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AD/CVD 5: AFBs Team

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
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, and the United Kingdom for the Period of Review May 1, 2004, through April 30, 2005

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom for the period May 1, 2004, through April 30, 2005. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and ministerial errors, in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in these administrative reviews for which we received comments and rebuttal comments by parties:

1. Offsetting of Negative Margins
2. Model-Match Methodology
3. Sample and Prototype Sales
4. Use of Adverse Facts Available
5. Inventory Carrying Costs
6. Freight Expenses
7. Affiliation
8. Billing and Other Post-Sale Price Adjustments
9. Ministerial Errors
10. Miscellaneous Issues
    - A. U.S. Indirect Selling Expenses
    - B. Bearing Design Types
    - C. Home-Market Packing
    - D. Warehousing Expenses
    - E. Expansion of Window Period

Background

On March 9, 2006, the Department of Commerce (the Department) published preliminary results of the administrative reviews of antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, and the United Kingdom (71 FR 12170) (AFBs 16 Prelim). The reviews cover 14 manufacturers/exporters. The period of review is May 1, 2004, through April 30, 2005. We invited interested parties to comment on the preliminary results. At the request of certain parties, we held a Japan-specific issues hearing on May 11, 2005.

Company Abbreviations

Barden/FAG – The Barden Corporation (U.K.) Ltd. and FAG (U.K.) Ltd
FAG/INA – INA-Schaeffler KG, INA 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
JTEKT - JTEKT Corporation (formerly known as Koyo Seiko Co., Ltd.)
Nachi - Nachi-Fujikoshi Corporation
NPB – Nippon Pillow Block Co., Ltd.
NSK – NSK Ltd.
NTN – NTN Corporation
Sapporo – Sapporo Precision, Inc.
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.
SNR – SNR Roulements or SNR Europe
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 – 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 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 – Ball Bearings and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 70 FR 54711 (September 16, 2005).

AFBs 16 Prelim – Ball Bearings and Parts Thereof from France, et al.; Preliminary Results of Antidumping Duty Administrative Reviews, 71 FR 12170 (March 9, 2006).

Discussion of the Issues

1. Offsetting of Negative Margins

Comment 1: Citing, *inter alia*, Huaiyin Foreign Trade Corp. v. United States, 322 F.3d 1369 (CAFC 2003), SKF states that the purpose of the antidumping law is to put the domestic producers on an equal playing field with importers which have sold products at less than fair value. Further, citing Koyo Seiko Co. v. United States, 746 F. Supp. 1108 (CIT 1990), and others, SKF states that the Department must calculate fair and accurate margins to achieve this objective. SKF and Nachi 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 raises a respondent's margin artificially, misrepresents the realities of the marketplace, and presumes a greater level of inequality between the domestic and foreign producers. Citing Bowe Passat Reinigungs-und Waschereitechnik GmbH v. United States, 926 F. Supp. 1138, 1150 (CIT 1996) (Bowe Passat), NTN asserts that there is a statistical bias in favor of inflated margins inherent in the Department's practice of not offsetting dumped sales with non-dumped sales in the calculation of the weighted-average dumping margin.

Citing First Written Submission of the United States, United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("United States – Zeroing'), WT/DS294, ¶¶ 77-92 (January 31, 2005), and Certain Softwood Products from Canada: Sales at Less than Fair Value, USA-CDA-2002-1904-02, Hearing Tr. at 208:13-17 (September 28, 2004), SKF asserts that the United States has acknowledged that the practice of not offsetting dumped sales with non-dumped sales in the calculation of the weighted-average dumping margin is not required by statute, regulation, policy, or the margin-calculation program. Citing Timken Co. v. United States, 354 F.3d 1334 (CAFC 2004) (Timken 2004), cert. denied, 543 U.S. 976 (2004), SKF, NTN, and JTEKT argue that the Act does not require the Department's practice of not offsetting dumped sales with non-dumped sales in the calculation of the weighted-average dumping margin. Indeed, SKF argues, because the Act directs the Department to consider all sales, the Department's interpretation of the law as permitting the practice of not offsetting dumped sales with non-dumped sales in the calculation of the weighted-average dumping margin is inconsistent with the law itself. NTN asserts that, had Congress intended for the Department to employ a practice of not offsetting dumped sales with non-dumped sales in the calculation of the weighted-average dumping margin, it would have included the practice in the detailed instructions for the calculation of dumping margins.

Nachi and NTN argue that, in order to effectuate the plain meaning of sections 731 and

773 of the Act, the Department must include all sales of the "class or kind of foreign merchandise." Citing National Knitwear & Sportswear Association v. United States, 779 F. Supp. 1364 (CIT 1991), NTN argues that the Department's practice of not offsetting dumped sales with non-dumped sales in the calculation of the weighted-average dumping margin transforms the antidumping law into a punitive measure. NTN also argues that the Department's practice of not offsetting dumped sales with non-dumped sales in the calculation of the weighted-average dumping margin violates section 771(35)(B) of the Act. SKF argues that the Department's reliance on the word "exceeds" in the section 771(35)(A) definition of "dumping margin" is incorrect when applied to the assessment of antidumping duties. Specifically, SKF argues that, although section 751(a)(2)(C) of the Act requires a single determination, section 751(a)(2)(A) of the Act requires that the Department determine "the normal value and export price (or constructed export price) of each entry of subject merchandise" and "the dumping margin for each such entry." SKF asserts that the statutory definitions of normal value, export price, and CEP preclude the practice of not offsetting dumped sales with non-dumped sales in the calculation of the weighted-average dumping margin. Further, SKF asserts that, if Congress had intended the section 751(a)(2)(A) calculations to be different, it would have specified the methodology required for assessments and deposit rates in section 751(a)(2)(C) of the Act. SKF asserts that the section 736(c)(3) provision governing assessments for early duty determinations should parallel section 751(a)(2)(C) of the Act.

SKF argues that the term "weighted-average dumping margin" is not mentioned in the statutory provisions concerning the determination of the duty amount. Specifically, SKF asserts that, while the term appears in section 777a(c)(1) of the Act, the provision does not dictate that the Department must refrain from offsetting dumped sales with non-dumped sales in the calculation of the weighted-average dumping margin in the second step of its analysis. Citing United States–Final Determination on US–Softwood Lumber from Canada, WT/DS264/AB/R ¶¶ 12, 65 (August 11, 2004) (Softwood Lumber), SKF asserts that the United States has argued unsuccessfully that, while it cannot refrain from offsetting dumped sales with non-dumped sales at the first step of the calculations (determination of the dumping margin), it can do so at the second step (determination of the weighted-average dumping margin). SKF argues that nothing in section 771 of the Act requires that the Department exclude non-dumped sales from the final calculation and, therefore, the Department is precluded from doing so at the second stage of the calculation. Accordingly, SKF argues that, if the Department can refrain from offsetting dumped sales with non-dumped sales, it must do so at the first step of the calculation even though the Department has acknowledged that it cannot do so at that step.

SKF asserts that the Department has neither explained nor supported its practice of not offsetting dumped sales with non-dumped sales at the assessment phase. Citing 19 CFR 351.212(b), SKF states that the Department calculates an assessment rate for each importer by dividing the total amount of dumping for the subject merchandise not offset by non-dumped sales by the entered value of such merchandise. SKF asserts that the Department's methodology, promulgated in 1997, represents a departure from the historic entry-by-entry assessment method. Citing Koyo Seiko Co. v. United States, 110 F. Supp. 2d 934 (2000), aff'd, 258 F.3d 1340 (CAFC 2001), SKF concedes that courts have upheld the assessment methodology but argues that the CIT did not examine the Department's practice of not offsetting dumped sales with non-dumped sales in that case. Further, SKF argues that, while the calculation methodology was changed to make it less cumbersome, the elimination of elements used in the underlying methodology was neither required nor specified. SKF argues that the Department's practice in the assessment calculation represents a change from the previous methodology. Citing Atchison, Topeka & Santa Fe Ry. v. Wichita Bd. of Trade, 412 U.S. 800, 808 (1973), SKF asserts that the Supreme Court has ruled that, "{w}hatever the ground for the departure from prior norms, . . . it must be clearly set forth so that the reviewing court may understand the basis of the agency's action and so may judge the consistency of that action with the agency's mandate." SKF also argues that the main statutory provisions concerning the calculation of dumping margins and assessments remained the same after Congressional implementation of the URAA. Accordingly, citing Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. 1970), SKF argues that the Department cannot change its practice with respect to assessments without an explanation.

SKF concedes that the Federal Circuit stated in Timken 2004, 354 F. 3d at 1343, that the Department's practice of not offsetting dumped sales with non-dumped sales "legitimately combats the problem of masked dumping" but argues that the Federal Circuit cited cases decided prior to the passage of the URAA. Specifically, SKF argues that Serampore Industries Pvt. Ltd. v. DOC, 675 F. Supp. 1354 (CIT 1987), and Bowe Passat do not justify the Department's practice because Congress specifically addressed masked dumping in the URAA. Accordingly, citing Lamie v. U.S. Trustee, 540 U.S. 526 (2004), SKF argues that, because Congress addressed masked dumping directly, the Department cannot interpret the law to justify its practice as a means to address masked dumping.

SKF also argues that, in light of the URAA's amendments to the Act, the Department's interpretation of the Act is unreasonable. SKF asserts that each phase of a proceeding has important consequences for subsequent phases of the proceeding. Citing Floral Trade Council v. United States, 41 F. Supp. 2d 319 (CIT 1999), SKF argues that, absent consideration of the interdependence of the different provisions of the post-URAA Act, an interpretation of one provision can thwart the language or intent of another provision. SKF argues that changes resulting from the URAA were not considered in either Timken 2004 or Corus Staal BV v. United States, 259 F. Supp. 2d 1253 (CIT 2003), aff'd, 395 F.3d 1343 (CAFC 2005) (Corus Staal), cert. denied, 126 S. Ct. 1023 (2006).

SKF argues section 751(d)(2) of the Act ties investigations, administrative reviews, and sunset reviews together in a framework that did not exist prior to the URAA. SKF argues that the term "subject merchandise" must be treated consistently in order to give effect to the entire statutory scheme. SKF states that sections 735(a)(1) and 777A(d)(1)(A) of the Act require that the Department use weighted averages of the prices for the subject merchandise and determine whether all of the merchandise under investigation is being sold at less than fair value. Additionally, SKF states that section 735(d)(1) requires that the ITC must make its injury determination as to the subject merchandise as a whole.

SKF argues that, while these overall determinations were made only once prior to the URAA, section 752 of the Act now requires that the Department and ITC make the overall determination once every five years. SKF reasons that, because the initial investigation and subsequent administrative reviews are crucial in the sunset review, each phase of the proceeding must be based on the examination of an overall average dumping margin for the subject merchandise as a whole. Accordingly, SKF argues, because the Department's practice of not offsetting dumped sales with non-dumped sales does not produce margins which are reflective of the subject merchandise as a whole, neither the Department nor the ITC can rely on the margins when conducting sunset reviews.

SKF also argues that the Department's methodology violates the international obligations of the United States. Citing Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64 (1804) (Charming Betsy), SKF, Nachi, JTEKT, NTN, and NPB argue that, whenever possible, U.S. laws should be interpreted to avoid a violation of international obligations. Citing the SAA at 669, SKF and JTEKT assert that Congressional intent is evidenced by the SAA statement that "{t}he implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under those {Uruguay Round} agreements." Further, citing Federal Mogul Corp. v. United States, 63 F.3d 1572 (CAFC 1995), and Hyundai Elecs. Co. v. United States, 53 F. Supp. 2d 1334 (1999), SKF states that the GATT and agreements of the WTO fall within the Charming Betsy doctrine.

Citing SNR Roulements v. United States, 341 F. Supp. 2d 1334 (CIT 2005) (SNR Roulements), NTN concedes that WTO reports are not binding on the Department or the court but argues that WTO reports illuminate whether an agency's practice is in accordance with international obligations. Moreover, NTN argues, the CIT stated in Timken Co. v. United States, 240 F. Supp. 2d 1228, 1244 (CIT 2002), that it would only continue to uphold the Department's methodology until "it becomes clear that such a practice is impermissible." Finally, citing Roper v. Simmons, 125 S. Ct. 1183 (2005), NTN argues that recent Supreme Court decisions lend support to the idea of looking to international and foreign legal sources as instructive for the interpretation of U.S. law.

NTN argues that the Department should reconsider its practice in light of certain WTO reports. SKF argues that the Department's practice of not offsetting dumped sales with non-dumped sales is contrary to the Antidumping Agreement. Citing European Communities - Antidumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (March 1, 2001), Nachi, NTN, and NPB argue that the WTO Dispute Settlement Body has found that such practices are violative of the Antidumping Agreement. NTN argues that the Department's practice violates the fair-comparison requirement in Article 2.4.2. of the Antidumping Agreement. SKF argues that the definition of dumping in section 771(34) of the Act parallels Article 2 of the Antidumping Agreement. SKF also argues that the Department's practice of not offsetting dumped sales with non-dumped sales, thereby inflating the dumping margins and values, violates Article 9.3 of the Antidumping Agreement.

SKF argues that several WTO Dispute Settlement Body reports have found that such a practice is inconsistent with the terms of the Antidumping Agreement. Citing United States–Sunset review of Anti-Dumping Duties on Corrosion-Resistant Steel, WT/DS244/AB/R (December 15, 2003), and Softwood Lumber, SKF states that several reports addressing the Department's practice have been issued subsequent to the Federal Circuit's decision in Timken 2004. Additionally, citing Panel Decision, Certain Softwood Lumber Products From Canada: Sales at Less Than Fair Value, USA-CDA-2002-1904-02 (June 9, 2005), SKF asserts that a binational panel has found that, in investigations, the Department's practice conflicts with international obligations and, pursuant to the Charming Betsy doctrine, is violative of the Act. Citing Panel Report, United States - Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”), WT/DS294/R, ¶¶7.32 & 7.106 (October 31, 2005) (US - Zeroing (EC) (Panel)), at the time it filed its general-issues case brief, SKF argues a WTO panel had found that, in the context of antidumping investigations, the Department’s practice is inconsistent with the Antidumping Agreement on both an “as such” and “as applied’ basis.

In their general-issues briefs, SKF, Nachi, and NTN explain that the US - Zeroing (EC) (Panel) report on the permissibility of the Department’s practice in administrative reviews was unlikely to be upheld on appeal. Citing United States - Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”), WT/DS294/AB/R at ¶¶ 133-135 (April 18, 2006) (US - Zeroing (EC) (Appellate Body)), SKF, JTEKT, NTN, and NPB argue that the WTO Appellate Body has found that the Department’s practice of not offsetting dumped sales with non-dumped sales, in the context of both investigations and administrative reviews, violates the United States’ international obligation under the Antidumping Agreement. Finally, citing Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation, 71 FR 11189 (March 6, 2006) (Antidumping Proceedings) (stating that the Department will abandon the use of average-to-average comparisons without offsetting any dumping that is found with the results of comparisons for which the average export price exceeds the normal value), SKF, Nachi, and NTN assert that the Department has recognized that, at least in the context of investigations, the Department’s practice is inconsistent with international obligations. NTN argues that, in light of US - Zeroing (EC) (Appellate Body), the Department should take a similar action with respect to administrative reviews. NPB asserts that the Department does not have to wait for guidance from either Congress or the Administration in order to abandon its practice.

Citing Timken 2004, 354 F.3d at 1342-45, Timken argues that the Federal Circuit has determined that the Department’s practice of not offsetting dumped sales with non-dumped sales is a reasonable interpretation of U.S. law. Timken also argues that, because the Department’s practice was well established in 1994, Congress could have modified the practice but declined to do so. Additionally, citing Corus Staal BV v. United States, 259 F. Supp. 2d 1253, 1264-65 (CIT 2003), aff’d, 395 F.3d 1343 (CAFC 2005) (Corus Staal), cert. denied, 126 S. Ct. 1023 (2006), Timken argues that Congress enacted new language to describe the calculation of weighted-average dumping margins and “at least arguably encourage{d}zeroing by referring only to dumping margins where the U.S. price exceeds {normal value}.” Further, citing Antidumping and Countervailing Duties: De Minimis Dumping Margins and De Minimis Subsidies, 52 FR 30660, 30662 (August 17, 1987), Timken argues that the 1994 statutory language describing the calculation of weighted-average margins mirrors the language in the Department’s preexisting regulations which had been adopted in 1987. Timken also argues that the Department had expressly declined to modify the preexisting regulations to disallow its practice of not offsetting dumped sales with non-dumped sales. Finally, Timken argues that, even though section 1103 of the Omnibus Trade and Competitiveness Act of 1988 required the President to transmit to Congress “an explanation as to how the implementing bill and proposed administrative action will change or affect existing law,” the SAA accompanying the URAA does not include any reference to disallowing the Department’s practice.

Timken states that the Department has explained previously that, because the weighted-average dumping margin is calculated on the basis of all U.S. sales, all sales are taken into account, referring to AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 1. Timken states that the Act requires the calculation of a "weighted-average dumping margin," which is to be determined by dividing the "aggregate dumping margins" by the "aggregate export prices" for each exporter. Further, Timken argues that section 771(35) of the Act defines the dumping margin as the amount by which the normal value exceeds either the export price or CEP. Accordingly, Timken states, the Department's interpretation of "dumping margin" as referring to positive margins is reasonable and consistent with long-standing practice.

Concerning SKF's argument that the dumping margin must be based on differences between non-zeroed export prices and normal values in order for the determinations under section 751(a)(2)(A)(i) and (ii) to be consistent, Timken argues that SKF's inference does not amount to a prohibition against zeroing. Further, Timken argues that SKF's interpretation ignores the section 771(35) definitions of "dumping margin" and "weighted-average dumping margin." Timken also argues that section 736(c)(3) of the Act does not address the calculation of weighted-average margins, let alone prohibit or proscribe a particular methodology.

Timken argues that the Department's practice comports with the prior entry-by-entry assessment method. Timken argues that under the master-list assessment method, which yielded separate calculations for each entry, antidumping duties were due on dumped entries even though other entries had not been dumped. Citing Timken 2004, 354 F.3d at 1342, Timken argues that the Department's practice of not offsetting dumped sales with non-dumped sales is similar because "it neutralizes dumped sales and has no effect on fair-value sales." Timken argues that, as with the entry-by-entry method, fair margins are not permitted to offset dumping margins.

Concerning SKF's argument that section 777A(d)(1)(B) of the Act prevents the Department from relying on a concern for "masked dumping" to justify its practice of not offsetting dumped sales with non-dumped sales, Timken argues that the targeted-dumping provision applies to investigations. Timken also argues that the targeted-dumping provision requires the weighted-average-to-transaction method under certain circumstances rather than the average-to-average or transaction-to-transaction methods. Timken also asserts that, pursuant to section 777A(d)(2) of the Act, the weighted-average-to-transaction method is the normal method in administrative reviews.

Concerning NTN's argument that the Department's practice of not offsetting dumped sales with non-dumped sales cannot be reconciled with the Act's focus on the class or kind of merchandise and produces unfair comparisons, Timken 2004 states that these arguments have been addressed by the courts, citing Timken 2004, 354 F.3d at 1344, and NSK Ltd. v. United States, F. Supp. 2d 1276, 1281-82 (CIT 2005), aff'd, 162 Fed. Appx. 982 (CAFC January 11, 2006).

Concerning arguments that the WTO has determined that the Department's practice violates the Antidumping Agreement, Timken states that the Department has addressed these arguments previously. Citing AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 1 and Corus Staal, 395 F.3d at 1348-49, Timken asserts that WTO Dispute Settlement reports are not binding on the United States and that implementation must be pursuant to the statutory scheme specified in section 123(g) of the URAA and codified at 19 USC 3533(g).

Timken also argues that, due to factual differences, the previous WTO Appellate Body reports are not instructive. Citing US - Zeroing (EC) (Panel), Timken argues that, at the time its case brief was filed, a WTO Panel found that, in the context of administrative reviews, the Department's zeroing methodology was consistent with the Antidumping Agreement. Timken also argues that, in US - Zeroing (EC) (Appellate Body), the Appellate Body declined to determine that zeroing in administrative reviews was contrary to the Antidumping Agreement "as such" and only addressed zeroing "as applied" in the specific named administrative reviews. Citing United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/RW, ¶¶ 5.29-5.30 (April 3, 2006), Timken argues that another WTO panel found that a previous Appellate Body report on the Department's practice was limited to comparisons involving average U.S. prices. Timken explains that, pursuant to section 777A(d)(2) of the Act, the Department examines individual export prices in administrative reviews. Finally, Timken argues that Antidumping Proceedings applies to investigations, not administrative reviews.

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.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value *exceeds* the export price and constructed export price of the subject merchandise" (emphasis added). The Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or CEP. As no dumping margins exist with respect to sales where normal value is equal to or less than export or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The Federal Circuit has held that this is a reasonable interpretation of the statute. See Timken 2004, 354 F.3d 1334, 1342, Koyo Seiko Co. v. United States, 543 U.S. 976 (2004), and Corus Staal BV, 395 F.3d at 1347. In fact, courts have upheld the Department's offset methodology in litigation concerning another segment of this administrative proceeding recently. See NSK Ltd. v. United States, 358 F.Supp. 2d 1276 (CIT 2005), aff'd, 2006 U.S. App. LEXIS 1682 (CAFC 2006)(NSK); Paul Müller Industrie GmbH v. United States, Cons. Court No. 04-00522, Slip Op. 06-80 at 6-7 (May 26, 2006) (stating "{u}nless the Supreme Court or the Federal Circuit expressly overrule Timken 2004 or Corus Staal, this court does not have the power to re-examine the issue of zeroing in administrative reviews" and that "none of the Plaintiffs offer a valid reason to disregard *stare decisis* and re-examine Commerce's interpretation concerning its zeroing methodology in administrative reviews"). Further, the Act has not been amended since the Federal Circuit affirmed the Department's methodology in Timken 2004, Corus Staal BV, and NSK.

Respondents have cited four WTO dispute-settlement reports finding the denial of offsets by the United States in specific administrative determinations to be inconsistent with the Antidumping Agreement. With respect to Softwood Lumber, consistent with section 129 of the

URAA, the United States' implementation of that WTO report affected only the specific administrative determination that was the subject of the WTO dispute - the antidumping duty investigation on softwood lumber from Canada. See 19 U.S.C. § 3538. With respect to US – Zeroing (EC) (Appellate Body), the United States has not yet gone through the statutorily mandated process of determining how to implement the report. See 19 U.S.C. §§ 3533 and 3538. As such, neither the implementation of Softwood Lumber nor the Appellate Body's report in US – Zeroing (EC) (Appellate Body) has any bearing on whether the Department's denial of offsets in these administrative reviews is consistent with U.S. law. See Corus Staal BV, 395 F.3d at 1347-49 and Timken 2004, 354 F.3d at 1342. With respect to EC Bed Linen and U.S. Corrosion - Resistant Steel, the Federal Circuit refused to find the Department's interpretation of the Act unreasonable based on those WTO reports. See Timken 2004, 354 F.3d at 1344, and Corus Staal, 395 F.3d at 1349. Accordingly, the Department has continued in these reviews to deny offsets to dumping based on export transactions that exceed normal value.

Further, SKF's argument that the Department should permit margins from non-dumped sales to offset margins for dumped sales because the Department did not explain why the agency abandoned the "master list" entry-by-entry assessment method in favor of the current methodology lacks merit. First, the Department has explained the reasons for abandoning the master-list method. See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27314 (May 19, 1997) (explaining that the master-list method has fallen into disuse because respondents were frequently unable to link specific entries to specific sales and because master lists were difficult to administer in reviews involving a large number of entries). Second, the courts have sustained the current methodology. See, e.g., Koyo Seiko Co., Ltd v. United States, 110 F. Supp. 2d 934 (CIT 2000), aff'd, 258 F.3d 1340 (CAFC 2001). Third, even under the entry-by-entry assessment method, which yielded separate calculations for each entry, the margins in dumped entries were not offset by the margins in non-dumped entries. The Department's practice has not changed in this respect because "it neutralizes dumped sales and has no effect on fair-value sales." Timken 2004, 354 F.3d at 1342. As with the entry-by-entry method, the Department has continued to deny offsets for the final results of these administrative reviews.

2. *Model-Match Methodology*

Comment 2: JTEKT, NPB, NSK, NTN, and SKF argue that the Department should use the family model-matching methodology which it used prior to AFBs 15 instead of the revised model-matching methodology it developed in AFBs 15. The respondents contend that the Department has not provided an adequate justification for changing its model-matching methodology and, therefore, the revised methodology is unlawful.

Citing USEC Inc. v. United States, 259 F. Supp. 2d 1310, 1325-26 (CIT 2003), 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. JTEKT observes 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. The respondents assert that the Department has neither provided a reasoned analysis detailing its basis for departing from the pre-existing practice nor demonstrated that the revised methodology will result in a more accurate dumping margin.

The respondents claim that the Department gave as its "compelling reason" the technological advancement since the first administrative review in which the family-matching methodology was adopted. The respondents also contest the Department's assertion 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.

JTEKT 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.

JTEKT 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, JTEKT contends that the statute uses the term "merchandise," rather than the term "model," to define "foreign like product." Thus, JTEKT 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.

JTEKT and SKF also contend that the Department has misdescribed its normal practice by stating that it normally identifies the "single most-similar" model. JTEKT 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. According to SKF, this is no different from the family designation. Thus, SKF argues, the family coverage in the AFB reviews is comparable to the coverage the Department attains in other cases and the family methodology is no less accurate than the Department's approach in other cases.

JTEKT 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. JTEKT 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.

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, and accompanying Issues and Decision Memorandum at Comment 1 (October 30, 2002), respectively, JTEKT 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." JTEKT 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.

Citing AFBs 2, 57 FR at 28365, NTN contends that the Department stated that, in the interest of maintaining a stable and predictable approach to its margin calculations, it would only alter its methodology when compelling reasons exist. SKF also avers that a model-matching methodology should be stable and predictable. NTN and SKF assert that the Department's change to the methodology now defeats the interest of stability and predictability in the Department's margin calculations. NTN contends that the family-matching methodology was a reasonable solution to account for the tremendous number of variations in the subject merchandise. NTN asserts that there has been no change in the nature of bearings that warrant a change in the Department's model-matching methodology

JTEKT, NSK, and SKF assert that the Department still has not demonstrated that its revised model-matching methodology results in more accurate dumping margins. According to NSK, any evidence as to the accuracy of the revised approach is negative, particularly given that, under the revised methodology, 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.

JTEKT contends that the Department has presented no evidence to demonstrate either that the occurrences of CV under the family-matching methodology provided less accurate benchmarks for normal value or, conversely, that the revised model-matching methodology identifies better benchmarks. Citing AFBs 3, 58 FR at 39764, JTEKT claims 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 provides an illustration wherein a U.S. model has no seal and two home-market models have different seals. NSK states that there is no way to know which home-market model is the more similar bearing without examining the bearings' functionality, end use, and market niche. NSK contends that the Department's revised model-matching methodology does not, and can not, take such factors into consideration. NSK asserts that the family-matching methodology did take such issues into account. NSK claims that taking the average of multiple home-market bearings substantially similar to the U.S. bearing being matched accurately accounts for price differences attributable to non-physical aspects of the different bearings. According to NSK, the

Department's revised methodology has gerrymandered the matching methodology to maximize the number of price-to-price matches without regard for the number of matches created that previously would have been impermissibly dissimilar.

NPB argues that the Department's methodology allows inappropriate matches, such as comparisons of standard bearings to specialty bearings. NPB argues 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 NPB, the bearings being compared are not like in component materials, are used for different purposes, and are not approximately equal in commercial value.

JTEKT claims that it presented numerous examples in the prior review of models with small dimensional differences that it asserts are neither physically or commercially similar. According to JTEKT, 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, JTEKT 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. JTEKT 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, JTEKT 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 provides two examples of matches that the Department made which it claims were of merchandise that are very dissimilar. According to NSK, the comparison models have different load ratings, have different diameters, and are dissimilar in use. NSK asserts that the family-matching methodology implicitly recognized the physical and commercial differences between these products because, under that methodology, the bearings identified in these examples would have been treated as dissimilar, thereby precluding matching. According to NSK, the revised methodology results in many more non-identical price-to-price matches than would have been found using the family-matching methodology. NSK contends that these new similar matches are dissimilar and, therefore, result in a less accurate margin.

NPB also argues that the Department did not provide any meaningful analysis demonstrating that its revised methodology actually results in reasonable comparisons or in a more accurate dumping margin. NPB asserts that, in AFBs 15, the Department provided a flawed analysis which did not demonstrate that its hypothesis was correct 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) and offered nothing more than suppositions and predictions. NPB asserts that the Department provided even less analysis in the current review, merely relying on its analysis in AFBs 15 and incorporating that analysis by reference. According to NPB, the Department provided no analysis demonstrating that its revised methodology actually produced more price-to-price comparisons in the current reviews than the family-matching methodology would have done. NPB also asserts that, even if there are more price-to-price comparisons under the revised methodology, the Department has provided no discussion either in AFBs 15 or in this review of whether the resulting new comparisons are reasonable.

NPB also argues that the comparisons generated by the Department's revised methodology are unreasonable. First, NPB contends that the Department's logic for preferring the most similar model does not withstand scrutiny because it includes difference-in-merchandise adjustments that do not account for the dissimilar features of the models selected for comparison. Second, NPB asserts that the Department has not even claimed that it identifies all of the relevant physical characteristics in choosing the most similar model. According to NPB, the fact that other physical characteristics were ignored was less important because averaging by family meant that the differences ignored by the Department tended to cancel out but now they can be substantial, creating dumping margins where none exist. Finally, NPB contends that the entire exercise is based on a false premise because the Court has held that the Act does not require the Department to use a methodology that identifies the greatest number of matches of similar merchandise and affirmed the family-matching methodology, citing Torrington Co. v. United States, 881 F. Supp. 622, 634 (CIT 1995).

Timken argues that the Department should continue to use the revised model-matching methodology. Timken asserts that the respondents did not identify any specific comparisons made by the Department which are inappropriate nor did they suggest that any additional physical criteria should be examined in order to refine the model-matching methodology. Timken contends that the respondents' arguments are the same arguments raised and fully rebutted by the Department in AFBs 15.

According to Timken, the arguments that the Department made in AFBs 15 remain true in these reviews. Timken asserts that the revised methodology is more accurate than the family-matching methodology because it selects a single most-similar model rather than average a group of similar models and results in more price-to-price comparisons. Timken contends that the revised methodology is more consistent with the statutory preference for price-to-price comparisons over CV comparisons. Timken asserts that the family-matching methodology was adopted in part because of administrative limitations that are no longer present. Timken claims further that the revised methodology is more consistent with the Department's normal practice of identifying a single most-similar product. Finally, Timken argues that it is reasonable for the Department to determine that a bearing with similar size and load rating that has the same design type, number of rows, load direction, and precision grade and whose variable manufacturing cost does not differ by more than 20 percent from the bearing sold in the United States constitutes a similar bearing for antidumping price comparisons. Timken also observes that nothing in the family-matching methodology would have precluded comparisons of standard bearings to specialty bearings.

Department's Position: For these final results, we have continued to use the model-match methodology we developed in AFBs 15. See AFBs 15 and the accompanying Issues and Decision Memorandum at Comments 2 through 5. The arguments presented by the respondents are substantially similar to those we rejected in AFBs 15.

As we explained in AFBs 15, we determined that compelling reasons existed to revise the model-match methodology for these bearings proceedings. Specifically, we determined that a revision to the methodology would accomplish three things: 1) it reflects more accurately the intent of section 771(16) of the Act, including the statute's preference for identifying the foreign like product by selecting the single most-similar product; 2) it reflects the statutory preference for using price-to-price comparisons; 3) it allows us to take advantage of technological developments. In addition, the revised methodology is much closer to our normal matching practice than is the family-matching methodology. See AFBs 15, 70 FR 54711, and accompanying Issues and Decision Memorandum at Comment 2.

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. Where no matches can be found under section 771(16)(B) of the Act, we will resort to constructed value pursuant to section 771(16)(C) of the Act.

We developed a revised methodology in order to reflect more accurately the intent of section 771(16)(B) of the Act, which is to compare the subject merchandise to the single most-similar comparison-market model. Timken Co. v. United States, 630 F. Supp. 1327, 1337 (CIT 1986). 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. It is more accurate to select a single most-similar model rather than average together several disparate models for purposes of comparison 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. 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 of section 771(16) of the Act more closely.

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. The respondents base this argument, in part, on their contention that the different models are used for very different applications. The respondents' interpretation of sections 771(16)(B)(ii) or (C)(ii) of the Act is much narrower, however, than the Department's interpretation. 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 as long as they meet the other criteria of sections 771(16)(B) or (C) of the Act. In other words, if models fit the description of the scope of an antidumping duty order, we consider such products to be like the subject merchandise in component material or materials and in the purposes for which used.

In fact, our revised 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 AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2, 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. By contrast, in most antidumping proceedings we impose no limits in the matches based solely on the differences in physical characteristics.

In addition, the matches we made are appropriate with respect to the statutory instructions. 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 specialty bearings) would not have rendered such bearings inappropriate as matches under our previous methodology because the distinction between a standard bearing or a specialty bearing was not considered in the family-matching methodology. Thus, we could have compared a standard bearing to a specialty bearing using the family-matching methodology. Moreover, 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 and NSK's assertion that we are not taking into account all of the relevant characteristics (such as NSK's example of a U.S. model that has no seal and two home-market models that have different numbers of seals), as we have stated before, we welcome interested parties to provide comments on what additional physical characteristics we should take into account in our model-matching methodology. None of the respondents suggested additional characteristics until NPB's suggestions in its case brief dated April 25, 2006. With respect to the additional physical characteristics NPB suggested in its case brief, see Comment 4, below.

While stability and predictability in our margin-calculation methodologies are desirable goals, they are not the only goals we seek when calculating dumping margins. In our view, the most important goal is accuracy. It is more important to calculate accurate dumping margins than it is to retain a less accurate methodology. Because our revised model-matching methodology is more accurate than the family-matching methodology, it is appropriate for the Department to apply it.

Furthermore, we addressed the issue of the purposes for which bearings are used 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). Thus, 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 Seiko Co. v. United States, 66 F.3d 1204, 1210 (CAFC 1995) (Koyo).

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 AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2, 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 revised methodology are like the subject merchandise in component material or materials and in the purposes for which used, thus satisfying the second statutory criterion.

As we describe above, the methodology we adopted in AFBs 15 is narrower than we normally use in other market-economy cases. Typically, with the exception of distinguishing between prime and non-prime merchandise, we normally set no limits on the comparisons between the subject merchandise and the foreign like product beyond not considering models whose difference-in-merchandise adjustment is greater than 20 percent of the total cost of manufacturing. In a normal market-economy case, the mere fact that a model meets the definition of "foreign like product" is enough to make it "similar" for purposes of sections 771(16)(B) and (C) of the Act as long as the difference-in-merchandise adjustment is 20 percent or less. In fact, in other cases, we can and do, on occasion, make comparisons of products which have individual characteristics which differ by more than 40 percent if that happens to be the most similar product.

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. Some respondents assert that some of the comparisons we made were of 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. 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.

As we stated in AFBs 15, there is a clear statutory preference for using price-to-price comparisons. See AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2. 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. As we discussed in AFBs 15, we conducted a model-match analysis in those reviews and found that our revised model-matching methodology resulted in many more reasonable similar price-to-price comparisons across the AFB proceedings. In fact, we found that the revised methodology results in more than twice as many reasonable similar price-to-price comparisons than we would obtain using the family-matching methodology. Id. 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.

In addition, the revised model-matching methodology reflects our practice in other cases, guided by section 771(16)(B) of the Act, which is to identify the foreign like product by selecting the single most similar product. See SKF USA v. United States, 874 F. Supp. 1395, 1399 (CIT 1995), citing section 771(16) of the Act ("An accurate investigation requires that the merchandise used in the comparison be as similar as possible. Furthermore, there is a statutory preference for comparison of most similar, if not identical merchandise for the purpose of Fair Market Value calculations.") See also Notice of Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the Republic of Korea, 70 FR 73435 (December 12, 2005); Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Brazil, 70 FR 7243 (February 11, 2005); Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110 (October 30, 2002).

With respect to JTEKT's and SKF'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, the respondents confuse 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.

As we explained in AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2, 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 AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2, 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, we initially intended to limit comparisons solely by "grouping specific models into families." See AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2. 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 AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 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 AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2. 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 the Department to incur substantial expense when running the antidumping margin-calculation computer 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. These factors are not 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.

As we explained in AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2, 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 and we are exhausting all sales of home-market models that can reasonably be compared to the U.S. model under section 771(16) of the Act before we resort to constructed value. 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.

We have solicited extensive comments from interested parties regarding this revised 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.

Finally, with respect to NPB'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 AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2, the program we prepared for analyzing the effects of the different methodologies was not meant to be a precise measure of the differences in types of comparisons we would find. NPB 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. NPB's argument that we cannot use the revised methodology in these reviews because we did not duplicate the analysis we performed in AFBs 15 is also unpersuasive. We found that we would obtain more price-to-price matches for virtually every respondent in our analysis in AFBs 15 and, again, NPB has neither presented an analysis or explanation of why we would have a different finding in this review were we to conduct the same exhaustive analysis we did in AFBs 15. In fact, there is evidence on the record that suggests we do obtain more price-to-price matches using the revised methodology than the family-matching methodology. See NSK's case brief dated April 26, 2006, at page 4.

Comment 3: JTEKT and NSK contend that, if the Department implements its revised methodology, it must set the cap of the sum of the deviations 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). JTEKT contends that even models which differ by a minor amount as to only one of the eight physical characteristics are nonetheless physically and commercially dissimilar. Citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Antidumping Duty Administrative Reviews, 56 FR 11178 (March 15, 1991), NSK contends that the Department has stated previously that such sales "constitute the universe of such or similar merchandise." NSK asserts further that, once the physical characteristics are permitted to deviate at all, it becomes an arbitrary exercise to determine any generalized rule as to the limits that would be appropriate for the range of permitted deviations. If the Department is to avoid matching U.S. sales to dissimilar bearings, NSK concludes, the only defensible approach is for the Department to cap the physical deviations at zero.

Timken contends that the Department considered and rejected the respondents' arguments in AFBs 15. Timken argues that the respondents' arguments are based on the premise that models which deviate slightly in size or load rating cannotbe appropriate similar comparisons. Timken asserts that this premise is mistaken and observes that the Department's methodology for the bearings orders is actually more restrictive than the identification of similar models deployed in many other antidumping proceedings.

Department's Position: We find that no substantive revisions to our model-matching methodology 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. Moreover, none of the respondents has demonstrated how using a smaller cap would increase the accuracy of the margin calculation.

Comment 4: NPB argues that, if the Department continues to use the revised model-matching methodology, it should take into account all relevant physical characteristics. According to NPB, the eight physical characteristics the Department uses in its methodology are not sufficient to determine the single most-similar model sold in the comparison market. NPB contends that the Department should take into account seven additional physical characteristics in its methodology: types of seals, greased versus ungreased, ceramic versus non-ceramic, diameter of second inner dimension, diameter of second outer dimension, diameter of second width dimension, and diameter of third width dimension. According to NPB, these physical characteristics are readily available to the Department in its existing databases.

Timken argues that the Department should reject NPB's suggestion. According to Timken, NPB offered no support for its proposition that the identification of similar merchandise must account for the same panoply of factors for which the Department accounts in the identification of identical merchandise because the statutory definitions of identical and similar merchandise differ. Timken observes that the Department's identification of identical merchandise relies on the detailed product codes maintained by the producers while its identification of similar merchandise necessarily abandons the product code.

Department's Position: In order for the Department to reasonably consider NPB's argument to consider additional physical characteristics, it must be made earlier in the administrative review. The time to make these arguments was at the beginning of the reviews so we could solicit comments from other interested parties, not in the case brief after we have issued the preliminary results.

There are also practical issues involved with the additional characteristics NPB suggests that we cannot resolve at this late time. For example, NPB suggests that we take into account the type of seals. It is preferable to compare models with the same type of seals rather than models with different types of seals, but it is not clear whether we should compare a U.S. model that has no shield or seal for which there are two appropriate home-market models where one has a shield and the other has a seal. NPB has provided no explanation of how we should identify the most similar match in this situation. Thus, we would need to solicit additional information from NPB and comment from interested parties before implementing the changes in the model-match methodology as NPB suggests. Therefore, given the lateness of NPB's request and lack of a reasonable explanation of how we would implement the issue of the additional characteristics pursuant to our revised methodology, we cannot consider NPB's request for these reviews. We intend to pursue this matter further in subsequent reviews.

Comment 5: JTEKT, NPB, NSK, NTN, 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. The respondents argue that the Department's application of the revised model-matching methodology in these reviews is unlawfully retroactive. The respondents contend that the Department did not fully articulate its revised model-matching methodology until the completion of the 2003/04 administrative reviews. JTEKT 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. JTEKT 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 Shikoku Chemicals Corp. v. United States, 795 F. Supp. 417 (CIT 1992) (Shikoku), NTN and SKF argue 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.

JTEKT asserts 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.

Timken argues that the Department considered and rejected the respondents' arguments in AFBs 15. Timken contends that the respondents' arguments are based on erroneous interpretations of the law. Timken asserts that, because reviews are retrospective by nature, any change in the Department's methodology is retroactive to some extent. Timken also contends that reliance arguments cannot justify the continuation of a methodology known to be less accurate. Finally, citing Brother Industries Ltd. v. United States, 771 F. Supp. 374, 382 (CIT 1991), Timken asserts that the CIT has held that a party must prove its detrimental reliance. Timken claims that the fact that dumping has continued to be observed for these respondents is evidence that there has been little or no actual reliance on the family-matching methodology.

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

We may alter a methodology as long as the new methodology is reasonable. Hangzhou Spring Washer Company v. United States, 387 F. Supp. 2d 1236, 1246 (CIT 2005) (Hangzhou) (when an agency departs from its practice, it must clearly set forth the ground so that the reviewing court may understand the basis of the agency's action and so may judge the consistency of that action with the agency's mandate); Luoyang v. United States, 347 F. Supp. 2d 1326, 1333 (CIT 2004) (Luoyang) ("an agency decision to change its methodology should be examined under the Chevron test and sustained if the new methodology is reasonable"). Also, section 782(g) of the Act directs us to provide the parties affected by the change a final opportunity to comment before the final determination.

As we explain in our response to Comment 2, above, our new model-match methodology is reasonable. Furthermore, recognizing that we applied the family-matching methodology in fourteen administrative reviews, we ensured that we notified all interested parties of our determination to revise the methodology. In fact, we provided notice to the parties approximately six months prior to the initiation of the fifteenth administrative reviews; respondents have been on notice of the revised methodology since December 2003. Prior to implementing the revised methodology, we provided ample opportunities for all interested parties to meet with us to discuss suggestions and comments relating to the change in methodology. See AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 4.

Finally, to the extent that this change affected entries made during the period of review for these sixteenth reviews of the AFB orders, that effect is permissible. To require that all changes in methodology be applied not to entries under review, but to future entries, would stymie our ability to change our own practices. The statute requires that entries be reviewed on a retrospective basis. See section 751(a)(2) of the Act. See also American Permac, Inc. v. United States, 642 F. Supp. 1187, 1192 (CIT 1986). If a decision to change a methodology may apply only prospectively to sales occurring after the change is adopted, then our decisions in administrative reviews would apply only to future entries, not to the actual entries reviewed, and for which antidumping duties are assessed. Such a limitation would directly contravene the statute. Therefore, we find there is no reason to delay the implementation of our revised model-matching methodology to future reviews.

Comment 6: SKF argues that the Department should not include lubricants in its definition of control numbers (i.e., the codes that the Department considers to be identical merchandise for matching purposes). 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 distorted margins.

Timken argues that the Department considered and rejected SKF's arguments in AFBs 15. According to Timken, the Department found that lubricants can have a significant effect on the cost of a bearing. Therefore, Timken contends, models with different greases may not be suitable as identical comparisons because the Department does not make a difference-in-merchandise adjustments in identical comparisons. Further, Timken asserts, 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 found in AFBs 15 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 AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 5, we found at the verifications we conducted for the 2002-2003 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, as we stated in AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 5, 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. We cited NSK as an example of a respondent which chose to do this and whose designations we accepted. SKF did not attempt to avail itself of this alternative, even though we published AFBs 15 in the Federal Register prior to the date SKF submitted its original responses for these reviews. If there are particular lubricants, such as the ones SKF cited in its case brief, that SKF believes should be treated as essentially identical, it should make such claims early enough in the review for us to evaluate its claims and, if necessary, request additional information and conduct verifications of such claims as we did for NSK in AFBs 15 (and, for that matter, in these reviews). Had SKF done so, this issue might well have been moot for SKF in these administrative reviews.

3. *Sample and Prototype Sales*

Comment 7: Timken argues that the Department should not exclude certain U.S. sales which Barden claimed as sample sales from Barden's U.S. sales database because Barden's narrative description of its treatment of sample sales contradicts information in Barden's U.S. sales file. Timken cites AFBs 14 and the accompanying Issues and Decision Memorandum at Comment 18 to assert that Barden has not 1) demonstrated affirmatively that the zero-priced sales in question are sample sales or 2) substantiated that the company received no consideration for these sales.

Barden claims that the transactions in question are not sample sales but the returns of the products that the customers purchased and later returned because of alleged problems with the shipment. Barden argues that the company found these customers' claims unjustified and returned the bearings to the customers without issuing a credit to the customers. Barden claims that the company's electronic accounting system treats these transactions in question as sample sales because the company issued a zero-priced invoice when the company returned the products to the respective customers.

Department's Position: Based on our review of the record, we have concluded that the transactions in question were not zero-priced sample sales but customer returns of previously purchased merchandise which Barden did not accept. See Barden's September 26, 2005, section C questionnaire response at page 51 and Barden's April 13, 2006, rebuttal brief at page 6. As such, we have continued to exclude them from our calculation of Barden's dumping margin.

Comment 8: GRW claims that, in the dumping-margin calculation, the Department included free sample transactions GRW provided to U.S. customers. GRW argues that the Department should exclude these free sample transactions from the calculations for GRW because GRW made these transactions outside the ordinary course of trade.

Timken opposes the exclusion of GRW's claimed sample transactions. According to Timken, GRW did not respond to some of the Department's questions concerning samples and prototypes in the original questionnaire. Specifically, Timken argues, GRW did not provide the price and quantity for the sample and the weighted-average price and average quantity of normal sales of comparable models to the same customer. Moreover, Timken comments, GRW did not provide "qualitative and quantitative analysis demonstrating the unique and usual characteristics" of the sales that can be excluded. To support its opposition, Timken cites AFBs 14 and the accompanying Issues and Decision Memorandum at Comment 18, AFBs 8 at 33343 (Comments 3 and 4), and AFBs 7 at 54070-71 (Comments 4 and 7).

Department's Position: We disagree with Timken. We impose an antidumping duty on merchandise if we determine that, *inter alia*, the merchandise is being sold in the United States at less than its fair value. See section 731 of the Act. The court has found that a sale requires both a transfer of ownership to an unrelated party and consideration. Samples given to potential customers at no charge lack consideration and therefore do not constitute sales. See NSK Ltd. v. United States, 115 F.3d 965, 975 (CAFC 1997).

GRW reported sample transactions in its database and provided sufficient narrative explanations and documents to support its claim of U.S. sample transactions. GRW explained that the company receives requests for samples over the telephone or during a visit to a customer, that the company does not provide free samples to customers which purchased the same product already, that the company does not generate revenue or profit from free samples given to its customers, and that the company does not know the ultimate disposition of free samples. GRW also provided a delivery note stating "marked samples–not for resale" as an attachment to support its free-sample claim. See GRW's original response dated September 26, 2005, pages 90-91. Therefore, we find GRW's narrative and database reports concerning its sample transactions to be sufficient and have excluded the U.S. sample transactions from the dumping-margin calculations for the final results of review.

Comment 9: SKF Italy argues that the Department included home-market sales of prototype merchandise erroneously in the calculation of normal value. SKF Italy asserts that the company provided detailed information establishing that its prototype sales have extraordinary characteristics in the home market, thus rendering them outside the ordinary course of trade. Because the Department did not inform SKF Italy that the information SKF Italy provided regarding the prototype sales was insufficient, SKF Italy claims, the Department is estopped from finding that the evidence SKF Italy provided regarding the prototype sales is deficient.

Timken argues that the Department should comply with SKF's request for exclusion of prototype sales from the calculation of normal value but only to the extent SKF supplied supporting documentation. Timken argues that the Department should exclude SKF Italy's prototype sales of only one particular model for which SKF Italy supplied supporting documentation.

Department's Position: We find that SKF Italy provided adequate documentation demonstrating that the company made prototype sales of one particular model outside the ordinary course of trade. Therefore, we have excluded the prototype sales of this one particular model from our calculation of normal value.

For all other claimed prototype sales, SKF Italy did not provide documentation supporting its claim that the company sold them outside the ordinary course of trade. In our questionnaire, we requested that SKF Italy provide documentation demonstrating the extraordinary characteristics which render the claimed prototype sales outside the ordinary course of trade. We also stated in our questionnaire that the exclusion of prototype sales is conditional upon the respondent's demonstration that they are sold outside the ordinary course of trade. SKF Italy did not provide documentation supporting its claim for all other prototypes because the company considered our request for such documentation to be "burdensome." See SKF Italy's September 26, 2005, questionnaire response at page B-70. SKF Italy's decision not to provide information supporting its request for a favorable adjustment to normal value does not obligate us to provide SKF Italy with an opportunity to remedy or explain deliberate and voluntary deficiencies. Therefore, we have included the sales in question in our calculation of normal value.

4. *Use of Adverse Facts Available*

Comment 10: Nachi argues that the Department's decision to base its margin, in part, on adverse facts available is contrary to law and is not supported by substantial evidence on the record. Nachi observes that the Department found incorrect physical characteristics with respect to 16 of the 40 models it examined at verification. Nachi contends that the Department inferred improperly, without further examination or analysis, that the errors were systemic in nature such that Nachi misreported physical characteristics for a substantial proportion of its models.

Nachi argues that the Department should not apply facts available for the 40 models whose eight physical characteristics the Department verified and for which the Department has accurate information. Nachi contends that the Department has the correct physical-characteristic information on the record with respect to all of the 40 models it examined at verification. Because it has the correct information for these models, Nachi avers, the Department may not use facts available for calculating the margin for sales of these models.

Nachi argues that there is no substantial evidence for the Department's application of facts available due to the inferred misreporting of the four "primary" physical characteristics (i.e., bearing design, load direction, number of rows, and precision grade). According to Nachi, the Department found errors in the primary physical characteristics for one of the 40 models it examined at verification and that model was a special model. Nachi contends that this does not justify the Department's finding that the errors were systemic in nature. Nachi avers that, for U.S. models which do not match any home-market sales with respect to the primary physical characteristics, any errors in the other four characteristics are irrelevant because the normal value would necessarily be based on constructed value.

Nachi argues that there is no substantial evidence for the Department's inference that there were systemic mistakes in the reporting of the secondary physical characteristics (i.e., inner diameter, outer diameter, width, and load rating). According to Nachi, the error rate among the models the Department examined is statistically insignificant when viewed in light of the aggregate number of models and physical characteristics reported because it found 19 errors in 320 characteristics examined (40 models multiplied by 8 characteristics). Nachi also asserts that the 40 models the Department selected were not representative of its other models because the size of the sample of models the Department examined is statistically too small for it to conclude that the errors the Department found in Nachi's reported physical characteristics were systemic. Nachi contends further that, even if the sample size were sufficiently large to permit a proper inference, the Department's selection of bearing models to examine at verification was not representative of the universe of models because the Department selected primarily special bearings rather than the standard bearings which, according to Nachi, comprise the bulk of its sales. Nachi also claims that one of the models the Department examined was further manufactured and that another was not sold during the sample weeks and, as a result, they are not representative of its U.S. and home-market sales databases. Therefore, Nachi concludes, the Department should not have inferred that the misreporting of physical characteristics was systemic.

Nachi argues that the Department should not apply facts available to matches of products with the identical eight physical characteristics (i.e., bearing design, load direction, number of rows, precision grade, inner diameter, outer diameter, width, and load rating). Nachi cites, as an example, several bearings with the same product series. According to Nachi, even though these bearings are different because of differences in characteristics such as the number of seals or shields, each of these models necessarily have the same eight physical characteristics listed above because they belong to the same product series. Thus, according to Nachi, just as the Department declined to use facts available for identical matches, the Department should not use facts available for similar matches where the match is within the same product series.

Nachi argues that the Department should not apply facts available to U.S. sales of parts which were further-manufactured in the United States. Nachi observes that the Department did not attempt to find similar matches for U.S. sales of parts where no identical home-market sales exist. Because of this, Nachi contends, its incorrect reporting of physical characteristics would not affect the model match with respect to U.S. imports of parts and therefore the Department should not apply facts available to the U.S. sales of parts. Thus, Nachi argues, the Department should not apply the rate it calculated based, in part, on adverse facts available to imports of parts which were further manufactured and which the Department excluded from its margin-calculation program because Nachi qualified for the special rule for further-manufactured products.

Nachi argues that there is no substantial evidence for the Department's application of facts available with respect to standard models. According to Nachi, the Department selected twelve standard models and found a misreported physical characteristic for only one characteristic for one of those models. Nachi concedes that it made some errors in reporting product characteristics for special models, but it asserts that the error rate for standard models is extremely low. Nachi contends that, because of this, the Department's application of adverse facts available to sales of standard models is based on the inference it made as a result of its verification findings with respect to special models. Thus, Nachi concludes, the Department's application of adverse facts available to sales of standard models is not based on substantial evidence on the record.

Nachi argues further that the Department may not use an adverse inference for sales without identical matches because the use of facts available is not warranted. According to Nachi, if the use of facts available is not warranted, it follows that the Department cannot use an adverse inference. Nachi argues alternatively that, if there are some sales for which the Department must use the facts available, the Department should still refrain from using an inference that is adverse to Nachi. Citing Color Picture Tubes from Japan; Final Results of Antidumping Administrative Review, 62 FR 34201, 34209 (June 25, 1997) (Color Picture Tubes), Nachi contends that the Department has a precedent of not using adverse inferences where a company has cooperated and the effect of the error is small. Nachi also asserts that the use of an adverse inference is only authorized by law if the Department finds that the party has failed to cooperate by not acting to the best of its ability and that it must explain why the absence of the correct information is of significance to the progress of its review. Nachi contends that the circumstances have not met these standards in this case.

Nachi also contends that there is no suggestion by the Department or any record evidence that Nachi's failure to report all of the physical characteristics correctly was anything but inadvertent. Citing Fujian Mach. & Equip. Import & Export Corp. v. United States, 178 F. Supp. 2d 1305, 1334 (CIT 2001), Nachi asserts that, while a finding of willfulness is not required in order for the Department to determine that a party has not cooperated to the best of its ability, the Department must "tread especially carefully" in cases, such as this one, where the respondent has responded in a timely fashion to numerous requests for voluminous information and cooperated fully with the Department's requests at verification. Citing Nippon Steel Corp. v. United States, 337 F.3d 1373, 1383 (CAFC 2003), Nachi argues that a completely errorless review is not a reasonable expectation and that the CAFC has recognized that the standard does not require perfection. Nachi asserts further that the fact that the Department found no other errors, that Nachi participated in the original investigation and many of the subsequent reviews without any problems whatsoever in reporting physical characteristics, and that this is the first review in which it has been required to report individual physical characteristics – all of which, Nachi claims, supports the position that using an adverse inference is inappropriate. Nachi argues that, where the use of facts available is justified, it should use the weighted-average of all possible normal values for the U.S. sale, including normal value calculated based upon constructed value.

Nachi argues that the Department's selected rate for use as adverse facts available is inappropriate. Nachi contends that the Department's discretion in determining the adverse facts available is not unbounded. According to Nachi, the use of adverse facts available must be a reasonably accurate estimate of the respondent's actual rate, it may not be punitive, aberrational, or uncorroborated, and it must be probative of what Nachi's actual rate would likely have been. Nachi asserts that the rate the Department applied bears no relationship to Nachi's pricing and cost structure in the current review because it is an outdated rate based upon a segment of the proceeding that is seventeen years old. Nachi also contends that this rate is clearly punitive because it is almost three times the highest rate the Department found in any of the past sixteen years and almost five times the rate the Department found in the most recent review in which Nachi participated.

Nachi asserts that the Department's attempt at corroborating the rate it used actually demonstrates how little probative value the rate actually has. According to Nachi, the corroboration requirement is not satisfied by examining only those transactions with positive margins as the Department has done. Rather, Nachi asserts, the requirement is that the adverse facts-available rate must bear some rational relationship to the actual rate that it would have found for all transactions, not just positive-margin transactions. Nachi argues that, if the Department determines that the use of an adverse inference is justified, it should use the highest of all possible normal values calculated using Nachi's submitted data based upon the matches the Department might make given the rules of its model-matching methodology.

Timken argues that the Department should not modify its application of adverse facts available with respect to Nachi. With respect to models that are identical with regard to the eight characteristics, Timken contends that the universe of such models may include models which do not actually have the same characteristics as the U.S. models because they were misreported. As a result, Timken asserts, the reporting errors do have an effect even for models where the reported characteristics are identical.

With respect to sales of parts, Timken alleges that the Department did not use such sales in its calculation of Nachi's margin because Nachi qualified for the special rule for further-manufactured subject merchandise. Timken argues that the Department's use of a rate that is determined on all other sales, including sales for which only similar comparisons were available, is appropriate and in keeping with the Department's usual practice.

With respect to those models for which the Department collected the correct characteristic data at verification, Timken argues that correction of the characteristics for these models does not end the issue for these models. According to Timken, correct information for other models that were likewise incorrectly reported but were not examined by the Department could yield additional comparison models.

With respect to standard models, Timken contends that, of the models the Department examined, one model did contain an error. Moreover, Timken argues, the Department's model-matching methodology does not differentiate between models based on whether they are included in the producer's catalog or are specialty products.

Timken contends further that the errors the Department found were significant. Timken asserts that the proper comparison is the number of errors versus the number of models examined. Timken observes that the Department found 19 errors among 16 of the 40 models it examined at verification and argues that the Department concluded correctly that this is a significant rate by any standard.

Timken contends that Nachi's citation to <u>Color Picture Tubes</u> is unavailing because the respondent's failure in that case was not systemic; the failure consisted of missing constructed-value data for some U.S. sales. Timken asserts that, in Color Picture Tubes, the number of U.S. sales concerned was very small and that the missing data would have prevented a normal-value calculation based upon constructed value, assuming that normal value could not be based upon home-market prices. Timken asserts that, by comparison, Nachi's failure affects all instances where comparisons to similar, not identical, merchandise occurs.

Timken also rebuts Nachi's argument that this is the first review in which it was required to report the physical characteristics. Timken asserts that the reported characteristics are the same characteristics that all respondents have been required to report in prior reviews. Thus, Timken contends, there were no novel data to be collected. Timken also argues that Nachi's assertion that it had no problems in reporting physical characteristics in prior reviews is meaningless because respondents were permitted to report more limited databases. According to Timken, the more limited database likely did not aid the discovery of reporting errors.

Finally, Timken argues that the adverse facts-available rate the Department used is neither punitive nor outdated. Timken contends that the Department applied the rate only to similar comparisons, not to all comparisons. As a result, Timken alleges, a comparison with Nachi's overall weighted-average dumping margins in past reviews is not instructive. Timken argues further that the rate is not outdated because, as the Department stated in its corroboration analysis, a significant portion of sales observations with positive margins (using identical comparisons which were not affected by Nachi's errors) had a margin equal to or greater than the rate the Department used.

Department's Position: While we continue to find that the use of adverse facts available is warranted, we have made some changes to our calculations in response to Nachi's comments. We address the application of adverse facts available first and such changes later in this position. Section 776 of the Act provides two distinct parts that address two circumstances under which we have received less than the full and complete facts needed to make a determination. See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1381 (CIT 2003). If a respondent "fails to provide {requested} information by the deadlines for submission," or "provides such information but the information cannot be verified," the Department shall "fill in the gaps with 'facts otherwise available.'" See section 776(a)(2)(B) and (D) of the Act and Nippon Steel Corp., 337 F.3d at 1381. Section 776(b) of the Act permits the Department to "use an inference that is adverse to the interests of {a respondent} in selecting from among facts otherwise available" only if the Department makes the separate determination that the respondent "has failed to cooperate by not acting to the best of its ability to comply." See section 776(b) of the Act and Nippon Steel Corp., 337 F.3d at 1381. Such an adverse inference may include reliance on information derived from the final determination in the investigation. See section 776(b)(2) of the Act.

As we explained in the AFBs 16 Prelim, 71 FR at 12172, we found at verification that Nachi reported incorrect physical characteristics for a number of models. See Nachi Verification Report dated February 9, 2006, at pages 4-5. Specifically, we found that Nachi reported incorrect physical characteristics for 16 of the 40 models we examined at verification.

As we explained in the verification report, because we found errors with respect to several of the first 10 models we examined, we selected an additional 10 models for verification. Id. Because we found errors with respect to several of the additional 10 models we selected, we selected an additional 10 models sold in the home market and an additional 10 models sold in the United States. We found errors with respect to several models of the additional 10 home-market models and we found errors with respect to several models of the additional 10 U.S. models we selected. Id. Thus, each time we selected additional models for verification, we found additional models with incorrectly reported physical characteristics. Because of the significant number of errors and the pervasive nature of those errors discovered through the additional selection of home-market and U.S. models, we conclude that the reporting errors were systemic in nature. Accordingly, we determine that it is appropriate to use facts available in this case because Nachi misreported its physical characteristics for a substantial proportion of its models. Because the correct physical characteristics appeared on Nachi's technical drawings and in its catalogs that we examined at verification, we find that Nachi's failure to report the critical information accurately indicates that the company did not act to the best of its ability in reporting the information. Moreover, because Nachi did not act to the best of its ability in reporting these characteristics, it is appropriate to use adverse inferences in addressing the errors in the characteristics Nachi reported in accordance with section 776(b) of the Act.

The matching of U.S. and home-market models is at the core of our antidumping duty analysis because it determines which sales are used as the basis for normal value. In order to conduct an accurate model match we must be satisfied that the physical characteristics the respondent reports for its sales are accurate. Because we found at verification that Nachi reported incorrect physical characteristics for a substantial proportion of its models, however, we are not satisfied that we can make accurate comparisons of similar merchandise using Nachi's reported physical characteristics. Moreover, we cannot be certain that, for any of the U.S. sales for which we would not find a match using Nachi's reported physical characteristics, we would not find a similar match had Nachi reported its physical characteristics correctly. Accordingly, we can have no confidence in the normal values we would identify (or, in the case of constructed value, do not identify) using Nachi's reported physical characteristics and, therefore, we cannot calculate accurate dumping margins for those U.S. sales.

We disagree with Nachi that the errors are insignificant. As we stated in the verification report, we found errors for 16 of the 40 models we examined. See Nachi verification report dated February 9, 2006, at page 4. While it is true that there are eight physical characteristics for each model, the incorrect reporting of just one of these characteristics can distort the model match and lead to inaccurate comparisons and margins. To see how this can happen, consider a hypothetical example where a U.S. model with a load rating of 10,000 has two possible home-market matches: one is a model whose actual load rating is 10,200 and the other is a model whose actual load rating is 10,300. Thus, we should match to the first home-market model. If the respondent reported the load rating for the second model incorrectly as 10,100, however, we would match to the second model instead of the first model. Thus, we would make the wrong comparison and, as a result, would base normal value on the wrong home-market prices.

Moreover, we find that our determination that the errors were systemic in nature was warranted. As we describe above, initially we selected 10 models for verification and, because we found errors in the physical characteristics Nachi reported for several of these models, we selected an additional 10 models for verification. Because we found more errors with respect to several of these additional models, we selected two more sets of 10 models: 10 home-market models and 10 U.S. models. We found more errors with respect to several models within each additional set of models we selected. Thus, for every group of 10 models we selected at verification, we found a number of models for which Nachi reported incorrect physical characteristics. The fact that we found more incorrectly reported characteristics every time we examined additional models indicates that the errors were systemic in nature.

Nachi's assertion that the sample size we examined at verification was too small and unrepresentative is unavailing. We allotted one week to verify Nachi's home-market sales. In that week, in addition to verifying the physical characteristics Nachi reported for its sales, we verified the quantity and value of Nachi's home-market sales, conducted a number of sales traces, and verified a number of adjustments and expenses that Nachi reported. See Nachi verification report dated February 9, 2006, at pages 2-10. Thus, it would not be possible for us to examine the characteristics for all of the models a respondent reports in its sales database during the limited time for conducting verification of the data. Similarly, it would not be feasible to do a substantially more comprehensive examination of hundreds of models to enlarge the sample size. Given that we found additional errors for individual models within each additional 10 models we selected, however, we do not have any reason to believe that we would not have continued to find errors had we enlarged the sample size.

Furthermore, such a comprehensive examination is not necessary. The CAFC has held that our methodology of a spot-check is reasonable. See Micron Tech. v. United States, 117 F.3d 1386, 1396 (CAFC 1997), citing Monsanto Co. v. United States, 733 F. Supp. 1507, 1508 (1990) ("{v}erification is a spot check and is not intended to be an exhaustive examination of the respondent's business"). At verification, we conduct a spot-check to test information provided by a party for accuracy and completeness and do not conduct a full-scale audit to test an entire universe because such an examination would be unrealistic. Id. In this case, our initial spot-check resulted in a finding of incorrectly reported characteristics. We then expanded our examination to ascertain whether the results of the initial spot-check were indicative of systemic problems or simply a fluke. As we describe above, our expanded examination indicated that the results of the initial spot-check was indicative of systemic problems.

Nachi's challenge of the purportedly small size of our spot-check verification actually undermines Nachi's arguments on this point. The 10 models we selected initially for verification corresponded to the models for which we performed our sales traces during the verification. The sample size (10) of the sales traces we performed at verification was proportionally much smaller than the sample size (40) of the models whose physical characteristics we examined at verification. Nachi essentially requests that we presume that the latter sample is too small yet, because there were no errors with the sales traces, that the former sample would not be too small. Such a conclusion is illogical. Moreover, if this were the case, then we could not conduct verifications of any but the smallest companies because we simply do not have the time to examine hundreds or thousands of transactions in a week nor do we have the resources to devote multiple weeks to a verification to conduct such an examination. As described above, however, this is not the case and we may reasonably infer both that Nachi reported the prices and quantities of its sales transactions correctly and that the errors we found in Nachi's reported physical characteristics were systemic in nature.

Accordingly, we must use the facts available to calculate the margin for U.S. sales for which we found no identical match. As we described the AFBs 16 Prelim, 71 FR at 12172, we found that, where we identified an identical match, we could use that price as the basis for normal value because we do not identify identical models on the basis of the physical characteristics in this proceeding. Because the errors in the reported physical characteristics were systemic in nature and can distort the model match, however, we cannot be sure that the similar matches we find using Nachi's reported physical characteristics are actually matches of the most similar models. Moreover, we cannot be sure, where we find no similar matches using Nachi's reported physical characteristics, that no similar matches actually exist because Nachi reported the characteristics of those potential matches incorrectly. Therefore, we determine that we must use the facts available for any of Nachi's U.S. sales for which we did not find a contemporaneous identical match.

Furthermore, we determine that the use of an adverse inference is warranted because Nachi did not act to the best of its ability in reporting the physical characteristics of the models it sold. While we agree with Nachi that there is no indication that the errors were anything but inadvertent, the fact is that Nachi had the correct data available to it in the technical-specification sheets it maintains in its normal course of business and in its catalog. Nachi has not proferred an adequate or reasonable justification for why it could not have reported the correct characteristics. A respondent satisfies the statutory mandate to act to the best of its ability when the respondent does "the maximum it is able to do" in meeting the Department's requests for information. China Steel Corp. v. United States, 306 F. Supp. 2d 1291, 1303-04 (CIT 2004) citing Nippon Steel Corp., 337 F. 3d at 1283. To determine whether a respondent has not cooperated to the best of its ability and draw an adverse inference under section 776(b) of the Act, the Department must make two findings: 1) the Department must decide objectively whether a reasonable respondent would have known that the requested information was required to be kept and maintained under the antidumping statute; 2) the particular respondent failed to timely produce the requested information and the respondent's failure to respond resulted from either its failure to keep and maintain the information or put forth its maximum efforts to locate and acquire the information from its records. Id.

Here, we find that Nachi knew that the product-characteristic data we requested was required to be kept and maintained in its business records for antidumping pruposes because we have required Nachi, and all respondents, to provide such information in every review since the first review. See, e.g., Ball Bearings and Parts Thereof from France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of

Administrative Reviews, and Notice of Intent to Revoke Order In Part, 68 FR 6404, 6408 (February 7, 2003), where we explained that "a bearing family consists of all bearings which contain the same following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width." These physical characteristics are the same characteristics we attempted to verify with respect to Nachi in the instant review. We find that Nachi did not make efforts to comply with the "best of its ability" standard because it had the information available to it in the form of technical drawings and catalogs. We used these technical specifications and catalog descriptions provided by Nachi at verification to compare them for accuracy against the reported physical characteristics. Based on this comparison we discovered that Nachi reported incorrect physical-characteristic data in its response. Nachi did not report its physical-characteristic data correctly and, because there is no reason Nachi could not have done so, we conclude that Nachi did not act to the best of its ability in reporting the physical characteristics of the models it sold.

Nachi offered as a mitigating circumstance the fact that it did not have to report the physical characteristics in its sales databases in the previous reviews in which it has participated. We find this explanation to be unsatisfactory. As we explain above and as Timken observes, the family-matching methodology we have used since the 1988-90 administrative reviews of these orders used the same eight characteristics which we examined at verification in this review. Thus, we have required respondents to report these characteristics in every review since the 1988-90 administrative reviews, albeit in a sales-summary file and not in the sales databases themselves. Nachi reported the sales-summary databases, however, with it's September 25, 2005, questionnaire response, just as it has done in every review in which it participated prior to this review. The only novel instruction in this review was for Nachi to incorporate the characteristics from the sales-summary databases into the home-market and U.S. sales databases which it submitted. Nachi has not explained, nor are we aware of any reason, why doing this would be problematic or difficult. Thus, the fact is that Nachi did have to report the physical characteristics in its sales databases in every previous review in which it has participated.

We also find that the rate we used is appropriate. As we explained in the preliminary analysis memorandum for Nachi dated March 2, 2006, at page 3, we were able to corroborate the margin on the grounds that, of the transactions for which we calculated a positive margin, a substantial number of such transactions had a margin greater than the adverse facts-available rate which we selected. Nachi's argument that this rate is higher than the weighted-average margin we have calculated for Nachi in any of the reviews in which it has participated and its complaint that we performed our corroboration analysis using only positive-margin transactions are unavailing. First, we are using the rate to calculate the margin for individual transactions Nachi reported. Second, as we describe above, we are making an adverse inference. Because we are making an adverse inference, limiting our attempt to corroborate the rate to only positive-margin transactions is appropriate. Furthermore, even if we did not so limit our corroboration attempt, the percentage of transactions with such a margin is, contrary to Nachi's characterization, significant, especially in light of the fact that we are making an adverse inference (Nachi calculated the percentage of transactions with such a margin over all sales on page 36 of its April 25, 2006, case brief). Also, because we were able to corroborate the margin with respect to a significant number of Nachi's U.S. sales with identical matches in the current review, we find that the adverse facts-available rate we have selected is not outdated.

In addition, we have not adopted Nachi's suggestion that we use the highest normal value of all potential matches we identify using our model-match methodology instead of attempting to select the most similar match. Because we determine that the adverse facts-available rate we used for the preliminary results is appropriate, it is not necessary to look for alternatives to that rate.

Finally, Nachi proposes a number of exceptions that it claims do not warrant the use of facts available. First, Nachi proposes that matches of products with the identical eight physical characteristics should not be subject to the use of facts available. Nachi's misreported physical-characteristics information undermines the reliability of the matches of products with the identical eight physical characteristics using Nachi's data. For any such match we find, it is possible that the characteristics of one (or both) of the products were reported by Nachi incorrectly. Thus, we cannot be sure that the match is an appropriate match and must use the facts available.

Nachi also argues that we should not use the facts-available models for which we would find a match in the same bearing series as the U.S. model. We agree with Nachi. The record does show that models that are in the same bearing series are essentially the same bearing with relatively minor modifications (e.g., one model might have steel shields whereas another might have rubber seals). See Nachi's section A response dated September 25, 2006, at Exhibit A/7.d. We determine that, in instances where our model-matching methodology resulted in a match to a model in the same bearing series as the U.S. model, it is very likely that the home-market model we selected is, in fact, the most similar model. Therefore, in such instances, the use of facts available is not necessary and we have used the actual prices of the home-market models.

Second, Nachi proposes that the Department should not apply facts available to U.S. sales of parts which were further-manufactured in the United States. We agree with Nachi. With respect to the sales of parts, if we can find no appropriate identical match, we do not make an attempt to find a similar match. See the decision memorandum to the file from Mark Ross to Jeffrey May dated July 7, 2004, on the record of the 2003/04 administrative reviews at page 3. Therefore, had we not applied the special rule for further manufacturing with respect to Nachi, the errors in Nachi's reported physical characteristics would not have affected our margin calculation with regard to Nachi. This is because the sales of further-manufactured parts could only be compared to home-market sales of the identical part or to constructed value; we would not attempt to use physical-characteristic data in order to select a similar match for sales of parts in the United States. Therefore, we find it is appropriate to calculate the margin for imported parts that were further-manufactured using only the margins for those sales for which we did not use adverse facts available as the margin due to unreliable similar matching.

Third, Nachi proposes that the Department should not apply facts available to the forty models whose physical characteristics the Department verified. This proposal suffers for the same reason as Nachi's proposal to not apply facts available to matches with the identical eight physical characteristics. There are an indeterminate number of models which we did not examine at verification for which Nachi may have reported incorrect physical characteristics. Thus, even if the U.S. sale and the home-market sale to which we compare it are both of the forty models whose characteristics we verified, we cannot be sure that there is not another home-market model that would be a more similar match but for which Nachi reported one or more incorrect physical characteristics. For example, even if we found a home-market match for a U.S. sale where both the model sold in the home market and the United States were among the 40 models we examined at verification, there may be another home-market model that is more similar still but which we do not identify in our model-matching methodology because Nachi reported the physical characteristics for this second home-market model incorrectly. Thus, we cannot be sure that the match is an appropriate match and must use the facts available if the U.S. model does not match to an identical model Nachi sold in the home market.

Fourth, Nachi proposes that the Department should not apply facts available to standard models. Nachi does not provide a definition of "standard" models but appears to suggest that models that are in its catalog are standard models. As Timken observes, however, we do not distinguish between standard models and specialty models in our model-matching methodology. Thus, the most appropriate match for a standard model might well be a specialty model and vice versa. Instead, and as a result, we cannotbe sure that the match is an appropriate match and must use the facts available.

Finally, Nachi proposes that the Department should not apply facts available to U.S. sales of models which do not have the same bearing design, load direction, number of rows, and precision grade as any models sold in the home market. We agree with Nachi. Although it is true that we found that Nachi reported an incorrect bearing design and load direction for one model, that model was in the first 10 models we selected for examination at verification. See Nachi verification report dated February 9, 2006, at page 4 (the fact that the model was in the first 10 models we selected can be seen from the fact that we listed the observation number for that model). When we selected additional models for examination in order to ascertain whether the error was systemic in nature, we did not find any other models for which Nachi reported an incorrect bearing design or load direction (we found no models whatsoever for which Nachi reported the incorrect number of rows or precision grade). Thus, although we find that the errors in the other characteristics, particularly width and load rating, are systemic in nature and may distort the model match, we determine that the error we found with respect to bearing design, load direction, number of rows, and precision grade are not systemic in nature. Accordingly, we based normal value on constructed value for those U.S. sales of models which do not have the same bearing design, load direction, number of rows, and precision grade as any models sold in the home market.

5. Inventory Carrying Costs

<u>Comment 11</u>: NTN contends that the Department erred in requesting NTN to

recalculate inventory carrying costs applicable to NTN's CEP sales. Specifically, NTN argues that the Department's policy of treating inventory carrying costs that occur after the merchandise enters the United States as having been incurred in the United States, regardless of whether the respondent or its U.S. affiliate actually finances the cost, is at odds with financial and commercial reality.

First, NTN argues that, regardless of when its U.S. affiliate actually takes title to merchandise or when the product enters the territory of the United States, the duration of NTN's burden of financing the inventory rests with NTN until its U.S. affiliate makes a payment under the terms of sale. As such, NTN argues, the Department should apply the short-term interest rate of the party actually financing the inventory carrying costs. Therefore, NTN argues, the Department should use NTN's yen-denominated short-term rate associated with its terms of payment (i.e., for a time period after the merchandise enters the United States and before its U.S. affiliate makes a payment for its purchases from NTN).

Second, NTN argues that, in light of the Department's policy of treating all inventory carrying costs that occur after the merchandise enters the United States as inventory carrying costs incurred in the United States, the Department erred in using a U.S. short-term rate for a period of time prior to the entry of the merchandise into the United States. As such, NTN argues, the Department should have used NTN's short-term rate based on yen-denominated loans instead of using its U.S. affiliate's U.S. rate due to the fact that NTN did not have short-term loans denominated in U.S. dollars.

Timken argues that the Department's instruction requiring NTN to recalculate its U.S. inventory costs was warranted. In support of its argument, Timken cites AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 18, Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Administrative Review, 68 FR 11045 (March 7, 2003), Industrial Nitrocellulose from the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review, 67 FR 52447 (August 12, 2002), Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Administrative Review, 67 FR 10371 (March 7, 2002), and Import Administration Policy Bulletin No. 98.2, Imputed Credit Expenses and Interests Rates (February 23, 1998).

Timken argues that the Department recalculated U.S. inventory costs accurately so that the cost of time in inventory after goods arrive in the United States is treated as having been incurred in the United States. In support of its argument, Timken cites AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 18, AFBs 6, and AFBs 9. Timken contends that the issue of which party, whether parent entity or its U.S. affiliate, ultimately finances cost of inventory is irrelevant to the issue of whether the expense was incurred in the country of manufacture or in the United States. Timken contends further that the terms of transaction between the parent and its affiliate are also irrelevant to the issue of which interest rate should be used. Timken argues that the U.S. interest rate is the only appropriate rate to use because it reflects an opportunity cost associated with the delayed receipt of U.S. dollars on sales by the affiliate to unaffiliated U.S. customers.

Department's Position: We agree with NTN that a party which extends the payment terms to its U.S. affiliate carries the financial burden of financing the inventory and it is that party's short-term interest rate that we should use in calculating inventory carrying costs corresponding to a period to which such terms of payment are tied. In fact, this practice was upheld by the CAFC. Specifically, in Timken Co. v. United States, 858 F. Supp. 206, 212-213 (CIT 1994), the Court agreed with the Department's conclusion that, "if the payment terms that the parent extends to its subsidiary, in combination with the time the merchandise remains in the subsidiary's inventory, indicates that the parent bears the cost of carrying the merchandise for a portion of time the merchandise is in inventory, then the parent's short-term interest rate will be used to calculate that portion of the inventory carrying cost." In that case, the Court upheld the Department's recalculation of the U.S. inventory carrying cost of NSK's U.S. subsidiary using NSK's short-term interest rate in Japan in favor of using NSK's U.S. subsidiary's short-term interest rate in the United States for the time that NSK bears the cost of carrying the inventory. Therefore, we have recalculated a portion of NTN's U.S. inventory carrying cost using NTN's yen borrowing rate commensurate with the payment terms NTN extends to its affiliate because such payment terms demonstrate that NTN bears the cost of carrying the merchandise for a portion of the time that the merchandise is in inventory. See also AFBs 9, 64 FR at 35620.

As observed correctly by NTN, because our policy is to treat all inventory carrying costs that occur after the merchandise enters the United States as inventory carrying costs that occurred in the United States, we erred in treating the inventory carrying costs applicable to the time period associated with ocean transit as having occurred in the United States. Our July 5, 2005, questionnaire instructions at pages C-31 and C-32 indicate that only inventory carrying costs incurred from the time of final production to the time of arrival in the United States should be treated as inventory carrying costs incurred in the country of manufacture. NTN reported that it takes approximately two weeks for the merchandise to reach the U.S. territory. See the memorandum to file entitled "Home-Market and Export-Price Sales Verification Report of NTN Corporation: 2004-2005 Administrative Review of the Antidumping Duty Order on Ball Bearings and Parts Thereof from Japan," dated January 3, 2006 (NTN 2006 HM Verification Report), at 16. Accordingly, we have recalculated inventory carrying costs incurred in the United States for NTN's CEP sales by reducing the inventory carrying period in the United States by 14 days. We have also recalculated inventory carrying costs incurred in Japan for NTN's CEP sales by increasing the inventory carrying period in Japan by 14 days. Further, in light of our position that the parent company's burden of financing the inventory is commensurate with the payment terms it extends to its affiliate, we have recalculated inventory carrying costs incurred in Japan for NTN's CEP sales by applying NTN's yen-denominated short-term rate to the inventory carrying period from the time of production to the time of shipment to NBCA.

Comment 12: Timken argues that the Department should recalculate Nachi's home-market inventory carrying costs. Timken claims that Nachi's home-market inventory carrying costs were calculated using "unit value" whereas its U.S. inventory carrying costs were based on adjusted transfer price. Timken asserts that these calculation bases are inconsistent and, citing Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049, 14055

(March 29, 1996), and Extruded Rubber Thread from Malaysia, Final Results of Antidumping Duty Administrative Review, 63 FR 12752, 12760 (March 16, 1998), argues that the Department's practice is to recalculate inventory carrying costs so that they are on consistent bases in the comparison market and the United States. Timken alleges further that allowing the calculation of inventory carrying costs using different bases in different markets distorts the margin calculation because it results in a greater downward adjustment to normal value.

Nachi argues that the Department should continue to accept its reported home-market inventory carrying costs. Nachi asserts that it calculated the average number of days in inventory using average monthly shipment values. Nachi contends that, because of this, the use of the unit value of the merchandise to calculate the inventory carrying expense is appropriate to ensure an apples-to-apples calculation. Nachi also argues that any potential distortion arising from the use of the value of the shipped units instead of cost or inventory value would be extremely small and well below the de minimis threshold. Finally, Nachi asserts that the Department accepted Nachi's reporting methodology in AFBs 12.

Department's Position: Companies generally value the cost of their finished-goods inventory using the costs incurred to manufacture their products rather than the value of future sales. Furthermore, it is the Department's practice to calculate inventory carrying costs based on COM. See, e.g., Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review, 63 FR 12752, 12760 (March 16, 1998), Final Determination of Sales at Less than Fair Value: Canned Pineapple Fruit from Thailand, 60 FR 29553 (June 5, 1995), and Certain Corrosion-Resistant Carbon Steel Flat Products from Australia: Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049, 14055 (March 29, 1996). Therefore, based upon the Department's practice and to ensure an apples-to-apples comparison, we have recalculated both home-market and U.S. inventory carrying costs using COM for purposes of the final results.

Comment 13: Nachi argues that the Department should use Nachi's reported U.S. inventory carrying costs. Nachi asserts that, when the Department recalculated Nachi's inventory carrying costs in order to use a short-term interest rate tied to the currency in which the sales are denominated, it relied improperly on Import Administration Policy Bulletin 98.2 to support its position. According to Nachi, Policy Bulletin 98.2 outlines the Department's policy with respect to selecting surrogate interest rates when respondents do not have short-term U.S. dollar-denominated borrowing and has nothing to do with appropriate interest rates for calculating inventory carrying costs. Citing AFBs 9, 64 FR at 35620, Nachi asserts that the Department stated that, "where the payment terms that an exporting company extends to its affiliate and the time that the merchandise remains in the affiliate's inventory, indicate that the exporting company bears the cost of carrying the merchandise for a portion of time that the merchandise is in inventory, then the exporting company's short-term interest rate will be used to calculate that portion of the inventory carrying costs." Nachi contends that this practice was upheld by the Court in Timken Co. v. United States, 858 F. Supp. 206, 212 (CIT 1994).

Timken argues that the Department recalculated Nachi's U.S. inventory carrying costs correctly. Timken asserts that the precedent Nachi cites applied to the pre-URAA law. Citing AFBs 9, 64 FR at 35619, Timken contends that the Department explained that the question of who (the affiliate or the parent) bears the ultimate financial cost of the expense is irrelevant in determining whether to deduct an expense from CEP. Timken claims that it is likewise irrelevant to determine which interest rate should be used. Timken argues that, as the expense reflects an opportunity cost associated with the delayed receipt of U.S. dollars on sales by the affiliate to unaffiliated U.S. customers, only the U.S. interest rate is appropriate.

Department's Position: We agree with Nachi in part. In keeping with our practice in AFBs 9, we have recalculated a portion of Nachi's U.S. inventory carrying cost using Nachi's yen borrowing rate because Nachi's payment terms to its U.S. affiliate demonstrate that Nachi bears the cost of carrying the merchandise for a portion of the time that the merchandise is in inventory. See AFBs 9, 64 FR at 35620. We have not used Nachi's reported U.S. inventory carrying costs, however, because Nachi included only those inventory carrying costs borne by the U.S. affiliate in its reported expense. See Nachi's September 26, 2005, section C response at exhibit C/45.2. We have recalculated Nachi's U.S. inventory carrying costs to include both the inventory carrying costs borne by the U.S. affiliate and the inventory carrying costs incurred by Nachi once the merchandise entered the United States. In keeping with AFBs 9, the inventory carrying costs incurred outside the United States (i.e., in the foreign country and in transit to the United States) may be excluded properly from the inventory carrying costs incurred in the United States, which we deduct from CEP. See AFBs 9, 64 FR at 35619. For the time following the arrival of the merchandise in the United States, however, we deduct all of the inventory carrying costs Nachi incurred from CEP because they are associated with economic activity in the United States regardless of the entity which bears the costs.

Comment 14: Timken argues that the Department should recalculate JTEKT's home-market inventory carrying costs so that they are based on the costs of the merchandise rather than the reported prices of the merchandise. Timken observes that JTEKT's calculation is not consistent with its calculation of U.S. inventory carrying costs, which are based on product costs, and asserts that JTEKT's approach is contrary to Departmental practice which is to calculate inventory carrying costs in both markets on product-specific costs, citing Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049 (March 29, 1996), and Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review, 63 FR 12752 (March 29, 1996), in support of this claim. Timken also asserts that JTEKT's approach distorts the margin calculation because inventory carrying costs based on prices result in a greater downward adjustment of home-market sales prices than carrying costs based on product-specific costs.

JTEKT rebuts that the Department should continue to accept the manner in which it calculates its home-market inventory carrying costs and comments that the Department reviewed and accepted its calculation methodology in AFBs 14. JTEKT explains that, in that review, it clarified in a supplemental questionnaire response that it multiplies the factor for home-market inventory carrying costs by reported sales prices because the factor is calculated by dividing the value for the average inventory balance by a sales value, namely the average daily sales. JTEKT adds that, conversely, the factor for U.S. inventory carrying costs is multiplied by the model-specific costs in order to calculate the U.S. inventory carrying costs because the factor is calculated by dividing the average landed cost value of inventory maintained during the period of review by a cost value, namely the average landed cost of goods sold during the period of review. Thus, JTEKT concludes, there is no inconsistency between the methods it used to calculate the home-market and U.S. inventory carrying costs and revision of one or the other would lead to distortive results.

JTEKT argues that Department determinations which Timken cites do not address the issue of the appropriate multiplier to be used when the carrying-costs factor has been calculated by dividing the average inventory value by a sales value. JTEKT asserts that, in such an instance, the multiplier used to calculate amounts for inventory carrying cost must be consistent with the sales-based value used in the denominator of the factor calculation. JTEKT contends that, if the Department recalculated home-market inventory carrying costs by multiplying the carrying-cost factor by model-specific costs, it would result in a distorted and mathematically incorrect calculation of the carrying costs.

JTEKT stresses that the Department has accepted its calculation methodology for home-market inventory carrying costs in each prior AFB review and in many administrative reviews of the orders on tapered roller bearings from Japan as well. It comments that the Department verified the calculation in AFBs 14 and that there is no basis for the Department to reconsider its acceptance of the methodology at this late point in time.

Department's Position: A review of exhibit 11 of JTEKT's section B response shows that it calculated its home-market inventory carrying costs by dividing an average inventory balance by the average amount of daily sales, applying the quotient to an interest-rate factor (obtained by dividing JTEKT's annual interest rate by 365 days), and applying the resulting inventory-carrying-cost factor to its reported home-market sales prices. It is clear from the exhibit that the division of the inventory balance by the daily sales amount yields an average number of days in inventory. This time-based factor is then applied to the daily interest rate in order to obtain the factor for capturing inventory carrying costs.

As discussed in response to Comment 12 above, it is the Department's practice to calculate inventory carrying costs based on the COM. See, e.g., Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review, 63 FR 12752, 12760 (March 16, 1998), Final Determination of Sales at Less than Fair Value: Canned Pineapple Fruit from Thailand, 60 FR 29553 (June 5, 1995), and Certain Corrosion-Resistant Carbon Steel Flat Products from Australia: Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049, 14055 (March 29, 1996). We do not agree with JTEKT's conclusion that the carrying-cost factor may only be applied properly to sales-based amounts because a sales amount was used to calculate the average amount of time in inventory. We know of no mathematical error or distortion arising from the application of this factor to COM nor has JTEKT identified one. Because the calculation of the factor was not based on the allocation of actual sales expenses, it is not necessary to apply the factor to sales amounts or prices.

In addition, we agree with Timken that application of the carrying-cost factor to the reported COM, as opposed to sales-specific costs, will permit the calculation of product-specific carrying costs more accurately. Thus, in order to obtain results that are consistent with our practice and in terms of product type, we have applied JTEKT's carrying-cost factor to the COM of products for our calculation of the final margin for JTEKT.

6. Freight Expenses

Comment 15: NTN asserts that the Department's allocation of freight expenses based on shipment weight, instead of acceptance of NTN's use of value of product shipped as an allocation basis, is not justified because the Department departed from its past practice of accepting value-based allocations in previous administrative reviews involving NTN. Citing Shikoku, Atchison v. Wichita Bd. of Trade, 412 U.S. 800 (U.S. 1973) (Atchison), Greater Boston Television Corp. v. FCC, 444 F.2d 841 (D.C. Cir. 1970) (Greater Boston Television), cert. denied, 403 U.S. 923 (U.S. 1971), and Ramaprakash v. FAA, 346 F.3d 1121 (D.C. Cir. 2003) (Ramaprakash), NTN argues that, absent a rational explanation or an analysis, the Department is required to not deviate from its established practice of accepting NTN's value-based allocation of freight expenses in instances when the underlying facts presented to the Department have not changed.

Citing Shikoku, Melamine Chemicals, Inc. v. United States, 732 F.2d 924 (CAFC 1984), Budd Co., Wheel & Brake Div. v. United States, 746 F. Supp. 1093 (CIT 1990), Burlington Northern & Santa Fe Ry. v. Surface Transp. Bd., 403 F.3d 771 (D.C. Cir. 2005) (Burlington), NTN contends that the Department did not act fairly in its administration of the antidumping law in that the Department singled out NTN as the only respondent in the current administrative reviews of the antidumping duty orders on bearings to re-calculate freight expenses using a weight-based allocation methodology. NTN argues that, because the Department stated that it considers a change of an allocation basis from value-based to weight-based "a significant change in practice," the re-recalculation of freight expenses affected only NTN adversely, not other respondents, and the Department did not provide a notification of such a change prior to its implementation. NTN cites the March 2, 2006, Memorandum to Laurie Parkhill entitled "Administrative Review of the Antidumping Duty Order on Ball Bearings and Parts Thereof from Japan; Examination of Allocation Basis Used in the Calculation of Freight Expenses" (Freight Memorandum).

NTN contends further that the Department's reliance on certain data applicable to two U.S. sales transactions which it presented for purposes of exemplifying how a value-based allocation of freight expenses masks dumping is ineffective and misleading, referring to Attachment IV-A of the March 2, 2006, Memorandum to File entitled "Ball Bearings and Parts Thereof from Japan: NTN Corporation - Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order (5/1/04 - 4/30/05)" (NTN Preliminary Analysis Memo). Specifically, NTN argues that, with respect to the first depicted example, a change to a weight-based allocation results in an increase in that transaction's negative margin, not a change from negative to a positive margin, which NTN contends should have been the expected result if the Department's assertion of the masking of dumping holds true. With respect to the second depicted example, NTN argues that the Department's demonstration of how the masking of dumping occurs is flawed in that the U.S. transaction chosen by the Department for illustrative purposes uses the applicable bearing model's estimated weight and not that model's actual weight.

NTN argues that it is unreasonable for the Department to use a weight-based allocation methodology because, although NTN provided estimated weight[1] for bearing models for which it does not keep weight in its business records, the Department lacks the actual weight of these bearing models needed to implement its proposed methodology with an expectation that such methodology produces accurate results. Furthermore, NTN contends that shipment-specific weight and freight-expense data, obtained by the Department at its verification of NTN's CEP sales and which the Department used to compute a weighted-average factor representing the cost in U.S. dollars per net kilogram, causes distortions because it is based on a three-month period and is inclusive of data for non-subject merchandise. NTN argues that the Department's application of this computed factor to U.S. sales transactions of bearing models for which NTN provided an estimated weight results in an inaccurate re-calculation of freight expenses.

NTN argues that, if the Department continues to use a weight-based allocation of freight expenses for the final results of this review, it must use the following information, as provided by NTN in its April 7, 2006, submission in response to the Department's March 30, 2006, letter: 1) use the actual weight of certain bearing parts instead of an estimated weight; 2) compute and use a weighted-average U.S. dollars-per-kilogram factor based on shipments exclusive of non-subject merchandise; 3) use the revised model-specific estimated weights[2] instead of the estimated weighted-average weight figure NTN submitted previously in its November 17, 2005, supplemental questionnaire response.

Timken contends that NTN's argument that it had relied on the Department's acceptance of its value-based methodology in prior administrative reviews and thus the Department is precluded from re-calculating freight expenses on the basis of weight is without merit. Timken contends that NTN's reliance argument is not justified because the Department's preference has always dictated an allocation of expenses based on the basis on which the underlying expenses are incurred. In fact, Timken argues, the Department has rejected NTN's value-based reporting in previous reviews. Timken cites AFBs 10 and the accompanying Issues and Decision Memorandum at Comments 77 and 78, AFBs 11 and the accompanying Issues and Decision Memorandum at Comment 34, and AFBs 12 and the

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[1] NTN provided an estimated weight for the bearing models in question by calculating a weighted-average weight figure using the weight information of bearing models for which it does maintain weight information in its records (NTN's November 17, 2005, supplemental questionnaire response).

[2] NTN proposed a methodology to calculate estimated weight of each bearing model for which it does not maintain weight information in its business records (id., at pages 3-4 and Attachment 3).

accompanying Issues and Decision Memorandum at Comment 42. Further, Timken argues, the Department's questionnaire, issued to all respondents in this review, at pages B-20 and C-19 states expressly that, if a respondent allocates expenses on any basis other than the basis on which the expenses are incurred, it must demonstrate that the allocation methodology it uses does not produce distortions.

Timken also contends that NTN's argument that it was singled out unfairly from other respondents that use a methodology similar to NTN's is without merit. Timken argues that the Department has insisted continuously in previous reviews that NTN abandon or defend its allocation of freight expenses on the basis of value. Thus, according to Timken, the Department's decision to re-allocate NTN's expenses on the basis of weight in this review can hardly be deemed unfair. Moreover, citing AFBs 4 and AFBs 12 and the accompanying Issues and Decision Memorandum at Comment 49, Timken argues that the Department has rejected or reallocated freight expenses for other respondents where it found distortions in the respondents' allocations.

Citing the Freight Memorandum Timken argues that the Department has demonstrated fully why a value-based methodology to allocate freight expenses causes distortions in reported freight adjustments to prices and distortions in the calculation of an antidumping margin. Citing the NTN Preliminary Analysis Memo, Timken argues further that NTN's objections to the Department's transaction-specific examples supporting its analysis ignore the fact that the Department also analyzed the aggregate effects of distortions associated with NTN's reporting of freight expenses. In its rebuttal brief Timken provides further explanations supporting the Department's interpretation of the results associated with the specific examples the Department depicted in the NTN Preliminary Analysis Memo.

Finally, Timken urges the Department to reject NTN's contention that the Department's re-calculation of freight expenses is unlawful because it relied on estimated weight data provided by NTN and expense data covering only three months. Timken asserts that a lack of certain data or a lack of accurate data is a result of NTN's own failure to report properly the information requested repeatedly by the Department. Further, Timken argues, the Department should exercise its discretion in accepting certain weight and expense information submitted in NTN's April 7, 2006, letter.

Department's Position: The regulations at 19 CFR 351.401(g) state that "{t}he Secretary may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions." Further, section 351.401(g)(2) states that "{a}ny party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions."

In the numerous antidumping proceedings before it, the Department's practice with respect to the reporting of various adjustments, including freight expenses, has always been constant. That is, we have required the respondents to report adjustments to prices on the basis on which they incurred the underlying expenses. See, e.g., Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Japan, 56 FR 16300 (April 22, 1991), at Comment 4, NTN Bearing Corp. of Am. v. United States, 186 F. Supp. 2d 1257, 1274-1276 (CIT 2002), and SNR Roulements v. United States, 341 F. Supp. 2d 1334, 1350-1351 (CIT 2004) (SNR Roulements). Also, see our standard market-economy antidumping questionnaire, available on the Import Administration website at http://ia.ita.doc.gov/questionnaires/questionnaires-ad.html.

We recognize that respondents, including NTN, may incur a given expense on multiple bases. Our practice has been accommodating, inasmuch that, if transaction-specific reporting is not feasible, a respondent must allocate an expense using at least one of the bases on which the expense is incurred. Further, our practice has been consistent with the regulations such that we accept an allocation provided that we are satisfied that the allocation method used does not cause inaccuracies or distortions. See 19 CFR 351.401(g)(1). As pointed out correctly by Timken, NTN's value-based reporting of freight adjustments has been the subject of concern in a number of administrative reviews. See, e.g., AFBs 10, AFBs 11, AFBs 12, and AFBs 15. In none of these reviews did NTN attempt to report its freight expenses on the basis on which it incurs them (i.e., volume, distance, hourly truck usage, etc.), much less attempt to report its freight expenses on at least one of the bases on which it incurs its freight expenses. Moreover, in none of these past reviews did NTN attempt to support its value-based allocation as one that does not introduce distortions. The instant review is no different. Specifically, in our October 20, 2005, supplemental questionnaire we expressed our concern by telling NTN that it had not demonstrated that its value-based methodology to allocate freight expenses does not cause distortions. NTN did not address our concern in its November 17, 2005, response to our supplemental questionnaire.

What is different in this review, however, is that we conducted verifications of NTN's home-market and U.S. sales information. Through verification we assess the soundness of NTN's reporting methodology, we examine NTN's ability to report price adjustments in an manner consistent with our practice, and we compare our assessment and evaluation to the various claims NTN made in this review, claims which are identical to the claims NTN made in past reviews.

Specifically, NTN claims it is unable to report freight expenses on the basis on which they are incurred due to NTN's electronic book-keeping limitations as well as an absence of certain weight data. In its original and supplemental questionnaire responses NTN stated repeatedly that value-based reporting is the only viable option for NTN because NTN incurs freight expenses on multiple bases. NTN also denied repeatedly that any other allocation method is more practical or superior compared to its value-based methodology. See NTN's September 25, 2005, questionnaire response at pages B-29, B-30, B-32, C-25, C-26, C-27, C-28, C-30, C-32, C-33 and NTN's November 17, 2005, supplemental questionnaire response at pages B-4 through B-9 and C-5, C-6 through C-8.

During verification we learned that, at least with respect to expenses for international freight and U.S. inland-freight expenses from the port to NTN's affiliate's warehouse, NTN is able to gather, albeit not electronically, the information in a relatively short period of time necessary for a successful implementation of a weight-based allocation methodology. See the memorandum to file entitled "Verification of the Sales Response of NTN Corporation and NTN Bearing Corporation of America in the Antidumping Review of Ball Bearings and Parts

Thereof from Japan," dated February 13, 2006 (NTN 2006 CEP Verification Report). Furthermore, based on explanations NTN provided at verification with respect to international and air freight as well as U.S. inland freight from the port of entry to NTN's affiliate's warehouse, we concluded that NTN's inability to report the necessary information, which would enable the implementation of a methodology reflecting the basis on which it incurred home-market and U.S. inland expenses amounts simply to NTN's and its U.S. affiliate's electronic record-keeping. See NTN 2006 HM Verification Report.

In essence, NTN's claimed inability to report freight expenses on the basis incurred amounts to nothing more than NTN's decision not to implement a mechanism in its electronic record-keeping which would enable the collection and reporting of the necessary data. For example, NTN never provided reasons as to what prevents it from altering the structure of its accounting database to activate one additional variable which tracks weight. By doing so, for example, the same employee who enters the freight-expense information into NTN's accounting system can enter the weight of that shipment at the same time, which is one of the main bases on which the underlying expenses are incurred. Alternatively, the employee can enter the distance applicable to each shipment, which is another basis on which these expenses are incurred. Alternatively, NTN can maintain a spreadsheet tracking such data separate from its accounting database. In fact, this is precisely what Nachi, another Japanese respondent in this review, has done for many administrative reviews. It is of relevance that Nachi, a Japanese company of comparable size to NTN, implemented specialized record-keeping means which enables it to report freight expenses on both bases on which freight expenses are incurred - weight and distance.

NTN also contends that it does not maintain, in the ordinary course of business, the weight of each bearing model, an element necessary to implement an accurate weight-based allocation methodology. NTN has not provided a reasonable justification which explains why its ability to track such information is impaired. Nevertheless, NTN's decision to not keep the necessary data electronically only detracts from its argument of the burden associated with compiling such information manually. In other words, NTN cannot argue effectively that it is too burdensome to obtain certain freight expense and weight data manually when it chooses to not implement an easier method (i.e., electronically) of capturing this information. Therefore, since NTN controls and is in possession of the relevant information, NTN's decision not to maintain certain information necessary for reporting freight expenses accurately does not establish the grounds for relieving NTN from its "burden of establishing to satisfaction of the Secretary the amount and nature of the particular adjustment" pursuant to 19 CFR 351.401(b)(1).

NTN argues that the Department has deviated unlawfully from its established practice of accepting value-based allocations because NTN relied on this methodology for many administrative reviews. We disagree with NTN's argument that our acceptance of NTN's value-based methodology, borne out of NTN's claimed inability to report such expenses properly, signals a deviation from our practice. We find that this argument has no merit because, as we stated above, our practice has always been to require the reporting of adjustments based on how the underlying expenses are incurred. In support of its argument NTN cites Shikoku. In Shikoku, the Court held that the Department acted unreasonably in changing its allocation methodology when the facts demonstrated that the respondents had the right to rely upon the Department's consistent approach in the original investigation and four administrative reviews. See Shikoku, 795 F. Supp. at 422. In Shikoku, the Court also held that the Department was not able to demonstrate that the new allocation methodology was in fact an improvement. Id.

The facts in this review are distinguishable from Shikoku demonstrating that the reliance at issue in Shikoku is not relevant to this case. First, NTN's reliance argument is unconvincing because NTN was on notice of our preferred reporting methodology and our expressed concerns with its value-based methodology in past and in present administrative reviews. In addition, NTN's allocation methodology is in direct conflict with our preferred methodology supported by many years of practice. Second, we have demonstrated that the new methodology is an improvement because it produces the expected outcome (i.e., correlation between volume or weight of a bearing and its respective calculated freight adjustment) and results in increased accuracy in the calculation of a dumping margin (by virtue of eliminating the shifting of a portion of freight expenses from dumped to non-dumped sales).

In support of its argument NTN also cites Atchison, Greater Boston Television, and Ramaprakash. In Atchison the U.S. Supreme Court upheld the judgment from the lower court, remanding a case for further proceedings to the government agency because it had not adequately explained its reasoning for departing from its previous rules. See Atchison, 412 U.S. at 801. In Greater Boston Television the court stated that "...an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored..." See Greater Boston Television, 444 F 2d. at 852. In Ramaprakash the court remanded the case to an agency because it held that the agency failed to explain its departure from its own precedent adequately. See Ramaprakash, 346 F.3d at 1129.

The factual information in this review is clearly distinguishable from that in Atchison, Greater Boston Television, and Ramaprakash. First, as we have already explained, the implementation of a weight-based methodology with respect to the calculation of NTN's freight expenses is not an act of departure from our established practice but, rather, an act of adjusting NTN's information to comport with our practice from which NTN has consistently deviated. Second, in the NTN Preliminary Analysis Memo, we first explained why we rejected NTN's methodology for reporting freight expenses and provided explanations as to why a weight-based allocation methodology is superior to a value-based methodology. Specifically, we stated,

> "NTN did not demonstrate or substantiate its assertion that its allocation of ocean freight, air freight, and U.S. inland freight expenses based on sales value...does not cause distortions and is the most reasonable methodology available. Further, NTN did not demonstrate that an allocation of these expenses based on weight, whether shipment-specific or on an aggregate level, is less superior than its reported allocation based on sales value. The Department finds that an allocation of these expenses based on weight is more accurate because weight relates directly to volume, a basis on which the charges in question were incurred. Specifically, NTN is charged for the freight expenses based on volume (i.e., container size). Because volume is a

mathematical function of mass and density and the density of products NTN ships is essentially constant (i.e., the density of products NTN shipped is similar because they are mostly made of steel and/or combination of steel and other metals), a direct correlation exists between the volume and the corresponding weight of shipped products. Because heavier products are more voluminous, a bigger portion of the total freight expense must be attributable to them."

See the NTN Preliminary Analysis Memo at pages 6 and 7.

Further, in the NTN Preliminary Analysis Memo we demonstrated how the new methodology produces the expected results by observing a significant correlation between the changes in weight of any given bearing model and corresponding changes in a re-calculated sale-specific freight adjustment while no such correlation exists under NTN's value-based methodology. Moreover, in the NTN Preliminary Analysis Memo and in the Freight Memorandum, we provided explanations, examples, and an in-depth analysis showing how a value-based methodology can shift a portion of any given freight expense from below-cost sales to above-cost sales and from dumped sales to non-dumped sales and, thus, resulting in masking dumping margins. Because we used a new methodology for calculating average weights for certain bearing models, revised the calculation of NTN's international freight factor, and accepted actual weights for bearings parts, as described in detail below, we have re-evaluated our freight-distortion analysis and provided refined explanations with respect to the examples we used in the preliminary results of this review. See "Ball Bearings and Parts Thereof from Japan: NTN Corporation - Analysis Memorandum for the Final Results of the Administrative Review of the Antidumping Order (5/1/04 - 4/30/05), July 7, 2006 (NTN Final Analysis Memo). Using the finalized methodology for calculating freight expenses, our findings support the same conclusions we made in the preliminary results of this review.

We disagree with NTN's assertion that we singled it out from a group of respondents that also used a value-based methodology and subjected NTN to adverse treatment. In support of its argument NTN cites Burlington. In Burlington the Court found that the agency's lack of an adequate explanation resulted in a disparate treatment of otherwise equally situated parties. As we stated in the AFBs 16 Prelim and in the Freight Memorandum, we determined that NTN's allocation of international and inland-freight expenses based on the value of the shipped product causes inaccuracies or distortions. Even after we found that NTN's value-based methodology for allocating freight expenses did, in fact, cause substantial distortions in the calculation of these expenses and, ultimately, in the calculation of a dumping margin, we did not subject NTN's margin calculation to adverse treatment. An adverse treatment would be to reduce NTN's claim for freight expenses for its reported home-market sales, increase NTN's claim for freight expenses of its U.S. sales, or use other, more adverse, information in place of NTN's data,[3] none of which we have done; instead we used NTN's newly provided data to re-calculate its freight expenses. As such, we believe we

[3] In fact, in SNR Roulements, the Court upheld our decision in AFBs 11 to apply adverse treatment with respect to NTN's reported freight-expense information for its home-market and U.S. sales.

went to a great length to allow NTN to comply with our practice of reporting expenses on the basis on which they are incurred while ensuring that we used NTN's own data in a non-distortive way. In other words, the change in methodology we invoked resulted in the outcome that would have been obtained had NTN reported its freight expenses properly in the first place.

The information on the record of this review is distinguishable from that in Burlington because we provided an adequate explanation for our treatment of NTN compared to other respondents. With respect to other respondents that used a value-based methodology to allocate their freight expenses, in our Freight Memorandum we stated that we do not have all the necessary data that we would need to reallocate their freight expenses. The necessary data which we had for NTN but not the other respondents would be the per-unit model-specific weight information by bearing and the calculated unit-of-currency per unit-of-weight-measure freight-expense factor(s). As we mentioned above, we had an opportunity to pursue the collection of certain elements of freight information at our verification of NTN's data. The Department did not take the opportunity to spot-check the freight expense for all other respondents. Each verification varies somewhat from review to review depending on the issues in the company-specific verification. Nevertheless, as we stated in the AFBs 16 Prelim, with respect to other respondents in these administrative reviews that have used a value-based methodology to allocate freight expenses, "(f)or future reviews of these orders, we will not accept value-based methodologies for the allocation of inland freight or international freight expenses except in situations where the freight charges are, in fact, incurred on a value, not weight or volume, basis." Through our verification we made the data determination we discuss above and, as a result, have the information on the record for NTN in this review but not for other respondents. As such, contrary to NTN's assertion, we provided an adequate explanation with respect to the differential treatment of NTN. Furthermore, our decision to not re-calculate other respondents' freight expenses in this review does not invalidate, in any way, our decision to implement such a change for NTN where we had readily available and verified data submitted by NTN that allowed us to calculate NTN's freight expenses on the basis of weight reasonably.

We disagree with NTN that the use of a weight-based methodology to calculate freight expenses results in inaccurate results because it uses an estimated weight for a number of bearing models for which NTN reported sales in its home market and U.S. sales list. First, NTN did not provide an analysis supporting its assertion. Second, we believe we provided a sufficient explanation supported by an aggregate analysis as well as transaction-specific examples that demonstrate why a weight-based methodology is superior unequivocally to NTN's value-based methodology, despite the fact that our methodology uses an estimated weight for some bearing models. See the NTN Preliminary Analysis Memo for a detailed discussion.

In its March 24, 2006, letter after publication of our preliminary results, NTN informed us that, for certain bearing models for which it does not maintain weight information in its business records, it used an estimated average-weight factor based on actual weight information for finished bearings for which it does keep records. NTN provided this factor in its November 17, 2005, supplemental questionnaire response. In its letter, NTN informed us that it used this calculated factor for finished bearings for which it does not have weight data as well as bearing parts. Further, in its letter, NTN asserted that the use of this factor for bearing parts in our re-calculation of freight expenses resulted in distortions margin calculations for NTN. In order to remedy this problem, in our March 30, 2006, letter to NTN we requested that NTN provide the actual weight of bearing parts. NTN provided this information in an April 7, 2006, letter. For the final results of this review, we have used the actual weights of bearing parts in place of NTN's estimated average-weight factor.

Upon further review of the information on the record of this review, we found that the estimated average-weight factor NTN provided also does not distinguish among the significantly varied sizes of finished-bearing models. In other words, in our re-calculation of freight expenses for the preliminary results, we used NTN's estimated average-weight factor equally for bearing models of significantly different sizes. Because weight of any subject matter is a direct function of its size (i.e., volume), in our March 30, 2006, letter to NTN we also asked NTN to explain why, in its attempts to estimate an average weight, it did not use the actual weight of bearing units of similar dimensions as an estimate of weight for those bearing units for which NTN does not keep weight information in its business records. In its April 7, 2006, reply to our request for information, NTN was silent on this issue. Instead, NTN proposed a new methodology for estimating average weight. Specifically, NTN proposed to derive, using the weight data for finished bearings for which it keeps weight information in its records, a kilogram-per-yen factor based on the total COM. Such a factor would then be applied to the reported COM value of each model to obtain a model-specific average weight. NTN asserted that its methodology for deriving an estimated weight is sound because steel accounts for a majority of a bearing's weight. The price of steel, in turn, NTN asserted, is a function of weight and, thus, a heavier bearing will contain more steel and this correlation will be reflected in the reported COM value. As such, NTN asserted, there is a direct correlation between the weight of a bearing and its COM value.

We did not adopt NTN's proposal for estimating an average weight based on COM. While it is true that some degree of correlation exists between the COM value of a bearing and its weight, there are a multitude of factors that are responsible for differences in a bearing's COM value that have no affect on its weight. For example, the same bearing produced in different time periods will have a different direct-materials cost when steel prices fluctuate, as they have in the recent past. Further, the COM value reflects other nuances, such as variances in machine-processing times, as well as differences in reported variable and fixed overheads which may vary significantly among bearings of the same weight. See, e.g., NTN's September 25, 2005, Section D questionnaire response. For example, the processing, testing, and inspection of a bearing used in an aerospace application may be more involved and rigorous and require the use of different machinery and, thus, cost more than a standard bearing of similar weight used in automobile applications.

For the final results of this review, we have calculated a weighted-average weight for bearing models for which NTN does not maintain weight information in its business records by using the actual weight and volume of bearing models for which NTN provided the weight information. First, we aggregated the actual weights of bearing models NTN reported for both the home-market and U.S. sales lists segregated by product status (i.e., mounted or housed versus unmounted or unhoused). Second, we aggregated the volume of bearing models NTN reported for both markets, segregated by product status. We computed the volume of each bearing model by calculating the difference between the outer area and an inner area of the bearing, using the reported outer- and inner-diameter product characteristics, and then we multiplied this difference by the value of the reported width of each bearing. We then computed a weighted-average kilogram-per-millimeter factor for each reported product status (i.e., mounted or housed, unmounted or unhoused, parts, subassemblies, etc.). We then applied the product status-specific factor to the product status-specific volume of each bearing model to obtain a value in kilograms for those bearing models for which NTN does not have the actual weight. In effect, we estimated a model-specific weight of each bearing and used it in place of the average single weight factor NTN provided originally. We believe this methodology is reasonable absent actual weights of bearing models because, as we stated earlier, weight is a mathematical function of volume and density. We do not believe density presents a distortion in our methodology because steel is a major material component of all bearings; in other words, we assumed density as a constant variable in our methodology because we believe it does not vary significantly among bearings.

In the preliminary results of this review, we calculated a U.S. dollars-per-kilogram factor, applicable to international freight and U.S. inland-freight shipments, from the port of entry to the warehouse of NTN's U.S. affiliate, which we then applied to the weight of each bearing to re-calculate the freight expenses for NTN's reported U.S. sales. We derived this factor based on the information we obtained during our verification of NTN's CEP sales. See CEP Verification Report, exhibit 7. In its March 24, 2006, letter NTN urged us to re-calculate this factor by excluding shipments of non-subject merchandise. In our March 30, 2006, letter we asked NTN to modify the information in the Excel spreadsheet (collected as exhibit 7 at our CEP verification of NTN) by identifying shipments of subject merchandise, non-subject merchandise, and shipments which contained both. In its April 7, 2006, letter NTN submitted the requested information. In its case brief, NTN argues again that we should re-calculate a U.S. dollars-per-kilogram factor exclusive of non-subject merchandise. We agree with NTN. The use of freight information applicable to subject merchandise only, in place of using freight information applicable to all products, results in a more accurate calculation of freight expenses as they relate to subject merchandise. A more accurate calculation of freight expenses, in turn, enhances the accuracy of the dumping-margin calculation for NTN. As such, for the final results of this review, we have relied on the freight information applicable to shipments of the subject merchandise only to re-calculate a U.S. dollars-per-kilogram factor we used in the calculation of international and U.S. inland-freight expenses from the port of entry to NTN's affiliate's warehouse. See the NTN Final Analysis Memo.

We disagree with NTN's assertion that the conclusions we reached using examples depicted in Attachment IV-A in the NTN Preliminary Analysis Memo, which we used to exemplify how a value-based methodology to calculate freight expenses presents distortions and masks dumping, are flawed and misleading. With respect to the first example which NTN contested, we showed that a transaction having a negative dumping margin (margin by which the U.S. net price exceeds normal value) resulted in an increased negative margin when a value-based methodology for allocating freight expenses was replaced with a weight-based methodology. This example produces the same result as the second example, contested by NTN, inasmuch that a change to a weight-based methodology results in an increase in the margin, whether negative or positive. The expected outcome for transactions with negative margins is due to an elimination of the distortion associated with the subtraction of an unjustifiably overstated freight expense from the gross unit price. The expected outcome for transactions with positive margins is due to an elimination of the distortion associated with the subtraction of an unjustifiably understated freight expense from the gross unit price for transactions with positive margins. As such, contrary to NTN's assertion, a shift to a weight-based methodology from a value-based methodology to allocate freight expenses would not necessarily cause a change from a negative margin to a positive margin for sales that are non-dumped sales.

With respect to the second contested example we agree with NTN that an illustration of masked dumping was not fully effective because it used an estimated weight of the bearing provided by NTN. As we described above, we found that NTN's methodology for estimating an average weight of the bearing models for which it does not keep weight information in its records contained significant distortions. Nevertheless, after we implemented the new methodology for calculating an estimated weight of certain bearings, we revisited this example using the new estimated weight information. See the NTN Final Analysis Memo. We found that, with respect to the same transaction, our conclusions of how NTN's calculation of freight expenses causes distortions and our hypothesis of how masking of dumping occurs with the use of a value-based methodology are still valid.

Moreover, we introduced yet another example (i.e., a third transaction in NTN's margin database) to contrast, across all three transactions, the calculated freight adjustments using value-based and weight-based methodologies and to exemplify the effect of the masking of dumping using NTN's reported freight adjustments. We used purposefully strict parameters across all three transactions, such as the same customer code, essentially the same date of sale, similar quantity, and virtually identical weights, to contrast the reported freight adjustments and their respective effects on margins. Two of the selected transactions were dumped sales and one was not. We found that a proportional increase in the weight of the examined sales results in a significantly disproportional increase in the calculated freight expense for a non-dumped sale and in significantly disproportional decreases in the calculated freight expenses for each of the dumped sales under a value-based methodology. We found further that, as a result, a non-dumped sale's negative margin was understated and the positive margins for both of dumped sales were also understated. We provide the specifics of our analysis in the NTN Final Analysis Memo because it involves the use of data designated by NTN as business-proprietary information.

Finally, NTN's reliance on the two examples mentioned above to refute our masking-of-dumping conclusion is unpersuasive. We used these examples as mere transaction-specific illustrations to provide further support for our freight-distortion analysis we described in the NTN Preliminary Analysis Memo, the results of which were appended therein in attachment IV. With respect to NTN's home-market sales, this analysis showed on a cumulative basis that a certain percentage of total inland-freight expenses shifted from below-cost sales to above-cost sales and, with respect to NTN's U.S. sales, this analysis showed that a certain percentage of total international-freight expenses shifted from dumped to not-dumped sales.

Further, as we stated above, because we used a new methodology to calculate an estimated weight for certain bearing models, revised the calculation of the international-freight factor, and used actual weights for bearings parts, we re-visited our freight-distortion analysis. The results of this analysis continue to support the conclusions we made in the preliminary results of this review. We provide the details of our analysis in the NTN Final Analysis Memo because it involves the use of data designated by NTN as business-proprietary information.

Comment 16: Timken argues that the Department should reconsider NSK's claim that no warehouse-to-customer freight charges were incurred during the period of review for U.S. sales where the reported sales terms are categorized as "other" in NSK's U.S. sales file. According to Timken, NSK's assertion that the sales term categorized as "other" includes shipping arrangements that cannot be identified because of clerical errors and also rare instances in which a NSK salesperson may deliver products to a customer during the course of a normal sales call is not supported by the record. Timken argues that NSK's U.S. sales file indicates that the number of instances where NSK reported the terms of sale as "other" far exceed the described scenarios. Timken asserts that, although the Department has addressed this identical issue in previous reviews, where the Department accepted NSK's reporting of this particular terms of sale it did so because the instances where NSK in fact bore the freight cost were rare.

Timken requests that, given the facts of the record in this review, the Department should reconsider NSK's claim that no warehouse-to-customer freight charges were incurred for U.S. sales where the reported sales terms were categorized as "other".

NSK responds by stating that Timken's allegations are distortive and unfounded. NSK argues that its allocation methodology with regard to freight is reasonable, supported by the record, and has been accepted repeatedly by the Department in previous segments of this proceeding.

NSK asserts that the allocation of its U.S. freight costs begins with the total amount reported in its financial statements. According to NSK, given this methodology for reporting freight, there are no U.S. freight costs that are unreported. NSK also argues that its freight costs are extremely small relative to the overall value of U.S. sales and are just above the Department's de minimis threshold of 0.33 percent. NSK asserts that any reallocation of its freight cost would not have any impact on the margin. NSK argues that, nevertheless, an examination of its U.S. sales database will show that the total number of transactions with the freight term "other" is a very small percentage of the total and, therefore, by no means excessive as Timken argues.

NSK argues that the Department has verified and accepted NSK's reporting of the sales term "other" as reasonable and contends that Timken has provided no evidence justifying an change to that practice.

Department's Position: We have considered Timken's request and find that the record does not support its assertion that the number of instances NSK reported the terms of sale as "other" far exceed the described scenarios. As the record indicates, the total number of transactions with the freight term "other" is small when compared to the total number of transactions. Therefore, we find Timken's argument unpersuasive in this regard. In addition, we are satisfied with NSK's explanation and allocation of its U.S. freight costs from warehouse to customer for transactions with the terms of sale reported as "other." See NSK's September 26, 2005, questionnaire response at page C-6. Furthermore, we verified NSK's U.S. inland freight from warehouse to the unaffiliated customer expenses and found no discrepancies. See NSK U.S. Verification Report dated February 13, 2006. For these reasons, we have accepted NSK's reporting of its freight costs and continue to find its freight allocation reasonable.

Comment 17: Timken argues that the Department should not accept NSK's assertion that it cannot specifically identify those sales categorized as "ship with" because these sales include bearings that have been shipped with other bearings. Timken asserts that a review of the sales in question by customer reveals that shipment terms are generally the same when viewing transactions based on other sales to the same customer. For example, according to Timken, where other shipments of similar products and similar quantities to the same customer are shipped "collect", shipments reported as "ship with" will also generally be "collect". Timken argues that NSK's assertion that it cannot determine the actual shipment method for these sales is thus not supported by the reported data. Based on these reasons, Timken requests that the Department recalculate the value reported in sales where the sales terms were categorized as "ship with" to reflect the shipment charges in other sales to the same customer.

NSK argues that, for bearing sales it shipped with other bearings, it cannot identify the shipping arrangements because its computer records do not allow for this type of information. NSK argues further that its computer records do not provide a link between the sales shipped together. NSK argues that, since it cannot identify the sales terms for these bearings sales, it reports them as "ship with". For this reason, NSK argues, it calculates a reasonable allocation.

NSK argues that Timken's assertion suggesting that NSK and the Department guess at the sale terms for the "ship with" transactions based on other sales to the same customer is baseless and contrary to the Department's practice. According to NSK, contrary to Timken's suggestion, a number of the customer codes associated with "ship with" sales show a history of both prepay and add-and-collect sales. NSK argues that, for this reason alone, the Department should reject Timken's invitation to engage in undocumented speculation when verified information exists on the record to support its freight allocations. NSK points out that the freight-cost factor for these sales is just above the de minimis level. It argues that its reporting of the sales term "ship with" has repeatedly been accepted and verified by the Department as reasonable and Timken has provided no meaningful support for changing that practice.

Department's Position: As we stated in response to the previous Comment, we verified NSK's freight expenses and found no discrepancies. We specifically verified NSK's freight sales term "ship with" during verification and are satisfied with NSK's reporting of this freight expense. See NSK U.S. Verification Report dated February 13, 2006, at page 5. For this reason, we find Timken's argument unpersuasive. Therefore, we have accepted

NSK's reporting of its freight costs and continue to find its freight allocation reasonable.

7. Affiliation

Comment 18: JTEKT asserts that the Department should reverse its decision to collapse JTEKT and an affiliate (the name of which has been accorded proprietary treatment) into a single entity for purposes of calculating JTEKT's dumping margin. It argues that, in making its determination to collapse, the Department disregarded fundamental facts of the record that make collapsing inappropriate and unlawful. It asserts that, given that JTEKT holds a minority interest in the affiliated company, that shared board members give JTEKT no control over the affiliate's operations under Japanese law, and that an examination of sales transactions between the two companies demonstrates no significant potential for the manipulation of price or production, the Department's decision to collapse is not supported by the evidence of record or in accordance with the law.

JTEKT observes that, in AFBs 15, the Department predicated its decision not to collapse JTEKT with the same affiliate due to the petitioner's failure to raise the issue at a earlier stage in the proceeding but that, despite further development of the issue in the current review, there is no new material evidence of record to justify a change in the Department's course on collapsing from numerous past reviews. JTEKT adds that, for this reason alone, the Department's decision to collapse is unsupported by substantial evidence and should be reversed for the final results of review.

JTEKT acknowledges that it is "affiliated" with the other company in question under the Department's regulations and that the two companies produce similar or identical merchandise. JTEKT submits, however, that the third collapsing criterion, that a significant potential for the manipulation of price or production between the two companies, is not satisfied in this case because the relationship between the two companies does not represent one of the "unusual situations, where the type and degree of relationship is so significant" that there exists "a strong possibility of price manipulation," citing Nihon Cement Co., Ltd. v. United States, 17 CIT 400, 425 (1993) (quoting Final LTFV). Citing Departmental precedent, JTEKT argues that the totality of the circumstances in this case do not support a finding that JTEKT and its affiliate are sufficiently intertwined to be properly considered a single entity. It asserts that, although it purchases a significant proportion of the affiliate's production, it does not have a controlling interest in the affiliate. It adds that the presence of JTEKT board members as non-voting corporate auditors on the affiliate's board of directors does not represent any significant potential for manipulation. It concludes that the proposition that the collapsing regulation authorizes the Department to treat two companies as a single entity based on a sole factor – the substantial purchases of one company's production by another – to be absurd.

JTEKT comments that a review of Departmental collapsing determinations reveals no other instances where companies were collapsed on the bases of: 1) a minority shareholding interest in one company by another, 2) a limited overlap of non-voting board members, and 3) sales transactions between the affiliates. It adds that the Department found no significant potential for price or production manipulation in the LTFV investigation of stainless steel bar from Germany, where there was 1) almost complete common ownership by a parent, 2) two overlapping board members, and 3) sales transactions between the affiliates, citing Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Bar from Germany, 67 FR 3159 (January 23, 2002) (Stainless Steel Bar Investigation). JTEKT concedes that the level of sales transactions between it and its affiliate are higher than the level of shared transactions in the bar investigation but counters that the level of common control between it and its affiliate is significantly lower than the level of common control at issue in the Stainless Steel Bar Investigation.

JTEKT comments that, in cases where the Department did decide to collapse two or more companies, it generally did so based on findings of a controlling ownership interest in one company by another or in the affiliated companies by a common parent, the sharing of production or office facilities, the sharing of price and production information, and the sharing of significant management employees. JTEKT argues that it and its affiliate can be distinguished by earlier cited determinations because the degree of interrelationship between the two companies is substantially lower than that found to exist in the earlier affirmative determinations of a significant potential for manipulation between two or more companies. It reiterates that, in contrast to the earlier determinations, JTEKT does not have a controlling interest in the affiliate, the two companies are not controlled by a common parent, their facilities and management structures are not intertwined, and they do not share pricing or production information despite the sharing of some board members.

JTEKT argues further that the specific factors on which the Department based its decision to collapse JTEKT and its affiliate do not support the conclusion that there is a significant potential for manipulation. The respondent comments that, although the Department made much of the fact that JTEKT was the largest shareholder of the affiliate, JTEKT's ownership represents a non-controlling minority share of the company. It cites Certain Welded Carbon Standard Steel Pipes and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632, 47639 (September 10, 1997), for the proposition that the decision to collapse is essentially "dependent to one extent or another upon the potential of one or more persons or a part of a company to control another" and asserts that, without further indicia of control, JTEKT's minority stake in its affiliate cannot be sufficient to show a significant potential for manipulation. JTEKT observes that its status as a minority shareholder means that it has no legal right under Japanese law to compel its affiliate to provide the sales and cost data required due to the Department's collapsing decision. It adds that, in the Issues and Decision Memorandum for AFBs 12 at Comment 19 (August 30, 2002), the Department recognized that it was not reasonable to expect respondent companies to report the resales data of their affiliated resellers of which they did not own a majority interest and that, similarly, it would now be unreasonable of the Department to expect JTEKT to compel its affiliate, of which it owns a minority share, to report the detailed cost and sales data requested in the antidumping duty questionnaire.

JTEKT adds that, in the few instances in which the Department has collapsed a respondent with an affiliate in which the respondent did not hold a controlling interest, either the respondent appears not to have raised the issue or the totality of the circumstances differed markedly from those currently at issue. It cites the 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, in which the Department decided to collapse a respondent and its affiliate, of which the respondent held a minority interest, after finding that the respondent's chairman and vice-president held two of only three posts on the affiliate's board of directors and the respondent acknowledged that it had "management and operation right" for the affiliate.

JTEKT asserts that, by contrast, the presence of JTEKT directors on the board of its affiliate does not represent a significant potential for manipulation because the directors serve on the board on a very limited basis as part-time, "non-stationed" auditors. It states that, under the provisions of Japanese corporate law, larger companies are required to have at least three such board auditors whose duties are limited to the conduct of business audits and whose function is completely independent of the management of the company. JTEKT stresses that, although the auditors attend the board-of-directors meetings, they are not permitted to vote and have no control over the board's decisions. It concludes that not only are the JTEKT officers a minority on the affiliate's board but they do not serve in a function that would support the finding of a strong possibility of price or production manipulation on the part of JTEKT.

The respondent argues that the sales transactions between JTEKT and the affiliate do not represent a significant potential for manipulation because the Department did not find such transactions to be a decisive factor in past affirmative collapsing determinations. It contends that, in addition, the sales and cost data of record do not support the inference of manipulation of pricing by JTEKT, observing that a certain amount of the acquisition prices that it paid to the affiliate exceeded the affiliate's costs of producing the models. It adds that the cost-test analysis in the Department's March 2, 2006, collapsing memorandum (Koyo Collapsing Memorandum[4]) does not support its finding of a potential for pricing manipulation because the Department used data based on JTEKT's acquisition costs instead of the affiliate's costs of production. JTEKT asserts that, even if JTEKT were found to be selling merchandise at prices below its costs of acquisition from the affiliate, it would indicate nothing more than independent decision-making on JTEKT's part but that an analysis of the data now of record shows that, by and large, such sales did not occur.
The respondent concludes that the totality of the circumstances demonstrates that there is no potential for the manipulation of price or production, significant or otherwise, in this case and that, therefore, it would be unlawful and unsupported by substantial evidence and past precedent to collapse JTEKT and its affiliate into a single entity for purposes of calculating JTEKT's dumping margin.

Timken rebuts that the Department should not modify its decision to collapse JTEKT and its affiliate into a single entity. The petitioner disagrees with JTEKT's statement that no additional information relevant to the collapsing issue was placed on the record; Timken

[4] On May 5, 2006, we published the final results of the changed-circumstances review in which we determined that JTEKT is the successor-in-interest to Koyo Seiko Co. Ltd. See 71 FR 26452.

asserts that the Department obtained information in this review that supports its decision. It rebuts further that the factors upon which the Department based its decision were numerous, including common ownership of the companies, the sharing of board members, and the results of a cost-test analysis. Timkin also finds JTEKT's suggestion that the decision was based solely on the sales transactions between the affiliated companies to be baseless. It adds that the Department should disregard JTEKT's attempts at inferring contradictions between the decision at issue and past collapsing decisions because the abbreviated, public discussions of these past decisions do not disclose the wide array of facts from the proprietary record upon which each of these decisions was based.

Timken concludes by commenting that possession of a controlling interest of one company in another is a positive but not necessary indication of the potential for price and production manipulation between the two companies. It adds that this potential is not limited to circumstances where one company is compelled to share information with another but is also present where entities willingly share information. Timken cites sections 771(33)(F) and (G) of the Act and 19 CFR 351.102(b) to state that control may exist even in the absence of any ownership interest. It asserts that the Department treated the degree of JTEKT's control over its affiliate correctly as an affirmative factor which, in combination with the other factors the Department identified, can create the potential for manipulation of price and production.

Department's Position: The fact that JTEKT and its affiliate are "affiliated", as defined under section 771(33) of the Act, or that the two companies produce similar or identical products, thus satisfying the collapsing criteria under 19 CFR 351.401(f)(1), has not been at issue in this case. Thus, the issue of whether to collapse the companies in this case rests on the whether there is a significant potential for the manipulation of price or production between the two companies, a criterion set forth under 19 CFR 351.401(f)(2).

In our Koyo Collapsing Memorandum, we found the facts here meet each of the factors listed under 19 CFR 351.401(f)(2) as indicative of such a potential. We found common ownership between the companies due to JTEKT's holdings in the affiliate, shared board members, and intertwined operations of the two companies. See 19 CFR 351.401(2)(I)-(iii). The latter finding was based on a sharing of sales information, which we found to be implicit in the sharing of board members, and significant sales transactions between the two companies. An analysis of Koyo's sales data, including its acquisition costs of products from the affiliate, led us to conclude that the shared transactions were significant and the potential existed for Koyo to be involved in the production and pricing decisions of the affiliate. We also found that Koyo's standing as the largest shareholder of the affiliate to be indicative of the intertwined nature of the companies. Thus, we found several factors that supported our finding of intertwined operations between the two companies and that those factors, combined with a few others, supported our determination to collapse. Koyo Collapsing Memorandum at 4-5.

Turning to JTEKT's arguments, we disagree that no new material information was placed on the record in this review. We issued supplemental questionnaires to Koyo on November 4, 2005, and January 3, 2006, in order to obtain more detailed information on the affiliate and its period-of-review sales to Koyo. We used this information, which we did not obtain in prior reviews, to determine the significance of the sales transactions between the companies.

We also disagree with the respondent's assertion that the record does not disclose a type and degree of relationship that is so significant that there is a strong possibility of price manipulation, as contemplated in Nihon Cement Co. v. United States, 17 CIT 400 (1993). In Nihon Cement Co., the court stated, "while each of these criteria, {19 CFR 351.401(f)(2)}, did not have to be met, Commerce {does} have to consider them all." See id. at 426. Because of the numerous factors pointing to price manipulation, including the sharing of board members, we find that the relationship between the companies is significant enough to suggest a strong possibility of price manipulation. See Dongkuk Steel Mill Co. v. United States, Court No. 04-00190, slip op. 2005-75 at 15 (CIT 2005) ("In examining these factors, Commerce considers both actual manipulation in the past and the possibility of future manipulation, which does not require evidence of actual manipulation during the period of review."); see also Antidumping Duties; Countervailing Duties; Final Rule, 62 FR at 27296, 27346 (May 19, 1997) ("The standard based on the potential for manipulation focuses on what may transpire in the future."). The respondent would like us to believe that the shared board members, by only acting as auditors for the affiliate, are somehow shielded from exposure to its pricing and production information but have yet to clarify how these directors can attend the affiliate's board meetings without gaining such exposure. Without this clarification, we must assume that the board members have ready access to this information and that, consequently, the sharing of this information with JTEKT is a very possible outcome.

We agree with the petitioner that a majority interest of one company in another is not a prerequisite for collapsing but that it is a positive indication of a significant potential for manipulation. As observed by JTEKT, a majority interest has often been present in prior affirmative collapsing determinations. The provisions of 19 CFR 351.401(f)(2) instruct the Department to consider the level of common ownership, which may or may not be a controlling ownership. Here, we found the level of common ownership to be significant both in terms of the amount of shareholdings held by JTEKT in the affiliate and in terms of JTEKT's status as the largest shareholder of the affiliate and, although JTEKT's holdings do not make it a controlling shareholder in the affiliate, they imply that JTEKT holds a certain influence over the pricing and production decisions of the other company. Hence, we stand by our decision to factor these considerations into our collapsing analysis.

We find the respondent's citation to the Stainless Steel Bar Investigation to be inapposite to this case. In that investigation, we determined that the evidence did not support a finding to collapse the two companies, both of which were almost completely owned by a shared parent company and which had no shared transactions between them. Here, JTEKT directly holds a substantial percentage of the affiliate's shares and there are significant sales transactions between the two companies. The respondent would like us to find that collapsing in this case is as unsupported by the evidence as it was in the Stainless Steel Bar Investigation. We cannot agree because, as discussed above, we find JTEKT's ownership interest and the significant sales transactions between JTEKT and its affiliate to be compelling factors, in addition to others, in the analysis of the collapsing criteria.

We agree with JTEKT that there are factual distinctions between the relationship of

JTEKT and its affiliate and the relationship at issue in Flat Products from Taiwan. We do not have the explicit evidence of intertwined operations on the record before us that the respondent provided in the earlier determination. Nevertheless, the totality of the circumstances in this case leads us to conclude that there is a significant potential, indeed a strong possibility, for manipulation such that JTEKT and its affiliate should remain collapsed as a single entity for purposes of calculating a final dumping margin for JTEKT.

8. Billing and Other Post-Sale Price Adjustments

Comment 19: Timken argues that the Department should deny Barden's claimed rebates for home-market sales as impermissible post-sale modifications of the invoiced price. Timken asserts that the Department has determined that post-sale modifications of the invoiced price are not acceptable unless the customer was aware of the conditions to be fulfilled and the approximate amount of the rebates at the time of the sale, citing Final Results of Antidumping Duty Administrative Reviews: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada, 61 FR 13815 (March 28, 1996). Timken asserts that it is the Department's practice to reduce the gross selling price by the amount of the rebate when the seller establishes the terms and conditions under which the rebate will be granted at or before the time of the sale. Citing Barden's September 26, 2005, Section B response to the Department's questionnaire at page 22, Timken argues that, because Barden did not have a rebate program in effect during the period of review, Barden's home-market customers did not know the conditions to be fulfilled to obtain the rebates and did not know the approximate amount of the rebate. As such, Timken argues, that the Department should deny Barden's claimed rebates for home-market sales because the terms and conditions for which Barden grants its rebates were not known by its home-market customers at the time of the sale.

Barden refers to its Section B response in which it stated that "it did not have a central rebate program in effect for all customers or any class or category of customers in effect during the period of review. Rebates are offered to certain home-market customers." Barden asserts that it explained that it offers these rebates are offered to a very limited number of customers, they are established on an annual basis, and they are disbursed at the end of the year in which the rebate program was in effect. Further, Barden argues, its response indicates that its customers are aware of the rebate terms and conditions prior to sales being made because the terms are established at the beginning of the year. Finally, Barden argues that the Department verified the home-market rebate program in the 2003/04 administrative review and no changes to the rebate program have occurred since that time. As such, Barden argues, that the Department should reject Timken's argument.

Department's Position: It is the Department's practice to adjust normal value to account for rebates when the terms and conditions of the rebate are known to the customer prior to the sale and the claimed rebates are customer-specific. See Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Administrative Review, 66 FR 14887 (March 14, 2001), and accompanying Issues and Decision Memorandum at Comment 4. In the prior review of Barden (AFBs 15), we verified that Barden establishes and discloses to certain customers the terms and conditions of its home-market rebate program at the beginning of the calendar year before the sales to which these rebates apply take place. Barden then disburses the rebates to those customers at the end of the calendar year. See April 4, 2005, Barden Verification Report at 7. Nothing on the record of this review indicates that Barden's home-market rebate program as we verified in AFBs 15 has changed. As such, we have continued to allow customer-specific rebate adjustments for certain Barden home-market sales for these final results of review.

Comment 20: Timken argues that Barden's reported home-market billing adjustments do not appear to match the explanation Barden gave in its questionnaire response that home-market billing adjustments occur rarely and may be made pursuant to under- or over-shipments of ordered merchandise. Timken argues that none of the reported observations in Barden's September 26, 2005, questionnaire response with a billing adjustment also contain a quantity adjustment and billing adjustments are reported even where the quantity shipped is very low. Timken argues that the Department should reject billing adjustments which result in decreases in Barden's reported home-market prices and to reject only those billing adjustments that result in increases in Barden's reported U.S. sales prices. Timken argues that the Department does not permit post-sale price adjustments unless they are based on a preexisting normal business practice which has been substantiated by the respondent, citing AFBs 4, 60 FR at 10930.

Timken asserts that unfettered permission of such post-sale adjustments opens a door to price manipulation, creates the potential for dumping determinations which are not based on commercial prices, and subsumes the Department's practice regarding the determination of date of sale. Timken argues that the Department should not rely on the reported date of sale if the sales price is not determined until after the producer and purchaser have negotiated so-called adjustments to the invoiced price. Timken argues that billing adjustments cannot be captured by measuring some objective value, such as costs incurred, for example, for freight adjustments or selling-expense adjustments. Instead, Timken asserts, the adjustments reflect post-sale changes to originally invoiced prices that are entirely within the discretionary control of the respondent and are implemented after the sale. As such, Timken argues, the Department cannot determine with any degree of certainty which of the reported prices, the original invoiced price or the prices as modified by the adjustments, result in a more accurate measurement of the actual dumping margin. Timken asserts that, under these circumstances, the Department should not rely on home-market prices which were lowered as a result of these billing adjustments.

Citing AFBs 14 and the accompanying Issues and Decisions Memorandum at Comment 23, Barden argues that the Department has found it appropriate to account for actual billing adjustments reflected on the company's books that increase or decrease a reported gross unit price because they affect the precise amount the respondent received for the merchandise. Barden asserts that a majority of its billing adjustments were to correct pricing errors at the time of the original invoicing on a transaction-specific basis. To validate its claim that a majority of its billing adjustments were due to pricing errors, Barden refers to the copies of invoices, credit notes, and debit notes for the three largest downward billing adjustments Timken identified in Exhibit 1 to its case brief. Further, Barden argues that the Department verified in the prior review that Barden reported billing adjustments on a transaction-specific basis and reflected actual debits and credits incurred.

Department's Position: We do not require that post-sale price adjustments such as invoicing errors and price corrections be subject to a pre-existing agreement in order to consider them in our margin calculations because, by their very nature, they are distinct from post-sale adjustments such as rebates. See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 70 FR 3677 (January 26, 2005), and accompanying Issues and Decision Memorandum at Comment 1. We find that Barden has provided adequate documentation to distinguish its treatment of post-sale billing adjustments resulting from pricing errors or quantity adjustments. See Barden's section B questionnaire response at 19. Barden confirmed in its December 1, 2005, supplemental response that it does not use quantity adjustments to increase or decrease prices and provided an example of a price correction which it treated as a billing adjustment. Moreover, Barden has reported these billing adjustments on a transaction-specific basis, reflecting actual credits and debits issued to its customers in the normal course of business. We verified Barden's business practices in recording these billing adjustments in the prior review (AFBs 15; see the April 4, 2005, Barden verification report at page 6) and there is nothing on the record of this review to indicate that Barden's reporting of these home-market billing adjustments has changed. As such, we have accepted Barden's claim for the home-market billing adjustments at issue because they correct billing errors or make quantity adjustments and reflect what Barden received for these home-market transactions and what Barden recorded in its normal course of business.

Comment 21: *NTN classified changes in prices resulting from invoicing errors as billing adjustments A. NTN classified post-sale lump-sum (not sale-specific) price increases as billing adjustments B and post-sale lump-sum price decreases as other discounts. Hereinafter, we refer to billing adjustments B as "billing adjustments" and other discounts as "discounts."*

NTN contends that the Department's decision to disallow a downward adjustment to normal value by declining to accept NTN's reporting of its home-market discounts is a reversal of the Department's long-established practice of accepting such reporting in previous reviews and is contrary to regulations and the dictate of the courts. NTN argues that the discounts in question qualify as the price adjustment as defined by 19 CFR 351.102(b) and must be taken into account in the derivation of the net price to use in the calculation of normal value as directed by 19 CFR 351.401(c). Specifically, NTN argues that 19 CFR 351.102(b) defines a price adjustment expressly as "any change in price...that is reflected in the purchaser's net outlay." As such, NTN argues, the discounts in question qualify unequivocally as price adjustments because they are reflected in NTN's customers' net outlay.

Citing 19 CFR 351.401(g)(1), NTN contends that, because NTN does not incur, grant, and track, in its books and records, the discounts in question with respect to individual sales, NTN's reporting of these discounts is not feasible on a transaction-specific basis and, therefore, must be accepted by the Department in calculating the net price. NTN contends that it has met the requirements of 19 CFR 351.401(g)(3) in that the methodology it used to allocate the discounts in question is on as specific a basis as possible given the structure and constraints of its record-keeping.

Finally, citing NSK Ltd. v. United States, Consol. Court No. 04-00519, slip op. 06-19 (CIT 2006), NTN argues that, if the Department disallows the discounts in question which are negative adjustments to normal value, then it must also disallow billing adjustments which are positive adjustments to normal value because they were incurred and reported in the same fashion.

Citing the Department's report of its verification of NTN, Timken argues that, because the Department calculates prices with respect to specific models, NTN's reporting of its allocated discounts in question results in net prices containing distortions. Specifically, Timken argues, because the discounts NTN granted bear no symmetry to how they were allocated and, consequently, because the discounts that NTN granted bear no symmetry to how NTN applied its allocation to its sales, the net prices of sales on which the discount actually occurred resulted in an overstatement. Conversely, Timken argues, the net prices of sales on which NTN did not actually grant the discount are understated unjustifiably. As such, Timken argues, by relying on the unadjusted prices for sales on which NTN did not grant the discount while rejecting the incorrectly reported values for sales on which it did grant the discount, the Department increased the number of instances where the actual model-specific price is used. Timken argues that this provides a reasonable basis for the Department's refusal to accept NTN's inaccurate reporting of discounts adjustments.

Timken disputes NTN's argument that the Department's unexplained departure from its practice of accepting NTN's allocation in previous reviews is not warranted. Specifically, Timken argues, the Department's observation at verification serves as an explanation. Further, citing AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 11 and AFBs 14 and the accompanying Issues and Decision Memorandum at Comment 21, Timken argues that the Department's practice has been consistent in those reviews with respect to other respondents where the Department found distortions in price adjustments.

Department's Position: Section 351.401(b)(1) of the regulations states that "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment" and 19 CFR 351.401(c) states that "{i}n calculating...normal value...the Secretary will use a price that is net of any price adjustment, as defined in 351.102(b), that is *reasonably attributable to the subject merchandise or the foreign like product...*" (certain language omitted, emphasis added).

The regulations at 351.401(g) state that "{t}he Secretary may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions."

Further, the regulations at 351.401(g)(2) state that "{a}ny party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions."

Finally, section 351.401(g)(3) of the regulations state that "{i}n determining the feasibility of transaction-specific reporting or whether an allocation is calculated on as specific a basis as is feasible, the Secretary will take into account the records maintained by the party in question in the ordinary course of its business, as well as such factors as the normal accounting practices in the country and industry in question and the number of sales made by the party during the period of investigation or review."

In AFBs 16 Prelim at 12175 we stated that, "based on our findings at verification and consistent with AFBs 15, we denied NTN's claim for other discounts in the home market that NTN granted on a model-specific basis to certain customers for specific periods but allocated incorrectly over sales of all models to the same customers and a similar claim for which NTN had allocated its discounts over sales that had occurred outside the period of time for which NTN had granted the adjustment to such customers." In our verification report we stated that we learned that "NTN granted lump-sum billing adjustments and other discounts to certain customers for sales of specific models of {ball bearings} for specific periods of time. With respect to the customers we examined, we found that, although NTN sold other models to the customer for which NTN did not incur any adjustments and although NTN sold bearings to these customers during other periods in which NTN granted no adjustments, NTN allocated the total value of granted billing adjustments and other discounts over all sales of {ball bearings} during the entire fiscal year to the customer and applied the allocated ratios to all reported sales of all products to the customer during the period of review." See NTN 2006 HM Verification Report.

We determined that NTN reported the discounts differently than how it granted such adjustments. Specifically, we determined that, in its attempt to derive a factor for reporting the discounts in question, NTN divided the total value of discounts granted (i.e., the numerator) by the total value of certain sales (i.e., the denominator). We found at verification that the total value of sales NTN used in the denominator contained sales which did not bear any relationship to the discounts NTN had captured in the numerator. As such, the numerator and denominator were not stated on a rational basis. In other words, NTN's methodology is distortive because NTN allocates adjustments from sales that actually had an adjustment to sales that did not have an adjustment. Therefore, we concluded that the factor NTN calculated for its home-market discounts was distorted.

Furthermore, we found at verification that NTN then applied this factor to its home-market sales which did not bear any relationship to the discounts that NTN granted. Such an application of NTN's discounts factor distorts further NTN's reporting of the discounts in question. While NTN is correct that 19 CFR 351.102(b) defines a price adjustment as "any change in price...that is reflected in purchaser's net outlay" and it is true that NTN's customers' payment amounts reflect the discounts NTN granted, this point is not relevant here because we do not use customer-specific aggregate prices. We use product-specific and time-specific prices in our margin calculation. NTN's allocation of the discounts in question results in the assignment of price adjustments to sales which cannotbe said to have been reasonably affected by such adjustments. As such, we find that NTN's reporting of its discounts results in a price adjustment that is not reasonably attributable to sales of the foreign like product, as required by 19 CFR 351.401(c).

We find NTN's feasibility argument that it reported the discounts in question on as specific as basis possible unpersuasive. Specifically, while we recognize the potential existence of limitations associated with NTN's electronic record-keeping, NTN did not make an argument as to whether it could have accomplished the proper reporting of discounts in question from its records manually. NTN granted the discounts in question to specific customers for purchases of specific products during specific periods of time. Surely NTN maintains the records in the ordinary course of its business, such as invoices, that are necessary to supplement its reporting. In addition, the number of sales for which the discounts were granted is insignificant in relation to NTN's universe of reported home-market sales. Furthermore, NTN is silent as to why it applied its allocated-discounts factor to reported home-market sales which were not eligible for such discounts (i.e., sales to the same customer of products for which NTN did not grant the discounts and sales to the same customer of products for which NTN did grant the discounts but outside the period for which it granted the discounts). Moreover, at no point in this review did NTN attempt to demonstrate that its methodology of calculating the factor associated with the discounts in question does not cause inaccuracies or distortions. Therefore, we find that NTN did not demonstrate to our satisfaction that its reporting was on as specific a basis as feasible and, as such, we find that NTN did not satisfy the requirements of 19 CFR 351.401(g)(3).

Finally, we disagree with NTN's argument that, if we disallow the discounts in question, we must also disallow positive billing adjustments because they were granted and reported in the same manner. NTN's reliance on NSK Ltd. v. United States, Consol. Court No. 04-00519, slip op. 06-19 (CIT 2006), is without merit. First, NSK Ltd. v. United States is not final. Second, our practice is consistent with SKF USA, Inc. v. United States, 77 F. Supp. 2d 1335 (CIT 1999), where the Court held that our decision to grant the positive adjustment and to deny the negative adjustment was in accordance with the law and affirmed our reasoning in AFBs 5, 61 FR at 66498 where we stated that, if we disregard positive billing adjustments, "respondents would have no incentive to report these adjustments on a transaction-specific basis, as requested." Our practice is also consistent with INA Walzlager Schaeffler KG v. United States, 957 F. Supp. 251 (CIT 1997).

Comment 22: The petitioner argues that, with the exception of three specific adjustments that JTEKT showed to be corrections of invoice errors, the Department should deny all of JTEKT's claimed negative billing adjustments because the record suggests that JTEKT may make any changes to its prices after the date of sale, for whatever reason, as negotiated with its customers. Timken asserts that, as the Department has no basis to determine that the changes reflect commercial practice or that the customers would have had sufficient knowledge of the changes at the time of the sale or before, the claimed negative adjustments (reported in fields BILADJ1H and BILADJ2H) should not be allowed.

JTEKT responds that the Department should reject Timken's argument for several reasons. JTEKT observes first that, although the Department denied some negative adjustments JTEKT reported in the BILADJ2H field in the prior two reviews, the basis for denial of these adjustments does not pertain to negative adjustments it reported in the BILADJ1H field. JTEKT elaborates that the Department's concern that negative adjustments in the BILADJ2H field were being allocated over a broader universe of sales and over a broader period of time than those sales on which the adjustments were granted simply does not apply to the BILADJ1H adjustments since JTEKT is able to report the latter adjustments on a transaction-specific basis.

JTEKT adds that Timken has provided no support for its assertion that the billing adjustments may not have been granted pursuant to JTEKT's normal commercial practice. JTEKT comments that, at numerous past verifications, the Department did not find that either a BILADJ1H or BILADJ2H adjustment had been granted outside JTEKT's normal course of business. In support of its claim, JTEKT cites to the Department's verification report for Koyo for the 2002/2003 administrative review. JTEKT also states that there is no evidence on the record of the current review to suggest that its claimed billing adjustments do not reflect its normal commercial practice.

JTEKT concludes that the mere fact that its billing adjustments are post-sale in nature has never been a basis for their rejection in past reviews and, similarly, should not be a basis in the current review. It observes that the Department has reviewed and accepted the adjustments, as post-sale price adjustments, in the past and in turn has been affirmed by the CIT and the CAFC. JTEKT requests that the Department not confuse these adjustments with rebates or other discounts that are negotiated by parties before or at the time of sale and that it not reject the adjustments on the self-evident ground that they do not occur before or at the time of sale.

Department's Position: We are not persuaded by Timken's argument that we should deny all negative billing adjustments JTEKT claimed on the basis that they do not reflect commercial practice. In the course of this proceeding, JTEKT has provided supporting documentation for three negative BILADJ1H adjustments and approximately a dozen BILADJ2H adjustments. The documentation revealed that JTEKT made each of the BILADJ1H adjustments in order to correct an invoicing error. Our review of the BILADJ2H adjustments shows that most concerned post-sale price renegotiations, as claimed by JTEKT on page 19 of its section B questionnaire response. None of the documentation we reviewed suggests that the adjustments did not actually take place between parties or that they were of a non-commercial nature.[5]

Furthermore, we cannot conclude that we should deny the adjustments on the basis that the customers had no knowledge of them prior to or at the time of time of the sale. First, our review of the supporting documentation shows that, although a customer may not have had knowledge at the time of sale, it likely had an expectation of such an adjustment with

[5] In this review, we have continued to deny all negative BILADJ2H adjustments reported by JTEKT (as in AFBs 14 and AFBs 15) on the basis that the allocation of these adjustments, which can be product- or period-specific, over all of a customer's sales for the period of review could produce distortive results. We have made exceptions to this disallowance where JTEKT's supporting documentation demonstrated that an adjustment was tied to all sales made to a customer throughout the period of review. For a detailed discussion of these exceptions, see the Department's analysis memoranda for JTEKT for the preliminary and final results of review.

respect to the BILADJ2H adjustments, many of which were lump-sum adjustments that JTEKT granted to a customer time and again over a period of months or years. Most importantly, price adjustments are defined as discounts, rebates, or post-sale price adjustments under 19 CFR 351.102(b). Thus, by regulation, a company is permitted to claim a post-sale price adjustment.

Therefore, because our rather extensive review of JTEKT's adjustments has not indicated that the adjustments were non-commercial in nature and because their post-sale status is not a basis for their rejection, we conclude that Timken has not set forth sufficient bases for a denial of all negative home-market billing adjustments JTEKT claimed.

Comment 23: Timken argues that the Department does not allow post-sale price modifications in the form of rebates unless the respondent establishes that the customer was aware of the conditions of the rebate and the approximate amount. Timken maintains that, in determining whether to accept a claimed billing adjustment, the Department should remain cognizant of the distinction between rebates and billing adjustments. Timken states that an adjustment which would not be permitted under the Department's well-established practice with regard to rebates should not be permitted by the simple artifice of renaming the adjustment as a "billing adjustment". Citing INA's September 26, 2005, Section B response to the Department's questionnaire at page 22, Timken contends that INA explains only that changes "are made to correct billing errors or to reflect changes in price made after original invoicing" and, thus, the claimed adjustments are not limited to the correction of billing errors but include other adjustments. Timken declares that INA's home-market sales response contains no explanation regarding the nature of the latter nor does INA assert that it makes the other adjustments pursuant to an established commercial practice with its customers; therefore, Timken asserts, the Department should not allow a billing adjustment on home-market sales. Timken selects certain transactions from INA's home-market dataset which Timken uses as examples of alleged post-sale rebates.

Timken argues that the Department cannot determine, with any degree of certainty, which of the reported prices, the originally invoiced prices or the prices as modified by the adjustments, result in a more accurate measurement of the actual margin between U.S. prices and normal value. Timken contends that under these circumstances the Department should reject only those adjustments which result in decreases in the reported home-market prices and, conversely, with respect to U.S. sales, should reject only those adjustments which resulted in increases in the reported U.S. prices.

In rebuttal, INA argues that Timken attempts to analogize billing-adjustment practice to the Department's treatment of rebates while acknowledging that INA's reported billing adjustments are not rebates. INA contends that Departmental practice is settled that it is proper to account for actual billing adjustments reflected on the company's books which increase or decrease a reported gross unit price in the margin calculation because they affect the precise amount that the respondent received for the merchandise. Furthermore, INA contends, Timken has pointed to no record information that would dispute the bona fides of INA's reported billing adjustments. Accordingly, INA concludes, the Department should accept INA's claims for all billing adjustments it reported.

Department's Position: The record shows that most billing adjustments INA reported were made to correct billing errors. We accept post-sale discounts, rebates, and other billing adjustments as direct adjustments to price if we determine that, in reporting these adjustments, a respondent acted to the best of its ability and that its methodology is not unreasonably distortive. See AFBs 7 at Comment 7 (citing section 776 of the Act). See also AFBs 9, 68 FR at 35603.

We reviewed INA's home-market sales transactions which Timken identified as examples of post-sale rebates. We noticed that many of the allegedly suspect billing adjustments for certain sales of bearings resulted in higher net prices while later-reported sales of the same bearings were at identical prices to the same customers. We found that, for other sales, the billing adjustments resulted in increases in home-market prices. Moreover, for the overwhelming majority of cases any adjustments were of a very small amount. See Exhibit 2 to Timken's November 2, 2005, Comments on INA's Questionnaire Responses, Timken's case brief of April 4, 2006, and INA's rebuttal brief of April 11, 2006, at 4, 5, and 6. Therefore, the record does not demonstrate any pattern of margin distortion or manipulation by INA. Furthermore, INA explained that it made many of the billing adjustments to correct post-sale invoice errors which were not known at the time of sale.

Finally, although INA was not subject to a home-market verification for this period of review, we conducted a verification in the previous review where we verified that reported billing adjustments were limited in nature, made on a transaction-specific basis, and reflected actual debits and credits incurred (see the INA verification report, at pages 5 and 6, dated April 12, 2005). Overall, we find that INA acted to the best of its ability in reporting these billing and the record does not demonstrate that INA used billing adjustments to manipulate or distort the calculation of the margin. Accordingly, we accepted INA's claims of billing adjustments for the final results of review.

Comment 24: Timken argues that, based on the record, NSK's explanations for certain billing adjustments in the home market is insufficient and does not follow the Department's established practice for making such adjustments. Specifically, Timken argues that the Department's questionnaire instructs the respondent that, if billing adjustments fall into separate categories or programs, the respondent should report the adjustment in separate fields. According to Timken, contrary to this instruction NSK reported transaction-specific data in one field and lump-sum adjustments in a second field. Timken argues that certain lump-sum adjustments stemming from retroactive price changes that NSK made after establishing prices with its customers could lead to price manipulation. Timken argues that NSK's justification for such retroactive prices changes is insufficient under the Department's established practice.

In rebuttal, NSK argues that its ability or that of any other respondent to use billing adjustments to manipulate the Department's margin calculation is largely foreclosed by the Department's sampling methodology. NSK asserts that, for this segment of the proceeding, for example, its 2004-2005 fiscal year ended in March 2005. According to NSK, when the Department issued its questionnaire in July 2005 indicating the home-market sample months, it had already closed its records for all of those months. Thus, NSK argues, the opportunity to use billing adjustments to manipulate the prices in those transactions had long passed.

NSK argues further that the data on the record demonstrates that no manipulation in fact occurred. Specifically, NSK argues, only a small percentage of NSK's home-market sales (by value) featured negative or downward billing adjustments.

NSK argues that Timken's assumption that margin manipulation drives these adjustments contradicts the Department's own findings in numerous verifications of NSK in which the Department determined that NSK's records showed that the reported adjusted price were the actual prices charged to and paid by NSK's customers and that it was legitimate commercial considerations or negotiations that drove the adjustments.

NSK argues that, for these reasons, the Department should continue to allow NSK's negative home-market billing adjustment.

Department's Position: In our November 4, 2005, supplemental questionnaire, we asked NSK questions regarding the nature of its lump-sum billing adjustments and how it reported these adjustments in the sales database. Based on our review of NSK's responses and our analysis of the record, we find that there is no evidence on the record to suggest that NSK has manipulated its lump-sum billing adjustments to its favor. As NSK points out, for a respondent to manipulate its billing adjustments to its favor, it must first have direct knowledge of the sample months we select for our margin analysis for that particular review period. We did not announce the sample months until we issued the original questionnaire in July 2005. NSK closed its books in March 2005 and, as a result, its ability to engage in margin manipulation is highly unlikely.

Furthermore, the record demonstrates that, given that only a small percentage of NSK's home-market sales (by value) have negative billing adjustments, any manipulation of these adjustments would have no or an insignificant effect on NSK's margin calculation.

Finally, we have verified this specific adjustment in previous reviews and have found no evidence indicating that NSK has ever engaged in any manipulation of its lump-sum billing adjustments.

As we stated in response to Comment 21, because billing adjustments are, by definition, post-sale adjustments and are usually made to correct errors, we cannotconclude that we should deny them simply because customers did not have sufficient knowledge of them before or at the time of sale. Therefore, for these reasons, we conclude that Timken has not set forth sufficient bases for a denial of all negative billing adjustments NSK claimed.

9. Ministerial Errors

A number of parties have alleged that the Department made certain ministerial errors in its calculations for the AFBs 16 Prelim. Below is a list of the parties which have alleged ministerial errors by the Department in their case briefs:

Party	Country	Company	Issue
GRW	Germany	GRW	CEP Offset
GRW	Germany	GRW	Draft Liquidation Instructions
Nachi	Japan	Nachi	Downstream Sales

NSK	Japan	NSK	Draft Liquidation Instructions
NSK	Japan	NSK	Repacking Expenses
Sapporo	Japan	Sapporo	U.S. Zero-Price Sales
SKF	France	SKF France	U.S. Database Identification Programming Errors
SNR	France	SNR France	Difference-in-Merchandise Adjustment
Timken	Italy	SKF Italy	Inland Freight
Timken	Italy	SKF Italy	Indirect Selling Expenses
Timken	Germany	INA/FAG	U.S. Direct Selling Expenses

Where we and all parties agree that a ministerial error occurred, we have made the necessary correction and addressed the comment only in our company-specific analysis memoranda dated July 7, 2006. Comment 25 addresses the ministerial error alleged by Nachi with which the Department disagrees.

Comment 25: Nachi argues that the Department used the downstream sales prices of certain affiliated customers in its preliminary results even though Nachi's sales prices to these affiliated customers passed the arm's-length test. Thus, according to Nachi, the Department used sales to certain affiliated parties that passed the arm's-length test twice by including the downstream sale in the home-market sales the Department used to calculate normal value.

Timken agrees that the Department should not use both the sale to the affiliated reseller and the reseller's downstream sale. Timken observes, however, that the Department's computer-program instructions appear to limit the printout of the test to five observations and, therefore, the printout does not necessarily provide a complete description of the test's outcome.

Department's Position: The basis of Nachi's comment was the output of the computer-program we attached to the preliminary analysis memorandum dated March 2, 2006. The output of the program only printed the results for a sample of the customers. In fact, more of Nachi's customers did not pass the arm's-length test than indicated by the sample of customers listed in the output. See the notes on page 18 of the log of the comparison-market program attached to the preliminary analysis memorandum dated March 2, 2006, which indicates the total number of affiliated customers and the number of those customers which did not pass the arm's-length test. In fact, all of the customers for which Nachi provided downstream sales did not pass the Department's arm's-length test. We have printed the full results of the arm's-length test for all affiliated customers in the comparison-market program which is attached to the final results analysis memorandum for Nachi dated July 7, 2006, to demonstrate these results. Therefore, we have not used these sales twice as Nachi alleges and no change to the program is necessary.

10.   Miscellaneous Issues

Comment 26: Timken argues that, for the final results, the Department should account for all expenses NSK incurred for Japanese workers in the United States and deduct these expenses from CEP. Timken asserts that, in the prior review, the Department found that these workers were involved in economic activities which relate to the sale of ball bearings to unaffiliated customers in the United States and, similarly, the Department should deduct these expenses from CEP for the final results of this review. In addition, citing Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from the Republic of South Africa, 62 FR 61084, 61091 (November 14, 1997), Timken argues 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 certain expenses in question were not incurred on economic activity associated with U.S. sales to unaffiliated purchasers. NSK argues that, because the Japanese-worker expenses relate to the employees' status as Japanese nationals rather than to their economic activity in the United States, they should not be deducted from U.S. price. According to NSK, the expenses associated with certain additional benefits for these Japanese workers are designed to mimic the parent company's compensation structure while the workers are residing outside Japan, regardless of whether the worker is in the United States or some other country. NSK contends that, as such, these expenses are not connected to any U.S. economic activity nor can they be traced to any U.S. sales of subject merchandise. According to NSK, the requisite connection between indirect selling expenses and U.S. sales activity is simply lacking.

NSK argues further that it is also inappropriate to deduct travel expenses incurred on behalf of Japanese nationals. NSK contends that such expenses are even further removed from any sale to a U.S. customer. NSK asserts that Timken is essentially requesting the Department to adopt the position that, no matter how far removed, virtually any expenses that have anything to do with interactions between the parent company and its U.S. subsidiary should be deducted from CEP. According to NSK, such a position is inconsistent with the Department's established practice and should be rejected.

Department's Position: In its December 5, 2005, supplemental questionnaire response, at page S-34, NSK provided information which indicates that the Japanese workers in question were involved in economic activities which relate to the sale of ball bearings to unaffiliated customers in the United States. As a matter of record, NSK included certain expenses for these Japanese workers in its calculation of indirect selling expenses which the Department deducts from CEP.

As such, there is no dispute that the Japanese workers in question are in fact engaged in economic activity occurring in the United States. Because the record is clear 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. For this reason, we disagree with NSK's argument that we should not deduct the additional benefit expenses from CEP because they mimic its parent company's compensation structure. Although the expenses may mimic the parent company's compensation structure it still represents full compensation associated with economic activity occurring in the United States. As such, the statute, SAA, regulations, and case authority instruct us to deduct such expenses it from CEP. See section 772(d)(1) of the Act, the SAA at 823, and Timken v. United States, 16 F. Supp. 2d 1102, 1106 (CIT 1998) (Timken 1998) (concluding that the Department's decision to limit selling expenses deducted from CEP to those that were associated with economic activity occurring in the United States was supported by substantial evidence and in accordance with law).

Similarly, an expense might provide a multitude of secondary functions in the foreign country or even throughout the world but, if a company incurs the expense initially because it is associated with economic activity occurring in the United States, we will deduct it from CEP accordingly. See Timken, 16 F. Supp. at 1106. As such, NSK's argument is irrelevant under the statute, SAA, regulation, and case authority.

With regard to the issue of travel expenses NSK incurred on behalf of Japanese nationals for travel between Japan and the United States and within the United States, the record indicates that NSK accounted for such expenses in its figures for U.S. sales expenses and, therefore, no adjustment is necessary. See NSK's May 25, 2006, second supplemental-questionnaire response. For further information, please see the NSK final results analysis memorandum dated July 7, 2006.

Comment 27: NTN contends that, to avoid unreasonable matches of bearing models with substantial differences in design, physical characteristics, and applications, the Department should use the bearing-design types NTN uses in its normal course of business as opposed to the seven bearing-design classifications the Department identified in its questionnaire. NTN contends that the Department's claim on page 5 of its NTN Preliminary Analysis Memo, that "NTN did not provide an adequate justification to use its reported bearing designs" is not supported by the facts on the record. On the contrary, NTN contends, it provided justification for the use of the design types employed in its normal course of business, that these design types capture adequately the variations in bearing design, and that these design types respond more accurately to the statutory requirements mandating the selection of similar merchandise pursuant to section 771(16) of the Act. NTN contends that the Department's bearing-design classifications are too broad to capture all of the physical variations of NTN's bearing designs and result in matches of physically and functionally different products. NTN contends that the information it provided in Exhibits B-3 and B-3A of its September 26, 2005, questionnaire response comprised more than 80 pages of drawings, catalog pages, summary pages, correlation charts, and supporting explanations demonstrating the distinctions among NTN's design categories.

NTN contends that it has used its design types continuously since the original LTFV investigation. NTN contends that the Department has not provided a compelling reason for its decision to disallow NTN's design types in AFBs 15 as well as in this administrative review. Citing Shikoku, NTN contends that its reliance on the use of its design types in fourteen prior administrative reviews, the presence of an "unchanged fact pattern, and the lack of discovery of significant error" render the Department's change of methodology - to abandon NTN's design classifications - unwarranted.

Timken argues that NTN's position, that the Department's bearing-design types are so broad that they do not account for significant physical characteristics in bearing models and, thus, do not meet the broadest definition of "foreign like product," is based on an erroneous premise. Specifically, Timken contends, because the design type is only one of the eight characteristics the Department uses to identify the foreign like product, this criterion is not intended to capture the foreign like product independently.

Timken asserts that, in light of the Department's mechanics in its model-match methodology, the use of an extremely narrow criterion for a design type would limit the number of price-to-price comparisons. Moreover, citing to AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 58, Timken argues that NTN does not attempt to demonstrate that the Department's methodology results in the comparison of dissimilar products or that the use of NTN's designated design types will yield more accurate results.

Timken contests NTN's argument that the Department's acceptance of NTN's design types in reviews prior to AFBs 15 crystalizes into a longstanding practice from which the Department is not permitted to depart. Citing AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 57, Timken argues that the Department's practice relies first on bearing-design types identified in its questionnaire and, second, requires a party to justify the use of additional bearing-design types.

Finally, Timken argues the Department's prior acceptance of NTN's design types was in connection to the Department's use of the "family" model-match methodology. Under that methodology, Timken argues, the narrowly defined "family" of bearing models was not a result of the Department's conclusion that products outside the "family" would be dissimilar but, rather, because the Department calculated a weighted-average price of models within the "family."

Department's Position: 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. Specifically, section 771(16)(B) of the Act instructs that there are three criteria that a home-market model must meet in order to be considered similar to the U.S. model: i) the home-market model must be produced in the same country and by the same person as the subject merchandise; ii) the home-market model must be like the subject merchandise in component material or materials and in the purposes for which used; iii) the home-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, i) the home-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, ii) the home-market model must be like that merchandise in the purposes for which used, and iii) the home-market model must be found to be reasonably comparable with the U.S. model by the Department.

The thrust of NTN's argument centers on the second criterion of sections 771(16)(B) and 771(16)(C) of the Act. As we stated in AFBs 15, "{i}n the vast majority of market-economy proceedings, the Department's practice has been that any and all home-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 we normally 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." See AFBs 15 and accompanying Issues and Decision Memorandum at Comment 2. In the same comment, citing Final LTFV, 54 FR at 18999, we stated the following: "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.'"

Because all bearing models designated by NTN as different design types have a ball as a rolling element and fall within one of our seven bearing-design designations (i.e., angular contact, self-aligning, deep groove, integral shaft, thrust ball, housed bearing, and insert bearing), we consider them equally similar in component material or materials for model-match purposes, as instructed by section 771(16)(B)(ii) of the Act.

Further, to agree to an additional bearing-design classification, we have to be satisfied that the classification is substantially different from each of the design types we have identified. See, e.g., AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 15. After considering the information on the record we find that, with the exception of one design type, NTN did not provide compelling evidence that each of its reported bearing-design types was so significantly different that it merited its own classification, distinct and separate from the seven bearing-design types we identified in our questionnaire. We do find, however, that NTN provided evidence, as discussed below, that demonstrates that NTN's hub units incorporating angular contact bearings are significantly different from standard angular contact bearings as well as housed bearings to warrant a bearing-design designation distinct and separate from the seven bearing-design types we identified in our questionnaire.

Specifically, with the exception of hub units, we found that, on many occasions, NTN's numerous bearing-design designations were distinguishable due to a single element of difference or an element of difference that is not pertinent, such as a different width of inner race or the type of bore, the type of pillow material (i.e., cast iron vs. steel), the presence or absence of filing slots or the presence or absence of a dust cover, etc. Furthermore, certain elements for which NTN claims a separate design-type designation result in differences in product characteristics such as load direction, load rating, number of rows, etc., which we recognize in our model-match methodology. For example, NTN designates angular contact bearing models differently based on an angle of point-of-contact or the number of points-of-contact. We understand that these differences correlate directly with the load ratings and physical dimensions as well as, on occasion, the precision rating of bearings. These characteristics already distinguish dissimilar products in our model-match methodology. In fact, in its justification for a separate bearing-design designation for maximum-capacity bearing models, for example, NTN stated that "these bearings contain more balls than a standard ball bearing of similar dimensions. This gives the bearings a dynamic load rating of 20 to 35 percent greater than the corresponding standard bearing." See NTN's November 17, 2005, supplemental questionnaire response, at page A-10. Again, because load rating is a critical product characteristic responsible for distinguishing dissimilar products under our methodology, we would not match a maximum-capacity bearing model to a model that has a lower load rating even though it may have the same bearing-design designation. As such, although two NTN-designated bearing-design models might fall under the same design category we have established, it is unlikely that we will match these models as identical or similar models because of the consequent differences in their respective load ratings, precision grades, or variations in physical dimensions exceeding the sum-of-deviations limit of 40 percent.

Furthermore, we find that NTN's arguments that the function or application of different bearings warrant a separate design designation are unpersuasive. As we discuss above, by reference to AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 15, we stated that "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." As such, we find that NTN's interpretation of section 771(16)(B)(ii) of the Act that similar models be like the subject merchandise "in the purposes for which used" an extremely narrow one. In fact, 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 Seiko Ltd. v. United States, 66 F.3d 1204, 1210 (CAFC 1995), citing Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan; Final Results of Antidumping Duty Administrative Review, 56 FR 41508 (August 21, 1991).

NTN's argument that it has used these bearing-design types since the LTFV investigation is inaccurate. First, as we explained in AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 15, in the 2002/2003 administrative review, for example, NTN reported far fewer design types than it reported in this review. NTN also argues that the Department did not provide a compelling reason to disallow NTN's design classifications in AFBs 15 and in the instant review and cites Shikoku in support of its argument. In Shikoku, the Court held that the Department did not act reasonably in changing its methodology when the facts demonstrated that the respondents had the right to rely upon the Department's consistent approach in the investigation and four administrative reviews. See Shikoku, 795 F. Supp. at 422. The factual information in this review is clearly distinguishable from that in Shikoku. The Court in Shikoku set out a detailed test that had to be met before the Department's changes in practices would be considered unreasonable. Here, NTN has not demonstrated that the Department's changes in practice would be unreasonable. NTN has not met any of the conditions established in Shikoku. Here, we required the respondents to report the same five design classifications in every administrative review since the investigation. See, e.g., AFBs 1 and AFBs 14. As we explained further in AFBs 15, we also require that a respondent which argues for a design classification separate from the five we identified in the questionnaire must demonstrate why it merits its own classification. See July 5, 2005, Questionnaire, Appendix V, section I.6.f.2. We found that, with one exception, NTN did not demonstrate why we should use its bearing-design designations. As such, NTN's argument is unpersuasive inasmuch as NTN merely juxtaposes its self-directed methodology and the Department's methodology in showing its reliance. In essence, NTN argues that the Department had changed its methodology by abandoning its acceptance of unsupported design types in earlier reviews in favor of requiring NTN to comport, in this review, with the design designations set forth by the Department since the investigation. We find such argument unfounded because, as we stated above, there was never a change in our methodology and, as such, NTN cannot justify its reliance on a methodology which conflicts directly with the established methodology.

As we stated in AFBs 15, "because the bearing-design type must be identical to be an appropriate match (see the memorandum entitled 'Antifriction Bearings (and Parts Thereof) From France, Germany, Italy, Japan, Singapore, and the United Kingdom – Model-Match Methodology' dated July 7, 2004), 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 this proceeding." See AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 15. Taken cumulatively, sections 773(a)(4) and (a)(1)(A) of the Act express a clear preference for price-to-price comparisons and our selection of product characteristics enables a maximum number of price-to-price comparisons of similar products. Therefore, to overcome the statutory preference for price-to-price comparisons, NTN would have to convincingly demonstrate why its design classification is appropriate enough to make this departure.

While we recognize that NTN reported its design classifications in prior reviews, NTN is not relieved in the instant review from its obligation to demonstrate and support a unique design classification for its bearing models on a design-specific basis, which we do not believe NTN did with the exception of hub units. As such, the Department finds that the information on the record of this review does not support the use of NTN's design classifications.

With respect to NTN's hub units, we find that these bearing models warrant a distinct and separate bearing-design classification. For the bearing models in question, NTN provided its explanations and technical information in its September 26, 2005, questionnaire response in Exhibit B-3 and in its November 17, 2005, supplemental questionnaire response at page A-11. Specifically, NTN explained that hub units incorporating integrated bearings contain flanged races, either outer, inner, or both. For certain generations of hub units, NTN explained, the flange is drilled with holes to allow the insertion of bolts. These flanged outer races allow for specific mounting functions such as allowing a wheel or an anti-lock braking system to be mounted onto a hub unit whereas the flanged inner race allows the hub unit to be attached to the drive-train assembly. As such, NTN explained, the hub units serve not only as an antifriction device but also as a platform conducive to mounting or attaching other automobile components. We find that NTN provided compelling evidence to support its argument that the physical elements associated with its hub units warrant a bearing-design designation distinct and separate from the seven bearing-design designations we have identified. Therefore, we find that it is not appropriate to make comparisons of NTN's hub units with non-hub unit bearings. As such, for the final results of this review, we have designated NTN's hub units as a separate design type.

Comment 28: *In the NTN Preliminary Analysis Memo, at page 14, we stated that NTN's methodology to calculate home-market packing materials expenses causes distortions inasmuch as it does not distinguish among the various packing requirements with respect to different customer categories. Specifically, for example, NTN stated that sales to OEMs are packed in bulk while sales to distributors and after-market purchasers are packed individually in boxes. See, e.g., NTN's September 26 2005, questionnaire response at pages A-13, A-14, B-42, and C-44 and NTN's November 17, 2005, supplemental questionnaire response at pages B-15 and C-12. We re-calculated NTN's home-market packing materials expenses by using the customer category-specific U.S. re-packing materials factors as a proxy.*[6]

NTN contends that the Department acted unlawfully in re-calculating NTN's home-market packing-materials expense. Specifically, NTN argues that it based its methodology on the Department's directives in previous administrative reviews requiring NTN to report packing expenses without regard to customer categories. NTN contends that this is why it reported a single packing-expenses factor in its home-market sales list instead of separate packing-expense factors for various customer categories which it records in its business records and reported in its questionnaire response. As such, NTN argues, the Department has not provided compelling reasons for a change in the established methodology on which NTN relied, particularly in light of the fact that the new methodology is in direct contradiction with the Department's decisions in the previous administrative reviews. NTN argues that, had the Department asked in the supplemental questionnaire for reasons as to why NTN's reporting of packing expenses does not distinguish among customer categories, the Department would have obtained the necessary explanations which would have precluded it from relying on packing data related to the U.S. market as a proxy to estimate NTN's packing experience in Japan.

NTN contends that, in case the Department determines to continue to calculate home-market packing expenses specific to each customer category, the Department must use the information on the record of this review which reflects actual packing expenses incurred in

[6] We used NTN's U.S. re-packing expenses information to calculate U.S. re-packing expenses factors separately for each customer category. See Attachment I of the NTN Preliminary Analysis Memo.

Japan, segregated by cost centers dedicated to capturing sales and expense information applicable to the various customer categories, in favor of using U.S. packing data as a proxy for such expenses. Such an approximation, NTN contends, has no connection to packing expenses actually incurred in Japan and ignores the information readily available on the record of this review. As such, NTN contends, the Department should use customer-specific home-market packing-expense ratios NTN provided in its questionnaire response.

Timken contests NTN's position defending its use of a single packing-expense ratio. Citing the Department's NTN 2006 HM Verification Report and AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 20, Timken argues that, in the previous review as well as in this review, the Department objected to NTN's calculation of packing expenses because it results in essentially the same reported packing-expense factors for OEMs and distributors. Timken contends that NTN's use of a total single factor does not address the Department's concerns.

Timken disputes NTN's assertion that the Department did not ask NTN to explain why it did not report packing expenses by customer group. Citing the Department's October 20, 2005, supplemental questionnaire to NTN, Timken contends that the Department asked NTN to demonstrate that its allocation of packing expenses on the basis of value does not cause distortions in light of the Department's observation that packing expenses differ by customer category.

Finally, Timken objects to NTN's suggestion that the Department should use the customer-specific packing-expense information in Worksheet 4 in Exhibit B-7 in NTN's September 26, 2005, questionnaire response. Citing NTN 2006 HM Verification Report, Timken argues that, because the Department found that NTN's customer-specific ratios are essentially the same in value, the use of such factors would not remedy the Department's concern.

Department's Position: NTN reported a single packing-expense factor for all of its home-market sales which did not distinguish among the various customer categories to which NTN made sales such as OEMs, distributors, and after-market purchasers although, in its questionnaire and supplemental questionnaire responses, NTN stated repeatedly that differences in packing requirements are based solely on customer category.

In the NTN Preliminary Analysis Memo we stated that:

> "we find that NTN's allocation of packing expenses with respect to NTN's reported HM home-market's sales causes substantial distortions inasmuch as it does not capture differences in expenses for packing materials inherent in packing requirements with respect to different customer categories. In an attempt to best capture such differences and given the absence of the necessary data on the record of this review which would enable us to calculate packing expense factors for each customer category separately, we ...relied on the information in Attachment I (with respect to NTN's packing experience in the United States) as a proxy to estimate differences in packing material expenses for NTN's {home-market} sales to different customer categories. Using such information, we recalculated packing materials and, ultimately, packing

expense factors for each HM customer category."

While it is true that we directed NTN not to report customer-specific packing expenses in an early administrative review of this order, in subsequent administrative reviews, including the 2003-2004 review as well as the instant review, it has become apparent that such reporting is necessary because we designate NTN's levels of trade based on its reported customer categories. Because the use of customer-specific packing expenses accounts for differences in expenses associated with packing requirements of different customer categories, we can eliminate certain distortions in net prices, introduced by virtue of using NTN's cumulative reporting of such expenses, when we make comparisons of sales at different levels of trade. Specifically, because NTN uses a value-based methodology to allocate packing expenses, a reporting of a single packing-expense factor results essentially in averaging otherwise disparate customer-specific packing expenses. For example, if a distributor packing factor is 8 percent while an OEM packing factor is 2 percent, assuming equal quantities of sales to both types of customer, the single reported factor would be 5. This is important from a margin-calculation standpoint because, as explained below and with respect to NTN, we designate levels of trade based on customer categories.

When we calculate the level-of-trade adjustment factors for NTN's export-price sales, we compare weighted-average home-market prices for each level of trade, net of adjustments and expenses, including packing expenses. See 19 CFR 351.412(e). NTN derived and reported sale-specific packing expenses by multiplying the reported single packing-expense factor by gross unit prices. This results in distorted net prices among levels of trade because the average single packing-expense factor minimizes the disparity between packing costs for different customer categories. This in turn results in distorted level-of-trade adjustment factors which, in turn, results in distorted normal values after application of level-of-trade-adjustments for distributor, after-market, and OEM sales when we make comparisons at different levels of trade for NTN's export-price sales.[7]

In sum, the use of separate packing-expense factors by customer category is warranted because it captures differences in expenses for packing materials inherent in packing requirements with respect to different customer categories which, in turn, eliminates foreseeable distortions in our margin calculations.

We do not agree with NTN's assertion that we must use actual packing expenses it incurred in Japan in favor of using U.S. packing data as a proxy for such expenses. In our NTN Preliminary Analysis Memo, we stated that the record does not have the necessary data to calculate home-market packing-expense factors for each customer category. We made that statement because, although NTN provided home-market packing-expense factors by

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[7] Although we subtract a greater amount of a packing expense from distributor and after-market prices, because such prices are typically higher than OEM prices for NTN's sales, it does not eliminate the distortion in resultant net prices and can becomes more severe when the differences in prices among customer categories increases and/or when the difference in actual customer-specific packing expenses increases.

customer category, we found that it had derived such factors by allocating the total cost center-specific packing-materials and packing-labor expenses based on the ratio of customer category-specific sales value to the total sales value of each cost center. As such, while we agree with NTN that each of its cost centers is dedicated to capturing sales information applicable to the various customer categories, these cost centers do not capture the expense information in the same manner. In other words, for example, the packing-expense factor for distributors for a particular cost center, as reported by NTN, does not capture actual packing expenses incurred by this cost center even though it does capture information concerning the value of sales to distributors.

The evidence on the record supports our conclusion. Specifically, the home-market customer category-specific factors NTN reported are virtually identical in values on a cost center-specific level or on a company-wide level (i.e., a summation of cost center-specific values). See worksheet 4 in exhibit B-7 in NTN's September 26, 2005, questionnaire response. Although we recognize that NTN's packing experience in Japan might be different from the one in the United States, we find that the relevance of using data that reflects differences in packing requirements of various home-market customer categories, by virtue of using U.S. packing data as a proxy for expenses incurred in Japan, outweighs possible differences in packing requirements between the markets. As such, we do not find NTN's arguments persuasive to warrant a departure from the methodology we used in the preliminary results.

Finally, NTN relied on the same average packing-expense factor to calculate packing expenses for both its reported home-market sales and its reported U.S. sales. Because NTN shipped the merchandise in bulk to its U.S. affiliate, for the final results of this review we used, for consistency purposes, the re-calculated home-market OEM factor, as depicted in Attachment II of our NTN Preliminary Analysis Memo, to re-calculate packing expenses incurred in Japan for NTN's reported CEP sales. In addition, because NTN made export-price sales to OEMs only, we also used the same re-calculated OEM factor to re-calculate packing expenses incurred in Japan for NTN's reported export-price sales. See the Final Analysis Memorandum for NTN dated July 7, 2006.

Comment 29: Timken contends that the expenses associated with the warehousing of NTN's further-manufactured products should not have been excluded from the calculation of its U.S. indirect selling expenses. Specifically, Timken argues that NTN's statement at the Department's verification of NTN's U.S. sales information that further-manufactured products are non-subject merchandise, warranting an exclusion from the calculation of U.S. indirect selling expenses, is not accurate. First, Timken argues, further-manufactured products reported by NTN consume imported components and parts that are subject to the antidumping duty order. Second, Timken argues, because the value of sales (i.e., the denominator) over which indirect selling expenses were allocated includes sales of further-manufactured products, it is illogical to exclude the value of the warehousing expenses attributable to these sales from the numerator in the calculation of the ratio for U.S. indirect selling expenses.

NTN argues that the information on the record of this review is clear that the warehousing expenses which NTN excluded from its calculation of its U.S. indirect selling expenses pertain solely to non-subject merchandise. NTN cites exhibit C-11 of its September 25, 2005, questionnaire response and NTN 2006 CEP Verification Report at page 20. NTN argues that because the excluded expenses pertain solely to non-subject merchandise their exclusion from the calculation of NTN's U.S. indirect selling expenses was proper. Citing SKF United States v. INA Walzlager Schaeffler KG, 180 F.3d 1370 (CAFC 1999), and NSK Ltd. v. United States, 358 F. Supp. 2d 1276, 1292 (CIT 2005), affirmed by NSK Ltd. v. United States, 162 Fed. Appx. 982 (CAFC 2006), NTN contends that the Department has allowed such a methodology and it has been upheld by CIT and affirmed by the CAFC.

Department's Position: In our NTN 2006 CEP Verification Report we stated that NTN made an adjustment to its indirect selling expenses to exclude a portion of warehousing expenses its U.S. affiliate paid on behalf of certain facilities. We stated further that NTN made this adjustment because, NTN explained, these facilities' activities do not relate to the sale or distribution of the subject merchandise in the United States. Specifically, as we explained in our verification report, we learned that certain facilities in question perform further-processing on subject-merchandise components imported from Japan in the production of products other than ball bearings while an other facility in question performs further-processing on subject merchandise components imported from Japan in the manufacture of products including ball bearings. Id. Moreover, in our verification report we stated, "NBCA {NTN's U.S. affiliate} explained that, because further-manufactured products are non-subject merchandise, the warehousing expenses associated with these products were excluded from {indirect selling expenses}" Id. At our verification of NTN's reported U.S. sales information, we also tested NTN's claim for further-manufactured sales, including the examination of the relevant information pertaining to the facilities in question. Id.

In the NTN Preliminary Analysis Memo we stated that, "{b}ased on the information submitted in NTN's August 19, 2005, submission, we determined that NTN qualified for the Special Rule for exemption from responding to Section E of our original questionnaire pursuant to section 772(e) of the Act and to 19 CFR 351.402(c)(2)" such that we determined that the value added in the United States exceeds substantially the value of the imported subject merchandise consumed in the production of further-manufactured products. Therefore, we did not require NTN to report sales of further-manufactured products. Essentially, we determined and confirmed, in our verification of NTN's U.S. sales information, that the subject-merchandise components, imported from Japan and consumed in the further-manufacturing process at the facilities in question, resulted in the product that was either outside the scope of the antidumping duty order or in the product subject to the Special Rule exemption. As a result, the excluded warehousing expenses relate to either the imported subject-merchandise components consumed in the production of further-manufactured products or resultant finished product (i.e., further-manufactured product) that we determined was either outside the scope of the antidumping duty order or subject to a Special Rule exemption.

With respect to our calculation of a factor for indirect selling expenses, our practice has been the following: if the denominator used to calculate a factor for indirect selling expenses is comprised of the sales value for subject and non-subject merchandise, we allow the exclusion of expenses pertaining exclusively to non-subject merchandise from the numerator if the remaining selling expenses are common expenses pertaining to both subject and non-subject merchandise. See, e.g., NSK Ltd. v. United States, 358 F. Supp. 2d 1276 (CIT 2005), and Timken Co. v. United States, 209 F. Supp. 2d 1373, 1381 (CIT 2002). We find that NTN's exclusion of the warehousing expenses in question from the calculation of its U.S. indirect selling expenses is analogous with our practice. Specifically, because NTN was exempted under the Special Rule from reporting sales of further-manufactured product, it was proper for NTN to exclude the warehousing expenses which are attributable directly to sales of further-manufactured products.[8] The resultant pool of indirect selling expenses, including post-adjusted warehousing expenses, represents common expenses attributable indistinguishably to sales of subject merchandise and non-subject merchandise as well as sales of further-manufactured products. NTN then allocated the adjusted value of indirect selling expenses over the value of sales to which these expenses apply. We find this appropriate, based on the record of this review. Therefore, we have not re-calculated NTN's indirect selling expenses.

Comment 30: NPB argues that the Department should increase the search window around sampled sales by a month on each side of the sampled month. NPB comments that, when selecting home-market sales for matching purposes for a sampled firm, the Department searched only in immediately adjacent sampled months, so that a U.S. sale had only three potential months in which to find a normal-value match. According to NPB, this decision reduced the possibility of finding identical matches and increased the number of similar comparisons in instances where reasonably contemporaneous identical matches were available.

NPB argues further that the Department did not provide a clear rationale for its decision to narrow the search window. NPB suggests that extending the sample months slightly from the usual "three-month-back, two-month forward" period would not create a distortion because its bearing prices are very stable. Moreover, NPB argues, if the Department broadens the search for normal value to no more than two sample months in either direction, most of the comparison months that are thereby added do in fact fall within the traditional six-month time frame.

NPB claims that the Department's decision to abandon the family approach to identify comparison products has exacerbated the effect of narrowing the search window of sample months. The proportion of identical product matches has fallen tremendously as a result of that decision, NPB argues, and the effect of this change has fallen disproportionately on respondents subject to sampling in this review because of the narrowed search window. NPB suggests that the Department modify its practice to increase the size of its contemporaneity search. NPB claims that such a modification will correct an unnecessary and unintended distortion of the Department's ability to match U.S. sales to identical matches in the home

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[8] In the even NTN was not exempt from reporting sales of further-manufactured products we would require NTN to capture the warehousing expenses pertaining to imported subject merchandise.

market.

Timken comments that the Department's contemporaneity methodology for the bearings proceedings conforms with its practice of limiting contemporaneous comparisons to sales that are no more than three months prior or two months after the U.S. sales. While the sampling method reduces the total number of available months for comparison, Timken argues, this is merely the natural consequence of the reduction in reporting requirements, and the statute authorizes the Department to use sampling techniques, as specified in section 777A(a)(1) of the Act.

Department's Position: The contemporaneous months should not pass beyond the most recent of the three months prior or the two months subsequent to the month of the U.S. sale in which there was a sale of a foreign like product. See 19 CFR 351.414(e)(2). The Court has upheld this practice. See Prodotti AlimentariMeridionali v. United States, 26 CIT 749, 755 (2002), and AIMCOR v. United States, 86 F. Supp. 2d. 1248, 1255 (CIT 1999). Since AFBs 1, for respondents which provided sampled sales databases, we have matched each bearing model sold in the United States in one of the sampled weeks to the corresponding home-market month, then to the immediately preceding sampled home-market month, and then to the immediately following sampled home-market month. See Memorandum from Joseph Spetrini, Deputy Assistant Secretary for Office of Compliance, to Eric Garfinkel, Assistant Secretary for Import Administration, entitled "Recommendations on Sampling Technique and Methodological Approach for Administrative Reviews of Antifriction Bearings from Various Countries," dated July 30, 1990, page 6.

Given the fact that sample home-market months are separated by a month or more between each other in either direction, extending the window period by a month in each direction often results in extending the window period beyond the time period our regulation allows. See 19 CFR 351.414(e)(2). Therefore, we have not extended the window period for sampled respondents as NPB requests.

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 _________

____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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Date