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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Administrative Reviews of Ball Bearings (other than tapered roller bearings) and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom – May 1, 2000, through April 30, 2001

Summary

We have analyzed the case and rebuttal briefs of interested parties in the May 1, 2000, through April 30, 2001, administrative reviews of the antidumping duty orders covering ball bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in these administrative reviews for which we received comments and rebuttal comments by parties:

1. Facts Available
2. Margin Calculation (Zeroing of Positive Margins)
3. Export Price/Constructed Export Price
4. Price Adjustments
    - A. Commissions
    - B. Billing Adjustments
    - C. Credit Expenses

D. Direct and Indirect Selling Expenses
E. Others
5. Arm's Length Test and Sales to Affiliated Parties
6. Sample Sales, Prototype Sales and Sales Outside the Ordinary Course of Trade
7. Cost of Production and Constructed Value
A. Profit for CV
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9. Discount and Rebates
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A. Improper Service
B. Consignment Sales
C. Model Matching
D. Clerical Errors
E. Others

Background

On April 10, 2002, the Department of Commerce (the Department) published preliminary results of the administrative reviews of antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, and the United Kingdom (67 FR 17361) (Preliminary Results). The reviews cover 40 manufacturers/exporters. The period of review is May 1, 2000, through April 30, 2001. We invited interested parties to comment on the Preliminary Results. At the request of certain parties, we held hearings for Japan-specific issues on June 2, 2002, and Germany-specific issues on June 11, 2002.

Company Abbreviations

Asahi Seiko - Asahi Seiko Co., Ltd.
Barden UK - The Barden Corporation (U.K.) Ltd.
Bearings Discount - Bearings Discount International GmbH
EuroLatin Ex. Services - EuroLatin Export Services, Ltd.

FAG Germany - FAG Kugelfischer Georg Schaefer AG
FAG Italy - FAG Italia S.p.A.
FAG UK - FAG (U.K.) Ltd.
Isuzu - Isuzu Motors Ltd.
Koyo - Koyo Seiko Co. Ltd.
MPB - MPB Corporation d/b/a/ Timken Aerospace & Super Precision
Nachi - Nachi-Fujikoshi Corporation
Nankei Seiko - Nankei Seiko Co., Ltd.
NPBS - Nippon Pillow Block Sales Co., Ltd.
NSK UK - NSK Bearings Europe, Ltd.
NSK - NSK Ltd.
NTN - NTN Corporation
Osaka Pump - Osaka Pump Co., Ltd
Paul Müller - Paul Müller Industrie GmbH & Co. KG
RIRSA - Representaciones Industriales Rodriguez S.A.
Rodamientos Rovi - Rodamientos Rovi
Rovi Marcay - Rovi Marcay
Rovi Valencia - Rovi Valencia
SNFA - SNFA Bearings, Ltd.
SKF France - SKF France S.A. and Sarma
SKF Italy - SKF Industrie S.p.A.
Takeshita - Takeshita Seiko Co., Ltd.
Torrington - The Torrington Company
Torrington Nadellager - Torrington Nadellager GmbH

Other Abbreviations
AFB - antifriction bearing
BB - ball bearing
CAFC - Court of Appeals for the Federal Circuit
CEP - Constructed Export Price
CIT - Court of International Trade
COP - Cost of Production
CV - Constructed Value
EC - European Community
LTFV - Less Than Fair Value
POR - Period of Review
SAA - Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994)
URAA - Uruguay Round Agreements Act

AFB Administrative Determinations
AFBs 3 - Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Revocation in

Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993).

AFBs 4 - Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995).

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

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

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

AFBs 8 - 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, 63 FR 33320 (June 18, 1998).

AFBs 9 - Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590 (July 1, 1999).

AFBs 10 - Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 65 FR 49219 (August 11, 2000).

AFBs 11 - Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al., 66 FR 36551 (July 12, 2001).

Discussion of the Issues

1. Facts Available

Comment 1: Isuzu, an Original Equipment Manufacturer (OEM) reseller, contends that the Department's selection of the highest rate for a manufacturer based on partial best information available (BIA) from the original investigation and its corroboration by an examination of transaction-specific margins of a cooperating Japanese manufacturer in the current review misapplies the standard that the adverse facts-available rate must be "a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance." According to Isuzu, the result is an unreasonably high rate with no relationship to Isuzu's actual dumping margin.

In support of its argument, Isuzu cites F.L.II De Cicco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (CAFC 2000), rev'd on other grounds in Micron Tech., Inc. v. United States, 243 F.3d 1301 (CAFC 2001). Isuzu asserts that corroboration does not justify the imposition of this rate which, it claims, is neither rationally related to sales nor indicative of customary selling practices and is unduly harsh or punitive. Isuzu also asserts that, because there are three different types of respondents in the current review (Japanese bearings manufacturers, OEM resellers, and trading companies), the Department should recognize these distinctions in selecting adverse facts available. Additionally, Isuzu disputes the characterization of the 73.55 percent rate from the original LTFV investigation as having been a "calculated" rate. Furthermore, Isuzu argues, the fact that the 73.55 percent partial-BIA rate was derived under a section of the law that has subsequently been amended discredits its selection further as an adverse facts-available rate in the current review. Finally, Isuzu contends that, because the rate was computed using data on transactions that occurred fourteen years ago, its probative value for current transactions is negligible. For the above reasons, Isuzu contends that the imposition of the highest rate calculated for any cooperating respondent in the proceeding would strike the requisite balance between deterrence and a reasonably accurate estimate of Isuzu's actual dumping margin.

Department's Position: Because Isuzu chose not to cooperate in this review, we applied total adverse facts available. See the Department's memorandum to the file dated August 31, 2001, concerning Isuzu's understanding that a decision not to participate in the review would most likely result in the application of facts available. As total adverse facts available, we selected the highest rate the Department had calculated for any company in any segment of this proceeding. This rate was 73.55 percent. Specifically, 73.55 percent is the rate that the Department calculated during the preliminary stage of the LTFV investigation using the petition rate as best information available to analyze specific home-market sales to unrelated parties. See Preliminary Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan, 53 FR 45343, 45346 (November 9, 1988). This rate was then applied, as a result of Koyo's submission of a new response immediately prior to verification, as best information available in the final determination. See Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan, 54 FR 19101, 19102 (May 3, 1989), and Final Determination 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 18992, 19033 (May 3, 1989). The selection of the highest rate calculated for any company in any segment of this proceeding as an adverse facts-available rate is consistent with our past practice. See, e.g., AFBs 10, 65 FR 49219.

Further, nothing on the record indicates that the extent of the dumping margin would be limited, circumscribed, or otherwise affected by the type of respondent (i.e., manufacturer, OEM reseller, trading company). A comparison of the dumping rates that we have calculated in the past for various types of respondents is meaningless because such margins are based on the pricing practices of cooperative firms. Such rates do not define the limits to which any type of respondent could dump the subject merchandise in the United States.

Finally, although the selected rate was derived in the original investigation, we conclude that it is relevant for the current segment of the proceeding. We were able to corroborate this rate based on contemporaneous sales information. To corroborate the adverse facts-available rate, we examined current transaction-specific margins for Nachi Japan. This method of corroboration is consistent with our past practice. See, e.g., AFBs 10 (comparing the selected margin to margins calculated on individual sales by respondents in the current review). In doing so, we found a substantial number of sales, made in the ordinary course of business and in commercial quantities, with dumping margins at or exceeding 73.55 percent. These specific transactions were substantial whether measured by the number of transactions, the value of the transactions, or the quantity of the transactions. (The details of this analysis are contained in the proprietary version of the Department's analysis memorandum for the Preliminary Results with respect to Isuzu dated April 1, 2002.) This evidence supports our conclusion that, because the selected rate might reflect Isuzu's actual dumping margin, it is neither unduly harsh nor punitive. Therefore, we determine that the rate selected as adverse facts available is relevant to Isuzu's rate of dumping and continues to have probative value. Accordingly, we have not altered our conclusion for these final results.

Comment 2: Asahi argues that the Department applied adverse facts available incorrectly to certain of its U.S. sales for which the Department determined that there were no comparable home-market sales or CV data. Asahi asserts that it provided CV data in accordance with the Department's questionnaire which requires that respondents report CV data in cases where there are no contemporaneous sales of comparable merchandise in the home market or where the contemporaneous sales of comparable merchandise reported were made to affiliates. Asahi points out that it has responded in the same way since the 1990-1991 review with respect to CV data. It claims that, due to a misunderstanding during this review, some of the CV data it submitted was only for the family models in the home market and, therefore, certain models do not have the exact CV reported on a model-specific basis.

Asahi argues that the Department requested supplemental CV data from Asahi and, because its counsel is located outside of Washington, D.C., it did not have sufficient time to understand the request fully nor give its counsel sufficient time to review the data carefully before submitting it to the Department. Furthermore, Asahi adds, the Department's additional request that Asahi resubmit all of its data at the same time hindered its ability to review the supplemental CV data properly.

Asahi argues further that many of the U.S. sales for which the Department applied adverse facts available because no CV data was available had matching or similar home-market sales. Asahi provides examples of these matching U.S. and home-market sales, explaining that if the Department uses the matching home-market sales there is no reason to resort to CV. Moreover, Asahi explains, CV can be calculated for every model based on the data it submitted in its responses by taking the total cost of manufacturing for each U.S. model and adding to it an amount for general and administrative expenses and the net interest expense as calculated and reported in its COP response.

Finally, Asahi asserts that the Department changed its calculation methodology in the 1999-2000 review (a review in which Asahi did not participate) and it was not aware of any such changes until the release of the Preliminary Results. Asahi emphasizes that, since it has responded to the questionnaire in the same way it has in all past reviews, it can only surmise that the change in the Department's methodology resulted in the Department's neglecting to use Asahi's reported data. Therefore, Asahi concludes, for all of the reasons above, the Department's determination to apply adverse facts available to certain U.S. sales was incorrect and the Department should revise its margin calculations for Asahi for the final results to use the matching, similar home-market data as submitted in Asahi's responses.

Torrington responds that it does not take any position on this issue.

Department's Position: Because Asahi did not provide the CV information as we required, we determine that facts available is warranted pursuant to section 776(a)(2)(A) of the Act. After reviewing the record, however, we have reconsidered our application of adverse facts available to U.S. sales for which we could not find comparable home-market sales or CV data. Specifically, for the reasons discussed below, as facts available we have now used Asahi's cost-of-manufacturing information for the models for which we did not have usable CV data.

Although we disagree with Asahi's assertion that there were sufficient home-market sales to compare to all U.S. sales, we believe that Asahi acted to the best of its ability. First of all, with the due date of the preliminary results only weeks away, we only were able to give Asahi a short time to respond to the supplemental request for CV data. Asahi met this deadline and a second deadline involving a verbal request for further information. (The details of this request are contained in the public version of the memorandum to the file dated March 22, 2002.)

Second, Asahi provided the required information for a substantial number of the models it sold to the United States. Finally, after reviewing the record, we have determined that there is relevant data on the record to allow us to calculate the necessary CV for those U.S. models for which Asahi did not provide CV data. That is, we were able to use the total cost-of-manufacturing amounts from Asahi's response for the sales in question and then add to those amounts general, administrative, and interest expenses based on Asahi's COP data. Although we have not applied adverse facts available for these final results of review, Asahi will be required to provide cost data in conformity with the requirements of the questionnaire for future administrative reviews.

2. Margin Calculation (Zeroing of Positive Margins)

Comment 3: Koyo, FAG Italy, NPBS, NSK UK, NSK, Barden, SKF, and Asahi assert that the Department's practice of assigning a zero-percent dumping margin for sales to the United States made at or above normal value violates Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994) (Antidumping Agreement). In support of their assertion, the respondents cite European Communities-Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS 141/AB/R (March 1, 2001) (Bed Linen). In this report, they argue, the World Trade Organization (WTO) Appellate Body ruled that the European Community (EC) violated its WTO obligations in the way it calculated an overall dumping margin by using a methodology that included zeroing negative price differences for some models of bed linen. Citing AFBs 11, 66 FR 36551, Barden addresses the same issue, asserting that the Department pronounced its immunity to the WTO Appellate Body decision. Barden argues that, regardless of the Department's interpretation of its obligations under the WTO, the Department is certainly obligated to follow the statutory provision under section

751(a)(2) of the Tariff Act of 1930, as amended (the Act), which requires that antidumping duties be determined based on the dumping margin for each entry.

The respondents argue that the Department's practice of zeroing negative margins to calculate the overall antidumping duty margin likewise violates the provision of the Antidumping Agreement and, thus, violates U.S. antidumping law. The respondents assert that, under Article XVI of the Agreement Establishing the WTO, the United States agreed to "ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed agreements," even if it was not a party to a given case. Koyo, FAG Italy, NPBS, and Barden also cite Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804) (Charming Betsy), asserting that the Department is required by the Charming Betsy doctrine to interpret U.S. law as not to conflict with international obligations. Similarly, citing Glaxo Wellcome Inc. v. U.S., 126 F. Supp. 2d 581, 593 (CIT December 21, 2000), Barden contends that the CIT expressed the following: "...courts attempt, to the extent possible, to harmonize the interpretation of domestic statutory law with sources of law reflecting U.S. international obligations." In conclusion, the respondents ask the Department to bring its methodology into conformity with the Appellate Body's decision in Bed Linen by offsetting positive margins with negative margins in its calculations for the final results of the reviews.

Torrington contends that the Bed Linen decision creates no obligation for the United States because the decision was directed at the EC, not the United States. Citing Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), reprinted at 103d Cong. 2d Sess., H. Doc. 103-316, Vol. 1, page 1654, Art. 19.1., Torrington states that "dispute settlement decisions create obligations only for the 'member concerned'."

Torrington also contends that, even assuming that the decision in Bed Linen creates an obligation for the United States, Article 2.4.2 of the Antidumping Agreement addresses how investigating authorities may calculate dumping margins during the investigation phase of a proceeding and, thus, the decision would only create an obligation for the Department with respect to investigations. Torrington asserts that, therefore, no inconsistency arises between the Appellate Body's interpretation of Article 2.4.2 of the Antidumping Agreement and the methodology applied by the Department in the current reviews. Torrington adds that the distinction between the investigation phase of a proceeding and an administrative review has been recognized in the past by the Dispute Settlement Body of the WTO. In support of these assertions, Torrington cites both United States – Antidumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea, WT/DS99/R (January 29, 1999), par. 6.89 and 6.90., and the SAA at 810.

Department's Position: As we have explained in prior decisions, our methodology is consistent with our statutory obligations under the Act. See Decision Memorandum at Comment 34 accompanying Certain Automotive Replacement Glass Windshields from the People's Republic of China, et al; Notice of Final Determination of Sales at Less Than Fair Value, 67 FR 6482 (February 12, 2002), and Decision Memorandum Comment 1 accompanying Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands, et al; Notice of Final Determination of Sales at Less Than Fair Value, 66 FR 50408 (October 3, 2001).

We include U.S. sales that were not priced below normal value in the calculation of the weighted-average margin as sales with no dumping margin. The value of such sales is included with the value of dumped sales in the denominator of the weighted-average-margin calculation.

We do not allow U.S. sales that were not priced below normal value, however, to offset dumping margins we find on other U.S. sales. The Act directs the Department to employ this methodology.

Section 771(35)(A) of the Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) of the Act defines "weighted average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." Taken together, these statutory provisions direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or CEP, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margins" in section 771(35)(B) of the Act makes clear that the singular "dumping margin" in section 771(35)(A) of the Act applies on a comparison-specific level and does not itself apply on an aggregate basis. The Act does not direct the Department to factor negative price differences (i.e., the amount by which export price or CEP exceeds normal value) into the calculation of the weighted-average dumping-margin. This does not mean, however, that we ignore sales that were not priced below normal value in calculating the weighted-average rate. It is important to recognize that the weighted-average margin will reflect any "non-dumped" merchandise examined during an investigation or review because the value of such sales is included in the denominator of the weighted-average dumping-margin calculation while no dumping amount for "non-dumped" merchandise is included in the numerator. Thus, a greater amount of "non-dumped" merchandise results in a lower weighted-average margin.

Furthermore, this is a reasonable means of establishing estimated duty-deposit rates in investigations and assessing duties in reviews. The deposit rate we calculate for future entries must reflect the fact that the Customs Service is not in a position to know which entries of merchandise are dumped and which are not. Further, by spreading the liability for dumped sales across all reviewed sales, the weighted-average dumping margin allows the Customs Service to apply this rate to all merchandise subject to the review.

These statutory requirements take precedence over any potentially conflicting obligations under the Uruguay Round Agreements. The URAA makes clear that, if there is a conflict between U.S. law and any provision of the WTO Uruguay Round Agreements, U.S. law prevails. See section 102(a)(1) of the URAA ("no provision of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstances, that is inconsistent with any law of the United States shall have effect"). Moreover, the SAA provides specifically that "[r]eports issued by panels or the Appellate Body under the DSU (i.e., the WTO Dispute Settlement Understanding) have no binding effect under the law of the United States." SAA at 1032, reprinted in 1994 U.S.C.C.A.N. 4040, 4318.

Finally, with respect to the respondents' WTO-specific arguments, we believe U.S. law is consistent with our WTO obligations. Moreover, the WTO decision in Bed Linen concerned a dispute between the EC and India. Consequently, we have no obligation under U.S. law to act on that decision.

3. Export Price/Constructed Export Price

Comment 4: NTN argues that the Department should calculate CEP profit on a level-of-trade-specific basis. NTN claims that selling expenses alone do not entirely explain the differences in prices between levels of trade and that, to account fully for the differences in prices, profit levels must be taken into consideration. NTN also contends that there is a statutory preference that profit be calculated on the narrowest possible basis and that, by not calculating CEP profit on a level-of-trade-specific basis, the Department ignores that preference. NTN argues further that, because CV profit is calculated on a level-of-trade-specific basis, CEP profit should also be calculated on that basis.

MPB contends that the Department has rejected this argument in prior administrative reviews and that the Department's methodology was affirmed by the CIT in NTN Bearing Corp. et al., v. U.S., Slip Op. No. 00-64, at 52-53 (CIT June 5, 2000).

Department's Position: It is not our practice to calculate CEP profit on a level-of-trade-specific basis. See AFBs 9, 64 FR at 35621 (July 1, 1999), and 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, 63 FR 2558, 2570 (January 15, 1998) (final admin. review) (Tapered Roller Bearings). The CAFC has agreed that we do not need to consider level of trade in our CEP-profit calculation because the most specific data we are statutorily required to use is “category of merchandise.” NTN Bearing Corp. v. U.S., Slip Ops. No. 01-1328, 01-1353, 01-1342, at 11-12 (CAFC June 28, 2002). “Category of merchandise” means the class or kind of merchandise which comprises the broad category of merchandise subject to the order. Id.

We believe that NTN's reliance on the term “narrowest,” as used in sections 772(f)(2)(C)(ii) and (iii) of the Act, is misplaced. The statute uses this term in describing the second and third alternative methods for determining total expenses. Both of these methods are based upon using information contained in financial reports. For NTN, we used the first alternative method since the company provided the necessary data (i.e., U.S. and home-market sales information as well as CV and COP data for the subject merchandise and the foreign like product, respectively). This method is consistent with section 772(f)(2)(C) of the Act and the SAA at 824-825. Our practice in this regard has been upheld by the CAFC, and we have employed it to calculate our final results.

Comment 5: NTN argues that the Department should have excluded export-price sales from the calculation of CEP profit. NTN argues that section 772(f)(2)(C)(i) of the Act states that the adjustment of profit on CEP sales is limited to expenses incurred "with respect to the subject merchandise sold in the United States . . . for the purpose of establishing normal value and constructed export price." NTN contends that, because this statutory provision applies and there is no mention of export price as a factor, the Department erred in including export-price revenues in its calculations. NTN asks that the Department modify its position.

MPB reaffirms the inclusion of export-price sales as consistent with the Department's prior practice upheld repeatedly by the CIT, citing Torrington Co. v. U.S., 146 F. Supp. 2d 845, 880-882 (CIT May 10, 2001) (Torrington I), and NTN Bearing Corp. of Am., et al., v. U.S., Slip Op. No. 02-07, at 26-32 (CIT Jan. 24, 2002).

Department's Position: Our practice is to include export-price sales in the calculation of profit to be deducted in the CEP calculation. See, e.g., AFBs 8, 63 FR at 33345, and AFBs 9, 64 FR at 35622. The CIT has upheld our practice of including export-price sales in the calculation of CEP profit. See Torrington I, NTN Bearing Corp., and NSK v. U.S., Slip Op. No. 02-61, at 130-131 (CIT July 8, 2002). In addition, our analysis in these reviews is consistent with Policy Bulletin 97.1 (September 4, 1997).

The basis for calculating total actual profit is the same as the basis for calculating total expenses under section 772(f)(2)(C) of the Act. The first alternative under this section states that, for purposes of determining profit, the term "total expenses" refers to all expenses incurred with respect to the subject merchandise sold in the United States (as well as the foreign like product sold in the exporting country). Thus, where the respondent makes both export-price and CEP sales to the United States, sales of the subject merchandise encompass all such transactions. See Policy Bulletin 97.1. Because NTN had export-price sales, we have included these sales in the calculation of CEP profit.

4. Price adjustments

A. Commissions

Comment 6: Torrington cites FAG Italy's August 31, 2001, questionnaire response, Section B, at page 28, arguing that FAG Italy paid home-market commissions to three unrelated commissionaires with all commissions being a fixed percentage applied to the net invoice price. Torrington argues further that the net invoice price upon which FAG Italy's home-market commissions are based should not include additions to the price for freight and packing revenue because the charges do not appear on the commercial invoice. Torrington requests that the Department correct the calculations to reflect this information.

FAG Italy argues that the net invoice value includes any on-invoice reduction (e.g., discounts) or additions (e.g., freight/packing revenue) to the invoiced price with all charges specifically included on the commercial invoice to the customer. FAG Italy refers to its August 31, 2001, questionnaire response, Section B, at pages 26 and 46, and its January 28, 2002, supplemental response, arguing that it reported the actual amounts for freight and packing revenue received from the customers on a transaction-specific basis and that freight-reimbursement charges were billed directly to the customer on the commercial invoice.

Department's Position: FAG Italy reported the actual amounts of this expense which it incurred on a transaction-specific basis. See FAG Italy's August 31, 2001, questionnaire response, Section B, at pages 26 and 46. We have verified this expense in prior reviews and have found that the freight and packing revenue amounts are included on the sales invoices. See FAG Italy Verification Report for the 1997-1998 administrative review, dated February 16, 1999, at page 9. These actual amounts were subject to verification for this review as well. Given our verification of this expense in the past and no evidence that FAG Italy has changed its invoicing practice, we find that the commissions FAG Italy paid on the invoiced amounts reflect the freight revenues. Accordingly, there is no reason to restate this expense as Torrington suggests.

Comment 7: NTN argues that the Department's test to determine whether commissions paid to home-market affiliates were at arm's-length rates ignores important factors other than price affecting commission rates. NTN argues that the Department's test is flawed because it does not consider factors such as the percentage of the quantity or price that the affiliated-party sales make up of total sales which NTN made in the home market. According to NTN, it negotiates commission rates individually with each selling agent, affiliated or unaffiliated, and there are many factors that may affect commission rates. NTN claims that, because of the complexity and number of factors it uses to determine commission rates, it would be impractical for NTN to make a comprehensive chart explaining the commission rate for each agent. NTN contends that the more accurate method would be for the Department to review commission rates on an individual basis, which is the manner in which they are negotiated.

MPB contends that the Department requested further information which would have enabled it to perform the analysis advocated by NTN but NTN did not provide adequate information for the Department to make such an analysis. Thus, MPB asserts, any deficiency in the analysis is NTN's own fault and the Department simply considered the evidence on the record. MPB concludes that the Department's test was appropriate and that NTN should not benefit from its own failure to provide information.

Department's Position: It is a longstanding Department practice that, when a respondent makes a claim for a favorable adjustment, it must demonstrate that it is entitled to that adjustment. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished And Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part, 65 FR 11767 (March 6, 2000), at Issue 9, Comment 1. In this case, it is incumbent on NTN to demonstrate that the commissions it paid to affiliates in the home market were at arm's-length rates. NTN's claim that it would be impractical for it to try to make a comprehensive chart explaining the commission rate for each agent does not absolve it of its responsibility for demonstrating that its commissions paid to its affiliates in the home market are at arm's-length rates. Respondents have the burden of providing data, which are within their control, to establish a position that they urge the Department to take; in antidumping proceedings, "respondents have the burden of creating an adequate record to assist Commerce's determinations." NSK Ltd. v. United States, 919 F. Supp. 442, 449 (CIT 1996); Tianjin Machinery Import & Export Corp. v. United States, 806 F. Supp. 1008, 1015 (CIT 1992).

Prior to issuing the Preliminary Results, we reviewed commission rates on an individual basis as NTN has suggested. We examined the commission rate it paid to each individual affiliate and the services that affiliate performed and compared this information to the services rendered and rates paid to the unaffiliated commissionaire we found to be most similar to the affiliated commissionaire in terms of services rendered. See the Department's preliminary analysis memorandum for NTN dated April 1, 2002, at page 6. As a result of this analysis, we found that commissions paid to certain affiliated parties were not made at arm's-length rates.

In its comment, NTN appears to ignore the fact that we need some basis for comparison when determining whether the commissions paid to affiliated parties were made at arm's length. If there were no bases for comparison, we would have to deny the adjustment because it would be impossible to determine whether the commissions were at arm's length. In this review, however, there was such information, as described above, and we made our determination that the commissions were not made at arm's length based on that record evidence.

Therefore, because NTN did not demonstrate that the commissions it paid to certain affiliates in the home market were at arm's length, we denied the adjustment for sales to those affiliates in the Preliminary Results and we have not changed our findings for the final results.

B. Billing Adjustments

Comment 8: Torrington argues that the Department should deny all of Koyo's home-market billing adjustments reported as billing adjustment two because Koyo does not provide any information in its questionnaire response to support the reported billing adjustments. Citing SKF USA Inc v. INA Walzlager Schaeffler KG, 180 F. 3d 1370, 1376 (CAFC 1999) (SKF v. INA), Torrington points out that the Court concluded that transactions involving non-scope merchandise may not be used to support adjustments to prices reported on subject merchandise and foreign like products. Torrington asserts that Koyo's allocation methodology for billing adjustment two includes a variety of non-scope products, such as tapered roller bearings, cylindrical roller bearings, and spherical plain bearings.

Torrington recognizes that prior CAFC decisions permit such adjustments in cases where the billing adjustments are granted equally for each of the products that are involved in the lump-sum adjustment, citing Smith Corona Group v. United States, 713 F. 2d 1568 (CAFC 1983) (Smith Corona). According to Torrington, such an exception might only apply to Koyo's lump-sum adjustments which are granted on a customer-specific basis. Because Koyo's billing adjustment two is not limited to lump-sum adjustments, Torrington argues that the Department should not grant these adjustments. Due to the nature of this adjustment (the specifics of which are business proprietary information and are described in the Department's analysis memorandum for Koyo dated April 1, 2002), Torrington asserts, the burden of proof is on the respondent to provide evidence which illustrates that these adjustments cannot be reported in the manner in which they were granted. Torrington argues that, because the respondent has not provided such evidence, the Department should use the unadjusted prices as they reflect transaction-specific data relating to in-scope merchandise only.

Koyo contends that the Department properly accepted Koyo's home-market billing adjustment two as reported for the Preliminary Results. Citing Timken Co. v. United States, 16 F. Supp. 2d 1102, 1108 (CIT 1998) (Timken), Koyo argues that Torrington overlooks the CIT's directive that "Commerce's decision to accept (Koyo's billing adjustments two)...is supported by substantial evidence and is fully in accordance with the post-URAA statutory language and the directions of the SAA." Koyo asserts that Torrington also overlooks the fact that the CIT reaffirmed its decision in Torrington Co. v. United States, 100 F. Supp. 2d 1102 (CIT 2000) (Torrington II). Moreover, the respondent argues, neither the decision in SKF v. INA nor Smith Corona supports the petitioner's argument that Koyo's billing adjustment two should be denied. Koyo claims that, in these cases, the CAFC was interpreting the antidumping law as it existed prior to the enactment of the URAA and neither case addresses the Department's post-URAA treatment of billing adjustments as adjustments to price rather than expenses. Furthermore, Koyo continues, Smith Corona merely sets forth the proposition that, under the pre-URAA law, the allocation of an expense was permitted when that expense was incurred equally across the transactions to which it was allocated. Koyo argues that in Torrington Co. v. United States, 82 F.3d 1039 n.15 (CAFC 1996), the Court said that it was assuming that Koyo's price adjustments were expenses and, thus, subject to the pre-URAA restriction on allocations, leaving open the question whether billing adjustments should be treated as expenses in the first instance. Therefore, Koyo concludes, the CAFC decisions in the cases on which Torrington relies do not address the issues raised in the current case.

Furthermore, Koyo argues, Torrington does not provide any compelling new facts to support its suggestion that Koyo's billing adjustment two is distortive. Koyo asserts that, in each instance in which the Department has verified its questionnaire responses, it has never identified any evidence which might suggest that Koyo's billing adjustments were being manipulated. In addition, Koyo continues, the Department concluded in all previous reviews that Koyo had reported billing adjustment two to the best of its ability.

Department's Position: We find that Koyo has reported billing adjustment two to the best of its ability. Our examination of the record leads us to conclude that this adjustment is part of Koyo's long-term business practices and there is no information on the record that Koyo attempted to manipulate this price adjustment for the purpose of lowering or eliminating its dumping margin.

Torrington's reliance on the CAFC decisions in SKF v. INA and Smith Corona is misplaced because, as Koyo points out, the CAFC was interpreting the antidumping law as it existed prior to the enactment of the URAA and the provisions and the Department's practice relevant to this issue have changed since then. That is, we agree with Koyo that the cases to which Torrington refers do not address our treatment of billing adjustments as price adjustments following the enactment of the URAA. See, e.g., Preamble to Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27346-27347 (May 19, 1997) (Final Rule), AFBs 7, 62 FR at 54050-54053, AFBs 8, 63 FR at 33328, and AFBs 9, 64 FR at 35602.

We are satisfied that Koyo has reported billing adjustment two to the best of its ability for this POR. According to the information on the record, this post-sale price adjustment is comprised of two types of adjustments: (1) lump-sum adjustments negotiated with customers without reference to model-specific prices, and (2) adjustments granted on a model-specific basis but which Koyo records in its computer system on a customer-specific basis only. As we explained in prior reviews, given the large number of sales involved, we have accepted the respondent's claims that it is not feasible to report this adjustment on a more specific basis. See AFBs 7, 62 FR at 54050-51, AFBs 8, 63 FR at 33328, AFBs 9, 64 FR at 35603, AFBs 10, 65 FR 49219, at Comment 28, and AFBs 11, 66 FR 36551, at Comment 18.

Furthermore, we examined this expense closely at the verifications for AFBs 9, 64 FR 35603 (see Koyo Seiko Sales Verification Report, public version, for the 1997-98 administrative review, dated January 14, 1999, at pages 10-11), and in the most recent review, AFBs 11, 66 FR 36551 (see Koyo Home Market Sales Verification Report, public version, for the 1999-2000 administrative review, dated February 12, 2001, at pages 17-18), and found no indication that Koyo's methodology would result in distortive allocations. At these and previous verifications, we reviewed various documents that demonstrated that Koyo maintains these adjustments in its computer system on a customer-specific basis and not on a model-specific or sales-specific basis.

In the instant review, we have not found evidence on the record to indicate that there is any distortion in Koyo's methodology for reporting these billing adjustments. Furthermore, since Torrington's arguments present no new or compelling evidence to support the proposition that Koyo's negative billing adjustments are distortive, we have allowed Koyo's billing adjustment two as an adjustment to normal value.

Comment 9: Torrington argues that the Department should not accept NSK's billing adjustment one and provides more specific allegations that involve business proprietary information. The petitioner cites Timken Company v. United States, 673 F. Supp. 495, 513 (1987), and argues that it is well established that the Department "acts reasonably in placing the burden of establishing adjustments on a respondent that seeks the adjustments and that has access to the necessary information." Torrington asserts that NSK did not satisfy its burden. Torrington also argues that the Department should require NSK to report the different categories of billing adjustment one and contends that NSK has not demonstrated that separate reporting of these categories is not possible. Torrington asserts that NSK's descriptions of billing adjustment one suggest that separate reporting is feasible. In addition, Torrington argues that for the final results the Department should account for certain rounding differences in the billing adjustments by applying partial facts available.

NSK comments that it reported its billing adjustment one in precisely the same manner as it has for at least the past six reviews and that Torrington has not raised any challenge to NSK's reported billing adjustment one data in its briefs since at least AFBs 9. Further, NSK observes that the Department verified its reporting of billing adjustment one thoroughly in AFBs 9 and again in AFBs 12, in each case with no discrepancies. Therefore, NSK asserts, Torrington's comments must be weighed against the consistent record that NSK has made demonstrating that it is entitled to this price adjustment.

NSK argues that, in this review, Torrington raised only concerns about certain home-market transactions with extremely large billing-adjustment amounts. NSK asserts that it explained the reasons for the reported adjustments in its response to the supplemental questionnaire. Thus, NSK argues, it has addressed Torrington's issues completely. NSK asserts that with the full benefit of this exchange on the record the Department then examined NSK's billing adjustment one in detail at the home-market verification, including both NSK's methodology for calculating the adjustment and the actual adjustments reported. NSK cites to the NSK Sales Verification Report at 6 and argues that the Department's verification report states accurately that the Department's verification team "traced the original and adjusted unit price and sales value for each of the sales transactions to NSK's sales ledger and did not find any discrepancies." Thus, NSK asserts, there is no basis on this record for the Department to make any adjustment to NSK's reported billing adjustment one.

NSK comments that billing adjustment one represents only a small percent of the home-market database by quantity and value. Consequently, NSK states, Torrington's requested minor adjustments (which vary by plus or minus one percent) to what is already a minor adjustment, aside from being unwarranted as a matter of law and fact, would produce at most an immaterial de minimis change.

Department's Position: We reviewed this expense at verification and found no indication that NSK's methodology for reporting billing adjustment one would result in distortions. Pursuant to section 351.402(g)(2) of the Department's regulations, "[a] party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions." Thus, we generally have accepted claims for discounts, rebates, and other billing adjustments as direct adjustments to price if we determine that the respondent, in reporting these adjustments, acted to the best of its ability and that its reporting methodology was not unreasonably distortive. See, e.g., AFBs 6, 62 FR at 2090, and AFBs 7, 62 FR at 54049 (June 18, 1998). In order to show that its reporting methodology was not unreasonably distortive, a respondent must provide a sufficiently detailed explanation as to why the allocation methodology does not result in inaccuracies or distortions.

NSK has reported this billing adjustment on a customer- and part-specific basis. During verification of this expense, we reviewed various documents and determined that NSK has reported this adjustment in the most feasible manner possible. See the Home-Market Verification Report dated February 25, 2002, at page 6 and exhibit V-6. In response to Torrington's allegation that NSK could report different categories of billing adjustment one separately, we verified and are satisfied that NSK's accounting records do not distinguish the specific underlying reason for the issuance of billing adjustment one. Therefore, we find that it is not possible for NSK to report billing adjustment one under multiple separate variables as Torrington suggested. As such, we have accepted NSK's reported billing adjustment one.

Comment 10: Torrington argues that the Department should not accept NSK's billing adjustment two and provides more specific allegations that involve business proprietary information. Torrington also argues that the Department properly places the burden on the respondent to demonstrate entitlement to a claimed adjustment and alleges that NSK has not satisfied this burden. Finally, Torrington claims that for the final results the Department should apply partial facts available by denying downward (negative) billing adjustments while granting upward (positive) billing adjustments.

NSK asserts that, as in the case of billing adjustment one, the Department verified that NSK reported billing adjustment two properly. NSK argues that the exhibits the Department reviewed at verification show that NSK granted this adjustment in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. NSK contends that, based on the evidence of record, the Department confirmed that NSK acted to the best of its ability in reporting this information using an allocation methodology that does not cause inaccuracies or distortions. NSK also asserts that this issue has been raised by the petitioner in previous reviews and that the Department has rejected it. NSK argues that there is nothing on the record of this review that would lead the Department to reach a contrary conclusion; therefore, it contends, the Department should affirm past practice and continue to accept NSK's billing adjustment two.

Department's Position: NSK has satisfied its burden of demonstrating its entitlement to billing adjustment two. We examined this expense at verification and are satisfied that the allocation methodology used by NSK does not cause inaccuracies or distortions. See the Home-Market Verification Report dated February 25, 2002, at page 6 and exhibit V-6. NSK reported billing adjustments on a customer-specific basis. We confirmed that NSK's accounting records indicate only the lump-sum adjustment to its customer-specific accounts receivable. NSK is not able to link the adjustment to specific sales or products. As such, we are satisfied that NSK acted to the best of its ability in reporting this information. Therefore, we have adjusted normal value for NSK's reported billing adjustment two.

C. Credit Expenses

Comment 11: MPB argues that, if the Department is not fully satisfied with NTN's home-market credit calculation, it should restate NTN's home-market credit expenses on the basis of the facts available. According to MPB, the Department was dissatisfied with NTN's original explanation of its home-market credit expense calculation and asked the company to provide a worksheet demonstrating the method by which NTN calculated credit days for a particular home-market customer. MPB states that it does not understand fully, however, the worksheet NTN provided to demonstrate its calculation. MPB argues that, if the Department does not understand NTN's worksheet completely, the Department should re-state the expense. MPB suggests that an appropriate method would be to use the lower of two possible amounts: either NTN's reported amount or an amount determined on the basis of another respondent's information.

NTN argues that the Department should continue to accept its reported home-market credit expenses. According to NTN, the Department has apparently understood and accepted the data submitted by NTN for use in its home-market credit calculation. NTN argues that MPB's lack of understanding the data is not a justification for the recalculation of credit expense through use of another respondent's information. NTN contends that it has provided all the necessary information requested by the Department and is willing to answer any questions by the Department if there is any confusion regarding the subject data. Therefore, NTN concludes, the Department should ignore MPB's suggested method of calculation using another respondent's information.

<u>Department's Position</u>: We have examined the credit calculation NTN provided in its January 3, 2002, supplemental response, Attachment B-6, and understand the calculation fully. This credit calculation is essentially identical to the basic calculation NTN described on page B-32 of its August 31, 2001, response. We are also satisfied that NTN's calculation methodology comports with our normal credit-expense calculation methodology with the caveat that it is customer-specific rather than transaction-specific. Accordingly, we find it is appropriate to deduct NTN's reported home-market credit expense from normal value.

D. Direct and Indirect Selling Expenses

<u>Comment 12</u>: Torrington argues that the Department should recalculate Barden’s home-market indirect selling expenses by excluding indirect selling expenses incurred by Barden’s third-country affiliate (FAG Aircraft/Super Precision Bearings GmbH (AC/SP)). Torrington claims that Barden did not demonstrate that its affiliate’s reported indirect selling expenses are actually selling expenses or that they apply to all of Barden’s sales in the United Kingdom. Barden did not provide, Torrington continues, an explanation of the calculation of AC/SP’s indirect selling expenses ratio. Finally, Torrington contends, Barden did not allocate any portion of its affiliate’s indirect selling expenses to its sales in the United States.

Barden argues that the record demonstrates clearly that Barden is a part of FAG Germany's AC/SP business unit which is partially responsible for technical support as well as sales and marketing development in the United Kingdom with respect to Barden's sales of U.K. and German-designed product. Barden argues that indirect selling expenses for AC/SP technical and sales support were allocated properly and applied to all of its AC/SP-type product sales. Barden argues further that it manufactures and sells only AC/SP-type product in the home market. It contends that it calculated AC/SP's indirect selling expense ratio over all of its AC/SP's sales to all markets properly because AC/SP's financial-reporting system cannot split a pool of indirect selling expenses by product type, customer, or market. Further, Barden continues, AC/SP's reported ratio represents actual indirect selling expenses incurred by AC/SP rather than Barden's reimbursements for services to its German affiliate (i.e., intra-company payments). Barden asserts that the Department verified that these intra-company payments represent reimbursements to AC/SP for technical, sales, management, and manufacturing support services. Finally, Barden contends that AC/SP's indirect selling expenses should not be attributed to the Barden Corporation's (Barden US's) sales of subject merchandise in the United States because AC/SP does not provide sales support for resales of Barden's product in the United States and, accordingly, does not receive reimbursements from Barden US for such services. Finally, Barden asserts, Barden US does not produce AC/SP-designed product.

Department's Position: The record is clear that Barden is part of FAG Germany's AC/SP business unit. The record supports Barden's affirmation that AC/SP is partly responsible for providing technical and sales support on sales to Europe, the Americas, and other markets, particularly with respect to a German-designed product. At verification, we examined Barden's general ledger accounts in which it records intra-company fees and payments to FAG Germany. We confirmed that Barden reimburses AC/SP for technical, sales, management, and manufacturing support services.

Further, we agree that AC/SP's indirect selling expense ratio was calculated correctly and applied to all of Barden's home-market sales. The record is clear that Barden's reported home-market sales consist only of AC/SP-type products. Therefore, because AC/SP is the business unit within FAG Germany responsible for marketing, technical, and customer support for sales of only aircraft and super-precision bearings, the application of AC/SP's indirect selling expense ratio to Barden's home-market sales of AC/SP-type products is appropriate.

We agree with Torrington that AC/SP's indirect selling expenses should be attributed to Barden's sales in the United States. We do not find, however, that such expenses constitute an adjustment under section 772(d) of the Act which we should deduct from CEP. The information on the record does not suggest that these expenses were incurred by or for the account of the affiliated reseller in the United States. Specifically, there is no information on the record that AC/SP provides technical and sales support to Barden US with respect to its resales of Barden's product in the United States. The record also does not suggest that either Barden or Barden US relies on AC/SP's technical and sales support expertise to facilitate Barden US's sales in the United States or that Barden assumes AC/SP's costs of providing such services on behalf of Barden US. Also, the information on the record does not cause us to believe that Barden US reimburses AC/SP or Barden for any such services.

For the final results of review, however, we have applied AC/SP's indirect selling expense ratio to the entered value of Barden's sales to its affiliate in the United States. We then added this factor to the reported amount of home-market indirect selling expenses incurred in the country of manufacture to sell the product to the United States. Because the numerator of AC/SP's indirect selling expense ratio reflects the costs incurred on sales of all AC/SP-type products to all customers in all markets and the denominator is comprised of sales to all markets, including the United States, it is appropriate to apply AC/SP's indirect selling expense ratio not only to Barden's home-market sales, but also to Barden's sales to its affiliate in the United States.

Comment 13: Torrington argues that the Department should recalculate home-market indirect selling expenses for FAG Sales Europe GmbH (SE) by excluding indirect selling expenses incurred by FAG OEM Und Handel AG (OH). Torrington contends that the record does not support the addition of OH's indirect selling expenses to SE's indirect selling expense pool. Torrington alleges that OH is a production facility, not a sales company, and hence does not perform any selling functions in support of SE's home-market sales.

FAG Germany asserts that OH's selling expenses were added to SE's indirect selling expenses properly. FAG Germany argues that the record establishes clearly that OH performs selling functions in support of SE's sales in the German market. FAG Germany adds that the record identifies and quantifies specific selling activities performed by OH in its support of SE's sales, as well as demonstrates the allocation of these expenses to home-market sales by SE.

Department's Position: We have examined the information on the record and have concluded that the record supports FAG Germany's claim that SE's reported home-market indirect selling expenses capture the cost of selling functions undertaken by OH accurately. The record demonstrates clearly that OH is a business entity involved in production as well as sales activities. See FAG Germany's August 31, 2001, response to the Department's questionnaire on page 7 pertaining to the 2000-2001 administrative review of the antidumping duty order on ball bearings and parts thereof from Germany. Further, the record supports that certain selling functions pertaining to SE's domestic sales of OH's product were undertaken exclusively by OH. Id. Additionally, in its response to our supplemental questionnaire, FAG Germany enumerated various profit centers within OH that are engaged in selling and marketing activities and provided the allocation of expenses pertaining to sales in the German market. Id at Exhibit 4. Last, FAG Germany provided a reconciliation of each business unit's (i.e., SE) indirect selling expenses to the respective profit and loss statement and further allocation of each business unit's total indirect selling expenses over applicable sales. See FAG Germany's August 31, 2001, response on pages 34-35 and Exhibit 13 of Section B to the Department's questionnaire pertaining to the 2000-2001 administrative review of the antidumping duty order on ball bearings and parts thereof from Germany. As Torrington does not introduce any information that causes us to question the integrity of the information on the record, we decided not to alter FAG Germany's calculation of indirect selling expenses for SE for the final results of review.

Comment 14: According to MPB, NTN states that "NTN USA is a holding company," that "[i]t is not involved with the manufacture and sale or distribution of the subject merchandise," and that "[i]ts expenses are therefore not included in U.S. selling expenses as has been accepted in past reviews." MPB argues that the Department should request the necessary information to account for certain services in the figure representing NTN's total U.S. selling expenses.

NTN states its opposition to including its purported U.S. selling expense as a U.S. indirect selling expense. NTN argues that, contrary to MPB's argument, NTN did include certain services in its reported U.S. indirect selling expense. NTN claims MPB's allegations are erroneous and requests that the Department recognize NTN's full response regarding its indirect selling expense.

Department's Position: The record demonstrates that NTN included expenses it incurred for certain services provided by NTN USA in its reported indirect selling expenses. See NTN's August 31, 2001, section C response at Attachment 9 and its January 3, 2002, supplemental section C response at page C-3. Thus, NTN's statement on page A-5 of its January 3, 2002, supplemental section A response that it did not include any such expenses appears to be in error. Because the expenses are appropriately included in the data NTN reported, no adjustment to NTN's reported indirect selling expenses for expenses incurred by NTN USA is necessary.

Comment 15: MPB argues that the Department should make an adjustment for technical service expenses in its calculation of export price for NTN. MPB states that, although NTN reported direct technical service expenses for CEP sales, NTN did not report such expenses for export-price sales. MPB contends that this is inconsistent with other aspects of NTN's response and requests that the Department investigate the facts and make any appropriate adjustments.

Citing section 772(c)(2)(A) of the Act, NTN argues that the inclusion of technical advice and after-sales service/warranty expenses as a basis for a negative adjustment to the export-price sales are not required. According to NTN, section 772(c)(2)(A) of the Act requires that adjustments for indirect expenses include only those amounts ". . . incident to bring subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." NTN contends that after-sales technical service expenses are not expenses that occur incident to bringing the subject merchandise from Japan to the United States. NTN asserts that it has provided sufficient information for the Department to calculate a margin and has not withheld information from the Department.

Department's Position: NTN reported both direct and indirect technical service expenses for U.S. sales. See NTN's August 31, 2001, section C response at page C-36. As MPB observes, NTN reported direct technical service expenses only for CEP sales. There is no evidence on the record, however, that the technical service expenses NTN incurred on export-price sales were direct in nature. Furthermore, NTN’s classification of its technical service expenses was subject to verification. Therefore, we find it would be inappropriate to restate NTN's reported expenses for export-price sales as MPB suggests.

Comment 16: MPB argues that the Department should reject certain adjustments to NTN's pool of U.S. selling expenses (viz., the "worksheet 3" adjustments). According to MPB, in its supplemental questionnaire the Department requested that NTN provide further explanation concerning certain aggregate adjustments NTN made to its pool of expenses for purposes of the response, but NTN's response was demonstrably deficient. MPB contends that the Department should not accept NTN's response. Rather, MPB contends, the Department should disregard the subject "adjustments" and include the amounts in the figure for indirect sales expenses. Accordingly, MPB argues, for purposes of the final results, the Department should adjust NTN's indirect sales expenses by restoring the amounts NTN removed and adjust all CEPs appropriately.

NTN argues that the Department should accept NTN's explanation of NTN's U.S. selling expenses. NTN claims that it repeated the information from the explanation page of Exhibit C-9 submitted with its questionnaire response because it responded exactly to what the Department asked regarding details of the adjustment. NTN states that it has no more information and cannot produce more detailed information that does not exist. NTN contends that a full response to the Department's question by NTN does not justify any sort of denial of adjustments as proposed by MPB. NTN requests that the Department disregard MPB's comments and not take them into account in the calculation of the final results.

Department's Position: We have reviewed NTN's responses to our requests for information and are satisfied that the adjustments NTN made to its reported indirect selling expenses are proper. We do find that the expenses associated with one of these adjustments should have been captured elsewhere in the response, however, and have revised NTN's margin calculation appropriately. Because of the proprietary nature of this data, please see our analysis memorandum for the final results dated August 23, 2002, for a description of this adjustment and how we captured it in our analysis of NTN.

E. Others

Comment 17: MPB states that NTN has reported some home-market expenses, such as freight and packing expense, as percentages of price. MPB observes that use of the percentage factors apparently assumes that the Department would accept prices to affiliates and disregard resales by affiliates. MPB presumes that the affiliates' subsequent resale prices differ from NTN's prices to them and argues that, if this is the case, any adjustments originally calculated on the basis of aggregate sales value must be adjusted to reflect the fact that different prices are in the database. MPB claims that NTN apparently made no such adjustment, however, and requests that the Department recalculate all expenses calculated as percentages of price for purposes of the final results. MPB states that some adjustments will be incorrect without appropriate corrections (assuming prices to the affiliates and the resale prices differ).

NTN argues that MPB's request has no merit because the information on downstream sales has no relationship to NTN's home-market sales. NTN asserts that no changes were necessary in NTN's home-market database and claims that MPB's statement that affiliated parties' subsequent sales should have an effect on NTN's home-market expenses is a mischaracterization. NTN claims further that the data on downstream sales for affiliated parties whose information it supplied in its January 3, 2002, supplemental response does not affect NTN's home-market sales expenses since those companies incur their own expenses with regard to freight, packing, warehousing, and other indirect sales. In addition, NTN observes, MPB's argument seems to be based in part upon its demand that certain sales to affiliated parties not be excluded and that the Department apply adverse facts available. NTN requests that the Department not recalculate NTN's home-market expenses as MPB suggests.

Department's Position: We do not agree that any recalculation of these expenses is necessary. NTN's methodology first sums the expenses it incurs on its sales, including sales to affiliates but not sales by affiliates. NTN then allocates the expense to the sales for which it incurred the expenses (i.e., its sales, including sales to affiliates but not sales by affiliates). Because NTN reported the expenses it incurred on its sales (as opposed to the affiliates' resales), we find it is appropriate for NTN to use its sales as the basis of its allocation. Furthermore, in cases where NTN has supplied prices of downstream sales, certain direct and indirect selling expenses incurred by the affiliate are allocated over the affiliate’s sales values. Therefore, with the exception of freight costs, we agree with NTN that its expense allocations are correct.

Finally, we have restated NTN's inland-freight costs using the adverse facts available on the record. See our response to Comment 42, below. Thus, this issue is moot with regard to freight expenses.

5. Arm’s-Length Test and Sales to Affiliated Parties

Comment 18: Torrington alleges that FAG Germany and NSK incorrectly reported home-market sales to certain affiliated resellers instead of resales by the affiliates to home-market customers. Torrington argues that, although sales by the respondents to the particular affiliates account for less than five percent of total home-market sales, the percentage of models sold by FAG and NSK to its home-market affiliates that correspond to models sold by both companies to the United States is significant. Furthermore, Torrington states, while the Department verified the mathematical accuracy of NSK's affiliated-reseller reporting during verification, the Department's verification report does not address whether it is feasible for NSK to report downstream sales of all affiliated resellers. Therefore, Torrington argues, with respect to NSK, the Department should use partial facts available by calculating weighted-average downstream sales prices for comparable models sold by other Japanese respondents to unaffiliated home-market customers. With respect to FAG Germany, Torrington argues that the Department should require the respondent to report the resales by the affiliated reseller in question.

Citing 19 CFR 351.403(d), FAG Germany argues that, since sales to its affiliate are less than the Department's regulatory threshold of five percent, it reported sales to its affiliate rather than sales by its affiliate in the home market.

NSK contends that its reporting was approved by the Department and is consistent with the Department's regulations. NSK contends further that it explained in its July 17, 2001, letter, why it was unable to report the requested information with respect to each reseller. Further, NSK asserts that it complied with the Department's July 27, 2001, request for information in its response but, the Department did not address the subject of reporting downstream sales in its supplemental questionnaire. As such, NSK claims, it reported its home-market sales in the manner specifically approved by the Department and, therefore, the petitioner's request for the use of partial facts available is without merit.

NSK argues that the Department should reject Torrington's assertions concerning the percentage of NSK's U.S. sales that match to sales to the affiliated resellers in question. NSK contends that Torrington's argument on this point is legally irrelevant and is also flawed on a number of accounts. First, NSK explains, Torrington has not shown that the sales to the affiliated resellers were in fact used as matches for U.S. sales or, if they were, that they were uniquely matched (i.e., there were no other home-market sales used in the calculation of normal value). Second, NSK continues, Torrington has not offered any argument as to why the sales, having passed the Department's arm's-length test, were not appropriate for use in the normal-value calculation when, according to 19 CFR 351.403(c), the Department has determined that these sales are appropriate for such use. Also, according to pages 4-6 of Torrington's General Issues Rebuttal Brief dated May 13, 2002, NSK notes, Torrington otherwise accepts the Department's current arm's-length test as the correct basis for determining when sales to an affiliated reseller may be used. NSK asserts that the Department should reject Torrington's position and continue to accept NSK's reporting of its sales to certain affiliated resellers.

Department Position: As a general rule, the Department does not calculate normal value using sales by an affiliated party if sales of the foreign like product by an exporter or producer to all affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question (19 CFR 351.403(d)). NSK's sales to affiliated parties account for less than five percent of its home-market sales. Therefore, we have determined that NSK has appropriately not reported the sales by the affiliates.

We find that Torrington's argument concerning the high percentage of models the respondents sold to home-market affiliates that correspond to models sold to the United States is unconvincing. While the percentage of corresponding models may be high, it is the total value (or quantity) of sales that has a greater impact on our calculation results because there are significant sales of corresponding models to unaffiliated parties. Therefore, our practice pursuant to 19 CFR 351.403(d) is to evaluate home-market sales to affiliated parties on a total value (or quantity) basis in comparison to total sales of foreign like product. For this reason, we disagree with Torrington that the use of partial facts available is warranted. As such, we have accepted

NSK's reporting of its sales to certain affiliated resellers.

We determined also that the five-percent threshold was satisfied in FAG Germany's case based on data it submitted in its questionnaire response. Although not necessary, we performed an additional analysis of the impact that sales to the affiliated party had on U.S. models sold and found an insignificant number of matches compared to corresponding sales to unaffiliated parties. Therefore, we continue to conclude that FAG Germany reported home-market sales to its affiliate correctly instead of resales by its affiliate to home-market customers.

Comment 19: MPB argues that the Department should apply adverse facts available to certain sales by NTN to home-market affiliates because NTN did not report the resales by the affiliates. MPB contends that, with one exception, NTN reported sales to home-market affiliates in Japan despite the Department's request that NTN report sales by its affiliates. MPB argues that the Department should not accept NTN's reasons for not reporting downstream sales because there is little indication that NTN took more than perfunctory steps to gain the affiliates' cooperation. MPB argues further that the Department should reject NTN's position because the resale data are important for an accurate margin calculation. MPB concludes that the Department should resort to a facts-available rate for all sales to affiliates where resale information was not reported.

NTN contends that it satisfies the regulatory requirements for the exclusion of sales by affiliated parties and that MPB's selective comments are misleading. NTN asserts that the Department's regulation gives the Department discretion in determining whether to exclude sales by affiliated parties, with the percentage of sales to those affiliated parties being one factor taken into account. NTN asserts further that the Department used the sales NTN submitted and determined whether the sales were made at arm's-length prices by comparing home-market selling prices to affiliated parties to home-market selling prices to unaffiliated parties. NTN claims that the regulations provide the basis for exclusion of sales by affiliated parties as an independent ground for exclusion and, therefore, the Department should reject MPB's request to use adverse facts available for those sales.

NTN also claims that MPB has made a number of unwarranted assumptions about how NTN's affiliated companies operate and NTN's ability to obtain information. NTN asserts that there is no evidence on the record to support MPB's assumptions and that there is no showing on the record that NTN did not comply fully with all of the Department's requests. With respect to providing information and supporting documentation for affiliated resellers for which it had not been able to obtain downstream sales information, NTN asserts further that it provided the necessary information for the Department to calculate a fair and accurate dumping margin. Although it did request its affiliated companies to supply downstream sales information, NTN explains, the companies refused, as was their legal right to do so. NTN comments that the Department has recognized this in prior reviews and has not required NTN to submit the data. NTN concludes that there is no basis for the Department to grant MPB's request to apply an adverse facts-available rate to address NTN's sales to affiliates where resale information was not reported.

Department's Position: We find that the use of facts available is unnecessary. With regard to most of the affiliates for which NTN did not report downstream sales as we requested, NTN explained that it "has no legal right to compel the submission of data from" these affiliates. See NTN's January 3, 2002, supplemental response at page A-3. We have accepted and verified this explanation with regard to such affiliates in prior reviews. See, e.g., the public version of the NTN Preliminary Results Analysis Memorandum for the 1999-00 administrative review dated January 30, 2001, at page 7. There is no evidence on the record that the circumstances surrounding these sales (especially NTN's ability to compel these affiliates to submit data) have changed. Therefore, we find that NTN acted to the best of its ability in reporting its sales to these affiliates rather than the sales by these affiliates.

With regard to NTN's other affiliate, we found that NTN's sales to that affiliate were made at arm's-length prices. Because they were made at arm's-length prices, they formed a reasonable basis for determining normal value and we used them as reported by NTN. Accordingly, the use of facts available is unnecessary.

Comment 20: Koyo argues that the Department's arm's-length test is flawed because the Department excludes all affiliated-party sales when the average price of sales to an affiliated parties is lower than 99.5 percent of the average price of sales to unaffiliated customers. Koyo assumes that the Department excludes such transactions pursuant to section 771(15) of the Act on the grounds that they were not made “in the ordinary course of trade.” Citing United States - Antidumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/R (February 28, 2001) (Hot-Rolled Steel Products), Koyo asserts that the WTO Appellate Body found the Department’s arm’s-length test impermissible because the Department automatically excludes all sales to affiliates that are sold at average prices that are less than 99.5 percent of the weighted-average prices to unaffiliated parties but automatically includes high-priced sales to affiliates unless the exporter can illustrate that those sales were, in fact, aberrational. In reaching its conclusion, Koyo asserts further, the WTO Appellate Body recognized at paragraphs 148-149 that the Department’s discretion “to determine how to ensure that normal value is not distorted through the inclusion of sales that are not ‘in the ordinary course of trade’” is not without limits; it “must be exercised in an *even-handed* way that is fair to all parties affected by an antidumping investigation” (emphasis in the original). Koyo makes clear that the WTO Appellate Body does not undermine the general requirements of 19 CFR 351.403 which states that sales to affiliates should only be used in computing normal value where those sales are made at arm’s- length prices. Therefore, Koyo concludes, the Department should abandon its rigid arms-length test and, instead, determine whether home-market sales to affiliated parties are in the ordinary course of trade based on the facts of the specific transactions at issue as the Department does for sales to unaffiliated parties.

Department's Position: The regulations at 19 CFR 351.403(c) state that, "[i]f an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller." The preamble to the regulations states that "[t]he Department's current policy is to treat prices to an affiliated purchaser as 'arm's length' prices if the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers." See Final Rule, 62 FR at 27355. Thus, pursuant to the regulations and our practice as explained in the regulations, we interpret the term "comparable" to mean that the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers. The arm's-length test has been upheld repeatedly as consistent with domestic law by reviewing domestic courts. See NTN Bearing Corp. of America, 905 F. Supp. 1083 (CIT 1995), NSK Ltd. v. United States, 969 F. Supp. 34 (CIT 1997), and NTN Bearing Corp. v. United States, Slip Op. 00-64 (CIT June 5, 2000). Moreover, Congress has provided that private parties cannot obtain remedies at law upon the ground that an antidumping duty determination by the Department is inconsistent with the Uruguay Round Agreement. See 19 USC 3512(c). Congress also provided specifically that the response to an adverse WTO panel report is the province of the executive branch and, more particularly, the Office of the U.S. Trade Representative. See 19 USC 3538. Thus, a WTO report adverse to the United States does not constitute binding precedential authority for the Department. See Hyundai Elec. Co., Ltd. v. United States, 53 F. Supp. 2d 1334, 1343-44 (CIT 1999). Until such time as action is taken to implement the Hot-Rolled Steel Products report, the Department will continue to make its determination in accordance with current U.S. law, regulations, and methodologies.

Comment 21: NTN argues that the application of the arm’s-length test with respect to affiliated parties wrongly excludes a large number of sales to affiliated parties from the calculation of normal value. First, NTN contends that the application of the arm's-length test to affiliated parties in which it did not have a majority interest resulted in the erroneous elimination of any sales to those parties. Second, NTN contends that the Department did not evaluate whether its sales to affiliates were made at arm's length before requiring NTN to report downstream sales.

NTN challenges the Department's focus on price for affiliated-party sales when applying its arm's-length test and asserts that the Department should have considered other factors, such as payment and quantity terms, before deciding to exclude NTN's home-market sales from the home-market database. Citing NEC Home Electronics Ltd. and NEC Technologies, Inc. v. United States, 3 F. Supp. 2d 1451 (CIT March 24, 1998) (NEC), NTN argues that the arm's-length test would be better served considering factors such as percentage of quantity or price of the affiliated-party sales in terms of total sales which NTN made in the home market. In doing so, NTN asserts, the price may turn out to be comparable to the price at which the producer or reseller sold the foreign like product to unaffiliated parties. Furthermore, NTN argues, the lack of an objective standard to measure price differences or a working definition of "comparable" makes the current standard unpractical, and it considers the lack of such a framework an abuse of the Department's discretion.

In determining the proper scope of the arm's-length test with respect to affiliated-party sales, NTN urges the Department to moderate its strong presumption that any affiliated-party transaction does not qualify as an arm's-length transaction. NTN also suggests that the inflexibility of the arm's-length-transaction test may be inconsistent with WTO obligations which state that ". . . certain sales transactions between an investigated exporter and its affiliated company, previously excluded under the ‘99.5 percent’ or arm’s length’ test applied by the United States administrative officials, would have to be factored in a redetermination of such home value . . .” (citing Hot-Rolled Steel Products at 10).

MPB argues that the manner in which the Department applies its arm's-length test is proper. Citing NTN Bearing Corp. of America, 905 F. Supp. 1083 (CIT 1995), and NSK Ltd. v. United States, 969 F. Supp. 34 (CIT 1997), MPB asserts that the standard the Department used has been upheld repeatedly. MPB argues that the regulation on which NTN bases its assertion does not state what NTN claims it does. Rather, MPB continues, 19 CFR 351.401(c) allows the use of sales to an affiliated party in calculating normal value "...only if (the Department) is satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to the person who is not affiliated with the seller." MPB emphasizes that the use of the term "only" creates a strong presumption against the use of such prices in the calculation of normal value.

Further, MPB asserts, the WTO ruling does not apply to the arm's-length test, which is a product of U.S. domestic law and which has been upheld repeatedly by domestic courts. Thus, MPB concludes, there is no conflict with the U.S. international obligations.

Department's Position: We find that 19 CFR 351.403(c) regarding the Court's decision in NEC is not relevant to the issue raised in the instant review. In NEC, the Court held that our application of the arm's-length test was not reasonable where it created an impossibility. In that case, the respondent had no home-market sales to unaffiliated customers. Thus, there was no basis for making a price-based comparison. By contrast, in this review, NTN made sales to unaffiliated customers and we used them for comparison pursuant to our regulations.

With respect to the respondent's point that we should consider other non-price factors, NTN did not indicate which factors, if any, we should examine in lieu of, or in addition to, prices. The NEC decision endorsed an alternative methodology based on the specific facts of that case. NTN has not shown how the facts of that case either demonstrate that our normal practice is inappropriate or how an alternative methodology for determining whether sales made to affiliated parties were at arm's-length prices would be any better than our normal practice. Further, NTN does not explain how examining the percentage that home-market affiliated-party sales comprise of total home-market sales has any relevance to whether the sales made to affiliated parties were made at arm's-length prices.

NTN also ignores the fact that the Department's arm's-length test takes into account factors other than price, such as the specific terms of sale. For example, because we deduct credit expenses from the prices we use in the arm's-length test, the test properly accounts for differences in payment terms. Also, we account for differences in prices between levels of trade by making price comparisons in the arm's-length test at the same level of trade.

Finally, with respect to NTN's reference to the WTO dispute resolution panel finding in Hot-Rolled Steel Products and claim that we should change our practice in the current review in accordance with that finding, see our response to Koyo in Comment 20 above.

6. Sample Sales and Prototypes

Comment 22: Torrington argues that, although FAG Italy described its treatment of sample sales in the home market in its questionnaire response, it did not report any sample sales in the home-market sales list. Torrington requests that the Department require FAG Italy to confirm that all home-market sales have in fact been reported.

FAG Italy confirms that it had no sales of sample or prototype merchandise that matched to reported U.S. sales and that, consequently, it did not report home-market sample sales by the company.

Department’s Position: We have reexamined FAG Italy’s reporting of home-market sample sales and find no evidence that it treated sample sales in the home market improperly.

Comment 23: Torrington presents argument addressing an assertion by SKF Italy that certain zero-price sample or prototype sales should be excluded from SKF Italy’s U.S. sales list. Torrington comments that SKF Italy has claimed that providing the information requested by the Department regarding these sales would be “extremely burdensome” and, therefore, SKF Italy claims that it cannot provide the information that would prove the transactions are truly without consideration. Torrington cites to a zero-priced sales transaction that it argues should not be excluded as a sample sale.

SKF Italy responds that, having reviewed the transaction cited by the petitioner, it found that the sample designation for that transaction was in error. SKF Italy explains the basis for its error and states that, notwithstanding the error, the transaction should be excluded from the margin calculation.

Department's Position: With respect to the zero-priced transaction cited by Torrington, the Department finds that, because the transaction was related to a sale occurring outside the reporting period, the record supports its exclusion from the margin calculation. With respect to the broader issues raised by Torrington, as there exists no evidence on the record to the contrary, the Department finds that SKF Italy did not receive consideration for the sample sales at issue. In accordance with the decision of the Court in NSK Ltd. v. United States, 115 F.3d 965 (CAFC 1997), we conclude that, as the term "sold," as used in sections 731 and 772(c) of the Act, requires both a transfer of ownership to an unrelated party and consideration, the zero-value transactions for which SKF Italy received no consideration do not constitute sales. Therefore, for purposes of these final results, the Department has excluded SKF Italy's sample sales in the United States from the margin calculation.

Comment 24: Torrington disagrees with the Department's treatment of Nachi's sample sales in the Preliminary Results. It asserts that the information in the U.S. sales list only establishes that a sale is zero-priced and not that it is in fact a sample sale.

Nachi rebuts that the Department should reject Torrington's claims. It indicates that Torrington has not provided evidence to demonstrate that sales Nachi identified as U.S. sample sales are not sample sales. It asserts further that the minuscule amount of the sample sales compared to other reported U.S. sales confirms that they are indeed sample sales. Nachi explains the company's process for the internal documentation of some, but not all, sample sales. It also comments that, in the past instances where the Department verified Nachi's sales information, the Department found the information regarding its sample sales to be accurate and, accordingly, excluded the claimed sample sales from the margin calculations.

Department's Position: Because of the proprietary nature of these issues, we have addressed them in the analysis memorandum for Nachi for the final results of review, dated August 23, 2002. As stated there, we have concluded that the U.S. sales Nachi claimed as sample sales should continue be excluded from the margin calculation.

Comment 25: Torrington argues that the Department should not exclude sales of a sample product from FAG Germany's home-market sales list because the respondent did not provide adequate justification for the exclusion of these transactions. Furthermore, Torrington contends, FAG Germany sells bearings which are similar to the sample product at issue to the same customer.

FAG Germany rebuts that Torrington errs in its claim that "similar" sales of the sample product at issue were made to other home-market customers at equivalent prices and in equivalent quantities. It asserts that there were no other home-market sales of bearings from the family of the product. FAG Germany also asserts that factual evidence in its August 31, 2001, response satisfies the Department's requirements for excluding sales of the product from the home-market sales list. FAG Germany also indicates that the sample product at issue was sold for consideration and it was not claiming an exclusion of zero-priced sales. Citing the home-market sales verification report for FAG Germany from the 1998-1999 administrative review, dated December 3, 1999, p. 10, the respondent argues that the Department has verified sales of sample products like the product at issue in the past and has accepted the sales as reported by the company.

Department's Position: We have determined that we should exclude the sales of the sample product at issue from the margin calculation. We exclude sample or prototype sales in the home market from the margin analysis pursuant to section 773(a)(1) of the Act when we determine that those sales were not made in the ordinary course of trade as defined by section 771(15). This provision of the statute ensures that we base normal value on sales that are representative of the home market by placing the burden on FAG Germany to demonstrate that its sample sales are actually made outside the ordinary course of trade. FAG Germany has met this burden. In its August 31, 2001, questionnaire response, FAG Germany explained the manner in which transactions for the sample product are documented and distinguished from sales made in the ordinary course of business.

In response to Torrington's argument that the product at issue was similar to other bearings sold previously to the same customer, FAG Germany asserts that sales of the sample product constituted sales from a different family of bearings and that the sample product had not been sold on any previous occasion to this customer during the POR. We agree with FAG Germany that the term "similar" may not be used to equate sales from two separate and distinct families of bearings. Because FAG Germany demonstrated that the product in question was not sold in the ordinary course of trade, we have continued to exclude sales of this product from the margin calculation in these final results.

Comment 26: Nachi asserts that its home-market sales of prototypes should be excluded from the margin calculation.

Torrington rebuts that there is no indication in the Preliminary Results that the Department intended to exclude the home-market sales of prototypes and erred in not doing so. Torrington argues further that Nachi has not cited a legal basis for the exclusion of the sales nor has it provided the information or documentation the Department requested concerning these sales. Torrington concludes that the Department should only exclude the prototype sales if it is satisfied that Nachi has provided all the requested information and documentation.

Department's Position: Our practice is to exclude home-market sales transactions from the margin calculation if we determine such transactions to be outside the ordinary course of trade, based on consideration of all the circumstances particular to the sales in question. See 19 CFR 351.102 and Murata Mfg. Co. v. United States, 820 F. Supp. 603, 607 (CIT 1993).

In its response to our questionnaire, Nachi indicated that some of its home-market sales were prototype sales. It did not provide any of the information, however, regarding the circumstances particular to the sales or the documentation of these sales that we had requested. See Nachi's response to section B of the questionnaire, pp. 51-52. Indeed, Nachi did not even indicate, as we requested in our questionnaire, whether it sought to have the prototype sales excluded from the margin calculation. Thus, Nachi has not provided a basis for the exclusion of the sales. By not providing the requested information or documentation, we cannot determine whether these sales were made outside the ordinary course of trade. Therefore, we have not excluded them from the home-market sales database.

Comment 27: NTN proposes that its new methodology for designating sales with abnormally high profits demonstrates that such sales were made outside the ordinary course of trade. NTN observes that, in the prior administrative review, the Department found NTN's sample sales to be outside the ordinary course of trade and, in so finding, the Department recognized that NTN reported very few sample sales during the sample months and that the prices of the sample sales were consistently different from those of non-sample sales. According to NTN, sales with abnormally high profits are a very narrow and unique subset of its sales and are sold in low quantities, thus meeting the Department's requirements of showing unusual characteristics for the purposes of finding a sale to be outside the ordinary course of trade. Thus, NTN concludes, such sales are unrepresentative of the home market and should be excluded from the calculation of normal value and CV profit.

MPB responds that the Department should continue to include the sales in question in its calculation of normal value. MPB contends that the Department has rejected the same issue raised by NTN in prior reviews and that there is nothing new in the evidence NTN submitted in this review that could reasonably induce the Department to alter its treatment of such sales.

Department's Position: In order to determine that a sale is outside the ordinary course of trade, we must evaluate it based on all the circumstances particular to the sale in question and find that it has characteristics that are extraordinary for the home market. See 19 CFR 351.102 (definition of "ordinary course of trade").

We have stated in prior reviews that high profits by themselves are not sufficient for us to determine that sales are outside the ordinary course of trade. See, e.g., AFBs 9, 64 FR at 35620-35621. NTN attempts to support its claim in this review by asserting that high-profit sales were made in smaller quantities than normal sales. Based on our analysis of NTN's data, however, we find that NTN's "high-profit" sales are not sold in particularly low quantities. Because of the proprietary nature of our analysis, see the analysis memorandum for NTN for the final results, dated August 23, 2002.

Moreover, other than the allegedly high profits and allegedly low quantities, NTN has not provided any evidence suggesting that these sales have any characteristics that would make them extraordinary for the home market.

Finally, the CIT has affirmed our treatment of this issue in NTN Bearing Corp. of America v. United States, 104 F. Supp. 2d 110 (CIT 2000) (NTN Bearing), and the circumstances in this review are similar. In NTN Bearing, the CIT sustained the Department's rejection of NTN's claim that the verification of certain high-profit sales should have resulted in the exclusion of those sales from the calculation of normal value. See NTN Bearing, 104 F. Supp. 2d at 147. The CIT held that the Department's decision to require additional evidence demonstrating that sales with higher profits were outside the ordinary course of trade before excluding such sales from normal value was a reasonable exercise of discretion. Id. In this case, we have exercised our discretion similarly because of the lack of evidence demonstrating that certain high-profit sales are outside the ordinary course of trade. Consequently, we have not excluded NTN's so-called "high-profit" sales from our calculation of normal value.

7. Cost of Production and Constructed Value

A. Profit for Constructed Value

Comment 28: NSK, NPBS, FAG, and SKF contend that the Department calculated CV profit on a class-or-kind basis for home market sales within the ordinary course of trade. However, they claim that, under section 773(e)(2)(A) of the Act (hereinafter "preferred method"), CV profit should be based on sales of a "foreign like product." Accordingly, they argue, the Department's calculation of CV profit is unlawful and constitutes an impermissible aggregation on a class-or-kind basis under the preferred method.

NSK states that, for the reasons it expressed in the 1998-99 administrative review of the order, the Department must calculate CV profit under the "preferred methodology" only by reference to profit on identical or, in the absence of identical, similar merchandise. In the absence of relevant profit data, NSK argues, the Department is required by the statute to calculate profit under one of the alternative measures in section 773(e)(2)(B) of the Act.

Each respondent also argues that the Department has applied contradictory definitions of “foreign like product” with respect to price-to-price comparisons and the CV-profit calculation. In particular, FAG asserts that, in price-to-price comparisons, the Department limits its definition of “foreign like product” to those reasonably comparable bearing models within the same family of bearings. In the CV-profit calculation, however, the respondents assert, the Department expands its definition of “foreign like product” to include those bearing models within the more general class or kind. Similarly, FAG juxtaposes the definitions of the terms “foreign like product” with the term “class or kind” of merchandise and concludes that “foreign like product” is a much smaller group of merchandise than the “class or kind” of merchandise. Citing the SAA at 839, SKF argues that the language therein indicates clearly that the preferred method dictates the reliance on a narrow universe of products. Therefore, SKF contends, any aggregation under section 773(e)(2)(A) of the Act is limited within the statutorily defined parameters of the term “a foreign like product.” Also citing SKF USA, Inc. v. United States and FAG Kugelfischer Georg Schaefer AG, et al v. United States, 263 F.3d 1369 (CAFC 2001) (collectively SKF USA), NSK, NPBS, FAG, and SKF make specific reference to the CAFC’s remand instructions requiring the Department to explain why it uses different definitions of foreign like product for price purposes and when calculating CV.

NPBS, FAG, and SKF also contend that, while cumulation of profit on a class-or-kind basis is permissible under alternative CV-profit calculation methods provided in sections 773(e)(2)(B)(i) and (ii) of the Act, these provisions require that all sales reported for each class or kind of merchandise be used in the calculation. The respondents, therefore, contend that the

Department's exclusion of below-cost sales is unlawful when CV profit is calculated on a class-or-kind basis. As such, each company argues that the Department must include below-cost sales in the CV-profit calculation. In addition, SKF argues that, even if the Department determines its exclusion of below-cost sales to be lawful, the Department should nevertheless include such sales in the denominator of the calculation to express more accurately a foreign producer's profit rate as a percentage of actual profits over all sales. SKF contends that the current law does not preclude sales disregarded under section 773(b)(1) of the Act from comprising the basis for the CV-profit calculation. Moreover, SKF states, section 773(e) of the Act does not specify the particular basis for determining the denominator when performing a CV-profit calculation. Therefore, SKF concludes that it is consistent with the current law for the Department to express a foreign producer's profit rate as a percentage of actual profits over all sales, including below-cost sales. SKF alleges that, as long as the actual amount of profit by the foreign producer is used as the basis for the CV-profit calculation, the Department has the discretion to decide how this amount should be expressed. Such discretion, SKF argues, is employed in the Department's calculation of the antidumping deposit and assessment rates. SKF states that both calculations are based on normal value and export price and include the amount of dumping duties due as the numerator but use net U.S. price and entered value, respectively, as the denominator. Citing Bowe Passat Reinigungs-Und Wäschereitechnik GmbH v. United States, 926 F. Supp. 1138, 1150-51 (CIT 1996), SKF argues that there is a recognized statistical bias in the Department's calculation of margins. SKF contends that this statistical bias is tempered by the Department in its selection of a representative denominator for its margin calculation, i.e., including the value of non-dumped sales. The CV-profit calculation requires a similar treatment, according to SKF.

SKF also contends that RHP Bearings Europe Ltd. v. United States, 83 F. Supp. 2d 1322, 1336 (CIT 1999) (RHP), is not dispositive as to the proper method of calculating CV profit. SKF states that, in light of the CAFC's ruling in SKF USA, the CIT's ruling in RHP upholding the

Department's methodology is no longer relevant. Further, citing Consolo v. Federal Maritime Comm'n, 383 U.S. 607, 620 (1996), Trent Tube Div., Crucible Material Corp. v. Avesta Sandvik Tube AB, 975 F. 2d 807, 814 (CAFC 1992), and Pohang Iron & Steel Co. v. United States, WL 970743, No. 98-04-00906 at 7 (CIT 1999), SKF argues that an administrative agency's decision, deemed to be supported by substantial evidence on the record, can be contrary to the original decision previously upheld by a court's determination. As such, SKF asserts, the CIT's ruling in RHP does not preclude the Department from employing an alternative methodology.

Torrington disagrees with NSK, NPBS, FAG, and SKF. Citing the Issues and Decision Memoranda for AFBs 10 and AFBs 11, at Comments 57 and 29, respectively, Torrington states that the Department has rejected FAG's arguments and similar arguments by other respondents in previous reviews. Torrington also observes that, in SKF USA, the CAFC specifically rejected FAG's argument that section 773(e)(2)(A) of the Act precludes the use of aggregate calculations.

Department's Position: For these final results, we calculated CV profit first by calculating the total revenue and expenses for all home-market sales of the class or kind of merchandise made within the ordinary course of trade on a level-of-trade-specific basis. We then calculated the profit percentage based on the level-of-trade-specific total revenue and total expenses. Finally, we calculated the CV profit by multiplying the applicable profit rate (based on the level of trade) by the per-unit COP.

The questions raised by NSK, NPBS, FAG, and SKF were addressed by the Department in its recent redeterminations in response to the CAFC's remand orders in SKF USA v. United States and FAG Kugelfischer v. United States. The CIT has affirmed those redeterminations in Slip Ops. No. 02-63 and 02-64 (CIT July 12, 2002). In its remand redetermination, the Department explained that it interprets and applies the statutory term "foreign like product" more narrowly in its price-based analysis than in its calculation of both the profit and the selling, general, and administrative (SG&A) components of its CV analysis under section 773(e)(2)(A) of the Act. The Department has interpreted and applied that term more broadly, as the definition allows, for good reason, as we explain below. Final Rule, 62 FR at 27359.

As clarified in the SAA, the statute establishes a general rule or preferred methodology for calculating the amounts for SG&A and for profits in the calculation of CV. See section 773(e)(2)(A) of the Act, the SAA at 839, and Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7307, 7334 (February 27, 1996). In particular, the SAA states that the alternative statutory CV profit and SG&A methods under section 773(e)(2)(B) of the Act apply "where the method described in section 773(e)(2)(A) of the Act cannot be used, either because there are no home market sales of the foreign like product or because all such sales are at below-cost prices." SAA at 840. Thus, for the preferred methodology to be applicable, there must be sales of the foreign like product in the ordinary course of trade, i.e., sales made at above-cost prices. The statute and SAA also establish, however, when normal value is to be based upon CV, stating that "[o]nly if there are no above-cost sales in the ordinary course of trade in the foreign market under consideration will Commerce resort to constructed value." SAA at 833 (emphasis in original). Thus, if the Department were required to interpret and apply the term "foreign like product" in precisely the same manner in the CV-profit context as in the price context, there would be no sales of the foreign like product upon which to base the CV-profit calculation. Accordingly, the preferred method of calculating CV profit established by Congress would become an inoperative provision of the statute.

In SKF USA, the CAFC recognized that, "[i]f Commerce had used the same definition of 'foreign like product' for purposes of the constructed value calculation as in the price calculation, Commerce, having found that 'there were no usable sales' of identical and same-family AFBs in the home market for purposes of the price calculation under 19 U.S.C. § 1677b(a)(1)(B)(i), would have to make that same finding for the constructed value calculation under 19 U.S.C. § 1677b(e)(2)(A). Commerce would then be required to use one of the methodologies set forth in 19 U.S.C. 1677b(e)(2)(B) to make that profit calculation." SKF USA, 263 F.3d at 1376-1377 (emphasis added).

In every case where the foreign like product is interpreted and applied in the same manner for both the price determination and the CV-profit determination, the same result would occur. In other words, under a rigidly uniform interpretation of the term “foreign like product,” the preferred methodology for calculating CV profit would never be applied in any case. In our view, a narrowly construed “foreign like product” in the CV-profit context is unworkable and contrary to the intent of Congress because it would always lead to the same conclusion, i.e., that there are no sales of the foreign like product upon which to base CV-profit calculations. Under such an interpretation, the preferred methodology for profit (and SG&A) would become an inoperative provision of the statute.

In our view, “foreign like product” is defined in the statute in such a way that different categories of merchandise may satisfy the meaning of the term, depending upon the facts and circumstances of the case and the application of the term in the particular statutory context in which it appears. The term is used to make several different types of determinations, such as to determine whether the home market or an export market may be considered an appropriate comparison market for normal value, to establish the appropriate price for normal value of the subject merchandise, to determine whether below-cost allegations on a country-wide basis have merit, and to determine the profit and SG&A components of CV. In each context, the Department has sought to interpret and apply the term in a reasonable manner, consistent with Congressional intent.

In our view, the question in the preferred CV-profit context is whether the same general class or kind of merchandise, e.g., ball bearings, sold in the comparison market by a producer or exporter is reasonably comparable to the subject merchandise sold by the same producer or exporter to the United States. Section 771(25) of the Act defines subject merchandise as “the class or kind of merchandise that is within the scope of an investigation, [or] a review. . .” We interpret the definition of “foreign like product” in subsection 771(16)(C) of the Act, i.e., the same “general class or kind of merchandise,” to be that category of merchandise that corresponds to the subject merchandise. This is consistent with the language of the provision that requires the Department to use "the actual amounts . . . realized by the specific exporter or producer. . . for profits, in connection with production and sale of a foreign like product." We addressed the use of the term "a" in this context in promulgating our regulations and determined then that it did not signify any special meaning over the term "the" foreign like product. Final Rule, 62 FR at 27359. If, however, as respondents have argued, the term "a foreign like product" is to have any particular meaning, we believe it must be interpreted in conjunction with the plural term "profits." The reference to profits of "a foreign like product" supports the view that the agency should base its CV-profit determination upon a category of merchandise and not upon the results of a product-matching or model-matching methodology conducted for price-to-price determinations.

Furthermore, we interpret the term "in respect of which a determination . . . can be satisfactorily made" to mean that the Department may determine that the first and second categories under sections 771(16)(A) and (B) of the Act cannot be used to determine satisfactorily the amount for "profits." In any given context, the particular subsection used, i.e., section 771(A), (B), or (C) of the Act, can be different from what is used in any other context. In the CV context, in this and most other cases, the category we can use to make a satisfactory determination of foreign like product is the broader category contained in subsection (C) covering sales of the general class or kind of merchandise. See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From Japan; Preliminary Results of Antidumping Duty Administrative Review, 63 FR 47465, 47467 (September 8, 1998).

The respondents have claimed that the category of merchandise the Department uses for profit is expansive, relative to the foreign like product determined in the price determination because the Department does not treat sales of AFBs outside the "family" of bearings as foreign like products.

We disagree, however, with the respondents' claim that we should be restricted to our determination of foreign like product for price comparisons, i.e., that only sales of identical bearing models or sales of models within a bearing "family" may constitute foreign like product. We find that the creation of "families" of bearings was a model-matching or product-matching methodology for price determinations under section 773(a) of the Act. That methodology has allowed the parties and the agency to overcome some of the complexities involved in making product comparisons which are peculiar to AFBs. As a matter of efficient administration, given the sheer number of different bearing models and the attendant complexities of matching such models, the Department grouped the models into families of bearings. The Department's adoption of the "family" approach did not signify, however, that bearing models that were outside the bearing family but still within the class or kind of merchandise were determined to be products that do not constitute foreign like product for purposes of determining the profit and SG&A components of CV.

If the bearing-family designation used for price determinations does anything, it signifies that merchandise within a class-or-kind designation may be considered merchandise that "may reasonably be compared" and, therefore, that the designation of class or kind of merchandise establishes the parameters of foreign like product under section 771(16)(C) of the Act. This is evident from the way in which the definition of bearing family was structured. The Department stated that a bearing "family" consists "of all bearings within a class or kind of merchandise that are the same in each of the physical characteristics listed below." See, e.g., Twelfth Review, AD Questionnaire, App. V, at 4. The characteristics consist of load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outside diameter of the model, inside diameter of the model, and width/height of the model. See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Preliminary Results of Antidumping Duty Administrative Reviews, 64 FR 8790, 8795 (February 23, 1999). In other words, ball bearings and cylindrical roller bearings – two separate classes or kinds of merchandise – were determined to be two categories of merchandise that should not be compared to each other, regardless of whether any model from one class or kind was identical to a model of another class or kind with respect to the above characteristics.

In this case, we continue to find, as we have in past reviews, that the class or kind of bearings sold in the home market by SKF and FAG are reasonably comparable to the class or kind of bearings sold in the United States.

The Department "defines 'foreign like product' consistently in determining profits for CV, selling, general, and administrative expenses for CV, for country-wide cost allegations, and in determining the viability of comparison markets for use as normal value." However, the Department applies the term in its narrowest sense for product-matching for particular price-to-price comparisons, recognizing that the requirement of a rigid, uniform interpretation would prohibit the Department from relying upon section 771(16)(C) of the Act and would render inoperative the preferred methodology of calculating CV profit established in section 773(e)(2)(A) of the Act. In doing so, the Department cannot administer the statute in the manner intended by Congress if it is required to follow the exact same interpretation of "foreign like product" in its determinations for profits in CV as it makes in its price-to-price comparisons.

Finally, we disagree with the respondents' claim that our exclusion of below-cost sales in the calculation of CV profit is unlawful. We calculated profit for CV pursuant to section 773(e)(2)(A) of the Act, which directs us to include "the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country" in our calculation of CV. Because below-cost sales are outside the ordinary course of trade, we do not include such sales in our CV-profit calculation pursuant to section 773(e)(2)(A) of the Act.

SKF cites both <u>RHP</u> and <u>SKF USA</u> to suggest that <u>RHP</u> is no longer dispositive. Since SKF's submission of its case briefs, however, the CIT has affirmed the Department's Remand

Results concerning SKF USA in their entirety. In RHP, the CIT affirmed the Department's use of profit based upon the class or kind of merchandise which encompassed all foreign like products under consideration for purposes of CV profit because the use of such data matched the criteria of section 771(16)(C) of the Act. On appeal, the CAFC affirmed in part, vacated in part and remanded the case to the CIT instructing it to remand the case to the Department to "explain its methodology for calculation of constructed value profit... and explain why that methodology comported with statutory requirements." See RHP Bearings Ltd. v. United States, 288 F.3d 1334, 1337 (CAFC 2002). The matter remains pending with the Department. For these reasons we have not changed our calculation of CV profit from the method we used in the Preliminary Results.

B. Affiliated-Party Products

Comment 29: Torrington argues that, based on its verification finding, the Department should include general and administrative (G&A) expenses of Barden's parent company, FAG Germany, in the calculation of Barden's total G&A and, ultimately, in the calculation of the total COP for inputs it purchased from its affiliated parties.

Barden concedes that its parent company's G&A expenses should have been included in the total COP figures for affiliated-party inputs. Barden argues, however, that the addition of such expenses results in a de minimis change to the COP figures and, therefore, does not affect the reported major-input valuation adjustment (the difference between a COP figure and a transfer price). As a result, Barden contends, because none of the COP figures for affiliated-party inputs exceeds the respective transfer price, the inclusion of its parent company's G&A expenses does not affect the reported COPs and CVs of the bearing models or have any impact on the margin calculation.

Torrington rebuts that Barden's assertion regarding the de minimis change to COP figures implies an "insignificant adjustment" within the meaning of 19 CFR 351.413. Citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils

From the Republic of Korea, 64 FR 30664 (June 8, 1999), Torrington argues that it is the Department's practice to implement the adjustment where "it would be more of a burden to calculate a margin both with the adjustment and without the adjustment, compare the results, and determine the adjustment is 'insignificant.'" Further, Torrington argues, Barden has not demonstrated that the omission of a parent company's G&A expenses will not have any impact on the dumping margin.

Department's Position: For the final results, we have included the G&A expenses of Barden's parent company, FAG Germany, in the calculation of the total COP for Barden's affiliated-party inputs. After accounting for the addition of Barden's parent company's G&A expenses and the revised FAG Group's financial-expense ratio (see our response to Comment 40), the resulting COP figures for affiliated-party inputs still do not exceed the reported transfer prices, which are used by Barden to value affiliated-party inputs. See Attachment I of the Department's analysis memorandum for Barden for the final results of the administrative review, dated August 23, 2002, for the calculations. Therefore, reflective of the addition of FAG Germany's G&A expenses, the resultant COP figures for Barden's affiliated-party inputs, although changed, have no impact on the calculation of Barden's margin.

Comment 30: Torrington contends that the record is unclear as to whether certain turning machines used in Barden's production processes are leased from affiliated parties. If so, Torrington argues, Barden has not demonstrated whether the lease payments were executed at arm's length or whether such payments cover all actual costs, including depreciation expenses.

Barden argues that Torrington's assertions contradict the Department's finding at verification that the leases at question were contracted with unaffiliated parties.

Department's Position: In our verification report we stated that "...to verify the business relationship between Barden and its lessors we reviewed some lease agreements. We found that none of the leased assets were secured with affiliated parties." See page 3 of the Verification Report on the Cost of Production and Constructed Value Data Submitted by the Barden

Corporation (U.K.) Ltd. (May 8, 2002). Because we were satisfied with the information we had reviewed, we did not pursue verification of other lease agreements since we had no reason to suspect or believe that certain assets were secured with affiliated parties. Therefore, we consider the issue verified and find Barden's assertions concerning its leases were accurate.

Comment 31: Torrington alleges that the corporate entity which acquired FAG Italy's former production facility in Somma Vesuviana as of January 1, 2001, is affiliated with FAG Italy and that this fact obligates FAG Italy to value the products (whether completed bearings or inputs) produced at the Somma Vesuviana facility properly (the highest of transfer price, price charged to an unaffiliated party, or COP) procured from this entity during the POR. Torrington argues that, for such products, whether major inputs or completed bearings, FAG Italy should provide the complete cost data in order to enable proper valuation. Torrington argues that, apart from the probability of common management, the close supplier relationship between FAG Italy and this entity has the potential to affect decisions concerning the production, pricing, or cost of the foreign like product, thus constituting an affiliation within the meaning of 19 CFR 351.102.

FAG Italy argues that, during the period of FAG Italy's ownership of the Somma facility, it reported the actual COP for all products manufactured at this facility for the cost-calculation period (FY 2000). Moreover, FAG Italy contends, it reported the actual COP for all Somma-produced products sold during and after the period of FAG Italy's ownership of the Somma facility. FAG Italy asserts that the record demonstrates clearly that after January 1, 2001, FAG Italy had no ownership interest in the Somma facility. Further, FAG Italy argues, Torrington does not point to any record evidence suggesting FAG Italy's influence and/or control of the operations of the entity which acquired Somma facility. Hence, FAG Italy contends, the products purchased after January 1, 2001, from the newly created entity were valued properly at the actual weighted-average acquisition cost, which is in accordance with the Department's questionnaire instructions.

Department's Position: FAG Italy complied with our instructions by properly reporting all actual COP figures for products manufactured at the Somma facility which were sold during and after the period of FAG Italy's ownership of the Somma facility. Thus, the reported costs based on the cost-calculation period for the fiscal year ending December 31, 2000, reflect the actual COP of FAG Italy's affiliate for the period up to the time of FAG Italy's divestiture of the Somma facility. Further, we disagree with Torrington that the record suggests the existence of an affiliation between FAG Italy and the entity which acquired FAG Italy's Somma facility. The newly created entity is not the exclusive supplier of products to FAG Italy and its supply does not account for a substantial portion of FAG Italy's sales. Accordingly, based on the record it does not appear that this relationship has the potential to affect either entity's decisions concerning the production, pricing, or cost of the foreign like product and thus lacks the existence of a "control" requirement within the meaning of 19 CFR 351.102. Hence, we agree with FAG Italy that it valued all products purchased after January 1, 2001, from the newly created entity properly at the actual weighted-average acquisition costs.

Comment 32: NTN argues that the Department should use reported costs based on transfer prices to calculate CV and COP and that costs should not be adjusted using market prices or the affiliates' COP. Citing section 773(f)(2) of the Act, NTN contends that affiliated-party input transactions may be disregarded only if "the amount representing that [input] element does not fairly reflect the amount usually reflected in the sales of merchandise under consideration in the market under consideration." NTN asserts that there is no evidence that its affiliated-party inputs did not fairly reflect the amount usually reflected in the sales of merchandise under consideration. For these reasons, NTN requests that the Department use NTN's reported costs based on transfer prices.

Torrington contends that the Department has rejected this argument in prior reviews and that NTN did not explain how the evidence differs in this review.

Department's Position: Pursuant to section 773(f)(3) of the Act, in the case of a transaction between affiliated persons involving the production of a major input, the Department considers whether the amount represented as the value of the major input is less than its COP. The Department promulgated 19 CFR 351.407 to implement the statute. That section states that, for purposes of section 773(f)(3) of the Act, the value of a major input purchased from an affiliated person will be based on the higher of (1) the price paid by the exporter or producer to the affiliated person for the major input, (2) the amount usually reflected in sales of the major input in the market under consideration, or (3) the cost to the affiliated person of producing the major input. We have relied upon this methodology in past AFB reviews as well as in other cases. See, e.g., AFBs 6, 62 FR at 2117, AFBs 7, 62 FR at 54065, AFBs 8, 63 FR at 33337, and AFBs 9, 64 FR at 35612. Moreover, the CIT has upheld our application of the regulation. See Mannesmann v. United States, 77 F. Supp. 2d 1302 (CIT 1999), and American Silicon Technology v. United States, 110 F. Supp. 2d 992 (CIT 2000).

NTN argues that the Department must have reasonable grounds to believe that inputs are being sold at less than COP before it may use COP information. The Department considers the initiation of a cost investigation concerning home-market sales a specific and objective reason to believe or suspect that the transfer price from a related party for any element of value may be below the related suppliers' COP. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 63 FR 20585 (April 27, 1998). This practice was affirmed by the CIT in NSK Ltd. v. United States, 910 F. Supp. 663 (CIT 1995), and in NTN Bearing Corporation of America, NTN Corporation, American NTN Bearings Manufacturing Corporation, NTN Driveshaft, Inc. and NTN-Bower Corporation; NSK Ltd. and NTN Corporation; Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. v. United States, Consol. Court No. 97-10-01801, Slip Op. 00-64 (June 5, 2000). Therefore, we have not used NTN's reported costs based on transfer prices in our COP and CV calculations for those bearing models where the affiliate's COP exceeded the transfer price.

C. Depreciation of Idle Assets

Comment 33: MPB argues that, if the Department uses NTN's costs, the Department should restate the values to account for depreciation on idle assets. MPB alleges that NTN apparently did not include depreciation on idle assets in its reported costs. Citing Stainless Steel Bar from Italy, Issues & Decision Memo, Comment 47 (January 23, 2002), MPB contends that the Department's practice is to include such expenses in COP. MPB requests that the Department request the appropriate information or use another respondent's data as adverse facts available.

NTN argues that the Department should disregard MPB's comments about NTN's reporting of its depreciation of idle assets because NTN has already reported these costs in its response.

Department's Position: NTN included depreciation of idle assets in its reported G&A expenses. See NTN's August 31, 2001, section D response at Exhibit D-10. Thus, no revision to NTN's reported costs is necessary.

D. Loss on Marketable Securities

Comment 34: NTN argues that its loss with respect to the revaluation of marketable securities is a non-operating loss and should not be included in the G&A expenses for the calculation of COP because they are investment costs, not costs associated with production or sale of subject merchandise.

MPB argues that, because NTN cited no facts or sources of record making reference to such losses, MPB is unable to address this contention but requests the opportunity to do so if and when NTN ultimately cites to the record.

Department's Position: We agree that we should not include losses (or gains) on the revaluation of marketable securities as a part of G&A expenses because such expenses are related to investment activities which are not associated with the core business of NTN. This practice has been upheld by the CIT. In U.S. Steel Group a Unit of USX Corporation, USS/Kobe Steel

Co., and Koppel Steel Corp. v. United States, 998 F. Supp. 1151 (CIT February 25, 1998), the CIT upheld our remand determination in which we stated that, "where . . . items of income and expense are most closely related to the general operations of the company (all general activities associated with the company's core business), it is appropriate to treat those items as part of G&A." Accordingly, we have revised our calculation of NTN's G&A expenses to exclude these losses.

With regard to MPB's comment, in our supplemental questionnaire we asked NTN to include such losses in its G&A costs. NTN revised its reported costs to include such losses. See NTN's January 3, 2002, supplemental section D response at page D-3. Although MPB requested the opportunity to address NTN's contention "if and when NTN ultimately cites to the record," as described above, we have a specific policy on such losses (or gains) and would have agreed with NTN in any event.

E. Others

Comment 35: Torrington contends that, based on the Department's observation made at verification, it should use the cost of manufacture (COM) amount, not the cost-of-goods-sold (COGS) amount, as the denominator in the calculation of Barden's G&A expense ratio. Citing Hussey Copper, Ltd. v. United States, 17 CIT 993, 997-998, 834 F. Supp. 413, 419 (1993), Torrington argues that the case-specific circumstances may warrant the Department to depart from its traditional methodology if it is able to articulate the reason for a departure. One such reason, Torrington continues, is the consistency achieved when the derivation of an applicable ratio uses the same basis (COM) identical to that of the reported per-unit costs, particularly when this ratio is later applied against the per-unit costs. Further, Torrington argues, the Department's past determinations cited by Barden in its case brief do not specifically address the question of the appropriate denominator to use in calculating the G&A expense ratio.

Barden contends that it calculated the G&A ratio properly by using the COGS amount as the denominator pursuant to the Department's questionnaire instructions and in accordance with the Department's Antidumping Manual. Citing Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part: Canned Pineapple Fruit From Thailand, 65 FR 77851 (December 13, 2000), Final Results and Partial Rescission of Antidumping Administrative Review: Stainless Steel Sheet and Strip From Taiwan, 67 FR 6682 (February 13, 2002), Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 67 FR 6488 (February 12, 2002), and Final Results of Antidumping Duty Administrative Review: Certain Valves and Connections, of Brass, for Use in Fire Protection Systems From Italy, 56 FR 5388 (February 11, 1991), Barden argues that its calculation of the G&A expense ratio is consistent with the Department's long-standing practice. Barden rebuts that the petitioner has not offered arguments that the use of COGS was improper or any precedent that dictates that the Department use COM instead of COGS.

Department's Position: Barden calculated the G&A expenses ratio properly by using the COGS amount as the denominator. Barden's methodology is consistent with the Department's practice of calculating G&A expenses by dividing the fiscal-year G&A expenses by the fiscal-year COGS (adjusted for categories of expense not included in COM, such as packing) and then applying the percentage to the COM of the product. We did not adjust Barden's COGS figure because it contains the same categories of expenses included in Barden's COM figure. Moreover, Barden's G&A expenses reflect both selling and manufacturing activities of the company. Therefore, it is logical to use the COGS amount as the denominator in calculating the G&A expense ratio because G&A expenses are incurred for those products sold during a period that were manufactured in the current as well as prior periods. Because we consider G&A expenses as period expenses and extract them directly from the financial statements for the period that corresponds most closely to the POR, the G&A expense ratio should be calculated based on expenses (i.e., COGS) that are also reflected in the financial statements for the same period. Our methodology of using COGS as the denominator in calculating the G&A expense ratio is consistent with our practice. See Final Results of Antidumping Duty Administrative

Review and Determination Not To Revoke the Order in Part: Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea, 64 FR 69694 (December 14, 1999), and Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan, 55 FR 34585 (August 23, 1990). Therefore, for the final results we have not altered Barden's calculation of its G&A expense ratio.

Comment 36: Torrington alleges that Barden did not comply with the Department's questionnaire instructions by reporting multiple matching control numbers (CONNUMs) for the same bearing models. Consequently, Torrington asserts, Barden reported more than one cost figure for each respective model (i.e., unique product) in its COP database.

Barden argues that it reported a single weighted-average cost of each unique product correctly using the variable IDNUM as represented by a specific matching control number. Barden contends that the Department verified this at its facilities between April 15 and April 19.

Department's Position: Torrington alerted the Department to this issue in its pre-verification comments (Comments of the Torrington Company Regarding Verification of the Section D Response of The Barden Corporation (U.K.) Ltd. (April 5, 2002)). In order to address Torrington's concerns, the Department allotted sufficient verification time to examine this issue thoroughly. In our verification report we explained our findings: "We examined the sales database Barden submitted to the Department and ensured that Barden reported only one CONNUM for each product code. We saw that a CONNUM could have multiple product codes, but the difference in product codes is due to differences in the type of grease used, packing, and clearance (the Department does not consider these characteristics to be relevant to model-matching). Therefore, Barden properly weight-averaged the costs for models that were identical without regard to these characteristics." See page 9 of the Verification Report on the Cost of Production and Constructed Value Data Submitted by the Barden Corporation (U.K.) Ltd. (May 8, 2002). Therefore, we confirm that Barden's reporting methodology is in compliance with the instruction in the questionnaire.

Comment 37: Asahi argues that the Department erred by determining that Asahi made sales in the home market in substantial quantities at less than COP. It claims that the overall 20-percent below-cost determination must be done on a foreign-like-product basis as defined at 19 CFR 351.406 as opposed to a model-specific basis. According to Asahi, the proper interpretation of the term foreign like product can be determined by looking at the usage of the term throughout the statute and the Department's regulations. It points to section 771(16) of the Act and the Preamble to the Department's regulations at 62 FR 27412 as examples. Asahi asserts that it is clear from the statute and the regulations that the term foreign like product refers to the overall product, not the individual models, and that the foreign like product in this case is ball bearings. Therefore, it asserts, the proper COP analysis must be based on the total sales of ball bearings above and below cost. Moreover, Asahi continues, the statute directs the Department to determine whether below-cost sales were made in substantial quantities over an extended period of time. Because 20 percent or more of the volume of sales of the foreign like product were not made below cost, Asahi claims, the statutory test has not been met and, therefore, the Department should consider all sales reported by Asahi in its final results.

Torrington argues that the Department's method for determining below-cost sales is in accordance with section 773(b)(2)(C)(i) of the Act which states that sales made at prices below the COP have been made in substantial quantities if the volume of sales represents 20 percent or more of the "volume of sales under consideration for the determination of foreign market value..." According to Torrington, the Department interprets the phrase "the volume of sales under consideration for the determination of foreign market" to refer to the sales of the model examined. Furthermore, Torrington claims, the Department's interpretation conforms with prior practice under the "10/90/10" test defined at page 9 of the Use and Measurement of Production Costs Under U.S. Antidumping Law issued by the Department's Office of Accounting on September 19, 1995.

Department's Position: We do not agree that the below-cost test must be done on a broader basis than a model-specific basis. The Department has a long-standing practice to conduct the sales-below-cost test on a model-specific basis. See Policy Bulletin, 92/3 (Dec. 15, 1992); see also Policy Bulletin, 94.1 (Mar. 25, 1994). Moreover, in addressing the cost test, the SAA has clarified that "[a]s under current practice, the cost test generally will be performed on no wider than a model-specific basis." SAA at 832. Therefore, in accordance with the statute, the SAA, and past practice, we have continued to conduct the cost test on a model-specific basis.

Comment 38: MPB argues that the Department should verify NTN's cost data before accepting them for the final results. In the alternative, MPB argues, the Department should make appropriate adjustments on a facts-available basis. MPB contends that much of NTN's cost data is inexplicable on its face when compared with information from the prior review. MPB claims that total costs, and sometimes components thereof (such as direct labor and materials), swing radically from one year to another with no apparent justification. MPB observes that annual indirect expenses can vary significantly on a per-unit basis, between years, if total production quantities change. MPB contends, however, that neither direct labor nor materials should undergo large-scale swings without changes in technology or some other basic conditions. In addition, MPB argues, in responding to MPB's pre-preliminary comments on this matter, NTN ignored the inexplicable data and the problems they present and merely referred to Attachment D-1 of its section D response, which MPB asserts does not address its concerns.

NTN argues that it has reported its cost data to the Department adequately, and, therefore, application of facts available is unwarranted. NTN comments that the Department has not asked about the cost difference between the data for the 1999-2000 and 2000-2001 reviews and that MPB cannot demand facts available for alleged unresponsiveness when the Department has not requested information.

NTN claims that MPB speculates as to other causes of COP variations without an understanding of NTN's cost methods. NTN states that standard costs are reviewed every half fiscal period (April and October) and changes are made accordingly. NTN explains that the actual cost is calculated by multiplying the standard cost by the variance ratio, even for situations of non-production. According to NTN, its COP data also reflects the current signs of an economic depression. NTN claims that the Department has verified and found NTN's accounting to be accurate in prior administrative reviews.

Department's Position: NTN responded adequately to our supplemental questions regarding its reported costs. NTN's reference to "Attachment D-1" referred to Attachment D-1 of its supplemental response dated January 3, 2002, not the exhibits it submitted with its original section D response. Furthermore, even though we did not verify NTN's cost information in this review, its submitted data was subject to verification. Accordingly, we find there is no reason to either restate NTN's costs or to use facts available with regard to NTN's costs.

Comment 39: NTN argues that the Department must use CV rather than attempt to find a family match when it disregards contemporaneous sales of identical merchandise because they fail the cost test. NTN alleges that the Department's current practice is based on an erroneous reading of the determination in CEMEX, S.A. v. United, 133 F.3d 897 (CAFC 1998) (CEMEX). NTN contends that the statute directs that the identification of the foreign like product to match to a U.S. sale must occur prior to the determination of whether the sales of the foreign like product are outside the ordinary course of trade. According to NTN, section 773(b)(1) of the Act directs further that, once the foreign like product has been identified, the normal value for those sales which are disregarded as below-cost sales is to be based on CV.

MPB contends that the Department has rejected this argument in prior reviews and that NTN has not demonstrated why the CEMEX decision should not be followed.

Department's Position: The CAFC stated in CEMEX that "[t]he language of the statute requires Commerce to base foreign market value on nonidentical but similar merchandise..., rather than constructed value when sales of identical merchandise have been found to be outside the ordinary course of trade." See CEMEX, 133 F.3d at 904. Section 771(15) of the Act expressly defines below-cost sales in substantial quantities and within an extended period of time as "outside the ordinary course of trade." Therefore, to be consistent with the CAFC's ruling in CEMEX, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market that were identical to or part of the similar “family” of subject merchandise and which were sold in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the merchandise in the similar family made in the ordinary course of trade. Only where there were no home-market sales of similar-family merchandise in the ordinary course of trade did we resort to the use of CV for normal value.

Comment 40: Barden contends that the Department should allow FAG Germany’s reported interest income amount in full which is used as an offset in the calculation of the FAG Group’s financial-expense ratio. Barden argues that a portion of the “other” interest income amount is comprised of the interest income earned by FAG Germany’s subsidiaries. Such interest income is of short-term nature because, Barden claims, FAG Germany is the only entity that engages in long-term, non-operational investment activities for the FAG Group companies.

Barden argues that the remaining portion of the “other” interest income amount represents interest on antidumping duty deposits refunded by the Customs Service to FAG’s subsidiary in the United States. Barden contends that this revenue source is also of a short-term nature. Barden argues further that this revenue source should not be classified as long-term in nature because such a classification implies an investment activity of the company. Because it would be illogical to conclude that antidumping cash deposits represent an investment activity, Barden continues, the interest income from these cash deposits can only be rendered as a short-term source of revenue generated from activities related to the production and distribution of the subject merchandise.

Torrington contends that the Department should deny the offset to Barden’s calculation of FAG Group’s financial-expense ratio for the “other” interest income amount. As a preliminary matter and citing Federal-Mogul Corp. v. United States, 824 F. Supp. 215, 220 (1993), Torrington states that the Department does not include antidumping legal expenses in the expenses deductible from the U.S. price because doing so would artificially increase the dumping margin. By analogy, Torrington argues, the Department should similarly reject Barden's claimed offset for interest income earned on antidumping deposits, as it would artificially lower the dumping margins. Additionally, Torrington contends, Barden has not demonstrated that interest earned on non-scope merchandise has not been allocated improperly to subject merchandise.

Furthermore, Torrington argues that the Department should not reconsider its verification finding regarding Barden's inability to substantiate or document a portion of the interest-income-offset amount pertaining to the "other" interest income. Torrington asserts that Barden has not provided any authority for its entitlement or rectified its inability to provide supporting documentation at verification.

Citing The Timken Co. v. United States, 673 F. Supp. 495, 513 (1987), the petitioner contends that the respondent bears the burden of demonstrating entitlement to claimed adjustments. Citing AFBs 6, 62 FR at 2118, the petitioner argues that it is the Department's practice to grant offsets to interest expenses for interest income if the respondent is able to demonstrate that such interest income is of short-term nature and is related to production activities and the investment of working capital.

Department's Position: We agree that the burden of proof rests with the party making a claim and 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 this instant review, Barden bears the burden of demonstrating its entitlement to a favorable adjustment (i.e., interest-income offset).

In calculating COP and CV, it is the Department's practice to allow a respondent to offset financial expenses with short-term interest income that is earned on a company's working capital accounts and which reflect the general operations of the company. See Timken v. United States, 852 F. Supp. 1040, 1048 (CIT 1994). The Department does not allow, however, a company to offset its financial expense with income earned from investing activities (e.g., long-term interest income, capital gains, dividend income) because such activities are not related to the general operations of the company. At verification Barden did not substantiate or document a portion of the amount for an interest-income offset pertaining to the "other" interest income. Therefore, Barden could not demonstrate that this amount reflects short-term interest income earned on the investment of working capital and is related to current operational activities of the company. Moreover, with respect to the alleged amount of short-term interest income earned by FAG Germany's subsidiaries, the record is not clear as to whether this amount is comprised only of interest income. The types of current assets reported in the consolidated statements of FAG Holding Corporation and its subsidiaries list current asset accounts (e.g., "Other" and "Other Assets") that are capable of generating not only short-term interest income but also other types of short-term income. Additionally, with respect to interest income earned on antidumping cash deposits, we agree generally with Barden that posting antidumping cash deposits is an operational activity of FAG US (which is involved in the importation and resale of the subject merchandise) and does not relate to the company's investment activities. Barden has not demonstrated, however, that this notion in itself is indicative of the fact that antidumping cash deposits constitute an ongoing and ordinary working capital requirement of the company's current operations. Thus, the interest earned on such deposits may not be rendered as a return on investment of company's working capital.

Notwithstanding the verification finding, it is the Department's practice to exclude expenses that are incurred as part of the process attendant to the antidumping duty order. In Final Results of Antidumping Duty Administrative Reviews and Termination in Part: 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, 62 FR 11825

(March 13, 1997), citing to the September 20, 1996, final remand results pursuant to Federal-Mogul Corp. v. United States, Slip Op. 96-193 (CIT 1996), AFBs 6, 62 FR 2081, and the December 17, 1996, final remand results pursuant to The Timken Company v. United States, Slip Op. 96-86 (May 31, 1996), the Department stated that "[a]s explained in these determinations, it is reasonable for a respondent to deduct from its reported U.S. indirect selling expenses an amount which reflects those interest expenses it incurred when financing cash deposits. Our decision is based on the fact that the respondent incurred the interest expenses at issue as a result of the need to pay antidumping duty cash deposits. Therefore, we consider these interest expenses to be comparable to expenses for legal fees related to antidumping proceedings in that they were incurred only because of the existence of an antidumping duty order and a respondent's involvement therein." Similarly, following this rationale, it is logical to exclude the revenue items (e.g., interest income on antidumping duty deposits) that are also realized as part of the process attendant to the antidumping duty order. Absent the order, Barden would not need to pay antidumping cash deposits and consequently would not earn interest revenue on such deposits. For the final results, the Department excluded the other interest-income amount from the total interest-income offset.

8. Packing and Movement Expenses

Comment 41: NTN contends the Department acted improperly in reallocating NTN's packing expenses for home-market sales based on differences between sales to OEMs, distributors, and aftermarket customers. NTN argues that there are a variety of factors, such as total overhead, volume of sales, and packaging materials, which can account for the similarity in packing expenses between bulk-packaged bearings and individually packed bearings. NTN asserts that it reported its packing expenses to the best of its ability given the records kept in the ordinary course of business and requests that the Department use its packing expenses as reported for the purpose of the final results.

MPB argues that the Department should deny NTN's claim for a home-market packing expense adjustment because its allocation methodology is distortive. MPB argues further that, if the Department continues to make an adjustment, the Department's reallocation is preferable to NTN's reported amounts.

Department's Position: For the Preliminary Results, we reallocated NTN's packing expenses because of the similarity in reported packing expenses for bulk-packaged sales and individually packaged sales. See our analysis memorandum for the preliminary results applicable to NTN, dated April 1, 2002, at page 7. Because NTN's allocation methodology does not take into account the differences in the types of packaging, we find that its allocation methodology is unreasonably distortive.

We asked NTN to explain whether the reported packing expenses were allocated on the basis incurred and, if not, to explain why such an allocation is impossible and demonstrate that its methodology is not distortive. NTN responded that its allocation methodology was the best available to it and argued that it would be inappropriate to allocate packing expenses by weight. See NTN's January 3, 2002, supplemental section B response at pages B-1 and B-7. NTN did not explain or attempt to demonstrate, however, that its methodology is not distortive. Moreover, NTN has not explained how factors, such as total overhead, volume of sales, and packaging materials can result in a similarity in cost between bulk-packed and individually packed bearings and it has not pointed to any record evidence supporting its claim. Therefore, for the final results of review we continue to find it appropriate to reallocate NTN's packing expense.

The regulations at 19 CFR 351.401(g) state that we "may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions." Because we are not satisfied that NTN's allocation method does not cause inaccuracies or distortions, we did not use it. Based on record information, we are satisfied that our reallocation methodology alleviates our concerns regarding inaccuracies and distortions in calculating NTN's packing expenses. Therefore, we determine that it is inappropriate to deny the adjustment as suggested by

MPB.

Comment 42: MPB argues that the Department should restate NTN's reported home-market and U.S. inland freight expenses on the basis of weight. MPB alleges that NTN refused to comply with the Department's request to report the weights of the bearings it sold and thus prevented the Department from testing NTN's reporting to ascertain its reasonableness. MPB asserts that this is clearly non-cooperation. MPB also asserts that, notwithstanding the basis on which NTN incurs freight expenses, weight is a logical basis for allocating freight cost for products such as AFBs and is probably more reasonable than sales value. MPB observes that NTN's sales-value method is inappropriate on its face because insurance (which is paid on the basis of value) is a separately reported expense and because it is not clear that very expensive bearings are more expensive to ship than inexpensive bearings. MPB contends that NTN's non-cooperation is in effect a demand that the Department use NTN's selected method and requests that the Department not allow NTN to refuse to provide requested information and then benefit from the non-cooperation. Accordingly, MPB argues, the Department should resort to adverse facts available. MPB suggests that the Department apply the freight factor of another Japanese respondent to the extent it yields a less favorable deduction than NTN's reported amounts.

NTN argues that it reported its freight expenses properly according to the Department's requirements and to the best of its ability. NTN states that the Department requested that, if the respondent could not allocate the freight expense on the basis incurred, then NTN must 1) explain how it allocated the expenses, 2) explain why it could not allocate them on any of the bases on which they were incurred, and 3) demonstrate that the allocation methodology it used is not distortive. According to NTN, it responded to the best of its ability to the Department's request. NTN indicates that it submitted evidence on the record demonstrating how its freight expenses are calculated and explained that it does not maintain data on weight that would enable it to calculate freight on a weight basis. NTN also claims that it presented invoices showing that its freight expenses are incurred based on factors other than weight. NTN explains that it could not allocate these expenses based on any one factor because multiple variables are used, which are not uniform for each sale. NTN explains further that it allocates its home-market freight expenses based on a percentage of sales price and allocates its U.S. freight expenses based on value. Citing AFBs 8, 63 FR at 33340, the respondent claims that its allocation methodology has been approved by the Department in all prior reviews except for the 1999/2000 review. NTN contends that it responded to the Department's questionnaire and supplemental questionnaire to the best of its ability regarding the allocation of its home-market and U.S. freight expenses and, therefore, this situation does not meet the requirements for the application of adverse facts available under section 776(b) of the Act.

NTN rejects MPB's assertion that weight is a logical basis for allocating freight cost for AFBs and is more reasonable than sales value. It also rejects MPB's assertion that NTN's method is inappropriate on its face because insurance is a separately reported expense and it is not clear that very expensive bearings are more expensive to ship than less expensive bearings. NTN argues that larger bearings are more costly than smaller ones and, therefore, MPB is not correct in presuming a total lack of correlation between price and weight. NTN argues further that MPB's assumptions about how freight expenses are incurred have no concrete evidence. NTN asserts that, if it incurs freight expenses on a variety of bases, the use of a weight factor alone would be highly distortive. NTN concludes that the Department correctly accepted its reported allocation of freight expenses without resort to adverse facts available and requests that for the final results of review the Department not recalculate the home-market and U.S. freight expenses.

Department's Position: The regulations at 19 CFR 351.401(g)(1) 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. Further, the regulations state that "[a]ny party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions." See 19 CFR 351.401(g)(2). Finally, although 19 CFR 351.402(g)(4) directs that we will not reject an allocation method solely because the method includes expenses incurred with respect to sales of merchandise that do not constitute subject merchandise, the preamble to the regulations states that, ". . . in the case of these types of allocation methods, it will be particularly important that a party claiming an adjustment provide the explanation required under paragraph (g)(2) as to why the allocation method used is not inaccurate or distortive" (62 FR at 27348).

Although weight is not the only factor on which NTN incurs freight expenses, there is no evidence on the record that the sales price of merchandise is a factor on which NTN incurs freight expenses. Thus, although it might be true that an allocation based on weight alone may have some degree of distortion, such an allocation is less distortive than an allocation calculated on a basis on which, the record evidence indicates, no freight expenses are incurred. Therefore, we find NTN's allocation of freight expenses on the basis of sales value to be unacceptable.

Further, when we asked NTN to demonstrate that its methodology is not distortive, NTN said that its "methodology is not distortive because it bases its freight expense on the factor that is common to each shipment: sales value. Because this factor is common to all shipments, the freight expense cannot be shifted in favor of one shipment or another." See NTN's January 3, 2002, supplemental questionnaire response at pages B-1 and C-2. This argument is not convincing because the same argument can be made with regard to weight, which is common to all transactions. NTN also argued that an allocation based on weight would be distortive because its freight expense is not allocated by weight. See NTN's January 3, 2002, supplemental response at pages B-1 and C-2. This argument does not explain how NTN’s allocation is neither inaccurate nor distortive; moreover, it is not logical. Finally, NTN stated that its "records do not contain all the necessary information to allocate expenses based on weight." See NTN's January 3, 2002, supplemental questionnaire response at page C-2. This claim is not credible. An examination of NTN's product brochure, which NTN submitted as Exhibit A-24 in its August 31, 2001, response, reveals that the weight is listed for every bearing therein. Therefore, we find that NTN did not explain adequately how its methodology is not distortive and did not substantiate that the allocation is calculated on as specific a basis as is feasible.

In addition, we are not persuaded by NTN's claim that a value-based allocation is just as reasonable as a weight-based allocation on the grounds that larger bearings are more costly than smaller ones. There is no evidence on the record to support NTN's claim. Furthermore, we conducted an analysis of this type with regard to NSK UK, a respondent in the concurrent review of AFBs from the United Kingdom, and found this not to be true with regard to NSK UK. See the NSK UK public final results analysis memorandum dated August 23, 2002, for a description of the analysis we performed. Because of this, we are rejecting NTN's value-based freight allocation.

We asked NTN about its allocation methodology in the most recent review and provided NTN with the opportunity to show that its allocation methodology was not distortive or to provide weight information in a supplemental questionnaire. Final Decision Memo for AFBs 11 at Comment 34. Moreover, in AFBs 11, NTN chose not to supply the explanation or the information, and we applied an adverse inference. Id. While we have accepted NTN's allocation methodology in prior reviews (see, e.g., AFBs 8, 63 FR at 33340, and AFBs 7, 62 FR at 54084), in those reviews, unlike this review and AFBs 11, we did not ask NTN to demonstrate that its allocation methodology was not distortive or to provide weight information in a supplemental questionnaire. Thus, we found in those reviews that it would be improper to deny the adjustment without allowing NTN the opportunity to show that its methodology was not distortive or to provide the requested weight information.

In addition, we asked NTN to report the per-unit weight for its bearings in our original questionnaire and in our supplemental questionnaire. We asked that NTN include this data in its home-market and U.S. sales databases. NTN refused to comply with these requests, stating only that it does not use weight in the calculation of its freight expenses. See, e.g., NTN's January 3, 2002, supplemental response at pages B-3 and C-6. Although, as we noted above, the weights of NTN's bearings is included in NTN's product brochure, the size of the sales databases and number of models prevents us from incorporating the weights from NTN's product brochure in its sales databases.

For this review we afforded NTN the opportunity to address our concerns and it did not do so. Because NTN withheld information the Department requested twice, we find the use of facts available to be appropriate pursuant to section 776(a) of the Act. If NTN had provided the weight information in its sales databases for which we asked in both our original questionnaire and our supplemental questionnaire, then we would have been able to evaluate this information and, if necessary, attempt to reallocate NTN's reported expenses. Furthermore, because NTN did not adequately explain how its methodology is not distortive and is not inaccurate, and it did not provide information following two specific requests, we find that NTN did not provide the "full explanation" and "suggested alternative form" and did not demonstrate that it acted to the best of its ability. See sections 782(c)(1) and (e)(4) of the Act. Thus, because the weight data is not in the sales databases or in a format in which we could use and because NTN did not provide the information following two specific requests, we find that it did not act to the best of its ability. Therefore, the use of adverse facts available is warranted, pursuant to section 776(b) of the Act.

We have determined that disallowing the entirety of the respondent's claimed home-market freight expenses would be inappropriate because the record shows that the company actually incurred these freight costs and we are able to calculate an adverse rate based on record information, pursuant to section 776(b)(4) of the Act and 19 CFR 351.308(c)(2). In establishing what to use as adverse facts available for home-market freight expenses, we examined the freight rates for each of NTN's cost centers based on the worksheets that NTN submitted in its questionnaire response, dated August 31, 2001, at exhibit B-4, and we selected the lowest freight rate from the worksheets. We consider this rate to be appropriate because it is based on NTN's reported data in the context of this review. See the NTN final results analysis memorandum, dated August 23, 2002, for the rate we selected.

With respect to applying adverse facts available for freight on NTN's U.S. sales, we assumed that inland-freight expenses that NTN incurred during the POR were incurred for subject merchandise and allocated the total freight expense to those sales. We find that this is reasonable because it is based on NTN's reported data and it is an adverse inference. See the NTN final results analysis memorandum, dated August 23, 2002, for our calculation of the freight expense we applied to NTN's U.S. sales.

Comment 43: MPB argues that the Department should require further explanations of the domestic inland-freight expense NTN incurred for U.S. sales or resort to adverse facts available. MPB contends that it is not clear how NTN was able to separate the domestic inland-freight expenses attributable to home-market sales from those attributable to U.S. sales. Moreover, MPB argues that NTN's use of transfer prices to allocate the domestic inland-freight expenses presumably causes these expenses to be understated relative to the home-market sales, which are allocated using sales prices. MPB argues that the Department should require NTN to justify its methodology. MPB argues that, in the absence of such justification, the Department should devise a method by which it can spread the aggregate domestic inland freight expenses evenly across all goods, such as allocating the expenses by weight.

NTN argues that it responded to the best of its ability to the Department's request for information regarding its reporting of domestic inland-freight expenses incurred on U.S. sales and, therefore, the use of adverse facts available is unwarranted. NTN explains that it uses transfer price to allocate the domestic inland-freight expenses incurred on U.S. sales because of the multiple variables involved in each sale that are not uniform for each sale. NTN also contends that the Department has verified its methodology in prior reviews.

NTN argues further that the Department never asked how it segregated the domestic inland-freight expenses between export and domestic sales. Thus, NTN argues, using adverse facts available because it did not answer a question the Department did not ask is inappropriate. NTN also observes that it explained that it knew at the time of shipment whether a product was destined for sale to its subsidiaries and, therefore, it is able to discern whether a product is for the domestic or export market.

Department's Position: NTN is correct in noting that we did not ask for an explanation of how it segregated domestic inland-freight expenses between domestic and U.S. sales. In addition, the record indicates that NTN uses different account codes for the domestic inland freight incurred on domestic and U.S. sales. See Attachment C-3, Appendix 4 of NTN's January 3, 2002, supplemental section C response and Exhibit B-4, Worksheet 4 of NTN's August 31, 2001, section B response. Thus, the means by which NTN segregated the expenses is clear. Therefore, we have not revised the segregation of NTN’s domestic inland-freight expenses as MPB suggests.

Comment 44: MPB argues that the Department should account for warehouse expenses, if any, NTN incurred in Japan on U.S. sales. MPB explains that, for home-market sales, NTN reports (1) inland freight – plant to distribution warehouse, (2) warehousing expense, and (3) inland freight – plant/warehouse to customer. For U.S. sales, however, MPB observes, NTN reports (1) inland freight – plant to distribution warehouse and (2) inland freight – plant/warehouse to port of exit, but it does not report any warehouse expenses. MPB contends that NTN’s questionnaire response suggests that warehouse expenses are incurred on NTN’s U.S. sales because, in the narrative for inland freight-plant/warehouse to port of exit, the respondent states that "NTN based inland freight charges between factory or warehouse to the port of exit on a percentage of transfer price . . . ." MPB questions whether NTN failed to report appropriate amounts of warehouse expenses on U.S. sales because it reports inland freight to and from a warehouse in Japan. MPB claims that NTN's reporting is either confusing or warehouse expenses have been omitted. MPB argues that the Department should be fully satisfied that all expenses, including any warehouse expenses in Japan incurred in connection with U.S. sales, have been reported. MPB requests that the Department resort to adverse facts available if it is not fully satisfied.

NTN argues that it reported its Japanese warehouse expenses relating to U.S. sales to the best of its ability and, therefore, the use of adverse facts available is unwarranted. NTN explains that its export distribution centers for U.S.-destined sales are NTN properties. Thus, NTN argues, while rent was reported as a warehouse expense for home-market sales, this amount was not incurred by NTN with respect to warehousing expenses of the type requested in the Department's questionnaire with respect to U.S. sales. NTN contends that there is no misreporting of its warehouse expenses and no adjustment should be made for this expense for the final results. NTN concludes that the Department should not use adverse facts available.

Department's Position: The record suggests that NTN incurs warehousing expenses on its U.S. sales. Furthermore, NTN's argument that these are incurred at "NTN properties" begs the question as to whether the warehousing occurs at the factory or at a separate location. Because we never afforded NTN the opportunity to remedy the potential discrepancy, however, the use of an adverse inference is not warranted. Further, because the warehousing could have occurred at the factory, treating it as if it had occurred away from the factory would be an adverse inference. Accordingly, we have accepted the data as reported by NTN, and we intend to examine the issue in subsequent segments of this proceeding.

Comment 45: With regard to FAG-Germany’s U.S. sales, Torrington argues that the Department should continue to limit the addition of other revenue to the U.S. price so that the increase does not exceed the amount reported in inland freight expenses. Similarly, Torrington advocates disregarding other revenue amounts when no value is reported for inland-freight expenses.

FAG Germany argues that other revenue amounts collected by one of its U.S. affiliates should not be disregarded because these amounts include items other than freight revenue. For example, according to the respondent, insurance charges actually billed to its U.S. affiliate

Barden's customers are included in the amount reported as other revenue. Thus, the respondent explains, when the U.S. affiliate pays only for insurance and bills the amount to the customer, amounts for other revenue can be reported even though it incurs no freight expense. As such, FAG Germany asserts, the reimbursement for insurance costs is properly reported as other revenue. Furthermore, FAG Germany argues, there is no basis for limiting the addition of other revenue at the amount of reported freight costs because other revenue can include other on-invoice charges.

Department's Position: We inadvertently limited the addition of other revenue to the U.S. price so the increase would not exceed the amount reported for inland freight to the customer. As we stated in an earlier review, "it is inappropriate to limit the adjustment of FAG Germany's other revenue at the amount of reported inland-freight expenses when such revenues actually exceeded the amount of freight expense." See Final Decision Memorandum for AFBs 10 at Comment 31. Where the reported gross unit price to its U.S. customers includes amounts on invoice for expenses and revenues, we find that it is appropriate and consistent with our practice to adjust FAG Germany's gross unit price for such expenses and revenues. See Federal-Mogul Corp. v. United States, 862 F. Supp. 384, 412 (CIT 1994), and Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from the United Kingdom, 64 FR 30688, 30703 (June 8, 1999). For the final results, we have accepted all reported expenses and revenues and not limited the addition of other revenue to the U.S. prices to equal the amount reported for inland freight to the customer.

Comment 46: Torrington argues that the Department should require Koyo to modify its home-market packing-expense calculations to reflect the applicable ratios that Koyo reported in its questionnaire response or the Department should modify the expenses. According to Koyo's response, Torrington explains, it applied one of two packing-expense ratios (depending on customer type) to the total COM of a particular model to obtain the packing-expense amount reported in its home-market sales list. When testing the values Koyo reported for packing expenses in the home-market sales list, however, Torrington claims, a substantial number of observations yield ratios other than the two Koyo reported.

Koyo argues that there are no inconsistencies in its reported home-market packing expenses. It claims that Torrington's argument is based on errors that Torrington made when attempting to link the COP data in Koyo's home-market database to the COP data that Koyo reported separately. Accordingly, Koyo requests that the Department disregard Torrington's argument.

Department's Position: We examined the error alleged by Torrington but did not find any discrepancies. Therefore, we conclude that there are no inconsistencies in Koyo's reported packing expenses.

Comment 47: Torrington argues that the Department should apply partial facts available with regard to NSK UK's inland-freight expense for U.S. sales. Torrington observes that the Department asked NSK UK in its October 25, 2001, supplemental questionnaire to reallocate U.S. inland freight expenses on the basis of weight and to estimate the number and quantity of transactions where inland freight expenses were incurred on the basis of value as opposed to weight. Torrington contends that NSK UK did not comply with these requests. Torrington explains that NSK UK claimed it could not do so because it did not maintain information on weight shipped or any other records that would allow it to determine the basis on which freight expenses were incurred in any particular instance. However, Torrington contends, NSK UK reported transaction-specific weight data in its U.S. sales database. Thus, Torrington argues, NSK UK's claim is unsupported by the record.

Torrington contends that, with respect to high-volume commodity ball bearings, NSK UK's reporting methodology likely understates the U.S. inland-freight expenses. Thus, Torrington argues, the Department should apply some form of partial facts available to NSK UK's inland-freight expenses. Torrington suggests that, as partial facts available, the Department could use the highest U.S. inland-freight expense ratio reported by the various respondents to these reviews.

NSK UK argues that the Department should not use facts available with respect to its U.S. inland-freight expense. NSK contends that it complied with the Department's requests for information fully. NSK UK claims it explained, in response to the Department's question, that it does not keep records which allow it to know the basis or bases on which freight costs are incurred on any particular shipment and that it allocated these costs on the only comprehensive data which it had available, which was value. NSK UK also claims that the Department has verified and accepted NSK's allocation methodology in past reviews. Finally, NSK claims that allocation by value is as reasonable as any other allocation methodology because freight expenses are based on a number of factors, including time-sensitivity of delivery, distance, volume, and weight. NSK alleges that a more expensive bearing is generally a heavier bearing and, therefore, a value-based allocation is just as reasonable as a weight-based allocation. Thus, NSK UK argues, there is no factual or legal basis to apply any form of facts available.

Department's Position: NSK UK informed us that U.S. inland-freight expenses could be incurred on the basis of "value, volume, weight, timing and/or shipment distance." See NSK UK's August 31, 2001, response at page C-19. Although NSK UK had stated that value was a possible basis on which inland freight could be incurred, when we inquired further, NSK UK disavowed that value was a basis in its November 8, 2001, supplemental questionnaire response at page S-10. NSK also explained that it could not report freight on the basis on which it was incurred because it does not track "each shipment's cost of freight, weight, distance, time of delivery, or any other specific factor." See NSK UK's November 8, 2001, supplemental questionnaire response at page S-11.

We are not persuaded by NSK UK's claim that a value-based allocation is just as reasonable as a weight-based allocation on the grounds that a more expensive bearing is generally a heavier bearing. We have analyzed NSK UK's U.S. database and find that the correlation between weight and value is not sufficiently strong to support the conclusion that a value-based allocation is a reasonable proxy for a weight-based allocation. Because our analysis involves proprietary data, please see our August 23, 2002, analysis memorandum for NSK UK for a further description of our analysis. Because there is no significant correlation between weight and value, we do not agree that a value-based allocation is as reasonable as a weight-based allocation. Pursuant to 19 CFR 351.401(g)(2), we determine that NSK UK has not sufficiently demonstrated that its value-based allocation does not cause inaccuracies or distortions.

We do not find, however, that we should apply partial facts available. We accept NSK UK's claim that it could not allocate these expenses on the basis of total weight shipped. Although Torrington notes that NSK UK reported the weight of the bearings it reported in its U.S. database, NSK UK stated clearly that it obtained these weights from "technical specifications." See NSK UK's August 31, 2001, response at page C-9. Thus, because there is nothing on the record to contradict NSK UK's claims, the necessary information is available on the record, NSK UK did not significantly impede this proceeding, and NSK UK's claims were subject to verification, we decline to apply facts available, pursuant to section 776(a) of the Act.

We normally prefer that a respondent report an expense on the basis on which it was incurred. Where this is impossible, we prefer that the basis of the allocation methodology the respondent uses be as close to the basis on which the expense was incurred as possible. In this case, weight is one of the bases on which freight was incurred, but value is not. Therefore, to the extent that these expenses can be allocated based on weight rather than value, we find that methodology to be preferable. In reporting its expenses for all CEP transactions, NSK UK has essentially given us the universe of expenses incurred on subject merchandise. Because NSK UK reported the weight of the bearings it reported for all CEP transactions, we have the data necessary to allocate the expense attributable to subject merchandise to the reported sales on the basis of weight. Accordingly, we have reallocated NSK UK's reported U.S. inland-freight expenses on the basis of the reported weights, pursuant to 19 CFR 351.401(g).

Comment 48: FAG Germany and FAG Italy argue that the Department's deduction of reported U.S. warehousing expenses and warehouse commission expenses (designated as shipping warehouse commissions and entering warehouse commissions) paid to affiliates constitutes a double deduction from U.S. price. To avoid double-counting, FAG Germany and FAG Italy request that the Department not deduct warehouse commission expenses paid to affiliates.

Torrington agrees that the Department should not deduct the same expense twice, but it disagrees with the proposed remedy. Torrington states that the actual commissions paid to the affiliated agent constitute the more accurate measure of the actual expense and should be used for the adjustment, unless the commission paid to an affiliated commissionaire is less than the reported warehouse expense. As such, Torrington opposes the respondents' proposed methodology for avoiding double-counting.

Department's Position: We agree that in calculating the CEP of U.S. sales we should not deduct both pre-sale warehousing expenses and warehousing commissions. On page 38 of its August 31, 2001, submission, FAG Germany stated that, "should the Department choose to deduct pre-sale warehouse expenses from the U.S. price of reported sales made by its affiliate through related warehouses, for which a separate factor has been calculated, then amounts reported for warehouse commissions to those same related warehouses should not also be deducted because the deduction of both would result in double-counting." For the Preliminary Results, we inadvertently deducted both pre-sale warehouse expenses and warehouse commissions that FAG Germany's and FAG Italy's U.S. affiliate incurred on its sales. We have addressed FAG Germany's and FAG Italy's concern about double-counting for these final results.

Contrary to the respondents' recommendation that warehouse commissions be set to zero and in agreement with Torrington, however, we have deducted the reported warehouse commissions rather than the warehouse expense unless the commission paid to an affiliated commissionaire is less than the reported warehouse expense. In such instances, we have deducted the warehouse expense.

Comment 49: Torrington argues that the Department should not accept NSK's expense for U.S. freight from port to warehouse. Torrington contends that the items included in the numerator and denominator of the factor calculation are not on the same basis and, as such, NSK's methodology for calculating this expense is flawed. Torrington asserts that the Department should apply facts available by recalculating the expense.

NSK argues that, in order to determine whether its methodology is reasonable, it is necessary to establish what items are included in the numerator of the factor calculation (i.e., the expense amount) as this will determine the items to be included in the denominator. NSK asserts that this approach will ensure that the expense is allocated on a reasonable basis.

NSK explains that the expense in question is for the movement of imported merchandise from the port to an NSK warehouse. NSK asserts that the imported merchandise consists of (a) finished bearings, (b) imported scope components, and (c) imported non-scope materials (e.g., green rings). Citing its August 31, 2001, response at pages C-13 – C-14 and its December 31, 2001, response to Torrington’s Deficiency Comments at page 11, NSK asserts that the numerator is an all-inclusive number, covering expenses for the movement of all of the above products. As a consequence, NSK argues, the proper denominator to allocate this expense must capture all of the imported merchandise, both scope and non-scope. NSK asserts that the proper denominator is the figure applicable to NSK Corp. sales, including sales of imported finished products, and sales of products that were produced using the imported scope and non-scope materials. NSK argues that the fact that some of the resulting sales are "non-scope" (i.e., do not incorporate components within the scope of the order) is beside the point – the expense in question is incurred in connection with these products and, therefore, an allocation of the expense to such sales not only is reasonable but is necessary to prevent an over-allocation of the expense to scope sales. Accordingly, NSK contends, the Department should continue to accept the expenses it reported for U.S. freight from port to warehouse.

Department's Position: We find that the methodology NSK used to allocate its freight expense for moving U.S. sales from the port to warehouse is reasonable. The expense is incurred in connection with scope and non-scope products and, as such, an allocation of the expense to such sales is acceptable. We also find, however, that the numerator and the denominator are not on the same basis because the freight expenses (numerator) are incurred on imports while the denominator (total sales) includes products after they have been further processed in the United States. Therefore, for these final results we have reallocated this expense by taking the ratio of the sales value for ball bearings and parts thereof to total sales and applying it to the total U.S. freight from port to warehouse expense to arrive at the expense for ball bearings and parts thereof. We then divided the total freight expense for ball bearings and parts thereof by the total entered value of this merchandise to arrive at a factor which we applied to the entered value for each transaction.

Comment 50: Torrington argues that the Department should modify its treatment of FAG Italy's revenue and expenses associated with freight and packing by limiting the freight and packing expense incurred on a home-market sale by the amount of the freight and packing revenues reported on a home-market sale.

Torrington explains that for the Preliminary Results the Department deducted an amount for inland freight-plant/warehouse to customer from the gross unit price as part of movement expenses and in a similar manner deducted packing expense from the gross unit price. Torrington observes that FAG Italy's home-market sales list also includes information on freight revenue and packing revenue. Torrington explains that FAG Italy reported transaction-specific freight and packing expense reimbursements it received from home-market customers in the freight and packing revenue fields. Torrington indicates that the Department added freight revenue and packing revenue to the gross unit price. It contends that the freight and packing expenses obtained by allocation exceeded the freight and packing revenue (i.e., the actual amount

FAG Italy received for the freight and packing services).

Torrington also contends that the Department's preliminary analysis memorandum does not accurately reflect how freight and packing revenue were treated for the Preliminary Results. Torrington asserts that the memorandum indicates that packing revenue was deducted from gross unit price but in the actual margin calculation both freight revenue and packing revenue were added to the gross unit price. Torrington requests that the Department modify the memorandum to describe the actual calculations and modify the calculation to limit freight and packing expenses to not exceed the amounts reported in the freight and packing revenue fields.

In addition, with regard to U.S. sales, Torrington argues that the Department should modify its treatment of adjustments made for FAG Italy's inland-freight expense from the warehouse to the unaffiliated customers and other revenue. Torrington contends that the Department should limit the amount of other revenue added to the U.S. price to not exceed the actual transaction-specific cost of freight reported.

Citing the AFBs 10 Decision Memorandum at Comment 31, FAG Italy argues that it is the Department's practice not to limit any expense or revenue item in either the home or U.S. market (where reported properly by a respondent) regardless of whether they are allocated expenses or actual revenues billed to the customer on the commercial invoice. FAG Italy contends that the logical corollary to the Department's position in the cited case is that it is equally inappropriate to limit the adjustment of FAG Italy's home-market freight and packing expenses at the amount of the reported revenue when such expenses actually exceed the amount of the revenue. In addition, FAG Italy argues that Torrington has not forwarded any arguments or submitted any data that FAG Italy's reporting of home-market inland-freight revenue and inland-freight expenses or packing revenue and packing expenses are in any way distortive, inaccurate, or unlawful. FAG Italy asserts that, as in all prior reviews, these expenses and revenues should be deducted or added in full to normal value.

In addition, FAG Italy asserts that Torrington presents one argument with respect to the home-market sales and the exact opposite argument with respect to U.S. sales. FAG Italy contends that Torrington cannot have it both ways.

Department's Position: FAG Italy's reporting of freight expense and revenue as well as packing expense and revenue in the home market is consistent with Department practice. In addition, FAG Italy's reporting of freight expense and other revenue in the U.S. market is also consistent with Department practice. We find that it is inappropriate to limit the adjustment of FAG Italy's home-market inland-freight and packing expenses to the amount of reported inland-freight and packing revenue when such expenses exceed the amount of freight and packing revenue. It is also inappropriate to limit the adjustment of FAG Italy's U.S. other revenue to the amount of the inland-freight expense from the warehouse to unaffiliated customers. See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from the United Kingdom, 64 FR 30688, 30703 (June 8, 1999), and AFBs 10, at Comment 31. Our position on this issue with respect to U.S. expenses and revenues is equally applicable to home-market expenses and revenues. As such, for these final results, we have accepted FAG Italy's reporting of U.S. freight expenses and revenues as well as home-market freight and packing expenses and revenues and made the appropriate deductions from and additions to the gross unit price.

9. Discounts and Rebates

Comment 51: Torrington alleges that certain early-payment discounts offered by FAG Germany to home-market customers exceeded the payment terms listed in Exhibit 5 provided in FAG Germany's questionnaire response of August 31, 2001. Torrington asserts that FAG Germany explained that the terms provide the percentage discount which would apply to purchases of comparable merchandise if payment is made within a specified time period. Torrington argues that the Department should eliminate reported discounts where the actual payment period exceeded the payment terms involved or where the claimed discount exceeded the discount terms in Exhibit 5.

FAG Germany argues that Torrington has not cited to any record evidence suggesting that FAG Germany's early-payment discounts are misstated, misreported, or otherwise incorrect. Moreover, FAG Germany argues, in its examples, Torrington applied the early-payment discount percentages to the wrong price basis when it applied the percentage discount to gross unit price. FAG Germany asserts that its transaction-specific early-payment discounts are applied to total net invoice prices which include other revenue (e.g. freight revenue) as well as other adjustments (e.g. billing adjustments). Therefore, according to FAG Germany, Torrington's methodology does not result in the amounts FAG Germany reported. As such, FAG Germany argues, the Department should make the claimed deduction of discounts from normal value.

Department's Position: We find that actual reported discounts are a more accurate reflection of discounts given. As we requested, FAG Germany's home-market sales database provides actual early-payment discounts on a transaction-specific basis (see FAG Germany's Section B Questionnaire Response at B15-16). Rather than base our calculations on theoretical terms of sale such as those listed in FAG Germany's response at Exhibit 5 of Section B, we find that the use of actual reported early-payment discounts, which are subject to verification, is a more accurate reflection of discounts granted on subject merchandise within a given POR. Thus, we have not denied an adjustment to normal value for FAG Germany's reported early-payment discounts because we find that these discounts represent an accurate reflection of the actual discounts granted on the subject merchandise. Accordingly, we have granted an adjustment to normal value for these reported early-payment discounts.

Comment 52: MPB argues that the Department should not accept NTN's claim concerning certain discounts without verification or at least obtaining further information. According to MPB, NTN states that it negotiates the discounts "on a customer- and product-specific basis." MPB observes that in its supplemental questionnaire, however, the Department said this description was unclear as to whether the company was reporting these discounts on a product-specific or product-type-specific basis. MPB requests that the Department conduct a verification of NTN's method or, in the alternative, disallow the discounts completely, notwithstanding determinations in prior reviews.

NTN argues that the Department accepted NTN's claim for certain discounts correctly. NTN claims that it has provided worksheets in Attachment B-3 which demonstrate the reasonableness of its methodology. NTN argues that the Department has accepted its methodology in recent reviews and that it was also successfully verified in the1998-1999 review. NTN claims further that, as demonstrated during that verification, NTN's actual sales records form the basis for calculating the discounts. NTN observes that there is no reason for the Department to conduct another verification or to disallow the discounts.

Department's Position: NTN has demonstrated satisfactorily that its allocation among different bearing types results in a reasonable, non-distortive allocation. Pursuant to 19 CFR 351.402(g)(2), "[a] party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions." Thus, we generally have accepted claims for discounts, rebates, and other billing adjustments as direct adjustments to price if we determined that the respondent acted to the best of its ability in reporting these adjustments and that its reporting methodology was not unreasonably distortive. See, e.g., AFBs 6, 62 FR at 2090, and AFBs 7, 62 FR at 33325. In order to show that its reporting methodology is not unreasonably distortive, a respondent must provide a sufficiently detailed explanation as to why the allocation methodology does not result in inaccuracies or distortions. In previous reviews we have verified the methodology NTN uses for discounts and have determined that it is not unreasonably distortive, that it does not include non-subject merchandise, and that NTN acted to best of its ability in reporting its discounts. See, e.g., AFBs 7, 62 FR at 33325. In AFBs 7, we found that NTN granted the discount on a customer- and product-type basis (i.e., by customer and on an antidumping duty order-specific (i.e., BB) basis), as well as allocated it by customer to BBs. During verification for AFBs 7, we reviewed numerous documents which NTN uses to track this type of discount (on an order-specific basis) and determined that NTN reported this discount in the most feasible manner possible. The allocation was order-specific (BB) and the bearings do not vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that the results of the allocation are not unreasonably inaccurate or distortive (AFBs 7, 62 FR at 33325).

For this review, NTN stated in its January 2, 2002, supplemental response that its discounts are "granted and reported on a customer- and product-specific basis" and referred to an exhibit which demonstrates the calculation of the discount ratio for each customer and product type. See NTN's January 3, 2002, supplemental response at page B-4. Although Attachment B-3 of NTN's January 3, 2002, supplemental response indicates that the discounts were granted and reported on a customer- and product-type-specific basis, not a customer- and product-specific basis (i.e. model) basis, it is clear from this response that NTN is not shifting discounts from non-comparable merchandise to comparable merchandise because the discounts are granted on an order-specific basis. As verified in previous administrative reviews, the bearings do not vary significantly in terms of value, physical characteristics, or the manner in which these bearings are sold. See, e.g., AFBs 7, 62 FR at 33325. We have accepted NTN's allocation methodology in this review because it does not appear that the methodology NTN employed is unreasonably distortive and is not different from the methodology it has used in previous administrative reviews, some of which, as noted above, have been verified. Because of this, we find that NTN's methodology is not distortive and have deducted its reported discounts from normal value.

10. Miscellaneous

A. Improper Service

Comment 53: Asahi argues that the Department should have rejected the petitioner's request for review of Asahi because the petitioner did not notify Asahi properly of its request. Asahi indicates that it learned of the request for review by the Department's publication of the notice of initiation in the Federal Register. After obtaining a copy of the petitioner's request for review, Asahi explains, it found that the request lists Asahi's correct address but the certificate of service attached to the request does not show Asahi as having been served with a copy of the request. Asahi argues that, because the petitioner did not follow the specific requirement of 19 CFR 351.303, which requires that requests for administrative review be served on named parties unless their location is unknown, the Department should have rejected the petitioner's filing. Asahi asserts that, although the regulations also state that the Department may accept a request for review if convinced of the reasonableness of an attempt to serve the request on the named party, the statement does not apply in this case because there was not such an attempt by the petitioner. Because the petitioner deprived Asahi of the time necessary to begin to prepare for this administrative review, Asahi argues, the Department should correct the situation by determining that a review of Asahi was not proper and rescind the initiation.

Torrington cites Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808 (October 16, 1997), and argues that, given the shortness of the delay Asahi experienced in receiving the request for review and the fact that Asahi had participated in six prior reviews, the Department's decision to view the delay as harmless and continue the review was well within its discretion. Furthermore, Torrington argues, Asahi waived its objection to the delay by participating in the review.

Department's Position: We do not agree that we should have rejected Torrington's request for a review of Asahi. Although Asahi did not receive Torrington's request for review until June 20, 2001, we did not request any information from parties participating in the review until June 28, 2001, when we issued the questionnaire. Therefore, we do not accept Asahi's argument that it has been deprived of the time necessary to prepare for the review since specific information regarding the review had not yet been requested. Furthermore, with respect to Asahi's reference to 19 CFR 351.303, we believe that Torrington made a reasonable effort to serve Asahi with the request for review once Torrington realized that it had made an error. That is, according to Asahi's June 20, 2001, letter concerning this issue, it appears that Torrington faxed Asahi a copy of the request for review as soon as Torrington learned of the problem on June 20, 2001. For the reasons explained above, we do not believe that the brief delay in receiving the request for review had any effect on Asahi's ability to respond to our request for information. Therefore, we have not rescinded the review.

B. Consignment Sales

<u>Comment 54</u>: Nankai Seiko argues that the Department applied partial adverse facts available incorrectly to some of its sales when the Department determined that it failed to report certain sales as export-price transactions. The respondent explains that it made the sales in question to a Japanese trading company and the Japanese trading company resold the subject merchandise in the United States through its U.S. affiliate. Nankai Seiko states that in its questionnaire response dated August 31, 2001, it listed the Japanese trading company's U.S. affiliate as a customer but it did not list the Japanese trading company anywhere in its questionnaire response.

Nankai Seiko states that the Department learned of the sales in question from the Japanese trading company's website, which indicated that its U.S. affiliate had been formed as a result of a joint effort between the Japanese trading company and Nankai Seiko. Nankai Seiko asserts that, when the Department made further inquiries with respect to the nature of the relationship, Nankai Seiko characterized the relationship as a "consignment arrangement" between Nankai Seiko and the Japanese trading company's U.S. affiliate in Nankai Seiko's supplemental questionnaire dated November 14, 2001. Nankai Seiko states that, given these facts, the Department concluded that the arrangement was a consignment sale and that such sales should be classified as CEP transactions. Nankai Seiko contends that the Department determined that application of adverse facts available to these sales was warranted, in part due to the fact that Nankai Seiko did not report these sales as CEP transactions in its original response.

Nankai Seiko disputes the classification of these sales as CEP transactions and asks the

Department to reconsider its application of adverse facts available. Citing the Antidumping Manual at Chapter 7, p. 9, Nankai Seiko argues that the sales are not consignment sales and that they are properly classified as sales to an unaffiliated purchaser for export to the United States. Nankai Seiko bases this assertion on several facts. For one, it claims that all the selling arrangements were made between Nankai Seiko and the Japanese trading company prior to exportation. Also, once the sales were made, Nankai Seiko asserts, it had no further dealings with the Japanese trading company except to receive payment from the Japanese trading company for credit notes Nankai Seiko received from the trading company's U.S. affiliate. Thus, Nankai Seiko calls this arrangement a deferred-payment scheme and claims that its use of the term "consignment" in its November 14, 2001, supplemental questionnaire response was erroneous. Nankai Seiko also asserts that it is not affiliated with the Japanese trading company and that this makes the sales export-price transactions rather than CEP transactions. Nankai Seiko acknowledges that the trading company's website described its arrangement to sell Nankai Seiko bearings as a joint effort between the trading company and Nankai Seiko but asserts that this terminology is misleading, as the two companies share no directors or officers, have no co-mingling of stock, do not exert direct power or influence over the other, and are not involved in an employer-employee or any other form of agency relationship. Nankai Seiko also asserts that once it completes the sale with the Japanese trading company there is no further action by the Japanese trading company on Nankai Seiko's account. Nankai Seiko requests that the Department find Nankai Seiko and the Japanese trading company to be unaffiliated and treat its sales to the Japanese trading company as export-price transactions.

Torrington asserts that the totality of the circumstances, rather than only geographic factors, need to be considered in classifying these sales and that the evidence supports treating these sales as CEP transactions. Torrington also asserts that it would be illogical to classify these sales as anything other than consignment sales given the use of the term "consignment arrangement" by the Japanese trading company. Torrington concludes that, since these transactions are consignment sales, Nankai Seiko's reliance on the export-price definition in the Antidumping Manual is misplaced because the definition does not apply to consignment sales.

Department's Position: After reexamining the information on the record we find that we should not apply adverse facts available to the sales at issue because these transactions do not meet the Department's definition of CEP sales. Neither the Japanese trading company nor its U.S. affiliate are selling the goods on Nankai Seiko's account. There is no common leadership, no intermingling of stock, and no employer-employee relationship between Nankai Seiko and the trading company or its U.S. affiliate. Furthermore, Nankai Seiko incurs no further expenses after delivery of shipments to the Japanese trading company. Although Nankai Seiko is the sole provider of bearings to the trading company, this fact appears to be nothing more than an informal business arrangement. Without evidence of control exerted by Nankai Seiko over the Japanese trading company, we conclude that these two parties are unaffiliated. We also find that the sales between Nankai Seiko and the Japanese trading company are consummated before importation into the United States. Because Nankai Seiko reported the sales as export-price transactions correctly, the use of adverse facts available is not appropriate and we have included these transactions in our calculation of the final results of review.

C. Model Matching

Comment 55: Torrington asserts that, although SKF Italy states that it reported the complete commercial product code and the family to which the product belongs, there are numerous observations in which the family designation is identical to the product designation. Thus, the petitioner argues, the families to which these products belong may not have included all models within the family designations.

SKF Italy argues that its product and family designations have been repeatedly and extensively examined by the Department without discrepancy in past administrative reviews and were found to be reasonable and accurate based on the characteristics of the products in question. SKF Italy argues further that its methodologies are in full compliance with the Department's instructions and have not changed in the instant review. Moreover, SKF Italy asserts, based on the Department's instructions for defining families, these products are indeed unique families. Therefore, SKF Italy argues, the petitioner's claims with respect to model matching are baseless and inaccurate.

Department's Position: As stated in Appendix V of the Department's June 28, 2001, questionnaire, for purposes of this proceeding, a bearing family consists of all bearings that are the same in each of the following physical characteristics: (1) load direction, (2) design, (3) number of rows of rolling elements, (4) precision grades, (5) dynamic load rating, (6) outside diameter, (7) inside diameter/bore, and (8) width and height. Consequently, if a particular product does not share any of the physical characteristics listed above with any other product, that product would clearly constitute its own bearing family.

The Department finds that there is no evidence on the record which demonstrates that SKF Italy did not adhere to the Department's instructions for identifying bearing families. Thus, for purposes of the final results of the this review, the Department has used the product and family designations SKF Italy provided in its questionnaire response.

D. Clerical Errors

NTN, Nachi, NSK, SKF France, FAG Italy, and Torrington alleged that the Department made certain clerical errors in its calculations for the Preliminary Results. Where we and all parties agree that a clerical error occurred, we have made the necessary correction and addressed the comment only in the company-specific final results analysis memoranda, dated August 23, 2002. The comments included in this decision memorandum address situations where parties alleged that we made a programming or clerical error but either we disagree or a party to the proceedings disagrees with the allegation.

Comment 56: NSK contends that when revising certain data in the home-market sales list for verification corrections the Department made a few inadvertent programming errors.

Torrington argues that the Department should ensure that NSK's alleged programming errors are explained fully and are consistent with the record evidence. Torrington also argues that the Department should ensure that the suggested corrections are warranted and that NSK's suggested programming language implements the Department's intended approach.

Department's Position: We verified the corrections at issue during the home-market sales verification, and we agree with NSK that we made certain clerical errors when attempting to incorporate these corrections into the home-market sales list. For these final results, we have corrected the clerical errors.

Comment 57: NSK asserts that, contrary to past reviews and to governing law, the Department did not delete zero-price sample transactions from the U.S. sales list. NSK argues that in AFBs 11 and in prior reviews the Department accounted for U.S. zero-price samples properly by removing them from the margin calculation and used the entered value of the samples for purposes of calculating the assessment rate. In this review, NSK asserts, although it provided information on the record sufficient to demonstrate that claimed samples were provided to customers without consideration, the Department did not remove them from the margin calculation. Further, NSK asserts that the Department did not pursue this issue in a supplemental questionnaire.

Torrington contends that there is no indication in the analysis memorandum for the Preliminary Results that the Department intended to exclude NSK's sample sales from the U.S. sales list. Torrington argues that the Department should only exclude NSK's sample sales if it is satisfied that NSK provided all requested information regarding these transactions and met its burden of demonstrating that there is no consideration for these transactions.

Department's Position: We are satisfied that NSK provided all the requested information regarding the sample transactions at issue and met its burden of demonstrating that it received no consideration for these transactions. As such, for these final results we have excluded samples from the margin calculations and used the entered value of the samples for purposes of calculating the assessment rate.

Comment 58: SKF France contends that the Department made a clerical error in its characterization of the U.S. levels of trade. Specifically, SKF France argues that the Department used customer category instead of channel of distribution for assigning the U.S. levels of trade.

Torrington asserts that the Department's use of customer category for assigning the U.S. levels of trade was intentional and is supported by the analysis memorandum for the Preliminary Results and the information on the record.

Department's Position: We did not make a clerical error in assigning sales to the levels of trade we found in the United States. The analysis memorandum for the Preliminary Results dated April 1, 2002, indicates that we intended to categorize both home-market and U.S. levels of trade based on customer category. In its August 31, 2001, response to our questionnaire SKF France stated that the selling functions and services furnished by its U.S. affiliate in various channels of distribution are a function of and are dictated by the class or category of a customer in question, and we find that SKF France's questionnaire response supports the differentiation in levels of trade by customer category.

Comment 59: NTN contends that the Department made a clerical error by setting the U.S. sales value to zero for sample sales. According to NTN, the Department simply deleted all zero-price U.S. sales in the prior administrative review but in this review used a new methodology which distorts the dumping margin.

MPB argues that the Department's treatment of U.S. sample transactions should conform to the methodology explained in the Department's April 1, 2002, analysis memorandum for the Preliminary Results applicable to NTN.

Department's Position: The issue NTN has raised is not a clerical error. For NTN's U.S. sample transactions, we set both the antidumping duty margin and the export price or CEP to zero. This has the effect of excluding such sales from the calculation of NTN's antidumping margin. Because the transactions in question are zero-priced, setting the export-price or CEP to zero does not reduce the denominator as NTN claims. Thus, there is no distortion in our calculation of NTN's weighted-average antidumping margin.

The reason we do not simply delete such sales is that we need to include the quantity and entered value of the transactions when calculating assessment rates. If we deleted the sales as NTN suggests, we would calculate assessment rates on all sales other than the zero-price sample transactions. However, the U.S. Customs Service collects duties on all entries and may not have the information to distinguish between sample and non-sample transactions we have analyzed. Thus, if we do not "dilute" the assessment rates to include the quantity and entered value of zero-price sample transactions, the U.S. Customs Service would necessarily collect more antidumping duties than we intend. Accordingly, we have made no change pursuant to NTN’s comment. With respect to the comment from MPB, we find that our treatment of zero-priced sample transactions is consistent with the methodology explained in our April 1, 2002, analysis memorandum for the Preliminary Results applicable to NTN.

E. Others

Comment 60: Torrington alleges that sales of bearings produced by another German manufacturer and listed as “ex works” were sold to FAG Germany with knowledge of their exportation to the United States. As such, Torrington argues, these sales must be removed from FAG Germany’s U.S. sales list and be analyzed as export-price sales of the respective German manufacturer. Torrington also contends that, because these sales are listed as “ex works,” FAG Germany should have reported additional freight expenses (e.g., inland freight) for the transactions.

FAG Germany states that it appears that Torrington has assumed that the German manufacturer in question is an unaffiliated supplier. FAG Germany explains that the supplier is actually an affiliated producer and, as such, any sale directly from the affiliate to an unaffiliated U.S. customer is by definition an export-price sale by FAG Germany. FAG Germany also states that, in this instance, imputed knowledge of export is irrelevant. FAG Germany also explains that, by definition, the term of sale “ex works” implies that the purchaser pays all of the freight from the factory. Accordingly, FAG Germany argues, its affiliated supplier did not incur any freight on the sales at issue.

Department's Position: Record evidence identifies the German supplier as an affiliate of FAG Germany. Under these circumstances, the affiliate's knowledge that the bearings were destined for the United States has no significance. Therefore, we have made no revisions to the sales at issue.

Comment 61: Torrington alleges that the sales of FAG Germany's subsidiary, FAG International Sales and Service GmbH (ISS), are not home-market sales because FAG Germany states in its August 31, 2001, questionnaire response, at page 6, that ISS sells to customers in Africa, Asia, Australia and Eastern Europe. As further evidence of FAG Germany's knowledge that these sales were intended for export, Torrington asserts, on page 26 of the same submission, FAG Germany stated that "ISS only sells in the home market for export from Germany. Its domestic customers are, therefore, so-called indirect exporters." Thus, Torrington argues, these sales should not be used to determine normal value.

FAG Germany contends that Torrington provides no legal or factual basis for its position and argues that the Department has treated these identically reported transactions as home-market sales in previous administrative reviews. FAG Germany also contends that, for ISS home-market sales, shipment locations are specified in the customer's order and on actual shipping documents, the company collects value-added tax (VAT), it delivers to a home-market customer, and it is not provided with export documentation.

Finally, FAG Germany contends that, when its records or a customer's records reflect the existence of an export sale, it does not consider that transaction to be a home-market sale for reporting purposes. FAG Germany concludes that, under both German law and U.S. antidumping law, sales by ISS in Germany are considered home-market sales and, therefore, should be included in the calculation of normal value.

Department's Position: Read independently, FAG Germany's statements on the record of this review can be seen as confusing (see Section A Questionnaire Response dated August 31, 2001, at pages 6, 26, and 27). Therefore, we have re-examined the record in detail.

Although FAG Germany states at pages 6 and 26 of its section A response that ISS sells for export to certain countries, at page 27 it explains that it categorizes sales according to the shipment location specified in the customer's order and on the actual shipping documents unless it knows, or has reason to know, that the shipment location is not the true destination of the goods. FAG Germany also contends that, when it ships goods to a domestic location in Germany, the company is required by German law to collect VAT which is remitted to the government. Furthermore, FAG Germany states that it has knowledge that bearings are for export only when bearings it sells to home-market customers are drop-shipped to a third country at the customer's request, when the bearings are delivered to a freight forwarder for shipment to a third country, or are specially marked or packed to reflect a third-country destination (id at 28). Finally, FAG Germany indicates that it has not reported sales as home-market sales where company records reflect the existence of an export sale such as where FAG Germany delivers the merchandise to freight forwarders for shipment to another country.

We have no factual evidence on the record that indicates that FAG Germany's assertions with respect to its reporting of home-market sales are not applicable to ISS. As such, for these final results, we have continued to treat sales FAG Germany reported as ISS transactions as home-market sales. We intend to examine this issue further in our next review.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results of reviews and the final weighted-average dumping margins for all reviewed firms in the Federal Register.

Agree __________ Disagree __________

____
Faryar Shirzad
Assistant Secretary
for Import Administration

____
Date