned a comprehensive construction of the ''class or kind'' subject to an antidumping duty order in *Mitsubishi Elec. Corp.* v. *United States,* 898 F.2d 1577, 1582 (Fed. Cir. 1990), to avoid attempts to evade the antidumping duty order.

Torrington concludes that where the imported accessories and parts arrive together with the bearings, housings, and other parts, the Department should instruct Customs to suspend liquidation and collect antidumping duty deposits and duties with respect to the entirety. The mere repackaging of a housed bearing with locking collar or sleeves and with other accessories should not serve to exempt all of the accessories from the antidumping duty order.

SKF argues that it has already been determined that pillow blocks and accessories are not covered by the scope of the order and the fact that they may be used in AFB applications upon importation is irrelevant.

NPBS responds that the housings are imported separately and as such are not included in the scope of the order. Furthermore, there is no avoidance issue since the price of the completed bearing is reduced by the costs of the imported housing, as well as by further-manufacturing costs incurred in the United States and an allocated share of profit.

Department's Position: Locking collars, adaptor sleeves, housings and such accessories to antifriction bearings, when not assembled to those bearings, are not within the scope of the orders. The orders apply only to ''ball bearings, mounted or unmounted, and parts thereof * * * cylindrical roller bearings, mounted or unmounted, and parts thereof * * * (and) spherical plain bearings, mounted or unmounted, and parts thereof.'' See *Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan,* 54 FR 19102 (May 3, 1989). The language makes no specific statement that housings and like accessories were considered during the LTFV investigation, nor were such accessories specifically included in the orders.

In a scope ruling in this case, the Department determined that ''eccentric collars are not integral parts of a bearing and are * * * outside the scope of the antidumping duty orders.'' Furthermore, the Department found that eccentric collars were not ''constituent part(s) of completed bearing(s) which are irreplaceable in their function,'' that ''(a)n eccentric collar is an attachment to the bearing, not a part of a completed bearing,'' and that ''the function of locking a bearing to the shaft (could) be performed by other accessories such as concentric collars, sleeves, or set-screws.'' Based on this evidence, the Department determined that an ''eccentric collar,'' when imported unattached, is an accessory to a bearing, not a bearing part, and is, therefore, outside the scope of the antidumping duty orders.'' See memorandum dated May 14, 1993, ''Final Scope Ruling—Antidumping Duty Orders on Antifriction Bearings (Other Than Tapered Roller Bearings) from Japan.''

When such accessories are assembled with an antifriction bearing and imported into the United States, we treat them as one unit because they are imported as one unit, and because addition of the accessory does not remove the bearing from the class or kind of merchandise. This does not mean that such accessories are, in and of themselves, subject to the orders. The housings, collars, and sleeves that are mentioned by the petitioner, like eccentric collars, are attachments to the bearings that are not essential to the antifriction property of the bearings; thus, they do not constitute either bearings or bearing parts by themselves. Therefore they are not subject to the order. Based on the foregoing argument, we conclude that importing such items not attached to the bearing is not, as petitioner contends, an evasion of the order.

Comment 9: FAG-Germany argues that the Department improperly included in its preliminary margin calculations U.S. sales of needle roller bearings with roller length-to-diameter ratios between three to one and four to one. FAG states that although the Department made a scope determination

on December 23, 1991 in another case establishing this standard, it was not until September 2, 1992, four months into the fourth period of review, that the Department formally notified parties that the four to one standard would be applied in all circumstances for distinguishing needle roller bearings from CRBs. Hence, FAG claims that it was not forewarned that such merchandise would become part of the margin calculation and standards of due process of law were violated.

Torrington holds that the Department properly included all CRBs, including those with roller length-to-diameter ratios equal to or less than four to one. Torrington states that the respondents were aware of the scope determination 10 months before they received the questionnaire for the fourth review.

Department's Position: We agree with Torrington. In several prior scope rulings, including one requested by FAG, the Department stated that ''the ratio of 4 to 1 is the common industry standard to distinguish a needle roller bearing from a cylindrical roller bearing. Accordingly, we have determined for purposes of this scope proceeding that the ratio of 4 to 1, as selected by the ITC in its final determination, is the dispositive ratio in defining the physical characteristics of a needle roller bearing.'' See memorandum dated December 23, 1991, ''Final Determination on the Request by FAG for Exclusion of Certain Engine Crank Shaft and Engine Main Shaft Pilot Bearings from the Scope of *Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings and Parts Thereof From the Federal Republic of Germany.''* Conversely, those roller bearings with roller length-to-diameter ratios of less than 4 to 1 are properly classified as cylindrical roller bearings and are therefore subject to the antidumping duty orders, as was stated in a later memorandum. See memorandum dated June 1, 1993, ''Final Scope Ruling—Antidumping Duty Orders on Antifriction Bearings (Other than Tapered Roller Bearings) from Germany: INA Walzlager.'' This determination has been upheld by the CIT. See *Koyo Seiko Co. Ltd.* v. *United States,* Slip. Op. 93–191 (CIT 1993).

Additionally, the Department's scope ruling issued in December of 1991 to FAG clearly adopted an industry standard which was applicable to all cylindrical roller bearings. This occurred well before the POR. Moreover, the September 2, 1992, clarification was issued long before FAG's questionnaire responses were due. Therefore, there was no ambiguity regarding the fact that the Department would consider CRBs with roller length-to-diameter ratios of less than four to one to be covered in this review.

16E. Pre-Final Reviews

Comment 10: RHP, SNR, IKS, and FAG request that the Department authorize and implement pre-final disclosure of computer programs and printouts. Respondents claim that in prior administrative reviews the correction of clerical errors has been delayed until many months after the final determination. Respondents maintain that the delay occurred because an action was filed in the CIT depriving the Department of jurisdiction to correct the relevant errors. RHP proposes that the Department either delay publication pending analysis or publish tentative final results so that clerical errors can be corrected.

Department's Position: As noted in the previous review (see *AFBs III* (at 39786)), in the interest of issuing the final results in a timely manner, the Department cannot implement this step. Furthermore, it is unnecessary. Because there were few changes made between the preliminary results and the final results, the Department finds that granting this request would cause unnecessary delay in the release of the final results.

Comment 11: SNR and FAG request that upon final disclosure the Department give parties a complete printout of all positive margin sales used by the Department in its final determination. SNR and FAG maintain that prompt release of complete printouts is essential for their analysis of the Department's results.

Department's Position: In response to SNR and FAG's request that additional data be printed out for final disclosure, we must decline to change our procedure. It is not practical to print out every bit of data that might be generated by our computer programs. Therefore, we have chosen to print out as much data as is necessary to ensure that the programs are functioning as intended. While FAG and SNR may wish to examine certain additional data, other interested parties may wish to examine still other data. In that printing out additional data is not needed to ensure the accuracy of our results and it is burdensome to the Department to tailor printouts for individual parties, we must decline requests that additional data be printed. Furthermore, we note that all parties have access to the same original data used by the Department and complete copies of our computer programs. Therefore, parties have the ability to duplicate the Department's results and generate any additional data they wish.

16F. Termination Requests

Comment 12: GMN argues that the Department's rejection of GMN's termination request is unreasonable and constitutes an abuse of agency discretion. GMN admits that it made a late request to withdraw its request for review and to terminate this review. This review was requested by GMN in order to obtain revocation of the order against it. GMN declared bankruptcy on December 1, 1993, but still tried to complete the review and the sales verification during the week of January 10, 1994. The only domestic competitor, Torrington, did not object to GMN's request. Federal-Mogul, an interested party although not a competitor, filed an objection. GMN responded to this objection, but Federal-Mogul did not respond to GMN's rebuttal. According to GMN, the use of the BIA rate is in no way reflective of GMN's recent history. GMN notes that because the request for review was made by GMN itself, and its existing deposit rate was zero percent, its late request for withdrawal from the review could only be motivated by the bankruptcy. By allowing Federal-Mogul ''veto power'' over GMN's request, the Department abdicated its statutory right to exercise discretion in such matters.

If the Department rejects GMN's request to withdraw, and if the Department maintains that it cannot calculate a margin for GMN without further verification, GMN suggests that we sever GMN's review and place it on a separate schedule.

Department's Position: The Department has determined that it would be inappropriate to terminate this review for GMN. Our decision is based on the fact that GMN's request to terminate the review was submitted during the verification process, an advanced stage of the review process, and that we were unable to complete sales and cost verifications successfully. Moreover, GMN was aware that it would be unable to complete verification, and thus that its margin would probably be based on BIA when it requested the termination. We also note that Federal-Mogul objected to termination of the review.

Although GMN substantially cooperated with our review, we consider the inability of a respondent to complete a verification in progress to be a serious matter. Though GMN's pending bankruptcy may have played a role in GMN's inability to complete the verifications, we cannot determine what other factors may have hindered the verifications. We note that, at the

hearing, GMN's counsel acknowledged that GMN was aware of its financial troubles long before the verification. Respondents should not be given incentive to request reviews and then withdraw their requests if verifications appear to be going poorly. This is one of the reasons why 19 CFR 353.22(a)(5) generally requires that review requests be withdrawn no later than 90 days after the date of publication of the initiation notice. Federal-Mogul's objection only indicates that other parties have an interest in the outcome of an administrative review, which supports the Department's decision not to terminate this proceeding.

16G. Programming

Comment 13: Torrington argues that RHP's the Department's preliminary SAS programs for RHP improperly assigned a zero margin to sales with a USP of less than zero. Torrington continues that it is possible to have a U.S. sale with a value of less than zero. Torrington asserts that the Department should calculate margins on all U.S. sales including those with a value less than zero.

RHP states that it has no objection to the Department adjusting the program so that sales with an adjusted price of less than zero are included.

Department's Position: Torrington misunderstood our program. The lines of the program which are quoted in its case brief do not improperly assign all sales with a negative USP a zero margin. Generally, margins were calculated for such sales as appropriate. However, for certain U.S. sales RHP provided no FMV information and, accordingly, we determined BIA dumping margins for such sales by applying the appropriate BIA rate to the USP of each of those sales. For these sales, negative margins would be generated by applying the BIA rate to a negative USP. Therefore, the lines of the program in question merely set to zero the margins for any U.S. sales to which a BIA rate should be applied but which have a negative USP.

Comment 14: Torrington contends that while RHP's program should assign a BIA rate to RHP's U.S. sales of models that would be matched with HM sales by NSK Europe, it appears that there are errors in the treatment of NSK's sales which prevented the application of BIA to those U.S. sales. Torrington argues that the program did not properly classify these NSK sales in the RHP preliminary program.

RHP states that it attempted to find the alleged errors, but has been unable to do so. RHP argues that because it did not find any errors and Torrington has not identified specific errors, the Department should not change the treatment of NSK sales.

Department's Position: We agree with Torrington that there was a flaw in RHP's preliminary program. However, the flaw merely created duplicate listings of NSK Europe models and was not the reason that no RHP U.S. sales matched to HM sales by NSK Europe. Rather, no sales were matched because there were no comparable families of bearings, *i.e.*, similar merchandise, sold by NSK Europe. In response, we modified the program to match NSK Europe's sales with RHP's U.S. sales by model instead of by family. The fact that no NSK Europe models matched with RHP models further demonstrates that RHP and NSK did not sell comparable merchandise.

Comment 15: FAG UK/Barden alleges that the Department incorrectly identified domestic brokerage and handling expenses (DBROKHE) using the variable name for domestic presale inland freight (DPRSFRE).

Department's Position: We disagree with FAG UK/Barden. Our analysis of the firm's response, including its format sheets, leads us to conclude that FAG reported its brokerage and handling expenses in the field DPRSFRE. Therefore, we have deducted brokerage and handling expenses as DPRSFRE.

Comment 16: Torrington asserts that a clerical error occurs at line 990 in FAG UK's program where the margin is set to zero whenever USP is less than zero.

FAG UK argues that there is no clerical error at line 990 of the program, and that the setting of PCTMARG equal to zero where USP is less than zero, in any event, has no impact on the margin.

Department's Position: We disagree with Torrington that there is a clerical error. Without this line of the program, U.S. sales with dumping margins and negative U.S. prices would show a negative percentage margin. This programming eliminates this anomaly. The setting of the PCTMARG variable at line 990 has no effect on the calculation of the dumping margin.

Comment 17: Torrington states that, in PP transactions, the UNTCUSE variable (customs value) in the program for FAG-Germany is defined as UNITPRE—OCNFRE—MARNINE, and that UNITPRE was modified to include an amount representing VAT, to allow comparison with a VAT-inclusive FMV. Torrington argues that the VAT amount should be removed from UNTCUSE.

Department's Position: We disagree with Torrington that any change is necessary. This variable is not used for PP sales in either the margin calculation or in the calculation of assessment rates. The UNTCUSE variable is only used when calculating *ad valorem* assessment rates. However, purchase price sales are assessed on a per-unit, not *ad valorem*, basis.

16I. Revocation

Comment 18: Torrington asserts that the Department should deny SKF-France's request to revoke the antidumping duty orders spherical plain bearings (SPBs). Torrington notes that revocation is permissible only if the requesting company is unlikely to sell below FMV in the future. Torrington contends the circumstances indicate that this is doubtful, since SKF-France is part of a larger multinational organization which has preliminarily received dumping margins for SPBs in other countries.

SKF responds that Torrington has presented no legal basis on which to deny revocation. SKF argues that since neither the antidumping law nor the Department's regulations mandate a different standard for revocation for multinational corporations, Torrington's argument concerning SKF's multinational activity for purposes of revocation is irrelevant.

Department's Position: Under 19 CFR 353.25(a)(2)(i), the Department may revoke an order in part if it finds sales at not less than FMV for a period of at least three consecutive years. The results in this review, combined with the results in the two prior reviews, satisfies this requirement for SKF-France in the antidumping duty proceeding SPBs. Additionally, respondent has agreed, pursuant to 19 CFR 353.25(a)(2)(iii), to the immediate reinstatement of the order if circumstances develop indicating that they have resumed dumping the subject merchandise. We are satisfied that the respondents is not likely to sell the merchandise in the future at less than FMV, and we agree with respondents that the requirements for revocation have been met.

16J. No Sales During Period of Review

Comment 19: Kaydon, a U.S. producer of ball bearing products, urges the Department to reconsider its preliminary finding that Hoesch and Rollix had no U.S. sales of subject merchandise during the review period. Kaydon asserts that it has provided evidence to the Department which indicates that the respondents sell merchandise in the U.S. market which are properly characterized as bearings subject to the order rather than slewing rings. According to Kaydon, sales of these products, or substantially similar products, may have taken place during the POR but remain unreported due to

the respondents insistence that the merchandise are slewing rings and therefore fall outside the scope of the orders. Kaydon argues that if the Department concludes that these products are bearings, not slewing rings, and if respondent made sales of these products during the POR, the Department should consider Hoesch and Rollix's responses as inadequate and should seek further information regarding the merchandise sold by these respondents during the POR.

Hoesch and Rollix believe that Kaydon's request is not appropriate. Respondents claim that a scope determination rather than an administrative review is the proper context for considering scope issues. According to the respondents any scope questions Kaydon had with respect to the merchandise in question should have been raised within the context of a scope determination request. Therefore, respondents claim that Hoesch and Rotek's (a related affiliate in the United States) filing of its own scope determination request preclude consideration of the same issues in these final results. Furthermore respondents claim that the evidence Kaydon presented to support its allegations fails to justify any investigation by the Department of unreported sales.

Department's Position: We have confirmed through the U.S. Customs service that neither Hoesch nor Rollix have entered subject merchandise into the U.S. market during the POR. Furthermore, there is no information on the record to support Kaydon's assertion that these respondents, or related affiliates in the United States, have made sales of subject merchandise during the POR. Finally, we agree with respondents that a scope determination rather than an administrative review is the proper context for considering scope issues. Therefore, we will address the scope issues raised by Kaydon through the process of a scope inquiry which has been requested by both Kaydon and Hoesch.

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[A–475–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order

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

ACTION: Notice of final results of antidumping duty administrative reviews and revocation in part of an antidumping duty order.

SUMMARY: On February 28, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Italy. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof and cylindrical roller bearings and parts thereof. The reviews cover three manufacturers/exporters. The review period is May 1, 1992, through April 30, 1993.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms for each class or kind of merchandise are listed below in the section entitled ''Final Results of Review.''

The Department also is revoking the antidumping duty order on cylindrical roller bearings from Italy with respect to SKF.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733. Charles Riggle (Meter), Jacqueline Arrowsmith (SKF), Michael Rausher (FAG), or Michael Rill.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1994, the Department published in the **Federal Register** the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Italy (59 FR 9463). We gave interested parties an opportunity to comment on our preliminary results.

At the request of certain interested parties, we held a public hearing on general issues pertaining to the reviews of the orders covering AFBs from all countries on March 28, 1994.

Revocation In Part

In accordance with § 353.25(a)(2) of the Department's regulations (19 CFR 353.25(a)(2)), the Department is revoking the antidumping duty order covering cylindrical roller bearings from Italy with respect to SKF.

SKF has submitted, in accordance with 19 CFR 353.25(b), a request for revocation of the order with respect to its sales of the merchandise in question. SKF has also demonstrated three consecutive years of sales at not less than foreign market value (FMV) and has submitted the required certifications. It has agreed in writing to its immediate reinstatement in the order, as long as any producer or reseller is subject to the order, if the Department concludes under 19 CFR 353.22(f) that the firm, subsequent to the revocation, sold the merchandise at less than FMV. Furthermore, it is not likely that SKF will sell the subject merchandise at less than FMV in the future. Therefore, the Department is revoking the order on cylindrical roller bearings from Italy with respect to SKF.

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following ''classes or kinds'' of merchandise: ball bearings and parts thereof (BBs) and cylindrical roller bearings and parts thereof (CRBs). For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix'' to ''Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,'' which is published in this issue of the **Federal Register**.