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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, and the United Kingdom for the Period of Review May 1, 2006, through April 30, 2007

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom for the period May 1, 2006, through April 30, 2007. 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. Collapsing and Successor in Interest
4. Inventory Carrying Costs
5. Calculation of Cost of Production/Constructed Value and Use of AFA
6. Rate for Respondent Not Selected
7. Miscellaneous Issues
   - A. 15-Day Issuance of Liquidation Instructions
   - B. CEP Profit
   - C. Decision Not to Verify JTEKT's and NTN's Cost Data
   - D. BPI Treatment for Dumping Duties and Net Value of Sales
8. Clerical Errors

Background

On May 7, 2008, the Department of Commerce published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from

France, Germany, Italy, Japan, and the United Kingdom (73 FR 25654) (Preliminary Results). The reviews cover 27 manufacturers/exporters. The period covered by all the reviews is May 1, 2006, through April 30, 2007. We invited interested parties to comment on the Preliminary Results. At the request of certain parties, we held a hearing for Japan-specific issues on July 1, 2008, a hearing for Germany-specific issues on July 10, 2008, a hearing for France-specific issues on July 11, 2008, and a hearing for general issues on July 15, 2008.

Company Abbreviations

Barden/Schaeffler UK – The Barden Corporation (UK) Limited; Schaeffler (UK) Limited (formerly known as the Barden Corporation (UK) Limited; FAG (UK) Limited)
GRW – Gebrüder Reinfurt GmbH & Co., KG
JTEKT - JTEKT Corporation (formerly known as Koyo Seiko Co., Ltd.)
Nachi - Nachi-Fujikoshi Corporation
NSK UK – NSK Europe Ltd., NSK Bearings Europe Ltd., and NSK Corporation
NTN – NTN Corporation
SNFA France – SNFA France S.A.S.U. (previously known as SNFA S.A.S.)
SKF – The SKF Group (worldwide)
SKF France – SKF France S.A. and SFK Aerospace France S.A.S.
SKF Germany – SKF GmbH
Timken – Timken Company (formerly known as Timken US 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)
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)
I&D Memo – Issues and Decision Memorandum adopted by a Federal Register notice of final determination of an investigation or final results of review
ICCs – inventory carrying costs
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
URAA – Uruguay Round Agreements Act
WTO – World Trade Organization
WTO AB – World Trade Organization Appellate Body
WTO DSB – World Trade Organization Dispute Settlement Body

AFBs Administrative Determinations and Results

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), France (54 FR 19092), Italy (54 FR 19096), Japan (54 FR 19101), United Kingdom (54 FR 19120).

AFBs 1 – Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991), France (56 FR 31748), Italy (56 FR 31751), Japan (56 FR 31754), United Kingdom (56 FR 31769).

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), amended in Antifriction Ball Bearings (Other Than Tapered Roller Bearing) and Parts Thereof from Germany, Italy and Sweden: Amended Final Results of Antidumping Duty Administrative Reviews, 63 FR 38369 (July 16, 1998).

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

AFBs 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 – Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part, 72 FR 58053 (October 12, 2007).

Preliminary Results – Ball Bearings and Parts Thereof from France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Rescind Reviews in Part, 73 FR 25654 (May 7, 2008).

Discussion of the Issues

1. Zeroing of Negative Margins

Comment 1: JTEKT, Nachi, NTN, and SKF argue that the Department should change its practice concerning the offsetting of negative margins (also known as "zeroing").

Citing Chevron, U.S.A., Inc., v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 n.9 (1984), SKF asserts that zeroing is contrary to clear Congressional intent. SKF claims that the court has recognized that the statute does not plainly require zeroing in Timken Co. v. United States, 354 F.3d 1334, 1341-42 (CAFC 2004) (Timken I). In Corus Staal BV v. United States, 395 F.3d 1343, 1347 (CAFC 2005), cert. denied, 126 S. Ct. 1023, 163 L. ed. 2d 853 (2006) (Corus I), SKF states, the Court has recognized that the statute does not direct the Department to manipulate the value of certain transactions and that zeroing introduces a statistical bias into the antidumping calculation. JTEKT and Nachi also claim that Bowe Passat Reinigungs-und Washereitechnik GmbH v. United States, 926 F. Supp. 1138, 1150 (CIT 1996), recognized that zeroing creates inherent statistical bias.

SKF maintains that the statute directs the Department to consider all sales, including those sold at above fair value, in the calculation of dumping margin but that, consistent with its approach in AFBs 17, the Department did not cancel sales found to have positive dumping margins with sales found to have negative dumping margins. SKF contends that a dumping margin is not just an amount by which normal value exceeds U.S. price of subject merchandise. SKF requests that the Department determine the normal value and U.S. price of each entry of the subject merchandise and calculate the dumping margin for each such entry in a manner that will produce a consistent result as required by section 751(a)(2) of the Act. SKF claims that zeroing produces a dumping margin that is not consistent with the Department's determination of the normal value and U.S. price. SKF explains that, because Congress did not specify its intent for such inconsistent results, a dumping margin should be calculated using all normal values and all U.S. prices. Moreover, SKF states, section 736(c)(3) of the Act requires that the determination of normal value and U.S. price "shall be the basis for the assessment of antidumping duties on entries of merchandise" and for the deposit of estimated antidumping duties on future entries. Therefore, SKF concludes, the statute does not permit zeroing. Citing Webster v. Fall, 266 U.S. 507, 511 (1925), SKF claims that these statutory arguments are different from those decided previously by the CAFC and, therefore, the Department is not bound by the CAFC's judicial decisions in considering these statutory arguments.

SKF argues that zeroing does not serve the purpose of the antidumping law. According to SKF, the purpose of the antidumping law is, as the court stated in, e.g., C.J. Tower & Sons v. United States, 71 F.2d 438, 443 (CCPA 1934), and Huaiyin Foreign Trade Corp. v. United States, 322 F.3d 1369, 1379 (CAFC 2003), to put domestic producers on an equal playing field with importers that have sold products at less than fair value in the United States by, as the court

stated in Hoogovens Staal BV v. United States, 4 F. Supp. 2d 1213, 1220 (CIT 1998), imposing antidumping duties on imported goods at the rates determined by the Department. SKF states that it is essential for the Department to calculate fair and accurate margins as the CIT upheld in, among others, Federal-Mogul Corp. v. United States, 872 F. Supp. 1011, 1014 (CIT 1994), and Koyo Seiko Co., Ltd. v. United States, 746 F. Supp. 1108, 1110 (CIT 1990). Therefore, SKF argues, an antidumping duty should be only the amount that will equalize values and put the domestic industries and importers upon a basis of equality as the court found in C.J. Tower & Sons, 71 F.2d at 443. SKF claims that zeroing increases a respondent's dumping margin artificially, misrepresents the realities of the marketplace, and addresses more inequality than there is between importers and domestic producers.

JTEKT and Nachi argue that zeroing prevents the Department from making a fair comparison between the normal value and U.S. price as required by section 773(a) of the Act and Article 2.4 of the Antidumping Agreement. JTEKT asserts that the SAA at 820 states that section 773 of the Act implements the fair comparison between the normal value and U.S. price as required by Article 2.4 of the Antidumping Agreement. JTEKT also asserts that the Joint Report of the Committee on Finance, Committee on Agriculture, Nutrition and Forestry, and Committee on Governmental Affairs of the United States Senate on the URAA, S. Rep. No. 103-412, at 67 (1994), states the legislative intent to interpret the fair-comparison provision of the statute in a manner consistent with the international obligations of the United States as articulated in Article 2.4 of the Antidumping Agreement. JTEKT, Nachi, NTN, and SKF argue that the WTO found in several of its decisions, e.g., United States – Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (January 9, 2007) (US – Zeroing (Japan)), that the Department's zeroing practice violates the Articles 2.4 and 9.3 of the Antidumping Agreement in investigations and administrative reviews.

According to JTEKT, NTN, and SKF, the United States issued a statement at the WTO DSB Meeting on February 20, 2007, that the United States intends to comply fully with its treaty obligations and cease zeroing in administrative reviews in light of the adverse WTO decision. Nachi and SKF comment that the Department announced in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (Zeroing Notice), that it will no longer practice zeroing in making average-to-average comparisons in investigations. 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 Revocations of Certain Antidumping Duty Orders, 72 FR 25261 (May 4, 2007), SKF states that the calculation methodology described in the Zeroing Notice was applied "to the proceedings at issue in" United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/AB/R (April 18, 2006) (US – Zeroing (EC)). SKF also states that, in Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Ecuador: Notice of Determination Under Section 129 of the Uruguay Round Agreement Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador, 72 FR 48257 (August 23, 2007), the Department recalculated the margin using the calculation methodology described in the Zeroing Notice and revoked the order as an implementation of the WTO panel decision in United States – Antidumping Measure on Shrimp from Ecuador, WT/DS335/R (January 30, 2007), which found that the zeroing practice in

investigations violated the Antidumping Agreement.

Nachi and NTN state that, as reported in Status Report Regarding Implementation of the DSB Recommendations and Rulings in the Dispute United State – Measure Relating to Zeroing and Sunset Reviews, WT/DS322/22/Add.1 (January 11, 2008), the United States announced on January 10, 2008, that it is no longer zeroing in antidumping duty investigations as of February 22, 2007, but that it will continue zeroing in administrative reviews because, with respect to the "assessment reviews at issue in this dispute, in each case the results were superseded by subsequent reviews." NTN argues that assessment rates calculated in administrative reviews assess duties on entries that were made during the particular period of review and, therefore, the assessment rates are not superseded by subsequent reviews. NTN contends that the assessment rates are a direct, immediate, and exact manifestation of the antidumping duty amount that a company will pay for that review. Nachi claims that the Government of Japan requested an Article 21.5 panel in the WTO because the Department continues not to eliminate zeroing and argues that the continued practice of zeroing only bolsters Japan's position in the Article 21.5 panel. Nachi also argues that the WTO AB's findings against the practice of zeroing in United States – Final Antidumping Measures on Stainless Steel from Mexico, WT/DS344/AB/R (April 30, 2008) (US – Zeroing (Mexico)), undermine further the legality of the Department's practice of zeroing. SKF also cites US – Zeroing (Mexico), which found that the practice of zeroing is inconsistent with Article VI:2 of the GATT 1994 and Article 9.3 of the Antidumping Agreement, to argue that the Department should eliminate zeroing in the final results because the practice of zeroing in administrative reviews is ripe for reconsideration by the Department. Nachi asserts that zeroing is not a statutory requirement and requests that the Department provide a compelling justification for zeroing if it decides to continue zeroing. JTEKT finds no justification in continuing the practice of zeroing contrary to the WTO's repeated findings against zeroing and the stated intention of the United States to comply with the WTO obligations and cease zeroing.

SKF requests that, even though the court has affirmed the Department's practice of zeroing as a reasonable interpretation of an ambiguous statute in, e.g., Paul Muller Industrie GmbH v. United States, 435 F. Supp. 2d 1241, 1245 (CIT 2006), the Department should reconsider its statutory interpretation of the appropriateness of zeroing in administrative reviews because the difference between an investigation and a review is not relevant for purposes of zeroing as stated in Corus I and United States – Sunset Review of Antidumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R (January 9, 2003) (US – Corrosion-Resistant Steel), and United States – Laws, Regulations and Methodology for Calculating Dumping Margins, WT/DS294/18, Communication by the United States at para. 12. (June 12, 2006). Moreover, SKF asserts that, after the WTO issued several decisions against zeroing, the continuation of zeroing violates the international obligations of the United States as specified in the SAA at 13 and Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804) (Charming Betsy). Nachi argues that the Department should not interpret the statute in a manner that does not conflict with the international obligations of the United States as stated in Charming Betsy. JTEKT contends that the CAFC held that statutes should not be interpreted to conflict with international obligations such as GATT agreements absent express Congressional language to the contrary in Federal Mogul Corp. v. United States, 63 F.3d 1572, 1581 (CAFC 1995), citing Charming Betsy. JTEKT also explains that the CAFC held the same principle in Allegheny Ludlum Corp. v. United States, 367 F.3d 1339, 1348 (CAFC 2004).

Timken argues that a dumping margin exists under section 771(35)(A) of the Act when there is a sale or likely sale of goods at less than fair value under section 771(34) of the Act. Therefore, Timken explains, a comparison of normal value and U.S. price that results in a negative value is not dumping, cannot result in a dumping margin, and cannot be used to offset dumping under section 771(35)(B) of the Act. Citing Norman J. Singer, Sutherland's Statutory Construction § 46:05, at 154 (6th ed. 2000), Timken asserts that each section of a statute should be construed in connection with every other section so as to produce a harmonious whole.

Timken states that section 734(b)(2) of the Act allows the Department to suspend an investigation if the exporters of the subject merchandise agree to eliminate completely the amount by which the normal value of the foreign like product exceeds the U.S. price of subject merchandise. Timken explains that the only reasonable understanding of section 734(b)(2) of the Act is that exporters must raise the U.S. price to a level at or above normal value and eliminate any amount by which normal value exceeds U.S. price. Timken interprets that the word "exceeds" in section 734(b)(2) of the Act and in section 771(35)(A) of the Act has the same meaning.

According to Timken, the Department's zeroing has been upheld by the CAFC in several cases, citing, e.g., NSK Ltd. v. United States, 510 F.3d 1375, 1379-80 (CAFC 2007) (NSK I), and Corus Staal BV v. United States, 502 F.3d 1370, 1375 (CAFC 2007) (Corus II). Citing Koyo Seiko Co., Ltd. v. United States, 516 F. Supp. 2d 1323, 1344 (CIT 2007) (Koyo Seiko I), Timken claims that any new argument Nachi and SKF have raised does not affect the stare decisis effect of the appellate court's holdings.

Timken comments that, in World Trade Organization, Communication from the United States, Final Antidumping Measures on Stainless Steel from Mexico, WT/DS344/11 (June 12, 2008), the United States has stated that (1) zeroing treats non-dumped imports as not dumped, (2) zeroing does not inflate the dumping margin, (3) the WTO DSB found in four instances that the practice of zeroing is permissible but the WTO AB disagreed with the WTO DSB's findings by presenting new rationale that does not withstand close scrutiny, and (4) the WTO AB lacks authority to find against zeroing. Timken also comments that, in Press Release, U.S. Mission to the United Nations in Geneva, U.S. Statement at the WTO Dispute Settlement Body Meeting (February 20, 2007), the United States expressed its view that the WTO AB's findings against zeroing in administrative reviews lack legal merit and make no sense from a policy perspective. Timken contends that the United States stated in both documents that WTO Member parties have not agreed to prohibit zeroing.

Timken explains that Congress has enacted a detailed process to adopt WTO decisions and that a WTO dispute-settlement report does not trump the Department's discretion in applying the statute. Moreover, according to Timken, the varying decisions of the WTO Dispute Settlement Body are binding only on the parties to the dispute and they cannot be the law regarded as the law of nations. Therefore, Timken claims, Charming Betsy does not apply. Citing NSK I, Timken comments that the Department has not decided to eliminate zeroing in administrative reviews. Timken urges that the Department continue its current approach of zeroing.

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 U.S. price. As no dumping margins exist with respect to sales where normal value is equal to or less than U.S. price, the Department does 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 I at 1342 and Corus I at 1347-49.

While the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations, the Department has not adopted any other modifications concerning any other methodology or type of proceedings, such as administrative reviews. See Zeroing Notice, 71 FR at 77724.

Respondents have cited WTO dispute-settlement reports (WTO reports) finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA. See Corus I at 1347-49, accord Corus II, and NSK I at 1380. Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, e.g., 19 U.S.C. § 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

We disagree with SKF's argument that the difference between an investigation and a review is not relevant for purposes of zeroing. The CAFC has found the language of section 771(35) of the Act to be ambiguous. See Timken I at 1342. Furthermore, antidumping investigations and administrative reviews are different proceedings with different purposes. Specifically, in antidumping investigations, the Act specifies particular types of comparisons that may be used to calculate dumping margins and the conditions under which those types of comparisons may be used. See section 777A(d)(1) of the Act. The Act discusses the types of comparisons used in administrative reviews. See section 777A(d)(2) of the Act. The Department's regulations clarify further the types of comparisons that will be used in each type of proceeding. See 19 CFR 351.414. In antidumping investigations, the Department generally uses average-to-average comparisons whereas in administrative reviews the Department generally uses average-to-transaction comparisons. See 19 CFR 351.414(c).

The purpose of the dumping-margin calculation also varies significantly between antidumping investigations and reviews. In antidumping investigations, the primary function of the dumping margin is to determine whether an antidumping duty order will be imposed on the subject imports. See sections 735(a), (c), and 736(a) of the Act. In administrative reviews, in contrast,

the dumping margin is the basis for the assessment of antidumping duties on entries of merchandise subject to the antidumping duty order. See section 751(a) of the Act. Because of these distinctions, the Department may interpret section 771(35) of the Act differently in the context of antidumping investigations involving average-to-average comparisons than in the context of administrative reviews.

With respect to United States-Final Determination on Softwood Lumber from Canada, WT/DS264/AB/R (August 11, 2004) (US – Softwood Lumber), the WTO AB's finding only related to the denial of offsets in the antidumping investigation of softwood lumber from Canada. That report, and the Department's implementation of that report, did not address the Department's denial of offsets in other antidumping investigations or in any administrative review. See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada, 70 FR 22636 (May 2, 2005). Moreover, ultimate resolution of that WTO dispute was achieved through a mutually agreed solution and not through an elimination of the denial of offsets. See Notification of Mutually Agreed Solution, United States-Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/29/Add.1 (March 9, 2007).

With respect to US – Zeroing (EC), the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations. See Zeroing Notice. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding such as administrative reviews. Id., 71 FR at 77724. Concerning SKF's argument that the new policy with respect to average-to-average comparisons in investigations invalidates the Department's methodology in administrative reviews, the CAFC has sustained the Department's methodology in administrative reviews after the new policy was implemented. See NSK I at 1379-80 and Corus II at 1375.

With respect to US – Corrosion-Resistant Steel and EC – Antidumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (March 1, 2001) (EC – Bed Linens), the CAFC refused to find the Department's interpretation of the Act to be unreasonable on the basis of these reports. See, e.g., Corus I at 1348-49. As discussed above, the CAFC found that WTO reports are without effect under U.S. law until they are implemented pursuant to the statutory scheme provided in the URAA. Id. Additionally, the CAFC stated that, in US – Corrosion-Resistant Steel, the WTO AB never made a finding regarding the Department's denial of offsets. Id. Further, the CAFC commented that, in EC – Bed Linens, the United States was not a party to the dispute. Id.

With respect to US – Zeroing (Japan) and as discussed above, Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, e.g., 19 U.S.C. § 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 U.S.C. § 3533(g) and Zeroing Notice. With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure. With regard to US – Zeroing (Japan), it

is the position of the United States that appropriate steps have been taken in response to that report and those steps do not involve a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative reviews. Furthermore, in response to US – Zeroing (Japan), the CAFC has repeatedly affirmed the permissibility of denying offsets in administrative reviews. See Corus II at 1374-75 and NSK I at 1379-80.

With respect to US – Zeroing (Mexico), the report has not been implemented pursuant to the express statutory scheme and the parties to that dispute are currently negotiating a reasonable period of time for implementation.

In SKF v. United States, No. 2007-1502, slip op. at 14-15 (CAFC Aug. 25, 2008), the CAFC rejected SKF's argument that zeroing is a distortive misapplication of the antidumping laws and upheld our practice of zeroing. Citing NSK I at 1379, for one example, the CAFC found that it has upheld zeroing repeatedly in the past decisions. Citing Corus I at 1349, Corus II at 1374, and Timken I at 1342, the CAFC found that SKF did not raise any argument not fully resolved by its established precedents. The CAFC found SKF's arguments regarding zeroing unpersuasive and upheld our practice of zeroing unequivocally.

For all these reasons, the various WTO AB reports regarding zeroing do not establish whether the Department's denial of offsets in these administrative reviews is consistent with U.S. law. Accordingly and consistent with the Department's interpretation of the Act described above, the Department has continued to deny offsets to dumping based on export transactions that exceed normal value in these reviews.

2. Model-Matching Methodology

Comment 2: JTEKT, NTN, and SKF argue that the Department should use the family model-matching methodology which it used prior to AFBs 15 instead of the revised model-matching methodology it developed in AFBs 15. NTN and SKF assert that stability in agency practice is fundamental to the implementation of the antidumping law. The respondents contend that the Department may only change the model-matching methodology when compelling reasons exist. The respondents argue that the Department's reasons for revising the model-matching methodology are not compelling nor supported by substantial evidence. NTN argues that the Department has not provided any additional facts, reasons, evidence, or bases for abandoning the family methodology in favor of the sum-of-the-deviations methodology it employed in this review but, rather, the Department has relied on the arguments it made in AFBs 15.

JTEKT argues that the Department had strong legal and factual bases supporting its decision in AFBs 1 to develop the family-matching methodology. According to JTEKT, the Department used in the LTFV investigation a model-matching methodology similar to the one it used in the Preliminary Results. JTEKT and SKF assert that the Department had an unsatisfactory experience in using this methodology in the LTFV investigation. SKF asserts further that the Department recognized in the LTFV investigation that product matches were to be made on the basis of certain core physical characteristics of the bearings. The respondents contend that the Department developed the family-matching methodology to take into account the salient characteristics of the bearings market. The respondents contend further that these characteristics

have not changed since the time the Department developed the family-matching methodology.

The respondents contend that the Department has not provided any evidence to demonstrate that its new model-matching methodology results in a more accurate identification of similar merchandise. Citing the SAA at 839, JTEKT asserts that normal value may be based on CV where home-market sales are inappropriate to serve as a benchmark for a fair price. Citing Torrington Co. v. United States, 881 F. Supp. 622, 634 (CIT 1995) (Torrington), and SKF USA v. United States, 876 F. Supp. 275, 279 (CIT 1995), the respondents assert that the CIT stated that the antidumping statute did not require the Department to use a methodology that identifies the greatest number of matches of similar merchandise. JTEKT argues further that there is nothing in either the statutory language enacted by the URAA or the language in the SAA to suggest that Congress rejected this understanding. Based on these precedents, JTEKT claims, the Department's assertion that an alleged statutory preference for price-to-price comparisons is a compelling basis for revising the model-matching methodology is unjustified.

The respondents assert that the Department has presented no evidence to demonstrate that either the occurrences of CV under the family-matching methodology provide poorer benchmarks for normal value or that the new model-matching methodology identifies better benchmarks. JTEKT contends that the Department assumes that the additional price-to-price matches generated under its new methodology are reasonable. JTEKT argues that the fact that a larger number of price-to-price comparisons are generated cannot be a measure of the accuracy of a model-matching methodology. JTEKT contends that a methodology that permitted matches without any limitations as to the physical characteristics of the products compared would permit price-based comparisons for all U.S. sales but that a large proportion of those matches would be with grossly dissimilar home-market models. JTEKT argues that accuracy must be reflected by reference to the quality rather than the sheer quantity of the matches generated by the methodology and that the Department has not provided any evidence that the quality of the matches has improved.

NTN argues that simple logic demonstrates that the family-matching methodology creates closer matches due to its more stringent matching requirements. According to NTN, the less stringent requirements of the sum-of-the-deviations methodology result in less similarity between matched bearings and, thus, matches which are less accurate. Citing Torrington, NTN contends that the CIT upheld the family-matching methodology because an accurate investigation requires that the merchandise used in the comparison be as similar as possible.

SKF argues that the Department's stated desire to match to a "single most similar" model is misplaced because the Department's definition of a control number is not necessarily defined by a single commercial product. According to SKF, control numbers can refer to a cluster of different products which are identical with respect to the physical characteristics the Department considers important. Thus, SKF asserts, the methodology the Department used in the Preliminary Results is no more accurate than the family-matching methodology.

JTEKT and NTN argue that the Department's methodology results in comparisons of models that are physically and commercially dissimilar. JTEKT provides three examples of matches generated in the Preliminary Results that it asserts are matches between products that are neither

commercially nor physically similar as well as matches which it contends are better matches. JTEKT claims, as an example, that, with respect to inner or outer diameter, a given product either meets the requirements of a customer's application or it does not and that a product with a different inner or outer diameter would not meet the customer's requirements. JTEKT contends that, if a bearing does not meet the customer's requirements, the fact that the inner or outer diameter may be "close" to that which is required is of no interest to either the customer or the manufacturer. As a result, JTEKT asserts, 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. Furthermore, JTEKT argues, the applications in which two different models may be incorporated, even if their dimensions vary only slightly, can be vastly different despite the closeness of their dimensions.

NTN contends that, when the Department developed the family-matching methodology, it decided to forego ranging of the matching criteria to avoid dissimilar matches. NTN asserts that the Department has implemented ranging in its new methodology without proving that ranging does not create dissimilar matches.

The respondents argue that the evolution of the Department's technical capability is not a sufficient, much less compelling, reason to discard the family-matching methodology. The respondents contend that the stated reasons underlying the family-matching methodology did not rely on the technical limitations faced by the Department but, rather, to take into account the salient characteristics of the AFB market. JTEKT argues that the Department's reliance on a statement in a letter soliciting comments that it would group bearings into families in order to minimize the necessity for comparisons among an exceptionally large number of bearings is misplaced. JTEKT asserts that this statement merely speaks to the breadth of the AFB market and the number of models which comprise that market and not the Department's technical limitations.

Finally, JTEKT argues that there is no basis for the Department's attempt to apply its normal model-matching methodology in the reviews of the orders on ball bearings. JTEKT argues that there is no statutory requirement that the Department identify only a single home-market model that is the "most similar" to the model sold in the United States. JTEKT asserts that the products covered by the orders on ball bearings are simply not suitable for a determination that a "single most similar" model may be identified. According to JTEKT, even assuming that the Department's description of its normal practice is accurate, the application of that practice in this case would require the use of arbitrary rules and lead to unpredictable and anomalous results. JTEKT contends that the Department develops model-matching methodologies for particular products on a case-by-case basis and that the methodology used in another proceeding is not necessarily the proper one for the subject merchandise covered by these orders. Citing AFBs 3, 58 FR at 39763, JTEKT contends that nothing in the explanation given by the Department refers to the Department's computer capability but, rather, focuses exclusively on the nature of the product at issue.

Timken asserts that all of the respondents' arguments have been addressed and rejected by the Department in prior reviews. Timken also contends that the Department's revised methodology has been used since AFBs 15 and has been affirmed by the CIT in Koyo Seiko I and in SKF

USA Inc. v. United States, 491 F. Supp. 2d 1354 (CIT 2007) (SKF).

Timken avers that it is beyond dispute that the family-matching methodology was selected, in part, because it provided the Department with a way to handle the selection of similar models without unduly restraining the resources of the Department. Timken also contends that it is beyond dispute that the limitations which constrained the Department's capacity to handle the matching of large databases at the time were greatly diminished by the time of AFBs 15.

Citing Antifriction Bearings from Japan, Preliminary Determinations of Sales at Less Than Fair Value, 53 FR 45343, 45345 (November 9, 1988), Timken asserts that the family-matching methodology was also selected because it presented an improvement over permitting the respondents to select the most similar models themselves. Timken argues that, while it is true that a sum-of-the-deviations methodology was used in the LTFV investigations, this proves nothing regarding the impact of technological change. According to Timken, the Department left the execution of the sum-of-the-deviations methodology to the respondents and, if enough identical comparisons were found, similar comparisons were deemed unnecessary.

Timken contends further that the family-matching methodology was premised on the fiction that models within a family of comparison models were equally similar or dissimilar to the U.S. model. Timken also asserts that the family price was also a fiction because it was affected by the quantity sold of each of the models that comprised the family. Timken contends that the quantity sold is not a proper criterion for model match. Timken argues that the Department's revised model-matching methodology is more accurate than the family-matching methodology because it selects a single model for comparison rather than calculating an average price on a group of models.

Timken argues that JTEKT's claim that bearings with even slight differences in size can have very different applications is misplaced. According to Timken, bearings have thousands of different applications and argues that this does not mean they differ in purpose as contemplated by section 771(16) of the Act.

Timken argues that the respondents' claim that the Department is equating the achievement of additional price comparisons with better accuracy is incorrect. Timken asserts that the Department rejected expanding family groups by ranging the family criteria not because the additional models could not be appropriate comparison models but was based on a desire to keep the family groups as narrow as possible.

Timken contends that the Department's revised methodology conforms better with the Department's normal practice than the family-matching methodology and that the statute indicates a preference for price comparisons over CV. Timken also asserts that, even if the Department were to agree that it is not required to select a single most comparable model, it has demonstrated that doing so yields a more accurate result and, as a result, cannot lawfully decline to apply the more accurate method.

Department's Position: For these final results, we have continued to use the model-matching methodology we developed in AFBs 15 and applied since then. See AFBs 15 and the

accompanying I&D Memo at Comments 2 through 5. The arguments presented by the respondents in these reviews are substantially similar to those we declined to adopt in AFBs 15 and the accompanying I&D Memo at Comments 2 through 5, AFBs 16 and the accompanying I&D Memo at Comments 2 through 4 and 6, and AFBs 17 and the accompanying I&D Memo at Comments 3 through 7 and 9. Moreover, our model-matching methodology has been upheld by the CAFC in SKF v. United States, No. 2007-1502, slip op. at 14-15 (CAFC Aug. 25, 2008), and by the CIT in Koyo Seiko I.

The respondents' challenge to our decision to change the model-matching methodology was raised when we changed the methodology in AFBs 15. We addressed the parties' comments in AFBs 15 and the accompanying I&D Memo at Comments 2 through 5. We have not changed the methodology since then. Nevertheless, our change in methodology in AFBs 15 was reasonable as discussed below. Our continued use of the model-matching methodology we devised in AFBs 15 remains appropriate for these reviews; the respondents do not demonstrate otherwise.

The model-matching methodology we applied in these reviews was the same methodology that we applied in AFBs 15, AFBs 16, and AFBs 17. Therefore, there is no issue related to stability and predictability. 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, as we explained below, 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 fourth administrative review in which we have applied the revised model-matching methodology.

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 the following objectives: 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. See AFBs 15 and the accompanying I&D Memo at Comment 2, which is incorporated by reference. In addition, the revised methodology is much closer to our normal matching practice than is the family-matching methodology. Id.

In AFBs 15, 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. Id. See also 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, physical differences for which we did not account under that methodology. The methodology we used in these reviews is more accurate than the family-matching methodology because it identifies a single most-similar model rather than averaging 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.

As we explained in AFBs 15 and the accompanying I&D Memo 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 yet can still reasonably be compared. Additionally, we are now 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.

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 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 the accompanying I&D Memo 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 the accompanying I&D Memo at Comment 1. See also 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.").

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 resort to CV as determined under section 773(e) of the Act.

No party has challenged our methodology with respect to the first criterion that the comparison-market merchandise must be produced in the same country and by the same person and be of the same general class or kind as the merchandise which is the subject of the order.

The respondents argue that a number of the matches we made are inappropriate because the U.S. model and comparison-market model cannot be considered to be similar. The respondents base this argument, in part, on their contention that the different models are used for very different applications. The respondents' interpretation of sections 771(16)(B)(ii) or (C)(ii) of the Act is much narrower, however, than the Department's interpretation. In the vast majority of market-economy proceedings, the Department's practice has been that any and all comparison-market models that are within the class or kind of merchandise are possible similar comparisons as long as they meet the other criteria of sections 771(16)(B) or (C) of the Act. In other words, if models fit the description of the scope of an antidumping duty order, we consider such products to be like the subject merchandise in component material or materials and in the purposes for which used.

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 the Final LTFV. 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). Id. 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." See Final LTFV, 54 FR at 18999. 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., Ltd. v. United States, 66 F.3d 1204, 1210 (CAFC 1995) (Koyo Seiko II).

In fact, while it resembles our normal methodology more closely than did the family-matching methodology, 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 the memorandum from Barbara E. Tillman to Joseph A. Spetrini dated May 6, 2005, which is attached to the memorandum to file dated September 4, 2008, putting public documents from prior reviews onto the record of these reviews, 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.

Accordingly, 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 too dissimilar to be used as matches in light of our normal practice and our interpretation of section 771(16) of the Act.

In fact, none of the characteristics which JTEKT cited to support its claims of matches of dissimilar products would have rendered such comparisons as inappropriate under the family-matching methodology because that methodology did not account for any of these characteristics. Each of the matches JTEKT cited as inappropriate meet the model-match criteria for these reviews. Namely, they are identical to the U.S. model with respect to bearing design, load direction, number of rows, and precision grade, they do not deviate by more than 40 percent in sum with respect to outer diameter, inner diameter, width, and load rating, and the difference in variable costs is less than 20 percent of the total cost of manufacturing the U.S. model.

Furthermore, JTEKT claims, with respect to the three matches it identified as being inappropriate, that there is a more appropriate match available which we did not use. In each of JTEKT's examples, however, the sum of the deviations of the "inappropriate" model is smaller than the sum of the deviations of the "more appropriate" model claimed by JTEKT. See the printout of the models' physical characteristics attached to the Department's September 4, 2008, final results analysis memorandum for JTEKT for the physical characteristics of those models.

In addition, JTEKT's allegations regarding dissimilar matches are predicated on physical characteristics that are not part of our model-matching criteria (e.g., the hardness of the outer ring). See JTEKT's case brief at 16. As we discussed more fully in AFBs 15, we developed the model-matching criteria based on comments from the interested parties. See AFBs 15 and the accompanying I&D Memo at Comment 2. In order to make the "more appropriate" matches which JTEKT suggests, we would not only have to take into account an additional characteristic or characteristics beyond those we already examine, we would also have to elevate the new characteristic or characteristics to a position in the matching hierarchy before inner diameter, outer diameter, width, and load rating. Unless we put the new characteristics or characteristics before inner diameter, outer diameter, width, and load rating in the hierarchy, we would select the models we actually selected in the Preliminary Results over the models that JTEKT considers to be "more appropriate" matches because we would select the model that is closest in terms of the sum of the deviations using the current characteristics. No party has suggested such a change in the characteristics or sequence of consideration thereof in the methodology. Thus, in spite of JTEKT's assertion to the contrary, we did select the most appropriate model with respect to each of JTEKT's examples.

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 calculation of normal value. For example, if the U.S. model had 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.

The respondents argue that we merely assume that additional price-to-price matches are reasonable. On the contrary, we explained in AFBs 15, in subsequent reviews, and above how the additional price-to-price matches meet the statutory definitions for similar merchandise according to section 771(16)(B) of the Act.

NTN argues that the Department decided previously not to permit matches within certain ranges of characteristics in order to avoid dissimilar matches yet it implemented ranging in the model-matching methodology used in Preliminary Results without proving that it does not create dissimilar matches. As we stated above and in AFBs 15 and the accompanying I&D Memo at Comment 2, the reason we treated models with different inner diameters, outer diameters, widths, or load ratings as dissimilar (i.e., did not range) under the family-matching methodology 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. Furthermore, NTN has not provided any examples of matches we made which are dissimilar such that they cannot be reasonably compared.

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 for which the difference-in-merchandise adjustment is greater than 20 percent of the total cost of manufacturing the U.S. model. 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 physical characteristics which differ by more than 40 percent if that happens to be the most similar product.

The final similarity 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. The CIT has approved the Department's 20-percent difference-in-merchandise test. See Torrington at 634-35. 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 review, they were like that merchandise in the purposes for which used, and we have determined, for the reasons enumerated above, that the comparison-market merchandise may reasonably be compared with the subject merchandise.

As we stated in AFBs 15, there is a clear statutory preference for using price-to-price comparisons. See AFBs 15 and the accompanying I&D Memo 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 these bearings 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 limits such comparisons.

As we explained in AFBs 15 and the accompanying I&D Memo 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 and those constraints were no longer operative. 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 I&D Memo at Comment 2 (quoting the July 13, 1990, letter from Bernard Carreau on the record of the 1988-90 administrative reviews which is attached to the memorandum to file dated September 4, 2008, putting public documents from prior reviews onto the record of these 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 I&D Memo 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, in the 1988-90 reviews, we intended initially to limit comparisons solely by "grouping specific models into families." See AFBs 15 and the accompanying I&D Memo at Comment 2 (quoting the 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 I&D Memo 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 technological capabilities. Rather, as we explained in AFBs 15 and the accompanying I&D Memo 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 and increasing the number of reasonable price-to-price comparisons 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 is, therefore, that we are able to select the single most-similar model whereas, previously, we were unable to do so due to technological limitations.

The respondents argue that the fact that there are more price-to-price matches does not mean that the sum-of-the-deviations methodology is more accurate. As we said above, however, the statute has a clear preference for price-to-price matches. Thus, so long as the additional price-to-price matches are reasonable, a methodology which results in more such matches is more in line with the statutory intention and is, in our view, a more accurate methodology. We have explained above why we consider all the additional matches we made to have been reasonable. Furthermore, it is not only the presence of additional reasonable matches which makes our current methodology more accurate than the family-matching methodology. The fact that we are selecting a single most-similar model as the basis of normal value rather than averaging together the prices of a group of disparate models, all but one of which are, by definition, less similar than the single most-similar model, also makes our current methodology more accurate than the family-matching methodology. Only JTEKT has attempted to show that some of the models we selected were not the most-similar model but, as we discuss above, we did select the most-similar model in each of the instances JTEKT described.

NTN's argument that the family-matching methodology creates closer matches because of its more stringent requirements is incorrect. The family-matching methodology limited matches more stringently but it did not create closer matches. Rather, our current methodology selects, more or less, the same models to which we matched in the family-matching methodology and, in addition, selects reasonable comparisons among models which differ up to a maximum of 40 percent with respect to inner diameter, outer diameter, width, and load rating rather than discarding such matches in favor of CV. First, with respect to the matches found in the family-matching methodology, our current methodology selects generally the same matches except, instead of averaging together the prices of all matches within the family, we now select the single most-similar model for comparison. Thus, with respect to these matches, our current methodology selects closer matches. Second, with respect to matches we now make but would not have made under the family-matching methodology, as we describe above, the reason for not making those matches was because we were averaging the prices of disparate models. Now that

we are no longer doing that, there is no reason to not make these comparisons. With respect to such comparisons, the family-matching methodology did not result in closer comparisons; rather, it made no match at all and we had to rely on CV. Thus, the family-matching methodology did not identify any matches which were closer, or more similar, to the matches we identify using our current methodology.

JTEKT and SKF argue that the Department used a methodology similar to that used in the investigation and that the Department found the methodology from the investigation to be unsatisfactory. JTEKT and SKF omit two salient differences. First, in the investigation, if at least 33 percent by volume of a respondent's U.S. sales could be compared to home-market sales of identical products, then we limited comparisons to identical comparisons only. If less than 33 percent of a respondent's U.S. sales could be compared to identical products, we compared the largest-volume products sold in the United States to similar products sold in the home market. See, e.g., Preliminary Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan, 53 FR 45343, 45345 (November 9, 1988), unchanged in LTFV Final. Thus, we limited the scope of comparisons in the investigation in a manner not contemplated by our current methodology. Second, we did not perform the model-match ourselves but left it to the respondents. See, e.g., the June 29, 1988, letter from Roland L. MacDonald to Aktiebolaget SKF on the record of the LTFV investigation which is attached to the memorandum to file dated September 4, 2008, putting public documents from prior segments of the proceedings onto the record of these reviews. In our current methodology, we have control over the matching of models rather than have to leave it to the respondents. Neither of these conditions which existed in our model-matching methodology in the LTFV investigation exist in our current methodology. Moreover, as we explain above, our current methodology is more accurate than the family-matching methodology.

SKF argues that the Department's stated desire to match to a "single" most-similar model is misplaced because the Department's definition of a control number is not necessarily defined by a single commercial product. SKF's analogy is not accurate because a control number is meant to designate merchandise that is identical or virtually identical. We do this because we recognize that a respondent's product nomenclature may take into account differences which do not affect our dumping analysis in a meaningful manner. For example, in these proceedings, historically we have not regarded differences in characteristics such as chamfering, etchings, and clearance because bearings with such differences, for purposes of measuring price discrimination, are virtually identical. See, e.g., the antidumping questionnaire dated August 14, 2007, at page B-8 and C-8. Thus, comparing a bearing with one etching to a bearing with a different etching (or no etching) is essentially a comparison of identical products. In such cases, moreover, we do not attempt to make a difference-in-merchandise adjustment because such differences which may exist do not cause meaningful differences in price or cost. Thus, while a respondent or its customer may think of the two bearings as different products, we do not consider them to be different for purposes of calculating a dumping margin. By contrast, this is not the case with similar, non-identical merchandise such as those non-identical models that fall within the same bearing family under the family-matching methodology. With respect to such models, there is no dispute that such models have physical differences that may affect price and cost. We hold that it is best to select the single model which is most similar for comparison rather than to average together the prices of disparate models with varying degrees of similarity.

Finally, JTEKT asserts that the products covered by the orders on ball bearings are not suitable for a determination that a single most-similar model may be identified and that the application of that practice in this case would require the use of arbitrary rules and lead to unpredictable and anomalous results. JTEKT has not provided any evidence for this assertion, however, and merely asserts that ball bearings are different from other products for which the Department uses its normal model-matching methodology. Moreover, as discussed above, JTEKT has not identified any matches we made that were inappropriate. In addition, JTEKT has not explained why including the prices of models that are less similar to the single most-similar model would result in a more accurate margin.

Therefore, compelling reasons existed to use the model-matching methodology we developed in AFBs 15 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. For the same reasons, the use of the model-matching methodology is appropriate for these reviews.

Comment 3: JTEKT contends that, if the Department implements its revised methodology, it should revise that methodology further to identify the single most-similar model within the old definition of a bearing family (i.e., only searching among comparison-market models that have the same bearing design, load direction, number of rows, precision grade, inner diameter, outer diameter, width, and load rating as the U.S. model). JTEKT asserts that it has explained that models which differ even by a minor amount with respect to only one of the physical characteristics are nonetheless physically and commercially dissimilar. JTEKT asserts that the Department's claim that models with small deviations in physical characteristics must be similar appears to be based on nothing more than the fact that this may be true for other products. Thus, JTEKT concludes, the Department must not match products that are not within the same family as defined in the family-matching methodology. For the same reasons, it asserts, the use of the previous model-match methodology is appropriate for these reviews.

In the alternative, JTEKT argues that the Department should eliminate the single 40-percent cap on the permissible sums of the deviations and instead apply a cap of 10 percent for the deviation of each of those physical characteristics between the U.S. model and the potentially matching model in the comparison market. JTEKT contends that, given that the Department has assumed that the 40-percent cap would result, on average, in 10-percent caps on the individual characteristics, it would makes sense to achieve that goal directly by imposing individual 10-percent caps on each of the characteristics (i.e., inner and outer diameters, width, and load rating). JTEKT alleges that a product that has a difference in an individual characteristic of 40 percent cannot be said to be similar because it would necessarily have a very different purpose and commercial value.

JTEKT also contends that individual 10-percent caps would be more consistent with the central purpose of the antidumping duty orders, which is to encourage respondents to adjust their prices in order to purge themselves of dumping liability. JTEKT asserts that, in order to adjust prices in this manner, a respondent must know at the time of sale the universe of models sold in the comparison market that may match to each U.S. model. JTEKT claims that respondents would

be better able to do this if the methodology imposed individual caps rather than a single cap on the sum of the deviations.

Timken contends that JTEKT does not advance any reason why bearings which deviate in physical characteristics cannot be compared as long as an adjustment is made for differences in merchandise. Timken asserts that differences in the size and load rating may be expected to have predictable effects on the cost and value of the bearing and thus would be adequately addressed by such adjustments.

With respect to JTEKT's suggestion of individual 10-percent caps, Timken contends that the 40-percent cap was adopted following comment by all interested parties. Timken avers that the Department's explanation in a memorandum dated May 6, 2005, which is attached as Exhibit 3 of JTEKT's general issues case brief, continues to be valid. Timken asserts that JTEKT has not attempted to make any factual showing to demonstrate that the continued use of the 40-percent cap leads to inappropriate comparisons.

Department's Position: We have not adopted JTEKT's suggestions. As we describe in response to Comment 2, above, JTEKT's interpretation of section 771(16)(B)(ii) or (C)(ii) of the Act is much narrower than our interpretation and the 40-percent cap on the sum of the deviations is a reasonable limitation on model matches. JTEKT has not provided evidence that demonstrates that limiting the matches further would result in a more accurate margin. Therefore, we continue to find that the 40-percent cap on the sum of the deviations is appropriate for use in these bearings proceedings.

Furthermore, as we describe in response to Comment 2, above, 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; it was not our decision that bearings with different physical characteristics could not be reasonably compared. Accordingly, we find no reason to search only among models that have the same inner diameter, outer diameter, width, and load rating as the U.S. sale.

With respect to JTEKT's arguments that we should use individual 10-percent caps instead of a 40-percent cap on the sum of the deviations, as we discuss in response to Comment 2, above, we find that none of the matches which JTEKT cited as inappropriate is actually inappropriate in light of our normal practice and our interpretation of section 771(16)(B) of the Act. Thus, JTEKT has not shown that allowing deviations of up to a total of 40 percent results in inappropriate matches. Given our determination that matches that differ by no more than 40 percent are appropriate and reasonable, JTEKT's suggestion would result in matches being discarded in favor of use, presumably, of CV. As we stated in response to Comment 2, earlier, the Act indicates a clear preference for price-to-price matches. 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. Accordingly, we find that JTEKT's suggestion would not only not improve the accuracy of our model-matching methodology, it might decrease the accuracy of our methodology.

While it is true that the 40-percent cap could allow an average of a 10-percent cap on the four

characteristics, we never assumed that it would result in individual caps of 10 percent nor did we ever specify this as a goal. Based on the reasoning we gave in AFBs 15 and in response to Comment 2, above, we see no reason why a bearing sold in the United States could not be reasonably compared with a home-market bearing, for example, with a 40-percent difference in width for purposes of calculating normal value so long as the difference-in-merchandise adjustment is within 20 percent of the cost of manufacturing the U.S. bearing.

Finally, JTEKT asserts that, in order to adjust prices in order to purge itself of dumping liability, a respondent must know at the time of sale the universe of models sold in the comparison market that may match to each U.S. model and that respondents would be able to do this better if the methodology imposed individual caps rather than a single cap on the sum of the deviations. We disagree with JTEKT.

First, in nearly every other antidumping proceeding, the universe of models sold in the comparison market that may match to each U.S. model is all models sold in the comparison market which meet the physical description of the merchandise that is within the scope of the antidumping duty order. We have already reduced the size of the universe of models sold in the comparison market that may match to each U.S. model, not only by limiting matches to the 40-percent cap on the sum of the deviations but also by the fact that we only match to models that are identical with respect to design type, load direction, number of rows, and precision grade.

Second, while we do not dispute JTEKT's claim that it would make it easier for respondents if we reduced the universe of sales in the comparison market further, we do not find this reason to be sufficient for us to disregard price-to-price matches that are appropriate and reasonable. The point of revising the model-matching methodology in AFBs 15 was to capture all reasonable and appropriate price-to-price matches now that we no longer were constrained by technology as we were in 1990 when we developed the family-matching methodology. In the absence of evidence that any of the matches we are making are not reasonable comparisons, we find no reason to alter our methodology.

Comment 4: JTEKT contends that, if the Department implements its revised methodology, it should treat the presence or absence of lubricant as a ninth physical characteristic. Citing its factual submission dated November 16, 2007, JTEKT contends that lubrication serves several critical functions for bearing products such as reducing friction and wear among bearing parts, dissipating heat generated inside the bearing, prolonging bearing fatigue life, and preventing corrosion and contamination by dirt. Thus, JTEKT argues, the presence or absence of lubrication has a fundamental effect on the nature of the bearing product and the applications for which it is suitable for use. JTEKT contends further that models that are not lubricated should not be matched to models that are lubricated.

Timken argues that the Department should reject JTEKT's suggestion. Timken asserts that, if JTEKT's suggestion is adopted, a bearing with lubricant could never be compared with a bearing without lubricant. Timken contends that JTEKT's argument is based on the observation that bearings supplied with lubricant and bearings supplied without lubricant find different applications and customers. According to Timken, such a difference has never been found to affect comparability either in the family-matching methodology or in the current methodology.

Department's Position: We have not adopted JTEKT's suggestion. JTEKT has not demonstrated that an unlubricated bearing cannot reasonably be compared with a lubricated bearing. JTEKT's argument appears to rest on the fact that lubricated and unlubricated bearings are used in different applications. As we said in response to Comment 2, above, 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, not whether a specific application for one bearing differs from the specific application of another. Moreover, 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 II at 1210.

Furthermore, we have never found that an unlubricated bearing could not be reasonably compared with a lubricated bearing. In fact, prior to AFBs 15, when we still used the family-matching methodology, we treated bearings that were identical with the exception of how they were lubricated to be identical bearings. See, e.g., the excerpt from the questionnaire from the 1993-94 administrative reviews which is attached to the memorandum to file dated September 4, 2008, putting public documents from prior reviews onto the record of these reviews. In other words, if the only difference between two bearings was that one was lubricated and the other unlubricated or if the only difference was that the two bearings had different types of lubricants, we treated those two bearings as identical products. We only began treating such bearings as different products after we found that differences in lubricant can create significant differences in cost. See AFBs 15 and the accompanying I&D Memo at Comment 5 (adding lubricant to the Department's criteria for identical merchandise). Determining that two bearings are not identical, however, is not the same as saying they are not similar within the meaning of sections 771(16)(B) and (C) of the Act. As we stated above, we have never found that a difference in lubrication, in and of itself, would cause us to treat two bearings as so dissimilar that they could not reasonably be compared unless that difference caused the difference-in-merchandise adjustment to exceed 20 percent of the COM of the U.S. product. Accordingly, we have not adopted JTEKT's suggestion.

Comment 5: 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. According to JTEKT, the life of a bearing is related directly 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 under-weights this physical characteristic.

Timken argues that the Department should not change its treatment of dynamic load rating in its model-matching methodology. Timken contends that JTEKT has advanced no evidence that the value of a bearing is related directly to the cube of the load rating. Moreover, according to Timken, bearing life is also determined by a number of other factors.

Department's Position: We have not adopted JTEKT's suggestion. We are not attempting to measure the useful life of a bearing for purposes of our antidumping analysis. Rather, we are attempting to find the most similar bearing for purposes of a price comparison. There is no

evidence on the record that indicates that prices or costs of bearings vary in correlation with the cube of the load rating or that cubing the load rating would lead to more accurate matches.

Furthermore, JTEKT's suggestion would have the effect of limiting the matches we might make because using the cube of the load rating would effectively magnify any difference which exists in load rating, thereby increasing any deviation. For example, suppose the deviation in the load rating between a U.S. model and an otherwise similar home-market model was 15 percent. If we cubed those load ratings, the resulting deviation would be over 52 percent and, thus, we would discard it. JTEKT has not demonstrated, however, that any matches we made using our methodology that would be excluded using JTEKT's suggestion are unreasonable or inappropriate. JTEKT has not explained why a home-market model that has, e.g., a 15-percent difference in load rating cannot be reasonably compared to an otherwise similar U.S. model. Accordingly, we find no reason to determine it would be appropriate to exclude such matches.

Finally, by cubing the load rating, we would, in essence, be placing more weight on load rating than on inner diameter, outer diameter, and width. To illustrate this, suppose the difference between a U.S. model and one home-market model was a 10-percent deviation in load rating and the difference between that U.S. model and a second home-market model was a 20-percent deviation in width. Under our methodology, we would select the model with the deviation in load rating over the model with the deviation in width because the former had a smaller total deviation. Under JTEKT's suggestion, however, the deviation of the load rating would become approximately 33 percent and, as a result, we would choose instead the model with the deviation in width over the model with the deviation in load rating because the former would now have the smaller total deviation. Other than its assertion regarding the length of the life of the bearing, JTEKT has not explained or demonstrated why we should add additional weight to the load rating over the other characteristics. Using our example, JTEKT has not explained why we should choose a model with a 20-percent deviation in width over a model with a 10-percent deviation in load rating. Accordingly, we have not adopted JTEKT's suggestion.

Comment 6: JTEKT argues that, if the Department insists on using the revised methodology, it must devise procedures by which respondents can identify inappropriate matches resulting under the Department's methodology and exclude those matches from the margin calculation.

Timken argues that the Department should not adopt JTEKT's 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 Seiko II at 1210, 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, the matches are approximately equal in commercial value because the differences in variable costs is within 20 percent of the cost of manufacturing of the U.S. model.

Department's Position: We have not incorporated JTEKT's suggestion with respect to these reviews. JTEKT can and did identify what it felt were inappropriate matches in its case brief. While we did not agree with JTEKT that the matches we made were inappropriate, there is nothing that precludes any respondent from identifying allegedly "inappropriate" matches in the future, either in pre-preliminary comments or in case briefs as long as they rely on information on the record.

With respect to the "inappropriate" comparisons alleged by JTEKT in this review, 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 as discussed in our response to Comment 2, above. In fact, as we stated in response to Comment 2, above, the characteristics JTEKT has cited which it contends make bearings dissimilar 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.

Nevertheless, we intend to make every effort to incorporate additional time in the process in subsequent reviews in order to address JTEKT's concern.

Comment 7: 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 argues that the Department should reject SKF's suggestion. Timken contends that SKF's argument was addressed by the Department in AFBs 15. Timken claims that the Department's decision to account for differences in grease remain correctly grounded in its observation that such differences materially affect the cost of the product. As a result, Timken asserts, models with different greases may not be suitable as identical comparisons because the Department does not make a difference-in-merchandise adjustment for comparisons of identical products. Timken also contends that products excluded from identical comparison because of a difference in the control number relating to grease are still valid as similar comparisons where cost differences will be taken into account.

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 bearings proceedings so that we do not ignore differences in lubrication. As we stated in AFBs 15 and the

accompanying I&D Memo 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 compare 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 regard the models as "identical" for matching purposes, we could 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 presumably higher cost of high-performance grease 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. We do not calculate different costs for identical bearings. Thus, there would be no difference in the variable cost of merchandise between the home-market sale and the U.S. sale. 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.

Comment 8: NTN argues that the Department should recognize NTN's proposed additional design types and suggests that the Department recognize five different types of insert bearings rather than group all insert bearings into one category. NTN contends that it has placed schematics and other evidence on the record demonstrating the differences between its suggested types of insert bearings and argues that they are commercially distinct, used in different applications, sold to different customers, and sold at different prices. NTN asserts that this is true for NTN as well as its competitors and that the international standards organizations also divide insert bearings among these types. According to NTN, the Department has not explained why it did not accept NTN's proposed designations.

Timken argues that the Department's determination not to accept NTN's proposed designations was correct. According to Timken, NTN did not demonstrate that NTN's proposed additional breakouts are substantially different from insert bearings, the category which the Department already recognizes as a separate design type. Citing the Department's preliminary results analysis memorandum for NTN, Timken asserts that the Department explained its decision and enunciated the applicable standard which, according to Timken, NTN did not meet.

Timken avers that the only difference between the proposed design types is the manner in which the shaft is secured. Timken agrees with the Department's notice to NTN that these relatively minor differences did not establish that the proposed subcategories were substantially different from insert bearings in general. Timken asserts that NTN did not substantially add to its arguments in its case brief for this review. Thus, Timken concludes, NTN's proposed distinctions remain unsupported and the Department's rejection of them was appropriate.

Department's Position: We have not accepted NTN's proposals. NTN proposed that we distinguish among five different types of insert bearings: set-screw type insert bearings, eccentric locking collar type insert bearings, adapter type insert bearings, farm implement type insert bearings, and "nonstandard, other type" insert bearings. In its letter of September 28, 2007, NTN submitted information including technical drawings showing how the different types of insert bearings differed physically from each other, as well as pages from the websites of NTN's affiliates and NTN's catalog demonstrating that NTN considers them to be commercially distinct products.

In our November, 14, 2007, supplemental questionnaire, we asked NTN to justify its claim given that the different types of insert bearings did not seem so different to us that they could not be reasonably compared. We also indicated in our questionnaire that our examination of NTN's home-market sales data suggested that the prices and costs of different types of insert bearings with similar physical characteristics generally do not vary substantially.

In its December 12, 2007, response to our supplemental questionnaire, NTN claimed that, not only does it consider the different types of insert bearings to be commercially distinct products which are put to different uses, but NTN's customers, many of the major bearings manufacturers and distributors, and international standards organizations consider these different types of insert bearings to constitute commercially different product types. NTN also claimed that the fact that the costs and prices of different types of insert bearings with similar physical characteristics may not vary substantially from one another is not dispositive of whether the inert bearing should be considered different design types. Rather, NTN argued, it is the totality of factors, including similarity in component material and in purposes for which used that defines similar merchandise.

We do not dispute that the different types of insert bearings which NTN claims should be treated as separate design types are commercially distinct from one another. This is true, however, of nearly all, if not all, non-identical bearings. NTN has not explained, however, how the different claimed types of insert bearings are so different that they cannot be reasonably compared under section 771(16)(B) of the Act. In order for us to accept NTN's proposed designations, NTN must show why, for example, a set-screw type insert bearing cannot be reasonably compared to an otherwise similar farm-implement type. NTN has not done so. The evidence that NTN has provided in support of its contention shows that the different types of insert bearings are physically different and commercially distinct from one another. NTN has not shown, however, why bearings with these specific physical differences and commercial distinctions cannot be reasonably compared to one another for the purpose of calculating a margin when we routinely make comparisons of models with physical differences and commercial distinctions when we cannot find a sale of an identical model in the comparison market.

We agree with NTN that we have to look at the totality of factors in determining whether two bearings can be reasonably compared and not merely whether the costs and prices of different types of bearings with similar physical characteristics vary substantially from one another. In the absence of other factors, however, similarity in price and costs suggest that such products can be reasonably compared to one another. While similarity in price and costs is not, in and of itself, dispositive as to whether two bearings can be reasonably compared, we asked NTN to explain

why, given such similarities, different types of insert bearings cannot be reasonably compared with one another. In response, NTN claimed they are commercially different and used in different applications.

As we said in response to Comment 2, above, NTN's interpretation of section 771(16)(B)(ii) or (C)(ii) of the Act is much narrower than our interpretation. Moreover, as we said in response to Comment 2, above, 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, not whether a specific application for one bearing differs from the specific application of another. 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 II at 1210.

Thus, NTN has only shown that, like any two different models with different characteristics, models within different subcategories are commercially distinct. We already treat them as commercially distinct in that we recognize a model in one subcategory as one control number and a model in another subcategory as a different control number and, thus, we do not regard them as identical merchandise. Nevertheless, NTN still has not demonstrated why, for example, a set-screw type insert bearing cannot be reasonably compared to an otherwise similar farm-implement type. As Timken observes, NTN put forth no new argument in its case brief beyond what we had decided not to incorporate for the Preliminary Results. Because NTN has not demonstrated that the proposed subcategories are substantially different such that they cannot be reasonably compared to one another, we have not adopted NTN's suggestion.

Comment 9: NTN argues that the Department should use the difference-in-merchandise adjustment to resolve ties when selecting the most similar merchandise before resorting to a level-of-trade and contemporaneity analysis. NTN asserts that the statute and regulations instruct that the physical characteristics of the product being imported and a comparison of these characteristics to those of the product sold in the comparison market is of overarching importance in the margin calculation. According to NTN, only after the appropriate physical match has been made can the Department turn to other factors to make the determination of which sale of the appropriate product it will choose for matching purposes. NTN argues that the characteristics of the sale, such as level of trade and contemporaneity, say nothing about the suitability of the home-market model for purposes of the model match. But, NTN avers, the difference-in-merchandise adjustment does relate to differences in the physical characteristics of the products being compared. Citing section 771(16) of the Act, NTN comments that one of the terms of the definition of "foreign like product" is that the merchandise must be approximately equal in commercial value whereas no mention is made in section 771(16) of the Act of factors such as level of trade or contemporaneity. NTN provides examples from the Department's preliminary calculations of NTN's margin which it alleges demonstrate that using contemporaneity and level of trade before the difference-in-merchandise adjustment results in inferior matches.

Timken argues that the Department should reject NTN's argument. Timken cites the Department's rationale in AFBs 15 in support of the proposition that the Department should take

into account differences in level of trade and contemporaneity before using the difference-in-merchandise adjustment to resolve ties.

Department's Position: We disagree with NTN. We find that it is appropriate to place more weight on level-of-trade and contemporaneity concerns than on differences in costs for tie-breaking purposes. Section 773(a)(1)(B)(i) of the Act instructs us that the normal value shall be based on prices "to the extent practicable, at the same level of trade" as the U.S. sale while section 773(a)(1)(A) of the Act instructs us that the normal value shall be based on prices "at a time reasonably corresponding to the time" of the U.S. sale. There is, however, no corresponding statutory instruction to use the model which is closest in terms of the variable cost of manufacturing. Rather, the statute instructs that the similar merchandise be approximately equal in commercial value to the U.S. product. See section 771(16)(B)(iii) of the Act. Because the comparison-market products under consideration are within our 20-percent cap on the differences in variable cost of manufacturing of the U.S. model to which it is matched, we consider matches to be approximately equal in commercial value. Accordingly, while we continue to find that using the differences in costs is a valid consideration for resolving ties between two or more models, we determine that it is appropriate to examine differences in level of trade and contemporaneity before using the difference-in-merchandise adjustment for purposes of breaking ties in our model-matching methodology. See AFBs 15 and the accompanying I&D Memo at Comment 3.

Finally, the CIT has affirmed our methodology for resolving ties. See Koyo Seiko I at 1338. Therefore, we have not adopted NTN's suggestion.

Comment 10: Timken argues that the Department should not permit SKF to treat bearing kits as a separate design type. Citing AFBs 15 and the accompanying I&D Memo at 57, Timken asserts that the Department's standard for treating a bearing as having a different design type is that the respondent must demonstrate that its additional proposed design type is different from those identified in the questionnaire such that it merits its own classification. Citing AFBs 16 and the accompanying I&D Memo at 77, Timken contends that the Department has stated that a single element of difference would not suffice to support a proposed distinction, that a difference would not suffice to the extent an element of difference was also captured in other physical characteristics already recognized by the Department, and that differences in function or application would not suffice to warrant a finding of a separate design type.

Timken asserts that SKF's reported bearing kits do not meet the Department's standards for treatment as a separate design type. Timken asserts further that evidence on the record shows that bearing kits are not a different type of bearing or a bearing design but simply a different way of packaging and selling existing bearing-design types which the Department already recognizes.

Timken states that it does not take issue with SKF's assertion that its sales of bearings packaged in kits with other subject or non-subject products may complicate SKF's reporting of sales and cost data. Rather, Timken contends, these difficulties have no relevance to the question of whether bearing kits are a different design type.

SKF argues that the Department should continue to accept its claim of bearing kits as a separate

design type. SKF contends that the Department has explored this issue through numerous supplemental questionnaires and has verified the evidence SKF has presented. SKF also asserts that the Department has rejected the same arguments by Timken in prior reviews. SKF contends further that it has met its burden to demonstrate that its reported bearing kits are a separate design type.

SKF also asserts that, in treating bearing kits as a separate design type, the Department recognized that bearing kits may include not only one or more bearings but also various other items that are necessary for the kits' intended application; SKF reiterates its assertion that it does not import subject bearing kits into the United States.

SKF also contends that the evidence cited by Timken buttresses SKF's argument that bearing kits should be treated as a separate design type. According to SKF, Timken does not recognize that many kits include more than one bearing, some of which are non-subject, as well as numerous other important items which make kits a separate and distinct design type, including mounting studs, mounting holes, and other non-subject parts. SKF observes that the one kit Timken discusses in its case brief contains additional non-subject parts.

SKF also argues that the Department's current questionnaire structure will not accommodate the reporting of bearing kits. According to SKF, the Department would need to develop a separate and distinct set of product characteristics and matching criteria for kits which would create an extreme burden on both SKF and on the Department.

Department's Position: We agree that, technically, the bearings that SKF sells within a kit are not a separate design type. For the reasons enumerated below, however, we continue to treat them, effectively, as if they were a separate design type for the purposes of our margin calculations in these reviews because to do otherwise could introduce a host of complications to our margin calculations although there is no evidence that comparing a bearing to a bearing kit would produce more accurate results.

No party disputes that the bearing or bearings within a kit may have the same design type as a bearing sold on its own. The nature of SKF's bearing kits, however, can render comparison with a bearing not sold in a kit difficult if not unreasonable. For example, SKF's catalog of wheel-bearing kits shows that every kit is composed of at least one bearing packaged with at least one other component. See Exhibit 2 of Timken's December 14, 2007, factual-information submission at pages 188 to 209. Frequently, the bearing kits contain multiple non-bearing components. Id. Because of this difference in how the bearings were sold, a comparison of a bearing sold in the United States with a bearing kit sold in the home market could potentially create a dumping margin. As an example, assume that a bearing is sold in the United States and an identical bearing is part of a bearing kit sold in the comparison market. Because the kit contains merchandise other than the bearing, some portion of the price of the kit is attributable, presumably, to that other merchandise. Thus, a comparison of the U.S. price of the bearing with the price of the kit would not be an apples-to-apples comparison because the price of the kit contains an element attributable to merchandise other than the bearing within the kit. Thus, to the extent that the price contains an element attributable to other merchandise within the kit, the price of the kit is "overstated" vis-à-vis the price of the bearing sold in the United States.

In order to achieve a fair comparison, we would have to deduct that portion of the price attributable to the merchandise other than the bearing. In other words, we would have to conduct the equivalent of a further-manufacturing analysis on SKF's kits in order to achieve a fair comparison with the bearing sold in the United States. This would require us to collect the equivalent of the information we normally collect in section E of our questionnaire, except in this instance with respect to comparison-market sales rather than U.S. sales; we would be required to analyze such information and perform a complex calculation of the home-market price for the bearing in which we would deduct not only the costs of the other components but also, presumably, a profit element, just as we do for further-manufactured U.S. sales. There are other complexities, as well; for example, how and whether we would be able to attribute the indirect selling expenses and commissions, if any, to the bearing in a kit for CEP and commission-offset purposes or whether we would somehow have to allocate such expenses to the bearing in order to make a proper CEP or a commission-offset adjustment. In addition, because such an analysis with respect to comparison-market sales is a matter with which we have little, if any, experience, there may be other issues involved which we cannot now envision. All of this would create a substantial burden on us, it would add significant complexity to the reviews, and there is no evidence that conducting such an analysis would increase the accuracy of our margin calculations for SKF in these reviews.

Furthermore, in the context of these reviews, undergoing this burden is not likely to affect the accuracy of our margin calculation. SKF's sales of kits account for a relatively small proportion of SKF's comparison-market sales. See, e.g., the transcript of the public hearing conducted for the Germany-specific issues on July 10, 2008, at page 39 (the transcript was placed on the record on July 23, 2008). Thus, including such sales in our analysis is not likely to have a substantial effect on SKF's margins. Because of this, we find it is not reasonable to subject both SKF and ourselves to this burden.

For the foregoing reasons, we determine that a comparison of a bearing sold in the United States with a bearing kit sold in the comparison market would result in an unreasonable price comparison and would likely have a small, if any, impact on SKF's margins in these reviews. Accordingly, we continue to find that, for these reviews, treating SKF's bearing kits as a separate design type in effect for calculation purposes is a reasonable method for calculating SKF's margins.

3. Collapsing and Successor in Interest

Comment 11: Timken argues that the Department's preliminary determination not to collapse SKF France and SNFA France is based in part on a significant error. Timken asserts that, under the Department's collapsing practice, the Department will treat two affiliated producers as a single entity if the two producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Department concludes that there is a significant potential for the manipulation of price and production as evidenced by such factors as the level of common ownership, interlocking boards of directors or shared management, or intertwined operations. Timken also asserts that not all these factors need to be present if the parties are sufficiently related to present the possibility of price manipulation.

Timken states that, under the Department's practice, where any one of two related companies could shift production to the other without necessitating substantial retooling, the part of the Department's collapsing regulation concerning the potential for manipulation is satisfied (citing 19 CFR 351.401(f)(1)). Timken emphasizes that it is not necessary that both facilities are able to shift production without substantial retooling.

Citing Viraj Group v. United States, 476 F.3d 1349 (CAFC 2007) (Viraj), Timken states that the Federal Circuit affirmed the Department's decision to assess substantial retooling by comparing the required tooling expenses to production-related assets. Timken states further that in Viraj retooling was not deemed to be substantial in instances where the Department estimated that it would require "less than 10 percent of the {entities} current fixed asset value to carry out". Finally, Timken states that, under Viraj, the Court agreed with the Department that the collapsing regulation only requires that the products be similar and that there is no requirement that the facilities be similar.

Timken asserts that SNFA France and SKF France have production facilities that would not require significant retooling to restructure manufacturing priorities. Timken points out that, through its existing affiliate, SKF Aerospace, SKF France and SNFA France produce subject bearings for aerospace and machine-tool applications and that there exists an overlap of suppliers. Timken also argues that product overlap is not required and that section 771(16)(C) of the Act prescribes that the Department may consider all products that are within the class or kind of product to be similar.

Timken also argues that there is a significant potential for manipulation of price or production based on SKF France's 100-percent ownership of SNFA France because the management of SNFA France now answers to SKF France. Timken points to the fact that an SKF France financial director was brought into SNFA France management and that two SNFA France management personnel elected not to continue their employment following the acquisition. Conversely, Timken comments, the SNFA France sales director will also assume responsibility for some SKF Aerospace France S.A.S. sales. Timken also argues the following: (1) SNFA France will be absorbed into SKF France's Industrial Division's Aerospace and High Precision Bearings business unit; (2) SNFA France's sales will be included in SKF France's financial reports; (3) SKF France asserts it intends to achieve manufacturing synergies and it intends to increase sales of SNFA France products by integrating SNFA France into SKF France's global sales network; (4) SNFA France also sells merchandise to the same customers and in the same channels as SKF France; (5) certification or qualification procedures are not an obstacle to customers switching from a product produced by an SKF France facility to products produced by an SNFA France facility.

Timken concludes that, because SNFA France is now wholly-owned by SKF France, SKF France has the potential to control corporate pricing decisions and the selling behavior of SNFA France.

SKF France argues that in deciding not to collapse SKF France and SNFA France the Department's decision did not rest upon a significant factual error but upon the voluminous certified information that both SKF France and SNFA France submitted to the Department. SKF

France asserts that under 19 CFR 351.401(f)(1) it would not be appropriate for the Department to collapse SNFA France with SKF France because the Department must first find the requisite type of production facilities and a significant potential for manipulation.

As a first step, SKF France states, the Department found that there are key physical distinctions between the ball bearings produced by SKF France and SNFA France and the Department concluded that SNFA France does not produce identical or similar products to those produced by either SKF France or SKF Aerospace. Also, SKF France states, the Department concluded that the physical differences and production processes of the various bearings would require substantial retooling on the part of SNFA France to produce a SKF France bearing or substantial retooling of either SKF France company to produce a SNFA France bearing.

SKF France denies that both SKF France and SNFA France produce subject bearings for aerospace and machine-tool applications and that Timken is in error in making such an allegation. SKF France also states that Timken's argument that there exists an overlap of suppliers between SKF France and SNFA France does not lead to the conclusion that there are identical or similar products produced by the two firms. SKF France also takes issue with Timken's argument that detailed product overlap is not required for collapsing affiliated firms. SKF France argues that there are key physical distinctions between ball bearings produced by SKF France and SNFA France, which the Department found were significant and which went far beyond ordinary model ranges.

As a second step, SKF France states that the Department found that substantial retooling would be required for SNFA France to produce a SKF France bearing or for SKF France to produce a SNFA France bearing. SKF France indicates that both it and SNFA France provided the Department with extensive information regarding the substantial retooling that would be required for SNFA France to produce SKF France's products or for SKF France to produce SNFA France's products. SKF France also argues that Timken's argument relies heavily upon Viraj but that Viraj does not dictate that the Department's decision regarding SKF France and SNFA France is wrong. Furthermore, SKF France asserts, Timken's arguments regarding substantial retooling costs ignore important factual information and do not depict the costs that would be involved in shifting production lines between the companies accurately.

As a final step, SKF France argues that there is not a significant potential for the manipulation of price or production such that SNFA France should be collapsed with the SKF France companies. SKF France asserts that the companies do not share managers or board members. In addition, SKF France asserts, while SNFA France since the acquisition no longer has a board of directors, that change is unrelated to any operational objective; rather, SKF contends, it was a result of the change in legal status from an S.A.S. to an S.A.S.U., a change necessitated by the fact that SNFA France now only has one shareholder. SKF France also states that there have been no efforts or plans to integrate the management of the SKF France companies and SNFA France. SKF France asserts further that the decision by two family members that had an ownership stake in SNFA France to discontinue their employment with SNFA France is not relevant and that the Department should decline to speculate on the meaning of their retirement from management of the company.

SKF France concludes that there have been no changes with respect to the day-to-day operation and financial decisions made by SNFA France and that the operations of the companies are not intertwined. SKF France indicates that the companies maintain separate facilities located in different parts of France which have no connection to each other and, given the lack of facility integration, there is also no sharing of employees. Moreover, SKF France asserts, each company incurs its own expenses for its own production and sales.

Department's Position: Under 19 CFR 351.401(f), the Department will treat two or more affiliated producers as a single entity where:

(1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and
(2) where there is a significant potential for the manipulation of price or production.

In identifying a significant potential for the manipulation of price or production, the Department may consider:

(A) the level of common ownership;
(B) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
(C) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between affiliated producers.

In its January 4, 2008, questionnaire response SKF France stated that SNFA France manufactures high-precision bearings used in aeroengine applications whereas SKF Aerospace manufactures airframe components, such as rod ends, rod end bearings, and rods. Based on SKF France's data, we concluded that the differences between aeroengine and airframe bearings are significant. We also concluded that the differences were substantial enough that it would take substantial retooling expenses on behalf of either the SKF France companies or SNFA France to make products currently made by the other. Due to the business-proprietary nature of these decisions, the details are provided in a Memorandum to Laurie Parkhill (Collapsing Memorandum), dated April 30, 2008.

While Timken cites Viraj to help support its contention that retooling between the SKF companies would not be substantial, we are not persuaded that Timken's cost estimates are accurate. Taking into account some of the additional necessary expenses for a retooling conversion described on page 31 of SKF France's proprietary rebuttal brief dated June 19, 2008, we believe that our retooling decision is not inconsistent with Viraj.

In Viraj, the court found that 19 CFR 351.401(f) requires similarity in the products produced, not similarity in the facilities that produce such products. Here, SNFA France manufactures high-precision bearings used in aeroengine applications whereas SKF Aerospace manufactures airframe components such as rod ends, rod-end bearings, and rods. Based on our analysis of the characteristics of these product types, we conclude that the product-similarity requirement is not met in this case.

With respect to whether there is a significant potential for the manipulation of price or production, we are not persuaded that the changes in organization or integration of management are substantial enough at this point to conclude that such potential exists. While there have been minor changes in personnel in the SNFA France organization as described by Timken, such minor changes in personnel are normal in any organization. While the SKF Group's 100-percent ownership of SNFA France is a factor in our decision, it is not a deciding factor given the other information that we must consider, such as whether SKF France's and SNFA France's operations are intertwined. While Timken may be correct in asserting that the company is seeking to increase sales of SNFA France products by integrating SNFA France into SKF's global sales network, this is also not a deciding factor. More important, we find there is insufficient evidence on the record to support the conclusion that that the SKF companies are selling the same products to the same customers in the same channels of trade, as alleged by Timken. Therefore, we find that, for this POR, there is not a sufficient basis to collapse the SKF companies with SNFA France. Because this is an evolving situation, we expect to examine the issue in future administrative reviews.

Comment 12: Timken contends that, even if the Department does not collapse SNFA France with the SKF companies, it should still not permit the post-succession SNFA France to succeed in the status of pre-acquisition SNFA France. Timken asserts that the company structure and management of post-acquisition SNFA France is significantly different. According to Timken, the prior SNFA France was a family-owned manufacturer catering to the machine-tool and aerospace markets while the new SNFA France is a wholly-owned subsidiary of SKF France, a public company and a leading worldwide producer of bearings, including bearings for machine-tool and aerospace application.

Moreover, Timken argues, the new entity in combination with SKF France is a far more formidable competitor in the aerospace market than the pre-acquisition SNFA France. Timken also asserts that, in the machine-tool sector, the new entity is likely to become a leading competitor in a market where SKF France was not viewed as such previously, thus expanding its customer base. Timken claims that the company's marketing focus is expected to change in the following ways: (1) SKF France will now be able to extend the reach of SNFA France bearing sales worldwide; (2) the SNFA France brand will likely be abandoned and its packaging changed; (3) SNFA France has been renamed as SKF Aeroengine France.

Timken concludes that, because SNFA France has undergone such a profound change and because in the future SNFA France will sell as an SKF company, the Department's prior finding that SNFA France did not export at prices below normal value no longer has any relevance to SNFA France's future exports. Also, regardless of the Department's collapsing decision, Timken argues, the new SNFA France should be treated as an exporter that has not yet been reviewed.

SKF France argues that, for the same reasons the Department determined that SNFA France should not be collapsed with SKF France, the Department should continue to find that the post-acquisition SNFA is the successor-in-interest to the pre-acquisition SNFA France and should receive the benefit of its zero margin. Citing Certain Softwood Lumber Products From Canada: Preliminary Results of Changed Circumstance Review, 71 FR 2189, 2190 (January 13, 2006),

SKF France asserts that the Department has discretion in determining successorship because there is no explicit legal standard for determining whether one company is a successor to another. SKF France asserts further that, in determining whether a company is the successor-in-interest, the Department looks certain factors such as management, production facilities, supplier relationships, and customer base.

SKF France states that SNFA France's management and corporate structure have remained the same since the acquisition. SKF France comments that, while post-acquisition SNFA France no longer has a board of directors, that change is unrelated to any operational objective; rather it was a result of the change in legal status from an S.A.S. to an S.A.S.U. SKF France asserts that this change was necessitated by the fact that SNFA France now only has one shareholder and that the board has not been replaced by SKF France board members but rather that the board no longer exists. According to SKF France, SNFA France's managers continue to be responsible for the day-to-day operations of the company and they are not subject to review or veto by the managers of the SKF entities.

SKF France claims that Timken's reference to SNFA France as a former family business belies the nature of SNFA France when AB SKF (SKF France's parent firm) acquired it which SKF France describes as a major producer of specialized aeroengine bearings. SKF France adds that the inclusion of SNFA France in the SKF Group is not a major departure for SNFA France and that it retains the same structure, management, and status that it did prior to acquisition.

SKF France also states that SNFA France operates the same production facilities as it did prior to the acquisition and that there has been no substantial change to these facilities as a result of the acquisition. In addition, SKF France claims, SNFA France has not modified its production processes or product lines and there are no plans to combine SNFA France's production facilities with those of SKF France.

SKF France next argues that SNFA France uses the same suppliers after the acquisition as it did prior to the acquisition. SKF France states that, while SKF France and SNFA France reported overlapping suppliers, no changes were made after the acquisition to the suppliers of both companies as a result of the acquisition.

Finally, SKF France contends that SNFA France's customers have not changed as a result of the acquisition and that customers of one entity are not now being served by another entity as a result of the acquisition. Moreover, SKF France asserts, SNFA France's sales policies remain the same and SNFA continues to use its own sales channels in France and the United States.

Department's Position: In conducting a changed-circumstance review to determine whether a new company is a successor-in-interest to a previous company, we examine a number of factors to determine whether the new company remains essentially the same or similar to the old company. These factors include any changes in management, production facilities, supplier relationships, and customer base. See Purified Carboxymethylcellulose from Finland; Notice of Preliminary Determination of Antidumping Duty Administrative Review, 72 FR 44106, 44107 (August 7, 2007) (Purified Carboxymethylcellulose), unchanged in Purified Carboxymethylcellulose from Finland, Notice of Final Results of Antidumping Duty

Administrative Review, 72 FR 70568 (December 12, 2007).

The record of the changed-circumstances review, which we incorporated into the record of the administrative review, shows that there is sharing of top management between SNFA France and the SKF companies but that, in terms of day-to-day operations, there has been no changes to SNFA France. See SKF France's responses to our requests for additional information dated May 8 and July 19, 2007. The record shows that SNFA France created a supply-chain department to apply production planning and scheduling consistent with SKF's methodology but that, because of the considerable differences in products and product lines between SNFA France and the SKF companies, SNFA's production facilities have not been affected by the merger. Id. SKF France stated on several occasions that it had no plans to close or relocate any of the production facilities of the three companies. The record shows that, because of overlap between some suppliers of raw materials and bearing parts, SKF France attempted to harmonize the prices obtained from these suppliers. See SKF France's response, dated May 8, 2007. Finally, the record shows that, although SKF France anticipated having a shared point of contact for sales inquiries, the three companies would maintain their own sales representatives and distribution networks. See SKF France's response, dated July 19, 2007.

Shortly before our rescission of the changed-circumstances review, SKF France informed us that the name of SNFA France would be legally changed to "SKF Aeroengine France S.A.S.U." in the fall of 2007. See Comments from SKF France, dated September 19, 2007. Thus, during the POR of this administrative review, SNFA France retained the name it had prior to its merger with SKF France.

Given this information, we conclude that the post-acquisition SNFA France is the successor-in-interest to the pre-acquisition entity of that name. The record shows that, during the POR, there were no significant changes to the management or production facility of SNFA France. In addition, purchases of shared suppliers consisted of raw materials and bearing parts that SNFA France and the SKF companies further-manufactured into their unique products. There were also no changes to the sales processes or customer bases of the companies during the POR and, as indicated above, SNFA's name did not change until after the POR. Therefore, we find that the evidence of the record of this review supports a finding that the post-acquisition SNFA France, and not SKF France, is the successor-in-interest to the pre-acquisition SNFA France.

4. Inventory Carrying Costs

Comment 13: Timken asserts that the Department accepted U.S. ICCs for JTEKT and NTN which were calculated based on the COM without considering that the merchandise was transported from Japan to the United States. Timken argues that the cost of U.S. inventory includes the cost of freight, duties, and brokerage fees incurred to bring the merchandise to the U.S. warehouse. Timken contends that the valuation of inventory (and therefore the calculation of ICCs) must take into account the full cost of the inventory, which, citing Patrick R. Delaney, et. al., Wiley GAAP 98, Interpretation and Application of Generally Accepted Accounting Principles 1998, at 163, according to U.S. GAAP, includes the cost of bringing the merchandise to its existing location.

Timken argues that the imputed ICCs in the home market and the U.S. market differ depending on the inventory turnover rate, the cost of borrowing, and the cost of the merchandise in inventory. Therefore, Timken contends, if the calculation does not account for differences in any one of these three elements, the calculation is not accurate. In other contexts, Timken argues that the Department recognizes that the cost of freight can be a part of the cost of the merchandise, citing Sigma Corp. v. United States, 117F.3d 1401, 1407 (CAFC 1997) (Sigma). Timken maintains that the Department should likewise have considered the cost of transport here as well when it calculated the imputed ICCs.

JTEKT and NTN argue that the Department should disregard Timken's proposal to modify the Department's calculation of ICCs to reflect landed costs. JTEKT cites to AFBs 17 and the accompanying I&D Memo at Comment 13, where the Department stated that, "{c}onsistent with other cases, {it} continue{d} to calculate JTEKT's U.S. {ICCs} based on COM." JTEKT contends that the Department should reject Timken's further proposal of using a value that includes the so-called landed costs of delivering goods to the United States. JTEKT submits that the Department should reject this proposal which, according to JTEKT, is the same as that raised by Timken and rejected by the Department in the previous review.

JTEKT asserts that, because it used the cost of goods sold as the denominator in calculating its U.S. ICC factor, that factor should be multiplied by the COM in order to ensure mathematical consistency. JTEKT contends that to multiply that factor by a value equivalent to landed cost would inflate the resulting ICC figure artificially.

Citing Federal-Mogul Corp. v. United States, 918 F.Supp. 386, 397 (1996) (Federal-Mogul I), JTEKT contends that Timken's proposal would cause the U.S. ICC methodology to revert to a discredited formula that had been used in the early AFBs reviews. JTEKT asserts that it revised its calculation of U.S. ICC to avoid future challenges, that the petitioner did not object to this change, and that the Department has accepted this methodology since that time.

JTEKT argues that, even though U.S. GAAP indicates that certain costs should be included in the value of the goods used to calculate inventory, as a general matter U.S. GAAP does not consider ICCs to be a cost at all. Therefore, JTEKT asserts, like credit, the ICC is an imputed expense that the Department has established for dumping purposes but it is not a cost that is recognized under normal accounting standards.

NTN agrees with the Department's calculation of U.S. ICCs on the basis of COM. NTN argues that, in calculating ICCs, the Department did not use NTN's reported transaction information and the actual costs associated with that transaction. Instead, NTN argues, the Department imputed U.S. ICCs based on COM. NTN contends that this calculation ensured that an "apples-to-apples" comparison took place between U.S. price and normal value at similar points in the chain of commerce. NTN asserts that Timken's proposal is a mixed-up methodology in which certain costs are imputed and certain costs are actual. NTN also asserts that Timken did not cite any law or regulation that even tenuously supports its position or methodology.

Department's Position: Although we have had a practice of calculating U.S. ICCs based on the COM of the merchandise in inventory (see, e.g., Extruded Rubber Thread from Malaysia: Final

Results of Antidumping Duty Administrative Review, 63 FR 12752, 12760 (March 16, 1998) (Extruded Rubber Thread), 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)), we have refined our approach to measuring this imputed expense.

Inventory carrying costs are a measurement of the time value of holding merchandise in inventory. While the merchandise is in inventory the respondent has not recovered the costs it incurred in manufacturing the merchandise and placing the merchandise in inventory. Therefore, we determine that the value of the merchandise sitting in inventory includes not only the cost of manufacturing the merchandise but also those costs associated with placing the merchandise in inventory. These additional expenses include the freight and other movement expenses associated with transporting the merchandise from the factory to the warehouse as well as packing expenses. Although Timken only raised this issue in the context of U.S. sales, we are applying our decision to all home-market and U.S. sales made by JTEKT and NTN because, in our view, the logic for making the change for U.S. sales also applies to home-market sales and because we find it necessary to make an apples-to-apples comparison.

This refinement does not contravene the cases we cited earlier. At issue in each of those cases was whether the inventory value we use to calculate ICCs should be a cost-based value or a price-based value. For example, in Extruded Rubber Thread, the respondent calculated its ICCs using the gross unit prices of its sales. Which costs should be included in the inventory value was not at issue in any of these cases.

We disagree with JTEKT that using a value equivalent to landed cost would inflate the resulting ICC figure artificially. JTEKT used the cost of goods sold as the denominator in calculating its U.S. ICC factor only in the sense that it used it as the denominator in calculating the number of days the merchandise was in inventory. See JTEKT's October 11, 2007, section C response at Exhibit C-15. The numerator of that calculation is the inventory balance. Id. The inventory balance is, presumably, on the same cost basis as JTEKT's cost of goods sold[1] and, therefore, the calculation of the number of days in inventory is "mathematically equivalent." Because both the numerator and denominator in the calculation of the number of days in inventory are mathematically equivalent, the basis of the numerator and denominator (whether COM, purchase price, standard cost, or something else) in that calculation is not dispositive as to the basis which we use to calculate ICCs.

We also disagree with JTEKT that the use of landed cost in calculating ICCs has been

[1] It is not clear from JTEKT's response what the cost basis (e.g., standard cost, purchase price) of its inventory value or cost of goods sold is. See JTEKT's October 11, 2007, section C response at Exhibit C-15. We assume they are both on the same cost basis because our experience is that companies nearly always, if not always, use the same cost basis for both inventory value and the cost of goods sold. Furthermore, consistent with GAAP, companies use the same cost basis to value inventory and the cost of goods sold in the books and records they keep in the normal course of business. See Wiley GAAP Guide 2002 at 239 ("In a periodic inventory system . . . cost of goods sold is computed by adding beginning inventory and net purchases (or COM) and subtracting ending inventory. . . . . In a perpetual inventory system . . . when inventory is sold, the cost of goods sold and reduction of inventory are recorded.").

discredited. In Federal-Mogul I, a plaintiff challenged the use of transfer prices as the inventory value for purposes of calculating ICCs and, in any event, we determined that the use of transfer prices was acceptable in calculating US ICCs; the CIT upheld our determination. See Federal-Mogul I. Here, no party has suggested using transfer prices to value inventory for purposes of calculating ICCs. Therefore, Federal-Mogul I is not relevant to this issue.

We agree with JTEKT that U.S. GAAP is not dispositive on the issue of calculating imputed ICCs because ICCs are an imputed expense and not contemplated by GAAP. Our determination here is not based, however, on U.S. (or any other country's) GAAP. It is simply on the basis that the value of inventory used to calculate ICCs should include those costs not yet recovered that were incurred in manufacturing, packing, and transporting the merchandise to the warehouse where data on the record permit.

We disagree with NTN that this methodology would mix imputed costs with actual costs. At issue is the basis upon which we calculate an imputed cost (i.e., ICCs). The basis we have determined to use, COM plus movement plus packing, does not itself include any imputed expenses.

Finally, we are applying this change only to JTEKT and NTN in this review because the issue was only raised in the context of the Japan-specific proceeding. As a result, the other respondents in these reviews (e.g., SKF) did not have an opportunity to comment on the issue in these reviews. We will apply this decision to future reviews of these other proceedings.

Comment 14: Timken argues that the Department should not rely in part on Japanese interest rates to calculate U.S. ICCs for NTN and JTEKT. Timken contends that there is no established practice supporting the use of the Japanese interest rates based only on the payment terms between the affiliate and the Japanese parent. Timken contends that, in prior reviews, the Department has permitted some Japanese respondents to use Japanese interest rates for a portion of their reported U.S. ICCs. Timken argues that the Department explained that, when the parent company extends favorable payment terms to its U.S. affiliate, the parent company is shouldering the financial burden associated with the expense. Timken states that, in the Preliminary Results, the Department has continued the use of Japanese interest rates in such instances.

Timken argues that the Department should change its methodology and use U.S. interest rates regardless of the payment terms between the parent and the affiliate. While Timken acknowledges that the use of Japanese interest rates to calculate U.S. ICCs has been upheld by the CIT, Timken argues that these decisions occurred under pre-l994 law when the Department's U.S. ICC calculation included the time the merchandise spent in transit to the U.S. affiliate but that, in post-1994 practice, the Department's U.S. ICCs include only the time between arrival in the United States and shipment to the unaffiliated U.S. customer.

Citing Certain Welded Stainless Steel Pipe From Taiwan: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part, 65 FR 39367 (June 26, 2000) (Taiwan Pipe), Timken asserts that the Department declined to use the Taiwanese interest rate for the period in which payment to the parent was not due. According to Timken, the

Department explained that it is the Department's practice to use the borrowing rate in the currency in which the cost of the inventory is incurred by the entity that bears the cost of producing or acquiring such inventory. Timken also asserts that, in that case, the Department observed that it had no evidence that the U.S. affiliate did not pay the parent company until the last day of the payment period, that the U.S. affiliate was invoiced as soon as the parent company shipped, that the U.S. affiliate had title to the products even when they were still on the water, and that the U.S. customers paid the affiliate. Timken asserts that certain of these circumstances are present in the Japan-specific proceeding.

Timken contends that the payment terms between the parent and the U.S. affiliate do not relate to the resale and, therefore, they should not affect the CEP calculation. Citing 19 CFR 351.402(b), which provides that the Department will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States, Timken argues that the payment terms between the Japanese parent and the U.S. affiliate are not an appropriate basis for modifying a CEP deduction that is made otherwise properly based on arm's-length data. Timken asserts that the Department's reliance on the credit extended by the parent company to its affiliated resellers amounts, in effect, to an inappropriate offset which reduces a required deduction.

Timken argues that there is no point in measuring the effective cost to the U.S. affiliate but, rather, that the proper focus is on calculating comparable prices. According to Timken, the purpose of calculating imputed costs is to improve the accuracy of the price comparisons by taking into account certain costs which the economic entities are known to have incurred but which may not be measured accurately using direct data available on the books and records of the entities, given that these direct data reflect the affiliation between the entities. Timken contends that the Department should measure the imputed cost using only criteria appropriate to the market in which the cost is incurred regardless of the affiliated parties' obvious ability and incentive to shift such costs.

Timken argues further that the purpose of the CEP calculation is to avoid reliance on affiliated-party data. Timken asserts that reliance on the potentially permissive payment terms allowed between affiliated parties to adjust the CEP is contrary to the underlying purpose of resorting to CEP.

Finally, Timken asserts that reliance on the credit terms extended by the parent company also amounts to the commingling of two different adjustments. According to Timken, the Department has always recognized that imputed credit expenses and imputed ICCs are different types of expenses. According to Timken, the inventory carrying activity by the U.S. affiliate differs from the credit extended by the parent and is an activity that occurs only in the United States. Timken claims that, in the context of the calculation of CEP, the imputed credit expense incurred by a foreign parent is irrelevant because the law is not concerned with the parent's selling activities and expenses.

Citing Tapered Roller Bearings and Parts Thereof from Japan, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in

Part, 63 FR 20585, 20600 (April 27, 1998), JTEKT argues that the Department's practice of using the foreign parent's interest rate when the record shows that the foreign parent assumed the financial burden of this imputed expense is well established and has been unaffected by the passage of the 1994 law. JTEKT also asserts that the Department discredited the methodology suggested by Timken in those reviews. JTEKT contends further that its methodology has been accepted repeatedly by the Department and that the Department has made clear that the selection of the appropriate interest rate to be applied is based on which party bears the cost of carrying the merchandise in inventory and not extraneous factors such as who has title or who receives payment from U.S. customers.

JTEKT asserts that Taiwan Pipe supports the Department's use of JTEKT's home-market interest rate to calculate a portion of U.S. ICC in this review. JTEKT contends that Timken omitted from its comments the Department's explanation in Taiwan Pipe that it deviates from the practice of using the U.S. company's interest rate only in instances where there is clear evidence that an entity other than the one holding the merchandise in inventory absorbs the full cost of financing the cost of the merchandise during the time that the merchandise is held in inventory. Thus, JTEKT argues, Taiwan Pipe reveals a general practice that the interest rate to be used in calculating ICCs should be selected according to the identity of the party that bears the cost of financing the goods during the period in which they remain in inventory and, therefore, supports JTEKT's calculation.

JTEKT contends that the payment terms between the Japanese parent and its U.S. affiliate are relevant to the calculation of ICCs. JTEKT asserts that the Department's reluctance to use prices between affiliates to calculate CEP is not implicated by its methodology to calculate U.S. ICCs. JTEKT asserts that the record establishes that JTEKT, rather than its U.S. affiliate, bore the cost of carrying the merchandise in inventory for the period prior to the U.S. affiliate's payment to JTEKT.

JTEKT also argues that the use of the home-market interest rate for a portion of the time in inventory does not commingle the credit expense and ICCs. JTEKT asserts that, when merchandise is carried in inventory, it creates an imputed expense to the party that must finance the burden of that inventory and that the calculation of this imputed expense by necessity incorporates an interest rate. JTEKT claims that the selection of the home-market rather than the U.S. interest rate in situations in which the foreign parent bore the cost of carrying the inventory reflects the identity of the party who bears the financial burden of carrying the inventory. JTEKT contends that this is entirely separate from the calculation of the imputed credit expense incurred on merchandise sold in the United States by the U.S. affiliate. Thus, according to JTEKT, there is no inappropriate commingling of the two imputed expenses.

NTN states that the Department should continue to use the Japanese interest rate to calculate U.S. ICCs. NTN asserts that, contrary to Timken's assertion, the Department's practice regarding which interest rate to use did not change as a result of the 1994 law. NTN also contends that the Department's methodology was upheld by the CIT in Timken Co.v. United States, 858 F. Supp. 206, 213 (CIT 1994) (Timken II), and that Timken has identified no statue or regulation that stops this case from being controlling law.

NTN argues that Timken's own cite to Taiwan Pipe demonstrates that the Department continued to recognize this methodology after 1994. NTN argues that, although Timken quotes selectively from Taiwan Pipe, it ignores the sentence that recognizes the Department's use of the interest rate of the party financing the ICCs.

Finally, NTN argues that the Department's use of Japanese interest rates to calculate NTN's U.S. ICCs accords with sound commercial and financial reality.

Department's Position: As we stated in Taiwan Pipe and the accompanying I&D Memo at Comment 2, it is our practice to use the short-term borrowing rate in the currency in which the cost of the inventory is incurred by the entity that bears the cost of producing or acquiring such inventory. In instances where there is evidence that an entity other than the one holding merchandise in inventory absorbs the full cost of financing the cost of the merchandise during the time that the merchandise is held in inventory, we use the borrowing experiences of that entity. Id. This practice has been upheld by the CIT in Timken II.

In this case, both JTEKT and NTN have demonstrated that the foreign parent bears the cost of financing inventory for a portion of the time the merchandise is in the U.S. affiliate's inventory. See JTEKT's October 11, 2007, section C response at page C-52 and NTN's October 11, 2007, section C response at page C-44. Thus, this case is different from Taiwan Pipe where no such demonstration was made.

Furthermore, while it is true that our treatment of the cost of carrying inventory between the exporting country and the United States changed as a result of the changes to the antidumping law in 1994, that change related solely to whether ICCs incurred before importation could be deducted in calculating CEP. See, e.g., AFBs 6, 62 FR at 2124. This change did not affect which interest rate should be used in calculating those ICCs.

Timken's citation of 19 CFR 351.402(b) is inapposite. That regulation is silent with respect to how the expenses to be deducted from CEP are to be calculated. Instead, 19 CFR 351.402(b) provides that we will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States. We disagree further with Timken's argument that the payment terms between a parent and its affiliate relate to the sale to the affiliate rather than to economic activity in the United States because there is no question that the holding of that inventory is associated with economic activity within the United States and there is no question that, because of those payment terms, it is the foreign parent which bears the expense. We deduct expenses that are related to economic activity in the United States in calculating CEP regardless of who pays the expense. See, e.g., AFBs 15 and the accompanying I&D Memo at Comment 9.A. This is true regardless of the currency in which the expense was incurred. In this instance, it is appropriate to use the parent's interest rate because the record shows clearly that the foreign parent bore the cost of financing the inventory.

We disagree with Timken's argument that we should not measure the effective cost to the U.S. affiliate. While we agree that the proper focus is on calculating comparable home-market and U.S. prices, the way we do that is by making adjustments to the home-market and U.S. prices in accordance with the antidumping law. In this case, pursuant to section 772(d)(1) of the Act, we

are making an adjustment to U.S. price using the data of the company that bore the financing cost of holding the inventory.

We disagree with Timken's assertion that reliance on the payment terms between the foreign parent and the U.S. affiliate defeats the underlying purpose of resorting to CEP. We do not find that using the foreign parent's interest rate for calculating a portion of ICCs compromises the CEP methodology because the foreign parent was the entity which actually bore that cost. The CIT has stated that "there is no reason why the U.S. subsidiary could not have benefited from its parent's ability to borrow money in the home market at the home-market interest rate." See Timken II at 213. Thus, the CEP methodology is not compromised by using the foreign parent's interest rate for calculating a portion of ICCs incurred in the United States where the foreign parent actually bore that cost.

Finally, we disagree with Timken's assertion that we are commingling imputed credit and imputed ICCs. We are not deducting the foreign parent's "imputed credit" expense. Rather, we are deducting ICCs incurred in the United States and we calculate that cost using the actual short-term borrowing rates of the entity which incurred the expense.

5. Calculation of Cost of Production/Constructed Value and Use of AFA

Comment 15: SKF Germany argues that the statute provides that only when a party has not acted to the best of its ability may the Department use an inference that is adverse to the interest of that party. SKF Germany asserts that, during the course of this administrative review, it has acted to the best of its ability, a conclusion, it maintains, the Department has not disputed. SKF Germany argues that, in violation of the statute, the Department used an adverse inference that only affects SKF Germany and not its unaffiliated supplier, the only party that the Department determined did not act to the best of its ability.

SKF Germany contends that, contrary to the statute, the Department requested that its largest unaffiliated supplier, a non-respondent in this administrative review and a business competitor, provide cost data for the bearings it sold to SKF Germany during the review period. SKF Germany asserts that, despite having no incentive to comply and not having prepared cost data for the current review period, the supplier complied to the best of its ability. SKF Germany argues that, as a result of inadvertence, its unaffiliated supplier submitted the cost data three business days late, the day after the Department made a second request for the data. According to SKF Germany, the Department rejected the submission based on this inadvertent untimely response and denied a request to reconsider this decision in which the unaffiliated supplier set forth the reasons for the delay.

SKF Germany asserts that, rather than rely on the cost data it submitted in response to the Department's questionnaire, the Department applied an AFA rate of 70.41 percent which increased SKF Germany's dumping margin over five-fold. SKF Germany contends that the Department applied AFA because SKF Germany's unaffiliated supplier allegedly failed to act to the best of its ability in complying with what SKF Germany contends is an unreasonable request for cost data which, as a non-participating respondent (and producer), its supplier had no reason to prepare. SKF Germany asserts that, in violation of the statute, this adverse inference only

affects SKF Germany and not its unaffiliated supplier, the party at whose putative non-compliance the AFA was targeted. SKF Germany argues that, because it has no access to its unaffiliated supplier's cost data and its unaffiliated supplier had no incentive to comply, the Department's application of AFA is arbitrary and capricious as it cannot serve the statutory purpose of encouraging compliance. SKF Germany asserts further that the Department then chose a punitive AFA rate that it purportedly corroborated using a single individual transaction margin for a single bearing. SKF Germany argues that the AFA rate the Department used in the Preliminary Results is a nineteen-year-old rate that has no connection to SKF Germany or this review period and it is therefore an unreasonable rate. SKF Germany contends that the Department's selection of this rate was legally and factually unsupported and must be revised for the final results.

Citing PAM, S.p.A v. United States, 495 F. Supp. 2d 1360 (CIT 2007) (PAM), SKF Germany argues that the CIT has rejected AFA rates where, as corroboration, the Department found only a few outlier sales transactions at or above the AFA rate. SKF Germany asserts that, in PAM, the Department used as corroborating evidence individual sales transactions of other respondents that were at or above the AFA rate. SKF Germany argues that the CIT stated in that case that the Department's factual finding cannot be generalized absent information regarding whether those individual transactions represent a significant portion of the transactions that occurred during the review period. SKF Germany contends that the situation in this case, where the Department found one sale of one bearing with a dumping margin higher than the AFA rate, is similar to that presented in PAM. SKF Germany claims that this rate is an outlier and, thus, it is unreasonable and should not be used as AFA.

SKF Germany argues that, instead of using the only reasonable and lawful option under the circumstances, which is acquisition cost, the Department invoked AFA through a faulty reading of the statute and did not apply the relevant legal standards. SKF Germany contends that the Department's decision to request unaffiliated-supplier cost data and to disregard SKF Germany's acquisition cost has no basis in the statute. According to SKF Germany, the Department's consistent practice under this order has been to use acquisition cost to calculate COP and CV for purchases of bearings from unaffiliated suppliers.

SKF Germany argues that, for sixteen consecutive administrative reviews, the Department has required respondents to report acquisition cost for re-sales of complete bearings and/or parts produced by unaffiliated suppliers. In those reviews, according to SKF Germany, the Department's instructions focused correctly on the relationship of the supplier to the respondent. Thus, according to SKF Germany, for complete bearings and components purchased from affiliated parties, the Department applied the provisions outlined under section 773(f)(2) and (3) of the Act for calculating COP and CV correctly. SKF Germany asserts that, in the bearing proceedings, however, acquisition cost has always been used to report purchases from unaffiliated suppliers, whether for production or subsequent resale.

According to SKF Germany, it is a standard administrative-law principle that an agency should refrain from adopting inconsistent policies governing identical situations to ensure that an agency administers a statute consistently. Citing Hussey Copper, Ltd. v. United States, 834 F. Supp. 413, 418 (CIT 1993) (Hussey), SKF Germany 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 Germany, 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 Germany contends that, in this instance, there has been no material change of fact in this review to justify the Department's departure from its past methodology.

SKF Germany argues further that the Department's new methodology imposes a governmental obligation on respondents to obtain confidential business data from unaffiliated competitors. As a result, SKF Germany argues, respondents can be punished by use of AFA if they cannot obtain the data or lose control of part of their participation in an administrative review if the data are not obtained by the respondents.

SKF Germany claims that the acquisition costs it reported are the only costs for these products that are contained in its normal cost-accounting system and the records it uses to prepare its financial statements. SKF Germany contends that its reporting of acquisition costs as the COM has been the approved methodology since the origin of the antidumping duty order. Thus, according to SKF Germany, its response to the Department's questionnaire was complete and accurate as submitted. SKF Germany asserts that it was only in response to the Department's subsequent request for the unaffiliated supplier's cost information that it was unable to supply the information requested because it has no control over such information. SKF Germany argues that the Department's subsequent requirement that SKF Germany obtain and submit its unaffiliated supplier's cost data is not mandated by the antidumping statute. SKF Germany claims that the statutory provisions for circumstances where the Department may disregard a respondent's reported acquisition costs are not applicable to SKF Germany. SKF Germany 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 Germany 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 Germany 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 Germany, 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. Citing Consolidated International Automotive, Inc., v. United States, 809 F. Supp. 125, 128 n.3 (CIT 1992), SKF Germany argues that this is the interpretation that the courts have given to these provisions providing that the "fair value" and "major input" provisions are specially designed to handle related-party transactions.

SKF Germany contends that the "transactions disregarded" provision further reinforces the statutory scheme of reliance on unaffiliated-party transactions. Citing NTN Corp. v. United States, 306 F. Supp. 2d. 1319, 1349 (CIT 2004), SKF Germany argues that the Department's practice is to use the very type of transactions that it intends to disregard herein to measure

whether the amount involved in an affiliated-party transaction fairly reflects the elements of value, including costs, prevalent in the marketplace.

SKF Germany argues that none of the statutory provisions cited by the Department in the Preliminary Results applies to the use of unaffiliated-supplier data or supports the Department's position. Further, SKF Germany claims, none of the provisions cited by the Department is directed at unaffiliated suppliers. SKF Germany asserts that the Department has not supported its change in practice either legally or factually. SKF Germany contends that the Department stated simply in Preliminary Results, without explanation, that its practice is to use the actual production costs of unaffiliated suppliers in lieu of the exporter's acquisition cost to calculate COP and CV and is extending this practice, where appropriate, to reviews of the antidumping duty orders on ball bearings.

SKF Germany claims that the Department's attempt in the Preliminary Results to justify its new policy by asserting that it was moving towards consistency throughout its cases is flawed in two respects. According to SKF Germany, the Department has not applied this requirement consistently in other proceedings and instances in which the Department imposed this requirement is easily and wholly distinguishable from the reviews of the bearings orders. Citing Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006) (Diamond Sawblades), and the accompanying I&D Memo at Comment 56, SKF Germany argues that there are instances where the Department has declined to require the submission of third-party production costs. Thus, SKF Germany argues, the Department itself has stated that only on occasion has it obtained a third-party producer's cost information.

With regard to the second point, SKF Germany asserts that the Department only cited to one non-bearing determination in which it imposed a similar requirement. SKF Germany argues that this case is distinguishable from the non-bearing cases because, with the exception of one case, all of the determinations involved agricultural or perishable products. SKF Germany argues that agricultural products have a short shelf-life, necessitating that products must move quickly from a grower/producer to a final customer. According to SKF Germany, agricultural products are often subject to sharp price variations depending on freshness and quality. Thus, SKF Germany argues, agricultural products have a unique set of potential pricing/costing issues and concerns. SKF Germany contends that bearings do not have a short shelf-life and quality will not decrease in value if a producer cannot make a quick sale. SKF Germany contends that this case is further distinguishable because all of the cases cited by the Department in support of its new position involved close-supplier or cooperative-type situations. SKF Germany claims that no such relationship exists in the context of the current administrative review. SKF Germany argues that it has no affiliation with its supplier and, in fact, is a direct competitor of that supplier. In sum, SKF Germany argues that the cases cited by the Department in this and the 2005-06 reviews do not support the application of this unaffiliated-supplier cost requirement to either SKF or the administrative reviews of the bearings orders.

SKF Germany argues that the Department's new requirement of obtaining cost information from unaffiliated suppliers also runs afoul of due process. SKF Germany argues that the Department's

new requirement curtails its ability to participate meaningfully in administrative reviews. SKF Germany argues that, for example, it is never permitted to see cost data from its unaffiliated supplier because its unaffiliated supplier will not and cannot provide sensitive cost data to SKF Germany because it is a direct business competitor. In addition, SKF Germany contends, its unaffiliated supplier may even be reluctant to supply its sensitive cost data to SKF Germany's counsel for fear of the appearances of a possible violation of anti-trust laws.

SKF Germany asserts that, even if its unaffiliated supplier would be willing to provide the cost data directly to SKF Germany's counsel, counsel for SKF Germany would not be in a position to evaluate the cost data or ensure their accuracy because counsel is not familiar with the unaffiliated supplier's production costs. Moreover, SKF Germany argues, counsel for SKF Germany under the terms of the Department's Administrative Protective Order could not discuss the cost data in question with the client. SKF Germany contends that the only option it has under the Department's new policy, therefore, would be to rely upon the unaffiliated supplier to prepare the cost data in question properly and accurately to submit the cost data to the Department in a timely manner. SKF Germany argues that the Department's new policy necessarily puts SKF Germany in the position of being a respondent that cannot review, check, submit, or fix any procedural or substantive errors regarding cost data that the Department would be using against it. SKF Germany asserts that such a situation is against the principle of meaningful participation in the Department's proceedings and it violates SKF Germany's due-process rights.

SKF Germany argues that the Department's decision to use facts otherwise available was unlawful because it did not apply the provisions of section 782(e) of the Act. According to SKF Germany, when an interested party does not submit the requested information by the deadline established, the Department may only use facts available. SKF Germany contends that, although the unaffiliated supplier's cost information was submitted after the Department's deadline, the Department was not prejudiced by the late submission because the deadline for this submission was four months before the Department issued the Preliminary Results. SKF Germany asserts that it was arbitrary and unreasonable for the Department not to apply section 782(e) of the Act because the unaffiliated supplier's cost submission was three business days late. SKF Germany argues further that the Department itself solicited data well after the established deadline for submitting the cost data.

SKF Germany asserts that the remaining requirements of section 782(e) of the Act were satisfied as to the submission by SKF Germany's unaffiliated supplier. SKF Germany asserts that the unaffiliated supplier submitted to the Department actual cost data for ball bearings that it supplied to SKF Germany in the previous administrative review, adjusted for inflation over the intervening year. SKF Germany contends that the cost data were verifiable and the information was not so incomplete that it could not serve as a reliable basis for reaching the applicable determination. Moreover, SKF Germany states, any possible concern resulting from the fact that the underlying data came from the previous review period was never voiced by the Department and unfounded because the cost data was adjusted by the unaffiliated supplier with the relevant producer price index.

SKF Germany argues that its unaffiliated supplier has acted to the best of its ability, as that standard has been interpreted consistently by the courts. According to SKF Germany, its unaffiliated supplier provided the requested data even though it had no incentive to do so and had not prepared its cost information for the current administrative review. SKF Germany asserts that the unaffiliated supplier responded the day after the Department made a second inquiry. SKF Germany contends that, under these circumstances, the fact that the unaffiliated supplier submitted the cost information three business days late demonstrates that the unaffiliated supplier acted to the best of its ability in complying with the Department's request. Further, SKF Germany asserts, when the unaffiliated supplier's counsel realized the lapse, it requested that it be permitted to file out-of-time but the Department denied that request.

SKF Germany contends that the Department's decision to use facts otherwise available was unlawful because the Department was statutorily required to reconsider SKF Germany's ability to provide the unaffiliated supplier's cost data when SKF Germany notified the Department that it was unable to do so. Moreover, SKF Germany argues, it also notified the Department that it appeared highly unlikely that such information would be forthcoming and would not otherwise be on the record of the review. SKF Germany asserts that it provided a full explanation why neither it nor its unaffiliated supplier would be able to provide the requested data. SKF Germany asserts that it also suggested alternative forms in which it would be able to provide necessary information.

SKF Germany states that, pursuant to section 782(c)(1) of the Act, the Department was required to consider the ability of the interested party to submit the information in the requested form and manner and should have offered guidance to SKF Germany with regard to this issue. SKF Germany claims that the Department did not respond when it notified the Department that it could not provide the unaffiliated supplier's data. SKF Germany also claims that the Department did not respond when its unaffiliated supplier indicated that it was not in a position to provide SKF Germany with any such information. SKF Germany asserts that, despite the fact that it satisfied the requirements of section 782(c) of the Act, the Department did not provide guidance, reconsider in any way its request or the parties' ability to respond thereto, or suggest other ways to avoid a totally adverse margin.

SKF Germany argues further that, even if the Department's pursuit of data from the unaffiliated supplier was in compliance with the statute, when the unaffiliated supplier did not provide data in the manner requested, the Department was obligated to assist SKF Germany and modify the requirements. SKF Germany asserts that it is unreasonable and illogical to interpret the statute to require the Department to modify a request when a party has difficulty in providing its own data but to punish the respondent when it cannot obtain comparable data from a non-respondent to the proceeding over which it has no control.

SKF Germany contends that the purpose of section 782(c)(1) of the Act is to ensure due process and to prevent respondents from being trapped by facts available or AFA when they cooperate with the Department. Citing the SAA at 869, SKF Germany argues that the Department is required to give notice to parties of whom information is requested of certain facts, including the potential use of facts available if a party does not submit requested information in the requested form and manner by the date specified. SKF Germany claims that the Department never served

it with the request for cost data directed to its unaffiliated supplier and there was no comparable notice on any document the Department served previously on SKF Germany. Thus, according to SKF Germany, it never received this notice, which it contends would be required in order to apply facts available to its sales. SKF Germany states that giving notice to its unaffiliated supplier accomplishes nothing because the unaffiliated supplier did not have any risk of adverse impact and therefore had no incentive to comply fully.

SKF Germany asserts that the Department ignored SKF Germany's notification that it would be unable to provide the unaffiliated supplier's cost data. According to SKF Germany, the Department refused to work with SKF Germany to obtain the best usable data to avoid facts available or AFA. SKF Germany argues that this conduct is contrary to the statute and judicial precedent and, because the Department did not fulfill its statutory obligations, the Department was precluded from using facts otherwise available in this case.

Citing Nippon Steel Corporation v. United States, 337 F. 3d 1373, 1382 (CAFC 2003) (Nippon Steel), SKF Germany argues that, in order for the Department to determine that a respondent has not cooperated to the best of its ability and should receive an AFA rate, the courts have held that the Department must make the following two affirmative showings: (1) the respondent should have known that the requested information was required to be kept and maintained; (2) the respondent did not put forth its maximum efforts to obtain the requested information from its records.

SKF Germany contends that, to the extent that gaps existed in the information the Department needed to calculate SKF Germany's dumping margin, while use of facts available may have been appropriate, the Department cannot satisfy the foregoing standard with respect to its applications of AFA as to SKF Germany's sales.

SKF Germany claims that, in other antidumping cases, the Department has decided not to use AFA when a non-respondent (and competitor) has exclusive control of the requested data. SKF Germany cites to Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan, 68 FR 10461, 10464 (July 29, 1998), in which the Department did not use AFA because the respondent could not obtain information possessed by the petitioner which was an affiliated party in that case. In addition, citing Notice of Final Determination of Sales at Less Than Fair Value: Honey from Argentina, 66 FR 50611 (October 4, 2001) (Honey from Argentina), and the accompanying I&D Memo at Comment 1, SKF Germany argues that, because the respondent was not in a position to report its unaffiliated supplier's cost data, the Department did not conclude that the respondent failed to act to the best of its ability because the relevant cost information was outside the control of the respondent. SKF Germany contends that similar facts exist in this case and, therefore, the Department's application of AFA to its sales is unwarranted.

Citing Nippon Steel, SKF Germany argues that the CAFC has stated that the statute has two distinct parts addressing two distinct circumstances under which the Department has received less than full and complete facts needed to make a determination. According to SKF Germany, the use of AFA requires an affirmative finding that a party failed to act to the best of its ability; adverse inference cannot be validly drawn from a failure to respond. SKF Germany argues that,

while a failure to respond may be sufficient to use facts otherwise available, additional factual findings are required to use AFA. SKF Germany states that the statute requires a factual assessment of the extent to which a respondent keeps and maintains records and the degree to which the respondent cooperates in investigating those records and in providing the Department with the requested information. SKF Germany contends also that the CIT reiterated that the Department must make an additional finding under section 776 of the Act in order to apply AFA.

In this case, according to SKF Germany, the Department did not examine the level of effort made by SKF Germany's unaffiliated supplier and concluded that it failed to act to the best of its ability because its submission of cost data did not meet the deadline. SKF asserts that nowhere in the Preliminary Results did the Department make a factual assessment of the extent to which a respondent keeps and maintains records and the degree to which the respondent cooperates in investigating those records and in providing the Department with the requested information.

SKF Germany contends that, even if the Department was somehow justified in using facts otherwise available in this case, because the Department did not meet the statutory test for use of AFA, it must use neutral facts available. SKF Germany argues that, for the final results, the Department should use the acquisition cost to calculate COP and CV for SKF Germany's U.S. sales of merchandise produced by unaffiliated suppliers. Citing Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 FR 56739, 56752 (October 21, 1999), SKF Germany argues that the Department has used acquisition cost as neutral facts available when unaffiliated-supplier costs were unavailable.

As an alternative, SKF Germany asserts, for the final results, the Department could use the cost data submitted by its unaffiliated supplier in the previous administrative review as long as it is not adverse to the interest of SKF Germany. SKF Germany claims that these data were verified by the Department and could be used without any difficulty. SKF Germany asserts that, for the reasons stated above, the Department should use its reported acquisition costs to value the bearings sold by SKF Germany for the final results.

Timken responds by arguing that SKF Germany ignores the fact that the cost data the Department requested were not the cost data reported by the unaffiliated supplier. Timken asserts that, rather than supplying cost data on products supplied in the current administrative review, the unaffiliated supplier submitted actual cost data for ball bearings that it supplied to SKF Germany in the previous review period, adjusted for inflation over the intervening year. Timken argues that the Department's decision to reject the unaffiliated supplier's cost submission was not solely based on the fact that the cost data was submitted untimely but based on a set of events that led to the Department's decision to apply AFA to certain SKF Germany sales. Specifically, Timken argues, in early November 2007 the Department requested that SKF Germany coordinate with its unaffiliated supplier to provide the required data. Timken asserts that, in mid-November 2007, SKF Germany responded to the Department's request by stating that it would be highly unlikely that such information would be forthcoming and it would not otherwise be on the record in this review. According to Timken, SKF Germany's letter did not provide a substantive reason for the alleged inability in the current administrative review to provide the requested information. Timken argues that, instead, SKF Germany's response to the

Department's request provided only SKF Germany's legal and factual opposition to the request itself.

Timken states that in late November 2007 the Department provided a letter to counsel for SKF Germany's unaffiliated supplier requesting that it provide the cost data in question for the current administrative review. In that letter, Timken asserts, the Department stated that, if SKF Germany's unaffiliated supplier was unable to respond to the relevant portions of the questionnaire within the specified time limits or was unable to provide the information in the form required, the supplier was to contact the official in charge. Timken asserts that in its letter the Department offered to accommodate any difficulties that the unaffiliated supplier might encounter in answering the questionnaire.

Timken argues that the Department never received the requested cost information and it also never received a request for an extension of time or a request for assistance prior to the Department's January 3, 2008, deadline. Timken contends that it was only after the Department's deadline that SKF Germany's unaffiliated supplier provided the cost data in question but, rather than providing the cost data requested, the unaffiliated supplier provided the cost data for the incorrect POR. Timken asserts that, contrary to SKF Germany's contention, the requirements of the statute were satisfied by the Department, given the events that had take place prior to the January 3, 2008, deadline. Thus, Timken contends, the unaffiliated supplier did not demonstrate that it acted to the best of its ability. Timken argues that the fact that SKF Germany's unaffiliated supplier was not a respondent in the current administrative review does not change this fact. Timken asserts that, while the effort required may be complex or time-consuming or the response required by the Department may not be prepared in the ordinary course of business by companies not subject to the administrative review, these situations do not diminish the statutory standard.

Timken argues that the statute permits an interested party to notify the Department that it is unable to submit the requested information, together with a full explanation and suggested alternative forms. Timken asserts that in such cases the Department considers the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Timken argues that, as the statute makes clear, the Department is under no obligation to modify its data request; it is only required to consider the request. In this case, according to Timken, the Department considered SKF Germany's letter and determined to maintain its request for cost data in question. Thus, Timken considers that the Department satisfied the statutory requirement in this instance.

Timken contends that the statute requires an explanation as to why the data request cannot be met. In addition, Timken argues, the explanation as to why such cost information could not be provided should have been submitted by the unaffiliated supplier. Timken argues that no such explanation was ever filed by SKF Germany's unaffiliated supplier.

Timken argues that it disagrees with SKF Germany's assumption that the application of AFA to its sales is not adverse to its unaffiliated supplier's interest but it is adverse only to SKF Germany's interest. Timken contends that the inference affects SKF Germany's unaffiliated

supplier adversely as well. Timken asserts that the use of adverse inferences is grounded in the reasonable assumption that respondents have an incentive to provide favorable data and a disincentive to provide unfavorable data. Timken states that this assumption continues to hold when the data must be provided by an unaffiliated supplier of the respondent. Timken claims that the Department may assume that the unaffiliated supplier has an interest in maintaining its relationship with SKF Germany. Timken contends that, if SKF Germany's interpretation was correct, then the Department would not be able to apply an adverse inference whenever a supplier declined to provide the requested information. Timken argues that the Department has applied adverse inferences in numerous cases with similar circumstances found in this case.

Timken argues that SKF Germany's reliance on PAM is wholly inapposite because the Department applied partial AFA data to certain sales transactions (i.e., those transactions which involved the product produced by the non-cooperative supplier). Timken argues further that the corroborating data consisted of the margin calculations for the same respondent in the prior administrative review in which the Department did obtain the unaffiliated supplier's cost information.

Timken argues that, for these reasons, the Department should reject SKF Germany's arguments and continue to apply an AFA rate of 70.41 percent to those U.S. sales for which SKF Germany was not the producer and for which the producer failed to provide COP by the deadline for submission of the information.

Department's Position: Section 776(b) of the Act states that, if an interested party fails to provide the necessary information by the deadline or in the form or manner requested, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Because SKF's unaffiliated supplier did not submit the requested cost information in a timely manner and because it is an interested party in this proceeding as defined by the section 771(9)(A) of the Act, we continue to find that its actions constitute a failure to cooperate to the best of its ability for the final results. See section 771(9)(A) of the Act.

As we explained in the Preliminary Results, we provided SKF Germany's unaffiliated supplier with notice of our requirement to submit cost information of bearings that it sold to SKF Germany during the review period. In addition, contrary to SKF Germany's assertion, we offered its unaffiliated supplier an opportunity to indicate whether it had any difficulty in meeting our request for cost information. Specifically, we stated the following in our November 28, 2007, letter to its unaffiliated supplier:

> "If you are unable to respond to the relevant portions of the questionnaire within the specified time limits or are unable to provide the information in the form required, please contact Janis Kalnins at 202-482-1392. We will attempt to accommodate any difficulties that you encounter in answering this questionnaire…."

Thus, we provided SKF Germany's unaffiliated supplier an opportunity to contact us if it needed additional time to respond to our request or if it was having difficulty in providing the

information in the form we required. SKF Germany's unaffiliated supplier never contacted the Department with any extension request or indicated that it would be unable to respond to such a request.

Furthermore, as we stated in the Preliminary Results, we provided SKF Germany's unaffiliated supplier with notice that, if it did not provide us with the relevant cost data in a timely manner it could be subject to a determination based on facts available. See the Department's November 28, 2007, letter at 2. Therefore, SKF Germany's unaffiliated supplier was on notice of the consequences of not providing the requested for cost information. The record is thus clear that SKF Germany's unaffiliated supplier did not act to the best of its ability in this regard and, therefore, we continue to find that it is appropriate to make an adverse inference pursuant to section 776(b) of the Act with respect to only those U.S. sales of bearings purchased by SKF Germany from its unaffiliated supplier. See Notice of Final Results Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries from Chile, 70 FR 6618 (February 8, 2005), and the accompanying I&D Memo at Comment 3.

Furthermore, we find that SKF Germany's assertion that we are only authorized to use AFA against the party that has failed to respond (in this case, the unaffiliated supplier) is unpersuasive. Our position in this regard is consistent with our practice in circumstances similar to those found here where the refusal of the producer or supplier to provide information in response to our requests had implications for the respondent. See Certain Forged Stainless Steel Flanges From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 42005 (July 16, 2003), and the accompanying I&D Memo at Comment 8. As in this decision, lack of cooperation by the producer of the subject merchandise has made it impossible for the Department to calculate the actual and accurate COP of the subject merchandise for the unaffiliated supplier/producer under section 773(b) of the Act. As such, we continue to find that AFA is warranted for the absence of COP data pertinent to the unaffiliated supplier or producer.

We disagree with SKF Germany's assertion that our decision to use facts otherwise available was unlawful because we did not apply the provisions set forth in section 782(c)(1) of the Act. As we explained in the Preliminary Results, section 782(c)(1) of the Act is not applicable in this instance because SKF Germany's supplier did not notify us that it would be unable to provide the cost information in question as we requested in our November 28, 2007, letter. In addition, with respect to sections 782(e) and (d) of the Act, we continue to find that those provisions are not applicable in this case because the requested information was not submitted by the established deadline. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Electrolytic Manganese Dioxide from Australia, 73 FR 15982 (March 26, 2008). See also Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review from Xiangcheng Yisheng Foodstuffs Co., Ltd., 68 FR 55583-55587 (September 26, 2003).

Further, because we face strict statutory deadlines when conducting administrative reviews of antidumping duty orders, it is important that certain types of information from an interested party (e.g., Quantity and Value, COP, and CV information) are provided early in an administrative review and in a timely manner so that we can analyze such information effectively and meet our statutory obligations under U.S. law. When an interested party decides without explanation to

file requested information in an untimely manner, an unnecessary burden is placed on the Department to meet its statutory obligations and to analyze the information effectively. Thus, the Department's established deadlines are in place for a reason and need to be followed by all interested parties. As we indicate above, we will try to accommodate interested parties if they are unable to provide the information in the requested manner or if they require additional time to provide such information. In this case, we provided SKF Germany's unaffiliated supplier more than a month to submit the requested information. As we indicate above, SKF Germany's unaffiliated supplier never contacted the Department to indicate that it was having difficulty responding to our request and it never contacted the Department to request an extension of the deadline to submit the information we had requested. Without explanation, SKF Germany's unaffiliated supplier simply provided information after the deadline.

We also disagree with SKF Germany's contention that we did not respond when we were notified by SKF Germany that it was highly unlikely that its unaffiliated supplier would be providing the cost information we had requested. Contrary to SKF Germany's contention, we responded by contacting SKF Germany's unaffiliated supplier and requesting the cost information in question directly. As we indicate above, the unaffiliated supplier simply did not contact us requesting any guidance on providing the requested cost data and did not request any extension of time for submitting the cost information in question. Thus, we were not in a position to provide the guidance to which SKF Germany refers because we were never asked to do so by the unaffiliated supplier.

We disagree with SKF Germany's assertion that we should have modified our request after learning that its unaffiliated supplier would not be able to provide the requested information. The Department may use its discretion to modify a request if it decides it is necessary but it is not obligated to do so. See section 782(c)(1) of the Act. Furthermore, in its November 14, 2007, letter to the Department, SKF Germany did not request guidance on how to resolve the issue with respect to the Department's request for cost information from its unaffiliated supplier. SKF Germany indicated only that it attempted to obtain the cost information in question but that its unaffiliated supplier did not comply with SKF Germany's request. See SKF Germany's November 14, 2007, submission. Thus, SKF Germany did not provide a full explanation that was satisfactory to the Department.

Given SKF Germany's efforts to obtain the necessary COP information from its unaffiliated supplier, we have reconsidered our use of the 70.41 percent AFA rate and have applied a different AFA rate to SKF Germany, as we believe doing so will induce cooperation in the future. Thus, for the final results, we have applied a rate of 17.66 percent to those U.S. sales of bearings purchased by SKF Germany from its unaffiliated supplier. This AFA rate is the highest rate ever calculated for SKF Germany in any segment of the proceeding and reflects the history of dumping margins we have established for SKF Germany. For further details, see Final Results Analysis Memorandum (September 4, 2008). In future administrative reviews of the antidumping duty order on ball bearings and parts thereof from Germany, if SKF Germany's unaffiliated supplier decides not to cooperate to the best of its ability, we may reconsider our use of the 17.66 percent AFA rate and the extent to which its use has encouraged the cooperation of interested parties.

In addition, our corroboration analysis has changed due to our decision to use a different AFA rate (see below). Accordingly, SKF's argument based upon the PAM decision is moot and we do not need to address it here. In any event, the corroboration methodology we have used in the final results is fully consistent with CAFC precedent. See Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1339 (CAFC 2002) (Ta Chen).

With respect to corroborating the AFA rate, section 776(c) of the Act provides that, when the Department relies on secondary information as facts available, it must corroborate, to the extent practicable, that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics, and customs data as well as information obtained from interested parties during the particular proceeding.

To corroborate secondary information, to the extent practicable, the Department normally examines the reliability and relevance of the information to be used. Unlike other types of information such as input costs or selling expenses, however, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. See Antifriction Bearings and Parts Thereof from France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, Notice of Intent to Rescind Administrative Reviews, and Notice of Intent to Revoke Order in Part, 69 FR 5949, 5953 (February 9, 2004), unchanged in AFBs 14.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited or judicially invalidated. See D & L Supply Co. v. United States, 113 F.3d 1220, 1221 (CAFC 1997).

None of these unusual circumstances is present here. Moreover, there is no information on the record of this review that demonstrates that 17.66 percent is not an appropriate AFA rate for SKF Germany. Therefore, we consider the dumping margin of 17.66 percent, which is a margin percentage we determined in AFBs 3, as amended, relevant for use as AFA for this review.

We examined SKF Germany's individual transaction margins from the current administrative review in order to determine whether the rate of 17.66 percent was probative. We found a

number of sales with dumping margins either somewhat above or somewhat below the rate of 17.66 percent. Therefore, we find that this rate is corroborated to the extent practicable. See Ta Chen at 1339.

With regard to SKF Germany's argument that the statute was not intended to authorize us to require respondents to report unaffiliated suppliers' COP, we disagree. As we stated in AFBs 17 and the accompanying I&D Memo at Comment 17, the statute provides that we 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 employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business"), 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").

In addition, as we stated in the AFBs 17 and the accompanying I&D Memo at Comment 17, 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." Thus, contrary to SKF Germany's contention, unaffiliated suppliers are not exempt from the statute with regard to reporting cost information. Further, we continue to find that requiring cost data from unaffiliated suppliers produces more accurate COP and CV information, as acquisition costs alone do not capture all of the actual costs of the manufacturer supplying the bearings to the reseller. See AFBS 17 and the accompanying I&D Memo at Comment 17.

With regard to SKF Germany's citation of Diamond Sawblades, we find this citation to be inapposite. In that case, the Department stated that it did not obtain a third-party producer's COP because it determined that the results of doing so would be negligible for purposes of calculating the respondent's COP. In this case, we requested the third-party producer's COP information because the information provided by SKF Germany indicated that the results of obtaining third-party COP information would not be negligible for purposes of calculating SKF Germany's dumping margin. Thus, the facts in that case are dissimilar to ones found here. In addition, in this case, consistent with Diamond Sawblades, we did not obtain a third-party producer's COP information where we found that the results of doing would be negligible for our calculations. We requested the third-party producer's COP only from those respondents which indicated in their response to Question 8 in Appendix V of our questionnaire dated August 14, 2007, that a certain percentage of sales by value were produced by unaffiliated suppliers. Thus, our decision to obtain third-party COP information was based on the respondents' own information after a

careful analysis. See Memorandum to Laurie Parkhill from Richard Rimlinger, dated November 6, 2007.

Contrary to SKF Germany's 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, as the Department stated in AFBs 17 and the accompanying I&D Memo at Comment 17, "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 also Honey from Argentina and the accompanying I&D Memo at Comment 12.

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. The fact that several of the cases we have cited in support of our position consist of agricultural products does not alter the statutory emphasis on the use of actual-cost data in calculating COP and CV for all antidumping duty cases. In addition, as SKF Germany acknowledges, there are other antidumping duty cases which involve non-agricultural products where the Department has used actual production cost in lieu of the exporter's acquisition costs to calculate COP and CV. See Elemental Sulphur from Canada: Final Results of Antidumping Finding Administrative Review, 61 FR 8239, 8251 (March 4, 1996) (Elemental Sulphur). See also AFBs 17 and the accompanying I&D Memo at Comment 17. Thus, our practice in this regard applies to all antidumping cases.

With regard to SKF Germany's argument that we are adopting inconsistent policies with regard to this issue, we disagree. Contrary to SKF's claim with respect to its citing of Hussey, the Department is not adopting significantly inconsistent policies but is now consistent throughout its cases. In addition, Hussey 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.

We also disagree with SKF Germany'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 exempt from antitrust considerations under the Supreme Court's Noerr-Pennington Doctrine, in which efforts to influence administrative decisions are immune from Sherman Act scrutiny. See United Mine Workers v. Pennington, 381 US 657 (1965). Section 771(28) of the Act in conjunction with sections 773(b)(3)(a) and 773(e)(1) of the Act give the Department authority to obtain cost data from the producers of subject merchandise in making its final determinations, making the collection and use of cost data within the scope of antidumping law and, therefore, within the parameters of the exception. Furthermore, the parties are not forced to share

confidential information if they choose not to, as they can arrange for the release of such information under the protection of an APO.

Therefore, for the reasons stated above, we continue to find that it is appropriate to use the actual production costs of unaffiliated suppliers in lieu of the exporter's acquisition costs to calculate COP and CV and that AFA is warranted with respect to those bearings purchased by SKF Germany from its unaffiliated supplier for the final results.

6. Rate for Respondent Not Selected

Comment 16: Timken argues that the Department should not assign a de minimis rate to Rolls Royce. According to Timken, the Department analogizes to the statutory instruction regarding the calculation of the all-others rate for the purpose of calculating the rates applicable to non-sampled producers and exporters. Timken contends that the statute instructs the Department to exclude margins that are zero or de minimis from its calculation of such rates. Timken also asserts that the statute provides that, if the margins calculated for all investigated producers are zero or de minimis, then the Department may use "any reasonable method" to establish the rate for exporters and producers that are not individually examined. Citing Brake Rotors from the People's Republic of China: Final Results of 2006-07 Administrative and New Shipper Reviews and Partial Rescission of 2006-07 Administrative Review, 73 FR 32678 (June 10, 2008) (Brake Rotors), Timken contends that the Department has explained that the selection of such a reasonable method must be made on a case-by-case basis and depends on the facts of the case, including the prior history of margins.

Timken acknowledges that, in Brake Rotors, the Department imposed a de minimis all-others rate on companies not selected for individual examination. Timken argues that the Department's decision in that case was based on the conclusions that the respondents were fairly homogenous in terms of economic characteristics and that the preponderance of margins were zero or de minimis. Timken contends that neither of these conclusions applies here. Timken asserts that, with respect to the antidumping duty order on ball bearings and parts thereof from the United Kingdom, the Department has calculated margins, with few exceptions, that were above de minimis for the producers and exporters it has examined. Timken also claims that the producers are not homogenous. As a result, Timken concludes, the Department should not apply a de minimis rate to Rolls Royce and, instead, should use the rate it calculated for Rolls Royce in AFBs 1, which is 3.71 percent.

Rolls Royce argues that the Department used the only reasonable method available when it assigned the rate it calculated for Barden. Rolls Royce contends that using the rate the Department calculated for it in AFBs 1 is not a reasonable method. Rolls Royce argues that the Department is required to establish a rate based on the facts on the record of the current administrative review.

Department's Position: We selected three respondents, Barden, Molins PLC, and NSK UK, for individual examination with respect to the administrative review of the antidumping duty order on ball bearings and parts thereof from the United Kingdom. See the memorandum from Thomas Schauer to Laurie Parkhill dated August 14, 2007. After the review requests for Molins

PLC and NSK UK were timely withdrawn, we rescinded the review with respect to these companies. See Preliminary Results, 73 FR at 25655. As a result, Barden is the only respondent we examined individually for the administrative review of the antidumping duty order on ball bearings and parts thereof from the United Kingdom. For these final results, we calculated a de minimis rate for Barden, the single remaining cooperative respondent which we selected for individual examination. Id.

The statute is silent as to how we should calculate the rate for respondents we did not select for individual examination in an administrative review. Timken is correct that generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or de minimis margins or any margins based on total facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based on total facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possible method is "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." In this review, we have, in addition to Barden, three companies to which we assigned margins based on AFA. Based on the facts of this case, we determine that a reasonable method for determining the margin for Rolls Royce in this review is the average of the margins, other than those which are zero, de minimis, or based on total facts available, that we found for the most recent period in which there were such margins. In this case, the most recent administrative review we have completed for this proceeding was AFBs 17, as amended, and the rate we calculated for the sole respondent, Barden, was not zero, de minimis, or based on total facts available. The margin we calculated for Barden was 0.72 percent (see Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Ball Bearings and Parts Thereof from Japan and the United Kingdom, 72 FR 64578, 64579 (November 16, 2007)). While the statute contemplates that we may use an average of the zero, de minimis, or facts-available rates determined in an investigation, in this review, we have available information that would not be available in an investigation. We have determined that it is more appropriate in this review to use a calculated rate from a previous review as this method does not rely on zero, de minimis, or facts-available margins and there is no reason to find that it is not reasonably reflective of potential dumping margins for the non-selected company.

Furthermore, we agree with Timken that the facts in Brake Rotors were different than the facts in this case. Although we found it was appropriate in Brake Rotors to calculate the margin for non-selected respondents using zero or de minimis margins because "the brake rotor firms are fairly homogenous in terms of economic characteristics" and "the preponderance of margins calculated were zero or de minimis" (see Brake Rotors and the accompanying I&D Memo at Comment 1), neither of these factors applies here. First, there is no evidence that the respondents are "homogenous in terms of economic characteristics." More importantly, the preponderance of margins we have found for the respondents in previous segments of this case were not zero or de minimis. Moreover, unlike Brake Rotors, in which we determined no margins based on facts available, in this review, we found a de minimis margin for one respondent, Barden, and we found margins which we based on AFA for the other respondents.

We disagree with Timken's suggestion that we should use the rate we found for Rolls Royce in AFBs 1. We published AFBs 1 in 1991. The rate we are using is based on information pertaining to a substantially more recent period and we find no reason to prefer using Rolls Royce's own current rate, which was calculated in AFBs 1.

Accordingly, we determine that the most appropriate margin available for us to use for Rolls Royce in this review is the average of the margins, other than those which are zero, de minimis, or based on total facts available, that we found for the most recent period in which there were such margins. Therefore, the margin we have assigned to Rolls Royce for the final results of this administrative review is 0.72 percent.

7. Miscellaneous Issues

15-Day Issuance of Liquidation Instructions

Comment 17: SKF argues that the Department's stated intent 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, 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, 2005 U.S. App. LEXIS 23082 (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: We disagree with SKF that our practice is contrary to law. As we explained in AFBs 17, 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. See AFBs 17 and the accompanying I&D Memo at Comment 26. Further, 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, 502 F. Supp. 2d 1295 (CIT 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 found expressly that publication of the final results of review 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.

CEP Profit

As explained in the Preliminary Results, the Department instructed respondents to report a sample of home-market or U.S. sales transactions (time-sampled sales) in the event the respondent had more than ten thousand sales transactions in either market. The Department selected six weeks for reporting U.S. sales and eight months for reporting home-market sales randomly. The home-market months included months from the 90/60-day contemporaneity period (window period), which is a period three months prior to the POR and two months after the POR and used for selecting contemporaneous sales when there are no sales in the foreign market of a foreign like product identical or similar, as appropriate, to the subject merchandise during the preferred month. The Department used a time-weight factor to increase the sales data for each month to reflect a full POR.

Comment 18: 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.

Timken refers to sections 772(d)(3) and 772(f) of the Act and states that the Department calculates 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. Timken argues that, because the Department uses eight months of home-market sales, it should use a time-weight factor of one and a half to produce twelve months' worth of home-market sales data rather than a factor of two to produce data to reflect a longer period. Timken argues that, by multiplying the data by two, home-market sales are over-represented in the Department's CEP-profit calculation. As a result, Timken argues, the profit rate of home-market sales outweighs the profit rate of U.S. sales and, thus, distorts the CEP-profit calculation in favor of the profit on home-market sales over the profit on U.S. sales. Timken contends that, although the statute provides for the calculation of CEP profit using all sales in the U.S. and home markets, the profit from one market should not be favored over the profit in the other.

Timken continues by stating that the Department concluded in AFBs 13 that, because it relies on sales outside the POR (i.e., within the window period) in determining normal value, such sales must also be included in the CEP-profit calculation. Therefore, Timken argues, 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 home-market time-sampled sales with a factor of one and a half to produce a period of twelve months, which is equivalent to the period of time used for U.S. sales, whether using POR sales data or time-sampled sales data.

NTN argues that the Department should not agree with Timken's argument on the grounds that Timken has not identified any specific issues concerning the CEP-profit calculation in the context of the reviews.

Department's Position: We have not altered our calculations as Timken proposes.

Section 772(d)(3) of the Act provides that the price used to establish CEP should be reduced by the profit allocated to the expenses described in paragraphs (1) and (2) of section 772(d) of the Act. Section 772(f)(2) of the Act outlines special rules for determining CEP profit; specifically, sub-section (C)(i) states that the expenses to be used are "{t}he expenses incurred with respect to the subject merchandise sold in the United States and foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price." The Department uses this combination of expenses incurred on home-market and U.S. sales to calculate CEP profit.

As we explained 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 the accompanying I&D Memo at Comment 9, and in AFBs 13 and the accompanying I&D Memo at Comment 7, because we rely on sales outside the POR (i.e., within the window period) to form the basis of our calculation of normal value, we must also use expenses incurred on these sales in

the calculation of the CEP-profit ratio. Accordingly, in an effort to adjust reported home-market time-sampled sales to reflect the full POR including the extended window period, we use a time-weight factor of two to adjust the data to reflect a longer period as opposed to one and a half (as suggested by Timken) to reflect just twelve months.

This methodology of including the expenses incurred on sales during the window period in our calculation of the CEP-profit ratio is in accordance with the statute and our normal practice. 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.

Decision Not to Verify JTEKT's and NTN's Cost Data

Comment 19: Timken argues that the Department's decision not to verify the cost data submitted by JTEKT and NTN was unlawful. Timken refers to the request for verification it filed with the Department on October 5, 2007, arguing that good cause for verification of both companies exists because JTEKT's cost data had not been verified since the 1997-98 review and NTN's cost data had not been verified since the 1996-97 review. Timken refers also to the factual information it filed with the Department on November 16 and 19, 2007, in which Timken compared the cost data in this current review for each of the companies with the cost data in prior reviews for each of the companies. Timken implies, by referring to its November 2007 filings, that there were some variations in the cost data for certain models. Timken argues that cost is expected to vary due to variations in production methods and due to increases in the cost of inputs, but the Department did not pursue extensive reporting of cost data for any specific models with JTEKT and NTN.

Citing the Trade Remedies Reform Act of 1984, 98th Cong. 2d sess., H. Rep. 98-725 at 42, reprinted in 5 U.S.C.A.A.N. 5127, 5169 (1984), Timken argues that the Department "normally verifies information where it believes there is a significant issue of law or fact." Citing the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 2948, 3037-38 (1984), and section 782(i) of the Act, Timken argues also that the statute requires the Department to verify if there is a timely request and good cause for verification where "{g}ood cause could be such factors as a significant issue of law or fact, changed or special circumstances, discrepancies found in previous verifications, or the likelihood of a significant impact on the result{,}" quoting from H. Rep. 98-725 at 43. According to Timken, the relevance of the cost data it submitted with respect to JTEKT and NTN and the fact that there has not been a cost verification since the 1996-97 review or the 1997-98 review constituted good cause for verification.

Further, Timken asserts, the Department's concern to weigh the need for verification against the burden on agency resources is diminished by the fact that the Department reviewed only two of twelve companies due to the selection of respondents for individual examination as well as the rescission of certain reviews. Thus, Timken concludes, the Department's decision to forego verification of the cost data submitted by JTEKT and NTN was unlawful.

JTEKT argues that Timken's request that the Department reconsider its decision not to verify is untimely. Although Timken submitted a request that the Department verify JTEKT's responses and although Timken submitted factual information to support the basis of its request, JTEKT continues, Timken waited until May 28, 2008, before requesting that the Department reconsider its decision not to verify. JTEKT points out that Timken's renewed request came nearly three months after JTEKT filed two supplemental questionnaire responses and nearly a month after the Department issued its Preliminary Results. According to JTEKT, the verification of JTEKT's questionnaire responses at such a late stage in the review would cause a significant delay in the completion of the review. JTEKT asserts that no unusual circumstances exist that would warrant such a significant disruption of the review process.

JTEKT argues that there is no factual or legal support for Timken's assertion that the Department's decision is unlawful. JTEKT and NTN assert that none of the factors Timken identifies under section 782(i) of the Act or in H. Rep. 98-725 is present in this case nor are there any other factors that might indicate "good cause." The respondents assert that the only point Timken makes is that there were variations in the reported cost data for some bearing models in the current POR when comparing the data to prior PORs. NTN adds that Timken provides no data to support the hypothetical statements it makes about the reason for the variations in cost. The respondents assert that the fact that costs may have changed from one review period to the next is not a significant issue of law or fact nor is it a changed or special circumstance.

NTN contends that nothing in the statute requires the Department to verify all data at each verification and the statute does not distinguish among areas of verification. Citing Floral Trade Council v. United States, 822 F. Supp. 766, 772 (CIT 1993) (Floral Trade Concil), NTN states that verification is an audit process that selectively tests the accuracy and completeness of a respondent's submission. NTN continues by asserting that the court has stated that the Department has a degree of latitude in implementing its verification procedures, citing PPG Indus. Inc. v. United States, 781 F. Supp. 781, 787 (CIT 1991) (PPG). In addition, NTN contends, the CIT has stated that an agency is not required to use or verify all of the information it receives in a review and that it is enough for the Department to receive and verify sufficient information to reasonably and properly make its determination, citing Hercules, Inc. v. United States, 673 F. Supp. 454, 470 (CIT 1987) (Hercules). NTN asserts that, given the statements by the CIT, it is clearly unnecessary for the Department to conduct a verification of all sections of the response filed by NTN in a review.

JTEKT argues further that, when Timken raised the point of the variations in the cost data in prior reviews, the Department pursued Timken's concerns in supplemental questionnaires. In response, JTEKT continues, it has demonstrated ordinary reasons for the variations in the model-specific costs. Accordingly, JTEKT asserts, the Department acted within its discretion in deciding not to ask questions regarding this issue in supplemental questionnaires it issued during this review. NTN adds that it was verified at two locations in the 2004-05 review and in many other reviews. Because it was just verified in the 2004-05 review, NTN asserts, the requirement under which the Department must verify NTN's response has not been met. Further, NTN continues, Timken's argument does not demonstrate any discrepancies in any of these prior verifications nor do any of Timken's arguments demonstrate that verification in this review would likely have had a significant impact on the results.

Department's Position: Section 782(i)(3) of the Act states that "the administrating authority shall verify all information relied upon in making . . . a final determination in a review under section 751(a) if (A) verification is timely requested by an interested party as defined in section 771(9)(C), (D), (E), (F), or (G), and (B) no verification was made under this subparagraph during the 2 immediately preceding reviews and determinations under section 751(a) of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown." Accordingly, because the Department verified the questionnaire responses of both JTEKT and NTN in the 2004-05 review (see Ball Bearings and Parts Thereof from France, et al.; Preliminary Results of Antidumping Duty Administrative Reviews, 71 FR 12170, 12171 (March 9, 2006)), the Department was not required to verify the respondents' data again in this review of the 2006-07 POR.

With respect to section 782(i)(3) of the Act which states that the Department shall verify "all information relied upon . . ." as it relates to Timken's allegation that, specifically, cost data had not been verified, the Department's verification obligations have been clarified in CIT decisions. In Floral Trade Council, the CIT stated that "verification is an audit process that *selectively tests* the accuracy and completeness of a respondent's submission" (emphasis added). The CIT stated further in PPG that "Congress has afforded Commerce a degree of latitude in implementing its verification procedures . . . . Moreover, '{t}he decision to select a particular {verification} methodology rests solely within Commerce's sound discretion'" (citations omitted). In Hercules, the CIT determined that "Commerce was not required to use or verify all information it received from {the respondents}. It is enough for Commerce to receive and verify sufficient information to reasonably and properly make its determination." Furthermore, in NTN Bearing Corp. of Am. v. United States, 186 F. Supp. 2d 1257, 1296 (CIT 2002), the court explained that "{a} verification is a spot check and is not intended to be an exhaustive examination of the respondent's business. {Commerce} has considerable latitude in picking and choosing which items it will examine in detail." Accordingly, the Department's verifications of JTEKT and NTN in the 2004-05 review are not rendered void by statutory standards by the fact that the Department exercised its discretion in focusing its examination upon sales.

In addition, we do not find Timken's argument that the cost data of the companies varied from one period to the next compelling or illustrative of good cause for verification as described in H. Rep. 98-725 at 43. Annual changes in cost are a normal aspect of doing business, and Timken has not demonstrated that the changes in cost for this POR are abnormal. Based on the above, we find that the facts in this case do not rise to the level of good cause.

BPI Treatment for Dumping Duties and Net Value of Sales

Comment 20: JTEKT argues that the Department should continue to extend business-proprietary treatment to the numerator and denominator of the fraction used to calculate JTEKT's dumping margin. Referring to the Department's letter dated April 24, 2008, JTEKT asserts that the Department's expressed intention to treat respondents' adjusted dumping duties due and net value of United States sales as public information is contrary to 19 CFR 351.105(c).

Department's Position: For the final results of these reviews, the Department has continued to afford business-proprietary treatment to the figures at issue. The Department notified JTEKT of

its decision on June 18, 2008. See the letter from Laurie Parkhill to JTEKT dated June 18, 2008.

8. Clerical Errors

Comment 21: SKF France asserts that there is a clerical error in the Department's margin calculation that caused the application of an upward level-of-trade adjustment to home-market OEM sales prices when they matched to export-price sales to aftermarket customers. SKF France observes that, in its level-of-trade analysis, the Department found that all export-price sales were made at the same level of trade as home-market sales to OEM customers and that, therefore, no adjustment should be made to normal value when matching a home-market OEM sale to an export-price sale. The respondent requests that the Department correct the error in its calculations for the final results.

Timken rebuts that no change should be made to the calculations. It argues that an adjustment to normal value is warranted because the Department found two home-market levels of trade. It adds that, in keeping with the record evidence that selling functions for the home and U.S. markets did not differ, an adjustment is appropriate whenever the levels of trade differ between matched sales, including instances where U.S. aftermarket sales are compared to home-market OEM sales.

Department's Position: As we explained in our analysis memorandum for SKF France for the Preliminary Results, we found the company to have two levels of trade in the home market – one for sales to OEMs and one for sales to aftermarket customers. But when examining the levels of trade of the export-price sales, we concluded that all of the sales were made at one level of trade and that they were made at the same level of trade as the home-market sales to OEMs. Thus, we determined that the export-price sales to both OEMs and aftermarket customers should be matched, if possible, to an OEM home-market sale and, if such a match was not possible, then they should be matched to an aftermarket home-market sale and a downward level-of-trade adjustment to normal value would be appropriate.

In the margin calculations, we designate export-price sales made to OEMs to be at the same level of trade as home-market OEM sales. But we inadvertently designated all export-price sales made to aftermarket customers to be at the same level of trade as home-market aftermarket sales, which resulted in an upward level-of-trade adjustment to normal value when comparing these export-price sales to home-market OEM sales. This designation is inconsistent with our level-of-trade analysis and we have modified the calculations for the final results so that we have treated all of SKF France's export-price sales as having occurred at the same level of trade as the home-market OEM sales, thus making no level-of-trade adjustment to normal value when making such comparisons.

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