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

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Reviews of Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom for the Period of Review May 1, 2003, through April 30, 2004

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom for the period May 1, 2003, through April 30, 2004. 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 of Negative Margins
2. Model-Match Methodology
3. Acquisition Cost vs. Suppliers Cost
4. U.S. Repacking Costs
5. CEP Profit
6. Affiliation
7. Billing Adjustments
8. Clerical Errors
9. Miscellaneous Issues
    - A. NSK-U.S. Selling Expense: Treatment of Certain Japanese-Worker Expenses
    - B. Bearing-Design Types
    - C. Ordinary Course of Trade: High-Profit Sales
    - D. Sample Sales in the Home Market
    - E. Inventory Carrying Costs
    - F. U.S. Customs Duties
    - G. Packing Expense for Home-Market Sales

H. U.S. Indirect Selling Expenses Incurred in Japan
I. U.S. Indirect Selling Expenses Incurred in the United States

Background

On May 13, 2005, 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 (70 FR 25538) (AFBs 15 Prelim). The reviews cover 19 manufacturers/exporters. The period of review is May 1, 2003, through April 30, 2004. We invited interested parties to comment on the preliminary results. At the request of certain parties, we held a hearing for general issues on June 28, 2005, and a Japan-specific issues hearing on July 1, 2005.

Company Abbreviations

Asahi – Asahi Seiko Co., Ltd.
Barden – The Barden Corporation (U.K.) Ltd.
FAG/INA – INA-Schaeffler KG, INA Vermogensverwaltungsgesellschaft GmbH, INA Holding Schaeffler KG, FAG Kugelfischer Georg-Schaefer AG, FAG Automobiltechnik AG, FAG OEM und Handel AG, FAG Komponenten AG, FAG Aircraft/Super Precision Bearings GmbH, FAG Industrial Bearings AG, FAG Sales Europe GmbH, FAG International Sales and Service GmbH
FAG Italy – FAG Italia S.p.A., FAG Automobiltechnik AG, and FAG OEM und Handel AG
GRW – Gebrüder Reinfurt GmbH & Co., KG
INA – INA Wälzlager Schaeffler KG
INA et al. – INA-Schaeffler KG, FAG Kugelfischer AG, FAG Italia S.p.A., The Barden Corporation (U.K.) Ltd., INA USA Corporation, FAG Bearings Corporation, and the Barden Corporation
Koyo – Koyo Seiko Co., Ltd.
NBCA – NTN Bearing Corporation of America
NMB/Pelmec – NMB Singapore Ltd., Pelmec Industries (Pte.) Ltd., and NMB Technologies Corporation
NPB – Nippon Pillow Block Co., Ltd.
NSK – NSK Ltd.
NTN – NTN Corporation
Osaka Pump – Osaka Pump Co., Ltd.
Pacamor – Pacamor Kubar Bearings
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., SKF RIV-SKF Officine di Villas Perosa S.p.A., RFT S.p.A., and OMVP S.p.A.

SKF UK – SKF Aeroengine Bearings UK (formerly known as Aeroengine Bearings UK or NSK Aerospace)
SMT – Nankai Seiko Co., Ltd.
SNR – SNR Roulements and SNR Europe
Takeshita – Takeshita Seiko Co., Ltd.
Timken – Timken US Corporation and MPB Corporation, petitioner

Other Abbreviations

AFA – adverse facts available
AFBs – antifriction bearings
Antidumping Agreement – Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994)
APO – administrative protective order
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
EC – European Community (currently known as European Union)
Final Rule – Antidumping Duties, Countervailing Duties, Final Rule, 62 FR 27296 (May 19, 1997)
G&A – general and administrative expenses
ITC – International Trade Commission
LTFV – less than fair value
OEM – original equipment manufacturer
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 expenses
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

AFBs Administrative Determinations and Results

Preliminary LTFV – Antifriction Bearings from France, et al., Preliminary Determinations of Sales at Less Than Fair Value, 53 FR 45343, 45345 (November 9, 1988)

Final LTFV – Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992 (May 3, 1989).

AFBs 1 France – Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France; Final Results of Antidumping Duty Administrative Reviews, 56 FR 31748 (July 11, 1991)

AFBs 1 Germany – Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991)

AFBs 1 Italy – Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Italy; Final Results of Antidumping Duty Administrative Reviews, 56 FR 31751 (July 11, 1991)

AFBs 1 Japan – Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan; Final Results of Antidumping Duty Administrative Reviews, 56 FR 31754 (July 11, 1991)

AFBs 1 Singapore – Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Singapore; Final Results of Antidumping Duty Administrative Reviews, 56 FR 31759 (July 11, 1991)

AFBs 1 United Kingdom – Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 56 FR 31769 (July 11, 1991)

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

AFBs 3 – Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993).

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

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

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

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

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

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

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

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

AFBs 12 – Ball Bearings and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, 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).

AFBs 14 – Ball Bearings and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part, 69 FR 55574 (September 15, 2004).

AFBs 15 Prelim – Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 25538 (May 13, 2005).

Discussion of the Issues

1. Offsetting of Negative Margins

Comment 1: Asahi, GRW, INA et al., Koyo, NPB, NTN, Sapporo, SKF, and SNR 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 of the Antidumping Agreement. Asahi, GRW, Koyo, NMB/Pelmec, NPB, NTN, SKF, and Sapporo argue further that the Department's practice is not in compliance with WTO obligations of the United States. In addition, Asahi, INA et al., Koyo, NMB/Pelmec, NSK, NTN, NMB/Pelmec, SKF, and SNR argue that the Department's practice contradicts sections of the statute. GRW, INA et al., Sapporo, and SNR argue that the Department should cease its practice since no allegation of targeted dumping has been made.

Asahi, GRW, INA et al., Koyo, NPB, NTN, Sapporo, SKF, and SNR claim that the WTO has held that the Department's practice of not offsetting dumped sales with non-dumped sales in the calculation of the weighted-average dumping margin is inconsistent with U.S. obligations under the Antidumping Agreement. The respondents cite to United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R (August 11, 2004) (Softwood Lumber), European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (March 1, 2001) (Bed Linen), and United States – Sunset Review of Anti-dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R (December 15, 2003) (Corrosion-Resistant Steel), to support their claim. Asahi, SNR, INA et al., NPB, and Sapporo add that the decision in Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804) (Charming Betsy), supports their argument that the Department must not interpret the law in a way which conflicts with its international obligations. Accordingly, Koyo and SKF argue that the Department should eliminate its practice of not offsetting dumped sales with non-dumped sales to ensure that the U.S. law is applied in a manner that is consistent with its obligations under the Antidumping Agreement. Specifically, Koyo asserts that the CAFC indicated that "GATT agreements are international obligations, and absent express Congressional language to the contrary, statutes should not be interpreted to conflict with the international obligations," citing Federal Mogul Corp. v. United States, 63 F.3d 1572, 1581 (CAFC 1995) (trade laws are not exempt from the Charming Betsy doctrine), Luigi Bormioli Corp. v. United States, 304 F.3d 1362, 1368 (CAFC 2002) ("the statute must be interpreted to be consistent with {international} obligations, absent contrary indications in the statutory language or its legislative history"), and Allegheny Ludlum Corp., et al. v. United States, 367 F.3d 1339 (CAFC 2004) (Allegheny Ludlum). Koyo and SKF add that this idea is also emphasized by the statement in the SAA at 669 that the statute was "intended to bring U.S. law fully into compliance with U.S. obligations under the URAA agreements."

According to SKF, the U.S. statute underwent significant revisions to bring the United States into compliance with the Antidumping Agreement. SKF claims, however, that the fundamental mandates resulting from these revisions were not considered in Timken Co. v. United States, 354 F.3d 1334 (CAFC 2004) (Timken), or in Corus Staal B.V. v. United States

Department of Commerce, 259 F. Supp. 2d 1253 (CIT 2003) (Corus Staal I). For example, SKF asserts, the sunset-review provision is a revision to the statute which ties together investigations, administrative reviews, and sunset reviews in a way that did not exist prior to the passage of the URAA. SKF asserts further that, because the Department and ITC are required to examine the subject merchandise as a whole, they are also required to base the weighted-average dumping margins for investigations and reviews on an average of the subject merchandise as a whole. SKF claims that, by not offsetting dumped sales with non-dumped sales, the Department ignores the effects of negative margins and, therefore, does not produce margins that reflect the subject merchandise as a whole. In addition, SKF asserts that, in Corus Staal B.V. v. Department of Commerce, 395 F.3d 1343, 1349 (CAFC 2005) (Corus Staal II), the CAFC indicated that a WTO decision addressing the methodology of not offsetting dumped sales with non-dumped sales directly could be relevant to and possibly binding on its analysis when implemented. SKF asserts that now more current decisions in Corrosion-Resistant Steel and Softwood Lumber support the view that the Department's methodology is WTO-inconsistent. SKF claims that concerns identified by the CAFC as reasons to uphold the Department's methodology of not offsetting dumped sales with non-dumped sales as a reasonable interpretation of the statute are unrelated to the Department's methodology and asserts that the Department cannot rely on Timken as support for not offsetting dumped sales with non-dumped sales.

In addition, Koyo, NTN, and Asahi contend that section 773(a) of the Act was enacted specifically to implement the language of Article 2.4 of the Antidumping Agreement which requires that a "fair comparison shall be made between the export price or CEP and normal value" when determining whether merchandise is being sold at less than fair value. The respondents cite the SAA at 820 and documents accompanying the enactment of the URAA as support for their contention.

NTN, Koyo, SNR, INA et al., and Sapporo contend further that the WTO has determined that the Department's practice of not offsetting dumped sales with non-dumped sales violates the principle of a fair comparison, citing United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/R (April 13, 2004) (Softwood Lumber Panel Report). The respondents assert that the WTO position was later affirmed by the appellate body in Bed Linen and upheld again in Softwood Lumber. Specifically, Koyo states that the WTO appellate body in Bed Linen, para. 55, has found consistently that failure to consider "the weighted average of prices of all comparable export transactions," as required under Article 2.4.2 of the Antidumping Agreement, violates the "fair comparison" requirement contained in Article 2.4. Koyo asserts that the fact that this case involves an administrative review rather than an investigation does not avoid the Department's obligation under section 773(a) of the Act. INA et al., Koyo, and SNR assert that the appellate body held in Softwood Lumber that, inconsistent with Article 2.1 and 2.4.2, the Department's practice does not give equal weight to comparisons between normal value and export price in which the margins are negative. Koyo cites Softwood Lumber Panel Report, para 7.216, to add that the appellate body affirmed the panel's findings that, through "the use of zeroing, it is clear to us that the entirety of the prices of some export transactions, i.e., those export transactions where the weighted-average export price is greater than the weight-average normal value . . . are not taken into account."

NSK, Koyo, NMB/Pelmec, SKF, and Asahi argue that both the CIT and CAFC have found consistently that the statute does not require that the Department not offset dumped sales with non-dumped sales, citing Corus Staal I, 259 F. Supp. 2d at 1261, Corus Staal II, 354 F.3d at 1343, and Timken, 354 F.3d at 1341. SKF asserts that the CIT has recognized that the Department's practice "introduces a statistical bias in the calculation of dumping margins," citing Bowe Passat Reinigungs-Und Waschereitechnik GmbH v. United States, 926 F. Supp. 1138, 1149 (1996) (Bowe Passat). NSK contends that section 731 of the Act instructs that an antidumping duty is the imposition of an extra duty at the border designed to counteract the effect of a class or kind of foreign merchandise being sold in the United States at less than fair value and causing material injury to an industry in the United States. NSK argues that the statute does not authorize the imposition of an extra duty to counteract a single less-than-fair-value import, or even a small number of such imports, that otherwise occur as part of a large number of fair-value imports. According to NSK and Asahi, the plain meaning of the statute is that an antidumping duty may only be imposed if the bevy of imported sales that form the class or kind of foreign merchandise collectively is being sold at less than fair value and materially injures a domestic industry. NSK asserts that the structure of the antidumping statute (e.g., sections 732 and 733 of the Act) support its reading of section 731 of the Act that antidumping determinations be made and duties levied on a class-or-kind basis rather than on a subset (e.g., individual sales) of the class or kind of the subject merchandise. NSK and Asahi assert further that the words "class" and "kind," when defined based on their ordinary meaning, confirm that an antidumping duty may be imposed only if a group of foreign merchandise is being sold at less than fair value. NSK also asserts that Timken and Corus Staal II can be read to lend support to its arguments with respect to section 731 of the Act. According to NSK, in both of these cases the court looked at the issue of not offsetting dumped sales with non-dumped sales but the decisions are distinguishable because neither reviewed the issue in the context of section 731 of the Act. NSK asserts that, read against the backdrop of section 731 of the Act, the Court's statutory analysis in Timken provides support for NSK's argument. Citing Corus Staal II, 395 F.3d at 1347, NSK argues that Timken governs administrative reviews as well as administrative investigations because the distinction that exists between the two does not have the effect of making Timken inapposite. Asahi adds that section 751 of the Act instructs the Department to consider "each entry" of subject merchandise. Asahi contends that the Department is excluding the effect of some entries by excluding negative margins from the class or kind of foreign merchandise. Asahi claims that, as a result, the Department is evaluating transactions inconsistently and, thereby, creating an inaccurate margin.

With respect to section 771(35)(A) of the Act which defines dumping margin as "the amount by which the normal value exceeds the export price or CEP of the subject merchandise," SKF states that the Department has argued that the word "exceeds" mandates that positive margins only are to be included in the computation of the weighted-average dumping margin, citing Timken, 354 F.3d at 1341. SKF asserts that the Department's rationale has been rejected, citing Timken and Corus Staal I. Accordingly, SKF argues that the Department must demonstrate that its practice of not offsetting dumped sales with non-dumped sales in the current reviews is reasonable and based on a permissible construction of the statute.

Furthermore, GRW, INA et al., Sapporo, and SNR claim that it has been the Department's rationale that its practice of not offsetting dumped sales with non-dumped sales is to prevent targeted dumping. Respondents claim further that section 777A(d)(1)(B) of the Act and 19 CFR 351.414(f) provide procedures for analyzing targeted-dumping allegations. Accordingly, respondents argue, the Department's practice cannot be applied under Chevron USA, Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843-44 (1984) (Chevron), which provides for an agency decision in instances where a statutory provision does not exist. Furthermore, respondents assert that the Department cannot rely upon targeted dumping as its basis for continuing its practice since the petitioner has missed its deadline for filing an allegation of targeted dumping as set forth in 19 CFR 351.301.

Timken and Pacamor argue that the CAFC upheld the Department's practice of not offsetting dumped sales with non-dumped sales in Timken. Pacamor adds that the courts have also upheld the Department's practice in Bowe Passat. Timken asserts that, because the fair-comparison requirement has been implemented fully in the statutory provisions for normal value, it imposes no limitations on the Department's practice. Furthermore, concerning the respondents' claim that there are WTO reports which require a change in U.S. law, Timken asserts that the CAFC found otherwise in Corus Staal II, 354 F.3d at 1348. Timken explains that, since the court issued its decision in Corus Staal II, the Department has responded to the Softwood Lumber decision without eliminating its practice of not offsetting dumped sales with non-dumped sales, citing Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products from Canada, 70 FR 22636, 22639 (May 2, 2005) (Softwood Lumber Determination).

According to Timken, the Department's long history of not offsetting dumped sales with non-dumped sales is reflected in the Act, the Department's regulations, and various legislative documents such as the SAA and Joint Report of the Committee on Finance, Committee on Agriculture, Nutrition and Forestry, and Committee on Governmental Affairs of the United States Senate on the URAA, S. Rep. No. 103-412. Timken contends that the most supporting evidence that the legislature had no intention of making changes to the Department's practice of not offsetting dumped sales with non-dumped sales is the omission of any discussion of the topic from the SAA and other contemporaneous legislative documents. More specifically, Timken contends that implementation of Article 2.4 of the Antidumping Agreement requirement for a fair comparison did not mean the removal of the practice of not offsetting dumped sales with non-dumped sales. Thus, Timken asserts, nowhere in section 773 of the Act (which implements the requirement of Article 2.4) is there any reference to the Department's practice of not offsetting dumped sales with non-dumped sales. Furthermore, Timken cites Antidumping and Countervailing Duties; De Minimis Dumping Margins and De Minimis Subsidies, 52 FR 30660 (August 17, 1987) and states that an interested party proposed that the Department change its definition of "weighted-average dumping margin" to include negative margins. Timken asserts that the Department rejected the request as outside the scope of its regulations and that the request would call for the agency to "fundamentally alter its method of calculating dumping margins."

Timken argues further that the respondents' interpretation of the words "merchandise," "class," and "kind" has been rejected by the CIT. Timken points out that the CIT has stated that the language on which NSK wishes to rely to define "class" and "kind" is ambiguous and could be interpreted as NSK wishes or as the Department has done, citing SNR Roulements v. United States, 341 F. Supp. 2d, 1334, 1346 (CIT 2004) (SNR Roulements).

In reply to the respondents' targeted-dumping argument, Pacamor claims that the courts have addressed this issue clearly. Thus, Pacamor asserts, the courts have determined that, pursuant to Chevron, the Department's practice of not offsetting dumped sales with non-dumped sales is a permissible construction of the law. Pacamor asserts further that a review of section 777A(d)(1)(B) of the Act and 19 CFR 351.414(f) reveals that Congress did not preclude the Department's practice. Furthermore, Pacamor points out that the section of the regulations which covers targeted dumping does not preclude the Department from self-initiating its own targeted-dumping analysis. Specifically, Pacamor asserts that 19 CFR 351.414(f)(3) states that "{t}he Secretary normally will examine only targeted dumping described in an allegation, filed within the time indicated in section 351.414(d)(5) . . ." According to Pacamor, the use of the term "normally" in this statement indicates that a filing of an allegation of targeted dumping is not the only method of commencing a targeted-dumping examination. As support for its position, Pacamor points to the Department's Final Rule, in which, Pacamor asserts, the Department discussed its intentions with respect to 19 CFR 351.414(f)(3) specifically. It is clear, according to Pacamor, that the Department has the authority to address instances of targeted dumping without an allegation and may rely on the concerns of targeted dumping for not offsetting dumped sales with non-dumped sales.

Department's Position: We have not changed our methodology with respect to the calculation of the weighted-average dumping margins for the final results. 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 calculation of the weighted-average margin. 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.

We disagree with the respondents' claim that the WTO Appellate Body has held that our methodology of not offsetting dumped sales with non-dumped sales is inconsistent with U.S. obligations under the Antidumping Agreement (specifically, because it does not allow for a fair comparison). As stated in the Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 69 FR 68309 (November 24, 2004) (Wire Rod), Congress made clear that reports issued by WTO panels or the Appellate Body "will not have any power to change U.S. law or order such a change." See SAA at 659. The SAA emphasizes that "panel reports do not provide legal authority for federal agencies to change their regulations or procedures." See SAA at 1032; see also Corus Staal II, 395 F.3d at 1348 ("WTO decisions are not binding on the United States") (citations and quotation marks omitted). To the contrary, Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute-settlement reports. See 19 U.S.C. 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute-settlement reports to trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C.

3538(b)(4) (implementation of WTO reports is discretionary); see also SAA at 1023 ("{a}fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is 'not inconsistent' with the panel or Appellate Body recommendations . . ." (emphasis added)). See Wire Rod and accompanying Issues and Decision Memorandum at Comment 8.

In addition, we do not find the cases cited by the respondents supportive of their WTO-specific arguments. 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 Radio Corp. v. United States, 437 U.S. 443, 450 (1978); see also Corus Staal II, 395 F.3d at 1349, and SNR Roulements, 341 F. Supp. 2d at 1345. 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. We also disagree with the respondents' claim that more recent decisions have been made in Corrosion-Resistant Steel and Softwood Lumber which are contrary to our practice of not offsetting dumped sales with non-dumped sales. In fact, subsequent to Softwood Lumber and the Softwood Lumber Determination, the CIT in Corus Staal B.V. v. United States, No. 04-00316, 2005 WL 1692853, at *1 (CIT 2005) (Corus Staal III), stated that the Department's changed methodology in the Softwood Lumber Determination "is 'not inconsistent with the findings of the panel or the Appellate Body,' see 19 U.S.C. 3538(b)(2), because the individual-to-individual methodology, as the WTO Appellate Body noted, was not addressed by its Softwood Lumber ruling {and therefore} the CIT is bound by circuit precedent upholding zeroing." See Corus Staal III, WL 1692853, at *8. We maintain that our margin-calculation methodology is consistent with U.S. law and U.S. law is consistent with the WTO obligations of the United States.

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. See Timken, 354 F.3d at 1342; see also Corus Staal I, 259 F. Supp. 2d at 1264, Corus Staal II, 395 F.3d at 1343, Corus Staal III, WL 1692853 at 5, and Bowe Passat, 926 F. Supp. at 1149. Specifically, in Timken, the CAFC ruled explicitly that the Department's practice of not offsetting dumped sales with non-dumped sales, i.e., 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. In Corus Staal I, the CIT 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. Further, we have discussed our position with respect to our practice of not offsetting dumped sales with non-dumped sales in prior cases. See AFBs 14 and the accompanying Issues and Decision Memorandum at Comment 1 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. Our methodology continues to be consistent with our statutory obligations under the Act.

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 SKF's argument, the sunset-review provision does not change the statute in a way which requires the Department to change its margin-calculation methodology. Sunset reviews, investigations, and administrative reviews are separate segments in which the Department's practice and procedures for calculating a dumping margin may differ slightly depending on the segment. For example, in investigations the Department determines the dumping margin by comparing the weighted-average normal values to the weighted-average U.S. prices. In administrative reviews the Department determines the dumping margin by comparing the weighted-average normal values to the U.S. prices of individual transactions. We have calculated the dumping margins with respect to these administrative reviews in compliance with our practice and in compliance with the statute as identified in the preceding paragraph. See Timken, 354 F. 3d at 1345 (upholding the Department's methodology in administrative reviews); see also Corus Staal II, 395 F. 3d at 1349 (upholding the Department's methodology in investigations).

The respondents' reliance on section 731 of the Act is misplaced. This provision of the statute applies to investigations and the decision of whether to issue an antidumping duty order. The Department calculates the amount of antidumping duties in an administrative review which is governed by section 751 of the Act. Furthermore, the respondents' argument with respect to section 731 of the Act has been rejected by the CIT. See SNR Roulements, 341 F. Supp. 2d at 1345; see also NSK v. United States, 358 F. Supp. 2d 1276, 1282 (CIT 2005) (NSK). Specifically, the CIT held that the language of section 731 of the Act "neither unambiguously requires nor prohibits zeroing . . ." SNR Roulements, 341 F. Supp. 2d at 1345. Similar reasoning was struck down in both NSK and Bowe Passat. See NSK, 358 F. Supp. 2d at 1281-82; see also Bowe Passat, 926 F. Supp. at 1150. 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. Id. See also Corus Staal I, 259 F. Supp. 2d at 1263

n.15. In NSK, citing Timken, the CIT stated, "{c}onsidering the policy underpinning the statute, an entry-by-entry approach to calculating dumping margins may yield more accurate results, since offsetting dumping margins with sales greater than normal value would allow foreign companies to practice selective dumping." See NSK, 358 F. Supp. 2d at 1281. Accordingly, the Department's offset methodology "legitimately combats the problem of masked dumping, where certain profitable sales serve to 'mask' sales at less than fair value." See Timken, 354 F. 3d at 1343 *citing* Bowe Passat, 926 F. Supp. at 1150.

These decisions 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. 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 14, this is a reasonable means of establishing estimated duty-deposit rates in investigations and assessing duties in reviews. See AFBs 14 and the accompanying Issues and Decision Memorandum at Comment 1. 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.

With respect to the respondents' targeted-dumping argument, the respondents refer to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(f) to support their argument. The cited statute and regulations apply to investigations, not administrative reviews. Because a statutory provision does not exist which addresses the issue of targeted dumping with respect to administrative reviews directly, the Department's practice of not offsetting dumped sales with non-dumped sales is a permissible construction of the law, pursuant to Chevron. See Chevron, 467 U.S. at 843.

2. Model-Match Methodology

Comment 2: Koyo, NMB, NPB, NSK, NTN, SKF, and SMT argue that the Department should not change its family model-matching methodology for identifying similar models in the comparison market. The respondents contend that the Department has not provided an adequate justification for any change in its model-matching methodology and, therefore, implementing a new methodology is unlawful.

Citing USEC Inc. v. United States, 259 F. Supp. 2d 1310, 1325-26 (CIT 2003), and Tung Mung Dev. Co., Ltd., v. United States, 25 CIT 752, 771 (2001) (Tung Mung), NSK argues that, where the Department adopts a particular practice as part of its antidumping analysis and that practice becomes well-established, the Department does not have the legal authority to depart from the practice unless its decision to do so is accompanied by a reasoned analysis demonstrating that the departure is supported by substantial evidence and in accordance with law. Koyo and NSK observe that the Department stated in AFBs 2, 57 FR at 28366, that "it will only alter the {model-matching methodology} when compelling reasons exist." Citing Anshan Iron &

Steel Co., Ltd., v. United States, Consol. Ct. No. 02-00088, slip op. 03-83 at 19 (CIT 2003) (Anshan), NSK contends further that, in addition to providing a reasoned analysis, the replacement methodology must "calculate a more accurate dumping margin" to justify the abandonment of a well-established methodology. NSK asserts that the Department has not provided a reasoned analysis detailing its basis for departing from the pre-existing practice or demonstrated that the new methodology will result in a more accurate dumping margin.

The respondents argue that the Department has not provided a reasoned analysis justifying its abandonment of the family-matching methodology. The respondents claim that the Department gave as its "compelling reason" the technological advancement since the review in which the family-matching methodology was adopted and that the Department asserted that it developed the family-matching methodology in order to meet the constraints of the technological limits at the time it developed that methodology. The respondents contend that the record provides no support for these assertions. On the contrary, the respondents argue, the record shows that the family-matching methodology was "specifically designed to take into account the salient characteristics of the AFB market, particularly the large number of individual bearing models that are offered for sale and the fact that many models may be traced to a core family because they share the {eight family} characteristics," citing AFBs 3, 58 FR at 39764. Thus, according to the respondents, the record demonstrates that the nature of the AFB market drove the development of the family-matching methodology. SKF also asserts that the Department used a sum-of-the-deviations methodology in the investigation by directing respondents to create a concordance that was used to determine the single most-similar model. Therefore, SKF argues, this methodology is not new and was available to the Department when it created the family-matching methodology.

Koyo and SKF argue that the mere ability on the Department's part to employ a more complex model-matching computer program is not a sufficient reason for discarding its long-established AFB model-matching methodology. NSK contends that the Department has provided no evidence that its current technological capabilities are meaningfully different from those in previous reviews nor has it provided an explanation of how such differences are relevant to the task at hand. NSK contends that the Department has been running the margin programs on "PC SAS" since at least the 1994-95 administrative reviews and that, to the extent that running the programs on personal computers represents the change in technology to which the Department refers, it has not established why there is a compelling reason for a change now, nearly a decade after the technological "advancement" took place.

Koyo argues that the Department's vision of the model match as requiring the identification of a single "most-similar" model is both incorrect as a matter of law and inappropriate in the AFB reviews. Citing sections 771(16)(B) and (C) of the Act, Koyo contends that the statute uses the term "merchandise," rather than the term "model," to define "foreign like product." Thus, Koyo concludes, there is no requirement that the Department identify only a single home-market model that is "most similar" to the model sold in the United States.

Koyo also contends that the Department has misdescribed its normal practice by stating that it normally identifies the "single most-similar" model. Koyo asserts that the Department's normal practice often defines a "model" (i.e., "control number") in terms of ranges of physical characteristics, with the result that several physically distinct products may be pooled together

and treated as a single "model" for purposes of the model match.

Koyo argues that it is particularly inappropriate to select a "single most-similar" model in the AFB proceedings because the products covered by the AFB reviews are simply not suitable for a determination that a "single most-similar" model may be identified. Koyo contends that ball bearings differ from other types of products with which the Department has had extensive experience, such as steel or agricultural products, which are essentially homogenous and whose dimensional ranges can be divided reasonably into increments.

NSK argues that the sum-of-the-deviations methodology does not itself represent a technological advancement, since that methodology had been used in reviews of the antidumping finding and duty order on tapered roller bearings from Japan in the 1980s. Citing AFBs 3, 58 FR at 39764, NSK contends that the Department rejected the petitioner's proposal that it use a sum-of-the-deviations methodology as it had in the proceedings concerning tapered roller bearings.

Citing Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review, 64, FR 56759, 56769 (October 21, 1999), and Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110 (October 30, 2002), and the accompanying Issues and Decision Memorandum at Comment 1 (October 30, 2002), respectively, Koyo contends that the Department has limited revisions to the model-matching methodology in other proceedings to those cases either where there have been changes in the industry or where the Department has determined that it would be "unfair to refuse to make better comparisons which capture differences that are meaningful on a commercial level." Koyo asserts that there have been no developments in the facts of this case upon which the family-matching methodology was predicated which would warrant reconsideration of that methodology.

NMB argues that the Department's sum-of-the-deviations methodology is itself a specialized methodology that is different from the Department's normal model-matching methodology used in other antidumping proceedings.

NMB and NTN contend that the family-matching methodology was developed through argument and input from the petitioner, respondents, and the Department. Thus, according to the respondents, the family-matching methodology was the consensus solution to account for the tremendous number of variations in the subject merchandise so as not to result in absurd matches and skewed results. The respondents assert that there has been no change in the nature of bearings that warrant a change in the Department's model-matching methodology.

Koyo and NSK assert further that the Department has not demonstrated that its revised model-matching methodology results in more accurate dumping margins. According to NSK, the Department has not explained how its new methodology could be more accurate than the family-matching methodology in light of the fact that the new methodology requires that products treated as "dissimilar" in all prior reviews of the AFB orders must now be treated as "similar" for the purposes of calculating a margin. NSK contends that an increase in the number of price-to-price matches is preferred only to the extent that the matches are of similar merchandise. Citing the SAA at 839, Koyo contends that CV is appropriate where there are no, or an inadequate number of, home-market sales or where the existing home-market sales are "inappropriate" for the purposes of serving as a benchmark for a fair price. Citing AFBs 3,58 FR at 39764, Koyo and NSK claim that the goal in establishing a model-matching methodology is not merely to

obtain the greatest number of price-to-price matches but to identify matches of reasonably similar merchandise while preventing matches of dissimilar models. NSK claims that the Department has never explained how differences in the eight family physical characteristics can now be ignored whereas previously such differences established which bearings were dissimilar from the U.S. sale.

NSK also claims that the example the Department provided in its May 6, 2005, decision memorandum ("{n}o party, to date, has advanced a convincing reason why it would be unreasonable to match a bearing sold in the United States that had a width of, for example, 20 millimeters to a bearing sold in the comparison market that had a width of 21 millimeters, if the difference in widths was the only difference between the two bearings and an appropriate adjustment could be made to account for the effect on price comparability") is misleading. Koyo and NSK contend that, with an overall 40-percent cap of the sum of the deviations, the fact that a bearing sold in the United States with, for example, a certain width could be compared to a home-market bearing with a width that was only 60 percent of the width of the U.S. bearing is a "convincing reason" why the sum-of-the-deviations methodology is unreasonable.

Asahi and NPB argue that the Department's methodology allows inappropriate matches, such as comparisons of housed bearings to unhoused bearings, standard bearings to high/low temperature bearings, standard bearing-quality steel bearings to stainless steel bearings, and dust-proof bearings to standard bearings. These respondents argue that such bearings are physically different such that they do not meet the test of physical comparability enunciated in section 771(16)(B) of the Act. According to the respondents, the bearings being compared are not like in component materials, the bearings being compared are used for different purposes, and the bearings being compared are not approximately equal in commercial value.

Koyo claims that it has presented numerous examples of models with small dimensional differences that it asserts are neither physically or commercially similar. According to Koyo, with regard to inner or outer diameter, a given product either meets the requirements of a customer's application precisely or it does not. If it does not, Koyo asserts, then the fact that its inner or outer diameter may be "close" to that which is required is of no interest to the customer or manufacturer. Koyo argues that, in such a case, one cannot say in any meaningful way that a bearing with dimensions that are "close" to the customer's requirements is "similar" to the model whose dimensions meet the requirements precisely. Moreover, Koyo asserts, the applications in which two different bearing models may be incorporated, even if their dimensions vary only slightly, can be vastly different despite the closeness of their dimensions.

NSK cites examples of U.S. models that have large antidumping margins under the revised methodology but, under the family-matching methodology, would have no or smaller antidumping margins. NSK contends that these examples demonstrate that the Department's revised methodology is not "more accurate" than the family-matching methodology.

Asahi argues that the Department should not apply the new model-matching methodology with respect to Asahi in this review pursuant to section 782(c)(1) of the Act. According to Asahi, the SAA at 864-5 provides that the Department may modify its requests for information if asked by an interested party to avoid imposing an unreasonable burden on the party. Asahi contends that the new model-matching methodology in this review would create an undue burden on Asahi as a result of the margin the Department calculated using the methodology, which is

much higher than any margins the Department calculated previously.

Finally, SKF asserts that the Department's model-match analysis which it used to determine whether the revised methodology would result in more price-to-price matches was flawed because it was conducted on the respondent's data with minimal processing (i.e., without having run the arm's-length test or cost test). Because of this, SKF argues, it is impossible for the Department to have concluded that the proposed methodology would lead to a greater number of price-to-price comparisons. SKF also contends that, if the Department deems this analysis sufficient, the families sold in the home market cover such a large proportion of its U.S. market sales that no change in methodology is warranted.

Timken argues that the Department should continue to use the revised model-matching methodology. Timken asserts that the revised methodology better reflects the instruction of the statute in two important respects. First, citing Timken Company v. United States, 630 F. Supp. 1327, 1337 (CIT 1986), Timken contends that, in connection with the interpretation of section 771(16) of the Act, the CIT has instructed that, where two or more products fall within a given subcategory of the definition (e.g., similar products), the Department has an obligation to select the most-similar product. Second, citing section 773(a)(1)(B)(i) of the Act and Smith Corona Corp. v. United States, 713 F.2d 1568, 1575 (CAFC 1983), Timken asserts that there is a statutory preference for basing normal value on price-to-price matches rather than on CV. According to Timken, the revised methodology accords with these principles better than the family-matching methodology.

Timken also contends that the revised methodology is more consistent with the Department's normal practice of identifying similar products for matching purpose by selecting the single most-similar product. Citing, e.g., Stainless Steel Wire Rod from Spain; Final Results of Antidumping Duty Administrative Review, 66 FR 10988 (February 21, 2001), Timken asserts that the Department does not have a practice of pooling groups of products and deeming them all equally similar as the family-matching methodology does.

Timken asserts further that the revised methodology is more accurate because it no longer relies on an average price calculated on a pool of different products. According to Timken, the family-matching methodology was less accurate because it deemed all models within the family as being equally similar even though the products within the family, because of additional features (e.g., seals), might be priced very differently. Timken asserts that it had submitted evidence previously demonstrating the distortive effect of averaging products within a family using respondents' actual data in these reviews. Timken contends that the nature of averaging produces approximations that describe a median price but not any particular member of the group being averaged. Timken asserts that there may be significant cost differences and consequently significant differences in prices among the models in a family. For these reasons, Timken concludes, the Department's revised methodology is more accurate than the family-matching methodology because it selects the single most-similar model rather than average together the prices of all models within a family.

Timken also dismisses NSK's argument that the Department has not explained why bearings it considered dissimilar previously are now similar. First, Timken asserts, any change in the model-matching methodology will result in changes in the choice of matched models. Second, Timken contends, the additional matches reflect the statutory preference for similar

comparisons over cost-based comparisons. Third, Timken argues, NSK misunderstands the reason the original model match rejected similar comparisons where there were slight differences in size or load rating. According to Timken, such comparisons were not rejected because the models could not be considered similar; rather, they were rejected because the Department determined to pool admittedly differing products and average their prices.

In response to Koyo's argument that the increased use of similar comparisons is not permissible because it results in comparisons of foreign like products which are not substitutable from the view point of the customer, Timken asserts that the foreign like product does not have to be substitutable for the U.S. model. Citing Koyo Seiko Ltd. v. United States, 66 F.3d 1204, 1210 (CAFC 1995) (Koyo), Timken observes that the CAFC has held that "it is not necessary 'to ensure that home market models are technically substitutable, purchased by the same type of customers, or applied to the same end use as the U.S. model.'"

Timken argues that the models the Department selected as similar are similar within the meaning of section 771(16)(B) of the Act for the following reasons: (a) with respect to subparagraph (1), the models being matched are produced in the same country by the same person; (b) with respect to subparagraph (2), which requires that the models be alike in component material or materials and alike in the purposes for which used, Timken cites Final LTFV, 54 FR at 18998-99 to argue that the analysis performed by the Department for purposes of its class-or-kind determination in the original investigation is instructive. Timken claims that the Department considered the criteria in Diversified Products Corp. v. United States, 572 F. Supp. 883, 889 (CIT 1983) (Diversified Products), including the general physical characteristics and the ultimate use in its class-or-kind determination. According to Timken, the Department found that the critical component for determining similarity in the physical characteristics of bearings is the rolling element. Therefore, Timken contends, all ball bearings are alike in use because they are suited for particular applications. Thus, Timken concludes, by limiting its comparisons of ball bearings sold in the United States to other ball bearings, the Department ensured that it is comparing merchandise that is like in component materials and in the purposes for which used.

With respect to the example matches cited by Koyo and NSK as "inappropriate comparisons," Timken argues that the models cited are all appropriate similar matches because they are similar in their physical characteristics, their costs are within 20 percent of the U.S. model, and they have similar kinds of uses. According to Timken, the examples cited by the respondents do not demonstrate that there are any flaws in the Department's methodology.

Timken contends that the Department was correct to recognize that the family-matching methodology was driven in part by technological limitations which no longer apply. Timken concedes that the nature of the AFB market was an important factor in the Department's selection of a model-match methodology in the original investigations and in the first administrative reviews as well as in the current reviews. Timken avers that it does not follow that technical challenges did not also play a role in the Department's adoption of the family-matching methodology. Timken cites Preliminary LTFV, 54 FR at 45345 and Final LTFV, 54 FR at 19027 in support of its assertion that the Department's determinations were driven in part by the challenges of dealing with such large numbers of data. Timken asserts further that technological factors would have played an obvious role in defining the Department's ability to address these challenges and that the Department described these challenges with great

specificity in its December 3, 2003, memorandum in the 2002-03 administrative reviews. Timken argues that the Department's descriptions of its technological difficulties, as experienced by its own personnel, carry weight regardless of second-guessing by various interested parties.

Timken argues further that the Department's determinations have continued to evolve, involving changes reflecting both the Department's desire for higher accuracy as well as evolving technical capability. In support of its argument, Timken cites AFBs 1 Germany, in which the Department sampled CEP sales whenever a respondent reported more than 2,000 transactions and Ball Bearings and Parts Thereof From France, Germany, Italy, and Singapore: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, and Notice of Intent To Revoke Order In Part, 68 FR 6404, 6406 (February 7, 2003), in which the Department sampled only when a respondent reported more than 10,000 transactions.

Regarding Koyo's and SKF's argument that technical limitations could not have played a role because the Department used the sum-of-deviation method in the original investigation to identify similar comparisons, Timken contends that the Department limited price comparisons to identical merchandise if at least 33 percent by volume of U.S. sales could be so compared and only looked for similar comparisons, starting with the largest volume U.S. product, until it reached 33 percent. Timken cites Preliminary LTFV, 54 FR at 45345, and Final LTFV, 54 FR at 19628, in support of its contention.

Department's Position: For these final results, we have incorporated a new model-match methodology for identifying similar comparison-market models in our administrative reviews of the 1989 antidumping duty orders on AFBs. This methodology selects the single most-similar model rather than relying on an average of the prices of a family of models. First, we select only those home-market models which are identical to the U.S. model with respect to bearing design, load direction, number of rows, and precision grade. From those models selected, we then select the single model that has the fewest physical differences from the U.S. model with respect to inner diameter, outer diameter, width, and load rating, with an upper boundary of a 40-percent difference in the total deviation in the values for these four physical characteristics. We then use differences in level of trade and contemporaneity to resolve ties between"equally similar" home-market models as defined by our model match criteria. See our response to Comment 3. Finally, any remaining ties in possible matches are resolved by comparing differences in the VCOM.

In addition, as discussed in our response to Comment 3, below, we have determined that housed bearings and insert bearings (bearings designed to be inserted into a housing sold without the housing) are different design types from those we enumerated in our July 7, 2004, questionnaire for these reviews. Thus, we compare housed and insert bearings only to other similar housed and insert bearings (i.e., they must be identical in terms of bearing design).

This new model-matching methodology is much closer to our normal matching practice than is the family-matching methodology in that it allows us to select the single most-similar model and allows us to avoid rejecting reasonable price-to-price comparisons between models with slightly different physical characteristics. We have solicited extensive comments from interested parties regarding this new methodology, and we have incorporated numerous suggestions intended to improve the accuracy of the methodology. For future reviews, interested parties may continue to suggest additional characteristics which we may decide to use to refine the methodology further so that eventually we may account for an even greater range of

characteristics that affect price and cost.

For the reasons enumerated below, we conclude that compelling reasons exist to change the model-match methodology. The new methodology is substantially more accurate than the family-matching methodology. Also, we now have the technological capability to use a more accurate methodology.

We began to explore a new methodology because we recognized that technological changes now allow us to use a methodology which is more sophisticated and more accurate than the family-matching methodology we developed in the 1988-90 administrative reviews. As we stated in the memorandum from Jeffrey A. May to James J. Jochum dated December 3, 2003, on the record of the 2002-03 administrative reviews at 2, there is a clear statutory preference for using price-to-price comparisons. We consider the implication of the statute on this point to be that reasonable price-to-price comparisons are a more accurate measure of dumping than are price-to-CV comparisons. Therefore, a model-matching methodology which results in a greater number of reasonable price-to-price comparisons is an inherently more accurate methodology than one which precludes such comparisons.

As we described in the memorandum from Barbara E. Tillman to Joseph A. Spetrini dated May 6, 2005, we found that our new model-matching methodology resulted in many more reasonable similar price-to-price comparisons across the AFB proceedings. In fact, we found that the new methodology results in more than twice as many reasonable similar price-to-price comparisons than we would obtain using the family-matching methodology. See May 2005 memorandum at pages 6-7 and 14. Therefore, for the reasons described in the preceding paragraph, we have concluded that the new methodology is a more accurate methodology than the family-matching methodology.

In the family-matching methodology, we treated all models within a family as equally similar although there were, in fact, other physical differences for which we did not account under that methodology. Therefore, the proposition that it is more accurate to select a single most-similar model than to average together several disparate models for purposes of comparison stands to reason because, wherever we might group the prices of several different models, all of the models that are not the single most-similar model are necessarily less similar than the single most-similar model. Thus, margins calculated on the basis of an average of prices of both the single most-similar model and all less-similar models have the potential to be less accurate than the margins calculated on the basis of the price of the single most-similar model. This is not to say that a comparison with a less-similar model is necessarily inappropriate. Rather, by selecting the single most-similar model for comparison, we are adhering to the statutory hierarchy more closely and, therefore, are calculating a more accurate margin. As an example, consider a situation where a model sold in the United States has no seals or shields and two home-market models exist as potential matches: one with one seal and another with two seals. Assuming all other characteristics are equal, it is evident that the home-market model with one seal would be the more appropriate match. By the same token, comparison with the model with one seal would be more appropriate and, therefore, any resulting margin would be more accurate than the comparison with an average of the one-seal and two-seal models, as would occur under the family methodology.

With respect to Koyo's assertion that our normal practice often defines a "model" in terms of ranges of physical characteristics with the result that several physically distinct products may be pooled together and treated as a single "model" for purposes of the model match, Koyo is confusing our normal practice with respect to the identification of identical merchandise and our identification of the most-similar model. Our normal practice is to identify identical merchandise on the basis of physical characteristics that have a non-negligible effect on the price and/or cost of the merchandise. See Appendix I of our standard questionnaire (http://ia.ita.doc.gov/questionnaires/q-review-app-1-5-100103.pdf) at page I-9 ("identical merchandise is merchandise that is produced by the same manufacturer in the same country as the subject merchandise, and which the Department determines is identical or virtually identical in all physical characteristics with the subject merchandise, as imported into the United States"). As a result, two products which a respondent identifies as different models in its internal classification system may be identified as identical for antidumping purposes. For example, in the AFB proceedings, we instruct respondents to ignore differences in etching and chamfering when creating their control numbers which we use to identify identical merchandise. Thus, a respondent may classify two otherwise identical bearings as different models as a result of differences in etchings on the two bearings. Because there is no significant difference in the prices or costs of the two bearings, however, we regard them as identical bearings by assigning the two bearings the same control number. When we describe our practice of identifying the single most-similar model, we are identifying the single most-similar control number, which is how we designate models for dumping purposes. We are not referring to models as the respondents use them in their internal classification systems.

Therefore, we believe that the hierarchy established in the statute instructs that the most accurate methodology is that methodology which selects the most-similar model and which results in the greatest number of reasonable price-to-price comparisons. It is our view that, if we must deviate from our normal practice by averaging together disparate models, as we did in the family-matching methodology, the reasons for that deviation must be justified and explained. In our view, the family-matching methodology was the methodology by which we could most satisfactorily determine the foreign like product given the technological constraints we faced at the time we devised that methodology.

As we explained in the December 2003 memorandum at 3-4, we did not have the technological means to identify the single most-similar model at the time we developed the family-matching methodology. While it is true, as the respondents contend, that the nature of bearings played a role in our development of the family-matching methodology, we consider the nature of the product for every model-matching methodology we develop in all proceedings. The record is clear, however, that we developed the family-matching methodology in order "{t}o minimize the necessity for comparisons among an exceptionally large number of bearing models." See letter dated July 13, 1990, on the record of the 1988-90 administrative reviews. In other words, the model-matching methodology, which we were in the process of developing when we issued that letter to solicit comments, by necessity had to deviate from our normal practice by limiting comparisons. As we explained in the December 2003 memorandum, the reason we had to deviate from our normal practice was that we simply did not have the means to identify the single most-similar model.

Furthermore, initially we intended to limit comparisons solely by "grouping specific models into families." See July 1990 letter. It was the decision to average bearings together in order to make comparisons that led us to decide not to compare bearings with slightly different characteristics such as inner diameter or width. The wider the range of models that are included in a family, the greater the number of models that deviate from the single most-similar model. To minimize this effect, we limited the range of bearings we would consider as belonging to a family. As we described in the December 2003 memorandum at footnote 2, we did not limit the range of bearings to be considered similar because of the nature of bearings but because we were averaging the prices of disparate bearings within families.

The technological limitations which led us to group models into families in order to limit comparisons in the 1988-90 administrative reviews no longer apply. We discussed the changes in the December 2003 memorandum at page 3. In brief, when we developed the family-matching methodology, we used an offsite mainframe computer that was slower than the desktop computers we use today. The use of that mainframe computer caused us to incur substantial expense when running the antidumping programs, and Department personnel had to use a special terminal to gain access to the mainframe computer such that only a few personnel were able to work on a program at a time. These combined factors made it impossible for us to run programs which would select the single most-similar model in accordance with our normal methodology. Not one of these factors is applicable today. Department personnel now run all programs on desktop computers which are faster than the mainframe computer the Department used for the 1988-90 administrative reviews, the Department incurs no additional expense to run the programs on desktop computers, and each Department analyst has a desktop computer such that, for example, all AFB calculations for each review can be conducted simultaneously.

NSK argues that the Department has not answered why the methodology should be changed now and contends that the technological changes to which the Department refers occurred a decade ago. First, if it is possible to implement a more accurate methodology, it is appropriate to do so now even if it was theoretically possible to implement the methodology earlier than we did. To argue that we did not implement a more accurate methodology at the first possible instance we might have implemented it does not argue against our adoption of the new methodology now. Second, the timing of the technological changes that led to the revision of our model-matching methodology for these proceedings is not as NSK suggests. Although it is true that we began using PC SAS in the 1994-95 administrative reviews for some companies, the Department continued to run the programs to calculate the margin for NSK (among other companies) on the mainframe computer until the 1998-99 administrative reviews. See Memorandum to the File dated September 12, 2005, placing relevant pages from the public versions of computer printouts for our calculation of NTN's margin in the 1997-98 administrative reviews on the general-issues record of these reviews. This was because the desktop computers at that time still were not powerful enough to make it possible to run the programs for NSK even using the family-matching methodology, much less a methodology which selects a single model. Furthermore, the technological advances were not simply a matter of the software we used. Rather, it was the physical limitations of the computers we used that led to the development of the family-matching methodology. Those limitations no longer apply and, therefore, if we can use a more accurate methodology, we should do so.

Also, the family-matching methodology is less accurate than our normal matching methodology. At the time we developed it, the family-matching methodology was the most accurate methodology we were capable of performing. Now we are able to implement a model-matching methodology which is more accurate in that it selects a single most-similar model and results in more price-to-price comparisons because the choices for selecting a similar model are not as limited as in the family-matching methodology. Furthermore, given that we are able to select a single most-similar model rather than be compelled to average disparate models together into families, there is no longer any reason not to compare models with slightly different physical characteristics such as inner diameter except in cases where the models are so different that they cannot reasonably be compared.

Our normal practice for comparing U.S. models to similar home-market models is guided by sections 771(16)(B) and (C) of the Act. Section 771(16)(B) of the Act instructs that there are three criteria that a comparison-market model must meet in order to be considered similar to the U.S. model: 1) the comparison-market model must be produced in the same country and by the same person as the subject merchandise; 2) the comparison-market model must be like the subject merchandise in component material or materials and in the purposes for which used; 3) the comparison-market model must be approximately equal in commercial value to the subject merchandise. Section 771(16)(C) of the Act instructs that, where no matches can be found under 771(16)(B) of the Act, three criteria must be met to consider a product similar to the U.S. model: 1) the comparison-market model must be produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation; 2) the comparison-market model must be like that merchandise in the purposes for which used; and 3) the comparison-market model must be found to be reasonably comparable with the U.S. model by the Department.

The first criterion of sections 771(16)(B)(i) or (C)(i) of the Act is not at issue here. No party has argued that the matches we made were of models not "produced in the same country and by the same person as the subject merchandise" or "produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation."

The respondents' interpretation of the second criterion is much narrower, however, than the Department's interpretation. The respondents argue that a number of the matches we made are inappropriate because the U.S. model and comparison-market model cannot be considered to be similar. For example, NSK suggests that a U.S. model with a 20 mm width cannot be reasonably compared to a comparison-market model with a 12 mm width. In the vast majority of market-economy proceedings, the Department's practice has been that any and all comparison-market models that are within the class or kind of merchandise are possible similar comparisons so long as they meet the other criteria of sections 771(16)(B) or (C) of the Act. This means that normally we consider all models within the scope of a given antidumping duty order to be like the subject merchandise in component material or materials and in the purposes for which used.

With respect to bearings, we addressed these issues in the context of our like-product determination in Final LTFV, 54 FR at 18999. We found that "the shape of the rolling element (in ball, cylindrical, needle, and spherical roller bearings) or the sliding contact surfaces (in spherical plain bearings) determined or limited the AFB's key functional capabilities (e.g., load

and speed). In turn, these capabilities established the boundaries of the AFB's ultimate use and customers expectations" and that "{t}he rolling element and sliding contact surfaces are the essential components of the subject merchandise. These components bear the load and permit rotation. A change in the geometry of these components changes the load/speed capability of the AFB and, thus, the applications for which the AFB is suited." We went on in that notice to contrast the different expectations of purchasers of ball bearings and purchasers of other types of bearings (e.g., spherical roller bearings).

In fact, our new model-match methodology adopts a narrower focus than the normal methodology we use in other market-economy cases, albeit not as narrow as the family-matching methodology or as narrow as the respondents argue it should be. For the reasons we explained in the May 2005 memorandum, we are not matching models which differ with respect to bearing design, load direction, number of rows, or precision grade or models which have a difference in four other physical characteristics of greater than 40 percent. In fact, in many antidumping proceedings we impose no limits in the matches based solely on the differences in physical characteristics.

Furthermore, we find that the respondents' arguments about the applications of different bearings to be unpersuasive. While it is true that section 771(16)(B)(ii) of the Act instructs that similar models be like the subject merchandise in the purposes for which used, the respondents have adopted an extremely narrow interpretation of this instruction. As we discuss above, however, we find that it is the rolling element that is dispositive as to whether a bearing can be considered similar with respect to the purposes for which bearings are used (e.g., a ball bearing cannot be considered similar to a cylindrical roller bearing under any circumstance), not whether a specific application for one bearing differs from the specific application of another. Furthermore, the CAFC has held that, "for purposes of calculating antidumping duties, it is not necessary 'to ensure that home market models are technically substitutable, purchased by the same type of customers, or applied to the same end use as the U.S. model.'" See Koyo, 66 F.3d 1204, 1210 (CAFC 1995). In addition, the possibility always existed, even under the family-matching methodology, that we would compare the prices of models which were not substitutable for the U.S. model in our normal-value calculation. For example, if the U.S. model was a model with two seals or shields, there was nothing in the family-matching methodology which would have precluded the normal value from being based on the prices of models that had no seals or shields. Presumably, the latter could not be substituted for the U.S. model, yet we would have calculated normal value using the prices of such models under the family methodology.

With regard to the respondents' arguments that we are now treating as similar models we found previously to be dissimilar, as we stated above and in the December 2003 memorandum, the reason we considered models with different inner diameters, outer diameters, widths, or load ratings to be dissimilar was because we were averaging groups of different models together, not because such models would be inappropriate comparisons in a methodology in which we selected a single model. In sum, we find that the models we selected as similar comparisons under the new methodology are like the subject merchandise in component material or materials and in the purposes for which used, thus satisfying the second statutory criterion.

The final criterion, codified in section 771(16)(B)(iii) of the Act, instructs that the comparison-market model must be approximately equal in commercial value to the subject merchandise. Section 771(16)(C)(iii) of the Act instructs that the comparison-market model must be like that merchandise in the purposes for which used and the comparison-market model must be found to be reasonably comparable with the U.S. model by the Department. Some respondents assert that some of the comparisons we made were between bearings that were not approximately equal in commercial value. In antidumping proceedings, however, we use the 20-percent "cap" on the difference-in-merchandise adjustment to determine whether two different models are approximately equal in commercial value. This practice and the reasons for it are expressed in the Department's Policy Bulletin 92.2 dated July 29, 1992. Because we applied our normal methodology of disregarding potential matches with a difference-in-merchandise adjustment of greater than 20 percent, we regard all the matches we actually made to be approximately equal in commercial value.

For the foregoing reasons, we find that the comparisons resulting from our new model-matching methodology are of similar bearings within the meaning of sections 771(16)(B) and (C) of the Act.

We also find the respondents' arguments that our new methodology results in inappropriate matches to be unpersuasive. As discussed above, the matches we made are appropriate with respect to the statutory instructions. With the exception of comparisons of housed to unhoused bearings as we discuss in response to Comment 3 below, we do not find that any of the allegedly inappropriate matches are actually inappropriate in light of our normal practice and our interpretation of section 771(16) of the Act. In fact, the characteristics respondents have cited which they contend make bearings dissimilar (e.g., standard bearings to high/low-temperature bearings, standard bearing-quality steel bearings to stainless steel bearings, and dust-proof bearings to standard bearings) would not have rendered such bearings inappropriate as matches so long as they were within the family of the U.S. bearing under our previous methodology. Moreover, with the exception of NPB, none of the respondents suggested alternative matches which would either be appropriate or more similar than the matches we actually selected. With respect to NPB's suggested alternative matches, because of the proprietary nature of the data involved, these suggested matches are discussed in the Final Results Analysis Memorandum for NPB dated September 12, 2005.

In addition, NSK contends that the new methodology is inaccurate on the grounds that some sales would have had lower or no margins using the family-matching methodology but now have high margins using the new methodology. NSK's premise is flawed. Rising margins do not indicate any less accurate results than does the proposition that decreasing margins indicate more accurate results. In fact, a more accurate calculation means that the margins on some sales will increase while others will decrease. Most important, however, is the fact that the margins for most sales will likely change, reflecting the more accurate calculation of the dumping margin for each sale. Furthermore, the fact that some respondents have not commented on the new methodology since the issuance of the AFBs 15 Prelim is informative; we find that such silence demonstrates that the new methodology is not designed to raise margins but, rather, to reflect more accurately the pricing behavior of the respondent companies. Thus, NSK's selection of a handful of transactions which has higher margins using the new methodology than they would

have had under the family-matching methodology does not provide a complete picture of the effect of the new methodology on margin calculations.

Finally, NSK asserts, without explanation, that the fact that a U.S. model with a width of 20 millimeters could be compared to a home-market model with a width of 12 millimeters is a convincing reason why the Department's methodology is unreasonable. On the contrary, we find nothing unreasonable about such a comparison, so long as the difference-in-merchandise adjustment is 20 percent or less, in light of our normal practice and our interpretation of the statute. In fact, we can and do make such similar comparisons in other antidumping proceedings. We cannot cite to specific instances where we have made such comparisons directly, however, because it involves BPI not on the record of any of these reviews. See, generally, Notice of Amended Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand, 69 FR 42419 (July 15, 2004).

In conclusion, our new model-matching methodology emulates more closely our normal matching practice than does the family-matching methodology in that it selects the single most-similar model and does not reject reasonable price-to-price comparisons between models with slightly different physical characteristics. Therefore, our new methodology is substantially more accurate than the family-matching methodology and the fact that we are now able to use a more accurate methodology is a compelling reason to change the model-match methodology.

With respect to Asahi's contention that we should not use the new methodology to calculate Asahi's margin, we find Asahi's reference to section 782(c)(1) of the Act to be unavailing. That provision of the law pertains to situations where an interested party "is unable to submit the information requested in the requested form and manner" requested by the Department. Asahi had no such difficulty in this review. Also, this provision is not meant to protect respondents, regardless of size, from the consequences of dumping merchandise in the United States.

Finally, with respect to SKF's assertion that our model-match analysis computer program was flawed because it did not take into account the result of the arm's-length test or the cost test, as we stated explicitly in the May 2005 memorandum, the program we prepared for the purposes of that memorandum was not meant to be a precise measure of the differences in types of comparisons we would find. SKF has not provided any explanation as to why we would obtain significantly different results had we taken into account the results of the arm's-length test or the cost test in those analysis programs.

Therefore, we conclude that, because our new model-matching methodology follows the statutory hierarchy more closely, it is a more accurate methodology than the family-matching methodology, thus providing by itself a compelling reason to implement the methodology in these reviews.

Comment 3: Asahi, Koyo, NPB, NSK, NTN, and SKF argue that the Department's new methodology for identifying similar models in the comparison market is flawed and that, if the Department uses the new model-matching methodology, it must be revised to discard inappropriate matches from being made.

Koyo, NMB, NSK, and NTN contend that, if the Department implements its revised methodology, it should continue to cap the sum of the deviations. Koyo, NSK, and NTN argue that the cap must to be set at zero percent. In other words, the respondents request that the

Department choose the single most-similar model only within the old definition of family (i.e., identical with respect to bearing design, load direction, number of rows, precision grade, inner diameter, outer diameter, width, and load rating). Citing Antifriction Bearings and Parts Thereof From France; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Antidumping Duty Administrative Reviews, 56 FR at 11178 (March 15, 1991), NSK contends that the Department has stated previously that such sales "constitute the universe of such or similar merchandise." The respondents also contend that the Department's proposal to adopt an overall cap of 40 percent neither sufficiently restricts the number of egregious matches that are generated by the revised methodology nor does it meet the Department's goal of permitting solely those matches between models with very slight or minute physical differences in the eight physical characteristics. NTN contends that capping the sum of the deviations at zero would account for what both the Department and the respondents have agreed historically are the most important characteristics to be considered when contemplating matches of different AFB products. According to NTN, this methodology would satisfy the Department's recently stated desire to match to a single most-similar model.

In the alternative to a zero-percent cap, Koyo and NSK suggest that, rather than use an overall 40-percent cap, the Department should limit each physical-characteristic deviation to 10 percent. Asahi suggests that the Department use an overall 10-percent cap while SKF suggests that the Department use an overall 20-percent cap. The respondents argue that these smaller caps would prevent matches between models that are very different and, while not as accurate as the family-matching methodology, would be more accurate than the methodology the Department used for the AFBs 15 Prelim.

Asahi contends further that the Department's implementation of the sum-of-the-deviations methodology was flawed because it understates the impact of a difference in the load rating of bearings. According to Asahi, load rating is not a simple measure of a single physical characteristic. Rather, Asahi claims, it combines a large number of issues to which a single number is assigned. Asahi asserts that the number is never zero and the minimum load rating for a bearing is fixed, in part, by the size and physical characteristic of the bearing. Thus, Asahi contends, the "zero point" for the load rating for each particular size of bearing is different. As a result, Asahi argues, the relative change reflected in the deviation does not reflect the difference between two load ratings accurately. Asahi argues that the differences in load rating can never be quantified properly and that the calculated deviations are simply the result of the arbitrary zero point the Department set. Therefore, Asahi argues, to apply the sum-of-the-deviations methodology for load ratings would be arbitrary, capricious, and not in accordance with law.

Asahi and NPB argue that the Department's methodology allows inappropriate matches, such as comparisons of housed bearings to unhoused bearings, standard bearings to high/low-temperature bearings, standard bearing-quality steel bearings to stainless steel bearings, and dust-proof bearings to standard bearings. The respondents argue that such bearings are physically different such that they do not meet the test of physical comparability enunciated in section 771(16)(B) of the Act. According to the respondents, the bearings being compared are not like in component materials, the bearings being compared are used for different purposes, and the bearings being compared are not approximately equal in commercial value. Therefore, Asahi and NPB conclude, the Department must revise its methodology to not allow such matches. NPB

submitted with its case brief a list of alternative matches for certain models sold in the United States that it claims would be more appropriate matches than the ones selected by the Department.

Asahi contends further that the Department should have accounted for other physical characteristics, such as the length and configuration of the inner ring, the configuration of the outer ring, surface treatments, high-cost greases, special hardening or annealing, and specialty components and treatments, in its model-matching methodology. Asahi contends that these are important characteristics which distinguish bearings physically. Asahi suggests that the Department incorporate these characteristics in its revised model-matching methodology and argues that differences is these characteristics mean that the bearings are not comparable.

Koyo also argues that, if the Department insists on using the revised methodology, it must also devise procedures by which respondents can identify inappropriate matches resulting under the Department's methodology and have those matches excluded from the margin calculation. Koyo also submitted a number of examples of matches that the Department made in its preliminary results for Koyo that it alleges are inappropriate comparisons.

Finally, Koyo argues that the Department should use differences in level of trade and contemporaneity to resolve ties between "equally similar" home-market models before using differences in the VCOM. Koyo asserts that, although the Department made level-of-trade and contemporaneity considerations more important than the difference in costs in prior reviews, it did not explain the change for the current reviews. Koyo argues that the Department should place more weight on level-of-trade considerations than on the difference in cost because models sold at different levels of trade are not commercially similar. Koyo also argues that the Department should place more weight on contemporaneity considerations than on the difference in cost because, according to Koyo, costs fluctuate over time, often due to factors beyond a respondent's control. As a result, Koyo alleges, models sold in the more proximate contemporaneity window are more likely to be commercially similar than models that merely happen to have similar costs but were sold in a less-contemporaneous window month.

Timken argues that the Department should reject the respondents' proposals to limit the sum of the deviations to zero percent because models which differ slightly in size or load rating should not be excluded irrevocably as a possible similar comparison. Timken avers that the dumping statute prefers price comparisons because it focuses on differences in value rather than on differences in costs and that the revised methodology reflects that preference. Timken argues that the respondents have offered no support for their alternative cap suggestions of 10 percent or 20 percent. Timken contends that the 40-percent cap the Department used achieves the intended purpose of eliminating potentially unsuitable comparisons not filtered out by the correct reporting of all physical characteristics, the application of the 20-percent difference-in-merchandise test, and the application of the sum-of-the-deviations methodology. According to Timken, the Department tested the application of the 40-percent cap and other respondents have supported that threshold. Therefore, Timken concludes, no modification is needed.

Timken contends that Asahi's concern about insert bearings and housed bearings is accommodated by the correct reporting of the design type but does not reflect on the appropriateness of the revised methodology. With respect to the possibility that the Department's methodology could result in inappropriate comparisons between stainless steel

bearings and standard bearings, Timken asserts that Asahi has admitted that its concern is hypothetical only. Timken claims further that the Department has accounted for cost differences in its methodology.

Timken concurs with Asahi that comparisons must account for high-cost greases but asserts that the Department's methodology already recognizes these differences in the identification of identical bearings. Timken claims that the Department accounts for these differences in similar comparisons by application of the 20-percent difference-in-merchandise test and the consideration of manufacturing costs. Therefore, Timken concludes, no change to the revised methodology is necessary.

With respect to the other different types of models described by Asahi and NPB, Timken claims that these models would have been treated as potential matches under the family-matching methodology, the only difference being that they would be weight-averaged with other models. Timken contends that any mismatches are the result of the respondents' reporting failures.

With respect to the alternative matches proposed by NPB, Timken asserts that these matches are unexplained, unsupported, and very late. According to Timken, NPB's purported issues have been the subject of comment since the Department started considering changes to its model-matching methodology, yet NPB did not offer these new criteria until the submission of its case brief for this review. Therefore, Timken argues, the Department should not accept the alternative matches.

With respect to Asahi's argument about the use of percentage deviations on reported load ratings, Timken argues that Asahi is wrong. Timken asserts that, by incorporating load rating, the Department's sum-of-the-deviations calculation is conservative because size is, in effect, considered twice. According to Timken, Asahi's comparison to measurement in different scales does not apply because expressions of load ratings should be consistent, at least within the products of the same manufacturer.

Timken argues that Koyo does not need new procedures for handling inappropriate matches. According to Timken, Koyo controls its data and inappropriate matches can be avoided by the correct reporting of all physical characteristics.

With respect to Koyo's argument that the Department should use differences in level of trade and contemporaneity to resolve ties between "equally similar" home-market models before using differences in the VCOM, Timken contends that Koyo's argument ignores that, under the family-matching methodology, cost differences were not used as a selection criterion for model match. By contrast, Timken avers, the Department uses costs in the revised methodology to select the single most-similar merchandise. According to Timken, the Department's practice is to select the single most-similar merchandise first and then look for the particular sale or group of sales at the closest level of trade and the most proximate in time to the U.S. sale. Timken concludes that, because cost difference is used to select the single most-similar merchandise, it should continue to take precedence over level of trade and temporal proximity.

Department's Position: We find that our new model-matching methodology is not flawed and that, with one exception, no substantive revisions are necessary. We continue to find that the 40-percent cap on the sum of the deviations is appropriate for use in these proceedings. As we discussed in response to Comment 2, above, we find that none of the matches which the respondents cited as inappropriate is actually inappropriate in light of our normal practice and our

interpretation of section 771(16)(B) of the Act. None of the respondents has demonstrated how using a smaller cap would increase the accuracy of the margin calculation.

Moreover, except for NPB, none of the respondents has suggested there were more appropriate matches we should have made in lieu of the matches we actually made. With respect to NPB's suggested alternative matches, we find that it has not supported its assertions that its alternative matches are actually better matches. Because of the proprietary nature of our analysis, we have discussed these suggested matches in our Final Results Analysis Memorandum for NPB dated September 12, 2005.

In addition, certain respondents allege that we must account for certain characteristics to prevent matches of dissimilar bearings (e.g., dust-proof bearings to standard bearings). As we discussed in response to Comment 2, above, these characteristics would not have taken such bearings outside the family of the U.S. bearing. In fact, an examination of some of the models which NPB identified as inappropriate would have been used as the basis for normal value in the family-matching methodology. See our Final Results Analysis Memorandum for NPB dated September 12, 2005, for an example of such a match.

We agree that we should not make comparisons between housed and unhoused bearings. We determine that housed bearings and insert bearings (i.e., unhoused bearings that are specifically designed to be put into a housing) are different design types and have allowed respondents to report them as such. See, e.g., NSK's letter requesting clarification dated July 23, 2004, at page 4, and our reply letter dated August 2, 2004. Accordingly, we have reclassified Asahi's and NPB's housed bearings as separate design types.

Furthermore, we have not adopted Asahi's suggestion that we incorporate additional characteristics in our model-matching methodology at this time. Asahi's suggested characteristics merely indicate the types of bearings it argues "can not" be considered similar. As we discussed above, with the exception of housed/unhoused bearings, we do not agree with Asahi that, for example, stainless steel bearings cannot be compared to standard bearing-quality steel bearings if the match otherwise meets the criteria of our new matching methodology including the 40-percent sum-of-the-deviations cap and the 20-percent difference-in-merchandise cap. Beyond these allegations, however, it is by no means clear that Asahi's suggestions are comprehensive. For example, we know that bearings are made of materials other than stainless steel or standard bearing-quality steel, but Asahi does not enumerate what these other materials may be. Thus, even if we were to somehow incorporate Asahi's characteristics into our methodology, we cannot be sure that our list of values for each characteristic is all-inclusive and, thus, appropriate as a model-matching characteristic across these proceedings. Further, other parties did not comment on these additional characteristics such that the records of these proceedings do not reflect an extensive debate on this aspect of the model-match methodology.

None of the foregoing is meant, however, to preclude further comment in future reviews on our model-matching methodology. The new methodology is more accurate and is more similar to the normal model-match methodology that we use in other market-economy proceedings than the family-matching methodology. For future reviews, interested parties may continue to suggest additional characteristics which we may use to refine the methodology further so that eventually we will account for a greater range of characteristics that affect price and cost.

We disagree with Koyo's argument that we need to devise additional procedures for respondents to identify inappropriate matches. Koyo can and did identify what it felt were inappropriate matches in its case brief and in submissions prior to our issuance of the AFBs 15 Prelim. NPB did the same. While we generally did not agree with the respondents that the matches we made were "inappropriate," there is nothing that precludes Koyo from making similar arguments in the future, either in pre-preliminary comments or in its case briefs. Thus, we find there is no reason to devise or adopt additional procedures as Koyo suggests.

Finally, Koyo argues that we should use differences in level of trade and contemporaneity to resolve ties between "equally similar" home-market models before using differences in the VCOM. Timken is correct in claiming that, under the family-matching methodology, we did not use cost differences as a selection criterion for model match. Although the variable appeared in the computer program we used to match models and calculate dumping margins, it played no role because we were averaging the prices of all models within the family sold by month into one weighted-average monthly price. We acknowledge, however, that we have had an inconsistent practice with respect to this issue among antidumping proceedings. In some proceedings, we have accorded more weight to the differences in the VCOM than we have differences in level of trade and contemporaneity. In other proceedings, we have accorded more weight to differences in level of trade and contemporaneity than we have to the differences in VCOM. In the interests of administrative consistency, we hereby state our intended practice across all antidumping proceedings.

We find that it is appropriate to place more weight on level-of-trade and contemporaneity concerns than on differences in costs. While using the differences in costs is a valid methodology for resolving ties between two or more models where there are no differences in the physical characteristics for which we account in our model-matching methodology, we determine that level of trade and contemporaneity are more important to our model-matching methodology. Section 773(a)(1)(B)(i) of the Act instructs us that the normal value shall be based on prices "to the extent practicable, at the same level of trade" as the U.S. sale while section 773(a)(1)(A) of the Act instructs us that the normal value shall be based on prices "at a time reasonably corresponding to the time" of the U.S. sale. When faced with a choice of two or more models among which we must select using our model-matching methodology, we determine it is appropriate to take into account differences in level of trade and contemporaneity before using the differences in cost to select the single most-similar model. This determination is applicable not only to the AFB proceedings but also to all market-economy antidumping proceedings. Therefore, we have implemented this determination for these final results and we will implement this determination in all future preliminary results of administrative reviews of antidumping market-economy proceedings.

Comment 4: Asahi, Koyo, NSK, and SKF argue that, even if the Department changes its model-matching methodology, any change must be made prospectively and, therefore, cannot be implemented until a future administrative review. Asahi, Koyo, NSK, and SKF argue that the Department's application of the revised model-matching methodology in these reviews is unlawfully retroactive. NSK contends that the Department did not indicate that it intended to revisit the model-matching methodology until December 2003 when the 2003-04 POR was already two-thirds complete. Furthermore, NSK and SKF claim that, when the Department did

announce that it intended to revise the model-matching methodology, it did not indicate at that time what form the replacement methodology would take. Koyo contends that the Department still has not made a final decision as to the new model-matching methodology. Koyo and NSK assert that, for these reasons, they and other respondents were unable to price their U.S. sales at or above normal value, which the antidumping law seeks to encourage. Koyo and NSK contend that compliance with the law is impossible where the methodology is revealed only after the sales are made.

Citing Verizon Tel. Cos. v. FCC, 269 F.3d 1098, 1109 (D.C. Cir. 2001) (Verizon), NSK argues that the courts have established two principles to govern the retroactivity of rules made during administrative proceeding similar to antidumping reviews: 1) when there is a substitution of new law for old law that was reasonably clear, the new rule may justifiably be given prospective-only effect in order to protect the settled expectations of those who had relied on the pre-existing rule, and 2) retroactive effect is appropriate for new application of existing law, clarifications, and additions, but retroactivity will be denied when to apply the new rule to past conduct or to prior events would work a manifest injustice. Citing Aliceville Hydro Associates v. Federal Energy Regulatory Com., 800 F.2d 1147, 1151 (D.C. Cir. 1986) (Aliceville), NSK contends that longstanding agency practices carry the weight of law. Accordingly, NSK argues, the well-established family-matching methodology carries the weight of law with respect to the Department's administration of the AFB orders. Citing Landgraf v. USI Film Prods., 511 U.S. 244 (1994) (Landgraf), Asahi contends that the Supreme Court established that statutes cannot be construed to have retroactive effect unless Congress has evidenced clear intent to the contrary. Citing ALZ NV v. United States, 283, F. Supp. 2d 1302, 1309-10, 1327 (CIT 2003), Asahi argues further that the courts have also applied similar analysis to agency regulations. Citing Anshan and Shikoku Chemicals Corp. v. United States, 795 F. Supp. 417 (CIT 1992) (Shikoku), SKF argues that any changes to the model-match methodology should only be prospective. Therefore, the respondents conclude, any revision to the model-matching methodology may only be applied prospectively.

Koyo observes further that the Department only revised its arm's-length test prospectively and argues that the model match is so fundamental to the dumping calculation that it, too, should only be applied prospectively, if at all.

NSK contends that, to the extent that the Department finds it appropriate to adopt the new methodology, it may impose the new model-matching methodology no sooner than the 2005-06 administrative reviews, excluding those sales made prior to the issuance of the final results of the instant reviews. Koyo and SKF argue that the Department may implement the new model-matching methodology no sooner than the 2006-07 administrative reviews.

Finally, citing the examples of individual models it discussed in Comment 2, above, NSK contends that the examples it provided illustrate the inherent unfairness in applying the revised methodology to U.S. sales that were already made at fair value under the family-matching methodology and became "dumped" only because the Department changed the rules after the fact.

Timken argues that the Department should not postpone the application of the revised methodology. Timken asserts that the authorities the respondents cite deal with the interpretation of statutes, particularly the potential retroactive application of new statutory law, where the

statute does not address its temporal application expressly. Timken contends that, in the instant case, there is no new law, only the Department's determination to modify its methodology to implement an existing law more faithfully and to achieve greater accuracy. Citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (CAFC 1990), and NTN Bearing Corp. v. United States, 74 F.3d 1204, 1208 (CAFC 1995), Timken argues that further delay in the implementation of a method known to be a more faithful application of the law and acknowledged to yield more accurate results would be unlawful.

Citing Landgraf, Timken argues further that, except in the context of criminal legislation, the presumption against retroactive application of new statutory law is a presumption only which is overcome, inter alia, by the statute's instruction to the contrary. Timken asserts that the antidumping statute has set up a system of retrospective reviews to determine dumping duties. Therefore, according to Timken, all decisions made by the Department in administrative reviews to modify any methodologies are always retroactive.

Citing, e.g., Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review, 64 FR 66110 (October 30, 2002), Timken contends that the Department has made changes in the model-match methodology in other proceedings even where a particular methodology was in use for several reviews. Timken asserts further that such changes in model-matching methodology have been affirmed by reviewing courts. Moreover, Timken argues, the Department adopted an extraordinarily cautious approach in these proceedings which far exceeded normal practice because the Department announced the intended changes in the 2002-03 reviews and collected extensive comments from interested parties but did not apply the changes until these 2003-04 reviews.

Timken also argues that NSK's argument that the family-matching methodology should be viewed as a long-standing agency practice carrying the same weight as law is baseless. Timken concedes that consistent agency decisions may crystallize into a regular practice but contends that the relevant practice is not the Department's use of the family-matching methodology. Rather, Timken argues, the family-matching methodology was contrary to the otherwise virtually uniform Department practice of selecting the single most-similar product. Timken asserts that, because the family-matching methodology was contrary to the Department's normal practice, there can be no justified reliance.

Citing Brother Industries v. United States, 771 F. Supp. 374, 382 (CIT 1991), Timken claims that the CIT has held that a party must prove its detrimental reliance. Timken observes that the Department has found margins consistently using the family-matching methodology for all the parties now attempting to invoke detrimental reliance and argues that the continued existence of dumping margins undermines directly any claims that these parties in fact relied on the Department's prior practice to set prices. Timken contends further that the factual situations in Anshan and Shikoku differ from the situation in these proceedings. In Shikoku, Timken asserts, the respondent demonstrated its reliance and the Department was not able to demonstrate that the methodology was in fact an improvement. In contrast, Timken cites NTN Bearing Corp. v. United States, 104 F. Supp. 2d 110, 124-25 (CIT 2000), as a case where Shikoku was not applied where reliance was not proven and where the Department's change merely reflected consistent preference for transaction-specific reporting.

In Anshan, Timken claims, the Department had departed from its normal practice whereas, in these reviews, the Department is returning to its normal practice. Timken also alleges that the court did not reach the issue of reliance in Anshan but only reviewed the Department's explanations of its departure from practice for reasonableness and then remanded for additional explanation. Citing Bethlehem Steel v. United States, 27 F. Supp. 2d 201, 207 (CIT 1998), Timken contends further that, given the retrospective nature of the Department's prior reviews, an exporter cannot expect to predict exactly the potential antidumping liability at the time of import into the United States.

Department's Position: We determine that it is not necessary to postpone implementation of the new model-match methodology to a future round of administrative reviews, both as a matter of law and fact. The case law cited by the respondents does not support their argument that the new model-match methodology must be applied prospectively. Also, we find that the respondents have not demonstrated detrimental reliance on the family-matching methodology.

The respondents argue that we should apply the change in our model-match methodology prospectively. In particular, Asahi cites Landgraf for the proposition that "statutes cannot be construed to have retroactive effect" unless Congress evinced clear intent to that effect. Landgraf deals with the potential retroactive application of new statutory law where the statute does not address its temporal application expressly. Here, there is no new statute - we are modifying a methodology that implements the existing statute. Moreover, Landgraf explains that, except in the context of criminal legislation, the presumption against retroactive application of new statutory law is a presumption only, which is overcome, inter alia, by the statute's instruction to the contrary. Landgraf, 511 U.S. at 280. The antidumping statute sets up a system of retrospective annual reviews to determine dumping margins. See section 736 of the Act and 19 CFR 351.212(a). Thus, decisions made in reviews to modify methodologies will, by necessity, have retroactive effect.

In fact, the Department has made retroactive changes to the model-match methodology in other cases, even where a particular methodology was in use for several reviews. See Pipes and Tubes from Thailand; Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110 (October 30, 2002), and the accompanying Issues and Decision Memorandum at Comment 1; Roller Chain, Other Than Bicycle, From Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 63671, 63678-9 (November 16, 1998); Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 30068 (May 10, 2000), and the accompanying Issues and Decision Memorandum at Comment 8. Similarly, reviewing courts have affirmed retroactive changes in the Department's model-match methodology. See Hyster Co. v. United States, 848 F. Supp. 178, 184-186 (CIT 1994), AK Steel Corp. v. United States, 21 CIT 1204, 1219 (1997), SKF USA, Inc. v. United States, 876 F. Supp. 275, 278-79 (CIT 1995), and Koyo, 66 F. 3d 1204.

While it is true that "practices of an agency that become crystallized may be in the nature of law" (2 K. Davis, Administrative Law Treatise 7:23 at 113 (2d ed. 1983)), the retroactive application of a new agency practice will be denied effect only when a party demonstrates detrimental reliance on the old practice. See Verizon, 269 F.3d at 1110, Aliceville, 800 F.2d 1147, 1152-53, and Shikoku, 795 F. Supp. at 421. In Shikoku, the court held that the

Department acted unreasonably in changing its allocation methodology and preventing the plaintiffs from qualifying for consideration for revocation when the facts demonstrated that plaintiffs had the right to rely upon the Department's consistent approach in the investigation and four administrative reviews. Moreover, the Department did not demonstrate to the satisfaction of the court that the methodology was in fact an improvement.

These 2003-04 reviews are distinguishable from Shikoku. First, none of the respondents is eligible for revocation. Moreover, as discussed below, the facts do not demonstrate that the respondents relied detrimentally upon the family model-match methodology, and we have demonstrated that the new methodology is an improvement; that is, it results in more accurate calculations of dumping margins.

The respondents have not demonstrated detrimental reliance on the family-matching methodology. We have found dumping margins for all of the respondents which argue that we should postpone implementation of the methodology. In fact, we have always found dumping by these respondents; of these respondents, only Asahi in the 1990-91, 1991-92, and 2002-03 administrative reviews has ever had a de minimis dumping margin. Thus, it is not at all clear that the respondents have relied on the family-matching methodology in order to avoid dumping.

We first announced that we were considering a change to our model-matching methodology in June 2003. In December 2003, we announced that we would seek to change the model-matching methodology and solicited comments from interested parties about what characteristics we should consider in our new methodology. With the exception of Asahi, none of the respondents has offered any suggestions meaningfully different from Timken's original suggestion (with respect to why we did not adopt Asahi's suggestions, see our response to Comment 3, above). Thus, although we did not announce our intended methodology until July 2004, the only real alternative was the methodology Timken suggested in its June 17, 2003, submission to the Department. Therefore, the parties should have been aware of what the new methodology was likely to be in the event the Department decided to implement a new methodology. Furthermore, although the respondents have expressed displeasure that we had not yet made a final ruling on the methodology, the fact is that every alteration we have made to Timken's suggested methodology (e.g., placing a cap on the sum of the deviations) has been in response to arguments by the respondents. Thus, the respondents have had numerous opportunities to assess the impact of the Department's proposed methodology and make suggestions that would enable the Department to calculate accurate margins.

As we describe in response to Comment 2, above, we determine that our new methodology is more accurate than the family-matching methodology. Given that we attempt to calculate accurate margins, we find that it is appropriate to implement a demonstrably more accurate methodology as soon as possible.

Finally, Koyo's reference to the Department's implementation of its new policy with regard to determining whether sales were made at arm's-length prices is incorrect. Koyo asserts that our implementation of the new policy was entirely prospective. We published the announcement of that policy in the Federal Register on November 15, 2002. See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186 (November 15, 2002). We first implemented this policy in the AFB proceedings in the administrative reviews covering the period May 1, 2002, through April 30, 2003. Thus, the policy was applied

to sales made for six months of the POR which were transacted prior to the Department's announcement of its change in policy. Our implementation of our new model-match methodology for these proceedings in no way conflicts with our implementation of the new arm's-length policy.

For the foregoing reasons, we find there is no reason to delay the implementation of our new model-matching methodology to future reviews.

Comment 5: SKF and SMT argue that the Department should not change the definition of control numbers (i.e., what the Department considers to be identical merchandise for matching purposes). The respondents observe that, until the instant reviews, the Department instructed respondents to ignore differences in lubricants when creating control numbers. SKF states that, for the first time, the Department has now instructed the respondents not to ignore such differences without any prior warning that such a change was imminent.

SKF asserts that there is no factual basis to support the Department's change in the definition of control numbers in the AFB proceedings. According to SKF, the type of lubricant is unlike the eight physical criteria that the Department uses for defining identical merchandise and should not be used in this manner. SKF contends that, given the overlap in many of the properties that exist in the multitude of lubricants that are being marketed currently, grease type for the most part identifies historic customer preferences and regional conditions rather than physical differences in the bearings. SKF asserts that, in the past, such differences were ignored and the Department made such comparisons properly but, with the redefinition of control number, the Department's analysis no longer reflects differences in pricing for comparable products in both markets and creates artificial and inflated margins.

SKF asserts that the impetus for the change appears to be the petitioner's concern that high-priced lubricants were not being reflected properly in the dumping analysis. SKF contends that, in its case, this is not an issue because the lubricant type is built into the COP and is reflected in the U.S. and home-market sales price for the bearing.

SKF and SMT also argue that there is no compelling need to change the definition of control numbers and, in the absence of such a need, the Department cannot change its methodology. According to SKF, the Department based its change on the fact that it discovered a few instances in which lubricant costs may have been significant. SKF asserts that, in its experience, there are very few instances where it uses lubricants which have this effect. Thus, SKF contends, there is virtually no difference in cost of function between a large variety of lubricants and, therefore, the solution the Department reached was "overkill". Therefore, SKF concludes, the Department has not made a showing that would allow it to change its methodology. Finally, SKF argues that, for the same reasons that any change in the methodology used to identify similar merchandise must be prospective, any change in the definition of control numbers must be made prospectively.

Timken argues that the Department's distinction between models with different greases is justified on the basis of its observations regarding the effect on costs. Further, Timken contends, if a comparison model is identical but for a difference in grease and the grease affects the cost only minimally, the comparison model will be used as a similar comparison.

Department's Position: We find that there are compelling reasons to change our definition of control numbers in the AFB proceedings so that we do not ignore differences in lubrication. As we stated in the memorandum from Mark Ross to Jeffrey A. May dated July 7, 2004, at 3, we found at verifications we conducted in the 2002-03 administrative reviews that differences in the types of greases can cause significant differences in cost. Because of this, two models which are otherwise identical may have significantly different costs if they contain different types of grease. If we were to treat these two different models as identical products, it could lead to distortive effects on our calculation of the dumping margin. For example, if we compared a U.S. model with a standard grease to a home-market model which is otherwise identical but has a high-performance grease and we regarded the models as "identical" for matching purposes, we would create a dumping margin. This can happen because, when we make comparisons between identical products, we do not make a difference-in-merchandise adjustment. Thus, we would not account for the higher cost and, presumably, price of the home-market model in calculating a dumping margin. Similarly, a comparison of a U.S. model with a high-performance grease to a home-market model with a standard grease could mask dumping. Accordingly, we have changed our definition of control numbers to account for different types of lubrication.

SKF's argument that we should not change our definition of control numbers because grease types reflect historic customer preferences and regional conditions rather than physical differences in the bearings is not persuasive. To the extent that this is true, our model-matching methodology ought to allow us to make the appropriate comparisons. If two otherwise identical models are compared and the differences in lubrication have a negligible effect on the costs of the models, under our model-matching methodology we will select the home-market model as the comparison for the U.S. model. SKF did not cite any examples where this did not happen.

Finally, if a respondent believes that there are lubricants which we should treat as identical for purposes of defining control numbers, the respondent may request that we do so. For example, NSK requested this with regard to certain lubricants which it characterized as standard. We permitted NSK's reporting methodology, with the proviso that it report the grease codes in a separate field. See NSK's letter requesting clarification dated July 23, 2004, at pages 5-6, and our reply letter dated August 2, 2004. Furthermore, NSK explained the basis for its reporting and we were able to verify NSK's methodology. See NSK's section B questionnaire response dated October 12, 2004, at pages B-3 and B-4 and the Department's NSK home-market sales verification report dated April 14, 2005, at page 3.

With respect to SKF's argument that any change in our definition of control numbers must be made prospectively, we find that it is appropriate to make the change immediately. As we stated in response to Comment 4, above, because we have a duty to calculate accurate margins, we find that it is appropriate to implement a demonstrably more accurate methodology as soon as possible. Furthermore, SKF has not demonstrated detrimental reliance on our previous definition of control numbers. Therefore, we have continued to implement this change for these final results of reviews.

3. Acquisition Cost vs. Suppliers Cost

In the context of the current reviews, Timken requested that the Department require that the respondents report COP data, rather than acquisition costs, for AFBs purchased from unaffiliated suppliers and subsequently resold. In the AFBs 15 Prelim, the Department stated that, rather than modifying the reporting requirements in the current reviews, beginning with the 2005-06 reviews, it would "require the respondents to report COP and CV information for the purchases from their unaffiliated suppliers where facts . . . reflect the facts in the other proceedings . . . in which we have required the COP and CV information from unaffiliated suppliers." See Memorandum from Laurie Parkhill to Barbara E. Tillman, Ball Bearings from France, et al.: Whether to Use Acquisition Cost or Unaffiliated Suppliers' Cost of Production, at page 6, dated May 6, 2005 (Acquisition-Cost Memo).

Comment 6: Timken asserts that, in calculating COP and CV, section 773 of the Act requires that the Department add the costs of materials and fabrication incurred in producing the merchandise, SG&A, and, in the case of CV, an amount for profit as realized by the specific producer or exporter. Timken also argues that, when referring to the material and fabrication costs of producing merchandise, neither the statutory provisions relating to the calculation of CV nor those relating to COP refer to the specific producer or exporter. Timken argues that this contrasts with provisions requiring the inclusion of SG&A incurred by the specific producer or exporter. Further, Timken argues that section 773 of the Act clarifies that, for the purposes of section 773 of the Act, the term exporter or producer includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to calculate the accurate total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise.

Citing Elemental Sulphur From Canada; Final Results of Antidumping Finding Administrative Review, 61 FR 8239 (March 4, 1996) (Elemental Sulphur), and other decisions by the Department, Timken argues that the Department's practice is to use actual production costs because reliance on acquisition costs would deny domestic producers a remedy against below-cost imports. Timken asserts that the Department has applied facts available when it did not receive COP data for a respondent's supplier. Finally, Timken argues that, pursuant to section 776 of the Act, reliance on an exporter's acquisition costs as facts available is justified only when the producer's cost data is unavailable. Accordingly, Timken argues the Department should not use acquisition costs where it has data from the supplier which can be matched to the exporter's data.

SKF argues that the Department's plans to require unaffiliated suppliers' COP data rather than use the exporter's acquisition cost is in direct contravention to the law of the case. SKF argues that for the past fourteen administrative reviews the Department has required the reporting of acquisition costs for resales of bearings and parts produced by unaffiliated suppliers. SKF argues that, because the respondents have relied on the Department's existing methodology to their detriment and already made sourcing decisions, the Department's announcement that it will not implement the change until the 2005-06 administrative reviews comes too late to avoid significant adverse consequences. Citing Shikoku, SKF argues that its rightful reliance precludes the Department's change in methodology.

SKF, Koyo, NSK, and NTN argue that the Act does not require the use of the unaffiliated producer's COP over a respondent's acquisition cost and that the Act supports the acceptance of acquisition price. NSK contends that section 771(28) of the Act authorizes the Department to examine both the exporter and the producer of the subject merchandise to the extent necessary to calculate the costs accurately. Further, NSK argues that, because the provision's legislative history states that the Department may look at the costs, expenses, and profits of the exporter and the producer in limited situations where different firms perform the production and selling functions, the Department cannot use unaffiliated-supplier cost data when the respondent is principally an integrated producer and seller which supplements its own production with limited purchases.

Citing sections 773 and 782 of the Act, SKF, Koyo, and NSK argue that there is a statutory preference for the use of a respondent's own books and records. SKF and NTN argue that the transactions-disregarded and major-input provisions of the statute specify the limited situations where the Department can look beyond a respondent's books and records and disregard certain transactions for the calculation of COP and CV. SKF argues that, because both of these provisions are applicable only to transactions between affiliated parties, there is no statutory basis that permits the Department to disregard similar transactions between unaffiliated parties. Citing Consolidated International Automotive, Inc. v. United States, 809 F. Supp. 125 (CIT 1992), and NTN Corp. v. United States, 306 F. Supp. 2d 1319, 1349 (CIT 2004) (NTN I), SKF asserts that courts have recognized that transactions between unaffiliated parties should be accepted at face value and that the Department's practice is to compare the transaction prices with prices charged by unrelated parties. NSK argues that, because the antidumping law is built on the core principle that transactions between unaffiliated parties are market-price transactions and are the benchmark against which all other prices are to be measured, it would be nonsensical for the Department to use NSK's sales prices to an unaffiliated producer as the measure for dumping but then tell the unaffiliated producer that the price is not acceptable in determining the producer's COP or CV.

Citing section 773(e) of the Act, SKF argues that a methodology using the actual production costs of an unaffiliated producer, rather than the exporter's acquisition costs, to measure COP prevents the Department from complying with its statutory obligation to calculate an actual profit "incurred and realized by the specific exporter or producer being examined in the investigation or review" because the resulting CV-profit margin would not reflect the profit of the specific producer or exporter under examination. Further, SKF asserts that the Department's proposed approach would create an artificial basis on which to determine whether SKF's prices were at prices which permit the recovery of all costs.

INA et al., GRW, Koyo, NSK, NTN, Sapporo, and SKF argue that the factual circumstances in the cases cited by Timken are different from those in the AFBs proceedings. SKF asserts that all of the cases cited by Timken, many of which involve agricultural products, involve close suppliers or cooperatives. SKF argues that the situation in the AFBs proceedings is different because SKF's suppliers are competitors and SKF neither controls the unaffiliated suppliers nor holds an ownership interest. Koyo, NTN, and NSK argue that, in the cases where the Department has sought the COP data of unaffiliated suppliers, the respondent either did not produce the merchandise or acquired a large proportion of the merchandise from other suppliers. INA et al., GRW, and Sapporo argue that each case cited by Timken involved facts that

undermined the suitability of the respondent's acquisition cost from its unaffiliated supplier as the basis of a COP or CV calculation. NTN argues that the administrative reviews cited by Timken are unrelated to the AFBs proceedings, have no precedential value, and should not be taken as a general methodology used in every review. INA et al., GRW, and Sapporo argue that, although it may be the Department's general policy to attempt to obtain actual COP data from unaffiliated suppliers, it is not a requirement and there are cases where the Department has used the respondent's acquisition cost as a surrogate for the COM.

INA et al., NSK, and SKF argue that the sharing of COP data could subject producers to charges of anti-competitive conduct. INA et al. and NSK argue that a methodology directing respondents either to violate U.S. antitrust laws or base sourcing decisions on an unaffiliated supplier's willingness to provide sensitive cost data to a federal agency in a proceeding in which it is not a participant is anti-competitive and violates the spirit of the antidumping law which is to foster fair competition. INA et al., Koyo, NSK, NTN, and SKF assert that, because the unaffiliated suppliers often compete directly with the respondents, they will not provide the respondents with the COP data. NSK argues that, because the suppliers are also competitors, the suppliers will see a strategic advantage in raising NSK's costs by not cooperating with the Department's requests if the Department attempts to gather the information directly from the suppliers. Citing AFBs 12 and the accompanying Issues and Decision Memorandum at Comment 19, Koyo and NSK argue that, in the analogous context of reporting the sales data of affiliated resellers in the home market, the Department has recognized that it is not reasonable to require respondents to report their affiliates' resales data where the respondent does not have a majority interest in the affiliate and thus has no legal basis for compelling the affiliate to provide such information.

INA et al. and NTN argue that it would be unlawful for the Department to apply AFA to a respondent which is unable to obtain COM data from an unaffiliated home-market supplier. INA et al. argue that the imposition of AFA would be unlawful because section 776 of the Act requires a determination that the party had not acted to the best of its ability and a determination over which a respondent has no control cannot be used to support the use of AFA.

INA et al. also argue that it would be unlawful for the Department to use COM data from another respondent. Citing Elemental Sulphur, INA et al. argue that, in rejecting the petitioner's request that the Department use another respondent's COM data, the Department stated that previous administrative decisions did not stand for the proposition that cross-respondent use of proprietary data is permissible absent consent or adequate safeguards to protect the confidentiality of the data because in the previous cases adequate safeguards to protect the confidentiality were present. INA et al. argue that safeguards are not present in the current case because, for the purposes of COP, section 773(b)(3)(A) requires that the Department calculate the cost of materials and fabrication of the "foreign like product" which, by definition, is limited to merchandise produced by the same person.

Citing Tehnoimportexport v. United States, 766 F. Supp. 1169, 1177 (CIT 1991), and China National Metals & Minerals Import & Export Corp. v. United States, 674 F. Supp. 1482 (CIT 1987), INA et al. argue that courts have recognized that the use of another respondent's business proprietary data without consent is unlawful. Finally, INA et al. argue that, although respondents are entitled to review their margin calculations, the disclosure of another

respondent's COM data would violate section 777(b) of the Act which prohibits the release of another respondent's proprietary data to the respondent. SKF argues that, while the Department could request the information directly from the unaffiliated producers, respondents would be forced to price their products without any reference to normal value and that would violate notions of due process. SKF also argues that section 782 of the Act expresses a preference for information submitted by an interested party.

Timken argues that, similar to arguments in the context of the Department's change in model-match methodology, concerns about detrimental reliance are baseless. Timken also argues that concerns about harming unaffiliated suppliers' negotiating positions can be overcome by permitting the release of information only under an APO. Timken also argues that SKF's reliance on section 782 of the Act is unavailing because the Act requires that material and fabrication costs be based on the producer's costs. Finally, citing Elemental Sulphur, 61 FR at 8251, Timken asserts that the argument by INA et al. that there is no reason for the Department not to accept acquisition costs is baseless because the Act requires the use of the producer's COP data and the Department has acknowledged that reliance of acquisition costs would create a "huge loophole and open domestic producers to competition with below cost exports without remedy."

Department's Position: As we explained in the Acquisition-Cost Memo, we have decided that we will not require the respondents in these 2003-04 administrative reviews to provide the COP and CV data of their unaffiliated suppliers due to our long past practice in these AFB proceedings of using acquisition costs to calculate COM and the unusual challenges the respondents would face in providing that information well after we received questionnaire responses from the respondents. See AFBs 15 Prelim and Acquisition-Cost Memo.

Timken did not make its request until an advanced stage in the current reviews of these orders. As we stated in the Acquisition-Cost Memo, respondents require sufficient time to report the COP information accurately. For example, because respondents often construct their own control numbers and unaffiliated suppliers are unlikely to know the respondents' control numbers, the respondents need to develop a concordance methodology so that the Department can match the respondents' sales databases with the unaffiliated suppliers' COP data. Accordingly, because of the respondents' need to develop such a concordance methodology and our need to analyze and verify the information, we have decided that it is appropriate to defer any implementation of Timken's request until the reviews of the 2005-06 period.

4. U.S. Repacking Costs

Comment 7: NSK argues that the Department should treat its U.S. repacking expenses as movement expenses instead of as direct selling expenses. Citing NSK Ltd. v. United States - Final Results of Redetermination Pursuant to Court Remand, Consol. Court No. 98-07-02527 (May 18, 2005) (NSK Remand) at 2, NSK observes that, on remand, the Department reversed its prior practice of treating NSK's U.S. repacking expenses as direct selling expenses and, rather, treated them as movement expenses. NSK contends that the operative facts that led the Department to its decision in that remand are the same in the instant review and there is no information on the record or justification, in light of the court's holding, for not treating its U.S.

repacking expenses as movement expenses.

Timken argues that the Department should treat NSK's U.S. repacking expenses as selling expenses rather than as movement expenses. According to Timken, the court made its decision based upon the record evidence in that review that NSK's practice was to ship its merchandise from Japan to U.S. warehouses on pallets in bulk and, in some instances, repack the merchandise into individual or small-quantity boxes prior to shipment to the U.S. customer. Timken contends that, because this was the only record evidence upon which the Department relied in that review, the court found the Department's determination to treat NSK's U.S. repacking expenses as direct selling expenses to be arbitrary and not based on substantial evidence.

Citing the Department's NSK Remand at 2, Timken claims that the Department commented that there may be instances in which, based on record evidence, U.S. repacking expenses would be classified more appropriately as selling expenses. Timken argues that there is evidence on the record of this review that supports the Department's decision to treat NSK's U.S. repacking expenses as selling expenses. According to Timken, NSK's responses make it clear that NSK incurs U.S. repacking expenses chiefly for certain types of customers rather than other types of customers. Timken concludes that NSK must incur U.S. repacking expenses in order to complete sales to certain U.S. customers and, therefore, they are selling expenses.

Department's Position: In light of the NSK Remand, we find that it is appropriate to treat NSK's repacking expenses as movement expenses in this review. As NSK observed, there is no substantial difference between the factual situation in this review and the factual situation in the review before the CIT which issued that remand. Furthermore, while it is true that we stated, in our NSK Remand at 2, that "{t}here may be instances, however, in which, based on record evidence, U.S. repacking expenses would be classified more appropriately as selling expenses (one such example would be a situation in which the U.S. customer required a particular type of packaging as a precondition for purchase)," as in the remand, there is no record evidence indicating that NSK's customers require a particular type of packaging as a precondition for purchase. Moreover, the fact that NSK incurs a particular expense more for one type of customer than another does not, in itself, indicate that an expense is a selling expense. For example, a respondent might incur air-freight expenses solely on sales to a particular type of customer and never on sales to other types of customers. Nevertheless, in such a situation, we would not consider air freight to be a selling expense. Therefore, we have treated NSK's U.S. repacking expenses as movement expenses.

5. CEP Profit

Comment 8: Asahi contends that the Department calculated Asahi's CEP-profit ratio erroneously in the preliminary results. Asahi argues that the Department must use the VCOM from the home-market database to calculate the total cost of goods sold in the home market. Asahi claims that the Department constructed a new VCOM from the cost database using a complicated and unnecessary weight-averaging methodology which did not include the VCOM of the housings Asahi reported in the home-market database for housed bearings Asahi sold in Japan. Asahi states that the Department can add the reported VCOM to an amount for fixed

overhead to produce a TCOM and that the Department can apply the factors for G&A and interest to the TCOM. Asahi claims that the Department can add the G&A, interest, and home-market packing expense to the TCOM to produce a total COP. According to Asahi, the Department can then multiply the total COP by the quantity in each sales observation to produce an exact total cost of goods sold for each home-market observation. Asahi contends further that the Department can then calculate the total cost of goods sold for the reported period by adding the values for all home-market observations and then multiply this total by the weighting factor to produce the total cost of goods sold in the home market for use in the CEP-profit calculation.

Asahi also argues that the Department did not include the values for the U.S. inventory carrying costs incurred in the country of manufacture and U.S. inventory carrying costs incurred in the United States as part of the total U.S. selling expenses in calculating the CEP ratio and should do so for the final results.

The petitioner contends that the Department did not make an error in its calculation for the total cost of goods sold in the home market for CEP profit. The petitioner argues that, in calculating Asahi's total cost of goods sold in the home market for CEP profit, the Department relied upon the TCOM Asahi reported in its cost database. With regard to Asahi's argument that the Department erred by omitting the U.S. inventory carrying costs incurred in the country of manufacture and U.S. inventory carrying costs incurred in the United States in its calculation of the total U.S. selling expenses, the petitioner contends that the CEP-profit calculation is based on actual financial expenses and the addition of imputed expenses would result in double-counting.

Department's Position: The Department did not err in its calculation of the total cost of goods sold in the home market for CEP profit. Rather, Asahi did not report housing costs in its COP database. The Department has corrected Asahi's error for the final results of this review so that the value of housings is included in the COP and CV. See the Department's analysis memorandum for Asahi, dated September 12, 2005, for a detailed analysis.

We also did not err in our omission of the U.S. inventory carrying costs incurred in the country of manufacture and U.S. inventory carrying costs incurred in the United States from the calculation of the total U.S. selling expenses. We followed our normal calculation methodology, which is to exclude imputed expenses in the calculation of CEP profit. This practice was upheld in SNR Roulements v. United States, 402 F.3d 1358 (CAFC 2005).

Comment 9: NTN argues that the Department should not have included NTN's export-price sales in the calculation of CEP profit because export-price and CEP calculations are two different methodologies for the calculation of U.S. price according to sections 772(a) and (b) of the Act. NTN contends that the adjustment of profit on CEP sales is based on expenses incurred in the United States as a percentage of total expenses. NTN argues that section 772(f)(2)(C) of the Act defines the total expenses as those "expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and CEP." NTN claims that, because export-price expenses cannot be considered for CEP-profit adjustments, it would be contrary to the statute and legislative intent to consider export-price sales revenue for the same purpose.

The petitioner rebuts that the CIT rejected NTN's position in Torrington Co. v. United States, 146 F. Supp. 845 (CIT 2001), and that the Department has no reason to accept NTN's argument for this review.

Department's Position: We disagree with NTN. The basis for total profit is the same as the basis for total expenses under section 772(f)(2)(C) of the Act. The first alternative under this section states that, for purposes of determining profit, the term "total expenses" refers to all expenses incurred with respect to the subject merchandise sold in the United States (as well as the foreign like product sold in the exporting country). Thus, where the respondent makes both export-price and CEP sales to the United States, sales of the subject merchandise would encompass all such transactions.

It is our long-standing practice to include export-price sales in the calculation of CEP profit. See AFBs 8, 63 FR at 33345, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews, 63 FR 2558, 2570 (January 15, 1998), and Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 53287, 53295 (October 14, 1997). In addition, our calculation of CEP profit is consistent with Policy Bulletin 97.1, dated September 4, 1997.

NTN raised this same argument in AFBs 9 but the CIT rejected it. The CIT held that it was ". . . not convinced that Commerce's interpretation of the statutory scheme is unreasonable and sustain{ed} Commerce's inclusion of profits on export-price sales in the calculation of CEP profit." The CIT articulated that NTN ignored the following two issues:

> To start, the first category of total expenses is not limited to expenses incurred with respect to CEP sales made in the United States and the foreign like product sold in the exporting country. It also covers expenses incurred with respect to export-price sales because it refers to "expenses incurred with respect to the subject merchandise sold in the United States;" the term "subject merchandise" is defined in 19 U.S.C. section 1677(25) as the class or kind of merchandise that is within the scope of a review, and the class or kind of merchandise in this review includes both CEP and export-price sales.

See Torrington v. United States, 146 F. Supp. 2d 845, 882 (CIT 2001). Therefore, because NTN had export-price sales during this review period, we have included those sales in the calculation of CEP profit.

6. Affiliation

Comment 10: Timken argues that the Department should "collapse" Koyo and one of its Japanese affiliates and calculate a single, weighted-average margin for sales of the two companies for the final results of review. It asserts that Koyo and the affiliate meet all three of the collapsing criteria set forth under 19 CFR 351.401(f). It comments that Koyo

acknowledged its affiliation to the other company, as defined under section 771(33) of the Act, in its response to the antidumping questionnaire, thereby satisfying the first collapsing criterion. Timken asserts that the record evidence establishes the second criterion, that the two companies have production facilities for similar products and could change manufacturing priorities without substantial retooling. In support of its assertion, Timken cites to Koyo's questionnaire response, where it states that the affiliated company produces ball-bearing products and is a supplier of finished ball-bearing products to Koyo, products which Koyo sells to customers in both the U.S. and home markets. In addition, Timken cites Koyo's questionnaire response where Koyo identified the affiliate as a manufacturer which supplied Koyo with ball bearings that Koyo sold in the home market and that were identical or similar to the ball-bearing models that Koyo sold in the United States during the POR. Timken also cites to information not amenable to public summary. Timken asserts that the record evidence also serves to satisfy the third collapsing criterion, that there is a significant potential for the manipulation of price or production between the two companies. It argues that this criterion is met because of evidence relating to each of the factors under 19 CFR 351.401(f)(2) – common ownership of the two companies, the extent to which managerial employees or board members of one firm sit on the board of directors of the affiliated firm, and the intertwined business operations of the two companies. Timken's comments regarding this evidence are not amenable to public summary.

Koyo rebuts that it should not be collapsed with the affiliate at issue because Timken's request for collapsing is untimely. It observes that, in each of the proceedings cited by Timken in which the Department decided to collapse companies into a single entity, the decision to collapse was made prior to the publication of the preliminary results of review. Koyo comments that Timken raised the collapsing issue in its Japan-specific case brief for the first time despite the fact that Timken submitted a December 7, 2004, letter to the Department alleging deficiencies in Koyo's questionnaire responses and that, in all but a few instances, the evidence upon which Timken relies in its collapsing claim appears in the questionnaire response Koyo filed on October 12, 2004. Koyo concludes that there is no reason for Timken to have waited to raise the issue of collapsing in its case brief. It argues that, inasmuch as the Department declined to implement Timken's January 10, 2005, suggestion pertaining to the reporting of the COP of unaffiliated suppliers because of the advanced stage of the current reviews, the Department should refuse to consider Timken's even more tardy collapsing claim.

Koyo responds further that the totality of the circumstances do not support the collapsing of it and an affiliate into a single entity. Koyo acknowledges that, pursuant to the relevant regulations, it is considered to be affiliated with the other company although it owns only a minority share of that company's stock. Koyo also acknowledges that the affiliate's production facilities produce similar or identical merchandise to that which Koyo produces. Koyo argues, however, that the third criterion under 19 CFR 351.401(f)(1) is not met and that the "totality of the circumstances," upon which the Department stated it will base its decision of whether to collapse two companies in Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Sweden, 63 FR 40449, 40453 (July 29, 1998), does not support the collapsing of Koyo and its affiliate. It asserts that, although

Koyo purchases a significant proportion of the affiliate's production, Koyo does not have a controlling interest in the company nor does it share a significant overlap in officers with the affiliate.

Koyo adds that its lack of controlling interest is in contrast to companies involved in segments of proceedings that Timken cited as examples of collapsing, such as the preliminary results of the AFBs 2002-03 reviews and Certain Cold-Rolled Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Review, 60 FR 65284 (December 19, 1995). It states that this lack of controlling interest is significant because, as a minority shareholder, Koyo has no legal right under Japanese law to compel its affiliate to provide Koyo with its sales and cost data. It observes that, in AFBs 12 an its accompanying Issues and Decision Memorandum at Comment 19, the Department recognized that it was not reasonable to expect a respondent company to report the sales data of an affiliated reseller when the respondent did not own a majority interest in the reseller and thus had no legal basis to compel the reseller to provide such information. Koyo argues that, similarly, it would be unreasonable in the current review for the Department to expect Koyo to compel an affiliated supplier, in which it holds a minority share, to provide the detailed sales and cost data requested by the Department in the antidumping questionnaire.

Koyo rebuts that, in the examples cited by Timken in which the Department did collapse a respondent company and an affiliate in which the respondent held a minority share, either the respondent appears not to have raised the issue of its status as minority shareholder or the totality of the circumstances differed greatly from those currently at issue. Koyo comments specifically that, in Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Taiwan, 66 FR 49618 (September 28, 2001) (Flat Products from Taiwan), and its accompanying Issues and Decision Memorandum at Comment 1, the Department decided to collapse the respondent and its affiliate after finding that the respondent company's chairman and vice-president held two of the three positions on the affiliate's board of directors. It states that, by contrast, the two Koyo officers that serve on the board of directors of Koyo's affiliate constitute a minority of the board and serve solely as part-time auditors on the board. Koyo states that, under the provisions of Japanese corporate law, the duties of the auditors are limited to the conduct of the business audits and their function is independent of the management of the company. Koyo argues that, thus, although the Koyo officers attend the affiliate's board meetings, they exercise no control over the pricing and production decisions of that company and do not serve in a managerial function that would support the conclusion that the two companies operate under common control. It concludes that, therefore, the totality of the circumstances of this review demonstrates that there is no potential for the manipulation of price or production between the companies, as required by the third criterion under 19 CFR 351.401(f)(1), and that it would be inappropriate for the Department to collapse Koyo and its affiliate into a single entity for purposes of calculating Koyo's dumping margin.

Department's Position: The fact that Koyo and its affiliate meet the first two criteria under 19 CFR 351.401(f)(1) is not in dispute. Koyo acknowledges its affiliation to the company at issue and that the two companies manufacture either similar or the same products. In response to the request the Department made in its antidumping questionnaire

that Koyo identify the factors that could establish the third criterion for collapsing in the antidumping duty questionnaire, Koyo stated on page 17 of its section A questionnaire response that, although it purchased some finished bearing models and bearing components from the affiliate during the POR, the two companies operated "entirely independently because Koyo owns less than a majority of the stock" of the affiliate. It stated that, as a result, it was unable to direct the operations of the affiliate and the companies did not share production, sales, or pricing decisions. Koyo added that the companies also did not share employees, production facilities, or sales information. With respect to shared management of the two companies, Koyo stated that it shared two officers with the affiliate and that the officers served as "non-stationed" auditors for the affiliate. Koyo asserted that there were no "intertwined operations" between itself and the affiliated supplier.

Because this response did not suggest to us that we should make further inquiry into the issue of collapsing Koyo and its affiliate, we did not seek additional information on the matter from Koyo in our supplemental questionnaire. If Timken suspected, as it now asserts, that the business operations of the two companies were intertwined at the time it received a copy of Koyo's questionnaire response, it could have questioned the statements at a stage in the review in which the Department could have obtained more detailed information on the relationship between Koyo and its affiliate. Instead, Timken waited to express its concerns about price and production manipulation until it filed its case brief, to which Koyo responded by recounting the information that it has placed on the record previously.

Based on the information on the record, we cannot find that the third criterion for collapsing has been met. Perhaps with a more developed record we would conclude otherwise but, because the petitioner raised concerns price and production manipulation so late in this review, we can only conclude that the collapsing of Koyo and its affiliate is not warranted by the evidence of record.

7. Billing Adjustments

Comment 11: Koyo comments that it reported certain home-market billing adjustments on a customer-specific basis in the field BILADJ2H and these adjustments included adjustments Koyo granted on a model-specific basis but which it recorded in its computer system on a customer-specific basis only. It adds that the reported adjustments also included "lump-sum" adjustments, adjustments made as a lump sum to a customer's total amounts payable and hence recorded in Koyo's computer system on a customer-specific basis.

Koyo observes that, with respect to the model-specific adjustments that it reported and thus allocated on a customer-specific basis, it adopted this allocation methodology because it was unable to report these adjustments on a more specific basis. It observes further that, to the extent that it incurred the adjustments on sales of the foreign like product to a customer, the methodology is not unreasonably distortive because the non-comparable merchandise included in the allocation consisted primarily of types of bearings similar to ball bearings in value, physical characteristics, and the manner in which they are sold.

Koyo recounts that the Department denied its allocation methodology for BILADJ2H in AFBs 14 and that, in response to a supplemental questionnaire the Department issued in the current review, it reviewed the billing adjustments it reported for the top-five recipients of negative adjustments manually. Koyo states that it found that four of these five customers had received lump-sum adjustments, for which Koyo submitted documentation in its supplemental questionnaire response in order to demonstrate that it had reported the adjustments on the same basis on which they had been incurred – a customer-specific basis. Koyo also states that the manual review of the three largest negative adjustments comprising the total billing adjustment for the fifth top recipient showed that the amount of the model-specific adjustments allocated to sales of ball bearings was less than the amount of the adjustments Koyo actually granted for sales of these products. Koyo comments that its reporting methodology thus under-allocated billing adjustments for this customer during the POR.

Koyo asserts that, in light of the Department's long-standing position (prior to AFBs 14) of accepting Koyo's allocation methodology for the adjustments it reported in BILADJ2H and its evidence demonstrating that its treatment of these adjustments in the current review is not distortive, the Department should reverse its decision in the AFBs 15 Prelim to deny the adjustments and grant all of them for the final results of review. It argues that, alternatively, the Department should grant the BILADJ2H adjustments of the top five recipients for which the evidence demonstrates that the adjustments were either reported in the manner in which they were incurred or under-allocated to sales of the foreign like product.

Koyo comments that, in all post-URAA reviews of AFBs and tapered roller bearings but the last review of AFBs, the Department accepted the methodology by which Koyo allocates and reports its BILADJ2H adjustments and that the Department's acceptance of its reporting methodology for billing adjustments has been affirmed by both the CIT and the CAFC. Koyo observes that, in the earlier reviews, it had stated that it had allocated the BILADJ2H adjustments in as specific a manner as permitted by its electronic records. It observes further that, to the extent that billing adjustments were allocated over a broader universe of products or time periods than that on which they were incurred, the Department found that the allocation was not "unreasonably distortive" because the products (comparable and non-comparable) over which Koyo allocated its adjustments did not vary significantly in terms of value, physical characteristics, or the manner in which they were sold. It cites AFBs 8, 63 FR at 33327, in support of its comment.

Koyo adds that, despite the Department's findings in the earlier reviews, it found that Koyo's methodology for allocating the BILADJ2H adjustments caused "unreasonable inaccuracies and distortions" in AFBs 14, citing the accompanying Issues and Decision Memorandum at Comment 21. It comments that the Department based its conclusion on the review of a single sample billing adjustment at verification during the 2002-03 review and that, from review of this adjustment, the Department found that the BILADJ2H adjustments were incurred on time periods that did not correspond to the POR and involved the allocation of adjustments from sales that actually had adjustments to sales that did not have adjustments. Koyo states that the Department's reliance in the current review on its decision

in AFBs 14 ignores both the fact that it verified and accepted Koyo's methodology in the earlier reviews and that Koyo submitted evidence in its supplemental questionnaire response in the current review that demonstrates that its allocation is not distortive.

Koyo argues that the Department's reasoning for rejecting the BILADJ2H adjustments is unsupportable because it leads to the conclusion that all allocations over a universe of transactions broader than that over which the adjustments were originally incurred are unreasonably distortive, reasoning that Koyo assets the Department has rejected repeatedly in its interpretation of section 782 of the Act in order to endorse a more liberal, post-URAA approach to permitting expense allocations. In support of its assertion, Koyo cites to NTN Bearing Corp. v. United States, 295 F.3d 1263, 1268 (CAFC 2002) (NTN II), in which the CAFC upheld the Department's acceptance of Koyo's allocation of BILADJ2H adjustments. It observes that, if Koyo was able to "allocate" the adjustments at issue to the specific universe of sales on which they were incurred, it would not be allocating the adjustments at all but reporting them on the basis on which it reports its BILADJ1H adjustments. Koyo adds that it is required to allocate the BILADJ2H adjustments on a customer-specific basis because its electronic records do not permit it to identify the specific sales on which the adjustments were granted originally.

Koyo asserts that the test to determine distortion in an allocation methodology is not whether individual billings adjustments have been allocated over a broader universe of sales than that on which they were incurred but whether the sales on which the adjustments were incurred and the sales over which the adjustments were allocated, which may include sales of non-comparable merchandise, are sufficiently similar in terms of the value and physical characteristics of the merchandise involved and the manner in which the merchandise is sold. Koyo observes that the Department found in earlier reviews that, because the pool of merchandise over which Koyo allocated its BILADJ2H adjustments was similar in these three ways, its allocation methodology was not unreasonably distortive. It comments that, on the understanding that this analysis would apply in the current review, it stated in its original and supplemental questionnaire responses that the pool of products over which Koyo allocated its BILADJ2H adjustments was similar in terms of value, physical characteristics, and the manner in which the products were sold. Koyo states that it explained in its responses that the sales of non-foreign like product over which it allocated the adjustments consisted primarily of bearing products that did not vary in value, function, or sales channels from sales of the foreign like product.

Koyo argues that, if all that is required to determine that an allocation is "unreasonably distortive" is a finding that in some instances adjustments are allocated to transactions on which they were not incurred originally, then the standard test to determine distortion has been eviscerated and the interpretation of section 782 of the Act, as adopted by the Department and the CIT, has been repudiated. Koyo maintains that the Department erred in its preliminary finding that Koyo's allocation of BILADJ2H adjustments is distortive.

Koyo asserts that the evidence it submitted in its supplemental questionnaire response concerning the reporting of BILADJ2H adjustments for the top-five recipients of negative adjustments demonstrates that its allocation methodology for this adjustment was not distortive. It states that, because the evidence shows that the adjustments of four of the top

five recipients were reported on the customer-specific basis on which they were incurred, there is no justification for the Department's denial of these adjustments. It states further that the analysis in its supplemental questionnaire response of the three largest billing adjustments of the other top-five recipient demonstrates that fewer of these adjustments were allocated to sales of ball bearings to this customer than were actually granted for the sales. Koyo concludes that there is no reason that the Department should refuse to grant it a smaller BILADJ2H adjustment than that which it incurred on sales to this customer.

Koyo asserts that, despite the fact that its evidence demonstrated that a certain percentage of the net value of the negative billing adjustments were granted to the top five recipients in a manner that was either not distortive or that did not benefit Koyo, the Department did not address the evidence in its preliminary results adequately and concluded erroneously that the evidence and arguments presented by Koyo did not sufficiently address the inaccuracies and distortions that it had found in AFBs 14. It argues that this evidence, along with the Department's long-standing practice of accepting Koyo's allocation of the BILADJ2H adjustments, indicate that the Department should accept its allocation methodology in the current review. It adds that, at a minimum, the Department should accept its allocation of negative adjustments for the top five recipients.

Finally, Koyo asserts that, if the Department continues to reject the negative BILADJ2H adjustments, it should grant those reported for the top five recipients and, for all other customers, reject the positive adjustments reported in BILADJ2H as well as those which are negative. Koyo observes that, in AFBs 14 and the accompanying Issues and Decision Memorandum at Comment 21, the Department justified rejection of only the negative BILADJ2H adjustments because "if it 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." Koyo responds that to deny the negative adjustments but to accept the positive ones is inherently inconsistent, inappropriately punitive, and contrary to law.

Koyo argues that, assuming the Department had cause to reject Koyo's allocation methodology in AFBs 14, it did not provide any explanation or justification for drawing an adverse inference, as required under section 776(b) of the Act. It cites AFBs 14 and the accompanying Issues and Decision Memorandum at Comment 21, where the Department stated that "the issue of whether it was feasible for Koyo to report the expense on a more accurate basis is irrelevant" due to its finding that the allocation methodology was unreasonably distortive and asserts that, although the issue of feasibility may have been irrelevant to the determination of whether to accept Koyo's methodology, it was relevant to the determination of whether Koyo cooperated and acted to the best of its ability. Koyo states that, by denying only the negative BILADJ2H adjustments, the Department decided to draw an adverse inference without an explanation.

Koyo observes that, in the 2002-03 sales verification report for Koyo, the Department stated that it found no evidence that Koyo kept the information electronically that it needed to allocate the BILADJ2H adjustments to the specific sales on which they were incurred. Koyo asserts that, based on this statement, it is hard to see how the company could have attempted to allocate the adjustments in a more specific manner and adds that the statement

undermines the Department's comment that it kept the positive adjustments in order to provide an incentive for accurate reporting of information. Koyo concludes that the Department is thus merely applying an adverse inference in an impermissibly punitive manner and it should therefore grant all or none of its BILADJ2H adjustments.

Timken responds that, assuming that the allocation issue does not extend to the lump-sum adjustments, Koyo ignores that it reported the lump-sum adjustments and the model-specific adjustments for which it could not provide specific reporting in the same field, thus precluding different treatment by the Department. Timken adds that, because Koyo has not identified which BILADJ2H adjustments represent lump-sum adjustments, the Department is precluded from evaluating the scope of the allocation issue. Timken asserts further that the assumption that the allocation issue does not extend to the lump-sum adjustments is not supported by the findings of the 2002-03 sales verification report for Koyo, in which the Department found that "the lump-sum billing adjustment" was incurred on time periods that did not correspond to the POR and that it was model-specific.

With respect to Koyo's analysis of the top-five recipients to which it granted a model-specific adjustment, Timken comments that it does not demonstrate non-distortion of the allocation methodology because, if one customer's billing adjustments can be under-allocated, then another customer's adjustments can be over-allocated. Timken states that Koyo has not provided evidence to show the extent to which such adjustments are under-allocated instead of over-allocated.

Timken also asserts that Koyo's argument that billing adjustments should be permitted because of the similarities between comparable and non-comparable merchandise should be evaluated in the context of the reasons for the adjustments. Timken recounts that Koyo stated in its questionnaire response that billing adjustments occurred for several reasons, including when Koyo and a customer had not established a price for a product at the time that Koyo started selling the product to the customer, when Koyo and a customer negotiated annual or semi-annual price reductions, or when Koyo and a customer negotiated a simple settlement without reference to model-specific prices. Timken argues that these price negotiations could reflect Koyo's desire to avoid high prices on sales of the foreign like product and that, without more detailed information concerning the nature of the adjustments, the Department has no assurance that the allocations are not distortive.

Finally, Timken comments that Koyo's conclusion that the Department's denial of negative adjustments amounted to an unlawful application of AFA should be rejected by the Department. It observes that, based on Koyo's refusal to modify its reporting of the BILADJ2H adjustments from the prior review, the Department could find that Koyo did not act to the best of its ability to report the adjustments in this review. It argues, however, that such a finding is not necessary because section 782(e)(2) of the Act does not require the Department to use information, such as the descriptions and arguments made by Koyo in the current review, that cannot be verified. It adds that declining to use unverified information does not amount to the use of AFA.

Timken observes that the Department cannot remove all reported BILADJ2H adjustments from its margin calculation because to do so would permit the respondent to benefit, in part, from the Department's finding that some of the adjustments were distortive.

It states that the Department can substitute other data, thought to reflect more fully the actual value of the adjustment, for the adjustments and that this action would not equal the use of AFA, as clarified in the SAA at 869. It concludes that the Department denied only those adjustments that resulted in a decrease of normal value appropriately and that this action did not equal the application of AFA.

Department's Position: In AFBs 14 and the accompanying Issues and Decision Memorandum at Comment 21, we found that Koyo's allocation methodology for its BILADJ2H adjustments caused "unreasonable inaccuracies and distortions" based on findings at verification where we examined the allocation of a product-specific adjustment. The detailed analysis of our findings appear in our analysis memorandum for the final results for Koyo for the 2002-03 administrative review, dated September 8, 2004, instead of the Issued and Decision Memorandum for that review because of the proprietary nature of much of the analysis. Based on our analysis, we concluded that the verified BILADJ2H adjustments were incurred on time periods that did not necessarily correspond to the POR and that they involved the allocation of adjustments from sales that actually had adjustments to sales that did not have adjustments. Accordingly, we denied the negative adjustments Koyo reported in the BILADJ2H field for the final results of review in AFBs 14.

Because Koyo reported its BILADJ2H adjustments in the same manner for this review as for prior reviews, we asked Koyo to demonstrate that its allocation was not distortive in a supplemental questionnaire. In its March 3, 2005, response to the questionnaire, it submitted the analysis of the top-five recipients of the negative adjustments discussed in its comments above. Upon review of this analysis, we again denied the negative adjustments because, as discussed in our preliminary results analysis memorandum for Koyo for the 2003-04 review, dated May 6, 2005, we did not find that the analysis sufficiently addressed the distortions we found in the prior review.

With respect to the model-specific billing adjustments, Koyo's analysis does not address our concerns. It does not explain how these adjustments could be tied to the period of time for which they were actually granted, allowing for more reasonable price comparisons throughout the POR, or how they could be attributed to sales of specific products, allowing for more reasonable price comparisons between products. Without Koyo making the adjustments more specific to the time period or model for which they are granted, we continue to find that these types of adjustments are unreasonably distortive. In addition, we agree with Timken that, whereas the adjustments for one customer may reveal an under-allocation of negative adjustments, an over-allocation is just as likely for other customers. Moreover, in NTN II, the CAFC accepted the Department's analysis of certain price adjustments for Koyo and NTN after observing that it included consideration of whether the adjustments could be used without difficulties or distortions. In other words, our analysis in the current review is consistent with the analysis we performed in the earlier reviews and confirmed by the CAFC. Thus, we continue to deny the "product-specific" adjustments (referred to as "lump-sum" adjustments in AFBs 14) for these final results.

We have been persuaded by the analysis in Koyo's supplemental response and case brief that it reported the negative lump-sum adjustments for four of its customers on as specific a basis as possible. Moreover, because Koyo submitted documentation that

establishes that these adjustments were granted on all products sold and that the adjustments covered the POR, we find that the company allocated the adjustments in a non-distortive manner. Thus, we have accepted them for the calculation of the dumping margin for Koyo.

It remains our policy to accept reported positive billing adjustments even when we reject negative adjustments in order to encourage the accurate reporting of all positive amounts. We disagree with Koyo's comment that no explanation was provided for the denial of the negative adjustments in AFBs 14 and its conclusion that, by doing so, we drew an adverse inference in the facts we selected for the calculation of the final results in that review. We rejected Koyo's claim for an adjustment based on an analysis of its allocation methodology, not an analysis of its willingness to cooperate to the best of its ability in that review. Similarly, our rejection of some of its negative amounts in this review does not constitute a facts-available decision concerning the reported data.

With the exception of the lump-sum adjustments for four of the top-five recipients of negative adjustments, we have rejected the negative BILADJ2H adjustments for the final results of this review and accept all of the reported positive amounts.

8. Clerical Errors

A number of parties have alleged that the Department made certain clerical errors in its calculations for the AFBs 15 Prelim. Where we and all parties agree that a clerical error occurred, we have made the necessary correction and addressed the comment only in our company-specific analysis memoranda dated September 12, 2005.

Comment 12: GRW alleges that the Department included GRW's U.S. shipments of free ball-bearing samples in the preliminary margin calculation. GRW requests that the Department exclude U.S. samples from the calculation. Timken argues that the Department should deny GRW's request because GRW has not explained whether consideration has been given for the alleged sample sales in question.

Barden argues that, in the calculation of the preliminary margin, the Department included zero-priced U.S. transactions of sample merchandise and requests that the Department remove such transactions from its calculations.

Timken did not comment on Barden's allegation.

Department's Position: We have denied GRW's claim concerning its so-called U.S. sample sales since GRW reported that all its U.S. sales had consideration. The respondent seeking the exclusion of sample sales must show that there was a lack of consideration or transfer of ownership. See NSK, Ltd. v. United States, 115 F.3d 965, 974-75 (CAFC 1997), and NTN Bearing Corp. of Am. v. United States, 104 F. Supp. 2d 110, 143 (CIT 2000). The burden of evidentiary production belongs "to the party in possession of the necessary information." See Zenith Electronics Corp. v. United States, 988 F. 2d 1573, 1583 (CAFC 1993). Even where the Department does not ask a respondent for specific information that would enable it to make an exclusion determination in the respondent's favor, the respondent has the burden of proof to present the information in the first place with its request for exclusion. See NTN Bearing Corp. of Am. v. United States, 997 F.2d 1453, 1458 (CAFC 1993).

In Appendix V of our original questionnaire issued on July 7, 2004, for these reviews, we asked GRW to indicate sample transactions by reporting the code "S" in the sales databases specifically. In its U.S. sales database, however, GRW did not distinguish between sample sales and other sales. Nor did GRW provide a narrative response that explained which sales were sales without consideration and were sample sales to the U.S. market during the POR. In its U.S. sales database, GRW reported gross unit prices greater than zero for all of its U.S. sales transactions. Therefore, we find that all of GRW's reported U.S. sales were sales with consideration.

We disagree with Barden. We did exclude zero-priced U.S. transactions of sample merchandise from the calculation of the preliminary margin. For further details, see the Department's final analysis memo for Barden.

Comment 13: NSK argues that, due to a peculiarity in SAS, the computer-programming language the Department employs to calculate margins, the Department's programs did not match models correctly. According to NSK, when the number of decimal places is not limited, occasionally SAS will determine that two equal values are not equal. NSK contends that, because the Department did not set a limit on the number of decimal places the sum-of-the-deviations and cost-difference percentages could have, this SAS "bug" evaluated equal sum-of-the-deviations percentages incorrectly as being unequal. As a result, NSK asserts, the sales comparison was not made on the basis of the smallest difference-in-merchandise adjustment in every case of equal sum of the deviations despite the Department's intention to the contrary. NSK suggests programming language to set a limit on the number of decimal places for the sum-of-the-deviations and cost-difference percentages to correct this problem.

Timken takes no position on this issue.

Department's Position: We agree with NSK and have corrected this inadvertent error. We have made this change in our computer programs for all respondents.

9. Miscellaneous Issues

A. NSK-U.S. Selling Expense: Treatment of Certain Japanese-Worker Expenses

Comment 14: Timken argues that the Department should deduct certain expenses incurred by NSK for Japanese workers in the United States from CEP. According to Timken, NSK classified certain expenses associated with Japanese workers as indirect selling expenses incurred in the country of manufacture which the Department does not deduct from CEP. Timken contends that these expenses are classified more properly as indirect selling expenses incurred in the United States which the Department does deduct from CEP.

Timken asserts that NSK incurred these expenses for activity in the United States because the work done in the United States by Japanese workers was in support of U.S. sales. Timken argues that payments made on behalf of Japanese workers for services performed in America are necessarily related to U.S. sales regardless of what form the compensation might take. Timken argues that, in accordance with 19 CFR 351.402(b), the Department should deduct these expenses from CEP even though NSK, not its U.S. affiliate, pays these

expenses. Timken cites Stainless Steel Sheet and Strip from Germany, 67 FR 7668 (February 20, 2002), and the accompanying Issues and Decision Memorandum at Comment 4 in support of its argument.

Citing Furfuryl Alcohol from the Republic of South Africa, 62 FR 61084, 61091 (November 14, 1997) (Furfuryl Alcohol), Timken argues further that the Department should deduct from CEP any related travel expenses incurred on behalf of the Japanese nationals for traveling between Japan and the United States because they are also associated with economic activity in the United States.

NSK argues that the Department treated its Japanese-worker expenses properly as indirect selling expenses incurred in the country of manufacture. Citing the SAA at 823, NSK contends that the Department only deducts those selling expenses that are associated with economic activity occurring in the United States. Citing the Preamble to the Department's regulations in Final Rule, NSK claims that the Department established that it would not deduct expenses incurred in connection with sales from the manufacturer to the affiliated importer from CEP. NSK contends that the Department does not deduct expenses incurred by the foreign parent from CEP unless they relate specifically to a U.S. sale to an unaffiliated purchaser.

NSK asserts that the record demonstrates that the expenses in question were not incurred on economic activity associated with U.S. sales to unaffiliated purchasers. NSK also contends that the precedent Timken cites is inapposite because, in that case, the Department found that the expenses were associated with technical services, marketing, sales and transportation support provided to the manufacturer's U.S. subsidiary. According to NSK, the precedent cited by Timken confirms that a nexus with U.S. sales activity is required to justify deduction of indirect selling expenses from CEP and that no such nexus exists with respect to the expenses in question.

Finally, NSK argues that the Department has examined this issue in previous reviews and has rejected the petitioner's arguments in those reviews.

Department's Position: The record demonstrates that these workers were involved in economic activities which relate to the sale of ball bearings to unaffiliated customers in the United States. For further details, see the Department's final analysis memo for NSK and NSK's January 14, 2005, supplemental response at S-43. In fact, NSK included certain expenses for these workers in its calculation of indirect selling expenses which the Department deducts from CEP. See NSK's January 14, 2005, supplemental response at S-44. Because it is clear from NSK's response that these workers were involved in economic activities in the United States, their activities relate to the sale to unaffiliated purchasers in the United States. In addition, the compensation was made to workers who were involved in activities which relate to the sale to unaffiliated customers in the United States. This is true regardless of the form the compensation takes. Therefore, it is appropriate to deduct from CEP all compensation those workers received regardless of "where or when paid." See 19 CFR 351.402(b). Accordingly, we have deducted these expenses from CEP.

We also agree with Timken that any travel expenses incurred on behalf of the Japanese nationals for traveling between Japan and the United States should also be deducted from the CEP. See Furfuryl Alcohol, 62 FR at 61091. It is not clear from the record,

however, whether NSK incurred such expenses or, if so, whether NSK included such expenses in its reported indirect selling expenses incurred in the United States which we deduct from CEP. Because this issue was raised late in this administrative review and we did not request that NSK clarify this matter, it would be inappropriate for us to make any adverse inferences with respect to NSK's reporting. Therefore, we have not incorporated an amount for such possible travel expenses into the figure for indirect selling expenses on NSK's U.S. sales.

B. Bearing-Design Types

Comment 15: NTN argues that the Department should not have reclassified its bearing-design types into one of the Department's five designated design types and should revert to the design types NTN had reported originally. NTN claims that it provided a detailed analysis of its design types, it explained the differences among its various designations, and its design categories are necessary to avoid unreasonable comparisons of commercially dissimilar products. NTN argues that the Department's designations do not distinguish between bearings and bearing units, do not take into account that bearings fall into more than one category, and do not capture all of NTN's bearing designs.

Citing Shikoku, NTN claims that the Department may not change its methodology arbitrarily, especially because the Department does not argue here that key facts have changed. NTN argues that the Department's methodology may be warranted where a higher level of accuracy is achieved but that the Department's reclassification does not improve the accuracy of the calculations. NTN contends that it has used its design types continuously since the original LTFV investigation and that the design types have been accepted and verified by the Department on numerous occasions. NTN claims that it relied on the methodology that the Department adopted and upheld with respect to NTN's bearing designs.

NTN argues that the Department's claim on page 4 of its preliminary analysis memorandum for NTN dated May 6, 2005, that "NTN did not sufficiently make the case that each of its reported bearing designs merited its own classification" is not supported by the facts on the record and does not justify the Department's change of methodology. NTN contends that it provided over 80 pages of information as evidence that its bearing types deserve their own classification. NTN argues further that the Department's classification resulted in unreasonable matches between bearings that were substantially different in their design, physical characteristics, and practical application; NTN describes eight such matches in detail in its brief.

Finally, NTN argues that the Department's reclassification is inconsistent with the Department's own policy of achieving a higher level of accuracy and claims that its design classifications accounted for physical characteristics, design, purpose, and practical application.

The petitioner argues that the Department's rejection of NTN's design types was proper because NTN did not make the case that each of its reported design types merited its own classification. The petitioner claims that, as part of the new model-match methodology, the Department specified a small set of design types to identify bearings that should be

matched with each other. The petitioner asserts that the Department determined the criteria for determining matches under the new model-match methodology and that NTN has the burden of demonstrating for each design type that the distinction was necessary in order to avoid matching models that were not similar. The petitioner claims that, while NTN identified a few comparisons that it alleges should not be made, it did not demonstrate that the comparisons would not be similar for purposes of the statute.

Department's Position: NTN did not provide evidence that each of its reported bearing designs merited its own classification. Based on comments we have received, however, we have recognized two more classifications, housed bearings and insert bearings, that we did not recognize for the preliminary results. See our response to Comment 3. Although we may request further information in future reviews, there was enough information on the record of this review to conclude that certain classifications NTN requested related to housed bearings and that other classifications NTN requested related to insert bearings. As for the rest of the bearing-design classifications that NTN claimed, however, there was not sufficient justification to allow each its own classification.

NTN's arguments that it has used these bearing-design types since the investigation, that the Department has adopted and upheld its design classifications, and that the Department cannot change its methodology arbitrarily are inaccurate and unconvincing. First, NTN has not used these design classifications since the investigation. Due to the proprietary nature of this expense, see the Department's final analysis memorandum for NTN for further details. Second, we have not changed our methodology with respect to design-type classifications. We have set forth five different classifications in the questionnaire consistently and, when parties reported additional types, we required that a respondent demonstrate that each merited their own classification. See the July 7, 2004, Questionnaire, Appendix V, section I.6.f.2. Third, this issue concerns the accuracy of NTN's reported characteristics, not a change in methodology. While NTN may have reported some of these bearing types in prior reviews, our new model-match methodology demands closer examination of this issue. Nonetheless, this does not relieve NTN of its obligation to provide evidence supporting its classifications in this review, which it did not provide in this review.

Further, NTN did not provide a detailed analysis of its bearing-design types and did not explain the differences among its various designations. To agree to an additional bearing-design classification, we must be satisfied that the classification is substantially different than each of the other design types. In our supplemental questionnaire dated January 31, 2005, we instructed NTN to identify those bearing-design types, to explain in detail how each of those additional design types are different from the five design types we identified in the original questionnaire, and to explain why it believed that each of those additional design types should be given their own classification. NTN did not provide the information or explanation we requested. Rather, it submitted over 80 pages of unusable bearing drawings, pictures, and charts often without explanation as to their meaning or relevance.

NTN did not demonstrate that its design-type categories accounted for physical characteristics, design, purpose, and practical application. Because of NTN's inadequate justification as to why particular bearing types merit their own design-type classification, it is unclear what the physical characteristics, design, purpose, and practical application are and to which of its bearing classifications those characteristics apply. Therefore, NTN did not support its argument that its design-type categories account for these characteristics with any persuasive record evidence.

Contrary to NTN's further arguments, our methodology distinguishes between bearings and bearing units, and we never match a bearing part to a finished bearing. In addition, if NTN believes that its bearings fall into more than one category or that our classifications do not capture all of NTN's bearing designs, then it has the burden of demonstrating it, which it did not do. Moreover, NTN did not demonstrate that the comparisons would not be similar for purposes of the antidumping statute. In fact, because the bearing-design type must be identical to be an appropriate match (see the July 2004 memorandum concerning the development of a new model-match methodology), NTN's classifications would limit the number of matches of similar products because its classifications are unreasonably narrower than what the record evidence supports and based on the classifications we have used consistently in the AFBs proceedings. The statute has a clear preference for price-to-price comparisons, and we selected the five bearing-design types carefully, along with the other characteristics, in order to maximize the number of price-to-price comparisons of similar products. See sections 773(a)(4) and (a)(1)(A) of the Act. While we allow an additional bearing-type classification in cases where a company provides persuasive evidence to support it, we cannot accept NTN's numerous classifications without such evidence.

NTN has not provided evidence for the record of this review explaining how each of its additional proposed design types is different from the five types we identified in the original questionnaire, and it did not demonstrate that each of its proposed additional design-type classifications merits its own classification. Therefore, we did not use the design-type classifications NTN reported, and we classified its bearings into the design types we designated in the original questionnaire and, as appropriate, into the categories of housed or insert bearings as discussed above.

C. Ordinary Course of Trade: High-Profit Sales

Comment 16: NTN argues that the Department should determine that its home-market sales of bearings with abnormally high profits were outside the ordinary course trade. NTN asserts that it has provided evidence in its questionnaire responses that its sales with abnormally high profits are unique, unusual, and not representative of the profit levels and sales quantities of its ordinary sales and, therefore, that such sales are outside the ordinary course of trade.

NTN claims that, in NTN I, the CIT agreed with the Department on this issue because of NTN's reliance on only one factor, profit levels. NTN asserts that it has revised its methodology substantially and that this review has different facts. NTN claims that it has reevaluated the profit levels it considers to take sales outside the ordinary course of trade and

it only included sales with extraordinarily limited sales quantities. Further, NTN claims that it reported the unique circumstances surrounding these sales, stating that these transactions represent "spot sales for maintenance and repair" and "sales to research and development facilities."

NTN argues that 19 CFR 351.102(b) mentions merchandise sold with abnormally high profits as a specific example of sales outside the ordinary course of trade. NTN also cites Mantex v. United States, 17 CIT 1385 (1993), for the premise that "the disparity in profit margins is indicative of sales that were not in the ordinary course of trade."

Citing Koenig & Bauer-Albert AG v. United States, 22 CIT 574, 589 (1998), NTN argues that, although the Department has discretion to interpret what constitutes a sale outside the ordinary course of trade, the Department's discretion is not unlimited and the Department cannot impose impossible burdens of proof on claimants. NTN claims that the Department's current requirements impose an impossible burden of proof on NTN.

The petitioner argues that NTN has not explained why these sales are not within the ordinary course of trade. The petitioner asserts that merely arguing that certain sales fall on one side of particular profit and quantity levels is not sufficient to demonstrate that those sales are outside the ordinary course of trade.

The petitioner points out that NTN's response indicates that "spot sales for maintenance and repair" and "sales to research and development facilities" are common for NTN's customers. The petitioner argues that "spot sales for maintenance and repair" just means that the sales were made without a contract and that NTN does not explain why "sales to research and development facilities" should be distinguished from other sales.

Department's Position: We disagree with NTN that its sales of bearings with abnormally high profits were made outside the ordinary course trade. 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.

Although NTN claimed that its sales with "abnormally high profit levels" made in "abnormally small quantities" and which "often represent spot sales for maintenance and repair and sales to research and development facilities for testing and evaluation" are outside the ordinary course of trade, NTN offered no evidence to support its claim that its high-profit sales were spot sales for maintenance and repair and sales to research and development facilities for testing and evaluation. See pages B-48 and B-49 of NTN's January 14, 2005, section B Questionnaire Response.

Even if some sales were spot sales for maintenance and repair and sales to research and development facilities for testing and evaluation, there is nothing particularly unusual about "spot sales" used for maintenance and repair or bearings sold to research and development facilities for testing and evaluation. It is the Department's understanding that "spot sales" simply means that the sales were made without a contract and, based on NTN's response, spot sales are common for NTN. For example, in describing its U.S. sales, NTN claimed that "distributors often order on a spot basis" and, more importantly, NTN claimed that "{i}n the home market NTN does not sell pursuant to either long- or short-term contracts." See pages A-12 and A-21 of NTN's January 14, 2005, section A Questionnaire

Response. Likewise, NTN has provided no evidence to show why bearings sold for maintenance and repair or to research and development facilities for testing and evaluation are extraordinary in comparison with other home-market sales. In fact, NTN claimed in its response that "sales to after-market customers are mainly for the replacement of existing bearings." See page A-15 of NTN's January 14, 2005, section A Questionnaire Response. Thus, aside from NTN's assertions about the abnormally high profits and abnormally low quantities, NTN has not provided any evidence suggesting that these sales have any characteristics that would make them extraordinary for the home market.

To determine its high-profit sales, NTN identified all of its sales above a certain profit threshold and below a certain quantity threshold. NTN did not provide any explanation as to why these thresholds made high profits abnormally high and low quantities abnormally low. Thus, NTN did not demonstrate that its high-profit sales had abnormally high profits and abnormally low quantities.

Even if these thresholds did make the profits appear abnormally high and quantities abnormally low, we have determined in prior reviews and been affirmed by the CIT that high profits by themselves are not sufficient for us to determine that sales are outside the ordinary course of trade. See AFBs 14 and the accompanying Issues and Decision Memorandum at Comment 33, AFBs 13 an the accompanying Issues and Decision Memorandum at Comment 13, and AFBs 12 and the accompanying Issues and Decision Memorandum at Comment 27; see NTN I, NTN Bearing Corp. of America v. United States, 248 F. Supp. 2d 1256 (CIT 2003), and NTN Bearing Corp. of America v. United States, 155 F. Supp. 2d 715 (CIT 2001).

Although NTN asserted in the 2002-03 review that its high-profit sales were also low-quantity sales because it did not claim a profit-based exclusion for its high-quantity sales, we determined that those sales were not outside the ordinary course of trade. See AFBs 14 and the accompanying Issues and Decision Memorandum at Comment 33.

High profits and low quantities do not support NTN's claim that certain sales were extraordinary compared to NTN's other sales in the home market. For example, there is no evidence on the record to suggest that NTN made these sales to a particular customer or type of customer, the sales involved a particular bearing type or group of bearings, they were negotiated under special conditions, they involved special production procedures, or they had special sale terms. Rather, NTN merely started with all its normal home-market sales and isolated high-profit and low-quantity sales. Any group of sales will have a subgroup of relatively high-profit sales with relatively low quantities. By themselves, high profits and low quantities do not make sales extraordinary or outside the ordinary course of trade. Therefore, we have not considered NTN's high-profit, low-quantity sales to be outside the ordinary course of trade.

D. Sample Sales in the Home Market

Comment 17: NTN argues that the Department determined erroneously that NTN's sample sales in the home market were within the ordinary course of trade and included them in the calculation of normal value contrary to the statute, the evidence on the record, and its

own practice in the last four reviews. NTN argues further that it has not changed its designation methodology or treatment of sample sales in any way from prior reviews and that its response in the current review is very similar to the information on the records of the prior reviews. NTN contends that, unless the Department can provide an adequate explanation of how the circumstances in this review are materially different in any way from the prior reviews, the Department should exclude NTN's claimed sample sales from the calculation of normal value.

NTN claims that, by their nature, sample sales are not representative of other sales in the market and, thus, outside the ordinary course of trade. Citing CEMEX, S.A. v. United States, 133 F.3d 897, 901 (CAFC 1998), NTN asserts that, in determining whether sales are outside the ordinary course of trade, the Department must consider the totality of the circumstances. NTN argues that in this review the Department only focused on one factor, quantity.

NTN claims that its sample sales are made generally for evaluation and testing purposes to allow a customer to determine whether a particular product is suited for the customer's needs and that its sample sales are usually made to either the technical department of customers, to customers whose business is testing and evaluation, or sometimes to a customer's research and development center. NTN also claims that these sales are made typically on a one-time basis (per application) and are not sold for commercial consumption as the vast majority of sales in the ordinary course of trade. NTN claims that, although in some cases customers may have purchased the same model previously, the subsequent sales are nevertheless treated as samples when they are requested for the specific purpose of a sample purchase for a different use, such as a new application, testing, or evaluation. NTN also argues that, unless there was a significant difference in price and quantity and other factors such as the purpose of the purchase, it does not designate the transaction as a sample.

NTN argues that the criteria it used to identify sample sales apply to the sample sales in question. NTN claims that sample sales were extremely rare during the POR and contends that the quantities involved in the sample sales were insignificant when compared to NTN's total number of transactions. NTN also claims that the Department should consider the quantity of bearings reported as sample sales as compared to the total sales and asserts that the profit level for the sample sales is significantly higher than sales of the same product made in the ordinary course of trade.

NTN claims that it provided adequate evidence that the customers requested the sales as sample sales and argues that its sales records, including purchase orders, acknowledgments of receipt, and similar documents, all of which are generated by NTN's customer rather than NTN, indicate that the sales were samples.

Finally, NTN argues that the exclusion of its sample sales is consistent with other proceedings and cites Granular Polytetraflouroentheylene Resin from Japan: Preliminary Results of Review, 60 FR 5622 (January 30, 1995), as an example of where the Department excluded sample sales mainly because they were provided for evaluation purposes, not for consumption.

The petitioner argues that the Department found correctly that NTN had not supported its claims that these sales were sample sales. The petitioner also argues that NTN did not provide any documentation that demonstrates that these sales were outside the ordinary course of trade.

Department's Position: NTN did not provide adequate information concerning its alleged sample sales in the home market, and it did not answer very specific questions we asked in the questionnaire and the supplemental questionnaire about its alleged sample sales. In particular, NTN did not provide the average quantity of normal sales and provided no qualitative or quantitative analysis or other evidence that these sales were sample sales or unusual compared to sales it treats as being within the ordinary course of trade. Further, the alleged sample sales do not meet the criteria NTN claims it meets for the exclusion of sample sales. See the Department's preliminary analysis memorandum for NTN dated May 6, 2005, for more information. Also, NTN did not provide any evidence that its customers requested these bearings as samples. Further, although NTN claims that its sample sales were usually made to the technical department of customers, to customers whose business is testing and evaluation, or sometimes to a customer's research and development center, it did not provide any evidence of this claim and did not explain which particular sales were sold to this class of customer. Therefore, we find that NTN did not support its claim that these sales were sample sales, and we did not exclude them from the calculation of normal value.

E. Inventory Carrying Costs

Comment 18: NTN argues that the Department erred in recalculating NTN's inventory carrying costs based on the evidence on the record and the Department's treatment of NTN's inventory carrying costs in previous reviews. NTN claims that its methodology in calculating inventory carrying costs has been done on the most specific basis possible considering its record-keeping as demonstrated by NTN's responses. NTN claims that it computed its inventory carrying costs based on the total average value of inventory for the fiscal period, as opposed to the per-unit product value requested by the Department, because the per-unit actual value of the product does not exist in the records it keeps in the ordinary course of business.

The petitioner argues that NTN has not asserted or demonstrated that the Department's rationale is incorrect and asserts that the Department should not alter its recalculation of inventory carrying costs for the final results of review.

Department's Position: We have not altered our recalculation of inventory carrying costs for these final results of review. Our recalculation and reclassification of NTN's inventory carrying costs reflects our practice for measuring inventory carrying costs incurred in the home market for home-market sales, inventory carrying costs incurred in the home market for U.S. sales, and inventory carrying costs incurred in the United States for U.S. sales.

For inventory carrying costs NTN incurred in the home market for home-market sales, NTN's methodology results in overestimating inventory carrying costs significantly. When we take the number of days in inventory NTN calculated and use our standard methodology, there is significant variation between the inventory carrying costs we

calculated and the inventory carrying costs NTN calculated and reported. Therefore, we have recalculated NTN's home-market inventory carrying costs using our standard formula.

For inventory carrying costs NTN incurred on U.S. sales, although for the preliminary results we reclassified some of the inventory carrying costs that NTN characterized as having been incurred in the country of manufacture as inventory carrying costs incurred in the United States, we used the actual expense amounts NTN reported. For more detailed information, see the Department's final analysis memorandum for NTN, dated September 12, 2005.

NTN used the terms of sale between itself and NBCA to distinguish those inventory carrying costs incurred in the country of manufacture and those incurred in the United States. The party which bears the cost is not dispositive, however, of whether the expense is incurred in the country of manufacture or in the United States. Our normal practice is to use the inventory time in the country of manufacture and in transit to the United States in our calculation of inventory carrying costs incurred in the country of manufacture. Once the merchandise arrives in the United States, however, we use the remaining time in inventory to calculate the inventory carrying costs incurred in the United States, regardless of which party bears the costs. See AFBs 6, 62 FR at 2124-5.

NTN's response did not indicate clearly the number of days after production that the merchandise arrived in the United States. Therefore, based on the narrative explanation in NTN's questionnaire response, we made a conservative estimate of this period. We then reclassified the inventory carrying costs NTN reported for the period between arrival in the United States and the time when NBCA began incurring the inventory carrying costs as inventory carrying costs incurred in the United States rather than, as NTN reported them, inventory carrying costs incurred in the country of manufacture.

F. U.S. Customs Duties

With respect to U.S. customs duties, NTN provided percentages representing the customs-duty rate and other statutorily mandated fees, such as the harbor-maintenance fee, and multiplied these percentages by the transfer price to determine the amount of customs duties to report to the Department for each transaction. In the AFBs 15 Prelim, the Department recalculated NTN's customs duties so that the duties would reflect a calculation based on entered value, the basis on which they were incurred.

Comment 19: NTN argues that its response shows clearly that its methodology uses a customs-duty rate that reflects the Department's adjustment. NTN claims that this is demonstrated by an example it provides which shows that it multiplied the customs-duty rate by a ratio which accounts for the difference between transfer price and entered value before it multiplied the rate by the transfer price to determine the amount it reported for U.S. customs duties.

NTN argues that it has used this methodology in calculating U.S. customs duties since the beginning of this proceeding and that the Department has never questioned its methodology and has provided no compelling reasons for change in this review.

NTN argues that CBP has verified and accepted NTN's transfer price and calculation of customs duties and that the Department and CBP have always treated NTN's transfer prices as adequate and reliable.

The petitioner did not comment on this issue.

Department's Position: We agree with NTN's description of its claimed figures for the cost of U.S. customs duties. Therefore, for the final results, we have used the U.S customs duties NTN reported.

G. Packing Expense for Home-Market Sales

Comment 20: NTN objects to the Department's reallocation of NTN's home-market packing expenses to account for differences in bulk-packing costs for OEMs and the normal packing costs NTN incurs for other customers. NTN claims that it used a sales-value allocation methodology because it does not keep records of packing costs on a unit-by-unit basis. NTN argues that, although the cost of materials for distributors and after-market packing is somewhat greater than the cost for bulk packing for OEMs, overhead, sales volume, and the cost of packaging materials apply to both bulk and individually packed items and make the cost of each similar. NTN also argues that, because the packing expenses are shared between both sales of ball bearings and other products, the Department's recalculation of packing expenses does not consider the relationship between the foreign like product and other merchandise and, therefore, is distortive. NTN argues that sales value is the best and most accurate allocation methodology for this expense.

The petitioner argues that NTN's claim that overhead, sales volume, and the cost of packaging materials can account for similarity in expense between bulk and individually packaging is not supported by any facts on the record. The petitioner also argues that NTN's claim that the Department's recalculation is distortive because it does not consider the relationship between ball bearings and other merchandise is counter-intuitive and that it is unclear why this would be true. The petitioner asserts that, because packing in bulk is likely to cost more than individual packing and NTN has not provided any facts which would suggest otherwise, the Department should continue to use its recalculation for the final results of review.

Department's Position: We have reviewed the record and find that it is appropriate to reallocate NTN's packing expenses as we did for the AFBs 15 Prelim because packing in bulk costs less on a per-bearing basis than individual packing and NTN has not provided any facts which would suggest otherwise. Further, our methodology is reasonable because we assigned to sales that were bulk-packed a packing allocation factor of one and sales that were packed individually a packing allocation factor based on the number of bearings that were packed individually (i.e., the quantity). See the Department's preliminary analysis memorandum for NTN dated May 6, 2005.

NTN's argument that we did not consider the relationship between the foreign like product and other merchandise lacks merit. NTN allocated its total packing expenses to all merchandise. We simply reallocated the packing expenses NTN allocated to sales of the foreign like product differently. NTN has not supported its argument that the cost for bulk packing for OEMs, overhead, sales volume, and the cost of packaging materials apply to

both bulk and individually packed items and make the cost of each similar. Finally, our recalculation of NTN's packing expenses for home-market sales is due to NTN's methodology not reflecting the cost difference between bulk and other packing, not because of NTN's sales-value allocation.

H. U.S. Indirect Selling Expenses Incurred in Japan

Comment 21: The petitioner argues that the Department should use facts available to add the cost of expenses related to a certain indirect selling expense to NTN's indirect selling expenses. The petitioner asserts that NTN claimed that these expenses were reported in indirect selling expenses incurred in Japan on U.S. sales and referred the Department to Attachment C-10 of the questionnaire response. The petitioner claims, however, that it appears that Attachment C-10 does not contain those expenses. Due to the business-proprietary nature of this expense, the Department's final analysis memorandum for NTN dated September 12, 2005, contains further detail on this issue.

NTN argues that there is no basis for the petitioner's argument to use facts available and claims that it has included these expenses in its U.S. indirect selling expenses incurred in Japan on U.S. sales. NTN claims that the Department verified similar facts for this issue in the 2001-02 review and that it has not changed its methodology in this review. NTN asserts that the petitioner raised this issue unsuccessfully in the 2002-03 review and that there has been no change in facts or reporting methodology that warrants a different decision in this review.

Department's Position: After reviewing the record, it is unclear whether NTN included the costs related to the expense in question in its figure for indirect selling expenses incurred in the home market on U.S. sales. Although Attachment C-10 of NTN's questionnaire response does not mention this expense specifically, it may be subsumed under any one or more of the account headings listed in Attachment C-10. Because this issue was raised late in this administrative review, we have been unable to ask NTN to provide further information. Therefore, it would be inappropriate to assume in this review that NTN did not include these costs. We plan to examine this issue in more detail in subsequent reviews.

I. U.S. Indirect Selling Expenses Incurred in the United States

Comment 22: The petitioner argues that NTN reported one amount in Exhibit C-11 of its questionnaire response for a certain indirect selling expense paid by NBCA but another amount is listed in NBCA's financial statements. The petitioner argues that it appears that NBCA has omitted the difference between the two values and that the Department should add the difference to NTN's indirect selling expense for the final results. Due to the business-proprietary nature of this expense, the Department's final analysis memorandum for NTN contains further details.

NTN argues that it has explained the rationale for this adjustment fully and that the petitioner provides no reason for the Department to add the difference between the two values to NTN's indirect selling expenses.

Department's Position: We disagree with the petitioner. The amount NTN reported in Worksheet 2b of Exhibit C-11 in its January 14, 2005, questionnaire response for the category which includes this expense ties to the total amount of "Selling, General and Administrative" expenses reported on NBCA's financial statements. Further, the amount that the petitioner claims is listed in NBCA's financial statements at page 9 of Exhibit A-19 does not necessarily correspond to this expense category. Thus, it would be inappropriate to add the difference between the two values to NTN's indirect selling expenses.

Comment 23: The petitioner states that NBCA adjusted its reported warehousing expense by the amount paid for a facility that does not produce subject merchandise. The petitioner argues that it is not clear why NTN adjusted NBCA's warehousing expense to such a degree. The petitioner also claims that NBCA's financial statements characterize the amount paid under a category for warehousing and other categories and argues that is not clear why the other categories should be removed from the warehousing expenses.

The petitioner also argues that, in spite of the Department's specific questions, NTN did not identify who NBCA pays for a certain indirect selling expense and did not demonstrate that all of the products for which that expense is incurred are non-subject merchandise. The petitioner argues that, because NTN did not provide the requested information, it has not demonstrated that its indirect selling expenses should be adjusted and, therefore, the Department should add this expense amount to indirect selling expenses for the final results. Due to the business-proprietary nature of this expense, the Department's final analysis memorandum for NTN contains further details.

NTN argues that the Department did not ask who NBCA pays for these expenses and that, because the U.S. facility does not produce ball bearings, this merchandise cannot possibly be subject merchandise.

Department's Position: We have reviewed the record and find that it is not clear why NTN excluded NBCA's warehousing expense to such a degree. We asked NTN in a supplemental questionnaire to explain in detail how it calculated this amount, but it did not respond. See the Department's Supplemental Questionnaire for NTN, dated January 31, 2005 (NTN Supplemental), question 122.

Further, although we asked NTN, "Who does NBCA pay for the expenses {in question} that you excluded from G&A?" (NTN Supplemental, question 128), NTN did not respond to the question. We also asked NTN to "demonstrate that the products pertaining to the expenses in question are of non-subject merchandise" (NTN Supplemental, question 128). NTN responded by stating, "These facilities do not produce subject merchandise since they are located in the U.S. and produce merchandise other than 'ball bearings or parts thereof.'" See NTN's supplemental questionnaire response, dated March 14, 2005, question 128. Because our question did not relate to production facilities but to an expense that could be incurred on subject and non-subject merchandise outside the production facilities, NTN's reply was unresponsive. See the Department's proprietary analysis memorandum for further explanation of the expense in question. Thus, NTN did not demonstrate that the expense in question was incurred only on non-subject merchandise.

Because NTN did not explain how it calculated the amount of the expense in question it excluded from its indirect selling expenses and did not answer our questions concerning this adjustment, NTN has not demonstrated that the adjustment is appropriate. Therefore, we have added this expense amount to the amount of NTN's indirect selling expenses for the final results.

Comment 24: The petitioner argues that NTN did not provide any basis for its allocation of a certain indirect selling expense. The petitioner also argues the expense should be allocated based on total sales value because it is reasonable and there is no other information for allocating those expenses. Due to the proprietary nature of this expense, see the Department's final analysis memorandum for NTN for further details.

NTN argues that the Department has allowed this adjustment consistently and that, after reviewing the record in the 2002-03 review, the Department was "satisfied that NTN removed only the indirect selling expenses from its allocation pool that are attributable to non-subject merchandise" (quoting the AFBs 14 Issues and Decision Memorandum at Comment 12).

Department's Position: We have reviewed the record and find that the expenses in question should be allocated based on sales value. In our second supplemental questionnaire dated April 13, 2005, we asked NTN to justify its allocation of the expenses in question. It did not do so. We also asked NTN to explain why annual sales would not be a better basis for allocation, but it did not respond to this question. See page 4 of its April 20, 2005, response to the second supplemental questionnaire.

In the previous review, the petitioner also raised this as an issue and we found that, "because the expense in question is associated with non-subject merchandise, …NTN properly excluded this expense amount from the pool of allocated indirect selling expenses." See the AFBs 14 Final Results Analysis Memorandum for NTN dated September 8, 2004, page 4. We still find that a certain amount of the expenses in question should be excluded from the indirect selling expenses. Having developed the record in this review further than the record in the previous review, we find that NTN's methodology is distortive because it does not represent an accurate division of the expenses between subject and non-subject merchandise. For the final results, therefore, we have allocated the expense on the basis of total sales value.

Comment 25: The petitioner argues that, because it is a cost of doing business for NBCA to maintain an inventory of the products it sells, the Department should include the amount of a certain indirect selling expense which NBCA incurred in indirect selling expenses incurred in the United States.

Citing the AFBs 14 Final Results Analysis Memorandum for NTN, NTN argues that the Department has rejected this argument and that neither the facts nor the law have changed from the prior review.

Department's Position: We have reviewed the record and find that the expense is not a selling expense and, therefore, it is appropriate to exclude it from the pool of indirect selling expenses. Section 772(d) of the Act directs us to adjust CEP for expenses associated

with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid. Because the expense is related to the production of goods, rather than the sale of goods, it is not a selling expense as defined by section 772(d) of the Act.

Further, in a cost case, section 773(b)(3) of the Act directs the Department to calculate COP for the foreign like product (i.e., costs recognized and allocated to goods as they are produced), rather than the cost of sales (i.e., costs recognized as expenses on the books as the goods are sold). See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17344 (April 9, 1999). Because this expense is related to the production of goods, the expense should not be treated as a selling expense. This is consistent with how we treated these expenses in earlier reviews. See AFBs 12 and the accompanying Issues and Decision Memorandum at Comment 9 and AFBs 14 Final Results Analysis Memorandum for NTN, pages 2-3. For these reasons, we find that NTN excluded this amount from the pool of its indirect selling expenses properly.

Recommendation

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

Agree _____ Disagree _____

_____
Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____
Date