69 FR 55574, September 15, 2004

A-100-001
Admin. Rev.: 02/03
Public Document
AD/CVD 5: AFBs Team

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Reviews of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom for the Period of Review May 1, 2002, through April 30, 2003

Summary

We have analyzed the case and rebuttal briefs of interested parties in the May 1, 2002, through April 30, 2003, administrative reviews of the antidumping duty orders covering antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in these administrative reviews for which we received comments and rebuttal comments by parties:

1. Offsetting Margins with Above-Normal-Value Transactions
2. Model-Match Methodology
3. Adverse Facts Available
4. Indirect Selling Expenses
5. Allocation Methodology

6. Movement Expenses
7. Sample Sales
8. Billing Adjustments and Rebates
9. Cost Issues
10. Clerical Errors
11. Miscellaneous Issues
    A. Performance Lubricant
    B. HM Sales Reporting by NPBS
    C. Sales Outside the Ordinary Course of Trade
    D. Home-Market Interest Rate
    E. Home-Market Commissions

Background

On February 9, 2004, the Department of Commerce (the Department) published preliminary results of the administrative reviews of antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom (69 FR 5949) (Preliminary Results). The reviews cover 173 manufacturers/exporters. The period of review is May 1, 2002, through April 30, 2003. We invited interested parties to comment on the Preliminary Results. At the request of certain parties, we held hearings for Japan-specific issues on May 21, 2004, and for general issues on June 25, 2004.

Company Abbreviations

Asahi – Asahi Seiko Co., Ltd.
Barden – The Barden Corporation (U.K.) Ltd.
FAG – The FAG Group (worldwide)
FAG Germany – FAG Kugelfischer Georg Schafer AG
FAG Italy – FAG Italia S.p.A.
INA – INA Wälzlager Schaeffler KG
Koyo – Koyo Seiko Co., Ltd.
Nankai Seiko – Nankai Seiko Co., Ltd.
NBCA – NTN Bearing Corporation of America
NMB/Pelmec – NMB Singapore Ltd. and Pelmec Industries (Pte.) Ltd.
NPBS – Nippon Pillow Block Sales Co., Ltd.

NSK – NSK Ltd.
NTN – NTN Corporation

Osaka Pump – Osaka Pump Co., Ltd.
Paul Mueller – Paul Mueller Industrie GmbH & Co. KG
Ringball – Ringball Corporation
Sapporo – Kitanihon Seiko Co., Ltd., Sapporo Precision, Inc., and Sanbi Co., Ltd.
SKF – The SKF Group (worldwide)
SKF France – SKF France S.A. and Sarma
SKF Germany – SFK GmbH
SKF Italy – SKF Industrie S.p.A.
SNR – SNR Roulements
Takeshita – Takeshita Seiko Co., Ltd.
Timken – Timken U.S. Corporation and MPB Corporation
Weber – Weber Kugellager International

Other Abbreviations

AFA – adverse facts available
AFB – antifriction bearings
AM - after-market
Antidumping Agreement – Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994)
APO – administrative protective order
BB – ball bearings
BIA – best information available
BPI – business proprietary information
CAFC – Court of Appeals for the Federal Circuit
CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – Court of International Trade
COM – cost of manufacture
COP – cost of production
CV – constructed value
DIFMER – difference in merchandise
EC – European Community (currently known as European Union)
Final Rule – Antidumping Duties, Countervailing Duties, Final Rule, 62 FR 27296 (May 19, 1997)
FA - facts available
ITC – International Trade Commission
OEM – original equipment manufacturer

POI – period of investigation
POR – period of review
SAA – Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994)
SG&A - selling, general and administrative
The Act – The Tariff Act of 1930, as amended
TCOM – total cost of manufacture
URAA – Uruguay Round Agreements Act
VCOM – variable cost of manufacture
WTO – World Trade Organization

<u>AFBs Administrative Determinations and Results Cited in this Memorandum</u>

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

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

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

<u>AFBs 8</u> – <u>Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews</u>, 63 FR 33320 (June 18, 1998).

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

<u>AFBs 10</u> – <u>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</u>, 65 FR 49219 (August 11, 2000).

<u>AFBs 11</u> – <u>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</u>, 66 FR 36551 (July 12, 2001).

<u>AFBs 12</u> – <u>Ball Bearings and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews</u>, 67 FR 55780 (August 30, 2002).

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).

Discussion of the Issues

1. Offsetting Margins with Above-Normal-Value Transactions

Comment 1: SKF, FAG, NSK, Koyo, and NPBS argue that the Department's practice of assigning a zero percent dumping margin for sales to the United States made at a price above normal value violates Articles 2.4 and 2.4.2 of the Antidumping Agreement. SKF, NSK, Koyo, and NTN also argue that the Act does not support the Department's methodology. SKF, Koyo, and NTN argue that the Department's practice of refusing to allow U.S. sales that were not priced below normal value to offset margins found in other U.S. sales (commonly referred to as "zeroing") contradicts the construction of sections 771 and 773 of the Act. NSK and NTN argue that the Department's practice contradicts section 731 of the Act.

In support of their argument, SKF, FAG, NSK, Koyo, and NPBS cite European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (March 1, 2001) (Bed Linen). Respondents argue that, in Bed Linen, the WTO Appellate Body determined that the EC's practice of "zeroing" the results of calculations conducted on product groups that were found not to be dumped, is a violation of Articles 2.2 and 2.4.2 of the Antidumping Agreement because it effectively excludes selected transactions from the calculation of a dumping margin applied to all products. Additionally, SKF argues that in U.S.-Corrosion-Resistant Steel, WT/DS244/AB/R (December 15, 2003), the Appellate Body indicated that "zeroing" methodologies inflate margins and are inherently biased, although, in that instance, the WTO Appellate Body was unable to determine from the factual record whether underlying margins had been computed using a "zeroing" methodology similar to that in Bed Linen. Additionally, citing United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/R (April 13, 2004) (Softwood Lumber Panel Report), SKF, FAG, NSK, and Koyo argue that the WTO panel found that the Department's "zeroing" methodology violates Article 2.4.2 of the Antidumping Agreement.

SKF, FAG, NSK, Koyo, and NPBS argue that under the Charming Betsy doctrine, which has been affirmed in the trade context, a methodology that violates the Antidumping Agreement is an unreasonable interpretation of the underlying statute. See Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804) (Charming Betsy); see also Fed. Mogul Corp. v. United States, 63 F.3d 1572, 1581 (CAFC 1995) (noting that trade laws are not exempt from the Charming Betsy doctrine); Luigi Bormioli Corp. v. United States, 304 F.3d 1362, 1368 (CAFC 2002) ("{T}he statute must be interpreted to be consistent with {international} obligations, absent contrary indications in the statutory language or its legislative history."); Timken Co. v. United States, 354 F.3d 1334, 1341 (CAFC 2004) (Timken); Allegheny Ludlum Corp., et al. v. United States, 367 F.3d 1339 (CAFC 2004) (Allegheny Ludlum).

SKF argues that, in signing the WTO agreements, the United States agreed to "ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements." See SKF's general issues case brief, at page 12, citing Final Act Embodying Results of Uruguay Round Multilateral Trade Negotiations Art. XVI (April 15, 1994). SKF also argues that, under the Antidumping Agreement, the United States "shall take all necessary steps, of a general or particular character, to ensure . . . the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement. . . ." Antidumping Agreement Art. 18.4. SKF asserts that the United States took the initial action to meet this obligation through the enactment of the URAA. SKF and Koyo argue that the legislative history of the URAA indicates Executive and Congressional intent to adhere to the requirement in Article 2.4 of the Antidumping Agreement that a fair comparison shall be made between the export price or the CEP and the normal value. Koyo also asserts that the SAA provides that the URAA is "intended to bring U.S. law fully into compliance with U.S. obligations under {the Uruguay Round} agreements." See Koyo's general issues case brief, at page 10, citing SAA at 669, dated May 28, 2004. Koyo argues that this evidences the Executive intent that the Act be interpreted in a manner consistent with the Antidumping Agreement. Furthermore, SKF, FAG, and Koyo assert that even if the Department determines that the WTO decisions are not binding, WTO decisions should be taken into account as the authoritative interpretation of international obligations. Finally, citing Rust v. Sullivan, 500 U.S. 173, 187 (1991), SKF argues that nothing precludes the United States from bringing U.S. law into conformity with WTO interpretations and obligations, and that in this instance, recent WTO determinations provide a reasoned basis for change in the Department's "zeroing" methodology.

FAG, SKF, NSK, and Koyo assert that, because the Softwood Lumber Panel Report examined the U.S. "zeroing" methodology, the precedential value of Timken is questionable and the Department cannot assert that its practice has not been examined by the WTO. See Timken, 354 F.3d at 1344 (finding that the CIT distinguished Bed Linen correctly because it did not involve the United States and it involved an antidumping investigation rather than an administrative review). Finally, NSK and Koyo argue that, although the Softwood Lumber Panel Report involved an investigation, as opposed to an administrative review, there is no basis in either logic or law for differentiating between investigations and administrative reviews for dumping methodology.

SKF also argues that the Department's "zeroing" methodology is inconsistent with the Department's and CIT's recognition that dumping calculations are to be based on positive and negative values. SKF argues that the CIT's statement in Floral Trade Council v. United States, 41 F. Supp. 2d 319, 332 (CIT 1999), that the "new URAA provision 19 U.S.C. § 1677(e)(2)(B)(iii) does not mandate the creation of a positive amount where all available evidence indicate non-profitable sales," indicates that the Department's creation of a distinction between positive and negative amounts should not be a basis for finding "zeroing" reasonable. See SKF's general issues case brief, at page 3, citing Floral Trade Council, 41 F. Supp. 2d at 332. Further, SKF argues that the canon of statutory construction that "identical words used in different parts of the same act are intended to have the same meaning," preclude the Department from finding that section 771(35)(A) of the Act mandates the creation of only positive amounts. SKF general issues case brief, at page 4, citing Sullivan v. Stroop, 496 U.S. 478, 484 (1990), quoting Sorenson v. Secretary of Treasury, 475 U.S. 851, 860 (1986). Additionally, SKF argues that the Department's rejection of arguments that U.S. prices yielding a negative value after adjustments should be set to zero, demonstrates the Department's recognition that calculations should be based on positive and negative prices and the unreasonableness of the argument that sections 771(35)(A) and (B) of the Act preclude the use of negative margins. See AFBs 2 at 28425; Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (December 13, 2000) and the accompanying Issues and Decision Memorandum, at Comment

26. SKF, NTN, and Koyo argue that the Department's "zeroing" practice violates the requirement of section 773(a) of the Act that a "fair comparison shall be made between the export price or constructed export price and normal value." Finally, SKF, Koyo, and NSK argue that both the CAFC and the CIT have found that the U.S. antidumping statute does not require "zeroing." See Timken, 354 F.3d at 1341 (finding that the language used to define dumping in section 771(35)(A) of the Act does not "compel a finding that Congress expressly intended to require zeroing); Corus Staal B.V. v. United States Dep't of Comm., 259 F. Supp. 2d 1253, 1261 (CIT 2003) (Corus Staal) (finding that "{t}he statute neither requires nor prohibits Commerce from considering non-dumped sales").

NSK contends that the Department's practice of "zeroing" negative margins contradicts the meaning of section 731 of the Act because it ignores the statute's requirement that antidumping duties may only be imposed when a class or kind of foreign merchandise is being, or likely to be, sold in the United States at less than fair value. NSK explains that the CAFC found that the ITC must analyze "contradictory evidence or evidence from which conflicting inferences could be drawn, . . . to ensure that the subject imports are causing the injury, not simply contributing to the injury in a tangential or minimal way." NSK's case brief, at page 8, citing Taiwan Semiconductor Indus. Ass'n v. Int'l Trade Comm'n, 266 F.3d 1339, 1345 (CAFC 2001) (Taiwan SIA). In Taiwan SIA, NSK contends, the CAFC articulated that the injury to the domestic industry may not be present simply because imports of less than fair value exist. NSK asserts that the Department's practice of "zeroing" negative margins emasculates the analysis of "contradictory evidence, or evidence from which conflicting inferences could be drawn" that would allow for an unbiased margin calculation. NSK asserts that granting the contradictory evidence of sales above fair value the same weight as sales below fair value will demonstrate dumping of a class or kind of merchandise, not just occasional sales of such merchandise below fair value. NSK asserts that, because Timken does not address the governance of section 731 of the Act, the Department must conduct the step-one analysis of Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

Timken argues that, in Timken, although the CAFC disagreed that the Department's methodology was compelled by the statute, the CAFC did agree that the Department's methodology was a reasonable interpretation of the statute. Timken, 354 F.3d at 1343. Additionally, in response to respondents' argument that the Department's "zeroing" methodology violates the fair comparison requirement in section 773(a) of the Act, Timken argues that the CAFC has rejected this argument and held that the section "does not impose any requirements for calculating normal value beyond those explicitly established in the statute and does not carry over to create additional limitations on the calculation of dumping margins." Id. at 1344.

Timken also argues that the Charming Betsy doctrine does not require that the Department interpret U.S. law in a manner consistent with the interpretations of the Antidumping Agreement by the WTO Dispute Settlement Body. Specifically, citing Timken, Timken asserts that the CAFC held that "{i}n light of the fact that Commerce's 'longstanding and consistent administrative interpretation is entitled to considerable weight,' . . . we refuse to overturn the zeroing practice based on EC - Bed Linen." Id. at 1344. Timken also asserts that, in its analysis, the CAFC explained that Bed Linen involved an investigation rather than an annual review. Further, Timken argues that, although the CAFC in Allegheny Ludlum relied on United States-Countervailing Measures Concerning Certain Products from the European Communities, WT/DS212/AB/R (December 9, 2002) and reversed the

Department's approach to subsidies measurement where the subsidy recipient has undergone ownership changes, the CAFC cautioned that it "recognizes that the Charming Betsy doctrine is only a guide; the WTO's appellate report does not bind this court in construing domestic countervailing duty law." Allegheny Ludlum, 367 F.3d at 1348. Timken argues that, unlike the Department's long-standing and court-approved dumping methodology, the Department's subsidy methodology had been subject to evolving controversy and CIT disapproval. Additionally, Timken asserts that the Softwood Lumber Panel Report has been appealed to the WTO Appellate Body and that, even if the decision was final, changes to the U.S. practice or regulations would be the subject of future implementation determinations.

Timken also argues that the WTO Appellate Body's interpretations of the Antidumping Agreement do not amount to the "law of nations as understood in this country." Charming Betsy, 6 U.S. at 118. Specifically, Timken argues that WTO dispute settlement decisions are neither rules of general application nor widely accepted. See Timken's general issues rebuttal brief, at page 7, dated June 3, 2004, citing Restatement of the Law, Third, The Foreign Relations Law of the United States, §101 (defining international law, as used in the restatement, as "rules and principles of general application") and §102(3) ("{i}nternational agreements create law for the states parties thereto and may lead to the creation of customary international law when such agreements are intended for adherence by states generally and are in fact widely accepted."); Sampson v. Federal Republic of Germany, 250 F.3d 1145, 1154 (7th Cir. 2001) (not applying Charming Betsy where international law consisted of evolving customary law). In support of its position, Timken asserts that dispute settlement decisions do not bind other panels. Additionally, citing Japan-Taxes on Alcoholic Beverages, WT/DS8/R (July 11, 1996) at paras. 6.10, Timken argues that panels have adopted conflicting interpretations of the same provision. Finally, Timken argues that in Fed. Mogul Corp., 63 F.3d at 1580, the CAFC applied the Charming Betsy doctrine to the text of the General Agreement on Tariffs and Trade and the Antidumping Agreement rather than to the interpretations of dispute settlement panels.

Department's Position: We have not changed our methodology with respect to the calculation of the weighted-average dumping margins for the final results. As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. See AFBs 13 and the accompanying Issues and Decision Memorandum, at Comment 2; and Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands, 66 FR 50408 (October 3, 2001) and the accompanying Issues and Decision Memorandum, at Comment 1; see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000-2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part, 67 FR 68990 (November 14, 2002) and the accompanying Issues and Decision Memorandum, at Comment 9.

We included U.S. sales that were not priced below normal value in the calculation of the weighted-average margin as sales with no dumping margin. The value of such sales is included with the value of dumped sales in the denominator of the weighted-average-margin calculation. We do not allow U.S. sales that were not priced below normal value, however, to offset dumping margins we find on other U.S. sales.

Section 751(a)(2)(A)(ii) of the Act requires the Department to calculate a dumping margin for each entry of the subject merchandise. Section 771(35)(A) of the Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) of the Act defines "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." Taken together, the Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds the export price 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 applying on a comparison-specific basis and not on an aggregate basis. At no stage in this process is the amount by which the export price or CEP exceeds normal value on sales that did not fall below normal value permitted to cancel the dumping margins found on other sales.

Contrary to the respondents' assertion, both the CAFC and CIT have ruled that the Department's margin-calculation methodology is a reasonable interpretation of the statute. In Timken, the CAFC ruled explicitly that the Department's "zeroing" practice, e.g., not allowing U.S. sales not priced below normal value to offset margins found on other U.S. sales, is a reasonable interpretation of section 751(a)(2)(A) of the Act. Timken, 354 F.3d at 1345. The CIT, in Corus Staal, found that Congress was aware of the Department's methodology when it enacted the URAA, and thus could have prohibited the Department's practice of not allowing non-dumped imports to offset margins found on other U.S. sales if it so chose. Instead, Congress enacted a statute that, at least arguably, encourages this practice by "referring only to dumping margins where the U.S. price exceeds NV" {sic} (presumably, the court meant to say "where NV exceeds the U.S. price"). Corus Staal, 259 F. Supp. 2d at 1264.

NSK's argument that the Department's margin-calculation methodology violates section 731 of the Act has been rejected by the CIT. See SNR Roulements v. United States, Consol. No. 01-00686, slip op. 04-100, at 21 (CIT August 10, 2004) (SNR Roulements). Specifically, the CIT held that the language of section 731 of the Act "neither unambiguously requires nor prohibits zeroing . . ." Id. Moreover, NSK's reliance on Taiwan SIA is misplaced because the CAFC's decision therein addressed the ITC's probe into the existence of the statutory injury in the investigation, not the Department's margin-calculation methodology. Accordingly, the decision in Taiwan SIA does not support NSK's argument that sales above normal value signify "contradictory evidence" within the context of calculating a dumping margin or that the Department's disinclination to allow such sales to offset dumping margins produces bias in the calculation of the dumping margin. Similar reasoning was struck down in both SNR Roulements and Bowe Passat. See SNR Roulements at 25; see also Bowe Passat Reinigungs-Und Waschereitechnik GmbH v. United States, 926 F. Supp. 1138, 1150 (1996) (Bowe Passat). In Bowe Passat, the CIT found that the Department's practice of not allowing U.S. sales not priced below normal value to offset margins on other U.S. sales is reasonable because it combats masked dumping, which the court found to be a legitimate goal consistent with the Act. See Bowe Passat, 926 F. Supp. at 1150. See also Corus Staal, 259 F. Supp. 2d at 1263 n.15. The decisions in both Bowe Passat and Corus Staal have recognized that the Department's methodology does not ignore sales that did not fall below normal value in calculating the weighted-average dumping rate. It is important to understand that the weighted-average margin reflects any "non-dumped" merchandise examined during the administrative review; the value of such sales is included in the denominator of the dumping rate while no dumping amount for "non-dumped" merchandise is included in the numerator. This way, the value of "non-dumped" merchandise results in a lower weighted-average margin. Also, as we stated in AFBs 13, this is a reasonable means of establishing estimated duty-deposit rates in investigations and assessing duties in reviews. See AFBs 13 and the accompanying Issues and Decision Memorandum, at Comment 2. The deposit rate we calculate for future entries must reflect the fact that CBP is not in a position to know which entries of merchandise are dumped and which are not. Further, by spreading the liability for dumped sales across all reviewed sales, the weighted-average dumping margin allows CBP to apply this rate to all merchandise subject to the review.

The Department's margin-calculation methodology is consistent with U.S. law and U.S. law is consistent with the WTO obligations of the United States. The Bed Linen decision involved the EC and India. In Timken, the CAFC refused to overturn the Department's practice based on Bed Linen "{i}n light of the fact that Commerce's 'longstanding and consistent administrative interpretation is entitled to considerable weight.'" Timken, 354 F.3d at 1344 citing Zenith, 437 U.S. at 450; see also SNR Roulements, at 20. Furthermore, respondents' reliance on Softwood Lumber Panel Report is misplaced because if there are to be any changes to the Department's practice and/or regulations based on the decision, these changes would occur pursuant to an implementation determination. Indeed, in Allegheny Ludlum the CAFC stated that WTO Appellate Body reports do not bind U.S. courts in construing the laws of the United States. Allegheny Ludlum, 367 F.3d at 1348.

2. Model-Match Methodology

Comment 2: In its case briefs, Timken submitted analyses of the data of a number of respondents purporting to support the Department's decision to change the model-matching methodology for future administrative reviews of the antidumping duty orders on antifriction bearings from France, Germany, Italy, Japan, Singapore, and the United Kingdom.

FAG, Koyo, NMB/Pelmec, NSK, NTN, and SKF contend that, because neither Timken nor the Department has enunciated any compelling reasons to change the model-matching methodology, the Department should not change the model-matching methodology it employs in calculating antidumping margins for administrative reviews of the orders. Koyo, NMB/Pelmec, and NSK further argue that, if the Department persists in making a change to the model-matching methodology, any such change must not be made until after the 2003-04 administrative reviews.

Department's Position: We have already determined not to change the model-matching methodology for the 2002-2003 administrative reviews. See the Decision Memorandum from Jeffrey A. May to James J. Jochum, dated December 3, 2003, for a complete discussion of our decision. Furthermore, Timken did not argue in its case briefs that we should change the model-matching methodology for these reviews. Finally, we will provide ample opportunity for comments on whatever decisions we make in the next administrative reviews in the context of those reviews. Therefore, this issue is moot in the context of these administrative reviews.

3. Adverse Facts Available

Weber is a respondent in the administrative reviews of the antidumping orders on BBs from

Germany, France, and Italy. On September 11, 2003, Weber responded to Section A of the Department's July 28, 2003, questionnaire. Because of filing deficiencies, we rejected Weber's first response to Section A of the questionnaire and asked Weber to re-file, which it did on September 22, 2003. On February 12, 2004, and June 24, 2004, we issued supplemental questionnaires to Weber in order to address the deficiencies in its responses to Sections A, B, C, and D of our original questionnaire. Weber responded in a timely manner to both of the Department's supplemental questionnaires, filing responses dated March 9, 2004, and July 12, 2004, respectively.

Comment 3: SKF USA requests that the Department apply AFA to Weber for the final results of these reviews. SKF USA contends that Weber failed repeatedly to provide certain requested information and to submit information in proper form, in violation of the Department's regulations. Specifically, SKF USA states that Weber has failed to provide data on its distribution and sales processes, and on its corporate structure as requested in the Department's July 28, 2003, questionnaire, and its February 12, 2004, and June 24, 2004, supplemental questionnaires. SKF USA also lists a number of alleged deficiencies, including Weber's failure to provide product characteristics and financial statements to the Department despite repeated requests. SKF USA alleges that these deficiencies leave the Department unable to calculate a margin for Weber. Therefore, SKF USA argues that the Department must apply AFA in calculating a margin for Weber for the final results of these reviews.

Weber filed a rebuttal to SKF USA's arguments dated August 3, 2004. Because the rebuttal was not filed within the deadlines established by our regulations, it was rejected as untimely. See Letter to Weber Kugellager from Mark Ross, dated August 13, 2004.

Department's Position: Pursuant to sections 776(a)(2)(A) and (C) and section 776(b) of the

Act, the Department determines that the application of total AFA is warranted for respondent Weber. Section 776(a)(2)(A) of the Act provides for the use of FA when an interested party withholds information that has been requested by the Department. Section 776(a)(2)(C) of the Act warrants the use of FA when the Department determines that an interested party significantly impedes a proceeding. The statute requires that before the Department can use FA with respect an interested party, the Department must comply with section 782(d) of the Act. Section 782(d) of the Act provides that if the Department determines that an interested party's response to a request for information does not comply with the request, the Department shall inform the interested party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with the opportunity to remedy or explain that deficiency. As demonstrated in further detail below, despite opportunity to correct its deficiencies, Weber has withheld information requested by the Department and has significantly impeded the final results of these administrative reviews.

On July 28, 2003, the Department requested that Weber provide product characteristics for the BBs it sold in the U.S. and home market, and that it provide copies of its financial statements. On September 8, 2003, Weber responded to the Department's request for information. There were numerous substantive and procedural deficiencies and errors in Weber's original response. For example, Weber's sales listing was unusable, Weber failed to submit the requisite number of copies to the Department, and Weber mislabeled many documents as BPI that were not BPI. In its subsequent re-filing, Weber remedied these deficiencies, but continued to omit information crucial to the Department's review. Weber did not provide product characteristics, such as load directions, the number of rows, precision grades, and load ratings, nor did it provide copies of its financial statements.

Thus, the Department repeated its request for this information in supplemental questionnaires dated February 12, 2004, and June 28, 2004. Weber responded to our February 12, 2004, supplemental questionnaire, but still omitted the product characteristics and financial statements requested in the original questionnaire. Our June 28, 2004, supplemental questionnaire asked Weber specifically to provide the missing product characteristics and its financial statements. Weber stated that it was unable to provide the requested information. Weber stated that as a reseller, it did not have technical data such as product characteristic information because it was not a manufacturer. Weber refused to provide copies of its financial statements, stating that they include the BPI of other companies. As discussed in the respective memoranda for France, Germany, and Italy, dated September 8, 2004, Weber could have easily obtained the requested technical data from product catalogues, and Weber failed to explain why the Department's APO procedures would have been inadequate to protect its BPI. Thus, we do not find Weber's arguments to have merit. Because Weber has refused to provide the information requested by the Department, namely the missing product characteristics and copies of its financial statements, the application of FA is warranted pursuant to section 776(a)(2)(A) of the Act.

The Department finds Weber's failure to provide this information, the product characteristics and the financial statements, significantly impedes the proceeding pursuant to section 776(a)(2)(C) of the Act, and prevents the Department from calculating antidumping margins for Weber for the final results of these reviews. Despite the resources the Department expended in issuing supplemental questionnaires requesting that Weber provide product characteristics and the financial statements, Weber failed to provide this information. Without the missing product characteristics, the Department is unable to match BB models Weber sold to the United States with the most appropriate foreign like product, as defined in section 771(16) of the Act. Therefore, it is impossible for the Department to calculate antidumping margins for Weber. Additionally, without Weber's financial statements the Department is unable to rely on the accuracy of any sales totals and price adjustment information reported by Weber in its questionnaire response because the financial statements provide the basis to check the accuracy of the information provided by the respondent. Because Weber did not provide its financial statements, we do not have a valid source from which to trace the figures used in Weber's expense calculations, nor any financial evidence of the size and scope of Weber's sales in the home market and to the United States. Thus, we can neither utilize nor rely on the validity of the information submitted by Weber. Accordingly, we find that Weber has significantly impeded the calculation of the antidumping margins for the final results of these reviews.

Weber failed to provide information explicitly requested by the Department in the three questionnaires issued to the company. Section 782(c)(1) of the Act does not apply because the circumstances do not indicate that Weber was unable to submit the information required by the Department. Further, we cannot calculate an accurate antidumping margin based on the information in Weber's response. Accordingly, it is appropriate here to use total FA for Weber. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand From India, 68 FR 42389, 42390 (July 17, 2003); Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order In Part, 65 FR 47960, 47961 (August 4, 2000).

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party, if the Department determines that the interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See also SAA at 870 and 19 CFR 351.308(a). In order to demonstrate that an adverse finding is warranted, the Department must make an objective showing that a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations. See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (CAFC 2003). The Department must also make a subjective showing that the respondent has failed to promptly produce the requested information, and that failure to fully respond is the result of respondent's lack of cooperation in either: (a) failing to keep or maintain all required records, or (b) failure to put forth its maximum efforts to investigate and obtain the requested information from its records. See id.

The product characteristic information Weber claimed it could not provide was available to Weber from public sources such as catalogues and the internet or through non-public sources such as its suppliers. For further details, please see the memoranda entitled "The Use of Adverse Facts Available and Corroboration of Secondary Information" for Weber, dated September 8, 2004. This information is data that a re-seller would be expected to have in order to assure that its products meet the needs of its customers. This information could have been obtained by a reasonable effort on the part of Weber. Furthermore, Weber chose not to provide us with its financial statements because they contained BPI that it did not want disclosed. Weber did not explain why an APO would not be sufficient to protect the BPI in its financial statements. We ask for and receive business confidential financial statements and other BPI documents that are routinely released under APO as part of our administrative review procedures. We advised Weber on more than one occasion that any bracketed information would remain protected under APO. Weber did not give an adequate reason to justify the withholding of its financial statements. Nor did Weber offer a workable, timely, and verifiable alternative to these requests. AK Steel v. United States, Slip Op. 04-108 at 10-14 (CIT, August 25, 2004). In response to our third and final supplemental questionnaire dated June 28, 2004, Weber did offer to send some limited financial data in order to assist in our calculations. However, this information was not included in its response. Therefore, it is unknown whether this information might have been satisfactory.

The Department finds that, by not providing the necessary responses to the questionnaires issued by the Department, and a reasonable explanation for not submitting the requested information, Weber failed to cooperate to the best of its ability. The requested product characteristics and financial statements are integral to the Department's antidumping analysis. Weber is responsible for submitting necessary information on the record, and it was the only party that could provide financial statements and the missing product characteristics. Therefore, it is the only party which could have complied with the Department's request.

Without product characteristics, the Department is unable to match BB models Weber sold in the United States to sales of the foreign like product, as defined in section 771(16) of the Act. As discussed above, without Weber's financial statements, the Department cannot rely on the sales and expense amounts reported by Weber. Thus, we find that the application of total AFA for the final results of these administrative reviews is warranted for Weber.

As the AFA margin, we have applied the highest calculated rate for any company in any segment of the relevant proceeding on BBs from the countries for which Weber was subject to review. Specifically, the rates are 66.42 percent for France, 70.41 percent for Germany, and 68.29 percent for Italy. We determined those margins to be reliable and relevant. In an administrative review, if the

Department chooses as total AFA a calculated antidumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Please refer to the respective memoranda for France, Germany, and Italy, dated September 8, 2004, for details concerning the corroboration of these AFA rates. The use of these rates as AFA rates for the Preliminary Results was not contested by any party in these reviews.

4. Indirect Selling Expenses

Comment 4: Timken argues that the Department should adjust U.S. prices for all U.S. indirect selling expenses that SKF USA reported. Specifically, Timken argues that the Department should include the management fees reported in the income statements of both SKF Bearings USA and Chicago Rawhide USA (SKF USA's business units operationally involved with imported AFBs) as U.S. indirect selling expenses. Timken asserts that the present record indicates that the income statements for SKF Bearings USA and Chicago Rawhide USA include a line item (Line 10) for "Management Fees" which is added to a separate line item entitled "Selling Expense" (Line 8) to arrive at a total for the line item entitled "Selling and Administrative Expenses" (Line 11). Because the Selling and Administrative Expenses line item is comprised of both selling expenses and management fees, Timken concludes that the management fees are incurred for selling functions and as such should be included as U.S. indirect selling expenses.

SKF France argues that Timken did not raise this issue in response to SKF France's original questionnaire response, dated October 6, 2003, nor in response to any of the two subsequent supplemental responses, dated December 3, 2003, and January 12, 2004, respectively. SKF France asserts further that Timken is attempting to submit new information on the record because Timken's present concerns involving U.S. indirect selling expenses for SKF USA are not based on factual information on the record. However, SKF France acknowledges that Timken's submission of December 9, 2003, raises an unrelated concern regarding SKF USA's reporting of U.S. indirect selling expenses. SKF France asserts that the Department addressed Timken's concern in its second supplemental request for information and that SKF USA provided a complete response. As such, SKF France requests that the Department disregard Timken's arguments in its case brief.

Further, SKF France argues that it would be inappropriate for the Department to include management fees reported in the 2002 income statements for SKF Bearings USA and Chicago Rawhide USA as U.S. indirect selling expenses because these management fees are not associated with selling functions. Rather, SKF France states that the fees are allocations to various SKF Group business units (including SKF Bearings USA and Chicago Rawhide USA) of expenses incurred by the corporate head office in Götenberg, Sweden for corporate administrative functions. SKF France observes that while the line item "Selling and Administrative Expenses" (line 11) in the 2002 income statement is comprised of both selling expenses and management fees, the latter represent administrative expenses unrelated to the sale of subject merchandise. As such, SKF France argues that it has properly classified the management fees in question as administrative expenses which should not be included as U.S. indirect selling expenses.

Department's Position: We reviewed the record and conclude that Timken's argument is based on existing factual information on the record. Timken's submission on December 9, 2003, raises concerns regarding treatment of salaries and management fees of SKF executives, personnel, and administrators. In its case brief dated June 2, 2004, Timken specifically argues that the Department should include management fees reported for SKF Bearings USA and Chicago Rawhide USA as U.S. indirect selling expenses because it alleges that these fees are attributable to selling activities related to the subject merchandise. Since Timken's argument in its June 2, 2004, submission probes the issue of U.S. indirect selling expenses with respect to salaries and management fees of SKF personnel further (also discussed in its December 9, 2003, submission), we conclude that Timken's argument is not based on new factual information.

After reviewing the record, we accept SKF France's explanation of the management fees in question. In its rebuttal brief dated June 8, 2004, SKF France states: "The management fees cited by Timken are not related to selling – rather, the fees are allocations to the various SKF Group business units (including SKF Bearings USA and Chicago Rawhide USA) of expenses incurred by the corporate head office in Gotënberg, Sweden for corporate administrative functions." Because there is no other information on the record to refute SKF France's explanation that these management fees are not expenses attributable to sales of subject merchandise, we conclude further that SKF France has excluded these expenses from U.S. indirect selling expenses properly.

<u>Comment 5</u>: Timken argues that SKF USA's calculation of U.S. indirect selling expenses over-allocates SKF USA's expenses away from OEM and AM sales of subject merchandise. Citing Exhibit 30 of SKF France's questionnaire response, dated October 6, 2003, Timken observes that SKF USA computes U.S. indirect selling expense factors for SKF Bearings USA's OEM and AM sales and that SKF USA calculates these factors using selling expenses and net U.S. sales amounts and allocates

selling expenses to OEM sales, AM sales, export sales, and sales by its Industrial Service Center (I.S.C.) (a unit of SKF USA that sells service contracts and performs for-fee services, but is not involved in sales of subject merchandise). Timken alleges that the reported amount of U.S. indirect selling expense attributed to I.S.C. and export sales is inaccurate because the total amount of U.S. indirect selling expense for both I.S.C. and export sales exceeds the total value of I.S.C. and export sales. As such, Timken requests that the Department correct the allocation methodology for U.S. indirect selling expenses.

SKF France states that Timken's claim of over-allocation is based on a false presumption and calculation. SKF France asserts that Timken presumes falsely that the value reported in the line item entitled "NET Sales - External Customers" (Line 1) of SKF Bearing USA's 2002 income statement represents total net sales. SKF France states that this is not a correct presumption and explains that, in SKF Bearing USA's 2002 income statement, the value on the line item entitled "Net Sales - External Customers" (Line 1) does not include all sales; rather, total net sales are listed on the line item entitled "Total Net Sales" (Line 4). SKF France further explains that Timken failed to include in its calculation virtually all of SKF USA's export sales reported on the line item entitled "SKF comp. other" (Line 3). SKF France asserts that because Timken applies an incorrect value of partial sales taken from the line item entitled "NET Sales - External Customers" (Line 1) and omits the reported value for export sales on the line item entitled "SKF comp. other" (Line 3) in its calculation to derive the remainder sales value attributable to I.S.C. and export sales, the results are incorrect. As such, SKF France argues that Timken's characterization of the sales levels for export and I.S.C. sales is in error because the sale amount reported on the line item entitled "NET Sales - External Customers" (Line 1) represent only

I.S.C. domestic sales and not the sum of I.S.C. and export sales. In turn, SKF France argues that, because of the miscalculation, Timken's conclusion that U.S. indirect selling expenses are over-allocated away from OEM and AM sales of subject merchandise is inaccurate.

Department's Position: We have reviewed the record and agree with SKF France that Timken's allegation that U.S. indirect selling expenses have been over-allocated away from OEM and AM sales is incorrect because the allegation is based on an inaccurate calculation which consists of Timken's misapplication of the sales total reported in SKF Bearings USA's 2002 income statement for the line item entitled "Net Sales - External Customers" (Line 1) and an omission of the sales total reported in the line item entitled "SKF comp. other" (Line 3). Because Timken's calculation does not include all sales, specifically, export sales, the sales value Timken attributes to I.S.C. and export sales is incorrect. Since the actual sales value attributable to the I.S.C. and export sales calculation does not demonstrate an over-allocation of sales from OEM and AM to I.S.C. and export sales, we have made no change to the U.S. indirect selling expenses for these final results. Due to the proprietary nature of the information presented in the case and rebuttal briefs of Timken and SKF France with respect to this comment, please see SKF France's Final Results Analysis Memorandum dated September 8, 2004.

Comment 6: Citing Exhibit 30 of SKF France's Section C questionnaire response dated October 6, 2003, Timken argues that SKF France erred in removing all of the selling expenses pertaining to Logistics Sales & Shipping (LS&S) (except for a portion of the total representing pre-sale warehousing expenses) from the pool of U.S. indirect selling expenses before allocating the selling expenses to net U.S. sales. Specifically, Timken argues that SKF France has not identified where it has otherwise adjusted its reported U.S. sales prices to account for the portion of the LS&S expense total that is not pre-sale warehousing expenses. Furthermore, Timken argues that SKF France has not explained the nature of these expenses. As such, Timken requests that the Department include the expenses in question as part of U.S. indirect selling expense.

SKF France asserts that the portion of LS&S which is not part of the reported pre-sale warehousing expenses represents expenses for factory product packing and other services performed at the Crossville facility on behalf of SKF USA's U.S. production facilities. Therefore, SKF France argues that it would be incorrect to include the expenses of LS&S as part of U.S. indirect selling expenses since they are actually U.S. manufacturing expenses.

Department's Position: We agree with SKF France that it would be incorrect to include the expenses in question as part of U.S. indirect selling expenses. As SKF France states in its rebuttal brief dated June 8, 2004, the portion of LS&S which is not part of the reported pre-sale warehousing expenses represents expenses for factory packing and other services performed at the Crossville facility on behalf of SKF USA's U.S. production facilities. Moreover, because the Department was satisfied with this explanation, we did not request further information pertaining to the nature of these expenses for this POR. Because there is no evidence on the record to refute SKF France's assertion that the expenses in question represent U.S. manufacturing expenses, we have not added these expenses to its pool of U.S. indirect selling expenses.

Comment 7: Timken argues that FAG Germany's calculated business-unit-specific ICC factors were applied inconsistently in FAG Germany's home-market sales list, thus resulting in different ICC values for the same models.

FAG Germany states that Timken's assertion is erroneous because Timken did not take into account the manufacturer's code in its analysis of FAG Germany's application of ICC factors.

Department's Position: We agree with FAG Germany that its calculated business-unit-specific ICC factors were applied consistently to the TCOM of each model in FAG Germany's home-market sales list. As FAG Germany observed correctly, Timken did not consider the manufacturer codes in its analysis of how FAG Germany applied its ICC factors. The manufacturer codes are critical in this respect, because the same bearing model can be manufactured by FAG Germany or purchased from unaffiliated suppliers, thus resulting in different ICC values reported by FAG Germany for the same model. The application of the same ICC factor, without regard to manufacturer code, to the same models, some of which have different COM, yields different ICC values.

Comment 8: Timken argues that Paul Mueller should not be allowed to claim the foreign currency exchange gain incurred by Paul Mueller's affiliate GMN Bearing USA as an adjustment to U.S. indirect selling expenses because the Department only allows an adjustment to indirect selling expenses for short-term foreign exchange gains or losses that arise from the core business of the respondent. In support of its argument, Timken cites Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile, 68 FR 6878 (February 11, 2003), and accompanying Issues and Decision Memorandum, at Comment 13 (Fresh Atlantic Salmon from Chile) (regarding monetary correction adjustment and the financial expense ratio). Timken argues further that Paul Mueller should not be allowed to adjust its U.S. indirect selling expenses for its foreign currency exchange gain as there is no indication as to whether the foreign exchange gain incurred by GMN Bearing USA is long-term or short-term, or whether the gain relates to the core business of the respondent. Citing the Issues and Decision Memorandum for AFBs 12, at Comment 34, Timken observes that the Department did not include gains or losses on the revaluation of marketable securities as part of general and administrative expenses because such expenses are related to investment activities which are not associated with the core business of the respondent.

In rebuttal, Paul Mueller argues that the cases cited by Timken have nothing whatsoever to do with foreign currency exchange gains or losses incurred with respect to the purchase of goods. Paul Mueller argues that a review of the decision in AFBs 12 reveals that the issue involved revaluation of marketable securities, an activity not associated with the core business of Paul Mueller. Paul Mueller states that the balance sheet of GMN Bearings USA not only does not show any marketable securities as an asset, but that its profit and loss statement and the balance sheet prove that there are no investments. Therefore, Paul Mueller contends, the foreign currency exchange gain reported cannot possibly be related to investment activity. Finally, Paul Mueller asserts that an examination of the decision in the petititioner's citation to Fresh Atlantic Salmon from Chile and the accompanying Issues and Decision Memorandum, at Comment 13, indicates that the losses incurred by the Chilean respondent are related to debt and not to the purchase of product.

Paul Mueller argues that the record demonstrates that GMN Bearing USA purchases bearings from Paul Mueller in Euros. Therefore, Paul Mueller argues, it is clear where the foreign currency exchange gains or losses are derived, i.e., from the purchase of bearings (the core business of the company) in Euros and the fluctuation in exchange rates that can occur from the time of receipt into inventory to payment for the bearings. Paul Mueller contends that, under the terms of payment between the companies, it is clear that Paul Mueller is paid for its bearings in a relatively short period of time which supports its contention that the currency gains or losses are short-term.

Paul Mueller argues further that in Comment 34 to the above-cited AFBs 12 decision, the Department cited U.S. Steel Group a Unit of USX Corporation, USS/Kobe Steel Co., and Koppel Steel Corp. v. United States, 998 F. Supp. 1151 (CIT February 25, 1998), wherein the CIT held that "where. . . items of income and expense are most closely related to the general operations of the company (all general activities associated with the company's core business), it is appropriate to treat those items as part of G&A." Paul Mueller contends that the record shows clearly that GMN Bearing USA's general operations involved the purchase and sale of bearings, including Paul Mueller's bearings and bearings produced by other companies. Paul Mueller states that GMN Bearing USA is a distributor of bearings and that virtually all of its income is generated from the bearing trade. Thus, Paul Mueller asserts that any expense item or related income item should be covered in GMN Bearing USA's U.S. indirect selling expenses. Paul Mueller indicates that foreign currency exchange gains and losses are reported as "Other Expenses" in the financial statement of GMN Bearing USA, thereby treating this item as an operating expense or SG&A expense in its normal books and records. As such, Paul Mueller contends, the Department should accept GMN Bearing USA's accounting treatment of this item as an expense which is also consistent with Generally Accepted Accounting Principles.

Paul Mueller explains that the firm's counsel represented the SNFA Group during AFBs 8, AFBs 9, AFBs 10, and AFBs 11, and SNFA uniformly claimed an offset for foreign currency gains that resulted from the purchase of materials and was allowed that adjustment in each of the reviews mentioned previously. Paul Mueller argues that, like SNFA, GMN Bearing USA accounts properly for losses and gains that result from its purchases of material (i.e., the purchase of bearings from Paul

Mueller and other vendors). Paul Mueller holds that the gain is clearly short-term in nature and derives directly from GMN Bearing USA's core business and that there is nothing on the record of these proceedings that indicates the contrary.

Finally, Paul Mueller contends that the Department has recently revised its policy with respect to foreign currency gains and losses and that under the new policy, the Department uses all foreign currency exchange gains or losses recognized by the company within the fiscal year without attempting to distinguish between short-term and long-term occurrences. Citing Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004), and accompanying Issues and Decision Memorandum, at Comment 14 ("Our new policy is to include the entire amount of net foreign exchange gain or loss in the financial expense ratio calculation. . . . The fact that much of the foreign-exchange loss arose due to the holding of long-term foreign-denominated monetary liabilities does not change the fact that, during the current year, as a result of the change in exchange rates, the company experienced a real financial gain or loss.") and Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11045 (March 7, 2003).

Paul Mueller contends that Timken's arguments conflict directly with the Department's current policy on this issue. Accordingly, Paul Mueller argues that the Department should not revise its U.S. indirect selling expense calculation.

Department's Position: The Department has determined that it is appropriate to provide an offset to the pool of U.S. indirect selling expenses for gains incurred on GMN Bearing USA's purchases of bearings in Euros from Paul Mueller. The foreign exchange gains/losses related to these purchases of bearings in Euros from Paul Mueller are treated as an operating expense or SG&A expense in GMN Bearing USA's normal books and records and are included in "Other Expenses" in GMN Bearing USA's profit and loss statement (see Exhibit N of Paul Mueller's section A questionnaire response dated October 6, 2003). It is appropriate to treat all of these expenses as U.S. selling expenses, since the record shows (see Paul Mueller's section A questionnaire response dated October 6, 2003 at 2) that virtually all of GMN Bearing USA's business is selling bearings in the United States, and that the gains are not related to investment activities (see GMN Bearing USA's profit and loss statements and balance sheets in Exhibit N of Paul Mueller's section A questionnaire response dated October 6, 2003). The gains in this instance are considered properly under indirect selling expenses because they are incurred by the seller regardless of whether the particular sales in question are made and the gains are reasonably attributed to these sales. See SAA at 824.

The statute directs the Department to deduct U.S. indirect selling expenses from the CEP pursuant to section 772(d)(1)(D) of the Act, and the Department may adjust the pool of expenses to be deducted so that it accurately reflects the company's aggregate indirect selling expenses. Therefore, the Department has offset GMN Bearing USA's indirect selling expenses by the amount of gain incurred on its purchases of bearings in Euros as reported in GMN Bearing USA's profit and loss statements. We need not reach Timken's argument that the Department must distinguish between short-term and long-term gains and losses in making this adjustment, because in this case all of the gains are short-term.

Comment 9: Timken argues that the Department should adjust NTN's U.S. indirect selling-expense ratio to include interest expenses not elsewhere accounted for in NTN's response. Specifically, Timken argues that the Department should include the amount corresponding to the line item "Interest -

Other" found in Exhibit C-11 of NTN's response in the pool of NTN's U.S. indirect selling expenses that are allocated to its sales. Timken asserts that NTN has not explained why it excluded the amount corresponding to this line item from its U.S. indirect selling-expense ratio calculation. Citing <u>Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review</u>, 67 FR 78417, 78419 (December 24, 2002), Timken argues that it is the Department's practice to include interest expenses in indirect selling expenses while removing imputed credit costs. Timken concludes by asking the Department to include the portion of interest expenses not attributed to U.S. inventory carrying costs in the pool of NTN's U.S. indirect selling expenses that are allocated to its sales.

NTN asserts that its adjustments to U.S. indirect selling expenses, including interest expenses, incurred in the United States, have been reviewed and verified by the Department many times and found to be accurate and reasonable. NTN contends that Timken has alleged nothing new in this administrative review. Further, NTN asserts that it has not changed its U.S. indirect selling expense allocations with respect to interest expenses since the prior review, where the Department accepted its allocation methodology. Thus, according to NTN, there is no reason for the Department to deny the adjustments that it has allowed in all previous reviews.

<u>Department's Position</u>: We agree with the petitioner that the Department's practice is to include interest expenses in indirect selling expenses while removing imputed credit costs. To ensure that NTN removed only imputed interest expenses from its pool of indirect selling expenses, we followed the same methodology as articulated in <u>Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results</u>

and Final Rescission in Part of Antidumping Duty Administrative Review, 67 FR 78417 (December 24, 2002) and accompanying Issues and Decision Memorandum, at Comment 8. Specifically, using NTN's information found in Exhibit C-11 at worksheet 3 of its September 25, 2003, questionnaire response, we calculated an interest expense ratio. To do this, we calculated the ratio of CEP sales of subject merchandise to total sales and applied it to the total interest expense, as reported by NTN in Exhibit C-11. This yields a subject-merchandise-specific interest expense amount. This allocation is appropriate to ensure that the deduction for double counting is taken from a pool of expenses at the same level as the offset (i.e., subject merchandise). This more accurately ensures that no non-subject merchandise interest or imputed expenses are applied to subject merchandise. From this amount, we then deducted the sum of imputed interest expenses associated with CEP sales, creating the amount of actual interest expenses after adjustment for imputed interest expenses. Because the difference between the two amounts (the subject-merchandise-specific interest expense amount and the imputed interest expenses associated with CEP sales amount) produced a positive figure, we then divided this amount by the total CEP sales of subject merchandise amount to produce a ratio of net interest as a percentage of total CEP sales of subject merchandise. Since the resulting ratio is insignificant (less than one-hundredth of a percent) and would have no impact on our margin calculation, we made no adjustments to NTN's indirect selling expense calculation. See 19 CFR 351.413. For further detail, see Final Analysis Memorandum dated September 8, 2004, at page 4.

Comment 10: Timken argues that the Department should include the amount corresponding to the line item for "Write Off of Doubtful Accounts" in NTN's pool of allocated U.S. indirect selling expenses for the final results. Citing Stainless Steel Bar From India; Final Results of Antidumping Duty

Administrative Review, 68 FR 47543, 47544 (August 11, 2003), Timken argues that the Department's practice is to include bad debts that are written off as indirect selling expenses.

NTN asserts that the Department already made this adjustment in the preliminary results and therefore this issue is moot.

Department's Position: We agree with NTN that this issue is moot because we made this adjustment in our preliminary results. See Preliminary Results Analysis Memorandum dated February 2, 2004, at page 5.

Comment 11: Timken argues that for purposes of its final results, the Department should include in the pool of allocated U.S. indirect selling expenses an amount for a certain expense found in a line item in NTN's questionnaire response at Exhibit C-11.

NTN argues that the Department properly excluded the amount at issue from the pool of allocated U.S. indirect selling expenses. NTN argues further that Timken has cited no authority for its request to include the expenses in question in NTN's U.S. indirect selling expenses.

Department's Position: We have reviewed the record and find that the expense in question is not a selling expense and therefore, is properly excluded from the pool of allocated U.S. indirect selling expenses. Due to the proprietary nature of this information, please see NTN's Final Results Analysis Memorandum dated September 8, 2004, at page 4, for a detailed discussion.

Comment 12: Timken argues that the Department should include a portion of directors' salaries that NTN excluded from its pool of allocated U.S. indirect selling expenses. Timken argues that it is not clear why NTN excluded the salary expenses in question from its U.S. indirect selling expense ratio calculation. Timken concludes by requesting that the Department adjust NTN's prices for the full amounts of the salary expenses in question.

NTN argues that the Department has accepted its adjustment of directors' salaries in all reviews in this case and, therefore, the Department should reject Timken's request to adjust NTN's U.S. indirect selling expenses for the full amounts of its directors' benefits and salaries.

Department's Position: We have reviewed the record and are satisfied that NTN removed only the indirect selling expenses from its allocation pool that are attributable to non-subject merchandise. We asked NTN questions concerning the expense at issue in a supplemental questionnaire and NTN adequately explained why it excluded the expense. Thus, we find that there is nothing on the record that leads us to believe that the expense in question, which NTN excluded, was removed improperly. Due to the proprietary nature of this information, please see our discussion in NTN's Final Results Analysis Memorandum dated September 8, 2004, of the explanations NTN provided in its December 10, 2003, supplemental response at page 25.

5. Allocation Methodology

Comment 13: Timken argues that NTN did not include certain expenses related to inter-company sales made by a U.S. affiliate to NBCA (which NBCA subsequently sold to unaffiliated customers) in the calculation required to allocate indirect selling expenses to NTN's U.S. sales. Timken asserts that by removing such expenses from the numerator and not adjusting the denominator used to determine the U.S. indirect selling expense ratio, i.e., removing NBCA's sales of NTN's U.S. affiliate's products, NTN's calculation provides distorted results because it under-allocates the expenses in question to subject merchandise.

Timken argues that the Department typically ensures consistency between the numerator and denominator used to determine the allocation ratio. Timken asserts that, in the case of indirect selling expenses being allocated over sales, the sum of indirect selling expenses (numerator) must be the expenses incurred to make the sales (denominator) over which they are to be allocated. According to Timken, if they are not consistent, distorted results occur.

Timken concludes by requesting that the Department revise NTN's U.S. indirect selling expenses to avoid this distortion for purposes of its final results.

NTN responds that the expenses in question are solely related to sales of non-subject merchandise and therefore excluded from the antidumping duty calculations legitimately. NTN asserts that it has excluded expenses related to non-subject merchandise only and these exclusions do not distort the margin calculations. According to NTN, it would in fact distort the calculations to include such expenses. NTN contends that for other expenses, i.e., those that cannot be attributed to either subject or non-subject merchandise, it applied a reasonable allocation methodology that has been accepted by the Department.

NTN argues that Timken's assertion that NTN reduced its allocated expenses by removing expenses associated with sales of NBCA is erroneous. According to NTN, it simply did not include expenses associated with merchandise that are outside the scope of the order. Citing SKF USA Inc. v. INA Walzlager Schaeffler KG, 180 F.3d 1370,1376 (CAFC1999), NTN argues that the CAFC has approved the removal of expenses related to merchandise outside of the scope of the order. NTN argues that, when NBCA captures, as an account unto itself, expenses that are entirely unrelated to this antidumping duty case, the company has no reason to include such expenses when it calculates its indirect selling expenses. NTN asserts that to include the expenses in question in the margin calculation would be as inaccurate as to include sales of non-subject merchandise in the margin calculation for this order. NTN argues that the Department has accepted NTN's methodology in prior reviews and that it has not changed its methodology in this administrative review.

NTN argues that, to arrive at a ratio that can effectively be used to allocate certain expenses to sales of subject merchandise only, it is necessary to include all sales of both subject and non-subject merchandise in the denominator. NTN asserts that the CAFC has held previously that similar allocation methodologies were reasonable and supported by substantial evidence on the record. In conclusion, NTN argues that its expense allocation process is reasonable and does not produce distorted results as Timken contends.

Department's Position: We have reviewed NTN's questionnaire response and are satisfied with NTN's allocation methodology. In its December 10, 2003, supplemental response at page 24, NTN indicates that it did not include the expenses associated with sales of its U.S. affiliate to NBCA in the numerator of its indirect selling expense calculation because these expenses are related solely to sales of non-subject merchandise. Therefore, they are not expenses common to subject and non-subject merchandise which need to be allocated to both. Because we have verified NTN's allocation methodology in past reviews and found it to be acceptable, we have therefore accepted NTN's allocation methodology in this administrative review. In addition, we find no evidence in these reviews that NTN's allocation methodology is distortive.

Comment 14: Timken argues that the Department found at verification that Koyo misallocated home-market lump-sum billing adjustments, tooling revenue, and commissions. According to Timken, the Department found that the expense factors for such reported price adjustments should have been multiplied by the sum of gross unit price and transaction-specific billing adjustments, whereas Koyo multiplied the expense factors by the gross unit price. Timken urges the Department to correct this error for the final results.

Timken contends further that Koyo likely made the same misallocation when it calculated home-market indirect selling expenses, inland freight expenses, warehousing expenses, credit expense, and inventory carrying costs. Timken argues that the Department should also adjust these expenses so that the expenses are reported on the basis of gross unit price net of transaction-specific billing adjustments rather than just gross unit price.

Koyo concurs that these expenses should be adjusted as described by Timken.

Department's Position: We agree with Timken and Koyo that we should adjust Koyo's reported home-market lump-sum billing adjustments, tooling revenue, commissions, indirect selling expenses, inland freight expense, warehousing expenses, credit expenses, and inventory carrying costs to take into account transaction-specific billing adjustments. In addition, because Koyo's U.S. credit expenses were calculated in the same manner as its home-market credit expenses, we have made a similar adjustment to Koyo's reported U.S. credit expenses.

6. Movement Expenses

Comment 15: Timken alleges that NMB/Pelmec's allocation of its freight expenses on a cost-per-piece basis causes distortion on certain freight expenses because this methodology does not reflect the decrease in freight costs as volume increases, and vice versa. Timken asserts that, because more sales were made to OEMs, the freight expenses should be lower. Timken supports its assertion by providing both the highest and the average quantities for NMB/Pelmec's OEM and distributor sales.

Timken requests that the Department depart from its precedent and reallocate NMB/Pelmec's certain freight expenses.

NMB/Pelmec finds no supporting evidence in Timken's request for reallocation. NMB/Pelmec accuses Timken of attempting to call NMB/Pelmec's longstanding methodology into question under a factually unsupported basis that freight costs should decrease as volume increases. NMB/Pelmec explains that the company has reported freight expenses on a per-piece basis because the per-piece basis is the only allocation methodology allowed by the company's books and records. NMB/Pelmec states that the company incurs freight on the basis of the number of trips and pallets, not on the size of a shipment as Timken claims. NMB/Pelmec reiterates that it was impracticable to distinguish freight expense by weight based upon the recording methodology it used in its books and records.

<u>Department's Position</u>: The Department may consider allocated expenses when transaction-specific reporting is not feasible, if the Department considers that the allocation method used does not cause inaccuracies or distortion. 19 CFR 351.401(g)(1). A respondent seeking to report an expense on an allocated basis must demonstrate that the allocation is calculated on as specific a basis as is feasible and must explain why the allocation methodology used does not cause inaccuracies or distortions. 19 CFR 351.401(g)(2).

In the questions concerning freight in sections B and C of the original questionnaire, the Department requested that the respondent allocate the freight expense on the basis incurred, <u>e.g.</u>, weight, volume, etc. The Department also requested in sections B and C of the original questionnaire that, if the respondent incurred its freight expenses on multiple bases, <u>e.g.</u>, weight and distance, and the respondent cannot allocate the expenses on the bases on which they were incurred, the respondent should allocate the freight expense on at least one of the bases on which its expenses were incurred. The Department requested in the questionnaire that, if the respondent cannot allocate the expenses on any of the bases on which they were incurred, the respondent must explain how it allocated the expenses and why the respondent could not allocate them on any of the bases on which its expenses were incurred and demonstrate that the allocation methodology the respondent used is not distortive.

According to NMB/Pelmec, tracing specific freight charges to individual transactions is not practicable. See NMB/Pelmec's original response, pages B-23-28; C-21-25; C-27-29, dated September 30, 2003. NMB/Pelmec stated that the company based the freight charges on the number of trips and pallets, not on weight. Id. NMB/Pelmec explained that the company based its freight-expense allocations on a per-piece basis because this is the only methodology possible given how the company records this information in its books and records. For NMB/Pelmec's reported freight allocation methodology, see NMB/Pelmec's original response, attachments B-2, B-3, B-4, B-5, C-3, C-4, C-6, C-7, dated September 30, 2003. Timken did not provide sufficient evidence to show any specific distortion in NMB/Pelmec's freight allocation methodology. Moreover, the information Timken used to show that NMP/Pelmec's reported methodology was distortive; the highest and average quantities sold to OEM and distributor sales by NMB/Pelmec are of no value in assessing the alleged distortion of NMB/Pelmec's methodology. Therefore, we find that NMB/Pelmec's reported allocation methodology for its certain freight expenses is not distortive.

Comment 16: Timken argues that NTN should adjust its U.S. prices for warehousing in the home market prior to shipment to the United States. Timken states that NTN reported warehouse expenses for its home-market sales but did not report any warehouse expenses in the home market for its U.S. sales despite reporting freight charges for inland freight from the plant to the warehouse for its U.S. sales. Timken also asserts that NTN reported the code for warehousing in a particular account in its chart of accounts but did not include expenses from this account in its export charges reported in Exhibit C-8 and C-9. Therefore, Timken argues, the Department should adjust NTN's U.S. prices for warehouse expenses incurred in the home market prior to shipment to the United States.

NTN argues that it did report warehousing expenses for its U.S. sales and that the Department has already accepted NTN's U.S. warehousing adjustments in the previous two reviews and concluded in the last review that, "based on our verification, we are satisfied that NTN included U.S. warehousing expenses in its response." NTN claims that it has not changed its methodology in this review. Further, NTN asserts that the account in question is only a warehousing account for home market use and should not, therefore, be used for its calculation of warehousing expenses for its U.S. sales. Therefore, NTN concludes, the Department should not make an adjustment to NTN's allocation of its U.S. warehousing expenses.

Department's Position: The record suggests that NTN may have incurred warehousing expenses in the home market for its sales to the United States because NTN reported that it incurred inland freight from its plant to a distribution warehouse and inland freight from its plant/warehouse to the port of exit. See NTN's supplemental response, pages C-23 through C-26, dated December 10, 2003. However, we do not have information on the record of this segment of the proceeding to substantiate the existence of this expense and, therefore, we have accepted NTN's response with regard to its reporting of warehousing expenses. We intend to examine this issue in detail in subsequent segments of this proceeding.

7. Sample Sales

Comment 17: Timken opposes the Department's exclusion of NMB/Pelmec's U.S. sample sales from the margin calculations. Citing AFBs 8 at 33342-43, in which the Department rejected Koyo's and NTN's U.S. sample exclusions but accepted SKF's U.S. sample exclusions pursuant to a CAFC decision, Timken states that the Department does not accept claims automatically that zero-priced transactions are excludable. Timken acknowledges that the Department excluded NMB/Pelmec's samples in AFBs 13, but urges the Department not to exclude samples in this segment of the proceeding because NMB/Pelmec transferred to one U.S. customer very large quantities of pieces of BBs in multiple sample transactions. Because of these quantities, Timken asserts that NMB/Pelmec's reported sample transactions to this U.S. customer are inconsistent with the supporting information the company provided. Timken also alleges that NMB/Pelmec transferred to this U.S. customer merchandise of the same model with consideration.

NMB/Pelmec points out that, compared to its overall total of its reported transactions, the sample transactions are negligible because they represent only a tiny percentage of the total U.S. sales quantity. NMB/Pelmec asserts that it provided all necessary and requested information regarding its samples and demonstrated properly that these samples should be excluded. NMB/Pelmec argues that Timken provides no evidence to support its argument that these sample transactions, which involve no consideration, should not be considered samples. NMB/Pelmec claims further that Attachment V-5 of its September 30, 2003, original response, which compares the quantity and value between actual sales and sample shipments by product and customer, demonstrates that the nature of the company's sample transactions was consistent with the Department's criteria for accepting sample transactions.

Citing NSK Ltd. v. United States, 115 F.3d 965, 974-75 (CAFC 1997) (NSK), which found that samples given to potential customers at no charge lacked consideration, NMB/Pelmec argues that its sample transactions should be excluded as a matter of law because the record evidence of NMB/Pelmec's transfers of samples prove that the company received no consideration. Knowing that the Department does not exclude automatically "from analysis any transaction to which a respondent applies the label sample," but rather would "exclude sample transactions. . . for which a respondent has established that there either is no transfer of ownership or no consideration," as stated in AFBs 7 at 54069, NMB/Pelmec explains, it has not requested an automatic exclusion of samples but bases its claims on the substantial supporting documentation in its responses to the Department's questionnaires. NMB/Pelmec asserts that its record evidence demonstrates that the company received zero consideration for the samples in a way consistent with common commercial practices for samples and that no contrary evidence exists.

NMB/Pelmec calls Timken's charge untimely because Timken did not raise this issue within the fact-gathering period. NMB/Pelmec argues that the inclusion of its U.S. sample sales in the dumping calculation would amount to the application of AFA to NMB/Pelmec. NMB/Pelmec opposes an application of either adverse or neutral FA because the company has provided all necessary information regarding sample sales in a timely manner in response to the Department's questionnaires to the best of its ability in the form and manner requested by the Department without impeding this proceeding significantly. NMB/Pelmec argues that Timken reads AFBs 8 selectively and NMB/Pelmec distinguishes itself from the respondents to whom the Department applied AFA for sample sales because those respondents did not cooperate to the best of their ability to prove that their claimed sample sales lacked consideration. NMB/Pelmec also distinguishes itself from SKF Germany, for whom the Department excluded sample sales in AFBs 7 even though SKF Germany reported a basic, but incomplete, response with respect to its sample sales. NMB/Pelmec states that it responded fully to the Department's relevant questions and that the Department had excluded the company's samples in the past reviews. NMB/Pelmec sees no reason for the Department to deviate from its longstanding practice of excluding the company's samples.

Department's Position: Based on our review of the record after we received issue briefs from the parties, we find that NMB/Pelmec transferred the samples in question to an affiliated reseller in the United States. Because samples of subject merchandise that a respondent transferred to its U.S. affiliate reseller should not be included in the respondent's U.S. sales list, we excluded these samples from NMB/Pelmec's U.S. sales list. See the NMB/Pelmec Final Results Analysis Memorandum, dated September 8, 2004.

Also, contrary to Timken's assertion, this U.S. customer received all of its samples from NMB/Pelmec without consideration. In its U.S. sales list, NMB/Pelmec did record a gross unit price for a number of sample transfers but the company cancelled out the entire gross unit price for these transactions within a billing adjustment.

Comment 18: Timken argues that one U.S. sale claimed by FAG Germany as a sample sale should not be excluded from FAG Germany's U.S. sales list. Timken asserts that FAG Germany has not demonstrated affirmatively that the zero-priced sale in question is a sample sale or, at the minimum, substantiated that no consideration was received for this sale.

FAG Germany argues that the sale should be excluded from its U.S. sales list because no consideration was attributed to this sale. FAG Germany provided a copy of an invoice, appended to its rebuttal brief, applicable to the sale in question, in order to demonstrate that no consideration was received for this sale.

Department's Position: We did not exclude from our margin calculation the U.S. sale alleged by FAG Germany to be a sample transaction. Our practice is to exclude transactions from the margin calculation if we determine such transactions did not receive consideration, based on our evaluation of all the circumstances particular to the sales in question. See NTN Bearing Corp. v. United States 248 F. Supp 2d 1256, 1289 (CIT 2003). In our November 19, 2003, supplemental questionnaire, we sought additional information with regard to the U.S. sale in question. In its response to our supplemental questionnaire, FAG Germany stated that the information sought by the Department would be provided at a later date. The specific information sought by the Department was never addressed by FAG Germany. FAG Germany did attempt to submit additional information regarding the sale in question but the submission was untimely, and in accordance with 19 CFR 351.301(b)(2), we rejected the information submitted by FAG Germany.

It is well established that "the party in possession of the necessary information" bears the burden of evidentiary production. See Zenith Electronics Corp. v. United States, 988 F.2d 1573, 1583 (CAFC 1993). Therefore, FAG Germany, the party seeking the exclusion of the transaction in question, is required to show that the sale lacked consideration or a transfer of ownership. See NSK, 115 F.3d at 974-75 and NTN Bearings Corp., 248 F. Supp. 2d at1289.

FAG Germany did not meet its evidentiary burden or afford the Department with a timely opportunity to consider all the circumstances particular to the sale in question. Because we could not determine whether FAG Germany did not, in fact, receive consideration for the U.S. sale in question, we did not exclude it from our margin calculations.

Comment 19: Barden argues in its case brief that the Department neglected to remove sales of sample merchandise from the U.S. sales list when calculating its antidumping duty margin. Barden claims that, because it described these sample sales fully in its questionnaire response and marked them clearly in its U.S. sales list, the Department must exclude those sales. Barden cites NSK, supra, in support of its argument.

Timken argues in its case brief that the Department does not automatically accept claims that zero-priced transactions are excludable from antidumping margin calculations. Timken claims that Barden asserted that, for "bearing types sold as sample bearings, there were no other sales in the U.S. to that customer of comparable merchandise." Timken argues that Barden's assertion is not supported by the evidence and that, in fact, there are two instances in which the alleged sample bearings were sold to the same customer previously. Timken claims, therefore, that these two sample sales are effectively discounts and should not be excluded from the margin calculations. In its rebuttal brief, Timken adds that the burden of proof is with the party claiming the exclusion and that party must demonstrate or submit documentation showing that the sales in question lacked consideration.

In its rebuttal brief, Barden states, "Timken provides no factual or legal basis for its fallacious conclusion that bearings invoiced at zero-prices are, by definition, 'discounts' where those bearings are also sold to the same customer at a market price." Barden also argues that it provided documentation demonstrating that these transactions were indeed bona fide zero-priced transactions and identified all prior sales of these zero-priced bearings to the same or different customers.

Department's Position: We find that all of Barden's claimed sample transactions should be excluded for purposes of calculating the dumping margin. Timken claims that we do not exclude zero-priced transactions automatically from the dumping margin calculations and that, because some of the bearings given as samples were previously sold to the customer, the Department should consider these sample sales discounts and include them in the margin calculation. Although we agree with Timken that we do not exclude zero-priced transactions automatically from the dumping margin calculations, we determine that in this case Barden described these transactions fully to the Department in its original section C response and its supplemental response and demonstrated that these transactions lacked consideration and, thus, were not sales. See NSK, 115 F.3d at 974-75.

As for Timken's allegation that two of the alleged sample transactions were disguised discounts, we have no evidence that this is the case. For both transactions, there is no evidence to suggest that Barden received any compensation or they amounted to discounts to the customer. Furthermore, we asked several additional questions in the supplemental questionnaire and requested documentation for many of Barden's sample transactions. Barden answered all questions adequately and the documentation demonstrated that Barden received no consideration for the transactions at issue. See Barden's supplemental response, at page 58, dated December 24, 2003. Finally, Barden provided an explanation in its response to the questionnaire and supplemental questionnaire when it stated that "products that were previously purchased by a customer may be sold as a sample if the customer wants to test an existing bearing in a new application." See Barden's supplemental response, at pages 56-57, dated December 24, 2003.

We agree with Barden that we neglected inadvertently to exclude transfers of sample merchandise from the margin calculations for the Preliminary Results. Therefore, these sample transactions have been excluded for the final results of review.

Comment 20: Timken argues that, as indicated by the reported sale dates, Paul Mueller's reported sample transactions were subsequently sold to a customer in the United States as regular, non-sample, transactions. Timken observes that the claimed sample transactions contain payment dates that postdate regular transactions of the same model to the same customer by a substantial margin. Timken argues further that the quantities involved in the sample transactions are substantial, relative to the quantities in the regular sales. Furthermore, the petitioner claims that the bearings were delivered to the customer and were never returned and that Paul Mueller asserts that it does not know whether the bearings were destroyed, but "presumes they were tested." Barring evidence that the bearings supplied as samples were, in fact, destroyed by the customer and in view of the fact that the sample transactions involved a substantial quantity of bearings in relation to the regular sale, Timken argues that the Department should adjust the reported unit price in the non-sample transactions downward to reflect the fact that additional bearings were received by the U.S. customer.

In rebuttal, Paul Mueller argues that Timken's assertion that Paul Mueller should not receive sample-transaction treatment for the transactions in question is without merit. Paul Mueller argues that, as indicated in its section C questionnaire response, the bearings were given to customers free of charge and that the pro forma invoices that accompanied the samples indicated that the bearings were provided as free samples and that, where an order existed, it typically referred to the sample. Moreover, contrary to Timken's assertion, Paul Mueller asserts that the customer involved did not purchase the subject bearings before the sample was provided. With regard to Timken's argument that GMN Bearing USA (Paul Mueller's U.S. affiliate) did not know the ultimate disposition of the samples, Paul Mueller argues that the Department's acceptance of sample sales does not require proof of destruction. As to Timken's assertion that the quantity in the sample transactions was significant in relation to later sales of the product, Paul Mueller argues that a review of the samples which it gave away shows that the quantity provided was much smaller than quantities later sold. Regarding Timken's comment that there is a date of payment given for those transactions claimed to be samples, Paul Mueller explains that, when no payment date was available at the time of its response, the date of the questionnaire response was inserted automatically as the payment date. Paul Mueller stated that not removing these pro forma submission dates from the sales list when payment dates for the transactions were updated was a clerical error on its part. Finally, Paul Mueller argues that the record demonstrates that the few sample transactions were properly treated as zero-priced sample transactions and, consistent with the Department's long-established practice, these sample transactions should be disregarded.

Department's Position: Contrary to Timken's assertions, we find that there is sufficient evidence provided in Paul Mueller's responses for us to make a determination that the respondent did not receive consideration for this merchandise. We observed Paul Mueller's treatment of sample transactions during our verification of its home-market and U.S. sales and found only those discrepancies listed in our verification report. See the Paul Mueller verification report, at page 13, dated April 27, 2003. During our verification, we observed that Paul Mueller received no consideration for the samples and that the pro forma invoices that accompanied the merchandise indicated that the company provided the bearings as free samples. Furthermore, we observed that, when a payment date was missing, the date of the questionnaire response was inserted automatically as the payment date. Finally, with regard to Timken's argument that the sample transactions are substantial relative to normal sales, we examined one of the bearing models used by Timken to support its argument. The quantity of sample transactions are only a small fraction of the subsequent sales quantities of the same model. See Paul Mueller's original response and attached sales data, dated October 6, 2003. For further detail, see Final Analysis Memorandum for Paul Mueller Industrie GmbH & Co. KG - Ball Bearings from Germany from David Dirstine to the File, dated September 8, 2004, at 2.

Therefore, consistent with our past practice and <u>NSK</u>, we did not calculate a margin on U.S. transactions which Paul Mueller designated as zero-priced samples because no consideration was given for these bearings.

8. Billing Adjustments and Rebates

<u>Comment 21</u>: Timken contends that the Department found at verification that Koyo's lump-sum billing adjustments were incurred on specific models and for time periods not corresponding to the POR. Timken observes that Koyo simply totaled all adjustments on a customer-specific basis and allocated the total adjustment over all sales to that customer. Timken argues that the allocation ignores that the adjustment was not actually incurred on all sales because the sale either involved a different product or occurred during a different time. Accordingly, Timken asserts, the Department should grant the adjustment only to the extent that it determines that more accurate reporting is not feasible.

Koyo contends that the Department has repeatedly examined this issue in prior reviews and has found that Koyo is not able to allocate these billing adjustments on a more specific basis than on the basis on which Koyo reported the adjustment, <u>i.e.</u>, a customer-specific basis.

Department's Position: We found at verification that Koyo's lump-sum billing adjustments were incurred on time periods that did not correspond to the POR, e.g., for a six-month period or for a month, but that Koyo allocated the lump-sum billing adjustments over all sales to the customer during the POR. See the Koyo verification report, at page 5, dated April 14, 2004. We also discovered that Koyo did not actually adjust the prices of all models sold to the customer but that it allocated the lump-sum billing adjustment to all sales made to the customer. Id.

Our longstanding practice is to accept adjustments that are not reported on a transaction-specific basis "when it was not feasible for a respondent to report the adjustment on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions." See AFBs 6 at 2091.

In this case, we found that the allocation methodology Koyo used causes unreasonable inaccuracies and distortions. Koyo's methodology allocates lump-sum billing adjustments from sales that actually had an adjustment to sales that did not have an adjustment. Furthermore, we have analyzed this effect and found the distortive effect to be substantial. Because of the proprietary nature of our analysis, see the Koyo Final Results Analysis Memorandum, dated September 8, 2004, for a complete analysis of the distortive effects of Koyo's allocation methodology. Accordingly, we have denied Koyo's reported negative lump-sum billing adjustments.

While it is true that we have verified and accepted Koyo's reporting methodology for lump-sum billing adjustments in prior reviews, in this review we have directly observed clear evidence of a substantial distortion caused by Koyo's allocation methodology. As we describe in the Koyo Final Results Analysis Memorandum, dated September 8, 2004, the evidence of distortion in this POR caused by the allocation methodology is clear and unequivocal. As a result, we have disallowed Koyo's allocation methodology for its lump-sum billing adjustments. Furthermore, because we have found Koyo's allocation methodology to be unreasonably distortive, the issue as to whether it was feasible for Koyo to report the expense on a more accurate basis is irrelevant.

Finally, with respect to Koyo's positive lump-sum billing adjustments, our longstanding practice has been to include "positive (upward) HM price adjustments (e.g., positive billing adjustments that increase the final sales price) in our analysis of such companies. The treatment of positive HM billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an unacceptably broad basis in order to reduce normal value and margins. That is, if we were to disregard positive billing adjustments, which would be upward adjustments to normal value, respondents would have no incentive to report these adjustments in the most specific and non-distortive manner feasible." See AFBs 6 at 2091. Therefore, we have not disregarded Koyo's positive lump-sum billing adjustments.

Comment 22: Asahi observes that, in its verification report, the Department indicated that Asahi allocated rebates for one customer over all sales although they were earned for two quarters only. Asahi contends that its methodology was proper because it reported rebates actually paid during its fiscal year because the payments tie directly to its financial statements for the same fiscal year.

Asahi contends that it has used this methodology in every review in which it has participated and that this methodology has been verified and accepted by the Department in past reviews. Asahi also argues that, had the Department brought the matter up during verification, it could have provided a complete explanation which would have demonstrated why its methodology was correct.

Asahi alleges further that, because the Department has not provided it with its calculation methodology, it has been unable to replicate the Department's calculation methodology. Therefore, according to Asahi, it does not know or understand the Department's rationale.

Asahi argues also that the Department may not use surprise findings that were not included in the Preliminary Results. Asahi claims that it is being denied due process as it may not meaningfully comment absent a full understanding of the methodology used by the Department.

Finally, Asahi contends that, because the rebate cited in the verification report was for one percent and that the vast majority of sales did not receive a rebate, the effect is de minimis.

For the above reasons, Asahi argues, the Department must not change its reported home-market rebates.

Department's Position: We found at verification that Asahi's home-market rebates were incurred on time periods that did not correspond to its fiscal year, e.g., for individual quarters, but that Asahi allocated the rebate over all sales to the customer during its fiscal year. See the Asahi verification report at page 4, dated April 22, 2004.

Our longstanding practice is to accept adjustments that are not reported on a transaction-specific basis "when it was not feasible for a respondent to report the adjustment on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions." See AFBs 6 at 2091.

In this case, we have found that the allocation methodology Asahi used causes unreasonable inaccuracies and distortions. Asahi's methodology allocates rebates from sales that actually incurred rebates to sales that did not incur rebates. We found this to be true of all but one of the customers to which Asahi paid rebates that we examined at verification. Furthermore, this effect is not insignificant. For example, one customer we examined at verification received a rebate of one percent of sales for the second and fourth quarters of 2002 but did not receive a rebate for the third quarter of 2002 or for the first quarter of 2003. See the Asahi verification report, at page 4, dated April 22, 2004. Accordingly, we have denied Asahi's reported home-market rebates.

While it is true that in the past we have verified and accepted Asahi's reporting methodology for rebates, as described above, in this review we have directly observed clear evidence of a significant distortion caused by Asahi's allocation methodology. Moreover, Asahi reported rebates for a significant portion of its home-market sales but, as we found at verification, a large portion of these sales did not actually incur rebates. As a result, we have disallowed Asahi's allocation methodology for its rebates. Furthermore, because we have found Asahi's allocation methodology to be unreasonably distortive, the issue as to whether it was feasible for Asahi to report the expense on a more accurate basis is irrelevant.

Asahi asserts that, had we brought the matter up during verification, it could have provided a complete explanation which would have demonstrated why its methodology was correct. This is not the case. We understood Asahi's allocation once Asahi explained its methodology at verification. As we stated above, Asahi allocated rebates from sales that incurred rebates to sales that did not actually incur rebates and this affected a significant number of sales.

We are uncertain as to what Asahi means when it argues that it "has been unable to replicate the Department's calculation methodology." However, we disagree with Asahi's assertion that our rationale is unclear. In our questionnaire, we told respondents that we "will accept allocated expenses if you can demonstrate that the allocation is calculated on as specific a basis as is feasible (e.g., on a customer-specific basis, product-specific basis, and/or monthly-specific basis, etc.) and is not unreasonably distortive." See our July 28, 2003, questionnaire at page G-4. Asahi did not explain why it could not have allocated its rebates to only those sales made during the periods for which it granted the rebates. In fact, Asahi's responses nowhere indicated that it paid rebates only on specific subsets of the sales made to customers during the fiscal year. Had this fact been clear from Asahi's responses, we could have instructed Asahi to correct the distortive effect in a supplemental questionnaire.

Finally, Asahi's contention that we may not use "surprise" findings that were not included in the preliminary results is without merit. The findings were a result of a post-preliminary-results verification. Furthermore, had we been aware of the shortcomings of Asahi's methodology previously, we would have asked Asahi to revise its methodology prior to issuing our preliminary results. Verification is not the proper venue for correcting flaws in a methodology that only came to light at verification.

Comment 23: Timken alleges that SKF Italy's narrative explanation of home-market billing adjustments at page B-27 of its October 6, 2003, questionnaire response is inconsistent with certain reported home-market billing adjustments. Summarizing SKF Italy's narrative explanation, Timken states, "SKF asserts that adjustments are granted to correct invoicing errors." However, Timken cites an example where the adjustment does not appear to be a correction for a billing error. Accordingly, Timken requests that the Department compel SKF Italy to provide additional support or deny the adjustment.

SKF Italy asserts that reported billing adjustments conform to its normal business practices and that "where billing adjustments were issued and recorded, SKF reported these to the Department." Furthermore, SKF Italy states that it provided a sample credit note and a calculation worksheet for a reported home-market transaction in response to the Department's only supplemental question regarding billing adjustments. SKF Italy also asserts that Timken's request is beyond the time when such questions should have been raised. As such, SKF Italy requests that the Department deny Timken's request.

Department's Position: Timken's case brief was submitted in a timely manner and the arguments raised in the case brief are based on information already on the record. SKF Italy's narrative explanation of billing adjustment at page B-27 of its October 6, 2003, questionnaire response states, "The amounts reported in field BILLADJH represent credit or debit memos attributable to the specific product and transaction reported, e.g., overcharging or undercharging due to price input error. . .The reported billing adjustments are derived from individual debit/credit memos and are reported on an invoice-specific and product-specific basis (i.e., transaction specific basis)." In addition, SKF Italy's December 11, 2003, supplemental response provided documentation to support its methodology for the reported billing adjustments. As such, the Department has granted the home-market billing adjustment at issue because it is an actual billing adjustment that reflects what SKF Italy actually received for this particular home-market transaction and what SKF Italy recorded in its normal business practices.

Comment 24: Timken argues that SKF Italy's Section B narrative response, indicating that it did not grant the rebates reported under field REBATE1H to any large OEMs, is inconsistent with the home-market sales list which reports values under REBATE1H for OEMs. As such, Timken requests that the Department seek further clarification or deny the adjustment for all of the observations affected by the inconsistency.

SKF Italy concedes that rebates were indeed granted to a few customers classified as large OEMs, and admits that their original narrative "could have been more exact." However, SKF Italy asserts that the reported number of transactions for which it granted rebates to large OEMs is insignificant. In addition, SKF Italy argues that these values are accurate adjustments which occurred during the regular course of business in the sales process. Therefore, SKF Italy requests that the Department include the reported adjustments in the calculation of normal value for these final results.

Department's Position: We agree with SKF Italy that its narrative description could have been more exact. However, after reviewing the data files and narrative response on the record regarding rebates, we conclude that SKF Italy's clarification of the reported rebates in its May 3, 2004, rebuttal brief provides sufficient support for the accuracy of these adjustments. As such, the Department will not deny SKF Italy's rebate adjustments for these final results.

9. Cost Issues

Comment 25: Citing section 773(f) of the Act, NSK asserts that the Department erred when it used the adjustment between NSK's purchase price of inputs from affiliated suppliers and the suppliers' COP for calculations other than COP or CV. NSK argues that the Department's use of affiliated-supplier price and cost data is limited solely to COP or CV calculations and should not apply to VCOM. Specifically, NSK argues that the Department "lacks authority to apply the inputs adjustment to any other aspect of the dumping calculations." Therefore, NSK argues that the Department should revise its margin calculations so that the affiliated-party input adjustments only apply to COP and CV.

Citing NTN Bearing Corporation of America v. United States, 186 F. Supp. 2d 1257, 1297-1304 (CIT January 24, 2002) (NTN I), Timken argues that the Department's adjustments to material costs of affiliated-party inputs is both permissible and reasonable, even when the adjustments affect calculations other than COP and CV, such as VCOM and TCOM.

Department's Position: We agree with Timken that we adjusted NSK's affiliated-party input prices for purposes of calculating the VCOM used in determining the DIFMER properly. NSK asserts incorrectly that section 773(f) of the Act specifically limits substitution of affiliated-party cost data to our analysis for COP under section 773(b) of the Act and CV under section 773(e) of the Act. In Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roler Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antuidumping Duty Administrative Reviews, 63 FR 2558 (January 15, 1998) at Comment 26 (TRB 95-96), we stated that "COP and CV are composed of several components. We also note that the adjustment we made for NSK's affiliated-party inputs is actually an adjustment to its reported material costs. Because material costs are a component of the VCOM and the TCOM, and these in turn are components of COP and CV, when we adjusted NSK's reported material costs we not only recalculated its COP and CV, but we effectively recalculated VCOM and TCOM components of COP and CV as well." Therefore, in this case, the Department's changes to COP and CV resulting from NSK's use of affiliated-party inputs impacts NSK's COM, specifically VCOM and TCOM.

In TRBs 95-96, we stated that our long-standing practice includes the use of VCOMs and TCOMs in order to 1) determine appropriate model-matching; 2) calculate DIFMER adjustments, 3) perform the sales-below-cost test, and 4) calculate normal value when applying CV. See TRBs 95-96 at 2574. Moreover, we determined that neither section 771(b) of the Act or section 773(a)(6) of the Act restricts our ability to use affiliated-party input adjustments for purposes other than COP or CV.

Finally, if we determine that a component of a respondent's COP and CV is distortive for one aspect of our analysis, it is reasonable to make the same determination with respect to those other aspects of our margin calculations where we relied on the identical cost data. To do otherwise would not only produce distortive results but would be contrary to our mandate to administer U.S. antidumping laws as accurately as possible.

In NTN I, NTN challenged the Department's use of affiliated-supplier cost data for inputs obtained from the affiliated supplier for purposes other than calculating COP and CV. The CIT upheld the Department's use of affiliated-supplier cost data for purposes other than the calculation of COP and CV. See NTN I at 1303. In particular, the CIT determined that it was reasonable for the Department to use affiliated-supplier cost data to calculate the DIFMER adjustment under section 773(a)(6) of the Act. The CIT reasoned that "...{a}lthough the SAA provides in relevant part that under the existing statute {that is, §§ 1677b(f)(2)and (3)}, these provisions literally apply only to the calculation of constructed value ... {and} cost of production, ... it would be anamolous to interpret this language as implying that Congress' intention was to prohibit Commerce from using affiliated supplier cost data for other purposes." See NTN I at 1303. Further, the CIT reasoned that "{t}he statute, read as a whole, does not show Congressional intent to restrict the use of affiliated supplier cost data solely to COP and CV calculations and in effect, tie the hands of Commerce while parties could distort dumping margins with impunity." Id.

Moreover, the CAFC recently upheld the Department's use of affiliated-party input cost data for uses other than COP and CV. See NTN Bearing Corp. v. United States, 368 F. Supp. 3d 1369 (CAFC 2004) (NTN II). Specifically, the CAFC upheld the Departments's use of "affiliated supplier cost data to calculate cost deviations to limit the definition of similar merchandise, the difmer adjustment, and inventory carrying costs." Id. at 1374. In NTN II, NSK, as plaintiff along with NTN and Koyo, argued as it does in the instant segment of this proceeding, that Congress intended the Department's use of affiliated-supplier cost data to be limited to the calculation of COP and CV. NTN II at 1373. However, the CAFC found that the Department's use of affiliated-party-input cost adjustments to limit the definition of similar merchandise, the difmer adjustment, and inventory carrying costs did not derive from the statutory provisions governing COP and CV, but from distinct statutory authorities. Id. As a result, the CAFC rejected NSK's argument that sections 773(b) and 773(e) of the Act, the statutory provisions governing COP and CV, preclude the use of affiliated-supplier cost data for any other purpose.

Therefore, consistent with NTN I, NTN II, and our past practice, in the instant segment of this proceeding, we continue to use NSK's affiliated-supplier cost data to 1) determine appropriate model-matching; 2) calculate difmer adjustments, 3) perform the sales-below-cost test, and 4) calculate normal value when applying CV.

Comment 26: Timken contends that SKF Italy and NN Euroball are affiliated companies, since SKF Italy's parent company, AB SKF holds 90 percent and 23 percent interest in those companies, respectively. As such, Timken argues that the prices of the balls which SKF Italy purchases from NN Euroball should undergo the arm's-length test, and be compared to market prices. If such prices are not available, Timken argues that the Department should compare the price of balls purchased from NN Euroball with COP values of balls, and use the higher of the two in its calculations, since balls are a major input.

SKF Italy asserts that NN Euroball is not an affiliated party because SKF Italy has no financial interest in NN Euroball. SKF Italy explained that the 23 percent ownership interest in NN Euroball held by AB SKF is non-controlling, and neither AB SKF nor SKF Italy have any overlapping directors or managers. In addition, SKF Italy contends that its purchases of balls from NN Euroball are made at arm's-length prices. Further, SKF Italy states that, in those few instances where identical models were obtained from NN Euroball and an unaffiliated party, NN Euroball charged higher prices.

Department's Position: The Department has determined that NN Euroball is affiliated with SKF Italy according to sections 771(33)(E) and (F) of the Act. See Memorandum to Laurie Parkhill - Administrative Review of the Antidumping Duty Order on Antifriction Bearings and Parts Thereof from Italy - Decision to Treat SKF Industrie S.p.A and NN Euroball as Affiliates (June 16, 2004). Because the issue of NN Euroball's affiliation with SKF Italy was decided late in this proceeding, we did not request that SKF Italy provide NN Euroball's model-specific cost information for the balls it supplied to SKF Italy during the POR. However**,** on June 18, 2004, the Department requested SKF Italy to provide supplemental information to determine the applicability of the major input rule on sales of balls by NN Euroball to SKF Italy.

In its June 25, 2004, submission, SKF Italy provided information which supports its claim that it purchased balls from NN Euroball at arm's-length prices during the POR. For example, where SKF Italy purchased the same ball models from both NN Euroball and unaffiliated suppliers, the purchases were made at a pattern of prices that supports SKF Italy's arm's-length assertion. Further, in Appendix D-5 of SKF Italy's June 25, 2004, submission, NN Euroball provided information demonstrating that NN Euroball's transfer prices were significantly above cost during the POR. See Antifriction Bearings and Parts Thereof From Italy: SKF's Response to the Department's June 18, 2004 Letter at Appendices D-3, D-4, and D-5, dated June 25, 2004.

Regarding Timken's argument that the balls supplied by NN Euroball constitute "major inputs," the statute does not contain a definition of "major input." See Mitsubishi Heavy Indus. Ltd. v. United States, 15 F. Supp. 2d 807 (CIT 1998), aff'd 275 F.3d 1056 (CAFC 2001). Further, rather than adopt a bright-line definition of "major input," the preamble to the Department's regulations specifically rejects the concept of a single threshold for defining an affiliated party input as major. Instead, the Department bases determinations of whether an affiliated party input is major on case-specific facts such as: the nature of the input, the product under investigation, and the nature of the transactions and operations between the producer and its affiliated supplier. See Antidumping Duties; Final Rule, 62 FR 27295, 27362 (May 19, 1997).

After examining the facts surrounding SKF Italy's affiliation with NN Euroball, including the quantity and value of the inputs in question, we determined that these inputs are not subject to the major input rule. See SKF Italy's Analysis Memorandum dated September 8, 2004.

Comment 27: Timken claims that NPBS obtains housings from a wholly owned subsidiary, Qinghuangdao NPBS Bearings Co., Ltd. (Qinghuangdao), and based the calculation of costs for Qinghuangdao-manufactured housings on allocated costs because housings are often transferred without a transfer price. In addition, Timken also asserts that NPBS purchases other inputs from its subsidiary Fukuchiyama Foundry Co., Ltd. (Fukuchiyama).

Timken requests that the Department apply its long-standing practice regarding the reporting of major and minor inputs obtained from Qinghuangdao and Fukuchiyama. Citing AFBs 11 and its accompanying Issues and Decision Memorandum, at Comment 30, Timken argues that the Department values major inputs at the higher of transfer price, market price or the affiliate's COP and minor inputs at the higher of transfer price, market price, or the affiliate's COP (where market prices are unavailable).

NPBS argues that the inputs supplied by Qinghuangdao and Fukuchiyama were not major inputs and that the Department did rely on its normal practice by accepting the transfer prices for these inputs.

Department's Position: During our verification, we learned that NPBS exports less than one percent of its bearings with Qinghuangdao-made housings into the United States. See Verification Report of the Cost of Production and Constructed Value Data Submitted by Nippon Pillow Block Manufacturing Co., Ltd., Nippon Pillow Block Sales Co., Ltd., and FYH Bearing Units USA, Inc. of Japan, dated April 28, 2004, page 5 (NPBS Verification Report). NPBS' electronic data submissions also support this fact. For the purpose of determining the CEP, the Department may decline to take into account insignificant adjustments in relation to the price or value of BBs. See section 777A(a)(2) of the Act. An "insignificant adjustment" is any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent, of the CEP. See 19 CFR 351.413. The housings supplied by Qinghuangdao have virtually no impact on NPBS' COP of bearings sold to the United States. Also, Fukuchiyama's inputs, e.g., slingers, dust covers, etc., were minor in comparison to NPBS' total COM. See NPBS Verification Report pages 4-5, 8, and Exhibits 6, 15. Therefore, we determine that these minor inputs should be valued according to section 773(f)(2) of the Act.

The Department values minor inputs at the higher of transfer price or market price. See AFBs 11 and its accompanying Issues and Decision Memorandum, at Comment 30. Since NPBS did not purchase these parts from other suppliers, nor did Fukuchiyama supply them to other customers, there were no market prices for the inputs in question. Also, we could not use Fukuchiyama's COP as a surrogate for market price because Fukuchiyama did not maintain model-specific cost records for these parts. However, at verification we examined the material costs for these items and found them to be well below the transfer prices paid by NPBS for these items. See NPBS Verification Report, Exhibit 15. Additionally, Fukuchiyama's financial statements show the firm to be profitable. See NPBS' original questionnaire response Attachments A-15 and A-16, dated October 2, 2003. Therefore, we have accepted Fukuchiyama's transfer prices in calculating NPBS' costs and we find no further modification to the reported prices is necessary. See section 773(f)(2) of the Act.

Comment 28: Timken indicates that one of NPBS' models had not been produced by NPBS for a decade and therefore no documents were available for verification of this model. Citing AFBs 13, Timken requests that the Department use standard costs plus a POR variance rather than historical costs for models sold but not produced during the POR. Timken indicates that, where information was not available, the Department has restated the reported historical cost by adjusting them for inflation using producer price indices published in International Financial Statistics and urges the Department to continue to apply this policy. Timken requests that the Department require NPBS to identify other reported models not currently produced.

NPBS claims that the company has no standard cost system. As far as adjusting historical costs is concerned, according to NPBS, Japan has experienced substantial deflation, particularly in producer products, over the last decade. In support of its argument, NPBS cites an Internet website titled "Domestic Corporate Goods Price Index (1970 – 2002) (Price Index)" and posted by Japan's Ministry of Public Management, Home Affairs, Posts and Telecommunications's Statistics Bureau. NPBS asserts that the company was conservative in not claiming a lower cost reflecting the price changes. NPBS states that the Department may either apply a price adjustment factor by using the Price Index or use the submitted costs, which NPBS claims exaggerate its costs relative to the methodology outlined by Timken.

Department's Position: In situations where a product is sold but not produced, the Department uses a variety of costing methods. For example, we have used the cost of a similar model produced during the POI or POR as a surrogate or we have used adjusted historical production cost. See AFBs 13, 68 FR 35623 and its accompanying Issues and Decision Memorandum, at Comment 23.

We disagree with NPBS that the use of its historical production cost overstates the cost of the model in question. While NPBS claims that it was conservative not to claim a lower cost reflecting the price changes due to Japan's substantial deflation in producer products over the last decade, there is no evidence on the record that these models were written down or are obsolete. Thus, we have used NPBS' actual historical cost adjusted by the consumer price indices of Japan. See NPBS Final Result Analysis Memorandum dated September 8, 2004.

10. Clerical Errors

A number of parties have alleged that the Department made certain clerical errors in its calculations for the Preliminary Results. Where we and all parties agree that a clerical error occurred, we have made the necessary correction and addressed the comment only in the company-specific final results analysis memoranda, dated September 8, 2004. The comments included in this Decision

Memorandum address situations where parties alleged that we made a programming or clerical error but either we disagree or a party to the proceedings disagrees with the allegation.

Comment 29: NPBS argues that the Department made a clerical error by not using its sales made outside of the sample months in its calculation of the CEP-profit ratio. NPBS asserts that it raised the same issue in the 2001-02 review and the Department agreed. NPBS contends that, because the Department has not enunciated a reason to change its methodology in this review, it should use all of NPBS's home-market sales made in both the sample and non-sample months to calculate the CEP-profit ratio.

Timken asserts that, if the Department intends to include home-market sales made outside the sample months in addition to the sales made during the sample months in its calculation of the CEP-profit ratio, it will have to make an additional change. According to Timken, the Department multiplied the home-market values by a weight factor in order to recreate a "whole POR" figure. If the Department adopts NPBS's suggestion but does not remove the weight factor, Timken argues, the Department will essentially be double-counting the entire home-market database in its calculation of CEP profit.

Department's Position: We disagree with NPBS that we made a ministerial error. According to 19 CFR 351.224(f), a ministerial error is "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial." Here, NPBS has questioned our sampling methodology. Under our sampling rules, if a respondent has more than 10,000 transactions in the home market, we require that the home-market sales be sampled. We do not allow the respondent the option of whether to sample if it has more than 10,000 transactions because that would permit the respondent to choose whichever methodology, i.e., whether to sample or not to sample, was more favorable in each review. See the original questionnaire, at pages V-8 and V-9, dated July 28, 2003, where we instructed respondents to report sales during certain months (as opposed to the whole POR). Therefore, since NPBS had more than 10,000 home market transactions, we must sample home-market sales. If a respondent reports all home-market sales even though it has more than 10,000 transactions, our longstanding practice in reviews of these orders is to exclude the sales made outside of the sample months from the home-market database and not use such sales. See, e.g., the Koyo Preliminary Results Analysis Memorandum and the attached comparison-market program, at lines 261-275, dated January 31, 2003. Therefore, we excluded NPBS's sales made outside of the sample months properly.

As Timken observes, we address the potential imbalance between sampled sales in one (or both) markets by weighting the values in the sampled market. We did this properly for NPBS's home-market sales using the same methodology we have consistently used for other respondents in this and prior administrative reviews of the antifriction bearing orders. Id. Thus, there was no ministerial error.

Comment 30: NPBS alleges that the Department made a clerical error by using incorrect figures for CV selling expenses and profit. NPBS contends that the Department calculated CV selling expenses and profit on the basis of two levels of trade in spite of the fact the Department found that it only had one level of trade in the home market. NPBS argues that the Department should calculate a single figure for its CV selling expenses and profit on the basis of all of its home-market sales.

Timken agrees with NPBS's assertion that the Department made a clerical error but contends that NPBS's suggestion would result in another error. Timken suggests an alternative way to correct the error.

Department's Position: Although we found a clerical error, this error had no effect on the correct calculation of CV selling expenses and profit for NPBS. Our standard methodology calculates both level-of-trade-specific CV selling expenses and profit and an aggregate of CV selling expenses and profit. Thus, if there were two levels of trade in the home market, we would calculate three different figures for CV selling expenses and profit: two level-of-trade specific figures and one aggregate figure. Here, because NPBS has only one home-market level of trade we calculated two figures for NPBS, one level of trade specific and one aggregate. In this case, the two figures were not the same because we made an error. See the NPBS Final Results Analysis Memorandum, dated September 8, 2004. We corrected the error for the final results. However, because we used the level-of-trade specific figures, which are correctly calculated and are based on all of NPBS's home-market sales, we used the correct figures for our preliminary results. Therefore, no change is necessary for the final results with regard to this issue.

11. Miscellaneous Issues

A. Performance Lubricant

Comment 31: Timken alleges that SKF Italy did not respond adequately to the Department's request for information regarding performance lubricants. In support of this allegation, Timken contends that SKF Italy did not specify which models contained a performance lubricant, or list the prices of these lubricants as requested in the Department's original questionnaire. Therefore, Timken requests that the Department require SKF Italy to provide all of the information requested with respect to performance lubricants.

SKF Italy contends that the Department did not adequately define the term "performance lubricant" because all lubricants enhance the performance of bearings. As such, SKF Italy claims that it provided the most comprehensive information by identifying the bearing and control number for the model which contained polyhexaflourpropylene, the sole example the Department provided as a performance lubricant.

Department's Position: For purposes of this review, we find SKF Italy's response regarding performance lubricants sufficient. Specifically, on page C-27 of SKF Italy's original response dated October 6, 2003, SKF Italy states, "The part numbers (i.e., models) under which SKF USA sells bearings reflect any special lubricants specified by the customer or necessary for a particular application. The lubricant is thus an integral part of the bearing and is included in the unit price of the bearing – it is neither separately identified nor separately charged. As such, the reported unit prices reflect the cost of any special lubricants; there is no separate price for the lubricant in a given bearing." Although Timken's concerns relate to our model-match methodology, we have not changed our model-match methodology for this POR. See the "Model-Match Methodology" section of this memorandum.

B. Home-Market Sales Reporting by NPBS

Comment 32: Timken complains that NPBS did not include subject merchandise made by other producers in its home-market sales. Timken argues that NPBS should report all home-market sales, including sales of subject merchandise made by other producers.

NPBS claims that it provided home-market sales of the same bearing families as those sold in the United States and therefore no additional reporting of home-market sales is necessary.

Department's Position: We agree with NPBS. Because NPBS did not sell bearings made by other producers to the United States, sales of such bearings in the home market are not foreign like product within the meaning of section 771(16) of the Act, and need not be reported.

C. Sales Outside the Ordinary Course of Trade

Comment 33: NTN argues that the Department should determine that sales of NTN's bearings with abnormally high profits were made outside the ordinary course trade. NTN asserts that, as it has provided evidence in its questionnaire response, sales with abnormally high profits are rare and not representative of the profit level of its ordinary sales and, therefore, such sales are not representative of other sales in the home market. NTN points out that the Department found NTN's sample sales to be outside the ordinary course of trade by recognizing that the sales were rare and that the weighted-average prices were consistently different from the weighted-average prices of non-sample sales. Like sample sales, NTN argues, its sales with abnormally high profits were made in low quantities, thus meeting the Department's requirements of showing unusual characteristics for the purposes of finding sales to be outside the ordinary course of trade. Furthermore, NTN continues, unlike AFBs 12 and AFBs 13 where the Department found that high-profit sales were made occasionally in large quantities, the sales at issue during this POR were never made in large quantities. Therefore, NTN concludes, to the extent that it has made high-profit sales outside the ordinary course of trade, the Department should exclude such sales from the calculation of normal value.

Timken disagrees with NTN. It comments that the Department dismissed NTN's same argument in the previous review by explaining that it would not exclude sales on the sole basis of low quantities and/or high profits in the absence of other evidence that the sales were not in the ordinary course of trade. Because NTN's assertions remain unsupported in this review, Timken asserts, the Department should dismiss them.

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

We have stated in prior reviews that high profits by themselves are not sufficient for us to determine that sales are outside the ordinary course of trade. See, e.g., AFBs 9 at 35620-21 and AFBs 12 and the accompanying Issues and Decision Memorandum, at Comment 27. NTN attempts to support its claim in this review by asserting that high-profit sales were made in smaller quantities than normal sales. In order to determine that a sale is outside the ordinary course of trade due to abnormally high profits, there must be extraordinary characteristics particular to the sales in question which would make them unrepresentative of the home market. See 19 CFR 351.102 (emphasis added). NTN has not shown that these profit levels are in any way abnormally high. Indeed, NTN has not demonstrated with record evidence that these sales are somehow abnormally high. Aside from NTN's assertions about the high profits and low quantities, NTN has not provided any evidence suggesting that these sales have any characteristics that would make them extraordinary for the home market.

Moreover, as we stated in AFBs 12 and AFBs 13, the CIT has affirmed our treatment of similar sales. See NTN Bearing Corp. of America v. United States, 104 F. Supp. 2d 110 (CIT 2000) (NTN Bearing). In NTN Bearing, the CIT sustained the Department's rejection of NTN's claim that the verification of certain high-profit sales should have resulted in the exclusion of those sales from the calculation of normal value. See NTN Bearing, 104 F. Supp. 2d at 147. The CIT held that the

Department's decision to require additional evidence demonstrating that sales with higher profits were outside the ordinary course of trade before excluding such sales from normal value was a reasonable exercise of discretion. Id. Similarly, in this case, because of NTN's lack of record evidence demonstrating that certain high-profit sales are abnormally high and should therefore be excluded as outside the ordinary course of trade, we have not excluded NTN's so-called "high-profit" sales from our calculation of normal value.

D. Home-Market Interest Rate

Comment 34: Asahi observes in the Department's verification report a difference between the interest rate Asahi received from affiliated banks and unaffiliated banks. Asahi argues that the Department should not adjust its reported home-market interest rate. Asahi contends that the difference between the loan rates from affiliated banks and unaffiliated banks is de minimis because it was less than one-hundredth of one percent. Asahi asserts that 19 CFR 351.413 allows the Department to ignore insignificant adjustments. Asahi also argues that it is not unusual for rates to differ slightly between banks. Asahi contends that, had the Department brought the matter up earlier in the verification, it could have demonstrated the reasons why such differences are not relevant based on its financial records.

Timken did not respond to this comment.

Department's Position: We have not made any adjustment to Asahi's reported home-market interest rates. As Asahi observes, 19 CFR 351.413 defines the term "insignificant adjustment" as "any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent, of the export price, constructed export price, or normal value, as the case may be." In this case, the observed difference between affiliated and unaffiliated banks in the interest rate is significantly less than 0.33 percent. Furthermore, because the interest rate is used to calculate credit expense and inventory carrying costs over periods of less than one year, the effect on normal value will be even smaller than the effect of the amount of the interest rate.

E. Home-Market Commissions

Comment 35: Asahi indicates in the Department's verification report that the company reported home-market commissions for some sales outside of the POR and did not report other commissions for sales within the POR. Asahi contends that its methodology was proper because it reported commissions actually paid during its fiscal year because the payments tie directly to its financial statements for the same fiscal year. Asahi alleges that the Department allowed it to report according to its fiscal year. Asahi also asserts that it reported the actual commissions paid rather than based the reported expense on the rates listed in its agreements. Finally, Asahi contends that it has used this methodology in every review in which it has participated and that this methodology has been verified and accepted by the Department in past reviews.

Timken did not respond to this comment.

Department's Position: We have recalculated Asahi's reported home-market commissions to base them on the rates Asahi actually paid its agents. We verified that Asahi actually paid commissions that corresponded with the rates in the commission agreements. See the Asahi verification report, at page 6, dated April 22, 2004. We found further at verification that the amounts Asahi reported varied from the amounts Asahi paid because Asahi allocated its commissions by dividing the commissions paid during the POR by the sales value sold through the agent during the POR. Id. This resulted in commissions that differed from those actually paid on the sales made during the POR because 1) some of the commissions paid during the POR were incurred on sales made prior to the POR and 2) Asahi did not pay the commissions for some of the sales during the POR for which it incurred commissions until after the POR.

We also found at verification that, because Asahi actually paid commissions that corresponded with the rates in the commission agreements, we can recreate the transaction-specific expense by multiplying the gross unit price by the rate in the commission agreement. Id. Moreover, we observe that Asahi used this methodology to report commissions for U.S. sales. See Asahi's original response, at Exhibit C-11A, dated October 6, 2003. Because of the proprietary nature of our analysis on this point, please see the Asahi Final Results Analysis Memorandum dated September 8, 2004. Therefore, because we have verified the actual

transaction-specific payments, we have recalculated Asahi's home-market commissions to reflect the rates Asahi actually paid it commissionaires.

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 review and the final dumping margins for all of the reviewed firms in the Federal Register.

Agree _________ Disagree _________

____

James J. Jochum

Assistant Secretary
for Import Administration

____
Date