A-100-001
Admin. Rev.: 05/01/08 – 04/30/09
Public Document
AD/CVD 5: AFBs Team

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Reviews of Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom for the Period of Review May 1, 2008, through April 30, 2009

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom for the period May 1, 2008, through April 30, 2009. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and ministerial 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. Rate Selection for SKF Germany
2. SKF's Bearing Kits
3. Short-Term U.S. Interest Rate for Inventory Carrying-Costs
4. Barden's Request for Revocation
5. Deduction of CEP Profit
6. Freight and Packing Revenue Offset Caps
7. Importer-Specific Assessment Rates
8. 15-Day Issuance of Liquidation Instructions
9. Zeroing of Negative Margins

Background

On April 28, 2010, the Department of Commerce (Department) published the preliminary results of its administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews, Preliminary Results of Changed-Circumstances*

Review, Rescission of Antidumping Duty Administrative Reviews in Part, and Intent To Revoke Order In Part, 75 FR 22384 (April 28, 2010) (*Preliminary Results*).[1] The reviews cover 22 manufacturers/exporters. The period covered by the reviews is May 1, 2008, through April 30, 2009. We invited interested parties to comment on the *Preliminary Results*.

Company Abbreviations

Barden – The Barden Corporation (UK) Limited and Schaeffler (UK) Limited (formerly known as the Barden Corporation (UK) Limited; FAG (UK) Limited)
EDC – European Distribution Center, an affiliate of SKF
NHBB – New Hampshire Ball Bearings Inc., an importer for myonic GmbH
NSK – NSK Ltd., NSK Europe Ltd., and NSK Bearings Europe Ltd.
NSK Japan – NSK Ltd.
NTN – NTN Corporation
Schaeffler UK – Schaeffler (UK) Limited (formerly known as the Barden Corporation (UK) Limited and FAG (UK) Limited)
SKF – The SKF Group (worldwide)
SKF France – SKF France S.A. and SFK Aerospace France S.A.S. (formerly known as SARMA)
SKF Germany – SKF GmbH
SKF Italy – SKF RIV-SKF Officine di Villas Perosa S.p.A., SKF Industrie S.p.A. (SKF Industrie), RFT S.p.A., OMVP S.p.A., and Somecat S.p.A. (Somecat)
SKF UK – SKF (UK) Limited
Timken – The Timken Company (formerly known as Timken US Corporation), petitioner

Other Abbreviations

AFA – adverse facts available
AFBs – antifriction bearings
CAFC – Court of Appeals for the Federal Circuit
CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – Court of International Trade
EP – export price
I&D Memo – Issues and Decision Memorandum adopted by a *Federal Register* notice of final determination of an investigation or final results of review
ICCs – inventory-carrying costs
LTFV – less than fair value
NAFTA – North American Free Trade Agreement
POR – period of review
SAA – Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994)

[1] The *Federal Register* published a correction notice on May 13, 2010, to correct a typographical error in its publication of the *Preliminary Results*. See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Duty AdministrativeReviews, Preliminary Results of Changed-Circumstances Review, Rescission of Antidumping DutyAdministrative Reviews in Part, and Intent To Revoke Order In Part*, 75 FR 26920 (May 13, 2010).

The Act – The Tariff Act of 1930, as amended
URAA – Uruguay Round Agreements Act
WTO – World Trade Organization
WTO AB – World Trade Organization Appellate Body

<u>AFBs Administrative Determinations and Results</u>

Final LTFV – Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 18992 (May 3, 1989), *France* (54 FR 19092), *Italy* (54 FR 19096), *Japan* (54 FR 19101), *United Kingdom* (54 FR 19120).

AFBs 2 – Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992).

AFBs 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), as amended in *Antifriction Ball Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, Italy, and Sweden: Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 38369 (July 16, 1998).

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 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 11 – 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, 66 FR 36551 (July 12, 2001).

AFBs 13 – Ball Bearings and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not to Revoke Order in Part, 68 FR 35623 (June 16, 2003).

AFBs 15 – Ball Bearings and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, 70 FR 54711 (September 16, 2005).

AFBs 16 – Ball Bearings and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, 71 FR 40064 (July 14, 2006).

AFBs 17 – Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part, 72 FR 58053 (October 12, 2007).

AFBs 18 – Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823 (September 11, 2008).

AFBs 19 – Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part, 64 FR 44819 (August 31, 2009).

Discussion of the Issues

1. Rate Selection for SKF Germany

Comment 1: SKF Germany argues that the Department's calculation of the simple average of the margins for myonic GmbH and Schaeffler KG, the two German respondents which the Department selected for individual examination, and the application of the simple-average margin to SKF Germany (not selected for individual examination) is unreasonable. SKF Germany explains that the Department's use of the simple-average margin is not an accurate reflection of the experience of German producers of subject merchandise as a whole.

SKF Germany states that the statute and regulations are silent on the methodologies the Department may use to establish margins for companies which the Department does not select for individual examination. SKF Germany claims that, in the absence of clear Congressional intent, the Department must devise a reasonable methodology which is fair, accurate, and reflective of economic reality. Citing *SNR Roulements v. United States*, 402 F.3d 1358, 1363 (CAFC 2005), and *Shakeproof Assembly Components Div. of Ill. Tool Works v. United States*, 268 F.3d 1376, 1382 (CAFC 2001), SKF Germany asserts that the Department has an obligation to calculate margins "on a fair and equitable basis" and "as accurately as possible." Citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962), SKF Germany asserts further that the Department's decision must articulate a "rational connection between the facts found and the choices made." Citing *Gallant Ocean (Thailand) Co., Ltd. v. United States*, Court No. 2009-1282 (CAFC 2010) (*Gallant Ocean*), SKF Germany explains that the margin calculated for a company the Department did not select for individual examination must represent commercial reality.

SKF Germany contends that, because the companies the Department selected for individual examination, myonic GmbH and Schaeffler KG, vary significantly in size and individual weighted-average margins, only the calculation of a joint weighted-average margin could possibly yield a reasonable, representative result. SKF Germany explains that, as is evident by the statutory requirements in section 735(c)(5) of the Act, section 773(e)(2)(B)(ii) of the Act, and section 775(c)(1)(B) of the Act to calculate weighted-average all-others rates, constructed-value profit, and antidumping duty margins, respectively, it is Congress's preference for the use of weighted averages in antidumping duty proceedings. Citing, *e.g.*, *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221, 1227 (CIT 1998), SKF Germany acknowledges that the Department prefers the use of weighted averages to simple averages because a simple average may ignore relevant factual differences and thus be distortive. Citing, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502, 24505 (May 10, 2005), SKF Germany claims that the Department has used weighted averages to calculate separate rates in non-market-economy investigations. SKF Germany also acknowledges that the Department used the simple-average margin for SKF Germany because calculating a weighted-average margin using the margins of myonic GmbH and Schaeffler KG would reveal business-proprietary information of one respondent to the other.

SKF Germany does not suggest that a simple average can never be used. Instead, SKF Germany contends, record evidence demonstrates that the Department's use of a simple-average margin for SKF Germany is at odds with the Department's normal practice and yields a flawed result. SKF Germany argues that, because of the difference between myonic GmbH and Schaeffler KG in size, the weighted-average margin, which takes into account the total U.S. sales volume each of these two companies reported, is lower than 11.94 percent, the simple average the Department assigned to SKF Germany for the *Preliminary Results*. SKF Germany argues further that the lower weighted-average margin is more representative of the overall dumping margin on sales of subject merchandise because it accounts for the companies' comparative sales volumes and gives more equal weight to all U.S. sales examined individually. SKF Germany claims that the weighted-average margin is fairer, more accurate, and reflective of commercial reality. SKF Germany contends that the use of a simple-average margin for SKF Germany punishes the company unfairly for the Department's decision to select respondents for individual examination.

SKF Germany suggests that the Department calculate a weighted-average margin for SKF Germany using the ranged volume figures of U.S. sales which myonic GmbH and Schaeffler KG provided in the public versions of their questionnaire responses. SKF Germany states that this methodology would maintain the benefits of a weighted average without revealing business-proprietary information. SKF Germany claims that the calculation of a weighted-average margin is more accurate because it takes into account quantitative differences among the selected respondents and because it would produce a more reasonable and representative result. Moreover, citing *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 34122 (June 18, 2004), and the accompanying I&D Memo at Comment 4, SKF Germany asserts that the Department has used data from ranged public versions in the past to calculate, *e.g.*, selling expenses and profits for constructed value.

SKF Germany explains that the weighted-average methodology it suggests yields a result, 5.81 percent, that is more reflective of its recent historical dumping margins because its margins in *AFBs 16*, *AFBs 17*, and *AFBs 18* were 7.35 percent, 3.06 percent, and 4.15 percent (which dropped to 1.97 percent on remand), respectively. SKF Germany contends that the use of a simple-average margin does not reflect SKF Germany's historical performance because these historical margins are closer to 5.81 percent, not 11.94 percent. SKF Germany states that the Department's preliminary calculation memorandum for SKF Germany does not explain how the 11.94 percent is grounded in commercial reality.

Citing, *e.g.*, *AFBs 18*, 73 FR at 52824, Timken states that the Department calculates a simple-average margin for companies which it did not select for individual examination in a review in which it selects two companies for individual examination in order to prevent disclosure of a selected respondent's business-proprietary information to the other selected respondent. Timken explains that the Department took this approach in response to selected respondents' protests before the CIT.

Timken contends that SKF Germany's proposed calculation methodology is without support in logic or precedent. According to Timken, when the Department selects a sufficient number of respondents for individual examination, the Department calculates a weighted-average margin by dividing the total per-unit dumping duty of the selected respondents by the total sales amount of the selected respondents. Citing, *e.g.*, *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 75 FR 12726 (March 17, 2010), and the accompanying I&D Memo at 30 (*Fish Fillets from Vietnam*), Timken argues that the weighted-average margin is weighted by the sales value. Timken points out that SKF Germany has not cited any precedents for its proposal and contends that SKF Germany's proposal to weight the margin by quantity is distortive in that margins for exporters of higher-value products will be underweighted. Timken also argues that SKF Germany's margins were higher than 11.94 percent in the *Final LTFV*, *AFBs 2*, *AFBs 3*, *AFBs 4*, and *AFBs 15* with 132.25 percent, 12.08 percent, 17.66 percent, 15.53 percent, and 16.06 percent, respectively.

<u>Department's Position</u>: We find that SKF Germany's proposed calculation methodology for its weighted-average margin is not consistent with our practice. In our calculation of a weighted-average margin, we use the total calculated U.S. sales value of merchandise. See section 771(35)(B) of the Act which 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." See also *Fish Fillets from Vietnam* and the accompanying I&D Memo at Comment 3. Therefore, we find that SKF Germany's proposed calculation methodology is distortive because it does not take into account the total U.S. sales value in the calculation of a weighted-average margin. We also find that SKF Germany's proposed calculation methodology is distortive because it takes into account Schaeffler KG's further-manufactured merchandise which we excluded from the margin calculation for Schaeffler KG pursuant to section 772(e) of the Act and 19 CFR 351.402(c). See *Preliminary Results*, 75 FR at 22386. See also the Schaeffler KG preliminary analysis memorandum dated April 21, 2010, at 5-6.

The statute and our regulations do not address directly how we should establish a rate to apply to imports from companies which we did not select for individual examination in accordance with section 777A(c)(2) of the Act in an administrative review. Generally, we have used section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, as guidance when we establish the rate for respondents not examined individually in an administrative review. See *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review*, 75 FR 6352 (February 9, 2010), and the accompanying I&D Memo at Comment 2. Section 735(c)(5)(A) of the Act provides that "the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, . . . "

Because using the weighted-average margin based on the calculated net U.S. sales values and antidumping duty values of myonic GmbH and Schaeffler KG would allow these two respondents to deduce each other's business-proprietary information and thus cause an unwarranted release of such information, however, we cannot assign to SKF Germany the weighted-average margin based on the calculated net U.S. sales values and antidumping duty values of these two respondents.

For the final results, we determine that using the ranged total U.S. sales values myonic GmbH and Schaeffler KG reported in the public versions of their responses (dated July, 9, 2009, and July 6, 2009, respectively) to our request for information concerning the quantity and value of their exports to the United States is more appropriate than applying a simple average. These publicly available figures provide the bases on which we can calculate a margin which is the best proxy for the weighted-average margin based on the calculated net U.S. sales values of myonic GmbH and Schaeffler KG. We find that this approach is more consistent with the intent of section 735(c)(5)(A) of the Act and our use of section 735(c)(5)(A) of the Act as guidance when we establish the rate for respondents not examined individually in an administrative review.

Because the calculated antidumping duty amounts and U.S. sales values for myonic GmbH and Schaeffler KG are business-proprietary figures, we find that 6.59 percent, which we calculated using the publicly available figures of U.S. sales values for these two firms, is the best reasonable proxy for the weighted-average margin based on the calculated net U.S. sales values of myonic GmbH and Schaeffler KG. See the memorandum to the file entitled "Ball Bearings and Parts Thereof from Germany: Final Calculation of the Margin for Respondent Not Selected for Individual Examination" dated August 26, 2010.

Concerning SKF Germany's argument that the margin we assign to SKF Germany for the final results of this administrative review has to be reflective of the company's recent historical dumping margins, we continue to find, as we did in *AFBs 19*, that a company's recent historical dumping margins alone do not serve as a reasonable basis for us to determine a certain rate because of various other factors, *e.g.*, changes in the pattern of margin differences between respondents in past reviews. See *AFBs 19* and the accompanying I&D Memo at Comment 13.

We also find that SKF Germany has cited no statutory authority for its argument that its rate must be reflective of its recent dumping history. Instead, SKF Germany cites *Gallant Ocean* which concerns the reasonableness of an AFA rate in an administrative review. The application of AFA rates concerns a different statutory provision than that being applied here, section 735(c)(5)(A) of the Act. Because the margin for SKF Germany is not based on AFA, the holding in *Gallant Ocean* is not applicable to the margin for SKF Germany in this administrative review.

This is a change to our practice concerning the margin applicable to companies not selected for individual examination in an administrative review of an antidumping duty order. In situations where we cannot apply our normal methodology for calculating a weighted-average margin due to requests to protect business-proprietary information, we find that the use of this methodology is appropriate as our normal practice from now on.

2. SKF's Bearing Kits[2]

<u>Comment 2</u>: Timken argues that the Department should not treat SKF's bearing kits as a separate design type. Timken contends that the Department's treatment is unreasonable because, where a particular product is sold as a kit in the home market but sold without a kit for the U.S. market, the normal value for the U.S. product is limited to constructed value. Timken contends further that, because the Department does not require SKF to report home-market sales of kits, precise analysis of the impact of the Department's decision is not possible.

Timken contends that SKF's catalog concerning wheel bearings demonstrates that wheel hub units offered in kits differ from hub units not offered as kits solely by the inclusion of minor items, such as one or more nuts, a clip, or pins in the box in which the bearing is packaged. Timken asserts further that mounting holes and mounting studs, which SKF has claimed distinguish kits as separate design types, are features of the hub unit itself and are present whether or not the product is sold in kit form. Timken also claims that ABS sensors, which SKF has claimed distinguish kits as separate design types, are features of the hub unit itself and are present whether or not the product is sold in kit form. Finally, Timken alleges that the fact that a kit may include two bearings, which SKF has claimed distinguish kits as separate design types, does not render it a different product.

Citing *AFBs 18* and the accompanying I&D Memo at 32, Timken also contends that the Department has recognized that kits are not technically a different design type. According to Timken, the Department rationalized its distinction as needed to avoid difficult adjustment issues such as how to account for the addition of other elements of value which included items not subject to the order. Timken contends that the Department's rationalization is not logical because treatment of kits as a separate design type still permits the comparison of kits sold in the United States to kits sold in the comparison market. Timken asserts that, because this is so, the Department would still have to adjust for the differences between the kits sold in the two markets.

Timken asserts that the Department has recognized in other cases that the packaging of non-scope items with the scope product does not require exclusion of the product, does not preclude dumping comparisons, and is adjustable. In support of its assertion, Timken cites to the Department's determination in *Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Japan*, 53 FR 430 (January 7, 1988) (*Color Picture Tubes*), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475 (February 14, 2005) (*Tissue Paper*), and the accompanying I&D Memo at 3 and 5, and *Preliminary Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 70 FR 67412, 67414 (November 7, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) (*Artist Canvas*).

Timken contends that the effective exclusion of kits opens an opportunity for circumvention in

[2] For discussion of this issue,"SKF" refers to SKF France and SKF Italy only.

that respondents may avoid antidumping comparisons in any instance where the product sold in the comparison market is simply packaged as a kit, especially where, as here, all that is needed to transform the product into a non-comparable kit is the addition of a single minor item. Timken asserts that the insertion of a single additional minor item and special packaging does not render it unreasonable or even difficult to compare a bearing not in a kit with a bearing in a kit. According to Timken, there is no need to perform a complex calculation because the record suggests that the adjustment would likely be *de minimis* adjustments and the regulations provide that the Department may disregard insignificant adjustments. Timken also claims that there is no indication that the addition of these items could not be treated as packing costs, analogous to the manner in which the Department treated non-scope additions in *Tissue Paper*.

Timken also argues that the Department's statement that including sales of kits in its analysis will not likely have a substantial effect on SKF's margins is unproven in the context of the record. According to Timken, the monthly sales data SKF submitted indicates that SKF sells a certain type of bearing in the United States but not in kits, although it sells this type of bearing in the home market both in kits and by themselves. Thus, according to Timken, the Department cannot reliably determine the normal value of these bearings sold in the United States without examining the sales of all of these bearings in the home market, whether or not they are sold in the form of a kit.

Finally, citing *Timken Company v. United States*, 630 F. Supp. 1327, 1336 (CIT 1986), Timken contends that the Department's exclusion of kits is contrary to the admonition of the CIT regarding the importance of complete databases to ensure the accuracy of matching models. Accordingly, Timken concludes, the Department should instruct SKF to amplify its home-market response to include sales where the comparison-market product matched a product sold in the United States with regard to design type, load direction, number of rows, and precision grade but was sold as part of a kit.

SKF argues that the Department's acceptance of its reporting of kits as a separate design type was proper. SKF claims that the Department has permitted SKF to report kits as a separate design type for a number of prior reviews and the Department has explored this issue repeatedly through supplemental questionnaires and at verification. Thus, SKF contends, the companies have demonstrated that the design type for bearing kits is substantially different from each of the other design types.

SKF argues that Timken's citations to precedent are inapposite because they all relate to the reporting of U.S. sales and whether the products sold in the United States fall within the scope of an order. SKF states that it does not argue that kits which contain subject bearings should be excluded from the scope of the reviews and that it did not import kits containing subject merchandise into the United States.

SKF asserts that the issue here revolves not around the reporting or non-reporting of U.S. sales but, rather, around what home-market sales the Department will use in its comparisons with U.S. sales. According to SKF, the Department has explained that calculating normal value using the price of the kit would be complex and that there is no evidence that engaging in such a burdensome calculation would increase the accuracy of the margin calculations. SKF submits that, were the Department to attempt such calculations, it would lead to a less accurate and indefensible result based on a hybrid methodology found nowhere in the statute. SKF claims that Timken's suggestion of subtracting the costs of non-scope components as supposed packaging costs would likely be inaccurate because it would not take into account the effect on the price or profit of selling a kit *versus* selling the individual parts of a kit as separate parts. SKF contends further that Timken does not suggest a matching methodology for comparing kit sales to non-kit sales. SKF suggests that, as in the case of bearing parts, there are no established product characteristics for the accessories and non-subject bearings contained in the kits and, as such, the Department would be best served by only attempting to make identical matches for kits.

SKF also argues that there would be little possible impact on the margin calculation even if sales of kits were used as normal value because its sales of kits account for a small percentage of home-market sales. SKF contends that Timken cites to no U.S. bearing sale that was matched to constructed value that would instead find a price-based match to a kit. SKF argues that the Department should not be forced to undertake a cumbersome and unprecedented analysis when there is no evidence that it would yield any usable results. Moreover, SKF contends, there has been no indication that the Department has had any difficulties finding appropriate comparisons for hub units sold in the United States such that it might need to require the detailed reporting of home-market kits sales to obtain more reliable data for comparison purposes. SKF asserts that Timken's suggestions along those lines are pure conjecture.

SKF argues that the fact that some kits contain only one part in addition to the bearing does not change the fact that many of the other kits contain more than just one additional part and, in some instances, more than one bearing, some of which may be non-subject bearings. SKF also contends that, even if the kit contains only a single nut in addition to the bearing, that does not mean that the nut is minor or insubstantial. According to SKF, in most cases, the nut is an axle-nut used as a locking device to prevent an uncontrolled shift of the bearing. SKF adds that the Department's questionnaire does not account for the reporting of technical characteristics for a kit or for the non-subject merchandise contained in a kit.

<u>Department's Position</u>: We agree that, technically, the bearings that SKF sells within a kit are not a separate design type. For the reasons enumerated in *AFBs 18* and the accompanying I&D Memo at Comment 10, however, we continue to treat them, effectively, as if they were a separate design type for the purposes of our margin calculations in these reviews.

Timken takes issue with our reasoning in *AFBs 18* on several grounds. Timken asserts that the Department has recognized in other cases that the packaging of non-scope items with the scope product does not require exclusion of the product, does not preclude dumping comparisons, and is adjustable. We find the precedents Timken cites to be unavailing. Two of the cases Timken cites (*Color Picture Tubes* and *Artist Canvas*) involved questions as to whether certain items (*e.g.*, artist canvas sold in kits) imported into the United States were subject to an antidumping duty investigation; there is no indication in those decisions that we made any comparisons using sales of subject merchandise packaged with non-subject merchandise in either the United States or the comparison market.

With respect to *Tissue Paper,* Timken claims that there is no indication that the addition of the minor items such as nuts or clips could not be treated as packing costs, analogous to the manner in which the Department treated non-scope additions in *Tissue Paper*. In the preliminary determination for *Tissue Paper,* we made an upward adjustment to normal value to account for the non-subject merchandise "analogous to the Department's practice of adding a respondent's packing costs (*e.g.*, cartons, adhesive tape, labels) to {normal value}." See *Certain Tissue Paper Products and Certain Crepe Paper Products From the People's Republic of China: Notice of Preliminary Determinations of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination for Certain Tissue Paper Products*, 69 FR 56407, 56415 (September 21, 2004), changed in *Tissue Paper*, 70 FR at 7477, in which we based the margin for the respondent in question on total AFA. In the final determination, however, we stated, "{w}ith regard to China National's argument regarding the Department's decision to adjust normal value for the mixed packages and include sales of mixed packages to the U.S. in the margin calculation, we note the Department is applying total AFA to China National. Since the Department is applying total AFA to China National, we are not using any of China National's data for mixed packages to calculate China National's dumping margin. Therefore, the precise nature of the adjustment is moot." See *Tissue Paper* and the accompanying I&D Memo at Comment 1. Thus, we did not reach a final conclusion as to whether the methodology we employed in the preliminary determination was appropriate.

SKF submitted information regarding the kits it sells in its September 11, 2009, submissions on the records of the France and Italy proceedings. According to the catalog SKF attached in those submissions, a kit may include a second bearing (which may be non-subject), nuts, screws, spacers, circlips, oil seals, O-ring gaskets, shield plates, a split ring, a grease cap, and/or mounting instructions. Thus, as we found in *AFBs 18*, in order to achieve a fair comparison to a U.S. bearing not sold in a kit, we would have to deduct that portion of the price of the kit attributable to the merchandise other than the bearing. In other words, we would have to conduct the equivalent of a further-manufacturing analysis on kits SKF sold in the home market in order to achieve a fair comparison with the bearing it sold in the United States. This would require us to collect the equivalent of the information we normally collect in section E of our questionnaire except in this instance with respect to home-market sales rather than U.S. sales; we would be required to analyze such information and perform a complex calculation of the home-market price for the bearing in which we would deduct not only the costs of the other components but also, presumably, a profit element, just as we do for further-manufactured U.S. sales. There are other complexities, as well; for example, how and whether we would be able to attribute the indirect selling expenses and commissions, if any, to the bearing in a kit for CEP and commission-offset purposes or whether we would have to allocate such expenses to the bearing somehow in order to make a proper CEP or a commission-offset adjustment.

Timken suggests we simply deduct the cost of non-subject merchandise in a manner analogous to packing expenses. While it is true that this would avoid the difficulty of determining the profit element, we find that such a methodology may be unreasonable. The kit is sold as a complete item and can include a number of non-subject items, none of which can be considered analogous to packing materials. To merely deduct the cost of these items without accounting for a profit element would overstate normal value. Furthermore, there is no evidence on the record supporting Timken's implication that the additional items in a kit are "minor." Moreover, although Timken focuses its arguments on the kits that only contain one non-subject item, there is no reason to think that the bearings in kits which would match to U.S. sales would be limited to those kits that had only one non-subject item. Furthermore, although Timken asserts that adjustments to normal value in the case of a kit would likely be *de minimis* adjustments, Timken cites to no evidence or support for this assertion.

In any event, even if we did not account for the profit element of the non-subject merchandise, we would nevertheless have to undertake the remainder of an equivalent of a further-manufacturing analysis as described above on SKF's sales of kits in the home market. This would create a substantial burden on us, it would add significant complexity to the reviews, and there is no evidence that conducting such an analysis would increase the accuracy of our margin calculations for SKF in these reviews.

Timken argues that the Department's statement that including sales of kits in its analysis will not likely have a substantial effect on SKF's margins is unproven in the context of the record of these reviews. We have analyzed the evidence on the records of these reviews and it suggests that including kits in our margin analysis would likely not have a substantial effect on SKF's margins. Because this analysis and evidence includes proprietary information, we cannot address it in this memorandum. Instead, we have included the analyses with respect to the France and Italy proceedings in the SKF France and SKF Italy final results calculation memoranda dated August 26, 2010, respectively.

Finally, Timken contends that the Department's rationalization for treating kits as a separate design type in order to avoid difficult adjustment issues is not logical because treatment of kits as a separate design type still permits the comparison of kits sold in the United States to kits sold in the comparison market. As Timken itself observes in its brief, SKF did not sell kits in the United States during the POR. See SKF's September 11, 2009, submissions on the record of the France and Italy proceedings at 4. Thus, there is no need for us to consider what we would do had SKF sold the kits in the United States.

Accordingly, we determine that a comparison of a bearing sold in the United States with a bearing kit sold in the comparison market would result in an unreasonable price comparison and would likely have a small, if any, impact on SKF's margins in these reviews. Therefore, we continue to find that, for these reviews, treating SKF's bearing kits as a separate design type in effect for calculation purposes is a reasonable method for calculating SKF's margins.

3. Short-Term U.S. Interest Rate for Inventory Carrying-Costs

<u>Comment 3</u>: Timken argues that U.S. ICCs for NSK Japan and NTN should be recalculated to rely only on U.S. interest rates, even if payment terms between the parent company and its U.S. affiliate indicate that the ICC is borne by the parent.

Timken acknowledges that, in *AFBs 16* and *AFBs 18*, the Department permitted some Japanese respondents to use Japanese interest rates for a portion of their reported U.S. ICCs when it was demonstrated that the parent bore the cost based on its payment terms with its U.S. affiliate and that similar decisions have been upheld by the CIT. Timken argues that this practice upheld by the CIT is limited, however, only to pre-URAA Department decisions and is not instructive of post-URAA practice. In pre-URAA practice, Timken states, the Department's U.S. ICC calculation included the time the merchandise spent in transit to the U.S. affiliate. In post-URAA practice, Timken contends, this time is no longer included in the adjustment for U.S. ICCs. Citing *Certain Welded Stainless Steel Pipe From Taiwan: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part*, 65 FR 39367 (June 26, 2000) (*Welded Steel Pipe*), and the accompanying I&D Memo at Comment 2, and *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada*, 69 FR 75921 (December 20, 2004) (*Softwood Lumber*), and the accompanying I&D Memo at Comment 39, Timken argues that the Department looks to the currency in which the cost of the inventory is incurred by the entity that bears the cost of producing or acquiring such inventory or where the U.S. affiliate took title, held the merchandise in inventory, and invoiced the customer. In the instant case, Timken argues, the Department knows that payment terms dictated that NTN's U.S. affiliate took title prior to importation and the Department has not examined when payment was actually made. In addition, Timken argues, contrary to 19 CFR 351.402(b), the payment terms between the parent and the U.S. affiliate do not relate to the resale so they should not be used to reduce deductions made for expenses affecting the resales.

Timken reiterates that in the context of the litigation concerning *AFBs 16* the CIT remanded this issue where the Department used the parent companies' interest rates. In that review, Timken states, the Department decided to use the parent-company interest rates to calculate ICCs because the parent company was the company that held the title to subject merchandise and invoiced the ultimate customer. According to Timken, the CIT required the Department to explain the apparent discrepancy between the Department's practice in reviews of the orders on bearings and the Department's practice in other cases, citing to *Welded Steel Pipe* and *Softwood Lumber* where the Department used that same line of reasoning but decided to use U.S. interest rates, because this suggests that the Department has adopted a new practice with respect to its decision to use Japanese interest rates in *AFBs 16*. In its remand determination, Timken continues, the Department acknowledged that it used U.S. interest rates in *Welded Steel Pipe* and *Softwood Lumber* but that these were isolated decisions and not instructive of the Department's normal practice. Timken states that, although the Department went on to cite numerous other decisions to support what it considers to be its established practice of using parent-company interest rates, the Department's determination was not relevant because it cited the aforementioned pre-URAA determinations along with two post-URAA decisions in which the Department acknowledged that, although permissive payment terms by the parent company may support the use of home-market interest rates, it used U.S. interest rates, referring to *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 6889 (February 11, 2003), and *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 69 FR 6259 (February 10, 2004).

Timken argues that, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 63 FR 20585, 20596 (April 27, 1998), the Department held that, according to section 772(d)(1) of the Act, relying on the related-party payment terms because they affect the affiliate's book cost of carrying inventory is contrary to the purpose of imputing the expense in the first place. Similarly, Timken contends, although the statute requires reliance on CEP to avoid reliance on affiliated-party values, reliance on the payment terms between the parent company and its U.S. affiliate is contrary to this purpose because the transfer price is not at arm's length; Timken cites *Koyo Seiko Co., Ltd. v. United States*, 36 F.3d 1565, 1567 (CAFC 1994). In the instant review, however, Timken asserts, the Department has made a decision contrary to the statute by allowing the calculation of imputed costs to be affected by affiliated-party values and data. Although the Department has disagreed with this observation by asserting in *AFBs 18* that the decision to recognize which entity bore the costs conforms with the statute, Timken argues, the statute contains no instruction that would require such reliance; by relying on the payment terms between the two affiliated entities, Timken contends that the Department permits costs to be shifted away from the affiliated resale operations which lowers the dumping margin. Timken states that the Department disagreed again, stating in *AFBs 18* that there is no reason that the affiliate could not have benefited from the parent company's access to home-market financing. Finally, Timken argues, credit and inventory-carrying expenses are distinct and should not be comingled regardless of the credit terms extended by the parent company. Timken concludes that, although the Department has held the same in past decisions, it denies that these expenses were comingled in the instant review.

NSK Japan argues that, contrary to Timken's argument, in the instant review the Department correctly accepted NSK Japan's calculation of the inventory costs incurred in the United States because the evidence of record fully confirms that the parent company absorbed the full cost of financing the cost of the subject imported ball bearings during the time this merchandise was held in inventory in the United States. NSK Japan argues further that the Department should reject Timken's assertion that *Welded Steel Pipe* and *Softwood Lumber* require it to reach a different conclusion in the instant review; as stated by the Department in its remand determination for *AFBs 16*, *Welded Steel Pipe* was an isolated decision and not instructive of the Department's normal practice and *Softwood Lumber* does not indicate clearly any departure from the Department's normal practice.

NTN argues that the Department acted properly in using the parent-country interest rate to calculate the portion of ICCs for the period to which payment terms are tied because the parent company carried the burden of financing the inventory during that time and an actual interest rate exists. NTN argues that Timken uses *Welded Steel Pipe* improperly in its argument because the Department did not change its basic methodology in that the Department still recognized the use of the interest rate of the party bearing the full cost of the merchandise while it was held in inventory. This practice was appropriately applied in the instant review, NTN argues, because it provided evidence demonstrating that the parent company had absorbed the cost of financing while the merchandise was in inventory.

NTN argues, as acknowledged by Timken, that the CIT has upheld this methodology and, although decided under pre-URAA law, the reasoning mirrors both the Department's recognized methodology and its current practice and Timken has not shown that any revisions to the law changed the logic and rationale for the calculation of ICCs using the interest rate of the party that financed the costs.

NTN argues further that the Department's use of Japanese interest rates to calculate NTN's ICCs is in accordance with sound commercial and financial reality. In the instant review, NTN states, the Department recognized that the parent company incurred a credit expense on its sales to its U.S. affiliate which is part of the ICCs of the entire NTN transaction; just as the Department computes other credit expenses using the date of payment as the key date, so should the Department calculate the ICCs at issue.

Finally, NTN argues, Timken misunderstands the issue when it cites 19 CFR 351.402(b) to suggest that payment terms relate solely to the sale to the U.S. affiliate and are thus not an appropriate basis for modifying a CEP deduction. NTN asserts that ICCs represent the adjustment at issue, not the payment terms or the interest rate. Therefore, it concludes, the Department's determination of the appropriate interest rate to use is distinct from the determination of whether the Department should make an ICC adjustment.

Department's Position: The Department's position remains unchanged from the *Preliminary Results*. While we recognize that there may be exceptions, it has generally been our longstanding practice that, if the payment terms that the parent company extends to its U.S. subsidiary indicate, in combination with the time the merchandise remains in the U.S. subsidiary's inventory, that the parent company bears the cost of carrying the merchandise for a portion of time the merchandise is in inventory in the United States, we use the parent company's short-term interest rate to calculate that portion of the ICC.[3] Further, in *AFBs 2* and *AFBs 9*, when information on the record indicated that the parent company bore the cost of carrying inventory in the United States on behalf of its U.S. subsidiary, we used Japanese yen-based short-term interest rates for the portion of the inventory-carrying period in which the parent company bore the cost of carrying the inventory in the United States.

In the instant case, record evidence demonstrates that the NSK Japan and NTN parent companies bear the cost of carrying the subject merchandise for a portion of time that such merchandise is in inventory in the United States. Accordingly, consistent with past practice, particularly in the bearings orders, we have used the parent companies' cost of carrying the merchandise for the relevant portion of time.

NTN is correct that the determination of the appropriate interest rate to use is distinct from the determination of whether the Department should make an ICC adjustment. Section 351.402(b) of the Department's regulations states in part, "…the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid. The Secretary will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United

[3] *See, e.g.*, the following decisions: *Timken Co. v. United States*, 18 CIT 619, 625-27, 858 F. Supp. 206, 212-13 (1994); *High Information Content Flat Panel Displays and Display Glass Therefor From Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32399-400 (July 16, 1991); *AFBs 2,* 57 FR at 28360, 28410; *AFBs 9,* 64 FR at 35590, 35619-20*; Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 6889 (February 11, 2003), and the accompanying I&D Memo at Comment 9; *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 69 FR 6259 (February 10, 2004), and the accompanying I&D Memo at Comment 8.

States…” It is this underlying distinction that is reflected in the methodology we employed in the so-called pre-URAA CIT decisions and two bearings cases cited by Timken as well as the numerous decisions to which we referred earlier. While Timken alleges inconsistency in that, when dictated by what appear to similar payment terms, the Department has decided to use parent-company rates in some instances and U.S. rates in others, the Department’s decisions in the cases mentioned above demonstrate just the opposite. The Department arrived at its final decisions first by determining whether to make an ICC adjustment, then determined which interest rate to use. The determination of which interest rate to use was generally based (pre-URAA or post-URAA, bearings cases or non-bearings cases) on the same criterion dictated not by payment terms alone but rather by the longstanding use of the interest rate of the entity which bore the cost of carrying the merchandise for a portion of time the merchandise was in inventory in the United States based on the facts of each case. *Welded Steel Pipe* was an isolated decision and did not state that the Department was changing its practice and in *Softwood Lumber* there is not enough information on the record to ascertain whether the Department departed from its longstanding practice in its use of U.S. interest rates or for what reason.

NSK Japan argues correctly that the Department should not use U.S. interest rates. The evidence provided by NSK Japan in its submissions supports NSK Japan’s claim that it was the parent company that bore the cost of carrying the merchandise. NSK Japan explained that the payment terms required that payment be made within in a certain timeframe and, because the average length of time reported for which the merchandise was in the parent company’s inventory fell within that timeframe, NSK Japan justifiably calculated its ICCs based on the average parent-company interest rate. In NTN’s submissions, it reported that the average length of time for which the merchandise was in the affiliated company’s inventory slightly exceeded the timeframe dictated by the payment terms, so NTN calculated the excess time in inventory using U.S. interest rates. Although we did not examine the dates on which the U.S. affiliates paid the parent companies for NSK Japan or NTN, we are satisfied that the parent companies financed the cost of carrying the inventory based on their respective payment terms with their U.S. affiliates combined with the amount of time that the subject merchandise remained in inventory.

While Timken is correct that payment terms governing transactions between the parent and its U.S. affiliate do not relate to the resale of subject merchandise in the United States *per se*, they are relevant in helping us determine which entity bears the costs of carrying inventory in the United States and the cost of carrying the subject merchandise, which is an expense that relates to the sale of the subject merchandise to the unaffiliated purchaser. We disagree with Timken’s contention that measuring the costs to the parent company is contrary to the purpose of imputing the expense in the first place. We impute ICCs to measure any impact different inventory-carrying periods in the U.S. and home markets may have on pricing practices in each market. If the parent firm absorbs these costs it has a different effect on pricing practices as opposed to if its U.S. affiliate absorbs such costs. Regardless of whether the parent or affiliate holds the inventory, it is the entity that absorbs the cost which determines the ultimate cost. Whether an expense is an actual expense or an imputed expense does not change the reality that a parent company can absorb selling expenses on behalf of its U.S. affiliate that relate to economic activity in the United States. If such is the case we still measure the cost to the parent company in making a deduction from CEP for such selling expenses.

In addition, we see no conflict with our practice and URAA revisions to the Act. While it is true that we do not include the time before importation in the U.S. ICCs that we deduct from CEP, this is because we do not consider the expenses to be related to economic activity in the United States. See SAA at 823 (". . .under new section 772(d), constructed export price will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following expenses (and profit) *associated with economic activities occurring in the United States*. . .") (emphasis added). It is still possible for a parent firm to absorb the cost of carrying inventory once the merchandise enters the United States and this is the economic reality in the instant case that we try to measure in making our CEP deduction for U.S. ICCs.

Finally, we disagree with Timken's contention that we are commingling the ICC CEP adjustment with the credit-expense adjustment for differences in payment terms. With respect to the credit adjustment we are adjusting for differences in payment terms to *unaffiliated* customers once the merchandise is shipped to the customer. The ICC adjustment measures the cost of carrying inventory prior to shipment to the customers. In contrast to the credit adjustment, we look at payment terms between the *affiliated* parties only to help us determine which entity bears the cost of this expense. Accordingly, we determine that the use of Japanese interest rates for ICCs in this case is both in accordance with our longstanding practice and our application of such rates in our calculations for NSK Japan and NTN was appropriate, based on the evidence provided by each company.

4. Barden's Request for Revocation

Comment 4: Timken argues that the Department should not revoke the antidumping duty order with respect to Barden as the Department does not have a sufficiently broad base of information required to establish the presumption that dumping will not recur if the order is revoked and because of the close relationship between Barden and Schaeffler UK.

Timken argues that, according to 19 CFR 351.222(b)(2)(i)(A) and (C), the Department examines whether the exporter in question has sold merchandise at fair prices for three consecutive years when considering a revocation request and considers whether application of the order is necessary to offset dumping. Timken contends that, in order to establish whether the Department has a sufficiently broad base of information to consider a revocation request, the Department examines the sales volume of each year and compares the volumes to an appropriate benchmark, such as the volume in the investigation, in other review periods, or the volume of sales in another market such as the home market. Further, Timken claims, when a substantial and unusual change in business practice occurs, the lack of dumping in the periods examined may not be enough to establish the presumption that dumping is not likely to recur.

Timken argues that, in previous cases such as *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 1953 (January 10, 2001) (*TRBs*), and the accompanying I&D Memo at Comment 21, *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy*, 68 FR 6882 (February 11, 2003), and the accompanying I&D Memo at Comment 1, and *AFBs 13* and the accompanying I&D Memo at Comment 27, the Department denied the respondents' requests for revocation because the Department did not consider the volume of goods sold during the examined PORs to constitute the "broad base" of information necessary for determining that the discipline of the order is no longer necessary to offset dumping.

Timken argues that the trends exhibited by Barden's U.S. transactions during the PORs covered by *AFBs 18*, *AFBs 19*, and the instant review and the sales volume of this review do not provide the required broad base of information to support a rebuttable presumption that, following revocation, dumping will not recur. Timken contends that the Department should compare the sales volume of this review to those volumes covered by *AFBs 18* and *AFBs 19*. Timken argues further that the Department should compare Barden's U.S. sales volumes to Barden's home-market sales volume for the same three years.

Timken states that Barden's relationship with Schaeffler UK counsels against revocation. According to Timken, Barden and Schaeffler UK share a common parent company. Timken claims that, because Schaeffler UK exported no subject merchandise to the United States during the instant POR, the Department did not examine Schaeffler specifically. Thus, Timken argues, the Department has collected a record to support the revocation of Barden only, not Schaeffler. Because of the nature of the relationship between Schaeffler and Barden and because Schaeffler is a supplier to Barden, Timken continues, the Department should not revoke the order with respect to Barden.

Timken argues further that the United States is believed to be in a slow recovery period from a severe recession. Timken argues that the strong decline in the market created by the recession reduces the probative value of the lack of current dumping in the three periods the Department has examined.

Barden argues that its reported U.S. sales in all three relevant periods were made in commercial quantities and that Barden's participation in the U.S. market during all three periods was genuine, meaningful, and designed to maximize profit. Barden argues that the sales trends exhibited during the three periods are attributable to the effects of the U.S. economic situation on the market.

Barden cites *Amended Regulation Concerning Revocation of Antidumping Duty and Countervailing Duty Orders*, 64 FR 51236 (September 22, 1999), and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 28659 (May 17, 2006), and the accompanying I&D Memo at Comment 1 to argue that, once a respondent has satisfied the statutory requirements for revocation, there is a presumption that the order is not necessary to offset dumping and the burden shifts to the petitioner to provide information evidence that rebuts this presumption. Barden argues that Timken has not carried this burden.

Barden argues that the Department evaluates sales volume in the United States as part of its revocation analysis in order to determine that the respondent's activity in the United States is consistent with normal commercial goals, as discussed in *Polyvinyl Alcohol From Taiwan: Final Results of Third Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part*, 65 FR 60615 (October 12, 2000) (*Polyvinyl Alcohol from Taiwan*), and the accompanying I&D Memo at Comment 1c, and in *Pure Magnesium from Canada; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order in Part*, 65 FR 55502 (September 14, 2000) (*Pure Magnesium*).

Barden argues that, for all three review periods in question, the sales volume cannot be characterized as very small, abnormally small, or insignificant, either absolutely or relatively. Barden argues that the sales trends are indeed attributable to the recent global economic slowdown. Barden states that sales-value trends between the three periods support the contention that Barden's activity in the United States is designed to maximize profits.

Barden continues that its sales trends to Canada, where Barden is not subject to the discipline of an order, showed similar patterns over the 2006-2008 time period. Barden claims that these data support the idea that the sales trends reflect greater global economic conditions. Further, Barden explains, the number of unique customers to which Barden sold subject merchandise during the instant period reflects conventional commercial activity.

Finally, Barden states that Timken's comments concerning the relationship between Barden and Schaeffler UK are premised on Schaeffler not being subject to the revocation. Barden argues that Schaeffler UK is covered by the Department's preliminary decision to revoke the order; therefore, it concludes, Timken's comments on this issue are moot and the Department should not consider them.

<u>Department's Position</u>: The Department's regulations articulate the three requirements for requesting revocation in an antidumping proceeding. See 19 CFR 351.222(e). One of these requirements is that the exporter or producer sold subject merchandise to the United States in commercial quantities during each of the three most recent periods. See 19 CFR 351.222(e)(ii). Although neither the statute nor the Department's regulations dictate a specific methodology, the Department has explained that its normal practice when conducting a commercial-quantity analysis in relation to revocation decisions is to examine each request on a case-by-case basis, considering the unique facts of each case, the nature of the industry, and the company's normal behavior in order to guarantee that the revocation decision is based on a sufficiently broad base of information. See *AFBs 13* and the accompanying I&D Memo at Comment 27, *TRBs* and the accompanying I&D Memo at Comment 21, *Polyvinyl Alcohol from Taiwan* and the accompanying I&D Memo at Comment 1c, and *Pure Magnesium*. The purpose of the commercial-quantities analysis is to determine whether the producer/exporter has been participating in the U.S. market in a meaningful way. The analysis allows the Department to be satisfied that the respondent could sell in the U.S. market at non-dumped prices without the discipline of the order in place.

With respect to ball bearings and parts thereof, identifying any "commercial quantities" threshold is especially challenging because of the nature of the industry where firms export completed bearings and bearing parts to the United States. For antidumping purposes, a completed bearing or a bearing part would each equal a quantity of one. For this reason, relying on quantity alone to conduct a relative analysis for bearings is incomplete. Hypothetically, we may find ourselves in a position where, in conducting our commercial-quantities analysis for revocation purposes, we compare 10,000 units of subject merchandise exported by Firm A to the United States in each of the three most recent PORs to 40,000 units shipped by Firm A during an earlier period, whether it be during the period of investigation or an earlier POR. Without considering other facts of the case, it would appear that, in the three recent PORs, Firm A's participation in the U.S. market is at levels 25 percent of the earlier comparative period. If, however, Firm A is now exclusively selling completed bearings whereas during the earlier comparative period Firm A sold only bearing parts, the quantitative comparative analysis alone would not provide a complete picture of Firm A's participation in the U.S. market. It is unclear as to whether such a commercial-quantities analysis in the case of bearings would provide a fair, apples-to-apples comparison between the current period and some earlier period without consideration of other factors of the case, which is the reason the Department must be satisfied it is making its revocation determination on a sufficiently broad base of information.

In its case brief, Timken refers to *Pasta from Italy* as an example of where the Department concluded from the commercial-quantities analysis that an order could not be revoked in part because the Department was not satisfied that the firm sold subject merchandise in commercial quantities. In that case, the Department compared the firm's sales volumes in previous review periods to the period of investigation. Barden was not a respondent during the investigation which led to the antidumping duty order in this proceeding and, therefore, we cannot apply the same methodology in this case. Further, in *Pasta from Italy*, we found that the record did not provide any "meaningful information" regarding that firm's normal business practice. In contrast, we are satisfied that the record of this case does provide "meaningful information" on which to base our revocation decision with respect to Barden.

Timken suggests that we compare Barden's U.S. sales quantities to home-market sales, as done in *AFBs 13*, where we declined to revoke a firm because its sales to the United States were, "in the aggregate, insignificant in comparison to its home-market sales and in absolute terms." See *AFBs 13* and the accompanying I&D Memo at Comment 27. We explained in our decision not to revoke the order in part in *AFBs 13* that, where the aggregate sales during a POR are of an unusually small quantity, we find that such quantities do not provide a meaningful basis on which to conduct our revocation analysis. As we stated in *TRBs* and the accompanying I&D Memo at Comment 21, citing *Professional Electric Cutting Tools from Japan: Final Results of the Fifth Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order, in Part*, 64 FR 71411 (December 21, 1999), it is our practice to examine the aggregate volume of total sales in the United States "in absolute terms or in comparison with the period of investigation or another appropriate benchmark period" in determining whether sales were made in commercial quantities. In other words, we may examine the sales volumes over the three most recent periods relative to an appropriate benchmark if one is available, as Timken suggests, or in absolute terms, based on the facts of the case. Further, we explained in *TRBs*, "Sales during the POR which, in the aggregate, represent an abnormally small quantity do not provide a reasonable basis for establishing the rebuttable presumption that dumping is not likely to recur in the future in the absence of an order." See *TRBs* and the accompanying I&D Memo at Comment 21.

For the instant review, the Department is satisfied, in absolute terms, that Barden's sales activity in the United States over the three most recent periods constitutes "commercial quantities." Indeed, Barden was one of the largest exporters of bearings from the United Kingdom during this period, which is the reason the Department selected the firm for individual examination in the review. Additionally, the Department is satisfied that Barden's overall sales-volume trends during this period may be reasonably attributed to the economic conditions in the United States. Further, the absolute sales-value trends over this period and the per-unit average-value trends over this period support Barden's claim that its participation in the U.S. market was genuine, meaningful, and designed to maximize profits. Additionally, we are satisfied with Barden's observation that the number of unique customers to which Barden sold subject merchandise reflects meaningful commercial activity. For further discussion of Barden's sales trends, please see the memorandum to file entitled "Administrative Review of the Antidumping Duty Order on Ball Bearings and Parts Thereof From the United Kingdom – Barden's U.S. Sales Trends over the Three Most Recent Periods of Review," dated August 26, 2010.

Beginning with the review covered by *AFBs 17*, the Department has regarded, for antidumping purposes, Barden/Schaeffler UK as a single entity following Schaeffler UK's acquisition of Barden. See *AFBs 17*, 72 FR at 58053. This is also reflected in the fact that the revocation request was submitted on behalf of Barden/Schaeffler UK, we issued the questionnaire to Barden/Schaeffler UK, a consolidated questionnaire response was submitted on behalf of Barden/Schaeffler UK, and our *Preliminary Results* announced our intent to revoke the order in part with respect to Barden/Schaeffler UK. The revocation of the order in part applies to the single entity, as the administrative review was conducted with respect to the single entity.

Based on the record evidence of the instant review, the Department is satisfied that this single entity, Barden/Schaeffler UK, has satisfied the conditions for revocation of the order in part with respect to its exports and/or sales of ball bearings and parts thereof.

5. Deduction of CEP Profit

Comment 5: SKF Italy argues that the Department should not deduct CEP profit from the U.S. sales price of bearings sold with the assistance of a commissioned sales agent in the United States. The respondent contends that this adjustment to CEP was improper because its commissioned sales agent is an unaffiliated party and that, by deducting from CEP both CEP profit and the commission paid, the Department effectively double-counted profit. The respondent cites *AFBs 11* in which the Department agreed that it should not make a CEP-profit adjustment to U.S. price when U.S. sales are made through an unaffiliated consignee.

Timken argues that the statute requires the deduction of CEP profit from the U.S. sales price. Timken alleges that there is no double-counting and that SKF Italy confuses the profit to be made by the affiliated exporter, SKF UK's SNFA operations, with the profit to be made by a sales agent. Timken contends that many CEP expenses include an element of profit. Timken asserts that the fact that a profit is made by the agent in providing those services is not relevant to the calculation of a profit ratio or calculation of a CEP profit amount using that ratio. Timken also argues that, because SKF Italy stated in its response that SKF UK's SNFA operations did not incur indirect selling expenses in the United States, the Department did not deduct any indirect selling expenses in the United States for the SKF Italy's CEP sales. Therefore, Timken concludes, the Department did not double-count profit.

Department's Position: In calculating CEP, we deduct commissions for selling the subject merchandise in the United States. See section 772(d)(1)(A) of the Act. The Act also directs us to deduct the "profit allocated to the expenses" described in paragraph (1), which includes commissions. See section 772(d)(3) of the Act. In this case, SKF Italy reported that it used an unaffiliated sales agent in the United States to sell its bearings and that the selling agent received a commission for this service. Therefore, we deducted this commission from CEP, pursuant to section 772(d)(1)(A) of the Act. We also deducted the part of SKF Italy's profit which is allocated to commissions, as directed by section 772(d)(3) of the Act.

In its argument that we have double-counted profit by deducting both the commission and the profit allocated to commission, SKF Italy assumes that the profit to which section 772(d)(3) of the Act refers is the unaffiliated sales agent's profit. This is incorrect. Section 772(f)(2)(D) of the Act, which provides the Department's methodology for determining profit, states that the allocated profit is the "total profit earned by the foreign producer, exporter, and affiliated parties…" SKF Italy reported that the sales agent is not the producer, the exporter, or an affiliated party. Therefore, any profit that the sales agent realizes is separate from the profit realized by SKF Italy on sales of its bearings in the United States and is not a part of the profit allocated to expenses pursuant to section 772(d)(3) of the Act. Section 772(d)(3) of the Act refers to the profit of the producer/exporter which, in this case, is SKF Italy and SKF UK's SNFA operations. Because the profit described in section 772(d)(3) of the Act is SKF Italy's profit, which is calculated by subtracting SKF Italy's expenses, including the entire amount of the commission paid to the unaffiliated agent, from SKF Italy's revenues, rather than any profit element in the sales agent's commission, the unaffiliated sales agent's profit is not double-counted.

We acknowledge that this differs from the position we took in *AFBs 11* where we declined to deduct CEP profit on the grounds that, "{b}ecause an amount for profit is already included in the arm's-length commissions SKF UK's SNFA operations paid to the consignee," deducting an amount for CEP profit "would result in double-counting." See *AFBs 11* and the accompanying I&D Memo at Comment 13. As explained above, however, the Act requires that we deduct both commissions for selling the subject merchandise in the United States and the profit allocated to the commissions. This is consistent with our position adopted in *AFBs 19* and the accompanying I&D Memo at Comment 6.

6. Freight and Packing Revenue Offset Caps[4]

Comment 6: SKF argues that the Department erred in treating SKF Italy's and SKF France's home-market freight and packing revenues as offsets to corresponding expenses by including certain inland-freight and packing expenses unrelated to the offset caps for freight and packing

[4] For discussion of this issue,"SKF" refers to SKF France and SKF Italy only.

revenue. Specifically, SKF Italy claims, the inland-freight expenses unrelated to the freight-revenue offset caps which the Department included improperly in its calculation of the freight-revenue offset caps are the inland-freight expenses incurred for shipping SKF Italy-manufactured ball bearings (1) from SKF Germany in Schweinfurt, Germany, to SKF Industrie in Airasca, Italy, and (2) from the EDC, an affiliate of SKF Italy in Belgium, to a transportation hub in Italy. SKF Italy claims that the packing expenses unrelated to the packing-revenue offset caps but included in the Department's calculation of the packing-revenue offset cap are the packing expenses incurred by (1) SKF Germany for a small volume of ball bearings sold by SKF Industrie in the home market and (2) the EDC on home-market sales of ball bearings produced by SKF Industrie and warehoused at the EDC. SKF Italy explains that SKF Germany or the EDC, not SKF Italy, incurred these freight and packing expenses. SKF Italy argues that these freight and packing expenses should not be offset with the reported freight and packing revenues because it did not charge the freight and packing expenses to its home-market customers.

SKF France argues that, similar to SKF Italy, it charged freight revenue on only one type of freight activity transport from SKF France to the ultimate unaffiliated home-market customer. In addition, SKF France asserts, it charged packing revenue only on packing performed by SKF France. According to SKF France, consistent with how the revenues are developed and as it explained in its October 1, 2009, original response (SKF France's questionnaire response), only the first "inland freight - plant/warehouse to customer" variable includes the expenses incurred by SKF France that the corresponding revenues seek to recoup. SKF France argues also that it is only the first packing variable that the corresponding revenues seek to recoup as well.

Similarly, SKF Italy contends that the inland-freight and packing expenses SKF Industrie incurred for ball bearings shipped from SKF Industrie to home-market customers are the expenses for which the corresponding revenues were intended to compensate. SKF Italy claims that the Department should use only these inland-freight and packing expenses incurred by SKF Industrie as the offset caps for freight and packing revenue. SKF Italy argues that its October 1, 2009, original response (SKF Italy's questionnaire response) distinguishes the inland-freight expenses SKF Industrie incurred from the inland-freight expenses its affiliates incurred. SKF Italy also argues that SKF Italy's questionnaire response distinguishes the packing expenses SKF Industrie incurred from the packing expenses its affiliates incurred. Citing its descriptions of its freight revenue and packing revenue fields in SKF Italy's questionnaire response, SKF Italy states that it does not charge customers for freight revenues and packing revenues with respect to the inland-freight expenses and packing expenses at issue.

SKF asserts that, consistent with the Department's description of the offset calculation in the *Preliminary Results*, the Department's past practice is to treat freight and packing revenues as offsets only to the specific corresponding freight and packing expenses. Citing *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009) (*PRCBs from the PRC*), and the accompanying I&D Memo at Comment 6, SKF explains that the Department limited the category of expenses included in the freight-revenue offset cap to the corresponding inland-freight expense based on the respondent's submission in that proceeding indicating that it earned freight revenue in connection with deliveries from regional warehouses to the customer. SKF states that the Department removed U.S. brokerage and handling fees from the offset cap in

PRCBs from the PRC because freight revenue did not compensate for these expenses. SKF argues that, as in *PRCBs from the PRC*, the Department should include in the offset calculation only inland-freight expenses for the transportation from SKF Italy and SKF France to the customer and packing expenses incurred for the customers.

Timken supports the Department's use of the inland-freight and packing expenses at issue as the offset cap for freight and packing revenue. Timken points out that, while SKF Germany and the EDC may have incurred some of the reported inland-freight and packing expenses, SKF Italy and SKF France have not explained why this should make any difference because SKF Italy and SKF France have received the benefits of all reported freight and packing revenues and because the Department deducted from normal value all freight and packing expenses that SKF Italy and SKF France reported. Citing *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008) (*Orange Juice from Brazil*), and the accompanying I&D Memo at Comment 7 and *PRCBs from the PRC* and the accompanying I&D Memo at Comment 6, Timken distinguishes the Department's calculation of the revenue-offset cap for SKF Italy and SKF France from its exclusion of U.S. brokerage and handling fees from the calculation of the revenue offset in *PRCBs from the PRC*. According to Timken, unlike the inland-freight and packing expenses which SKF Italy and SKF France oppose as a cap on the inland-freight and packing revenues, U.S. brokerage and handling fees are not freight expenses. Relying on SKF's data, Timken disputes SKF's argument that the amounts reported in the revenue fields for freight and packing reflected only charges for expenses reported in the first freight and packing fields.

<u>Department's Position</u>: For the final results with respect to SKF Italy and SKF France, we have continued to use all inland freight and packing expenses that we used in the *Preliminary Results* to cap the offset for SKF Italy's and SKF France's freight and packing revenues in our calculation of normal value.

SKF Italy and SKF France reported freight revenues charged to home-market customers for the inland transport of foreign like product to customers. See SKF Italy's questionnaire response and SKF France's questionnaire response. SKF Italy and SKF France also reported three types of freight expenses: INFLTC1H, INFLTC2H, and INFLTC3H. See SKF Italy's questionnaire response and SKF France's questionnaire response. INFLTC1H represented inland freight and insurance expenses "incurred" by SKF Italy and SKF France for the transport of foreign like product; INFLTC2H represented freight expenses of foreign like product manufactured and sold by SKF Italy and SKF France and transported from SKF Germany to SKF Italy and SKF France for sale in Italy and France; INFLTC3H represented freight expenses for foreign like product manufactured by SKF Italy and SKF France and transported from the EDC, an SKF warehouse in Belgium, to Italy and France for sale in Italy and France, respectively.

Similarly, SKF Italy and SKF France reported packing revenues charged to home-market customers for the packing of foreign like product. See SKF Italy's questionnaire response at B-65 and SKF France's questionnaire response at B-47. SKF Italy and SKF France also reported three types of packing expenses: PACK1H, PACK2H, and PACK3H. See SKF Italy's questionnaire response at B-81-85 and SKF France's questionnaire response at B-58-62. PACK1H represented transport-packing material and fabrication costs; PACK2H represented transport-packing costs for foreign like product manufactured by SKF Italy and SKF France but packed by SKF Germany and retransported to SKF Italy and SKF France for sale; PACK3H represented repacking expenses for foreign like product manufactured by SKF Italy and SKF France transported from the EDC in Belgium to SKF Italy and SKF France for sale in Italy and France.

In the *Preliminary Results* we used all reported inland freight and packing expenses to cap the amount of freight and packing revenues added to SKF Italy's and SKF France's normal values, finding that these expenses and revenues involved the same type of activities, *i.e.*, the inland transportation of foreign like product with freight revenues and the packing of foreign like product with packing revenues. See *Preliminary Results*, 75 FR at 22386.

SKF argues that the Department's practice is to limit the freight and packing expenses by capping the offset for freight and packing revenues only with expenses that generate corresponding revenue and the Department violated this purported practice by including expenses in the offset cap that did not generate corresponding revenues. SKF is mistaken in its assertion that we deviated from our practice in this case. As explained in prior determinations, our practice is to offset freight or packing expenses with related revenues. See *Orange Juice from Brazil* and the accompanying I&D Memo at Comment 7. We limit this offset to expenses that are related to "the same type of activity" as the freight or packing-related revenues (see *PRCBs from the PRC* and the accompanying I&D Memo at Comment 6). Our practice requires only that both the expenses and revenues be related to the same type of activities and in no case have we adopted SKF's narrower standard that expenses must generate explicit "corresponding revenues." By requiring that expenses and revenue be related to the same type of activities, the Department prevents manipulation of the calculation of normal value by ensuring that the revenues added to normal value correspond to the expenses which reduce normal value.

Applying our practice in the current reviews, we determined that all of SKF Italy's and SKF France's reported freight and packing expenses related to the same type of activities as SKF Italy's and SKF France's freight and packing revenues, *i.e.*, the inland transportation of foreign like product for freight revenues and expenses and the packing of foreign like product for packing revenues and expenses. In their questionnaire responses, SKF Italy and SKF France detailed that the freight revenues charged to customers related to the costs of transporting foreign like product from the factory or warehouse to customers, *i.e.*, the inland transportation of foreign like product. Similarly, the freight expenses reported by SKF Italy and SKF France, INFLTC1H, INFLTC2H, and INFLTC3H, all relate to the inland transport of foreign like product manufactured by SKF Italy and SKF France and sold by SKF Italy in Italy and SKF France in France.

In reporting their respective packing revenues, SKF Italy and SKF France detailed that these revenues related to the costs of packing the foreign like product. Correspondingly, the packing expenses reported by SKF Italy and SKF France, PACK1H, PACK2H, and PACK3H, all relate to the packing costs of foreign like product manufactured by SKF Italy and SKF France and sold by SKF Italy and SKF France in Italy and France, respectively.

In light of these reported data, we determined properly that all reported freight and packing expenses and revenues related to the same type of activities, *i.e.*, the inland transport of foreign like product with freight expenses and revenues and the packing of foreign like product with packing expenses and revenues. As such, we used all reported freight and packing expenses to cap the related revenue-offset amounts properly.

SKF's proposed standard would allow parties to manipulate the offset caps by allowing them to dictate which expenses could be included within the cap through their reporting of costs. For instance, SKF argues that, because it reported the packing costs in PACK2H and PACK3H as being "incurred" by other SKF entities in Europe rather than SKF Italy and SKF France, these costs should not be included in the cap. To the contrary, the costs described in PACK2H and PACK3H relate to packing expenses for merchandise manufactured by SKF in Italy and SKF in France and sold by SKF Italy in Italy and SKF France in France. These packing expenses clearly relate to the packing of foreign like product and, thereby, SKF Italy's and SKF France's reported packing revenues. SKF does not contend that the packing expenses do not relate to the packing of foreign like product. Instead, SKF is contending that, because the packing expenses were attributed to other SKF entities, they should not be included in the cap. Allowing a party to distinguish these expenses by claiming that one was incurred by another affiliate, as SKF has attempted, would allow parties to manipulate these offsets.

Such manipulation would serve to distort a party's margins. For instance, we reduced normal value in our calculations for SKF Italy and SKF France by all of the companies' reported freight and packing expenses; SKF makes no objection to these reductions. See "Ball Bearings and Parts thereof from Italy: Preliminary Analysis Memorandum for SKF Italy," dated April 21, 2010, at 10 and "Ball Bearings and Parts thereof from Italy: Preliminary Analysis Memorandum for SKF France," dated April 21, 2010, at 8 (stating in both instances that we deducted INFLTC1-3H and PACK1-3H from normal value). Normally, these expenses would also be included in the cap for the freight and packing revenues offset, yet SKF argues that only a limited subset of these expenses should be included within the cap for this offset, resulting in a lower cap and ultimately a lesser amount added to normal value. SKF has offered no argument justifying why these expenses merit to serve as a reduction to normal value but should not be used in capping the revenue offsets. SKF's proposed standard would merely allow parties to dictate which expenses are included within the cap through their reporting and thereby manipulate our calculations of normal value and the resulting margins. The margins would be distorted because normal value would not include all of the expenses associated with freight and packing of foreign like product.

SKF misstates the Department's findings in *PRCBs from the PRC*. In *PRCBs from the PRC,* a respondent reported freight revenue for deliveries of merchandise from the warehouse to customers in the U.S. market, *i.e*., inland-freight expenses. See *PRCBs from the PRC* and the accompanying I&D Memo at Comment 6. Accordingly, the Department found that only those freight expenses related to this "same type of activity," inland-freight expenses, should be included in the offset cap. *Id.* SKF argues mistakenly that the Department excluded U.S. brokerage and handling fees from the cap in this case because they did not generate a corresponding revenue. To the contrary, the Department excluded U.S. brokerage and handling charges from the cap because these charges related only to the international shipping of merchandise, not inland-freight expenses. *Id.* ("...we have changed our calculations so that the offset cap does not include U.S. brokerage and handling charges and *is limited to only the corresponding inland-freight expense*") (emphasis added). As such, contrary to SKF's arguments, the Department's determination in *PRCBs from the PRC* supports its determination in these underlying reviews.

The Department's practice is to limit the freight and packing expenses which cap the freight and packing revenues, related to the same type of activity. See *PRCBs from the PRC* and the accompanying I&D Memo at Comment 6. The Department determined in these underlying reviews that SKF Italy's and SKF France's reported freight and packing expenses were related to the same type of activity as SKF Italy's and SKF France's freight and packing revenues, *i.e.*, the inland transport of foreign like product with freight revenues and expenses and the packing of foreign like product with packing revenues and expenses. Accordingly, we find our decision to include all of SKF Italy's and SKF France's reported expenses in the offset cap to be consistent with our practice and necessary for an accurate calculation of the dumping margin for SKF Italy and SKF France.

7. Importer-Specific Assessment Rates

<u>Comment 7</u>: Myonic GmbH disagrees with the Department's decision in the *Preliminary Results* to calculate a single assessment rate for myonic Inc. and NHBB, myonic GmbH's two importers during the POR. Myonic GmbH requests that the Department calculate separate importer-specific assessment rates for each of these importers in order to ensure that neither importer bears antidumping duty liability for sales made by the other importer. Citing *AFBs 13* and the accompanying I&D Memo at Comment 26, myonic GmbH argues that the Department's normal practice is to calculate importer-specific assessment rates to prevent one importer from being liable for antidumping duties attributable to margins found on sales to a different importer. Citing *AFBs 13* and the accompanying I&D Memo at Comment 26, myonic GmbH explains that, in situations in which several importers are affiliated with the foreign exporter, the Department considers the affiliated companies as one corporate entity and calculates a combined assessment rate for all importers to prevent affiliated companies from manipulating individual assessment rates to their advantage.

Myonic GmbH claims that it was not affiliated with myonic Inc. and NHBB at the same time because these two importers were not affiliated with one another at the same time during the POR as a result of their affiliation with myonic GmbH at different times. Myonic GmbH explains that it owned myonic Inc. and sold the subject merchandise through myonic Inc. until March 5, 2009, the date on which myonic GmbH sold its shares in myonic Inc. to an unaffiliated investor and Minebea Co., Ltd. (Minebea), acquired myonic Holding GmbH, which owns myonic GmbH. As a result, according to myonic GmbH, Minebea's indirect subsidiary NHBB became myonic GmbH's U.S. sales affiliate. Myonic GmbH argues that no factual basis exists for the Department to treat myonic Inc. and NHBB as having been affiliated.

Myonic GmbH asserts that, in light of these circumstances, the Department's policy rationale for calculating a combined assessment rate for several affiliated importers does not apply. Myonic GmbH explains that, because myonic Inc. and NHBB were not affiliated, there was no potential for these two importers to manipulate individual importer-specific assessment rates to their advantage. Myonic GmbH argues that the Department's policy rationale for calculating importer-specific assessment rates apply because myonic Inc. and NHBB were never affiliated during the POR and because each importer should not bear the antidumping duty liability for sales made by the other importer.

Timken states that there is no indication that, in the margin calculation for myonic GmbH, the Department did not use the ball bearings NHBB purchased from myonic Inc. and resold to unaffiliated U.S. customers. Timken states further that, while myonic Inc. and NHBB were never affiliated, the Department determined in the *Preliminary Results* that the post-acquisition myonic GmbH was the successor to the pre-acquisition myonic GmbH. On this basis, according to Timken, the Department's calculation of a combined assessment rate for myonic Inc. and NHBB is justified.

Department's Position: For several importers that are affiliated with each other and a foreign exporter, we calculate a combined assessment rate for all affiliated importers to prevent affiliates from manipulating individual assessment rates to their advantage. See, *e.g.*, *AFBs 13* and the accompanying I&D Memo at Comment 26. For these final results, based on our review of the record, we have calculated separate importer-specific assessment rates for myonic Inc. and NHBB.

In order to "prevent one importer from being liable for antidumping duties attributable to margins found on sales to a different importer," we calculate importer-specific assessment rates on a limited basis in instances in which the importer is not related to the foreign exporter. See *AFBs 13* and the accompanying I&D Memo at Comment 26, citing *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*, 62 FR 11825, 11841 (March 13, 1997). Myonic GmbH, myonic Inc., and NHBB are distinguishable from FAG Germany and its affiliated U.S. importers in *AFBs 13*, in which we found that FAG Germany's affiliated U.S. importers purchased, at times, subject merchandise from each other for resale to unaffiliated U.S. customers.

Although we found that the post-acquisition myonic GmbH is the successor-in-interest to the pre-acquisition myonic GmbH in our changed-circumstances review,[5] because myonic Inc. and NHBB were never affiliates with each other during the POR, we find that there is no potential for these two importers to have manipulated individual importer-specific assessment rates to their advantage during the POR. We find that myonic Inc.'s transfer of ball bearings to NHBB, which took place only once during the POR as part of NHBB's parent company Minebea's acquisition of myonic GmbH on March 5, 2009, and NHBB's sales of those ball bearings to unaffiliated U.S. customers are not sufficient to indicate that such potential exists. Myonic Inc.'s transfer of ball bearings to NHBB was a transfer of ball bearings from myonic GmbH's outgoing U.S. sales affiliate to myonic GmbH's incoming U.S. sales affiliate as a part of the completion of Minebea's purchase of myonic GmbH. We do not have any other information on the record to indicate that, contrary to the information described above, there is a potential for manipulation.

[5] See *Preliminary Results*, 75 FR at 22389-90, unchanged in the final results.

Therefore, we find that assigning an importer-specific assessment rate for each of these two importers is appropriate for this POR to prevent each importer from becoming liable for the other importer's antidumping duty liabilities.

8. 15-Day Issuance of Liquidation Instructions

Comment 8: SKF argues that the Department's stated intent to issue liquidation instructions to CBP 15 days after publication of the final results of administrative review is contrary to law. Specifically, SKF argues, 19 USC 1516a(a)(2)(A) provides that, within 30 days after the date of publication in the *Federal Register* of the notice of final results of administrative review, an interested party may commence an action in the CIT by filing a summons and, within 30 days thereafter, a complaint. According to SKF, the statute thus provides an interested party 60 days to perfect its action before the CIT. In addition, SKF contends, because the CIT's Rules allow a party an additional 30 days to file a motion for preliminary injunction, a party has 90 days to decide whether to move for an injunction. SKF argues that, by issuing liquidation instructions 15 days after the publication of the final results, the Department is curtailing the time in which SKF may determine, by statute and the CIT's Rules, whether to challenge the final results at the CIT. SKF contends that, if the Department issues instructions and CBP liquidates entries before SKF moves for an injunction, the CIT will not be able to assert jurisdiction over the party's action. SKF argues that the policy requires parties to file early before the CIT and/or obtain temporary restraining orders, as well as a preliminary injunction, on an expedited basis.

Citing *Tianjin Mach. Imp. and Exp. Corp. v. United States*, 353 F. Supp. 2d 1294 (CIT 2004), aff'd, 146 Fed. Appx. 493 (CAFC 2005) (*Tianjin*), SKF argues that the CIT has held that the Department's prior policy of issuing liquidation instructions within 15 days of the publication of the final results of review is not in accordance with law. In that case, according to SKF, the CIT stated that the Department's policy "will compel parties, in every instance, to seek a preliminary injunction within fifteen days to prevent liquidation and preserve the court's jurisdiction, regardless of whether the party ultimately decides to challenge any aspect of the final determination," quoting from *Tianjin*, 353 F. Supp. 2d at 1309.

Citing *SKF USA Inc. v. United States*, 611 F. Supp. 2d 1351 (CIT 2009) (*SKF I*), *SKF USA Inc. v. United States*, 659 F. Supp. 2d 1338, 1350-51 (CIT 2009) (*SKF II*), and *SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264 (CIT 2009), SKF argues that the CIT held that the Department's prior policy of issuing liquidation instructions within 15 days of the publication of the final results and its current policy of issuing liquidation instructions 15 days after the publication of the final results are unlawful, arbitrary, and capricious. SKF also argues that, in creating the "15-day liquidation" policy, the Department did not consider a time period that would alleviate the extreme time pressures on litigants and would also provide CBP sufficient time to liquidate before the entries were deemed liquidated pursuant to 19 USC 1504(d). SKF also argues that the Department did not explain its reasons for establishing the liquidation policy beyond the danger of the entries being deemed liquidated.

SKF argues that the Department's current approach is inconsistent with the CIT's decisions and the statute. SKF argues that the Department should reconsider its 15-day liquidation policy and wait a minimum of 30 days before issuing liquidation instructions to allow interested parties a meaningful opportunity for judicial review.

Timken did not submit rebuttal comments on this issue.

Department's Position: We disagree with SKF that our policy of issuing liquidation instructions to CBP 15 days after the publication of the final results of review is contrary to law. Our policy is based upon administrative necessity, namely that we must provide CBP with sufficient time to liquidate all entries, particularly in large and complex cases such as the instant reviews, before the entries are deemed liquidated. This policy was developed in light of *International Trading Co. v. United States*, 281 F.3d 1268 (CAFC 2002) (*International Trading*), where the CAFC held that entries are deemed liquidated at the rate asserted at entry pursuant to 19 USC 1504(d) if CBP does not liquidate within six months of the publication of the final results. Extreme consequences follow from deemed liquidation, specifically the government's inability to collect duties calculated to be due. It is our practice to issue liquidation instructions unless we are aware that an injunction has been filed or is imminent. Furthermore, our current policy of sending liquidation instructions 15 days after the publication of the final results is in accordance with the CIT's statement that we must provide "some reasonable opportunity in which a plaintiff may seek to obtain the specific type of injunction described in 19 USC § 1516a(c)(2)." *SKF I*, 611 F. Supp. 2d at 1364.

Our prior policy of issuing liquidation instructions within 15 days of the publication of the final results has been affirmed by the CIT in *Mittal Steel Galati S.A. v. United States*, 491 F. Supp. 2d 1273 (CIT 2007) (*Mittal Steel*), and *Mittal Steel Galati S.A. v. United States*, 502 F. Supp. 2d 1295 (CIT 2007). In these cases, the CIT recognized that the statute does not establish a time by which the Department should issue liquidation instructions and held that the prior policy was reasonable.

We disagree with SKF that the statute or the CIT's Rules establish a minimum time limit after which we may issue liquidation instructions. Although holding that both iterations of the liquidation policy are not in accordance with law, the CIT's recent decisions have not ruled how long the Department must wait before issuing liquidation instructions. For instance, in considering a challenge to the Department's prior policy, the CIT rejected SKF's argument that the Department is required to wait 60 or 90 days after the publication of the final results before issuing liquidation instructions. See *SKF I*, 611 F. Supp. 2d at 1362-63 ("the court rejects plaintiff's argument that 19 USC 1516a(a)(2) requires {the Department} to wait sixty days (or alternatively, according to USCIT Rule 56.2(a), ninety days) from the date of publication before issuing liquidation instructions"). In a decision regarding the Department's current policy, the CIT held that the statute does not state that the Department must wait 30 days before issuing liquidation instructions. See *SKF II*, 659 F. Supp. 2d at 1350.

In addition, SKF's reliance on *Tianjin* is unpersuasive because, and as SKF acknowledges, the CIT has held that *Tianjin* does not require the Department to wait longer than 15 days to issue liquidation instructions. See *SKF II*, 659 F. Supp. 2d at 1349; see also *Mittal Steel*, 491 F. Supp.

2d at 1281 (stating that *Tianjin* "reads an implied stay of liquidation into {19 USC} 1516a" where there is none). Moreover, the CAFC has rejected the argument that suspension of liquidation must continue beyond the date that the final results are published to safeguard a party's right to judicial review. See *International Trading*, 281 F.3d at 1273. Publication of the final results of review triggers the period for liquidation and, within the reasonable period provided under the Department's new practice, interested parties must apply to the court for an injunction to prevent liquidation of entries pending judicial review. Accordingly, the Department intends to issue liquidation instructions 15 days after publication of the final results of these reviews.

9. Zeroing of Negative Margins

<u>Comment 9</u>: SKF argues that, because the plain language of the Act demonstrates that Congress intended for the Department to use both positive and negative values, the Department's interpretation that the Act permits zeroing is improper. Citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9 (1984) (*Chevron*), SKF explains that the U.S. Supreme Court has stated that it "must reject administrative constructions which are contrary to clear congressional intent." Citing *Timken Company v. United States*, 354 F.3d 1334, 1341 (CAFC 2004), *cert*. denied 543 U.S. 976 (2004) (*Timken*), and *Corus Staal BV v. United States*, 259 F. Supp. 2d 1253, 1261 (CIT 2003), aff'd, 395 F.3d 1343, 1347 (CAFC 2003), *cert.* denied, 126 S. Ct. 1023 (2006) (*Corus I*), SKF explains that both the CIT and CAFC have recognized that the Act does not direct the Department to employ zeroing. SKF argues that the Department has simply expanded the definition of "dumping margin" in section 771(35)(A) of the Act to create a rationale for excluding certain sales even though section 771(35)(A) of the Act is not an operative provision governing the dumping calculation.

SKF asserts that, in *AFBs 19*, the Department stated, "Section 771(35)(A) of the Act defines 'dumping margin' as the amount by which normal value exceeds the export price and constructed export price of the subject merchandise." While SKF acknowledges that section 771(35)(A) of the Act defines dumping margin as such, SKF argues that section 771(35)(B) of the Act states that the term weighted-average dumping margin is the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate EPs and CEPs of such exporter or producer.

SKF argues that the Department's reliance on the definition of dumping margin is in conflict with sections of the Act which govern assessment. Specifically, SKF explains, section 751(a)(2)(A)(i) of the Act directs that the Department determine normal value and either the EP or CEP of each entry. SKF also explains that, for reviews other than new-shipper reviews, section 751(a)(2)(C) of the Act requires that the Department base its assessment rate determination on two sub-determinations: (1) a determination of normal value and either EP or CEP for each entry, and (2) a determination of the dumping margin for each entry. SKF posits that, because section 751(a)(2)(C) of the Act requires that a single determination form the basis for the assessment-rate calculation, it follows that the two sub-determinations should yield a consistent result. SKF explains that, because the Act does not permit the use of zeroing to determine normal value, EP, or CEP, the determination of the dumping margin for each entry cannot be based on zeroing so that the determination is consistent. SKF argues that, had

Congress intended for the two sub-determinations to be inconsistent, it would have specified which determination was to form the basis of the assessment-rate calculation.

SKF avers that section 736(c)(3) of the Act, which governs assessments for early duty determinations and parallels sections 751(a)(2)(A) and (C) of the Act, states explicitly that the Department's "determination of normal value and export price (or the constructed export price), and that determination shall be the basis for the assessment of antidumping duties."

Citing *Stainless Steel Sheet and Strip In Coils From Mexico: Final Results of 2004/2005 Antidumping Review*, Secretariat File No: USA-MEX-2007-1904-01, Article 1904 binational panel review pursuant to NAFTA, at 9 (April 14, 2010) (*Coils From Mexico)*, SKF argues that the panel found that a plain reading of section 771(35) of the Act directs that all sales should be included in the analysis, but the Department has interpreted this provision so as to choose to ignore, or zero, certain sales which are not dumped. SKF argues that, in doing so, the Department ignores its obligation to determine the total aggregated values of the subject merchandise.

SKF argues that the NAFTA panel's interpretation of the statute conforms with the antidumping law which is to calculate an accurate dumping liability. SKF asserts that, when non-dumped sales are ignored, calculation of a dumping liability is distorted. According to SKF, the NAFTA panel found that it is precisely this distortion of dumping margins that forces the Department's interpretation of the statute to run afoul of the Antidumping Agreement.

SKF argues that, not only is there no statutory provision directing the Department to consider sales below normal value, sections 751(a)(1)(B) and 751(a)(2)(A) of the Act require that the Department "review, and determine . . . the amount of any dumping duty " and "determine . . . (i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and (ii) the dumping margin for each such entry."

SKF argues that the WTO has ruled consistently against the Department's use of zeroing in investigations, sunset reviews, and administrative reviews. SKF argues specifically that, in response to these rulings, the Department changed its methodology in antidumping investigations with respect to the calculation of the weighted-average dumping margin in average-to-average comparisons to no longer "zero-out" the effect of sales sold above fair value. SKF contends that, although the Department has recognized that zeroing is inconsistent with the international obligations of the United States and therefore no longer uses zeroing in antidumping investigations, the Department continues to zero in the administrative reviews that proceed from the investigations.

SKF contends also that the Department's methodology violates the international obligations of the United States. Citing *Alexander Murray v. Schooner Charming Betsy*, 6 U.S. 64 (1804) (*Charming Betsy*), SKF argues that, whenever possible, U.S. laws should be interpreted to avoid a violation of international obligations. SKF asserts that the explicit Congressional intent to comply with international obligations is supported by the SAA statement "to bring U.S. law fully into compliance with U.S. obligations under those {Uruguay Round} agreements," citing the SAA at 669. Accordingly, SKF argues, the Department should comply with the decisions of the

WTO and determine that the use of zeroing in administrative reviews is contrary to the requirements set forth in the Antidumping Agreement.

Citing, among others, *Timken*, SKF acknowledges that both the CIT and CAFC have concluded that zeroing is not required in either investigations or administrative reviews. Moreover, citing *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R (App. Body Rep't January 9, 2007) (*US - Zeroing (Japan)*), *United States - Final Determination on Softwood Lumber from Canada*, WT/DS264/AB/R (App. Body Rep't August 11, 2004) (*US - Softwood Lumber*), *European Communities - Antidumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/AB/R (March 1, 2001) (*EC - Bed Linens*), *United States - Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)*, WT/DS294/AB/4 (April 18, 2006) (*US - Zeroing (EC)*), SKF explains that the WTO has determined that the Department's zeroing methodology is inconsistent with U.S. obligations under the Antidumping Agreement. Citing *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006) (*Zeroing Notice*), and *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification*, 72 FR 3783 (January 26, 2007), SKF explains that the Department has abandoned its zeroing methodology in the context of investigations. SKF asserts that WTO decisions, combined with the Department's abandonment of zeroing in the context of investigations, makes this issue ripe for reconsideration for the final results of these reviews. While SKF concedes that the current proceeding is an administrative review rather than an investigation, citing *Corus 1*, 395 F.3d at 1347, and *United States – Sunset Review of Anti-dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/AB/R (App. Body Rep't December 15, 2003) (*US - Corrosion-Resistant Steel*), SKF explains that the CAFC and the WTO have concluded that the difference between investigations and administrative reviews is not relevant for the purposes of zeroing. Moreover, citing *United States – Laws, Regulations and Methodology for Calculating Dumping Margins*, WT/DS294/18, Communication by the United States at ¶ 12 (June 12, 2006), SKF states that the United States has concluded that the body of law which has developed at the WTO prohibits "zeroing in every circumstance in which a Member calculates a margin of dumping."

Citing *Coils From Mexico*, NSK argues that the Department's zeroing methodology violates U.S. antidumping law and that the NAFTA panel remanded the Department's 2004-2005 administrative review of the applicable order to recalculate respondents' dumping margin without zeroing. Citing *SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (CAFC 2001) (quoting *Transactive Corp v. United States*, 91 F.3d 232, 237 (1996)), NSK argues further that it is well established that an agency's action is arbitrary when the agency offers insufficient reasons for treating similar situations differently. NSK contends that, as a result, it would be arbitrary and capricious for the agency to eliminate zeroing in *Coils From Mexico* but not in the Department's final results of these reviews, specifically with respect to NSK.

NTN argues that the continued use of zeroing to calculate antidumping margins contradicts the assertion by the United States that it would implement the decision of the WTO which found that the Department's practice of zeroing violated international obligations of the United States. Therefore, NTN contends, the Department should abandon its practice of zeroing and recalculate

NTN's margins without the use of zeroing in this review.

Citing *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (CAFC 2007), and others, Timken explains that the CIT and the CAFC have rejected arguments that the plain statutory language does not permit zeroing. Timken also argues that various decisions of the WTO apply only to the parties to the dispute and do not bind future WTO panels, the WTO AB, or the parties to the dispute. Accordingly, citing *Charming Betsy*, 6 U.S. at 118, and *Restatement (Third) of Foreign Relations Law of the United States*, sections 101 and 102(3) (1987), Timken argues that SKF's reliance on *Charming Betsy* is inapposite because WTO panel and WTO AB decisions cannot be considered "the law of nations as understood in this country."

Timken argues that the assertion by various respondents that the NAFTA panel's decision in *Coils From Mexico* affects the Department's decision with respect to its zeroing methodology is erroneous. Timken argues that the Department's application of zeroing in the reviews of the orders on ball bearings and parts thereof has been upheld by the CAFC. Moreover, citing *The North American Free Trade Agreement* (December 17, 1992), United States-Canada-Mexico, 32 I.L.M. 289, Art. 1904(9), Timken asserts that the NAFTA panel decisions are binding only with respect to the particular matter between the parties and before the NAFTA panel.

Timken responds to NTN's arguments by arguing that the statute recognizes that implementation of WTO reports is discretionary and the statute prescribes a specific mechanism for their implementation. Timken asserts that the Department has completed this process only for investigations.

<u>Department's Position</u>: This issue has been raised in several previous administrative reviews of the bearings orders and, once again, we reiterate our position that, outside the context of antidumping investigations involving average-to-average comparisons, we interpret the language in section 771(35)(A) of the Act to mean that a dumping margin exists only when normal value is greater than EP or CEP. Thus, we have not changed our calculation of the weighted-average dumping margins for these final results of reviews with respect to our zeroing methodology.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price and constructed export price of the subject merchandise." As no dumping margins exist with respect to sales where normal value is equal to or less than EP or CEP, the Department does not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See, *e.g.*, *Timken*, 354 F.3d at 1342, *Corus I*, 395 F.3d at 1347-49, and *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1381 (CAFC 2008) (*SKF*).

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." We apply these sections by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds EP or CEP and dividing this amount by the value of all sales.

The use of the term "aggregate dumping margins" in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the normal value permitted to offset or cancel the dumping margins found on other sales.

This does not mean that we disregard non-dumped sales in calculating the weighted-average dumping margin. It is important to recognize that the weighted-average margin will reflect any non-dumped merchandise sold during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin 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.

The CAFC explained in *Timken* that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to 'mask' sales at less than fair value." See *Timken*, 354 F.3d at 1343. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate "masked dumping" before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales. See, *e.g., Timken*, 354 F.3d at 1343, *Corus I*, 395 F.3d 1343, *Corus Staal BV v. United States*, 502 F.3d 1370, 1374-75 (CAFC 2007) (*Corus II*), and *NSK Ltd. v. United States*, 510 F.3d 1375, 1381 (CAFC 2007) (*NSK*).

SKF argues that the WTO AB has ruled that "zeroing" is inconsistent with U.S. obligations under the Antidumping Agreement. The CAFC has held that WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA. See 19 USC 3538. See also *Corus I*, 395 F.3d at 1347-49; accord *Corus II*, 502 F.3d at 1375, and *NSK*, 510 F.3d at 1379-80.

Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, *e.g.*, 19 USC 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 USC 3533(g) and *Zeroing Notice*, 71 FR at 77722, 77724. With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure.

With respect to *US - Zeroing (EC)*, the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations. See *Zeroing Notice*. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See *id.*, 71 FR at 77724.

With regard to *US - Zeroing (Japan)*, the steps taken in response to this report do not require a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative reviews. Furthermore, in response to *US - Corrosion-Resistant Steel* and *EC - Bed Linens*, the CAFC has refused to find the Department's interpretation of the Act unreasonable on the basis of these reports. See *Corus I*, 395 F.3d at 1348-49. As discussed above, the CAFC found that WTO reports are without effect under U.S. law until they are implemented pursuant to the statutory scheme provided in the URAA. *Id.* Additionally, the CAFC noted that, in *US - Corrosion-Resistant Steel*, the WTO AB never made a finding regarding the Department's denial of offsets. *Id.* Further, the CAFC noted that, in *EC - Bed Linens*, the United States was not a party to the dispute. *Id.*

With respect to *US - Softwood Lumber*, the WTO AB's finding only related to the denial of offsets in the antidumping investigation on softwood lumber from Canada. That report, and the Department's implementation of that report, did not address the Department's denial of offsets in other antidumping investigations or in any administrative review. See *Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada*, 70 FR 22636 (May 2, 2005). Moreover, ultimate resolution of that WTO dispute was achieved through a mutually agreed solution and not through an elimination of the denial of offsets. See *United States – Final Dumping Determination on Softwood Lumber from Canada*, *Notification of a Mutually Agreed Solution*, WT/DS264/29/Add. 1 (March 9, 2007). For all these reasons, the various WTO AB reports regarding zeroing do not establish whether the Department's denial of offsets in these administrative reviews is consistent with U.S. law. Accordingly and consistent with the Department's interpretation of the Act described above, in the event that any of the export transactions examined in these reviews are found to exceed normal value, the amount by which the price exceeds normal value does not offset the dumping found with respect to other transactions.

Regarding SKF's and NSK's reliance on the NAFTA panel findings in *Coils from Mexico*, we find that this decision is not yet final and may be subject to an extraordinary challenge committee. Moreover, NAFTA panel decisions when final are only binding for the particular case before the panel. In contrast, the CAFC has upheld our use of zeroing repeatedly in administrative reviews. See, *e.g.*, *Timken*, 354 F.3d at 1343, and *Corus I*, 395 F.3d 1343. In contrast to the NAFTA panel, the CIT has continued to recognize this "binding precedent" since the issuance of *Coils from Mexico*, upholding the practice of zeroing in administrative reviews. See *JTEKT Corp. v. United States*, Slip Op. 10-75 (CIT July 6, 2010), at 7. As such, we find SKF's and NSK's reliance on *Coils from Mexico* to be misplaced.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the reviews and the final dumping margins for all of the reviewed firms in the *Federal Register*.

Agree ________ Disagree ________

____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

____
Date