mammals need an authorization under the MMPA to avoid prosecution under the MMPA. The Act requires applicants to submit information justifying the authorization. The MMPA also requires monitoring and reporting on marine mammal interactions with the activity.

Affected Public: Federal Government, businesses or other for-profit organizations, not-for-profit institutions and state, local or tribal government.

Frequency: Annually, and 90 day reporting requirements.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: October 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization

[FR Doc. 97–27526 Filed 10–16–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Information for Share Transfer in Wreckfish Fishery.

Agency Form Number: None.

OMB Approval Number: 0648–0262.

Type of Request: Reinstatement of a previously approved collection.

Burden: 1 hour.

Avg. Hours Per Response: 15 minutes.

Number of Responses: 4.

Needs and Uses: The individual transferable quota system for the wreckfish fishery is based on percentage shares. The purpose of this collection is to provide information on the transfer of ownership of percentage shares.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: October 10, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27577 Filed 10–16–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Regulations.

Agency Form Number: None.

OMB Approval Number: 0648–0075.

Type of Request: Reinstatement of a previously approved collection.

Burden: 330 hours.

Avg. Hours Per Response: 6 minutes.

Number of Respondents: 110 with multiple responses.

Needs and Uses: Foreign fishing activities can be authorized under the Magnuson-Stevens Fishery Conservation and Management Act. Collection of information from permitted foreign vessels is necessary for enforcement by allowing the monitoring of vessel activities and whereabouts in U.S. waters. Reports are also necessary for fishery management purposes to monitor the amount of fish caught or received by foreign vessels.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion, weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: October 10, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27578 Filed 10–16–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

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

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

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

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

SUMMARY: On June 10, 1997, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 21 manufacturers/exporters. The period of review (POR) is May 1, 1995, through April 30, 1996.

Based on our analysis of the comments received, we have made changes, including corrections of certain

inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Reviews.''

EFFECTIVE DATE: October 17, 1997.

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

France

Chip Hayes (SKF), Lyn Johnson (SNFA), Michael Panfeld (SNR), Robin Gray or Richard Rimlinger.

Germany

John Heires (Torrington Nadellager), J. David Dirstine (SKF), Suzanne Flood (INA), Michael Panfeld (NTN Kugellagerfabrik), Thomas Schauer (FAG), Robin Gray or Richard Rimlinger.

Italy

Chip Hayes (SKF), Mark Ross (FAG) or Richard Rimlinger.

Japan

J. David Dirstine (Koyo Seiko), Gregory Thompson (NTN), Kristie Strecker (NPBS), Thomas Schauer (NSK Ltd., Nachi-Fujikoshi Corp.) or Richard Rimlinger.

Romania

Kristie Strecker (Tehnoimportexport, S.A.) or Robin Gray.

Singapore

Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

Sweden

Mark Ross (SKF) or Richard Rimlinger.

United Kingdom

Hermes Pinilla (FAG, Barden, NSK/RHP) or Robin Gray.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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

Background

On June 10, 1997, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom (62 FR 31566). The reviews cover 21 manufacturers/exporters. The period of review (the POR) is May 1, 1995, through April 30, 1996. We invited parties to comment on our preliminary results of review. At the request of certain interested parties, we held public hearings for General Issues on July 8, 1997, and for Japan-specific issues on July 15, 1997. The Department has conducted these administrative reviews in accordance with section 751 of the Tariff Act.

Scope of Reviews

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

Use of Facts Available

For a discussion of our application of facts available, *see* the ''Facts Available'' section of the Issues Appendix.

Sales Below Cost in the Home Market

The Department disregarded home market (HM) sales below cost for the following firms and classes or kinds of merchandise for these final results of reviews:

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

Duty Absorption

We have determined that duty absorption has occurred with respect to the following firms and with respect to the following percentages of sales which these firms made through their U.S. affiliated parties:

Name of Firm	Class or kind	Percentage of U.S. affiliate's sales with dumping margins
France		
SKF	BBs	23.24
	SPBs	100.00
SNR	BBs	36.22
	CRBs	44.64
Germany		
FAG	BBs	54.57
	CRBs	40.14
	SPBs	21.10
INA	BBs	64.47
	CRBs	40.89
NTN	BBs	36.44
SKF	BBs	7.03
	CRBs	53.78
	SPBs	21.17
Italy		
FAG	BBs	20.43
SKF	BBs	8.15
Japan		
Koyo Seiko	BBs	49.49
	CRBs	86.02
Nachi	BBs	58.49
	CRBs	31.87
NPBS	BBs	55.46
NSK	BBs	24.23
	CRBs	36.19
NTN	BBs	37.50
	CRBs	19.26
	SPBs	73.03
Singapore		
NM Singapore/Pelmec Inc..	BBs	8.51
Sweden		
SKF	BBs	45.26
United Kingdom		
NSK/RHP	BBs	27.76
	CRBs	52.51
Barden	BBs	13.36

For a discussion of our determination with respect to this matter, *see* the ''Duty Absorption'' section of the Issues Appendix.

Changes Since the Preliminary Results

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

Analysis of Comments Received

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

Final Results of Reviews

We determine that the following percentage weighted-average margins exist for the period May 1, 1995, through April 30, 1996:

Company	BBs	CRBs	SPBs
France			
SKF	5.38	(2)	42.79
SNFA	66.42	18.37	(3)
SNR	8.60	10.14	(2)
Germany			
FAG	12.40	19.49	10.32
INA	49.62	20.08	28.62
NTN	9.44	(2)	(2)
SKF	4.25	17.82	4.72
Torrington Nadellager	(3)	76.27	(3)
Italy			
FAG	1.76	(1)	....
SKF	3.59	(3)	....
Japan			
Koyo Seiko	14.20	15.38	(1)
NPBS	16.70	(2)	(2)
NSK	9.88	6.88	(2)
NTN	7.10	3.86	7.69
Nachi	12.89	3.15	(2)
Romania			
TIE	.20	....	....
Singapore			
NMB Singapore/Pelmec Ind.	2.10	....	....
Sweden			
SKF	12.62	....	....
United Kingdom			
NSK–RHP	16.49	68.26	....
Barden	4.00	(1)	....

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
[3] No review.

Assessment Rates

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

1. Export Price Sales

With respect to export price (EP) sales for these final results, we divided the total dumping margins (calculated as the difference between normal value (NV) and EP) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer/customer under each order for the review period will be almost exactly equal to the total dumping margins.

2. Constructed Export Price Sales

For constructed export price (CEP) sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's/customer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Cash Deposit Requirements

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

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

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

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

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis,* the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant class or kind and country made effective by the final results of review published on July 26, 1993 (*see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order,* 58 FR 39729 (July 26, 1993) and, for BBs from Italy, *see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,* 61 FR 66472 (December 17, 1996)). These rates are the ''All Others'' rates from the relevant LTFV investigations.

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

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

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

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: October 8, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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Scope Appendix

A. Description of the Merchandise

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

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.2580, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

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

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

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

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50,10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.10.00, 8803.20.00, 8803.30.00, and 8803.90.90.

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

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.)

outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

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

B. Scope Determinations

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

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

Products covered:

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

Products excluded:

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

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

Products excluded:

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

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

Products covered:

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

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

Products covered:

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

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

Products excluded:

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

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

Products covered:

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

Products excluded: .

- Certain rotor assembly textile machinery components.
- Linear motion bearings.

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

Products covered:

- Chain sheaves (forklift truck mast components).
- Loose boss rollers used in textile drafting machinery, also called top rollers.
- Certain engine main shaft pilot bearings and engine crank shaft bearings.

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

Products covered:

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

Products excluded:

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

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

Products excluded:

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

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

Products covered:

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

Products excluded:

- Certain textile machinery components.

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

Products covered:

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

Products excluded:

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

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

Products covered:

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

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

Products covered:

- Certain series of INA bearings.

Products excluded:

• SAR series of ball bearings.

• Certain eccentric locking collars that are part of housed bearing units.

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

Products excluded:

• Certain textile machinery components.

Scope rulings completed between January 1, 1994, and March 31, 1994:

Products excluded:

• Certain textile machinery components.

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

Products excluded:

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

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

Products covered:

• Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order.

• Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order.

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

Products covered:

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

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

Products excluded:

• Dana Corporation—Automotive component, known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order.

• Rockwell International Corporation—Automotive component, known variously as a cushion suspension unit, cushion assembly unit, or center bearing assembly, is outside the scope of the order.

• Enkotec Company, Inc.—''Main bearings'' imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, are outside the scope of the order.

Issues Appendix

Company Abbreviations

Barden—Barden Corporation (U.K.) Ltd. and the Barden Corporation
FAG Germany—FAG Kugelfischer Georg Schaefer KGaA
FAG Italy—FAG Italia S.p.A.; FAG Bearings Corp.
FAG U.K.—FAG (U.K.) Ltd.
INA—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
Koyo—Koyo Seiko Co. Ltd.
Nachi—Nachi-Fujikoshi Corp., Nachi America Inc. and Nachi Technology, Inc.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.
NPBS—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK-RHP—NSK Bearings Europe, Ltd.; RHP Bearings; RHP Bearings, Inc.
NTN Germany—NTN Kugellagerfabrik (Deutschland) GmbH
NTN Japan—NTN Corporation; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corporation
SKF France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF Italy—SKF Industrie; RIV-SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF Group—SKF-France; SKF-Germany; SKF-Italy; SKF-Sweden; SKF USA, Inc.
SKF Sweden—SKF Sverige AB
SNFA—SNFA Bearings, Ltd.
SNR France—SNR Nouvelle Roulements
TIE—Tehnoimportexport
Torrington—The Torrington Company

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
CEP—Constructed Export Price
NV—Normal Value
HM—Home Market
OEM—Original Equipment Manufacturer
POR—Period of Review
PSPA—Post-Sale Price Adjustment
SAA—Statement of Administrative Action
URAA—Uruguay Round Agreements Act

AFB Administrative Determinations

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

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

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

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

AFBs IV—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995).

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

1. Facts Available

Comment: SKF France maintains that, with respect to its CRBs, the Department had no basis upon which to make an adverse inference since SKF companies did not sell French CRBs to the United States during this review period and since in its questionnaire responses it stated that SKF France did not make such sales. SKF France maintains that its response demonstrates that only BBs and SPBs were subject to review and, further, that SKF's reporting of HM and U.S. sales of SKF's French AFBs has been verified consistently. Finally, SKF France argues that, because the Department's use of facts available and an adverse inference is inappropriate as to CRBs, it is also inappropriate as to duty absorption by SKF with respect to CRBs.

Department's Position: We agree with SKF France. We sent a no-shipment inquiry to U.S. Customs on March 24, 1997. Customs did not indicate that there were any entries of CRBs from SKF France. Without such entries during the review period, there is nothing upon which we may assess any duties we determine in the course of the review. Therefore, the issue of whether SKF France had any sales of CRBs is moot.

In addition, we will continue to apply the ''all others'' rate, which is the rate established in the LTFV investigation, to CRBs from France for future entries of this merchandise. Because we are not applying facts available to SKF France's CRBs, we have not applied facts available in our duty-absorption determination on CRBs from SKF France.

2. Discounts, Rebates, and Price Adjustments

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 adjustments as direct (or indirect) selling expenses but, rather, as direct adjustments necessary to identify the correct starting price. While we prefer that respondents 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 AFBs reviews. It is inappropriate to reject allocations that are not unreasonably distortive in favor of facts otherwise available where a fully cooperating respondent is unable to report the information in a more specific manner. *See* section 776 of the Tariff Act. 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 the respondent used does 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 merchandise that is not subject to these reviews (out-of-scope merchandise). However, such allocations are not acceptable where we have reason to believe that respondents did not grant such adjustments in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. We have made this determination by examining the extent to which the out-of-scope merchandise included in the allocation pool is different from the in-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 in-scope and out-of-scope merchandise. While we scrutinize any such differences carefully between in-scope and out-of-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 that respondents submit sale-specific adjustment data on out-of-scope merchandise in order to prove that there is no possibility for distortion. Such a requirement would defeat the purpose of permitting the use of reasonable allocations by a respondent that has cooperated to the best of its ability.

Where we have found 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 the facts available with respect to this adjustment pursuant to section 776(b) of the Tariff Act. With respect to HM adjustments, in accordance with the Court of Appeals for the Federal Circuit's (CAFC) decision in *The Torrington Company* v. *United States,* 82 F.3d 1039, 1047–51 (CAFC 1996) (*Torrington I*) , we have not treated improperly allocated HM price adjustments as if they were indirect selling expenses (ISEs), but we have instead disallowed downward adjustments in their entirety. However, we have included positive (upward) HM price adjustments (*e.g.,* positive billing adjustments that increase the final sales price) in our analysis of such companies. The treatment of positive HM 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 V* at 66498.

Comment 1: Torrington asserts that some respondents reported home-market discounts, rebates, and post-sale price adjustments (PSPAs) by allocating amounts across all sales or across all sales to a given customer, even when some sales were not entitled to the adjustment. Torrington cites the CAFC's decision in *Torrington I* (at 1047–51), arguing that direct PSPAs must be reported on a sale-specific basis in order for the Department to make a downward adjustment to NV and that the Department may not make an adjustment for improperly allocated direct expenses as if these were indirect expenses. Torrington contends that the new statute retains the distinction between direct and indirect selling expenses, citing sections 772(d)(1)(B) and (D) and section 773(a)(7)(B) of the Tariff Act. Petitioner argues that, while the discussion in the SAA at 823–824 demonstrates the intention to continue the practice of allowing allocations when allocations were non-distortive, this statement is no longer valid because it was written in 1994, prior to *Torrington I,* when the Administration held the belief that its practice was sustained by the courts. Therefore, Torrington asserts, the Department should deny all rebates, discounts, and PSPAs that respondents did not report on a transaction-specific basis or which they did not allocate in such a manner as to be tantamount to reporting on a transaction-specific basis.

FAG, Koyo, Nachi, NSK, and SKF argue that the Department should make direct adjustments to price when the allocation of PSPAs is reasonable and not distortive and that such practice conforms with the SAA and the new regulations at 351.401(g)(1). Koyo, Nachi, NSK, and SKF contend that, in *Torrington I,* the CAFC did not disallow an adjustment merely because it involved an allocation. According to respondents, the court stated that, regardless of the allocation method, the Department could not treat direct price adjustments as indirect selling expenses, but the court did not address the propriety of the allocation methodology. Additionally, respondents claim, the allocation of these expenses does not detract from their relation to particular transactions, thereby making them direct expenses and deductible from price.

NSK further argues that the Department need not disallow price adjustments simply because the respondent is unable to report these expenses on a sales-specific basis (citing *Smith-Corona* v. *United States,* 713 F. 2d 1568, 1580 (CAFC 1983)). Additionally, Koyo argues that the Department treated the PSPAs properly as direct adjustments to gross price, rather than as direct or indirect selling expenses, since they are corrections to the sales price and do not arise as a result of preparing the merchandise for sale or from selling activities.

NTN contends it reported such adjustments on a transaction-specific basis. Therefore, NTN claims that Torrington's arguments do not apply to its response.

Department's Position: We agree with FAG, Koyo, Nachi, NSK, SKF, and NTN. As we discussed in the introductory remarks to this section, our practice is not to reject an allocation of price adjustments when it was not feasible for a respondent to report the adjustments on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions.

We see no conflict between *Torrington I* and our acceptance of allocated price adjustments subject to the above conditions because the CAFC did not address the propriety of the allocation methods respondents used in reporting the price adjustments in question. Although the CAFC appeared to question whether price adjustments constituted expenses at all (see *Torrington I* at n.15), it held that, assuming the adjustments were expenses, they had to be treated as direct selling expenses and could not be used to offset the deduction of U.S. indirect selling expenses. The CAFC did not find that such price adjustments could not be based on allocations. In fact, such a holding would have been inconsistent with the CAFC's prior holding in *Smith-Corona Group* v. *United States*, 713 F. 2d 1568, 1580–81 (CAFC 1983), which the *Torrington I* court did not question.

Comment 2: Torrington asserts that, if the Department accepts allocated PSPAs as a direct adjustment to NV in these reviews, it should not follow the method it used in the 1994/95 administrative reviews to determine whether the allocations are distortive. Rather, Torrington argues, the Department should judge all allocations using product-specific sales information. Torrington notes that different classes or kinds of AFBs cannot be deemed similar for purposes of expense allocations because the Department found in the original less-than-fair-value proceeding that there are several ''classes or kinds'' of bearings, each requiring a separate proceeding. Torrington explains that the physical characteristics of non-subject merchandise should not be considered similar to those of subject merchandise for purposes of expense allocations. Torrington argues that, if the physical characteristics of an out-of-scope bearing are considered similar to those of an in-scope bearing for purposes of allocating price adjustments, then the former should be included within the scope of the order.

FAG, Koyo, NSK, and SKF assert that the Department's 1994/95 review methodology used to determine the distortiveness of the allocation of PSPAs is sufficient. These respondents contend that the Department has reviewed the propriety of their allocation methodologies correctly by considering those products receiving allocated expenses according to the value and physical characteristics of the products and the manner in which they were sold. FAG, Koyo, NSK, and SKF contend that there is no evidence that the Department's methodology allowed disproportionate allocations of PSPAs across subject and non-subject merchandise and conclude that the Department should continue their use.

NTN asserts that Torrington's argument concerning the Department's methodology for determining distortiveness of allocations does not apply to it because it reported discounts on a product-specific basis.

Department's Position: We agree with FAG, Koyo, NSK, NTN, and SKF. As stated above in the introductory remarks to this section, in determining the propriety of respondents' allocation methodologies for price adjustments, we have not rejected an allocation method solely because the allocation includes adjustments granted on merchandise that is not subject to these reviews (out-of-scope merchandise). However, we did not accept such allocations where we had reason to believe that a respondent granted such adjustments in disproportionate amounts with respect to sales of out-of-scope and in-scope merchandise. We have made this determination by examining the extent to which the out-of-scope merchandise included in the allocation pool is different from the in-scope merchandise in terms of value, physical characteristics, and the manner in which it was sold. Significant differences in such areas may increase the likelihood that respondents granted price adjustments in disproportionate amounts with respect to sales of in-scope and out-of-scope merchandise.

Comment 3: Torrington contends that the Department should disallow certain discounts NTN Japan reported. Torrington argues that, based on documentation the Department obtained at verification which relates to the negotiation of certain discounts, NTN Japan's reported discounts were not granted on a customer-and product-specific basis and were not limited to subject merchandise. In addition, Torrington asserts that evidence on record indicates that these adjustments may not be discounts but, rather, may be claims for a different kind of adjustment for which, Torrington asserts, NTN has not met the Departmental standard.

NTN Japan maintains that negotiating discounts is a part of its normal business activity and that the Department verified its reported discounts in detail and found that they were granted on a customer-and product-specific basis. NTN asserts that Torrington's argument is based improperly on limited documentation included on the record and it fails to consider the overall verification by the Department officials, which included the examination of numerous documents relevant to these discounts which were not entered on the record. NTN notes that the Department is not required to enter all documents examined during verification on the record.

Department's Position: We disagree with the petitioner. We verified this discount and found that NTN granted it ''by product for each customer.'' In addition, it meets the Department's standard for a discount. We reached this conclusion after reviewing numerous documents at verification, although we did not include all reviewed information was included in the record as a verification exhibit. (*See* Verification Report dated May 8, 1997, at 5.) Therefore, petitioner's argument regarding whether the discount should be treated as something other than a discount is incorrect.

Comment 4: Koyo contends that the Department correctly accepted one of its billing adjustment claims (designated BILADJ1H in the response) but inexplicably failed to accept the other billing adjustment claim (designated BILADJ2H in the response). Koyo contends that both billing adjustments have been accepted in past AFB and tapered roller bearing (TRB) administrative reviews and that there have been no changes in its reporting methodology since the completion of those reviews.

Torrington argues that both of Koyo's billing adjustments, which it reported on a customer-specific basis, should be rejected. Torrington contends that BILADJ1H, which it claims was granted on a model-specific basis but was reported on a customer-specific basis, and BILADJ2H, which it claims was granted on a lump-sum basis, should both be rejected as both reporting methods result in the application of price adjustments to transactions which were not subject to these adjustments.

Department's Position: With respect to BILADJ1H, Koyo granted the adjustment amount on a customer- and model-specific basis. Koyo then totaled the price adjustments granted and sales of subject merchandise sold to each customer to calculate an overall adjustment factor per customer in order to allocate the adjustment over subject merchandise sales to the respective customer. Our examination of the record leads us to conclude that, while Koyo has paper records of the adjustment, it is not feasible for Koyo to retrieve the information electronically or to allocate this adjustment more specifically, given the large volume of transactions involved, the level of detail contained in Koyo's normal accounting records, and the time constraints imposed by the statutory deadlines under which all parties must operate. Therefore, we have accepted Koyo's reporting methodology for these billing adjustments.

With respect to BILADJ2H, Koyo granted both lump-sum adjustments which it negotiated with its customers without reference to model-specific selling prices and some adjustments which it granted on a model-specific basis but which Koyo reported on a customer-specific basis. Koyo allocated BILADJ2H to subject merchandise on the basis of sales value.

We have reconsidered our disallowance of BILADJ2H for the preliminary results and now agree with Koyo that we should allow its lump-sum billing adjustments as a direct adjustments to NV. We determine that Koyo acted to the best of its ability in reporting this information using customer-specific allocations. Given the fact that Koyo's records do not readily identify a discrete group of sales to which each billing adjustment pertains and the extremely large number of POR sales Koyo made, it is not feasible for Koyo to report this adjustment on a more specific basis. Moreover, we are satisfied that Koyo's allocation methodology across subject merchandise by sales value was not distortive.

Comment 5: Torrington argues that FAG Germany reported HM rebates improperly. Torrington notes that, while some rebates were payable only in connection with purchases of certain types of products, FAG reported these rebates on a customer-specific basis, creating the likelihood that some rebates were reported on sales when no rebates were actually paid. For this reason, Torrington asserts that the Department should deny the claimed adjustment.

FAG argues that it reported all rebates properly so that no rebates were reported where they did not apply. For customer-specific rebates, FAG claims it reported instances where the rebate was applicable to only certain products and factored the rebate only over sales of those products.

Department's Position: We disagree with Torrington. As Exhibit B–6 of FAG's questionnaire response dated September 9, 1996 demonstrates, FAG allocated its rebates on a customer-specific basis over sales only of those products that actually received rebates. Therefore, we determine that FAG's methodology for reporting rebates is reasonable and not distortive, and, in accordance with our policy, we have accepted FAG's HM rebates as reported.

Comment 6: Torrington argues that the Department should disallow certain post-sale price adjustments which SKF Germany reported in an inaccurate manner. Torrington contends that SKF Germany reported support rebates to distributors in a manner different from the manner in which the rebate was actually granted and, therefore, the Department should reject the adjustment to price. Torrington purports that, whereas SKF determines eligibility by comparing SKF Germany's invoice price to the reseller's invoice price, the reporting methodology allocates the rebate across all sales to the reseller, thereby reporting rebates on sales where none actually occurred.

Additionally, Torrington argues that the Department should reject SKF Germany's billing adjustment 2 in the HM, as it was not reported in an accurate manner. Petitioner contends that customer-specific reporting of the adjustment is not accurate unless the adjustment applies equally to all sales to that customer. Torrington also asserts that SKF did not report the timing of such billing adjustments accurately. Furthermore, Torrington points out that SKF was able to report such billing adjustments on a transaction-specific basis for U.S. sales but did not explain why it was unable to report the same adjustment on a transaction-specific basis for HM sales.

Finally, Torrington claims that it should not be responsible for demonstrating the distortive nature of such allocations because it does not have access to information which would allow such demonstration. Torrington maintains that it is SKF Germany's responsibility to produce evidence to demonstrate that its methodology is not distortive. Torrington concludes that, while the Department requested additional information for purposes of determining the distortiveness of such allocations, SKF Germany responded in a general, non-specific manner, precluding such a judgment by the Department.

SKF Germany argues that the Department was correct in accepting support rebates and billing adjustment 2 as adjustments to HM price. SKF Germany contends that Torrington is incorrect in arguing that SKF's reporting methodology regarding support rebates is likely to result in rebates on sales where none actually occurred. SKF Germany notes that, for each customer for whom SKF reported a support rebate, it actually granted a rebate to that customer and the actual amount granted does relate to the totality of sales to that customer. SKF Germany argues that the allocation of the rebate on aggregate sales to that customer is proper since the amount is based on sales of the customer, not sales of SKF Germany to the customer. As such, SKF states that it reported the rebate in exactly the manner in which it was incurred.

SKF Germany also disagrees with Torrington concerning billing adjustment 2, arguing that this billing adjustment applies only in instances where transaction-specific attribution was not possible. SKF disagrees further with Torrington's argument that SKF USA's ability to report billing adjustments on a transaction-specific manner supports Torrington's contention that the adjustment should be disallowed in the HM. Rather, SKF contends this difference in reporting methodology supports the allowance of SKF Germany's billing adjustment 2 because it demonstrates the two types of billing adjustments the two companies made. SKF USA only grants transaction-specific billing adjustments (billing adjustment 1), while SKF Germany grants rebates associated with a specific transaction (billing adjustment 1) and those that are not linked with a particular transaction (billing adjustment 2).

Department's Position: We agree with SKF Germany regarding our treatment of support rebates and billing adjustment 2. We find that SKF Germany's allocation methodologies are not unreasonably distortive. Due to the nature of the support rebates, transaction-specific reporting is not appropriate. SKF Germany grants these rebates to distributors/dealers to ensure that they obtain a minimum profit level on sales to select customers. Hence, because SKF Germany does not issue these rebates based on specific sales to the distributor/dealers but rather on the sales of the distributors/dealers, SKF Germany cannot report transaction-specific rebate amounts. Rather, SKF Germany has allocated the rebates it granted to a specific customer over all sales to that customer. SKF Germany's allocation methodology is not unreasonably distortive, as we are satisfied that each adjustment was granted in proportionate amounts with respect to the value of sales of in-scope and out-of-scope merchandise.

With respect to billing adjustment 2, SKF Germany reported billing adjustments not associated with a specific transaction. SKF Germany could not tie these adjustments to a specific transaction because the billing adjustments it reported in this field were part of credit or debit notes, issued to the customer, that related to multiple invoices, products, or invoice lines. In these cases, the most feasible reporting methodology that SKF Germany could use was a customer-specific allocation, given the large volume of transactions involved in these AFB reviews and the time constraints imposed by the statutory deadlines. Furthermore, we found that the products which received the adjustment were similar in terms of value, physical characteristics, and the manner in which they were sold. For these reasons, we find that this methodology is not unreasonably distortive.

We agree with Torrington that it should not be responsible for demonstrating the distortive nature of this allocation; rather it is the responsibility of the respondent to demonstrate that its methodology is not unreasonably inaccurate or distortive. SKF Germany has satisfied this responsibility with regard to the reporting of its support rebates and billing adjustment 2 with adequate explanation in its response. SKF Germany demonstrated that its allocation methodology was reasonable and that the AFB products over which it allocated a PSPA were similar in terms of value, physical characteristics and the method in which they were sold.

Comment 7: INA argues that the Department did not transfer negative billing adjustments from the HM sales database submitted by INA to the HM sales file used for the preliminary results, since the Department did not include in its preliminary results calculations the negative billing adjustments INA reported in the Department's preliminary results calculations. INA claims that this is a clerical error and that this error should be corrected in the final results.

In rebuttal, Torrington contends that the Department should disallow all of INA's claimed downward billing adjustments in calculating NV because INA provided only a brief description of its HM billing adjustments which did not indicate whether the adjustments were limited to in-scope merchandise. Torrington argues that the CAFC held that direct PSPAs must be reported on a sale-specific basis before the Department can make a downward adjustment in calculating NV.

Department's Position: We disagree with INA. We do not view the omission of downward HM billing adjustments as a clerical error and have disallowed this adjustment for the final results. As we discussed in the introductory remarks to this section, our practice is to accept 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 (see section 776 of the Tariff Act).

In our supplemental questionnaire dated January 23, 1997, we requested specifically that INA provide additional information to explain and demonstrate the nature of its reported billing adjustments and how they were incurred and recorded in INA's accounting system, as well as to demonstrate that the allocations were not unreasonably distortive. In INA's February 12, 1997 supplemental questionnaire response at page 16, the firm provided only a brief description of its HM billing adjustments by stating that all were made strictly on a transaction-specific basis and were made in cases in which INA Germany had to correct billing errors and in cases where the prices were definitely agreed upon with the customers after the shipments. However, INA did not provide sufficient evidence to demonstrate that the allocations of downward billing adjustments were limited to in-scope merchandise or were not otherwise unreasonably distortive. Because there is nothing on the record to support the accuracy of INA's claim, we have denied the adjustment.

As we mentioned in the introductory remarks at the beginning of this section, when we reject a respondent's allocation of price adjustments, we only reject the downward adjustments to NV. Therefore for these final results, we have included INA's upward billing adjustments in our analysis.

3. Circumstance-of-Sale Adjustments

3.A. Technical Services and Warranty Expenses

Comment 1: Torrington argues that the Department should treat certain of NTN's U.S. technical service expenses as direct rather than indirect selling expenses. Torrington asserts that NTN's supplemental questionnaire response did not meet the burden of demonstrating the indirect nature of the technical service expenses and, therefore, maintains that the Department should treat such expenses as direct selling expenses.

NTN argues that it responded adequately to the Department's supplemental inquiries regarding NTN's reported U.S. technical service expenses and notes that Torrington misread the question the Department posed in its supplemental questionnaire. NTN argues further that, if the Department determined that the technical service information provided in its responses did not demonstrate the indirect nature of such expenses, the Department would have requested NTN to submit additional information. NTN maintains that the manner in which it reported the expense in these reviews is based on the same methodology with which it reported the expense in the 94/95 administrative reviews and states that, in those reviews, the Department accepted NTN's methodology of reporting this expense.

Department's Position: We disagree with Torrington. In its supplemental response, NTN explained that the expenses are fixed expenses and do not vary with sales volumes. Therefore, because we are satisfied with NTN's responses to our questions, we have treated these expenses as indirect in nature.

Comment 2: Torrington asserts that SKF Germany under-reported its direct warranty expenses with regard to U.S. sales and that the Department should recalculate the direct adjustment to U.S. prices for warranty claims, including a facts-available amount for additional expenses which SKF Germany did not report properly. Torrington explains that, while SKF Germany reported the cost of replacement bearings as a direct warranty expense in the U.S. market, elsewhere in its response SKF Germany describes that in its warranty activities it incurs expenses associated with "customer contact, processing warranty claims, testing of bearings, and directing the shipment of defective and replacement bearings." Therefore, petitioner claims, SKF Germany incurs direct expenses other than merely the replacement cost of bearings and the

Department must account for these expenses in its calculations.

SKF Germany disagrees with Torrington's contention that direct warranty expenses for SKF USA were under-reported and that the Department should apply facts available, arguing that certain expenses which Torrington considers to be direct are indirect expenses and were reported properly as such.

Department's Position: We disagree with Torrington. Based on our analysis of the information SKF Germany submitted in these reviews, we agree with SKF Germany that it referred to fixed types of expense activities correctly, such as salary expenses for customer service representatives and salesmen who make customer contacts and process warranty claims as well as salary expenses for application engineers who test bearings and other internal testing expenses, as indirect expenses. Because these are fixed expenses, it was proper to report them as indirect expenses. Because there are no other issues with respect to SKF Germany's reporting of its U.S. direct warranty expenses, we have accepted SKF Germany's U.S. direct warranty expenses as reported for these final results.

3.B. Credit

Comment 1: Torrington contends that the adjusted price SKF Germany used to calculate credit expenses in the HM differed in its adjustments from the adjusted price used to calculate credit expenses in the U.S. market. According to Torrington, the adjusted price SKF Germany used in the U.S. market calculation included a deduction of cash discounts from the gross unit price incorrectly, though the HM adjusted price did not reflect such a deduction. Torrington contends that, because the calculation in the U.S. market was therefore lower, the result is an under-reporting of U.S. credit expenses. Because SKF Germany reported cash discounts in both the United States and the HM, Torrington asserts that the Department should recalculate reported credit expenses using fully adjusted prices in the calculation or apply facts-available information.

SKF Germany argues that it has not changed its methodology of calculating credit expense from that it used in prior reviews and notes that the Department has accepted it in prior reviews.

Department's Position: We agree with Torrington. SKF Germany calculated U.S. credit expense based on prices net of cash discounts but did not include deductions for reported cash discounts in the adjustment of prices SKF Germany used for calculation of HM credit expense. We have recalculated SKF Germany's HM credit expenses based on adjusted prices net of discounts for these final results.

Comment 2: Torrington contends that the Department should recalculate NTN's U.S. credit expense because NTN reported a customer-specific average credit expense rather than a transaction-specific credit expense. Torrington argues that reporting credit expense on an average basis may be distortive in cases where not all U.S. sales are dumped. Torrington points out that NTN has provided the necessary information on the record to recalculate a transaction-specific credit expense.

NTN rebuts Torrington's argument that its credit expense should be recalculated and points out that the Department has accepted NTN's methodology of reporting an average credit expense in all previous AFB administrative reviews. NTN argues that the only argument raised by Torrington, that reporting credit expense on an average basis may yield distortive results, is a statement applicable to dumping in general and is not specific to NTN's calculation of NTN's reported credit expense.

Department's Position: We agree with Torrington with regard to CEP sales. We have data on the record which allows us to calculate transaction-specific credit expense for CEP sales. Therefore, we have recalculated NTN's credit expense using the dates of payment which NTN reported. However, Torrington is incorrect in asserting that NTN reported transaction-specific payment dates for EP sales. NTN does not maintain its payment records in a manner which allows it to provide us with transaction-specific payment dates for EP sales to the United States (*see* NTN's September 9, 1996 submission at C–15). Therefore, in these reviews, as in past reviews, we are allowing NTN to calculate its U.S. credit expense for EP sales for each customer on the basis of the average number of days that receivables are outstanding. *See AFBs VI* at 201.

3.C. Indirect Selling Expenses

Comment 1: Torrington acknowledges that section 351.402(b) of the Department's new regulations directs the Department to deduct only those indirect expenses associated with sales to the unaffiliated customer in the United States and not those expenses which relate to the sale by the exporting company to the affiliated sales company in the United States. However, because SKF Germany has not provided adequate descriptions that would allow the Department to determine whether the expenses are associated with the sale to the affiliated company in the United States or with the subsequent resale to the unaffiliated U.S. customer, Torrington contends that the Department should deduct all indirect expenses incurred in Germany from CEP.

Torrington argues that, because Koyo attributed certain indirect selling expenses to its sales through its U.S. subsidiary, these expenses are related to sales to unaffiliated customers in the United States and the Department should deduct such expenses from CEP.

With regard to NSK, Torrington argues that the Department should deduct indirect selling expenses NSK incurred in Japan from CEP if they are associated with sales to the unaffiliated customer in the United States because NSK has not provided adequate descriptions which would allow the Department to determine with certainty whether indirect expenses incurred in Japan were associated with the sale to NSK's U.S. affiliate or with the subsequent resale to the unaffiliated U.S. customer. Citing NSK's chart of selling functions, Torrington asserts that it appears from the record that all of these expenses are related to U.S. resales, rather than sales to the U.S. affiliate, and argues that the Department should deduct all of these indirect expenses from CEP. Torrington argues that, at a minimum, the Department should regard the advertising component of NSK's indirect selling expenses incurred in Japan as associated with the resale to the unaffiliated U.S. customer and deduct the amount therefor from CEP.

Torrington argues that FAG has not demonstrated that certain expenses are associated with its sales to the U.S. affiliate rather than to the unaffiliated customers. Torrington contends that certain printing costs could be incurred in connection with sales to unaffiliated customers and, as such, the Department should deduct such expenses from CEP.

SKF Germany argues that the Department should not deduct these expenses from CEP because SKF Gleitlager and SKF GmbH incur the expenses with respect to their sales to SKF USA, not with respect to SKF USA's sales to the unaffiliated U.S. customer. SKF claims that the Department may only make such a deduction when these expenses are incurred in Germany with respect to sales in the United States to the unaffiliated customer.

Koyo states that Torrington has mischaracterized Koyo's commercial structure, which it states has remained unchanged from prior reviews. Koyo further contends that the Department has verified that Koyo produces the subject merchandise and ships it to its U.S. affiliate, not the ultimate customer in the United States, and that its U.S. affiliate inventories the product and ultimately negotiates with and sells the merchandise to the unaffiliated U.S. customer. Thus, Koyo argues, its expenses attributable to U.S. sales are almost exclusively incurred in its transactions with its U.S. affiliate, not in that affiliate's transactions with the unaffiliated customers.

NSK argues that the indirect selling expenses to which Torrington refers were all associated with NSK's sales to its U.S. affiliate. NSK notes that Torrington asked the Department to request more information regarding these expenses in a supplemental questionnaire and asserts that, because the Department did not ask NSK any questions regarding these expenses, the Department must have been satisfied with NSK's explanation. With regard to advertising expenses, NSK asserts that this expense is general international advertising which the foreign parent incurred and is not related to NSK's sales to unaffiliated customers and, therefore, the Department should not make such a deduction from CEP.

FAG argues that there is nothing on the record to support Torrington's assertion that certain selling expenses could be incurred with regard to sales to unaffiliated customers. FAG argues that it reported these expenses properly for the following reasons: (1) They are exclusively related to the sales relationship between FAG Germany and FAG US; (2) they are not a direct advertising cost of FAG US incurred by FAG Germany; (3) they are in no way related to economic activity occurring in the United States and are therefore not deductible from CEP.

Department's Position: As we stated in *AFBs VI* at 2124, we will deduct only those expenses associated with economic activities in the United States which occurred with respect to sales to the unaffiliated U.S. customer. We found no information on the record for this review period to indicate that the indirect selling expenses SKF Germany, Koyo, NSK, or FAG incurred in their respective HMs were incurred on sales to the unaffiliated customer in the United States. Regarding NSK, the evidence on the record does not suggest that NSK incurred these expenses, including advertising expenses, on its U.S. affiliate's sales to unaffiliated customers in the United States. Rather, the U.S. affiliate does its own advertising in the United States which we have deducted from CEP as a direct expense. Furthermore, NSK has cooperated with all of our requests for information with regard to indirect selling expenses. Deducting these expenses from CEP on the basis of Torrington's speculation that there is a possibility that respondents may have incurred them on the U.S. affiliates' resales would be inappropriate. Therefore, because indirect selling expenses respondents incurred in the foreign countries were not related specifically to commercial activity in the United States, we did not deduct them from CEP.

Comment 2: FAG claims the Department treated certain other HM direct selling expenses improperly as indirect selling expenses. FAG argues that, while it incurs an indirect expense regardless of whether a particular sale takes place, the other expenses were related directly to the distributor's sale of a particular bearing to an unrelated original equipment manufacturer (OEM) at the behest of FAG. FAG asserts that it explained in its questionnaire response that the direct credit to this distributor is functionally equivalent to a commission because it is a payment to the distributor on account of its sale to FAG's OEM customer. FAG contends that the Department should not consider this expense as an indirect selling expense since it incurred the expense with respect to a particular customer. Furthermore, FAG claims that allocation of a direct expense on a customer-specific basis is reasonable and proper when transaction-specific reporting is not possible, citing the SAA at 823–824.

Torrington counters that the selling expenses under contention should not be classified as direct selling expenses as FAG requests because FAG has not demonstrated how these are tied to a specific transaction. Torrington points out that the Department requested information from FAG which could demonstrate how the distributor's sale to its customer was tied directly to FAG's sale to the distributor and that FAG answered that there was no direct tie between the two sales. Since FAG did not link these payments directly to sales it made to the distributor, Torrington asks that the Department continue to treat these payments as indirect expenses.

Department's Position: We disagree with FAG. As Torrington observes, we asked FAG in a supplemental questionnaire ''[i]f there is a direct * * * tie between your sales and the customer's sales for which this expense is incurred, please explain the tie and submit documentary evidence to support your claim,'' to which FAG responded ''[t]here is no direct tie between FAG's reported sales to the distributor and the sales of the distributor that generate the payment or credit.'' *See* FAG KGS Section A–D Supplemental Response dated December 10, 1996 at 30. FAG acknowledges in its case brief that this expense is ''directly related to the distributor's sale of a particular bearing to an unrelated OEM at the behest of FAG.'' *See* FAG's German Case Brief dated June 30, 1997. Because the expense is related directly to the distributor's sale, FAG would have to demonstrate that there is a direct tie between its sales to the distributor and the distributor's sale that generates the payment for us to regard this as a direct expense. As noted above, FAG did not demonstrate such a tie.

FAG argues that this expense is functionally equivalent to a commission. We note, however, that ''[g]enerally speaking, a commission is a payment to a sales representative for engaging in sales activity, normally on behalf of the seller but occasionally on behalf of the customer'' and that ''the key question * * * is whether there was one transaction between [the respondent] and the ultimate purchaser in which the trading companies acted as [the respondent's] sales representatives for a commission '' or '' whether there were two transactions, one in which the trading companies bought from [the respondent] and received a [payment or credit] for that initial sale and the ultimate purchaser then bought from the trading companies.'' *See Certain Cold-Rolled Carbon Steel Flat Products From Germany; Final Results of Antidumping Duty Administrative Review,* 60 FR 65264 at 65278. In the instant situation, there are two transactions, one from FAG to the distributor and one from the distributor to the downstream customer (*e.g.,* sales to the unaffiliated third party). Thus, these expenses cannot be considered a commission. Finally, we note that FAG did not demonstrate that these payments were contemplated at the time of sale to the distributor. Therefore, because this expense is related to a downstream sale and not to the sales which FAG reported, this expense is an indirect selling expense, not a direct selling expense or a commission.

Finally, we did not treat these selling expenses as indirect because they were allocated on a customer-specific basis. Had we concluded that the expense was direct in nature but that FAG had failed to report it to the best of its ability or that its allocation was unreasonable, we would have denied the adjustment entirely. The fact that FAG allocated this expense did not enter into our decision to treat it as an indirect expense. As stated above, we treated these selling expenses as indirect expenses because FAG did not demonstrate that there is a direct tie between its sales to the distributor and the distributor's sale that generates the payment.

Comment 3: Torrington contends that NTN excluded certain expenses improperly from the category of reported U.S. indirect selling expenses and states that, for the purpose of the final results, the Department should deduct these expenses from CEP.

NTN argues that the Department has rejected Torrington's claim previously that the expenses to which Torrington refers were excluded from the category of reported U.S. indirect selling expenses improperly. NTN points out that, in the 1994/95 administrative reviews, the Department found that NTN's reporting of such expenses was not unreasonably distortive. NTN asserts that it has used the same methodology to report this category of expenses in the current reviews and, therefore, Torrington's argument is baseless.

Department Position: We agree with NTN. Having verified these expenses in past reviews and found the adjustments to be reasonable, we accepted them in the 1994/95 administrative reviews. *See AFBs VI* at 2105. For these reviews, after examining the record, we asked supplemental questions which NTN answered appropriately. Inasmuch as the record in these reviews indicates no reason that a different methodology should be used, we have accepted NTN's adjustments to its reported U.S. indirect selling expenses.

Comment 4: NTN Japan contends that the Department should recalculate NTN Japan's U.S. selling expenses to reflect its reported indirect-selling-expenses level-of-trade allocations. NTN Japan argues that the Department intended to calculate NTN Japan's U.S. selling expenses based on the reported levels of trade but did not do so in its preliminary calculations. NTN Japan maintains further that, in the 1992/93 TRB administrative review in which NTN Japan was involved, the Department accepted NTN Japan's level-of-trade-based U.S. selling expenses because it concluded that it prevents distortions.

Torrington contends that the Department should reject NTN Japan's reported selling expense allocations based on level of trade. Torrington states that, for the preliminary results, the Department recalculated NTN Japan's U.S. selling expenses without regard to level of trade correctly. Torrington states further that, in *AFBs VI*, the Department rejected NTN Japan's allocation methodology because it was distortive and unsubstantiated. Finally, Torrington states that NTN Japan's cite to the TRB case is misplaced because, in that case, the Department recalculated NTN Japan's U.S. selling expense allocations based on level of trade as a result of other problems inherent in NTN Japan's response.

Department's Position: We agree with Torrington. In *AFBs III* (and subsequently in *AFBs IV* at 10940, *AFBs V* at 66489, and *AFBs VI* at 2105), we determined that NTN Japan's indirect-selling-expense allocation methodology based on levels of trade bears no relationship to the manner in which it actually incurs these U.S. selling expenses, which ultimately results in distorted allocations. The CIT upheld this decision in *NTN Bearing Corp. v. United States,* 905 F. Supp. 1083 at 1094–95 (1995)*(NTN III).* NTN Japan did not provide record evidence to substantiate its claim that its indirect selling expenses are attributable to and vary by its reported levels of trade. Therefore, for these final results, we have maintained the recalculation of NTN Japan's U.S. indirect selling expenses we made for the preliminary results to represent such selling expenses for all U.S. sales.

4. Level of Trade

As set forth in section 773(a)(7) of the Tariff Act and in the SAA at 829–831, to the extent practicable, we have determined NV based on sales at the same level of trade as the level of trade of the EP or CEP. When we were unable to find comparison sales at the same level of trade as the EP or CEP, we compared the U.S. sales to sales at a different level of trade in the comparison market.

We determined the level of trade of EP on the basis of the starting prices of sales to the United States. We based the level of trade of CEP on the price in the United States after making the CEP deductions under section 772(d) but before making the deductions under section 772(c). Where HM prices served as the basis for NV, we determined the NV level of trade based on starting prices in the NV market. Where NV was based on constructed value (CV), we determined the NV level of trade based on the level of trade of the sales from which we derived selling, general and administrative expenses (SG&A) and profit for CV.

In order to determine the level of trade of U.S. sales and comparison sales, we reviewed and compared distribution systems, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are commonly used by respondents to describe levels of trade but are insufficient to establish a level of trade. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the levels of trade. Different levels of trade are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them. *See AFBs VI* at 2105.

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

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

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

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

The only company for which we made a level-of-trade adjustment for CEP sales in these final results was NMB/Pelmec. *See* the discussion at Comment 7, below. However, we concluded that it would be inappropriate to apply the level-of-trade adjustment we calculated for NMB/Pelmec to any of the other respondents. The SAA at 160 states that ''if information on the same product and company is not available, the adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may consider the selling experience of other producers in the foreign market for the same product in other products.'' Because no respondent reported sales in the same market as NMB/Pelmec (*i.e.*, Singapore), we have not used NMB/Pelmec's data as the basis of a level-of-trade adjustment for any other respondents.

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

Comment 1: Koyo, NMB/Pelmec, NTN Germany, SNR France, NSK, and NSK/RHP contend that the Department's practice with regard to level of trade effectively precludes a level-of-trade adjustment to NV for CEP sales and is thus contrary to law and Congressional intent.

NMB, NSK, and NSK/RHP contend that there is no statutory requirement that a level-of-trade adjustment be based on the full difference in prices between the HM comparison level of trade and the HM level of trade equivalent to CEP and suggest that a partial level-of-trade adjustment is contemplated by the statute. NMB/Pelmec argues that neither the URAA nor the SAA specifies which two levels of trade must be the basis for the adjustment. NSK and NSK/RHP contend that the plain reading of the statute requires that the Department must adjust NV for CEP sales for the difference between price levels at the two levels of trade which do exist in the HM. NSK and NSK/RHP argue further that the Department should at least make such a level-of-trade adjustment when comparing CEP to HM aftermarket (AM) sales which, they contend, is more advanced than HM OEM sales because prices are higher at the HM AM level of trade than at the HM OEM level of trade. Finally, NSK and NSK/RHP contend that CEP sales should be matched to HM OEM sales before they are matched to HM AM sales.

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

SNR France contends that its claim for a level-of-trade adjustment is based on information on the record that demonstrates a consistent pattern of price differences between OEM and distributor customers. Moreover, SNR France claims that its OEM sales are made at a level similar to the CEP level of trade. It suggests that if the CEP and OEM level of trade were identical (*i.e.*, if selling functions and activities performed were the same) price differences between OEM and distributor customers would be even greater. Thus, SNR France asserts, its claimed adjustment is understated and it is entitled to this conservative adjustment when CEP sales are compared to HM sales at the distributor level of trade.

Torrington contends that an analysis of patterns of consistent price differences between sales at different levels of trade in the HM cannot be performed absent a HM level of trade equivalent to the level of trade of the U.S. sale. Torrington also argues that the Department's requirement that price differences be due to HM level-of-trade differences before price-based adjustments are allowed is logical since many factors, not all of which pertain to level of trade, determine price. Torrington contends further that the balance achieved by the Department in selecting the appropriate sales to compare in the two markets on the basis of level of trade would be disturbed if the Department allowed a level-of-trade adjustment to eliminate a whole set of price determinants in one market while not removing them in the other market. Thus, Torrington concludes, the respondents' suggested level-of-trade adjustment would result in unfair comparisons. Finally, Torrington argues that Koyo's position concerning alternative methods is without supporting authority.

Department's Position: We disagree with respondents. Our methodology does not preclude level-of-trade adjustments to NV for CEP sales; we made such an adjustment in the case of NMB/Pelmec. Rather, we did not make a level-of-trade adjustment to NV for CEP sales where the facts of the case did not warrant such an adjustment.

Based upon our examination of the information on the record, with the exception of NMB/Pelmec, we found that no respondent in these reviews had a HM level equivalent to the level of the CEP. Furthermore, we find no provision in the statute for making a ''partial'' level-of-trade adjustment. We may make level-of-trade adjustments when there is ''any difference * * * between the export price or constructed export price and the [NV] that is shown to be wholly or partly due to a difference in level of trade between the export price or constructed export price and the normal value.'' *See* section 773(a)(7)(A) of the statute. While respondents seize on the phrase ''wholly or partly'' to justify a partial level-of-trade adjustment, we interpret this phrase to mean that we may make a level-of-trade adjustment if only part of the differences in prices between two levels of trade is attributable to a difference in levels of trade. In other words, we need not demonstrate that no factor other than level of trade influenced a pattern of price differences. Thus, we do not read into this language of the statute the authority to make a level-of-trade adjustment between two HM levels of trade where neither level is equivalent to the level of the U.S. sale.

With regard to SNR's claim that its OEM sales are made at a level of trade similar to the CEP level of trade and that SNR should be granted a level-of-trade adjustment when comparing CEP sales to distributor sales, we found that all of SNR's HM sales are made at a different level of trade than the level of the CEP. Therefore, for the reasons enumerated above, it is inappropriate to grant a level-of-trade adjustment to SNR for its CEP sales.

We disagree with Koyo that we should adopt proposed alternative methods by which to construct HM levels of trade. We base HM levels of trade on the respondent's actual experience in selling in the HM. There is no statutory basis for us to ''construct'' levels in the HM or elsewhere. Therefore, we have not used Koyo's claimed constructed NV levels of trade in order to calculate a level-of-trade adjustment for Koyo's CEP-sales comparisons.

Finally, we disagree with NSK and NSK/RHP that these companies' CEP sales should be matched to HM OEM sales before they are matched to HM AM sales. Based upon our examination of the information on the record, we found that no HM level of trade for either NSK or NSK/RHP had conclusively more selling functions than another HM level. Rather, the HM levels of trade each involved different degrees of various selling functions. We conclude that, for these companies, and for respondents generally, while the reported HM levels of trade are different from one another, no HM level of trade is more advanced than any other based upon the evidence on the record. We also disagree with NSK's and NSK/RHP's assertion that, because their OEM prices are generally lower than their AM prices, their OEM levels of trade is less advanced than the distributor/aftermarket levels of trade. We determine whether one level of trade is more advanced than another on the basis of the selling functions performed by a respondent with respect to the two levels of trade. NSK and NSK/RHP's HM OEM and AM sales are more advanced than the level of trade of the CEP because comparatively fewer selling functions are associated with the CEP than are performed for sales to either of the other levels of trade. Therefore, we have not altered our matching methodology.

Comment 2: Torrington contends that SKF Germany and SKF Sweden did not provide adequate information to support their claims for a CEP offset and requests that the Department deny this adjustment. Torrington asserts that respondents' explanation of differences in selling functions between the CEP level of trade and the two HM levels do not support an offset because an examination of these selling functions reveals that they are either duplicative, *de minimis*, equally applicable to sales to U.S. affiliate and HM sales, or the Department adjusts for them otherwise. Torrington concludes that the information respondents provided regarding differences in selling activities is insufficient for the Department to determine whether respondents' CEP is less remote than the level of trade of HM OEM sales.

SKF Germany and SKF Sweden assert that the Department determined correctly that they are entitled to a CEP offset based on differences in selling activities and functions between the HM levels of trade and the CEP level of trade. Respondents contend that they substantiated their CEP-offset claims fully in submissions to the Department, including the differences in selling functions between HM levels of trade and the CEP level of trade. SKF Germany contends further that these claimed differences are ''identical in all material respects'' to the information the Department verified in the 1994/95 reviews. SKF Sweden notes that during the current segment of these proceedings the Department verified the information it provided concerning selling activities and functions for each level of trade. Respondents assert that the preliminary results are in accordance with section 773(a)(7)(B) of the Tariff Act and entirely supported by the record. On this basis, respondents request that the Department reject Torrington's arguments and continue to grant the CEP offset in the final results.

Department's Position: We disagree with Torrington and determine that respondents provided adequate factual information to support their claims that the HM levels of trade are in fact more advanced than the CEP level of trade. It appears that Torrington may have misinterpreted the data presented in respondents' submissions. We conducted a thorough analysis of the information SKF Sweden and SKF Germany submitted on the record and determined that after deducting respondents' expenses from CEP pursuant to section 772(d) there exists adequate factual information to conclude that fewer selling functions are associated with the CEP than are performed on sales at their HM levels of trade. Thus, for both respondents, we considered the CEP level of trade to be different from either HM level of trade and a less advanced stage of distribution. *See* Memorandum to Laurie Parkhill, Level of Trade, March 24, 1997, in Import Administration's Central Records Unit (Room B–099 of the main Commerce building (hereafter, B–099)).

For the final results, because we could neither match the CEP level of trade to sales at the same level of trade in the HM nor determine a level-of-trade adjustment based on these respondents' HM sales, to the extent possible we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act (*see AFBs VI* at 2105).

Comment 3: Torrington claims that the Department's pattern-of-prices analysis does not support a downward level-of-trade adjustment to NV for differences between SKF France's EP sales matched to HM sales at the distributor level of trade.

SKF France disagrees with Torrington, arguing that the Department's adjustment methodology is correct. SKF France asserts that a clerical error in the Department's analysis memorandum, which reverses the relative price levels of the two HM levels, misled Torrington into thinking that the downward adjustment is inappropriate. SKF France cites to the results of the Department's level-of-trade adjustment calculations to support that a downward adjustment to NV is appropriate when matching its EP sales to HM sales at the distributor level.

Department's Position: We disagree with Torrington. We did not err in making a downward level-of-trade adjustment for SKF France's EP sales which we matched to HM distributor sales. Torrington's contentions are based upon a typographical error in the SKF

France preliminary results analysis memorandum which reversed the price levels of the HM levels of trade. Therefore, respondent's downward level-of-trade adjustment was proper.

Comment 4: NTN Japan and NTN Germany state that the Department should make a price-based level-of-trade adjustment for CEP sales made at a different level of trade in the United States than the comparison home market sales. Respondents suggest that using the transaction to the first unaffiliated U.S. customer prior to the deduction of expenses pursuant to section 772(d) would be consistent with the use of those levels of trade in matching U.S. CEP and HM sales and with evidence demonstrating that different selling activities are performed at each level of trade that affect price comparability.

Torrington argues that the Department's requirement that price differences be due to HM level-of-trade differences before price-based adjustments are allowed is logical since many factors, not all of which pertain to level of trade, determine price.

Department's Position: We disagree with NTN Japan and NTN Germany. The statutory definition of "constructed export price" contained at section 772(d) of the Tariff Act indicates clearly that we are to base CEP on the U.S. resale price, as adjusted for U.S. selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. *See* SAA at 823. These adjustments are necessary in order to arrive at, as the term CEP makes clear, a "constructed" EP. The adjustments we make to the starting price, specifically those made pursuant to section 772(d) of the Tariff Act ("Additional Adjustments for Constructed Export Price"), normally change the level of trade. Accordingly, we must determine the level of trade of CEP sales exclusive of the expenses (and associated selling functions) that we deduct pursuant to this sub-section. With regard to respondents' characterization of our matching methodology, we generally matched CEP sales to HM sales on the basis of the level of trade of the resale by the U.S. affiliate *only* where all HM levels of trade were more remote than the level of the CEP. The purpose of this methodology is to use the CEP offset to deduct indirect selling expenses from NV similar to those deducted from the U.S. starting price. For example, we were able to determine the CEP offset "cap" for HM OEM sales on the basis of indirect selling expenses incurred on OEM sales in the United States. Therefore, because no HM levels of trade reported by NTN Germany or NTN Japan were equivalent to the level of trade of these respondents' CEP sales, we were unable to make a level-of-trade adjustment for such sales.

Comment 5: Torrington argues that the record does not support NSK/RHP's claim for a CEP offset. Torrington contends that the Department improperly found that several selling functions associated with the CEP level of trade are substantially different from the sales functions associated with the comparison sales in the HM. For instance, Torrington states that the Department claimed erroneously that, at the CEP level of trade, little or no advertising was involved. Torrington states further that the Department determined incorrectly that certain selling functions (*e.g.*, technical support and strategic and economic planning) did not apply to the CEP level of trade. With respect to repacking expenses, Torrington contends that this function is not involved in the selling process and therefore should not justify a CEP offset. Citing *Certain Corrosion Resistant Carbon Steel Flat Products*, 62 FR 18,452 (April 15, 1997), Torrington argues that differences in selling functions, even substantial ones, may not be enough to warrant finding different levels of trade. Torrington suggests that the Department continue to compare prices within the broad comparison patterns but reject NSK/RHP's claim for a CEP offset based on these reasons.

NSK/RHP asserts that Torrington compares incorrectly the activities in which an international distributor engages when selling to a U.S. national distributor with activities of a U.K. national distributor selling to customers. Moreover, NSK/RHP contends that, after the initial error, Torrington then compares a category of expense (*e.g.*, advertising) at different points in the chain of distribution and suggests that the same function is performed by each national distributor. NSK/RHP contends further that, for CEP sales, it did not report advertising for its end-user customers because the Department deducts expenses for the function of advertising to unaffiliated U.S. customers in the calculation of CEP pursuant to section 772(d) of the Tariff Act. NSK/RHP notes that it agrees with Torrington that repacking is not a selling expense within the scope of section 772(d) of the statute. NSK/RHP therefore suggests that the Department remove repacking from the CEP-selling-function variable in the final results. NSK/RHP asserts that the Department should follow the statute as written and grant a level-of-trade adjustment for CEP matches or, at a minimum, grant a level-of-trade adjustment for CEP sales matched to HM aftermarket sales.

Department's Position: We disagree with Torrington. Torrington compares erroneously activities of an international distributor when selling to a U.S. affiliate with activities of a U.K. national distributor selling to customers. As we stated in our March 24, 1997 Memorandum (*Id.*), we could not determine whether these sales (*i.e.*, sales from the international distributor to the U.K. national distributor) were made at arm's length. Therefore, we did not use these sales to determine NV or as the basis of any level-of-trade adjustments. As a result of this determination, we compared sales made by the U.K. national distributor to customers in the HM with sales made at the CEP level of trade (*i.e.*, sales made by the international distributor to the U.S. affiliate). *See* NSK/RHP's February 6, 1997, supplemental questionnaire response (Exhibit S–2). Based on our analysis, we found that, for CEP sales, NSK/RHP did not engage in any of these selling activities (*e.g.*, freight and delivery arrangement, inventory maintenance, repacking, pre-sale warehousing and sales calls). However, we found that, at the HM levels of trade, NSK/RHP participated in these activities and therefore the HM levels of trade were substantially dissimilar from the CEP level of trade. Accordingly, as we explain in our level-of-trade memorandum, we considered the HM sales to be at different levels of trade and at a more advanced stage of distribution than CEP.

We agree with Torrington that differences in selling functions may not be enough in themselves to warrant finding different levels of trade. However, consistent with our practice in *AFB VI*, we consider the class of customer as one factor, along with selling functions and the selling expenses associated with these functions, in determining the stage of marketing, *i.e.*, the level of trade associated with the sales in question. *See AFB VI* at 2107.

With respect to expenses associated with repacking, please see our discussion in comment 1 of section 7 of this notice for an explanation of our treatment of repacking expenses.

Comment 6: Torrington argues, with respect to Barden's HM sales to government users, that the Department should not have determined that government users are at a different level of trade than OEM sales. Torrington asserts that there is no evidence on the record to support Barden's claim that government sales should be treated separately. In addition, Torrington contends that Barden's assertion that AM sales to airlines and repair contractors should be treated separately is also unsupported. Torrington states that Barden has not submitted adequate evidence to support its claim that AM sales should be treated separately from distributor sales. Moreover, Torrington claims that Barden's narrative explanations for certain selling functions (*e.g.*, computer, legal and accounting, personnel training, advertising, and strategic and economic planning) do not support the level-of-trade chart found in Exhibit A–4 of Barden's July 23, 1996, Section A Response. Therefore, according to Torrington, the Department should treat AM sales as being at the same level as distributor sales.

Barden states that it agrees with Torrington that the Department's redesignation of its HM level-of-trade categories was in error. Barden contends that neither the record nor commercial reality supports the inclusion of these two very distinct and separate channels of distribution (airline and repair AM contractors and government customers) under one level of trade. Therefore, according to Barden, the Department should use the customer category designations Barden submitted originally in its responses for these final results. Barden also contends that the Department should designate sales to its EP customers (*e.g.*, network distribution customers) as Barden originally identified on the record. Barden asserts that the Department unlawfully applied a facts-available level-of-trade adjustment to these sales because Barden allegedly failed to include them in their proper channels of distribution. Barden contends that it disclosed the types of selling activities and functions it incurred on its EP sales fully in its response to the Department's questionnaire.

Department's Position: We disagree with Torrington and Barden. While we acknowledge that Barden did not provide sufficient evidence to warrant a distinction for government sales, we disagree with Torrington that we should treat these sales as OEM sales. Torrington has provided no evidence nor any references to information on the record that supports its conclusion. Moreover, there is no evidence on the record that would suggest that government sales are similar to OEM sales. In addition, with respect to Barden's assertion that government sales differ substantially from any of the other level-of-trade categories, we determined that Barden's narrative explanation does not provide sufficient information to support its conclusion. Therefore, we have not changed our analysis from that in our preliminary results with respect to this issue.

We also disagree with Torrington's contention that we should treat AM sales as being at the same level as distributor sales. As we explained in our March 24, 1997 Memorandum (*Id.*), we found that the selling activities for level two (*e.g.*, distributors network) differed from those of level three (*e.g.*, airlines repair contractors (AM sales) and government customers) in after-sales services and warranties, advertising, administrative support and personnel training. While we agree with Torrington's assertion that there are certain discrepancies between Barden's narrative explanations and its level-of-trade chart, we have determined that such inconsistencies were not substantial. Thus, we have not made any changes with respect to this issue.

Finally, we have reexamined our facts-available determination with respect to Barden's EP sales. Upon further consideration, we determined that Barden did provide sufficient information concerning the nature of its customers and the selling functions it performed with respect to these sales. Therefore, we have accepted Barden's information and have not applied facts available to these sales for the final results.

Comment 7: Torrington claims that NMB/Pelmec failed to demonstrate entitlement to either a level-of-trade adjustment or a CEP offset to its HM prices and that the Department should not make either adjustment to NV in the final results.

Torrington notes that, in the preliminary results for NMB/Pelmec, the Department adjusted NV downward in the amount of the CEP offset. Torrington also notes that NMB admits that its distributor sales in the HM are at the same level of trade as the CEP level of trade in the United States. Torrington concludes that, because NMB/Pelmec reported no distributor sales in the HM during the POR, NMB is entitled to an adjustment in the form of a CEP offset only if it demonstrated that OEM sales in the HM were at a more advanced level of trade than the CEP level of trade. Torrington argues that this is not the case. It notes that NMB/Pelmec admits that selling expenses, such as after-sales service/warranties, technical advice and engineering services, and direct advertising, were all negligible or non-existent and, therefore, NMB/Pelmec omitted them from the computer-database fields. Torrington continues that, because these expenses were not reported, NMB/Pelmec made no visits to customers for these functions. Therefore, Torrington argues, these functions do not support NMB/Pelmec's claim for a CEP offset. Torrington notes further that indirect expenses with regard to solicitation of customer orders were also admittedly negligible. Thus, Torrington argues, there is no other information on the record to support NMB/Pelmec's claim that this function is more active in the case of sales to OEM customers.

Finally, Torrington alleges that NMB/Pelmec reports substantial activity at the CEP level of trade, which, at a minimum, undermines NMB/Pelmec's claim that a downward adjustment to NV is needed when comparison sales are to OEMs. Torrington points to a description in NMB/Pelmec's financial report of its U.S. affiliate as evidence.

NMB/Pelmec claims that Torrington's characterizations of its sales are incorrect. It argues that the Department should find that NMB/Pelmec is entitled to a level-of-trade adjustment and, at a minimum, a CEP offset whenever CEP sales are not compared to HM distributor sales. NMB/Pelmec contends that Torrington's claim that it did not report any distributor sales in the HM during the period is incorrect. NMB/Pelmec notes that the Department's preliminary findings that NMB/Pelmec did not report such sales were also incorrect. NMB/Pelmec points out that the record in this administrative review demonstrates clearly that it made substantial sales to distributors. Thus, NMB/Pelmec argues that the Department should have compared CEP sales to HM distributor sales. NMB/Pelmec asks that the Department correct its findings in the final results.

In addition, NMB/Pelmec contests Torrington's argument that NMB/Pelmec has not demonstrated that its HM OEM sales were at a more advanced level than the CEP level of trade. NMB/Pelmec replies that it provided detailed descriptions of selling functions for HM OEMs in its initial and supplemental responses, explaining that most of these functions were not performed for distributors, in addition to providing detailed sample support documentation. NMB/Pelmec states that, during the Department's verification of the 1994/95 administrative review, the Department verified NMB/Pelmec's claim that it performed more advanced selling functions for OEMs. NMB/Pelmec alleges that Torrington's claim appears to be based on confusion regarding the difference between direct and indirect selling expenses and on its failure to review the correction regarding selling functions NMB/Pelmec made in its supplemental response. NMB/Pelmec contends that Torrington ignored the supplemental corrections and based its claims on obvious errors.

Finally, NMB/Pelmec argues that Torrington failed to support its claim that NMB/Pelmec reported substantial activity at the CEP level of trade. It notes that the activities to which Torrington refers in NMB/Pelmec's consolidated financial statement were between NMB/Pelmec's parent company and its U.S. affiliate, not between NMB/Pelmec and its U.S. affiliate. Thus, NMB/Pelmec concludes, these activities do not support Torrington's claim. NMB/Pelmec also notes that the record shows that its parent company provides the same types of activities to its other subsidiaries and affiliates.

Department's Position: NMB/Pelmec reported distributor sales for the POR. We stated incorrectly in our analysis memorandum for NMB/Pelmec that it only made sales to OEM/trading companies during the period. This statement was a result of our mis-coding the customer categories NMB/Pelmec reported when applying our methodology for identifying the proper level of trade. We have now made the appropriate changes to calculate NMB/Pelmec's margins properly for these final results.

We agree with NMB/Pelmec that it is entitled to a level-of-trade adjustment whenever CEP sales are not compared to HM distributor sales. We re-examined NMB/Pelmec's response and determined that NMB/Pelmec's HM distributor sales are equivalent to the CEP level of trade. The evidence on the record suggests, contrary to Torrington's assertion, that NMB/Pelmec performs comparatively few selling activities either for sales to its U.S. affiliate or for HM sales to distributors. Furthermore, we determined that NMB/Pelmec's HM sales to OEMs are made at the same level of trade as its HM sales to trading companies but that these sales are made at a different level of trade than its HM distributor sales. Accordingly, we attempted to match CEP sales to HM distributor sales first and we matched CEP sales to OEM/trading company sales when no HM distributor sales existed. When we matched CEP sales to HM distributor sales, we made no level-of-trade adjustment or CEP offset because the sales are made at the same level of trade. When we matched CEP sales to HM OEM/trading company sales, we made a level-of-trade adjustment because we found that there was a pattern of consistent price differences between the two HM levels of trade. *See* NMB/Pelmec Final Results Analysis Memorandum dated September 22, 1997.

Finally, because we made a level-of-trade adjustment for comparisons involving HM OEM/trading company sales, we did not make a CEP offset for any comparisons of NMB/Pelmec's sales.

Comment 8: Torrington contends that NTN failed to provide record evidence demonstrating its entitlement to either a level-of-trade adjustment to NV for CEP sales or a CEP offset for those sales. With respect to NTN's identification of comparative selling activities, Torrington argues that, primarily, NTN identifies selling activities associated with CEP-resale transactions and states that NTN failed to provide a complete and accurate list of selling activities. In addition, Torrington contends that NTN did not provide a comprehensive description of its distribution and selling processes. Torrington also maintains that the quantification information that NTN provided in its response lacks the necessary detail to support a level-of-trade adjustment. Torrington concludes that, for the purpose of the final results, the Department should not grant NTN either a level-of-trade adjustment or a CEP offset to NV.

NTN contends that Torrington misreads the Department's questions and misinterprets NTN's data. NTN argues that, in its response, it identified distinct selling functions related to the different LOTs in the United States for both EP and CEP sales. NTN maintains that it provided responses to the Department's requests for information related to the selling functions and sales processes performed for, and the services offered to, each class of customer in both the United States and HM. NTN argues that it based its responses to the Department's level-of-trade and channel-of-distribution inquiries on its responses in the 1994/95 administrative reviews and states that, in those reviews, the Department accepted NTN Japan's responses.

Department's Position: We disagree with Torrington. NTN Japan provided adequate factual information to support its claims that its HM levels of trade are in fact more remote than the CEP level of trade. We conducted a thorough analysis of the information NTN Japan submitted on the record and determined that after deducting NTN Japan's expenses from CEP pursuant to section 772(d) there exists adequate factual information to conclude that fewer selling functions are associated with the CEP than are performed on sales at its HM levels of trade. Thus, for NTN Japan we considered the CEP level of trade different from all HM levels of trade and at a less-advanced stage of distribution.

For the final results, because we could neither match the CEP level of trade to sales at the same level of trade in the HM nor determine a level-of-trade adjustment based on NTN's HM sales, to the extent possible we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. *See* our position in response to comment 4, above.

Comment 9: Torrington contends that, with respect to the customers to which NTN made EP sales, the Department should not make a level-of-trade adjustment to NV based on the record evidence developed in the instant reviews. Torrington asserts that the record contains little information pertaining to such sales. In addition, Torrington argues that the information that is on the record is inadequate to warrant a level-of-trade adjustment.

NTN argues that it has not changed the facts related to these sales from those of the 1994/95 administrative reviews and states that, in those reviews, the Department made a level-of-trade adjustment for such sales. NTN also points out that the Department verified, in detail, NTN's response as it relates to its claimed levels of trade and found no discrepancies. NTN asserts that, because the Department made no further requests for information, the Department has, in essence, accepted NTN's responses as sufficient to warrant a level-of-trade adjustment with respect to EP sales it made to both customers.

Department Position: We disagree with Torrington. NTN Japan provided adequate factual information to support its claims with regard to the differences and similarities of its HM levels of trade and the EP level of trade. Therefore, where possible, we matched EP sales to sales at the same level of trade in the HM and made no level-of-trade adjustment. Where we matched EP sales to HM sales made at a different level of trade, in accordance with section 773(a)(7)(A) of the Tariff Act, we first determined whether there was a pattern of consistent price differences between these different levels of trade in the HM and, if so, made a level-of-trade adjustment accordingly.

5. Cost of Production and Constructed Value

5.A. Cost-Test Methodology

Comment 1: INA claims that the Department used CV for NV rather than seeking to make a family-match comparison where identical HM matches existed but were disregarded because they were below cost. INA contends that this approach is in error because it gives priority to the use of CV over price-based NV. Citing section 773(a)(4) of the Tariff Act, INA contends that the Department is to use CV only when it determines that the NV of the merchandise cannot be determined by comparison with sales of the foreign like product. INA asserts further that section 773(b)(1) reinforces this conclusion by stating that, when below-cost sales are disregarded, ''normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the NV shall be based on the constructed value of the merchandise.'' INA contends that the Department has defined potential ''foreign like products'' in terms of bearing families. INA concludes that, where there are remaining HM sales in the same family, the Department should base NV on those sales rather than on CV.

INA notes that, in *AFBs VI*, the Department defended its methodology on the ground that it makes the ''foreign like product'' determination under the criteria of section 771(16) only once and that the result of the cost test is not a criterion in determining the foreign like product under section 771(16). INA contends that the Department's automatic reliance on CV when all identical matches are disregarded as below cost is inconsistent with its approach with regard to contemporaneity because the Department applies the contemporaneity rule as a criterion for comparability even though that rule is not included in the section 771(16) definition.

Torrington argues that the Department should follow its decision in *AFBs VI* and continue to resort to CV rather than HM family sales when all sales of identical bearings are disregarded pursuant to the cost test.

Department's Position: We disagree with INA. Section 771(16) of the Tariff Act directs us to select the foreign like product ''in the first'' of several categories: identical in physical characteristics, similar in physical characteristics and commercial value, or of the same general class or kind that can be reasonably compared. The Department interprets the reference in section 773(b)(1) of the Tariff Act that it base NV ''on the remaining sales of the foreign like product in the ordinary course of trade'' to mean the selected foreign like product, not a succession of foreign like products. Therefore, we have resorted directly to CV where we have disregarded all contemporaneous identical HM sales as below cost instead of determining whether contemporaneous sales of a less similar model would survive the cost test and remain available as comparators. We explained this practice in detail in *AFBs V* at 66490–91 and *AFBs VI* at 2111–2112.

We disagree with INA's suggestion that our practice of using CV when all identical matches are disregarded is inconsistent with our policy with regard to choosing contemporaneous matches. We conduct a search for sales of the best model for comparison within a contemporaneity window pursuant to section 773(a)(1)(A) of the statute, which directs that ''[t]he NV of the subject merchandise shall be the price described in subparagraph (B), *at a time reasonably corresponding to the time of the sale* used to determine the export price or constructed export price'' (emphasis added). We have a longstanding practice of considering sales within 90 days before and 60 days after the month of the U.S. sale to be acceptable as potential comparators (*see Certain Small Business Telephone Systems and Subassemblies Thereof from Korea: Final Results of Antidumping Administrative Review,* 57 FR 8300 (March 9, 1993); *Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review,* 61 FR 1332 (January 19, 1996); *AFBs III* at 39735). Thus, our determination of which merchandise will be considered the foreign like product is based on (1) the product categories set forth in 771(16) and (2) the ability to review contemporaneous sales as contemplated in 773(a)(1)(A).

5.B. Research and Development

Comment: Torrington notes that the SKF Group companies, *i.e.*, SKF France, SKF Germany, SKF Italy, and SKF Sweden, allocated the general research and development (R&D) expenses incurred by their European Research Center (ERC) based on proportionate share holdings in the facility. Torrington contends that, if the Department accepts this methodology, the Department must account for expenses attributable to the share holding in the ERC by the SKF Group's parent company, AB SKF.

Respondents argue that their allocation methodology is proper and consistent with determinations in prior segments of this proceeding. Regarding Torrington's allegation of under-reporting, respondents explain that their parent company holds shares in the ERC on behalf of SKF Sweden and that SKF Sweden has reported the general R&D expenses attributable to these shares.

Department's Position: We agree with respondents. In section A of SKF Sweden's questionnaire response, respondent identifies the shares to which Torrington refers as SKF Sweden's share in the ERC. SKF Sweden reported the R&D expenses attributable to these shares as part of its general and administrative expenses. Thus, based on record evidence we are satisfied that respondents allocated the ERC expenses properly. Accordingly, for the final results, we did not adjust the R&D expenses reported by these respondents.

5.C. Profit for Constructed Value

Comment 1: NSK, INA, FAG Germany, FAG Italy, SNR France, and Barden argue that the methodology the Department used in the calculation of CV profit is unlawful. According to respondents, section 773(e)(2) of the Tariff Act authorizes the Department to make this calculation using one of four methods, depending on the information on the record. Respondents contend that, while in the preliminary results the Department calculated a CV-profit ratio for each level of trade within each class or kind of product sold in the HM in the ordinary course of trade, this method is not authorized by section 773(e)(2)(A) of the Tariff Act. Citing to this provision, respondents claim that the profit calculation must be equivalent to the sum of profits ''in connection with the production and sale of a foreign like product.'' Respondents argue that ''foreign like product'' is a statutorily defined term of art equivalent to the first of three enumerated categories of merchandise as defined by section 771(16) of the Tariff Act and that these three categories are narrower than ''class or kind''.

FAG Germany, FAG Italy and SNR France disagree with the Department's assertion that the use of the phrase ''a foreign like product'' rather than ''the foreign like product'' allows it to aggregate total profits across each class or kind of merchandise and that the meaning of ''foreign like product'' remains the same in both cases, as defined in the statute regardless of the preceding article, citing the *Notice of Proposed Rulemaking,* 61 FR at 7335. Thus, respondents argue, although Congress knew the meaning of ''foreign like product,'' it adopted this term intentionally in place of ''class or kind.'' Respondents also contend that, in accordance with section 771(16) of the Tariff Act, the foreign like product must be produced in the same country by the same person, disallowing the

Department's method of including sales of merchandise they sold that other manufacturers produced. Respondents contend further that the SAA at 840 clears any ambiguity regarding the term ''foreign like product'' in section 773(e)(2)(A) of the Tariff Act by recommending the alternative methods of 773(e)(2)(B) in instances where 773(e)(2)(A) cannot be used either because there are no HM sales of the foreign like product or because all such sales are at below-cost prices.

Torrington counters that the Department need not change its policy with regard to the CV-profit calculation, claiming that ''foreign like product'' refers to the entire class of merchandise that meets the definitions of section 771(16) and not just the identical part number or family. It notes that such a similar reference is made to foreign like product with respect to statutory passages concerning the viability test at section 773(a)(1)(C). Torrington adds that the interpretation of ''foreign like product'' as a family would necessarily create a gap in the statutory scheme. As an example, petitioner describes a situation where, if family-specific profit could not be calculated, the use of profits on the ''same general category'' would never be considered because ''foreign like product'' is too narrow to constitute ''the same general category'' as directed in section 773(e)(2)(B) of the Tariff Act. Torrington continues by arguing that the use of the indefinite article ''a'' rather than the definite article ''the'' in section 773(e)(2)(A) of the Tariff Act is significant and is meant to refer to ''any'' foreign like product, as in more than one foreign like product. In addition, Torrington disagrees with respondents' argument that Congress replaced the term ''class or kind of merchandise'' deliberately in order to restrict the calculation of profit only to the foreign like product corresponding to a U.S. sale. Torrington contends that the removal of the term was simply to conform the terminology of the U.S. antidumping law to the international Antidumping Code. Finally, Torrington contends that the respondents' suggested methodology would resort to the application of alternative methodologies too soon in the hierarchy of preferable methods. Petitioner argues that section 773(e)(2)(B) of the Tariff Act outlines alternative profit methodologies for use only when the method described in section 773(e)(2)(A) of the Tariff Act cannot be used, as in instances where there are no HM sales of the foreign like product or all such sales are below cost.

Department's Position: We disagree with the respondents. As we stated in *AFBs VI,* respondents' definition of the term ''foreign like product'' is overly narrow with respect to its use in the CV-profit provisions. In applying the ''preferred'' method for calculating profit (as well as SG&A) under section 773(e)(2)(A) of the Tariff Act, the use of aggregate data that encompasses all foreign like products under consideration for NV results in a practical measure of profit that we can apply consistently in each case. By contrast, an interpretation of section 773(e)(2)(A) of the Tariff Act that would result in a method based on varied groupings of foreign like products, each defined by a minimum set of matching criteria shared with a particular model of the subject merchandise, would add an additional layer of complexity and uncertainty to antidumping proceedings without generating more accurate results. It would also make the statutorily preferred CV-profit methodology inapplicable to most cases involving CV. We discussed in the preamble to our final regulations that, although we recognize that there are other methods available for computing profit for CV under section 773(e)(2)(A) of the Tariff Act, we continue to believe that our method represents a reasonable interpretation of the statute. *See Final Rule,* 62 FR at 27359. We also note that this approach is consistent with our method of computing SG&A and profit under the pre-URAA version of the statute, and, despite the fact that the URAA revised certain aspects of the SG&A and profit calculations, we do not believe that Congress intended to change this particular aspect of our practice. Therefore, we have not changed our methodology for the final results. *See also Notice of Proposed Rulemaking,* 61 FR at 7335 (discussing the Department's practice for calculating profit (and SG&A) using aggregate figures).

Comment 2: FAG Italy, FAG Germany, SNR France, and Barden contend that the Department's CV-profit methodology of calculating profit on an aggregate basis for all foreign like products is most similar to the first alternative CV-profit methodology described in 773(e)(2)(B)(i) of the Tariff Act because it aggregates profits encompassing sales from multiple foreign like products. However, respondents contend, contrary to the Department's methodology, section 773(e)(2)(B)(i) does not limit the CV-profit calculation to sales in the ordinary course of trade. Citing the SAA at 841, respondents argue that the absence of any language in section 773(e)(2)(B)(i) of the Tariff Act referring to sales in the ordinary course of trade and the presence of this precise limitation in descriptions of the other profit methodologies necessitates the inclusion of sales outside the ordinary course of trade in methodologies using all sales of the same class or kind.

SKF argues that below-cost sales should be included in the calculation of CV profit when grouping products of the same general category (citing section 773(e)(2)(B)(i) of the Tariff Act). Because the Department has chosen to calculate profit on a class-or-kind basis rather than for each family (foreign like product), these respondents contend that the Department is without authority to exclude sales outside the ordinary course of trade such as below-cost sales.

SKF argues that, if the Department continues to exclude below-cost sales from the calculation of total profits for each class or kind of merchandise, it should include the COP for below-cost sales when calculating the profit ratio for each class or kind of merchandise. Before dividing total profits by the total COP of all sales producing those profits, respondents argue that the Department should add the COP for below-cost sales back into the total costs of production for each respective group of sales. Respondents argue that this would allow the Department to determine the profit rate per sale more accurately.

Torrington asserts that respondents' arguments with respect to the inclusion of below-cost sales in the calculation of CV profit under section 773(e)(2)(B) of the Tariff Act is inconsistent logically with their argument concerning section 773(e)(2)(A) of the Tariff Act. Torrington contends that under respondents' methodology, before calculating an overall aggregate profit under section 773(e)(2)(B) of the Tariff Act, the Department would first have to test all sales of identical and similar models to determine whether any sales were made in the ''ordinary course of trade.'' Torrington contends further that below-cost sales would first be excluded under section 773(e)(2)(A) before resorting to aggregate profit data under section 773(e)(2)(B).

Torrington argues that below-cost sales must be excluded for purposes of calculating CV profit and should not be included in the average-profit calculation as so-called zero-profit sales. Citing section 771(15) of the Tariff Act and the SAA, Torrington contends that inclusion of sales outside the ''ordinary course'' are not a proper basis for determining profit under section 773(e)(2)(A) of the Tariff Act. Torrington argues that the SAA also establishes that ''only'' ordinary-course-of-trade sales will be the basis for the profit calculation and, therefore, the

Department should not include the full costs of sales at a loss in the denominator of the profit-ratio calculation as this would make these part of the profit calculation.

Department's Position: We disagree with respondents that our CV-profit methodology is most similar to the first alternative CV-profit methodology described in 773(e)(2)(B)(i) of the Tariff Act based on our interpretation of ''foreign like product.'' We agree with Torrington that we should not include sales that failed the below-cost test in the calculation of profit for CV because these sales fall outside the ordinary course of trade. As we stated in the preliminary results, we have calculated CV profit using the profit methodology as stated in section 773(e)(2)(A) of the Tariff Act. This provision requires that we base profit on sales made in the ordinary course of trade which, in turn, do not include sales that we disregarded as a result of the below-cost test. See section 771(15) of the Tariff Act. Furthermore, we do not believe that we should retain the full costs of disregarded sales while setting those sales' profits to zero. The use of partial information from the sales would distort the profit rate for sales in the ordinary course of trade and frustrate the intent of the statute.

Comment 3: NSK and NSK/RHP argue that the Department erred when it calculated CV profit based upon the HM database. Respondents contend that the HM database consists of sample-week sales and is not representative of its HM profit experiences with respect to the class or kind of merchandise. NSK and NSK/RHP maintain that the SAA intended the Department to use Financial Statement profit when determining CV profit and that the Department must apply the preferred profit methodology at the model-specific or family-specific level or it must resort to one of the alternative profit methodologies.

Torrington rebuts that respondents offer no evidentiary or rational basis for concluding that the HM database is not representative of the profit experiences in the HM when sample week sales are reported.

Department's Position: We disagree with NSK and NSK/RHP. We rejected this argument in *AFBs VI*, stating that HM sales and cost data provided by respondents on a sampled basis does not render such data inappropriate for purposes of calculating CV profit. Pursuant to the statutory authority provided at section 777A of the Tariff Act, we routinely use data in our analysis that has been reported on a sampled basis. Thus, the statute does not explicitly provide for such an automatic elimination of these profit methodologies in such cases. *See* our response to Comment 1 of section 6.C of *AFBs VI*, 62 FR at 2112, for a more comprehensive discussion on this topic.

Comment 4: SNR France argues that the CV profit the Department calculated for CRBs is based on U.S. sales rather than on HM sales. Moreover, SNR France asserts that this calculation is unlawful because it is not based on the actual profit that SNR France earns on HM sales of the foreign like product made in the ordinary course of trade. Specifically, SNR France contends that the Department based its profit calculation on costs taken from SNR France's U.S. CV database which, SNR France argues, is a mere microcosm when compared to its total HM sales. SNR France suggests that the Department should instead calculate a profit ratio based on its financial statements.

Torrington points to the fact that the Department did not request COP data from SNR France for CRBs. Torrington states that, while SNR France suggests that financial-statement data would be a more appropriate proxy for the entire profit calculation, Torrington contends that SNR France failed to propose appropriate ratios based on the financial statements. Moreover, Torrington asserts that this data would necessarily include non-scope products.

Department's Position: We disagree with SNR-France. We must balance the need to calculate an accurate margin with the need to reduce the burden on respondents. Because we did not request complete COP data for SNR-France's sales of CRBs, we were unable to calculate CV profit under the ''preferred methodology'' of section 773(e)(2)(A). Instead, we calculated CV profit based on the following methodology.

We subtracted the home market COP from the home market sales value. Home market COP consists of three costs: COM, interest expenses, and G&A expenses. First, we aggregated the expenses reported in the CV dataset. Then, we calculated the ratio of variable COM to total COM based on data contained in the CV dataset. We applied this ratio to the variable COM reported in the home market sales dataset. Thus, we created a reasonable proxy for home market total COM. Likewise, we calculated a ratio of G&A and interest expenses to the total COM reported in the CV dataset. We multiplied each of these ratios by the home market total COM. Finally, we summed these amounts to arrive at total home market COP.

This methodology results in a reasonable estimation of COP, since the major element in COP, the variable COM, is an actual amount and the proxy is limited to fixed costs, G&A, and interest expenses. Thus, this is a reasonable methodology allowed under section 773(e)(2)(B)(iii).

We agree with Torrington that SNR-France's financial statements would contain data for non-scope merchandise. Thus, SNR's suggested methodology would be a proxy as well. The record does not support the conclusion that SNR-France's financial statements would form a more appropriate proxy nor has SNR-France established that the Department's current methodology is distortive. Therefore, we have not changed the methodology we used in our preliminary results.

Comment 5: NPBS contends that the Department calculated a level-of-trade-specific profit mistakenly for purposes of calculating CV. NPBS asserts that profit for CV should not be calculated by level of trade, particularly when there is no match between HM and U.S. levels of trade. NPBS argues further that calculating CV profit by level of trade is contrary to law. Citing section 733(e) of the Tariff Act, NPBS asserts that the statute says nothing about level of trade in describing how to calculate CV. NPBS also asserts that the SAA says nothing about calculating profit for CV on a level-of-trade basis. To the contrary, citing the SAA at 839–841, NPBS asserts that Congress intended the Department to calculate profit for CV on a company-wide basis. NPBS concludes that it would be bad policy to calculate CV profit by level of trade because it would make dumping calculations unpredictable.

Torrington requests that the Department reject NPBS's arguments. Torrington asserts that the lack of explicit instructions in the law does not prevent the Department from calculating profit for CV on a level-of-trade basis. In support of this argument, Torrington cites *Mobile Communications Corp. of America* v. *F.C.C.*, 77 F.3d 1399, 1404–05 (D.C. Cir. 1996). Torrington concludes that the methodology represents a reasonable interpretation of the statute's requirements.

Department's Position: We agree with petitioner. Profit for CV should be calculated on a level-of-trade basis because the level-of-trade-specific profit calculation recognizes that profit levels may differ depending on the level of trade. Thus, in the final results we calculated NPBS's profit for CV on a level-of-trade-specific basis for each class or kind of merchandise. *See* our response to Comment 1 of section 6.C of

AFBs VI, 62 FR 2081 at 2112, for more information on our methodology for the calculation of profit for CV.

5.D. Affiliated-Party Inputs.

Comment 1: NSK contends that the Department has no reasonable basis for requiring the submission of cost information on inputs from affiliated suppliers and should therefore accept the transfer prices of such products as NSK reported.

Torrington argues that the Department should reject NSK's argument for the reasons the Department set forth in detail in *AFBs VI*.

Department's Position: We disagree with NSK. NSK made an identical argument in the prior review with respect to this issue, which we rejected, and NSK offers no new arguments for altering our position. Pursuant to section 773(f)(2) of the Tariff Act, we generally use the transfer price of inputs purchased from an affiliated supplier in determining COP and CV, provided that the transaction occurred at an arm's-length price. In determining whether a transaction occurred at an arm's-length price, we generally compare the transfer price between the affiliated parties to the price of similar merchandise between two unaffiliated parties. If transactions of similar merchandise between two unaffiliated parties are not available, we may use the affiliated supplier's COP for that input as the information available as to what the amount would have been if the transaction had occurred between unaffiliated parties. In the case of a transaction between affiliated persons involving a major input, we use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input. *See AFBs VI* at 2115. Therefore, we have not altered our methodology for these final results.

Comment 2: NSK argues that the Department should recognize the unique situation pertaining to a certain affiliated supplier of inputs and determine that purchases from this supplier were made at arm's-length prices.

Torrington argues that the situation pertaining to this supplier does not demonstrate that purchases from the supplier were necessarily made at arm's-length prices.

Department's Position: We disagree with NSK. NSK made an identical argument in the prior review with respect to an affiliated supplier, which we rejected, and offers no new arguments to convince us to alter our position. *See AFBs VI* at 2115. There is no evidence on the record that indicates that purchases from this supplier were necessarily made at arm's-length prices. Therefore, we have made no change in our treatment of this supplier for the final results.

Comment 3: NSK argues that the Department should not regard a certain type of input as a major input because this type of input does not meet the statutory definition of major inputs.

Torrington argues that NSK does not dispute that this type of input is an essential component of many types of bearings and that NSK's reported data demonstrates that this type of input can account for a significant percentage of the cost of manufacture.

Department's Position: We disagree with NSK. NSK made an identical argument in the prior review with respect to this type of input, which we rejected, and offers no new arguments for altering our position. *See AFBs VI* at 2116. Therefore, we have made no change in our treatment of this type of input for the final results.

Comment 4: Nachi contends that the Department should not reject its reported cost of affiliated-party inputs. Nachi asserts that the Department misunderstood its characterization of its methodology for reporting such costs and the underlying reasons for using this methodology. Nachi explains that its affiliated suppliers were small, captive producers that lacked the capability to provide product-specific cost information. Nachi contends that, if the affiliate is profitable during the POR, the transfer price must necessarily be above the affiliate's cost of producing the input. By contrast, if an affiliate had operated at a loss during the POR, Nachi asserts that it would have reported the COP for the input. Nachi notes that it reported the transfer price for purchases from all affiliates because all of its affiliates were profitable during the POR. Nachi also asserts that the Department accepted this methodology in every prior review in which Nachi participated.

Torrington argues that the overall profitability of an affiliated supplier is not determinative as to whether the transfer prices of particular inputs are above cost or reflect arm's-length prices. Torrington notes that Nachi did not provide prices of similar inputs it obtained from unaffiliated suppliers. Torrington further contends that the Department's preliminary determination to reject Nachi's reported cost of affiliated-party inputs is in accordance with the precedent the Department set in *AFBs VI* at 2115.

Department's Position: We disagree with Nachi. We require costs to be reported on a product-specific basis. Though Nachi's affiliated suppliers may have been captive to Nachi during the POR and though these suppliers may have all been profitable, the fact remains that some inputs may have been sold at transfer prices which were below the affiliate's cost of producing the input during the POR. Finally, we note that each review stands alone and the fact that we accepted Nachi's methodology in prior reviews is not determinative of which methodology we use in this review. Because Nachi did not report its data in such a way that we could determine whether all affiliated-party inputs were sold at a transfer price which was below the affiliate's cost of producing the input on a product-specific basis, for these final results we have used the facts available as described in our preliminary analysis memorandum for Nachi dated March 28, 1997.

Comment 5: Torrington contends that NMB/Pelmec reported COP and CV for all models using transfer prices for inputs purchased from affiliated parties. Torrington asserts that the transfer price of the input material did not exceed the COP of that material in all cases. Torrington argues that, in conformance with the policy the Department enunciated in *AFBs VI*, the Department should use the higher of the transfer price, cost, or market value for major inputs NMB/Pelmec obtained from its affiliated companies.

NMB/Pelmec rebuts that the Department is not strictly required to use COP in every instance, especially in the case where transfer price exceeds COP for the vast majority of inputs. Citing the preamble of *Antidumping Duties; Countervailing Duties Final Rule*, 62 FR 27296, 27362 (May 19, 1997), NMB/Pelmec contends that the Department has the discretion to use transfer prices after considering the specific facts of each case. NMB/Pelmec also notes that, in other comparable aspects of the antidumping margin calculation, such as the below-cost test for HM sales, the Department does not automatically exclude all below-cost prices as long as the vast majority are above cost.

Department's Position: We agree with Torrington that we should have used COP in cases where COP exceeded transfer price for the value of affiliated-party major inputs for NMB/Pelmec. We have made this change for the final results. *See* our response to comment 1 of section 6.D of *AFBs VI* at 2115 for a comprehensive discussion of our practice with regard to affiliated-party inputs.

Comment 6: Torrington argues that NTN Japan purchased components from an affiliated supplier at prices below the cost of producing such items. Torrington states that it based its examination on a submission made by NTN Japan's affiliated party for the record of these reviews. Torrington argues that the Department should restate NTN Japan's reported COP to reflect arm's-length values for those models in which NTN Japan purchased components from this affiliated party. Torrington also maintains that the Department should request all necessary information from NTN Japan to restate such values or apply facts available if NTN Japan is unable to provide such information.

NTN Japan argues that, while it received a public version of the argument regarding transfer prices from NTN Japan's affiliated supplier, it did not receive the full argument because Torrington had deleted the proprietary information. NTN Japan objects to its denial of access through its counsel to this information and notes that NTN Japan's affiliated party permitted such access to the original submission from which Torrington conducted its analysis.

Department Position: We agree with Torrington in part. After re-examining the record, we determine that NTN Japan's costs should be restated because the transfer prices from some affiliated parties were below the affiliate's COP. However, since it is unclear from the record for which models NTN Japan uses the purchased components, we are unable to restate NTN's costs on a model-specific basis. Therefore, we are applying facts available to NTN Japan's costs. Because of the proprietary nature of the information we are using, we cannot discuss the facts available we are applying in this public notice. *See* NTN Japan's final results analysis memorandum dated September 22, 1997 for a complete discussion of the facts available we are using to restate NTN Japan's costs. Finally, while we note NTN Japan's objection to being denied access to the proprietary version of Torrington's arguments, we could not redress the situation due to the circumstances surrounding the treatment of proprietary information in this case. For a complete discussion of these circumstances, see Memorandum from Greg Thompson to the File dated September 22, 1997.

5.E Abnormally High Profits

Comment 1: Torrington argues that no respondent has shown adequately that profits it earned on certain sales were aberrational or abnormal or otherwise should be disregarded for purposes of calculating CV profit. Torrington notes that the statute does not address abnormal profits but provides that sales which are outside the ordinary course of trade should be excluded from the calculation of NV and likewise the calculation of CV profit. Torrington states that, once the Department has excluded sales outside the ordinary course of trade from the calculation of NV, the Department has already ensured that it will use no sales with abnormally high profits in its CV-profit calculation. Torrington therefore concludes that it is illogical for the Department to re-examine the remaining sales for abnormally high profits before calculating a CV-profit rate.

Similarly, Torrington contends that, if a respondent fails to submit adequate information to establish that particular sales were outside the ordinary course of trade, the Department need not re-examine the same sales to determine whether some sales involved abnormally high profits. Torrington concludes that, because it is rational to maximize profits, evidence that maximum profits were extracted on some subset of total sales is not alone sufficient to indicate that profits were abnormal and that there is no profit margin that is abnormally high simply by reference to the costs or prices in the abstract.

Citing section 773(a)(1)(B) of the Tariff Act, INA, NSK, NSK/RHP, NTN, and SKF argue that the Department, in determining NV, must disregard sales which have ''abnormally high'' profits outside the ordinary course of trade. NTN, NSK, and NSK/RHP claim that the Department's new regulations at 351.102(b) and the SAA at 164 give the Department clear instruction to exclude sales made with abnormally high profits and sales made at aberrational prices as outside the ordinary course of trade. INA and NTN argue that sales with abnormally high profits are a category of transactions whose inclusion in the profit calculations would result in unrepresentative price comparisons and distortive results, citing the SAA and *IPSCO* v. *United States,* 714 F. Supp. 1211, 1217 (1989). INA, NTN, and SKF assert that Torrington is incorrect in arguing that, once the Department has eliminated some sales which are outside the ordinary course of trade, it does not need to reexamine the remaining sales to determine if they may have abnormally high profits and are therefore also outside the ordinary course of trade. Rather, respondents contend, the presence of abnormally high profits supports the conclusion that such sales are outside the ordinary course of trade and, therefore, must be excluded from the calculation of NV. NSK and NSK/RHP assert that the benchmark for concluding that sales are outside the ordinary course of trade due to the presence of abnormally high profits is not abnormally high profits *per se* but rather an analysis of the characteristics of the transaction in the context of the specific market.

FAG responds that abnormal profit ratios and inflated CVs resulted from the Department's unlawful calculation of CV profit on a class-or-kind basis rather than on a foreign-like-product basis (discussed at Comment 1 of section 5.C. (Profit for CV), above). Therefore, FAG argues, the Department has calculated abnormally high profit rates unlawfully beyond a reasonable degree of normality. FAG maintains that the URAA requires the Department to first calculate profit earned in connection with the production and sale of a foreign like product, citing section 773(e)(2)(A) of the Tariff Act. FAG argues that, despite the Department's purported use of this ''foreign like product'' methodology, the Department actually determines profit by reference to total revenue and total cost of all class-or-kind sales which pass the cost test. FAG argues that, because the Department determined profit rates on a class-or-kind basis according to section 773(e)(2)(B)(i), it should not exclude from the calculation of profit those sales made below cost while including sales with abnormally high profits. By eliminating sales in this manner, FAG contends, the Department has created profit rates which do not reflect ordinary experience. FAG argues that determination of profit rates on a category of sales more general than the foreign like product requires inclusion of all sales regardless of whether they were made in the ordinary course of trade. FAG requests that the Department recalculate profit rates based on all sales of the product group without regard to whether those sales were made in the ordinary course of trade.

Department's Position: We agree with Torrington that no respondent has adequately shown that profits earned were aberrational or abnormal or otherwise outside the ordinary course of trade. As in past reviews, the fact that a respondent identifies sales as having abnormally high profits does not necessarily render such sales outside the ordinary course of trade. Profits are not automatically abnormally high and such sales are not automatically outside the ordinary course of trade for purposes of computing CV profit simply because certain HM sales had profits higher than those of other sales. In *Large*

Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany (61 FR 38166, July 23, 1996), we stated that, in order to determine that profits are abnormally high, there must be certain unique or unusual characteristics related to the sales in question. Verification of the designation of certain sales as having abnormally high profits merely proves that the respondent identified sales as having abnormally high profits in its own records. This evidence does not indicate that such sales were made outside the ordinary course of trade for purposes of calculating NV in these reviews. Accordingly, we excluded no HM sales from the CV-profit calculation on the basis of finding abnormally high profits.

We disagree with FAG's contention that abnormal profit ratios and inflated CVs resulted from our unlawful calculation of CV profit on a class-or-kind basis rather than on a foreign-like-product basis. See our position with respect to ''Profit for Constructed Value'' above. With respect to FAG's argument that we should not have eliminated sales below cost from our analysis while including those sales it believes to have been made with abnormally high profits, we note that we have followed the requirements set forth in section 773(e)(2)(A) of the Tariff Act. By calculating the profit earned in connection with the sale of the foreign like product, we have examined HM sales properly to determine if they were made within the ordinary course of trade. Upon examining these sales, we have eliminated from our consideration all below-cost sales disregarded under section 773(b) of the Act, as these fall outside the ordinary course of trade. As stated above, respondents have not provided adequate evidence to support the conclusion that any sales which resulted in abnormally high profits were outside the ordinary course of trade. No unique or unusual characteristics related to these sales were demonstrated by any respondent. For these reasons, we have not excluded HM sales on the basis of abnormally high profits. Once we have eliminated sales outside the ordinary course of trade from the HM database, our profit methodology reflects the profit experience fully of the companies for those sales made within the ordinary course of trade and is, therefore, reasonable.

Comment 2: INA claims that there was one specific sale in the HM in the INA–FRG HM sales list that by any measure was made at an aberrational price with an abnormally high profit. INA argues that this is a sufficient basis for concluding that the sale was outside the ordinary course of trade and should be excluded from the Department's final margin calculations. INA cites section 773(a)(1)(B) of the Tariff Act, believing that it provides examples of this type of transaction that may be considered to be outside the ordinary course of trade. INA also points to *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany* (61 FR 38166, July 23, 1996), where the Department rejected arguments that sales with abnormally high profit margins should be excluded from NV, saying that ''numerical profit amounts'' alone were not enough to show that the profits were abnormally high and that ''there must be certain unique or unusual characteristics related to the sales in question'' (at 38178). However, INA asserts that that case should not be read to exclude the possibility that in a particular case ''numerical profit amounts'' alone would be sufficient, since the SAA at 164 specifically identifies abnormally high profit, without more, as a circumstance which would qualify as making a sale outside the ordinary course of trade. In sum, INA asserts that the use of this sale in the calculation of NV would result in irrational and unrepresentative results which is what the ''ordinary course of trade'' requirement of the statute is intended to prevent. Accordingly, INA contends, the Department should exclude the transaction from its final calculations.

In rebuttal, Torrington argues that the Department should not exclude any HM sales allegedly made at aberrational prices or with abnormal profits. Torrington also refers back to its argument that no respondent has shown adequately that profits each earned on certain sales were ''aberrational'' or ''abnormal'' or otherwise should be disregarded for purposes of calculating CV-profit rates for these reviews.

Department's Position: We disagree with INA. The presence of profits higher than those of numerous other sales does not necessarily place the sale outside the ordinary course of trade for purposes of computing CV profit. In order to determine that a sale is outside the ordinary course of trade due to abnormally high profits, there must be certain unique and unusual characteristics related to the sale in question. However, the respondents have provided no information other than the numerical profit amounts to support their contention that certain HM sales had abnormally high profits. Accordingly, we have not excluded INA's specific sale from the CV-profit calculation.

5.F. Credit and Inventory Costs

Comment 1: NSK and NSK-RHP claim that the Department made a clerical error in its calculation of imputed credit and inventory carrying costs for CV. Respondents contend that this clerical error understates imputed credit and inventory carrying costs since the ratios the Department used to calculate these adjustments are based on a price denominator that includes movement charges while the values to which the Department applied the ratios are net of movement charges. They request that the Department correct this error by either removing movement charges from the price denominator used in the ratio calculation or adding movement charges to the values to which the Department applies these ratios.

SKF France, SKF Germany, SKF Italy, SKF Sweden, and Torrington agree that the Department committed a clerical error in its calculation of imputed credit and inventory carrying costs for CV. These parties also agree with NSK's and NSK-RHP's suggested methodology for correcting the error.

Department's Position: We disagree with the interested parties' assertion that the methodology we applied for the preliminary results was a clerical error since it was intentional. However, upon considering all comments on our methodology, we have decided to make a change to our methodology since it understates the imputed credit and inventory carrying costs we calculated for CV. To correct the problem, we deducted movement charges from the denominator of the ratio calculations we used to derive imputed credit and inventory carrying costs for CV. This ensures that the ratios, and values to which we apply them, are comparable.

Comment 2: SNR France asserts that the Department used a price-based denominator, *i.e.*, total HM price, erroneously in the calculation of ratios used to derive imputed credit and inventory carrying costs for CV. SNR France contends that since the Department applies these ratios on a cost basis it must also calculate the ratios on a cost basis by using HM total COP in the denominator. SNR France notes that the Department made this change for the *Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 34201 (June 25, 1997) in *AFBs VI*.

Department's Position: As we explained in response to Comment 1 of this section, a change in the denominator of the ratio calculation is necessary for the sake of comparability. However, we do not agree with the change SNR France requested. To derive imputed credit and inventory carrying costs for CV, which is a surrogate for HM price, we apply the ratios to a CV that includes the COP, direct selling expenses, indirect selling expenses, commissions, profit, and packing. Thus, the CV we use is essentially on the same basis as the price in the denominator of the ratio calculation because both include and exclude the same expenses (except movement expenses, an error we corrected for these final results pursuant to Comment 1 of this section). Furthermore, we believe that an allocation based on price is more appropriate than one based on cost because we calculate imputed expenses by applying an expense factor to the price, not the cost, of transactions.

5.G. Other Issues

Comment 1: Torrington argues that, in the instant review, NTN allocated its reported COP and CV selling expenses on the basis of levels of trade. Torrington contends that, in the 1994/95 review, with respect to U.S. indirect selling expenses, the Department did not accept this allocation method because NTN could not demonstrate how these expenses were attributable to different levels of trade. Torrington asserts that, for these final results, the Department should reach the same conclusion as it did in the *AFBs VI* review and recalculate NTN's COP and CV selling expenses.

NTN argues that, although the Department did not accept NTN's selling expenses based on level of trade in *AFBs VI,* the Department did permit such level-of-trade-based selling expenses in previous reviews. NTN also argues that, in the most recently completed TRB review in which it was involved, the Department accepted its level-of-trade-based selling expenses and even stated that they ''prevent distortion'' (*citing Tapered Roller Bearings, Finished and Unfinished from Japan; Final Results of Administrative Review,* 61 FR 57629, 57636 (November 7, 1996)). NTN points out that the Department did not make any changes in the preliminary results of review to NTN's reported level-of-trade-based HM selling expenses and states that the Department normally uses such selling expenses in its CV calculations. Further, NTN argues that, absent Torrington raising the argument that NTN's HM selling expenses be denied, the Department should accept NTN's reported level-of-trade-based selling expenses.

Department Position: We agree with Torrington that these expenses should not be allocated based on level of trade. The CIT remanded this issue to the Department in *The Timken Company* v. *United States* on May 31, 1996 (*see* Slip Op. 96–86 for the 1990/92 reviews of the order on TRBs over four inches from Japan). The remand directed us to recalculate NTN's indirect selling expenses without regard to level of trade or explain our reasons why we thought the expenses were allocated correctly. In our remand, we explained that, because we could not determine on the basis of the information provided by NTN whether expenses varied according to level of trade, we recalculated the expense information without regard to level of trade. On July 3, 1997, the CIT affirmed our remand (*see* Slip Op. 97–87). Consistent with our remand determination in the TRB case, because NTN has not provided us with the necessary information for this review period to determine whether the expenses varied according to level of trade, we have recalculated its expenses so that they do not reflect levels of trade (*see* Analysis Memo dated September 22, 1997).

6. Further Manufacturing

Comment: Although SKF does not challenge the Department's methodology in applying the special rule of section 772(e) in these reviews, it suggests that the methodology for determining whether there are sufficient quantities of sales of non-further-processed subject merchandise for calculating a margin may not be an appropriate test under all circumstances.

Torrington rebuts that, since SKF does not contest the Department's preliminary results and SKF's comment is not based on the current record, the Department need not address the issue.

Department's Position: Since there is no information or argument on the record demonstrating that our methodology in this case is unreasonable, we have not changed our methodology for these final results. However, as a general matter, we note that the statute has left to our discretion how to determine whether a sufficient quantity of sales exists. We intend to develop our practice in this area on a case-by-case basis.

7. Packing and Movement Expenses

Comment 1: NSK argues that expenses associated with repacking in the United States are not selling expenses and thus should not be included in the selling expenses the Department uses to calculate CEP profit. Citing the statute at sections 772(c) and (d), NSK contends that repacking expenses are deducted pursuant to section 772(c)(2)(A) of the statute and thus should not be included in the CEP-profit calculation. In addition, NSK alleges that the Department has stated this implicitly by asking for packing and repacking expenses in a part of its questionnaire which is separate from selling expense.

Torrington argues that the Department treated repacking expenses as selling expenses correctly for the purposes of calculating CEP profit. Torrington notes that NSK reported that it normally does not perform repacking for U.S. sales but that it does some repacking to accommodate orders for smaller distributors. Torrington contends that this characterization is consistent with the Department's treatment of repacking as a selling expense.

Department's Position: We disagree with NSK. As NSK notes, section 772(c)(2)(A) of the Tariff Act covers ''transportation and other expenses, including warehousing expenses, incurred in bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' *See* SAA at 153. We do not view repacking expenses as movement expenses. The repacking of subject merchandise in the United States bears no relationship to moving the merchandise from one point to another. The fact that repacking is not necessary to move merchandise is borne out by the fact that the merchandise was moved from the exporting country to the United States prior to repacking. Rather, we view repacking expenses as direct selling expenses respondents incur on behalf of certain sales which we deduct pursuant to section 772(d)(1)(B) of the statute. Section 772(d)(1)(B) of the statute directs that CEP shall be reduced by ''expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees, and warranties.'' We regard repacking expense as a direct selling expense because it was performed on individual products in order to sell the merchandise to the unaffiliated customer in the United States. Presumably, if a respondent could have sold the merchandise without repacking it, the respondent would have done so. Thus, it is an expense associated with selling the merchandise.

Section 772(d)(1)(B) of the Tariff Act does not limit direct selling expenses deducted from CEP to credit expenses, guarantees or warranties. Furthermore, as noted in the SAA, under section 772(d), CEP will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of any selling expenses which result from, and bear a direct relationship to, selling activities in the United States. Finally, the format of our questionnaire is not germane to our analysis in determining how we treat reported expenses. Accordingly, we have continued to include repacking in the pool of selling expenses we use to calculate CEP profit.

Comment 2: Torrington asserts that NTN's reported HM packing expense is overstated based on a comparison it made between the information NTN and several other Japanese respondents provided. Torrington determined these rates by dividing the reported packing expenses by the reported gross unit prices. Torrington also asserts that NTN included expenses other than packing in its reported packing expense. In addition, Torrington alleges that NTN did not provide all of the worksheets necessary to support the manner in which NTN calculates its reported packing expense and states that, given this information, it cannot determine whether exports were included in the reported expense. Torrington maintains that, if exports were included in the calculation of NTN's packing expense, this expense may be based, in part, on transfer prices which could yield distortive figures. Further, Torrington asserts that NTN did not allocate its packing expense accurately. Torrington maintains that NTN did not adhere to the Department's requirement, as specified in its questionnaire, to report the expense based on identifiable costs. Torrington suggests that, for the above-mentioned reasons, the Department should either recalculate this expense or use the lowest packing rate from any other Japanese respondent.

NTN contends that it reported its HM packing expense accurately. NTN states that the experience of other Japanese companies has no bearing on the actual packing expense NTN incurred. NTN also states that, even if expenses other than packing were included in its reported packing expense, such expenses are negligible and, therefore, would have little impact on the reported packing expense. In addition, NTN argues that Torrington's allegation that NTN's packing expense includes export sales is incorrect. NTN maintains that the Department verified this expense and found no discrepancies with regard to this expense. NTN argues that it allocated its packing expense correctly and states that Torrington's suggestion that the Department recalculate this expense is baseless.

Department Position: Other respondents' packing costs are irrelevant to determining the accuracy of NTN's claimed amounts. We verified the calculation and allocation of NTN's packing expenses and found them to be reasonably undistortive (*see* verification report dated May 8, 1997, at 6). Therefore, we have accepted NTN's packing expenses as they were submitted.

8. Affiliated Parties

Comment 1: NPBS states that the Department should not treat a certain customer as affiliated. NPBS explains that the apparent basis for such treatment is that the customer's stockholding in NPBS barely meets the 5-percent threshold in 771(33)(E) of the statute when only the stock outstanding as of the time of the review is taken into account. NPBS claims that, in fact, the shares were previously held by employees of the NPBS company in question that would have taken the customer's shareholding below the 5-percent threshold. NPBS argues that, when some employees retire, their shares temporarily are converted into treasury stock but are then re-issued. NPBS claims that the Department should have included these shares in the denominator for the 5-percent test and, therefore, the Department would not have found the customer to be affiliated. NPBS contends that the customer's minimal shareholding does not place it in a position to satisfy the ''control'' criterion of 771(33)(G) of the Tariff Act and, accordingly, the Department should not treat the customer as affiliated.

Torrington responds that NPBS's argument should be rejected. Torrington explains that the Department applied its test correctly on the basis of facts observable and verifiable, rather than on speculation that the company expects to reissue certain stock, effectively reducing the percentage share of the customer.

Department's Position: We agree with petitioner. For these final results, we have continued to treat NPBS and the customer in question as affiliated. In accordance with section 771(33)(E) of the Tariff Act, the Department employs a 5-percent stock-ownership rule to determine whether two parties are affiliated. The party in question stated, and we verified, that during the POR it held 5 percent of the outstanding stock of NPBS. Once a party attains 5-percent ownership, for whatever reason, the Department determines that the parties are affiliated. Therefore, we have continued to treat the two companies as affiliated.

Comment 2: Torrington contends that the Department should not excuse NTN from obtaining sales information from its affiliated resellers in the HM. Torrington argues that NTN's excuses regarding the size of its resellers, its legal inability to obtain proprietary information from companies in which it holds a minority interest, the time involved to obtain such information, and the insignificant impact this information would have on the calculated margin are insufficient. Torrington also dismisses NTN's argument that the Department permitted NTN's reporting of sales to resellers in prior reviews because, Torrington states, each review is a separate proceeding. Torrington maintains that NTN has failed to demonstrate the arm's-length nature of such sales. Torrington argues further that, rather than disregard such sales when they fail the arm's length test, the Department should apply facts available to NTN's sales to affiliated resellers. Torrington also argues that, if the Department does not apply facts available to such sales, it should exclude such sales from the final margin calculations.

NTN contends that the application of facts available is not warranted because it provided responses to the Department's questionnaires and, as per the questionnaire, notified the Department of the difficulty involved in obtaining sales information from its affiliated resellers. NTN also argues that the Department did not request that NTN provide the sales information but, rather, requested an explanation concerning NTN's inability to obtain this information which it provided subsequently.

Department's Position: We disagree with the petitioner. NTN notified us of the sales to affiliated customers in the HM prior to answering our questionnaire. Given that these sales constituted a small percentage of NTN's HM sales and that collecting the data was not possible, we determined that NTN should report the sales to its affiliates. In the preliminary results, we conducted an arm's-length test and, in accordance with section 773(f)(2), we disregarded those sales which were not made at arm's-length prices. Based upon these facts and our determination not to request data concerning sales to unaffiliated customers, we have determined that the application of facts available is not warranted in this case.

9. Sample Sales and Prototypes/Zero Price Transactions

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

In light of the CAFC's opinion, we have reevaluated and revised our policy with respect to sales of samples. Therefore, pursuant to the CAFC's opinion, the Department will now exclude sample transactions, transactions for which a respondent has established that there is either no transfer of ownership or no consideration, from the dumping calculations.

This new policy does not mean that the Department automatically excludes from analysis any transaction to which a respondent applies the label ''sample.'' In fact, for these reviews, we determined that there were instances where it is appropriate not to exclude such alleged samples from our dumping analysis. It is well-established that the burden of producing support rests with the party in possession of the needed information. *See, e.g., NTN Bearing Corporation of America* v. *United States,* 997 F.2d 1453, 1458–59 (CAFC 1993), (citing *Zenith Elecs. Corp.* v. *United States,* 988 F.2d 1573, 1583 (CAFC 1993), and *Tianjin Mach. Import & Export Corp.* v. *United States,* 806 F. Supp. 1008, 1015 (CIT 1992)). In several cases, as discussed below, respondents failed to demonstrate or to submit documentation to show that their claimed sample sales lacked consideration. When respondents failed to support their sample claim, we did not exclude the alleged samples from our margin analysis.

With respect to HM sales, in addition to excluding sample transactions which do not meet the definition of ''sales,'' we may exclude sales designated as samples or prototypes from our analysis, pursuant to section 773(a)(1) of the Tariff Act, when a respondent has provided evidence demonstrating that the sales were not made in the ordinary course of trade as defined in section 771(15). We have addressed comments regarding ordinary course of trade separately in the section titled ''Ordinary Course of Trade.''

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

Comment 1: Torrington argues that the CAFC's recent determination in *NSK* does not require a modification of the preliminary results and that the Department should continue to include in the U.S. database free samples which respondents gave to parties in the United States. Torrington argues further that the Department rejected respondents' claims properly that certain sales should be excluded based upon the information contained in respondents' questionnaire responses. Torrington maintains that negative inferences could be made in respondents' questionnaire responses where respondents did not supply the requested information. Torrington maintains further that the Department should determine whether to exclude free samples from the sales database by distinguishing between situations where sample recipients undertake actual obligations or engage in parallel transactions and where the recipients remain free to purchase a product of their own accord.

NSK, NSK/RHP, SKF, FAG, and NTN respond that the *NSK* decision requires the Department to re-evaluate U.S. samples and exclude all sample sales from the U.S. database. Respondents argue that the *NSK* decision held that a transfer of a zero-priced sample lacks consideration and does not constitute a sale; therefore, they argue, the Department cannot use such transfers in the dumping analysis. NSK and NSK/RHP contend further that the Department must apply the ordinary meaning of ''sale'' to the antidumping law, which involves not only the transfer of ownership but also the payment, or promise, of consideration.

NSK, NSK/RHP, SKF, FAG, and INA argue that the Department's requirement that respondents report free samples is not based on the information presented in their questionnaire responses. Respondents maintain that the Department's position regarding samples sales is based on the assertion that giving away a sample constitutes a sale for purposes of the antidumping duty statute unless proven otherwise. Respondents argue that, since the *NSK* decision overturned the Department's past practice, the Department should now exclude free samples from the U.S. database.

Department's Position: We agree with both parties in part. We agree with respondents that the *NSK* decision requires us to examine, in our determination of whether samples offered to customers at no charge constitute sales, whether the transactions involved both a transfer of ownership and consideration.

We also agree with Torrington that, in our determination of whether to exclude transactions identified as samples from the sales database, we should examine the information on the record to determine whether the recipients of the samples have undertaken actual obligations to purchase AFBs from the provider of the free bearings or whether the recipients remained free to purchase bearings of their own accord. This approach is consistent with the CAFC's decision which, in finding that NSK's samples given to potential customers at no charge lacked consideration, noted ''[t]hese customers were free to transact with NSK based solely on their whim.'' *See NSK,* at 975. As the CAFC noted, ''[c]onsideration generally requires a bargained for exchange'' (*Id.*) and we did not limit our review of consideration to the payment of a monetary price for the sample products.

With regard to NSK's reported U.S. sample and prototype transactions, it appears from the record that NSK did not receive consideration for sample transactions, but that NSK did receive consideration for its reported prototype transactions. *See* Proprietary Exhibit C–24 of NSK's September 9, 1996 response. Therefore, in accordance with the CAFC's decision in *NSK,* we have excluded NSK's reported sample transactions but not its claimed prototype transactions from its U.S. sales database. We note that we had removed NSK's reported HM sample transactions from its HM sales database for the preliminary results because NSK demonstrated that such transactions were outside the ordinary course of trade. We have not altered this treatment for the final results.

With regard to NSK/RHP's and Nachi's reported sample transactions, we examined the record and found no evidence that NSK/RHP and Nachi received consideration for such transactions. Therefore, we have excluded NSK/RHP's and Nachi's reported sample sales from their U.S. sales databases. NSK/RHP and Nachi did not report sample sales in the HM. With respect to FAG, INA, NTN, and SKF, we have addressed each company's specific arguments below.

Comment 2: Torrington contends that, if the Department determines, based upon the *NSK* decision, to exclude certain sales claimed to be samples from the U.S. database, then the Department should require that the expenses incurred in connection with providing the free samples be accounted for as a direct selling expense to be attributed to the first sales transaction following the sample transaction. Torrington contends that, where this approach is not appropriate, the Department should attribute the expense (based on the COP of the sample) to all sales to the customer who received the sample and should cover the full COP of the sample.

NSK, NSK/RHP, SKF, INA, and FAG contest Torrington's proposal to treat the cost of samples as a direct selling expense. NSK and NSK/RHP respond that the Department should treat the cost of samples as an indirect advertising expense incurred in the general promotion of sales. They argue that the cost of a sample bearing is not properly charged to the recipient and that Torrington's approach is commercially unrealistic as it places more weight on the sample than it can reasonably bear. NSK, NSK/RHP, and SKF argue that the provision of free samples is not linked to specific sales; many factors drive the decision to purchase bearings. NSK and NSK/RHP contend further that, under Torrington's approach, if samples are provided and no sales occur, the expense would not be allocated to any U.S. sales.

SKF argues that, given the *NSK* decision, the Department need not inquire whether expenses associated with free samples were reported as indirect selling expenses. SKF maintains that, because the CAFC's holding in *NSK* did not rest upon the reporting of expenses, the Department should not base its decision to exclude sample sales upon whether the respondents had accounted for the related expenses. SKF contends that, if the Department disagrees with its argument, the Department should inquire about expense information only in future reviews. Finally, SKF argues that it reported its expenses related to sample sales as indirect selling expenses.

NTN argues that sample-related expenses cannot, as Torrington suggests, be attributed to the first sale following the sample transaction because there can be no selling expenses associated with the transaction since there has been no sale.

FAG and INA respond that Torrington failed to explain why the cost of samples should be treated as a direct selling expense. FAG argues further that there is no need to report the cost of manufacturing the samples since the samples were not sold. In addition, FAG maintains that respondents have accounted for all U.S. and HM selling expenses, as required by the questionnaire.

Department's Position: We have determined that we should treat the cost of zero-priced samples as an indirect selling expense respondents incurred in the general promotion of sales. However, we examined the record for these reviews and compared the total entered value of sample transactions with the total pool of expenses respondents used to calculate indirect selling expenses and found the total entered value of the sample transactions for all respondents for which we eliminated zero-price samples for these final results to be *de minimis.* Due to the burden of factoring these *de minimis* amounts into respondents' complex calculations of their indirect selling expenses, we did not recalculate indirect selling expenses to reflect the cost of zero-priced samples. Although we did not make this adjustment for these final results, in future reviews we will require respondents to include the costs associated with free samples as an indirect selling expense.

Comment 3: FAG Germany and FAG Italy request that the Department exclude all zero-priced U.S. sample transactions from the dumping margin calculation. Citing *NSK,* FAG Germany and FAG Italy contend that the sample transactions in their U.S. sales databases do not constitute ''sales'' since they provided them to potential customers at no charge.

Torrington contends that, since respondents repeatedly refer to zero-priced U.S. sample transactions as ''sales'' in their responses, the Department should draw an adverse inference and not exclude them from the margin calculation. Torrington also claims that respondents did not provide sufficient data regarding the individual sales they claimed for exclusion. Regarding FAG Italy, Torrington also contends that the Department should not exclude transactions from the margin calculation since the record is contradictory about whether this company had any such sample transactions. In support of this argument, Torrington cites to a statement in FAG Italy's supplemental questionnaire response that suggests that there are no samples in the U.S. sales database.

Department's Position: We have examined the record with regard to FAG Germany's reported sample transactions and found no evidence that FAG Germany received consideration for reported U.S. sample transactions. We did find evidence that indicated that FAG Germany received consideration for claimed HM sample transactions. Furthermore, FAG Germany did not demonstrate or submit documentation to show that its claimed HM sample sales were outside the ordinary course of trade. Therefore, in accordance with the CAFC's decision in *NSK,* we have excluded FAG Germany's reported sample sales from its U.S. sales database; however, we did not exclude FAG Germany's claimed HM ''samples'' from the calculation of NV.

With regard to FAG Italy, we have examined its HM and U.S. sales databases and found that FAG Italy did not identify any transactions as samples. Moreover, we also looked for zero-priced sales and found that FAG Italy did not report any zero-priced sales in either database. Therefore, we determined that FAG Italy's argument regarding sample sales is irrelevant with respect to these reviews.

Comment 4: The NTN companies (NTN Japan and NTN Germany) request that the Department exclude their sample sales from their U.S. sales databases in accordance with the CAFC's ruling in *NSK.*

Torrington argues that the Department must first determine whether a respondent has answered the Department's questions adequately regarding sample sales before making any exclusions. When all the information is not presented, Torrington asserts that the Department should assume that withheld information would have established that consideration (to which the court referred in *NSK*) was provided. Torrington maintains that such a fact pattern exists for the NTN companies and the Department should make adverse inferences. Torrington points to the NTN companies' questionnaire responses wherein they declined to answer questions regarding sample sales.

Department's Position: We agree with Torrington. As we noted in the introduction to this issue, the party in possession of the information has the burden of producing that information, particularly when seeking a favorable adjustment or exclusion. The NTN companies did not answer our questions regarding the purchase history of parties receiving samples. The NTN companies also did not answer our questions regarding the prices and quantities involved in sample sales. Rather, the NTN companies stated that the information is irrelevant. The answers to these questions would have aided us in determining whether the NTN companies received a bargained-for exchange from their U.S. customers.

Lacking knowledge of the details of these transactions, we cannot conclude that the NTN companies received no consideration for these alleged samples. In other words, because the NTN companies impeded our investigation of these transactions, we determined that an adverse inference is appropriate. Therefore, for these final results, we have included the NTN companies' sample sales in their respective U.S. sales database.

Comment 5: SNR France requests that the Department exclude its sample sales from its U.S. sales database in accordance with the CAFC's ruling in *NSK.* SNR France states that it responded to the Department's questionnaire regarding sample sales fully and the Department did not ask additional questions in its supplemental questionnaire.

Torrington responds that the Department must first determine whether a respondent has answered the Department's questions regarding sample sales at a sufficient level and a deficiency in this regard should draw an appropriate adverse inference. Torrington contends that the Department should assume that withheld information would have established that consideration (to which the court referred in *NSK*) was provided. Torrington maintains that such a fact pattern exists for SNR France and the Department should make an adverse inference. Torrington points to SNR France's questionnaire response wherein it declined to answer questions regarding sample sales.

Department's Position: We agree with SNR France. The firm provided a basic description of the sample sales it reported for the review period. Moreover, we found no evidence on the record that SNR France received consideration for reported U.S. sample transactions. Therefore, for these final results, we have excluded these sales from the U.S. sales database.

Comment 6: Torrington argues that the Department should reject SKF Germany's claims that sales identified as samples or prototypes should be excluded from the HM sales database because SKF Germany did not supply much of the information the Department required to support exclusion. In arguing that the respondent has the burden of proof when claiming favorable adjustments, Torrington cites *Fujitsu General Limited* v. *United States,* 88 F.3d 1034, 1040 (CAFC 1996). Torrington adds that the Department denied such claims with regard to SKF and NTN in the 1994/95 reviews.

SKF Germany argues that its response regarding samples and prototypes should be sufficient to justify SKF Germany's claim for exclusion of these transactions from its HM database. SKF Germany explains that there were few transactions involving samples and prototypes in the HM, thereby not warranting the expenditure of the substantial resources needed to provide the detailed data responsive to the Department's request.

Department's Position: We agree with SKF Germany. SKF Germany provided a basic description of the sample and prototype sales it reported for the review period. Moreover, we found no evidence on the record that SKF Germany received consideration for reported HM sample and prototype transactions. Therefore, for these final results, we have excluded these sales from the HM sales database.

Comment 7: INA asserts that the Department must exclude zero-priced samples given to customers at no charge from the U.S. sales database as these are not ''sales'' within the meaning of the antidumping law, citing *NSK.*

With regard to INA's zero-priced sample transactions, Torrington asks that the Department draw an adverse inference and not exclude any such transactions from the U.S. sales database. Torrington asserts that INA elected not to provide the information the Department requested and stated that it could not systematically identify sample transactions from its sales records.

Department's Position: We agree with Torrington. As we noted in the introduction to this issue, the party in possession of the information has the burden of producing that information, particularly when seeking a favorable adjustment or exclusion. INA did not answer our questions regarding the purchase history of parties receiving samples. INA also did not answer our questions regarding the prices and quantities involved in sample transactions. The answers to these questions would have aided us in determining whether INA received a bargained-for exchange from its U.S. customers. Lacking knowledge of the details of these transactions, we cannot conclude that INA received no consideration for these alleged samples. In other words, because INA impeded our investigation of these transactions, we determined that an adverse inference is appropriate. Therefore for these final results, we have included INA's sample sales in its U.S. sales database.

With regard to INA's HM ''zero-priced'' sample transactions, INA provided a complete response with respect to these transactions. We examined the record and found no evidence that INA received consideration for its HM sample transactions. Therefore, in accordance with the CAFC's decision in *NSK,* we have excluded INA's reported HM ''zero-priced'' sample transactions.

10. Export Price and Constructed Export Price

Comment 1: INA argues that the Department calculated CEP profit incorrectly on a class-or-kind basis. INA contends that the calculation should have been on a product-specific basis, since the Department makes the CEP-profit adjustment on a transaction-specific basis.

INA contends that section 772(d) of the Tariff Act provides that, in establishing CEP, the Department will make certain additional deductions beyond those it makes in establishing EP. According to INA, all of these deductions are transaction-specific since they are applied to a particular U.S. price and among the deductions is CEP profit, which is allocated to CEP expenses.

INA argues further that section 772(f) provides that the Department will determine the CEP-profit rate with reference to ''the expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country.'' Therefore, INA argues, since the Department uses the profit rate to determine transaction-specific profit under section 772(d) and applies it to transaction-specific expenses, it is apparent that ''the subject merchandise sold in the United States'' in section 772(f) refers to the particular merchandise for which CEP profit is being calculated. Thus, INA claims the ''foreign like product'' must refer to merchandise in the same family as the U.S. merchandise.

Furthermore, INA argues that merchandise that may be a foreign like product with respect to one model sold in the United States may not be a foreign like product with respect to another.

Therefore, INA argues that it is logically impossible for an aggregation of like products to be ''the foreign like product'' to all subject merchandise.

Finally, INA argues that the expense and profit data necessary to calculate CEP profit for each bearing family is on the record and, therefore, the Department should calculate CEP profit on this basis, not on an aggregation of reported HM and U.S. data. In support of INA, SKF argues that calculating CEP profit on a product-specific basis would lead to more accurate results.

Torrington counters that the Department's methodology for calculating CEP profit on a class-or-kind basis is a reasonable application of the statute, citing section 772(e) and the SAA at 824–825. Torrington disagrees with INA and SKF by arguing that the statute does not require the Department to calculate CEP profit on a product-specific basis and that, where the statute is silent or ambiguous with respect to a specific issue, the agency's methodology is permissible if based on a reasonable construction of the statute. Petitioner argues that the Department's methodology is reasonable and, therefore, is permissible.

Department's Position: We agree with Torrington. As discussed in more detail in *AFBs VI,* neither the statute nor the SAA requires us to calculate CEP profit on bases more specific than the subject merchandise as a whole. *See AFBs VI,* 62 FR at 2125. Respondent's suggestion would add a layer of complexity to an already complicated exercise with no increase in accuracy. Furthermore, a subdivision of the CEP-profit calculation would be more susceptible to manipulation.

Comment 2: SNR France and INA Germany argue that the Department excluded imputed expenses (credit expenses and inventory carrying costs) erroneously from its calculation of CEP profit, yet it applied the resulting profit factor to a U.S. selling expense total that includes these imputed costs. This, SNR France and INA Germany maintain, results in an unfair adjustment to U.S. price.

Torrington argues that this methodology conforms with the Department's practice in the 1994/95 reviews. Torrington suggests that the Department reject SNR France's and INA Germany's arguments for the reasons in *AFBs VI* at 2126.

Department's Position: We agree with Torrington. SNR France's approach blurs the definition of U.S. expenses, as defined in section 772(f)(2)(B), and U.S. selling expenses, as defined in section 772(d) (1) and (2). As we discussed in *AFBs VI,* 62 FR at 2126, sections 772(f)(1) and 772(f)(2)(D) of the Tariff Act state that the per-unit profit amount shall be an amount determined by multiplying the total actual profit by the applicable percentage (ratio of total U.S. expenses to total expenses) and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In accordance with the statute, we base the calculation of the total actual profit used in calculating the per-unit profit amount for CEP sales on actual revenues and expenses recognized by the company. In calculating the per-unit cost of the U.S. sales, we have included net interest expense. Therefore, we do not need to include imputed interest expenses in the ''total actual profit'' calculation since we have already accounted for actual interest in computing this amount under section 772(f)(1). When we allocated a portion of the actual profit to each CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expense allocation factor. This methodology is consistent with section 772(f)(1) of the statute, which defines ''total United States Expense'' as the total expenses described under sections 772(d) (1) and (2). Such expenses include both imputed credit and inventory carrying costs. *See Certain Stainless Wire Rods from France,* 61 FR 47874, 47882 (September 11, 1996).

Comment 3: Torrington alleges that NTN failed to include certain expenses incurred in the United States within the NTN organizational structure as CEP selling expenses. In rebuttal, NTN argues that the Department asked NTN the exact question that Torrington now raises and accepted NTN's response appropriately.

Department's Position: We agree with NTN. Because of the proprietary nature of the comments we received on this issue, however, we are not able to respond adequately in this notice. *See* proprietary memorandum to the file dated September 22, 1997.

Comment 4: Torrington alleges that certain of NTN's claimed EP transactions are actually CEP transactions when examined in light of the criteria for defining EP transactions as outlined in the Department's *Antidumping Manual.* Petitioner notes that these criteria are (1) the sales transaction occurs prior to importation; (2) the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent; (3) this was a customary commercial channel for sales of this merchandise between the parties involved; and (4) the related agent in the United States acted only as a processor of the sales-related documentation and a communication link with the unrelated U.S. buyer. Citing to *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea,* 62 FR 18,404 (April 15, 1997)(*Steel*), petitioner contends that, when the activities of the related selling agent exceed the functions normally associated with a related agent involved with EP sales, this indicates that the related agent is involved in more than just EP sales. Petitioner cites the following passage from the Department's *Antidumping Manual* (1994) as examples of selling activities that exceed those associated with EP sales:

> The extent of the related selling agent's normal functions, such as the administration of warranties, advertising, extensive in-house technical assistance, and the supervision of further manufacturing, may indicate that the agent is more than the ''paper-pusher'' envisioned for purchase price sales. *Id.* chapter 7 at 4–5.

Torrington concludes that this is the case for the sales in question and that they should be reclassified as CEP transactions.

In response, NTN argues that *Steel* provides no support for its position since it involved instances where there was a sale by the affiliated U.S. importer. NTN states that the Department verified the sales in question and found them to be sales by NTN Japan to an unaffiliated customer in the United States. NTN argues that for the petitioner to contend that such sales are CEP sales ignores the verification findings and effectively creates a sale between the unaffiliated customer and a NTN U.S. subsidiary (NBCA) where there were no sales negotiations between the unaffiliated customer and NBCA, no purchase orders from the unaffiliated customer, no invoices from NBCA, NBCA never takes title to the merchandise, NBCA never carries the merchandise in its inventory, and NBCA never acts as the importer of record. In summary, NTN states that these sales were made in Japan and met the Department's definition of EP sales transactions and that its affiliated party in the United States performed no activities other than those of being a communications link or processor of documents. Finally, NTN argues that it provided further information in response to a supplemental questionnaire and that the Department accepted this information.

Department's Position: We agree with NTN. Torrington lists the criteria the Department considers when deciding whether sales should be classified as EP or CEP. Of the criteria outlined, however, the only area that Torrington questions is the activities of NBCA's liaison office. As NTN notes, there is no information on the record suggesting that NBCA is the seller for the sales in question or that NTN has otherwise misreported the sales. Moreover, although we did not verify NTN's response for these reviews, we have verified this issue in past reviews and found no activities related to these sales. Therefore, after examining documentation for sales to the customer in question, concluded that they were categorized properly as EP transactions. Inasmuch as nothing on the record indicates any change in NTN's business practices, we determine these sales to be EP transactions.

Comment 5: NTN argues that the Department should calculate CEP profit on a level-of-trade-specific basis. NTN maintains that the statute expresses a preference for CEP profit to be calculated on the narrowest possible basis which, NTN states, ensures more accurate results, citing section 772f(2)C)(ii). NTN argues that, in accordance with the statute and for the purpose of employing as specific and accurate expenses as is possible in the calculation of NV and CEP, the Department accepted NTN's reported level-of-trade-based selling expenses and should, for the same reasons, calculate CEP profit based on level of trade such that it accounts for price differences at the levels.

Torrington contends that sections 772(C) and (D) of the statute requires that total expenses and profit be reported, not level-of-trade-specific expenses and profit. Torrington maintains further that, as the Department stated in the preamble to its new regulations, CEP profit should be based on all sales and anything less would further complicate the calculation and make the Department more vulnerable to manipulation.

Department's Position: We agree with Torrington for the reasons we discussed in response to comment 1 above and in *AFBs VI*, 62 FR at 2125.

11. Programming and Clerical Errors

FAG Germany, INA, Koyo, Nachi, NPBS, NTN Japan, SKF Italy, SKF Germany, SKF France, SKF Sweden, SNR France, and Torrington made allegations of programming or clerical errors. Where all parties and we agree that a programming or clerical error occurred, we made the necessary correction and addressed the comment in the final results analysis memoranda. The comments we included here address situations where parties alleged that we made a programming or clerical error but either we or another party to the proceedings disagrees with the allegation. This section of the notice also deals with clerical errors that respondents made but did not bring to our attention until after issuance of the preliminary results.

Comment 1: Nachi contends that, due to a programming error, the Department's credit-period calculation improperly inflates imputed credit expenses for U.S. sales. (The reason for this error is proprietary; therefore, we are not able to include a summary in this notice. For a detailed description of the error, please see page 3 of Nachi's July 1, 1997, Japan Issues Case Brief.) Nachi provides programming language intended to correct this error.

Instead of making the programming correction Nachi requested, Torrington requests a methodological change. Citing the questionnaire and the antidumping manual, Torrington asserts that the Department should base imputed credit expense solely upon the short-term interest rate of the U.S. affiliate. Torrington argues that the credit terms offered to the U.S. affiliate by the foreign exporter do not provide a basis to recalculate part of the U.S. credit expense. Torrington argues further that, if the Department accepts Nachi's methodology for calculating credit expense, the Department should not correct the programming error by using the computer language Nachi presented. Torrington contends that Nachi's suggested computer language is flawed.

Department's Position: We agree with Nachi that the credit-period calculation contains a programming error that inflates the imputed credit expense for U.S. sales improperly. As described below, we corrected the programming error using the programming language Torrington suggested on page 4 of its July 8, 1997, Japan Issues Rebuttal Brief.

We disagree with Torrington's allegation that Nachi's credit-expense calculation methodology is improper. The foreign parent has to finance its receivables using short-term loans during the period in which its U.S. affiliate has not paid for purchases from the foreign parent. Only after the U.S. affiliate reimburses its parent does it absorb the cost of purchasing the merchandise and thus have to begin to finance its own receivables. Therefore, we have accepted Nachi's U.S. credit expense methodology.

We agree with Torrington, however, that Nachi's suggested computer language is flawed as Torrington describes in its rebuttal brief. After analyzing the programming language Nachi suggested and the language Torrington suggested, we conclude that Torrington's language calculates credit expense as we intended for the preliminary results. Therefore, we have adopted Torrington's suggested programming language to account for the programming error Nachi alleged.

Comment 2: Torrington contends that an error occurred in the cost-test section of the Department's computer program for Barden. Torrington claims that the program should have identified as below-cost sales several observations that it treated as above cost.

Barden asserts that Torrington neither offers an explanation of how or why this alleged error occurred nor does Torrington offer computer language to correct it. Barden claims that it re-ran the computer program and found no discrepancies with this portion of the program. Barden requests that the Department therefore dismiss Torrington's argument.

Barden also argues that the Department had no legal or factual authority upon which to apply the below-cost test to its HM database. Barden asserts that the Department unlawfully disregarded below-cost sales in a previous review covering the 1993/94 period. Therefore, according to Barden, there is no lawful basis for the Department to request or utilize Barden's COP data in this review. Thus, Barden requests that the Department not apply a below-cost test to Barden's HM sales.

Department's Position: We disagree with Torrington. We have confirmed that the cost test is working properly. Specifically, it is disregarding individual below-cost sales where more than 20 percent of the quantity of sales of a model are below cost. Therefore, we have determined that the error Torrington alleged does not exist.

With respect to our application of the cost test to Barden's HM sales, we disagree with Barden. As we stated in *AFBs V* at 66490, we cannot disregard the fact that we found that Barden was selling its products below the COP in the HM. Therefore, we are required to disregard such sales in accordance with section 773(b) of the Tariff Act. Moreover, pursuant to our *AFBs V* determination of below-cost sales by Barden in the HM, in accordance with section 773(b)(2)(A)(i) of the Tariff Act, we have the authority in this review to request COP information and apply the cost test. As a result of applying the cost test, we found below-cost sales and, therefore, disregarded Barden's below-cost sales in accordance with the statute.

Comment 3: SNR France contends that it reported an incorrect adjustment for one of the U.S. sales transactions that the Department used for the antidumping margin calculations. SNR France explains that it should have reported a quantity adjustment but that instead it reported a billing adjustment equal to an amount of the gross unit price. SNR France requests that the Department review its submission dated June 19, 1997, and correct the error accordingly.

Department's Position: We established our criteria for the correction of clerical errors made by a respondent but discovered after the preliminary results in *Certain Fresh Cut Flowers from Colombia,* 61 FR 42833, 42834 (August 19, 1996) (*Flowers from Colombia*). In *Flowers from Colombia,* we stated that we will correct these types of errors under the following conditions: (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) we must be satisfied that the corrective documentation provided in support of the clerical-error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical-error allegation, and any corrective documentation, must be submitted to us no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification.

SNR France has satisfied the Department's criteria for the correction of clerical errors made by a respondent but discovered after the preliminary results. Thus, we made the requested correction.

Comment 4: NPBS contends that, when testing prices to affiliated customers, the Department's computer program mistakenly treats sales to one customer as if they were sales to several different customers. NPBS explains that it assigned a different customer code for each of the customer's sales offices and the sales offices of the customer's sales subsidiary affiliate. NPBS requests that the Department rerun the arm's-length test, treating the separate codes as a single customer. NPBS also contends that, in the Department's arm's-length test, two of the customer codes used for identifying sales to the affiliated customer apply to different customers. NPBS states that the two customer codes identify unaffiliated customers that have the same first word in their names as the customer the Department intended to treat as an affiliate. NPBS argues that the customers in question have no affiliation with NPBS or the customer which the Department intended to treat as an affiliate.

Torrington contends that the Department has no obligation to comply with NPBS's request to rerun the arm's-length test and treat the separate codes as one customer. Torrington argues that NPBS has not alleged a clerical error in the application of the test but is taking issue with how the Department applied the test. Torrington asserts that the Department should make no change since NPBS has not explained why its methodology is better than the Department's.

Department's Position: We agree with respondent. NPBS is correct that we mistakenly treated sales to one customer as if they were sales to several different customers. For the arm's-length test, it was our intent to analyze the transactions as sales to a single customer. We have corrected this clerical error by assigning the affiliated customer a single code.

We also agree with NPBS that we should treat two of the customers we treated as affiliated in our preliminary results as unaffiliated. This clerical error occurred when we inadvertently assigned the customers the affiliation code because they have the same first word in their name as the affiliated customer. To correct the problem, we have conducted the arm's-length test without designating the two companies as affiliates.

Comment 5: Torrington contends that there is a programming error in the section of the Department's computer program for SKF France that converts expenses incurred in French francs on U.S. sales to U.S. dollars. To correct this problem, Torrington requests that the Department insert an "ELSE" statement in the line of programming that performs the exchange-rate conversion.

Department's Position: We disagree with Torrington. In the programming language to which Torrington refers, no "ELSE" statement is necessary. In SAS programming, an "ELSE" statement gives an alternative action if the "THEN" clause in an "IF-THEN" statement is not executed. In the section of SKF France's program to which Torrington refers, when the original "IF" clause is executed (*i.e.*, SKF France has reported no expense for the transaction), then the program simply multiplies the exchange rate by zero. If SKF France has reported an expense, then the program multiplies the exchange rate properly by the reported expense denominated in French francs. Torrington's suggested language will only result in the conversion being executed when an expense is missing and has been designated as zero. Because Torrington's suggested language does not affect the outcome of the programming instruction, we did not make the change.

Comment 6: NSK Japan argues that certain U.S. sales receiving facts available should be deleted from the Department's antidumping analysis. NSK Japan asserts that these sales were inadvertently included in the database due to a programming error on its part.

Department's Position: We agree with NSK Japan and have deleted these sales from our analysis for these final results. Though the proprietary nature of the comment prevents a full discussion here, we note that the accuracy of NSK Japan's assertion in its July 1, 1997, Japan Issues Case Brief is obvious from the record. Thus, NSK Japan has satisfied the Department's criteria for the correction of clerical errors made by a respondent but discovered after the preliminary results. *See Flowers from Colombia* at 42834 and our response to Comment 3 of this section.

Comment 7: Torrington argues that, when calculating NTN Japan's margin, the Department should assign a facts-available rate to certain HM transactions that lack a corresponding price. Torrington claims that the Department neglected to use these transactions in the preliminary margin calculations.

Department Position: Torrington has misinterpreted the results of our preliminary analysis. We have not applied facts available to these transactions. Due to the proprietary nature of the information, this issue is discussed further in the analysis memorandum (*see* NTN's analysis memorandum dated September 22, 1997).

12. Duty Absorption

Section 751(a)(4) of the Tariff Act provides for the Department, if requested, to determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) authorizes this type of investigation during an administrative review initiated two years or four years after publication of an order.

For transition orders as defined in section 751(c)(6)(C) of the Tariff Act (*i.e.*, orders in effect as of January 1, 1995), section 351.213(j)(2) of the Department's antidumping regulations provides that the Department will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See* 62 FR 27296, 27394 (May 19, 1997). Although these antidumping regulations are not binding upon the Department for these AFB reviews, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the Tariff Act. This approach ensures that interested parties will have the opportunity to request a duty-absorption determination prior to the time of the sunset review of the order under section 751(c) on entries for which the second and fourth years following an order have already passed. Because these orders on AFBs have been in effect since 1989, these are transition orders in accordance with section 751(c)(6)(C) of the Tariff Act; therefore, based on the policy stated above, the Department will consider a request for an absorption determination during a review initiated in 1996 or 1998. On May 31, 1996 and July 9, 1996, Torrington requested the Department to determine, with respect to various respondents, whether antidumping duties had been absorbed during the POR. These being reviews initiated in 1996 and a request having been made, we have made a duty-absorption determination as part of these administrative reviews.

In our preliminary results of review, we calculated the percentage of sales by a U.S. affiliate with dumping margins for each exporter. We stated that, with respect to those companies (with affiliated importer(s)) that had dumping margins, we would rebuttably presume that the duties will be absorbed for those sales which were dumped. Subsequent to the preliminary results, we received comments.

Comment 1: Respondents claim that the Department has interpreted section 351.213(j) of its regulations incorrectly as providing for duty-absorption inquiries in the second and fourth years following a sunset review after which an order is continued and in periods such as the seventh and ninth reviews for transition orders. Citing the principle of statutory construction ''*expressio unius est exclusio alterius*,'' wherein there is an inference that all omissions should be understood as exclusions, respondents conclude that the lack of explicit Congressional approval for duty-absorption inquiries for the latter transition orders shows that Congress did not intend for duty-absorption inquiries to be initiated more than four years after publication of an antidumping order. Finally, respondents contend that the Department is incorrect in justifying the duty-absorption inquiry by calling AFBs orders transition orders in accordance with section 751(c)(6)(C) of the Tariff Act. According to respondents, section 751(c)(6)(C) of the Tariff Act only applies to ''sunset'' reviews.

Torrington claims that narrowing the applicability of the duty-absorption inquiries to only the second and fourth years of sunset reviews would unduly limit the effectiveness of the statute. Torrington claims that there is no indication that sections 751(a)(4) or 751(c)(6)(D) intended to create such a narrow application. Torrington's response to the legal principle of ''all omissions should be understood as exclusions'' is that it has little force in the administrative setting because deference is granted to an agency's interpretation of a statute, unless Congress has directly spoken to the question at issue (citing *Mobile Communications Corp. Of America* v. *F.C.C.*, 77 F.3d 1399, 1404–1045). Torrington further argues that ''whether the specification of one matter means the exclusion of another is a matter of legislative intent for which one must look at the statute as a whole'' (citing *Massachusetts Trustees of Eastern Gas & Fuel Associates* v. *United States*, 312 F.2d 214,220 (1st Cir. 1963) (citing authority), *aff'd*, 377 U.S. 235 (1964)).

Department's Position: With regard to the time frame in which we are conducting these reviews, section 351.213(j)(1), in accordance with section 751(a)(4), provides for the conduct, upon request, of absorption inquiries in reviews initiated two and four years after the publication of an antidumping order. The preamble to the proposed antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year (61 FR at 7317). Because these orders on AFBs have been in effect since 1989, these are transition orders in accordance with section 751(c)(6)(C) of the Tariff Act. This being a review initiated in 1996 and a request having been made, we are making duty-absorption determinations as part of these administrative reviews.

Comment 2: Respondents state that gauging absorption on information that they do not know until completion of an administrative review is unfair. More specifically, they claim that the nature of the review process prevents them from determining the U.S. price increase necessary to pass dumping duties onto customers because the ultimate liability is not determined until the end of a review. Respondents claim further that, other than dumping duties paid at the time of entry, they have no means of estimating the price increases necessary to pass dumping duties to the customers.

Finally, respondents argue that the Department cannot presume ''rebuttably'' that duty absorption on sales to the U.S. affiliate exists if the record does not contain evidence of the U.S. purchaser's assumption of liability for ultimate assessment. Respondents claim that the Department's rebuttable presumption ignores commercial reality in that no U.S. buyer would agree to assume liability for an unascertainable amount of duties. Respondents claim that the Department has not provided any reason for adopting the presumption of duty absorption and that the presumption is not allowable by law, citing *NLRB* v. *Baptist Hosp. Inc.*, 442 U.S. 773, 787 (1979), and *United Scenic Artists, Local 829* v. *NLRB*, 762 F.2d 1027, 1034 (D.C. Cir 1985).

SNR and SKF state that the 15-day deadline for submitting evidence to rebut the assumption that unaffiliated U.S. purchasers will pay the assessed dumping duty is too short, given the amount of evidence that would have to be collected and the number of customers that would have to be approached.

Finally, FAG Germany and FAG Italy contend that the duty-absorption inquiry is only applicable to the foreign producer or exporter, citing section 751(a)(4) of the Tariff Act.

Torrington agrees with the Department's approach in using the rebuttable presumption that the duties for sales that were dumped will be absorbed. Torrington argues that the Department's examination of whether duty absorption occurred by reviewing data on the volume of dumped imports and dumping margins follows the guidelines of the SAA. Torrington argues that the Department's decision was reasonable, given the lack of record evidence that the first unrelated customer will be responsible for paying the duty that is ultimately assessed and the consistency of the Department's dumping determinations and the fact that the Department gives the respondents the opportunity to provide evidence that the unaffiliated purchasers will pay the assessed duty. Additionally, Torrington asks that the Department reject respondents' inference that the absorption inquiry only extends to the foreign producer, rather than the foreign producer and affiliated importer(s). Torrington cites the preamble to the new regulations and the SAA at 885 in support of the latter.

Finally, Torrington claims that, while the difficulty of obtaining evidence increases with the extent of dumping involved, this does not mitigate against the Department's 15-day deadline (after the publication of preliminary results) for submitting evidence that unaffiliated U.S. purchasers will pay the assessed dumping duty.

Department's Position: We agree with Torrington. An investigation as to whether there is duty absorption does not simply involve publishing the margin in the final results of review. As the Department noted in the preliminary results of these reviews, the determination that duty absorption exists is also based on the lack of any information on the record that the first unaffiliated customer will be responsible for paying the duty that is ultimately assessed. Absent such an irrevocable agreement between the affiliated U.S. importer(s) and the first unaffiliated customer, there is no basis for the Department to conclude that the duty attributable to the margin is not being absorbed.

This is an instance where the existence of a margin raises an initial presumption that the respondent and its affiliated importer(s) are absorbing the duty. As such, the burden of producing evidence to the contrary shifts to the respondent. *See Creswell Trading Co., Inc.* v. *United States,* 15 F.3d 1054 (CAFC 1994). Here, the respondents have failed to place evidence on the record, despite being given ample time to do so, in support of their position that they and their affiliated importer(s) are not absorbing the duties.

Comment 3: Torrington argues that, even though the Department's duty-absorption methodology is reasonable because it relies on a weighted-average dumping margin which takes all dumped sales into account, a more accurate reflection of the impact of dumping on the domestic industry could be achieved by taking weighted-average dumping margins divided by the percentage of the U.S. affiliate's sales with dumping margins. Torrington also contends that the proposal made by several respondents of taking into account negative margins masks dumping and contributes to an importer's financial ability to continue the practice of duty absorption.

Respondents contend that, once an importer has certified that it has not been reimbursed for antidumping duties, it is unnecessary for the Department to conduct a duty-absorption inquiry unless there is evidence of fraud. Respondents also emphasize that, if such weighted-average dumping margins were calculated, they could be highly distortive when applied to a small volume of transactions. Respondents claim further that, if the total profits exceed the amount of antidumping liability, this can be taken as proof that duty absorption is not occurring. SKF argues that, using data already available on the record, the Department is able to conduct an accurate analysis of whether dumping duties are being absorbed by comparing the total profit of CEP sales to the total amount of the antidumping liability. SKF also emphasizes that, while dumping must be measured on a transaction-specific basis, there are no reasons why a duty-absorption inquiry can not be done on an aggregate basis.

SKF, Koyo, NSK, and SNR argue that the Department's duty-absorption methodology fails to measure duty absorption on respondents' U.S. sales database as a whole. Respondents claim that by not considering sales made at non-dumped prices the Department fails to get an accurate measure of whether absorption has occurred. SKF and SNR emphasize that, because the Department calculates dumping margins after U.S. sales are shipped and invoiced, companies cannot calculate precisely the price necessary to eliminate dumping. Therefore, respondents assert they can only be expected to reach non-dumping price levels on an overall basis. As a result, SKF contends that the Department should use weighted-average margins which exclude from the percentage of dumped sales those transactions with *de minimis* margins as a threshold test for duty-absorption inquiries.

Department's Position: We disagree with respondents that we should aggregate negative and positive margins in our duty-absorption determination. The Department treats so-called ''negative'' margins as being equal to zero in calculating a weighted-average margin because otherwise exporters would be able to mask their dumped sales with non-dumped sales. *See Final Determination of Sales at Less Than Fair Value; Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools from Japan,* 58 FR 30149 (May 26, 1993). It would be inconsistent on one hand to calculate margins using only positive-margin sales, which is the Department's practice, and then argue, in effect, that there are no margins for duty-absorption purposes because a deduction from the total duties determined should be made for sales without margins. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 62 FR 18744, 18745 (April 17, 1997). However, non-dumped sales affect the percentage of sales through affiliated importers which are dumped and therefore affect the results of the absorption inquiry. Therefore, we disagree with Torrington's suggestion as well. Only using the sales with dumping margins in the denominator of our calculations would distort the calculations by overstating the percentage margin of dumping.

Finally, a company's profit on CEP sales is not a relevant issue. This, too, does not negate the fact that these are duties absorbed by the affiliate.

13. Reimbursement

Comment 1: Torrington states that the Department should apply the reimbursement regulation in situations where the transfer prices to an affiliated importer are below the actual COP and the transactions were found to have dumping margins. Torrington contends that below-cost transfer prices are tantamount to an indirect transfer of funds, allowing ''foreign deep pockets'' to relieve importers from having to raise resale prices to finance assessment of antidumping duties. Torrington, citing *Color Television Receivers from Korea,* 61 FR 4408, 4411(Feb. 6, 1996), states further that, because the Department concluded that the reimbursement regulation applies in exporter's-sales-price situations, the Department should apply the reimbursement rule to indirect payments between affiliated parties in these reviews. Finally, Torrington states that the Department should ask each respondent whether it transferred subject merchandise to its affiliated U.S. importer at prices below the COP and whether it made any capital, equity or other contributions to its U.S. affiliate during the POR.

Respondents state that when deciding this issue the Department should maintain its reliance, as it did during the 1992/93, 1993/94, and 1994/95 reviews, on whether explicit and specific factual evidence exists of direct reimbursement of dumping duties by an affiliated importer. Koyo, NSK, INA, and SNR state that Torrington's allegations of below-cost transfer prices do not establish the specific and direct links between transfer pricing and reimbursement, cited in *Federal-Mogul Corp* v. *United States,* 918 F.Supp. 386, 394 (CIT 1996)(*Federal-Mogul I*), necessary to conclude reimbursement has occurred. Koyo further states that the *Korean TVs* case does not undermine the CIT's decision in *Federal-Mogul I,* or the Department's refusal to undertake reimbursement investigations in the last four AFBs reviews, simply on the basis of below-cost transfer prices.

NTN cites the Department's revision of its regulations on antidumping and countervailing duties to conform with the URAA multilateral trade negotiations (62 FR 27355) as evidence that Congress has rejected the application of the reimbursement regulation (section 351.402(f) (1997)) to below-cost transfer pricing between affiliated parties. NTN claims that, when the express intent of Congress is unclear or ambiguous, deference will be granted to the Department's interpretation of its own regulations and, therefore, the Department has been granted broad discretion in determining what constitutes reimbursement of antidumping duties for purposes of 19 CFR 353.26 (1996).

In response to Torrington's suggestion to pursue two additional lines of inquiry regarding reimbursement, NSK states that the Department should conclude reimbursement has occurred only when dumping duties are paid directly on behalf of the importer or when dumping duties are actually reimbursed to the importer. FAG Italy, NSK, Barden, and NTN state that, when certification of non-reimbursement is filed and there is no evidence of Customs fraud, the Department has no further obligation to investigate because there is no basis for presumption of reimbursement and no statutory authority to place any burden on respondents to rebut such a position. SKF Italy and Germany also note that their borrowing behavior is already addressed in their responses to the Department's questionnaire and that the Department verified this issue, eliminating the need to collect further data.

FAG Italy, SKF, Koyo and Nachi state that, despite having numerous chances to present new arguments or evidence to the Department, Torrington failed to offer anything that would warrant reconsideration of the Department's previous position.

Department's Position: We disagree with Torrington. Although we agree that the reimbursement regulation is applicable in CEP situations, there must be evidence that the parent has reimbursed (*e.g.*, the exporter directly paid the duties for the importer or the exporter lowered the amount invoiced to the importer) its subsidiary for antidumping duties to be assessed (*see Korean TVs* at 4410–11). In that case, we reaffirmed our original view that reimbursement, within the meaning of the regulation, takes place between affiliated parties if the evidence demonstrates that the exporter directly pays antidumping duties for the affiliated importer or reimburses the importer for such duties (*see The Torrington Company* v. *United States*, Slip Op. 97–136 (CIT September 19, 1997)(*Torrington II*)). In this case, there is no evidence that any of the named respondents engaged in reimbursement activity with their respective affiliated U.S. subsidiary. *See also Brass Sheet and Strip from the Netherlands*, 57 FR 9534, 9537 (March 19, 1992), *Brass Sheet and Strip from Sweden*, 57 FR 2706, 2708 (January 23, 1992), and *Brass Sheet and Strip from Korea*, 54 FR 33257, 33258 (August 14, 1989).

Furthermore, Torrington has presented no evidence of inappropriate financial intermingling, an agreement to reimburse, or reimbursement in general. FAG, Koyo, and Nachi are correct in that the presence of both below-cost transfer prices and actual dumping margins do not, in and of themselves, constitute evidence that reimbursement is taking place. Therefore, consistent with our position in previous reviews of these orders, we reject Torrington's contention that below-cost transfer prices are tantamount to an indirect transfer of funds for reimbursement of antidumping duties and that we should make a deduction therefore in CEP transactions (*see AFBs III* (39736), *AFBs IV* (10906–07), *AFBs V* (66519), and *AFBs VI* (2129)).

14. Tooling Revenue

Comment: NSK argues that the Department should not consider tooling to be part of revenue for the purpose of calculating the dumping margins. NSK claims that tooling revenue is not an integral part of the product, that the Department did not include this item in its questionnaire for previous reviews, and that Torrington did not consider tooling as part of revenue in past AFB reviews. NSK also cites the Department's position in *Mechanical Transfer Presses from Japan*, 55 FR 335, 339 (Jan. 4, 1990), where the Department did not adjust prices by an amount for tooling. Finally, NSK points out that, in situations where tooling can be considered subject merchandise, it is specifically identified as an integral component of the price, citing *Certain Forged Steel Crankshafts from the United Kingdom*, 56 FR 5975, 5978 (Feb. 14, 1991).

NSK argues that, even if the Department maintains that tooling revenue should be added to NV, the Department should not add tooling revenue to NV as facts available in its analysis of NSK. NSK argues that it is inappropriate to use facts available in its case because it responded fully to all of the Department's requests for information. NSK argues that it provided tooling revenue on a product-specific basis and the fact that the Department could not match the tooling revenue to the product codes in its HM sales database demonstrates that those products to which it would apply were not reported in the database.

Torrington disagrees with NSK's position, claiming that the Department should include tooling revenue in the computation of NV pursuant to the terms of the antidumping duty order, the applicable law, and the questionnaire. Petitioner cites two cases where the Department ruled as such: *Certain Forged Steel Crankshafts From the United Kingdom*, 56 FR 5975, 5978 (Feb. 14, 1991), where tooling revenues were included in price even when tooling is billed separately, and *Bicycle Speedometers From Japan*, 58 FR 54328 (Oct. 21, 1993), where amortized tooling costs were added to, not subtracted from, price. Torrington claims that the supplemental questionnaire in these AFB reviews further demonstrates the Department's policy of including tooling in revenue since it asks for detailed information on tooling costs. Finally, Torrington states that tooling is a cost of producing bearings and that, in all market-type transactions, prices are set to cover costs.

Department's Position: In the *Final Determination of Sales at Less Than Fair Value: Oscillating Fans From the People's Republic of China*, 56 FR 55271, 55279 (Oct. 25, 1991), the Department established its policy of considering tooling as part of factory overhead and, therefore, a component of final price. The Department has followed this practice in subsequent cases. *See, e.g., Certain Forged Steel Crankshafts from the United Kingdom, 55 FR at 5978, and Bicycle Speedometers from Japan*, 58 FR at 54328. In *Mechanical Transfer Presses from Japan*, 55 FR at 339, the Department disallowed die tooling from revenue computation because it was identified separately in the contractual sales documentation along with spare parts and other optional item prices and, therefore, was not an ''integral'' cost of the commodity. In contrast, tooling revenue associated with AFBs is additional revenue on the sale of the AFB, not a separate accessory.

However, upon re-examining the record, we determine that it is clear from the record that NSK's reported tooling revenue pertains to models which NSK did not report, appropriately, in its HM sales database. Therefore, we have not added tooling revenue to NSK's NV for these final results. We note, however, that the application of facts available in our preliminary results was not meant to be a tool to punish NSK but rather to be an estimate of NSK's actual experience with regard to tooling revenue when we were unable to match the models for which tooling revenue was incurred to the models NSK reported in the HM sales database.

15. Cash Deposit Financing

Comment: NTN and NTN Germany (collectively ''NTN'') argue that the

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

NTN argues that section 772(d)(1) of the Tariff Act only allows for the deduction of selling expenses. However, NTN contends, the Department has previously stated that it does not consider cash deposit financing expenses as such. As an example, NTN contends, the Department noted in *AFBs VI* at 2,104 that such expenses were not selling expenses since they ''were incurred only because of the existence of the antidumping duty orders'' and the Department concluded that ''the expenses cannot correctly be characterized as selling expenses.'' NTN also points to the Department's acceptance of this adjustment in the first three reviews of these orders (*AFBs I-III*), in the two most recently completed reviews of these orders (*AFBs V and VI*), and in the position the Department took in comments it filed with the CIT in the litigation arising from AFBs IV. According to NTN, the CIT adopted these comments in large part, holding that ''interest NTN paid for antidumping duty deposits is not a selling expense and, thus, should be excluded from NTN's U.S. indirect selling expenses.'' *Federal-Mogul* v. *United States,* 20 CIT —, —, Slip Op. 96–193 (December 12, 1996) (*Federal-Mogul II*).

NTN argues that, notwithstanding Departmental and judicial precedent, the Department's statements in the instant review are flawed. First, NTN contends, the Department's statement in the preliminary results that it is ''not convinced that there are opportunity costs associated with paying deposits'' contradicts the well-reasoned analysis the Department set forth in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part (TRBs Final Results*), 62 FR 11,825, 11828–830 (March 13, 1997), in which the Department explained that it ''recognize(s) that opportunity costs * * * have a real financial impact on the firm.''

Second, NTN argues, the Department misunderstands the basis for its allowance of the adjustment in prior reviews in its statement that ''the dumping margin should not vary depending on whether a party has funds available to pay cash deposits or requires additional funds in the form of loans.'' NTN agrees that this statement is correct but contends that this does not necessarily lead to the Department's preliminary conclusion that it should deny the adjustment. NTN points to *TRBs Final Results* where the Department reasoned that a firm may also choose to divert funds from other corporate activities to pay cash deposits but the opportunity costs associated with the diversion reflect a real cost to the firm.

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

NTN concludes that, since the only reference to this issue in these proceedings is a memorandum to the file regarding an ex parte meeting with the Torrington Company dated April 23, 1997, there is no change in fact pattern or the law which would compel such a sudden shift in the Department's position. Moreover, NTN argues that, at some point, the Department's prior decisions become case law, citing *Shikoku Chemicals* v. *United States,* 16 CIT 383, 388 (1992). NTN requests that the Department allow the adjustment to U.S. indirect selling expenses for the final results.

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

Torrington argues that the Department's previous policy actually encouraged dumping by allowing larger and larger adjustments to selling expenses as deposit rates increased. Torrington reasons that, the more a company dumps its merchandise in the United States, the larger the interest payments covering duty deposits will be. Torrington concludes that, as the interest expense becomes greater and greater, so does the offset to indirect selling expenses. Likewise, the smaller the offset, the lower the final dumping margin. Thus, Torrington contends the Department's old policy actually encourages dumping. Torrington suggests that this scenario will be exacerbated over time as interest expense accumulates and in any interest expenses the Department imputes. Torrington asserts that, if offsets become sufficiently large, dumping margins can disappear without any change in pricing behavior.

Moreover, if the Department only allows an adjustment for actual interest paid, Torrington asserts that the previous policy discriminates against importers who finance deposits with cash because these importers would not have any interest payments.

Torrington agrees with the Department's statements in the *Preliminary Results* questioning whether ''opportunity costs'' are actually incurred because, Torrington argues, ''opportunity costs'' exist only in economic theory. Torrington contends that, if deposits were not made, then there would be no merchandise to resell. Thus, Torrington concludes, deposits are a cost of doing business for those who choose to trade unfairly.

Torrington acknowledges that the CIT, in *Federal-Mogul II*, reached a contrary conclusion, but, petitioner contends the CIT upheld bad policy and the Department is right in changing its policy. Torrington argues that money is fungible and loans to finance duty deposits make money available for other endeavors. Torrington argues that the CIT, in *Federal-Mogul II*, failed to account for this.

Torrington argues that section 772(d)(1) mandates the deduction of certain selling expenses from CEP. Since imputed expenses do not appear on the company's books, Torrington contends that an offset to those selling expenses is contrary to law because it reduces a mandatory deduction improperly.

In addition, Torrington argues that, under the URAA, CEP is meant to be a proxy for an arm's-length price to an unaffiliated importer. As such, Torrington contends, selling expenses such as those incurred for financing cash deposits are related solely to the sale to the affiliated importer and are not related to the resale to the unaffiliated U.S. customer. Torrington contends that the Department's new regulations reflect the contemporaneous construction of the URAA as evidenced by the preamble statement: ''In these final regulations, we have clarified that the Secretary will deduct only expenses associated with a sale to an unaffiliated customer in the United States.'' By the same logic, Torrington argues, credit costs imputed to the importer on account of duty deposits should not be added back to CEP because these costs will not be deducted from CEP in the first place.

Torrington argues that, although the Department's new regulations do not apply to the current review per se, the foregoing analysis reflects existing practice under the new law, citing *Extruded Rubber Thread from Malaysia,* 62 FR 33,588 at 33597–98 (June 20, 1997). In sum, Torrington maintains that antidumping cash deposits (and any credit expenses imputed to those deposits) do not represent activities of the importer in selling the merchandise in the U.S. market.

Finally, Torrington argues that there is no evidence that any affiliated importers actually obtained loans for the purpose of paying cash deposits. Therefore, Torrington contends, there is no evidence that imputed credit costs are ''specifically associated with economic activities in the United States,'' citing *Certain Internal-Combustion Industrial Forklift Trucks from Japan,* 62 FR 5592 at 5611 (February 6, 1997). Without evidence that credit costs were incurred, Torrington asserts there is no basis to conclude that any deductions from CEP on account of the importer's expenses included such costs in the first place. As such, Torrington concludes, there is no basis for NTN's claimed adjustment.

Department's Position: We agree with Torrington that we should deny an adjustment to NTN's U.S. indirect selling expenses for expenses which NTN claims are related to financing of cash deposits. However, we have not adopted Torrington's logic entirely.

The statute does not contain a precise definition of what constitutes a selling expense. Instead, Congress gave the administering authority discretion in this area. It is a matter of policy whether we consider there to be any financing expenses associated with cash deposits. We recognize that we have, to a limited extent, removed such expenses from indirect selling expenses for such financing expenses in past reviews of these orders. However, we have reconsidered our position on this matter and have now concluded that this practice is inappropriate.

We have long maintained, and continue to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that we should deduct from U.S. price. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping. *See, e.g., AFBs II.* We have also declined to deduct legal fees associated with participation in an antidumping case, reasoning that such expenses are incurred solely as a result of the existence of the antidumping duty order. *Id*. Underlying our logic in both these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of the dumping order.

Financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping order. As we stated in the preliminary results: ''money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost.'' *See Preliminary Results* at 31,569. Companies may choose to meet obligations for cash deposits in a variety of ways that rely on existing capital resources or that require raising new resources through debt or equity. For example, companies may choose to pay deposits by using cash on hand, obtaining loans, increasing sales revenues, or raising capital through the sale of equity shares. In fact, companies face these choices every day regarding all their expenses and financial obligations. There is nothing inevitable about a company having to finance cash deposits and there is no way for the Department to trace the motivation or use of such funds even if it were.

In a different context, we have made similar observations. For example, we stated that ''debt is fungible and corporations can shift debt and its related expenses toward or away from subsidiaries in order to manage profit'' (*see Ferrosilicon from Brazil,* 61 FR at 59412 (regarding whether the Department should allocate debt to specific divisions of a corporation)).

So, while under the statute we may allow a limited exemption from deductions from U.S. price for cash deposits themselves and legal fees associated with participation in dumping cases, we do not see a sound basis for extending this exemption to financing expenses allegedly associated with financing cash deposits. By the same token, for the reasons stated above, we would not allow an offset for financing the payment of legal fees associated with participation in a dumping case.

We see no merit to the argument that, since we do not deduct cash deposits from U.S. price, we should also not deduct financing expenses that are arbitrarily associated with cash deposits. To draw an analogy as to why this logic is flawed, we also do not deduct corporate taxes from U.S. price; however, we would not consider a reduction in selling expenses to reflect financing alleged to be associated with payment of such taxes.

Finally, we also determine that we should not use an imputed amount that would theoretically be associated with financing of cash deposits. As Torrington points out, there is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. Like taxes, rent, and salaries, cash deposits are simply a financial obligation of doing business. Companies cannot choose not to pay cash deposits if they want to import nor can they dictate the terms, conditions, or timing of such payments. By contrast, we impute credit and inventory carrying costs when companies do not show an actual expense in their records because companies have it within their discretion to provide different payment terms to different customers and to hold different inventory balances for different markets. We impute costs in these circumstances as a means of comparing different conditions of sale in different markets. Thus, our policy on imputed expenses is consistent; under this policy, the imputation of financing costs to actual expenses is inappropriate.

16. Romania-Specific Issues

Comment 1: TIE contends that the Department should use the factory overhead, SG&A, and profit values of an Indonesian steel producer (Jaya Pari) placed on the record for the POR rather than rely upon the surrogate values obtained from a cable submitted by the U.S. embassy in Jakarta. TIE purports that the Jaya Pari data identifies how the overhead, SG&A, and profit values were derived, whereas the embassy cable does not reveal how these values were calculated and, thus, TIE cannot determine and comment on the accuracy and representativeness of such values. TIE recognizes that, although Jaya Pari is not a bearings producer, the Department has established a preference for use of publicly available information (PAI) over embassy cable data. TIE argues further that the embassy cable is nearly six years old, whereas Jaya Pari's data was derived from a 1995 financial statement, a source upon which the Department has relied in prior non-market-economy bearing reviews. In addition, TIE maintains that the SG&A rate in the embassy cable is extraordinarily high and has significantly contributed to its dumping margin.

Torrington discusses several reasons as to why the Jaya Pari financial statement is inappropriate. Torrington asserts that Jaya Pari's financial statement is missing certain pages which may contain information relevant to assessing the validity of the document. Torrington argues that the 1995 financial statement TIE placed on the record does not contain the level of detail necessary to determine how certain values (in particular, materials and factory overhead) were calculated. Torrington contends further that the financial statement reflects a much higher raw-materials value than the overhead value and, thus, such figures may be disproportionately allocated because certain elements such as energy, electrodes, and rolls relative to steel manufacturing do not appear to be included in the overhead category.

Torrington argues that the embassy cable explains clearly how the overhead figure was derived and may need only an additional adjustment made for energy costs. Torrington maintains that the factory overhead and SG&A rates the Department employed in the preliminary margin calculations are understated because they did not take energy costs into account. Torrington asserts that the ratios the Department obtained from the embassy cable and used in the calculation of overhead and SG&A are less affected by the lapse of time as opposed to absolute figures which are found in the financial statement.

Department's Position: We agree with TIE. We have determined that the financial statement of Jaya Pari provides more appropriate surrogate information than the information in the cable from the U.S. embassy. In our hierarchy for selecting data for possible surrogate values, we prefer to use current, publicly available information. The cable which we used in the preliminary results is over five years old and therefore substantially less contemporaneous than the Jaya Pari information. Torrington's concern that certain pages are missing is irrelevant because the necessary pages, which show the overhead, SG&A and profit calculations as well as the explanatory notes, have been submitted. Additionally, the level of detail shown in the financial statements is greater than that of the cable. Finally, we cannot accept Torrington's contention that the financial statements have included certain elements relative to steel making incorrectly under ''raw materials'' rather than ''overhead.'' We have no factual basis for concluding that the raw-materials category is disproportionally high relative to the overhead category, and it also would be contrary to normal accounting procedures to place these elements—- energy, electrodes and rolls are the ones hypothesized by Torrington—under the category of ''raw materials.''

Comment 2: Torrington argues that, in the preliminary results of review, the Department published an incorrect value for TIE's dumping margin. Torrington suggests that, for the final results of review, the Department multiply by 100 the dumping margin published in the preliminary results of review in order to convert it properly to a percentage.

Department's Position: We agree with Torrington. In the preliminary results, we did not express the calculated margin as a percentage and, therefore, the published margin was understated. We have converted the margin to a percentage for the final results.

Comment 3: Torrington contends that the International Labor Office (ILO) costs the Department employed in the preliminary results of review are flawed for several reasons: (1) the wage rates used reflect only minimum wages in Indonesia and, thus, do not represent actual labor wage costs accurately; (2) the minimum wage rates do not include fringe benefits and, thus, such rates do not reflect labor rates accurately; and (3) certain information the Department used to value both direct and indirect labor pertain to the industries which have different international standard industrial classification (ISIC) codes than bearings. Torrington points out that the proper ISIC code for the products under review was determined in a prior segment of this proceeding. Torrington argues that, in the interest of the Department's desire to obtain actual, or as accurately as possible, Indonesian labor rates, the Department should use for the final results of review a particular table from the ILO *Yearbook of Labour Statistics* for 1994 instead of information from the *Special Supplement to the Bureau of Labor Statistics* used in the preliminary results. Torrington maintains that the ILO *Yearbook of Labour Statistics* contains actual wage rates and states that, because this document is based on the same year and serves as the same source of information from which the Department extrapolated the wage rates for the preliminary results of review, it should not constitute new information. Torrington argues further that using such information is consistent with the Department practice to use independent sources of information.

TIE contends that the information Torrington proposes that the Department use for the final results of review constitutes new information because it is untimely and has not been placed on the record previously. TIE also argues that, despite the fact that this information is new, it is a deficient source of information upon which to rely for the final results of review for the following reasons: (1) the data is more than two years older than that which the Department relied upon for the preliminary results of review and, thus, does not meet the Department's standard of using information that is most contemporaneous to the POR; (2) the wage rates employed in the preliminary results of review represent actual costs; (3) unskilled direct labor would be overstated because the data Torrington proposes includes salaried or skilled labor rates; and (4) the data Torrington proposes may be affected by time and, thus, it is likely that the data may have changed over the past five years.

Department's Position: Petitioner discusses the suitability of surrogate labor rates and has submitted information in its case brief recommending that the Department adjust the rates. TIE has pointed out that this information was not previously on the record and constitutes new information. The Department agrees with TIE that the labor rates which petitioner presents constitute new information. As such, we have not considered it, in accordance with 19 CFR 353.31(a), because it was submitted after the publication of the preliminary results and more than 180 days after the date of publication of the notice of initiation of this review.

We agree with TIE that the wage rates we used in the preliminary results represent actual costs. Although the ILO data is a minimum wage, it does indeed include such costs as ''cost-of-living allowances and other guaranteed and regularly paid allowances,'' according to the ILO's Special Supplement to the Bulletin of Labor statistics (1994). However, we agree with Torrington that the wage rates do not include fringe benefits. We have made an adjustment to the rates to include employee benefits, following the methodology in *Final Determination of Sales at Less than Fair Value; Disposable Pocket Lighters from the People's Republic of China,* 60 FR 22359 (May 5, 1995) (*Disposable Pocket Lighters*), which calculated supplementary benefits as 33 percent of manufacturing earnings. Finally, for indirect labor, rather than continue to use the rates for supervisors and general foremen from the crude petroleum and natural gas industries, we have used the supervisory labor rates from *Disposable Pocket Lighters*, which we have inflated for the POR. This rate is not industry-specific but, rather, represents a general estimate of supervisory labor in Indonesia. It is more accurate than the crude rate for the petroleum and natural gas industries, which represents supervisory labor in an industry which is not representative of AFB production.

Comment 4: TIE contends that the foreign inland freight rate which the Department used in the preliminary margin calculations is extraordinarily high compared with the rates used in prior Romanian AFB and TRB reviews and rates used in a prior Chinese TRB review. TIE also argues that the proposed rate is also much higher than ocean freight, implying that it costs more to transport bearings within Romania than it costs to ship them from Romania to the United States. TIE maintains that the high inland freight rate is attributable to either a mathematical error in the Department's calculations or the estimated freight rate which incorporates a division of an arbitrary distance of 40 kilometers per trip and yields an estimated per kilometer rate. TIE provides a hypothetical example based on a 1500-kilometer distance between its factories and the port. TIE asserts that using this distance in the Department's calculation would yield a freight rate that is 20 percent of the sales value which, TIE claims, is overtly incorrect. TIE maintains that the Department has a long-established practice to ascertain whether surrogate values are reasonable and argues that, in the instant review, the Department should use a more reliable and reasonable rate for foreign inland freight.

Torrington contends that TIE did not attempt to substantiate that the foreign inland freight rate in the preliminary margin calculations was too high other than comparing that rate with rates used in other determinations. In addition, Torrington argues that TIE's hypothetical example is baseless because the actual distance between the factories and the port is under 400 kilometers. Torrington also contends that utilizing a distance of 1500 kilometers in the Department's calculation results in a percentage that is nowhere near 20 percent of the sales prices as claimed by TIE.

Department's Position: We agree with TIE. We have changed the truck freight rate for these final results. Because the freight-rate calculation includes a division by an estimated distance for the distance of transporting goods, we have determined that the resulting estimated rate is less accurate than the rate we used in *Disposable Pocket Lighters. See* Surrogate Freight submission, March 4, 1997. We consider the freight rate we applied in *Disposable Pocket Lighters* to be more accurate because it is based on actual data from a cable from the U.S. Embassy in Indonesia and does not contain an estimated component. Additionally, we have inflated the value using the World Price Index for the POR. Therefore, we have used the rate of $.0326 per MT/km for the truck freight rate for the final results.

17. Miscellaneous Issues

17. A Ocean & Air Freight

Comment: Torrington notes that the Department permitted respondents to aggregate and then allocate ocean and air freight costs. Torrington argues that this practice is potentially distortive because air freight is considerably more expensive on a per-unit basis. Torrington claims further that it is relatively easy to segregate air freight from ocean freight because the situations in which companies use air freight, such as emergencies and production scheduling, are easily identified. Torrington states that the Department should require respondents to submit information segregating air freight expenses or, absent such information, apply facts available.

FAG Germany, FAG Italy, NSK, SKF France, SKF Germany, SKF Italy, SKF Sweden, Koyo, NSK Japan, INA, Barden, and NMB/Pelmec contend that it is impractical and in some cases impossible to isolate air and ocean freight charges with their record-keeping systems. Respondents also assert that the Department verified their reported freight costs and found them to be non-distortive in these reviews or in prior reviews. NSK argues that it is unreasonable to have to resubmit freight charges at a late date. Koyo and NSK also contend that past administrative and legal procedures support the aggregation and allocation of freight costs, asserting that the Department in past reviews and the CIT in various decisions have both upheld their freight-reporting methodologies.

In addition, Barden contends that all of its U.S. freight charges were by air and reported as such, while NSK states that it kept records of ''expedited deliveries'' that could be tied to specific sales and reported such expenses separately.

Department's Position: We disagree with Torrington. We have found that it is generally not feasible for respondents to report air and ocean freight on a transaction-specific basis in these proceedings. *See, e.g.,* NSK's September 9, 1996 section C response at 22. Where respondents were unable to report ocean and air freight separately, we have accepted aggregated international freight data. *See AFBs VI,* 62 FR at 2121; *see also The Torrington Company* v. *United States,* Slip Op. 97–57 at 11–14 (CIT May 14, 1997)(*Torrington III*) (affirming the Department's methodology for accepting co-mingled ocean and air freight where a respondent could not report the two expenses separately). Furthermore, we note that § 351.401(g) of our new antidumping regulations provide that we may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided we are satisfied that the allocation method used does not cause inaccuracies or distortions. *See* 62 FR 27410 (May 19, 1997). As discussed above, the Department has determined that it is generally not feasible for respondents to report air and ocean freight on a transaction-specific basis.

Furthermore, while we have considered Torrington's claim that aggregating and then allocating air and ocean freight is ''potentially'' distortive, we have no evidence that this methodology in fact distorts respondents' reported freight costs. While the new regulations are not binding in the instant reviews, they are a codification of our intended practice.

Because we determined that respondents acted to the best of their ability, it would be improper to make adverse inferences about their reported data by applying facts available simply because their record-keeping systems do not record their data on a transaction-specific basis. Therefore, we have accepted respondents' reported air and ocean freight expenses.

17.B. Burden of Proof

Comment: Torrington argues that the Department has shifted the burden of proof improperly to petitioner to demonstrate the invalidity of respondents' claims. Torrington asserts that the Department's error originated in the 1994/95 reviews and was aggravated by the Department's refusal to require respondents to state when they have disregarded prior determinations and by the Department's acceptance of petitioner-challenged respondent data without Department verification. Torrington maintains that, when the Department found there to be no information demonstrating distortive allocations of post-sale price adjustments, it effectively shifted the burden of proof to petitioners to present information to refute respondents' claims. Torrington argues that, since it has no right to conduct discovery or to attend verifications and since respondents possess all of the information relevant to distortion, respondents should bear the burden of proof regarding the distortion issue. Torrington asserts that *Fujitsu General Ltd.* v. *United States,* 88 F.3d 1034 (CAFC 1996), and *Timken Co.* v. *United States,* 673 F. Supp. 495 (CIT 1987), support its contention that respondents should bear the burden of demonstrating whether an allocation causes distortive results.

Torrington maintains that the Department shifts the burden of proof when it chooses not to verify and accepts respondents' data and when the Department does not require respondents to state on the record whether their questionnaire responses conform to prior rulings. Torrington claims that the Department also shifts the burden of proof upon petitioner by requiring petitioner to demonstrate, beyond a showing of below-cost transfer pricing, that foreign producers have in fact reimbursed dumping duties. Torrington also asserts that the Department places the burden of proof upon petitioner with regard to the reporting of product-specific R&D by allowing general allocations instead of product-specific allocations when respondents' annual reports mention new products. Torrington maintains further that the Department places the infeasible burden upon petitioner of proving, with regard to reseller transactions, that sales to HM buyers, related to U.S. OEMs or who distribute merchandise for export to third countries, are sales for export, not HM sales.

Torrington argues that, by shifting the burden of proof to petitioner, the Department has abdicated its fact-finding responsibilities and required the petitioner to perform the Department's investigation. Torrington cites *Rhone-Poulenc, Inc.* v. *Unites States,* 927 F. Supp. 451, 456–457 (CIT 1996), to support its contention. Torrington notes that the Department placed the burden of proof correctly upon respondents in these reviews with regard to duty absorption and that the burden should be similarly placed upon respondents for each issue parties address. Torrington concludes that, since respondents have had sufficient time to develop their records, the Department should not accept respondents' claims that they made their best efforts to substantiate their assertions.

NTN, SKF, and Koyo respond by stating that Torrington's argument is a vague, overly general criticism raised against all adjustments favorable to respondents. NTN argues that Department findings favorable to respondents do not shift the burden of proof to petitioner. Koyo argues that the Department is not required to investigate every claim petitioner alleges, and the Department required additional evidence correctly in support of petitioner's allegations of distortive adjustment methodologies. Koyo argues further that Torrington's position is similar to that taken by a party in *Al Tech Specialty Steel Corp.* v. *United States,* 575 F. Supp. 1277 (CIT 1983), in that the Department's requirement of additional information from petitioner when petitioner's claims were based on mere suspicion did not place an undue burden upon petitioner. Respondents argue that they and the Department have met their burdens of proof in that the Department has investigated petitioner's claims thoroughly and has conducted repeated verifications. SKF notes that it has provided thousands of pages of data in responding to the Department's questionnaires. NTN contends that the Department verified all of NTN's records regarding adjustments and reimbursement and found no evidence to support petitioner's claims. NTN notes, furthermore, that the cases petitioner cites to support its position, *Fujitsu General Ltd.,* v. *United States* and *Timken Co.* v. *United States,* are inappropriate because there is no basis for the Department to make a presumption of bad faith on the respondents' part, as was the situation in the cited cases. Koyo notes, moreover, that petitioner's argument regarding below-cost transfer pricing is immaterial since the level of transfer prices in relation to the benchmark Torrington proposes is irrelevant for determining whether the reimbursement of antidumping duties occurred. Finally, SKF argues that, contrary to petitioner's claims that the Department has abdicated its investigatory responsibilites, in the area of duty absorption—where petitioner approves of the Department's findings—the Department has invoked a methodology inappropriate in an investigatory fact-finding proceeding.

Department's Position: We agree with respondents that the petitioner does not bear an undue burden of proof in substantiating its claims. First, we disagree with petitioner's claim that our decision not to require respondents to state when they have disregarded prior determinations somehow results in or aggravates a shift in the burden of proof upon the petitioners. *See* our response to Comment 17(E). Second, we disagree that we shift the burden when we choose not to verify a particular respondent's data. As petitioner is aware, the Department has, over the course of the seven completed AFB reviews, verified all of the respondents subject to these 1995/96 reviews. The fact that respondents' data is subject to verification serves to ensure its accuracy. Moreover, where the Department has encountered difficulties in verifying a particular respondent's data, it has been careful to examine closely such information in later reviews.

With respect to the allocations at issue, the Department has examined fully and, in certain cases, verified respondents' data regarding petitioner's claims. Where we have been satisfied that a given allocation methodology is non-distortive, we have had no reason to require respondents to submit additional information. The mere fact that petitioner claims a methodology is distortive does not make it so. Where we have disagreed with petitioner, we have explained our positions throroughly in response to specific comments contained in this issues appendix. We have also addressed petitioner's allegations of reimbursement through below-cost transfer pricing (*see* our response to section 13, comment 1, above). In such cases, we have neither failed to meet our investigatory responsibilities nor placed an undue burden upon petitioner.

17.C. HTS.

Comment: Torrington argues that the Department should amend the list of HTS subheadings listed in the preliminary results by replacing HTS number 8482.99.6590, which Torrington claims does not currently exist, with HTS 8482.99.7060 and HTS 8482.99.7090 (1994 HTS) and also with HTS 8482.99.6560 and HTS 8482.99.6595 (1995 HTS and later). Torrington states that HTS 8482.99.6590 existed to cover parts of ball bearings and spherical plain bearings other than balls or races.

NSK agrees that HTS number 8482.99.6590 does not exist and should be removed from the references to the HTS classification in the final results. However, NSK states that Torrington did not describe accurately the HTS numbers and, along with SKF, suggests that the Department should examine the current HTS classifications applicable to scope merchandise before adding the references Torrington claims are appropriate.

Department's Position: We have confirmed that HTS number 8482.99.6590 has been deleted from the

1997 Harmonized Tariff Schedule and, therefore, we have removed it from the description of scope merchandise for the final results. We disagree with Torrington on the need to replace HTS 8482.99.6590 with HTS 8482.99.7060 and HTS 8482.99.7090 because these numbers refer to 1994 HTS numbers that no longer exist. Instead, after consulting with the U.S. Customs Service, we concluded that HTS 8482.99.6590 should be replaced with the 1997 HTS numbers HTS 8482.99.6560 and HTS 8482.99.6595. We also emphasize that HTS item numbers are provided for convenience and that the written descriptions of the scopes of the orders remain dispositive.

17.D. Certification of Conformance to Past Practice

Comment: Torrington claims that the Department should require all respondents to identify each instance where they have not followed previous Department rulings when responding to the Department's questionnaires. Torrington claims that, by accepting information which does not conform to previous agency determinations, the Department changes its position effectively without providing a reasoned explanation, which is contrary to administrative law. Torrington asserts that, when the Department does not verify questionnaire responses and respondents do not indicate where they have departed from prior agency rulings, then the quality of evidence upon which the Department relies is called into question profoundly under the substantial-evidence standard. Additionally, citing *Freeport Minerals Co.* v. *United States*, 776 F.2d. 1029 (CAFC 1985), among others, Torrington claims that the Department failed to discharge its affirmative duty to investigate and ascertain facts where (a) it knows that certain respondents take the position that they have no obligation to conform to prior agency rulings, and (b) it declines to take steps to ascertain whether those respondents are failing to conform.

Torrington analogizes the administration of the antidumping laws with customs-law enforcement. Torrington notes that, pursuant to 19 CFR 177.8(a)(2), importers are required to conform with prior customs rulings issued to the importer in question and suggests that the Department should take a parallel position in the administration of the antidumping law.

In addition, Torrington considers it illogical and unfair to continue an approach which requires the Department or Torrington to comb through every questionnaire response anew to detect instances wherein companies fail to follow prior rulings. Torrington states that respondents know when they are complying and where they are disregarding prior determinations. Torrington suggests that the Department should recognize this by requiring them to identify instances where their reporting reinstates a previously rejected method.

Torrington raises issues specifically pertaining to NTN and disagrees with NTN's position that it has no obligation to follow prior Department rulings expressly pertaining to NTN when answering subsequent Department questionnaires on the theory that each review is an independent proceeding, citing *AFBs V*, 61 FR at 66520–21. Torrington discusses several instances in which the Department rejected NTN's position in the various bearings reviews and suggests that the Department pursue the question carefully of whether NTN has disregarded prior negative rulings in these reviews. In Torrington's view, failure to apply past determinations when circumstances are essentially unchanged would constitute arbitrary administrative action and departures from precedent without explanation. If the Department cannot allay concerns on any of the foregoing pre-decided issues, Torrington urges the Department to resort liberally to facts available since Torrington believes that NTN should assume any risk of disregarding prior determinations.

NTN responds to Torrington's comments specifically addressing NTN's reporting methodology and states that, for four of Torrington's points, Torrington has mischaracterized NTN's reporting methodology. NTN observes that the CIT reversed the fifth issue. NTN claims that Torrington is unfamiliar with this case since it does not stand for the proposition that the Department may ''liberally resort to facts available'' when NTN has used a methodology with which Torrington disagrees. NTN also disagrees with Torrington's interpretation of the manner in which NTN has reported expenses and costs in prior segments of this proceeding.

Koyo submits that, if Torrington is to insist on such a practice, the Department should likewise restrict the issues that a petitioner may raise in its various filings in these proceedings to matters which have not already been addressed and rejected repeatedly by the Department and, often, by the Court of International Trade and not further appealed by the petitioner. Koyo suggests that, if Torrington persists with this proposal and the Department approves it, the Department should also restrict petitioners to matters not rejected previously.

SKF asserts that Torrington's reference to customs law is inapposite. SKF rebuts that one cannot compare a Customs tariff-classification ruling applicable to an entry of a particular type of merchandise to a complicated antidumping investigatory proceeding where, in any given review, hundreds or thousands of rulings and Department practices may be at issue. Moreover, SKF asserts that Customs has itself determined by rule that the cited entry procedure is necessary for the effective enforcement of the customs laws.

NTN, Koyo, SKF, NSK, and FAG disagree with Torrington's demand that respondents identify all cases where they are not following prior Departmental rulings and view the argument as pointless and impossible. Respondents state that Torrington has raised this argument in previous AFB reviews and the Department ultimately rejected Torrington's argument. Respondents point out that they are not bound by decisions in prior reviews as each administrative review is a distinct proceeding involving different sales, adjustments, and underlying facts and what transpired in previous reviews is not binding precedent in later reviews. Respondents also claim that Torrington has failed to provide any statutory support for such a drastic change in reported requirements. Respondents argue that Torrington's request be rejected because it would be unduly burdensome on both respondents and the Department.

Department's Position: We disagree with Torrington that we should require all respondents to conform their submissions, their allocations, and their methodology to our most recent determinations and rulings. In accordance with our usual practice, we also did not require respondents to identify where they have continued to use any methodology that we rejected in a prior review and justify the departure from established practice. Each administrative review is a separate reviewable proceeding involving different sales, adjustments, and underlying facts. What transpired in previous reviews is not binding precedent in later reviews and parties are entitled, at the risk of the Department's determining otherwise, to argue against a prior Department determination. As a practical matter, methodologies the Department accepts in one review are generally used by respondents in subsequent reviews and methodologies the Department rejects are not perpetuated in later reviews. The Department, however, may reconsider its position on an issue during the course of the proceeding in light of facts and arguments presented by the parties. *See AFBs V* and *AFBs VI.*

While the issue of a party's conformance to the Department's previous rulings has been addressed in prior administrative reviews, Torrington raises a new argument in these reviews with respect to its analogy of the administration of the antidumping law with customs-law enforcement. We have considered this argument, but we did not find that we are required by statute to adopt Torrington's suggestions or that the administration of the antidumping statute would be best served by changing our practice in this regard.

17.E. Pre-Existing Inventory

Comment: SKF claims that SKF USA made some CEP sales of merchandise that entered into the United States prior to suspension of liquidation (November 9, 1988) and that, although SKF identified these sales in the questionnaire response, the Department did not exclude these sales from the margin calculations. SKF cites *Stainless Steel Wire Rod From France: Final Results of Antidumping Duty Administrative Review* (61 FR 27296, 27314 (Sept. 11, 1996))(*Wire Rods from France*) to support its argument that merchandise which entered the United States prior to the 1988 suspension of liquidation (and in the absence of affirmative critical-circumstances finding) is not subject merchandise and is therefore not subject to review by the Department. SKF asserts that it demonstrated at verification the accuracy of its tracing system, so the Department should be satisfied that these sales involve merchandise which entered the United States prior to the suspension of liquidation.

Torrington claims that, because sampling prevents the Department from linking a sale to an entry, it is incorrect to exclude any POR sales from the margin calculations. Torrington claims that SKF has neither demonstrated a link between these sales and entries made prior to the suspension of liquidation nor has it provided sufficient explanation of the circumstances involving the extended length of time these bearings spent in inventory.

Department's Position: The record regarding the alleged pre-November 9, 1988 entries is insufficient to satisfy us that SKF's country-of-origin tracking system establishes conclusively that the specific sales were of bearings which entered the United States prior to the original suspension of liquidation. SKF's only explanation, submitted in its case brief, is that its inventory system can link European invoices with receipts into inventory at the U.S. affiliate.

Therefore, SKF has not demonstrated a link between the entry to inventory and the sale to the unaffiliated party during the POR.

17.F. Inland Freight

Comment 1: Torrington contends that the Department should recalculate NTN Japan's reported HM pre-sale inland freight and U.S. inland freight expenses. Torrington maintains that determining these expenses based upon sales value yields distortive figures. Torrington points out that NTN Japan's current method of valuing these expenses date back to the LTFV investigation in which the Department permitted this approach because NTN Japan could not calculate a sale-by-sale freight expense. Torrington argues that these expenses should be valued based on weight and/or distance which are more relevant and accurate factors than sales value.

NTN Japan argues that it incurs the pre-sale freight and inland freight expenses regardless of weight. NTN Japan also contends that the Department has verified these expenses in previous reviews and has found that the basis upon which it calculates these expenses is not unreasonably distortive. NTN Japan therefore maintains that the Department should not recalculate freight on the basis of weight.

Department's Position: We agree with NTN Japan. We have accepted the methodology NTN Japan used in past reviews and did not find it to be distortive. *See AFBs VI* at 2122. Since there is nothing on the record in the current reviews that would indicate that a change in methodology is necessary, we have accepted NTN Japan's methodology for allocating freight expenses.

17.G. Other Issues

Comment: Agusta Aerospace Corporation (AAC), an importer of subject merchandise produced by SNFA France, argues that it is exempt from the antidumping duty order in this review pursuant to the Agreement on Trade in Civil Aircraft, 31 U.S.T. 619, April 12, 1979, (hereinafter "the Agreement"). It maintains that the Agreement, which applies to aircraft, components and spare parts, provides that signatories agree to eliminate "all customs duties and other charges of any kind levied on, or in connection with, the importation of products * * * if such products are for use in a civil aircraft and incorporation therein, in the course of its manufacture, repair, maintenance, rebuilding, modification or conversion * * * ." (citing 31 U.S.T. 619, Art. 2). AAC asserts that the AFBs it imported during the POR were used as parts in A109 helicopters and such helicopters are exempt from duties under the Agreement. AAC argues further that the improved AFBs which it imported as a result of a mandate from its parent company should also be exempt from antidumping duties since the mandate from its parent company is functionally equivalent to AAC's parent company installing the bearings on the aircraft at manufacture. AAC concludes that, since the Agreement is an international treaty, the Department should not establish antidumping orders which conflict with it, absent express congressional language to the contrary.

AAC also argues that the Department should not assess antidumping duties on AAC's imported AFBs because AAC imports a relatively small amount of AFBs which comprise less than one percent of the total price of their completed aircraft. AAC argues further that, since AAC and its parent corporation permit only a finite, authorized market restricted to Agusta aircraft service centers and owners and operators of their aircraft to have access to the AFBs, the AFBs AAC imported cannot have a negative material impact on the U.S. AFB market since AAC has not authorized the U.S. AFB market to purchase AAC's AFBs. AAC concludes that, if the Department were to impose antidumping duties against AAC, the Department would defeat the purpose of the antidumping law, particularly since AAC cannot elect to purchase bearings by other manufacturers.

AAC challenges the Department's assessment of AFBs imported by AAC as adverse facts available and argues that the assessment is the unfair byproduct of SNFA's failure to respond to the Department's questionnaire. AAC argues that the Department should take into consideration the fact that, in its pre-preliminary results comments, AAC provided the Department with detailed import information but, given SNFA's refusal to respond, could not obtain information from SNFA. AAC argues that it lacks any authority or influence over SNFA to secure information from SNFA. AAC argues that the Department is punishing AAC for SNFA's unwillingness to cooperate in this review by rejecting the information AAC provided and by not requesting further information from AAC or its parent corporation.

Torrington rebuts that the Department should reject AAC's arguments. Citing *ASG Industries, Inc.* v. *United States,* 610 F. 2d 770, 777 n. 14 (1979), Torrington states that antidumping and countervailing duties are imposed in addition to regular duties. Torrington also notes that, pursuant to Section 1335 of the Omnibus Trade and Competitiveness Act of 1988, the Department may exclude certain sales of bearings that have no substantial non-military use and are made pursuant to an existing Memorandum of Understanding, citing 61 FR 66471, 66508 (December 17, 1996). Torrington argues that AAC makes no such claim.

Department's Position: We disagree with AAC. The elimination of duties discussed in article 2 of the Agreement on Trade in Civil Aircraft refers to the elimination of ordinary customs duties, not antidumping duties imposed to offset unfair foreign trade practices. Indeed, U.S. law makes even U.S. government agencies acting as importers subject to antidumping or countervailing duties applicable to the merchandise imported unless it is merchandise ''acquired by, or for the use of,'' the Department of Defense from a country with which Defense had a Memorandum of Understanding in effect on January 1, 1988, or merchandise imported by Defense which ''has no substantial nonmilitary use.'' *See* section 771(20) of the Tariff Act; *AFBs V,* 61 FR 66,472, 66,508 (Dec. 17, 1996). *See also Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 865 n.6 (CIT 1993) (stating that in case of a conflict between GATT and U.S. law, U.S. law applies). Therefore, the Agreement on Trade in Civil Aircraft does not exempt AAC from the requirement to pay antidumping duties on the merchandise at issue.

We also reject AAC's request that it be exempted from the order because it imported and sold only a small amount of subject merchandise from SNFA during the POR and because it imported and installed the bearings in response to a ''mandate'' from its parent company. Neither the statute nor our regulations provides exemptions from the dumping law for such reasons. Thus, importing subject merchandise subject to a ''mandate'' is not ''functionally equivalent'' to installing merchandise on the aircraft at manufacture. Moreover, the fact that AAC's bearings comprise under one percent of the total price of the finished product when sold to unrelated customers does not exempt it from paying antidumping duties.

Finally, we have not used the information provided by AAC regarding its imports of SNFA bearings to calculate an antidumping duty rate for SNFA or AAC. In market-economy cases, the Department's practice is to calculate a single rate for each respondent investigated or reviewed. As AAC notes, however, SNFA did not respond to the Department's questionnaire. While we recognize the difficulty that AAC may have encountered in trying to obtain information from SNFA, the information provided by AAC was based on its own imports of subject merchandise and, absent SNFA's data, was insufficient to allow for the calculation of an antidumping duty rate. As stated in the SAA at page 826, imported components which are further manufactured are not exempt from antidumping duties.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–820]

Ferrosilicon from Brazil: Amended Final Results of Antidumping Duty Administrative Review

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

ACTION: Amended final results of Antidumping Duty Administrative Review.

SUMMARY: On August 14, 1997, the Department of Commerce published the final results of the second administrative review of the antidumping duty order or ferrosilicon from Brazil. The review covered Companhia Ferroligas Minas Gerais-Minasligas and Companhia Brasileria Carbureto de Calcio manufacturers/exporters of the subject merchandise to the United States. The period of review is March 1, 1995 through February 29, 1996. Interested parties submitted ministerial error allegations with respect to the final results of administrative review for Minasligas on August 20, 1997. Based on the correction of certain ministerial errors made in the final results of review, we are amending our final results of review with respect to Minasligas and the All Others rate.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Sal Tauhidi or Irene Darzenta, AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4851 or (202) 482–6320, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

The Department of Commerce (the Department) has now amended the final results of this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the regulations set forth at 19 CFR part 353 (April 1996).

Background

On August 14, 1997, the Department published the final results of the second administrative review of the antidumping duty order or ferrosilcon from Brazil (62 FR 43504), covering the period March 1, 1995 through February 29, 1996. The respondents are Companhia Ferroligas Minas Gerais-Minasligas (Minasligas) and Companhia Brasileria Carbureto de Calcio (CBCC). The petitioners are Aimcor and SKW Metals & Alloys, Inc.

On August 20, 1997, the petitioners and Minasligas filed allegations that the Department had made certain ministerial errors in this administrative review with respect to Minasligas. Specifically, the petitioners alleged three ministerial errors with respect to the following issues: (1) the use of Brazilian reais-denominated gross unit prices instead of U.S. dollar-denominated gross unit prices for U.S. sales; (2) the treatment of marine insurance expenses for certain U.S. sales; and (3) the date of sale for one U.S. sale. Minasligas alleged two ministerial errors with respect to the following issues: (1) the adjustment to U.S. price for insurance revenue applicable to one U.S. sale; and (2) the treatment of value-added taxes (VAT) on U.S. sales. On August 27, 1997, both parties submitted comments on these allegations. For a complete discussion of the allegations, *see* the Department's October 6, 1997, Decision Memorandum Re: Alleged Ministerial Errors in the Calculation of the Final Antidumping Duty Margin for Companhia Ferroligas Minas-Gerais-Minasligas.

As discussed below, in accordance with 19 CFR 353.28(d), we have determined that certain ministerial errors were made in our margin calculations for Minasligas. In addition, the Department also determined that a clerical error was made regarding the