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Public Document
AD/CVD 5: AFBs Team

MEMORANDUM TO: David M. Spooner
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, Singapore, and the United Kingdom for the Period of Review May 1, 2005, through April 30, 2006

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom for the period May 1, 2005, through April 30, 2006. 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. Zeroing of Negative Margins
2. Model-Matching Methodology
3. Constructed Export-Price Offset
4. Inventory Carrying Costs
5. Calculation of Cost of Production and Constructed Value
6. Use of Acquisition Costs
7. Miscellaneous Issues
   - A. Deduction of Japanese-Worker Expenses from CEP
   - B. U.S. Duty
   - C. Exclusion of High-Profit Sales
   - D. NTN Bearing Designs
   - E. Further-Processing Methodology
   - F. Completeness of Reported U.S. Sales
   - G. 15-Day Iissuance of Liquidation Instructions

Background

On June 6, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on ball and parts thereof from France, Germany, Italy, Japan, Singapore and the United Kingdom (72 FR 31271) (AFBs 17 Prelim). The reviews cover 21 manufacturers/exporters. The period of review is May 1, 2005, through April 30, 2006. We invited interested parties to comment on the preliminary results. At the request of certain parties, we held at a general-issues hearing on July 17, 2007, and a Japan-specific issues hearing on July 18, 2007.

Company Abbreviations

Barden/FAG – The Barden Corporation (U.K.) Ltd. and FAG (U.K.) Ltd
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. (Koyo Seiko)).
Nachi - Nachi-Fujikoshi Corporation
Nankai Seiko Co. Ltd. (SMT)
NPB – Nippon Pillow Block Co., Ltd.
NSK – NSK Ltd.
NTN – NTN Corporation
Sapporo – Sapporo Precision, Inc.
Schaeffler - Schaeffler companies (worldwide)
Schaeffler KG - (formerly known as FAG/INA) 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
SKF – The SKF Group (worldwide)
SKF France – SKF France S.A. and Sarma
SKF Germany – SKF 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
ISEs - indirect selling 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
USTR - U.S. Trade Representative
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 Prelim - Antifriction Bearings and Parts Thereof From France; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Antidumping Duty Administrative Reviews, 56 FR (March 15, 1991)

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

AFBs 17 Prelim – Ball Bearings and Parts Thereof from France, et. al.; Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Rescind Review in Part, 72 FR 31271 (June 6, 2007).

Discussion of the Issues

1. Zeroing of Negative Margins

Comment 1: Several respondents[1] argue that the Department should change its practice concerning the offsetting of negative margins (also known as "zeroing"). Citing Corus Staal BV v. United States, 259 F.Supp. 2d 1253, 1261 (CIT 2003), aff'd, 395 F.3d 1343, 1347 (CAFC 2005), cert. denied, 126 S. Ct. 1023 (Jan. 9, 2006) (Corus I), and Timken Company v. United States, 354 F.3d 1334, 1341-42 (Fed. Cir. 2004), cert. denied, Koyo Seiko Co., Ltd. v. United States, 125 S. Ct. 412 (Nov. 1, 2004) (Timken 2004), among others, SKF and SMT assert that the courts have concluded that the Department's zeroing methodology is not required by the Act in either an investigation or administrative review. Citing Timken 2004, Corus I, and NSK Ltd. v. United States, 416 F. Supp. 2d 1334, 1338 (CIT 2006), among others, SKF, SMT, and Schaeffler acknowledge that the courts have concluded that zeroing is a reasonable interpretation of an ambiguous statute. Schaeffler, SKF, NPB, NTN, NSK, Nachi, JTEKT, Asahi, and Aisin Seiki explain that, in decisions such as United States - Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R at ¶¶ 137, 156, 165, and 185 (App. Body Rep't Jan. 9, 2007) (determining zeroing to be WTO-inconsistent "as such" when used in the context of both average-to-average and transaction-to-average calculations) (US - Zeroing (Japan)), and United States - Laws, Regulations and Methodology for Calculating Dumping Margins, WT/DS294 (App. Body Rep't Apr. 18, 2006) (US - Zeroing (EC)), the WTO Appellate Body concluded that the Department's zeroing methodology in the contexts of investigations, administrative reviews, new-shipper reviews, and sunset reviews is inconsistent with the obligations of the United States under the WTO Antidumping Agreement. Nachi, Schaeffler, SKF, and Aisin Seiki assert that, in a direct response to US - Zeroing (EC), the Department has abandoned its zeroing methodology in the context of investigations; SKF and Aisin Seiki aver that the Department has recognized that the Act permits a zeroing-free calculation in investigations, citing Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (Dec. 27, 2006) (Final Modification).

SMT explains that the courts in Corus I and Timken 2004 concluded that, because the Act does not address the impact of negative margins directly, the Department's interpretation of the Act was to be accorded deference under Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) (Chevron). SMT JTEKT, Nachi, and NPBS argue that it is a well-established principle of U.S. law that, to the extent possible, the Department must interpret and apply the antidumping law in a manner that does not conflict with international legal obligations, including obligations under the GATT Antidumping Code and the WTO Antidumping Agreement, referring to Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804) (Charming Betsy). Citing Hyundai Electronics Co., Ltd. v. United States, 53 F. Supp. 2d 1334, 1344 (CIT 1999), SMT states that the CIT has recognized that "Chevron must be

[1] The respondents which assert that the Department should change its practice for the final results are SKF, Schaeffler, SMT, NPB, NTN, NSK, Nachi, JTEKT, Asahi, Sapporo, SNR, and Aisin Seiki. Sapporo and SNR agree with Schaeffler's arguments.

applied in concert with the Charming Betsy doctrine when the later doctrine is implicated." SMT argues that, in light of US - Zeroing (Japan) and the binding international law contained therein, the Department's zeroing methodology is not a reasonable interpretation of the Act and, accordingly, is not entitled to deference under Chevron. Schaeffler avers that, because Timken 2004 was decided prior to the recent WTO determinations concerning the Department's zeroing methodology, it is of little probative value.

Nachi, SMT, and NPB argue that recent WTO decisions have placed the Department's zeroing methodology in conflict with Charming Betsy. Citing Corus I, SMT acknowledges that the U.S. courts have shown reluctance to apply the Charming Betsy rule in relation to WTO decisions concerning the Department's zeroing methodology. Nevertheless, SMT posits, the WTO's decision in US - Zeroing (Japan) has changed the legal environment because the WTO ruled that the Department's zeroing methodology is inconsistent "as such" with the WTO Antidumping Agreement. SMT also asserts that, even though the United States has not instituted Section 129 proceedings, the announcement by the United States that it intends to comply with US - Zeroing (Japan) represents a fundamental shift in the Executive branch's position. SMT concludes that this shift removes the policy concerns that were present in Corus I and, therefore, any remaining impediment to the application of Charming Betsy.

NTN states that it is unreasonable to believe that Congress would have provided detailed directions for the calculation of normal value, CEP, and export price in sections 772 and 773 of the Act and then expect the Department to ignore them by zeroing. NTN also argues that, because the Department's zeroing methodology does not result in a true weighted mathematical average, it violates sections 771(35)(A) and (B) of the Act. NTN and Nachi assert that the Department's zeroing methodology excludes certain transactions above normal value which make up the class or kind of merchandise and, thus, in violation of sections 731 and 773 of the Act, does not make a fair comparison between normal value and either export price or CEP. Schaeffler argues that section 751 of the Act requires unambiguously that antidumping margins be based on all dumping margins regardless of whether normal value is higher or lower than U.S. price. Citing the legislative history of the URAA, JTEKT and Schaeffler claim that Congressional intent to implement provisions of the WTO Antidumping Agreement, coupled with the WTO's determination that the Department's zeroing methodology violates the Antidumping Agreement, precludes a determination that zeroing is permissible under the Act. Schaeffler also asserts that Corus I did not address whether the Department's zeroing methodology complied with the section 751(a)(2)(i)(ii) of the Act.

SKF argues that the fact that the current proceedings are administrative reviews rather than investigations does not justify the Department's continued use of its zeroing methodology. Specifically, citing Corus I and other decisions, SKF and Schaeffler assert that the CAFC has ruled that, for the purposes of zeroing, the differences between investigations and administrative reviews are not relevant. Further, SKF asserts that the United States has concluded that the differences between investigations and administrative reviews are irrelevant for the applicability of US - Zeroing (EC). Finally, Asahi, SKF, JTEKT, NSK, NTN, Nachi, and NPBS state that the United States has committed to implementing US - Zeroing (Japan).

NSK states that the Department has confirmed that it has the authority to implement WTO decisions outside Section 129 proceedings. Citing AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2, NSK asserts that the Department has stated that an increased accuracy in dumping-margin calculations is a compelling reason to implement a methodological change as soon as possible and to apply the change to past entries. NSK posits that the WTO's determination that the Department's zeroing methodology does not result in accurate dumping margins is a compelling reason for the Department to not employ its zeroing methodology in the final results of the ongoing review.

SKF asserts that, in light of recent WTO decisions and the response of the United States, the Department's statutory interpretation as it relates to zeroing in administrative reviews is not in accordance with the Act and is ripe for reconsideration.

Timken argues that, in Timken 2004 and elsewhere, the CAFC 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 states that the Department's calculation methodology complies with sections 771(35)(A) and (B) of the Act and that section 751(a)(2)(A) of the Act does not represent a statutory prohibition against the Department's zeroing methodology. Further, Timken argues, rather than providing a detailed instruction on the calculation of a single weighted-average margin to be applied to all entries, section 751(a)(2)(A) of the Act merely requires that the Department determine a U.S. price, normal value, and dumping margin for each entry. Also citing Timken 2004, Timken asserts that the CAFC has recognized that section 751(a)(2)(A) of the Act supports the Department's zeroing methodology inasmuch as it reflect historical entry-by-entry duty calculations.

Timken explains that section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise" and that, pursuant to section 771(35)(B) of the Act, the "weighted average dumping margin" is the percentage obtained by dividing the "aggregate dumping margins" by the "aggregate export prices and constructed export prices." Accordingly, Timken states, because all export prices and constructed export prices are included in the denominator of the calculation, all sales are given mathematical effect and contribute to lower dumping margins. Further, citing AFBs 16 and the accompanying Issues and Decision Memorandum at Comment 1, Timken asserts that the Department's exclusive use of observed actual dumping margins in the "aggregate dumping margins" calculation conforms with the definition of dumping margin contained in section 771(35)(A) of the Act. Timken also asserts that the Department's zeroing methodology serves the purpose of the Act which is to prevent or counteract dumping that is injurious to the domestic industry rather than to assure a positive revenue stream for the subject exporter.

Timken explains that the United States has neither determined how it will comply with its obligations nor completed the requisite statutory process. Citing 19 USC 3538(b)(4), Timken states that the United States can choose among several responses to adverse WTO decisions such as (1) maintaining the status quo, (2) negotiating a resolution, or (3) modifying U.S. law or

practice to bring it into conformity with international legal obligations as interpreted by the Dispute Settlement Body. Finally, citing WTO, Communication from the United States, US-Zeroing (Japan), WT/DS322/16 (Feb. 26, 2007), and WTO, Proposal On Offsets For Non-Dumped Comparisons, Proposal from the United States, TN/RL/GEN/147 (June 27, 2007), Timken explains that the United States has expressed strong opposition to US - Zeroing (Japan) and has proposed adding language to the WTO Antidumping Agreement which would affirm expressly that antidumping authorities do not have an obligation to provide offsets. Finally, Timken states that 19 USC 3538(c)(1)(B) requires that any changes made to the results of an antidumping proceeding in response to a WTO decision concerning either the WTO Antidumping Agreement or WTO Countervailing Duty Agreement must be prospective in nature and only apply to entries made on or after the date of the decision by the Executive Branch to make such a change.

Department's Position: We have not changed our calculation of the weighted-average dumping margin as suggested by respondents for these final results of reviews.

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). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See Timken 2004, 354 F.3d at 1342. We disagree with Schaeffler that the Timken 2004 decision is of limited probative value and should not be accorded substantial weight. To the contrary, the CAFC's decisions have binding effect and the CAFC has found that WTO reports have no direct effect upon U.S. law. See Strickland v. United States, 423 F.3d 1335, 1338 (Fed. Cir. 2005); Corus Staal BV v. Dep't. of Commerce, 395 F.3d 1343, 1349 (Fed. Cir. 2005); Timken 2004, 354 F.3d at 1342; Corus Staal BV v. United States, Docket No. 2006-1652, at 7-8 (Fed. Cir. Sept. 21, 2007).

The Department has taken action with respect to two WTO dispute-settlement reports finding the denial of offsets to be inconsistent with the Antidumping Agreement. With respect to United States - Final Determination on Softwood Lumber from Canada, WT/DS264/AB/R (App. Body Rep't Aug. 11, 2004) (Softwood Lumber), this WTO report has no bearing on these administrative reviews because it affected only the specific administrative determination that was the subject of the WTO dispute, i.e., the antidumping duty investigation of softwood lumber from Canada. See 19 USC 3538.

With respect to US Zeroing (EC), the Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. See Final Modification. In doing so, the Department declined to adopt any other

modifications concerning any other methodology or type of proceeding, such as administrative reviews. See Final Modification, 71 FR at 77724.

As such, the Appellate Body's reports in Softwood Lumber and US - Zeroing (EC) have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law. See Timken 2004, 354 F.3d at 1342. With respect to United States - Sunset Review of Antidumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R (Dec. 15, 2003) (Corrosion-Resistant Steel), the CAFC refused to find the Department's interpretation of the Act unreasonable on the basis of this report. See Corus I, 395 F.3d at 1349. The CAFC stated that Corrosion-Resistant Steel is not binding because the Appellate Body did not make a finding regarding the Department's methodology. Id. More importantly, the CAFC recognized that WTO reports do not have any effect on U.S. law unless and until adopted pursuant to the express statutory scheme. Id. As such, the WTO reports cited by the respondents are not relevant to our determination.

According to respondents, the Appellate Body recently determined in US - Zeroing (Japan) that zeroing was inconsistent with WTO obligations "as such" when used in the context of both average-to-average and transaction-to-average calculations in antidumping investigations, antidumping administrative reviews, and new-shipper reviews. Thus, respondents argue the Department's interpretation of the statute is unreasonable because it is inconsistent with both the Act and the United State's international obligations.

Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute-settlement reports. See 19 USC 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute-settlement reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary); see also SAA at 354 ("{a}fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is not inconsistent with the panel or Appellate Body recommendations. . .)." Because no change has yet been made with respect to the issue of "zeroing" in administrative reviews, the Department has continued with its current approach to calculating and assessing antidumping duties for these administrative reviews.

With respect to NSK's argument that denying negative comparison results to offset positive comparison results in calculating the overall weighted-average margin of dumping leads to a dumping margin that is not as "accurate" as possible, we disagree. As explained above, the CAFC has held that the definition of dumping margin set forth in sections 771(35)(A) and (B) of the Act does not require inclusion of negative comparison results from the calculation of the weighted-average dumping margin. As such, the NSK allegation of inaccuracy in the Department's calculations resulting from the exclusion of negative comparison results in the weighted-average dumping margin is misplaced. By excluding such negative comparison results in this case, the Department is calculating the weighted-average dumping margin accurately in accordance with its reasonable interpretation of how that term is defined in the statute. See

Corus I, 395 F.3d at 1347, and Timken 2004, 354 F.3d 1341-42. For the reasons mentioned above, we have not changed our calculation for these final results.

Comment 2: Citing section 751(d) of the Act and 19 CFR 351.222, NTN states that the Department should revoke the order with respect to NTN. NTN explains that, in the context of an administrative review, the key element for revocation is that a company demonstrate sales at not less than normal value for three continuous years. NTN explains that such a determination is based on the Department's calculations, which should be lawful and in accordance with the international legal obligations and commitments of the United States. NTN asserts that the Department should determine that NTN's margin in the current review, as well as in the two previous reviews to be zero.

Citing Implementation of the Findings of the WTO Panel in US-Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocation of Certain Antidumping Duty Orders, 72 FR 25261, 25262-25264 (May 4, 2007) (Section 129: US-Zeroing (EC)), NTN explains, in response to US - Zeroing (EC), the Department has recalculated margins without the use of zeroing and, upon determining that some of the margins at issue were either zero or de minimis, revoked the orders as to those companies. NTN asserts that, after implementation of US - Zeroing (Japan), NTN will have demonstrated three consecutive years of not having made sales at less than normal value.

Timken argues that the Department's zeroing methodology remains lawful under U.S. law and that the United States has not yet determined how it will comply with US - Zeroing (Japan). Timken also asserts that there has not been a decision to modify the Department's practice as a result of US - Zeroing (Japan). Citing 19 CFR 351.222(b)(2)(i)(B), Timken asserts that NTN's own estimations are not a substitute for the Department's determinations that a company has not sold at less than fair value for three consecutive years. Timken argues that NTN's reliance on the Section 129: US-Zeroing (EC) revocations is misplaced because the revocations were issued based on the Department's implementation of a different WTO decision and USTR's case-specific implementation instructions. Finally, Timken explains that the Final Modification applies exclusively to investigations.

Department's Position: We did not calculate de minimis margins for NTN in the two previous administrative reviews of the antidumping duty order on ball bearings and parts thereof from Japan. See AFBs 16, 71 FR at 40066, and AFBs 15, 70 FR at 54713. Moreover, the Department has determined that NTN's antidumping margin for these final results is 7.76 percent. Accordingly, the Department finds no basis to revoke the antidumping duty order on ball bearings and parts thereof from Japan with respect to NTN.

2. *Model-Matching Methodology*

Comment 3: JTEKT, NPB, NSK, NTN, SKF, and SMT 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 13 (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 argue that the Department has not provided a reasoned analysis justifying its abandonment of the family-matching methodology. The respondents claim that the Department gave as its "compelling reason" the Department's technological advancement (i.e., better computing abilities) since the first administrative review in which the family-matching methodology was adopted. JTEKT contests 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. Citing AFBs 3, 58 FR at 39763, JTEKT asserts that the Department adopted the family-matching methodology to take into account the salient characteristics of the AFBs market. JTEKT claims that the Department never said that technological capabilities necessitated the family-matching methodology nor that it would revisit the methodology someday when its capabilities improved. JTEKT and NPB 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.

Citing Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review, 64 FR 56759, 56769 (October 21, 1999) (Pipes and Tubes from Thailand), and Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110 (October 30, 2002) (Concrete Reinforcing Bars from Turkey), and accompanying Issues and Decision Memorandum at Comment 1, respectively, JTEKT contends that the Department has limited

revisions to the model-matching methodology in other proceedings to those cases 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 28366, and AFBs 3, 58 FR at 39765, NTN contends that the Department stated that it developed its family-matching methodology in the interest of maintaining a stable and predictable approach to its margin calculations. Citing AFBs 3, 58 FR at 39765, NTN asserts that the Department said that it would only alter its methodology when compelling reasons exist. SKF avers that a model-matching methodology should be stable and predictable.

The respondents assert further that the Department has still 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 identical home-market match but has two non-identical candidates from which a selection must be made: the U.S. model has an outer diameter of 40 mm and an inner diameter of 25 mm; one home-market model has the same inner diameter but an outer diameter than is 10 percent greater than the U.S. model while the other home-market model has the same outer diameter but an inner diameter that is 10 percent less than the U.S. model. Given that the sum of the deviations for the two home-market models is the same, NSK asserts that it is not possible to select one of these models as being the "most similar" model. Citing, among others, its February 2, 2004, submission on the record of the AFBs 15 administrative review (2003-04), NSK contends that the consensus among the interested parties was that there is no meaningful way to create any hierarchy of importance among the physical characteristics. Thus, according to NSK, there is no agreed-upon hierarchy of characteristics. As a result, NSK argues, the question of which bearing is the most similar has no answer other than the arbitrary model which the Department decides should be most similar. 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 would have been impermissibly dissimilar in previous reviews.

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 contends that, 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.

NPB also 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 one another but now they can be substantial, creating dumping margins where none exist. 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. at 622, 634 (CIT 1995).

Finally, NSK and NTN argue that, although the CIT has affirmed the Department's revised model-matching methodology in SKF USA Inc., et al., v. United States, Slip Op. 07-86 (May 29, 2007) (SKF), the CIT made its decision only in the context of the orders on ball bearings from France, Germany, and Italy. Because of this, NSK argues, the SKF decision warrants only a low level of deference in the context of this review.

Timken argues that the Department should continue to use the revised model-matching methodology. Timken contends that the CIT has affirmed the Department's revised methodology in SKF and that, although the litigation before the CIT was only in the context of the orders on ball bearings from France, Germany, and Italy, the model-matching methodology does not differ across the orders.

According to Timken, the arguments that the Department made in AFBs 15 and AFBs 16 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 and permits the Department to rely more on price comparisons as preferred by the statute. In addition, Timken argues, the new methodology enhances the Department's data collection and its control over the model-matching process. Finally, Timken argues that the increase in the Department's technical capabilities was not the reason for the change, but made a change to a more accurate methodology feasible.

Department's Position: For these final results, we have continued to use the model-matching 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 in these reviews are substantially similar to those we rejected in AFBs 15 and AFBs 16. Moreover, our model-matching methodology has been upheld by the CIT in SKF and in Koyo Seiko Co. v. United States, Slip Op. 07-128 (August 23, 2007) (Koyo 2007).

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.

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.

Section 771(16)(B) of the Act instructs that there are three criteria that a comparison-market model must meet in order to be considered similar to the U.S. model: 1) the comparison-market

model must be produced in the same country and by the same person as the subject merchandise; 2) the comparison-market model must be like the subject merchandise in component material or materials and in the purposes for which used; 3) the comparison-market model must be approximately equal in commercial value to the subject merchandise. Section 771(16)(C) of the Act also lists three criteria for similar merchandise where matches are not found under section 771(16)(B) of the Act: 1) the comparison-market merchandise 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 order; 2) the comparison-market merchandise must be like that merchandise in the purposes for which used; 3) the administering authority must determine that the comparison-market merchandise may reasonably be compared with the subject merchandise. Absent matches under section 771(16) of the Act, we will resort to CV pursuant to section 773(e) of the Act.

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 section 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-matching 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 total difference in four other physical characteristics of greater than 40 percent. By contrast, in most antidumping proceedings we impose no limits on 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 has suggested alternative matches which would be either appropriate or more similar than the matches we actually selected.

With respect to NPB's assertion that we are not taking into account all of the relevant characteristics in selecting a most similar model, 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. As discussed further below, however, the time to make these suggestions is at the beginning of a review so we can solicit comments from other interested parties, not in the case brief after we have issued the preliminary results and it is too late in the conduct of the reviews to analyze and/or implement the suggestions. In these reviews, no interested party made suggestions or comments until the case briefs were submitted. With respect to the additional physical characteristics Asahi and NPB suggested in their case briefs, see our responses to Comments 5 and 6, 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 us to apply it. Furthermore, this is the third administrative review period to which we have applied the revised model-matching methodology. At some point, any new methodology will have been in place long enough that its continued use must be considered stable and predictable. In our view, this point has been reached.

We addressed the issue of the component material or materials and 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 also contrasted 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 component material or materials and in 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 1995).

In addition, the possibility always existed, even under the family-matching methodology, that we would compare the prices of models which were not substitutable for the U.S. model in our normal-value calculation. For example, if the U.S. model was a model with two seals or shields,

there was nothing in the family-matching methodology which would have precluded the normal value from being based on the prices of models that had no seals or shields. Presumably, the latter could not be substituted for the U.S. model, yet we would have calculated normal value using the prices of such models under the family methodology.

With regard to the respondents' arguments that we are now treating as similar models we found previously to be dissimilar, as we stated above and in 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 antidumping proceedings. 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 TCOM. 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.

In summary, then, we determine that the model-matching methodology we used in these reviews comports with section 771(16)(B) of the Act because the comparison-market models we selected were produced in the same country and by the same person as the subject merchandise, they were like the subject merchandise in component material or materials and in the purposes for which used, and they were approximately equal in commercial value to the subject merchandise. In addition, they comport with section 771(16)(C) of the Act because the comparison-market models we selected were 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, they were like that merchandise in the purposes for which used, and we have, for the reasons enumerated above, determined that the comparison-market merchandise may reasonably be compared with the subject merchandise. Concerning specific models the respondents identified as not meeting one or more of the criteria of sections 771(16)(B) or (C) of the Act, see our response to Comment 6.

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. With respect to NSK's assertion that our methodology is less accurate than the old methodology, the heart of NSK's assertion is its contention that we are comparing products which are not similar. We address this contention in response to Comment 6.

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 ("{a}n 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: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Brazil, 70 FR 7243 (February 11, 2005), and accompanying Issues and Decision Memorandum at Comment 1, and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110 (October 30, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

We disagree with NSK's claim that it is not possible to select one of two different home-market models with the same sum of the deviations as being the most similar model. The possibility that we could find two equally similar matches is not unique to the ball-bearings proceedings. As a hypothetical example, suppose we had a product for which one of the characteristics we used was length and two home-market models are available for comparison to a U.S. sale. In this example, the only physical difference between the home-market models is that one model is two centimeters shorter than the U.S. model and the other model is two centimeters longer than the U.S. model. According to NSK, we would not be able to select one of these home-market models as being the most similar. In fact, however, we addressed this issue in AFBs 15. We

observed that "Koyo argues that we should use differences in level of trade and contemporaneity to resolve ties between 'equally similar' home-market models before using differences in the VCOM" and acknowledged that "we have had an inconsistent practice with respect to this issue among antidumping proceedings." We then stated that, "{i}n the interests of administrative consistency, we hereby state our intended practice across all antidumping proceedings" which is that "it is appropriate to place more weight on level-of-trade and contemporaneity concerns than on differences in costs." See AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 3. Thus, to use NSK's example of two home-market models with the same sum of the deviations, we would select one over the other based first on differences in level of trade compared to the U.S. model, then contemporaneity, and then differences in costs. As described above, this is our practice in all antidumping proceedings.

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 AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2 (quoting a July 13, 1990, letter 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 (quoting a July 13, 1990, letter on the record of the 1988-90 administrative reviews). 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 respondents assert that the change in our technological capabilities is not a compelling reason to change the model-match methodology. That was not our point. We did not change the methodology solely because we had better technical capabilities. Rather, as we explained in AFBs 15 and the accompanying Issues and Decision Memorandum at Comment 2, it was

because of the technological limitations we faced during the 1988-90 administrative reviews that we settled on averaging together groups of similar models rather than selecting the single most-similar model. The change in our technological abilities since 1990 meant that we could now select the single most-similar model rather than rely on averaging groups of models together. The fact that we are now selecting the most-similar model means our methodology is more accurate than our previous methodology and it is the change in technological abilities that permitted us to make such a selection. A compelling reason for the change, therefore, is that we are able to select the single most-similar model whereas, previously, we were unable to do so due to technological limitations.

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 CV. 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.

Therefore, compelling reasons exist to change the model-matching methodology because our revised methodology follows the statutory hierarchy more closely, it is a more accurate methodology than the family-matching methodology, it results in an increased number of reasonable price-to-price comparisons, and we presently have the technological ability to use a more accurate methodology.

Comment 4: 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. JTEKT also argues that the Department's statement in its May 6, 2005, memorandum in AFBs 15 that the respondents' proposal would exclude models with very slight physical differences implies falsely that the revised methodology permits only matches of models with very slight physical differences which the family methodology would prevent.

Citing AFBs 1 Prelim, NSK contends that the Department has stated previously that only sales which were identical with respect to bearing design, load direction, number of rows,

precision grade, inner diameter, outer diameter, width, and load rating "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. In the alternative, JTEKT suggests, the Department should cap the sum of the deviations at 10 percent on each of the four individual characteristics (e.g., inner diameter, outer diameter, width, and load rating).

Timken argues that the Department has exercised its discretion and adopted a methodology that balances the different requirements of the statute for selecting comparison merchandise. Timken asserts that a more restrictive cap would limit matches to a narrower group of candidates and likely reduce the number of price-to-price matches, which Timken claims is contrary to the statute.

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 bearings proceedings. As we discuss in response to Comment 6, below, 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.

JTEKT contends that we implied falsely that the revised methodology permits only matches of models with very slight physical differences which the family methodology would prevent. We do not mean to imply, however, that we will only attempt to match products with "very slight" physical differences. We merely observed that, if we set the cap on the sum of the deviations to zero, even those matches with only very slight physical differences would be eliminated. There is nothing in the law, however, which suggests that we are limited to making only those matches with very slight physical differences.

Comment 5: 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 nonceramic, 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.

Department's Position: In order for the Department to have sufficient time to consider rebuttal comments by the other parties with respect to NPB's proposed change, it must be made earlier in the conduct of the administrative review. As we said in AFBs 16 and the accompanying Issues and Decision Memorandum at Comment 4, 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. No interested party, including NPB, submitted any comments or made any suggestions on the model-matching methodology in these administrative reviews prior to the case briefs. As it did in AFBs 16, NPB chose to wait until its submitted its case brief to file any comments.

As we said in AFBs 16 and the accompanying Issues and Decision Memorandum at Comment 4, there are 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. While it may be preferable to compare models with the same type of seals rather than models with different types of seals, it is not clear, for example, to which home-market model we should compare a U.S. model that has no shield or seal where there are two appropriate home-market models, one that has a shield and one that has a seal. NPB has provided no explanation of how we should identify the most similar match in this situation.

Given the timing of NPB's request and lack of a reasonable explanation of how we would implement the additional characteristics pursuant to our revised methodology, we are compelled to deny NPB's request. Even if it were feasible to change the model-matching methodology for NPB, no other respondent reported these characteristics, so it would only be possible to change the methodology with respect to NPB based on the record as it stands. We would need to solicit additional information from the other respondents before implementing the changes in the model-matching methodology as NPB suggests, which is not practicable at this advanced stage of the reviews. We will pursue this matter further in subsequent reviews so long as it is raised by interested parties at an early-enough stage for us to reasonably consider, obtain the views of all interested parties, and request the appropriate information, as necessary.

Comment 6: JTEKT argues that, if the Department insists on using the revised methodology, it must also devise procedures by which respondents can identify inappropriate matches resulting under the Department's methodology and have those matches excluded from the margin calculation. JTEKT, NSK, and SMT also submitted a number of examples of matches that the Department made in its preliminary results that they allege are inappropriate comparisons. The respondents based their claims on differences in commercial use, size of rolling elements, pitch circle diameter, heat treatment, groove and snap rings, shields, outer diameter, and type of steel used to produce the bearing. SMT contends that, as a result of the difference in costs created by these differences in the physical characteristics of the bearings, the Department has created an inherent inaccuracy in the margin calculations where the home-market model is more costly to produce than the U.S. model. JTEKT also requests an opportunity in the current review to submit evidence concerning additional matches that it

believes are inappropriate but for which it has been unable to obtain the necessary data and documents within the time constraints for filing its case brief.

In addition, Asahi contends that standard bearings should not be compared to high-temperature bearings. Citing section 771(16)(B) of the Act, Asahi asserts that home-market sales of high-temperature bearings do not meet the statutory definition of similar merchandise with respect to U.S. sales of standard bearings because they are not like in component materials, they are not used for like purposes, and they are not approximately equal in commercial value.

Timken argues that the Department should not adopt the respondents' suggestions. Timken contends that, if the Department is matching bearings that are not similar, then it is acting contrary to law. According to Timken, JTEKT always has the opportunity to challenge illegal agency action and, therefore, the Department does not need to create new procedures to accommodate such challenges.

Citing Final LTFV, 54 FR at 18998-99, Timken argues that the critical component for determining similarity in the physical characteristics of ball bearings is the ball. Timken asserts that, by limiting its comparison of ball bearings sold in the United States to ball bearings sold in the comparison market, the Department ensures that it is comparing merchandise that is like in component materials and in the purposes for which used.

Citing Koyo 1995, Timken argues further that the foreign like product does not have to be substitutable for the subject merchandise to which it is being compared. Finally, Timken asserts that the matches are approximately equal in commercial value because the differences in variable costs are within 20 percent of the cost of manufacturing of the U.S. model.

Department's Position: We disagree with JTEKT's argument that we need to devise additional procedures for respondents to identify inappropriate matches. JTEKT, as well as other respondents, can and did identify what it felt were inappropriate matches in its case brief. While we generally did not agree with the respondents that the matches made were "inappropriate," there is nothing that precludes the respondents from identifying allegedly "inappropriate" matches in the future, either in pre-preliminary comments or in case briefs, as long as they rely on information submitted for the record in a timely manner. Thus, we find there is no reason to devise or adopt additional procedures as JTEKT suggests.

With respect to the "inappropriate" comparisons alleged by the respondents, we find that the matches we made are appropriate with respect to the statutory instructions of sections 771(16)(B) and (C) of the Act as carried out by our model-matching methodology. We do not find that any of the allegedly inappropriate matches are actually inappropriate in light of our interpretation of section 771(16) of the Act we discuss in our response to Comment 3, above. In fact, the characteristics respondents have cited which they contend make bearings dissimilar (e.g., standard versus high-temperature bearings, differences in size of rolling elements, pitch circle diameter, etc.) would not have rendered such bearings inappropriate as

matches under our previous methodology because these distinctions were not considered in the family-matching methodology. Thus, we could have compared bearings with these differences using the family-matching methodology. Moreover, none of the respondents suggested alternative matches which would be either appropriate or more similar than the matches we actually selected.

Furthermore, if JTEKT required additional time to prepare its case brief, it should have requested an extension of the submission deadline of its case brief prior to filing its case brief. Furthermore, as we have described above, we find that none of the matches JTEKT has claimed were actually inappropriate.

Finally, with regard to SMT's argument that we have created an inherent inaccuracy in the margin calculations where the home-market model is more costly to produce than the U.S. model, we observe that we make an adjustment for differences in merchandise based on the differences in the variable cost of manufacturing between the models compared. Furthermore, we only compare models with a difference-in-merchandise adjustment of 20 percent or less of the cost of manufacture of the U.S. model, so we are not comparing models with wildly disparate costs. Thus, if the home-market model is more costly to produce than the U.S. model, we adjust the normal value downward by the amount of the cost difference. This is our standard practice in all cases pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

This is not to say that we could not consider adding criteria such as Asahi suggests to our model-matching methodology. As with NPB's suggestion we discuss in response to Comment 5, in order for us to reasonably consider an argument to add additional physical characteristics to our model-matching methodology, any such suggestions must be made earlier in the conduct of the administrative review. Therefore, we will pursue these matters further in subsequent reviews so long as they are raised by interested parties at an early-enough stage for us to consider, obtain the views of all interested parties, and request the appropriate information, as necessary.

Comment 7: JTEKT argues that the Department must adopt a more appropriate treatment of dynamic load rating, one of the physical characteristics the Department uses in the model match. Citing the catalog it submitted as Exhibit A-37 in its September 27, 2006, questionnaire response at pages 182-3, JTEKT asserts that the life of a bearing is directly related to the cube of its dynamic load rating. Because of this relationship, JTEKT argues, the Department should calculate the cube of the dynamic load rating and use that figure in its sum-of-the-deviations calculation instead of the dynamic load rating itself. Otherwise, according to JTEKT, the Department's methodology underweight this physical characteristic.

Timken argues that the Department should not change its treatment of dynamic load rating in its model-matching methodology. Timken asserts that the Department chose dynamic load rating because it provides a standard measure for a bearing producer of the constant load that can be born by a bearing for a set amount of time.

Department's Position: We have not adopted JTEKT's suggestion. As we stated above, in order to have sufficient time to consider rebuttal comments by the other parties with respect to JTEKT's proposed change, it must be made earlier in the conduct of the administrative review. As we said in AFBs 16 and the accompanying Issues and Decision Memorandum at Comment 4, 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.

To the extent that JTEKT believes that we are placing insufficient weight on dynamic load rating in our model-matching methodology, the appropriate response would not be to add additional weight to that characteristic within the sum of the deviations. As we explained in the Memorandum from Mark Ross to Jeffrey A. May, Antidumping Duty Reviews on Antifriction Bearings (and Parts Thereof) From France, Germany, Italy, Japan, Singapore, and the United Kingdom - Model-Match Methodology, dated July 7, 2004, on the General-Issues record (A-100-001) of the 2003-04 administrative reviews, "{a}lthough every party agrees that inner diameter, outer diameter, width, and load rating are all important physical characteristics that we must take into account in our model-matching methodology, no party has suggested a hierarchy for these four characteristics. Because we have no means of ranking these four characteristics into a hierarchy, we believe that a sum-of-the-deviations approach is workable." Thus, if dynamic load rating is a more important characteristic than inner diameter, outer diameter, or width, we should remove it from our calculation of the sum of the deviations and place it in the hierarchy before remaining "sum-of-the-deviations" characteristics (i.e., inner diameter, outer diameter, and width).

We will pursue this matter further in subsequent reviews as long as it is raised by interested parties at an early-enough stage for us to consider, obtain the views of all interested parties, and request the appropriate information, as necessary.

Comment 8: JTEKT and NPB 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.

Citing Shikoku Chemicals Corp. v. United States, 795 F. Supp. 417 (CIT 1992) (Shikoku), NPB contends that the Department may not change a methodology when parties have relied on that methodology. NPB asserts that it relied on the prior methodology when it established its pricing structure for sales it made during this review period. NPB asserts further that, because the Department did not finalize its methodology until five months into the period of review, NPB had no opportunity to amend its pricing structure to account for the change in methodology. JTEKT contends that the Department did not fully articulate its revised model-matching methodology until the completion of the 2003-04 administrative review. JTEKT asserts that, for these reasons, it and other respondents were unable to price their U.S. sales at or above normal value. JTEKT contends that compliance with the law is impossible where

the model-match methodology is revealed only after the sales are made. Because of this, NPB and JTEKT argue, any changes to the model-match methodology should only be prospective.

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. JTEKT contends that the earliest the Department could apply a revised model-matching methodology would be in the 2006/07 review.

Department's Position: The Department is permitted to change its methodology as long as it provides a reasonable explanation for the change, as discussed further below. With respect to the model-match methodology for the AFB proceedings, we changed the methodology two administrative reviews ago – in AFBs 15. We have now applied this model-matching methodology in three administrative reviews of the bearings orders, including the present one. Moreover, the CIT has upheld the application of the model-matching methodology in AFBs 15 twice. See Koyo 2007 and SKF.

We first announced that we were considering a change to our model-matching methodology in June 2003. Then, in December 2003, approximately six months before the initiation of the fifteenth administrative reviews of the orders, we announced that we would seek to change the model-matching methodology and solicited comments from interested parties about what characteristics we should consider in our new methodology. The respondents submitted comments. Subsequently, we announced our intended methodology in July 2004, which is nearly one year before the earliest entry of merchandise subject to the current administrative reviews.

In changing a methodology, we must provide the parties affected by the change in methodology notice and an opportunity to comment before the final determination. See section 782(g) of the Act. We must also articulate our ground for changing our methodology to enable a reviewing court to understand the basis of the change and evaluate the consistency of that action with our mandate. See Hangzhou Spring Washer Co., Ltd. v. United States, 387 F. supp. 2d 1236 (CIT 2005). As described above, we not only satisfied our statutory obligation by affording interested parties an opportunity to comment on the model-matching methodology before the final determination in the review in which the model-matching methodology was first applied, but, indeed, we exceeded our obligation as relates to these administrative reviews. Also, we clearly articulated our grounds for change (see our response to Comment 3).

Further, a new methodology or a change to an existing methodology may be adopted in the context of an administrative review even though the transactions subject to such review were made at an earlier time. This is because the statute has established a retrospective antidumping and countervailing duty assessment system, which means that final duties are calculated after merchandise has been imported into the United States. See 19 CFR 351.212(a). Because the Department's antidumping duty analysis takes place after sales of

subject merchandise have entered the United States, a changed methodology necessarily applies to sales that have already entered the United States. Retroactive application is distinguished from a retrospective system where, for example, in the case of critical circumstances, entries that were not subject to a proceeding at the time of entry became subject to dumping duties based upon a finding of critical circumstances.

The respondents' reliance on Shikoku is similarly misplaced. In our view, this case permits the application of a changed methodology in the review in which it is adopted, absent very limited and unique circumstances, none of which is present in the case of these bearings proceedings. The court in Shikoku was clear that it was carving out a narrow exception when it limited its ruling to the instance in which a slight improvement in the methodology acted to deny a respondent its revocation. In that case, the court ruled that the Department's explanation for changing its methodology was inadequate, that it only resulted in a slight improvement in its methodology, and, therefore, that it was not sufficient to warrant the change. The court also recognized that, if the change were more significant, fairness to petitioners in antidumping duty proceedings would warrant the change. Shikoku, 795 F. Supp. at 422. Unlike in Shikoku, the model-matching methodology in these bearings proceedings is far greater than a "slight" improvement. In addition, the respondents were notified of the change in methodology before the final results of these reviews, were afforded an opportunity to comment on the methodology, and have not pointed to any information on the record to demonstrate that they have detrimentally relied on the family-matching methodology in an attempt to comply with U.S. antidumping law.

For all of the reasons stated above, we find that our application of the current model-matching methodology in these administrative reviews is proper.

Comment 9: SKF argues that the Department should not elevate lubricants as a physical characteristic to one that is on equal footing with the historical eight physical characteristics used to identify bearings. SKF asserts that any concern that high-priced lubricants may not be reflected properly in the dumping analysis is insufficient to justify the Department's change in the treatment of lubricants. SKF contends that the proper methodology to address such concerns is to require that parties account for differences in lubricant prices in the submission of their COP information.

Timken contends that SKF appears to take issue with the Department's approach to the selection of identical merchandise but that, in its brief, SKF only asks for a modification of the selection of similar merchandise. Timken claims that, in any event, SKF's argument was addressed by the Department in AFBs 15.

Department's Position: We found in AFBs 15 that there are compelling reasons to change our definition of what constitutes identical merchandise (i.e., 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 2002-03 administrative reviews that differences in the

types of greases can cause significant differences in cost. Because of this, two models which are otherwise identical may have significantly different costs if they contain different types of grease. If we were to treat these two different models as identical products, it could lead to distortive effects on our calculation of the dumping margin. For example, if we compared a U.S. model with a standard grease to a home-market model which is otherwise identical but has a high-performance grease and we regarded the models as "identical" for matching purposes, we would create a dumping margin. Conversely, a comparison of a U.S. model with a high-performance grease to a home-market model with a standard grease could mask dumping. 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, higher price in calculating a dumping margin. Accordingly, we have changed our definition of control numbers to account for different types of lubrication.

SKF's argument that the proper methodology to address differences in lubricants is to require that reported COP data reflect differences in lubricant prices is not persuasive. If we treat two bearings, one with a standard lubricant and one with a high-performance lubricant, as an identical model, then we would calculate the cost of that single model by weight-averaging the costs of the two bearings. Moreover, the home-market prices of those bearings would be weight-averaged together into a single price to be used as normal value. Thus, SKF's suggestion would not address the differences in prices and costs between bearings with standard lubricants and bearings with high-performance lubricants. By defining the two different bearings as two different models, we appropriately capture the differences in prices and costs of the two bearings.

3. Constructed Export-Price Offset

Comment 10: *For the preliminary results of this review, we calculated Aisin Seiki's normal value based on constructed value. In accordance with section 773(e)(2)(B)(ii) of the Act, because Aisin Seiki did not have a viable comparison market, we calculated selling expenses and profit for Aisin Seiki's CV based on the weighted-average of the selling expenses and profit we calculated for the other Japanese manufacturers subject to this review in connection with their sales of the foreign like product in the ordinary course of trade in the foreign country. Pursuant to section 773(a)(7)(B) of the Act, we granted these other Japanese manufacturers a CEP offset, indicative that the manufacturers reported home-market sales and associated adjustments that were based on a level of trade more advanced that the U.S. level of trade.*

Aisin Seiki argues that a CEP offset to its normal value is appropriate because the commission and ISE amounts the Department used in calculating normal value for Aisin Seiki were based on those amounts for other manufacturers for which the Department also granted CEP offsets. Aisin Seiki argues that the Department should also make a similar CEP-offset adjustment when calculating normal value for Aisin Seiki. Aisin Seiki argues that, without a CEP offset, the Department's margin calculation for Aisin Seiki which adds

ISEs and commissions of other manufacturers to normal value and subtracts U.S. selling expenses from CEP, causes distortions in Aisin's dumping margin.

No interested party provided rebuttal comments on this issue.

Department's Position: We disagree with Aisin Seiki that a CEP-offset adjustment to its normal value is appropriate. In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the home market at the same level of trade as U.S. sales. Pursuant to 19 CFR 351.412(c)(iii), we identify the normal-value level of trade based on the starting-price sale in the home market or, as in the case with Aisin Seiki when normal value is based on constructed value, the level of the sales from which we derive SG&A and profit. In accordance with 19 CFR 351.412(c)(1)(ii), we identify the CEP level of trade based on the starting-price sale in the United States as adjusted under section 772(d) of the Act. Pursuant to section 773(a)(7)(A)(I) of the Act and 19 CFR 351.412(c)(2), to determine whether normal-value sales are at a different level of trade than that of export-price or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal-value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP-offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

Although Aisin Seiki claims that it is eligible for a CEP offset, it did not provide us with the necessary information to determine whether a CEP-offset adjustment to its normal value is warranted. Specifically, while the record contains level-of-trade information for other Japanese producers, Aisin Seiki did not provide us with a detailed explanation with respect to selling activities it undertakes for sales to its U.S. affiliate as we requested on pages V-2 and A-9 of our July 10, 2006, questionnaire. As such, we cannot ascertain whether comparison-market sales by other Japanese producers were made at levels of trade different from Aisin Seiki's CEP level of trade or whether the former were made at more advanced stages of distribution than the latter. Therefore, because we do not have the information necessary to reach such a conclusion, we are unable to grant Aisin Seiki a CEP-offset adjustment for these final results.

Comment 11: Canon contends that the Department erred in calculating a dumping margin for Canon because it did not grant a CEP offset to normal value. Canon cites section 773(a)(1)(B)(I) of the Act which requires, to the extent practicable, that the Department establish normal value at the same level of trade as the export price or CEP. Citing Micron

Tech., Inc. v. United States, 243 F.3d 1301 (CAFC 2001) (Micron Tech), Canon states that sales are made at the same level of trade if they are made at the same marketing stage in the chain of distribution that begins with the manufacturer. Citing Stainless Steel Sheet and Strip in Coils From Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review, 71 FR 45024 (August 8, 2006), Canon states that the normal-value level of trade is based on the starting price of sales to unaffiliated customers in the comparison market whereas the CEP level of trade is based on the derived price of a foreign exporter's sale to the affiliated importer in the United States. Citing Micron Tech, Canon clarifies that, pursuant to section 772(d) of the Act, the derived price of a foreign exporter's sale to the affiliated importer in the United States is obtained after the deduction of expenses and profit associated with the selling activities undertaken by an affiliated U.S. importer from the starting price of U.S. importer's sale to unaffiliated customers in the United States. Canon argues that, where the normal-value level of trade is different from the CEP level of trade, where the former is at a more advanced stage in the chain of distribution than the latter, and in situations where it is not practicable to quantify the effect of differences in levels of trade on price comparability, the Department must make a CEP-offset adjustment to normal value pursuant to section 773(a)(7)(B) of the Act.

Canon asserts that, logically, because its sales in the comparison market are to unaffiliated customers, the levels of intensity of selling activities associated with these sales must exceed those associated with selling activities Canon undertakes to sell to its U.S. affiliate. Canon points to exhibit S2A-1 of its January 4, 2007, supplemental questionnaire response for record evidence it alleges supports its assertion. As such, Canon argues, its sales in the comparison market were made at a stage in the chain of distribution more advanced than that associated with its sales to its U.S. affiliate.

Timken and domestic interested parties did not comment on this issue.

Department's Position: Section 773(a)(1)(B) of the Act requires that, to the extent practicable, the Department base normal value on sales at the same level of trade as export price or CEP. In the Preamble to the regulations in Final Rule we stated that, "{w}hile neither the statute nor SAA defines level of trade, section 773(a)(7)(A)(I) of the Act provides for level of trade adjustments where there is a difference in levels of trade and the difference 'involves' the performance of different selling activities...{w}hether that difference amounts to a difference in the levels of trade will have to be evaluated in the context of the seller's whole scheme of marketing." Final Rule, 62 FR at 27371.

In defining a CEP offset, section 773(a)(7)(B) of the Act states that, "{w}hen normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D)." In the

Preamble to the regulations in Final Rule, we stated that 19 CFR 351.412(f) "also clarifies that the Department will grant a CEP offset only where a respondent has succeeded in establishing that there is a difference in the levels of trade . . . ." See Final Rule, 62 FR at 27370.

The statute and the regulations are clear in requiring a respondent to demonstrate, to our satisfaction, the following circumstances: 1) the existence of different selling activities (or significant differences in intensity levels of similar selling activities) associated with comparison-market and CEP sales; 2) that these differences in selling activities (or significant differences in intensity levels of similar selling activities), in themselves, amount necessarily to a difference in the levels of trade, taking into account varying marketing schemes, each claiming a distinctive set of selling activities; 3) that the level of trade associated with comparison-market sales involves additional selling activities (or significantly higher intensity levels of similar selling activities) not present (or not to a comparable degree of intensity) in the level of trade of CEP sales, thus warranting a conclusion of the former being at the more advanced stage of distribution than the latter. Clearly, a respondent's demonstration as to the prevalence of these elements is central to our determination of the appropriateness of a CEP-offset adjustment to normal value. Such is the purpose of an entire section of our standard questionnaire, identical in content to the one we issued to Canon in this review, dedicated to guiding a respondent in providing the information necessary for our level-of-trade analysis. See "Distribution Process" of Section A of our standard questionnaire, which is available on our website at http://ia.ita.doc.gov/questionnaires/questionnaires-ad.html.

At issue here is whether Canon provided sufficient information to demonstrate the appropriateness of a CEP-offset adjustment to normal value. On this point, from the onset of this review, Canon made various erroneous assumptions regarding its interpretation of level of trade in general, as discussed below. Our questioning of Canon's reasoning behind its interpretation of its levels of trade was hindered by Canon's inability to provide certain standard information such as a selling-functions chart (requested in our original and first supplemental questionnaires) and its inability to answer questions effectively which we posed in our supplemental questionnaires in which we sought information aimed at understanding Canon's assumptions. For examples regarding the scope of information we requested and the quality of responses we received, see Canon's October 3, 2006, questionnaire response at pages A-14 through A-16 and Exhibit A-16, Canon's December 5, 2006, supplemental questionnaire response at pages 3-4, and Canon's January 4, 2007, second supplemental questionnaire response at page 2 and Exhibit S2A-1. Specifically, in its questionnaire responses, Canon argued that its reported home-market channels of distribution should constitute separate levels of trade because one of the channels involves (while the second one does not) an initial layer of selling functions undertaken by Canon for its sales to its affiliate and a subsequent layer of selling functions undertaken by Canon's affiliate for its re-sales to unaffiliated customers. It appears that one of Canon's erroneous assumptions was to conclude that, when Canon's selling functions are considered in the aggregate with those of

its affiliate, this resulting home-market channel of distribution attains a level of trade more advanced than the CEP level of trade.

Based on the information in Canon's second supplemental questionnaire response, we concluded in our preliminary results of review that Canon's two reported home-market channels of distribution constitute a single level of trade, that the CEP level of trade is not sufficiently different from the home-market level of trade, and that the CEP level of trade is not at a less advanced stage of distribution than the home-market level of trade. See memorandum to file entitled "Ball Bearings and Parts Thereof from Japan: Canon, Inc. (Canon) Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order (5/1/05-4/30/05)," dated May 29, 2007. Our decision was predicated, in part, on the fact that Canon provides very few selling activities associated with all of its channels of distribution. We recognize that a situation involving a layer of selling activities undertaken by a company in addition to a layer of selling activities undertaken by a company's affiliate can result, arguably, in a channel of distribution more advanced than those associated with a company's direct sales to unaffiliated home-market customers or with a company's sales to its U.S. affiliate. We do not believe that such is true with respect to Canon because both it and its affiliate provide the same set of selling activities, albeit to differing degrees, amounting to just three passive functions: sales forecasting, inventory maintenance, and order input/processing.[2] As such, we believe it would be erroneous to conclude that the home-market channel of distribution in question is more advanced simply because it is as limited in its scope of selling activities as the remaining home-market and U.S. channels that Canon reported. Our conclusion is logical because Canon's sole purpose of its involvement in the ball-bearing business is to procure ball bearings for its own products such as printing and copying machines, office imaging products, cameras, etc. as well as for repairing and/or refurbishing these products. As such, our conclusions regarding Canon's channels of distribution are very different from the level-of-trade conclusions we reach for a majority of ball-bearing manufacturers in these reviews, most of which rely on different sets of selling activities for each of their channels of distribution with each set comprising numerous active and passive selling functions. The record evidence that Canon furnished in this review underscores Canon's unique situation but it does not support Canon's argument of the appropriateness of a CEP-offset adjustment to normal value.

In the preliminary results, we found that there were no significant differences between the selling activities associated with Canon's CEP level of trade and those associated with the home-market level of trade because both levels of trade involve similar levels of intensity with respect to sales forecasting, inventory maintenance, order input/processing, and re-packing.

Canon's entire argument is predicated on its presumption (which we do not find is supported by record evidence) that, because its sales in the comparison market were made to

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[2] Although Canon reported re-packing as a fourth selling activity we do not consider it as a selling function pursuant to sections 773(a)(6)(A)-(B)(i) of the Act.

unaffiliated customers, the levels of intensity of selling activities associated with these sales must exceed those associated with its sales to its U.S. affiliate. We have re-examined the evidence on the record of this review (page 2 and Exhibit S2A-1 of Canon's second supplemental questionnaire response, dated January 4, 2007). Canon reported the same four selling activities for two of its home-market channels of distribution as well as its CEP channel of distribution - sales forecasting, inventory maintenance, order input/processing, and re-packing. Of the three reported selling activities, Canon reported identical levels of intensity, i.e., "moderate," for inventory maintenance and order input/processing selling activities across all channels of distribution; Canon reported a "moderate" level of intensity for sales-forecasting selling activity for both home-market channels of distribution while it reported a "low" level of intensity for this selling activity for its CEP channel of distribution.

Notwithstanding that Canon provided very few selling functions in all its channels of distribution, as we discuss above, we do not find that an incremental increase in the level of intensity of a single selling function with respect to the home-market channel of distribution, in comparison to the CEP channel of distribution, warrants a conclusion that this channel differs significantly from the CEP channel of distribution. Therefore, we find that Canon's CEP channel of distribution constitutes the same level of trade as its home-market channel and is not at a less advanced stage of distribution that the home-market channel. As a result, we do not find it appropriate to make a CEP-offset adjustment to normal value in our margin calculations for Canon in this review.

Comment 12: Timken argues that the Department must modify its methodology of weighting the values it uses in the computation of CEP profit to ensure that home-market and U.S. sales are expanded into balanced time periods. Citing Transcom, Inc. v. United States, 294 F.3d. 1371, 1376 (CAFC 2002), and Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (CAFC 1990), Timken argues that the statute intends a calculation of the most accurate margins possible. Timken argues that its proposition to modify the Department's CEP-profit calculation will produce more accurate results.

Timken argues that the Department's sampling methodology, invoked when respondents made more than ten thousand transactions during the POR, allows them to report U.S. transactions for six randomly selected weeks of sales and home-market transactions for eight randomly selected months of sales (including two so-called window months outside the POR). Timken contends that the Department's methodology of calculating CEP profit reflects time-adjusted sampled U.S. sales that produce a period of twelve months while the Department's time-adjusted sampled home-market sales produce a period of sixteen months. As such, Timken contends, home-market sales are over-represented in the Department's CEP-profit calculation, resulting in the profit rate of home-market sales out-weighing the profit rate of U.S. sales and, thus, distorting the CEP-profit calculation in favor of one market over the other.

In order to put sales in both markets on a comparable time-period basis, Timken proposes that the Department use either six POR months of home-market sales and continue to use its

time-weight factor of two or use eight months of home-market sales along with a modified time-weight factor of one and a half.

Timken argues that sections 772(d)(3) and 772(f) of the Act require a calculation of CEP profit using the profits earned and expenses incurred for sales of the subject merchandise in the United States and the foreign like product sold in the exporting country during the POR. Citing AFBs 13 and the accompanying Issues and Decision Memorandum at Comment 7, Timken argues that the Department concluded in those reviews, however, that, because it relies on sales outside the POR in determining normal value, such sales must also be included in the CEP-profit calculation. Therefore, Timken contends, if the Department continues to maintain in these reviews that the same data used in calculating normal value should also be used in calculating CEP profit, it then must weight sampled home-market sales with a factor of one and a half to produce a period of twelve months, a period of time the Department achieves when it adjusts sampled U.S. sales.

No interested party provided rebuttal comments on this issue.

Department's Position: We disagree with Timken. As we stated in Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review, 69 FR 33630 (June 16, 2004), and accompanying Issues and Decision Memorandum at Comment 9, we use the home-market sales during the extended window period to form the basis of our calculation of normal value. Thus, in accordance with the statute and our normal practice, which is articulated in Policy Bulletin 97.1, we use these expenses in the calculation of the CEP-profit ratio. This methodology is identical to that employed in past cases, such as Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 68 FR 6889 (February 11, 2003), and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 62 FR 18476 (April 15, 1997). In those cases as well as in these reviews, the methodology we used comports with section 772(f)(2) of the Act. Therefore, for these final results we have made no changes to our methodology for calculating CEP profit.

4. Inventory Carrying Costs

Comment 13: Timken asserts that the Department should only accept inventory carrying costs that have been reported in a consistent manner. Timken also holds that, when the factor for inventory carrying cost is calculated using cost of goods sold in the United States, then the inventory value in the United States (landed cost or transfer price), not the COP in the comparison market, should be used to determine the cost of inventory held in the United States.

Citing the Department's preliminary analysis memorandum for JTEKT dated May 29, 2007, in which the Department states, "{c}ompanies generally value the cost of their finished goods inventory using COM or other reasonable inventory-valuation methods rather than the value

of future sales," Timken argues that it has never advocated the use of future sales to measure inventory value. Instead, Timken advocates the use of an accurate measure of the inventory held by a related party in the United States, not inventory held by a parent company in the home market. Timken requests that the Department "calculate inventory carrying costs based on the respondent's actual inventory-valuation method if it reflects generally accepted accounting principles" as the Department stated in its preliminary analysis memorandum for JTEKT.

Timken observes that, in the past, the Department has sought to ensure a correct calculation of this expense by using a value that measured U.S. inventory. Citing Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 63 FR 20585, 20601 (April 27, 1998), citing the September 20, 1996, Remand Redetermination on pages 8-9 from Federal- Mogul Corp. v. United States, 918 F. Supp. 316 (CIT 1996) (TRB Remand Redetermination), Timken claims that the Department should calculate the inventory carrying costs in a consistent manner such that a factor calculated on one basis, e.g., landed cost, is applied on the same basis and, when the factor for inventory carrying costs is calculated using cost of goods sold in the United States, the value used to determine the cost of U.S.-held inventory is the value of inventory in the United States, e.g., landed cost or transfer value, not the COP in the home market. Citing the TRB Remand Redetermination, Timken states that the Department regards transfer prices as the actual cost to a U.S. subsidiary of acquiring the subject merchandise and, as such, "the actual cost of the merchandise as it entered the subsidiary's inventory."

Timken also argues that the Department should not accept JTEKT's calculation of its U.S. inventory carrying costs because JTEKT multiplied the rate for this expense by its reported TCOM. Timken claims that JTEKT's practice of calculating its factor for inventory carrying costs on the basis of its cost of goods sold and then multiplying the factor by the TCOM of the merchandise involved in each U.S. sales transaction is inconsistent and illogical. Timken argues that, instead of using TCOM as the multiplicand in this formula, the Department should multiply the factor for inventory carrying costs by a U.S. inventory value.

JTEKT agrees with the Department's preliminary rejection of Timken's arguments to change the calculation of JTEKT's inventory carrying costs factor which the Department has accepted in all past AFB reviews. JTEKT concurs with Timken in principle that, whatever basis is used to value inventory, i.e., whether on the basis of the cost or the sales price of the merchandise, consistent values should be used to calculate the transaction-specific amounts for inventory carrying costs the respondents report in the sales databases. JTEKT points out that the TRB Remand Redetermination Timken cites affirms the methodology Koyo Seiko, JTEKT, and Koyo Corporation of U.S.A. used to calculate inventory carrying costs in all previous administrative reviews of the AFB orders.

According to the TRB Remand Redetermination, JTEKT argues, if the calculation is based on "sales value," then the denominator of the fraction used to calculate the factor for inventory carrying costs would be the value of sales and the factor would then be multiplied by the "unit price" of each reported transaction to obtain the transaction's reported per-unit inventory carrying cost. Likewise, according to the TRB Remand Redetermination, JTEKT argues, if the calculation is based on cost, then the denominator of the fraction used to calculate the factor for inventory carrying costs would be the cost of the merchandise and the factor would then be multiplied by the "unit cost" of each reported transaction to obtain the transaction's reported per-unit inventory carrying cost. JTEKT claims that it followed these methodologies to calculate and report its factors for inventory carrying costs and the per-unit values in the review that was the subject of the remand.

JTEKT insists that, in the current review, it calculated its factors for inventory carrying costs and respective per-unit values according to the same principles as described in the TRB Remand Redetermination. Accordingly, JTEKT concurs with Timken's endorsement of the Department's approval of JTEKT's (previously Koyo Seiko's) calculation methodologies used to report the inventory carrying cost in its home-market and U.S. sales databases.

JTEKT states that, for the AFBs proceedings, it calculated its U.S. inventory carrying cost by multiplying the U.S. inventory carrying cost rate for such costs by the landed cost until another petitioner, Federal-Mogul Corporation, challenged this practice in the CIT after the Department completed AFBs 3. According to JTEKT, Federal-Mogul Corporation argued in Federal-Mogul Corp. v. United States, 918 F. Supp. 386, 397 (CIT 1996), that transfer prices such as landed cost "should not be used in calculating the adjustment to {foreign market value} because such prices are inherently suspect." The Department requested a voluntary remand which the CIT granted, JTEKT states, on which the Department reaffirmed – and the CIT affirmed in Federal-Mogul Corp. v. United States, 950 F. Supp. 1179 (1998), aff'd without opinion 155 F.3d 565 (CAFC 1998) – its inventory carrying cost methodology for calculating inventory carrying costs.

Although the CIT upheld JTEKT's use of the landed cost to calculate its U.S. inventory carrying costs, JTEKT states, it changed its calculation methodology in AFBs 5 by multiplying the rate by the COM to avoid possible challenges on the same issue in the subsequent reviews. JTEKT claims that the Department accepted this methodology, Timken's predecessor Torrington did not object, and Timken has not challenged this practice until this review. JTEKT argues that the Department should continue to accept JTEKT's methodology of calculating this expense. If the Department decides to recalculate this expense by multiplying the rate by the landed cost, JTEKT recommends, the Department should recalculate the erroneously reported landed cost before recalculating this expense.

NTN dismisses Timken's argument concerning the calculation methodology for inventory carrying costs as a general comment with no link between Timken's comments and the Department's decision in the preliminary results related to inventory carrying costs. Rather than citing relevant facts of record in these preliminary results or citing to other public

information on the record in this review, NTN argues, Timken goes to great lengths to provide lengthy quotations from remand results in 1998 for which Timken does not show any relationship to the record in this review. NTN characterizes Timken's argument as vague and requests that the Department reject Timken's argument because it is not based on the record in this review and thus does not raise issues the Department needs to address.

Department's Position: We have not changed our calculation of U.S. inventory carrying costs for JTEKT in the final results of review. Consistent with other cases, we continue to calculate JTEKT's U.S. 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, 14054-55 (March 29, 1996).

The court has granted deference to our choice of methodology in calculating inventory carrying costs. See E.I. DuPont de Nemours & Co. v. United States, 4 F. Supp. 2d 1248, 1256 (CIT 1998). As there is no statutorily mandated methodology to evaluate inventory carrying costs, we have considerable discretion to determine our method of calculation. The court has found that our calculation of U.S. inventory carrying costs based on COM is reasonable. See Paul Müller Industrie GmbH & Co. v. United States, Consol. Ct. No. 04-00522, Slip Op. at 9 (CIT June 29, 2007).[3] Even though transfer prices may represent the actual cost of the merchandise as it entered the subsidiary's inventory, it is reasonable to use COM to calculate U.S. inventory carrying costs. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Canada, 67 FR 55782 (August 30, 2002), and the accompanying Issues and Decision Memorandum at Comment 2.

We find that JTEKT calculated its U.S. inventory carrying costs consistently on a cost basis. JTEKT used its cost of goods sold as its denominator of the fraction it used to calculate its U.S. inventory-carrying days. It used its U.S. inventory-carrying days to calculate its U.S. factor and then multiplied its U.S. factor by the COM to calculate the U.S. inventory carrying cost. Therefore, we find JTEKT's use of COM in its calculation of U.S. inventory carrying costs reasonable and we do not find a basis to recalculate JTEKT's U.S. inventory carrying costs by multiplying the factor by the landed cost. Timken did not cite any other specific instances where the Department calculated inventory carrying costs incorrectly for other firms. Further, although NTN addressed Timken's argument in its rebuttal brief for the General Issues record, because Timken's comment did not address the nature of the calculation of NTN's inventory carrying costs, we have not evaluated NTN's rebuttal comments.

[3] This case was appealed to the United States Court of Appeals for the Federal Circuit on August 28, 2007.

5. Calculation of Cost of Production and Constructed Value

Comment 14: Aisin Seiki argues that the Department should base the profit rate for CV on Aisin Seiki's profit rate rather than the profit rate associated with its suppliers.

Timken contends that Aisin Seiki has not provided a valid explanation as to why the Department should change its methodology. Timken argues that, pursuant to section 773(e)(2)(B)(ii) of the Act, the Department has calculated Aisin Seiki's CV profit accurately and in accordance with the statute.

Department's Position: Because Aisin did not have a viable comparison market we used CV as the basis for normal value. With respect to the profit component of CV, sections 773(e)(2)(A) and (B)(i) of the Act require that profit be based on the actual amount incurred and realized by the specific exporter or producer being reviewed in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country or, if such data are not available, the actual amount of the profit of that producer or exporter incurred and realized in connection with the production and sale for consumption within the foreign country of merchandise that is in the same general category of products as the subject merchandise.

Where a respondent does not have home-market sales (as was the case with Aisin Seiki for the POR), data pertaining to sections 773(e)2(A) and 773(e)(2)(B)(i) of the Act are not available. Accordingly, the Department must use the alternative methods in sections 773(3)2(B)(ii) or 773(e)2(B)(iii) of the Act. In this case, Aisin could not provide the information required under section 773(e)(2)(A) or section 773(e)(2)(B)(i) of the Act because it did not have applicable sales in the home market. As such, section 773(e)(2)(B)(ii) of the Act provides for the use of profit calculated based on the weighted-average of the actual amounts incurred and realized by other exporters or producers that are subject to review in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. Consistent with section 773(e)(2)(B)(ii) of the Act and our normal practice, we added an amount for CV profit based on the weighted-average of actual amounts of profit incurred and realized by other Japanese respondents under review with respect to their sales of the foreign like product. See, e.g., Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review, 66 FR 36754 (July 13, 2001), and accompanying Issues and Decision Memorandum at Comment 4. Accordingly, we have not changed our calculation of CV profit for Aisin for these final results.

Comment 15: Timken argues that, based on its review of the Department's calculations, it appears that the Department excluded a certain number of U.S. sales in the calculation of the margin for SKF Germany because there are substantially more sales in the sales database SKF Germany submitted than are included as part of the Department's margin analysis. Timken asserts that the difference may be due to the removal of home-market sales

corresponding to a certain number of models from the margin analysis because of missing expense and profit information.

Timken suggests that the Department determine whether SKF Germany has reported all of its home-market OEM sales. Timken contends that, if the Department determines that SKF Germany has reported its home-market sales accurately, then it should modify its calculations so that the applicable CV expense and profit ratios are applied appropriately. Timken asserts that this situation may be related to the manner in which SKF Germany reports its home-market sales and associated level-of-trade information.

SKF Germany contends that it has reported all of its home-market transactions. It states that, pursuant to the Department's instructions, while it does not limit its reporting to sample months in the home market, it does report only those home-market sales for the bearings that match on the first four product characteristics to those bearings sold in the United States. SKF Germany argues that this is not a level-of-trade issue as suggested by Timken.

With respect to Timken's observation that the Department's margin calculation is based on only a certain number of sales reported by SKF Germany in the U.S. market, SKF Germany states that it also referred to the same apparent discrepancy in its Germany-specific case brief. SKF Germany asserts that the apparent discrepancy may have arisen, at least in part, from the Department's decision to incorporate third-party cost data in its calculations.

Department's Position: We agree with both Timken and SKF Germany that we excluded a certain number of U.S. sales from our analysis for the Preliminary Results; this was inadvertent and we have corrected our error. Further, we are satisfied that SKF Germay reported its home-market transactions accurately.

SKF Germany had sales at only one home-market level of trade during the POR but had sales in the United States at two levels of trade. For the AFBs Prelim we relied on the level-of-trade variable in our matching of U.S. sales to normal value and, due to an inadvertent error, we excluded a number of transactions from our margin analysis. We have corrected this error and have included all U.S. sales in our analysis.

Comment 16: Timken observes that, according to Barden's September 27, 2006, section C response at page 10, it reported U.S. sales to three categories of customer: OEMs, distributors, and machine and component repairers/rebuilders. Timken contends that this is at odds with Barden's description of its categories of customers in its September 27, 2006, section A response at 16-17 which does not mention the machine and component repairer/rebuilder category but does mention a fourth category, government customers. Timken also observes that there is no corresponding customer category in the home market to the machine and component repairers/rebuilders category in the U.S. market. Timken asserts that, when it becomes necessary to compare U.S. sales for this category of customer to CV, the Department has excluded them from the calculation of the weighted-average margin because the Department determines selling expenses based on home-market sales to the same customer category. Timken argues that the Department should determine the actual customer

categories to which Barden sold bearings in the United States and, consequently, which home-market selling expenses to use for calculating the CV of Barden's U.S. sales to machine and component repairers/rebuilders.

Barden contends that it inadvertently omitted from its section A response a description of machine and component repairers/rebuilders. Barden suggests that the Department use the selling expenses for OEMs to calculate the CV of Barden's U.S. sales to machine and component repairers/rebuilders. Barden argues that the Department should do this because machine and component repairers/rebuilders are more in the nature of OEMs than distributors of bearings. Barden also contends that it had no U.S. sales to government customers during the POR.

Department's Position: We sent Barden a supplemental questionnaire on July 19, 2007, to obtain more information regarding its sales to machine and component repairers/rebuilders. Barden submitted its response on July 26, 2007. Based on the information Barden submitted, we find that the selling functions Barden's U.S. affiliate performed for sales to machine and component repairers/rebuilders were not the same as those it performed for sales either to OEMs or distributors in the United States because Barden performed a number of selling functions for machine and component repairers/rebuilders at a different level of activity than it did for its sales to OEMs or distributors. See Barden's July 26, 2007, supplemental response at Exhibit 1. Therefore, in contrast with U.S. sales to OEMs or distributors, there is no corresponding level of trade in the home market for the purposes of calculating CV profit and selling expenses.

We find, however, that the selling functions for Barden's sales to machine and component repairers/rebuilders are closer to the selling functions for its sales to OEMs than for its sales to distributors. We based this conclusion on the fact that the selling functions for sales to machine and component repairers/rebuilders differed from the selling functions for sales to OEMs for three selling functions and that, for these three functions, Barden did not perform the selling function of a different level of activity machine and component repairers/rebuilders while it performed them both for OEMs and distributors. See Barden's July 26, 2007, supplemental response at Exhibit 1. By contrast, Barden performed several selling functions for distributors in addition to the three discussed above. Id. Because of this, we determine that the level of trade of U.S. sales to machine and component repairers/rebuilders is closer to the level of trade of home-market sales to OEMs than to distributors.

Accordingly, we attempted to match U.S. sales made to machine and component repairers/rebuilders to home-market sales to OEMs before matching to distributors. If we found no match, we calculated the CV profit and selling expenses for U.S. sales to machine and component repairers/rebuilders using the profit and selling expenses Barden reported for home-market sales to OEMs. We implemented this decision in our calculations by assigning the same level-of-trade code for machine and component repairers/rebuilders as we use for OEMs; this does not mean they are the same level of trade but is a simple way of ensuring

that they match to home-market OEM sales and that we use the profit and selling expenses of sales to OEMs as the basis for CV profit and selling expenses for sales Barden made to machine and component repairers/rebuilders in the United States.

6. Use of Acquisition Costs

Comment 17: JTEKT, Aisin Seiki, and SKF take issue with the Department's decision to require unaffiliated producers to provide COP information for use in the calculation of margins for certain resellers.

JTEKT and Aisin Seiki request that the Department remove from the record the information JTEKT and other manufacturer respondents already provided to the unaffiliated reseller respondents and calculate the antidumping duty margins for the reseller respondents based on the acquisition prices at which they obtained the subject merchandise from their unaffiliated suppliers rather than on the basis of the manufacturer respondents' costs. Further, Aisin Seiki argues that, because of disparities between the costs, basing normal value on manufacturers' actual costs for certain bearing models it purchased is not reflective of Aisin Seiki's acquisition costs and, therefore, causes distortions in the dumping margin the Department calculated for Aisin Seiki.

JTEKT and Aisin Seiki argue that the AFBs Prelim and the Department's September 7, 2006, memorandum from Richard Rimlinger to Laurie Parkhill entitled Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Calculation of the Cost of Production and Constructed Value for Merchandise Produced by Unaffiliated Suppliers (Unaffiliated Suppliers Memorandum) concerning this issue do not provide legal support for the Department's decision to require JTEKT and other manufacturer respondents to provide cost data to unaffiliated reseller respondents and calculate the margins for those reseller respondents on the basis of the respondent manufacturers' cost data rather than the reseller respondents' own acquisition costs. According to JTEKT, the Department relies erroneously on the statutory provision that is not intended to authorize the Department to require reseller respondents to replace their own acquisition-cost data routinely with their unaffiliated suppliers' COP. On the contrary, JTEKT asserts, one of the foundations of the antidumping duty statute and the Department's enforcement of the statute since 1980 has been that transactions between unaffiliated parties, such as unaffiliated manufacturers and resellers, are considered to be at "arm's length" and hence reliable for the purposes of determining prices and costs and testing the validity of prices involved in transactions between affiliates. JTEKT argues that the phrase "cost of materials and fabrication or other processing of any kind employed in producing the merchandise" in section 773(b)(1) of the Act does not compel the replacement of an exporter's cost of acquiring the merchandise from an unaffiliated supplier with the supplier's COP. JTEKT suggests that, in light of this principle, the proper focus should be on the prices and costs of the reseller respondents because they sold the subject merchandise purportedly at prices less than fair value in the United States and below their COP in their comparison market.

JTEKT advocates that the only measure of whether a respondent engaged in such practices must be its own COP, which, in the case of merchandise a reseller/exporter respondent has acquired from an unaffiliated supplier, equals the sum of the exporter's cost of acquiring that merchandise and its SG&A expenses. To determine otherwise, JTEKT states, would undermine the general understanding as to the arm's-length nature of transactions between unaffiliated parties. Therefore, JTEKT argues, in the absence of unusual circumstances that are not present in this review, the manufacturer respondents are not expected to provide cost information to unaffiliated parties.

JTEKT claims that its argument is consistent with the Department's longstanding practice of permitting the respondent exporters to use their cost of acquiring inputs from unaffiliated suppliers in calculating the COP for finished bearings. In such case, JTEKT states, respondents need to replace the cost of acquiring inputs for those inputs that are obtained from affiliated suppliers only if the acquisition cost is less than the affiliate's COP or the market price for the inputs, pursuant to sections 773(f)(2) and (3) of the Act. JTEKT states that there is no Congressional intent for the Department to rely on the statute to impose obliquely a different rule for finished bearings obtained from unaffiliated suppliers.

JTEKT states further that the phrase "{c}osts shall normally be calculated based on the records of the exporter or the producer of the merchandise . . ." and that section 773(f)(1)(A) of the Act cover situations in which, for example, an unaffiliated producer "knew" at the time of its sale to the exporter that the merchandise was intended for export, in which case it is appropriate for the Department to determine the existence of dumping based on the costs and prices of the producer, not the exporter. JTEKT argues that this statutory provision should not be a basis for requiring reseller respondents to report the COP of unaffiliated manufacturer respondents such as JTEKT.

SKF argues that the Department has misconstrued its statutory directive with regard to the reporting of costs for finished bearings and components purchased from unaffiliated suppliers. Notably, according to SKF, these unaffiliated suppliers often are SKF's major competitors. SKF argues that the Department's current interpretation of its statutory obligations stands in stark contrast to its prior interpretation as embodied in the Department's questionnaire requirements in the original investigation and in each of the past sixteen administrative reviews of the antidumping duty orders on bearings from various countries. SKF asserts that not only is the Department's current interpretation of its statutory obligations in direct contravention of the law of this case but it also conflicts with the requirements of other statutory provisions and it is inconsistent with prior decisions of the CIT. SKF asserts further that the Department's new interpretation requires respondents and their suppliers to either share confidential cost and sales information, thereby possibly subjecting them to charges of anticompetitive conduct, or to attempt to price their products without any cognizable reference point for normal value in total disregard of any semblance of due process.

SKF argues specifically that, for the past sixteen reviews, the Department has required the reporting of acquisition cost for re-sales of complete bearings and/or parts produced by unaffiliated suppliers. In those reviews, according to SKF, the Department's instructions focused correctly on the relationship of the supplier to the respondent. Thus, according to SKF, for complete bearings and components purchased from affiliated parties, the Department applied the special rule for calculating COP and CV correctly. SKF asserts that, in these proceedings, however, acquisition cost has always been used to report purchases from unaffiliated suppliers, whether for production or subsequent resale. SKF argues that there has been no material change of fact in this review to justify the Department's departure from this methodology. SKF argues further that, as a result, the facts of this case necessitate the same determination made by the Department in prior administrative reviews, that is, that acquisition price is the appropriate measure of COP and CV for merchandise manufactured by unaffiliated suppliers and resold by respondents.

Citing Hussey Copper, Ltd. v. United States, 834 F. Supp. 413, 418 (CIT 1993) (Hussey), SKF argues that the law dictates generally that, absent a change in material fact, an issue cannot be resolved by an agency in a contrary manner. Specifically, according to SKF, the law prohibits an agency from adopting significantly inconsistent policies or positions that result in creating conflicting lines of precedent governing the identical situation.

SKF asserts that, if the Department were to implement the change in its position in the final results of these administrative reviews, in complete contravention of the law there would be two directly conflicting lines of precedent governing the appropriate measure of COP and CV with respect to merchandise purchased from unaffiliated producers and resold by respondents.

Citing Anshan Iron and Steel Company Ltd., v. United States, 2003 CIT, Slip Op. 2003-83, at 19-20, SKF argues that, while it recognizes that exceptions exist to this general rule and that in particular circumstances the Department may change methodologies, the courts have held that in cases such as this, with a sixteen-review history of a consistent statutory interpretation, the Department cannot change its methodologies without providing a compelling need for doing so.

SKF argues that the Department has not provided the requisite support for the change in this case. According to SKF, there has been no recent statutory amendment that would mandate this change in reporting methodology. Citing Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries from Chile, 70 FR 6618 (February 8, 2005) (IQF Raspberries Final), and the accompanying Issues and Decision Memorandum at Comment 3, SKF argues further that, in fact, the Department appears to acknowledge that its decision is not mandated by the statute but rather, according to SKF, the Department claims that it has a practice of relying on COP or CV of the producer where the sale to an exporter or a reseller is of finished foreign like product.

SKF argues that, while no provision exists that specifically addresses the appropriate measure of COP or CV for finished merchandise produced by unaffiliated manufacturers and resold by respondents, the statutory framework of the antidumping law supports the acceptance of acquisition price as a reliable measurement. Citing Memorandum to File, Ball Bearings and Parts Thereof from Germany: SKF Germany's Sales of Merchandise Produced by Unaffiliated Suppliers (September 7, 2006), SKF argues that the Department appropriately does not suggest that the statute mandates the proposed change in methodology, as evidenced by the fact that the Department did not require the submission of unaffiliated-supplier costs in all instances. Rather, according to SKF, the Department purports to find support for its change in methodology by claiming that it has been a consistent Department practice which is supported by the statutory emphasis on the use of actual costs in calculating COP and CV. According to SKF, the Department, has not considered the statutory preferences properly, consistent with the U.S. international obligations, for relying on a respondent's own books and records. In addition, according to SKF the Department also does not consider the statutory distinction that is made between affiliated-party versus unaffiliated-party transactions and the dissimilar treatment in the statute that is accorded to such transactions.

Citing section 773(f)(1)(A) of the Act, SKF argues that the relevant statutory provision requires that cost shall normally be calculated based on the records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sales of the merchandise. SKF contends that, based on the reading of the statute, normally the Department uses the respondent's books and records to calculate costs. SKF asserts that its cost of goods sold for any bearings it purchased from unaffiliated sources is based exclusively on acquisition cost. According to SKF, this is the cost recorded on its books and in its financial records and is the cost upon which it makes all pricing decisions. Moreover, SKF argues, given the arm's-length nature of unaffiliated-party transactions, the acquisition cost is a reasonable measure of the COP.

SKF contends that only in limited situations may the Department disregard a reported value and look beyond the books and records of the respondent. For example, SKF argues, the special rules for calculating COP and CV, particularly the "transactions disregarded" and "major input" provisions, specify conditions under which certain transactions can be disregarded for cost-calculation purposes (i.e., circumstances under which it would be appropriate to look beyond a respondent's books). Citing sections 773(f)(2) and 773(f)(3) of the Act, SKF argues that, inasmuch as both of these provisions are applicable only to transactions between affiliated persons, there is no statutory provision that would permit the Department to disregard similar transactions between unaffiliated persons. Thus, according to SKF, the unaffiliated-party transactions in question should be accepted at face value (i.e., as reported in a respondent's books and records) as accurately capturing the relevant cost information. SKF argues that this is an interpretation that the courts have given to these provisions.

Citing Washington Red Raspberry Comm'n v. United States, 657 F. Supp. 537 (CIT 1987), aff'd, 859 F.2d 898 (CAFC 1988) (Washington Red Raspberry), SKF argues that, on review, the CIT reversed the Department's finding of affiliation in that case and, as a result, the Department's decision to disregard the sale of raspberries from the grower to the cooperative. Thus, according to SKF, subsequent to judicial review, cost reporting was based on the acquisition cost of the cooperative. SKF asserts that the CIT commented in that case that the "purpose of the law is to disregard transactions where common control of the parties thereto distorts prices paid, but the record does not establish the existence of this phenomenon herein." SKF contends that the reasoning of the CIT is equally applicable in this case because affiliation, through common control or otherwise, may distort acquisition prices and, thus, special rules have been devised or may need to be applied to eliminate the distortions. SKF argues that, absent affiliation or some other price-distorting fact which necessitates the use of some different value, the use of acquisition cost is correct and proper.

SKF argues that the cases cited by the Department in the instant reviews to support its position are distinguishable from this case. First, according to SKF, the cases cited by the Department primarily involve agricultural products with their own set of peculiar issues and concerns. In addition, according to SKF, all of the cited cases involve close-supplier or cooperative-type situations. SKF claims that many of the cases the Department cites involve situations where the suppliers have not made sales in the home market and, therefore, there is no independent market price upon which to evaluate the acquisition price at issue. In contrast, according to SKF, in the bearing reviews no such relationships exist. Thus, according to SKF, there is absolutely no basis to disregard the prices negotiated at arm's length between these companies.

SKF argues that, despite cooperation by its unaffiliated suppliers in the current administrative review of the Germany order, the Department's newly adopted position has the potential to result in the arbitrary assignment of facts available. SKF contends that the Department is requiring that respondents obtain the cooperation of unaffiliated bearing producers by requesting them to compile and release highly sensitive and confidential COP information. According to SKF, in most cases, these unaffiliated bearing producers compete directly with one another in many markets with respect to various product lines and, therefore, these unaffiliated producers have no incentive to comply with a respondent's request and release the relevant COP data.

SKF asserts that the Department's revised approach may be appropriate and feasible in certain situations, such as cooperatives, close-supplier or agent situations, or other instances in which affiliation can be inferred. SKF argues further that, where there is no alignment of interest or the interests are directly opposed to one another, however, the approach is not viable.

SKF asserts that, in this regard, the statute expresses a clear preference that the Department rely on the data submitted by an interested party. Here, according to SKF, the individual respondent interested party, such as SKF, has been submitting acquisition-cost information

since that is the information it has. According to SKF, the criteria for rejecting that information have not been met and that the Department's rejection of that information in advance by imposing a requirement that the interested party instead submit different information which is not its own information contravenes the statute.

For the reasons stated above, SKF urges the Department to use the acquisition price as the appropriate measure of COP and CV with respect to merchandise manufactured by unaffiliated producers and resold by respondents.

Timken argues that JTEKT's and SKF's arguments ignore the provisions that are directly applicable and ignore the statute's legislative history. Timken contends that section 773(e) of the Act carefully sets out the elements that compose the calculation of CV and, as the Department has recognized, the statute focuses on actual production costs. As such, Timken contends, section 773(e)(1) of the Act requires the inclusion of the "cost of materials and fabrication or other processing of any kind employed in producing the merchandise."

Moreover, Timken argues, section 773(e)(1) of the Act does not refer in any way to the specific producer being examined. Contrary to SKF's argument, Timken argues, the reference in section 773(e)(2)(A) of the Act to the "specific exporter or producer being examined" for the calculation of SG&A expenses does not present a difficulty. Timken contends that, at section 771(28) of the Act, "the term "exporter and producer" includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sales of that merchandise." Further, Timken argues that section 835 of the SAA, which is consistent with the Department's current practice, clarifies that, where different firms perform the production and selling functions, the Department may include the costs, expenses, and profits of each firm in calculating COP and CV. Finally, Timken argues, section 773(f) of the Act prescribes that, in general, "{c}osts shall normally be calculated based on the records of the exporter or the producer of the merchandise, if such records reasonably reflect the costs associated with the production and sale of the merchandise."

Timken contends that SKF's argument that the Department's references to administrative decisions is not relevant and ignores the broader concern identified in the Department's decisions. Citing Elemental Sulphur from Canada: Final Results of Antidumping Finding Administrative Review, 61 FR 8239, 8251 (March 4, 1996) (Elemental Sulphur), Timken argues that the Department has interpreted the "cost of producing the merchandise to mean the production costs of the producer, plus the producer's SG&A, plus the SG&A of the reseller." In addition, citing Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile, 69 FR 47869, 47872 (August 6, 2004) (IQF Raspberries Prelim), Timken argues that the Department used adverse facts available where a supplier did not provide the requested cost data. Finally, citing Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada, 64 FR 56739 (October 21, 1999) (Live Cattle), Timken argues that

when the required information could not be obtained from the supplier of cattle the Department resorted to the use of available facts.

With respect to Aisin Seiki's arguments, Timken argues that the respondent has not provided a reasonable explanation for why the Department should change its methodology. Citing Unaffiliated Suppliers Memorandum, Timken contends that the Department did not solicit cost information from the unaffiliated suppliers that supplied certain respondents because it would not likely have a significant effect on the margins because the purchased merchandise accounted for only a small part of their sales. In contrast, citing Unaffiliated Suppliers Memorandum at 3, Timken contends that the Department chose to obtain the cost information from certain resellers which did not produce bearings because it was likely to affect the margins for those respondents. As such, Timken argues that, there is a reasonable basis for the Department's decision.

Department's Position: On September 7, 2006, we required respondents to report COP and CV information for purchases of bearings from their unaffiliated suppliers where facts in these reviews were similar to the facts in the other proceedings in which we required the respondents to report the COP and CV information from unaffiliated suppliers. See Unaffiliated Suppliers Memorandum.

We determined that for a number of the respondents (GRW, Schaeffler, JTEKT, Nachi, NSK Japan, NSK UK, NTN, and Sapporo), the vast majority of merchandise they sold in both the home market and the United States was merchandise they produced. Relatively little of the merchandise these respondents sold was produced by unaffiliated suppliers. We determined that it was unlikely that obtaining their actual COP and/or CV data would have a significant impact on our margin calculations for these respondents. See Unaffiliated Supplier Memo at 3. In those instances where a respondent did not produce the merchandise at all or where a substantial amount of a respondent's sales were supplied by other producers, however, we found it necessary to use the actual costs because the suppliers' actual COP and CV data would have a significant impact on our margin calculations for these respondents (SKF Germany, FAG Italy, Canon, Mori Seiki, and Aisin Seiki). On March 30, 2007, we requested that all respondent-producers provide the actual COP and CV data for bearings they sold to unaffiliated respondent-exporters (SKF Germany, FAG Italy, Canon, Mori Seiki, and Aisin Seiki).

The respondents argue that the statute was not intended to authorize the Department to require respondents to report unaffiliated suppliers' COP. On the contrary, the statute provides that the Department will calculate COP and CV on the basis of actual production costs. See section 773(e)(1) of the Act (CV shall be based on "the cost of materials and fabrication or other processing of any kind employed in producing the merchandise"), section 773(b)(3)(A) of the Act (the COP shall be an amount equal to the sum of "the cost of materials and of fabrication or other processing of any kind"), and section 773(f)(1) of the Act (in general "costs shall normally be calculated based on the records of the exporter or the producer of the merchandise, if such records . . . reasonably reflect the costs associated with

the production and sale of the merchandise"). Section 771(28) of the Act states that, "{f}or purposes of section 773, the term 'exporter or producer' includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sales of that merchandise."

In addition, the SAA at 835 explains that "the purpose of section 771(28) . . . is to clarify that where different firms perform the production and selling functions, Commerce may include the costs, expenses, and profits of each firm in calculating cost of production and constructed value."

If acquisition costs do not capture all of the actual costs of the manufacturer supplying the bearings to the reseller, they are not an appropriate basis for the calculation of CV and, contrary to Aisin Seiki's claim, the use of such acquisition costs would distort the reseller's dumping margin due to the missing elements of cost. Contrary to the respondents' argument, the Department has had a longstanding practice of using the actual production costs of unaffiliated suppliers in lieu of the exporter's acquisition costs to calculate COP and CV. For example, "consistent with the Department's policy on this matter with regard to resellers, the Department has interpreted 'cost of producing the merchandise' to mean the production costs of the producer, plus the producer's SG&A, plus the SG&A of the reseller." See Elemental Sulphur. See also Notice of Final Determination of Sales at Less Than Fair Value; Honey from Argentina, 66 FR 50611 (October 4, 2001), and accompanying Issues and Decision Memorandum at Comment 12, and Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661, 7665 (February 25, 1991) (Salmon from Norway), at Comment 4. See our response to Comment 18 below for more discussion of this issue.

We also disagree with SKF's assertion that this interpretation of the statute requires respondents and their suppliers to either share confidential cost and sales information, thereby possibly subjecting them to charges of anticompetitive conduct, or to attempt to price their products without any apparent reference point for normal value in total disregard of any semblance of due process. In order to calculate antidumping duties accurately to provide the domestic industry with appropriate relief, the statute requires that we capture relevant elements of cost whether they be incurred by the exporter or producer. The antidumping duty law is an exception to the antitrust law and, because section 771(28) in conjunction with section 773 of the Act provides the Department with authority to use the costs from producers of subject merchandise, the Department's actions are clearly within the ambit of the antidumping law and, therefore, within the parameters of the exception. In any event, the parties are not forced to share confidential information if they choose not to but can arrange for release of such information under the protection of an APO.

In addition, in those instances where the producer did not provide the requested cost data, the Department has found it appropriate to make an adverse inference pursuant to section 776(b) of the Act. See IQF Raspberries Final at Comment 3. Finally, it is the Department's practice

to apply these principles regardless of whether the review covers only the exporter or both the producer and the exporter. For example, in a situation involving the latter, in Live Cattle, 64 FR at 56752, "{o}nce it was determined that these traded cattle sales were to be included in our analysis, in order to obtain the actual cost of producing these cattle, it was necessary to obtain the supplier's actual production costs. Accordingly, the Department solicited cost of production information from a sampling of {the producer-reseller's} suppliers."

As indicated above, the Department has a longstanding practice of using the actual production costs of unaffiliated suppliers in lieu of the exporter's acquisition costs to calculate COP and CV and is extending this practice, where appropriate, to the reviews of the orders on ball bearings. Thus, contrary to SKF's claim with respect to its citing of Hussey, the Department is not adopting significantly inconsistent policies but is actually moving towards consistency throughout its cases. In addition, SKF's cite to Washington Red Raspberry is not applicable because it pre-dates our current amended statute and our adoption of the SAA which clarifies that we may use both a producer's and exporter's data to calculate COP and CV. This is also true of Hussey.

Therefore, where appropriate for these final results, we have continued to use the actual production costs of unaffiliated suppliers in lieu of the exporter's acquisition costs to calculate COP and CV.

Comment 18: Aisin Seiki states that, depending on the circumstances, in the AFBs 17 Prelim the Department used either acquisition costs or supplier manufacturing costs in determining normal value based on CV. Aisin Seiki argues that when CV is based on acquisition costs the Department should not double-count G&A expenses, interest expenses, commissions, and CV profit because the acquisition costs are already inclusive of these items. To avoid overstating the CV, Aisin Seiki argues, the Department should base Aisin Seiki's G&A rate on either Aisin Seiki's G&A rate or its manufacturer's rate, but not both.

Timken contends that, when calculating cost for an exporter (such as Aisin Seiki) on the basis of the supplier's actual costs (rather than simply on the basis of the exporter's acquisition costs), the Department includes SG&A expenses from both the supplier and the exporter, citing Elemental Sulphur and Fresh Salmon as examples of this practice. In addition, Timken argues, the Department's practice conforms with section 771(28) of the Act which states that "the term 'exporter or producer' includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sales of that merchandise." Finally, Timken argues, the SAA at 835 explains that the purpose of this section "is to clarify that where different firms perform the production and selling functions, Commerce may include the costs, expenses, and profits of each firm in calculating COP and CV."

SKF responds that the two cases Timken cites do not reflect the Department's current practice, which is to include only a single SG&A expense. Citing Hand Trucks and Certain

Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review, 72 FR 27787 (May 15, 2007), and accompanying Issues and Decision Memorandum at Comment 20 (Hand Trucks from China), SKF argues that the Department calculated the exporter's normal value using surrogate values for the manufacturer's COP and SG&A expenses but used no values for the exporter's SG&A expenses. In Hand Trucks from China, SKF contends, the Department saw no reason to "apply one set of financial ratios to capture the manufacturer's experience, and a second set to capture the exporter's experience." Moreover, SKF argues, the Department determined, in that same decision, that it was "inappropriate to apply two SG&A ratios to COM."

In addition, citing IQF Raspberries Final at Comment 6, SKF argues that the Department determined that, "{b}ecause there is no record evidence that shows these costs are included in another component of the COP calculation, we find that this methodology eliminates the potential for understating or overstating the total COP."

As such, SKF argues that, in the instant case, including the SG&A expenses of both SKF and its unaffiliated supplier likely overstates SKF's total COP. SKF argues that the Department believes erroneously that SKF's acquisition costs should be replaced by the supplier's manufacturing costs in order to arrive at SKF's COP for these purchased bearings. SKF argues that, because it is SKF's COM that the Department is revaluing, it should only include the supplier's COM. Further, SKF argues, even if the Department were to substitute SKF's COM with that of its supplier, the Department should continue to use the SG&A reported by SKF in arriving at COP.

Moreover, SKF argues, its COP includes the expenses it incurs in acquiring any purchased components which would include the acquisition of the completed bearings. SKF argues that, pursuant to the manner in which the Department calculates selling expenses for purposes of computing SG&A, SKF's unaffiliated supplier's SG&A expenses presumably relate to sales to both final customers and intermediate parties. Therefore, SKF contends, it would not be the case that the unaffiliated supplier's expenses relate only to its production of the merchandise the supplier sold to SKF while SKF's expenses relate only to subsequent stages. Citing Hand Trucks from China and IQF Raspberries Final, SKF argues that, without a comparison of the selling activities of SKF and its unaffiliated supplier, it is likely that the Department will overstate selling expenses under Timken's proposed methodology. SKF argues that, because the unaffiliated supplier's G&A expenses presumably would not relate solely to the manufacture and sale to resellers and because SKF's G&A expenses do not relate solely to its resale of the relevant merchandise, it is likely that Timken's proposed methodology will result in double-counting G&A expenses because SKF and its suppliers engage in both manufacturing and selling activities.

Finally, SKF disagrees with Timken's argument that section 771(28) of the Act defines the term "exporter or producer" to include both the producer and exporter when they are different parties. Citing Hand Trucks from China, SKF contends that the Department rejected the same argument, finding that it was inappropriate to apply two sets of SG&A expenses. SKF

also disagrees with Timken's reference to the SAA, pointing out that on the same page (835) the SAA provides that these costs should be determined "using a method that reasonably reflects and accurately captures all of the actual costs incurred in producing and selling the merchandise under investigation or review." Instead, SKF argues, Timken's proposed methodology overstates the cost of producing subject merchandise because the SG&A activities of SKF and its unaffiliated supplier are likely to overlap.

Department's Position: While we agree with Aisin Seiki that the acquisition price in theory includes the manufacturer's selling expenses, G&A expenses, and profit, we do not agree that adding Aisin Seiki's selling expenses, G&A expenses, and profit effectively double-counts these expenses. The expenses and profit contained within the acquisition price represent the expenses incurred and the profit realized by the manufacturer in producing and selling the bearing to Aisin Seiki. The expenses and profit we add to the acquisition price represent that portion of the expenses incurred and the profit realized by Aisin Seiki in selling the finished product to Aisin Seiki's customer which is attributable to the bearing component of that finished product. Thus, while the expenses may be similar in nature, they are not, in fact, the same expenses and, therefore, they are not being double-counted.

As in prior reviews, the Department has interpreted the "cost of producing the merchandise to mean the production costs of the producer, plus the producer's SG&A, plus the SG&A of the reseller." See Elemental Sulphur, 61 FR at 8251. This means that we capture all costs associated with producing and selling the bearing, regardless of which party incurs the expenses. If we were to take Aisin Seiki's argument to its logical conclusion, we would not include the manufacturer's selling and G&A expenses because, presumably, such expenses were incurred by the steel producer which provided the bearing manufacturer with the steel used to produce the bearing.

For the same reason, we do not agree with Aisin Seiki that, where CV is based on actual costs, including both the manufacturer's G&A expenses and Aisin Seiki's G&A expenses double-counts G&A expenses. The expenses may be similar in nature but they are not the same expenses. Thus, they are not double-counted. Furthermore, Aisin Seiki's contention that the cumulative G&A rate exceeds any manufacturer's rate is inapposite. Every entity through which a product is sold, whether or not that product is further processed, incurs costs which should be added to the total cost of the product. For example, if company A sells identical products to company B and company C but company C resells the product to company D, the total cost of the product sold to company D will likely be greater than the cost of the product sold to company B because to calculate the expenses accurately we have to capture the expenses incurred by company C in selling the product to company D in addition to the expenses incurred by company A in selling the product to company C. This is true even though the products purchased by companies B and D are identical. Therefore, it is necessary to include Aisin Seiki's G&A expenses when calculating its CV.

We also disagree with SKF's argument that in Hand Trucks from China we "saw no reason to apply one set of financial ratios to capture the manufacturer's experience, and a second set to

capture the exporter's experience." The Department's practices for the NME methodology are often different than those practices in market-economy cases. Specifically, in NME cases, because we use market-economy surrogates to value the NME respondent's consumption of inputs or to calculate an estimate of its SG&A and interest expenses, we substitute, essentially, market-economy costs for NME costs as opposed to calculating actual total cost as we do in market-economy proceedings. Accordingly, in Hand Trucks from China, we did not include SG&A expenses for the reseller's normal value because, "without knowing the selling activities undertaken by the Indian producers whose information is being used to calculate an SG&A ratio, we cannot say whether or to what extent they differ from the selling activities of {the reseller} and its suppliers." See Hand Trucks from China and accompanying Issues and Decision Memorandum at Comment 20. The Indian producer could have performed all of the selling activities and therefore not have additional SG&A expenses to be included. Therefore, the Department had no basis to apply the SG&A and profit ratios in such a manner. In the instant case, because both the supplier and reseller are involved at different points of the sales chain resulting in sales to different customers (i.e., the supplier to the reseller and the reseller to the U.S. customer), the record evidence is clear that the reseller undertakes its own selling activities, independent of the selling activities performed by its supplier.

Likewise, we do not accept SKF's assertion that SG&A expenses of the unaffiliated supplier would not relate solely to the manufacture and sale to resellers but also relate to its sales to final customers. As indicated above, a different set of selling activities is required by each party in the sales chain to keep the merchandise moving from customer to customer.

Finally, SKF cites to IQF Raspberries Final in defense of its argument that using an SG&A rate for both the exporter and producer would overstate the total COP. In the final results of the subsequent administrative review (2004-05) of the same antidumping duty order, the Department determined that including the SG&A expenses for both the producer and the reseller was appropriate. See Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile, 72 FR 6524 (February 12, 2007), and accompanying Issues and Decision Memorandum at Comment 5:

> We disagree with SANCO that calculating separate amounts for ASF's G&A and financial expenses overstates ASF's cost of production. ASF is a separate entity from SANCO, has its own financial statements, and reports G&A and financial expenses on those financial statements. Those expenses were included in the calculation of the variable overhead field as SANCO reported it before the Preliminary Results. While the Department did not require the same methodology for ASF's reported costs in previous segments of this order, the methodology we incorporated in the Preliminary Results achieves a more accurate cost for SANCO and is consistent with the Department's longstanding practice.

Accordingly, with respect to resellers, for the final results of these reviews, we have included the respective supplier's selling expenses in the COP and CV and accounted for, as ISEs, the resellers' G&A as well as interest expenses in our margin calculations. See final analysis memoranda for SKF Germany, FAG Italy, Mori Seiki, Canon, and Aisin Seiki dated October 4, 2007.

Comment 19: Aisin contends that the Department acted arbitrarily in calculating CV based exclusively on acquisition costs for manufacturers that purchased from other unaffiliated suppliers and by calculating Aisin's CV based on the supplier's manufacturing costs where available. Aisin argues that the Department's application of inconsistent methodologies in similar situations is arbitrary, capricious, and not supported by law and that the Department should revert to using acquisition costs to calculate CV in the instant review. Timken did not comment on this issue.

Department's Position: The Department did not calculate CV based exclusively on acquisition costs for manufacturers that purchased from other unaffiliated suppliers. Where a significant portion of a manufacturer's sales to the United States during the POR consisted of bearings produced by unaffiliated suppliers, we calculated CV based on the supplier's manufacturing costs. Thus, we requested and used actual costs of the supplying manufacturer where such costs were likely to have an impact on our overall results. This was the case with respect to SKF Germany. In many cases, a manufacturer's sales to the United States consisted almost entirely of bearings produced by that manufacturer. In such cases we used acquisition costs to calculate CV of resold merchandise and did not require the reporting of the supplier manufacturer's actual manufacturing costs.

Where a reseller's sales consisted largely of its own produced product, the actual costs of its suppliers was not likely to have an impact on the reseller's overall results. In addition, where a reseller such as Aisin did not purchase ball bearings directly from the manufacturer of those bearings, we used acquisition costs to calculate CV and did not require the reporting of the supplier's actual manufacturing costs. In such cases, because the supplier did not produce the merchandise, it would not have the actual cost of producing the merchandise. Also, our obtaining actual costs from a producer further removed in the sales chain would not capture all the costs to the reseller (because CV would also require that we capture any costs incurred by intermediaries involved in the sales chain) and, therefore, we find it reasonable to use acquisition costs as the basis for calculating CV for the reseller in such situations. Because we were consistent in our application of these methodologies across all responding firms, our decision to use manufacturing costs to calculate CV, where appropriate, was neither arbitrary nor capricious.

7. Miscellaneous Issues

Deduction of Japanese-Worker Expenses

Comment 20: NSK argues that it is inappropriate for the Department to deduct certain expenses NSK incurred on behalf of Japanese nationals living in the United States from U.S. price. NSK explains that the Japanese-worker expenses at issue relate to the employees' status as Japanese nationals rather than to their economic activity in the United States. NSK explains further that 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. As such, NSK contends, the Japanese-worker expenses at issue 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 travel expenses which were incurred on behalf of Japanese nationals and relate to U.S. sales activities have already been included in SG&A expenses. NSK contends that the Department's further deduction of these travel expenses from CEP in AFBs 17.

Timken contends that the Department included all of the costs incurred by NSK to support its Japanese workers in the United States properly. Citing the SAA at 823, Timken asserts that U.S. CEP prices are to be adjusted for ISEs associated with economic activity in the United States. Timken asserts further that 19 CFR 351.402(b) requires that all selling expenses be deducted whether or not expenses are incurred in the United States and without regard to which respondent's entity pays for the expense.

Department's Position: It is evident from the information provided in NSK's questionnaire responses 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. See NSK's September 27, 2006, questionnaire response at page C-24 and its December 1, 2006, supplemental questionnaire response at page S-32. Thus, there is no dispute that the Japanese workers in question are engaged in economic activity occurring in the United States and their activities relate to sales 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, the expenses still represent 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 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) (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).

NSK's claim that we made an additional adjustment to U.S. price to account for travel expenses NSK incurred on behalf of Japanese nationals is misplaced. The record indicates that NSK accounted for expenses for its Japanese workers associated with travel between Japan and the United States and within the United States. See NSK's December 1, 2006, Supplemental Questionnaire at page 32. Specifically, NSK reported that these expenses were included as part of NSK Corporation's SG&A expenses. ISEs incurred in the United States are included in the accumulation of CEP selling expenses and we deduct them from U.S. price. Accordingly, the travel expenses at issue were deducted from U.S. price once. Our addition to the accumulation of CEP selling expenses accounts for Japanese-worker expenses other than the expenses for travel between Japan and the United States and within the United States. We do not add again the travel expenses at issue to the accumulation of CEP selling expenses as NSK seems to suggest. See the NSK final results analysis memorandum dated October 4, 2007, for more details on how we adjusted CEP selling expenses.

U.S. Duty

Comment 21: According to Timken, JTEKT calculated its U.S. customs-duty amount for each of its sales transactions by subtracting the transfer price from the landed cost. Timken alleges that JTEKT's U.S. customs-duty amount for a number of U.S. sales transactions do not conform to this calculation methodology. Timken demonstrates that, for these sales transactions, the amounts Timken calculated by subtracting JTEKT's reported transfer price from JTEKT's reported landed cost are different from JTEKT's reported U.S. customs-duty amounts. To correct these alleged errors, Timken requests that the Department recalculate JTEKT's U.S. customs-duty amount by subtracting the transfer price from the landed cost for all U.S. sales transactions.

JTEKT admits that it has reported erroneous amounts of U.S. customs duty for a certain number of U.S. sales transactions, but it also asserts that it reported erroneous amounts of U.S. landed cost for several transactions. JTEKT argues that, because of the errors on the U.S. landed-cost amounts, simply subtracting the transfer price from the landed cost to recalculate the U.S. customs duty would cause even more serious errors, as evidenced by examples Timken submitted in its case brief.

JTEKT provides a number of U.S. control numbers in which the erroneous reporting of the landed cost and U.S. customs duty occurred. JTEKT provides the correct amounts for U.S. customs duty and landed cost for the sales transactions with erroneously reported amounts for these items. JTEKT requests that the Department replace the erroneous amounts with corrected amounts for these sales transactions.

JTEKT suggests, in the alternative, that the Department modify the calculations to replace the erroneous U.S. customs-duty amounts with an amount calculated as the average duty rate

times the reported transfer price for the observations with incorrectly reported data within the U.S. control number. For a very small number of the U.S. control numbers that have no observations for which correct U.S. customs-duty amounts have been reported, JTEKT proposes that the Department recalculate the landed costs first by multiplying the transfer price by the highest U.S. customs-duty rate for JTEKT's correctly reported U.S. customs duty and then by adding the product of this multiplication to the transfer price. JTEKT then suggests that the Department subtract the transfer price from the recalculated landed costs to recalculate the U.S. customs-duty amounts for these particular U.S. sales transactions.

Department's Position: We find that Timken's suggestion of deducting transfer price from landed cost does not correct JTEKT's incorrect U.S. customs duties because, as JTEKT points out, some of the landed costs are also incorrect.

We did not revise the U.S. customs-duty amount for those sales transactions within the major control numbers JTEKT provided because doing so would not correct all identified errors on U.S. customs duty. We did not average the U.S. customs duty within each control number as JTEKT suggested because we were able to identify all sales transactions with erroneously reported U.S. customs duty. For such transactions where JTEKT reported correct duty amounts were reported for the same product-identification numbers, we replaced the erroneous duty amounts with the correct amounts based on JTEKT's correctly reported data for this item. See Final Analysis Memorandum for Ball Bearings and Parts Thereof from Japan's JTEKT Corporation for the Review Period 5/1/2005 - 4/30/2006 (October 4, 2007) (JTEKT Final Analysis Memo).

With respect to a very small number of U.S. sales transactions with erroneously reported U.S. customs duty but with no other U.S. sales transactions involving the same identification numbers, we have accepted JTEKT's suggestion and made calculation modifications accordingly, i.e., we recalculated the landed costs by multiplying the transfer price by the highest U.S. customs-duty rate for JTEKT's correctly reported U.S. customs duty and then by adding the product of this multiplication to the transfer price. Then we subtracted the transfer price from the recalculated landed cost to calculate the U.S. customs duty amounts for these transactions; we have also confirmed that the highest U.S. customs-duty rate JTEKT reported is correct. See JTEKT Final Analysis Memo.

With respect to a very small number of U.S. sales transactions with erroneously reported U.S. customs duty but with no other U.S. sales transactions involving the same identification numbers, we have accepted JTEKT's suggestion and made calculation modifications accordingly, i.e., we recalculated the landed costs by multiplying the transfer price by the highest U.S. customs-duty rate for JTEKT's correctly reported U.S. customs duty and then by adding the product of this multiplication to the transfer price. Then we subtracted the transfer price from the recalculated landed cost to calculate the U.S. customs duty amounts for these transactions; we have also confirmed that the highest U.S. customs-duty rate JTEKT reported is correct. See JTEKT Final Analysis Memo.

Exclusion of High-Profit Sales

Comment 22: NTN contends that, contrary to its obligations under the law, the Department did not qualitatively examine the circumstances of the sales and profit levels attached to NTN's home-market sales and those sales which NTN has requested that the Department exclude from the margin calculation. NTN argues that the Department should determine that certain home-market sales of bearings with abnormally high profits were outside the ordinary course of trade because these sales meet the statutory and regulatory requirements for sales "outside the ordinary course of trade." Citing 19 CFR 351.102, NTN argues that the Department's regulations provide that sales outside the ordinary course of trade include "merchandise sold at aberrational prices or with high profits." NTN asserts that it has provided ample evidence in its questionnaire and supplemental responses that its sales with abnormally high profits are unique, unusual, and not representative of the profit levels and sales quantities of its ordinary sales and, therefore, that such sales are outside the ordinary course of trade. NTN asserts that it has not requested that simply "high profit" sales be excluded from the calculations. Rather, NTN argues, it has requested that the Department exclude, in accordance with the language and intent of the statute, a certain, very small percentage of its sales with abnormally high profits from the calculation of normal value.

Timken argues that NTN has not explained why these sales are not within the ordinary course of trade. Citing NTN Bearing Corp. of America v. United States, 104 F. Supp.2d 110, 147 (CIT 2000), aff'd, 295 F.3d 1263 (CAFC 2002), Timken argues that the courts have affirmed the Department's requirements for evidence that would warrant the exclusion of particular sales from those sales used to determine normal value. Timken contends that merely arguing that certain sales fall on one side of particular profit and quantity levels is not sufficient to demonstrate that those sales are outside the ordinary course of trade. Timken points out that the record includes information that NTN sells to aftermarket customers in the normal course of business and that, in the home market, such customers require different selling activities including the need to keep bearing models in inventory beyond the time needed to supply the OEM. Timken argues that this information undermines NTN's claims that the sales in issue are, in fact, outside the ordinary course of trade. Timken argues that there is insufficient evidence to support the Department's exclusion of these sales in the calculation of normal value.

Department's Position: We disagree with NTN that its sales of bearings with abnormally high profits sold at unusually low quantities were made outside the ordinary course trade. Pursuant to 19 CFR 351.102, to determine that a sale is outside the "ordinary course of trade," we must evaluate the transaction based on all the circumstances particular to the sale in question and find that it has characteristics that are extraordinary for the home market. NTN claims that its sales with "abnormally high profit levels" are made in "unusually small quantities" and "often represent spot sales for maintenance and repair and sales to research and development facilities for testing and evaluation" and are outside the ordinary course of trade. NTN has not provided any evidence, however, suggesting that these sales have any characteristics that would make them extraordinary for the home market.

Even if some sales were spot sales for maintenance and repair and sales to research and development facilities for testing and evaluation, there is nothing particularly unusual about "spot sales" used for maintenance and repair or bearings sold to research and development facilities for testing and evaluation. It is the Department's understanding that "spot sales" simply means that the sales were made without a contract and, based on NTN's response, spot sales are common for NTN. For example, in describing its U.S. sales, NTN claimed that "distributors often order on a spot basis" and, more importantly, NTN claimed that "{i}n the home market NTN does not sell pursuant to either long- or short-term contracts." See pages A-11 and A-20 of NTN's September 27, 2007, section A Questionnaire Response.

Likewise, NTN has provided no evidence to show why bearings sold for maintenance and repair or to research and development facilities for testing and evaluation are extraordinary in comparison with other home-market sales. Selling bearings as replacement parts (i.e., for maintenance and repair) is not in any way unusual or extraordinary because bearings are subject to break or wear down and are likely to be replaced over time. In fact, NTN claimed in its response that "sales to after-market customers are mainly for the replacement of existing bearings." See page A-14 of NTN's September 27, 2007, section A Questionnaire Response. Therefore, we are not aware of any reason to conclude that selling bearings as replacement parts would not be part of NTN's ordinary course of trade. Thus, aside from NTN's assertions about the abnormally high profits and abnormally low quantities, NTN has not provided any evidence suggesting that these sales have any characteristics that would make them extraordinary for the home market.

In addition, the record evidence does not support NTN's assertion that its reported high-profit sales were made in unusually small quantities. We conducted our own analysis and found that the quantities in which NTN sold its reported high-profit sales were neither unusual nor extraordinary. In our analysis of NTN's high-profit sales, we found that slightly fewer than half of NTN's sales transactions were sold in quantities of fewer than 20 pieces. This alone demonstrates that very low-quantity quantities are not unusual or atypical for NTN. Due to the proprietary nature of the information we used in our analysis, see the final analysis memorandum for NTN dated October 4, 2007, for a more detailed discussion.

Finally, with respect to NTN's argument that its sales are outside the course of ordinary trade because they include abnormally high profits, the Department has stated and the CIT has affirmed that high profits by themselves are not sufficient for the Department to determine that sales are outside the ordinary course of trade. See AFBs 15 at Comment 16, AFBs 14 at Comment 33, AFBs 13 at Comment 13, and AFBs 12 at Comment 27; see NTN Corp. v. United States, 306 F. Supp.2d 1319 (CIT 2004), NTN Bearing Corp. of America v. United States, 248 F. Supp.2d 1256 (CIT 2003), and NTN Bearing Corp. of America v. United States, 155 F. Supp.2d 715 (CIT 2001). Again, the record evidence in this case does not substantiate NTN's claim that its reported high-profit sales were made outside the ordinary course of trade. As such, for these final results, we did not exclude these sales from our analysis.

NTN Bearing Designs

Comment 23: 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 Preliminary Analysis Memorandum for NTN dated May 29, 2007, 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 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 and do not capture all the differences in physical characteristics in bearing models within the Department's seven design types and does not meet the broadest definition of "foreign like product."

NTN contends that the information it provided in Exhibits B-3 and B-3A of its September 27, 2006, questionnaire response contains drawings, catalog pages, summary pages, correlation charts, and supporting explanations demonstrates the distinctions among NTN's design categories. NTN contends that it has used its design types continuously since the original LTFV investigation. NTN argues that it has provided ample evidence to establish the critical distinctions among its design categories. NTN contends that the Department's methodology of classifying design types produces unreasonable matches of products of substantially different design, physical characteristics, and practical application. As such, NTN requests that the Department use the design types NTN uses in its normal course of business for purposes of calculating NTN's final margin.

Timken argues that NTN has not demonstrated that the use of NTN's designated design types will yield more accurate results in matches of bearing models. Timken argues that section 771(16)(B) of the Act supports the Department's determination that bearings that are made by the same producer, are identical in four criteria (design type, number of rows, precision, and load direction), are not too disparate in four other criteria (inner diameter, outer diameter, width, and load rating), and are approximate in cost are similar. Timken contends that NTN has not justified the use of its system instead of that adopted by the Department for selecting appropriate matches of ball bearing models. As such, Timken argues that the Department has relied properly on its own criteria to match NTN's U.S. sales to home-market transactions.

Department's Position: For these final results, we continue to find that the information on the record of this review does not support the use of NTN's design classifications it maintains in its normal course of business in lieu of using bearing designs we designated in our July 10, 2006, questionnaire for this review. NTN continues to argue in this review, as it did in the last review, that its bearing-design types are more accurate in determining similar matches when calculating NTN's dumping margin and contends that it has provided adequate

justification for the use of its design types. We disagreed in AFBs 16 and disagree here based on the same evidence.

As we explained in AFBs 16, 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. See AFBs 16 and accompanying Issues and Decision Memorandum at Comment 27. 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 section 771(16)(B) of the Act, 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, the home-market model must be like that merchandise in the purposes for which used, and the home-market model must be found by the Department to be reasonably comparable with the U.S. model.

The thrust of NTN's argument centers on the second criterion of sections 771(16)(B) and 771(16)(C). As we stated in AFBs 15 and AFBs 16, "{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. As such, 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 16 and accompanying Issues and Decision Memorandum at Comment 27. In the same comment, citing Final LTFV, 54 FR at 18999, we stated the following:

> {w}e 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-matching 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 different substantially than each of the design types we have identified. After considering the information on the record we find that 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.

As we stated in AFBs 16 and find here, NTN's numerous bearing-design designations were, on many occasions, 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 rubber rings 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 already recognize in our model-matching methodology. For example, NTN differentiates angular-contact bearing models into separate design types 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, in turn, already distinguish dissimilar products in our current model-matching methodology. As we stated in AFBs 16, 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, for example, although two NTN-designated design bearing models might fall under the same design category we have established, it is highly unlikely that we will match these models as identical or similar models because of their 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 NTN's arguments that the function or application of different bearings warrant a separate design designation unpersuasive. In AFBs 16 and the accompanying Issues and Decision Memorandum at Comment 27, 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 court 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 1995, 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).

In addition, yet again in this review, NTN argues that the Department had changed its methodology by abandoning its acceptance of NTN's 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 NTN's argument to be unfounded because there never was a change in our methodology in determining additional design types and, as such, NTN cannot justify lawfully its reliance on a methodology which conflicts directly with our established methodology. As we explained in AFBs 16 and the accompanying Issues and Decision Memorandum at Comment 27, 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. Presently, we require that a respondent which argues for a design classification separate from the seven (including the five original design types) we identified in the questionnaire must demonstrate why it merits its own classification. See July 10, 2006, Questionnaire, Appendix V, section I.6.f.2. Upon review of the record evidence, we find that NTN did not demonstrate why we should use its bearing-design designations. As such, we find that in this review, as we have found in prior administrative reviews, NTN's argument continues to be unpersuasive.

As we stated in AFBs 15 and reiterated in AFBs 16, "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 drastically the number of potential 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 16 and the accompanying Issues and Decision Memorandum at Comment 27. 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, the burden is on NTN to demonstrate why its design classification is so appropriate as to necessitate deviations from the hierarchy of comparisons we have established.

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. As such, the Department continues to find that the information on the record of this review does not support the use of NTN's design classifications it maintains in its normal course of business in lieu of using the Department's bearing design-type classification system.

Further-Processing Methodology

Comment 24: Aisin argues that the Department's traditional further-manufacturing methodology used to calculate Aisin's dumping margin causes distortions in those instances where the cost of further manufacturing exceeds the price of the further-manufactured product. Citing Micron Tech., Inc. v. United States, 243 F.3d 1301, 1313 (CAFC 2001), and

NTN Bearing Corp. v. United States, 74 F.3d 1204, 1208 (CAFC1995), among others, Aisin argues that the Department has the authority and an obligation to mitigate against absurd results when calculating dumping margins. Further, citing section 772(e) of the Act, Aisin argues that the Department has the authority to use alternative methods when the value added in the United States exceeds more than half of the price of the merchandise as sold in the United States. As an alternative to the Department's traditional methodology, Aisin suggests that the Department limit the calculated per-unit antidumping duty to the cost of producing the bearing in the small number of instances where the further-manufacturing costs exceed the price of the further-manufactured product.

Department's Position: We disagree with Aisin's proposed methodology to limit our calculation of the U.S. sales price at the production cost of the subject bearing. This methodology would set the U.S. sales price to zero for transactions that are essentially below-cost sales in the United States. Moreover, sections 772 (c) and (d) of the Act, which define the adjustments to CEP, do not provide for such a limit.

We find further that Aisin's argument with respect to section 772(e) of the Act does not apply. Section 772(e) of the Act (i.e., the "special rule") provides that the Department will apply the special rule for further-manufactured product only "if there is a sufficient quantity of sales to provide a reasonable basis for comparison." Thus, there must be a sufficient quantity of non-further-manufactured sales available for purposes of sections 772(e)(1) and (2) of the Act before we may consider applying the special rule to further-manufactured sales. If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraphs (1) or (2) or if the Department determines that neither of the prices described in such paragraphs is appropriate, then the CEP may be determined on any other reasonable basis. In our analysis of the information on the record, we have concluded that there was not a sufficient quantity of sales to provide a reasonable basis for comparison; thus, the use of the sales identified in sections (1) and (2) of 772(e) of the Act would be inappropriate. See the decision memorandum from Richard Rimlinger to Laurie Parkhill dated October 18, 2006, for a discussion of our findings. Accordingly, in exercising our discretion to use "any other reasonable basis" pursuant to section 772(e) of the Act, we applied our normal practice of calculating CEP under sections 772(d)(2) and (3) of the Act.

As stated in RHP Bearings, Ltd. v. United States, 120 F. Supp. 2d 1116 (CIT November 2, 2000), and NSK, Ltd. v. United States, 245 F. Supp. 2d 1372 (CIT January 9, 2003), the special rule exists in order to reduce the Department's administrative burden. In Aisin's case, we were able to calculate CEP effectively and without undue burden by using the data Aisin submitted in response to our further-manufacturing questionnaire. Specifically, the calculation involves little more than the subtraction of the value-added figures that Aisin provided. The decision to refrain from applying the special rule in situations where the value added is simple to calculate is consistent with the Department's established practice. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy, 68 FR 2007 (January 15, 2003), and the

accompanying Issues and Decision Memorandum dated January 8, 2003, at Comment 3 and AFBs 8, 63 FR at 33338.

Congress has not specified the criteria that the Department must apply in determining whether the use of alternative methodologies is appropriate. As the CIT acknowledged in NSK, Ltd. v. United States, 245 F. Supp. 2d 1372, 1371, the Department has broad discretion in determining when the use of the alternative methodologies is appropriate. In Aisin's case, because the burden of determining the value added is relatively light and because neither of the two alternative methods described under section 772(e) of the Act can be applied, we find that our standard method of calculating CEP under sections 772(d)(2) and (3) of the Act produces the most accurate results.

Completeness of Reported Sales

Comment 25: Timken contends that litigation concerning a prior review of the antidumping duty order on ball bearings from the United Kingdom suggests that Barden may not have reported certain U.S. sales. According to Timken, the plaintiff in that litigation has argued that Barden knew or should have known that bearings it sold to a certain customer were to be shipped to the United States. Timken argues that the Department should seek further information to ensure that the U.S. sales database includes all sales which Barden should have reported.

Barden contends that it made no POR sales in either the home market or the U.S. market to any entity affiliated with the customer involved in the litigation. Barden argues that, because of this, there is no need to seek further information.

Department's Position: We sent Barden a supplemental questionnaire on July 19, 2007, to obtain more information regarding whether it had any sales to the customer to which Timken referred. Barden submitted its response on July 26, 2007. In its response, Barden stated that it had no sales of ball bearings or parts thereof to the customer. Based on Barden's response, we find there is no evidence or reason to believe that Barden did not report all of its U.S. sales of subject merchandise properly.

15-Day Issuance of Liquidation Instructions

Comment 26: SKF argues that the Department's intention to issue liquidation instructions to CBP in fewer than thirty days after the issuance of the final results of administrative review is contrary to law. Specifically, SKF argues, the statute at 19 USC 1516a(a)(2)(A) provides that, within 30 days after the date of publication in the Federal Register of the notice of a final administrative review determination, an interested party may commence an action in the CIT by filing a summons and, within 30 days thereafter, a complaint. According to SKF, the statute thus provides an interested party 60 days to perfect its action before the CIT. Hence, SKF argues, any action by the Department which could have the effect of curtailing that time frame is an abrogation of a party's right to judicial review.

SKF argues that the Department's 15-day liquidation instruction policy has the potential to allow CBP to liquidate entries prior to the close of the 30-day period in which a party may file a summons and prior to the close of the 60-day period in which a party may file a complaint. SKF contends that, if CBP liquidates entries within those 60 days, the CIT will not be able to assert jurisdiction over the party's action, even if the party has filed a summons properly with the court and even though the statute permits a party 60 days to prepare and file a complaint.

SKF argues also that the CIT's rules provide that parties have 30 days from the filing of a complaint to move for a preliminary injunction that would enjoin CBP from liquidating all entries under review. Thus, according to SKF, under the applicable statutory provision and the CIT's rules, a party has 90 days after the publication of the final results of an administrative review to move for a preliminary injunction. SKF contends that, if the Department issues liquidation instructions within 15 days of the final results, those entries become immediately at risk of being liquidated and could be liquidated before the CIT has granted a motion for preliminary injunction.

SKF asserts that the Department's 15-day policy has the effect of abrogating a party's statutory rights with regard to judicial review and that the policy also violates the CIT's rules with respect to the timing for filing motions for preliminary injunctions in cases brought under 19 USC 1516a. SKF contends that, in effect, the Department's policy forces parties to file early before the CIT and/or obtain temporary restraining orders, as well as a preliminary injunction, on an expedited basis in order to protect entries from being liquidated before the CIT has a chance to review the Department's determination.

Citing Tianjin Mach. Imp. and Exp. Corp. v. United States, 353 F. Supp. 2d 1294 (CIT 2004), aff'd, 146 Fed. Appx. 493 (CAFC 2005) (Tianjin), SKF argues that the CIT has already held that the Department's 15-day liquidation instruction policy is not in accordance with law. In that case, according to SKF, the CIT stated specifically that the Department's new policy will compel parties, in every instance, to seek a preliminary injunction within fifteen days to prevent liquidation and preserve the court's jurisdiction, regardless of whether the party ultimately decides to challenge any aspects of the final determination. Thus, according to SKF, the Department's policy is in direct conflict with the CIT's decision in that case. SKF requests that the Department not issue liquidation instructions within 15 days of the publication of the final results of these administrative reviews.

Department's Position: Due to the six-month deemed-liquidation requirements of 19 USC 1504(d) and CBP's stated need to have a significant portion of that time to complete liquidation of numerous entries such as those covered by these antidumping duty orders, we will continue to issue our liquidation instructions 15 days after publication of the final results of review unless we are aware that an injunction has been filed or is imminent.

The courts have affirmed our position on this issue. See Mittal Steel Galati S.A. Formerly Known as Ispat Sidex S.A. v. United States, 2007 Ct. Intl. Trade LEXIS 111, Slip Op. 07-110

(CIT July 18, 2007), and Mukand International Ltd. v. United States, 452 F. Supp. 2d 1329, 1334 (CIT 2006). SKF's reliance on Tianjin is misplaced. The CAFC has also rejected the argument that suspension of liquidation must continue beyond the date that the final results are published to safeguard a party's right to judicial review. See Int'l Trading Co. v. United States, 281 F.3d 1268, 1273 (CAFC 2002).

Thus, both the CAFC and the CIT have expressly found that publication of final results triggers the period for liquidation and that interested parties must apply to the court for an injunction to prevent liquidation of entries pending judicial review.

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 _____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date