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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Advisor
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, and Italy; 2010-2011

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, and Italy for the period May 1, 2010, through April 30, 2011. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and other 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. Targeted Dumping Methodology
2. ISEs, Packing, and Inland Freight Costs
3. G&A Expenses
4. U.S. Warehousing Expenses
5. Home Market Interest Expense Calculation
6. Capping Interest Revenue at the amount of Credit Expenses
7. Other Issues

Background

On June 5, 2012, the Department published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, and Italy. *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Preliminary Results of Antidumping Duty Administrative Reviews and Rescission of Antidumping Duty Administrative Reviews in Part*, 77 FR 33159 (June 5, 2012) (*Preliminary Results*). On October 16, 2012, the Department released its Post-Preliminary Analysis.[1]

We invited interested parties to comment on the *Preliminary Results* and Post-Preliminary Analysis. We received case and rebuttal briefs from various parties to the proceedings.

Company Abbreviations

myonic – myonic GmbH
NTN-SNR – NTN-SNR Roulements S.A. (formerly known as SNR Roulements S.A./SNR Europe)
Schaeffler – Schaeffler Italia S.p.A. (A.K.A., Schaeffler Italia S.r.l., WPB Water Pump Bearing GmbH & Co. KG, and The Schaeffler Group)
SKF – SKF RIV-SKF Officine di Villas Perosa S.p.A., SKF Industrie S.p.A. (SKF Industrie), and Somecat S.p.A. (Somecat)
Timken – The Timken Company, petitioner

Other Abbreviations

CAFC – U.S. Court of Appeals for the Federal Circuit
CMISELL – home market indirect selling expenses, excluding inventory carrying costs
CMNPRICOP – home market net price for purposes of the cost test
COGS – cost of goods sold
COM – cost of manufacture
COP – cost of production
CREDITH – home market credit expenses
CV – constructed value
G&A – general and administrative expenses
IDM – Issues and Decision Memorandum adopted by a *Federal Register* notice of final determination of an investigation or final results of review
ISEs – indirect selling expenses
ISELCV – indirect selling expenses, excluding inventory carrying costs, calculated for constructed value
OEM – original equipment manufacturer
SAA – Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994)

[1] *See* Memorandum from Susan Kuhbach, Office Director for AD/CVD Operations Office 1, to Paul Piquado, Assistant Secretary for Import Administration, entitled "2010/2011 Reviews of the Antidumping Duty Orders on Ball Bearings and Parts Thereof from France, Germany, and Italy: Post-Preliminary Analysis and Calculation Memorandum," dated October 16, 2012 (*Post-Preliminary Analysis*).

SG&A – selling, general, and administrative expenses
TOTCV – total constructed value

Discussion of the Issues

1. Targeted Dumping Methodology

Comment 1: Timken argues that the Department should determine that there was a significant pattern of price differences and should apply an alternative method, relying on the average-to-transaction (A-T) method for all of the respondents in these reviews.

Timken argues that the Department has described its determination inconsistently. According to Timken, in the decision memoranda discussing the application of its analysis, the Department concludes that there was not a significant pattern and that accordingly it would rely on the average-to-average (A-A) method. Timken asserts that the latter conclusion is repeated in the Department's general memorandum but that, elsewhere in the same general memorandum, the Department stated the pattern of price difference for comparable merchandise is insufficient to consider whether the A-to-A method can account for the alleged targeted dumping.

According to Timken, in prior determinations, the Department has considered whether the A-T method produced results that differed from the A-A method, whenever it found a pattern of significant price differences. Timken contends that a finding that there was a pattern of significant price differences was based on the "Nails" test (Nails Test). Timken asserts that the Department has now imposed an additional requirement to find a pattern of significant price differences outside of the already stringent requirements of the Nails Test. Thus, Timken avers, once the Nails Test revealed a pattern of significant price differences, the Department proceeded to evaluate whether the differences could be taken into account using the A-A method, or whether those differences required the application of the A-T method.

Timken contends that, as the Department has described its methodology, the "pattern" requirement is addressed in the test and not through an additional, unstated percentage requirement. Citing *Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 64475 (October 22, 2012) (*UAE Pipe*), Timken claims that the first part of the Nails Test determines whether there is a pattern of price differences. Citing *UAE Pipe*, Timken asserts that the second part of the Nails Test determines whether the differences are significant and, if so, the Department proceeds to its evaluation of the different comparison methods, without imposing an additional requirement.

Citing *Certain Steel Nails From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012) (*UAE Nails*), Timken argues that the Department has specifically rejected the application of an additional *de minimis* requirement on the grounds that the respondent "did not demonstrate why the prices for products corresponding to a small percentage of overall sales cannot be found to exhibit a pattern under the statute" and that "the targeted sales are not likely to account for a significant portion of sales because, by definition, targeting is an act of selectively pursuing a specific market segment or product." Timken claims that this is consistent with other determinations, such as *Multilayered Wood*

Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) (*Wood Flooring*), and *High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012). While acknowledging the Department's decision in *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012) (*Taiwan SBAs*), Timken contends that that decision appears to have been uncontested by other parties and is contrary to other decisions of the Department, which, in contrast, were fully contested by the interested parties.

Timken further argues that the application of a *de minimis* test would be even more inappropriate in reviews. According to Timken, the statute directs the Department to determine the normal value and export price of each entry in reviews (but not in investigations), and the dumping margin for each such entry. Further, Timken asserts that different (*i.e.*, reduced) *de minimis* thresholds apply in reviews because, in an investigation, the Department examines the exporters' overall pricing behavior as a class to determine whether a product was dumped in an investigation, whereas, in reviews, the Department examines pricing behavior in individual transactions by specific exporters with the purpose of neutralizing any dumping that is found. Timken argues that, even if the Department should apply an additional *de minimis* standard, it should be based on all sales to targeted customers/regions/periods. According to Timken, the Department calculated the percentage of targeted sales using a numerator consisting of the total value (or total quantity) of only the targeted sales, and a denominator consisting of all export sales by the examined exporter. Timken contends that the targeting test is used to identify the targeted customers/regions/time periods based on numerical tests that identify an inherently small number of sales to make that determination. Timken argues that, if the Department is to impose a new super-statutory requirement that, in addition to there being a pattern of significant price differences to a customer, region, or period there must also be a minimum quantity of sales to those targeted entities, the Department should not rely on quantities determined for a different purpose (*i.e.*, the identification of a pattern). Rather, Timken avers, the Department should employ a measure of targeted sales (*i.e.*, the quantity of sales to a targeted entity).

Finally, Timken asserts that the Department has consistently applied the A-T method whenever the test revealed a pattern of significant price differences, and the A-T method yielded different results from the A-A method. Timken argues that the Department should apply a consistent approach in the instant administrative review. Citing *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8107 (February 14, 2012) (*Final Modification for Reviews*), Timken contends that this would be in keeping with the Department's explanation, when the Department introduced the changes to reviews in the *Final Modification for Reviews*, that the approach in administrative reviews paralleled the approach taken in original investigations, including the use of an alternate method when appropriate.

The respondents agree with the Department's conclusion that their allegedly targeted sales are insignificant under the Nails Test and that the application of the A-T method is inappropriate. Citing *Taiwan SBAs*, the respondents assert that, contrary to Timken's argument, the Department has previously considered the portion of targeted sales in relation to a respondent's overall sales. SKF also argues that the cases cited by Timken do not support its position that the Department cannot perform a separate analysis comparing the volume of targeted sales to the total U.S. sales volume. According to SKF, the Department did not prohibit such an analysis in *UAE Nails* but, rather, found that the respondent did not demonstrate why the prices for products corresponding to a small percentage of overall sales cannot be found to exhibit a pattern under the statute. Schaeffler avers that investigation precedent may be instructive, but the Department is not required to follow it and, as a result, Timken's description of the Department's Post-Preliminary Analysis as having imposed "a new super-statutory requirement" is wrong. According to Schaeffler, the statute does not mandate or even authorize a targeted dumping analysis in administrative reviews, and the Department's authority to do so, or to conduct any other type of analysis in deciding whether to deviate from the A-A method derives from its own regulations. SKF argues that a *de minimis* analysis is necessary since the Department's practice is to use zeroing for all sales – not just targeted sales – when the Nails Test is satisfied. SKF asserts that, since the targeted dumping remedy is so drastic, it is not only reasonable, but required, that the Department ensure that the level of targeted sales is more than negligible.

The respondents argue that the Department does not have the statutory or regulatory authority to conduct a targeted dumping analysis in administrative reviews. According to the respondents, the statutory provision authorizing a targeted dumping analysis is provided only for investigations and not for administrative reviews. Citing *FAG Italia S.p.A. v. United States*, 291 F.3d 806 (Fed. Cir. 2002) (*FAG*), the respondents claim that the Department has claimed authority to act under one statutory provision based on the authority Congress granted to it under a separate provision in the past but that the U.S. Court of Appeals for the Federal Circuit vacated that attempt. Citing *Nken v. Holder*, 556 U.S. 418, 430 (2009) (*Nken*), the respondents assert that the Supreme Court has stated plainly that where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.

Citing *Dongbu Steel Co., Ltd. v. United States*, 635 F.3d 1363 (Fed. Cir. 2011) (*Dongbu*), and *JTEKT Corp. v. United States*, 642 F.3d 1378 (Fed. Cir. 2011) (*JTEKT*), the respondents contend that, in addition to being contrary to the methodology that the Department itself implemented in the *Final Modification for Reviews*, the Department's zeroing methodology has been called into question by the U.S. Court of Appeals for the Federal Circuit twice in the past two years. The respondents also argue that the underlying orders in this review were the subject of one of the WTO cases that led to the *Final Modification for Reviews* and the elimination of the zeroing methodology in reviews. Given that the European Communities and the United States have agreed to end the zeroing dispute and given that the Department has likewise adopted and implemented the *Final Modification for Reviews*, which applies to this review, the Department cannot now revert back to zeroing under the guise of targeted dumping allegations.

According to NTN-SNR, the foundation for Timken's February 17, 2012 targeted dumping analysis, upon which the Department now relies, is Timken's submission dated November 17, 2011, which Timken claimed to be "factual information pertaining to targeted dumping." NTN-SNR asserts that the Department did not request this information and, likewise, Timken had no basis for submitting it. NTN-SNR avers that Timken's November 17, 2011, submission should be removed from the record and that, once removed, there is no basis for Timken's targeted dumping allegation.

NTN-SNR further argues that the Department does not have the authority to issue a "post-preliminary" determination. According to NTN-SNR, the statute instructs the Department to make two determinations in an administrative review: a preliminary and a final. NTN-SNR contends that deadlines in administrative reviews are set by statute, with the regulations further advancing the goal of determining final assessment rates in a timely fashion and reducing the uncertainty surrounding liability for dumping duties and that, by issuing this interim determination, the Department is inflating the already tedious review process and wasting resources by requiring interested parties such as NTN-SNR to again file case briefs and again consider detailed calculations that may affect final assessment on POR entries. According to NTN-SNR, the Department has offered no rationale for why this unauthorized additional determination was necessary or furthered the purpose of calculating accurate margins. Accordingly, NTN-SNR contends, the Department should remove the "Post-Preliminary" determination from the record.

SKF argues that Timken's targeted dumping allegation provides no explanation as to why and how SKF supposedly selected the alleged targeted customers, time periods, and region, and thus allegedly engaged in targeted dumping. According to SKF, such an explanation is necessary for the Department to initiate a targeted dumping inquiry, because it is required to determine whether any observed pricing pattern is the result of an intentional targeted dumping strategy or is simply an unintended result of a variety of other, unrelated factors.

The respondents contend that the Department's targeted dumping analysis relies on an assumption that their U.S. sales create a normal distribution. The respondents claim that their pricing data generally do not conform to a normal distribution, and therefore a standard deviation test is not indicative of price distribution among these datasets. The respondents assert that the Department's methodology ultimately includes hundreds of units in the targeted dumping pool for any deviation in excess of the standard, even when based on pricing variations of mere cents, which allows the "test" to be satisfied as a result of minor pricing variations.

NTN-SNR claims that the Nails Test permits the Department to label sales as "targeted" even if the pricing pattern is not statistically significant, despite the statutory requirement that prices must differ significantly. NTN-SNR asserts that, when comparing a sample to the population, the standard practice in economics and other fields is to hold that the mean of the sample is statistically significant if it differs from the mean of the population by at least two standard deviations. NTN-SNR contends that finding significance in a difference of less than two standard deviations makes it much more likely to find pricing patterns, regardless of how the exporter sets its prices.

SKF argues that Timken's allegation does not account for levels of trade, even though SKF sells at multiple levels of trade in the United States and home markets. SKF contends that it is not possible to accurately analyze pricing differences without controlling for the level of trade at which the sales were made. SKF asserts that the Nails Test is unreasonable in this case because it fails to isolate meaningful pricing differences within the meaning of the statute. According to SKF, when levels of trade are properly taken into account, the targeted dumping test is not satisfied with respect to Timken's alleged targeted time periods and region.

NTN-SNR argues that the Department provided no discernible rationale for how it will now set the threshold that determines when there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among purchasers. Instead, according to NTN-SNR, the Department concluded that there is no such a pattern here. NTN-SNR contends that this broad conclusion is not a substitute for analysis and reason. In addition, NTN-SNR avers, the Department's two-pronged targeted dumping analysis lacks meaningful discussion as to the two thresholds it does set (*i.e.*, the standard deviation test and the gap test).

In addition, NTN-SNR argues that the Department fails to state whether and to what extent there is a meaningful difference between the A-to-A and A-to-T methods, or why it is necessary to apply zeroing to the entire database, rather than a smaller subset, and that it also fails to mention the standard it uses to determine when to apply its A-to-T method. According to NTN-SNR, the Department's lack of explanation strips interested parties of their right to provide meaningful comment even though their weighted-average dumping margins may be arbitrarily inflated based on statistical anomalies.

SKF argues that the Department should reject Timken's time period allegation because the allegedly targeted time periods fail the targeted dumping test when considered together instead of separately. SKF contends that, if the Department determines to conduct a targeted dumping analysis, it must provide a reasoned explanation for its decision to analyze the alleged time targeted time periods separately based on the facts of this case. In the alternative, SKF avers, given the lack of factual or commercial explanation of the significance of the non-consecutive alleged time periods, the Department should perform the targeted dumping analysis two times – alternatively considering the periods separately and combined – and then reject the allegation if it fails the test under either approach.

SKF argues that, although it agrees with the Department's decision to compare the level of sales found to be targeted to total U.S. sales in order to determine whether any observed pattern of price variations is significant, this comparison should be made separately for each targeted parameter, rather than as a single comparison based on the combined percentage of sales found to be targeted under all allegations. SKF claims that, where there are three separate allegations (*i.e.*, as to customers, regions, and time periods), there are necessarily three separate pricing patterns and that, in order to determine whether any one pattern is significant, it must be compared individually to total U.S. sales volume. SKF avers that adding together the percentage of sales found to be targeted by any parameter is to add apples and oranges and could result in a positive finding when each of three pricing patterns, viewed separately, would not be significant in comparison to total U.S. sales.

Finally, Schaeffler argues that the Department reasonably summed the value and quantity of alleged targeted sales and divided those sums by the total value and quantity of sales reported in the U.S. sales database to arrive at its share of targeted sales. According to Schaeffler, Timken advocates that the Department should employ a "consistent numerator," which would consist of not just alleged targeted sales, but all reported sales, targeted or otherwise, for those groups found to have been targeted. Schaeffler claims that, in a situation where the Department found that one reported sale to a customer was targeted out of a total of 25 reported sales to that customer, Timken would have the Department include the value and quantity of all 25 sales in the numerator of its equation for determining the share of targeted sales. Schaeffler asserts that this approach defies logic and is even inconsistent with the guidelines set forth in the statute, which address targeted sales only (*i.e.*, those establishing a pattern of significant price differences, and not all sales to the affected groups). Schaeffler avers that adopting Timken's suggestion would result in a measurement bearing no reasonable relation to the point of the exercise -- it would not, as the Department has done here, compute the volume and value of U.S. sales that were targeted, but something else entirely.

Timken rebuts the respondents' arguments by arguing that the Department does have statutory authority to conduct a targeted dumping analysis in annual reviews. Timken asserts that the statute, in the case of reviews, provides ample latitude: as the Department correctly observed, while section 777A(d)(1) of the Act describes methodologies and provides criteria for their selection, section 777A(d)(2) of the Act simply directs how A-T comparisons should be made when such comparisons are used. Thus, Timken avers, in contrast to section 777A(d)(1) of the Act, section 777A(d)(2) of the Act does not make reference to any specific comparison methodology to be used in reviews. According to Timken, the Department correctly interprets this structure as mandating certain criteria for selecting a comparison methodology in original antidumping investigations, but leaving the Department considerable discretion in selecting an appropriate comparison methodology in administrative reviews.

Timken further argues that in the case of administrative reviews, the statute instructs only that when comparing export prices of individual transactions to the weighted average price of sales of the foreign like product, the Department must confine such averaging to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale. Timken avers that this instruction necessarily implies that A-T comparisons can lawfully be made in reviews.

Timken acknowledges that the statute sets out the criteria justifying the reliance on A-T comparisons over A-A comparisons only in the context of its instructions for investigations but avers that this merely reflects the fact that it is only in the context of investigations that the statute expresses a preference for A-A comparisons. According to Timken, the Department now applies a preference for A-A comparisons in annual reviews to comply with WTO dispute settlement decisions. Timken contends that, because of this change, the statutory criteria justifying A-T comparisons over the default reliance on A-A comparisons, previously applied in investigations, are now equally relevant for annual reviews. Citing *Dongbu*, Timken contends that the Department's application of these same statutory criteria for like purposes in the context of annual reviews is clearly lawful, if not required.

Timken argues that the *FAG* holding cited by the respondents has no application here. According to Timken, contrary to the instruction at issue in *FAG*, the instruction at issue here is not limiting; the statute contains no instruction on what comparison method should be used, but simply instructs that if A-T comparisons are used, averaging must be limited. Timken also contends that the respondents' reliance on *Nken* is inapposite because the statute does not "omit" the language; the language is not there because the statute's instruction on reviews assumes the use of A-T comparisons – thus, there is no need to insert a provision permitting the use of A-T comparisons to account for differing prices.

Timken further argues that the Department's post-preliminary disclosures are lawful. According to Timken, the Department's analysis does not stop with the issuance of a preliminary results and the Department often makes additional determinations or conducts verification even after the preliminary results have issued. In fact, Timken claims, the Department routinely modifies preliminary determinations after the presentation of comments by interested parties and these modifications are then reflected in the final results.

In addition, Timken argues that the Department is authorized to use zeroing to address targeted dumping. According to Timken, the Department's position is not contrary to the statute nor is there any inconsistency. According to Timken, the alleged inconsistency in statutory interpretation that was challenged in *Dongbu* and *JTEKT* applies, if at all, only to annual reviews conducted under the Department's prior methodology; under the new methodology, the Department's methodology in annual reviews aligns with the methodology in investigations, including the application of alternate comparisons to address targeted dumping.

With respect to the respondent's criticisms of the Nails Test, Timken asserts that the Department addressed similar arguments in earlier decisions, and rejected them. Citing *Certain Oil Country Tubular Goods from the People's Republic of China, Final Determination of Sales at Less Than Fair Value*, 75 FR 20335 (April 19, 2010), Timken contends that the Department "considers the price threshold of one standard deviation below the average market price as a reasonable indicator of a price difference that may be indicative of targeted dumping because (1) it is a distinguishing measure relative to the spread or dispersion of prices in the market in question, and (2) it strikes a balance between two extremes, the first being where *any* price below the average price is sufficient to distinguish the alleged target from others, and the second being where only prices at the very bottom of the price distribution are sufficient to distinguish the alleged target from others" and that, in contrast "the number of sales with prices that are two standard deviations below the average market prices is too restrictive a standard because it would likely only identify outliers in the observed price data and not identify a pattern of targeted prices within the observed price data."

Timken asserts that the objection that a dataset with a normal distribution is required for the Department's analysis is inapposite. According to Timken, the Department's approach reflects that NTN-SNR's U.S. sales database is a complete set of the sales relevant to the Department's investigation, not a sample because the Department required the submission of all U.S. sales, not a sample or subset of U.S. sales. Timken claims that the Department employs the standard deviation test to determine whether sales prices to a targeted group are "lower" than prices to a non-targeted group -- not to make predictions about a sampled dataset. Thus, Timken avers, regardless of whether the distribution of NTN-SNR's U.S. prices is "normal" or not, the Department is able to identify, *via* the use of a standard deviation, a pattern of pricing differences (*i.e.*, targeted prices that are lower than non-targeted prices).

Timken argues that the Department does not need to provide additional justifications. Timken contends that SKF's argument that some additional showing of intent is required is in error. According to Timken, intent to target particular customers, regions, or time periods has never been an element of the Department's analysis. Timken avers that it is meaningful that the statute does not speak of targeted dumping *per se*; rather it speaks simply of a pattern of pricing differences.

Timken also argues that the Department should not combine non-consecutive time periods. Timken asserts that SKF's additional discussion appears nothing but a variant of its original argument that some additional showing of intent is required, but a showing of any special intent is not required. Moreover, Timken claims, a group of sales identified as targeted may not appear to be targeted when averaged or grouped with another group of sales but the original group continues to be priced differently from other sales. Timken further asserts that the Department has accepted allegations of time period targeting on a monthly basis in other proceedings.

Timken argues that SKF cites no support for its proposition that levels of trade must be taken into account. Timken claims that the statute contains no instruction on the matter. Moreover, Timken asserts, the Department found that all of SKF's U.S. sales, which were CEP sales, constituted a single level of trade. Accordingly, Timken avers, no adjustment is required.

Finally, Timken argues that the Department should not separately compare the volume for each targeted parameter to total sales. Timken contends that SKF does not explain its assertion that adding together the percentage of sales found to be targeted by any parameter is to add apples and oranges. According to Timken, the purpose of the test is only to determine whether there is a pattern of export prices (or constructed export prices) that differ significantly among purchasers, regions, or periods of time and, if so, the Department determines whether the differences require the application of an alternate method. Timken contends that, for the purpose of the statutory analysis, it makes no difference whether the sales are targeted on the basis of customer identity, or time period, or region and, accordingly, there is no reason to make separate evaluations as proposed by SKF.

Department's Position: We continue to find, for each respondent, that a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods does not exist and, therefore, the Department has not considered whether the A-A method can account for the observed price differences.[2]

<u>Legal Framework For The Application of An Alternative Methodology</u>

The respondents claim that the Department does not have the statutory authority to employ an alternative comparison method and to use the targeted dumping analysis in administrative reviews. We disagree. Section 771(35)(A) of Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." The definition of "dumping margin" calls for a comparison of normal value and export price or constructed export price. Before making the comparison called for, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act describes three methods by which the Department may compare

[2] *See* the post-preliminary analysis memoranda for NTN-SNR and Schaeffler Italia dated October 16, 2012, and the final calculation memoranda for myonic and SKF dated concurrently with this memorandum.

normal value and export price (or constructed export price) and places certain restrictions on the Department's selection of a comparison method in antidumping investigations. The statute places no such restrictions on the Department's selection of a comparison method in administrative reviews. The Department's regulations at 19 CFR 351.414 describe the methods by which normal value may be compared to export price or constructed export price in administrative reviews: average-to-average, transaction-to-transaction, and average-to-transaction. These comparison methods are distinct from each other. When using transaction-to-transaction or average-to-transaction comparisons, a comparison is made for each export transaction to the United States. When using average-to-average comparisons, a comparison is made for each group of comparable export transactions for which the export prices or constructed export prices have been averaged together (*i.e.*, for an averaging group). The Department's regulations at 19 CFR 351.414(c)(1) fill the silence in the statute on the choice of comparison method in the context of administrative reviews. In particular, the Department has determined that in both antidumping investigations and administrative reviews, the average-to-average method will be used "unless the Secretary determines another method is appropriate in a particular case."

The antidumping duty statute, the SAA, and the Department's regulations do not address directly whether the Department should use an alternative comparison method in an administrative review based upon a targeted dumping analysis conducted pursuant to section 777A(d)(1)(B) of the Act. *See* section 777A(d)(1)(B) of the Act; SAA, at 842-43; 19 CFR 351.414. In light of the statute's silence on this issue, the Department recently indicated that it would consider whether to use an alternative comparison method in administrative reviews on a case-by-case basis, but declined to "speculate as to either the case-specific circumstances that would warrant the use of an alternative methodology in future reviews, or what type of alternative methodology might be employed." *See Final Modification for Reviews*, 77 FR at 8107. At that time, the Department also indicated that it would look to practices employed by the agency in antidumping investigations for guidance on this issue. *See Final Modification for Reviews* at 8102.

In antidumping investigations, the Department examines whether to use an A-T method by using a targeted dumping analysis consistent with section 777A(d)(1)(B) of the Act:

> The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if
>
> (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
>
> (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of an administrative review, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in antidumping investigations. Accordingly, the Department finds the analysis that has been used in antidumping investigations instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The SAA does not demonstrate that the Department should conduct targeted dumping analysis in investigations only. The SAA does discuss section 777A(d)(1)(A)(i) of the Act, concerning the types of comparison methods that the Department may use in investigations. That provision, however, is silent on the question of choosing a comparison method in administrative reviews. Section 777A(d)(1)(A) does not require or prohibit the Department from adopting a similar or a different framework for choosing a comparison method in administrative reviews as compared to the framework required by the statute in investigations. The SAA states that "section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods." Like the statute, the SAA does not limit the proceedings in which the Department may undertake such an examination. We further disagree that *Dongbu* and *JTEKT* call into question the Department's zeroing methodology in administrative reviews. What the courts called into question was the Department's different interpretations of section 771(36) of the Act. *See Dongbu*, 635 F.3d at 1371, and *JTEKT*, 642 F.3d at 1381-1383. Moreover, the courts did not say that the Department's determinations in these proceedings were unlawful; rather, they asked for a further explanation to support the Department's different interpretations of section 771(36) of the Act. *Id*. The Department has provided its explanation in numerous proceedings justifying its different interpretations of section 771(36) when using A-A method and when using the A-T method, and the Court of International Trade has affirmed this explanation. *See Union Steel v. United States*, 823 F. Supp. 2d 1346 (Ct. Int'l Trade 2012); *Grobest & I-Mei Indus. Vietnam Co. v. United States*, 853 F. Supp. 2d 1352 (Ct. Int'l Trade 2012); *Far Eastern New Century Corp. v. United States*, Slip Op. 12-110 (Ct. Int'l Trade Aug. 29, 2012); and *Camau Frozen Seafood Processing Imp. Exp. Corp. v. United States*, Slip Op. 12-137 (Ct. Int'l Trade Nov. 15, 2012).

We further reject the respondents' assertions that the Department determinations in these administrative reviews are in conflict with the *Final Modification for Reviews*. The *Final Modification for Reviews* was implemented by the Executive Branch, pursuant to section 123 of the URAA, to change the Department's practice related to zeroing in administrative reviews in order to make it consistent with certain WTO panel and appellate body determinations. Neither the *Final Modification for Reviews*, nor the WTO panel and appellate body determinations involved the use of an alternative comparison methodology. Furthermore, no WTO panel or appellate body determination has addressed the use of an alternative comparison methodology pursuant to section 777A(d)(1)(B) or article 2.4.2 of the Antidumping Agreement.

<u>Targeted Dumping Analysis</u>

In recent antidumping investigations and administrative reviews where the Department has addressed targeted dumping allegations, the Department has employed the Nails Test for each respondent subject to an allegation to determine whether a pattern of export prices or constructed export prices for comparable merchandise that differ significantly among purchasers, regions or time periods existed within the U.S. market. The Nails Test involves a two-step process, as described below, that determines whether the Department should consider whether the A-A method is appropriate in a particular situation.

In the first stage of the test, the "standard-deviation test," we determined the share of the alleged targeted group's (*i.e.*, purchaser, region or time period) sales of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price of all sales under review, targeted and non-targeted. We calculated the standard deviation on a product-specific basis (*i.e.*, by control number (CONNUM)) using the weighted-average prices for the alleged targeted group and the groups not alleged to have been targeted. If that share did not exceed 33 percent, then we did not conduct the second stage of the Nails Test. If that share exceeded 33 percent, on the other hand, then we proceeded to the second stage of the Nails Test.

In the second stage, we examined all sales of identical merchandise (*i.e.*, by CONNUM) sold to the alleged targeted group which passed the standard-deviation test. From those sales, we determined the total volume of sales for which the difference between the weighted-average price of sales for alleged targeted group and the next higher weighted-average price of sales to the non-targeted groups exceeds the average price gap (weighted by sales volume) for the non-targeted groups. We weighted each of the price gaps between the non-targeted groups by the combined sales volume associated with the pair of prices for the non-targeted groups that defined the price gap. In doing this analysis, the alleged targeted group's sales were not included in the non-targeted groups; the alleged targeted group's average price was compared only to the average prices for the non-targeted groups. If the share of the sales that met this test exceeded five percent of the total sales volume of subject merchandise to the alleged targeted group, then we determined that targeting occurred.

As explained in the Post-Preliminary Analysis, if the Department determined that a sufficient volume of U.S. sales were found to have passed the Nails Test, then the Department considered whether the A-A method could take into account the observed price differences. To do this, the Department evaluated the difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using the A-T method. Where there is a meaningful difference between the results of the A-A method and the A-T method, the A-A method would not be able to take into account the observed price differences, and the A-T method would be used to calculate the weighted-average margin of dumping for the respondent in question. Where there is not a meaningful difference in the results, the A-A method would be able to take into account the observed price differences, and the A-A method would be used to calculate the weighted-average dumping margin for the respondent in question.

The petitioner has asserted that the Department has created an additional threshold to use the A-T method under section 777A(d)(1)(B) of the Act. We disagree. In *Taiwan SBAs*, and accompanying IDM at comment 1, as in these reviews, even though the Department found that sales had passed the Nails Test, that this was not sufficient to satisfy the pattern requirement of section 777A(d)(1)(B)(i) of the Act:

> As a result of our analysis, we preliminarily determine that the overall proportion of TRM's U.S. sales during the POI that satisfy the criteria of section 777A(d)(1)(B)(i) of

> the Act and our practice as discussed in Nails is insufficient to establish a pattern of EPs for comparable merchandise that differ significantly among certain customers or regions. Accordingly, the Department has determined that criteria established in 777A(d)(1)(B)(i) of the Act have not been met.

Furthermore, the Court of International Trade has opined on this issue in *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221, 1228 (Ct. Int'l Trade 1998), where the Court stated

> Under the appropriate circumstances Commerce has the discretion to *not* apply the targeted dumping exception to its normal methodology, even upon a finding of targeted dumping.

Further, as noted above, section 777A(d)(1)(B) of the Act states that the Department "may" determine whether to use the A-T method to calculate the weighted-average dumping margin if the two criteria, (i) and (ii), are satisfied. Therefore, even if both prongs are met, the statute does not obligate the Department to use the A-T method, or any alternative method, to calculate the weighted-average dumping margin.

Furthermore, we disagree with Timken's assertion that the application of a *de minimis* test would be even more inappropriate in reviews than in investigations. Timken reasons that the statute directs the Department to determine the normal value and export price of each entry in reviews (but not in investigations), and the dumping margin for each such entry and that, in reviews, the Department examines pricing behavior in individual transactions by specific exporters with the purpose of neutralizing any dumping that is found. However, this is no longer true; we normally calculate weighted-average dumping margins in both investigations and administrative reviews using the A-A method. *See* 19 CFR 351.414(c)(1). We only depart from this where the facts warrant and, as described above, they do not warrant departure from the A-A method in these reviews.

We also disagree with Timken's argument that we should include all sales to an alleged targeted group rather than just the sales which we find to be targeted. The sales to an alleged targeted group which we did not find to be targeted by definition are not part of the pattern of prices that differ significantly among purchasers, regions, or periods of time; if they were, we would also have found them to be targeted. Thus, there is no justification for including such sales when attempting to determine whether the pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods exists in order to consider whether the A-A method can account for the observed price differences.

Finally, contrary to Timken's assertion, we have not applied the A-T method in all cases where sales passed the Nails Test and the A-T method yielded different results from the A-A method. *See Taiwan SBAs*, 77 FR at 17028. The fact that the parties did not comment on our decision in *Taiwan SBAs* does not in any way impair or discredit our analysis in that investigation. We acknowledge that our decision in *Taiwan SBAs* differs from our decisions in other proceedings, but that is because the facts of the various cases were different. For example, Timken cites to *UAE Nails* for its proposition that the Department has specifically rejected the application of an additional *de minimis* requirement; while we cannot specify the data we examined in *UAE Nails* in the context of these reviews because that data is business proprietary data from another proceeding, we can state that the facts of *UAE Nails* are significantly different from the fact patterns we observed in these reviews.

We also disagree with NTN-SNR's claim that we do not have the authority to issue a post-preliminary analysis. While it is true that the statute provides that we issue, at minimum, a preliminary results and a final results of administrative reviews, there is no statutory or regulatory prohibition against interim analyses being placed on the record with a request for comment and/or case and rebuttal briefs from interested parties. We have previously issued post-preliminary determinations where we faced difficult issues and the courts have never opined that such practice is contrary to law.

With respect to NTN-SNR's assertion that we should have rejected Timken's factual submission, Timken's submission was timely filed because we extended the deadline for the submission of new factual information until November 17, 2011. *See* letter to interested parties dated October 5, 2011. Timken filed its submission on November 17, 2011; thus, it was timely filed. In any event, Timken did not rely on its November 17, 2011, submission in making its targeted dumping allegation against NTN-SNR. In its targeted dumping allegation against NTN-SNR, Timken referred to its November 17, 2011, submission exactly once: when it cited *Wood Flooring*, Timken observed that it had submitted a copy of the relevant pages of *Wood Flooring* in its November 17, 2011, submission. *See* Timken's targeted dumping allegation against NTN-SNR dated February 17, 2012, at 4. Timken, however, could have cited *Wood Flooring* regardless of whether it had submitted a copy of that case in its targeted dumping allegation. Thus, Timken's November 17, 2011, submission is not relevant to either its targeted dumping allegation nor to our targeted dumping analysis.

With respect to SKF's argument that the Department should reject Timken's targeted dumping allegation because it did not provide any explanation as to why and how SKF supposedly selected the alleged targets, Congress did not speak to the "intent" of the producers or exporters in setting prices that are significantly different as between the periods of time being examined, nor did it provide that the Department is prohibited from conducting an analysis under this provision if certain products might be seasonal in nature. Instead, Congress stated that "the Administration intends that in determining whether a pattern of significant prices differences exist, Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another." *See* SAA at 843. Consistent with section 777A(d)(1)(B) of the Act and the language of the SAA, the Department has analyzed whether or not a pattern existed, and whether or not differences in prices were significant. The Act and legislative history do not require that the Department conduct an additional analysis to determine the reasons that significant differences in prices exist. As stated in *Nails from the UAE*, comment 1, the Department is not required to determine

> "why" an exporter's pricing behavior may differ significantly as between different customers, regions or time periods. Indeed, inserting this kind of standard into a targeted dumping analysis is nowhere found in the Act and it would likely create an unmanageable standard for the Department. Instead, the Act requires the Department to

> determine whether a pattern of export price differences exists without regard to "why." When such a pattern exists, the Act indicates that export prices may not be appropriate for application of the A-A comparison methodology.

With respect to the remaining arguments from respondents regard the specifics of the Nails Test, we find that none of them affect our determination in these final results that a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions or time periods does not exist, and to continue to use the A-A method to calculate the weighted-average dumping margin for each respondent. Therefore, for purposes of these final results of review, we have not considered the remaining arguments.

2. ISEs, Packing, and Inland Freight Costs

Comment 2: Timken claims that NTN-SNR included costs incurred at warehouses not involved in the sale of the foreign like product with respect to home market sales and, therefore, overstated its ISEs, packing, and freight costs. Timken explains that NTN-SNR stated in its section B response that upon purchase, bearings are delivered to home-market customers from NTN-SNR's Central, St. Vulbas Distribution Network, Argonay, or Chambéry warehouses. However, in its verification exhibits, Timken argues, NTN-SNR included the cost centers associated with other warehouses as well.

NTN-SNR states that it is not necessary to revise its home market cost calculations and that Timken has misinterpreted its cost methodology. NTN-SNR argues that because there were so few sales involving these warehouses during the POR it did not find it necessary to include them in its narrative description of the general sales process. Nevertheless, it argues, a small portion of home-market sales were sold from these warehouses and, therefore, it is necessary to include certain costs associated with these warehouses when calculating NTN-SNR's home market ISEs, packing, and freight costs.

Department's Position: In its narrative response NTN-SNR stated that freight expenses on OEM sales are recorded in inland freight accounts and the Chambéry warehouse account (cost center 19). The freight expenses on distributor sales are recorded in the NTN-SNR Distribution Network cost centers, the St. Vulbas warehouse cost centers and in the inland freight account (cost center 84). Then, in its exhibits, NTN-SNR provided a list of all relevant cost centers which included several that were not detailed in the narrative. *See* NTN-SNR's October 13, 2011 section B questionnaire response at B-40 and exhibits B-B, B-D, B-E, and B-G.

Timken raised this concern in its pre-verification comments and we reviewed NTN-SNR's cost centers and home-market expenses in detail during verification. While NTN-SNR's narrative response did not include a discussion of certain other cost centers involved in the production and sale of foreign like product, NTN-SNR provided sufficient supporting documentation to show that it had actually incurred these costs. As discussed in our verification report, when reviewing the cost center codes that are relevant to the production, sale and distribution of ball bearings, we asked NTN-SNR to provide us with a more detailed description of these other cost centers. This included the cost centers associated with certain warehouses not identified in the narrative response. We found no discrepancies while conducting this exercise during verification.

Furthermore, we found that the supporting documentation provided by NTN-SNR at verification (*see* verification exhibit 10) does not contradict the information already provided by NTN-SNR in its response. Because NTN-SNR was able to substantiate the information regarding these additional cost centers during verification, we have not made any revisions to its cost calculations for the final results.

3. G&A Expenses

Comment 3: Timken argues that the Department should recalculate Schaeffler's G&A expenses to include the amounts for "General and administrative expenses" that were reported in the calculation of indirect selling expenses for both Schaeffler and Schaeffler Technologies.

According to Timken, the SAA states that, if a producer and an exporter of subject merchandise are separate companies, "Commerce may continue to calculate constructed value based on the total profit and total SG&A expenses realized and incurred by both companies." Citing *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 72 FR 58053 (October 12, 2007) and accompanying IDM at 48, Timken contends the Department has instructed that, when using an unaffiliated supplier's costs of production, it is the Department's practice to include the general and administrative expenses of both the producer and the reseller in its cost of production calculation.

Timken asserts that Schaeffler's cost reporting does not comply with the Department's instructions. According to Timken, Schaeffler explained that it did not separately report G&A expenses because Schaeffler was only a reseller and, therefore, none of its general and administrative expenses were related to manufacturing. Instead, Timken claims, Schaeffler stated that it included G&A expenses in its calculation of indirect selling expenses.

Schaeffler argues that the Department should reject Timken's argument. According to Schaeffler "cost of production," under the Department's long-standing practice, is limited to costs incurred in actually producing the merchandise under consideration. Schaeffler asserts that it has no role whatsoever in the production of merchandise performed by its supplier.

Schaeffler contends that the SAA does not *require* the Department to add the SG&A expense of the respondent to the unaffiliated producer; rather, the inclusion of the G&A expenses of the unaffiliated respondent is discretionary. Schaeffler argues that, because Schaeffler Technologies is operating in the same manner as that of a distributor, its overhead expenses should be treated as indirect selling expenses. Schaeffler contends that the SAA allows the respondent's cost to be included in the "S" portion of SG&A, which Schaeffler has done by reporting its German overhead expenses in indirect selling expenses.

Schaeffler argues that including Schaeffler Technologies' G&A expenses in the supplier's cost of production would be highly distortive because they are related solely to German production. Schaeffler asserts that, in Germany, Schaeffler produces far more bearings, and in many more types and designs, than are produced by the independent supplier in Italy. Schaeffler claims that it is unaware of an instance in which the Department crossed countries in order to capture G&A

expenses, except when the G&A at issue was related to a foreign parent, which is not the case here. Finally, Schaeffler argues that if the Department decides to include Schaeffler's overhead in the G&A expenses for the COP of the supplier's products, it must also remove such expenses from the reported indirect selling expenses.

Department's Position: Section 773(b)(3)(B) of the Act provides that, for purposes of the cost test, COP include "an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question." Section 773(e)(2)(A) of the Act provides that CV include "the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country." Thus, for both the cost test and CV, the statute directs us to account for both selling and G&A expenses. Accordingly, regardless of whether the G&A expenses in question are classified as selling expenses or as G&A expenses, we agree with Timken that it is appropriate to account for them in the cost test and CV.

We disagree with Timken's apparent assertion, however, that we did not do so for the *Preliminary Results*. In fact, we did account for them. As Timken observes, Schaeffler reported the G&A expenses in question in its calculation of indirect selling expenses for home-market sales. *See* Schaeffler's section B response dated September 29, 2011, at exhibit 12.

We accounted for Schaeffler's reported indirect selling expenses in the cost test. *See* section 4-B-ii of the comparison-market program log attached to Schaeffler's preliminary results analysis memorandum dated May 30, 2012, where we subtract the indirect selling expenses reported for home-market sales (*i.e.*, the variable CMISELL) in our calculation of the net price for use in the cost test (*i.e.*, the variable CMNPRICOP).[3]

We also accounted for Schaeffler's reported indirect selling expenses in our calculation of constructed value. *See* section 9-B of the margin program log attached to Schaeffler's preliminary results analysis memorandum dated May 30, 2012, where we include indirect selling expenses reported for home-market sales (*i.e.*, the variable ISELCV) to our calculation of constructed value (*i.e.*, the variable TOTCV).

Accordingly, no change is necessary. Moreover, if we were to increase the G&A expense variable to include the amount of the expenses in question, we would have to remove them from Schaeffler's reported indirect selling expenses to avoid double counting the expenses in question.

4. U.S. Warehousing Expenses

Comment 4: Timken argues that the Department should apply Schaeffler USA's warehouse

[3]For purposes of the cost test, we normally subtract selling expenses from the price which is compared to COP (*i.e.*, the CMNPRICOP variable) rather than include them in COP. We do this for ease of programming because selling expenses are typically reported in the sales database whereas G&A expenses are typically reported in the cost database. Mathematically, this achieves the same result as including the selling expenses in COP. To the best of our knowledge, no party in any proceeding has objected to this practice.

expense ratio to six transactions where the expense was omitted.

Schaeffler argues that the Department should reject Timken's argument. Schaeffler contends that the reason the expense was not reported for those transactions was because it was not incurred. According to Schaeffler, this was fully explained and documented in its supplemental response of May 31, 2012.

Department's Position: Timken originally raised this issue in its pre-preliminary comments. *See* Timken's submission dated May 15, 2012, at 10. In order to resolve this issue, we sent a supplemental questionnaire. *See* the supplemental questionnaire dated May 24, 2012. Schaeffler responded to our questionnaire, but we did not receive Schaeffler's response in time to address it in the *Preliminary Results*. *See* Schaeffler's supplemental response dated May 31, 2012.

Schaeffler explained that, with respect to five of the six transactions in question, the products were shipped directly from Germany to the customer's designated location or recipient in the United States and did not pass through the U.S. warehouse. *Id*. Because our analysis with respect to the sixth transaction involved business proprietary information, *see* the memorandum entitled "Ball Bearings from Italy - Final Results Analysis Memo for Schaeffler Italia S.r.l." dated December 4, 2012, for further details. As a result of our analysis, however, we determine that Schaeffler properly reported its warehousing expenses for all of the transactions in question. Accordingly, no change is necessary.

5. Interest Expense Calculation

Comment 5: Timken argues that, consistent with the Department's practice, the COGS figure used in the denominator of the calculation of SKF's interest expense ratio should be revised to exclude other expenses SKF did not include in the COM such as packing expenses. Timken states that the adjustment could be easily done as the data is already on the record. Thus, for the final results, the Department should make this revision.

SKF maintains that it has reported its financial-expense ratio accurately and reasonably. It explains that it based the calculation on the SKF Group's audited consolidated financial statements. For this reason, SKF argues, its use of the COGS as reported in the consolidated financial statements is the only reasonable basis upon which to calculate the financial-expense ratio. If the Department were to decide to use a COM rather than a COGS denominator, SKF states that it has provided in its response to the Department's supplemental questionnaire the necessary information to adjust the financial-expense ratio. SKF argues that the result of such an adjustment would be insignificant, as defined by 19 CFR 351.413, and therefore the Department should treat it as such.

Department's Position: It is the Department's practice to reduce the COGS denominator used in the calculation of the G&A and the financial-expense ratios by the cost of packing, selling expenses, and movement costs in order to keep the calculation on the same basis as the COM to which it is applied. *See* "Issues and Decision Memorandum for the Antidumping Duty Administrative Reviews of Ball Bearings and Parts Thereof from France, Germany, and Italy for the Period of Review May 1, 2009, through April 30, 2010," dated August 18, 2011, at comment

9. SKF has provided the information necessary to adjust the COGS denominator in such a manner. Therefore, for the final results, we have revised the calculation of the financial-expense ratio to reduce the COGS denominator in order to keep the calculation on the same basis as the COM to which it is applied.

6. Capping Interest Revenue at the amount of Credit Expenses

Comment 6: SKF explains that it reported, for home market interest revenue, amounts collected for late payments from customers on certain sales. In those instances where the home market interest revenue exceeded its home market credit expenses for a particular sale (CREDITH), SKF asserts, the Department did not limit the revenue by the amount of the expense, which is contrary to the Department's established practice explained in, *e.g.*, *Light-Walled Rectangular Pipe and Tube From Mexico; Final Results of Antidumping Duty Administrative Review*, 76 FR 9547 (February 18, 2011), and the accompanying IDM at comment 6 (*Rectangular Pipe from Mexico*), *Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review*, 77 FR 39467 (July 3, 2012) (*SSBar from India*), and *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 32508 (June 1, 2012) (*Steel Pipes from Turkey Prelim*). SKF requests that for the final results, the Department cap its home market interest revenues by the credit expenses.

Timken argues that the Department should reject SKF's request. Timken concurs that while the Department often treats certain revenues as offsets to the specific expenses for which they are intended to compensate, this practice is not applicable here as the revenues arise from late payment charges and more appropriately serve as a post-sale price increase rather than proceeds intended to compensate a given expense. Because there is no direct connection between the expenses, which are reported for every sale where payment is not received at the time of shipment, and the revenues, which arise from late charges, the interest revenue is properly accounted for as a price adjustment.

Timken argues that the three determinations cited by SKF are not instructive to the instant case. Rather, Timken argues, the circumstances in *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 76 FR 50176 (August 12, 2011) and accompanying IDM at comment 2 (*Orange Juice from Brazil*) are more applicable to this case. In *Orange Juice from Brazil*, Timken contends, the Department treated interest revenue as a price adjustment and not an offset to a specific expense which, the Department explained, was supported by the precedent of *Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 2909 (January 18, 2006) and accompanying IDM at comment 9 (*Cement from Mexico*). In *Orange Juice from Brazil*, Timken contends, the Department found that, because it was received for late payments, the interest revenue should not be treated similarly to other types of revenue and declined to cap it by the credit expense. In *Rectangular Pipe from Mexico*, Timken asserts, the Department capped both interest revenues and freight revenues but relied on a decision that only addressed freight revenues. Finally, in *SSBar India*, Timken argues, the Department incorrectly cited *Orange Juice from Brazil* to support its decision to cap interest revenues. To the contrary, Timken explains, the Department did not cap interest revenues in *Orange Juice from Brazil*. In *Steel Pipes from Turkey Prelim*, the Department relied on a determination in an earlier administrative review of the antidumping duty order on orange juice from Brazil whereas the more recent decision in *Orange Juice from Brazil* establishes the Department's current practice of treating interest revenue as a price adjustment, and not an offset.

Department's Position: We agree with Timken that the Department's practice is to treat interest revenue when received for late payments as a post-sale price adjustment and not as an offset to a specific expense. As explained in *Orange Juice from Brazil*, "the statute does not speak to the treatment of fees associated with late payments. In such circumstances, the Department must determine the most appropriate methodology to use," referencing *U.S. Steel Group v. United States*, 225 F.3d 1284, 1290 (Fed. Cir. 2000) and *Smith-Corona Group v. United States*, 713 F.2d 1568, 1582 (Fed. Cir. 1983) *cert denied*, 465 U.S. 1022 (1984). Additionally, we clarified in *Orange Juice from Brazil* that revenue earned as late payment fees is a different type of revenue than movement- or packing-related revenues, citing *Cement from Mexico*, where we explained that our longstanding practice of treating early payment discounts as an adjustment to price leads us to the same determination concerning late payment increases to the price. In the instant case, where SKF Italy claims fees charged for late payments as interest revenue, the revenue is appropriately treated a post-sale price adjustment.

7. Other Issues

Comment 8: In its case brief, Timken included deficiency comments related to perceived inconsistencies between SKF's narrative response and SKF's database with respect to reported home-market rebates and freight revenues. Timken requested that, prior to the final results, the Department seek an explanation for these perceived deficiencies.

Department Position: We requested, and SKF provided, clarification for these alleged deficiencies. Due to the proprietary nature of these comments, *see* the memorandum entitled, "Ball Bearings and Parts Thereof from Italy: Final Analysis Memorandum for SKF Italy" dated December 4, 2012. As a result of our analysis, however, we determine that SKF Italy properly reported its home-market rebates and freight revenues.

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 ________

Paul Piquado
Assistant Secretary
for Import Administration

4 DECEMBER 2012
Date