Export Price and Normal Value

The petitioner based the export price on quotes for 1997 delivered prices. Petitioner combined the per metric ton prices for needle bearing wire with two different diameters in order to provide an average export price. Petitioner adjusted these prices for the costs of inland freight, insurance, handling fees, ocean freight, brokerage, packaging, and international fees.

Petitioner based normal value on Japanese delivered home market prices. Petitioner combined the prices for needle bearing wire with two different diameters in order to provide a comparable value to the average export price.

We find the petitioner's averaging of the export price and home market prices to be inappropriate because the range of diameters differed in the two markets. Instead, for purposes of this initiation, we have revised the calculation to compare the home market and export prices of needle bearing wire with the closest diameter (*i.e.*, the home market prices of 2.0 mm. diameter wire to the export price of 2.1 mm. diameter wire). We also adjusted the home market price for Japanese inland freight and made arithmetic changes to the export price for certain movement charges. (Our adjustments to the calculations are outlined in a memorandum to the file, dated March 6, 1997.)

Based on comparisons of the export price to normal value, the estimated dumping margin for needle bearing wire from Japan is 40.67 percent.

Fair Value Comparisons

Based on the information provided by the petitioner, there is reason to believe that needle bearing wire from Japan is likely to be sold at less than fair value. If it becomes necessary at a later date to consider the petition as a source of facts available under section 776 of the Act, we may further review the margin calculation in the petition.

Initiation of Investigation

We have examined the petition on needle bearing wire and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating an antidumping duty investigation to determine whether needle bearing wire from Japan is being, or is likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determination by July 24, 1997.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of Japan. We will attempt to provide a copy of the public version of the petition to each exporter of needle bearing wire named in the petition.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by March 31, 1997, whether there is a reasonable indication that imports of needle bearing wire from Japan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

Dated: March 6, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–6384 Filed 3–12–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–825]

Sebacic Acid From the People's Republic of China, Extension of Time Limit for Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for its preliminary results in the administrative review of the antidumping order on sebacic acid from the Peoples Republic of China (China). The review covers the period July 1, 1995, through June 30, 1996.

EFFECTIVE DATE: March 13, 1997.

FOR FURTHER INFORMATION CONTACT: James Rice or Jean Kemp, AD/CVD Enforcement, Group III, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave. N.W., Washington, D.C. 20230; telephone: (202) 482–0162.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the completion of the preliminary results to July 31, 1997, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA). (See Memorandum from Joseph A. Spetrini to Robert S. LaRussa on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the URAA (19 U.S.C. 1675(a)(3)(A)).

Dated: February 26, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–6331 Filed 3–12–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–604, A–588–054]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part

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

ACTION: Notice of final results of antidumping duty administrative reviews and termination in part.

SUMMARY: On November 6, 1996, the Department of Commerce (the Department) published the preliminary results of its 1994–95 administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and of the finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054). The review of the A–588–054 finding covers one manufacturer/exporter and seven resellers/exporters of the subject merchandise to the United States during the period October 1, 1994, through September 30, 1995. The review of the A–588–604 order covers two manufacturers/exporters, seven resellers/exporters, four firms identified by the petitioner in this case as forging producers, and the period October 1, 1994, through September 30, 1995.

We gave interested parties an opportunity to comment on our

preliminary results. Based upon our analysis of the comments received we have changed the results from those presented in our preliminary results of review.

EFFECTIVE DATE: March 13, 1997.

FOR FURTHER INFORMATION CONTACT: Valerie Owenby or John Kugelman, Office of AD/CVD Enforcement III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0145 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are in reference to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On August 18, 1976, the Treasury Department published in the Federal Register (41 FR 34974) the antidumping finding on TRBs from Japan, and on October 6, 1987, the Department published the antidumping duty order on TRBs from Japan (52 FR 37352). On October 5, 1995 (60 FR 52149), the Department published the notice of ''Opportunity to Request an Administrative Review'' for both TRBs cases. The petitioner, the Timken Company (Timken), and two respondents requested administrative reviews. We initiated the A–588–054 and A–588–604 administrative reviews for the period October 1, 1994, through September 30, 1995, on November 11, 1995 (60 FR 57573). On November 6, 1996, we published in the Federal Register the preliminary results of the 1994–95 administrative reviews of the antidumping duty order and finding on TRBs from Japan *(see, 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; Preliminary Results of Antidumping Duty Administrative Reviews and Termination in Part,* 61 FR 57391 (November 6, 1996) (*1994–95 TRB Prelim*)). We held a hearing for the 1994–95 administrative reviews of both the A–588–054 and A–588–604 TRBs cases on December 20, 1996. The Department has now completed these reviews in accordance with section 751 of the Act, as amended.

Scope of the Review

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30.

Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of this order, except for those manufactured by NTN Corporation (NTN). This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8484.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. These HTS item numbers and those for the A–588–054 finding are provided for convenience and Customs purposes. The written description remains dispositive.

The period for each review is October 1, 1994, through September 30, 1995. The A–588–054 reviews cover TRB sales by one TRB manufacturer/exporter (Koyo Seiko Ltd. (Koyo)), and seven resellers/exporters (Honda Motor Corporation (Honda), Fuji Heavy Industries (Fuji), Kawasaki Heavy Industries (Kawasaki), Yamaha Motor Company Ltd. (Yamaha), Nigata Convertor Co. Ltd. (Nigata), Suzuki Motor Company Ltd. (Suzuki), and Toyosha Company Ltd. (Toyosha)). The reviews of the A–588–604 case cover TRB sales by two manufacturers/exporters (Koyo and NTN), seven resellers/exporters (Honda, Fuji, Yamaha, Kawasaki, Nigata, Suzuki, and Toyosha), and four firms identified by the petitioner as forging producers (Nittetsu Bolten (Nittetsu), Showa Seiko Company Ltd. (Showa), Ichiyanagi Tekko (Ichiyanagi), and Sumikin Seiatsu (Sumiken)).

As explained in our preliminary results of review, we have terminated the A–588–054 review for Honda and Toyosha, and the A–588–604 review for NTN, Koyo, Ichiyanagi, Sumikin, and Toyosha (*see 1994–95 TRB Prelim* at 7392). As also explained in our preliminary results, we have used 47.63 percent in the A–588–054 case and 40.37 percent in the A–588–604 case as total adverse facts available for Yamaha, Kawasaki, Nigata, and Suzuki (*see* id.). In addition, because Fuji, Honda, Showa, and Nittetsu had no shipments in the A–588–604 review, for the reasons explained in our notice of preliminary results, we have not assigned a rate to these firms for these final results (see id.). The period of review (POR) for both cases is October 1, 1994, through September 30, 1995.

Analysis of Comments Received

We received case briefs from Koyo, Fuji, and Timken on December 6, 1996. We received rebuttal briefs from the same three parties on December 13, 1996. In addition, on December 20, 1996, we reopened the record for the A–588–054 review for Koyo in order to receive additional comments from Koyo and Timken concerning Koyo's downward adjustment to its U.S. indirect selling expenses for those imputed interest expenses it incurred when financing antidumping duty cash deposits. We received these additional comments from Koyo on December 27, 1996, and from Timken on January 3, 1997. These comments, as well as those which were contained in all of the case and rebuttal briefs we received, are addressed below in the following order:

1. Adjustments to United States Price
2. Adjustments to Normal Value
3. Cost of Production and Constructed Value
4. Miscellaneous Comments Related to Assessment, Level of Trade, the Arm's-Length Test, and the 20% Difference-in-Merchandise Test
5. Clerical Errors

1. Adjustments to United States Price

Comment 1: Timken argues that the Department's preliminary results decision to accept Koyo's downward adjustment to its U.S. indirect selling expenses for interest expenses incurred when financing cash deposits is unclear. Timken asserts that the Department did not address issues concerning the exact nature of the calculation, such as (1) how long a respondent may adjust its expenses for a given duty deposit, (2) whether a respondent may deduct for interest on duty deposits for as long as the order exists, (3) whether liquidation and the conversion of the deposits into actual payments terminates the right to claim the adjustment, and, if so, why, (4) whether the fact that a respondent expenses its payments on duty deposits in the year they occur has any bearing on the issue, and (5) if the respondent is subject to more than one order, whether interest payments on duty deposits on entries subject to some other order may be allocated as an adjustment to expenses for imports under the subject order.

Timken further contends that, as a result, the Department has provided no idea of what information is required from a respondent to justify this adjustment. For example, Timken states, (1) if the Department allows the adjustment only for interest on deposits made during the POR, the record must contain information on what deposits the respondent made during the POR, (2) if the Department allows the adjustment for all deposits previously made, the record must contain the sum of these deposits, (3) if liquidation ends the right to the adjustment, the record must allow the Department to determine which entries have been liquidated and which deposits were converted to actual payments so that such deposits are not included in the sum for which the interest expenses are calculated, and (4) if only interest on deposits made for subject merchandise is allowed, the record must indicate that any importer of merchandise subject to more than one order properly separated its interest claims. Because the Department has failed to address these issues, Timken argues, it is unable to comment on the reasonableness of the Department's policy.

Nevertheless, for the purpose of further discussion, Timken presumes that the Department's apparent policy is to allow interest expenses attributable to deposits on subject merchandise until the entries associated with such deposits have been liquidated, and makes the following arguments:

First, Timken states that, under this approach, the act of liquidation transforms duty deposits from an ongoing burden to the importer in the form of interest payments into actual expenses which can be written off the importer's books. Timken contends that this is contrary to the 1979 legislation, in which Congress changed the antidumping law to require the payment of cash deposits and the payment of interest on underdeposits. Timken claims that it was Congress' intent that no party benefit from any delay in payment and, as a result, it made it clear that actual antidumping duties must be paid at the time of import and that subsequent adjustments for over-or under-payment should be coupled with interest payments to approximate as closely as possible the payment of actual duties at the time of import. Timken contends that by accepting an adjustment for the interest expenses attributable to all cash deposits previous to the POR, the Department, in essence, is treating cash deposits as something other than an actual payment of antidumping duties and is, therefore, acting contrary to the expressed intent of Congress.

Second, Timken argues that, by allowing an adjustment for interest expenses attributable to all previous cash deposits, the Department provides respondents with a mechanism to mask dumping because the adjustment has the effect of reducing the *ad valorem* duty deposit rate over time. As a result, Timken asserts, the Department's policy will encourage respondents to prolong and delay liquidation as long as possible, knowing that as long as liquidation is delayed, they can reduce the margin determined for any ongoing dumping.

Third, Timken argues that Koyo has failed to meet its obligation to document its claimed adjustment. Therefore, Timken asserts, because Koyo has not provided any information to support its adjustment, the Department has limited information to determine whether Koyo's claim is reasonable.

Finally, Timken argues that because the record demonstrates that Koyo expensed this interest on cash deposits, Koyo is claiming an adjustment for interest expenses which it has already written off for accounting purposes. In addition, using information on the record, Timken calculates a figure reflecting the actual amount of duty deposits for which Koyo would have incurred interest and, based on the fact that this figure does not correspond to the total cash deposits Koyo reported in its financial statements, Timken concludes that Koyo's claimed adjustment amount is inaccurate.

Koyo argues that the Department properly excluded those imputed interest expenses Koyo incurred when financing its cash deposits. Koyo asserts that, since the publication of the preliminary results for these TRB reviews, the Department has clearly articulated a policy concerning these interest expenses in the antifriction bearings (AFB) case (*Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472 (December 17, 1996) (*AFBs 93–94*)) and in the Department's September 20, 1996, final remand results pursuant to *Federal-Mogul Corp. and the Torrington Company* v. *United States*, Slip Op. 96–37 (February 13, 1996) (*Federal-Mogul Final Remand Results*)). Koyo states that the Department has explained that the imputed expenses in question are comparable to expenses for legal fees related to antidumping proceedings because they were incurred only because of the antidumping duty order. As a result, these expenses cannot be categorized as selling expenses (*AFBs 93–94* at 66488 and *Federal-Mogul Remand Results* at Comment 5). Koyo argues that this policy is in accordance with section 751(d)(1) of the Act, which directs the Department to deduct from USP only those expenses incurred in the selling of the subject merchandise, and the Statement of Administrative Action (SAA), which states that deposits of estimated antidumping duties are not to be treated as a cost. Koyo asserts that if deposits of antidumping duties are not to be treated as costs, the imputed interest expenses incurred on financing these deposits likewise cannot be considered as a cost.

Koyo further argues that exclusion of these interest expenses is not in conflict with the intent of Congress'' 1979 change in the antidumping duty law. Koyo contends that, since Koyo Corporation of the United States (KCU), Koyo's U.S. subsidiary, has paid deposits at the time of the entry of TRBs, it has in fact felt an immediate financial effect at the time of import, which was precisely what Congress anticipated in passing the 1979 Act.

Koyo also maintains that the Department's policy does not mask dumping, but, rather, neutralizes the impact on the calculation of antidumping margins of having to borrow money to finance cash deposits and ensures that antidumping duties are not artificially inflated. In addition, Koyo contends that the Department's allowance of this adjustment is in accordance with the CAFC's directive that the antidumping statute is intended to be remedial, not punitive, in nature (*Federal Mogul Corp.* v. *United States*, 63 F.3d 1572 (Fed. Cir. 1995)).

Furthermore, Koyo asserts, in the event that the Department has questions concerning its calculation of this adjustment, at this late date in this proceeding, it would be improper for the Department to reject the adjustment altogether, particularly in light of the Department's failure to ask for additional information in its supplemental questionnaire. Rather, Koyo claims, the proper course of action would be for the Department to reopen the record for the purpose of gathering additional information from Koyo on this topic.

Finally, Koyo contends, Timken's suggestion that the adjustment is improper because it was already expensed confuses the difference between cash deposits and the imputed interest incurred in financing these deposits, and overlooks the fact that this interest expense is a real financial burden which is not affected by the accounting convention of expensing deposits.

Department's Position: While we agree with Timken that, in our preliminary results of review, we did not provide a detailed explanation why we allowed Koyo's adjustment for those imputed interest expenses it incurred when financing cash deposits, we disagree that we have failed to articulate a clear policy on this issue. Shortly before the publication of the *1994–95 TRB Prelim*, we explained our policy concerning this adjustment in detail in our September 20, 1996, *Federal-Mogul Final Remand Results*, which were upheld by the CIT on December 12, 1996 in *Federal-Mogul Corp.* v. *United States*, Slip Op. 96–193 (CIT 1996). In addition, since the publication of our preliminary results, we have clarified our position not only in *AFBs 93–94* and *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Review*, 62 FR 2081 (January 15, 1997) (*AFBs 94–95*), but also in our December 17, 1996, final remand results pursuant to *The Timken Company* v. *United States*, Slip Op. 96–86 (May 31, 1996) (*Timken Final Remand Results*). As explained in these determinations, it is reasonable for a respondent to deduct from its reported U.S. indirect selling expenses an amount which reflects those interest expenses it incurred when financing cash deposits. Our decision is based on the fact that the respondent incurred the interest expenses at issue as a result of the need to pay antidumping duty cash deposits. Therefore, we consider these interest expenses to be comparable to expenses for legal fees related to antidumping proceedings in that they were incurred only because of the existence of an antidumping duty order and a respondent's involvement therein (*see, e.g., AFBs 93–94* at 66488, *AFBs 94–95* at 2104, *Federal-Mogul Final Remand Results* at Comment 5, and *Timken Final Remand Results* at 23). In addition, it has been our longstanding policy to not treat expenses related to antidumping proceedings as selling expenses (*see Color Television Receivers From the Republic of Korea; Final Results of Administrative Review of Antidumping Duty Order*, 68 FR 50336). The CIT recognized this line of reasoning in *Daewoo Electronics Co.* v. *United States*, 712 F. Supp. 931 (CIT 1989), when it recognized that legal fees are not selling expenses subject to deduction from United States Price (USP), and concluded that the classification of such expenses as selling expenses subject to deduction from USP would ''create artificial dumping margins and might encourage frivolous claims * * *which would result in increased margins'' (*see id.* at 947).

We consider the interest expenses at issue in these final results of review to be directly comparable. Koyo did not incur these interest expenses in any effort to sell merchandise in the United States. Rather, the expenses were incurred as part of the process attendant to the antidumping duty order. Had the order not existed, Koyo would not need to finance cash deposits, and the expenses would not have been incurred. Section 772(d) of the Act states that ''* * * the price used to establish constructed export price shall also be reduced by the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States in selling the subject merchandise.'' (Emphasis added.) The statute therefore clearly provides that the expenses to be deducted from USP are those borne, directly or indirectly, to sell the subject merchandise in the United States. The interest expenses at issue in these final results, like legal fees, are an expenditure which Koyo actually incurred, but clearly did not incur in selling TRBs to the United States.

In its comments to our preliminary results Timken further suggests that because we did not specifically articulate within our *1994–95 TRB Prelim* our position concerning numerous issues related to a respondent's calculation of the adjustment, it is unable to comment on the reasonableness of our policy. We disagree: not only have we clearly articulated a policy concerning this adjustment, as discussed above, but it is our position that the exact calculation of the adjustment is secondary to the numerous compelling reasons why the adjustment should be allowed. In fact, the CIT has recognized a similar line of reasoning in regard to antidumping legal expenses. In *Zenith Electronics Corp.* v. *United States*, Slip Op. 91–66 (July 29, 1991) (*Zenith*), the CIT stated that it is ''not a question of whether or not legal expenses can be related to the time period of the importation of the merchandise under review. Nor does it relate to the question of whether or not the legal expenses have a tendency to ultimately aid the sale of merchandise in the United States * * *. The fundamental reason for not allowing the use of legal expenses related to antidumping is that the expenses of a party's participation in legal proceedings provided by law should not become an element in the decision of those selfsame proceedings.'' Nevertheless, because Timken has raised, for these final results, issues specific to the calculation of this adjustment, we address the detailed points of Timken's arguments below.

First, we do not agree with Timken that the adjustment should be denied if it is a cumulative adjustment which reflects those interest expenses incurred during the POR for cash deposits made prior to the POR. Rather, we believe the adjustment should be allowed whether a respondent (1) limits its calculation to only those interest expenses incurred on cash deposits made during the period under review, (2) calculates a cumulative adjustment which reflects not only the interest expenses incurred on cash deposits made during the period being reviewed, but also reflects the interest expenses incurred during the POR on cash deposits from previous review periods as well, or, as Koyo has done in the instant review, (3) calculates a cumulative adjustment which reflects only those interest expenses incurred during the POR for cash deposits paid in previous PORs. In its comments Timken argues that, by accepting a cumulative adjustment amount, as a result of the fact that the adjustment will ''eat away'' at a respondent's margin, the Department allows respondents to ''mask'' dumping. Thus, Timken argues, the Department provides respondents with the impetus to delay litigation and liquidation. Timken's argument is, however, based on a results-oriented rationale which overlooks the fundamental reasons for allowing the adjustment, as discussed in detail above, and ignores the fact that the adjustment reflects a genuine expense solely attributable to the antidumping duty order.

As we explained in our *Timken Final Remand Results*, with the exception of cost-of-production (COP) and constructed-value (CV) calculations, it is the Department's practice to recognize an adjustment for imputed expenses (*e.g.*, inventory carrying costs and credit) when the expenses reflect a real cost to the firm, but are difficult to identify or isolate within a respondent's records. For example, in *Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 38417 (August 13, 1991) we explained:

The Department imputes an interest expense for time in inventory in order to adjust for the opportunity cost of holding the merchandise in inventory. An opportunity cost arises because funds could have been invested in alternative financial arrangements yielding interest * * *. Since the interest expenses associated with time in inventory cannot be isolated from other interest expenses, the Department must impute this expense amount. However, the Department's long-standing policy is to treat the opportunity cost of holding inventory as a real expense.

In other words, we recognize that opportunity costs associated with an activity like holding inventory or extending credit have a real financial impact for the firm (*see, e.g., Fujitsu General Ltd.* v. *United States,* 883 F.Supp 728, 737 (CIT 1995) (where the Department calculated a respondent's imputed interest adjustment to exporter's sales price (ESP) for time in inventory in order to adjust for ''missed opportunity'' costs of maintaining merchandise in inventory and the CIT found that the use of actual inventory periods to calculate imputed interest expense was reasonable and in accordance with law)). Because these costs are not readily identifiable, we allow the claimed adjustment to be imputed. In addition, while a firm may choose to finance its cash deposits by obtaining loans specifically for that purpose, a firm may also choose to divert funds from other corporate activities to pay cash deposits. By diverting funds for the purpose of paying cash deposits, the firm is forgoing the income which could have been earned had it used these funds for any number of other activities. In this way, an opportunity cost arises because the funds could have been invested in alternative financial arrangements yielding interest (*i.e.*, interest-bearing accounts or loans to other parties at interest). Therefore, it is not always the case that interest expenses incurred when financing cash deposits will be easily identified. Rather, when the cash deposits are funded through the diversion of funds from another activity or investment vehicle, the expenses may not be easily traced to a company's books and records or easily isolated from the company's other interest expenses. However, the opportunity costs associated with the diversion nevertheless reflect a real cost to the firm in the same way the opportunity costs of extending credit and holding inventory constitute real costs (*see Timken Final Remand Results* at 26).

Because the monies used to fund cash deposits for a given POR are unavailable until final antidumping duties are assessed for that POR, this opportunity cost will accrue until liquidation. For example, if a respondent pays cash deposits for TRB entries during the October 1, 1988, through September 30, 1989, TRB review period, but antidumping duties are not assessed on entries during this period until November 1, 1992, the financing costs of funding the 1988–89 cash deposits will not only be incurred in the 1988–89 POR, but will be incurred until actual duties are assessed at the time of liquidation in 1992. As a result, an interest expense associated with the 1988–89 cash deposits will be incurred during the 1989–90, 1990–91, and 1991–92 review periods. While a cumulative adjustment amount does affect a respondent's margin, dumping cannot be ''masked'' when an adjustment is made for a genuine expense attributable only to the order itself. In fact, if we fail to allow the adjustment, we risk calculating margins which are overstated due to our failure to take into account the fact that no such expense would have been incurred absent the order. Furthermore, we have no basis for suspecting that a large international corporation with millions of dollars tied up in cash deposits would purposely choose to delay assessment in order to realize a potential decrease in its dumping margin at some indeterminate point in the future.

As also explained earlier, interest expenses incurred when financing cash deposits are incurred solely due to the existence of the antidumping order and, like antidumping legal expenses, these interest expenses cannot be treated as U.S. selling expenses. It is irrelevant whether the expenses relate to cash deposits made during the current POR or a prior POR, as any such expenses are not selling expenses. Just as we do not expect antidumping legal expenses to be limited to those for the period under review, we do not expect interest expenses incurred when funding cash deposits to be limited to only the expenses for cash deposits made during the period under review. For example, legal expenses incurred during one POR may reflect legal fees for antidumping litigation from several previous reviews. Likewise, legal expenses for a given POR will accrue from period to period until all litigation for the period has ended. Therefore, because we conclude that it is reasonable to treat interest on cash deposits in the same way as we treat antidumping legal fees, it is reasonable not to limit the interest expense adjustment to only interest expenses tied to deposits made during the POR.

Timken also argues that we cannot accept a cumulative adjustment amount because to do so would be contrary to the Congressional intent of the 1979 change in the antidumping law. Timken's argument is based on its assumption that cash deposits are actual antidumping duty payments and, by allowing a cumulative adjustment, the Department is treating them as something other than actual payments. The Department has long maintained the position that ''duty deposits are not actual antidumping duties but estimates of future dumping liability'' (*see Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Reviews,* 60 FR 10900 (February 28, 1995). We have expressed the identical position in the TRBs cases, stating that ''the cash deposit requirements are estimates of antidumping duties. The actual dumping margins applicable * * * will be reflected in final assessment'' (*see Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof From Japan; Final Results of Antidumping Administrative Review,* 55 FR 38720 (September 20, 1990)). Furthermore, the CIT and Court of Appeals for the Federal Circuit (CAFC) have consistently recognized that a distinction exists between cash deposits and actual antidumping duties and that cash deposits are only estimates of final antidumping duties. For example, when ruling on the issue of whether the Department must calculate the cash deposit and antidumping duty rates using an identical methodology, the CAFC stated in *The Torrington Company and Federal-Mogul Corp.* v. *United States,* 44 F. 3d 1572, 1578–79 (Fed. Cir. 1995):

Section 1675(a)(2) does not require the same methodology of calculation for assessment rates and cash deposits rates * * *. Moreover, Title 19 bases the cash deposits rate on estimated antidumping duties on future entries * * *. Thus, Title 19 requires only cash deposit estimates, not absolute accuracy. This estimate need only be reasonably correct pending the submission of complete information for an actual and accurate assessment * * *. No evidence compels this court to find that deriving cash deposit rates from entered values leads to a more accurate estimation of future duties * * *.'' (Emphasis added)(citations omitted).

Therefore, cash deposits are clearly not payments of actual antidumping duties.

In its comments Timken suggests that, in instances where a respondent is subject to more than one antidumping duty order, the adjustment should be limited to those interest expenses incurred when financing cash deposits only for the merchandise subject to the order being reviewed. While we generally believe that the adjustment should be limited to only merchandise subject to the order under review, depending upon a respondent's calculation methodology, this issue may be irrelevant, as it was with regard to NTN in *Timken Final Remand Results* (q.v. at 35). Therefore, we believe it is necessary to examine the specifics of each case before it can be determined whether the scope/non-scope distinction is relevant to the adjustment at issue, as we have done in the instant case with regard to Koyo, and as is explained in our response to Comment 2 below.

We also disagree with Timken's contention that we must deny Koyo's downward adjustment because the record demonstrates that Koyo expensed its interest on cash deposits expenses. While the record demonstrates that Koyo expensed its cash deposits, there is no evidence that the interest expenses incurred when financing these cash deposits were also expensed. Furthermore, Koyo is claiming an imputed interest amount because these expenses are not readily identifiable in its records. As a result, there is no identifiable amount of interest for Koyo to expense. In addition, as explained above, these interest expenses reflect a real, ongoing financial burden to Koyo which is neither dissolved nor impacted by Koyo's use of an accounting convention which expenses antidumping cash deposits.

Finally, while we agree with Timken that at the time of the *1994–95 TRB Prelim* the record in this case did not contain detailed information supporting Koyo's calculation of its claimed adjustment, we do not agree that this warrants denial of the adjustment. Prior to these final results we reopened the record for these reviews to allow additional comment on Koyo's calculation of its reported adjustment amount. We did this because our policy concerning this adjustment was in its developmental stages throughout most of these administrative review proceedings. For example, at the time we issued our 1994–95 TRBs questionnaire to Koyo, and throughout the supplemental questionnaire stage of these review proceedings, it was our practice to deny this downward adjustment. Then, as a result of litigation in both the AFBs and TRBs cases, shortly before our *1994–95 TRB Prelim*, we articulated and began to apply a clear policy on this issue of allowing the adjustment. As a result of this change in policy, we allowed Koyo's claimed downward adjustment in our *1994–95 TRB Prelim*. Since we adopted this revised policy prior to the publication of the preliminary results for these reviews, we followed this policy in our preliminary review results. However, this was the first opportunity for the Department and the parties to address the rationale underlying our policy. Due to the changing nature of the policy throughout the course of these review proceedings, this is also the first opportunity for all parties, the Department included, to properly comment on and address the detailed specifics of Koyo's actual adjustment calculation. Thus, while we believe that there are numerous compelling reasons why the adjustment should be granted, to ensure a fair and reasonable application of this policy to these reviews, we determined that it was necessary to reopen the record for these reviews in regard to Koyo's calculation of its reported adjustment. In this way the Department would have the information and argument before us necessary to make a reasonable determination whether to allow Koyo's adjustment. Therefore, on December 20, 1996, we reopened the record and received additional information and comment from Koyo on December 27, 1996, and from Timken on January 3, 1997. These comments, as well as our position on the issues raised, are addressed in Comment 2 below.

Comment 2: Koyo argues that not only is its calculation of those imputed interest expenses it incurred when financing antidumping cash deposits based on information derived directly from its financial statements, but its calculation methodology is both conservative and reasonable. Koyo explains that it calculated the imputed interest expense it incurred as a result of having to finance cash deposits rather than use the monies in other interest-yielding financial arrangements by first calculating the total amount of cash deposits it paid for TRBs up to the beginning of the 1994–95 POR. Koyo argues that it derived these cash deposit figures directly from its 1993/94 financial statements, but, because the 1993–94 financial statement included the entire FY 1994, the figures reported in the financial statement included cash deposits paid during the months of October, November, and December of 1994. Because the 1994–95 POR only began on October 1, 1994, Koyo stated that, in order to calculate cash deposits paid only prior to the 1994–95 POR, it deducted from the figure in its financial statement those cash deposits paid from October 1994 through December 1994. Koyo explained that it then multiplied this total cash deposit amount by the KCU borrowing rate in effect during the 1994–95 POR, which it reported in exhibit C–9 of its 1994–95 TRBs questionnaire response. Koyo states that the result, which reflected the imputed interest expenses it incurred during the POR for cash deposits paid prior to the POR, is identical to the figure it deducted from its reported U.S. indirect selling expenses, as indicated in exhibit C–13 of its 1994–95 TRBs questionnaire response.

Timken argues that because there is no evidence that Koyo actually obtained loans in order to finance its antidumping cash deposits, Koyo failed to demonstrate that it actually incurred any interest expenses. Timken asserts that the Department should therefore deny the adjustment in question.

Timken further contends that it is unclear from the record whose opportunity was actually lost. Timken contends that, if Koyo, in accordance with the TRB antidumping duty order raised its U.S. prices in order to finance its cash deposits, it could not have lost any opportunity because its deposits would be paid for by the additional cash flow and, as a result, loans to finance cash deposits would be unnecessary. In addition, Timken asserts that if Koyo Seiko, the Japanese parent company, eased KCU's cash deposit requirements by either lowering transfer prices or reimbursing KCU, KCU would not have lost any opportunity to use the money it deposited. Therefore, Timken concludes, because Koyo has not demonstrated that KCU actually incurred the opportunity costs at issue, the Department should not allow the adjustment.

Timken also maintains that Koyo is not entitled to claim any lost opportunity income based on cash deposits that it will actually owe and which will not be refunded upon liquidation. Timken asserts that it is clear that Koyo will owe antidumping duties on those POR shipments for which it has paid cash deposits. Timken argues that, as a result, some or even all of its cash deposits reflect what will be owed to the U.S. Treasury as antidumping duties. Because these are lawful debts to the U.S. Treasury, Timken asserts, they cannot represent lost opportunity costs. Therefore, Timken states, Koyo's calculation formula is grossly overstated because it fails to take into account that portion of the cash deposits which reflect legal debts.

Timken further contends that Koyo's calculation fails to take into account the fact that Koyo will owe antidumping duties for the 1974–1979 TRB shipments, periods during which Koyo was not required to make cash deposits. Timken asserts that, to the extent that Koyo enjoyed the opportunity income from these funds that should have otherwise been required as cash deposits during the 1974–79 PORs, Koyo reaped a windfall which it has omitted from its calculation.

Finally, Timken argues that, even though the Department conducted a 1994–95 review for Koyo only in the A–588–054 TRBs case, Koyo nevertheless included within its calculation those interest expenses it allegedly incurred for the A–588–604 TRB shipments as well. Timken therefore asserts that, because TRBs within the scope of the A–588–604 case are non-scope merchandise within the context of the A–588–054 finding, to the extent that the Department allows Koyo's claimed adjustment, it should recalculate Koyo's adjustment to reflect only those interest expenses incurred with regard to cash deposits paid for A–588–054 TRBs.

Department's Position: As indicated in Comment 1, we believe that there are numerous reasons why the adjustment at issue should be allowed. However, as also explained in Comment 1, before making a final determination on whether to accept Koyo's adjustment, we determined that it was necessary to gather additional information regarding the details of Koyo's calculation of the adjustment. Based upon our review of the additional comments and information we received, we have determined that Koyo's calculation of its reported adjustment was reasonable and accurate and have allowed the adjustment for the following reasons.

First, we disagree with Timken that, in order to qualify for the adjustment at issue, Koyo must demonstrate that it obtained loans for the sole purpose of financing cash deposits. As explained in detail in our response to Comment 1 above, while a firm may choose to obtain loans specifically for the purpose of financing cash deposits, a firm may also choose to divert funds from other corporate activities to pay cash deposits. By diverting funds for the purpose of paying cash deposits, the firm is forgoing the income which could have been earned had it used these funds for any number of other activities. As a result, an opportunity cost arises because the funds could have been invested in alternative financial arrangements yielding interest. Therefore, because it is not always the case that interest expenses incurred when financing cash deposits will be easily identified, easily traced to a company's books and records, or easily isolated from the company's other interest expenses, we have determined that it is reasonable for the expense to be imputed. It is therefore unnecessary for a respondent to demonstrate that a loan was obtained for the sole purpose of financing cash deposits in order to qualify for the adjustment at issue.

We also disagree with Timken's contention that, because Koyo has failed to demonstrate that KCU actually incurred the opportunity costs at issue, the adjustment should be denied. Timken's argument relies first on the notion that, if KCU raised its U.S. prices in response in response to the TRB antidumping duty order or finding, the additional cash flow would have been sufficient to offset the cash deposits. Thus, Timken concludes that no opportunity cost would be incurred and loans to finance the cash deposits would be unnecessary. The purpose of the antidumping duty statute is to offset the effect of discriminatory pricing between the U.S. and home markets (*see Certain Hot-rolled Lead and Bismuth Carbon Steel Products From the United Kingdom*, 60 FR 4409 (August 24, 1995)). Thus, while there is no statutory requirement that a firm must act to eliminate price discrimination, if it decides to do so, how it does so is within its own discretion. For example, upon the imposition of antidumping duties, a respondent may act to eliminate the price differential by (1) increasing its U.S. prices, (2) lowering its home market prices, or (3) undertaking a combination of the two. If a firm chooses to eliminate the price discrimination solely by lowering its home market prices, there would be no need to increase U.S. prices. A firm may also choose to increase its U.S. prices and lower its home market prices at the same time. Thus, there is no requirement that a firm must raise its U.S. prices. There is also no guarantee that any increase in U.S. price would increase the cash flow in an amount that would offset the respondent's cash deposits. Even if a firm chose to rely solely on an increase in its U.S. prices, such that the increase would eliminate any dumping margins, the fact remains that the company's funds are tied up in cash deposits until liquidation occurs and final duties are assessed and this results in a financing cost to the company that is wholly attributable to application of the antidumping duty order.

Furthermore, by arguing that the Department must ensure that Koyo Seiko did not compensate KCU for the antidumping duty expenses it incurred, Timken is, in effect, simply restating a position it raised in a previous TRB review concerning the issue of duty reimbursement. In *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding*, 61 FR 57629 (November 7, 1996) (*TRBs 92–93*), a review conducted in accordance with the law in effect prior to the URAA, Timken argued, and we rejected, the contention that the Department was required to adjust USP for reimbursed duties pursuant to 19 CFR 353.26 of the Department's regulations. We explained that we have consistently held that, absent evidence of reimbursement, we do not have the authority to make such an adjustment (*see TRBs 92–93* at 57637). Furthermore, in *Torrington Company and Federal-Mogul Corp.* v. *United States*, 881 F. Supp. 622, 631 (CIT 1995), the CIT clearly explained that in order for 19 CFR 353.26 to apply, it must be shown that the foreign manufacturer either paid the antidumping duty on behalf of the U.S. importer or reimbursed the U.S. importer and that the regulation does not impose upon the Department an obligation to investigate based on mere allegations. The CIT went on to state that, before the Department is required to commit resources to investigate the transfer of funds and the reimbursement of antidumping duties, the party who requests the investigation must produce some link between the transfer of funds and the reimbursement of antidumping duties (*see id.* at 632). In addition, the CIT pointed out that once an importer has indicated on its certificate at the time of liquidation that it has not been reimbursed for antidumping duties, it is unnecessary for the Department to conduct additional inquiry absent a sufficient allegation of Customs fraud (*see* id.).

Other than the changes in language required by the URAA, section 351.402 (f) of the Department's proposed regulations, with respect to antidumping duties, is unchanged from 19 CFR 353.26, our current regulation. As a result, the rationale upon which we based our determination to not make an adjustment under section 353.26 still applies (*see AFBs 94–95* at 2129). In addition, while we recognize that the issue at hand is not whether we should make an adjustment in accordance with section 351.402(f) of the proposed regulations, our reasons for rejecting Timken's position with regard to that issue apply in this instance as well. As clearly explained in our response to Comment 1 above, interest expenses incurred when financing cash deposits are due solely to the existence of the antidumping duty order. Thus, like antidumping legal fees, these expenses are antidumping duty-related expenses. Timken provided no link between any of Koyo's intercorporate transfers and the reimbursement of antidumping duties in the earlier stages of this review nor has it done so for these final results. Considering that we have no evidence of the reimbursement of antidumping duties themselves, we clearly have no evidence of the reimbursement cash deposits or of any antidumping duty-related expenses. Therefore, absent this evidence, we are under no obligation to investigate the issue of reimbursement on the basis of mere allegations (*see, e.g., AFBs 94–95* at 2129). As a result, we disagree with Timken that we must ensure that reimbursement has not occurred prior to accepting Koyo's adjustment for those imputed interest expenses it incurred when financing antidumping duty cash deposits.

We also disagree with Timken that, because Koyo's cash deposits reflect legal debts, they cannot result in opportunity costs. Not only does this position overlook the basic fact that interest on cash deposits are incurred solely due to the existence of the antidumping duty order, and, as such, cannot be considered selling expenses and cannot be deducted from USP, but it ignores the fact that it is precisely because Koyo is required to pay cash deposits that the opportunity cost arises in the first place. If Koyo was not legally required to pay cash deposits, it would have the opportunity to use these funds in other financial arrangements. It is only because Koyo is required to pay cash deposits that it forgoes the opportunity to use the funds with which it pays cash deposits in other interest-yielding financial arrangements.

Timken's contention that Koyo incurred interest income during the 1974–79 PORs as a result of not having to pay cash deposits is also without merit. The law in effect pursuant to which the 1974–79 TRBs reviews were conducted did not require cash deposits upon entry (*see* The Tariff Act of 1930, as amended (1978)). Rather, importers were required to post other securities such as bonds. The legal basis for the requirement of cash deposits only came into effect with the introduction in 1978 of section 778 of the law (*see* The Trade Agreements Act of 1979 (*1979 Act*). Because the 1979 Act repeatedly linked the words ''deposit'' and ''cash'' (*see, e.g.,* sections 733(d)(2) and 734 (f)(2)(A)(iii) of the 1979 Act), we interpreted the words ''amounts deposited'' in section 778 to refer only to cash deposits of estimated antidumping duties upon entry and not to other types of securities such as bonds (*see Tapered Roller Bearings Four Inches or Less in Outside Diameter From Japan; Final Results of Antidumping Duty Administrative Review,* 55 FR 22369 (June 1, 1990) (*TRBs 74–79*)). Thus, we concluded that, since a bond is not cash, it does not constitute an amount deposited within the meaning of section 778 of the Act of 1979 (*see TRBs 74–79* at 22370). In addition, there was no provision in the 1979 Act which provided for the immediate conversion for existing antidumping findings from bonds to cash (*see* id.).

Therefore, because the 1974–79 reviews were conducted pursuant to the law in effect prior to the 1979 Act, which did not require cash deposits, the cash deposit requirement is irrelevant to the 1974–79 period. Therefore, Koyo's funds during the 1974–79 reviews cannot be characterized as funds which would have otherwise been required as cash deposits. Thus, Koyo correctly excluded from its adjustment calculation any consideration of that which occurred within the context of the 1974–79 period.

Finally, as we explained in our response to Comment 1 above, depending upon a respondent's U.S. indirect selling expense calculation methodology, the issue of whether the adjustment in question reflects scope and non-scope merchandise may be irrelevant, as it is in the instant case. During the POR Koyo manufactured TRBs which were subject to both the A–588–054 and A–588–604 cases, AFBs subject to the A–588–804 AFBs order, and other merchandise not subject to any antidumping duty order. KCU sold TRBs, AFBs, and other products in the United States. In addition, Koyo Seiko and KCU did not maintain separate financial statements for AFBs, TRBs and other merchandise. Because these financial statements reflect expenses incurred for all sales of all merchandise sold during the POR, Koyo calculated a U.S. indirect selling expense factor reflecting all merchandise, not only TRBs, by dividing the total U.S. indirect selling expenses incurred for all merchandise sold during the POR by the total value of all sales of all merchandise during the POR. However, prior to calculating this ratio, Koyo removed from its total U.S. indirect selling expense amount those expenses reported elsewhere in the response and made other adjustments, which included the adjustment for interest incurred on cash deposits. Because the total U.S. indirect selling expense amount reflected expenses for all sales (both scope and non-scope), the deductions Koyo made from this total expense correctly reflected all sales of all merchandise. However, in regard to its deduction for interest on cash deposits, Koyo only deducted from the total U.S. indirect selling expense amount those interest expenses incurred on TRB cash deposits. Given that Koyo's total U.S. indirect selling expense amount reflected all sales, this was a conservative calculation in that Koyo effectively left in its allocated expense amount those interest expenses incurred on its cash deposits for non-TRB merchandise. Thus, Koyo's inclusion of these expenses within its U.S. indirect selling expense amount results in the overstatement of its U.S. indirect selling expenses and a greater deduction from USP. Timken argues that Koyo's adjustment should be even more limited, suggesting that, because this review was only for the A–588–054 case, interest expenses incurred on cash deposits for A–588–604 TRBs should not be deducted. Given that the expense amount from which Koyo is making its interest on cash deposit adjustment reflects interest expenses related to all antidumping duty orders applicable to all merchandise, Timken's suggested methodology would result in an even greater overstatement of Koyo's U.S. indirect selling expenses than Koyo's current methodology. Therefore, in the instant case, the issue of whether the adjustment must be scope-specific is irrelevant because the indirect selling expense amount Koyo is adjusting reflects all sales of all merchandise and not only scope merchandise. If, however, Koyo calculated and reported scope-specific U.S. indirect selling expenses (those only incurred for the A–588–054 case) prior to making the adjustment for interest on cash deposits, we would have expected Koyo to adjust its scope-specific U.S. indirect selling expenses for those interest expenses incurred on cash deposits for A–588–054 merchandise only.

Comment 3: Timken argues that the Department incorrectly based its calculation of profit for Fuji's constructed export price (CEP) sales on Fuji's financial statements rather than on information on the record which would yield a more accurate calculation. Timken contends that, because the COP for a non-producer like Fuji is its acquisition costs, the Department is able to calculate the profit for all of Fuji's CEP sales by using

Fuji's reported acquisition costs as well as Fuji's reported U.S. selling and movement expenses. In addition to providing a sample of how CEP profit for Fuji should be calculated, Timken also states that, because section 772(d)(3) of the Act provides for CEP profit to be calculated using a respondent's reported expenses before using a respondent's financial statements, the Department should alter its calculation of Fuji's CEP profit for its final results of review.

Fuji argues that, while Timken is correct that the new law provides a hierarchy for the Department to determine the proper expenses to be used for calculating CEP profit, Timken overlooks that the SAA clearly indicates that the Department will ''request the information necessary to determine total expenses under the first alternative if Commerce is conducting a cost of production investigation,'' and ''if Commerce is not conducting a cost of production investigation, the respondent may submit the necessary information on a voluntary basis'' (SAA at 155). As a result, Fuji asserts, the Department should only use the first alternative in the statute if there is a cost investigation or if the respondent voluntarily submits the necessary information. Fuji contends that, if these circumstances are not present, the statute explicitly directs the Department to resort to a respondent's financial reports to calculate CEP profit (id.). Thus, Fuji maintains, because Fuji was not subject to a cost investigation during the POR and did not provide the information voluntarily, the Department acted in accordance with section 772 (d)(3) of the Act by using its financial reports to calculate CEP profit.

Furthermore, Fuji contends, Timken's argument implies that Fuji's reported acquisition costs, which it reported for model match purposes, are a surrogate for the detailed expense data requested in a COP investigation. Fuji argues that the Department has repeatedly rejected the notion that a reseller's acquisition costs are equivalent to COP data.

Fuji also rejects Timken's assertion that the Department's use of Fuji's financial reports led to an inaccurate calculation of CEP profit. Fuji maintains that, even though its financial statements incorporate data on other Fuji product lines, this is of no consequence because the SAA recognizes that calculating costs from a larger product line is not distortive (SAA at 155). Finally, Fuji objects to Timken's suggested calculation of Fuji's CEP profit, stating that Timken neglected to include fundamental packing, selling, and movement expenses and committed other errors which serve to undermine the reliability and credibility of Timken's argument.

Department's Position: We agree with Fuji. Section 772(d)(3) of the Act requires the Department, in determining CEP, to identify and deduct from the U.S. starting price an amount for profit. The SAA explains that this profit will be calculated by ''multiplying the total profit by the percentage determined by dividing total U.S. expenses by total expenses'' (SAA at 154). Section 772(f), the special rule for determining profit, defines total expenses as ''all expenses in the first of the following categories which applies and which are incurred by or on the behalf of the foreign producer and foreign exporter of the subject merchandise and by or on the behalf of the United States seller affiliated with the producer or exporter with respect to the production or sales of the merchandise; (1) the expenses incurred with respect to the subject merchandise * * * if the expenses were requested by the administering authority for the purpose of establishing NV and CEP; (2) the expenses incurred with respect to the narrowest category of merchandise * * * which includes the subject merchandise; or (3) the expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise.'' Thus, section 772(f) establishes a hierarchy of methods for calculating total expenses. The SAA clarifies these alternatives, explaining that, under the first alternative, ''Commerce will request the information necessary * * * if Commerce is conducting a COP investigation'' (*see* SAA at 155). If there is no COP information the SAA states that the ''respondent may submit the necessary information on a voluntary basis'' (*see* id.) However, if the information is not collected in the course of a COP investigation or submitted by the respondent voluntarily, the Department will then resort to the second two alternatives. The SAA states that, under the second two alternatives, ''the information will be obtained from financial reports'' (*see* id.). Finally, because section 772(f)(2)(D) of the Act and the SAA instruct the Department to calculate total profit on the same basis as total expenses, the SAA also explains that ''no distortion in the profit allocable to U.S. sales is created if total profit is determined on the basis of a broader product-line than the subject merchandise, because the total expenses are also determined on the basis of the same expanded product line'' (*see* id.).

Because we did not conduct a cost investigation of Fuji in either TRB review of the 1994–95 POR, we determined in our preliminary results that we did not have the information necessary to calculate CEP profit in accordance with the first alternative. As a result, we resorted to Fuji's financial reports for the POR to calculate the CEP profit percentage to be applied to U.S. expenses to calculate the CEP profit amount to be deducted from Fuji's CEP sales. In its arguments Timken suggests that, because Fuji submitted its acquisition costs, the Department has the information necessary to calculate profit under the first alternative. However, the only information we have concerning certain costs, such as general and administrative expenses, is from Fuji's financial statements. Because we do not have all the actual expenses necessary to calculate a CEP profit percentage based on the first of the alternatives, we have based this information on Fuji's financial statements, in accordance with section 772(f) of the Act and the SAA at 155.

Comment 4: Koyo argues that the Department incorrectly deducted from USP those indirect selling expenses Koyo incurred in Japan for its U.S. sales (export selling expenses). Koyo contends that the SAA clearly states that, under section 772(d) of the Act, CEP will be reduced by only those expenses and profit associated with economic activities occurring in the United States. Citing to *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France et. al.*, 61 FR 35713 (July 8, 1996) and *Calcium Aluminate Flux from France,* 61 FR 40396 (August 2, 1996), Koyo contends that the Department has interpreted section 772(d) to exclude the deduction of export selling expenses from USP in other administrative review proceedings and should apply the same interpretation in these final results of review as well.

Timken argues that under the law in effect prior to January 1, 1995, the Department made an adjustment for those indirect selling expenses incurred in Japan for Koyo's U.S. sales because these expenses were relevant to the sale of U.S. merchandise. Timken asserts that, because the definition of indirect selling expenses under the new antidumping law has not changed, the Department must continue to make this adjustment to USP. For example, Timken states that the Senate indicated that the category of indirect selling expenses which U.S. prices are adjusted for is to remain the same as under the old law (*Committee on Finance, Committee on Agriculture, Nutrition, and Forestry, Committee on Governmental Affairs, Uruguay Round*

Agreements Act, S. Rep. No. 412, 103d Congress. 2d Sess. 65 (1994)). Timken also contends that not only does the SAA support this position, but the Department itself has indicated that in implementing the URAA it will make ''adjustments to constructed export price under section 772(d) of the Act for expenses associated with economic activities in the United States, no matter where incurred'' (*Antidumping Duties; Countervailing Duties, Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308 (February 27, 1996) (*Draft Regulations*)).

Department's Position: We agree with Koyo. It is clear from the SAA that under the new statute we should deduct from CEP only those expenses associated with economic activities in the United States. The SAA also indicates that ''constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers'' (see SAA at 823). Therefore, we have deducted from CEP only those expenses associated with commercial activities in the United States. Our proposed regulations reflect this logic at 351.402(b) (''(t)he Secretary will make adjustments to constructed export price under 772 (d) for expenses associated with commercial activities in the United States, no matter where incurred'').

Timken's reference to the SAA to support the proposition that the new law is not intended to change our practice in this regard is misplaced. Timken cites various provisions of the SAA which state that our practice with respect to ''assumptions'' would not change. The SAA explains that ''assumptions'' are selling expenses of the purchaser for which the foreign seller agrees to pay (*see* SAA at 824). Thus, if the home market producer agrees to pay for the affiliated importer's cost of advertising in the U.S. market the Department would deduct such an expense as an ''assumption.'' It should be noted that assumptions are different than selling expenses incurred in the home market in selling to the affiliated importer, which are not incurred ''on behalf of the buyer'' (*i.e.*, the affiliated importer). Rather, the exporter incurs such expenses on its own behalf, and for its own benefit, in order to complete the sale to the affiliated importer (*see AFBs 94–95* at 2124).

In this case, Koyo's reported selling expenses at issue are not specifically associated directly to commercial activity in the United States, such as the subsidiary's activity of selling the merchandise in the United States. Rather, the expenses at issue were associated directly with the sale between Koyo and its subsidiary and were incurred prior to the commercial activity in the United States. Therefore, because Koyo's reported export selling expenses did not represent commercial activities performed in the United States, we did not deduct these expenses from CEP for these final results.

Comment 5: In its response Koyo reported those inventory carrying costs (ICC) it incurred in the United States for its U.S. sales as well as the ICC it incurred in Japan for TRBs sold in the United States. Because the average number of days a TRB spent in inventory in the United States was shorter than the number of days in which KCU, Koyo's U.S. subsidiary, was required to pay Koyo, we set U.S. ICC equal to zero, added the number of days of KCU's payment terms to the number of days Koyo reported for inventory in Japan, and calculated a revised ICC for U.S. sales using this revised number of days in inventory and the home market borrowing rate. This is in accordance with our practice to use the interest rate applicable to the foreign parent's borrowings in calculating U.S. ICC when there is evidence on the record that the foreign parent assumed the financial burden of this imputed expense through delayed payment by the U.S. subsidiary (*see, e.g., Federal-Mogul Final Remand Results* at Comment 1 and *The Timken Company* v. *United States*, 865 F. Supp. 881 (CIT 1994)).

Koyo states that while it agrees in principle with the Department's recalculation of its U.S. ICC, it disagrees with the Department's calculation of the number of days in inventory. Koyo contends that the Department's method assumes that a TRB will be held in inventory in the United States for the same number of days as KCU's payment terms, when, as the record demonstrates, the number of days in inventory in the United States is less than the number of days of KCU's payment terms. Koyo contends that, as a result, the Department's recalculation of its U.S. ICC calculates ICC beyond the period for which TRBs were actually held in inventory in the United States.

Department's Position: We agree with the respondent. When recalculating Koyo's ICC for its U.S. sales of TRBs, we incorrectly included within our calculation of the revised number of days in inventory for U.S. merchandise the full number of days of KCU's payment terms to Koyo Seiko, despite the fact that the actual number of days the merchandise spent in inventory in the United States was less than the payment terms. As a result, we agree that our recalculation overstates Koyo's ICC for its U.S. TRBs sales. Therefore, for these final results we have corrected this error by calculating the number of days in inventory for Koyo's U.S. merchandise by adding to the number of days the U.S. merchandise spent in inventory in the home market the actual number of days in inventory in the United States, rather than the number of days reflected by the full payment terms between KCU and Koyo Seiko.

Comment 6: Koyo states that, while it does not challenge the Department's splitting of home market TRBs sets, the Department incorrectly calculated CEP and CV profit after it split Koyo's home market TRBs sets into individual cup and cone sales. Koyo asserts that, as a result, the calculation of home market total revenue, total cost of goods sold, total selling expenses, and total movement expenses, includes not only the amount of the expense for home market sets, but the amounts for the individual components of the set as well. Consequently, Koyo claims, all home market elements of the Department's CEP and CV profit calculations are double-counted and Koyo's margin calculation is distorted. Koyo concludes that the Department should correct this error by either performing its set splitting after its calculation of the home market elements for CEP and CV profit, or by identifying within its computer program for Koyo those cups and cones split from home market sets and excluding them from the CEP and CV profit calculations.

Department's Position: We agree with Koyo. By performing the set-splitting portion of our analysis prior to our derivation of the home market elements necessary for the calculation of CEP and CV profit, we inadvertently double-counted home market total revenue, total cost of goods sold, total selling expenses, and total movement expenses. We have corrected this error for these final results by performing our derivation of the home market elements for our CEP and CV profit calculation prior to the set-splitting portion of our margin calculation computer program for Koyo.

Adjustments to Normal Value

Comment 7: Timken disagrees with Koyo's allocation of those home market expenses it incurred when transporting bearings from its plant to its warehouses (pre-sale freight). Timken contends that, based on its review of Koyo's response, only those bearings that Koyo sold for export and through home market affiliated distributors were shipped to warehouses. Other bearings (*e.g.*, those sold to home market original equipment manufacturers (OEMs)), appear to have been stored at the warehouse located at Koyo's plant. Timken asserts that, because Koyo's home market pre-sale freight allocation includes the sales of all bearings, Koyo actually allocated its pre-sale freight expenses to home market sales for which the expense was not incurred. As a result, Timken asserts, the Department must re-allocate and re-calculate Koyo's reported home market pre-sale freight expenses to exclude that merchandise which was not shipped from Koyo's plant to one of its warehouses.

Furthermore, Timken argues that, when reallocating this expense, the Department should also ensure that it is allocated equally to all sales for which it was incurred. Timken contends that, because Koyo incurred this expense equally for its domestic and export sales, and because Koyo was unable to report the expense separately for its domestic and export sales, the expense should be reported equally for all of Koyo's home market and U.S. sales. However, Timken asserts, while Koyo calculates the same pre-sale freight allocation ratio for its home market and U.S. sales, Koyo applies the ratio to U.S. transfer prices and home market resale prices. Timken claims that Koyo's calculation of per-unit pre-sale freight expenses for U.S. sales on the basis of transfer prices, rather than resale prices, results in greater expense amounts reported for Koyo's home market sales. Timken states that, because this distorts the commercial reality of the expense and the manner in which it was incurred, the Department should reallocate this expense accordingly.

Koyo maintains that its response to section B of the Department's questionnaire explains that Koyo operates two central warehouses in order to distribute the foreign like product in the home market. Thus, Koyo asserts, Timken's assertion that Koyo did not incur home market pre-sale freight for certain home market sales is based on Timken's failure to read the relevant section of Koyo's response. Furthermore, Koyo asserts, because Koyo Seiko incurred all pre-sale home market freight expenses, Koyo properly allocated the expense on the basis of the total sales value of Koyo Seiko's sales of TRBs. Koyo argues that this is a well-established methodology that the Department has verified and accepted in past TRBs and AFBs reviews, and Timken has provided the Department with no evidence that would compel the Department to reject this methodology at this late stage in the instant proceeding. In addition, Koyo contends that the Department has already resolved this issue in a closely related context. Koyo states that in its *Federal-Mogul Final Remand Results* the Department rejected a very similar argument in which Timken claimed that the ICC incurred by Koyo Seiko in Japan for U.S. sales should have been calculated on the basis of KCU's U.S. resale prices rather than Koyo Seiko's price to KCU (the transfer price). Koyo contends that the same reasoning the Department applied in those final remand results, in which it determined that the relevant sales for the calculation of the ICC expense were Koyo Seiko's sales to KCU, should apply here as well, and the Department should accept Koyo's calculation methodology using the sales from Koyo Seiko to KCU as the basis for its home market pre-sale freight expense allocation.

Department's Position: While we agree with Timken that Koyo's questionnaire response does indicate that it did not incur pre-sale freight expenses for certain home market sales, we disagree with Timken that Koyo's allocation of these expenses is otherwise unreasonable. In its response Koyo reported home market pre-sale freight expenses which reflected those expenses it incurred when transporting TRBs destined for sale in both the U.S. and home markets from the home market plant to home market warehouses. While Koyo reported these pre-sale freight expenses for all of its home market and U.S. export sales, its questionnaire response indicates that there are certain home market sales for which Koyo did not incur this expense because the merchandise was not transported from the plant to a warehouse at a location different from the plant. For example, on page 38 of its section B response to our questionnaire, Koyo explains that, prior to sale, not only did it store TRBs at its two home market central warehouses, warehouses at its branch and sales offices, and at the warehouses of its four consolidated distributors, but it also stored certain merchandise at its plant warehouse. In the proprietary explanation following this description on page 38 Koyo again indicates that there are certain types of home market sales for which the merchandise was stored at its plant warehouse. In addition, on page 25 of its section B response, when explaining its post-sale home market freight expenses, Koyo states that it incurred post-sale freight expenses either in shipping merchandise from the plant directly to a customer or when transporting merchandise from a warehouse to a customer. Again, the implication is that there are certain home market sales for which the merchandise is shipped directly from the plant to a customer and, therefore, is not transported to a warehouse at a location different from the plant. Therefore, we agree with Timken that the record demonstrates that there are certain home market sales for which Koyo did not incur home market pre-sale freight expenses.

We have determined, therefore, that for these final results it is necessary to (1) reallocate Koyo's reported home market pre-sale freight expenses such that the total sales value of those home market sales for which the expense was not incurred is excluded from the allocation denominator, and (2) apply the expense only to those home market sales for which the expense was incurred. However, Koyo's response does not enable us to specifically identify within Koyo's home market database those sales for which the expense was not incurred. In light of this, we have determined to rely on facts available to determine those sales for which the expense was not incurred. Based on Koyo's proprietary narrative explanation on page 38 of its response, we have concluded that Koyo most likely did not incur this expense on certain sales to home market OEM customers. While we recognize that it is likely that not all of Koyo's home market OEM sales were exempt from this expense, because we are unable to identify exactly which OEM sales were exempt, we have applied non-adverse facts available and recalculated the expense adjustment by (1) removing from Koyo's reported allocation denominator the total sales value of Koyo's home market OEM sales and (2) applying the recalculated expense adjustment to U.S. sales and only non-OEM home market sales.

However, despite the fact that we have determined for these final results that Koyo's pre-sale freight allocation denominator is overstated and the expense was reported for home market sales for which it was not incurred, we disagree with Timken that Koyo's allocation otherwise fails to reflect the manner in which the expense was actually incurred. In general, when a respondent relies on an expense allocation to calculate its per-unit adjustment amounts, we require that allocation to reflect the manner in which the expense was actually incurred (*see, e.g., TRBs 92–93* at 57635 and *Certain Fresh Cut Flowers From Columbia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42848 (August 19, 1996)). In addition, we examine the respondent's allocation methodology to determine if there is internal consistency between the numerator and denominator and within the methodology as a whole. For example, if an expense is allocated on the basis of total sales value, as is the expense at issue here, the expense amount (the numerator) and the total sales value (the denominator) should reflect the same pool of sales such that the total expense amount reported by the respondent is divided by the total value of the sales for which the expense was actually incurred. Likewise, the allocation ratio should be applied to the same sales price reflected in the denominator. For example, we would not accept the application of an allocation ratio to gross sales price if the denominator was calculated by totaling the value of all sales on the basis of a net price.

In the instant case, Koyo Seiko, the Japanese parent, incurred the pre-sale freight expenses at issue for all merchandise, whether destined for sale to the U.S., third-country, or home market (with the exception of the home market OEM sales described above). Because Koyo does not maintain its records such that it is able to calculate the total expense amount incurred for each market, it was unable to separately calculate the specific pre-sale freight expense attributable to each market. Therefore, Koyo used as its allocation numerator the total expense amount incurred by Koyo Seiko for all merchandise, as derived from Koyo Seiko's sales records.

The sales for which this expense was incurred were Koyo Seiko's sales to all its various customers, which encompassed a mix of affiliated and unaffiliated entities in both the export and home markets. Thus, Koyo calculated its pre-sale freight allocation denominator by totaling the value for all of Koyo Seiko's sales to all its customers, as derived from Koyo Seiko's records. While for these final results we have adjusted this denominator to exclude the total sales value of home market OEM sales, we have nevertheless preserved Koyo's basic allocation methodology for the following reasons:

Because Koyo Seiko's customers encompassed a mix of affiliated and unaffiliated parties in both the home and export markets, Koyo's denominator includes sales values which reflect both transfer and resale prices. Because Koyo Seiko's customer in the United States is KCU, its wholly-owned U.S. affiliate, the U.S. sales transactions relevant to Koyo's allocation are those between Koyo Seiko and KCU. Thus, Koyo correctly included within its denominator the total value of its sales to KCU, which were made at transfer prices. Similarly, in the home and third-country markets Koyo Seiko sold to both affiliated and unaffiliated customers. Therefore, Koyo properly included within its allocation denominator the total value of Koyo Seiko's sales to its home and third-country market customers, some of which were made at resale prices and others of which were at transfer prices. Koyo's methodology therefore not only relies on a numerator and denominator which reflect the same pool of sales, but its denominator is calculated on the basis of the value of those sales for which the reported total expense amount was actually incurred.

When calculating the per-unit expense adjustment amount for each U.S. and home market transaction, Koyo applied its allocation ratio (which was the same for all sales) to the appropriate unit price. For U.S. sales it applied the ratio to the transfer prices Koyo reported between Koyo Seiko and KCU, which were the U.S. prices upon which the expense was incurred and the U.S. sales values reflected in Koyo's allocation denominator. For home market sales, Koyo applied the ratio to either a resale price (for unaffiliated customers) or transfer price (for affiliated customers) because these were the home market prices upon which the expense was incurred and the home market sales values reflected in the allocation denominator.

Timken argues that, in order to properly reflect commercial reality and avoid distortion, Koyo should instead apply its expense ratio to U.S. resale prices, the price of the sale between KCU and the first unaffiliated U.S. customer. However, Timken overlooks the fact that this transaction is not the sale for which the expense was actually incurred. As a result, Timken's proposed methodology would neither reflect the manner in which, nor the sales upon which, Koyo actually incurred the expense. Timken's argument also ignores the fact that Koyo's allocation denominator includes not only U.S. transfer values but home market and third-country transfer values as well. Thus, Timken's assertion that Koyo always calculates the home market expense adjustment on the basis of resale prices is incorrect. Rather, the record demonstrates that, for sales to affiliated home market parties, Koyo calculated the adjustment on the basis of the transfer price between Koyo Seiko and the affiliated home market customer. In addition, rather than argue that all transfer values included in Koyo's denominator should be excluded from the allocation methodology, Timken limits its argument to only U.S. transfer prices and fails to demonstrate why U.S. transfer values are an improper factor in the denominators calculation while home market and third-country transfer values are not.

Finally, the record does not contain, and Timken has not provided, any evidence demonstrating that the transfer prices Koyo reported between Koyo Seiko and KCU are unreliable. Rather, the record indicates that these transfer prices were maintained by KCU, independent of the antidumping proceedings, within the ordinary course of business. Furthermore, we note that antidumping proceedings are only one of the forces applicable to a respondent's transfer pricing practices in that transfer prices are also subject to Internal Revenue Service audits for U.S. tax purposes.

Therefore, based on the above reasons, we do not agree with the petitioner that Koyo's basic allocation methodology is unreasonable. Therefore, for these final results, while we have recalculated Koyo's originally reported allocation ratio to exclude home market OEM sales, we have made no other changes to Koyo's overall allocation methodology.

Comment 8: Koyo and Fuji disagree with the Department's preliminary results treatment of their respective home market post-sale-price adjustments (PSPAs) . Koyo argues that the Department's denial of its PSPAs is based on an overly narrow interpretation of *The Timken Company* v. *United States,* 930 F. Supp. 621 (CIT 1996) (*Timken*) and *The Torrington Company* v. *United States,* 818 F. Supp. 1563 (CIT 1993) (*TorringtonI*), *aff'd* 82 F.3d (Fed. Cir. 1996) (*TorringtonII*), which the Department interprets as requiring it to reject home market PSPA adjustments allocated on a customer- and scope-specific basis. Koyo contends that, in Torrington II, rather than prohibit the allocation of direct home market expenses, the CAFC actually confirmed its earlier decision in *Smith Corona Group* v. *United States,* 713 F.2d 1568, 1580 (Fed Cir. 1983) that the Department may treat allocated expenses as direct selling expenses, provided that the allocation does not distort the margin. Koyo further asserts that the URAA and the Department's draft regulations confirm this position. Koyo states that the SAA explains that the Department does not intend to change its current practice of allowing companies to allocate direct expenses when transaction-specific reporting is not feasible, provided that the allocation method does not cause inaccuracies or distortions (SAA at 823–824). Koyo also asserts that, while the Department's draft regulations state a preference for transaction-specific reporting of direct expenses, it notes that allocated expenses may be treated as direct expenses when transaction-specific reporting is not feasible. Koyo further argues that its allocation of its home market PSPAs is consistent with the CIT's decision in *Federal-Mogul Corp.* v. *United States,* 862 F. Supp. 384 (CIT 1994) that direct selling expenses be allocated only over scope merchandise. Therefore, Koyo concludes, because its home market PSPA allocation methodologies meet the requirements established by the CAFC and the CIT for the treatment of direct expenses, the Department should accept these adjustments in its final results of review.

Fuji disagrees with the Department's denial of its reported home market rebate adjustment. Fuji contends that, while its allocation methodology includes non-scope merchandise, this was necessary because it is the basis upon which the rebates were incurred. In addition, Fuji asserts that, since the same rebate amounts are paid on scope and non-scope merchandise, its use of non-scope merchandise was not only appropriate, but it accurately allocated the rebates to TRBs. Furthermore, Fuji asserts, not only did it report its rebates on a dealer-specific basis, but, while it could have allocated its rebates to TRBs by taking a portion of the rebates paid based on the ratio of TRBs purchased to total parts and accessories purchased by each dealer, as suggested by the CIT in *The Torrington Company* v. *United States,*0 832 F. Supp. 379 (CIT), this methodology results in the same allocation for each dealer as its current methodology.

Fuji also contends that, even if the Department disallows its rebates as a direct adjustment to NV, the Department must nevertheless treat its reported rebates as indirect selling expenses. Fuji claims that the Department routinely treats those home market PSPAs which it denies as direct adjustments to NV as indirect selling expenses, even if the expense allocation includes both scope and non-scope merchandise.

Timken argues that, while Koyo granted its home market PSPA's on a customer and model-specific basis, Koyo nevertheless allocated these adjustments to all sales to a given customer during the POR. Timken asserts that Koyo therefore allocated the expenses to sales for which the adjustments were not actually granted. Timken states that, because neither the statute nor the Department's regulations allow such adjustments, the Department acted properly in denying all of Koyo's home market PSPAs in its preliminary results and should not alter its determination for these final results of review.

Timken also argues that the Department's treatment of Fuji's home market rebates was correct because these rebates were (1) incurred and allocated on the basis of sales of both scope and non-scope merchandise, (2) were not allocated on a transaction-specific basis, and (3) were not granted as a fixed and constant percentage of all sales upon which they were incurred. Timken argues that, not only has the CIT repeatedly held that merchandise which is outside the scope of an antidumping duty order cannot be used in the calculation of antidumping duties (*Torrington Company* v. *United States,* 818 F. Supp. 1563 (CIT 1993) and *Federal-Mogul Corp.* v. *United States,* 918 F. Supp. 386 (CIT 1996)), but the Department has repeatedly rejected adjustments which include non-scope merchandise within their allocations (*TRBs 92–93* and *AFBs 93–94*).

Further, Timken contends that, while Fuji claims that it accurately allocated its rebates to TRBs, Fuji failed to demonstrate that its reported amounts are the actual rebates earned on its home market sales. As a result, Timken asserts, it is not evident that every home market sale to a particular customer for which Fuji reported a rebate adjustment was eligible for, and earned, a rebate. In addition, Timken contends, given that Fuji's rebates were not transaction-specific and included sales of non-scope merchandise, Fuji failed to demonstrate that its rebates were granted at a fixed and constant percentage of all sales such that its allocation to scope merchandise yielded the exact amount of per-unit rebate granted on TRB sales.

Finally, Timken argues that the Department should not, as Fuji suggests, treat Fuji's rebates as indirect selling expenses. Timken maintains that the CAFC definitively held that direct expenses, such as rebates and other price adjustments, which, by their nature, are directly related to particular sales, cannot be treated as indirect selling expenses (*Torrington II* at 1050 and 1051). Timken claims that, because Fuji's rebates are clearly direct expenses, the Department correctly denied this adjustment in its preliminary review results and should not alter its determination for these final review results.

Department's Position: For these final results we have accepted claims for discounts, rebates, and other billing adjustments as direct adjustments to price if we determined that the respondent, in reporting these adjustments, acted to the best of its ability and that its reporting methodology was not unreasonably distortive. We did not treat such PSPAs as direct or indirect selling expenses, but rather as direct adjustments necessary to identify the correct starting price. While we prefer respondents to report these adjustments on a transaction-specific basis (or, where a single adjustment was granted for a group of sales, as a fixed and constant percentage of the value of those sales), we recognize that this is not always feasible, particularly given the extremely large volume of transactions involved in these TRBs reviews. It is inappropriate to reject allocations that are not unreasonably distortive in favor of the facts otherwise available if a respondent is unable to report the information in a more specific manner (*see* section 776 of the Act and *AFBs 94–95* at 2090). Accordingly, we have accepted these adjustments when it was not feasible for a respondent to report the adjustment on a more specific basis, provided that the allocation method used by the respondent did not cause unreasonable inaccuracies or distortions.

In applying this standard, we have not rejected an allocation method solely because the allocation includes adjustments granted on non-scope merchandise. However, such allocations may be unacceptable where we have reason to believe that a respondent did not grant such adjustments in proportionate amounts with respect to sales of scope and non-scope merchandise and, thus, may have resulted in unreasonable distortions. We have examined the extent to which non-scope merchandise included within the allocation pool is different from the scope merchandise in terms of value, physical characteristics, and the manner in which it is sold. Significant differences in such areas may increase the likelihood that respondents did not grant price adjustments in proportionate amounts with respect to sales of scope and non-scope merchandise. While we carefully scrutinize any such differences between scope and non-scope sales in terms of their potential for distorting reported per-unit adjustments on the sales involved in our analysis, it would not be reasonable to require respondents to submit specific adjustment data on non-scope merchandise in order to prove that there is no possibility of distortion. Such a requirement would defeat the purpose of permitting the use of reasonable allocations by respondents that have cooperated to the best of their ability (*see AFBs 94–95* at 2091).

Where we find that a company has not acted to the best of its ability in reporting the adjustment in the most specific and non-distortive manner feasible, we have made an adverse inference in using facts available with respect to the adjustment, pursuant to section 776(b) of the Act. Therefore, we agree with Timken that, when we find a respondent has allocated a home market PSPA in a distortive manner, or if we determine that a respondent has not acted to the best of its ability, we should deny the adjustment rather than treat it as an indirect expense. This is in accordance with the CAFC's decision in *Torrington II* at 1047–51. However, we note that *Torrington II* is of limited additional relevance to the issue at hand because the CAFC did not address the reasonableness of the allocation methods respondents used in reporting the PSPAs in question. Although the CAFC appeared to question whether price adjustments constituted expenses at all (*see Torrington II* at n. 15), it merely held that, assuming the adjustments were expenses, they had to be treated as direct selling expenses rather than indirect selling expenses.

In addition, we have included positive (upward) HM price adjustments (*e.g.*, positive billing adjustments which increase the final sales price) in our analysis. The treatment of positive home market billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an unacceptably broad basis in order to reduce NV and margins. That is, if we were to disregard positive billing adjustments, which would be upward adjustments to NV, respondents would have no incentive to report these adjustments in the most specific and non-distortive manner feasible (*see AFBs 94–95* at 2091).

In its response Koyo claimed direct adjustments to home market price for two types of billing adjustments and rebates. Because certain of Koyo's billing adjustments were positive, in accordance with our policy, we automatically made a direct adjustment to Koyo's reported home market gross unit prices for these upward adjustments. Concerning those billing adjustments which were negative (*e.g.*, resulted in a downward adjustment), based on our examination of the record in this review and our verification of Koyo's records in past reviews of the A–588–054 case, we are satisfied that Koyo's records do not allow it to report these billing adjustments on a transaction-specific basis and that Koyo acted to the best of its ability in calculating the reported adjustments on as narrow a basis as its records allowed. Furthermore, because Koyo's allocation was both scope-and customer-specific, we are satisfied that Koyo's reported billing adjustments are reasonably accurate and non-distortive. Therefore, for these final results we have made direct adjustments to home market price for both Koyo's negative and positive billing adjustments.

In contrast to its billing adjustments, Koyo reported its rebates only on a customer-specific basis. While we are satisfied that Koyo acted to the best of its ability in reporting this adjustment insofar as its records did not allow for it to report the adjustment on a more specific basis, its allocation nevertheless included non-scope merchandise. We therefore examined Koyo's allocation to determine if it is was reasonably non-distortive. Our review of the record indicated that the non-scope merchandise included in Koyo's allocation reflected sales of bearings other than TRBs. Not only has our review and analysis of the record given us no reason to believe that Koyo is more likely to grant its rebates on sales of bearings other than TRBs than it is on sales of TRBs, but we note that Koyo is primarily in the business of selling bearings, some of which are within the scope of the TRB orders and others which are not. While we recognize that there are differences in bearings, we have not found that the scope and non-scope bearings included in Koyo's allocation vary significantly in terms of value, physical characteristics, nor the manner in which they are sold such that Koyo's allocation would result in an unreasonably inaccurate or distortive allocation. Thus, we have made a direct adjustment to home market price for Koyo's rebates.

Concerning Fuji's rebates, our review of the record indicates that Fuji granted two different types of rebates, both of which were applicable to sales of all automobile parts (not only TRBs), and both of which were granted to only those dealers meeting the specific requirements of the individual rebate program. In order to derive the rebate amount it reported for each appropriate home market transaction, Fuji calculated dealer-specific allocation ratios by dividing the total rebate paid to a dealer during the POR (for all parts sales) by the total value of all parts sales to the dealer during the POR. Based on our review of the record, we are satisfied that Fuji reported these rebates to the best of its ability insofar as its records allow neither the reporting of invoice-specific rebates nor the identification of those rebates paid to each dealer specifically for TRBs purchases. Furthermore, as explained in the proprietary version of the Department's final results analysis memorandum for Fuji, we are also satisfied that Fuji reported the first of these rebates, ''Rebate 1,'' to the best of its ability in that its records allow neither the reporting of invoice-specific rebates nor the identification of those rebates paid to each dealer specifically for purchases of TRBs. Furthermore, as explained in the proprietary version of the Department's final results analysis memorandum for Fuji, we are also satisfied that Fuji's allocation methodology is not unreasonably distortive or inaccurate.

The same cannot be said for Fuji's other rebate program, ''Rebate 2.'' Fuji reported that it granted these rebates not on the basis of the dealers'' purchases from Fuji but, rather, on the basis of the dealers'' subsequent sales of automotive parts. In reporting ''Rebate 2,'' however, Fuji did not calculate its reported dealer-specific allocation ratios using the dealers' total sales values. Instead, Fuji used the value of *Fuji's* sales to the dealer. The use of this amount in calculating the dealer-specific allocation ratios for ''Rebate 2'' has the effect of overstating the appropriate amount of the rebates granted. In addition, as Fuji based the ''Rebate 2'' program on the total value of the dealers' subsequent sales of TRBs and other automotive parts, Fuji had the data at hand to correctly allocate ''Rebate 2'' on the same basis as originally granted. Therefore, unlike ''Rebate 1,'' we find that Fuji did not act to the best of its ability in reporting ''Rebate 2'' and, further, used an allocation methodology which is unreasonably inaccurate or distortive. Therefore, we have disallowed this adjustment for these final results.

Comment 9: Fuji argues that the Department incorrectly treated its reported home market warranty expenses as indirect selling expenses. Fuji contends that not only did it clearly provide the ''direct expense'' nature of its warranties in response to the Department's questionnaire, but the Department's questionnaire itself identifies warranties as a common example of a direct expense.

Timken argues that, rather than treat Fuji's home market warranty expenses as indirect selling expenses, the Department should have denied the adjustment in its entirety. Timken asserts that Fuji's response indicates that Fuji allocated its home market warranty expenses by dividing its total warranty expenses for all replacement parts by the total value of parts and vehicle sales during the POR. In other words, Timken contends, Fuji allocated its home market warranty expenses on the basis of sales of both scope and non-scope merchandise. Timken maintains that, because the CIT has held that it cannot allow the Department to accept a methodology which allows for the inclusion of warranty expenses on non-scope merchandise in calculating adjustments to NV (*Federal-Mogul Corp*. v. *United States,* 862 F. Supp. 384 (CIT 1994) (*Federal-Mogul II*), the Department must deny Fuji's home market warranty expense adjustment in its final results of review.

Department's Position: Similar to our policy concerning PSPAs, we accept claims for home market direct selling expenses as direct adjustments to price if we determine that a respondent reported the expense: (1) on a transaction-specific basis; (2) as a fixed and constant percentage of the value of sales on which it was incurred; or (3) on an allocated basis, provided that it was not feasible for the respondent to report the expense on a more specific basis and the allocation does not cause unreasonable distortions (*i.e.*, was likely to have been granted proportionately on sales of scope and non-scope merchandise). In addition, in accordance with *Torrington II,* we disallow any allocated home market direct selling expenses which do not meet any one of these standards (*see AFBs 94–95* at 2098).

Furthermore, in regard to warranty expenses, the Department has long recognized that it is not possible to tie POR warranty expenses to POR sales, since the warranty expenses can be incurred on pre-POR sales. Likewise, a respondent may not incur warranty expenses on POR sales until a future time period. Therefore, warranty expenses generally cannot be reported on a transaction-specific basis and an allocation is necessary (*see* id.).

In its response Fuji reported its warranty expenses using an allocation because it was unable to tie its POR warranty expenses to POR sales. While we do not object to Fuji's use of an allocation in this instance, we are not satisfied that Fuji's allocation is reasonably non-distortive. Fuji's reported total warranty expenses for the POR include those incurred for all automotive parts, not only TRBs. In addition, Fuji's warranties cover the full replacement of a defective automobile part, including all parts and labor. As a result, the warranty expense amount reported by Fuji includes not only the cost of all replaced automobile parts, but the labor for replacing a large variety of automobile parts as well. Considering the fact that there are numerous automobile parts which are far more expensive and far more labor-intensive to replace than a TRB and, likewise, numerous parts far less expensive and more easily replaced than TRBs, it is highly unlikely that Fuji incurred warranties for TRBs in an amount proportionate to other automobile parts. Therefore, we are not satisfied that Fuji's warranty expense allocation is reasonably non-distortive and we have denied this adjustment for these final results.

Comment 10: Timken states that Koyo incorrectly applied its allocation ratios for its home market pre-sale inland freight, post-sale inland freight, credit, and indirect selling expenses to its gross unit prices, rather than to unit prices net of rebates and discounts. Timken contends that Koyo's response demonstrates that the denominator Koyo used to allocate these home market expenses reflected its total home market sales value net of rebates and discounts. However, Timken asserts, rather than apply the allocation ratio it calculated for each expense to a unit price net of discounts and rebates, Koyo instead applied its allocation ratios to its gross home market unit prices. Timken claims that, as a result, Koyo over-allocated the expenses to its home market sales. Timken concludes that the Department should, therefore, recalculate these per-unit expense amounts by applying Koyo's reported allocation ratios to home market unit prices net of discounts and rebates. Timken also states that, even though the Department disallowed Koyo's home market rebate and discount adjustments to NV, the Department may use Koyo's reported discount and rebate amounts as facts available in order to avoid the over-allocation of the expenses at issue while still denying Koyo's rebate and discount adjustments to NV.

Koyo argues that the methodology it used to calculate its home market pre-sale inland freight, post-sale inland freight, credit, and indirect selling expenses is well-established and has been repeatedly verified and accepted by the Department in all past TRBs and AFBs reviews. Koyo asserts that, because the Department has never found any fault with Koyo's methodology in the past, it should again accept the methodology as reasonable for these final review results.

Department's Position: We disagree with Timken. While Timken asserts that Koyo has excluded rebates and discounts from the denominators it used in its pre-sale inland freight, post-sale inland freight, credit, and indirect selling expenses allocations, Timken points to no evidence on the record demonstrating this. Furthermore, based on our own re-examination of the record, we have found no evidence that this is the case. Rather, in regard to Koyo's pre-sale inland freight and post-sale inland freight allocations, exhibit B–4 of Koyo's response indicates that the allocation denominators used by Koyo were net only of internal sales between Koyo and its four affiliated home market distributors. There is no evidence that the denominators also excluded rebates and discounts. Likewise, we found no evidence on the record that Koyo excluded rebates and discounts from the customer-specific total sales values it used in its customer-specific credit allocations or the total home market sales value used in its indirect selling expense allocation. Furthermore, while we did not verify these allocations for these reviews, we note that Koyo's allocation methodologies are identical to those which Koyo used in past TRBs reviews which the Department did verify. Based on our review of the record and the fact that we have verified these allocations in past TRBs reviews without discrepancy and have found no evidence in past verifications that Koyo excluded rebates and discounts from the denominators in question (*see, e.g.,* the Department's 1992–93 home market verification report for Koyo dated November 28, 1995), we have no reason to suspect that Koyo misallocated and/or overstated these adjustments in these reviews. Therefore, we have made no changes to Koyo's reported home market pre-sale inland freight, post-sale inland freight, credit, or indirect selling expenses for these final results.

COP and CV

Comment 11: Timken states that in the computer program the Department used to determine the preliminary results margin for Koyo, the Department incorrectly excluded sales below cost from the home market database before U.S. and home market models were matched to determine like merchandise. Timken contends that, because this is contrary to the Department's policy to use CV when the NV of the like merchandise fails the cost test, the Department should correct this error for its final review results.

Koyo agrees with Timken that the Department should use CV when a U.S. TRB matches to a foreign like product which has failed the below-cost test.

Department's Position: We agree with both the petitioner and Koyo. In our preliminary results computer program for Koyo we inadvertently omitted computer programming language which would result in CV being used for NV in those instances where the U.S. model matched a home market model which failed the below-cost test. We have corrected this error for these final results of review.

Comment 12: Koyo argues that, for the purpose of determining whether any of Koyo's home market sales were below cost, the Department incorrectly compared home market prices net of indirect selling and packing expenses to COPs which included indirect selling expenses and packing. Koyo asserts that, to ensure a fair and balanced comparison, the Department should deduct from COP all indirect selling and packing expenses prior to comparing it to the home market price net of these expenses.

Department's Position: We agree with Koyo and have deducted from COP all indirect selling and packing expenses prior to comparing COP to home market prices net of these same expenses.

Comment 12: Koyo argues that, when calculating CV, the Department added indirect selling expenses and commissions in a fixed amount rather than applying a factor. Koyo asserts that, in doing so, the Department deducted the exact same amount of indirect selling expenses and commissions in every CV calculation, ignoring the differences in sizes and types of TRBs. Koyo contends that in the most recent AFBs review (AFBs 94–95), the Department calculated CV expense amounts on a transaction-specific basis such that the calculated expense accurately reflected the actual expenses which would have been incurred had the AFBs model been sold in the home market above cost. Koyo contends that the Department should adopt the AFBs approach in these final results not only because it is more accurate, but because it is consistent with the Department's rejection of calculations of average expense amounts when transaction-specific calculations are possible.

Department's Position: We agree with Koyo and have made the appropriate changes to our margin calculation computer program for Koyo for these final results.

Miscellaneous Issues Related to Assessment, Level of Trade (LOT), the Arm's-Length Test, and the 20% Difference-in-Merchandise (Difmer) Test

Comment 13: Timken states that, because the Department determined that the value added to those TRBs imported by Subaru-Isuzu Automotive (SIA), Fuji's manufacturing U.S. subsidiary, for use in the manufacture of automobiles in the United States substantially exceeded the value of the imported TRBs, in the preliminary results of review for Fuji the Department explained that it would use the weighted-average dumping margins it calculated for sales of identical or similar TRB models sold as replacement parts by Subaru of America (SOA), Fuji's U.S. selling subsidiary, to determine the margin for those TRBs imported by SIA. Timken contends that, while the Department's preliminary results makes it clear that the Department will apply SOA's cash deposit rate to SIA's TRB imports, the Department did not specifically indicate at what rate it would assess antidumping duties on SIA's imports. Timken asserts that, (1) because the value available to Customs' for liquidation purposes is the transfer value between Fuji and SIA, (2) because there is a difference between transfer and resale prices, and (3) because the Department has already calculated an assessment rate for Fuji using the total entered value of SOA's imports in the denominator, the Department should apply this assessment rate to SIA's imports as well.

Fuji argues that, not only is there nothing within section 772(e) of the Act, the statutory provision for merchandise with value added after importation, directing the Department to use the same assessment rate for each importer, but section 351.212(b)(1) of the Department's proposed regulations indicates that assessment rates will be specific to each importer. Therefore, Fuji asserts, the Department is not required to apply the assessment rate it calculated for SOA to SIA's imports. Furthermore, Fuji argues, because SIA is not a reseller of TRBs, as is SOA, there is no reason for one to assume, as Timken does, that SIA's transfer values would be different from its TRB resale prices to unrelated U.S. customers. Indeed, Fuji claims, there is no evidence on the record to support any such conclusion. In addition, Fuji contends, because SIA is not a reseller of TRBs, it would be grossly unfair for the Department to apply SOA's assessment rate, a reseller's assessment rate, to SIA's imports.

Therefore, Fuji asserts, the Department should either use SOA's calculated deposit rate as SIA's assessment rate, or calculate a new assessment rate for SIA. Fuji maintains that, because SIA is not a reseller of TRBs, the use of SOA's cash deposit rate as SIA's assessment rate would ensure an accurate assessment of SIA's TRB imports. Furthermore, Fuji argues, the use of SOA's cash deposit rate as both SIA's cash deposit and assessment rate would be in accordance with the Department's policy to calculate cash deposits rates which correspond as closely as possible to the eventual assessment rate.

If the Department decides not to use SOA's cash deposit rate as SIA's assessment rate, Fuji asserts, the Department should, in the alternative, calculate a separate assessment rate for SIA using only the dumping margins the Department calculated on sales of the identical TRBs imported by SOA. Fuji states that in the preliminary results the Department calculated SOA's cash deposit rate based on all its TRB imports. However, Fuji asserts, SIA only imports two TRB models. Therefore, Fuji concludes, the Department should apply to SIA an assessment rate based only on SOA's sale of the identical two TRB models and not the SOA rate it calculated based on SOA's sales of all TRB models. Fuji maintains that this approach is more consistent with section 772(e) of the Act and results in a more accurate assessment of SIA's imports because it is based only on the margins the Department calculated for the identical TRBs imported by SOA.

Department's Position: We disagree with Fuji. Section 772(e) of the new law allows us to determine the CEP of further-processed subject merchandise in a manner that does not require the calculation and subtraction of U.S. value added if the U.S. value added is likely to exceed substantially the value of the imported merchandise (this procedure is identified in the Act as the "special rule"). The statute further provides that, where there is a sufficient quantity of sales of identical or other subject merchandise sold to unaffiliated persons and the use of such sales is appropriate, the Department shall use the prices of such sales to determine the CEP of the further-processed subject merchandise. If there is not a sufficient quantity of sales of identical or other subject merchandise, or if the use of such sales is inappropriate, the Department may determine CEP of the further-processed subject merchandise on any other reasonable basis.

In accordance with section 772(e), in our questionnaire we request that respondents provide information to demonstrate whether the value added to the subject merchandise in the United States is likely to exceed substantially the value of the subject merchandise. If we determine that it is likely, we will normally not require the respondent to report the detailed further-manufacturing and sales information for its further-manufactured sales. In this way, section 772(e) not only relieves the Department of the burden of the detailed further-manufacturing analysis which would be required to determine the CEP of further-manufactured subject merchandise where the U.S. value added substantially exceeds the value of the subject merchandise, but it has the additional benefit of eliminating the burden on a respondent to collect and submit the detailed data necessary for the Department to conduct such an analysis.

However, if a respondent's U.S. value added is likely to exceed substantially the value of the subject merchandise and the Department chooses not to perform a detailed further-manufacturing analysis, in accordance with section 772(e) of the Act, we will rely on surrogate prices to determine the dumping margins, if any, for the further-manufactured subject merchandise.

In the instant case, SIA imports TRBs from Fuji for the sole purpose of using the TRBs in the further manufacture of automobiles in the United States, whereas SOA imports TRBs for the sole purpose of reselling the merchandise in the U.S. replacement market. In its response Fuji demonstrated that the value added in the United States to all TRBs imported by SIA is likely to exceed substantially the value of the TRBs. Accordingly, we did not require Fuji to report detailed further manufacturing and sales information for SIA's sales. Therefore, in accordance with section 772(e), we relied on surrogate prices (*i.e.*, those of SOA's sales of identical and other subject merchandise) to determine the dumping margins for SIA's sales.

While Fuji's arguments focus primarily on the manner in which the Department should calculate a separate assessment rate for SIA, this issue and Fuji's assertions are moot in light of the fact that our preference to calculate importer-specific assessment rates is limited to only those instances where the importer is not related to the foreign exporter. This is to prevent one importer from being liable for antidumping duties attributable to margins found on sales to a different importer. In those instances where the importer, or importers, are related to the foreign exporter, we consider the related parties to constitute one corporate entity and consider the use of a manufacturer/exporter-specific assessment rate to be appropriate (*see, e.g., TRBs 92–93* at 57648). In the instant case, because both SOA and SIA are Fuji's affiliated U.S. subsidiaries, we consider all three entities to constitute one corporate entity and, therefore, find no basis for the calculation of SIA or SOA-specific dumping margins, cash deposit rates, or assessment rates. Even if section 772(e) did not apply, we still would not calculate a separate assessment rate for SIA. Rather, because these entities constitute a single corporate entity, the margins we calculate for SIA's sales would have been combined with SOA's in order to calculate an overall Fuji-specific weighted-average margin, cash deposit rate, and assessment rate.

In addition, there is no evidence on the record supporting Fuji's contention that because SIA does not resell TRBs for the replacement market, its selling practices are significantly different from SOA such that SOA's assessment rate is inappropriate. Fuji has provided no information which suggests that the weighted-average dumping margin for SIA's sales would differ significantly from the weighted-average margin we calculated for SOA's sales, nor has Fuji provided any information demonstrating that SIA would sell at resale prices equivalent to the transfer prices it paid Fuji. Rather, the evidence on the record demonstrates that SIA would most likely engage in selling and pricing practices similar to SOA. We therefore have no basis to suspect that the application of SOA's assessment rate to all subject merchandise imported by SOA and SIA would be unreasonable.

Comment 14: Fuji argues that because it is a reseller which does not have access to the variable costs of manufacturing (VCOM) and total costs of manufacturing (TCOM) of the TRBs it resells in the U.S. and home markets, it agrees with the Department's use of its acquisition costs as the basis for the 20% difmer test. Fuji contends that in those cases where VCOM and TCOM are available, the Department allows non-identical home market models to be included within the pool of potential home market matches if the difference in the VCOMs between the U.S. and home market models is less than 20 percent of the U.S. model's TCOM. In other words, Fuji states, the Department uses the U.S. model's costs as the benchmark for its comparison. However, Fuji asserts, rather than use the U.S. model's acquisition cost as the benchmark for the 20% difmer test the Department conducted for Fuji, the Department incorrectly used the home market model's acquisition costs as the basis for the 20% difmer comparison.

Department's Position: We agree with Fuji. In our margin calculation computer program for Fuji we inadvertently used programming language which incorrectly applied the 20% difmer test. We have corrected this error for these final results.

Comment 15: Koyo argues that, in order to ensure a fair comparison between NV and USP, the URAA implemented section 773(a)(7)(A) of the Act, which provides for a LOT adjustment to be made if the respondent demonstrates that different LOTs exist due to a difference in selling activities between LOTs, and that the differences in LOT affect price comparability. Koyo argues that, while the Department correctly recognized that one LOT, a CEP LOT, existed in the United States, and two different LOTs existed in Koyo's home market (an OEM LOT and an after-market (AM) LOT), the Department nevertheless incorrectly concluded that Koyo did not meet the statutory requirements for a LOT adjustment. Koyo states that the Department did not grant Koyo a LOT adjustment because it could not find a LOT in the home market the same as the U.S. CEP LOT, and concluded that it lacked the data necessary to determine whether there was a consistent pattern of price differences between LOTs, based on Koyo's home market sales of TRBs. Koyo contends that this methodology, in which the Department requires a LOT to exist in the home market which is the same as the U.S. CEP LOT in order to determine if a pattern of price differences exists between established home market LOTs, overlooks the fact that there will almost never be a home market LOT equal to the U.S. CEP LOT. As a result, Koyo asserts, in almost every CEP situation, there will be no basis upon which to grant a LOT adjustment. Koyo further argues that in this case, and in virtually every case involving CEP sales thus far, the Department has applied this methodology and has never granted a LOT adjustment in CEP calculations. Koyo contends that this prevents a fair comparison between NV and USP and eviscerates the URAA's entire LOT adjustment provision in CEP cases.

Furthermore, Koyo asserts, the fact that a LOT like the U.S. CEP LOT does not exist in the home market does not mean that the data to determine a consistent pattern of price differences does not exist. Rather, Koyo claims, in the instant case, it provided the Department with exactly the type of data it needs to determine price comparability. Koyo contends that it provided the Department with a home market price, which reflects the price of home market TRBs if they were sold at a home market LOT identical to the U.S. CEP LOT. Koyo states that when this ''constructed normal value'' is compared to the NV of its home market sales, it becomes apparent that a pattern of price differences exists between the home market constructed CEP LOT and the other two home market LOTs. Therefore, Koyo concludes, because it has met the statutory requirement to demonstrate that a pattern of price differences exists and has met all other statutory requirements for a LOT adjustment, the Department is required to grant Koyo a LOT adjustment.

Timken argues that, in CEP calculations, the only way the Department can determine, in accordance with section 773(a)(7)(A) of the Act, if there is a consistent pattern of price differences between sales at different LOTs in the country in which NV is determined is if one of the home market LOTs is the same as the U.S. CEP LOT. Timken asserts that Koyo's constructed normal values, which Koyo claims reflect the prices that would exist if there was a home market LOT like the U.S. CEP LOT, do not serve as a reliable substitute for the absence of an actual home market CEP LOT. Furthermore, Timken claims that not only is it unclear which of Koyo's constructed normal values is the analog to the U.S. CEP LOT, but Koyo's deduction of indirect selling expenses to derive these constructed normal values is contrary to the underlying premise of a LOT adjustment. Timken states that the whole purpose of a LOT adjustment is to adjust for those price differences which are not reflected in selling expenses. Therefore, Timken maintains, if one does make prices at different LOTs equivalent by adjusting for differences in selling expenses, as Koyo does in this case, there is no need or statutory basis for the additional LOT adjustment.

Department's Position: We agree with Timken. We may not base LOT determinations or adjustments upon ''constructed'' or artificial home market levels. Koyo's constructed normal value LOTs are not LOTs at which Koyo actually sold TRBs in the home market during the POR. Furthermore, not only do we rely on actual starting prices in determining whether different LOTs exist, but there is no statutory basis for us to construct LOTs in the home market or elsewhere. Therefore, because Koyo was unable to demonstrate a pattern of consistent price differences between a home market LOT equivalent to its CEP and other home market LOTs, we did not have the information necessary to make a LOT adjustment. However, because Koyo's CEP LOT was less advanced than its HM LOTs, we made a CEP offset adjustment to NV for all our comparisons of Koyo's CEP sales.

Comment 16: Fuji argues that the Department's 99.5 percent arm's-length test, in which it calculates home market customer-specific weighted-average affiliated/unaffiliated price ratios and excludes from its margin calculations all sales to a home market customer if its ratio is not greater than 99.5 percent, is too restrictive and inappropriately rejects bona fide sales to affiliated home market customers that are made at the same prices as sales to unaffiliated home market customers. Fuji asserts that, even though it sold from the same price list at the same prices to all home market customers during the POR for any given product during any given month, the Department's arm's-length test nevertheless resulted in the exclusion of a large percentage of its affiliated customer sales from the Department's preliminary margin calculations.

For example, Fuji asserts that the Department's reliance on POR-weighted average prices results in the exclusion of affiliated party sales simply because different quantities may have been purchased by an affiliated party after a monthly price change took effect even though the prices charged to affiliated and unaffiliated customers during any given month were the same. In addition, Fuji contends that even if the same number of units are sold to both the affiliated and unaffiliated customer, all sales to the affiliated customer will fail the test even if a majority of the sales to the affiliated customer during the POR were priced higher than the sales of the identical product to the unaffiliated customer.

Fuji claims that, to avoid these inaccuracies, the Department should adopt a new arm's-length test in which individual transactions to affiliated customers are determined to be at arm's length unless the prices to the affiliated customer deviate from the weighted-average prices to unaffiliated customers by more than two standard deviations. Fuji asserts that this method not only better reflects commercial reality, but it eliminates abnormally high and low priced sales while still ensuring that only those affiliated-customer sales prices which are statistically comparable to unaffiliated-party sales prices are included in the Department's margin calculations.

Fuji further asserts that, if the Department does not adopt this new test, it should at least modify its existing arm's-length test such that it would use the same methodology, but apply it on a monthly, rather than a POR, basis. Fuji explains that if the Department compares the average monthly weighted-average price of a product sold to an affiliated customer to the monthly weighted-average sales prices of the same product to an unaffiliated customer, it would capture the fact that Fuji's monthly average sales prices to affiliated and unaffiliated customers are the same. In this way, Fuji concludes, the Department will avoid the arbitrary results produced by its current test and correctly include within its margin calculations those sales to affiliated home market customers which were clearly at arm's length.

Timken argues that, not only has the CIT ruled on several occasions that the Department's 99.5 percent arm's-length test is reasonable, but Fuji has failed to demonstrate that this test is unreasonable or that it results in distortions of price comparability. Timken concludes that the Department, therefore, should continue to adhere to its established arm's-length test in these final results of review.

Department's Position: We agree with Timken. Fuji failed to provide a single example from its own data supporting its assertions. Fuji presents only theoretical examples of why the arm's-length test is distortive and we have no basis upon which to conclude that our test is unreasonable. In addition, our comparison of Fuji's weighted-average net prices to unrelated customers and related customers in the home market clearly demonstrated that Fuji did not always sell to its related and unrelated customers at the identical net prices. Furthermore, not only is our 99.5 percent arm's-length test methodology well established, but the CIT has repeatedly sustained this methodology (*see, e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Antidumping Duty Administrative Review,* 61 FR 15772 (April 9, 1996), *Usinor Sacilor* v. *United States,* 872 F. Supp. 1000 (CIT 1994) (*Usinor), Micron Technology, Inc.* v. *United States,* 893 F. Supp. 21 (CIT 1995) (*Micron),* and *NTN Bearing Corp. of America, Inc.* v. *United States,* 905 F. Supp. 1083 (CIT 1995)). In addition, in *Usinor,* the CIT specifically stated that ''[g]iven the lack of evidence showing any distortion of price comparability, the court finds the application of Commerce's arm's-length test reasonable.'' Likewise, in *Micron,* because the CIT found that the plaintiff /respondent failed to ''demonstrate that Commerce's customer-based arm's length test inquiry is unreasonable'' and failed to ''point to record evidence which tends to undermine Commerce's conclusion,'' the CIT sustained the 99.5 percent arm's-length test, given the lack of evidence showing a distortion of price comparability. Therefore, for these final results we have not altered our 99.5 percent arm's-length test for Fuji, and have continued to apply the test used in our preliminary results.

Clerical Errors

Comment 17: Koyo argues that in the Department's preliminary results computer program for Koyo, the

Department incorrectly adjusted a quantity value which was already net of adjustments. Koyo argues that, to correct this error, the Department should either use the quantity value Koyo reported net of adjustments, or calculate its own net quantity value by deducting the quantity adjustments Koyo reported in its response from the gross quantity value Koyo also reported in its response.

Department's Position: We agree with the respondent. In order to correct these errors for these final results we have used the variable which reflects that quantity value which is already net of adjustments.

Comment 18: Fuji argues that in its response it explained that the date of sale for its EP sales was the purchase order date and the date of sale for its CEP sales was the invoice date. Fuji also states that, while it reported the invoice and purchase order dates under separate variables, it also reported another sale date variable ''SALEDTU'' which reflected the correct date of sale, whether the reported sale was an EP or CEP sale. Fuji contends that in the Department's preliminary results computer program for Fuji, the Department incorrectly used the invoice date variable for all of Fuji's EP sales. To correct this error, Fuji suggests that the Department simply use the ''SALEDTU'' variable, where appropriate.

Timken argues that the Department's use of the invoice date as the date of sale for Fuji's EP sales is in accordance with its new policy and should not be altered for the final results of review.

Department's Position: We agree with Fuji. While Timken is correct that, in recent antidumping reviews of other cases the Department has sent to respondents revised questionnaires which request them to report the invoice date as the date of sale for all sales, it was not our practice to do so at the time we issued our 1994–95 TRBs questionnaires. As a result, we had no intention of requiring the respondents in the 1994–95 TRBs administrative reviews to report their date of sale information in this manner for all sales, and our use of the invoice date as the date of sale for Fuji's EP sales was clearly a clerical error and does not reflect the application of this new practice. Therefore, because we believe it would be both unreasonable and unfair to apply this new practice now, a practice we began to use several months after our receipt of questionnaire responses in the 1994–95 TRBs reviews, and because we have determined that the proper date of sale for Fuji's EP sales was clearly the purchase order date, we have simply corrected our clerical error by using Fuji's reported purchase order date as the date of sale for its EP sales.

Final Results of Review

Based on our review of the arguments presented above, for these final results we have made changes in our margin calculations for Fuji and Koyo. Our preliminary determinations concerning no shipments, the use of total adverse facts available, and the terminations of reviews have remained unchanged for these final results (*see TRBs 94–95 Prelim* at 7392).

As a result of our comparison of CEP and EP to NV, we have determined that margins exist for the period October 1, 1994, through September 30, 1995, as follows:

Manufacturer/reseller/exporter	Margin (percent)
For the A–588–054 Review	
Koyo Seiko	21.70
Fuji	11.48
Kawasaki	47.63
Yamaha	47.63
Nigata	47.63
Suzuki	47.63
For the A–588–604 Review	
Fuji	(1)
Honda	(1)
Kawasaki	40.37
Yamaha	40.37
Nigata	40.37
Suzuki	40.37
Nittetsu	(1)
Showa Seiko	(1)

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

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

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rates for the reviewed companies will be those rates outlined above;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value (LTFV) investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate for the A–588–054 finding will be 18.07 percent and 36.52 percent for the A–588–604 order (*see Preliminary Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 58 FR 51058 (September 30, 1993)). All U.S. sales by each respondent will be subject to one deposit rate according to the proceeding.

The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, the Department will use the entered value of the merchandise to determine the assessment rate.

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

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

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

Dated: March 6, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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