bear interest at a single rate for each interest rate term. Pursuant to 7 CFR 1714.5, the interest rates on these advances are based on indexes published in the ''Bond Buyer'' for the four weeks prior to the third Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in 7 CFR 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of ''Municipal Market Data—General Obligation Yields'' or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 1998 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under 7 CFR 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.125 percent.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the third calendar quarter of 1998.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2019 or later	5.125
2018	5.125
2017	5.125
2016	5.000
2015	5.000
2014	5.000
2013	5.000
2012	4.875
2011	4.750
2010	4.625
2009	4.625
2008	4.500
2007	4.500
2006	4.375
2005	4.375
2004	4.250
2003	4.250
2002	4.125
2001	4.000
2000	3.875
1999	3.750

Dated: June 8, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 98–16146 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews

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

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

SUMMARY: On February 9, 1998, the Department of Commerce published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. The types of subject merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 20 manufacturers and/or exporters. The period of review is May 1, 1996, through April 30, 1997.

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 are listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, of Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France—Chip Hayes (SKF), Lisa Tomlinson (SNFA), or Richard Rimlinger.

Germany—Davina Hashmi (SKF), Hermes Pinilla (Torrington Nadellager), or Robin Gray.

Italy—Mark Ross (FAG), William Zapf (Meter), Chip Hayes (SKF), Minoo Hatten (Somecat), Robin Gray, or Richard Rimlinger.

Japan—J. David Dirstine (Koyo Seiko), Hermes Pinilla (NPBS), Thomas Schauer (NSK Ltd. and Nachi-Fujikoshi Corp.), Gregory Thompson (NTN), Robin Gray, or Richard Rimlinger.

Romania—Suzanne Flood (Tehnoimportexport, S.A.) or Robin Gray.

Singapore—Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

Sweden—Mark Ross (SKF) or Richard Rimlinger.

United Kingdom—Suzanne Flood (Barden), Hermes Pinilla (FAG U.K.), Diane Krawczun (NSK–RHP), Lyn Johnson (SNFA U.K.), Robin Gray, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (April 1997).

Background

On February 9, 1998, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom (63 FR 6512). The reviews cover 20 manufacturers and/or exporters. The period of review (POR) is May 1, 1996, through April 30, 1997. We invited parties to comment on our preliminary results of reviews. At the request of certain interested parties, we held public hearings for U.K.-specific issues on March 24, 1998, and for Japan-specific issues on March 25, 1998. The Department has conducted these administrative reviews in accordance with section 751 of the Act.

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following types of subject 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 types of subject merchandise, including a compilation of all pertinent scope determinations, *see* the ''Scope Appendix,'' which is appended to this notice of final results.

Use of Facts Available

In the preliminary results under the ''Use of Facts Available'' section, we inadvertently made two inaccurate statements with regard to Torrington Nadellager (*see* Memorandum from Laurie Parkhill, Office Director, to Richard W. Moreland, Deputy Assistant Secretary, dated February 5, 1998). Neither of the statements was accurate for Torrington Nadellager. We did not use facts available when calculating Torrington Nadellager's margin.

Sales Below Cost in the Home Market

The Department disregarded home-market sales made at prices below the cost of production for the following firms and classes or kinds of merchandise for these final results of reviews:

Country	Company	Subject merchandise
France	SKF	BBs.
Germany	SKF	BBs, CRBs, SPBs.
Italy	FAG	BBs.
	SKF	BBs.
Japan	Koyo	BBs.
	Nachi	BBs, CRBs.
	NSK	BBs, CRBs.
	NTN	BBs, CRBs, SPBs.
	NPBS	BBs.
Singapore	NMB/Pelmec	BBs.
Sweden	SKF	BBs.
United Kingdom	Barden	BBs.
	NSK–RHP	BBs, CRBs.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain revisions that changed our results. We have corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we or the parties do not agree are discussed in the relevant sections of the Issues Appendix.

In addition, as a result of *CEMEX, S.A.* v. *United States*, 133 F.3d 897 (CAFC 1998) (CEMEX), we have changed our model-matching methodology when we have disregarded sales of identical merchandise in the home market because they were at prices below the cost of production. Instead of relying on constructed value (CV) as the basis for normal value for that U.S. model, as we did in the preliminary results, we have attempted first to match models sold in the United States to models sold in the comparison market that fall within the same family of bearings (*i.e.*, similar bearings). If we found no appropriate matches within the same family, we then used CV as the basis of normal value.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these 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 that the following percentage weighted-average margins exist for the period May 1, 1996, through April 30, 1997:

Company	BBs	CRBs	SPBs
France			
SKF	8.31	[3]	54.84
SNFA	0.45	1.78	[3]
Germany			
SKF	2.26	7.32	5.06
Torrington Nadellager	[2]	0.16	[3]
Italy			
FAG	1.18	[3]	.....
Meter	[3]	10.65	.....
SKF	3.61	[3]	.....
Somecat	0.00	[3]	.....
Japan			
Koyo Seiko	6.17	[3]	[3]
Nachi	3.37	1.67	[3]
NPBS	2.30	[2]	[3]
NSK	2.35	2.21	[3]
NTN	7.10	11.55	14.18
Romania			
TIE	0.94	.....	.....
Singapore			
NMB Singapore/ Pelmec Ind.	5.33	.....	.....
Sweden			
SKF	11.61	[1]	.....
United Kingdom			
Barden	6.63	[1]	.....
FAG	[1]	[1]	.....
NSK–RHP	17.14	22.16	.....
SNFA	58.20	[3]	.....

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

[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

[3] No review.

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 have calculated, wherever possible, an exporter/importer-specific assessment rate or value for each type of subject merchandise.

Export Price Sales

With respect to export price (EP) sales for these final results, we divided the total dumping margins (calculated as the difference between normal value and EP) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of

merchandise in each of that importer's/customer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer/customer under each order for the review period will be almost exactly equal to the total dumping margins.

Constructed Export Price Sales

For constructed export price (CEP) 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. Where an affiliated party acts as an importer for EP sales we have included the applicable EP sales in this assessment-rate calculation. 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 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.

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews) we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period subject to each order.

In order to derive a single deposit rate for each order for each respondent we weight-averaged the EP and CEP deposit rates (using the EP and CEP, respectively, as the weighting factors). To accomplish this where we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. We then divided the combined total dumping margins for both EP and CEP sales by the combined total value for both EP and CEP 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 respondent'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 unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews 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 0.5 percent, and therefore *de minimis*, the Department shall require a zero 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 order 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), and, for BBs from Italy, *see 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*, 61 FR 66472 (December 17, 1996)). These rates are the ''All Others'' rates from the relevant LTFV investigations.

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

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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with section 715(a)(1) and 777(i)(1) of the Act.

Dated: June 9, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Scope Appendix Contents

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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 three types of subject 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, 8482.99.35, 8482.99.2580, 8482.99.6595, 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, and 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, 8482.99.70, 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, and 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, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.10.00, 8803.20.00, 8803.30.00, and 8803.90.90.

The HTS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is 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 scopes 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,* 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 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 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 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 between January 1, 1994, and March 31, 1994:

Products Excluded

- Certain textile machinery components

Scope rulings completed between October 1, 1994 and December 31, 1994 (*see Scope Rulings*, 60 FR 12196 (March 6, 1995)):

Products Excluded

- Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order

Scope rulings completed between April 1, 1995 and June 30, 1995 (see Scope Rulings, 60 FR 36782 (July 18, 1995)):

Products Covered

- Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order
- Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order

Scope rulings completed between January 1, 1996 and March 31, 1996 (*see Scope Rulings*, 61 FR 18381 (April 25, 1996)):

Products Covered

- Marquardt Switches—Medium carbon steel balls imported by Marquardt are outside the scope of the order

Scope rulings completed between April 1, 1996 and June 30, 1996 (*see Scope Rulings*, 61 FR 40194 (August 1, 1996)):

Products Excluded

- Dana Corporation—Automotive component, known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order
- Rockwell International Corporation—Automotive component, known variously as a cushion suspension unit, cushion assembly unit, or center bearing assembly, is outside the scope of the order
- Enkotec Company, Inc.—''Main bearings'' imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, are outside the scope of the order

Issues Appendix

Company Abbreviations

Barden—Barden Corporation (U.K.) Ltd. and the Barden Corporation
FAG Italy—FAG Italia S.p.A.; FAG Bearings Corp.
FAG U.K.—FAG (U.K.) Ltd.
Koyo—Koyo Seiko Co. Ltd.
Meter—Meter, S.p.A.
Nachi—Nachi-Fujikoshi Corp., Nachi America Inc. and Nachi Technology, Inc.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) 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–RHP—NSK Bearings Europe, Ltd.; RHP Bearings; RHP Bearings, Inc.
NTN—NTN Corporation; NTN Bearing Corporation of America; American

NTN Bearing Manufacturing Corporation
SKF France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF Italy—SKF Industrie; RIV–SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF Group—SKF—France; SKF-Germany; SKF—Italy; SKF-Sweden; SKF USA, Inc.
SKF Sweden—SKF Sverige AB
SNFA France—SNFA S.A.
SNFA U.K.–SNFA Bearings, Ltd.
TIE—Tehnoimportexport
Torrington—The Torrington Company
Torrington Nadellager—Torrington Nadellager, GmbH

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
CEP—Constructed Export Price
NME—Non-Market Economy
OEM—Original Equipment Manufacturer
POR—Period of Review
PSPA—Post-Sale Price Adjustment
SAA—Statement of Administrative Action
SG&A—Selling, General, & Administrative Expenses
URAA—Uruguay Round Agreements Act

Regulations

19 CFR Part 353, *et al.,* Antidumping Duties; Countervailing Duties; Final rule (applicable regulations).

19 CFR Part 351, *et al.,* Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296—27424 (May 19, 1997) (new regulations).

AFB Administrative Determinations

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 (May 3, 1989).

AFBs 1—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 2—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 3—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993).

AFBs 4—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, 60 FR 10900 (February 28, 1995).

AFBs 5—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 66472 (December 17, 1996).

AFBs 6—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 62 FR 2081 (January 15, 1997).

AFBs 7—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 62 FR 54043 (October 17, 1997).

1. Discounts, Rebates, and Price Adjustments

Comment 1: Torrington contends that the Department should disallow certain discounts which NTN reported. Torrington states that, based on its understanding of the record, NTN's reported discounts were allocated across all sales to a particular customer, but the discounts only applied to certain products sold to that customer. Torrington states that this makes the allocation methodology distortive and open to potential manipulation.

Citing to *The Torrington Company* v. *United States,* 82 F.3d 1039, 1047–1051 (Fed. Cir. 1996) (*Torrington*), Torrington states that the Court made a distinction between direct and indirect expenses and rejected a contention that the former could be allocated in a manner suitable for the latter, *i.e.,* allocated to sales not directly affected. Torrington states that NTN's allocation is clearly inconsistent with this decision.

NTN states the Department properly accepted these discounts in the preliminary results, and in prior reviews, and that Torrington is ignoring the Department's prior decisions on this issue. NTN states further that the Department verified the discount methodology thoroughly and that the Department should deny Torrington's request.

Department's Position: We agree with NTN. Contrary to petitioner's understanding of the way this discount is granted and allocated, we found that NTN granted the discount on a customer-and product-category basis (*i.e.,* by customer and on an antidumping (AD) order-specific (*i.e.,* BB, CRB, SPB) basis), as well as allocated it by customer on an AD order-specific basis (BBs, CRBs, or SPBs). (*See* Verification Report dated January 22, 1998, at 8 and at exhibit 13.) During verification, we reviewed numerous documents which NTN uses to track this type of discount (on an order-specific basis) and determined that NTN reported this discount in the most feasible manner possible. The allocation was AD order-specific (BBs, CRBs, or SPBs) and the bearings do not vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that the results of the allocation are not unreasonably inaccurate or distortive. Therefore, we find this methodology to be acceptable.

In addition, we disagree with Torrington's characterization of the Federal Circuit's decision in *Torrington.* Therein, the Court held that the Department could not make an adjustment for post-sale price adjustments (PSPAs) as indirect selling expenses (under the exporter's sales price-offset regulation) when the PSPAs were related directly to the transactions in question. While the Court held that the method of allocating or reporting an expense does not alter the relationship between the expense and the related sales (*see Torrington,* 82 F.3d at 1051), the Court did not indicate that allocations of direct expenses were impermissible.

Comment 2: Torrington argues that the Department should reject two types of Nachi's reported rebates because, it alleges, the allocation methodology Nachi used is distortive. (In making its argument, Torrington relies on business proprietary information which is not susceptible to summary.)

Nachi contends that Torrington has not demonstrated that Nachi's rebates are distortive and that the Department has accepted its rebate-allocation methodologies in prior reviews. Nachi contends that, because the Department verified that it is impossible for Nachi to report these rebates on a transaction-specific basis and because the reporting method that it has employed is the best alternative given its particular method of keeping records, the Department should allow these rebates in the final results of reviews.

Department's Position: We disagree with Torrington. We find that Nachi acted to the best of its ability in reporting both types of rebates with which Torrington takes issue and that Nachi's allocation methodology was reasonable. In addition, there is no information on the record which indicates that the bearings included in Nachi's allocations vary significantly in terms of value, physical characteristics, or the manner in which sold, such that Nachi's allocations would result in unreasonably inaccurate or distortive allocations.

With regard to rebate 3, the first of the two rebates in question, we find that Nachi reported this rebate on the most specific basis feasible, considering its particular method of recordkeeping. Nothing on the record indicates that only certain types of bearings are subject to the rebate. Nachi's response indicates that it calculated the rebate on an invoice-specific basis (Nachi generates invoices on a monthly basis in the home market). We determine that Nachi's statement that the rebate is based on ''the bearings covered by the claim submitted by the customer'' refers to the bearings covered by a specific invoice and not a limited set of bearings. *See* Nachi's Section B response, dated September 5, 1997, at page B–2 of Exhibit B/18.1. We found nothing at verification to contradict this statement. *See* Verification Report, dated January 26, 1998. Therefore, we conclude that, by allocating the rebate over the sales of each invoice to which the rebate was applicable, Nachi reported rebate 3 as accurately as possible.

With regard to rebate 5, we determine that Nachi reported this rebate as specifically as is feasible, given the records Nachi keeps in its normal course of business. Nachi reported that it ''pays (this rebate) on a customer-specific basis for eligible products only and has allocated and reported rebates to the Department on the same basis.'' *See* Nachi's Section B response dated September 9, 1998, at page B–1 of Exhibit B/18.1. Nachi also noted in its Supplemental Response dated November 10, 1998, at page 14 that, ''because it is not possible (for Nachi) to tie the payment of a rebate paid several months after a sale, Nachi allocated the payment each month on as specific a basis as possible.'' Again, we found nothing at verification that contradicts these statements. *See* the Verification Report for Nachi, dated January 26, 1998. Therefore, because we determine that Nachi acted to the best of its ability and that its allocation methodology for these rebates is reasonable, we have adjusted normal value for these rebates for these final results.

Comment 3: Torrington contends that the Department should reject SKF Germany's claim for adjustments in connection with its support rebate because SKF Germany applied the rebate to all sales of any distributor who qualified for this type of rebate. Torrington argues that, in addition, SKF Germany has granted rebates to distributors for non-subject merchandise. Torrington states that, because the rebate is allocated over all sales to a given distributor and not on a transaction-specific basis, the allocation is not reflective of how the rebate was incurred and, thus, distorts the dumping margins. The petitioner states that, because it does not have access to the information that would enable it to demonstrate such distortions, the respondent should bear the burden of proving that the reporting of its support rebate is not distortive.

SKF Germany rebuts Torrington's argument that it has employed a distortive methodology for reporting the support rebate. It states that it reported this rebate for each customer which received the rebate. SKF Germany explains that the rebate applied to the aggregate sales of a particular customer and that it reported the rebate by customer number. SKF Germany argues that, by allocating the support rebate to all sales to each of the particular customers which actually received the rebate, SKF Germany reported the rebate in the manner in which it was incurred. SKF Germany refutes Torrington's argument that the support rebate includes non-subject merchandise and points to the Department's verification report which indicates that the rebate is reasonable and allocated in a non-distortive manner. SKF Germany states that the Department has accepted its reporting methodology for the support rebate in the two previous AFB administrative reviews. SKF Germany states that, moreover, the CIT has affirmed SKF Germany's support rebate as a direct adjustment, citing *INA Walzlager Schaeffler KG et al.* v. *United States*, 957 F. Supp. 251, 269 (CIT 1997).

Department's Position: We disagree with Torrington. As in *AFBs 7*, we have not found SKF Germany's allocation methodologies to be unreasonably distortive. Because SKF Germany grants the support rebates to distributors/dealers on the basis of their overall sales to the particular distributor/dealer, SKF Germany can not report this rebate on a transaction-specific basis. We examined SKF Germany's home-market support rebates in detail at verification and found that, although SKF Germany calculates this rebate on a customer-specific basis, ''we found no evidence of distortion in the data that we reviewed,'' a point which Torrington has acknowledged. Furthermore, we verified the accuracy of the claim of payments. There is no information on the record which indicates that the bearings included in SKF Germany's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that SKF Germany's allocations would result in unreasonably inaccurate or distortive allocations. Moreover, we find that SKF Germany reported these rebates on as specific a basis as possible. For these reasons, we have adjusted for SKF Germany's support rebates. *See AFBs 7* at 54052–53 for a further discussion on the Department's position regarding this issue.

Comment 4: Torrington argues that the Department should deny certain home-market rebates claimed by Koyo. The petitioner contends that, instead of identifying the sales to a certain distributor and reporting the rebate for these sales only, Koyo allocated this substantial rebate across all sales to the distributor.

In rebuttal, Koyo argues that it reported its rebate expenses in these reviews in the same manner as it has in past reviews and that the Department has verified and accepted the claimed expense repeatedly. Koyo contends further that, during the POR, it did not have the capability in its computerized recordkeeping system to distinguish between sales of bearings to this distributor for a specific application covered by the rebate and sales to the same distributor of these bearing models that, although suitable for the specific application for which the rebate was intended, were sold for different applications that were not covered by the rebate. Koyo admits that its rebate-allocation methodology adjusts sales prices for some sales to this distributor for which rebates were not actually granted, but it concludes that its methodology is, nonetheless, not distortive overall. Koyo states that the determination of whether an allocation is distortive is not dependent on whether the allocation pool included merchandise for which the expense was not originally incurred, the degree to which the allocated adjustment exceeded any arbitrary benchmark, nor the difference between the allocated adjustment and the actual adjustment associated with any individual transaction. Instead, Koyo argues that the Department's test of whether an allocation is distortive is whether the

merchandise for which the adjustment was actually granted is different from the merchandise over which the adjustment was allocated in terms of value, physical characteristics, and the manner in which it was sold. Koyo contends that, in this case, it was not. Finally, Koyo argues that, before accepting an allocated rebate adjustment, the Department determines whether the respondent acted to the best of its ability in reporting these adjustments.

Department's Position: We disagree with Torrington. For these final results we have accepted claims for rebates as direct adjustments to price if we determined that the respondent, in reporting these adjustments, acted to the best of its ability and that its reporting methodology was not unreasonably distortive. While we recognize that there are differences in bearings, we have found no support for the proposition that the bearings included in Koyo's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that Koyo's allocation would result in an unreasonably inaccurate or distortive allocation. Thus, since Koyo has reported this rebate on as specific a basis as possible, we have made a direct adjustment to home-market price for Koyo's rebates.

Comment 5: Torrington argues that the Department should disallow NSK's reported negative post-sale billing adjustments because NSK has not demonstrated that these price adjustments were contemplated at the time of sale or that they are part of NSK's normal business practice.

NSK contends that Torrington is incorrect when it argues that, in order for NSK to claim a negative billing adjustment, its customer must have known at the time of sale that there would be a downward adjustment to price. Citing the preamble to new regulations, *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295 (new regulations) at 27344, NSK contends that the Department rejected the request of certain parties that the Department adopt such a requirement.

Department's Position: We disagree with Torrington. The new regulations, at 19 CFR 351.401(c), state that the Department ''(i)n calculating export price, constructed export price, and normal value (where normal value is based on price) * * * will use a price that is net of any price adjustment, as defined in section 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable).'' Price adjustments are defined in the new regulations at section 351.102(b) as ''any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay.'' While the Department stated in the preamble at 27344 that respondents should not be ''allowed to eliminate dumping margins by providing price adjustments 'after the fact,' '' there is no evidence on the record in these reviews that demonstrates or even suggests that this is happening. Finally, generally speaking, there is nothing unusual about PSPAs in this industry and, specifically, there is nothing on the record to suggest that NSK manipulated these adjustments. Accordingly, we have granted NSK this adjustment.

Comment 6: Torrington argues that the Department should disallow NSK's reported negative lump-sum billing adjustments because NSK has not demonstrated that these price adjustments were contemplated at the time of sales or that they are part of NSK's normal business practice. Torrington contends further, citing *Torrington,* that, because these billing adjustments are allocated on a customer-specific basis and, as a result, applied to sales on which they were not actually incurred, the Department should deny the adjustment.

NSK contends that it documented its entitlement to this adjustment fully. NSK also asserts that this issue has been raised by Torrington in previous reviews and that the Department has rejected Torrington's argument in those reviews.

Department's Position: We disagree with Torrington. With regard to the contention that the lump-sum billing adjustments were not contemplated at the time of sale, *see* our position in response to Comment 5 of this section, above. With regard to the fact that NSK allocated these adjustments, we note that our new regulations at 19 CFR 351.401(g)(1) direct that we ''may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided (we are) satisfied that the allocation method used does not cause inaccuracies or distortions.'' Although NSK allocated lump-sum price adjustments on a customer-specific basis, we determine that NSK acted to the best of its ability in reporting this information when it used customer-specific allocations.

Our review of the information which NSK submitted indicates that, given the lump-sum nature of this adjustment, the fact that NSK's records do not readily identify a discrete group of sales to which each rebate pertains, and the extremely large number of sales NSK made during the POR, it is not feasible for NSK to report this adjustment on a more specific basis. Furthermore, there is no information on the record which indicates that the bearings included in NSK's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that NSK's allocations would result in unreasonably inaccurate or distortive allocations. Therefore, we have adjusted normal value for NSK's reported negative lump-sum billing adjustments.

Comment 7: Torrington argues that the Department should reject SKF Germany's home-market billing adjustment 2 and, accordingly, deny all related downward adjustments. Torrington contends that SKF Germany claimed downward adjustments for transactions for which none were warranted because SKF Germany allocated the adjustment over all transactions with a given SKF Germany customer. By not reporting this adjustment on a transaction-specific basis, Torrington claims that SKF Germany has distorted the home-market price of particular models. Torrington also argues that the Department should deny billing adjustment 2 because double-counting may have occurred for those transactions for which SKF Germany reported both billing adjustment 1 and billing adjustment 2 and that SKF Germany has failed to demonstrate that double-counting did not occur. Torrington acknowledges that the Department accepted SKF Germany's reported home-market billing adjustment 2 in *AFBs 7,* but states that the Department's decision to do so was contrary to the Court of Appeals, for the Federal Circuit (CAFC) decision in *Fujitsu General Ltd.* v. *United States,* 88 F.3d 1034, 1040 (Fed. Circ. 1996) (Fujitsu). Torrington posits that the Department should deny only SKF Germany's reported downward adjustments associated with billing adjustment 2 as it has done in previous AFB administrative reviews.

SKF Germany rebuts Torrington's argument that its reporting methodology for home-market billing adjustment 2 is distortive. SKF Germany argues that the Department has verified and accepted both the manner in which its billing adjustment 2 is recorded in its normal course of business and the manner in which it was reported to the Department in the 1994/95, 1995/96, and current AFB administrative reviews. SKF Germany also refutes Torrington's claim that double-counting may have occured because, for some sales transactions, both billing adjustment 1 and billing

adjustment 2 were reported. SKF Germany contends that the underlying purposes of these two adjustments are distinct from one another and, as such, the adjustments are not mutually exclusive. SKF Germany also refutes Torrington's assertion that the only adjustments that should be disallowed are downward adjustments.

Department's Position: We disagree with the petitioner. We examined this expense closely at verification and found that the calculation of this adjustment was not unreasonably distortive. In particular, there is no information on the record which indicates that the bearings included in SKF Germany's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that SKF Germany's allocations would result in unreasonably inaccurate or distortive allocations. We also found that SKF Germany has used the most specific reporting methodology possible by calculating an individual adjustment factor for each customer based on SKF Germany's annual sales of bearings to that customer. SKF Germany then used this factor to calculate each specific adjustment. *See* Verification Report, December 12, 1997, p. 6–7. In addition, we verified that billing adjustments 1 and 2 are separate billing adjustments, with different underlying purposes. Accordingly, we have determined that SKF Germany has allocated billing adjustment 2 in the most specific manner possible and this allocation is not unreasonably distortive. Therefore, we have granted this adjustment for these reviews.

We also disagree with Torrington's statement that our acceptance of SKF Germany's billing adjustment 2 is inconsistent with the CAFC's decision in *Fujitsu*. In *Fujitsu*, the CAFC upheld the Department's rejection of a respondent's claim regarding start-up costs because the respondent had failed to meet its burden of proof. In this case, SKF Germany has provided sufficient information such that the Department was able to and has determined that SKF Germany is entitled to a price adjustment for billing adjustment 2.

Comment 8: Torrington argues that the Department should deny all of Koyo's downward billing adjustments because they were not truly billing adjustments and, in some cases, were not reported correctly. The petitioner argues that the Department should only accept billing adjustments if they reflect agreements made prior to the sale or if they reflect normal business practices. Specifically, Torrington asserts that the Department should reject billing adjustments 1 and 2 because both include a ''substantial number'' of downward adjustments and because both offer a potential for manipulation associated with PSPAs. In addition, the petitioner contends that billing adjustment 2 is distortive because it includes adjustments which Koyo granted on a model-specific basis but allocated over all sales to the customer involved, as well as lump-sum adjustments granted on a customer-specific basis, with the end result that adjustments are made to transactions for which no adjustment actually applied. Torrington argues that Koyo has the burden of justifying any downward adjustment to normal value and that this requires the company to present concrete evidence demonstrating distortion is not likely, given the nature of each adjustment, each customer, and each sale.

In rebuttal, Koyo argues that the Department should reject Torrington's arguments in these reviews as it has done in the past two AFB reviews. Koyo contends that, given that there is a complete absence of evidence that Koyo has been manipulating price adjustments, the Department should accept them as reported. Koyo states that it reported three general types of price adjustments in its questionnaire response: (1) adjustments made to preliminary prices where a pricing agreement did not previously exist; (2) adjustments made due to the renegotiation of existing price agreements (*e.g.*, to correct for Koyo's continued shipment of merchandise to a customer under the terms of an expired contract while price negotiations continued); and (3) lump-sum adjustments negotiated between Koyo and its customers without reference to the model-specific selling prices and other adjustments negotiated on a case-by-case basis. Koyo contends that each of these types of adjustments is a ''normal business practice'' for Koyo. Koyo argues further that, although the Department, under the pre-URAA antidumping law, rejected some of Koyo's PSPAs in some administrative reviews, it did so because of objections to the allocation methodology Koyo used, never because of any doubt as to the validity of the underlying post-sale commercial activities. Koyo states that, for billing adjustment 1, it matched debit and credit memos to the relevant sales and claimed the adjustment on a transaction-specific basis. In refuting Torrington's argument that Koyo's customer-specific billing adjustments reported under billing adjustment 2 are distortive, Koyo argues that requiring the precise assignment of adjustments to sales would in effect prohibit the use of allocations. Koyo argues that this is contrary to Congressional intent, as expressed in the URAA, and the express provisions of the Department's recently enacted antidumping regulations.

Department's Position: With respect to both billing adjustments, our examination of the record leads us to conclude that both rebates are part of Koyo's long-term business practices and there is no information on the record that Koyo attempted to manipulate its downward price adjustments for the purpose of lowering or eliminating its dumping margin. Koyo incurs and reports the first billing adjustment on a transaction-specific basis and therefore this adjustment does not involve any type of allocation. Accordingly, each adjustment to normal value reflects an actual billing adjustment. With respect to the second billing adjustment, we have determined that Koyo has reported it to the best of its ability. We have based our determination on the fact that this PSPA is comprised of two types of adjustments, including both lump-sum adjustments negotiated with customers without reference to model-specific prices and also adjustments granted on a model-specific basis, but which Koyo records in its computer system on a customer-specific basis only. Given the large number of sales involved, it is not feasible to report this on a more specific basis. *See AFBs 7* at 54050–51. Moreover, there is no information on the record which indicates that the bearings included in Koyo's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that Koyo's allocations would result in unreasonably inaccurate or distortive allocations. Therefore, we have allowed Koyo's lump-sum adjustments as direct adjustments to normal value.

2. Circumstance-of-Sale Adjustments

2.A. *Credit Expense. Comment:* Torrington argues that the Department should reject the credit expense adjustment NMB/Pelmec claimed on its home-market sales. Although NMB/Pelmec alleges that it used the borrowing experience of its affiliate, Minebea Technologies Pte., Ltd. (MTL), Torrington asserts that the actual interest rates NMB/Pelmec used to calculate home-market credit expenses are unsupported by evidence on the record. Torrington notes first that NMB/Pelmec miscalculated the short-term interest rate of MTL (the exact nature of this alleged miscalculation can not be described here due to its proprietary nature—*see* Analysis Memorandum

dated May 19, 1998). Torrington then points to NMB/Pelmec's financial statements and the interest rates for NMB/Pelmec's parent company, Minebea Group, as an example of the inconsistent reporting. Furthermore, Torrington asserts that the rate NMB/Pelmec used for calculating home-market credit expenses (*i.e.*, MTL's short-term interest rate) is also inconsistent with the rate it used to calculate inventory carrying costs.

NMB/Pelmec responds that it calculated its average short-term interest rate for the POR by dividing MTL's average monthly interest expenses by its average outstanding end-of-month loan balances which, NMB/Pelmec contends, is a routinely accepted formula to derive interest rates in antidumping proceedings. NMB/Pelmec cites *Steel Wire Rope from the Republic of Korea*, 61 FR 55965, 55969 (October 30, 1996), and *Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom*, 61 FR 51411, 51420–21 (October 2, 1996), to support its statement. NMB/Pelmec argues that Torrington has not provided any supporting evidence demonstrating that the Department should disregard this methodology. Moreover, NMB/Pelmec notes, the Department verified the home-market credit calculations in prior reviews. NMB/Pelmec argues that Torrington's reference to Minebea Group's rates is irrelevant since MTL holds the receivables in the home market and other Minebea Group companies do not. Furthermore, NMB/Pelmec argues that, during the time that the merchandise remains in inventory at the factory (Stage 1), it is being held by NMB/Pelmec and, therefore, it is appropriate to use NMB/Pelmec's rate to calculate inventory carrying costs (as opposed to MTL's rate).

Department's Position: Although we agree with NMB/Pelmec that its use of MTL's interest rates is appropriate for calculating home-market credit expenses, we also agree with Torrington that there was a miscalculation in NMB/Pelmec's methodology for deriving its average short-term interest rate. Therefore, we have corrected this error for these final results (*see* Analysis Memo dated May 19, 1998). Furthermore, we agree with the respondent that the use of NMB/Pelmec's interest rate is appropriate for the calculation of inventory carrying costs for Stage 1 because NMB/Pelmec incurs this cost. Where there are differences in the circumstances, such as how NMB/Pelmec incurs inventory carrying costs as opposed to its short-term interest expenses, different applications are appropriate, supported by evidence on the record. Therefore, with the correction noted above, we have accepted NMB/Pelmec's credit expenses and inventory carrying costs.

2.B. *Other Direct Selling Expenses.*

Comment: Torrington argues that the Department should reject NSK–RHP's claim for a direct adjustment for other direct selling expenses. Torrington maintains that NSK–RHP has not shown that these expenses are direct expenses and that these expenses include the cost of salaries. Torrington argues further that the Department should reject an adjustment for direct expenses allocated across all reported sales rather than to those sales where the expense was actually incurred. In addition, Torrington argues, the respondents must substantiate that more accurate reporting is not feasible and that the allocation does not cause unreasonable inaccuracies or distortions. Torrington concludes that NSK–RHP should have reported its expenses on a sale-specific basis in accordance with *Torrington*.

NSK–RHP responds that, since the Department's verification in these reviews uncovered no evidence suggesting evasive reporting by NSK–RHP, the Department should continue to deduct other direct selling expenses from normal value as it did in *AFBs 6* and *AFBs 7*. NSK–RHP also maintains that it incurred the expense on a sale-by-sale basis. NSK–RHP argues that it reported, in separate direct cost centers for its channels of distribution, expenses associated with selling activities related to particular customers. NSK–RHP contends that, since it was not feasible to report these expenses on a more specific basis due to its accounting system, it acted to the best of its ability and allocated the costs in a manner that did not cause unreasonable inaccuracies or distortions.

Department's Position: We agree with Torrington. The expenses which NSK–RHP claims are ''other direct selling expenses'' are the type of expenses which we normally do not categorize as sale-specific expenses and, in the absence of the sale, such expenses would be incurred. NSK–RHP includes salaries as an other direct selling expense; however, we normally categorize the costs of salaries to employees as a fixed, indirect expense. *See* Department's Questionnaire at I–5; *Torrington* at 1050. Moreover, the other expenses which NSK–RHP claims to be other direct selling expenses, which can not be described here due to their proprietary nature, also do not vary depending upon whether a particular sale occurs. *See* Analysis Memorandum dated May 20, 1998. Therefore, we have treated these costs as indirect selling expenses.

Because we find these selling costs to be indirect in nature, we need not address whether NSK–RHP allocated its costs in an unreasonably inaccurate or distortive manner. The fact that NSK–RHP allocated this expense did not enter into our decision to treat it as an indirect selling expense. We note further that *Torrington* addresses the allocation of direct, rather than indirect expenses, and thus this argument is inapplicable here.

Finally, neither our treatment in previous reviews of these expenses as direct nor our verification of U.S. expenses precludes the current finding. Furthermore, the issue is not whether evidence has been uncovered suggesting evasive reporting. Rather, the burden is on the respondent to demonstrate that the expenses are direct, as claimed. In this case, the evidence indicates that the expenses are indirect in nature.

2.C. *Indirect Selling Expenses.*

Comment: NTN states that the Department should use its indirect selling expenses as reported by level of trade instead of allocating them on an aggregate basis. NTN states further that the Department provides no explanation in its preliminary results as to its rationale for recalculating this expense. Finally, NTN states that the adjustment is particularly inappropriate because it combines NTN's selling expenses with those of an affiliate.

Torrington contends that, since the Department refused to find the relationship between home-market levels of trade and home-market indirect selling expenses self evident in *AFBs 7*, the burden of proof was on NTN to provide such evidence. Torrington states that, because NTN showed no relationship between the home-market levels of trade and indirect expenses incurred, the Department should affirm its preliminary results.

Department Position: We agree with Torrington. The method that NTN used to allocate its indirect selling expenses does not bear any relationship to the manner in which NTN incurs the expenses in question, thereby leading to distorted allocations (*see AFBS 3* at 39750). Therefore, we have allocated NTN's home-market indirect selling expenses over the total sales values, without regard to levels of trade.

3. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The normal-value level

of trade is that of the starting-price sales in the comparison market or, when normal value is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether normal-value sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make an level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the normal-value level is more remote from the factory than the CEP-level and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

As in the preliminary results, where we established that the comparison sales were made at a different level of trade than the sales to the United States, we made a level-of-trade adjustment if we were able to determine that the differences in levels of trade affected price comparability. We determined the effect on price comparability by examining sales at different levels of trade in the comparison market. Any price effect must be manifested in a pattern of consistent price differences between foreign-market sales used for comparison and foreign-market sales at the level of trade of the export transaction. To quantify the price differences, we calculated the difference in the average of the net prices of the same models sold at different levels of trade. We used the average difference in net prices to adjust normal value when normal value is based on a level of trade different from that of the export sale. If there was a pattern of no price differences, the differences in levels of trade did not have a price effect and, therefore, no adjustment was necessary.

We were able to quantify such price differences and make a level-of-trade adjustment for certain comparisons involving EP sales, in accordance with section 773(a)(7)(A). For such sales, the same level of trade as that of the U.S. sales existed in the comparison market but we could only match the U.S. sale to comparison-market sales at a different level of trade because there were no usable sales of the foreign like product at the same level of trade. Therefore, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. We made this determination by comparing, for each model sold at both levels, the average net price of sales made in the ordinary course of trade at the two levels of trade. If the average prices were higher at one of the levels of trade for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. We also considered whether the average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each model sold, in making this determination. We applied the average percentage difference to the adjusted normal value as the level-of-trade adjustment.

We were unable to quantify price differences in other instances involving comparisons of sales made at different levels of trade. First, with respect to CEP sales, the same level of trade as that of the CEP for merchandise under review did not exist in the comparison market for any respondent except NMB/Pelmec. We also did not find the same level of trade in the comparison market for some EP sales of merchandise under review. Therefore, for comparisons involving these sales, we could not determine whether there was a pattern of consistent price differences between the levels of trade based on respondents' home market sales of merchandise under review.

In such cases, we looked to alternative sources of information in accordance with the SAA. The SAA provides that ''if information on the same product and company is not available, the level-of-trade adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling experience of other producers in the foreign market for the same product or other products.'' *See* SAA at 830. Accordingly, where necessary, we attempted to examine the alternative methods for calculating a level-of-trade adjustment. In these reviews, however, we did not have information that would allow us to apply these alternative methods for companies that, unlike NMB/Pelmec, did not have a home-market level of trade equivalent to the level of the CEP.

The only company for which we made a level-of-trade adjustment for CEP sales in these final results was NMB/Pelmec. However, we concluded that it would be inappropriate to apply the level-of-trade adjustment we calculated for NMB/Pelmec to any of the other respondents. Because no respondent reported sales in the same market as NMB/Pelmec (*i.e.*, Singapore), we have not used NMB/Pelmec's data as the basis of a level-of-trade adjustment for any other respondents.

In those situations where the U.S. sales were EP sales and we were unable to quantify a level-of-trade adjustment based on a pattern of consistent price differences, the statute requires no further adjustments. However, with respect to CEP sales for which we were unable to quantify a level-of-trade adjustment, we granted a CEP offset where the home-market sales were at a more advanced level of trade than the sales to the United States, in accordance with section 773(a)(7)(B) of the Act.

Comment 1: NSK argues that the Department should make a level-of-trade adjustment when CEP sales are matched to home-market aftermarket sales. NSK contends that the Department can make a level-of-trade adjustment on the basis of the difference between the OEM and aftermarket levels of trade in the home market. NSK asserts that, although the home-market OEM sales and the level of CEP sales are not equivalent, the Department is not required to adjust for the entire amount of the difference between levels of trade when making a level-of-trade adjustment and could make a partial adjustment instead. NSK contends that the level of home-market OEM sales is closer to the level of CEP sales than is the level of home-market aftermarket sales because the prices for home-market OEM sales are lower than the prices for home-market aftermarket sales. NSK asserts that it would be appropriate, therefore, to adjust normal value with a level-of-trade adjustment based on the difference between the home-market levels of trade whenever CEP sales are compared to home-market aftermarket sales.

Torrington states that the Department's approach to level-of-trade adjustments and CEP offsets is extraordinarily complex. Torrington contends that NSK's arguments are incomplete and fail to address the

complexities of the Department's approach. For example, Torrington argues, NSK fails to describe how the statutory language at section 773(7)(A) ''partly due to'' is quantifiable when customer categories define level of trade. Torrington states that the fact that the CEP level of trade is ''closer to the factory'' than any other home-market level of trade is not in itself a controlling factor for purposes of quantifying an adjustment.

Department's Position: We disagree with NSK. We may make level-of-trade adjustments when there is ''any difference... between the export price or constructed export price and the normal value that is shown to be wholly or partly due to a difference in the level of trade between the export price or the constructed export price and normal value.'' *See* section 773(a)(7)(A) of the Act. We find no explicit authority to make a level-of-trade adjustment between two home-market levels of trade where neither level is equivalent to the level of the U.S. sale. *See AFBs 7.*

Comment 2: The petitioner alleges that, based on the record, there are considerable differences in the selling functions NSK and SKF Italy perform for EP and home-market OEM customers and thus, home-market OEM sales are not equivalent to EP OEM sales. Therefore, Torrington concludes, because there is no home-market level of trade equivalent to the level of EP sales, there is no basis for making a level-of-trade adjustment to normal value for EP OEM sales when the comparison sales were made to aftermarket customers.

NSK contends that, although there are some differences in selling functions between the home-market OEM level of trade and the level of the EP OEM sales, these two levels of trade are equivalent because many of the selling functions are the same. More importantly, NSK asserts, the purpose of defining levels of trade is to determine which customers are at the same marketing stage. In this case, NSK asserts, both home-market sales and EP OEM sales are sold directly to customers for OEM consumption. NSK contends that the fact that there are some differences does not alone demonstrate that the two levels of trade are not equivalent.

SKF Italy counters that Torrington has misconstrued or incorrectly analyzed and compared data regarding U.S. and home-market levels of trade in its response. SKF Italy affirms that it provided thorough, accurate, and accordant information on the levels of trade in the two markets that supports their being considered comparable.

Department's Position: We disagree with Torrington. As we stated in *AFBs 7* at 54055, ''differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade.'' We have reviewed the records in these reviews and found that the differences in selling functions between the home-market and the EP OEM levels of trade are not great. Some of the differences Torrington describes appear to be small differences in the level of intensity of the selling function. For some other functions, the record indicates that a minimal level of the function is performed at one level and not at the other level. While there are a few individual selling functions that vary substantially, we determine that these functions, by themselves, do not offset many similarities of the selling functions both respondents performed at the two levels of trade. *See* Level-of-Trade Memorandum from Robin Gray and Richard Rimlinger to Laurie Parkhill dated January 26, 1998.

Furthermore, while customer categories alone are also insufficient in themselves to establish that there is a difference in the levels of trade, they provide useful information in the identification of such differences. In this case, given the fact that the customer categories of the home-market and EP OEM levels of trade are identical, the fact that there is a qualitatively minimal difference in selling functions between the levels of trade does not persuade us that they are distinct. For these reasons, we conclude that the home-market and EP OEM levels of trade are equivalent.

Therefore, because we determined that there were two levels of trade in both home markets (*see* Level-of-Trade Memorandum from Robin Gray and Richard Rimlinger to Laurie Parkhill dated January 26, 1998), we have made our comparisons and a level-of-trade adjustment, as appropriate.

Comment 3: Koyo contends that the Department's practice with regard to level of trade effectively precludes a level-of-trade adjustment to normal value for CEP sales and is thus contrary to law and the intent of Congress.

Koyo asserts that it and other respondents have proposed alternative methods by which the Department could construct an appropriate home-market level of trade by deducting from normal value those expenses which correspond to the expenses the Department deducts from CEP, but that the Department has failed to provide a reasonable explanation for rejecting the proposals.

Torrington agrees with the Department's rejection of Koyo's proposal to use a ''constructed normal value'' to calculate a level-of-trade adjustment. Torrington maintains that the Department has responded to Koyo's argument in detail in *AFBs 6* and *AFBs 7.*

Department's Position: We disagree with Koyo that we should adopt alternative methods by which to construct home-market levels of trade. We base home-market levels of trade on the respondent's actual experience in the home market. The statute is clear that ''...the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.'' (*See* 773(a)(7)(A)). Therefore, we have not used Koyo's claimed constructed home-market levels of trade in order to calculate a level-of-trade adjustment for Koyo's CEP-sales comparisons. *See AFBs 6* at 2081 and *AFBs 7* at 54043.

Comment 4: NTN states that the Department should use the transaction to the first unaffiliated customer in the United States to determine the level-of-trade adjustment. NTN suggests that, based on this transaction, NTN satisfies the statutory requirements for an adjustment. Finally, NTN states that the methodology the Department used in the preliminary results would effectively bar an entire class of sales, CEP transactions, from ever being granted a price-based level-of-trade adjustment.

While Torrington acknowledges that it once espoused this same position, it acquiesces to the Department's past decisions on this issue and believes the current approach is now well established and should not be changed. Finally, Torrington states that, since the statute is unclear on this matter, the Department needs only to construct a reasonable methodology, which it has done.

Department's Position: We disagree with NTN. The statutory definition of ''constructed export price'' contained at section 772(d) of the Act indicates clearly that we are to base CEP on the U.S. resale price adjusted for selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. *See* SAA at 823. These adjustments are necessary in order to arrive at, as the term CEP makes clear, a ''constructed'' export price. The adjustments we make to the starting price, specifically those made pursuant to section 772(d) of the Act (''Additional Adjustments for Constructed Export Price''), normally change the level of trade. Accordingly, we must determine the level of trade of CEP sales exclusive

of the expenses (and concomitant selling functions) that we deduct pursuant to this sub-section. Therefore, because no home-market levels of trade NTN reported were equivalent to the level of trade of its CEP sales, we were unable to make a level-of-trade adjustment for such sales. *See* Level-of-Trade Memorandum from Robin Gray and Richard Rimlinger to Laurie Parkhill dated January 26, 1998.

4. Cost of Production and Constructed Value

4.A. *Cost-Test Methodology.* On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States,* 133 F.3d 897 (CAFC 1998) (*CEMEX*). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home-market sales to be outside the ''ordinary course of trade.'' The URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* section 771(15) of the Act. In our preliminary results, we invited parties to comment on this issue and various parties have provided comments.

Comment 1: Torrington argues that the Department should attempt to match U.S. sales to comparison-market sales of similar models before resorting to CV when comparison-market sales of identical models are excluded from the home-market sales database because they failed the cost test. Torrington asserts that the CAFC's decision in *CEMEX* requires the Department to do this whenever comparison-market sales of identical models are outside the ordinary course of trade or otherwise do not exist. Koyo does not disagree with the position stated by Torrington regarding the impact of the *CEMEX* decision.

NSK argues that the *CEMEX* decision does not provide a basis for the Department to change its practice of resorting to CV when comparison-market sales of identical models are excluded from the home-market sales database because they failed the cost test. NSK contends that *Federal-Mogul Corp.* v. *United States,* 918 F. Supp. 386, 396–397 (CIT 1996) (*Federal-Mogul 1*), supports this methodology. NSK asserts that, in *CEMEX,* the CAFC was faced with sales that were outside the ordinary course of trade under the statute as it existed prior to its amendment pursuant to the URAA. NSK explains that, under the pre-URAA law, below-cost sales were not considered outside the ordinary course of trade. NSK argues that it is incumbent upon the Department to demonstrate how the URAA amendments require a change in the practice endorsed by *Federal-Mogul 1.* NSK contends that the statute, at section 773(b), provides that the Department shall base normal value upon CV when all sales of the foreign like product are excluded because they have failed the below-cost test. NSK also asserts that the SAA supports this interpretation by indicating that the only change from the Department's practice prior to the URAA was to eliminate the ten-percent floor for using above-cost sales of a particular model and that, to the extent that the Department perceives any conflict between sections 773(b)(1) and 771(15), the express language of the former must control the general language of the latter. NSK contends further that the SAA confirms that sales below cost are a special, separate category of non-ordinary-course-of-trade sales to which *CEMEX* can not be applied.

NTN states that the *CEMEX* decision should have no impact on the current reviews because it did not address the issue of below-cost sales. NTN asserts further that the CAFC made no mention of section 773(b)(1) of the Act which requires the Department to use CV when it has disregarded below-cost sales from the calculation of normal value. In conclusion, NTN contends that, based on the aforementioned section of the law, if all sales of identical merchandise are found to have been sold below cost, as is the case in the current reviews, no sales of like product remain in the ordinary course of trade and the Department should base normal value on CV.

SKF France, SKF Germany, and SKF Italy contend that the Department should adhere to the policy set forth in the *CEMEX* decision and, as such, should resort to finding similar merchandise as a basis for determining normal value rather than CV in instances where normal value can not be based on identical merchandise in the home market.

Department's Position: The Department has reconsidered its practice as a result of the *CEMEX* decision and has determined that it would be inappropriate to resort directly to CV as the basis for normal value if the Department finds sales of the most similar merchandise to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of other similar merchandise, if such sales exist. The Department will use CV as the basis for normal value only when there are no above-cost sales of a foreign like product that are otherwise suitable for comparison.

In response to NSK's comments, the Court stated in *CEMEX* that ''[t]he language of the statute requires Commerce to base foreign market value on nonidentical but similar merchandise * * *, rather than constructed value when sales of identical merchandise have been found to be outside the ordinary course of trade.'' *See CEMEX* at 904. There was no cost test in *CEMEX* and *CEMEX* was under the pre-URAA statute. However, under the URAA, below-cost sales in substantial quantities and within an extended period of time are outside the ordinary course of trade and we disregard them from consideration. Therefore, in order to be consistent with *CEMEX* for these final results, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market that were comparable to merchandise within the scope of each order and which were sold in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Only where there where no sales of foreign like product in the ordinary course of trade did we resort to CV.

Comment 2: Barden argues that the Department does not have the authority to conduct a sales-below-cost test with respect to Barden because the Department can not use the results of a prior below-cost investigation which the Department has acknowledged was unlawful to conclude that it has ''reasonable grounds to believe or suspect'' that sales in the home market have been made below COP in these reviews. As such, Barden requests that the Department restore all disregarded home-market sales and recalculate the margin accordingly.

Torrington disagrees with Barden and asserts that the Department acted correctly by using COP data Barden submitted both to test whether home-market sales were above COP and to calculate profit for CV on the basis of above-cost sales. Torrington claims further that the Department is entitled to use COP data voluntarily placed on the record and, therefore, a respondent may not submit data voluntarily and then insist that the Department can not use it. Torrington claims that Barden does not argue that its COP data can not be used because it is in error, unreliable, or

incomplete. As such, the petitioner believes that section 773(b) of the Act authorizes the Department to consider and use the COP data submitted, both to test home-market prices and to calculate CV profit.

Department's Position: We have reconsidered the original decision to initiate a below-cost investigation for Barden in this review. In *FAG (U.K.) Ltd.* v. *United States,* Consol. Court No. 97–01–00063–SI *(FAG–U.K.),* reviewing the results of *AFBs 5,* the Department has acknowledged that, ''prior to conducting the test, Commerce had no reasonable belief that Barden's ball bearings were sold at below cost.'' Therefore, we conceded that we had applied the below-cost test to Barden in the 1993–1994 administrative review unlawfully, and, accordingly, we have requested a partial remand to rescind the COP investigation for that POR. Since our initiation of cost investigations in subsequent reviews were based on the results of our below-cost test in the 1993–1994 administrative reviews, we have concluded that our initiation of cost investigations in the current administrative reviews was unjustified. However, since the petitioner was precluded from filing cost allegations prior to the 120-day deadline due to our earlier decision to initiate these cost investigations, we allowed the petitioner to file cost allegations after our normal deadline. *See* the Department's letter dated April 2, 1998. We have now accepted Torrington's April 13, 1998 cost allegation and have performed a below-cost test of Barden's home-market sales for these final results. *See* Cost-Allegation Memorandum, dated May 1, 1998.

Comment 3: SKF France argues that the Department conducted a below-cost test of home-market sales for its SPB transactions improperly. SKF France notes that the Department has never initiated a test of sales below cost for SPBs. SKF France also contends that the Department should not use its reported costs in the calculation of profit for CV. SKF France contends that the data should only be used to test its reported variable costs of manufacture.

Torrington counters that the Department should continue to use SKF France's reported cost data. The petitioner states that the CIT has affirmed the Department's authority under the statute to consider and use submitted cost data both to test home-market prices and to calculate CV profit, citing *NSK Ltd.* v. *United States,* 969 F. Supp. 34 (1997).

Department's Position: We agree with SKF France that we were incorrect in conducting a test to determine whether it made home-market sales of SPBs below COP. We stated in *FAG U.K.* (*see* our response to Comment 2 above) that it is improper to examine whether sales are being made below COP unless we have received an allegation to substantiate such an examination or have disregarded below-cost sales in the most recent segment of the proceeding. Since we did not receive such an allegation in this review and have not disregarded below-cost sales in prior reviews, we have not conducted a below-cost test of SKF France's sales of home-market SPBs for these final results. We disagree with SKF France, however, that we should not use reported costs to determine profit for CV. Although we have flexibility to use alternate methods to determine profit for CV, our stated preference is to calculate profit on the sales of the foreign like product. Therefore, since SKF France submitted such data voluntarily, we have continued to use SKF France's reported costs for the calculation of CV profit of SPBs for these final results.

4.B. *Profit for Constructed Value.* Subparagraph (A) of section 773(e)(2) of the Act sets forth the preferred method for determining the amount of profit to be included in CV, and subparagraph (B) of the same section sets forth three alternative CV-profit calculation methods for use when the actual data are not available with respect to the amounts described in subparagraph (A). For all respondents, except Torrington Nadellager, in the preliminary results of these administrative reviews we calculated CV profit in accordance with the preferred method set forth under section 773(e)(2)(A) of the Act. For Torrington Nadellager, we calculated CV profit using the alternative methodology set forth under section 773(e)(2)(B)(iii).

Comment 1: FAG Italy and Barden argue that the Department has not calculated CV profit as required by section 773(e)(2)(A) of the Act since the actual calculations encompass multiple foreign like products, *i.e.,* all AFB models within the order-specific subject merchandise that were reported in the foreign-market sales databases as potential matches to U.S. sales. The respondents assert that, if the Department is going to calculate CV profit based on multiple foreign like products, it must perform the calculation in accordance with one of the three alternative methodologies set forth in section 773(e)(2)(B) of the Act.

The respondents assert that section 773(e)(2)(B)(i) of the Act provides for a CV-profit calculation methodology that is, for the most part, similar to the one the Department used. However, the respondents claim that, unlike the Department's methodology, section 773(e)(2)(B)(i) does not specifically limit the calculation of CV profit to sales in the ordinary course of trade. The respondents suggest that, since sections 773(e)(2)(A) and (2)(B)(ii) of the Act contain specific language to limit the CV-profit calculation to sales in the ordinary course of trade, the Department should interpret the lack of specificity under section (2)(b)(i) as not requiring such a limitation. As support for this position, the respondents cite to *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 12 F.3d 398, 401 (CAFC 1994) (*Portland Cement*), in which the Court stated that ''(w)here Congress has included specific language in one section of the statute but has omitted it from another, related section of the same Act, it is generally assumed that Congress intended the omission.''

Torrington asserts that the Department has calculated CV profit in accordance with section 773(e)(2)(A) of the Act. Torrington contends that it is not necessary therefore to use one of the alternative CV-profit calculation methodologies as suggested by the respondents.

Department's Position: We agree with Torrington. As we stated in *AFBs 7* at 54062, we believe that an aggregate calculation that encompasses all foreign like products under consideration for normal value represents a reasonable interpretation of section 773(e)(2)(A) of the Act. Moreover, we believe that, in applying the preferred method for computing CV profit under section 773(e)(2)(A) of the Act, the use of aggregate data results in a reasonable and practical measure of profit that we can apply consistently in each case. By contrast, a method based on varied groupings of foreign like products, each defined by a minimum set of matching criteria shared with a particular model of the subject merchandise, would add an additional layer of complexity and uncertainty to antidumping duty proceedings without necessarily generating more accurate results. It would also make the statutorily preferred CV-profit method inapplicable to most cases involving CV. *See* the preamble to our new regulations at section 351.405.

As noted above, we believe that our calculation of CV profit is in accordance with section 773(e)(2)(A) of the Act and, therefore, we disagree with respondents' assertion that our methodology for calculating CV profit is most similar to the first alternative methodology

described under section 773(e)(2)(B)(i) of the Act. However, we agree with the respondents' assertion that we should interpret the lack of a specific reference to sales in the ordinary course of trade under section 773(e)(2)(B)(i) of the Act as requiring that we not limit the CV-profit calculation under this method to sales in the ordinary course of trade. We addressed this issue in the preamble of our new regulations (*see* section 351.405), stating that, ''(w)ith respect to the other alternative profit methods authorized by section 773(e)(2)(B), the Department believes that the absence of any ordinary course of trade restrictions under the first alternative (subsection (i)) is a clear indication that the Department normally should calculate profit under this method on the basis of all home-market sales, without regard to whether such sales were made at below-cost prices.'' Therefore, for these final results we have used all sales under consideration for normal value and in the ordinary course of trade as the basis for calculating CV profit.

Comment 2: NSK argues that the Department must calculate CV profit on a model-specific or family-specific basis. Acknowledging that in prior segments of these proceedings the Department rejected arguments in support of such a methodology, NSK suggests that the issue be revisited in light of the recent CAFC decision in *CEMEX*. NSK suggests that the Department's calculation of CV profit based on the aggregation of data that encompasses all foreign like products under consideration for normal value is unlawful in light of the statutory requirement that the calculation of CV profit be limited to actual amounts for a ''foreign like product'' (NSK claims that a foreign like product as defined by section 771(16) of the Act is a category of merchandise that is narrower than the pre-URAA class-or-kind definition). In conclusion, NSK suggests that its proposed methodology for the calculation of CV profit would improve the accuracy of the margin calculations by more closely approximating price-to-price comparisons.

Torrington disagrees with NSK and asserts that the justification the Department provided for using this methodology in the last segment of these proceedings is still valid. Torrington suggests that the Department's interpretation of section 773(e)(2)(A) is reasonable on the basis that the law did not specify how the term ''foreign like product'' is to be applied in the context of calculating CV profit. Torrington contends that there is no reason that the term ''foreign like product'' can not have different applications for different purposes in the same statute. Noting that section 773(e)(2)(A) of the Act is the preferred method for calculating profit, Torrington asserts that NSK's narrow reading of the statute would render the ''preferred'' method useless in most situations involving CV. Furthermore, Torrington asserts that the Department could never apply the alternative CV-profit calculation methodology in section 773(e)(2)(B)(ii) of the Act if it were to adopt NSK's reading of the statute. Finally, Torrington argues that NSK's reliance on the Court's decision in *CEMEX* is misplaced because the decision dealt with a different issue.

Department's Position: We disagree with NSK for the reasons we stated in *AFBs 7* at 54062 and our response above to Comment 1 of this section. Therefore, we have not changed our CV-profit calculation methodology for the final results of these reviews. Regarding NSK's assertion that we should re-examine the issue in light of the CAFC's recent decision in *CEMEX*, we agree with Torrington that NSK's reliance on that decision is misplaced. The Court's decision in *CEMEX* dealt with how to determine foreign market value when there were home-market sales which were outside the ordinary course of trade. *See* our response to Comment 1 of section 4.A. above.

Comment 3: SNFA U.K. argues that, using its ten-transaction home-market sales listing to calculate CV profit is improper (the ten transactions comprise sales of models that are potential identical or similar matches to those models of subject merchandise sold to the United States during the POR). SNFA U.K. claims that the ten transactions account for a small percentage of its total home-market sales of BBs during the POR. The respondent asserts that relying on this limited reporting to calculate profit for CV does not yield a fair and representative result and ignores the economic reality of SNFA U.K.'s actual overall profit experience. The respondent asserts further that the average profit for one bearing model drives the profit rate for the entire limited database. SNFA U.K. argues that such a result is contrary to the Department's policy, noting that the Department stated in the preamble to its new regulations at section 351.405 that ''the sales used as the basis for CV profit should not lead to irrational and unrepresentative results.''

SNFA U.K. asserts that, in recent cases, the Department has resorted to more accurate data submitted on the record. SNFA U.K. cites *Certain Stainless Steel Wire Rods From France: Final Results of Administrative Review*, 62 FR 7206 (February 18, 1997) *(Certain Stainless Steel Wire Rods)*, and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Antidumping Administrative Review*, 61 FR 56514 at 56514 (November 1, 1996) *(Lead and Bismuth Carbon Steel Products)* to support its argument.

SNFA U.K. contends that the CIT and CAFC have rejected the use of data that leads to clearly anomalous and unrepresentative results. To support this, SNFA U.K. cites *CEMEX*, at 901, stating that the Court upheld the Department's exclusion of certain sales in the calculation of CV profit because the (much lower) profit level of these sales indicated that they were distortive and outside the ordinary course of trade. SNFA U.K. asserts that what is most important is that the Court stated that ''these sales represent a minuscule percentage of CEMEX's total sales of cement, a fact that indicates that they were not in the ordinary course of trade'' (id). SNFA U.K. also cites *Fabrique de fer de Charleroi S.A.* v. *United States, et al.*, 1998 CIT Lexis 53, Slip Op. 98–4 (CIT 1998) (*Fabrique*), in which the Court directed that unusually high-priced sales be excluded from the calculation of CV profit where the sales were ''but a fraction of sales'' made in the home market and led to unrepresentative results. (*Id.* at * 13.)

Finally, SNFA U.K. argues that section 771(16)(A) of the Act defines ''foreign like product'' as ''subject merchandise *and* other merchandise which is identical in physical characteristics with * * * that [subject] merchandise'' (emphasis added). Citing section 771(25) of the Act, SNFA U.K. continues that subject merchandise is in turn defined as ''the class or kind of merchandise that is within the scope of an investigation.'' SNFA U.K. asserts that the Department's June 20, 1997, AFBs questionnaire (at Appendix I–7) supports this definition and contends that the Department itself has held in other cases that ''(f)or purposes of calculating CV and CEP profit, we interpret the term ''foreign like product'' to be inclusive of all merchandise sold in the home market which is in the same general class or kind or merchandise as that under consideration,'' citing *Final Determination of Sales at Less than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139, 38145–38147 (July 23, 1996).

SNFA U.K. requests that the Department use the profit rate that it calculated and submitted in its

questionnaire response which is based on audited financial data for home-market sales of subject merchandise. SNFA U.K. contends that its profit calculation is supported under section 773(e)(2)(A) of the Act.

Torrington argues that the fact that the home-market transactions used to calculate CV profit involve sales of high-tech merchandise does not render the profit unrepresentative but, rather, duly reflects the nature of SNFA U.K. as a producer of high-tech bearings. Torrington points out that, in *AFBs 6* at 2114, the Department rejected a similar argument by FAG Germany and FAG Italy on the basis that nothing in the statute or SAA required the Department either to identify bearings with equivalent commercial values or to limit the profit levels observed on home-market sales. Therefore, Torrington concludes, the Department should not modify its calculation of CV profit in this case.

Department's Position: We agree with Torrington and, consistent with our practice in these proceedings, have continued to calculate CV profit using all foreign-like products under consideration for normal value, which is in accordance with the preferred methodology set forth under section 773(e)(2)(A) of the Act. *See* our response to Comment 1 of this section.

First, we do not find the respondent's submitted profit information to be an appropriate basis for determining CV profit. Although the respondent calculated and reported an alternative profit rate in its questionnaire response, it did not explain why it was providing this information at the time of submission or at any time during which additional factual information could reasonably be sought. It was not until the submission of its case brief that SNFA U.K. took issue with our usual practice for calculating CV profit and proposed using its alternative profit rate. By waiting until this late date in these reviews to claim that we should use SNFA U.K.'s alternative data, SNFA U.K. precluded our ability to seek additional information about its claimed profit rate. In particular, we did not have an opportunity to obtain necessary record evidence to establish the accuracy of the alternative profit rate (*e.g., a* reconciliation of the alternative profit rate with SNFA U.K.''s audited financial statements). Because we did not have an opportunity to obtain necessary record evidence regarding SNFA U.K.'s alternative profit rate, we can not consider using this information.

Furthermore, we disagree with SNFA U.K. that our CV-profit calculation is improper. In support of its argument, SNFA U.K. cites to the preamble of our new regulations where we stated that ''the sales used as the basis for CV profit should not lead to irrational and unrepresentative results.'' *See* preamble at section 351.405. This is an accurate statement of our policy, even before the adoption of these regulations. However, in deciding whether certain sales used as the basis for CV profit lead to irrational and unrepresentative results, we must consider the specific facts and circumstances surrounding the transactions. Furthermore, this is an issue that must be examined on a case-by-case basis, and the burden of showing that certain profits earned are ''abnormal,'' or otherwise unusable as the basis for CV profit, rests with the party making the claim. *See* preamble at section 351.405. Proof that the profits a respondent earned on specific sales are abnormal will depend on a number of factors. These factors include the type of merchandise under investigation or review and the normal business practices of the respondent and of the industry in which the merchandise is sold. In this respect, SNFA U.K. argues that it reported a few home-market sales which consist of some specialty, high-priced bearings that are rarely sold in the home market, but SNFA U.K. has not claimed that certain transactions in the home-market sales listing are outside the ordinary course of trade. Based on our analysis of the home-market sales listing and other information on the record, it appears that all of the reported models have a relatively high profit margin and that these high-profit home-market sales (reported by SNFA U.K. as potential identical or similar matches to those models of subject merchandise sold to the United States during the POR) meet the requirements for calculating CV profit in accordance with the preferred methodology set forth under section 773(e)(2)(A) of the Act.

In the respective final determinations for *Certain Stainless Steel Wire Rods* and *Lead and Bismuth Carbon Steel Products,* we acknowledged that, in the respective preliminary results, we had erred in each case by calculating the profit ratio multiplied by COP to derive CV profit. Initially, we calculated the profit ratio by computing a profit percentage for each home-market sales transaction and then weight-averaged the percentages by quantity. We later revised our calculation to derive the profit ratio by dividing total home-market profit by total home-market costs which is consistent with our normal methodology. However, this recalculation was not a result of too few home-market sales transactions or, as suggested by respondents, a ''micro-calculation'' which caused serious distortion in the profit rate. In fact, we derived the profit ratio for SNFA U.K. in the same way we derived the corrected profit ratio in the cases cited above by dividing the total home-market profit by total home-market costs.

In *CEMEX,* the CAFC supported the Department's decision to exclude certain types of cement sold in the home market from the margin calculations because there was substantial evidence on the record to support that the sales were outside the ordinary course of trade. The substantial evidence upon which we relied was that (1) the sales represented a minuscule percentage of total home-market sales, (2) shipping arrangements departed significantly from the standard industry practice in the home market which resulted in a significantly low profit margin, and (3) the sales were of a promotional quality which differentiated them from other products. *See CEMEX* at 133 F.3d at 901. With respect to SNFA U.K., again, the respondent did not provide substantial evidence on the record for the Department to determine whether sales of any of the models that SNFA U.K. claims were designed for special use were outside the ordinary course of trade. Furthermore, sales of these specially designed bearings do not represent a minuscule percentage of the total home-market sales reported in SNFA U.K.'s sales listing. In fact, these so-called specialty bearings account for most of SNFA U.K.'s reported home-market sales. At any rate, the simple fact that these products represent a small portion of total home-market sales alone does not render the sales outside the ordinary course of trade. In *CEMEX*, the Court cited *Murata Mfg. Co.* v. *United States,* 820 F. Supp. 603, 607 (CIT 1993), and stated that the Department must evaluate not just ''one factor taken in isolation but rather * * * all the circumstances particular to the sales in question.'' Here, after evaluating all the circumstances particular to the sales in question, we do not find that the transactions are outside the ordinary course of trade.

Finally, we do not find SNFA U.K's reliance on *Fabrique* persuasive. While in *Fabrique* the CIT found that the inclusion of profit on certain home-market sales for the calculation of CV profit extrapolated the average profit ''out of realistic and rational proportion'' (*Fabrique* at *16), we believe the facts of that case differ significantly from the present case. In *Fabrique,* the CV-profit calculation was affected by home-market sales of ''Z-

type product,'' a type of merchandise that the respondent did not sell in the United States. *Id.* at * 3–4. In the present case, SNFA U.K. is objecting to the inclusion in the CV-profit calculation of the home-market sales of merchandise it reported as potential identical or similar to matches to merchandise it sold in the United States. For this reason, we do not find *Fabrique* to be persuasive.

We note that the cases SNFA U.K. cites are pre-URRA cases in which profit was required to be calculated on the general class or kind of merchandise sold in the country of exportation. Under the new law, we are directed to calculate, where possible, profit in connection with the production and sale of the foreign like product made in the ordinary course of trade. In other new-law cases, we have interpreted this to mean the specific products reported for use as normal value for purposes of the CV-profit calculation. We discussed this in *AFBs 7* at 54062 and in our response to Comment 1 of this section. Therefore, our calculation of SNFA U.K.'s profit based on its reported sales is consistent with our past practice. Since SNFA U.K. has not demonstrated that its high-profit sales were outside the ordinary course of trade, we have continued to use them in our profit calculation for CV.

Comment 4: Barden argues that, in the absence of a valid sales-below-cost investigation (*see* Comment 2 of Section 4.A. above), the Department should deem all of its home-market sales as sold in the ordinary course of trade and, therefore, use all of the transactions to calculate CV profit.

Torrington disagrees with the Barden. Torrington contends that the Department was correct to eliminate sales below cost from the home-market sales database before calculating CV profit.

Department's Position: As we noted in our response to Comment 2 of Section 4.A. above, for the current segment of the proceedings we believe that we are justified in performing a sales-below-cost examination of Barden's reported home-market sales. Therefore, for the final results of reviews, in calculating the Barden's CV profit, we have continued to eliminate home-market sales that we disregarded because they were sold at below-cost prices and thus, not in the ordinary course of trade. This CV-profit calculation methodology is in accordance with the preferred method set forth under section 773(e)(2)(A) of the Act.

Comment 5: Citing to the CAFC's ruling in *CEMEX*, Barden argues that sales with abnormally high profits, or sales in small quantities, must be excluded from the calculation of CV profit on the basis that such transactions are outside the ordinary course of trade. Barden notes that the CAFC upheld the Department's decision to exclude from the calculation of CV profit two types of cement products on the basis that the ''profit margin on these types was significantly lower than * * * profits on other cement types,'' citing *CEMEX* at 901. Regarding sales in small quantities, Barden asserts that in *CEMEX* and in the CIT's ruling in *Mantex* v. *United States*, 841 F. Supp. 1290, 1307–08 (CIT 1993) (*Mantex*), the courts observed that a low volume of sales of certain products being examined demonstrates that such transactions are outside the ordinary course of trade.

In light of the above court rulings, Barden suggests that for the final results the Department perform a special analysis of profit and sales volume of transactions in the home-market database to determine whether certain sales fall outside a mean profit/quantity amount and thus outside the ordinary course of trade.

Torrington does not agree with Barden's argument that high-profit sales should be excluded from the calculation of CV profit. Torrington notes that, in *AFBs 7* at 54065, the Department rejected similar arguments in which the respondents claimed that section 773(a)(1)(B) of the Act and the Department's new regulations at 351.102(b) require that sales with abnormally high profits be treated as outside the ordinary course of trade. Torrington asserts that the ruling in *CEMEX* is different from the issue at hand here because the Department found ''unique or unusual characteristics,'' apart from differences in profit margins, which rendered the sales outside the ordinary course of trade. Torrington contends that, since there is no such evidence in this case, no modification should be made for the final results.

Department's Position: We disagree with Barden. First, we believe that the circumstances surrounding the CAFC's ruling in *CEMEX* are different from the circumstances here. As Torrington notes, in *CEMEX* we found ''unique or unusual characteristics,'' apart from differences in profit margins, that rendered the sales outside the ordinary course of trade. These characteristics include sales in a niche market and shipping arrangements that differ significantly from standard industry practice. Here, we find that there is not substantial evidence on the record to justify such a determination.

Rather than supporting its argument by citing to record evidence or presenting an analysis based on its reported home-market sales, Barden merely claims that sales with abnormally high profits or sales in small quantities should be found to be outside the ordinary course of trade. Barden attempts to place the burden of substantiating its arguments upon the Department, suggesting that the Department must develop special tests regarding profit and sales volume on the reported home-market sales transactions in order to determine whether such sales are outside the ordinary course of trade. Implementing such a suggestion would cause unnecessary delays in these reviews and impose an inappropriate burden upon the Department. As we stated in the preamble of the new regulations at section 351.405 (page 27358), the burden of showing that profits earned on above-cost sales are abnormal (or otherwise unusable as the basis for CV profit) rests with the party making the claim. If Barden wanted particular sales to be disregarded in the calculation of CV profit, it bore the burden of providing substantial record evidence and analysis to justify excluding those sales. Barden has not met that burden.

We also disagree with Barden's assertion that the courts' rulings in *CEMEX* and *Mantex* support a determination, here, that certain sales in small quantities should be excluded from the calculation of CV profit on the basis that such transactions are outside the ordinary course of trade. As noted above, the burden of establishing that a particular sale (or grouping of sales) is outside the ordinary course of trade rests on the party making the claim. Barden has not provided evidence to substantiate its claim that the sales in question are outside the ordinary course of trade.

Accordingly, we have not altered our calculation of Barden's CV profit for the final results of these administrative reviews.

4. C. *Affiliated-Party Inputs.*

Comment: The petitioner argues that the Department should use the higher of transfer price or actual costs for all NTN affiliated-party inputs. Specifically, the petitioner states that, pursuant to section 773(f)(2) of the Act, the Department should reject NTN's transfer values not meeting the arm's-length test, just as the Department did in *AFBs 7* (at 54065). Torrington makes the additional argument that, due to the circumstances involved (*see* proprietary case brief dated March 16, 1998), the Department should apply facts available in

accordance with the same methodology used in seventh review.

NTN contends that the Department should accept NTN's reported transfer prices for affiliated-party inputs because they reflect market values accurately and that use of facts available is not appropriate. NTN states that it realizes that sections 773(f)(2) and (3) of the Act instruct the Department to disregard certain affiliated-party transactions. However, the respondent emphasizes that these provisions do not apply to the factual situation at hand. NTN claims that there is no record evidence that its affiliated-party input transactions did not reflect arm's-length prices. Moreover, NTN argues that, even if a company sells an input at less than its cost of production, it does not follow that the transfer price is not reflective of a fair market price. NTN then argues that section 773(f)(3) of the Act applies only to ''major inputs.'' Thus, the company believes that the Department's decision in the preliminary results is incorrect because it applied the major-input rule to minor inputs NTN obtained from affiliates. NTN also states that the Department made a ministerial error in its preliminary results by applying section 773(f)(3) of the Act to services provided by affiliates. NTN believes that the Department did not intend to apply the major-input rule to these transactions.

Department's Position: We disagree with NTN that we should accept in all instances its reported transfer prices for transactions between affiliates. Pursuant to section 773(f)(3) of the Act, in the case of a transaction between affiliated persons involving the production of a major input, the Department may consider whether the amount represented as the value of the major input is less than its cost of production. In addition, section 351.407 of the Department's new regulations states that, for purposes of section 773(f)(3) of the Act, the value of a major input purchased from an affiliated person will be based on the higher of: (1) the price paid by the exporter or producer to the affiliated person for the major input; (2) the amount usually reflected in sales of the major input in the market under consideration; or (3) the cost to the affiliated person of producing the major input. We have relied upon this methodology in past AFB reviews as well as in other cases. *See, e.g., AFBs 7* at 54065, *AFBs 6* at 2117; *Final Results of Antidumping Duty Administrative Review; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 62 FR 18449, 18457 (April 15, 1997).

In this case, in our COP questionnaire we asked NTN to provide a list of the major inputs it received from affiliated parties which it used to produce the merchandise under review. NTN responded to the question by directing us to several exhibits. These exhibits listed the inputs NTN considered to be major inputs and provided the respective transfer prices and cost information for the inputs. We examined this information and determined that in some instances the company's reported transfer prices were less than their respective COP. As there were no other market prices available in most instances, we restated NTN's COP and CV in the instances where the affiliated supplier's COP for inputs used to manufacture the merchandise under review was higher than the transfer price.

In this regard, we disagree with NTN's contention that we misapplied section 773(f)(3) of the Act. This section governs the valuation of major inputs. NTN provided information regarding the cost of major inputs it used in manufacturing the subject merchandise; it was reasonable to rely upon the costs of producing these inputs which NTN provided. Therefore, the Department applied section 773(f)(3) correctly for purposes of determining COP and CV for these final results.

Furthermore, we disagree with NTN's allegation that we applied the major-input rule incorrectly, as described above, to processes performed by affiliates in the preliminary results. We intended to apply the the major-input rule to processes performed by affiliates because section 773(f)(3) of the Act directs us to examine the costs incurred for transactions between affiliated persons. These transactions may involve either the purchase of materials, subcontracted labor, or other services.

Finally, we did not find it necessary to use facts available in applying the major-input rule as we did in our previous review of NTN (*see AFBs 7* at 54065) and as suggested by the petitioner for these reviews. NTN provided the necessary information to restate costs appropriately.

4.D. *General, Selling, and Administrative Expenses. Comment:* The petitioner contends that NTN did not include in its calculation of COP and CV the bonus payments it made to its board of directors and auditors. Torrington notes that, in the normal course of business, NTN treats these payments as direct reductions to the company's retained earnings. However, the petitioner believes NTN should include these bonus payments in COP and CV in the same manner as any other current personnel expense. To adjust for this omission, the petitioner first suggests that the Department allocate the omitted cost exclusively to the merchandise under review. Second, Torrington suggests that the Department re-characterize all other reductions to ''retained earnings'' as current expenses because NTN apparently uses ''retained earnings'' to pay current expenses.

NTN counters that it excluded the bonuses distributed from retained earnings from its COP and CV calculations appropriately. NTN argues that the Department has determined on numerous occasions that these type of bonuses are similar to dividend payments and, accordingly, are not production costs, citing *Final Results of Antidumping Duty Review of Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan*, 57 FR 4951, 4957 (February 11, 1992), and *Final Results of Antidumping Administrative Review of Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan*, 56 FR 41508 (August 21, 1991). Furthermore, NTN argues that these bonuses should not be considered as a personnel expense because the payments are not for contractual remuneration, the disbursement is a distribution from retained earnings, and the company makes this distribution when it deems it appropriate.

Department's Position: We agree with the petitioner that these bonus payments which NTN distributed through its retained earnings represent compensation for services provided to the company. Therefore, in accordance with section 773(f)(1)(A) of the Act, we believe that it is appropriate to include these amounts in the calculation of COP and CV. Moreover, including this type of bonus payment in COP and CV is consistent with our treatment of this type of retained-earnings bonus distributions in the *Final Determination of Sales at Less Than Fair Value; Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8921 (February 23, 1998). In that proceeding, we determined that the amounts distributed by the respondents represented compensation for services which the individual had provided the companies. In the *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria*, 60 FR 33551, 33557 (June 28, 1995), and the *Final Results of Antidumping Duty Administrative Review of Porcelain-on-Steel Cookware from Mexico*, 62 FR 25908, 25914 (May 12, 1997), we also made similar determinations. In both instances, we determined that the respondents' bonuses and profit-sharing

distributions were forms of compensation and not dividends. Hence, we disagree with NTN's classification of these payments as dividends and its claim that the inclusion of these amounts in COP and CV contradicts our normal practice. We have revisited this issue in more recent cases and, based on a more thorough analysis, revised the position that we took in the TRBs decisions NTN cited.

As to the petitioner's suggestion that this bonus distribution only relates to the production of subject merchandise, we disagree. We found that this distribution relates to the administrative activities of the company as a whole and should be treated as such because it is not specific to the manufacture, design or sale of the product under review. We also disagree with petitioner's suggestion that it is necessary to include all other reductions made to ''retained earnings'' in the calculation of COP and CV. We reviewed the information on the record and found no evidence to suggest that NTN's other retained-earning distributions related to current expenses of the company. As for revising NTN's reported costs, we reviewed the information on the record and noted that the excluded amount is insignificant in this instance; inclusion of this bonus in the calculation of the dumping margins would have a minuscule effect on the final margin calculations. Therefore, while our policy is to include such amounts in our calculations because it has no effect on the final margins, for these final results, we have not included the bonus payments that NTN distributed from its retained earnings to its board of directors and auditors.

4.E. *Cost Variances. Comment*: The petitioner argues that the Department should restate NTN's reported cost variance to conform with variances reported in the company's normal books and records. The petitioner alleges that NTN is manipulating its reported COP and CV because it calculated its reported variances inconsistently. According to the petitioner, NTN calculated some of its models' variances based on product-specific costs while others were based on general plant-wide costs. Torrington asserts that the Department's acceptance of respondent's different calculation methods allows respondent too much potential for cost manipulation. Thus, petitioner suggests that the Department rely on the variances NTN calculated in the normal course of business.

NTN does not object to the Department's use of the company's variances calculated in the normal course of business. However, NTN points out that it only recalculated its submitted variances to conform voluntarily with previous Departmental decisions on this issue. Consequently, NTN does not believe that a revision of its reported COP and CV is necessary.

Department's Position: We disagree with the petitioner that the variances NTN used in the calculation of COP and CV distort model-specific costs. In *AFBs 4* at 10928, the Department determined that NTN's application of a plant-wide variance shifted costs unreasonably between products. Moreover, the Department found that the cost-accounting system the company used in the ordinary course of business maintained the necessary data to calculate more specific variances. Since completion of that administrative review, we have required NTN to compute its reported variances on the more specific basis when calculating COP and CV. For the instant reviews, we found NTN's more-specific variance computations reasonable because they allocate costs to products under review accurately. We also found that NTN only applied plant-wide variances to those models that it manufactured in facilities dedicated to producing only a single product type. If a facility produced more than one product type, NTN calculated and applied product-specific variances. At verification, we reviewed and tested NTN's method of calculating its product-specific variances (*see Memorandum from Stan Bowen to Chris Marsh*, pages 14, 15, 16, and related cost-verification exhibits (January 30, 1998)). The following is a summary of the verification steps we performed: (1) we reconciled NTN's submitted variances to source accounting records; (2) we confirmed that NTN calculated the submitted variances in the same manner as the variance calculated in the normal course of business; (3) we reconciled NTN's product-specific variances to respective plant-wide variances used in the normal course of business; (4) we confirmed that NTN grouped physically similar models when calculating its product-specific variances; and (5) we confirmed that NTN used the same method of calculating its various product-specific variances consistently. Our testing and review noted no exceptions. Therefore, for these final results, we have accepted NTN's product-specific variances and used them to calculate NTN's COP and CV.

5. Further Manufacturing

Comment: NSK–RHP argues that the Department erred when it did not apply the ''special rule'' for NSK–RHP's further-manufactured merchandise. NSK–RHP asserts that the Department erred when it used its traditional value-added methodology based on respondent's Section E data. NSK–RHP maintains that the weighted-average entered value of merchandise subject to further manufacturing is less than 35 percent of the net selling price to its unaffiliated U.S. customer; thus, it contends, these sales qualify for the special rule. NSK–RHP asserts further that there is a sufficient quantity of U.S. sales of finished bearings to provide a reasonable basis for comparison.

Torrington responds that the Department's rejection of the special rule was a proper exercise of its discretion. Torrington argues that the Department retains the authority to both employ and excuse Section E data as the basis of its further-manufacturing analysis. The Department need not modify the preliminary results with regard to the further-manufactured products, Torrington maintains, since calculating the value added clearly did not impose an added burden upon the Department.

Department's Position: We agree with the petitioner. As we stated in our new regulations, the special rule for further manufacturing exists in order to reduce the Department's administrative burden. 62 FR at 27353. *See*, also, section 772(e) of the Act, which provides that the Department need only apply the special rule where it determines that the use of such alternative calculation methodologies is appropriate. We retain the authority to refrain from applying the special rule in those situations where the value added, while large, is simple to calculate. *Id*. Respondent submitted Section E data in its questionnaire and supplemental responses. We acted within our discretion by employing this data to calculate the U.S. value added, as the calculation involves little more than the subtraction of the value-added figures which NSK–RHP provided. Thus, this case does not present the complex data-gathering and calculation burdens contemplated by the special rule.

6. Packing and Movement Expenses

6.A. *Repacking Expenses. Comment*: NSK and NSK–RHP argue that the Department should deduct U.S. repacking expenses as a movement expense. Both respondents state that U.S. repacking is an element of warehousing and as such should be classified like a warehousing expense under section 772(c)(2)(A) of the Act of 1930. NSK and NSK–RHP also contend that the Department's reasoning as expounded in *AFBs 7* at 54067 is flawed: the fact that respondents would

not repack merchandise if they did not have to in order to make a sale does not make repacking expense a selling expense. NSK and NSK–RHP assert that for the final results the Department should deduct U.S. repacking as a movement charge from CEP and exclude U.S. repacking from the calculation of CEP profit.

Torrington argues that the Department should not treat U.S. repacking expense as a movement expense. It asserts that the Department's existing position is valid. Furthermore, Torrington asserts that repackaging is a function of selling. Moreover, Torrington believes that the expense is incurred by reason of the sale, which is the test for a *direct* selling expense, and cites *Torrington* at 1050. In Torrington's view, the mere fact that the above-named companies do not retain sale-by-sale records does not change this basic character of the repacking. Accordingly, Torrington concludes that the Department's *AFBs 7* determination remains valid.

Department's Position: We disagree with NSK and NSK–RHP. As NSK and NSK–RHP note, section 772(c)(2)(A) of the Act covers ''transportation and other expenses, including warehousing expenses, incurred in bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' *See* SAA at 153. We do not view repacking expenses as movement expenses. The repacking of subject merchandise in the United States bears no relationship to moving the merchandise from one point to another. The fact that repacking is not necessary to move merchandise is borne out by the fact that the merchandise was moved from the exporting country to the United States prior to repacking. Rather, we view repacking expenses as direct selling expenses respondents incur on behalf of certain sales which we deduct pursuant to section 772(d)(1)(B) of the statute, which directs us to reduce CEP by ''expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees, and warranties.''

We also disagree with NSK and NSK–RHP's characterization of repacking expense as a warehousing expense. We regard repacking expense as a direct selling expense because it was performed on individual products in order to sell the merchandise to the unaffiliated customer in the United States. Warehousing expense, on the other hand, is merely an expense associated with storing the merchandise in a location before or during the movement process. As noted above, repacking does not have to be performed in order for merchandise to be moved while warehousing may be required in the movement process. Thus, we conclude that U.S. repacking expense is an expense associated with selling the merchandise.

6.B. *Inland Freight. Comment 1:* Torrington contends that the Department should reject the home-market inland-freight expenses which SKF Italy, SKF France, SKF Sweden, Barden, Koyo, FAG Italy, and NSK–RHP reported because those expenses are distortive since respondents failed to account for modes of transportation or distances shipped. Torrington asserts that freight charges are likely to be affected by the latter factors, noting that respondents' customers are located in different parts of the domestic markets and that in some situations sea transport might have been necessary. Due to the potential for distortion, Torrington asserts that the respondents should have employed a more specific per-unit freight-cost calculation methodology. Torrington states that, since the Department's dumping analysis is transaction-specific and given that variances in freight expenses may, in part, be a function of distance, the derivation of an average freight expense using a factor based on total transport expense and total transport weights or total sales values provides over-stated freight expenses in certain instances. Torrington states further that transaction-specific reporting is feasible, as Torrington's affiliate exporting from Germany, Torrington Nadellager, demonstrated.

SKF Italy, SKF France, and SKF Sweden respond that the Department has verified the accuracy of the expense and weight components of their inland-freight factors in these and earlier reviews and found those factors to be a reasonable reflection of SKF's freight expenses. The respondents assert that the Department has broad discretion under the post-URAA statute to employ the allocation of expenses when transaction-specific reporting is not feasible, provided such allocation does not cause inaccuracies or distortions. SKF Italy, SKF France, and SKF Sweden contend that the fact that transaction-specific reporting may be feasible for Torrington Nadellager is irrelevant to a determination of whether such reporting is feasible for other respondents. Therefore, SKF Italy, SKF France, and SKF Sweden state, the Department should continue to accept their reported home-market inland-freight expenses.

Barden argues that Torrington has not demonstrated sufficiently that Barden's methodology is in fact distortive. Barden claims that it is unable to report freight amounts on a shipment-specific basis from its records and that the Department has verified this on three separate occasions, most recently in these reviews. Barden argues further that the record demonstrates that it ships a significant amount of bearings in the home market using the regular postal service. Barden asserts that all postal rates are dependent upon weight, not distance, in England.

In rebuttal, Koyo states that, as it reported in its response, its home-market freight expenses are not incurred on a distance (or weight or volume) basis. Koyo argues that the methodology which it has used in prior reviews reflects Koyo's experience of shipping to hundreds of customer locations from various Koyo warehouses and plants throughout its home market. In summary, Koyo argues that Torrington's argument regarding its home-market freight expenses should be rejected and that Koyo's freight adjustment should be accepted as in all prior reviews.

FAG Italy contends that the Department should accept its reporting methodology unless Torrington can provide evidence of distortion. FAG Italy asserts that, in accordance with the questionnaire, it allocated freight expenses on the basis incurred, *i.e.*, by weight, and contends that there is nothing on the record to suggest that freight charges are dependent upon distance. Furthermore, FAG Italy notes that in its supplemental questionnaire response it stated that freight rates are based upon weight of the merchandise and do not vary significantly based upon the customer's destination.

NSK–RHP responds that it is unable, and should not be required, to submit freight charges on a transaction-specific basis. NSK–RHP argues that it used largely its own fleet of vehicles to ship merchandise to home-market customers and that it should not be forced to maintain freight accounts in the manner of Torrington's foreign affiliate. NSK–RHP asserts that the Department has verified and accepted previously its allocation of freight expense on the basis of weight and, therefore, has recognized that freight expenses are often not incurred on a transaction-specific basis.

Department's Position: We disagree with Torrington that respondents' reported home-market inland-freight expenses should be disallowed as distortive. In the first instance, Torrington's argument about the Department's uses of a transaction-specific analysis is not thoroughly accurate. While we do initially examine transaction-specific information on home-market sales, ultimately we

calculate a weighted-average home-market price for comparison to U.S. sales. The averaging of net home-market prices has the effect of averaging the components used to calculate those net prices, including inland freight. Therefore, the use of an allocated expense would not necessarily result in a distortion of home-market prices. Respondents in different markets incur freight charges on different bases and frequently on more than one basis. These factors generally make the calculation of a transaction-specific expense infeasible and no more reasonable than the allocation techniques respondents employed for these reviews. We are satisfied that the components of respondents' reported inland-freight expenses were reported accurately and allocated reasonably for the calculation of normal value. Therefore, we have continued to use these reported expenses in our final results.

Comment 2: Torrington contends that, because NTN calculated home-market pre-sale inland-freight expenses based upon sales values, the Department should disallow this expense or, at the minimum, apply the lowest per-unit amount reported by any other Japanese respondent as a facts-available solution. Torrington states that determining this expense based upon sales value is unnecessary and yields distortive results. Torrington states further that Torrington Nadellager was able to make allocations for this expense by invoice and that other respondents should be able to do the same.

NTN states that the Department verified the reported movement expenses and found them to be accurate and, as such, it should use them for the final results. In addition, NTN states that Torrington's argument regarding Torrington Nadellager's experience is illogical. NTN states that the argument completely ignores the fact that the Department's determination must be based on the facts unique to NTN, citing *Ipsco. Inc.* v. *U.S.*, 899 F.2d 1192, 1197 (Fed. Cir. 1990).

Finally, NTN argues that the Department's decision in *AFBs 7* must apply here since there have been no changes in law or fact which would compel a different result in these reviews.

Department's Position: In these reviews, we have accepted the methodology NTN used in past reviews. We did not find it to be distortive in those reviews and do not find it distortive here. See *AFBs 7* at 54084. Furthermore, we verified NTN's methodology for these reviews and found it to be reasonable because NTN explained that it can not calculate these expenses on a transaction-specific basis (*see* verification report dated January 22, 1998, at 8). Finally, one respondent's experience or recordkeeping system can not be imposed on another respondent. Therefore, we have accepted NTN's methodology for allocating freight expenses in the present reviews.

Comment 3: Torrington asserts that SKF Sweden might have overstated the reported per-unit cost of inland freight from warehouse to customer by including freight revenue in the numerator of the factor calculation.

SKF Sweden contends that it did not overstate the reported per-unit cost of inland freight from warehouse to customer. SKF Sweden asserts that, in order to calculate the total freight expense to use as the numerator in the freight-expense factor calculation, it must sum freight expenses from two separate freight accounts, freight revenue (freight which SKF Sweden initially incurred but later charged to customers) and freight expenses. SKF Sweden notes that it reported the actual per-unit freight revenue it received from its customers separately.

Department's Position: We agree with SKF Sweden that it did not overstate the per-unit cost of inland freight from warehouse to customer. The respondent calculated the reported per-unit cost of inland freight from warehouse to customer by applying a freight factor to the weight of each bearing shipped. SKF Sweden's invoice price includes an amount for freight paid by its customers. Therefore, to calculate the freight factor, SKF Sweden added the amount of freight it ultimately incurred on its own account to the amount of freight it initially incurred but later charged to customers, and it divided the sum by the corresponding weight of all bearings shipped. Since SKF Sweden reported the amount of freight revenue it received separately in its response and we added this revenue to the unit price, we must take into account freight costs SKF billed to its customers in calculating the numerator of the freight-factor calculation. This avoids understating SKF Sweden's total freight costs. The *AFBs 7* verification report for SKF Sweden's home-market sales contains a detailed explanation of how the respondent calculated this per-unit adjustment. We have included a public version of the report as an attachment to our May 29, 1998, analysis memorandum for the final results of this administrative review for SKF Sweden.

6.C. *Ocean and Air Freight. Comment 1:* Torrington argues that the Department should not have allowed Koyo to aggregate and then allocate ocean-and air-freight costs. Moreover, the petitioner notes that Koyo made no attempt to demonstrate that the failure to report separate amounts for ocean- and air-freight expenses did not distort the reported freight costs. As such, Torrington believes that the Department should not accept Koyo's position that it does not maintain a database that permits it to trace individual transactions. In addition, Torrington asserts that the Department should reject Koyo's reporting and recalculate a separate air-freight factor.

Koyo states that nothing in its recordkeeping or data-reporting methodologies has changed from previous reviews and that the Department has verified and accepted Koyo's treatment of these expenses. Koyo contends further that nothing in its response to the Department's requests for additional information demonstrates an ability to identify air-freight shipments with specific U.S. sales.

Department's Position: We disagree with Torrington. We have found that it is generally not feasible for respondents to report air and ocean freight on a transaction-specific basis in these proceedings. *See, e.g., AFBs 7* at 54081. Where respondents were unable to report ocean and air freight separately, we have accepted aggregated international freight data. *See AFBs 6* at 2121; *see also The Torrington Company* v. *United States*, Slip Op. 97–57 at 11–14 (CIT May 14, 1997) (affirming the Department's methodology for accepting co-mingled ocean and air freight where a respondent could not report the two expenses separately). Furthermore, we note that section 351.401(g) of our new regulations provides that we may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided we are satisfied that the allocation method used does not cause inaccuracies or distortions. While the new regulations are not binding in the instant reviews, they are a codification of our practice in this area. *See* also *AFBs 7* at 54081. While we have considered Torrington's claim that aggregating and then allocating air and ocean freight is potentially distortive, we find that this allocation is not unreasonably distortive.

Because we determined that the respondent acted to the best of its ability, it would be improper to make adverse inferences about its reported data by applying facts available simply because its recordkeeping system does not record the data on a transaction-specific basis. Therefore, we have

accepted Koyo's reported air-and ocean-freight expenses.

Comment 2: Torrington argues that the Department should disallow SKF Italy's attribution of air-freight expenses to all EP sales, but it should distinguish such shipments on a transaction-specific basis. The petitioner contends that the Department should not assume that more accurate delineation of transportation expenses for EP sales is not feasible. Torrington states that the diluted attribution of the expense distorts the calculation of net prices for EP transactions. Torrington suggests that the Department increase international-freight expenses for SKF Italy's EP transactions with a factor representing the additional cost of air freight.

SKF Italy counters that it would be inappropriate for the Department to segregate and identify the expense on a transaction-specific basis, since transportation of the shipments in question is dictated by SKF's determination to maintain inventory balances rather than customer orders. SKF states that it has calculated a separate international-freight factor for EP transactions and that the Department has verified and accepted this methodology in verifications of previous responses.

Department's Position: We disagree with Torrington that SKF Italy's reporting of air-freight expenses for EP transactions distorts the calculation of net prices for those transactions. In verifications of the expense in past reviews we have found that SKF has reported it in the best manner that its records will allow. It was not feasible to tie the air shipments to specific transactions. Thus, we determined its methodology of allocating the expense to the specific customer to be a reasonable attribution of the expense to EP sales. There is no information in the record of these reviews that would indicate that the attribution of the expense is no longer reasonable. Because SKF has acted to the best of its ability, we have continued to accept SKF's reporting methodology for the final results.

7. Affiliated Parties

Comment 1: Torrington claims that the Department should apply facts available to Nachi because Nachi reported sales it made to its affiliated resellers instead of sales which the affiliated resellers made to unaffiliated customers. Citing the preamble of the Department's regulation at section 351.402, Torrington argues that the volume of sales to unaffiliated resellers is greater than the regulatory threshold that the Department considers significant. Torrington also claims that the letters Nachi's affiliated resellers provided claiming an inability to report resales are unconvincing. Citing *Fresh Cut Flowers from Colombia*, 62 FR 53287 (October 14, 1997) (*Colombian Flowers*), Torrington argues that the Department has previously required small companies to adhere to similar standards in other proceedings regardless of the computer capacity of the company involved. In addition, Torrington notes that the Department's verification report does not address whether sales to affiliated resellers were at arm's-length prices. As facts available, Torrington suggests that the Department increase dumping duties by an amount equal to the value of the sales to resellers multiplied by the applicable facts-available margin for cooperative respondents for both BBs and CRBs.

Nachi contends that it has reported its sales to the best of its ability and that the Department tested its sales to affiliated resellers to ascertain whether they were made at arm's length. Nachi argues that the verification report's silence on the issue of sales to affiliated parties indicates the Department's acceptance of the evidence Nachi submitted. In addition, Nachi contends that Torrington's citation to *Colombian Flowers* is inapposite, since the case does not establish a rule as to how much information is required to determine that a respondent with limited computer capabilities has reported information to the best of its ability. Accordingly, Nachi argues that the record of these reviews demonstrates that Nachi has reported its sales to the best of its ability and that it would be contrary to law to apply adverse facts available.

Department's Position: We disagree with Torrington that the use of facts available is warranted. The record shows that Nachi attempted to obtain downstream-sales information from its affiliates, but it was unable to do so because ''these affiliates are small companies with unsophisticated computer systems that do not permit them to retain the sales data required by the Department.'' *See* Nachi's Supplemental Questionnaire response dated November 10, 1997, at page 11 and the letters from the affiliates contained in Exhibit A/1.f of Nachi's Section A Response dated September 5, 1997. No evidence on the record contradicts this claim.

Furthermore, Torrington's citation to the preamble to the new regulations does not compel the use of facts available in this case. Although the regulation to which Torrington cites does not govern these administrative reviews, they do reflect current practice. Section 351.403(d) of the new regulations states that ''the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question.'' The preamble to the regulations at section 351.403 also states that ''we have decided to codify the Department's current practice regarding the reporting of downstream sales when the volume of sales to affiliates is small. Under our current practice, we normally do not require the reporting of downstream sales if total sales of the foreign like product by a firm to all affiliated customers account for five percent or less of the firm's total sales.'' 62 FR at 27356. Those provisions do not indicate that we will necessarily base normal value on sales by affiliates in every circumstance. Rather, the preamble states that ''(t)he Department does not believe it necessary or appropriate to require the reporting of downstream sales in all instances. Questions concerning the reporting of downstream sales are complicated, and the resolution of such questions depends on a number of considerations, including the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length.'' *Id.* Thus, while we normally require respondents to report sales by affiliates rather than sales to affiliates, we can and do make exceptions on a case-by-case basis. In this case, we have accepted Nachi's sales to affiliates *in lieu* of sales by Nachi's affiliates for the following reasons: (1) the large overall number of sales to unaffiliated customers Nachi reported; (2) the fact that the majority of sales Nachi made to affiliated customers were made at arm's-length prices (*see* the margin calculation program attached to Nachi's Final Results Analysis Memorandum dated May 12, 1998); and (3) Nachi's inability to obtain those prices from its affiliates.

Finally, we agree with Nachi that *Colombian Flowers* is inapposite. In *Colombian Flowers* we did not establish a rule that must be applied in other cases but, rather, we stated our practice of determining whether to accept a respondent's sales to its affiliates instead of sales by its affiliates on a case-by-case basis. Therefore, for these final results we have based normal value on Nachi's sales to its affiliates

where we determine that those sales were made at arm's-length prices.

Comment 2: Torrington argues that the Department should increase Nachi's dumping margin to account for certain sales Nachi made to affiliated parties but did not report to the Department. Torrington states that Nachi excluded sales to affiliates of the foreign like product in the comparison market which Nachi sold for consumption. Torrington claims that, had they been reported, a portion of these unreported sales would have been matched to U.S. sales and thus resulted in margins. Torrington suggests as facts available that the Department increase dumping duties by an amount equal to the unreported sales multiplied by the facts-available margin for cooperative respondents.

Nachi claims that the Department should accept the exclusion of these sales from its home market database because these sales were outside the ordinary course of trade. According to Nachi, the total volume of sales was extremely small and its affiliated customers purchased the bearings for the purpose of repairing machinery and not resale. Nachi also states that it made these sales at aberrant prices.

Department's Position: We agree with Torrington that Nachi should have reported certain sales made to affiliated parties. In the questionnaire, we asked all respondents to ''report (their) sales to affiliated customers that consume the foreign like product.'' *See* questionnaire dated June 20, 1997, at B–7. Nachi failed to report these sales and did not explain why it did not report these sales either in its original response or its supplemental response. The company did not claim that these sales were outside of the ordinary course of trade until its March 23, 1998, rebuttal brief, and there is no evidence on the record to demonstrate that these sales actually are outside the ordinary course of trade. In addition, Nachi was obligated to report all sales, irrespective of the number of sales being excluded, and we do not consider the ultimate use of a bearing to be a relevant factor in our dumping analysis. Because there is no information on the record concerning the kinds, quantities, or values of bearings Nachi failed to report, we are adopting Torrington's suggestion for adverse facts available.

Comment 3: Torrington contends that Koyo did not report resales by all its resellers as the Department requested in its questionnaire and urges the Department to apply facts available to all models for which Koyo did not report home-market reseller sales. Torrington states that Koyo admitted it would have been possible, but that compliance efforts would be ''out of proportion'' to the fraction of home-market sales involved.

In rebuttal, Koyo states that it consulted with the Department on this issue prior to responding to the questionnaire. Specifically, Koyo reasons that it conferred with the Department as to whether it was acceptable to report (1) its sales to certain affiliated resellers rather than the sales by those affiliates to their customers, and (2) the percentage of sales made to the affiliated resellers rather than those affiliates' resales. Koyo argues that, although the volume of merchandise involved is small, the number of transactions is enormous. Furthermore, Koyo explains that the subject affiliates do not maintain either their sales information in a computerized format consistent with Koyo's records or their sales records according to the product descriptions Koyo uses. Thus, Koyo contends that the amount of work required to collect this data would involve an amount of time that ultimately would be disproportional to the volume of sales. Koyo also states that it used the same methodology in these reviews as in the 1994/95 and 1995/96 reviews. Finally, Koyo argues that the amount of sales involved accounts for less than five percent of the firm's total sales of the foreign like product.

Department's Position: We disagree with the petitioner. Koyo notified us of its intention to report sales to affiliated customers in the home market prior to answering our questionnaire (Koyo reported its direct sales to unaffiliated customers as well). Given that the sales to certain affiliated customers, for which collecting the data regarding the resales would be a major undertaking, constituted less than five percent of Koyo's home-market sales, we agreed that Koyo could report the sales to these affiliates and that it would not be necessary to report those affiliates' resales. Furthermore, since the quantity of these sales is below the five-percent threshold as stated in the new regulations at 351.403, we determined that facts available is not warranted in this case.

8. Sample Sales/Prototypes and Zero-Priced Transactions

On June 10, 1997, the CAFC held that the term ''sold'' requires both a transfer of ownership to an unrelated party and consideration. *NSK Ltd.* v. *United States*, 115 F.3d 965, 975 (Fed. Cir. 1997) (*NSK*). The CAFC determined that samples which NSK had given to potential customers at no charge and with no other obligation lacked consideration. *Id.* Moreover, the CAFC found that, since free samples did not constitute ''sales,'' the Department should not have included them in calculating U.S. price.

In light of the CAFC's opinion, we have re-evaluated and revised our policy with respect to sales of sample products. Therefore, pursuant to the CAFC's opinion, the Department now excludes from the margin calculation sample transactions for which a respondent has established that there is no transfer of ownership and no consideration.

This new policy does not mean that the Department automatically excludes from analysis any transaction to which a respondent applies the label ''sample.'' In fact, in these reviews, we determined that there were instances where we should not exclude such alleged samples from our dumping analysis. It is well-established that the burden of proof rests with the party in possession of the needed information. *See, e.g., NTN Bearing Corporation of America* v. *United States*, 997 F.2d 1453, 1458–59 (Fed. Cir. 1993) (citing *Zenith Elecs. Corp.* v. *United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993), and *Tianjin Mach. Import & Export Corp.* v. *United States*, 806 F. Supp. 1008, 1015 (CIT 1992)). In several cases, as discussed below, respondents failed to demonstrate or to submit documentation to show that their claimed sample sales lacked consideration. When respondents failed to support their sample claim, we did not exclude the alleged samples from our margin analysis. Because the inclusion of zero-priced transactions in the home-market database would benefit respondents by lowering average normal value, however, we excluded zero-priced items from the home-market database when such unsupported transactions occurred in the home market.

With regard to home-market sales, in addition to excluding home-market sample transactions which do not meet the definition of ''sales,'' we may exclude sales designated as samples or prototypes from our analysis pursuant to section 773(a)(1) of the Act when a respondent has provided evidence demonstrating that the sales were not made in the ordinary course of trade, as defined in section 771(15) of the Act.

With regard to assessment rates, in order to ensure that we collect duties only on sales of subject merchandise, we included the entered values and quantities of the sample transactions in our calculation of the assessment rates, and we set the dumping duties due for

such transactions to zero. We have done this because U.S. Customs will collect the *ad valorem* (or per-unit, where applicable) duty-assessment rate on all entries of subject merchandise regardless of whether the merchandise was a sample transaction. However, to ensure that sample transactions do not dilute the cash-deposit margin, we excluded both the calculated U.S. prices and quantities for sample transactions from our calculation of the cash-deposit rates.

Comment 1: Torrington contends that the Department should include SKF Germany's reported home-market sample and prototype sales in the final margin calculation. Torrington argues that SKF Germany did not reply to many of the Department's requests for information to support such an exclusion (*i.e.*, comparison of prices and quantities of samples and non-samples). Torrington also submits that, in its supplemental questionnaire response, SKF Germany admitted that it did not respond to the Department's inquiries purposely because the effort to do so would be disproportionate to any potential benefit. Citing *Fujitsu*, Torrington argues that the respondents have the burden of proof to establish that the sales in question were made outside the ordinary course of trade.

SKF Germany argues that the Department should exclude its home-market sample and prototype sales. SKF Germany submits that, given the few sample and prototype sales it made, it did not find it necessary to provide detailed information to the Department's exhaustive request for information. SKF Germany posits that the Department should rely on the same information provided in these reviews as it provided in *AFBs 7*. SKF Germany also states that its three-page narrative is responsive and the identification of these sales in its sales listing should be sufficient to warrant the exclusion of such sales from the margin calculation.

Department's Position: We agree with Torrington. Our practice is to exclude home-market sales transactions that are outside the ordinary course of trade based on the circumstances particular to the sales in question. However, despite our additional request for information in our supplemental questionnaire, SKF Germany has not demonstrated that the circumstances relating to these home-market sales are outside the ordinary course of trade and, therefore, we have included them in our analysis.

Comment 2: Torrington argues that the Department should include SKF Germany's reported zero-value and non-zero-value U.S. sample and prototype sales in the final margin calculation. Torrington contends that SKF Germany did not provide all of the data, including price and quantity comparisons, necessary for the Department to determine whether such sales lacked consideration to support their exclusion from the dumping analysis.

SKF Germany rebuts that it did provide enough data to establish that its zero-priced transactions lacked consideration to support their exclusion from the dumping analysis. SKF Germany argues that, pursuant to the Department's supplemental questionnaire, it answered in detail each of the five questions in the Department's questionnaire and it provided sales, cost, price, and quantity data for all sales transactions in question. SKF Germany contends that it has provided all necessary data to support the exclusion of its zero-priced U.S. sample and prototype sales from the final margin calculation.

Department's Position: We disagree with Torrington. Based on the information provided in SKF Germany's responses, we determined that no consideration was provided for SKF Germany's reported U.S. zero-priced transactions and prototype sales. Therefore, we did not calculate a margin on U.S. sales which SKF Germany designated as zero-priced samples or prototypes.

Comment 3: Torrington argues that, since Koyo is not requesting the exclusion of any U.S. sample sales or prototype sales from the margin calculation, the Department should assume that any zero-priced U.S. sales are nevertheless for consideration and not exclude them from the database.

Koyo does not oppose Torrington's suggestion.

Department's Position: We agree with Torrington. As we noted in the introduction to this issue, the party in possession of the information has the burden of producing that information. Koyo did not answer our questions regarding the purchase history of parties receiving samples. Koyo also did not answer our questions regarding comparisons of the prices and quantities involved in sample and non-sample transactions. Lacking knowledge of the details of these transactions, we can not conclude that Koyo received no consideration for these alleged samples. Therefore, for these final results, we have included Koyo's samples sales in its U.S. sales database in calculating the margins.

Comment 4: NTN requests that the Department exclude its sample sales from its U.S. sales databases in accordance with the CAFC's ruling in *NSK*. NTN also states that, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558, 2581 (January 15, 1998), the Department stated that it had reconsidered its policy with respect to samples and would now exclude from its dumping calculations sample transactions for which a respondent has established that there is either no transfer of ownership and no consideration. Finally, NTN states that zero-priced sales, by their very nature, lack consideration.

Torrington argues that NTN has the burden of proving entitlement to any favorable claim. Torrington asserts that NTN does not represent, much less demonstrate with facts, that no consideration is involved in its U.S. sample transactions. Rather, Torrington maintains, NTN merely asserts that zero-priced sales, by their very nature, lack consideration. Torrington states that NTN has failed to provide facts showing the absence of consideration, other than the zero price, and that the Department should reject the claim.

Department's Position: We agree with Torrington. As we noted in the introduction to this issue, the party in possession of the information has the burden of producing that information, particularly when seeking a favorable adjustment or exclusion. NTN did not answer our questions regarding the purchase history of parties receiving samples or our questions regarding comparisons of the prices and quantities involved in U.S. sample and non-sample sales adequately. The answers to these questions would have aided us in determining whether the alleged sample sales were, in fact, zero-priced samples with no consideration or, instead, provided essentially as a discount in conjunction with other sales. Because NTN did not provide the details we requested, we can not conclude that NTN received no consideration for these alleged samples. NTN withheld information within the meaning of section 776(a)(2)(A) of the Act and, in so doing, failed to cooperate by acting to the best of its ability to comply with our information request within the meaning of section 776(b) of the Act. Thus, we have determined that an adverse inference is appropriate. Therefore, for these final results, we have included NTN's claimed sample sales in its U.S. sales database.

Comment 5: NTN states that sample sales with abnormally high profits

should be excluded from the calculation of normal value. NTN asserts that normal value must be based on sales made in the home market that are in the ''ordinary course of trade.'' NTN states that the ordinary-course-of-trade provision serves an important purpose: ''to prevent dumping margins from being based on sales which are not representative'' of the home market, citing *Monsanto Co.* v. *United States*, 698 F. Supp. 275, 278 (CIT 1988). NTN states further that, to guarantee that sales the Department uses to calculate normal value are representative, the Department examines ''the circumstances particular to the sales in question,'' citing *CEMEX* at 6. Finally, NTN states that a profit-level comparison is probative of the economic reality of the sales and therefore the disparity in profit margins is indicative of sales that were not in the ordinary course of trade, citing *Mantex* v. *United States*, 841 F. Supp. 1290, 1308 (CIT 1993).

Torrington states the Department should include all alleged samples in NTN's home-market database. Torrington states that providing samples is ordinary practice in the market for bearings and the fact that NTN records transactions as ''samples'' in its books is not a basis for allowing the company to exclude arguably higher-price transactions from its antidumping database, as that would be a self-serving practice. Furthermore, Torrington states that NTN failed to show that profits it earned on particular transactions were aberrational or abnormal, and, thus, outside the ordinary course of trade. Finally, Torrington states that no one factor can determine whether particular transactions are within or outside the ordinary course of trade, citing *CEMEX*.

Department's Position: We agree with Torrington. With regard to home-market ''sample'' sales which NTN claimed were outside the ordinary course of trade, our practice is to exclude home-market sales transactions from the margin calculation as outside the ordinary course of trade based on *all* the circumstances particular to the sales in question. *See Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 607 (CIT 1993). With regard to NTN's abnormally high-profit sales, the presence of profits higher than those of numerous other sales does not necessarily place the sales outside the ordinary course of trade. In order to determine that a sale is outside the ordinary course of trade due to abnormally high profits, there must be unique and unusual characteristics related to the sale in question which make it unrepresentative of the home market. *See CEMEX*, 133 F.3d at 900 (citation omitted). However, NTN has provided no information other than the numerical profit amounts to support its contention that these home-market sales had abnormally high profits. The simple fact of high profits, standing alone, is not sufficient to find sales to be outside the ordinary course of trade. Accordingly, we have not excluded NTN's ''sample'' sales with allegedly high profits in calculating normal value.

Comment 6: Nachi argues that the Department should have excluded its claimed home-market prototype sales. Nachi contends that it demonstrated that these sales were outside the ordinary course of trade and the Department verified the accuracy of the claim.

Torrington disagrees, asserting that Nachi did not provide the information the Department requested with regard to its home-market prototype sales. Torrington contends further that whether the Department verified the fact that these sales were outside the ordinary course of trade can not remedy Nachi's failure to respond to the Department's questionnaire.

Department's Position: We agree with Nachi. Nachi demonstrated at verification that its home-market prototype sales are outside of the ordinary course of trade. *See* the Department's home-market verification for Nachi report dated January 26, 1998, at page 11. Therefore, we have excluded such sales from our analysis for these final results.

9. Export Price and Constructed Export Price

Comment 1: SKF Sweden asserts that the Department erroneously deducted the inventory carrying costs incurred for the time merchandise was in transit between Europe and the United States from the price used to establish the CEP. SKF Sweden argues that the Department should not deduct these expenses because they are not associated with commercial activity occurring in the United States.

Torrington requests that the Department continue to deduct these expenses from CEP. Citing to the SAA at 823 and the Department's new regulations at 351.402(b), Torrington asserts that the Department will generally make a deduction from CEP for expenses associated with commercial activities in the United States. Torrington contends that, since SKF Sweden's U.S. affiliate bore the expenses at issue, the costs are associated with U.S. commercial activity.

In addition, Torrington suggests that because the expenses relate to the transit of goods from Europe to the United States, the expenses should be deducted as a movement expense under section 772(c)(2)(A) of the Act.

Department's Position: We agree with SKF Sweden that the inventory carrying costs incurred for the time merchandise was in transit between Europe and the United States should not be deducted from the price used to calculate CEP. It is evident from both the SAA at 823 and our new regulations that, under section 772(d) of the Act, we only deduct from CEP the expenses associated with commercial activity in the United States which relate to the resale to an unaffiliated purchaser. We find that the expenses at issue are not associated with commercial activity in the United States and do not relate to the resale to the unaffiliated customer. Rather, these inventory carrying costs reflect part of the interest expense SKF Sweden incurred when it extended credit on the sale to its U.S. affiliate. Our new regulations direct us clearly not to deduct from the starting price any expense that is ''related solely to the sale to an affiliated importer in the United States,'' *i.e.*, those expenses that support the sale from the exporter to its U.S. affiliate (*see* 351.402). Thus, for the final results, we did not deduct these expenses from CEP.

We also disagree with Torrington's suggestion for treating the inventory carrying costs as a movement expense. Section 772(c)(2)(A) of the Act instructs us to reduce CEP by ''* * *. the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to *bringing* the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States * * *'' (emphasis added). The expenses at issue do not relate to ''bringing'' the subject merchandise from Sweden to the United States. As noted above, the expenses reflect the financing cost of holding inventory. Thus, we have not treated the inventory carrying costs as a movement expense.

Comment 2: Torrington argues that, with respect to certain sales made through one of FAG Italy's U.S. affiliates, to calculate CEP in accordance with section 772(d)(1)(A) of the Act the Department should have deducted the warehousing commissions and sales commissions paid to affiliated warehousing companies rather than deducting pre-sale warehousing expenses and indirect selling expenses for these sales. Torrington argues that

under no circumstance should the Department resort to the amounts reported for pre-sale warehousing expenses and indirect selling expenses over the actual commission amounts FAG Italy's U.S. affiliate paid to an affiliated warehousing company. Torrington argues further that the statute prefers the use of the commissions over adjustments like pre-sale warehousing expenses and indirect selling expenses on the basis that commissions are direct and reflect the actual amount paid while pre-sale warehousing expenses and indirect selling expenses are costs. In support of this argument, Torrington cites *Smith Corona Group* v. *United States*, 713 F.2d 1568, 1575 (Fed. Cir 1983), cert. denied, 465 U.S. 1022, 79 L.Ed.2d 679 (1984).

FAG Italy supports the Department's methodology of deducting pre-sale warehousing expenses and indirect selling expenses rather than deducting the commissions paid to affiliated warehousing companies. FAG Italy argues that commission payments between affiliated parties are not actual expenses within the meaning of the antidumping law. On the basis that commission payments between affiliated parties are not actual expenses, FAG Italy suggests that Torrington's argument for deducting actual amounts supports rather than disputes the Department's methodology.

Department Position: We disagree with Torrington's contention that in calculating the CEP of FAG Italy's U.S. sales we should have deducted certain warehousing commissions and sales commissions rather than pre-sale warehousing expenses and indirect selling expenses.

The sales that Torrington addresses in its comment were made by one of FAG Italy's U.S. affiliates to unaffiliated customers through affiliated warehousing companies. For these CEP sales, FAG Italy's U.S. affiliate paid both a sales commission and a warehousing commission to the affiliated warehousing companies. FAG Italy asserted on page 24 of its December 3, 1997, supplemental questionnaire response that the Department should deduct pre-sale warehousing expenses incurred on these transactions and not the warehousing commissions it paid to the affiliated warehousing companies because the deduction of both would result in double-counting. To avoid further double-counting, FAG Italy requested, if the Department deducted the sales commissions on these transactions, that it not deduct the indirect selling expenses reported for the U.S. affiliate because the sales agent assumed the selling functions and expenses for these sales.

To address FAG Italy's concern about double-counting, for the preliminary results we did not deduct from the price used to establish the CEP the warehousing commissions and sales commissions that FAG Italy's U.S. affiliate paid to its affiliated warehousing companies. Rather, we deducted the actual expenses, *i.e.*, indirect selling expenses and pre-sale warehousing expenses, that FAG Italy's U.S. affiliates incurred on the sales. We followed this methodology because we generally rely on actual expenses rather than intra-company transfers. See, for example, *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 53287, 53294 (October 14, 1997), and *AFBs 5* at 66489. Affiliated-party commissions are an intra-company transfer of funds to compensate an affiliate for actual expenses incurred in completing the sale to unaffiliated customers. We do not believe that such intra-company transfers of funds are a proper adjustment to price and, therefore, have not altered our methodology for the final results.

Comment 3: Torrington argues that the Department should reject Koyo's exclusion from the sum of its U.S. indirect selling expenses its excluded antidumping-related expenses because Koyo did not explain how they were calculated or what they involve.

In rebuttal, Koyo argues that it is evident from its questionnaire response that the only antidumping-related expense it reported was the antidumping-related legal expense that Koyo incurred during the POR. Koyo argues further that the Department has a well-established policy by which it does not consider legal expenses incurred in defending against an allegation of dumping to be expenses incurred in selling the merchandise in the United States, citing *AFBs 7* at 54079.

Department's Position: We agree with Koyo that the response makes clear that the expenses in question are antidumping-related legal expenses. We also agree with Koyo that we should not consider the legal fees associated with participation in an antidumping case to be U.S. indirect selling expenses. As we stated in *AFBs 7* at 54079, such expenses are incurred solely as a result of the existence of the antidumping duty order and to deduct such expenses from U.S. price would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping.

Comment 4: NTN states that the Department had no basis for including in the preliminary results the profit on EP sales in the calculation of CEP profit. NTN contends that the statute states clearly that the adjustment of profit to the CEP is to be based on expenses incurred in the United States as a percentage of total expenses, citing section 772(d) of the Act. NTN states that there is no provision in the statute for the inclusion of EP expenses or CV profit in this calculation and requests that the Department exclude these sales from the calculation of CEP profit in the final results.

Torrington states that the Department addressed this issue in *Tapered Roller Bearings, Four Inches or Less from Japan* (63 FR 2558, 2570 (January 15, 1998)) recently and in a policy bulletin dated September 4, 1997, and should stand by its determination in the preliminary results.

Department Position: We disagree with NTN. The basis for total actual profit is the same as the basis for total expenses under section 772(f)(2)(C) of the Act. The first alternative under this section states that, for purposes of determining profit, the term ''total expenses'' refers to all expenses incurred with respect to the subject merchandise sold in the United States (as well as home-market expenses). Thus, where the respondent makes both EP and CEP sales to the United States, sales of the subject merchandise would encompass all such transactions. Therefore, because NTN had EP sales, we have included these sales in the calculation of CEP profit. *See* also September 4, 1997, policy bulletin.

Comment 5: NTN argues that the Department should calculate CEP profit on a level-of-trade-specific basis. Citing section 772(f) of the Act, NTN maintains that the statute expresses a preference for CEP profit to be calculated on the narrowest possible basis which, NTN states, ensures more accurate results.

Torrington contends that the Department should follow its prior determinations. Torrington notes that NTN is mischaracterizing the statute and states that the statute refers to the ''narrowest'' group of products only when the groups are broader than the subject merchandise involved.

Department's Position: We agree with Torrington that NTN's reliance on the ''narrowest'' language is misplaced (section 773 (f)(2)(c)(ii)). That language addresses only the second alternative basis for the profit calculation, whereas here we rely on the first alternative. Moreover, neither the statute nor the

SAA requires us to calculate CEP profit using any of the alternatives on a basis more specific than subject merchandise and foreign like product (*see AFBs 7* at 54072). Thus, we have not adopted NTN's suggestion.

10. Miscellaneous Issues

10.A. *Programming and Clerical Errors.* Barden, FAG Italy, Koyo, Nachi, NMB/Pelmec, NSK, NSK-RHP, NTN, SNFA France, SKF France, SKF Germany, SKF Italy, SKF Sweden, Torrington Nadellager, and the petitioner have alleged that we made programming and/or clerical errors in the preliminary result calculations. Where we and all parties agree that a programming or clerical error had occurred, we made the necessary correction and addressed the comment only in the final-results analysis memoranda. (*See* Final Results Analysis Memoranda of various dates.) The comments included in this notice address situations where parties alleged that we made a programming or clerical error but either we or a party to the proceedings disagrees with the allegation.

Comment 1: SKF Italy, SKF France, and SKF Germany address inconsistencies between the methodology the Department specified for assigning level of trade in its preliminary results analysis memoranda dated January 26, January 27, and February 2, 1998, respectively, and the actual methodology the Department used in its margin calculations. Specifically, the respondents note that, while the Department's preliminary-results analysis memoranda indicate that the variable for customer category, *e.g.*, OEM or distributor, was used to designate a level of trade for sales to unaffiliated customers, the Department actually used the channel-of-distribution variable in its calculations. The respondents assert that, in a situation where there is an inconsistency between the calculations and the analysis memoranda, the calculations reflect the Department's intent. For the final results, the respondents request that the Department note a correction in the analysis memoranda.

Torrington asserts that the Department's preliminary-results analysis memoranda are statements of intent. Therefore, Torrington contends, the Department should modify its calculations for SKF France, SKF Germany, and SKF Italy so that the variable for customer category is used to designate the level of trade.

Department's Position: We agree with these respondents that, for these reviews, we should use the variable for channel of distribution to designate the level of trade on their sales to unaffiliated customers for this period of review. Our reference in the analysis memoranda to assigning the level of trade of the respondents' sales to unaffiliated customers based on the variable for customer category was an error.

In our view, customer categories alone are insufficient to establish the level of trade. For the CEP transactions at issue, in performing the analysis necessary for determining normal value at the same level of trade as the starting price for the CEP, which was the price to the unaffiliated customer, we examined the selling activities performed in each channel of distribution, as well as the point in the chain of distribution where the selling activities occurred. *See* January 26, 1998, Level-of-Trade memorandum that is on the General Issues record. Based on our analysis of all the SKF companies in these reviews, we determined that the variable for channel of distribution was the most appropriate item to use for designating the level of trade of their sales to unaffiliated customers. This variable identifies groupings of transactions that are most similar in terms of the selling activities the respondents and their affiliates performed in selling to unaffiliated customers in the home market and the United States. For the final results, we did not need to alter the level-of-trade designations in the margin calculations for SKF Italy, SKF France, and SKF Germany because we used the variable for channel of distribution to assign a level-of-trade for the preliminary results.

Comment 2: SKF Sweden asserts that in its preliminary-results margin calculation the Department assigned the level of trade for sales to unaffiliated customers incorrectly based on customer categories rather than channels of distribution.

Torrington asserts that no changes need to be made to SKF Sweden's calculations since the Department implemented the methodology described in the preliminary-results analysis memorandum.

Department's Position: We agree with SKF Sweden that we should use the variable for channel of distribution to designate the level of trade of sales to unaffiliated customers. In our preliminary-results margin calculations, we erred by assigning the level of trade to SKF Sweden's sales to unaffiliated customers based on the variable for customer category. Based on our analysis of SKF Sweden, the variable for channel of distribution is the most appropriate item to use for designating the level of trade on its sales to unaffiliated customers. *See* our response to Comment 1 of this section for additional information regarding our level-of-trade analysis. Thus, for these final results, we altered our calculations for SKF Sweden such that we used the channel-of-distribution variable to assign the level of trade of sales to unaffiliated customers.

Comment 3: Torrington refers to language in the Department's computer program for FAG Italy and asserts that the language excludes zero-priced U.S. sales from the margin calculation. Torrington contends that the Department should remove this programming language since FAG Italy reported that there were no sample transactions of Italian-made bearings in the U.S. sales database.

FAG Italy asserts that, since it did not report any zero-priced U.S. sales, there is no reason for the Department to delete the programming language. FAG Italy also suggests that the programming language should remain since it represents a correct statement of law.

Department's Position: We agree with FAG Italy that there is no reason to delete the programming language to which Torrington refers. However, we disagree with the respondent that this particular programming language should remain because it represents a correct statement of law. Rather, the purpose of this programming language is to avoid the creation of an error message when the numerator of the transaction-specific percentage margin calculation is zero or negative and the denominator is positive.

Moreover, with respect to FAG Italy, the issue of whether to exclude zero-priced U.S. sales is moot because we examined the respondent's U.S. sales database and determined that there are no such transactions. We also examined the output of the margin-calculation program and confirmed that no U.S. sales are being removed.

Comment 4: NTN contends that the Department's application of a sampling factor to its CEP sales of SPBs is an error, asserting that it did not report these sales on a sampled basis.

Torrington states that, if NTN reported 2000 or more SPB transactions, the Department should apply the sampling factor but, if the company had fewer transactions, it should not.

Department Position: We agree with NTN. However, because of the proprietary nature of our position on this issue, we are not able to respond adequately here. *See* memorandum from Greg Thompson to the file dated May 20, 1998.

Comment 5: NTN asserts that the Department miscalculated CEP profit.

Torrington contends that NTN's comment on this issue is too vague. Torrington contends that it is not able to provide a meaningful response without the respondent clarifying its point of contention and requests that the Department reject NTN's argument.

Department Position: We agree with Torrington. Inasmuch as NTN does not state what it believes is in error, what caused the error, or how the calculations should be changed to fix the alleged problem, we can not address the issue.

Comment 6: NTN states that, consistent with the Department's position in the *Final Results of the Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan*, 61 FR 57629, 57636 (November 7, 1996), the Department should use the U.S. selling expenses based on level of trade as NTN reported.

Torrington asserts that the Department should not use NTN's U.S. selling expenses based on level of trade because the reporting rationale is not supported by the record. Furthermore, Torrington contends that the Department's use of NTN's reported methodology appears to be a ministerial error, noting that the analysis memorandum does not provide an explanation of the Department's substantive departure from prior determinations.

Department Position: We agree with Torrington on both points. Moreover, due to a ministerial error, we did not revise NTN's reporting of U.S. indirect selling expenses for the preliminary results of review. We have corrected the problem for the final results. *See* memorandum from Greg Thompson to the file, dated May 20, 1998. Also, *see* our response to comment B.2. of the ''Circumstance of Sale'' section of this document.

10.B. *Pre-Existing Inventory. Comment:* SKF Italy, SKF France, and SKF Germany note that the Department's preliminary-results analysis memoranda dated January 26, January 27, and February 2, 1998, do not address the issue of whether U.S. sales of merchandise that entered into inventory prior to the suspension of liquidation in the original LTFV investigation were excluded from the margin calculations. The respondents suggest that the Department's failure to include instructions in the margin-calculation program to exclude sales of this merchandise is a programming error. Respondents request that the Department address this oversight for the final results and modify its calculations to exclude sales of pre-suspension inventory.

Torrington contends that no programming error occurred and, therefore, no changes need to be made. Moreover, Torrington asserts that it is the Department's policy to base its antidumping analysis of CEP sales on all transactions that have a sale date during the POR. Since the merchandise at issue was sold during the POR, Torrington argues, the Department should continue to include the sales in the margin analysis.

Department's Position: We agree with Torrington that no programming error occurred.

In *Stainless Steel Wire Rod from France*, 61 FR 47874, 47875 (Sept. 11, 1996), we discussed the treatment of U.S. sales of merchandise that entered into inventory prior to the suspension of liquidation. In that case, we indicated that sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise within the meaning of section 771(25) of the Act and, therefore, are not subject to our review. However, in these reviews, the respondents did not submit record evidence to establish that the sales at issue are of merchandise that entered the United States prior to the original suspension of liquidation. Therefore, consistent with our practice in the prior segment of these proceedings (*see AFBs 7* at 54084), for the final results we have continued to consider the transactions to be sales of subject merchandise and included them in our margin calculation.

10.C. *Military Sales. Comment:* Barden argues that the Department included military sales improperly in the preliminary calculations. Barden observes that, in its preliminary-analysis memo, the Department stated that, ''because the United Kingdom government does not have a Memorandum of Understanding (MOU) with the United States, we have included these sales in our analysis.'' Barden argues that this statement is incorrect and that there is a current MOU between the United States and the United Kingdom. Therefore, Barden contends that the Department must exclude all U.S. military sales in the calculation of Barden's final margins as it has in all prior reviews to date.

Torrington disagrees with Barden's argument and opines that the Department is not required to modify its preliminary results because Barden did not supply the Department with the information requested in the initial and supplemental questionnaires necessary to permit an exclusion of military sales. The petitioner asserts that the Department should reject Barden's argument and that the Department is justified in ignoring Barden's claims, citing *Murata Mfg. Co. Ltd.* v. *United States*, 17 CIT 259, 264, 820 F. Supp. 603, 607 (1993).

Department's Position: We agree with the respondent because our preliminary-analysis memorandum was in error. There is a current MOU between the U.S. and the U.K. governments effective until January 1, 2005. This memorandum is an agreement in the public domain. Therefore, we have excluded Barden's military sales from the final results in these reviews, as we have in all prior reviews to date. *See* section 771(20)(B) of the Act.

11. Cash-Deposit Financing

Comment: NTN argues that the Department's decision to ignore adjustments to NTN's U.S. indirect selling expenses for interest on cash deposits of antidumping duties is contrary to the Department's position in past reviews of these orders and in recent litigation.

NTN contends, the Department noted in *AFBs 6* at 2104 that such expenses were not selling expenses since they ''were incurred only because of the existence of the antidumping duty orders'' and the Department concluded that ''the expenses can not correctly be characterized as selling expenses.'' NTN also points to the Department's acceptance of this adjustment in *AFBs 5 and 6*, and in the position the Department took in comments it filed with the CIT in the litigation arising from *AFBs 4*. According to NTN, the CIT adopted these comments in large part, holding that ''interest NTN paid for antidumping duty deposits is not a selling expense and, thus, should be excluded from NTN's U.S. indirect selling expenses'' (*Federal-Mogul* v. *United States*, 20 CIT __, __, Slip Op. 96–193 (December 12, 1996) (*Federal-Mogul 2*)).

NTN argues that, in addition to disregarding Departmental and judicial precedent on this issue, the Department's decisions in the instant reviews are flawed. First, NTN contends, the Department's decision to disallow the adjustment in the preliminary results contradicts the well-reasoned analysis the Department set forth in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative*

Reviews and Termination in Part (*TRBs Final Results*), 62 FR 11,825, 11828–830 (March 13, 1997), in which the Department explained that it ''recognize(s) that opportunity costs * * * have a real financial impact on the firm.''

Second, NTN asserts, the Department's statements that opportunity costs are not associated with making cash deposits is a misunderstanding of the definition of ''opportunity costs.'' NTN argues that opportunity costs are ''the real economic loss which an entity experiences when it must forgo some other, more profitable use of its resources,'' citing *Cartersville Elevator, Inc.* v. *ICC*, 724 F.2d 668, 670 (8th Cir. 1984), and *Mira* v. *Nuclear Measurements Corp.*, 107 F.3d 466, 472 (7th Cir. 1997) (describing the diversion of funds from more profitable activity as ''the classic definition of opportunity costs''). NTN argues that the expense associated with making cash deposits fits these definitions. In NTN's view, the source of the funds does not determine whether this is an opportunity cost because, in either case, these funds can not be put to a more profitable use.

Finally, NTN argues that, at some point, the Department's prior decisions must become case law, citing *Shikou Chemicals* v. *United States*, 16 CIT 383, 388 (1992) (*Shikou Chemicals*).

Torrington argues that the Department rejected an adjustment to NTN's U.S. selling expenses for cash-deposit financing expenses properly. Torrington contends that there are both policy and legal reasons that support the Department's decision.

Torrington states that posting the estimated antidumping duties is a direct consequence of respondent's conscious decision to dump and, as such, is a selling (or other import) expense. Torrington contends that, if deposits were not made, then there would be no merchandise to resell. Thus, Torrington concludes, deposits are a cost of doing business for those who choose to trade unfairly.

Torrington acknowledges that the CIT, in *Federal-Mogul 2*, reached a contrary conclusion but contends that this is irrelevant, stating that, when the statute is unclear on its face, the court only reviews the Department's determinations for reasonableness, citing *The Timken Company* v. *United States*, 37 F.3d 1470, 1474 (Fed Cir. 1994). Torrington states that, since the statute provides no definition of ''indirect selling expense,'' the Court only affirmed the reasonableness of the Department's old position and, therefore, it remained open for the Department to reconsider and reach another reasonable position. Torrington states further that administrative agencies may change their positions, as the Department did in *AFBs 7*, if they provide reasoned explanations, citing *Busse Broadcasting Corp.* v. *F.C.C.*, 87F.3d 1456 (CAFC 1996), and *Household Goods Forwarders Tariff Bureau* v. *I.C.C.*, 968 F.2d 81 (CAFC 1992).

Torrington contends that the ''law of the case'' doctrine does not apply in this situation. Torrington states that the Department made this very clear in *AFBs 5* when it stated that each administrative review is a separate reviewable segment of the proceeding involving different sales, adjustments, and underlying facts.

Finally, Torrington states that *Shikou Chemicals* is not relevant in the instant case because the Department has determined that its old methodology was conceptually incorrect and required change, whereas in *Shikou Chemicals* the Department simply changed a methodology to improve a prior method. Moreover, Torrington argues that, in *Shikou Chemicals*, the respondent relied on the old methodology. In the instant reviews, NTN was fully aware of the determination made in *AFBs 7*.

Department's Position: We agree with Torrington that we should deny an adjustment to NTN's U.S. indirect selling expenses for expenses which NTN claims are related to financing cash deposits. However, we do not agree with the reasons Torrington has presented.

We should not remove such financial expenses from reported indirect selling expenses under any circumstances because they do not bear directly on an expense that parties incur solely as a result of the antidumping duty order; this holds regardless of whether the party claims any link to antidumping duty deposits or other expenses, such as legal fees. As we have stated previously: ''money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost.'' *See AFBs 7* at 54079.

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

Although we have allowed removal of expenses for financing cash deposits in a post-URAA case (*see TRBs Final Results*), we reexamined this issue in a previous segment of these proceedings and concluded that the new policy best reflects commercial reality with respect to affiliated-importer situations (*see AFBs 7*).

12. Romania-Specific Issues

Comment 1: Torrington argues that the Indonesian import data used to value the steel to manufacture inner and outer rings (Indonesian tariff classification HTS 7228.30) appear to be erroneous. Torrington claims that these data only appear in the trade statistics for January-February 1996 and therefore do not include full-year data for 1996. Torrington also argues that the Indonesian import statistics for the entire year 1996 demonstrate no imports of that category of steel. Torrington claims that the only reliable Indonesian import data on the record for HTS 7228.30 are those for the full-year 1995, which Torrington submitted on December 12, 1997. Thus, Torrington contends that the Department should determine that the January-February 1996 data for this certain Indonesian tariff classification are unreliable and rely on data for the full-year 1995 instead.

TIE disagrees with Torrington's argument and claims that the January-February 1996 data the Department used to value steel used to manufacture inner and outer rings (Indonesian tariff classification HTS 7228.30) are reliable. TIE states that it is logical to assume that the end-of-year data for that tariff classification was simply not available for publication at the time the year-end Indonesian statistics were issued. TIE claims that Torrington provided no factual evidence showing that end-of-year steel data are available. TIE notes that there is only a slight difference between the average import price as derived from the January-February 1996

data and the full-year 1995 data and thus claims that the similarity in prices supports the reliability of January-February 1996 data.

Department's Position: We agree with the petitioner. We find that using full-year 1995 data is more appropriate than using only two months of data from 1996, especially given that the 1995 data, unlike the 1996 data, allow us to remove imports from NME countries and countries with small volumes of exports to Indonesia. *See* our response to comment 2 below.

Comment 2: Torrington argues that surrogate values for bearing-quality steel should have been adjusted in conformity with Department practice to exclude imports from NMEs, imports of small quantities, and imports from non-producers of bearing-quality steel when the Department calculated surrogate values from import statistics. Torrington suggests that the Department use the 1995 Indonesian import-statistics report that lists the source countries of the import data and develop ratios to apply to Indonesian imports in other periods for which the source countries are not listed, citing *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania; Final Results of Antidumping Duty Administrative Review,* 62 FR 37194, 37195 (July 11, 1997) (*TRBs from Romania*).

The respondent argues that, under the circumstances, the Department should not exclude imports from NMEs, imports of small quantities, and imports from non-producers of the relevant product in calculating surrogate values from import statistics. TIE states that the most current and accurate data are not available to make the appropriate adjustments in the final results.

Department's Position: We agree with the petitioner. It is our practice to exclude imports from countries we have previously determined to be NMEs, small import quantities, and imports from non-producers of bearing-quality steel in calculating surrogate values for material inputs, where such exclusions are possible based on record information. *See TRBs from Romania* at 37195. Therefore, using the data available in the record and consistent with our practice in *TRBs from Romania* at 37195, we have excluded imports from countries that export less than seven metric tons *per annum* to Indonesia for the final results. We also have excluded imports from NMEs and imports from non-producers of bearing-quality steel.

Comment 3: Torrington argues that the Department should not use factory overhead, SG&A, and profit rates from the financial statements of an Indonesian steel company, P.T. Jaya Pari Steel, and asserts that it is not in the same industry category as the bearing industry. Torrington asserts that data from another Indonesian manufacturer, P.T. Lion Metal Works, is on the record and this company produces merchandise which more closely approximates the bearing industry. Torrington asserts that in the final results the Department should use the financial statements of P.T. Lion to calculate SG&A and profit rates, adjusting the calculation to avoid double-counting of movement expenses by using public data available on the record.

TIE disagrees with Torrington's argument that the Department should use the financial statements of P.T. Lion Metal works to calculate factory overhead, SG&A, and profit rates instead of using the financial statement of P.T. Jaya Pari Steel. TIE recognizes that P.T. Jaya Pari Steel is not a bearings producer. However, TIE argues that P.T. Jaya Pari Steel is a steel company and, therefore, is more closely related to a bearings producer than is P.T. Lion, which is involved in activities such as hospital and high-security equipment.

TIE asserts that, in *AFBs 7* at 54080, the Department used the factory overhead, SG&A, and profit values of P.T. Jaya Pari and should conform to past practice. TIE also asserts that, in this review, P.T. Jaya Pari's information contains, in a single, public source, factory overhead, SG&A, and profit data. TIE claims that it would be inaccurate to use P.T. Lion's data since it could not be ensured that costs are included correctly within administrative or distribution expenses and that the Department would be forced to go to another source to get the overhead information for its analysis.

Department's Position: As we stated in *AFBs 7* at 54080, in our hierarchy for selecting data for possible surrogate values, we prefer to use current, publicly available information. P.T. Jaya Pari's information is contemporaneous with the POR, P.T. Jaya Pari is a steel producer and therefore more similar to a bearings producer than P.T. Lion, a manufacturer of hospital and high-security equipment, and, finally, the P.T. Jaya Pari statements, unlike the P.T. Lion statements, allow us to calculate overhead, SG&A, and profit from one source as well as to analyze the components of each element. *See* Preliminary Analysis Memorandum for AFBs from Romania for the 1996–1997 POR dated January 26, 1998. Therefore, we have used P.T. Jaya Pari's financial statement because it represents a closer approximation of the costs incurred by TIE than would use of P.T. Lion's financial statement.

Comment 4: Torrington argues that, to value the steel used in the manufacture of TIE's bearings, the Department should use the appropriate tariff classification for steel used to manufacture balls, *i.e.*, other wire of alloy steel (HTS 7229.90). Torrington argues that TIE stated that wire is used to produce balls but it appears that the Department used the value of steel ''rod'' in coils (HTS 7227.90), not ''wire'' (HTS 7229.90), to value the steel for balls. Torrington suggests that the Department correct this error in the final results, replacing the value for ''rod,'' wherever it is used to value the steel for balls, with the appropriate value for ''wire.''

Department's Position: We have reviewed the record and found that we used the appropriate values for steel used to manufacture balls, *i.e.*, HTS 7229.90 (other alloy wire of alloy steel). Our materials for the final results contain the correct HTS numbers.

Comment 5: Torrington contends that the International Labor Office (ILO) costs the Department used in the preliminary results of review are flawed because the wage rates the Department used to calculate labor costs reflect only minimum wages in Indonesia and thus do not represent actual labor costs accurately.

Torrington also disagrees with the Department's use of the ILO's ''average daily wage and hours worked per week for the iron and steel basic industries'' to value direct labor. Torrington claims that the iron and steel basic industries are not within the same industry category as the industry producing bearings. Torrington argues that the Department decided the proper classification of the AFB industry in *TRBs from Romania* at 37194. The petitioner claims that, even if the minimum wage rates the Department used reflected rates actually paid in Indonesia, the rates would not be applicable to the industry in this review under any reasonable interpretation of the comparable-merchandise standard set forth in section 773(c)(4)(B) of the Act.

Torrington proposes that, in the interest of the Department's desire to obtain actual or as accurate as possible information, the Department should use, for the final results, either the Department's *Expected Wages of Selected Nonmarket Economy Countries*, the 1997 issue of *Investing, Licensing and Trading Conditions Abroad* (IL&T), or *Doing Business in Indonesia* (1996).

TIE claims that it was reasonable and in accordance with law for the Department to use the ILO labor costs. TIE argues that there is nothing on the record which indicates that the ILO wages do not reflect actual costs to employers. TIE explains that in *TRBs from Romania* at 37197 the Department found no indication that the ''minimum'' rate for the industry excludes any employee-benefit costs which the Department normally considers. TIE notes that the Department also addressed this issue in its January 26, 1998, Preliminary Analysis Memorandum, where it added amounts to labor rates to account for benefits. TIE states that the Department adjusted the ILO data correctly by using information from the Foreign Labor Trends, as in *Lighters from the PRC*, which showed supplementary benefits to be 33 percent of manufacturing earnings.

TIE also opposes Torrington's contention that the Department should not use data from Indonesian iron and steel basic industries to value direct and indirect labor. TIE claims that the Department responded to this same argument in *TRBs from Romania* at 37197, where it acknowledged that wage rates for laborers in the iron and steel basic industries are not in the same industry as the bearings industry. TIE notes that section 773(c)(4) of the statute states that the Department will attempt to find producers of comparable products in selecting surrogate countries when the Department can not locate information from the same industry. TIE argues that the facts of the current case are the same as those in *TRBs from Romania* and, therefore, that there is no information on the record which pertains specifically to the bearing industry.

In addition, TIE argues that the Department rejected in *TRBs from Romania* at 37197 two of the alternate sources for surrogate data, *IL&T* and *Doing Business in Indonesia* (1996), proposed by Torrington. Also, TIE contests Torrington's suggestion that the Department use its own calculation of wage rates for NME countries, *Expected Wages of Selected Nonmarket Economy Countries*, which is referenced by the Department's new regulations. TIE argues that the new regulations are not relevant in this review and, therefore, it would be unreasonable for the Department to apply those wage rates in an old-regulations case without prior notice to TIE.

Department's Position: We disagree with the petitioner. The wage rates we used in the preliminary results represent actual costs. Although the ILO data is a minimum wage, it includes such costs as ''cost-of-living allowances, and other guaranteed and regularly paid allowances,'' according to the ILO's Special Supplement to the Bulletin of Labor Statistics (1994). Furthermore, this follows our practice in *AFBs 7, TRBs from Romania,* and in *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 11217 (March 6, 1998). Thus, we have continued to use, in these final results, the ILO labor data that we used in the preliminary results.

We have not used our own calculation of wage rates for NME countries, *Expected Wages of Selected Nonmarket Economy Countries,* because this administrative review is not governed by the new regulations. We do, however, intend to use this data source in any subsequently requested administrative reviews which will be governed by the new regulations.

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BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review of pressure sensitive plastic tape from Italy.

SUMMARY: In response to a request from an importer, Horizon Plastics, the Department of Commerce is conducting an administrative review of the antidumping duty finding on pressure sensitive plastic tape from Italy. The period of review is October 1, 1996 through September 30, 1997. This review covers products manufactured and exported by N.A.R.S.p.A. We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195, and 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

Background

On October 21, 1997, the Department published in the **Federal Register** (42 FR 56110) the antidumping duty finding on pressure sensitive plastic tape (PSPT) from Italy. On October 31, 1997, in accordance with 19 CFR 351.213(b), an interested party and importer of the subject merchandise, Horizon Plastics, Inc., requested that the Department conduct an administrative review of N.A.R.S.p.A. exports of subject merchandise to the United States. We published the notice of initiation of this review on November 26, 1997 (62 FR 63069).

Scope of the Review

Imports covered by the review are shipments of PSPT measuring 1⅜ inches in width and not exceeding 4 mils in thickness. During the period of review (POR), the above described PSPT was classified under HTS subheadings 3919.90.20 and 3919.90.50. The HTS subheadings are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Use of Facts Otherwise Available

We preliminarily determine that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available is