short-term rates offered by Credit Lyonnais Belgium for loans in Belgian francs. *See* Prayon's submission of April 26, 1996. The Department used these rates to calculate the imputed credit expense incurred by Prayon for the preliminary results of review, and sees no reason not to use these rates in the final results of review.

Moreover, the Department's regulations permit factual information to be submitted for consideration in the final results of review up to the date of publication of the preliminary results of review or 180 days after the date of publication of the notice of initiation of the review, whichever comes first. See section 353.31(a)(1)(ii) of the Department's regulations. Both of these deadlines have passed (the preliminary results of review were published on May 24, 1996, and this review was initiated on September 15, 1995). Furthermore, it is the Department's stated practice to not consider in final results of review information untimely submitted. See section 353.31(a)(3).

Final Results of Review

Based on our analysis of the comments received, we have determined, as we did in the preliminary results, that a margin of 11.36 percent exists for Prayon for the period August 1, 1994 through July 31, 1995. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Prayon will be 11.36 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the ''all others'' rate, as established in the original investigation, will be 14.67 percent.

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

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

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

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

Dated: September 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25241 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–485–602]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Final Results and Rescission in Part of Antidumping Duty Administrative Review

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

ACTION: Notice of final results and rescission in part of antidumping duty administrative review.

SUMMARY: On April 8, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished (TRBs), from Romania. This review covers the period June 1, 1994 through May 31, 1995.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

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's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On April 8, 1996, the Department published in the Federal Register (61 FR 15465) the preliminary results of its administrative review of the antidumping duty order on TRBs from Romania (52 FR 23320, June 19, 1987). We conducted a hearing on May 22, 1996. On July 30, 1996, we extended the time limit for the final results to September 25, 1996 (61 FR 39631). We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of TRBs from Romania. These products include flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00, 8482.99.30, 8483.20.40, 8483.30.40, and 8483.90.20. Although the HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

This review covers eight companies and the period June 1, 1994 through May 31, 1995. Of the eight companies for which petitioner requested a review, only Tehnoimportexport (TIE) made shipments of the subject merchandise to the United States during the period of review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the respondent, TIE, and the petitioner, The

Timken Company (Timken). At the request of both parties, a public hearing was held on May 22, 1996.

Comment 1

TIE argues that the Department should not use surrogate data from the Thailand bearing producers NMB Thai and Pelmec Thai (NMB/Pelmec) for overhead and selling, general, and administrative (SG&A) expenses, because the Thai producers manufacture ball bearings that are more sophisticated than TIE bearings. TIE cites NMB/Pelmec's own catalogs as evidence of the sophistication of those companies'' bearings, and notes that the Department recognized, in a review of antifriction bearings (AFBs) from Romania, that NMB/Pelmec may not be ideal for purposes of comparison to TIE.

Timken counters that the rates from NMB/Pelmec used by the Department are the only reasonable values on the record regarding costs of producers of comparable merchandise in a country at a level of economic development comparable to that of Romania.

Department's Position

We agree with Timken. As discussed in the preliminary results of this review, we determined that Thailand is at a level of economic development comparable to that of Romania and is a significant producer of bearings. Therefore, we selected Thailand as a surrogate country. Where we were unable to locate publicly available published information (PAPI) to establish surrogate values from the primary surrogate country, Poland, we used Thai values. Notwithstanding any differences in the level of sophistication of bearings between the Thai and Romanian companies, NMB/Pelmec was the best available source of surrogate values from Thailand. Furthermore, the degree of sophistication of the bearings sold by the Thai companies would not directly impact the amount of SG&A expenses incurred by the company.

Comment 2

TIE argues that the Department's use of ranged Thai data to establish SG&A and overhead rates violates due process. TIE notes that the Department used ranged data based on the proprietary version of NMB/Pelmec's response—data TIE cannot independently verify. Further, TIE notes that the Department did not secure permission from NMB/Pelmec to use its data for this particular review, as it did when the data was used in a previous review of AFBs from Romania.

Timken responds that the rates are the best available, and should be retained by the Department. Timken notes that in typical non-market economy (NME) cases, the Department historically has relied on rates supplied by the embassy of the surrogate country, without independently verifying the underlying data. See transcript of the hearing, May 22, 1996, page 39.

Department's Position

We agree with Timken. The data used for this review were publicly available information from producers in a comparable industry (NMB/Pelmec), in a country deemed a suitable surrogate (Thailand). The fact that the underlying data used to arrive at the publicly available rates were proprietary is irrelevant; the ranged data are publicly available on the record of the 1988–90 antidumping review of AFBs from Romania, and we have placed these data on the record of this review. It is not necessary for the Department to secure permission to use data that is already in the public domain. Thus, the Department has continued to use the NMB/Pelmec values.

Comment 3

TIE argues that the Department's use of the same Thai SG&A data in the 1988–90 review of AFBs from Romania was based on application of adverse best information available (BIA), which is not relevant to this review. TIE notes that its alleged failure to provide certain information regarding selling expenses during the course of the 1988–90 AFB review resulted in the Department's applying the SG&A rate as adverse BIA. Further, this same rate was rejected in the subsequent AFB review because adverse BIA was not warranted.

TIE further argues the rate should not be used as other than adverse BIA, because certain expenses included in the NMB/Pelmec SG&A calculation are not applicable to TIE. Since the Department has made no findings in this review that TIE has not provided all necessary information, TIE claims, adverse BIA is unwarranted, and by extension, use of the NMB/Pelmec rate is inappropriate.

Timken notes that, unlike the numbers often used by the Department from embassy correspondence, or estimates from companies'' annual reports, the NMB/Pelmec rates are based on actual questionnaire responses. Timken concludes that these rates are as accurate as, if not more accurate than, any other rates used in NME antidumping duty proceedings.

Department's Position

We recognize that, in the 1988–90 review of AFBs from Romania, the Thai SG&A rate was applied as adverse BIA, and we recognize that this rate includes non-SG&A expenses. As this rate was being used as adverse BIA in that review, we did not consider whether the rate included non-SG&A expenses at that time. However, we agree that, if a surrogate SG&A value includes expenses that are generally not considered to be SG&A expenses, these components should be excluded from the surrogate value. After further analysis of the NMB/Pelmec SG&A rate, we find that the rate included adjustments for inland freight and import duties on raw materials, which generally are not categorized as SG&A expenses. Furthermore, because we have already accounted for inland freight costs elsewhere in our calculations, inclusion in the applied SG&A rate would double-count this expense. Therefore, for the purposes of this review, we have recalculated the Thai SG&A expense to exclude inland freight and import duties on raw material inputs.

Comment 4

TIE argues that the Thai SG&A rate is aberrational, and that the Department has an obligation not to use aberrational data.

According to TIE, because the SG&A expenses calculated by the Department are the highest ever calculated in any NME case, the data are aberrational, and should be rejected. TIE notes that the Department has refused to use data in other cases because it determined that such data conflicted with other publicly available data, and was, therefore, unrepresentative.

Timken notes that because the NMB/Pelmec SG&A and overhead expense data are derived from actual questionnaire responses, it is likely that the rate is as accurate as, if not more accurate than, any other rates used in previous antidumping proceedings. Furthermore, petitioner claims, it is logical that overhead rates stated as a percentage of total cost of production will be higher in countries in which labor costs are lower, as is the case in developing countries such as Thailand.

Department's Position

There is nothing on the record of this review to suggest that the NMB/Pelmec SG&A expense is not reflective of the Thai bearings industry. In fact, to our knowledge, NMB/Pelmec are the only bearing producers in Thailand. Accordingly, we do not view the NMB/Pelmec SG&A expense as aberrational.

Comment 5

TIE argues that, instead of using the NMB/Pelmec SG&A value, the Department should use ''Yugoslavian or other data,'' and cites the data it put on the record on March 28, 1996. TIE notes that the Department used Yugoslavia as a surrogate country in the last completed review of Romanian TRBs, and argues that the ten percent rate used in that review is more logical than the NMB/Pelmec rate.

Timken notes that TIE admits that this Yugoslavian rate was simply the former ten percent statutory minimum. Timken argues that, because the statutory minimum is no longer valid, the ten percent rate should be disregarded.

Department's Position

We agree with Timken. Yugoslavia is not a valid surrogate country for this review, due to changed conditions since 1988–89, the period of the review to which respondent refers. Therefore, it would not be appropriate to use a Yugoslavian rate, except in the absence of a publicly available SG&A rate from one of the suitable surrogate countries, such as Thailand. Furthermore, although Yugoslavia was used as a surrogate country in a past review, the SG&A rate used was actually the ten percent statutory minimum, which is not valid under the controlling statute.

Comment 6

TIE advocates the use of the former statutory minimum of ten percent for the SG&A expense. TIE notes that the Department is using an eight percent figure for profit, the former statutory minimum for profit. Further, TIE notes that the Department has never used a figure other than the former statutory minimum of ten percent for SG&A, except where the Department selected an adverse BIA rate. Thus, TIE argues, there is little or no evidence that the SG&A rate exceeds ten percent. TIE claims that in market-economy bearings cases where SG&A has been calculated, the expense has rarely exceeded ten percent.

Timken notes that as a result of Article 2.2.2 of the Uruguay Round's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, the statute eliminates the minimum rate for SG&A, and mandates use of actual rates where possible.

Department's Position

We agree with Timken. Under the controlling statute, the statutory minimum of ten percent for SG&A is invalid, and the Department must use actual rates when possible. See 19 U.S.C. 1677b(e)(2). Hence, the Department has continued to use the actual SG&A rate from NMB/Pelmec, two producers of comparable merchandise from a qualifying surrogate country. Use of the former statutory minimum in previous reviews has no bearing on this review. Furthermore, TIE incorrectly states that the Department is using the former eight percent minimum for profit. We are using eight percent as the profit margin in this review not because it was formerly the statutory minimum profit figure, but because publicly available information indicates that the profit figure is not less than eight percent.

Comment 7

TIE argues that the Department fails to describe the expenses included within the NMB/Pelmec overhead rate, and that the rate should therefore be rejected. TIE claims a breakdown of overhead expenses is impossible to generate, and that some components likely should be excluded to match the overhead for TIE.

Department's Position

The Department generally does not dissect the overhead rate of a surrogate country and apply only components relevant to the producer. It is generally not possible to break the surrogate overhead value into its individual components, at the level of detail that would be necessary to value each individual component of the NME producer's overhead. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China (60 FR 29571, June 5, 1995) (Drawer Slides) and Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China (60 FR 22359, 29575, June 5, 1995). Rarely, if ever, will it be known that there is an exact correlation between overhead expense components of the NME producer and the components of the surrogate overhead expenses. Therefore, as discussed in Drawer Slides, the Department normally bases normal value completely on factor values from a surrogate country on the premise that the actual experience in the NME cannot meaningfully be considered. Accordingly, Department practice is to accept a valid surrogate overhead rate as wholly applicable to the NME producer in question.

Comment 8

TIE contends the NMB/Pelmec overhead rate is an improper surrogate for Romanian overhead costs. Because TIE uses technology and machinery from the 1960s, its equipment is fully depreciated. TIE argues NMB/Pelmec's factories, which utilize expensive, modern equipment, have large depreciation expenses built into overhead. Therefore, the overhead rates as a percentage of the cost of manufacturing (COM) are not comparable to overhead rates for Romanian companies, or for comparable companies in Thailand or other surrogate countries, and should not be used as a surrogate for TIE's overhead.

Further, TIE argues that NMB/Pelmec's miniature, high-precision bearings use less raw materials than do TIE's bearings, which are larger. Therefore, TIE reasons, overhead as a percentage of the cost of manufacturing is higher for smaller bearings. By extension, TIE argues, the overhead rate for TIE, as a percentage of raw materials and labor, should be lower than the rate from NMB/Pelmec.

Timken notes that while TIE may have depreciated its equipment to zero, the rate at which an NME producer is able to depreciate equipment is irrelevant in the identification of appropriate, market economy surrogate values. Timken also notes that if machinery is old, then though depreciation costs are low, maintenance and repair expenses would be correspondingly high. Timken further argues that NMB/Pelmec's overhead rates are driven by low labor rates indicative of a developing country, and not by raw material costs.

Department's Position

We disagree with TIE, again for the same reasons cited in our response to comment 7. The Department does not tailor surrogate overhead rates to match the circumstances in the NME country. Therefore, following Department practice, we have continued to use the valid surrogate overhead rate from Thailand.

Comment 9

TIE suggests that, if the Department continues to use the NMB/Pelmec data for overhead, it should use the lowest of the overhead rates for NMB/Pelmec bearings listed in NMB/Pelmec's 1988–90 cost printouts, as ranged by the Department. TIE points out that there is a large range in the bearings-specific overhead rates. TIE claims that the lowest of the overhead rates would more accurately reflect overhead for the larger bearings sold by TIE to the United States.

Department's Position

The record does not contain information which allows us to verify TIE's assertion that the NMB/Pelmec models with the highest cost of manufacture and lowest overhead are, in fact, the largest models made by NMB/Pelmec. Therefore, the Department has continued to use the average overhead rate of all NMB/Pelmec models.

Comment 10

TIE asks the Department to use overhead data TIE submitted in its March 28, 1996 submission. In that submission, TIE asked the Department to consider rates from a Portuguese bearings company, a Yugoslavian metal processing company, and a Thai metal processor. TIE argues that these rates are more timely than the NMB/Pelmec rate.

Timken points out that Romania is not at a level of economic development comparable to that of Portugal—and that TIE actually argued, in a previous review, that Romania's level of development has never been as high as that of Portugal, and that the Department should eliminate Portugal from consideration as a surrogate country. Timken also notes that TIE's proposal to use surrogate values from metal processors does not meet the comparable-merchandise requirement of the statute (19 U.S.C. 1677b(e)(2)).

Department's Position

We agree with Timken. Neither Yugoslavia nor Portugal were found to be appropriate as surrogate countries for this review. The Thai overhead value submitted by TIE is from an industry other than bearings, and therefore inferior to the NMB/Pelmec overhead rate.

Comment 11

TIE asks the Department to disregard the imported price of Swedish steel in calculating cost of production for bearings produced at the Alexandria factory. Because Alexandria purchased less than three percent of its steel from Sweden, the amount purchased is insignificant, and, consistent with Department practice and the proposed regulations, the price should be disregarded. At the very worst, argues TIE, only the corresponding percentage of Swedish steel used by Alexandria should be used in the Department's calculations.

Timken argues that the amount of market economy steel purchased is irrelevant; import prices selected by the Department represent the price of steel available to TIE. Further, Timken argues that the Swedish price should be applied to both factories, since they are part of a single entity.

Department's Position

We agree with TIE. In calculating surrogate prices, the Department routinely disregards quantities too small to be representative. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews (60 FR 49251, September 22, 1995). We have therefore recalculated steel costs for the Alexandria plant using only surrogate prices from European Union (EU) exports to Poland.

Comment 12

TIE argues that the number of hours worked per month, obtained from the International Labor Office (ILO) Yearbook of Labor Statistics, 1995 and used to calculate surrogate wage rates in Poland, understates the true hours worked per month in Poland. TIE notes that information submitted by Timken, from Investing, Licensing & Trading Conditions Abroad, Poland 1995 (IL&T), published by the Economist Intelligence Unit, indicates a work week of 42 hours, and argues that the surrogate wage rate should be recalculated to reflect this.

Timken responds that the IL&T referred to the statutory maximum number of hours permitted under Polish law, and that the hours actually worked may be lower in Polish industry.

Department's Position

We agree with TIE. The ILO data used in the preliminary results was for actual hours worked, not paid hours (which would include, for example, paid vacation leave). The monthly wage statistics we used in the preliminary results, from the August 1995 issue of the Statistical Bulletin, published by the Polish government, however, are based on total compensation for paid hours, and not actual hours worked. Therefore, for these final results we recalculated the wage rate using the IL&T data, which represent paid hours.

Comment 13

TIE argues that Polish labor rates used by the Department improperly included payments for bonuses from profits. According to TIE, the use of a wage which includes bonus payments from profits is improper, as it assumes profits were, in fact, made by Polish bearing companies. TIE asks that the Department use wages exclusive of payments from profit.

Timken maintains the Department's goal is to identify and apply the fully-loaded labor costs (not just basic wages) of producers in the surrogate country. Profit bonuses, a portion of the cost to the employer, and of direct benefit to the employee, should be included in the Department's calculation.

Department's Position

We agree with Timken. Wage rates should reflect, as accurately as possible, the actual cost to employers. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China (60 FR 29571, 6/5/95). As is the case with SG&A and overhead, the Department generally does not dissect the wage rate of a surrogate country and apply only certain components to the producing country. See our response to comment 7. Department practice is to accept a valid surrogate wage rate as wholly applicable to the NME respondent in question.

Comment 14

TIE argues that Polish labor rates are not representative of labor rates in Romania or comparable countries, and should be rejected. According to TIE, the per capita gross national product (GNP) of Poland is roughly double that of Romania. TIE argues it would, therefore, be unfair to use the Polish wage rate. TIE advocates use of an average wage rate, derived from rates placed on the record from Algeria and Ecuador, and a rate for Poland revised in accordance with comment 12, above. Even this average, TIE contends, far exceeds the Romanian labor rate. TIE notes that the Department's proposed regulations direct the Department to use what is essentially an average labor rate in economically comparable market economy countries, and argues that the Department should adopt this policy for this review.

Timken discounts TIE's argument that Polish labor rates are not representative of Romanian labor rates, noting that the purpose of the surrogate value exercise is to find a rate to replace the Romanian rate, not to find a rate representative of the Romanian rate. Timken further counters that the components of the average wage rate proposed by TIE are invalid. Except for the rate for Poland, the other wage rates are minimum wage rates, not prevailing wage rates. Moreover, Algeria and Ecuador are not suitable surrogates, as they have no comparable industry.

Department's Position

We agree with Timken. Although proposed regulations suggest use of an

average labor rate, current Department practice is to use wage data from the surrogate country. Of the countries suggested for use by TIE, only Poland has a comparable industry. Poland, as the chosen surrogate country, is the proper source for surrogate wage rates.

Comment 15

Timken claims that TIE does not meet the Department's existing criteria for a separate rate determination. Timken contends that TIE does not have autonomy from the government in the selection of key management personnel, one of the criteria for determining *de facto* absence of government control. Timken notes the State Ownership Fund (SOF) owns seventy percent of TIE stock. Because of this, the SOF has a seat on the Council of Administration, which selects TIE's executive management. Its presence on the Council of Administration, Timken says, reflects participation in what is, by comparison with market-economy countries, the board of the company. According to Timken, presence on that board permits *de facto* control, by the Romania government, over the selection of TIE's key management personnel.

TIE counters that it has made a clear, steady progression toward complete privatization over the years, and that changes effective in this review clearly indicate a lack of *de facto* government control. TIE compares the status of privatization in Romania with that of Poland, to which the Department granted market-economy status despite government stock ownership of Polish industry. TIE claims that, even in the context of a test for market-economy status, the Department does not determine that ''government ownership'' of state-owned enterprises precludes their independence.

Department's Position

We agree with Timken. We have reexamined our position on this issue and have determined that TIE is not entitled to a separate rate. The record of the review indicates that the General Assembly of Shareholders consists of a representative of the SOF and a representative of the POF, and that voting power is commensurate with stock ownership. Seventy percent of the vote goes to the SOF, and thirty percent to the POF. The General Assembly of Shareholders chooses the Council of Administration, which is responsible for the hiring and firing of key personnel, such as the general director, and the designation of the Executive Committee, which controls the day-to-day running of TIE. The Council of Administration consists of three members, each with equal voting power; one of the members is from the SOF, one is from the POF, and one is from TIE. There is no record information indicating who any of these members are and whether they are representatives of the Romanian government or its ministries (see hearing transcript, pages 59–60) or otherwise how closely they are tied to the government. In addition, we note that TIE's management has remained the same since the composition of the Council of Administration changed. Accordingly, we find that TIE has not established that it has autonomy in making decisions regarding the selection of its management and, for this reason, there is insufficient record evidence of the absence of *de facto* government control over TIE to entitle TIE to a separate rate.

Comment 16

Timken argues the Department's separate rate analysis should be made consistent with rules for evaluating affiliated parties and for collapsing firms in market-economy countries. Timken says that, since the Romanian government owns more than five percent of TIE, and of the bearings factories, it is in a position to shift export activities from TIE to the factories to avoid antidumping duties. Timken argues that the Romanian government, as a majority shareholder, has the ability to exercise restraint or direction over TIE and the producing factories. Citing 19 U.S.C. 1677(33) and section 351.401(f) of the proposed regulations, Timken contends that, in a market-economy review, the Department would normally treat two or more similarly affiliated companies as a single entity. Timken argues that TIE, the bearings factories, and the Romanian government should be treated likewise.

TIE counters that, since the Romanian government does not exercise *de facto* control of TIE, despite its more than five percent stock ownership, the Department should not consider TIE and the Romanian government as affiliated parties. Nor should the Department view the factories as affiliated with the Romanian government. TIE notes there is no coordination between the two major stock-holding groups—the SOF and the POF—with regard to TIE and the two independent factories. TIE also notes that if the Department precluded a separate rate for a company because of more than five percent ownership by the government, no company could ever obtain a separate rate if its stock were owned by the government. This would contradict the Department's decisions in a number of cases, where the Department granted separate rates to Chinese trading companies owned by ''all the people'' when the supplying factories were also owned by ''all the people.''

Department's Position

The separate rates test for non-market economies is separate and distinct from the test to determine whether related producers in market economies should be treated as a single enterprise. Even the preamble to the proposed regulations, cited by Timken, specifically notes that section 351.401(f) ''does not address the issue of whether a producer or exporter in a nonmarket economy country is entitled to an individual antidumping rate.'' As set forth in the Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China (59 FR 22585, May 2, 1994), the NME separate rates test focuses on government control over export activities. As discussed above in our response to Comment 15, we have found that TIE is not eligible for a separate rate in this review.

Comment 17

Timken argues that a separate, non-zero rate for TIE, while the Romania-wide rate remains at zero, is contrary to the purpose of the antidumping duty law. Such a determination would encourage the shifting of production and export activities to avoid the reach of the antidumping duty law. Timken argues this is contrary to congressional intent and is an absurd conclusion, which should be rejected.

Timken further argues that, if the Department maintains a separate rate for TIE, it should apply the margin from the investigation, 8.70 percent, not the rate from the previous review, to all other firms. In *UCF America* v. *United States*, Ct. No. 92–01–00049, Slip Op. 96–42 (CIT February 27, 1996) (UCF), Timken argues, the Court of International Trade (the Court) held that companies that have never been individually reviewed should receive the margin found in the original investigation.

Department's Position

The Department acknowledges the recent decision of the Court, cited by Timken, in UCF. In this decision, the Court affirmed the Department's remand results for reinstatement of the relevant cash deposit rate, but expressed disagreement with use of the ''PRC-wide'' rate as the underlying basis for reinstatement. The Court raised various concerns with the Department's application of a ''PRC-wide'' rate.

The Court suggested that the Department lacks authority for applying a ''PRC-wide'' rate in lieu of an ''all others'' rate. We note, however, that section 777A(c) of the Act requires the Department to determine individual dumping margins for each known exporter or producer. Pursuant to this authority, the Department implements a policy in NME cases whereby all exporters or producers are presumed to comprise a single entity, the ''NME entity.'' The Court has upheld our NME policy in previous cases. See *e.g., UCF America, Inc.* v. *United States,* 870 F. Supp. 1120, 1126 (CIT 1994); *Sigma Corp.* v. *United States,* 841 F. Supp. 1255, 1266–67 (CIT 1993); *Tianjin Machinery Import & Export Corp.* v. *United States,* 806 F. Supp. 1008, 1013–15 (CIT 1992).

The ''NME-wide'' rate is consistent with section 735(c)(1)(B)(i)(I) of the Act. This provision directs the agency to assign a dumping margin for each exporter or producer individually investigated. As discussed above, in NME cases, all producers and exporters comprise a single entity. Thus, we assign the NME rate to the NME entity just as we assign an individual rate to a single exporter or producer operating in a market economy. As a result, all exporters and producers that are part of the NME entity are assigned the ''NME-wide'' rate. Because the ''NME-wide'' rate is the equivalent of a company-specific rate, it changes only when we review the NME entity (*i.e.*, all NME producers and exporters that have not qualified for a separate rate).

To qualify for a separate rate, an NME exporter or producer must provide evidence showing both *de jure* and *de facto* absence of government control. See Final Determination of Sales at Less Than Fair Value; Silicon Carbide from the People's Republic of China (59 FR 22585, May 2, 1994). Until such evidence is presented, a company is presumed to be part of the NME entity and receives the ''NME-wide'' rate. Consequently, whenever the NME enterprise has been investigated or reviewed, calculation of an ''all others'' rate under section 735(c)(1)(B)(i)(II) of the Act is unnecessary. All exporters or producers will either qualify for a separate company-specific rate, or be part of the NME enterprise, and receive the ''NME-wide'' rate. Thus, there can be no exporters or producers who have never been investigated or reviewed.

In this review, we have determined that TIE is, and always has been, the sole exporter of the subject merchandise to the United States. The Romanian government stated in its response to our questionnaire, and we have confirmed with the U.S. Customs Service, that TIE was the only Romanian exporter of the subject merchandise to the United States during this period of review (POR). In addition, in past administrative reviews of this case, TIE has been the only exporter of the subject merchandise to the United States. However, we have determined that TIE is not eligible for a separate rate. Since TIE's exports represent the only exports of this merchandise to the United States, we have calculated a rate for TIE based on its exports to the United States during the POR, and TIE's rate becomes the all-Romanian rate, or the ''NME-wide'' rate, and will be applied to all companies in Romania.

Comment 18

Timken argues that the Department should use European HTS subheading 7204.41 to classify nonalloy scrap generated in the production process. Cold-rolled steel is nonalloy steel; scrap produced from nonalloy steel is less costly, and should be reflected in the Department's scrap adjustment to material costs. If there are no significant exports of 7204.41 steel to Poland during the POR, it would be reasonable to use exports for a period preceding the POR.

TIE argues that there is an insignificant variation in the scrap values between HTS subheading 7204.29, which the Department used in its preliminary results, and subheading 7204.41. Further, use of data from prior periods would be less accurate, and should be rejected.

Department's Position

We agree with Timken. For these final results, we have calculated the portion of nonalloy scrap steel generated from the cold-rolled steel used, and have used HTS subheading 7204.41 for that portion in our calculation of the surrogate value for nonalloy scrap. For the remaining hot-rolled scrap steel, we have continued to use a surrogate price from the POR for subheading 7204.29.

Comment 19

Timken requests the Department use different HTS classifications for the steel bar used by the Romanian factories. Timken claims that European HTS 7228.30.89, the category used by the Department in the preliminary results, excludes steel with a chemical composition suitable for manufacturing bearings. This category, according to Timken, also excludes steel bars and rods with a circular cross-section, the same type of steel used in bearings production. Timken suggests the Department use the European HTS 7228.30.40 (for bearings produced in 1994) and 7228.30.41 and 7228.30.49 (for bearings produced in 1995). These classifications, Timken claims, are the closest matches with the U.S. definition of bearing-quality steel.

TIE notes that, in prior reviews of this order, Timken advocated the use of category 7228.30.89, the predecessor to the Department's steel bar selection for the preliminary results of this review. TIE notes there is no indication on the record that the Romanian factories use steel precisely corresponding to the category 7228.30.40, and that Timken has not asserted that European HTS 7228.30.89 is aberrational. Furthermore, Timken has not provided any data or documentation regarding category 7228.30.89. In addition, recent EU data show virtually no exports of steel to Poland under Timken's suggested categories. Therefore, TIE concludes, the Department should continue to use category 7228.30.89 in steel calculations.

Department's Position

We agree with TIE. We previously have found, in Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Final Results of Antidumping Duty Administrative Review (56 FR 41518, August 21, 1991), that SAE 52100 steel, the type reported used by TIE, best corresponds with European HTS 7228.30.89. While other European HTS categories may closely match what the U.S. considers bearing-quality steel, there is no evidence on record that the Romanian factories used this type of steel. Since the steel type reported by TIE is SAE 52100, and since we have previously found this type matches most closely with European HTS 7228.30.89, we have continued to use this category in our calculations.

Comment 20

Timken argues that the Department should use International Standard Industrial Classification (ISIC) category 382 instead of 381 when referring to the International Labour Office Yearbook of Labor Statistics to determine the number of hours worked in Poland. In Timken's February 26, 1996 submission, Timken provided the detailed descriptions of the ISIC categories. Ball and roller bearings, Timken points out, are classified in ISIC 3829, a subgroup of Major Group 382. Hence, Timken claims, the Department should use ISIC Group 382 instead of 381.

TIE argues that, since the Department used information from the government of Poland which specifically lists the labor rate for the manufacture of metal

products (except machinery and equipment), to the extent that the Department continues to use ILO data, it should continue to use ISIC group 381: Manufacture of Fabricated Metal Products, Except Machinery and Equipment. To calculate wage rates using monthly income from one category and hours worked from another would, TIE claims, lead to an inaccurate valuation. TIE argues that industry group 381 has been used by the Department in previous bearings cases.

Department's Position

We agree with Timken that the proper group for bearings is ISIC group 382 because bearings are included in one of its subgroups. However, for these final results we are using data on hours worked from the IL&T that are not industry-specific (*see* our response to comment 12). With respect to monthly income data, we used, in the preliminary results, ISIC group 381 data from the Statistical Bulletin, published by the Polish government. For these final results, we have recalculated the wage rate using monthly incomes in the Statistical Bulletin from ISIC group 382.

Comment 21

Timken argues that the Department should adjust its materials factor prices to account for insurance and freight costs incurred in shipping to Poland. The EUROSTAT export data used by the Department in the preliminary results reflected FOB values. Therefore, according to Timken, an appropriate adjustment must be made to reflect the cost of the materials when delivered to the importing country. Timken suggests the Department use the CIF–FOB conversion factor published by the International Monetary Fund in the International Financial Statistics Yearbook. Timken notes that the Department made such an adjustment in Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof from the People's Republic of China (56 FR 67590, December 31, 1991).

TIE replies that applying the CIF–FOB conversion factor to import prices into Poland would lead to distorted prices. First, TIE states that there is no evidence on record that Romanian factories insured their imports of raw materials. The CIF–FOB factor includes an adjustment for insurance that is not relevant in determining a surrogate value. Second, TIE argues that use of the CIF–FOB conversion factor would overstate freight costs between the EU and Poland. The CIF–FOB conversion factor is based on all imports into Poland, from all countries, and therefore includes ocean and air freight from distant countries. The EU and Poland, however, are contiguous, and most of the steel imported by Poland was from Germany, a contiguous country; therefore, freight methods and rates would be cheaper.

Department's Position

We agree with Timken that the FOB prices of EU exports to Poland do not state the true costs to Poland for raw materials. Although there is no evidence on record indicating whether Romanian factories insure their imports of raw materials, producers do incur costs to ship inputs to the factory. Therefore, the Department has used the CIF–FOB conversion factor suggested by Timken, as the best available surrogate information. This factor can not be separated into distinct rates for freight and insurance. Similarly, although freight distances for steel imported into Poland might differ from the average freight distance reflected in the conversion factor, we have no way to ascertain that difference.

Comment 22

Timken asks the Department to recalculate factor prices to exclude data involving small quantities of a product. Specifically, Timken asks the Department to disregard a country's exports to Poland if the total quantity from that country during the POR is less than ten metric tons. Smaller quantities, Timken claims, often involve special products or peculiar transactions that yield unit values unrepresentative of overall price levels for that HTS category.

Department's Position

We agree with Timken. In the preliminary results, we derived raw material surrogate prices based in part on quantities too small to be representative. Accordingly, the Department has recalculated factor prices after eliminating any data from a country exporting an insignificant amount to Poland during the POR. See Memorandum from Case Analyst to the File, dated September 25, 1996, ''Analysis for the final results of the 1994–1995 administrative review of tapered roller bearings and parts thereof, finished or unfinished, from Romania—Tehnoimportexport, S.A. (TIE),'' which is on file in the Central Records Unit (room B–099 of the Main Commerce Building) for the amounts considered to be insignificant.

Clerical Errors

TIE identified a clerical error with respect to the reporting of packing costs in its original submission. Review of the data shows that an obvious error was made in the reporting of a packing factor for one model. Accordingly, we have decided to correct the error, and recalculate the margins for the affected observations.

TIE also identified clerical errors made by the Department in its preliminary results of review. Although the submission alleging the clerical errors was submitted to the Department after the deadlines for submission of case and rebuttal briefs, and after the public hearing, we have determined that we made such errors, and have corrected them for the final results.

Currency Conversion

During the interim between the publication of the preliminary results and these final results, the Department was able to obtain daily exchange rates certified by the Federal Reserve Bank for the Thai Baht. Accordingly, we used these rates in place of the monthly rates used in the preliminary results.

Non-Shippers

Tehnoforestexport, S.C. Rulmenti S.A. Alexandria, S.C. Rulmentul S.A. Brasov, S.C. Rulmenti S.A. Barlad, S.C. Rulmenti Grei S.A. Ploiesti, S.C. Rulmenti S.A. Slatina, and S.C. URB Rulmenti Suceava S.A. stated that they did not have shipments during the period of review, and we confirmed this with the United States Customs Service. Therefore, we are treating them as non-shippers for this review, and are rescinding this review with respect to these companies.

Final Results of Review

As a result of our review of the comments received, we have determined the margin to be:

Manufacturer/ exporter	Time period	Margin (per-cent)
Romania Rate	6/1/94–5/31/95	14.89

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of TRBs from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for TIE and all other exporters will be 14.89 percent; and (2)

for non-Romanian exporters of subject merchandise from Romania, the cash deposit rate will be the rate applicable to the Romanian supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

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

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

Dated: September 25, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25243 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Notice of Prospective Grant of Coexclusive Patent License

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of a field of use coexclusive license in the United States to practice the invention embodied in U.S. Patent Number 5,389,523, titled, ''Liposome Immunoanalysis By Flow Injection Assay'' to Pasadena Scientific Industries, having a place of business in Hanover, Maryland and Saddleback Aerospace Corporation, having a place of business in Issaquah, Washington.

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

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

U.S. Patent Number 5,389,523 is a method of immunoanalysis which combines immobilized immunochemistry with the technique of flow injection analysis, and employs microscopic spherical structures called liposomes, or lipid vesicles, as carriers of detectable reagents.

NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensees to perform further research on the invention for purposes of commercialization. NIST may grant the licensees an option to negotiate for coexclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for coexclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the Federal Register, Vol. 57, No. 226 (November 23, 1992). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: September 24, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–25194 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 092096A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that a letter of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities was issued on September 23, 1996, to Conoco Inc., P.O. Box 51266, Lafayette, LA.

EFFECTIVE DATE: The letter of authorization is effective from September 23, 1996, through September 23, 1997.

ADDRESSES: The application and letter are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Charles Oravetz, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139) and remain in effect until November 13, 2000.