rate will be 23.80 percent, the all others rate from the LFTV investigation.

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

This notice 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). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the 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: December 4, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–31590 Filed 12–12–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; 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 of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

SUMMARY: On August 25, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from the People's Republic of China (PRC). The periods of review (PORs) are June 1, 1990, through May 31, 1991; June 1, 1991, through May 31, 1992; and June 1, 1992, through May 31, 1993.

Based on our analysis of comments received, we have made changes to the margin calculations, including corrections of certain clerical errors. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins are listed below in the section entitled ''Final Results of Review.''

We have determined that sales have been made below foreign market value (FMV) during each of the above periods. Accordingly, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between United States price (USP) and FMV.Q

EFFECTIVE DATE: December 13, 1996.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Hermes Pinilla, Andrea Chu, Donald Little, or Kris Campbell, 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 AND REGULATIONS: Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1995, the Department published in the Federal Register the preliminary results of its administrative reviews of the antidumping duty order on TRBs from the PRC. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Reviews,* 60 FR 44302 (August 25, 1995) (Preliminary Results). We gave interested parties an opportunity to comment on our preliminary results and held a public hearing on October 19, 1995. The following parties submitted comments: The Timken Company (petitioner); Shanghai General Bearing Company, Limited (Shanghai); Guizhou Machinery Import and Export Corporation (Guizhou Machinery), Henan Machinery and Equipment Import and Export Corporation (Henan), Jilin Province Machinery Import and Export Corporation (Jilin), Liaoning MEC Group Company Limited (Liaoning), Luoyang Bearing Factory (Luoyang), Premier Bearing and Equipment Limited (Premier), and Wafangdian Bearing Industry Corporation (Wafangdian) (collectively referred to as Guizhou Machinery *et al.*); Chin Jun Industrial Limited (Chin Jun); Transcom, Incorporated (Transcom); and L&S Bearing Company/LSB Industries (L&S).

We have conducted these administrative reviews in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 353.22.

Scope of Reviews

Imports covered by these reviews are shipments of TRBs and parts thereof, finished and unfinished, from the PRC. This merchandise is classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of the best information available (BIA) is appropriate for a number of firms. For certain firms, total BIA was necessary, while for other firms only partial BIA was applied. Our application of BIA is further discussed in the *Analysis of Comments Received* section of this notice.

Analysis of Comments Received

Comment 1: Petitioner argues that the Department's preliminary finding that there are nine independent Chinese TRB producers entitled to separate antidumping margins and duty rates is inconsistent with the preliminary determination that the TRB industry is not sufficiently market-oriented to allow for the use of home market prices. Petitioner states that, where the government retains significant control over an entire industry, there is sufficient direct or indirect control to warrant treating all of the producers as ''related'' for purposes of section 773(e)(4)(F) of the Act and, therefore, to calculate only a single margin for these companies. Petitioner contends that, if separate rates are calculated, there is a strong incentive to channel U.S. exports through exporters with the lowest margins, and that the record establishes that various TRB producers not only market their own bearings but also perform sales and marketing functions with respect to TRB models produced by other companies.

Petitioner further contends that the Department's *de jure* and *de facto* separate rates analysis places an impossible burden of proof on domestic interested parties due to the fact that a state-controlled economy can amend its laws and regulations without in fact relinquishing control, and domestic parties, as well as the Department, lack access to information that would indicate whether such control continues after the *de jure* amendments.

Respondents Guizhou Machinery *et al.* respond that the Department properly employed its standard separate rates methodology, as enunciated in *Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

Department's Position: We disagree with petitioner. A determination that a company is entitled to a separate rate differs from a market-oriented industry determination with respect to both the analysis performed by the Department and the impact of the decision. A separate rates determination does not presume to speak to more than an individual company's independence in its export activities. The analysis is narrowly focused and the result, if independence is found, is resultingly narrow—the Department analyzes that single company's U.S. sales separately and calculates a company-specific antidumping rate. Thus, for purposes of calculating margins, we analyze whether specific exporters are free of government control over their export activities, using the criteria set forth in *Silicon Carbide.* Those exporters who establish their independence from government control are entitled to a separate margin calculation.

A finding that a company is entitled to a separate rate does not constitute a finding that its home market or third country prices are sufficiently market-driven so that such prices may be used to establish FMV (which would be the result of a market-oriented industry determination). Rather, it indicates that the company has sufficient control over its export activities so as to prevent the manipulation of such activities by a government seeking to channel exports through companies with relatively low dumping rates. *See Disposable Pocket Lighters from the People's Republic of China; Final Determination of Sales at Less Than Fair Value,* 60 FR 22359, 22363 (May 5, 1995).

Petitioner's argument that there is sufficient direct or indirect government control to treat all exporters as ''related'' is unsupported by the record. The PRC companies that responded to our questionnaire submitted information indicating a lack of both *de jure* and *de facto* control over their export activities. Contrary to petitioner's claim that the necessary information concerning the *de facto* portion of the analysis is inaccessible to both petitioner and to the Department, such information was in fact subject to verification and was discussed in the relevant verification reports. Based on our analysis of the *Silicon Carbide* factors, the verified information on the record supports our determination that these nine respondents are, both in law and in fact, free of government control over their export activities. Thus, it would be inappropriate to treat these firms as a single enterprise and give them a single margin. Therefore, we have continued to calculate separate margins for these companies.

Comment 2: Petitioner argues that the Department should base the values of all factors of production (FOP) on the annual report of SKF India (SKF). In the preliminary results, the Department used the SKF report to value three factors (overhead; selling, general, and administrative expenses (SG&A); profit), and the Department derived values for the direct labor and raw material factors from two other, unrelated sources (International Labor Office (ILO) statistics and Indian import statistics, respectively). Petitioner argues that the annual report of SKF is the only record source that yields values for all five factors and that, as such, the SKF report is a single, coherent source that includes segregable information on each of the principal factors of production and other costs necessary to construct FMV. Petitioner further claims that using other sources to value labor and raw materials, while using SKF's labor and raw materials information to derive overhead, SG&A and profit, is inherently distortive. (The Department included SKF's material and labor expenses in the denominator of the calculation of percentages for factory overhead, SG&A and profit.)

Petitioner states that the use of the SKF report for all FOP values is consistent with the importance the courts attach to use of a single source when possible (citing *Timken Co.* v. *United States,* 12 CIT 955, 962, 963, 699 F. Supp. 300, 306, 307 (1988), *affirmed* 894 F.2d 385 (Fed. Cir. 1990) (collectively *Timken*)), and suggests that the SKF report most nearly approximates a verified, surrogate questionnaire response of the type the Department formerly sought from producers in potential surrogate countries.

Petitioner further contends that, whereas SKF's costs and expenses represent those of a producer of the class or kind of merchandise subject to review, the surrogate data for direct labor and raw materials the Department used cover a broad range of industries and products. Petitioner claims that the direct labor classification the Department used covers, in addition to bearings producers, hundreds of industry sectors under broad headings unrelated to bearings production, and argues that there is no rational basis for using such a non-specific source as a surrogate when the actual cost data of an Indian bearings producer is available.

Petitioner notes that record evidence shows the costs of raw materials and labor incurred by actual bearings producers in India to be consistently higher than the trade statistics values used by the Department in the preliminary results, either because the industries or product categories covered by the labor and raw materials sources are overly broad or because domestic prices are different from those of imports. Finally, petitioner adds that the information in the SKF report could be adjusted by the Department using its normal price-index approach for use in all three review periods.

Petitioner argues in the alternative that, in the event that the Department does not use the SKF report to value all FOP, the overhead and SG&A rates must be adjusted to reflect the use of lower materials and labor values from the separate sources. Petitioner claims it would be distortive to include SKF's full materials and labor costs in the cost of manufacture (COM) denominator of the overhead and SG&A calculations unless they are also the basis for valuing the raw materials and direct labor factors in the constructed value (CV) calculation. Petitioner proposes that the Department multiply the total weight of materials for SKF by the average value of steel that will be used in the final results and the total number of hours worked at SKF by the ILO labor value used for the material and labor figures the Department included in the overhead and SG&A calculations.

Petitioner states that the most obvious adjustment needed to the materials element of the overhead and SG&A calculations is due to the Department's use of Indian values free of duties; specifically, because the Indian import data applied in the preliminary results are based on pre-duty import values, it is inappropriate to use an SKF materials value that includes duties in the overhead and SG&A calculations. Petitioner suggests that, if the Department does not apply the adjustment proposed above, *i.e.,* total SKF material weight times the Indian value used, the amount of duties paid by SKF on imported materials, as indicated in the SKF annual report, should be deducted from the materials total in the overhead and SG&A

calculations in order to derive apples-to-apples ratios.

Guizhou Machinery *et al.* respond by arguing that it is irrelevant whether the SKF report represents a single, coherent source for valuing all FOP components and note that the Department consistently uses multiple sources of information for surrogate data in NME cases (citing *Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China,* 59 FR 28053 (May 31, 1994) (*Sebacic Acid*), and *Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China,* 59 FR 55625 (November 8, 1994) (*Certain Cased Pencils*)). Guizhou Machinery *et al.* add that petitioner's citation to *Timken* is misplaced and state that, in that case, the Department was not criticized for the use of different sources but for the disparity between the ratios resulting from the Department's calculation and other ratios on the record.

Guizhou Machinery *et al.* further state that the fact that the SKF report contains costs and expenses incurred by a producer of the class or kind of merchandise subject to review does not make the report a better source of surrogate data. On the contrary, Guizhou Machinery *et al.* state, whereas there is no evidence to indicate that SKF used the same type of steel as respondents, the Indian import statistics enable the Department to pinpoint a particular type of steel.

In response to petitioner's argument that it is inherently distortive to use the SKF report for overhead, SG&A and profit, but not for materials and labor, Guizhou Machinery *et al.* and Chin Jun argue that it would be more distortive to use the SKF report for the materials component due to a lack of detail regarding the types of steel SKF used. Chin Jun notes that the SKF steel prices do not provide separate prices for bar, rod or steel sheet, but instead provide a single figure for all steel used in the factory, including steel used in the production of non-subject merchandise. Chin Jun submits that the petitioner, the Department, and respondents do not have any idea what types of steel were included in SKF's material cost calculation. Guizhou Machinery *et al.* add that petitioner has provided no information demonstrating that the SKF report covers the specific steel inputs relevant to subject merchandise.

Guizhou Machinery *et al.* and Chin Jun also dismiss petitioner's claim that the SKF report most nearly approximates a verified surrogate questionnaire response. Respondents state that an annual report, though perhaps audited, is not verified and note that the Department has a preference for verifiable, public information (citing *Sebacic Acid* and *Final Determination of Sales at Less Than Fair Value: Manganese Sulphate from the People's Republic of China,* 60 FR 52155 (October 5, 1995) (*Manganese Sulphate*); *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 58 FR 21058 (May′ 18, 1992)).

Guizhou Machinery *et al.* respond to petitioner's contention that the cost of direct materials of actual bearings producers in India is shown to be consistently higher than the trade-statistics values used in the preliminary results by stating that such a fact does not render the trade statistics incorrect and that, furthermore, there is nothing in the law requiring the Department to use the highest value in choosing surrogate values.

Shanghai states that, in the event that the Department rejects the use of SKF materials, labor, and other costs except overhead, profit and SG&A, the Department should not further adjust overhead and SG&A as suggested by petitioner's argument in the alternative. Shanghai notes that the SKF report indicates that, in addition to TRB production, SKF has other lines of business, including the manufacture of textile machine components and other types of bearings. Shanghai contends that the report does not allow for the allocation of labor or materials to TRB production for SKF's overhead and SG&A, and there is insufficient information on which to base adjustments to overhead and SG&A based on different valuations of materials and labor used for TRB production. Finally, Shanghai notes that, since the report contains no information concerning the proportion of material represented by TRB steel costs, what portion of SKF's steel was imported, or how much was paid in duties, if the Department continues to use the SKF report for overhead and SG&A it should make no further adjustment to the rate used for the preliminary results.

Department's Position: We agree with respondents. Section 773(c)(1) of the Act states that, for purposes of determining FMV in a non-market economy, ''the valuation of the factors of production shall be based on the best available information regarding the values of such factors. * * *'' Our preference is to value factors using public information (PI) that is most closely concurrent to the specific POR. *See Final Determination of Sales at Less Than Fair Value: Drawer Slides from the PRC,* 60 FR 54472, 54476 (October 24, 1995) (*Drawer Slides*). Based on the record evidence for each of these three reviews we have determined that surrogate country import statistics (Indonesian for valuing steel used to produce cups and cones, and Indian for steel used to produce rollers and cages), exclusive of import duties, comprise the best available information for valuing raw material costs. Our reasons for preferring Indonesia, rather than our primary surrogate, India, for valuing steel used to produce cups and cones are set forth in our response to Comment 4.

We prefer published import data to the SKF data in valuing the material FOP for the following reasons. First, we are able to obtain data specific to each POR, which more closely reflect the costs to producers during the POR. Second, the raw materials costs from the SKF report do not specify the types of steel purchased by SKF. Although we agree with petitioner's point that SKF is a producer of subject merchandise, the report identifies other products it manufactures. From the information contained in the SKF report, we are unable to allocate direct labor and raw materials expenses to the production of subject merchandise. Therefore, contrary to petitioner's assertion, we find that the use of the SKF data in valuing material and labor costs would lead to distortive results.

We also disagree with petitioner's contention that the overhead and SG&A rates should be adjusted if we continue to use the SKF report to value these rates while valuing the material and labor FOP using other sources.

In deriving these rates, we used the SKF India data both with respect to the numerators (total overhead and SG&A expenses, respectively) and denominator (total cost of manufacturing (COM)), because this most accurately reflects the ratios of overhead to COM and of SG&A to COM in the surrogate country. These ratios, when multiplied by the product-specific material and labor factors of production of each respondent in these reviews, thereby constitute the best available information concerning the overhead and SG&A expenses that would be incurred by those bearings producers given their particular factors of production for those products. Petitioner's recommended adjustment would affect (reduce) the denominator by introducing elements unrelated to SKF's experience, but would leave the overhead and SG&A expenses in the numerator unchanged. We find that this adjustment would itself distort the overhead and SG&A experience of the surrogate, rather than curing any distortion in our calculations.

We also disagree with petitioner's argument that an adjustment should be made for duties paid on material imports included in the denominator of the overhead and SG&A expense ratios. We multiplied the overhead and SG&A rates by the material and labor values we used in our factors calculation. Such values do not include import duties because they are an estimate of a PRC producer's domestically sourced material and labor production expenses. Although we would not include duties paid on the importation of merchandise by SKF, we have no evidence as to the amount of duties, if any, included in SKF's raw materials costs. Therefore, we did not subtract any amount for import duties in our calculation of overhead and SG&A percentages.

Comment 3: Petitioner argues that, in order to conform with the Department's standard practice of using surrogate values from a time period contemporaneous with the POR, the Department should use data relating as closely as possible to each POR (citing *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Administrative Review,* 60 FR 49251, 49253 (September 22, 1995) (*Hand Tools*)). Petitioner states that, although the April–December 1991 surrogate value data assigned for raw material inputs in the preliminary results could rationally be used for the 1991–92 POR, Indian import data from the relevant periods should be used for the 1990–91 and the 1992–93 PORs. Alternatively, citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 49572 (September 26, 1995), petitioner suggests that data for the 1993–94 review might be used for the 1992–93 POR.

Guizhou Machinery *et al*, note that petitioner's preferred source from which the Department would value raw material inputs is the annual report from SKF, which covers the period April 1, 1990, through March 31, 1991, and argue that the data the Department used in the preliminary results is more contemporaneous than the SKF report in that it overlaps—at least in part—two of the three PORs in question. In addition, Guizhou Machinery *et al.* claim that data used for the 1993–94 review (the September 26, 1995, preliminary results) should not be considered because these statistics are not included in the administrative records for the reviews at issue, nor are they relevant to the time periods of these reviews.

Department's Position: We agree with petitioner that, consistent with *Hand Tools*, it is preferable, for the sake of accuracy, to apply surrogate values coincident with the POR whenever possible. For these final results, we have applied surrogate steel values coincident to each POR. The Indian import statistics and the Indonesian import statistics that we used are compiled on a monthly basis. Accordingly, we calculated POR weighted-average values using the months June through May for each POR.

Comment 4: Petitioner and respondents Shanghai, Guizhou Machinery *et al.*, and Chin Jun all submitted comments regarding the appropriate Indian import classification number(s) to be used in valuing the steel that comprises the raw materials factor of production. Petitioner argues that, in the event that the Department does not use the SKF report to derive this factor, the eight-digit Indian import classification number 7228.30.19 should be used to value steel bar and rod that was used to manufacture cups and cones. Petitioner notes that, whereas the Department used eight-digit categories to value steel sheet that was used for cages and steel rod that was used for rollers, the Department used a broader six-digit category (7228.30) for steel bar used to manufacture cups and cones. Petitioner argues that category 7228.30 includes sub-categories of steel that are not appropriate to the manufacture of TRBs. Specifically, categories 7228.30.01 and 7228.30.09 include "bright bars of alloy tool steel" and "bright bars of other steel," respectively. Petitioner states that these are bars with bright, high-finish surfaces, which are not used in the manufacture of TRBs, as the high finish would be useless given the cutting, grinding and honing involved in TRB production.

Petitioner further claims that categories 7228.30.12, "bars and rods of spring steel," and 7228.30.14, "bars and rods of tool and die steel," contain steel used for specific applications apart from TRB manufacture. Thus, petitioner argues, the Department should use the "others" category (7228.30.19), which it claims is a residual category containing the steel used in the manufacture of TRBs.

Shanghai submits that category 7228.30.01, "bright bars of alloy tool steel," is the only category of Indian imports that could possibly contain the type of steel used in the production of cups and cones. Shanghai claims that this category shares with U.S. HTS category 7228.30.20 the particular characteristics of hot-rolled, hot-drawn or extruded steel used for cups and cones.

Shanghai notes that the Department's past use of import statistics as a surrogate source of data has been affirmed if the import categories accurately reflect the material used to produce the product in question (citing *Sigma Corp.* v. *United States*, Slip Op. 93–230 (CIT Dec. 8, 1993); *Tehnoimportexport* v. *United States*, 766 F. Supp. 1169 (CIT 1991); and *Tehnoimportexport* v. *United States*, 783 F. Supp. 1401 (CIT 1992)). Shanghai states it follows that use of an inappropriate import category would not be affirmed and argues that the inclusion of steel categories other than 7228.30.01 to value cups and cones renders the Department's surrogate steel costs for cups and cones inaccurate. Shanghai notes that the "others" category put forward by petitioner, 7228.30.19, includes all types of steel within the 7228.30 basket other than those specifically covered by separate eight-digit categories. Shanghai contends that such "others" categories are not intended to duplicate what is contained in the separate individual categories, and it is unreasonable, therefore, to conclude that the "others" category includes merchandise that falls within 7228.30.01.

Shanghai additionally argues that category 7228.30.01 should be further adjusted to exclude exports from Poland and Italy. Shanghai argues that Indian imports from Poland should be excluded on the basis that the Department considered Poland to be an NME country during the period covered by the Indian import statistics, and that Indian imports from Italy should be deleted because the Italian prices are aberrational compared with other imports in the category. Shanghai contends that it is reasonable to assume that this import was of a type of steel different from that used in the production of cups and cones and, as such, should be excluded as unrepresentative of the type of steel used by PRC producers (citing *Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania*, 57 FR 42957 (September 7, 1992) (*Steel Pipe*)).

Petitioner contends that Shanghai's claim regarding category 7228.30.01 (bright bar) as the only category of Indian steel imports that could possibly contain the type of steel used in the production of cups and cones is contrary to fact because, to the best of its knowledge, no one has ever before suggested in the course of this or any other bearing proceeding that bright bars are used to manufacture bearings. Petitioner states that, by similarly excluding other specific eight- digit categories which, like 7228.30.01, are known not to include bearing steel, category 7228.30.19 remains the only category in subchapter 7228 that would contain bearing steel.

With respect to Shanghai's argument that Indian imports from Italy be excluded from 7228.30.01 as unrepresentative of the steel type used to manufacture bearings, petitioner reasserts its argument that the entire category, 7228.30.01, is unrepresentative of bearing steel and that Shanghai's argument is therefore irrelevant. Notwithstanding this point, petitioner takes issue with Shanghai's citing to *Steel Pipe* as an example in which the Department excluded certain higher priced imports as unrepresentative of the type of steel used to manufacture the product in question. Petitioner claims, first, that bearing quality steel is inherently higher quality steel than the non-alloy product at issue in *Steel Pipe*. Petitioner further argues that a higher value in a basket category might represent the only bearing quality import in the category.

With respect to Shanghai's argument concerning the exclusion of steel imports from Poland, petitioner asserts that Poland is properly regarded as a market-economy country for purposes of these reviews and, thus, Indian steel imports from Poland should not be excluded. Petitioner notes that the Department determined that Poland had completed the transition to a market economy by 1992, citing *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Poland*, 58 FR 37205 (July 9, 1993) (*Steel Plate*). Petitioner contends that, while the finding was limited to 1992 because the period of investigation at issue was 1992, it is reasonable to consider Poland to have been a market-economy country for these PORs because such a transformation could not be instantaneous.

Guizhou Machinery *et al.* dispute petitioner's argument regarding the use of steel category 7228.30.19, contending that petitioner suggests replacing one basket category, 7228.30, with another basket category, 7228.30.19. Guizhou Machinery *et al.* insist that petitioner's reasons for opposing the use of category 7228.30 apply as well to category 7228.30.19 and, therefore, do not provide compelling reasons for the Department to change categories.

In its rebuttal comments, Shanghai concurs with Guizhou Machinery *et al.* that the Department should reject petitioner's suggestion that the eight digit ''others'' category (7228.30.19) is the best category for valuing steel used to produce cups and cones. Although Shanghai agrees with petitioner that there is no eight-digit category in the Indian import statistics isolating bearing quality steel (noting that 7228.30.12 and 7228.30.14 are clearly inapplicable), Shanghai contends that the ''others'' category recommended by petitioner is too general and anonymous, containing steel imports of unknown types and quantities. Shanghai suggests in its rebuttal that the Department could use category 7227.90.11 (coil steel), speculating that the type of ball bearing steel used by Chinese producers might enter India under this category number.

Chin Jun argues that use of the basket category 7228.30 is unreliable, in that it contains a wide variety of steel products with a corresponding wide variety of prices. With regard to petitioner's argument that the Department use category 7228.30.19, Chin Jun asserts that use of this category would be incorrect unless aberrational data are excluded. Chin Jun states that the range of prices within this category is staggering and notes that as a residual category it contains many different types of steel. Although acknowledging that it is unclear whether category 7228.30.19 is directly comparable to U.S. HTS category 7228.30.80—the residual category under HTS 7228.30—Chin Jun states that the Indian data are aberrational by comparison to U.S. data from HTS 7228.30.80. Chin Jun argues that the Department should, as it has in the past, adjust the basket category in order to obtain a ''more reasonable indication of the market-based price for the type of steel used'' (citing *Steel Pipe*). Chin Jun suggests that the Department could accomplish such an adjustment by excluding all steel priced more than $1,000 per metric ton.

Chin Jun also contends that category 7227.90.11 is the correct category for steel used in the manufacture of rollers and that the Department erred in using category 7228.50.09, which is comprised of cold-rolled steel.

With respect to this last contention, petitioner notes that Chin Jun placed on the record its supplier's statement that the supplier ''uses cold-rolled alloy steel rod to manufacture rollers.'' *Public Version of Questionnaire Response of Chin Jun Supplier*, August 31, 1994, at 6. In addition, petitioner notes, other companies responded the same way.

Department's Position: We agree with petitioner that none of the eight-digit tariff categories within the 7228.30 steel group correspond specifically to bearing quality steel used to manufacture cups and cones, but do not agree that the best recourse is to the eight-digit ''others'' category (7228.30.19) within this group. We have determined that the use of Indian import data is not appropriate to value cups and cones in this case because, as noted in the arguments above and as shown below, we are unable to isolate bearing quality steel and, as discussed below, the value of the Indian import data is not reliable. *See Drawer Slides* at 54475–76.

We have examined each of the eight-digit categories within the Indian 7228.30 group and have found that, although bearing quality steel used to manufacture cups and cones is most likely contained within this basket category, there is no eight-digit sub-category that is reasonably specific to this type of steel. We eliminated the specific categories of alloy steel, commonly identified by petitioner and respondents, that are clearly not bearing quality steel, as follows. Under the Indian tariff system, bearing quality steel used to manufacture cups and cones is contained within the broad category 7228.30 (Other Bars & Rods, Hot-Rolled, Hot-Drawn & Extruded). However, none of the named sub-categories of this grouping (7228.30.01—bright bars of alloy tool steel; 7228.30.09—bright bars of other steel; 7228.30.12—bars and rods of spring steel; and 7228.30.14—bars and rods of tool and die steel) contains steel used in the production of subject merchandise. This leaves an ''others'' category of steel, 7228.30.19. However, we have no information concerning what this category contains, and none of the parties in this proceeding has suggested that this category specifically isolates bearing quality steel. Further, the value of steel in this eight digit residual category is greater than the value of the general six-digit basket category (7228.30), which in turn is valued too high to be considered a reliable indicator of the price of bearing quality steel, as shown below.

Where questions have been raised about PI with respect to particular material inputs in a chosen surrogate country, it is the Department's responsibility to examine that PI. *See Drawer Slides* at 54475–76; *Certain Cased Pencils*, 59 FR 55633, 55629 (1994). Because all parties raised questions about the validity of the Indian import data used to value cups and cones in the preliminary results, we compared the value of Indian imports in category 7228.30 with the only record source that specifically isolates bearing quality steel used to manufacture cups and cones: import data regarding U.S.

tariff category 7228.20.30 (''bearing quality steel''). We found that, for the time period covered by the PORs, the value of the Indian basket category 7228.30 was approximately 50 percent higher than the bearing quality steel imported into the United States. The Indian eight-digit ''others'' category recommended by petitioner, valued approximately 75 percent higher than the U.S. import data, was even more unreliable in comparison with the value of bearing-quality steel.

In light of these findings, we have determined that the Indian import data that we used to value cups and cones in the preliminary results is not reliable. For these final results, we are using import data from a secondary surrogate, Indonesia, a producer of merchandise comparable to TRBs, to value steel used to produce these components. As with India, we were unable to isolate the value of bearing-quality steel or identify an eight-digit category containing such steel imported into Indonesia; however, unlike the Indian data, the Indonesian six-digit category 7228.30 closely approximates the value of U.S. imports of bearing-quality steel, as well as the comparable six-digit category in the United States. Thus, we have determined that Indonesian category 7228.30, which is the narrowest category we can determine would contain bearing-quality steel, is the best available information for valuing steel used to produce cups and cones. Although Indonesia is not the first-choice surrogate country in these reviews, in past cases the Department has used values from other surrogate countries for inputs where the value for the first-choice surrogate country was determined to be unreliable. *See Drawer Slides* at 54475–76; *Cased Pencils* at 55629; *Certain Helical Spring Lock Washers,* 58 FR 48833, 48835 (Sept. 20, 1993). Because we are valuing the steel used to produce cups and cones using Indonesian import data, we are valuing the scrap offset to this steel value using the same source.

We also disagree with Shanghai regarding the appropriateness of Indian category 7227.90.11 as the steel type for cups and cones. Respondents reported that they use hot-rolled steel bar to manufacture cups and cones. Category 7227.90.11 is coil steel and is necessarily produced by a different mill than bar steel. No respondent reported using coil steel to manufacture cups and cones. In addition, during factory tours of various PRC-based bearings producers we found no evidence that any producer uses coil steel to manufacture cups and cones. Finally, we note that in its case brief (at 7) Shanghai claimed that ''the only category of Indian steel imports which could possibly contain the type of steel used in the production of cups and cones is AC 72283001, Bright Bars of Alloy Tool Steel.''

With respect to the valuation of steel used in the production of rollers and cages, we have applied the Indian import statistics used in the preliminary results. We note that the interested party comments regarding the validity of Indian import category 7228.30, as discussed above, pertain only to the valuation of steel used in the production of cups and cones. We also note that we disagree with Chin Jun concerning the appropriate category for steel used in the manufacture of rollers. We selected category 7228.50.09 based on respondents' statements that they used cold-rolled steel rod to manufacture rollers. In addition to the response from Chin Jun's own supplier, record evidence indicates that other manufacturers used the same type of steel. *See, e.g.,* public versions of Questionnaire Response for 1991–92 and 1992–93 Reviews of Luoyang, June 13, 1994, at 13, and Questionnaire Response for 1990–91 Review of Henan, December 19, 1991, at 8.

Concerning Shanghai's request that imports from Poland be excluded from the valuation of the steel input used to manufacture cups and cones, we note that we revoked Poland's NME status effective January 1, 1992. *See Steel Plate* at 37207. Therefore, for these final results, we have, to the extent possible, excluded imports from Poland prior to the 1992–93 POR because such steel was imported from an NME country.

Comment 5: Petitioner contends that market-currency acquisitions of raw materials should be disregarded in favor of Indian surrogate values with respect to Luoyang and Henan for several reasons. Petitioner first argues that the Department should disregard purchases of raw materials in which the purchase contract provided for delivery after the PORs because the steel received under such contracts could not have been used to produce bearings sold during those PORs.

In addition, petitioner claims that steel import contracts do not reflect market-economy transactions. Petitioner notes that Luoyang did not purchase steel directly and that contracts examined by the Department at verification indicated that the sale consisted of a transaction between a German trading company as the seller and China Foreign Trade Development Companies, Inc. as the buyer. Citing Memorandum to Division Director, Office of Antidumping Compliance from Case Analyst, Office of Antidumping Compliance: *Verification Report for Luoyang Bearing Factory in the Fifth and Sixth Reviews of the Antidumping Duty Order of Tapered Roller Bearings and Parts Thereof From the People's Republic of China* (August 3, 1995), petitioner observes that Luoyang has explained that steel is a controlled commodity and, as such, must be imported through a trading company.

Petitioner insists that, given this fact pattern involving contracts concerning a controlled commodity, the purchase of which must be carried out through the mandatory intervention of a state trading company, any such purchase cannot rationally be considered an arm's-length transaction reflecting uncontrolled market prices. Petitioner claims that the Department departs from using surrogate values only when the actual imports from a market economy reflect market-economy practices and prices (citing *Oscillating Fans and Ceiling Fans from the PRC,* 56 FR 55271 (October 25, 1991) (*Ceiling Fans*)). Petitioner contends that, under the circumstances of this case, the state-controlled trading company is by law given a leading role in negotiating the terms of sale and such trading companies, acting as coordinators of steel purchases for the entire Chinese economy, would enjoy such market power as to enable them to obtain better prices than any individual bearings producer. Petitioner suggests, in addition, that steel supplied to Luoyang from the PRC trading company was part of, or related to, broader deals between Luoyang and the trading company, which could affect the prices paid by Luoyang for reasons unrelated to the factors that would govern normal commercial transactions between market-oriented companies.

Finally, petitioner claims that there are no scrap values attributable to Luoyang's steel acquisition costs. Petitioner notes that the net cost of raw materials inputs is based on the steel cost minus a value for scrap credit and argues that applying a value to the steel from one source and scrap credit from a different source is inherently distortive. Petitioner adds that the courts have ruled this practice to be unsupported, citing *Timken,* and states that the Department addressed the issue on remand in *Timken* by using a single source, telexes from the U.S. Consulate in Bombay. Petitioner further notes that, in its remand calculations, the Department derived a scrap value for one material input, steel sheet, using a ratio as stated in the telex (which provided that scrap was equal to 20 percent of the value of the steel sheet), instead of the absolute value of scrap provided in the telex, where this absolute value of scrap was an unreasonable percentage of the absolute value of steel sheet. Petitioner recommends that if the Department maintains its position taken in the preliminary results to use steel prices paid by Luoyang and Henan to value certain steel inputs while using Indian import statistics to value scrap, it should use ratios, rather than absolute amounts, to derive the per-unit value of scrap.

Guizhou Machinery *et al.* respond that, consistent with section 773(c) of the Act and with 19 C.F.R. 353.52, the Department has established a practice of using actual import prices if they are from market-economy countries. Guizhou Machinery et al. contend that the ''Department practice allows for the valuation of inputs in NME cases based on market prices paid by the manufacturer for goods obtained from a market-economy source because these prices reflect commercial reality'' (citing *Final Determination of Sales at Less Than Fair Value: Coumarin From the People's Republic of China,* 59 FR 66895 (December 28, 1994) (*Coumarin*)). Guizhou Machinery *et al.* state that petitioner's assertion that the contracts do not reflect market-economy transactions because steel is a ''controlled commodity'' and because the contracts involved ''state trading companies'' is irrelevant because such arguments do not negate the fact that the sellers, who establish the sales prices, are market-economy companies (citing *Hand Tools* and *Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China,* 59 FR 58818 (November 15, 1994) (*Saccharin*)). In addition, Guizhou Machinery *et al.* contend that petitioner's statement that steel supplied to Luoyang from the PRC trading company might have been part of related or broader deals is nothing more than speculation, with no support on the administrative record.

Guizhou Machinery *et al.* argue that, because the contracts in question were all effective and legally binding during the PORs, the Department should use the market prices contained in the contracts as the basis for valuing the steel.

Finally, Guizhou Machinery *et al.* contend that, in *Timken,* which petitioner cited in support of its argument that the Department cannot use one source to value steel inputs and a different source to value steel scrap, the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC) did not rule that the Department cannot use different sources to obtain surrogate values for the various constructed value components but, rather, that the Department cannot use surrogate value data which yield distortive results and which are inconsistent with other record evidence. Guizhou Machinery *et al.* argue that petitioner has not shown that the use of market-oriented import prices for steel together with Indian import statistics for scrap credit yields distortive results or that it is inconsistent with other information on the administrative record for these reviews. Guizhou Machinery *et al.* contest petitioner's claim that the use of two different sources to value steel and scrap is ''inherently distortive,'' and point out that in many cases the Department has used different sources to value input materials and scrap.

Department's Position: We agree with petitioner that purchases of steel from PRC trading companies should not be used in these reviews. Our established policy allows for the valuation of inputs in NME cases based on market prices paid by the manufacturer for inputs purchased from a market-economy source because those prices reflect commercial reality. *See Saccharin* at 58822–23. However, in these reviews the transactions were conducted by trading companies instead of the manufacturers. Therefore, the manufacturer obtained the input from the trading company—a PRC source—and paid for the input in PRC currency. Therefore, we determine that the prices paid by the trading companies do not reflect the producers' prices and the prices paid by the producers for these inputs do not reflect market prices. We note here that Guizhou Machinery *et al.* misread *Coumarin.* In that case, as in this case, we did not use purchases from market-economy suppliers but instead applied surrogate values because producers obtained the input from a PRC trading company. *See Coumarin* at 66900.

Because we agree with petitioner that it is not appropriate to use the value of steel purchased by Luoyang and Henan in our calculations, and since we used information from the same source to value both the steel input and the scrap offset, we do not reach petitioner's argument that we should value scrap using a ratio, rather than an absolute scrap value, in the event that raw material input values and scrap values are taken from discrete sources. As noted in our response to Comment 4, we used Indonesian import data to value the steel input and scrap offset for cups and cones, and used Indian data to value the steel input and scrap offset for rollers and cages.

Comment 6: Petitioner argues that the Department should not have accepted Luoyang and Henan's request that the ''scrap input'' they used to produce certain cups and cones be valued as scrap. Petitioner argues that new material remains new product throughout the production process and the value of the raw material input piece is the same whether the companies produce one or two finished pieces from the input piece. Petitioner states that there is no reason for the Department to depart from its position in the 1989–90 review, in which the Department stated that the scrap steel input should not be valued at the cost of scrap. Petitioner argues that the respondents have failed to present rational alternatives in these PORs for taking account of their production of two pieces from one bar.

Luoyang and Henan argue that the Department was correct in valuing the ''scrap input'' as scrap. Luoyang states that it accumulates scrap pieces and stores them and, from time to time, uses large scrap pieces to manufacture smaller size bearings. Luoyang argues that petitioner's argument that new steel costs be used to value scrap input ignores the fact that different inputs are used in Luoyang's manufacturing process. Luoyang further contends that steel bar is a high quality material and can be used ''as is'' and requires no further processing or labor other than the production itself, while scrap consists of ''leftover'' steel pieces which have already been ''stressed'' once. Luoyang contends that petitioner's argument would artificially inflate Luoyang's materials costs.

Department's Position: We agree with petitioner. The ''scrap input'' used by Luoyang to produce certain TRBs was not purchased as scrap. Luoyang paid the full purchase price for this input. Sales of bearings produced from scrap are indistinguishable from those produced from new steel in Luoyang's U.S. sales listing. Valuation of the input as scrap instead of as new steel would result in an undervaluation of Luoyang's factors of production. Accordingly, we have valued the ''scrap'' steel input as new steel for the final results.

Comment 7: Petitioner claims that the ILO report used by the Department to derive surrogate labor rates indicates a 46.2-hour work week in India. Thus, petitioner argues, the Department should calculate the hourly wage rate in rupees using a 46.2-hour week instead of the 48-hour week it used in the preliminary results.

Petitioner further states that the Department incorrectly used the labor value associated with International Standard Industrial Classification (ISIC) major group 381, which covers the ''manufacture of metal products, except machinery and equipment,'' rather than that relevant to bearing production, 382, which covers the ''manufacture of machinery, except electrical.'' (citing ILO 1993 *Yearbook of Labor Statistics* at 1163). Petitioner suggests that the use of category 382 would be consistent with past practice.

Guizhou Machinery *et al.* respond that the machinery industry rates suggested by petitioner are inflated rates that should not be used in these reviews because the manufacture of machinery products involves sophisticated manufacturing processes and highly skilled labor. Respondents also contend that petitioner's argument that a 46.2-hour work week rather than a 48-hour work week should be used is not adequately supported by petitioner's brief.

Department's Position: We agree with petitioner with respect to the use of ISIC major group 382. Upon further inquiry, we found that labor associated with bearing production is included in this category and that the labor categories that comprise ISIC major group 381 are not relevant to bearing production. Therefore, the Department has used major group 382 for the final results of these reviews. *See* (ISIC) series M, No. 4, Rev. 3 at pg. 153.

We also agree with petitioner that we should use a 46.2-hour work week instead of a 48-hour work week. The ILO data that we used to value direct labor indicates that the average number of hours worked for ISIC major group 382 was 46.2 hours per week. Because we are basing the direct labor value on ILO data as stated above (which provide information on the basis of average daily wages), it is appropriate to use the average labor hours per week from the same source to derive an hourly labor rate from this annual wage data. Although a 48-hour work week was established as standard under Indian law, we note that other sources that we have examined (*e.g.,* the Economist Intelligence Unit) indicate that, in practice, the average number of hours worked is 45–47 hours per week.

Comment 8: Petitioner claims that indirect labor is not reflected in the SG&A and overhead rates, contrary to the Department's statement in the preliminary results that ''indirect labor is reflected in the selling, general and administrative and overhead rates.'' Petitioner notes that no portion of the amount shown as ''payments to and provisions for employees'' in SKF's annual report is included in either the overhead or the SG&A calculation. Petitioner states that, consistent with the 1989–90 administrative review, indirect labor must be added to the constructed value.

Petitioner further contends that the indirect labor amounts supplied by respondents are inadequate since the submitted indirect labor data, reported as a percentage of direct labor costs, are generally unsupported by explanation, calculations or documentation. Petitioner suggests that the Department should use as BIA the highest indirect labor rate on the record in these reviews.

Chin Jun claims that its supplier provided indirect labor data and was subject to verification, and that the Department should therefore reject petitioner's argument.

Guizhou Machinery *et al.* note that the Department used the SKF annual report to calculate the SG&A rate and that, since that calculated rate was below the statutory minimum, the Department applied the statutory minimum of 10 percent in the calculation. Guizhou Machinery *et al.* contend that there is no basis for asserting that the Department must add an amount to the statutory minimum for indirect SG&A labor since this is not the Department's practice.

With respect to overhead, Guizhou Machinery *et al.* contend that the Department can reasonably conclude that the activities listed as overhead in the SKF annual report are inclusive of the labor costs associated with such activities.

Department's Position: We agree with petitioner that indirect labor, which is attributable to overhead, and labor attributable to SG&A were not included in our constructed value calculations in the preliminary results. For these final results, we calculated overhead and SG&A expenses using the line items pertaining to these expenses from the SKF annual report. We did not use the statutory minimum since our calculations from the SKF report resulted in an SG&A rate that exceeded the minimum. We did not include any item from the SKF report specifically representing indirect labor costs in calculating the overhead and SG&A expenses, nor did we include the item ''payments to and provisions for employees'', since this item does not segregate direct from indirect labor. Further, contrary to Guizhou Machinery *et al.'s* suggestion, there is no evidence in the SKF report to indicate that the line items (*e.g.,* power and fuel) that we used to calculate these expenses included the indirect labor costs, if any, associated with each line item.

However, we disagree with petitioner that the indirect labor amounts supplied by respondents are inadequate. The record evidence in this case, based on our initial and supplemental questionnaires as well as verification, does not indicate any misreporting of the indirect labor ratios supplied by respondents. For these final results, we have calculated the expenses for indirect and SG&A labor using the ratios of indirect and SG&A labor to direct labor, as reported in the responses.

Comment 9: Petitioner states that the Department did not include interest expenses incurred by SKF in the constructed value calculation. Petitioner contends that interest expenses and other financing charges are ordinarily incurred in market economies and should be included in the constructed value calculation as instructed by the Department's *Antidumping Manual,* Ch. 8 at 55 (7/93 ed.). Petitioner notes that Jilin and Henan identified ''loan interest'' in their itemized list of expenses and that, in the 1989–90 review, the Department included interest expense in SG&A for its constructed value calculations.

Guizhou Machinery *et al.* argue that petitioner provides no basis for its assertion that SKF's interest expenses are in fact representative of producers in appropriate market-economy surrogate countries. Guizhou Machinery *et al.* state further that petitioner only cites legal authority for the proposition that the SG&A should include an amount for interest expenses but does not specify which charges from SKF's annual report should be included in the calculations.

Department's Position: We agree with petitioner that, consistent with our practice, financing charges should be treated as ordinary business expenses. Therefore, we have included interest expenses, as listed in SKF's 1991–92 financial statements, in the SG&A calculation in the final results. As noted in our response to Comment 8, we calculated the SG&A expenses by adding each line item from the SKF report that pertained to such expenses. The line items used in the preliminary results did not include interest expense, which was included in a separate category in the SKF report.

Concerning Guizhou Machinery *et al.*'s comment that petitioner has not sufficiently demonstrated the representativeness of SKF's interest expense, we note that this source constitutes the best available information and that Guizhou Machinery *et al.* have provided no alternative source for the valuation of this expense.

Comment 10: Petitioner argues that section 772(e)(2) of the Act requires the Department to deduct direct and indirect selling expenses incurred by respondents' U.S. subsidiaries from exporter's sales price (ESP). Petitioner states that the Department lacks the discretion to create an exception for selling expenses incurred by U.S. companies in NME countries, arguing that section 772 has never been amended to distinguish USPs with respect to NME-produced imports; rather, the adjustments required to calculate dumping margins with respect to NME cases have been codified in section 773.

Petitioner recognizes that the Department declined to make ESP adjustments in *Ceiling Fans* on the grounds that ''there is a lack of information on the record to make adjustment to both sides of the equation. * * * '' (citing *Ceiling Fans* at 55276). Petitioner claims that these reviews are distinct from *Ceiling Fans* because the U.S. importers of TRBs function at a different level of trade than that derived by the Department's constructed value of home market sales. Petitioner explains that the U.S. importers are resellers that function as distributors while, conversely, the Department's constructed value does not include SG&A expenses that represent expenses associated with reselling. Petitioner adds that in the preliminary results the Department relied on the statutory minimum, which represents the minimum activities of the manufacturer, to determine SG&A expenses to include in constructed value.

Petitioner further distinguishes the current reviews from *Ceiling Fans* by arguing that the SKF Annual Report provides sufficient evidence to calculate an adjustment to FMV as provided in 19 C.F.R. 353.56(b)(2) (ESP offset), which would not necessarily equal the U.S. selling expenses, if the Department chooses to make such an adjustment.

With respect to deductions of selling expenses from FMV, petitioner contends that, by using the SG&A expenses of SKF in the final results, the Department would exclude those expenses analogous to resale activities. Therefore, petitioner contends, there is no basis to conclude that constructed value requires any deduction similar to the statutory deduction from ESP. Petitioner also asserts that the home market or third-country selling expenses of the foreign producer/U.S. importer are not relevant to the derivation of constructed value and that these expenses cannot therefore be deducted from the surrogate or statutory minimum SG&A expenses used in constructed value. Finally, petitioner asserts that, if the Department does choose to grant an ESP offset, there is no basis on which to assume that an ESP offset would be equal to U.S. selling expenses; rather, the Department should subtract only that portion of SG&A attributable to indirect selling expenses (referencing schedule 6(d), ''Other Expenses,'' of the SKF Annual Report).

Shanghai supports the Department's preliminary decision not to deduct direct and indirect selling expenses from ESP, stating that there is insufficient information to make a corresponding adjustment to FMV which would thereby permit the fair and accurate comparison between USP and FMV required by the antidumping statute. Shanghai points out that the SKF Annual Report does not present the breakdown of selling expenses necessary to make the required adjustments. Shanghai further states that the Department recognized in *Ceiling Fans* that section 772(e) of the statute does not require the unfair adjustment of USP in ESP transactions without the corresponding adjustments to FMV. Shanghai asserts that the antidumping statute requires the Department to make fair comparisons between USP and FMV, pursuant to *The Budd Company* v. *United States*, 746 F. Supp. 1093, 1098. Shanghai concludes that a fair comparison cannot be made if the information available does not permit the FMV adjustment.

Guizhou Machinery *et al.* state that an adjustment to ESP without the companion ESP offset to FMV would lead to distorted results. Guizhou Machinery *et al.* argue that, while deductions for U.S. selling expenses and the ESP offset can be made in market-economy cases without difficulty, it is problematic to do so in NME cases because there is no market-based value for indirect selling expenses on the FMV side of the dumping equation.

Guizhou Machinery *et al.* cite *Ceiling Fans* as the Department's best explanation of the calculation problem and of the Department's reasons for traditionally declining to adjust both USP and FMV for U.S. selling expenses in an NME case, and they suggest that *Ceiling Fans* is a direct precedent for the Department's treatment of selling expenses in this case. Guizhou Machinery *et al.* state that the U.S. importers in *Ceiling Fans*, as in virtually every ESP case, were resellers and that the current reviews cannot therefore be distinguished from *Ceiling Fans* on this basis. Guizhou Machinery *et al.* also state that petitioner's argument does not deal with the fact that the statutory minimum SG&A the Department used as a surrogate value includes all selling expenses necessary to sell TRBs, including an amount for indirect selling expenses that would normally be deducted from FMV as an ESP offset.

With respect to petitioner's argument that, if necessary, there is record evidence that will allow for an ESP offset to FMV, Guizhou Machinery *et al.* further contend that petitioner's reference to schedule 6(d) in the SKF Annual Report as an appropriate source of indirect selling expenses is unsupported by any evidence.

Department's Position: We agree with petitioner with respect to the deduction of U.S. selling expenses from USP. We have reevaluated our practice concerning the deduction of expenses incurred by U.S. affiliates of respondent companies in NME cases and have concluded that such deductions are explicitly required by section 772(e)(2) of the statute, which states that ESP shall be reduced by the amount of ''expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the PRC*, 61 FR 19026, 19031 (April 30, 1996) (*Bicycles*)[1]. The statute provides no exceptions for cases involving NME countries. We have subtracted, therefore, direct and indirect selling expenses incurred by such U.S. affiliates from the starting price in deriving the USP.

We have made an ESP offset to FMV which, in conformance with section 353.56 of our regulations, is in an amount not to exceed indirect selling expenses incurred in the United States. We based this offset on the ''other expenses'' item from the SKF report, and subtracted from this item the amount for debentures as indicated in a footnote to ''other expenses'' in the SKF report. The SKF report notes that the general category of expenses containing the ''other expenses'' item includes ''selling expenses.'' However, none of the named items (*e.g.*, ''power and fuel'') pertain to selling expenses. We have concluded that, as suggested by petitioner, the ''other expenses'' item, minus debentures, represents these ''selling expenses.''

Comment 11: Petitioner claims that verification of Jilin and Liaoning revealed that these companies function in some circumstances as sales agents

[1] Although the statutory citation in this case is to the law as it existed on December 31, 1994, whereas the relevant citation in *Bicycles* is to the law as it exists subsequent to that date, both versions explicitly require the deduction of expenses generally incurred by or for the account of the exporter (or a U.S. affiliate) in the United States.

and states that the Department's calculation of USP does not distinguish between sales for which Jilin and Liaoning acted as agents and sales for which they purchased the bearings for their own accounts and then resold them for export to the United States. Petitioner argues that, in a market economy, the functions of an agent involve additional selling activities for which the agent would be compensated by commissions. Petitioner states that commissions, as selling expenses, should be reflected in constructed value. If commissions are not taken into account in constructed value, petitioner contends, these sales are not at the same level of trade as the Indian sales by SKF that are the basis for assigning values to the factors of production. Petitioner suggests that the Department use the commission rate reported by Premier and Henan as a proxy.

Guizhou Machinery *et al.* state that petitioner misunderstood the verification reports. Guizhou Machinery *et al.* state that in this situation Jilin and Liaoning do not act as commission agents, but simply provide assistance with transaction details after the factory has found a buyer. According to Guizhou Machinery *et al.*, the factory and the customer negotiate a sales price, which includes a fixed profit amount for Jilin or Liaoning, adding that the only difference between the two types of transactions is the nature of the profit. Guizhou Machinery *et al.* further state that if the Department does classify this fee as a commission it would be inappropriate to impute a commission in the manner suggested by petitioner because (1) all of the factories' selling expenses have been included in the statutory minimum SG&A, and (2) it would be improper to use one respondent's proprietary data to calculate a margin for another respondent.

Department's Position: We disagree with petitioner. With respect to petitioner's suggestion that we make an adjustment to FMV for commission expenses, we first note that all transactions by Jilin and Liaoning under review were purchase price transactions. We do not make circumstance-of-sale (COS) adjustments for selling expenses incurred on purchase price sales in NME cases because the surrogate data on the record do not allow us to quantify the direct surrogate home market selling expenses necessary for such an adjustment. *See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China*, 58 FR 48833, 48839 (Sept. 20, 1993) (*Lock Washers*). (Pursuant to our COS methodology, we first subtract home market direct selling expenses from FMV, then add U.S. direct selling expenses.) As noted in our response to Comment 10, we have adjusted for home market *indirect* selling expenses in ESP situations by deducting the ''other expenses'' item as listed in the SKF report. However, there is insufficient data to allow for a *direct* home market selling expense adjustment because we are unable to isolate direct selling expenses in the SKF report.

Second, even if we were to make COS adjustments for purchase price sales, we would make this adjustment using the U.S. selling expenses incurred by Jilin and Liaoning on these transactions. The commission expenses at issue are not incurred by Jilin and Liaoning; rather, they are paid by the PRC suppliers. We reviewed export transactions between the PRC exporter and the unrelated U.S. customer. We did not examine internal PRC transactions between the suppliers and the exporters.

Comment 12: Petitioner and Shanghai both submitted comments concerning the appropriate basis for valuing the ocean freight expense. Petitioner asserts that the freight rate for shipments from Japan to the United States used as the surrogate value by the Department to calculate ocean freight is inappropriate because the distance between Japan and the United States is shorter than that between China and the United States. Petitioner further states that, since Japan is considered one of the world's most advanced countries, it is not appropriate to use the port and maritime transportation system of Japan to calculate ocean freight expenses for the PRC, which is a developing country. Petitioner suggests that, in the absence of market-economy freight rates from China to the United States, the Department use ocean freight from India instead of Japan, since India is the surrogate country selected by the Department. Petitioner suggests that an Indian rate can be established by adding 30 percent to the Japanese rate based on a comparison of the CIF/FOB ratios for the two countries published by the International Monetary Fund (IMF) (1.09 for Japan and 1.117 for India, *i.e.*, 11.7 percent is approximately 30 percent greater than 9 percent).

Shanghai contends that the Department should have used the publicly available rate for shipments from the PRC to the United States, using data from the Federal Maritime Commission (FMC). Shanghai claims that publicly available information on file with the FMC indicates that the Asia North America Eastbound Rate Agreement (ANERA) maintained rates for shipments from the PRC to the United States by several market-country carriers throughout the periods of review.

Shanghai further argues that the port costs in Japan are among the highest in the world and are several times as high as those in other Asian ports and that, therefore, if the Department rejects the use of publicly available ocean freight rates from the PRC to the United States, it should not continue to use the inflated Japanese ocean freight rates but should instead use publicly available rates to the United States from other Asian ports (*e.g.*, Hong Kong/Macau and Taiwan). Shanghai states, in addition, that the Department erroneously applied a USD 3.00 surcharge to the ocean freight value. Shanghai contends that such a surcharge was applicable only on cargo from Japan during the period prior to September 30, 1993 and that there is no evidence of a fuel surcharge on ocean freight from the PRC to the United States. Finally, Shanghai responds to petitioner's suggested approach by stating that Indian rates are totally unrepresentative when compared with the market-based rates from the PRC to the United States.

Guizhou Machinery *et al.* respond to petitioner's suggested approach by arguing that the Department's ocean freight calculation is reasonable because it is based on market-economy rates and relates to the transportation between the United States and an Asian country within reasonable proximity to the PRC. Guizhou Machinery *et al.* further state that a comparison of the CIF/FOB ratios for Japan and India does not reflect the difference in ocean freight expenses charged by ocean freight providers in those counties or the actual freight rates charged in India. Guizhou Machinery *et al.* note that the valuation methodology used by the Department, which relies on the actual rates provided by the FMC, specifically accounts for the transportation of bearing products. Finally, Guizhou Machinery *et al.* suggest that the use of Japanese shipping rates is consistent with Department practice in many other NME cases.

Department's Position: We agree with Guizhou Machinery *et al.* and have used Japanese shipping rates for the final results. We are not using FMC data involving shipments from the PRC to the United States because we were not able to obtain ocean freight information for shipments of subject merchandise from the PRC to the United States during the periods of review. Although we found a shipment of bearings from Hong Kong to the United States during the periods of review, it was provided on a per-container basis and we were unable to allocate these charges on a per-unit basis. The Indian rate suggested by petitioner is inappropriate due to the significantly greater distance involved in shipments from India to the United States compared with shipments from the PRC to the United States. Although the distance from Japan to the United States is shorter than the distance from the PRC to the United States, the Japan-to-United States distance more closely approximates the PRC-to-United States distance than does the distance from India to the United States. Thus, the Japan rate is the best available information by which to value this expense.

Comment 13: Petitioner contends that the Department has understated the marine insurance expense by applying an insurance rate based on weight applicable to sulfur dyes from India rather than on value. Petitioner argues that the value of one ton of sulfur dye may be significantly less than the value of one ton of TRBs, in which case the payment for loss of one ton of sulfur dye would be less than the payment for the loss of bearings. Petitioner recommends that the Department calculate a marine insurance factor based on the ratio of the insurance charge per ton of sulfur dye divided by the value of sulfur dye per ton (based on U.S. Customs value) and apply this factor to the price of TRBs sold in the United States.

Guizhou Machinery *et al.* respond to petitioner by stating that value is not the only basis for insurance rates and that it is not reasonable to assume that the difference in Indian marine insurance rates applicable to sulfur dye and TRBs can be accurately measured simply by comparing the difference in product values. Guizhou Machinery *et al.* note that petitioner's argument about the customs values of sulfur dye is new information and has not been previously submitted on the record for these reviews. Guizhou Machinery *et al.* further state that the Department's approach of using the marine insurance rates from the Sulfur Dyes investigation is consistent with its calculations in NME cases. Finally, Guizhou Machinery *et al.* argue that the Department did not understate but rather overstated the marine insurance expenses due to ministerial errors in calculating several respondents' marine insurance expenses. Guizhou Machinery *et al.* urge the Department to therefore reject petitioner's request to make an upward adjustment to the marine insurance calculations.

Department's Position: We disagree with petitioner. We have relied on the publicly available information on marine insurance for sulfur dyes that we used for the preliminary results. These data are the only publicly available information that are available to us; further, we have used the same rate repeatedly for other PRC analyses. *See, e.g., Final Results of Administrative Review: Certain Helical Spring Lock Washers from the PRC,* 61 FR 41994 (August 13, 1996).

Comment 14: Petitioner argues that, where the Department discovered significant errors or omissions during verification of the information pertaining to one of the current review periods (1990–91, 91–92 or 92–93), such findings should also be applied to the other periods. Petitioner states that it requested verifications for all three outstanding review periods, but that the Department elected to verify only one or two of the periods. Petitioner states that, with respect to several of the exporters or producers, the Department subsequently rejected responses for one POR because of verification findings and applied BIA either in whole or in part with respect to that period, but accepted unverified responses for an earlier or later POR.

Citing section 751(a)(2) of the Act, petitioner argues that the Department is directed to consider all relevant information in its possession at the time the Department determines antidumping duties. Petitioner states that in *Floral Trade Council of Davis, California* v. *United States,* 709 F. Supp. 229, 230 (CIT 1989) (*Floral Trade Council*), the court held that documents in the Department's possession which had become sufficiently intertwined with the relevant inquiry are part of the record, no matter how or when they arrive at the Department. Petitioner asserts that, because the three reviews at issue have become intertwined, errors or omissions discovered during verification of one review period cannot be ignored for purposes of another review period. Petitioner argues that, since the results of verification were known to the Department before publication of the preliminary results for any of the three pending reviews, relevant information obtained with respect to a company in the course of one review is also before the Department for purposes of the other intertwined reviews. Noting the fact that there was a single briefing schedule, one hearing and one disclosure conference, petitioner argues that the Department is treating these reviews virtually as a unified proceeding.

Petitioner further argues that the Department routinely applies BIA from past reviews and cites as an example a review of a countervailing duty order on fabricated auto glass from Mexico, in which the Department relied upon information contained in a verification report from a past review of litharge, red lead and lead stabilizers from Mexico (citing *PPG, Inc.* v. *United States,* 708 F. Supp. 1327 (CIT 1989) (*PPG*)). Petitioner distinguishes *Cabot Corp. v. United States,* 664 F. Supp. 525, 527 (CIT 1987) (*Cabot*), in which the CIT held that a verification report for a subsequent review of the same order was not before the Department for consideration in the previous review, by noting that in *Cabot* the Department issued the final results of the previous review prior to issuance of the verification report in question. Petitioner argues that, in the pending review, because verification reports for subsequent reviews have been issued prior to the issuance of final results of the previous reviews, those reports are before the Department for consideration in the previous reviews.

Petitioner further contends that the failure to consider information from the verification reports in the other intertwined reviews shifts an impossible burden to petitioner. Petitioner asserts that such was the case in *Final Results of Antidumping Duty Administrative Review; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Components Thereof, From Japan*, 58 FR 64720, 64723 (December 9, 1993) (*TRBs from Japan*), in which the Department refused to consider knowledge gained from a verification for the 1991–92 review to correct errors likely to have been made in the 1990–91 review in order to avoid holding respondent in that case responsible for the Department's delay in conducting the earlier review. Petitioner claims that, because domestic interested parties necessarily depend upon information from a variety of sources, including verification reports from other review periods, in order to rebut arguments made by respondents, denying petitioner the ability to consult such reports and show inaccuracies in reported information interferes with fundamental rights of participation.

Finally, petitioner argues that, even if the Department refuses to consider verification results in the context of an earlier review, to the extent that the Department applied partial or complete BIA for the 1991–92 POR based on verification, the same BIA should be applied with respect to the 1992–93 POR.

Guizhou Machinery *et al.* respond that the Department should reject petitioner's request to combine the administrative records of the three reviews in question. Citing *Win-Tex Products, Inc.* v. *United States*, 797 F. Supp. 1025 (CIT 1992) (*Win-Tex*), Guizhou Machinery *et al.* argue that the results of each proceeding must be based upon substantial evidence of the administrative record for that proceeding. Guizhou Machinery *et al.* argue that each administrative review is considered a separate administrative proceeding and, absent affirmative incorporation, documents contained in the administrative record of one review are not part of the administrative record of another review.

Guizhou Machinery *et al.* further claim that petitioner's argument, based on its citation of *Floral Trade Council*, in which the CIT granted plaintiff's motion to supplement the administrative record of a scope proceeding with information from the underlying investigations by the Department and the International Trade Commission (ITC), is flawed. Guizhou Machinery *et al.* note that the CIT's decision was based on the fact that the Department itself stated in its scope decision that it had examined both original investigations. Thus, respondents argue, the CIT did not hold that the Department had to examine documents from earlier parts of the proceeding, but allowed the documents to be incorporated, not because plaintiff deemed them relevant, but, rather, because the Department itself had incorporated the documents in its determination.

Department's Position: We disagree with petitioner. Section 516A(b)(2)(A) of the Act states that the record for review includes ''a copy of all information presented to or obtained by the [Department] during the course of the administrative proceeding, including all government memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 777(a)(3)'' as well as ''a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.'' As elaborated in our regulations, ''[f]or purposes of section 516A(b)(2) of the Act, the record is the official record of each judicially reviewable segment of the proceeding.'' 19 C.F.R. 353.3(a) (1994). The CIT has consistently held that antidumping investigations and administrative reviews are wholly independent segments of a proceeding. *See, e.g., Outokumpu Copper Rolled Products AB* v. *United States*, 829 F. Supp. 318, 322 (CIT 1992) (''Each of Commerce's subsequent determinations must be supported by the record obtained during the course of [the] respective administrative proceeding.'').

We agree with respondents with respect to *Floral Trade Council.* There, the Court reviewed a scope decision in which the Department stated ''without qualification that it has examined 'the original investigations by the ITC and the Department.* * *' '' *Floral Trade Council* at 230. Thus, the Court allowed the plaintiff to supplement the record with certain documents from the investigation that had become ''sufficiently intertwined'' with the Department's scope inquiry. Here, in contrast, the Department is conducting a review pursuant to section 751 to determine whether, and to what extent, the respondents have sold subject merchandise at less than foreign market value during three separate periods of review. To make these determinations, we have relied on information pertaining to each separate period; we have not relied on administrative records for other segments of the proceeding in reaching any of these determinations.

With respect to *PPG*, in which we relied on a verification report from another case in making our determination, the report from the unrelated case was placed on the record of the case in question because it contained public information regarding Mexican interest rates. *See PPG* at 1328. Thus, the Department relied on the verification report in a similar manner as our current use of publicly available information from the *Sulfur Dyes* petition in valuing marine insurance. *See* Comment 13.

Although the preliminary results for these three reviews were published in the same notice and we conducted them concurrently, including a single briefing schedule, one hearing and one disclosure conference, as noted by petitioner, we did so for the convenience of all parties involved in these reviews. However, each review is a separate segment of the proceeding as defined in our regulations. *See* 19 C.F.R. 353.3(q). Despite the fact that reviews sometimes proceed concurrently or overlap, we generally do not apply the results of verification of one review period to other review periods. *See TRBs from Japan* at 64723. In this instance, we found no discrepancies during verifications of one POR that would also apply to other PORs based on record evidence.

Comment 15: Petitioner argues that the Department erred in its choice of the BIA rate to apply to certain transactions by Jilin, Liaoning, Chin Jun, Guizhou, and Henan. Petitioner states that the appropriate BIA rate for U.S. sales involving models for which insufficient data was supplied to allow the calculation of FMVs should be the highest rate found for any individual U.S. transaction, instead of the greater of the highest company-specific rate from a prior review or the highest rate calculated in the current review. Petitioner asserts that to do otherwise is to encourage respondents to selectively withhold relevant data whenever by doing so the Department would select a BIA rate lower than the actual margin of dumping.

Respondents Jilin, Liaoning, and Guizhou respond that they cooperated in these reviews and that petitioner has provided no reason to deviate from the Department's established practice concerning cooperative firms, nor has petitioner shown that the Department's results are aberrational as a result of the use of its policy.

Chin Jun responds that the highest single transaction recommended by petitioner is punitive and must be rejected because the Department expressly found in its preliminary results that Chin Jun was cooperative in the reviews at issue. Chin Jun further notes that it was unable to supply the missing information because such information was under the control of unrelated third parties.

Department's Position: We disagree with petitioner. The BIA that we have selected, as detailed in our response to Comment 29, is in accordance with the BIA policy for antidumping administrative reviews. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Administrative Reviews*, 58 FR 39729, 39739 (July 26, 1993). All of the companies in question, except Chin Jun during the 1990–91 review, substantially cooperated with our requests for information for the periods in question but failed to provide complete or accurate information with respect to certain transactions. For these specific transactions, we find that our BIA approach accomplishes the statutory goal of encouraging compliance with our requests for information as well as allowing us to determine current margins as accurately as possible. *See Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990). Petitioner's suggested BIA (*i.e.*, the highest rate found for any individual U.S. transaction) is unwarranted given the level of cooperation and the nature of the reporting deficiencies.

Comment 16: Petitioner states that Shanghai's bearing weights and scrap weights were unverifiable and that the

Department should therefore resort to partial BIA by adjusting the reported amounts to reflect the highest actual materials or lowest actual scrap costs.

Shanghai argues that the Department weighed actual bearings and scrap samples at verification and determined that any discrepancies found at verification were insignificant. Shanghai states that the Department has previously found no cause to resort to BIA on the basis of insignificant discrepancies (citing *Silicon Carbide* at 19749).

Department's Position: We disagree with petitioner. Although at verification we did find discrepancies from the reported weights, we determined these discrepancies to be insignificant. Therefore, they did not undermine the validity of Shanghai's responses. In addition, we found some discrepancies to be above reported weights and others to be below; we found no pattern of under-reporting.

Comment 17: Petitioner argues that the Department reported that it was unable to verify the number of Shanghai's employees assigned to the production of TRBs, citing the verification report for the 5th and 6th PORs. Petitioner claims that, as a result, the Department could not verify reported indirect labor nor was it able to determine the extent to which labor costs were understated by the omission of trained employee hours from the direct labor costs reported. Petitioner further argues that, given that overhead costs, SG&A and profit are all derived on the basis of materials and labor costs, the inability to verify labor hours is fatal to Shanghai's entire questionnaire response. Petitioner argues that, if the Department uses the partial information submitted by Shanghai, labor hours should be adjusted to account for trained employees. Petitioner refers to the verification report, which notes that, although Shanghai reported only skilled workers, the Department determined at verification that production teams consisted of both skilled and trained workers. Thus, petitioner asserts, the Department should, as BIA, reject the response entirely, or, alternatively, calculate the ratio of all workers to skilled workers and apply that ratio to Shanghai's reported labor hours.

Shanghai claims that petitioner has misinterpreted the verification report. Rather than stating that the number of employees assigned to TRB production was unverifiable, Shanghai says the report noted that it was not verifiable from personnel department worksheets, which do not contain such information. Shanghai says that it did report the number of employees assigned to TRB production and that such information was verifiable through a variety of means. Shanghai further claims that its reported labor hours accounted for trained workers. Shanghai counters petitioner's argument for use of BIA on the basis that it did not refuse information and it was able to produce, in a timely manner, any information requested by the Department.

Department's Position: We agree with Shanghai's contention that petitioner misinterpreted our verification report. In the report, we noted that there was nothing to which we could trace the numbers from a worksheet prepared for these administrative reviews in order to verify the number of employees assigned to the production of subject merchandise. However, based on company records examined at verification, we determined that Shanghai accurately reported the number of employees assigned to the production of TRBs.

We were able to verify the direct labor hours from Shanghai's internal record-keeping derived from work tickets. We found at verification that by reporting direct labor from the work tickets Shanghai did not account for trained workers. To calculate direct labor for the preliminary results, we adjusted Shanghai's reported labor hours in order to account for trained workers by adding the direct labor hours for trained workers to the direct labor hours for skilled workers. We have applied this same methodology for these final results. Because we were able to verify Shanghai's direct labor and there was no evidence indicating that indirect labor was misreported, we have used the indirect labor as reported.

Comment 18: Petitioner notes that the Department's analysis memoranda for Jilin and Liaoning for the fifth and sixth reviews do not indicate whether it corrected the databases for clerical errors discovered during verification.

Department's Position: For these final results, we have corrected Jilin and Liaoning's sales databases for the clerical errors we discovered during verification.

Comment 19: Petitioner states that, whether or not verified, the Department should make an adjustment for commissions incurred on U.S. sales (valued in a market economy) in the Department's analysis of Guizhou Machinery based on the commission rates reported by Premier and Henan, both of which disclosed sales through commission agents and the commission rates.

Guizhou Machinery states that the failure to report certain commission payments amounted to an insignificant ''clerical error.'' Guizhou Machinery further argues that it would be unfair to make wholesale adjustments to Guizhou's calculations which would affect all sales, including those sales which are unaffected by the error, and that it would be inappropriate to base an adjustment on the average commission rate reported by Premier and Henan because it would violate the administrative protective order (APO) rules applicable to that information.

Department's Position: We disagree with petitioner. Guizhou Machinery had only purchase price sales. Therefore, any adjustments for commissions would be circumstance-of-sale adjustments, which we do not make in NME cases. See our response to Comment 11.

Comment 20: Petitioner argues that, with respect to Guizhou Machinery and the 1992–93 review, the Department should reclassify as U.S. sales those transactions with purchase orders placed by a U.S. firm that were listed as third-country sales.

Guizhou Machinery argues that the administrative record indicates that the merchandise was shipped to a third country, not the United States, and that, although purchase orders were placed by a U.S. company, Guizhou Machinery did not know the ultimate destination of the TRBs because the merchandise was shipped to a third country. Guizhou Machinery argues that it would therefore be inappropriate to reclassify these third country sales as U.S. sales.

Department's Position: We disagree with petitioner. Section 773(f)(2) of the Act requires that the producer of the merchandise know, at the time of sale to the reseller, the country to which the reseller intends to export the merchandise in order for the Department to treat sales to a reseller as sales to the United States. Although there were certain purchase orders placed by a U.S. company, there is insufficient evidence that the respondent had knowledge of whether the subject merchandise was destined for the United States. During verification of Guizhou Machinery, the Department confirmed that these sales were shipped and sold to a Hong Kong-based company. Accordingly, we have classified these transactions as third country sales for the final results.

Comment 21: Petitioner asserts that the factory that supplies Guizhou Machinery with TRBs failed to report ''helpers'' (*i.e.*, workers assisting the basic production workers) in its reporting of direct labor. Petitioner requests that the Department increase the labor hours to account for unreported workers.

Guizhou Machinery responds that the Department's verification report clearly states that ''helpers'' are ''auxiliary workers,'' which are different than the ''basic production workers.'' Guizhou Machinery further argues that the auxiliary workers typically perform maintenance work and move containers and that ''auxiliary workers'' labor is indirect labor and is not part of direct labor.

Department's Position: We agree with petitioner. The Department verified that the function of ''helpers'' is to support the basic workers in the production of TRBs. Although ''helpers'' have a supporting role in the production process, they do perform a function in the production of TRBs. Therefore, the Department has adjusted its calculations for direct labor to account for unreported workers.

Comment 22: Petitioner notes that the Department stated that reported duties and charges incurred by Central Bearing, Luoyang's wholly owned subsidiary in the United States, on ESP sales were deducted from the unit price. Petitioner argues that, because printouts associated with Luoyang's ESP sales do not reflect such calculations, such expenses should be deducted in the calculation of USP for the final results.

Luoyang notes that, although the printout for ESP sales appears to be incomplete, the calculation of net USP does include relevant information regarding these expenses, and a review of the calculation formula indicates that the Department deducted duties and other charges. Thus, Luoyang argues, no revision is necessary for the final results.

Department's Position: We agree with Luoyang. A review of the formula we used to calculate net USP, which was provided to petitioner, indicates that net USP was the price after making deductions for duties and charges incurred by Central Bearing. Therefore, for these final results, we have made no further adjustment with respect to these expenses.

Comment 23: Petitioner contends that the Department should reject the factors data submitted by one of the suppliers involved in these reviews because it under reported its material consumption by using theoretical instead of actual yields in the denominator of the gross weight factor. Petitioner argues in the alternative that, if these data are not disregarded, the Department should adjust the data to account for this error.

Guizhou Machinery *et al.* respond that petitioner has not established that the error was so substantial as to justify the rejection of the supplier's response in its entirety.

Department's Position: We disagree with petitioner concerning its claim that the supplier response in question should be disregarded in its entirety. However, we agree that an adjustment should be made to the data submitted to correct for the difference between theoretical and actual yields. We have made this correction for the final results.

Comment 24: Shanghai argues that the SKF overhead rate that the Department used in the preliminary results should not be used for the final results because it is excessive and unrepresentative of Chinese producers for the following reasons. First, Shanghai argues that the Department's analysis improperly allocates the full amount of the depreciation expense to overhead, and it does not consider that certain depreciation expenses are allocable to SG&A. Shanghai notes that, for the final results of the 1989–90 review, the Department allocated a portion of depreciation to SG&A. Shanghai states that, according to the SKF annual report, 7.3 percent of total depreciation pertains to SG&A.

Second, Shanghai notes that the SKF annual report does not identify the nature of rent and lease expenses. Shanghai claims that office space and housing for executives should be charged to SG&A and that these lease and rent payments should therefore be allocated to SG&A, not to overhead.

Third, Shanghai argues that it is not reasonable to allocate ''Rates and Taxes'' to overhead since they are not characterized as such in the SKF annual report. Shanghai states that this treatment is inconsistent with the 1989–90 administrative review, in which the Department allocated the rates and taxes to SG&A. Shanghai requests that the Department accordingly reduce the SKF overhead by this amount in the event that it continues to rely on the SKF overhead rate.

Shanghai suggests that, since there is inadequate information to determine SG&A in the SKF Report, the Department should use the Tata Iron and Steel Company (TISCO) overhead figure of 19.24 percent of materials and direct labor as indicated in the July 16, 1991, cable from the Indian Embassy or use the data compiled by the Reserve Bank of India (RBI) for the overhead calculation.

Chin Jun also claims that attributing the entire amount of SKF's depreciation to overhead is improper because some depreciation, *e.g.*, depreciation on buildings, computer and furniture, should be included in SG&A. Chin Jun requests, therefore, that at least one quarter of depreciation should be allocated to SG&A. Chin Jun also recommends an alternative method for calculation of SG&A, resulting in an overhead rate of 11.76 percent.

Department's Response: We disagree with Shanghai that we should either use TISCO's SG&A rate or the RBI information for the calculation of SG&A and overhead rates instead of using SKF's annual report. TISCO, Tata Iron and Steel Company, as the name implies, is an iron and steel company, not a bearing company such as SKF. The information published by RBI represents over 600 companies in India from various industries. It is the Department's practice to utilize industry-specific PI when possible. See *Notice of Final Determination of Sales at Less Than Fair Value; Disposable Pocket Lighters From the People's Republic of China*, 60 FR 22359, 22364 (May 5, 1995). Accordingly, for the final results, we have continued to calculate SG&A and overhead rates based on the information stated in SKF's annual report.

However, we agree that it is appropriate to adjust the SKF overhead rate as follows. We agree with Shanghai and Chin Jun that it is improper to include all of SKF's depreciation in overhead because depreciation associated with office buildings and office equipment should be included in SG&A. Therefore, for the final results we allocated depreciation costs to overhead and SG&A according to the function and value of the assets; that is, we included in overhead only the depreciation expenses allocated to manufacturing. The information pertaining to the function and value of SKF's assets was obtained from the SKF annual report.

We also agree with Shanghai that rates and taxes should be allocated to SG&A and not to overhead. This allocation methodology is consistent with our practice in the 1989–90 administrative review of this proceeding and with other recent PRC cases. See memorandum from analyst to file *Factor Values Used for the Preliminary Results of the First Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China, for the Period October 15, 1993, through September 30, 1994* dated August 3, 1995.

With respect to lease rental expenses, we agree with Shanghai that the SKF annual report does not identify the nature of those expenses. However, we do not agree that all of the lease rental expenses are for SG&A, since a portion of those expenses could be attributed to overhead as well. Accordingly, we allocated lease rental expenses equally to SG&A and overhead, *i.e.*, 50 percent for SG&A and 50 percent for overhead.

Comment 25: Shanghai states that the Department should correct apparent calculation errors that, Shanghai contends, resulted in a higher reported steel cost for cups and cones. Shanghai notes a discrepancy between the steel cost for cups and cones reported in the analysis memorandum and that provided in surrogate data source memorandum.

Department's Position: For the final results, we have changed the surrogate source with which we valued the steel used to manufacture cups and cones, necessitating a recalculation. This change renders Shanghai's argument moot.

Comment 26: Shanghai argues that the actual prices at which it purchased steel from PRC steel producers are sufficiently market-driven to be used instead of surrogate values. In support of its contention that the use of market-driven NME prices is appropriate, Shanghai cites *Ceiling Fans,* wherein the Department has stated that the presumption that no domestic factor of production is valued on market principles ''can be overcome for individual factors by individual respondents with a showing that a particular NME value is market driven'' (citing *Ceiling Fans* at 55273). Shanghai argues that, where this standard is met, the Department should apply its normal (non-NME) methodology (citing S. Rep. No. 71, 100th Cong., 1st Sess., 108 (1987)).

Shanghai states that the domestic steel producers from which it purchased steel compete against steel producers from market-economy countries. Shanghai also notes that there are no import restrictions limiting its ability to purchase either domestic or imported steel and that, under PRC joint venture law, it has the legal right to purchase steel from any supplier in the world. Shanghai states that the prices at which it purchased steel from domestic suppliers during these PORs were consistent with world steel prices for comparable types of steel.

Shanghai argues in the alternative that, if the Department determines Shanghai's steel purchases were not sufficiently market-driven, it should use the verified market costs of PRC steel imports otherwise on the record as the basis for valuing steel inputs. Shanghai claims that, in view of the Department's policy stated in *Ceiling Fans* of accepting market-based costs incurred during the POR, the Department should apply such costs to all respondents as the best evidence of the market cost of steel available to PRC producers during the PORs.

Finally, Shanghai proposes that the Department should consider using Shanghai's verified steel imports placed on the record of the 1993–94 review. Shanghai claims that, when adjusted for inflation, these costs would also represent a reliable alternative as to the market cost of steel available during these PORs. Shanghai argues that the Department has previously determined that, if an NME producer reports prices that are market-based, it is appropriate to use those prices as opposed to surrogate values. Shanghai claims that ''market-based costs incurred by the respondents in producing the subject merchandise . . . are the most accurate and appropriate values for . . . the purposes of calculating FMV'' (quoting *Ceiling Fans* at 55275).

Petitioner counters that there is no basis for adopting Shanghai's claim that its actual domestic steel purchases were market-driven, claiming that steel purchased in the PRC is not free of the effects of state controls on labor, energy, input and infrastructure prices. Petitioner adds that the participation of a market-economy investor will not purge the PRC inputs of the effects of state control.

In response to Shanghai's argument that the Department should value steel inputs based on import costs incurred by other respondents during the PORs, petitioner responds that Shanghai has not shown that it had any connection with any other companies' market-economy acquisitions during these PORs. Petitioners adds that the fact that Shanghai made market purchases of these inputs in subsequent years is irrelevant to these reviews.

Department's Position: We agree with petitioner. In order to use the prices paid by Shanghai for domestically produced steel inputs in our analysis, we must find that the PRC steel industry as a whole is governed by market-driven prices. The absence of explicit government involvement in the transactions involving Shanghai's steel purchases is not sufficient to warrant the conclusion that the prices for these inputs are market-driven. *See Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome Plated Lug Nuts from the People's Republic of China,* 57 FR 15052, 15053 (April 24, 1992). Shanghai has provided no evidence that would indicate that either the steel industry or the bearings industry in the PRC is a market-oriented industry.

As stated in *Ceiling Fans,* we will use, outside the context of a market-oriented industry, actual prices paid for inputs by NME-based producers to market-economy suppliers in a convertible or market currency. *See Ceiling Fans,* 56 FR at 55275. However, because Shanghai provided no evidence of having paid such prices for its steel inputs we have, for the final results, valued Shanghai's steel inputs using surrogate values. Regarding Shanghai's claim that we should value its steel inputs based on import costs incurred by other respondents, we note that we have not valued any respondent's steel inputs in these reviews based on the company's steel purchases. *See Comment* 5.

Comment 27: Chin Jun argues that the Department should use the verified import price incurred by other respondents as the steel value for all PRC producers on the basis that the Indian import data used by the Department far exceeds the value of steel used to produce TRBs, as evidenced by copies of invoices submitted by Chin Jun showing the acquisition price of steel by companies in market-economy countries. Chin Jun claims that the Department has previously determined that it must compare the surrogate price it selects with world prices to determine whether the proposed surrogate values are aberrational (citing *Hand Tools*).

Petitioner responds that the steel values used in the preliminary results are very low when compared with actual steel prices paid by Indian bearing producers, including prices on the record for the less-than-fair-value investigation (LTFV) remand results.

Department's Position: We disagree with Chin Jun. As noted in our response to Comments 5 and 26, we have not used the value of any respondent's imported steel in calculating factor values in these reviews because no respondent purchased such steel directly from market-economy suppliers. We have also not considered prices indicated on the invoices provided by Chin Jun because such a small number of invoices as was provided by Chin Jun cannot be deemed indicative, absent additional supportive data, of the values of steel used to produce TRBs. Finally, the invoices submitted by Chin Jun contain business proprietary information, and, as noted in our response to Comment 2, we prefer to base surrogate values on PI where possible.

However, we note that we have determined that the Indian import data on steel used to produce cups and cones is not reliable in comparison with U.S. import data regarding bearing quality steel. Therefore, we have used Indonesian import data to value such steel. *See* Comment 4.

Comment 28: Shanghai claims that the Department arbitrarily inflated Shanghai's dumping margin for the 1990–91 POR by rounding its calculations of per unit dumping duties and of total value to four decimal places. Shanghai argues that, had the Department rounded the numbers to two decimal places, the result would have been a *de minimis* margin of 0.47 percent instead of the 0.51 percent rate published in the preliminary results. Shanghai states that, although the Department's calculations display the numbers in the AD column rounded to two decimal places, the Department advised it that the calculations actually extended the figures to four decimal places. Shanghai asserts that the only apparent reason for using the four-digit method is to inflate the margin. Shanghai adds that the Department should not exercise its judgment in a manner that denies a respondent a *de minimis* margin.

Department's Position: We disagree with Shanghai. Although the computer printout of the Department's preliminary margin calculations shows numbers that appear to be rounded to four decimal places, the actual margin calculation was based on unrounded numbers, consistent with our standard practice for antidumping analysis. We calculate margins using unrounded numbers to obtain more accurate results. The numbers are displayed to only four decimal places for ease of printing. Furthermore, changes to Shanghai's margin calculation for these final results have yielded a *de minimis* margin.

Comment 29: Premier contends that the Department inappropriately based its dumping margin entirely on a so-called cooperative BIA rate for all three review periods at issue. Premier notes that, for each period, the cooperative rate assigned is identical to the uncooperative rate and states that such rates are punitive as applied to Premier, since the company cooperated to the best of its ability, including participating in a three-day verification. Premier states that it was unable to provide certain factors of production information to the Department because such information resides with unrelated suppliers that often compete with Premier and that the Department's application of BIA under such circumstances constitutes an abuse of discretion since it amounts to penalizing a company for failing to provide information it does not have. Premier cites *Usinor Sacilor* v. *United States*, 872 F. Supp. 1000 (CIT 1994), in support of its contention that the Department cannot select a severely adverse BIA rate when the deficiencies in the data are outside the respondent's control.

Premier further states that this data is not necessary in order to calculate a dumping margin for Premier, since it is a Hong Kong company for which the Department can use acquisition costs in lieu of factors of production data. Premier notes that in the 1989–90 review the Department did not disregard the entire response, which lacked factors data, and instead applied cooperative BIA only to those U.S. sales for which there was no identical foreign market match.

Finally, Premier notes that the Department has modified its standard two-tiered approach in the past where strict application of this methodology would result in aberrational margins (citing *Certain Steel Products from Mexico*, 58 FR 37352 (July 9, 1993), and *Professional Electric Cutting Tools and Professional Electric Sanding Grinding Tools from Japan,* 58 FR 30144 (May 26, 1993)). Premier suggests that the Department could reasonably use other alternatives other than the two-tiered methodology in the pending reviews, including (1) the highest rate calculated for Premier in any prior segment of the proceeding (0.97 percent); (2) the second highest calculated rate in each of the three reviews; or (3) the highest calculated rate from the prior (1989–90) review (8.83 percent).

Similarly, Chin Jun contends that the cooperative BIA rate that the Department applied to transactions for which it was unable to provide factors of production data is unnecessarily punitive and that, if the Department applies BIA to such transactions in the final results, it should use the actual dumping margins found for Chin Jun's transactions for which factors data was provided. Alternatively, Chin Jun states that, for those models for which Chin Jun was unable to provide factors data, the Department should have used factors data from any PRC-based producer which provided such data.

Petitioner responds that the BIA rate applied to Premier was not punitive but was in fact a cooperative rate under the Department's two-tiered methodology. Petitioner also contends that the deficiencies in Premier's response extend beyond a lack of supplier data and include significant errors in Premier's U.S. sales database. Petitioner requests that the Department apply a non-cooperative BIA rate to Premier and to each of its non-cooperative suppliers.

Petitioner further states that Chin Jun's suggestion that its actual calculated dumping margins should be used with respect to U.S. sales for which it could not provide factors data is inappropriate and requests that the Department adhere to the BIA guidelines provided in petitioner's case brief.

Department's Position: We do not accept Premier's contention that it is being penalized for factors that are outside of its control. We are using a cooperative BIA rate due to several failures on the part of Premier to supply information, including the failure to provide, at verification, certain information which was within Premier's control. The company's responses had several deficiencies. In addition to its failure to provide factors information on a transaction-specific basis, Premier was unable to accurately identify its suppliers or provide the quantities of merchandise supplied to the company during the PORs. *See Memorandum from Analysts to File: Verification Report for Premier Bearing and Equipment, Ltd.* (August 3, 1995) at 2. Therefore, we applied, to all U.S. sales, as cooperative BIA, the higher of the highest rate ever applicable to Premier or the highest calculated rate in the review period for each of the three reviews. Since these cooperative BIA rates are lower than the highest rate found for the 1989–90 review, we do not reach Premier's suggestion that we use the highest rate from 1989–90 review of this order. Further, our policy of requiring factor-of-production information for NME cases was adopted subsequent to that review.

Chin Jun substantially cooperated with our requests for information in the 1991–92 and 1992–93 reviews, but failed to provide FOP information with respect to sales of certain models. Under section 776(c) of the Act we have the authority to use BIA ''whenever a party or any other person refuses or is unable to produce information requested.'' Therefore, we can use BIA not only when a party ''refuses,'' but also when a party is ''unable'' to provide information.

Accordingly, we applied, as partial BIA for those specific transactions where Chin Jun was unable to provide us with the requested cost information, the highest rate ever applicable to Chin Jun in any previous review. *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review,* 58 FR 37912 (July 14, 1993); *see* also our response to Comment 15.

Furthermore, we do not accept Chin Jun's argument that, for those models for which Chin Jun was unable to provide factors data, we should use factors data from any PRC-based producer because such data constitutes business proprietary information.

Finally, we disagree with petitioner's claim that an uncooperative BIA rate is appropriate under these circumstances. As stated in the preliminary results, we apply uncooperative BIA only in those circumstances where a party refuses to provide the information requested in the form required or otherwise significantly impedes the Department's review. Although both Premier and Chin Jun failed to provide certain information, they otherwise cooperated with our requests for information. Therefore, we decline to apply uncooperative BIA for these companies.

Comment 30: Henan claims that the Department made several clerical errors in its preliminary calculations with respect to several models in the 1991–92 and 1992–93 administrative reviews. Henan states that the errors are in the columns entitled ''Net Cost of Materials'' and ''Total Net Cost of Materials.'' Henan states that these errors created further distortions when the Department added SG&A and profit as a percentage of the inflated cost of production. As a result, Henan contends, the constructed value for these models exceeded the USP, creating the dumping margins found in the preliminary results. Henan requests that the Department reconstruct the calculations by using the correct figures for the total net cost of materials. Petitioner also asserts that there were clerical errors made in the calculations for Henan's 1991–92 and 1992–93 administrative reviews.

Department's Position: The Department agrees with both Henan and petitioner and has corrected the errors for the final results.

Comment 31: Luoyang claims that the Department erroneously assigned a value of zero for saleable scrap in calculating the margin for the 1992–93 POR. Luoyang argues that the Department should have allowed a credit as in the 1991–92 POR and as stated in the analysis memorandum for both PORs.

Petitioner states that an adjustment is not warranted for one POR simply on the basis that such an adjustment was made in the previous review. Petitioner further notes that it has long argued that a scrap adjustment is warranted only if the sale of scrap is documented in the particular POR in question, and, on that basis, Luoyang is not entitled to a scrap adjustment for the 1992–93 POR. Petitioner adds that the Department should explain why it stated in the analysis memo that it made a scrap adjustment yet in its calculations it denied the scrap adjustment for the 1992–93 POR.

Department's Position: We agree with Luoyang. We verified Luoyang's sale of scrap for the 1992–93 POR and intended to adjust for saleable scrap as we did in the previous PORs. *See Verification Report for Luoyang Bearing Factory in the Fifth and Sixth Reviews of the Antidumping Duty Order of Tapered Roller Bearings and Parts Thereof From the People's Republic of China* (August 3, 1995) at 6. For these final results, we have deducted scrap credit from Luoyang's gross cost of manufacture.

Comment 32: Chin Jun argues that the Department should use steel data on the record related to European Union (EU) and Japanese steel exports to India. Chin Jun states that, in addition to being reliable, the data is contemporaneous with the PORs. Chin Jun further submits that invoices showing prices paid by a U.S. producer of bearings to market-economy steel producers constitutes an acceptable alternative source of steel values, in that such information establishes a world price for bearing-quality steel which shows the Indian import statistics used for the preliminary results to be aberrational.

Petitioner counters that two of the three invoices supplied by Chin Jun in support of its argument that prices paid by a U.S. bearings producer are a valid source of steel values are dated outside the PORs. Petitioner also says that Chin Jun fails to explain how these selective data are more reliable than the data used by the Department.

Department's Position: We agree with Chin Jun that certain of the Indian import statistics should not be used to value bearing-quality steel. We compared the Indian import data with other sources and found it to be unreliable. See our response to Comment 4. However, we have not used EU and Japanese export data submitted by Chin Jun because we prefer import statistics to export statistics, as import statistics more accurately reflect the costs incurred by the bearings producer to procure the raw material inputs. Accordingly, we have, for these final results, used the Indonesian import statistics to value steel used to manufacture cups and cones.

Comment 33: Chin Jun asserts that the Department incorrectly inflated steel prices, noting that, from 1990 to 1992, average import prices under U.S. HTS 7228.30.80—a basket category which contains the type of steel used to produce cups and cones—dropped in the United States. Chin Jun says it is logical that steel prices in India also dropped during the PORs.

Petitioner responds that U.S. steel prices are irrelevant in these reviews. In addition, petitioner argues, according to Chin Jun's reasoning there would be uniform prices everywhere and no need to argue as to which surrogates to use.

Department's Position: For these final results we have applied surrogate steel values coincident with each POR. Therefore, we have not used price inflators for these final results, rendering Chin Jun's argument moot.

Comment 34: Transcom and L&S, domestic importers of subject merchandise, argue that the Department's decision to apply what they consider to be punitive BIA appraisement and deposit rates to companies that were never part of any of the reviews is unlawful. Transcom and L&S state that, for each of the three reviews in question, there were various companies from which they purchased subject merchandise, none of which received a questionnaire, nor were any named in the notice of initiation of review. Transcom states that entries from each of the unnamed companies were subject to estimated antidumping duty deposits at the ''all others'' rate in effect at the time of entry and argues that the Department is precluded as a matter of law from either assessing final antidumping duties on the unreviewed companies at any rate other than that at which estimated antidumping duty deposits were made or imposing the new BIA-based deposit rate on shipments from unreviewed companies.

Transcom and L&S, citing section 751(a) of the Act, state that the Department is directed to determine the amount of antidumping duties to be imposed pursuant to periodic reviews. They add that, in accordance with 19 C.F.R. 353.22(e), unreviewed companies are subject to automatic assessment of antidumping duties and a deposit of estimated duties at the rate previously established.

Transcom and L&S note that the CIT has concluded that in situations where a company's entries are not reviewed, the prior cash deposit rate from the LTFV investigation becomes the assessment rate, ''which must in turn become the new cash deposit rate for that company'' (citing *Federal Mogul Corp.* v. *United States,* 822 F. Supp. 782, 787–88 (CIT 19 3) (*Federal Mogul II*)). Transcom and L&S claim that the CIT has affirmed this rationale in other more recent decisions as well, concluding that the Department's use of a new ''all other'' rate calculated during a particular administrative review as the new cash deposit rate for unreviewed companies which have previously received the ''all other'' rating is not in accordance with law (citing *Federal Mogul Corp.* v. *United States,* 862 F. Supp. 384 (CIT 1994), and also citing

UCF America, Inc. v. *United States,* 870 F. Supp. 1120, 1127–28 (CIT 1994) (*UCF America)).*

Based on the cited CIT decisions, Transcom says that an exporter that is not under review would have no reason to anticipate that antidumping duties assessed on its merchandise would vary from the amount deposited. Transcom notes that *Federal Mogul II* (at 788) states that parties rely on the cash deposit rates in making their decision whether to request an administrative review of certain merchandise. In view of the Department's regulations, Transcom claims that the absence of any notice from the Department that unnamed companies faced the possibility of increased antidumping duty liability is fundamentally prejudicial to the unnamed companies. Transcom states that previous attempts by the Department to impose the BIA rate on an exporter neither named in the review request nor in the notice of initiation have been overturned, citing *Sigma Corp.* v. *United States,* 841 F. Supp. 1255 (CIT 1993) (*Sigma Corp. I*). In that case, Transcom contends, the CIT held that the Department was required to provide the company in question adequate notice to defend its interests, and, because it failed to do so, ordered that the merchandise exported by that company was to be liquidated at the entered deposit rate.

Transcom also explains that it purchased subject merchandise from certain provincial branches of China National Machinery Import & Export Corporation (CMC) and from China National Machinery & Equipment Import & Export Company (CMEC), both of which were named in the notice of initiation. Certain other provincial branches of both CMC and CMEC, from which Transcom did not purchase subject merchandise, were also named in the notice of initiation and received questionnaires. Rather than establishing that the branches from which Transcom purchased subject merchandise were subject to review, Transcom argues, the initiation notice implies that the unnamed branches were not subject to review. As a result, Transcom argues, the unnamed companies were not afforded an opportunity to defend their interests by demonstrating that they were independent from the umbrella company and, therefore, the Department should assign company-specific margins to these unnamed exporters.

Transcom contends that, in accordance with section 776 of the Act, the Department must have requested, and been unable to obtain, information before applying punitive BIA. Transcom claims that the Department may not resort to BIA ''because of an alleged failure to provide further explanation when that additional explanation was never requested'' (quoting *Olympic Adhesives, Inc.* v. *United States,* 889 F. 2d 1565 (Fed. Cir. 1990), and citing *Mitsui & Co., Ltd.* v. *United States,* Slip Op. 94–44 (CIT March 11, 1994), and *Usinor Sacilor* v. *United States,* 872 F. Supp. 1000 (CIT 1994)).

Petitioner claims that at the outset of this order CMEC was identified by the PRC authorities as the only PRC exporter of subject merchandise to the United States, *i.e.,* CMEC was the umbrella organization through which all companies in the PRC exported TRBs to the United States (*see Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof From the People's Republic of China,* 56 FR 67590, 67596 (December 31, 1991)). Petitioner adds that, during the 1989–90 review, PRC authorities stated, for the first time, that there were other producers/exporters of the subject merchandise and that the Department stated that the review initiated for CMEC was ''meant to include all exports of TRBs from the PRC.'' *Id.* Petitioner also contends that there is no reason to believe that there is any meaningful difference between CMEC and CMC. Furthermore, petitioner notes, CMEC was specifically named in the notices of initiation for all three reviews in question. Finally, petitioner argues that all branches and subsidiaries, or provincial companies, of a company covered by a review are themselves included in that review, and the fact that certain individual entities within the organization were found to be entitled to separate rates does not exempt other entities within the organization from the review.

Department's Position: We disagree with Transcom and L&S. It is our policy to treat all exporters of subject merchandise in NME countries as a single government-controlled enterprise and assign them a single rate, except for those exporters which demonstrate an absence of government control, both in law and in fact, with respect to exports. Our guidelines concerning the *de jure! and de facto* separate rates analyses, as well as the company-specific separate rates determinations, are discussed in the Preliminary Results at 44303–44304. We have determined that companies in the government-controlled enterprise failed to respond to our requests for information and, accordingly, have established the rate applicable to such companies (the PRC rate) using uncooperative BIA. As discussed below, the Act mandates application of BIA for such companies because they were properly included in the review and did not respond to the Department's requests for information.

Pursuant to our NME policy, all PRC exporters or producers that have not demonstrated that they are separate from PRC government control are presumed to belong to a single, state-controlled entity (the ''NME entity''), for which we must calculate a single rate (the ''PRC rate''). Previously the CIT has upheld our presumption of a single, state-controlled entity in NME cases. *See 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). Section 353.22(a) of our regulations allows interested parties to request an administrative review of an antidumping duty order once a year during the anniversary month. This regulation specifically states that interested parties must list the ''specified individual producers'' to be covered by the review. 19 CFR 353.22(a) (1994). In the context of NME cases, we interpret this regulation to mean that, if at least one named producer or exporter does not qualify for a separate rate, all exporters that are part of the NME entity are part of the review. On the other hand, if all named producers or exporters are entitled to separate rates, the NME entity is not represented in the review and, therefore, the NME rate remains unchanged. *Accord Federal-Mogul Corp.* v. *United States,* 822 F. Supp. 782, 788 (CIT 1993) (''In a situation where a company's entries are unreviewed, the prior cash deposit rate from the LTFV investigation becomes the assessment rate, which must in turn become the new cash deposit rate for that company.'').

In these reviews, numerous companies named in the notices of initiation did not respond to our questionnaires. On March 15, 1994, we sent a letter to the PRC embassy in Washington and to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), requesting the identification of TRB producers and manufacturers, as well as information on the production of TRBs and the sale of TRBs to the United States. We sent a second request to MOFTEC on July 26, 1994. MOFTEC informed us that the China Chamber of Commerce for Machinery and Electronics Products Import & Export (CCCME) was responsible for coordinating the TRBs case. MOFTEC also said it forwarded our letter and questionnaire to the CCCME. We sent a copy of our letter and the questionnaire directly to the

CCCME, asking that the questionnaire be transmitted to all companies in the PRC that produced TRBs for export to the United States and to all companies that exported TRBs to the United States during the PORs.

Since we did not receive information concerning many of the companies named in the notices of initiation, we have presumed that these companies are under government control. In accordance with our NME policy, therefore, the government-controlled enterprise, which is comprised of all exporters of subject merchandise that have not demonstrated they are separate from PRC control, is part of this review and we must calculate a ''PRC'' rate for that enterprise. Since we did not receive responses from these exporters, we have based the PRC rate on BIA, pursuant to section 776(c) of the Act. This rate will form the basis of assessment for these reviews as well as the cash deposit rate for future entries.

We acknowledge a recent CIT decision, *UCF America Inc.* v. *United States,* Slip Op. 96–42 (CIT Feb. 27, 1996), in which the Court affirmed the Department's remand results for reinstatement of the relevant cash deposit rate but expressed disagreement with the PRC rate methodology, which formed the underlying rationale for reinstatement. The Court raised various concerns with the Department's application of a PRC rate.

The Court suggested that the Department lacks authority for applying a PRC rate in lieu of an ''all others'' rate. However, despite the concerns expressed by the Court, it is the Department's view that it has the authority to use the PRC rate in lieu of an ''all others'' rate. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 15218, 15221 (April 5, 1996).

The PRC rate is consistent with the statute and regulations. As discussed above, in NME cases we presume that all producers and exporters comprise a single entity. Thus, we assign the PRC rate to the NME entity just as we assign an individual rate to a single exporter or producer, or group of related exporters or producers, operating in a market economy. Because the PRC rate is the equivalent of a company-specific rate, it changes only when we review the NME entity. As noted above, all exporters or producers will either qualify for a separate company-specific rate or will be part of the NME enterprise and receive the PRC rate. Consequently, whenever the NME enterprise has been investigated or reviewed, calculation of an ''all others'' rate is unnecessary, since there can be no exporters or producers that are not reviewed. Thus, contrary to the argument by Transcom and L&S, the Department's automatic assessment regulation (19 CFR 353.22(e)) does not apply to these reviews except in the case of companies that demonstrate that they are separate from PRC government control and are not part of this review, as discussed below.

We also disagree with Transcom and L&S's assertion that companies not named in the initiation notices did not have an opportunity to defend their interests by demonstrating their independence from the PRC entity. Any company that believes it is entitled to a separate rate may place evidence on the record supporting its claim, as two companies (Hubei and Guizhou Automotive) did in the 1991–92 and 1992–93 reviews. The companies referenced by Transcom and L&S made no such showing, despite our efforts to transmit the questionnaire to all PRC companies that produce TRBs for export to the United States.

Comment 35: Transcom argues that, in the event that the Department assigns a punitive BIA margin to the unnamed PRC exporters, it should not assign the ''all others'' rate to exports made by companies outside of the PRC. As with respondents Premier and Chin Jun, Transcom insists that a separate rate analysis is unnecessary for privately owned trading companies located in Hong Kong or Japan from which Transcom purchased subject merchandise. Transcom argues that, because such companies are independent from government control and because a timely request for review of their entries was not made, these reviews should not effect those companies.

Department's Position: We disagree with Transcom and L&S. We have not assigned an all others rate to non-PRC exporters of subject merchandise that we have not reviewed. Instead, in accordance with our standard policy regarding such exporters, the cash deposit rate is the rate applicable to the PRC supplier of that exporter. *See Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 61 FR 15028, 15033 (April 4, 1996).

Final Results of Reviews

As a result of our analysis of the comments we received, we determine the following weighted-average margins to exist:

Manufacturer/exporter	Margin (percent)		
	6/1/90 to 5/31/91	6/1/91 to 5/31/92	6/1/92 to 5/31/93
Premier Bearing and Equipment, Limited	[2] 4.24	[2] 5.25	5.25 [2].
Guizhou Machinery Import and Export Corporation	2.48	[2] 3.70	0.00.
Henan Machinery and Equipment Import and Export Corporation	0.00	0.14	0.00.
Luoyang Bearing Factory	1.14	0.00	0.00.
Shanghai General Bearing Company, Ltd	0.00	0.00	0.24.
Jilin Machinery Import and Export Corporation	4.24	5.05	0.00.
Chin Jun Industrial Ltd	[1] 8.83	0.61	1.54.
Wafangdian Bearing Factory	[1] 8.83	5.25	No sales.
Liaoning Co., Ltd	[1] 8.83	1.75	0.66.
PRC rate	8.83	8.83	8.83.

[1] This party did not respond to the questionnaire or did not respond to the supplemental questionnaire; therefore, as uncooperative BIA, we assigned the highest rate calculated in the investigation or in this or any other review of sales of subject merchandise from the PRC. This does not constitute a separate rate finding for this firm.

[2] As cooperative BIA, we assigned in each review the higher of 1) the highest rate ever applicable to that company in the investigation or any previous review; or 2) the highest calculated margin for any respondent in the same review.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the companies named above that have separate rates and were reviewed (Premier, Guizhou, Henan, Jilin, Luoyang, Shanghai, Liaoning, Chin Jun, and Wafangdian), the cash deposit rates will be the rates for these firms established in the final results of the 1992–93 administrative review, except that when margins are *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required; (2) for Hubei and Guizhou Automotive, both of which we determine to be entitled to separate rates, the rates will continue be those that currently apply to these companies (8.83 percent for both); (3) for all remaining PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 8.83 percent; and (4) for other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 C.F.R. 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 APOs of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 353.34(d). 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 the terms of an APO is a sanctionable violation.

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

Dated: December 5, 1996.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–31589 Filed 12–12–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–791–001]

Ferrochrome From South Africa: Preliminary Results of the 1992 Countervailing Duty Administrative Review

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

ACTION: Notice of preliminary results of 1992 Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting the 1992 administrative review of the countervailing duty order on ferrochrome from South Africa. We preliminarily determine the net subsidy to be 0.27 percent ad valorem, which is de minimis, for all companies for the period January 1, 1992 through December 31, 1992. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to liquidate entries without regard to countervailing duties. We invite interested parties to comment on these preliminary results. Parties who submit an argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: December 13, 1996.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Office 1, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4087.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1981, the Department published in the Federal Register (55 FR 11417) the countervailing duty order on Ferrochrome from South Africa. On March 12, 1993, the Department published a notice of ''Opportunity to Request Administrative Review'' (58 FR 13583) of this countervailing duty order. We received timely requests for review from Chromecorp Technology (Pty) Ltd. (Chromecorp), Consolidated Metallurgical Industries Ltd. (CMI), Ferralloys Limited (Ferralloys), and Samancor Ltd. (Samancor), all South African producers/exporters of ferrochrome.

We initiated the review, covering the period January 1, 1992 through December 31, 1992, on May 6, 1993 (58 FR 26960). This review covers three producers/exporters of the subject merchandise (CMI, Ferralloys, and Samancor), which account for all exports of the subject merchandise to the United States from South Africa, and the following eight programs:

(1) Export Incentive Program
(2) Regional Industrial Development Incentives
(3) Preferential Rail Rates
(4) Government Loan Guarantees
(5) Beneficiation Allowances—Electric Power Cost Aid Scheme
(6) General Export Incentive Scheme
(7) Industrial Development Corporation Loans
(8) Rail Transport Rebate on Outgoing Goods (subprogram of the Regional Industrial Development Incentives)

One company, Chromecorp, reported having no exports to the United States during the review period, although Chromecorp received benefits pursuant to export subsidy programs for which there was no program-wide measurable change. In cases where a company does not ship to the United States but benefits from export subsidies for which there are not measurable program-wide changes, we do not include the company in the review (see, *e.g., Certain Electrical Conductor Aluminum Redraw Rod From Venezuela; Final Results of Countervailing Duty Administrative Review,* 57 FR 41918, September 14, 1992). Therefore, we have not included Chromecorp in this 1992 review.

Applicable Statute

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is