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MEMORANDUM TO: Carole A. Showers
Acting Deputy Assistant Secretary
for Policy and Negotiations

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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, 2007, through April 30, 2008

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, 2007, through April 30, 2008. 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. Verification for GRW's Revocation
3. 15-Day Liquidation Policy
4. CEP Offset and CEP Profit
5. Sample Sales
6. Short-Term U.S. Interest Rates
7. Freight, Insurance, and Packing Revenue
8. Rate for Firms Not Selected for Individual Examination
9. Miscellaneous Issues
   A. Freight Expense
   B. Packing Expense
   C. Imputed Credit
   D. Completeness of Database
   E. Cost of Grease
10. Ministerial Errors

Background

On April 27, 2009, 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. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews and Intent To Revoke Order In Part*, 74 FR 19056 (*Preliminary Results*). The reviews cover 15 manufacturers/exporters. The period covered by all the reviews is May 1, 2007, through April 30, 2008. We invited interested parties to comment on the *Preliminary Results*. At the request of certain parties, we held a hearing for Italy-specific issues on June 22, 2009.

Company Abbreviations

Barden – 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
NSK UK – NSK Europe Ltd., NSK Bearings Europe Ltd., and NSK Corporation
NTN – NTN Corporation
Schaeffler Italy – Schaeffler Italia S.r.l. (formerly FAG Italia S.p.A.)
SKF – The SKF Group (worldwide)
SKF France – SKF France S.A. and SFK Aerospace France S.A.S. (formerly known as SARMA)
SKF Germany – SKF GmbH
SKF Italy – SKF RIV-SKF Officine di Villas Perosa S.p.A., SKF Industrie S.p.A. (SKF Industrie), RFT S.p.A., OMVP S.p.A., and Somecat S.p.A. (Somecat)
SKF UK – SKF (UK) Limited
SNFA UK – SNFA UK
SKF USA – SKF USA Inc.
Timken – Timken Company (formerly known as Timken US Corporation), petitioner

Other Abbreviations

AFBs – antifriction bearings
Antidumping Agreement – Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994)
CAFC – Court of Appeals for the Federal Circuit
CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – Court of International Trade
EP – export price
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
ISEs – indirect selling expenses
LIBOR rate – The London Interbank Offer Rate

LTFV – less than fair value
POR – period of review
SAA – Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994)
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

<u>AFBs Administrative Determinations and Results</u>

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

AFBs 7 – Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 62 FR 54043, (October 17, 1997), as amended in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 61963 (November 20, 1997).

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

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

AFBs 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 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).

AFBs 18 – Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823 (September 11, 2008).

Discussion of the Issues

1. Zeroing of Negative Margins

Comment 1: SKF argues that, because the plain language of the Act demonstrates that Congress intended for the Department to use both positive and negative values, the Department's interpretation that the Act permits zeroing is improper. Citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9 (1984) (*Chevron*), SKF explains that the U.S. Supreme Court has stated that it "must reject administrative constructions which are contrary to clear congressional intent." Citing *Timken Company v. United States*, 354 F.3d 1334, 1341 (CAFC 2004), *cert*. denied 543 U.S. 976 (2004) (*Timken*), and *Corus Staal BV v. United States*, 259 F. Supp. 2d 1253, 1261 (CIT 2003), aff'd, 395 F.3d 1343, 1347 (CAFC 2003), *cert.* denied, 126 S. Ct. 1023 (2006) (*Corus I*), SKF explains that both the CIT and CAFC have recognized that the Act does not direct the Department to employ zeroing. SKF argues that the Department has simply expanded the Act's section 771(35)(A) "dumping margin" definition to create a rationale for excluding certain sales even though section 771(35)(A) of the Act is not an operative provision governing the dumping calculation.

SKF argues that, not only is there no statutory provision directing the Department to look only at sales below normal value, sections 751(a)(1)(B) and 751(a)(2)(A) of the Act require that the Department "review, and determine . . . the amount of any dumping duty " and "determine . . . (i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and (ii) the dumping margin for each such entry." While SKF acknowledges that in *Timken* the court concluded that the Department's interpretation of the statutory language was not unreasonable, SKF argues that the Department's reliance on the definition of dumping margin is in conflict with sections of the Act which govern assessment. Specifically, SKF explains, section 751(a)(2)(A)(i) of the Act directs that the Department determine normal value and either the EP or CEP of each entry. SKF also explains that, for reviews other than new-shipper reviews, section 751(a)(2)(C) of the Act requires that the Department base its assessment rate determination on two sub-determinations: (1) a determination of normal value and either EP or CEP for each entry, and (2) a determination of the dumping margin for each entry. SKF posits that, because section 751(a)(2)(C) of the Act requires that a single determination form the basis for the assessment-rate calculation, it follows that the two sub-determinations should yield a consistent result. SKF explains that, because the Act does not permit the use of zeroing to determine normal value, EP, or CEP, the determination of the dumping margin for each entry cannot be based on zeroing so that the determination is consistent. SKF argues that, had Congress intended for the two sub-determinations to be inconsistent, it would have specified which determination was to form the basis of the assessment-rate calculation.

SKF avers that section 736(c)(3) of the Act, which governs assessments for early duty determinations and parallels sections 751(a)(2)(A) and (C) of the Act, states explicitly that the Department's "determination of normal value and export price (or the constructed export price), and that determination shall be the basis for the assessment of antidumping duties."

Citing, among others, *Huaiyin Foreign Trade Corp. v. United States*, 322 F.3d 1369 (CAFC 2003), SKF states that the purpose of the antidumping law is to put the domestic producers on an equal playing field with importers which have sold products at less than fair value. Further, citing *Koyo Seiko Co. v. United States*, 746 F. Supp. 1108 (CIT 1990), among others, SKF states that the Department must calculate fair and accurate margins to achieve this objective. SKF argues that the Department's zeroing methodology raises a respondent's margin artificially, misrepresents the realities of the marketplace, and presumes a greater level of inequality between the domestic and foreign producers.

Citing, *e.g.*, *Timken*, SKF acknowledges that both the CIT and CAFC have concluded that zeroing is not required in either investigations or administrative reviews. Moreover, citing *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R (App. Body Rep't January 9, 2007) (*US - Zeroing (Japan)*), *United States - Final Anti-dumping Measures on Stainless Steel from Mexico*, WT/DS344/AB/R (App. Body Rep't April 30, 2008) (*US - Zeroing (Mexico)*), *United States - Final Determination on Softwood Lumber from Canada*, WT/DS264/AB/R (App. Body Rep't August 31, 2004) (*US - Softwood Lumber*), *European Communities - Antidumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/AB/R (March 1, 2001) (*EC - Bed Linens*), and *United States - Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)*, WT/DS294/AB/4 (April 18, 2006) (*US - Zeroing (EC)*), SKF explains that the WTO has determined that the Department's zeroing methodology is inconsistent with U.S. obligations under the Antidumping Agreement. Citing *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006) (*Zeroing Notice*), and *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations: Change in Effective Date of Final Modification*, 72 FR 3783 (January 26, 2007), SKF explains that the Department has abandoned its zeroing methodology in the context of investigations. SKF asserts that WTO decisions, combined with the Department's abandonment of zeroing in the context of investigations, makes this issue ripe for reconsideration for the final results of these reviews. While SKF acknowledges that the current proceeding is an administrative review rather than an investigation, citing *Corus I*, 395 F.3d at 1347, and *United States – Sunset Review of Anti-dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/AB/R (App. Body Rep't January 9, 2003) (*US - Corrosion-Resistant Steel*), SKF explains that the CAFC and the WTO have concluded that the difference between investigations and administrative reviews is not relevant for the purposes of zeroing. Moreover, citing *United States – Laws, Regulations and Methodology for Calculating Dumping Margins*, WT/DS294/18, Communication by the United States at ¶ 12 (June 12, 2006), SKF states that the United States has concluded that the body of law which has developed at the WTO prohibits "zeroing in every circumstance in which a Member calculates a margin of dumping."

SKF also argues that the Department's methodology violates the international obligations of the United States. Citing *Alexander Murray v. Schooner Charming Betsy*, 6 U.S. 64 (1804) (*Charming Betsy*), SKF argues that, whenever possible, U.S. laws should be interpreted to avoid a violation of international obligations. SKF asserts that the explicit Congressional intent to comply with international obligations is evidenced by the SAA statement "to bring U.S. law fully into compliance with U.S. obligations under those {Uruguay Round} agreements," citing the SAA at 669. Accordingly, SKF argues, the Department should comply with the decisions of the WTO and determine that the use of zeroing in administrative reviews is contrary to the requirements set forth in the Antidumping Agreement.

Citing *Koyo Seiko v. United States*, 551 F.3d 1286, 1290-91 (CAFC 2008), and others, Timken explains that the CIT and the CAFC have rejected arguments that the plain statutory language does not permit zeroing. Citing *Timken*, 354 F.3d at 1341-42, Timken argues that the CAFC has concluded that zeroing serves the statutory purpose by neutralizing dumped sales while not affecting non-dumped sales. Timken argues that, because courts have concluded that zeroing serves a statutory purpose and comports with the statutory language, the Department is obliged to apply the law.

Timken also argues that various decisions of the WTO apply only to the parties to the dispute and do not bind future WTO panels, the WTO AB, or the parties to the dispute. Accordingly, citing *Charming Betsy*, 6 U.S. at 118, and *Restatement (Third) of Foreign Relations Law of the United States*, sections 101 and 102(3), Timken argues SKF's reliance on *Charming Betsy* is inapposite because WTO panel and WTO AB decisions cannot be considered "the law of nations as understood in this country." Finally, Timken argues that 19 USC §§ 3533(g) and 3538(b) proscribe how the implementation of an adverse WTO decision should proceed. Moreover, Timken also explains, 19 USC § 3538(c)(1)(B) requires that any implementation of adverse WTO decisions apply only to unliquidated entries which entered on or after the date on which the United States Trade Representative directs the Department to implement the decision.

Department's Position: We have not changed our calculation of the weighted-average dumping margins for these final results of review with respect to our zeroing methodology. 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." Outside the context of antidumping investigations involving average-to-average comparisons, we interpret this statutory definition to mean that a dumping margin exists only when normal value is greater than EP or CEP. As no dumping margins exist with respect to sales where normal value is equal to or less than EP or CEP, 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, *e.g.*, *Timken*, 354 F.3d at 1342, *Corus I*, 395 F.3d at 1347-49, and *SKF v. United States*, 537 F.3d 1373, 1381 (CAFC 2008) (*SKF*).

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." We apply these sections by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds EP or CEP, and dividing this amount by the value of all sales.

The use of the term "aggregate dumping margins" in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the normal value permitted to offset or cancel the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to recognize that the weighted-average margin will reflect any non-dumped merchandise examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

The CAFC explained in *Timken* that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to 'mask' sales at less than fair value." See *Timken*, 354 F.3d at 1343. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate "masked dumping" before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales. See, *e.g., Timken*, 354 F.3d at 1343, *Corus I*, 395 F.3d 1343, *Corus Staal BV v. United States*, 502 F.3d 1370, 1374-75 (CAFC 2007) (*Corus II*), and *NSK Ltd. v. United States*, 510 F.3d 1375, 1381 (CAFC 2007) (*NSK*).

SKF argues that the WTO AB has ruled that "zeroing" is inconsistent with U.S. obligations under the Antidumping Agreement. 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 19 USC § 3538. See also *Corus I*, 395 F.3d at 1347-49; accord *Corus II*, 502 F.3d at 1375, and *NSK*, 510 F.3d at 1379-80.

Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, *e.g.*, 19 USC § 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 USC § 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 USC § 3533(g) and *Zeroing Notice*, 71 FR at 77722, 77724. With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure.

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. See *id.* at 77724.

With regard to *US - Zeroing (Japan)* and *US - Zeroing (Mexico)*, the steps taken in response to these reports do not require a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative reviews. Furthermore, in response to *US - Corrosion-Resistant Steel* and *EC - Bed Linens*, the CAFC has refused to find the Department's interpretation of the Act unreasonable on the basis of these reports. See *Corus I*, 395 F.3d 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 noted that, in *US- Corrosion-Resistant Steel*, the WTO AB never made a finding regarding the Department's denial of offsets. *Id.* Further, the CAFC noted that, in *EC - Bed Linens*, the United States was not a party to the dispute. *Id.*

With respect to *US - Softwood Lumber*, the WTO AB's finding only related to the denial of offsets in the Softwood Lumber from Canada antidumping investigation. 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 a Mutually Agreed Solution, United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/29/Add. 1 (March 9, 2007). 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, in the event that any of the export transactions examined in this review are found to exceed normal value, the amount by which the price exceeds normal value does not offset the dumping found in respect of other transactions.

2. Verification for GRW's Revocation

<u>Comment 2</u>: Timken argues that the Department should not revoke the antidumping duty order with respect to GRW in the absence of a verification of GRW's sales data. Timken argues that section 782(i)(2) of the Act requires the Department to verify all information upon which it relies in making a revocation decision under section 751(d) of the Act. Timken also cites to 19 CFR 351.307(b)(1)(iii) which states that the Secretary will verify factual information upon which the Secretary relies in revocation under section 751(d) of the Act.

Timken argues that, based on the number of sales that were analyzed using identical comparisons in this review, the Department did not meet its obligation under the statute to verify all information on which it relied because it limited its verification to GRW's cost data only. In support of its argument Timken cites numerous administrative reviews in which the Department revoked (or expressed its intent to revoke) companies for which the Department conducted the verification of home-market sales data only, home-market sales and cost data, or home-market and U.S. sales data.

GRW argues that the statute and regulations simply require the Department to conduct verification when a party seeks revocation – they do not require the Department to conduct a sales verification. GRW argues that Congress has not set forth a specific methodology for the Department in conducting verification, citing *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 20948 (April 19, 2000), and accompanying I&D Memo at Comment 2, citing to *Micron Tech., Inc. v. U.S.*, 117 F.3d 1386 (CAFC 1997). In fact, argues GRW, the applicable statute and regulations afford the Department considerable latitude in selecting the methods of verification and particular items to be verified, citing, among others, *AFBs 13* and accompanying I&D Memo at Comment 20, citing to *American Alloys, Inc. v. United States*, 30 F.3d 1469, 1475 (CAFC 1994), *PPG Industries, Inc. v. United States*, 978 F.2d 1232, 1238 (CAFC 1992), and *Rubberflex SDN.BHD. v. United States*, 59 F. Supp. 2d 1338, 1344 (CIT 1999).

GRW argues that the Department exercised its discretion properly in selecting to verify GRW's cost data because it has not done so in at least the past ten administrative reviews. In fact, GRW asserts, the Department's decision to verify cost data was based, in part, on Timken's verification request which placed a particular emphasis on the need to verify GRW's cost data. GRW argues that, in its verification request, Timken also did not request specifically that the Department verify both cost and sales data. Moreover, GRW argues, Timken had numerous opportunities throughout the review to request that the Department conduct a sales verification and did not object to the Department's decision not to verify sales data.

Citing 19 CFR 351.222(b), (e), and (f), GRW argues that a partial revocation of antidumping duty order is not conditioned upon a sales verification. GRW argues that Timken does not cite a single legal or administrative precedent which establishes that the Department is required to verify sales data for a company which is a revocation candidate. GRW contends that Timken merely points to several administrative reviews where the Department exercised its discretion and concluded that a sales verification was appropriate in those reviews for those respondents.

<u>Department's Position</u>: The Department finds that the statute is silent on the requirements to verify all data at verification (*i.e.*, all sections of the response), it does not distinguish among areas of verification, and it does not set forth the hierarchy of verification preferences for various sections of the response. As we stated in *AFBs 18* and the accompanying I&D Memo at Comment 19, with respect to section 782(i) of the Act, which states that the Department shall verify "all information relied upon . . .," the Department's verification obligations have been clarified in CIT decisions.

Specifically, the CIT has 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." See *Hercules, Inc. v. United States*, 673 F. Supp. 454, 470 (CIT 1987). In *Floral Trade Council v. United States*, 822 F. Supp. 766, 771 (CIT 1993), the CIT stated that "verification is an audit process that *selectively tests* the accuracy and completeness of a respondent's submission" (emphasis added). Also of significance here is that the court viewed all sections of the response to be one submission - different sections of the response do not require separate verifications. *Id.* at 772 (finding the

Commerce need not "…verify each item in [respondent's] questionnaire…"). 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" (citations omitted). Similarly, in another case, the court found 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.'" See *PPG Indus. Inc. v. United States*, 781 F. Supp. 781, 787 (CIT 1991) (citations omitted).

The legal precedent makes clear that the Department has a wide discretion in deciding which sections of a party's response to verify, which verification methods to use, and which level of verification detail to examine. Consistent with the statutory intent we exercised our discretion to verify GRW's cost data. We did so because we verified GRW's sales data in the 2004-2005 administrative review and have not verified GRW's cost data in any prior segment of the proceeding. In light of GRW's request for a revocation in this review, we determined that the necessity to verify cost data outweighed the necessity to verify sales data. Accordingly, we find that our discretion to focus our verification efforts on GRW's cost data is validated by the statutory requirements, supported by legal precedent, and supported by substantial evidence.

3. 15-Day Liquidation Policy

<u>Comment 3</u>: 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, the statute at 19 USC 1516a(a)(2)(A) provides that, within 30 days after the date of publication in the *Federal Register* of the notice of a final administrative-review determination, an interested party may commence an action in the CIT by filing a summons and, within 30 days thereafter, a complaint. According to SKF, the statute thus provides an interested party 60 days to perfect its action before the CIT. Hence, SKF argues, any action by the Department which could have the effect of curtailing that time frame is an abrogation of a party's right to judicial review.

SKF 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.

Citing *Tianjin Mach. Imp. and Exp. Corp. v. United States*, 353 F. Supp. 2d 1294 (CIT 2004), aff'd, 146 Fed. Appx. 493 (CAFC 2005) (*Tianjin*), SKF argues that the CIT has already held that the Department's 15-day liquidation-instruction policy is not in accordance with law. In that case, according to SKF, the CIT stated specifically that the Department's 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 aspect of the final determination. Thus, according to SKF, the Department's policy is in direct conflict with the CIT's decision in that case.

Citing *SKF USA Inc. v. United States*, CIT Slip Op. 09-32 at 22 (April 17, 2009) (*SKF USA*), SKF argues that the CIT held recently that the 15-day policy violates a plaintiff's statutory right to seek an injunction under 19 USC 1516(c)(2). According to SKF, the CIT stated further that this statutory right implies, necessarily, some reasonable opportunity in which a plaintiff may seek to obtain the specific type of injunction described in 19 USC 1516a(c)(2). SKF argues that, as a result, the CIT held that the Department's application of the 15-day policy to implement the final results of the 2005/06 administrative review, and any future application of that policy to implement final results of an administrative review conducted under section 751(a)(1)-(2) of the Act, are unlawful because the 15-day policy does not provide parties a reasonable time in which to seek an injunction pursuant to 19 USC 1516a(c)(2).

SKF asserts that a time period of 15 days after publication of the final results does not provide interested parties a reasonable amount of time to seek and obtain an injunction. SKF argues that the Department's current approach remains inconsistent with *SKF USA*, the point of which was that plaintiff must have sufficient time to exercise its statutory right to obtain an injunction at the CIT. According to SKF, this requires the filing of a summons and complaint and requesting and obtaining a temporary restraining order and preliminary injunction. SKF argues that, for this purpose, there is no difference between issuance of liquidation instructions "within 15 days" of the publication of the final results and issuance of instructions on the fifteenth day after publication.

For these reasons, SKF requests that the Department not issue liquidation instructions 15 days after the publication of the final results of these administrative reviews. SKF argues that, at a minimum, the Department should wait 30 days to allow interested parties a meaningful opportunity for judicial review.

In rebuttal, Timken argues that SKF's reliance on *SKF USA* is inapposite. Timken asserts that, in a recent opinion, the court determined that the Department's policy was unlawful only insofar as it allowed liquidation instructions to be issued immediately after the publication of the final results. Moreover, according to Timken, SKF was incorrect in its assertion that *SKF USA* applied to the final results of the 2005/06 administrative review. According to Timken, the court examined the final results of the 2004/05 administrative review, not the final results of the 2005/06 administrative review. Timken argues that the error is material because the Department's liquidation language in the respective final results of reviews differs. Timken argues that the Department's language in the 2004/05 reviews suggested that the Department would send liquidation instructions immediately after publication of the final results, and it was that language that the court determined was unlawful. In contrast, Timken argues, in the final results of 2005/06 administrative reviews and since, the Department stated that it would issue liquidation instructions 15 days after publication of the final results. Timken asserts that, because the language does not suggest the possibility that the Department would issue instructions immediately after publication of the final results, the language conforms with the recent instruction of the CIT.

Department's Position: We disagree with SKF that we must refrain from issuing liquidation instructions until at least 30 days after the publication of the final results. Although the CIT held recently that our previous policy of issuing liquidation instructions within 15 days of publication of the final results was unlawful, we have changed our practice and now issue liquidation instructions 15 days after publication unless we are aware that an injunction has been filed or is imminent.[1] See *AFBs 17* and the accompanying I&D Memo at Comment 26. The Department announced its intention to continue to follow this practice in the preliminary results of the instant reviews. See *Preliminary Results*, 74 FR at 19064.

In *SKF USA*, the CIT rejected the same arguments raised by SKF in these reviews. For example, the CIT recognized that the antidumping statute does not require the Department to wait at least 60 days before the entries are deemed liquidated; thus there was no basis to compel the Department to do so. See *SKF USA* at 20. The same logic applies to SKF's claim that we should wait at least 30 days to issue liquidation instructions.

Our practice of issuing liquidation instructions 15 days after publication of the final results is based upon administrative necessity, namely that we must provide CBP with sufficient time to liquidate all entries, particularly in large and complex cases like the instant reviews, before the entries are deemed liquidated. Extreme consequences follow from deemed liquidation, specifically the government's inability to collect duties calculated. Furthermore, our current policy is in accordance with the CIT's statement that we must provide "some reasonable opportunity in which a plaintiff may seek to obtain the specific type of injunction described in {19 USC} § 1516a(c)(2)." See *id.* at 32.

In addition, SKF's reliance on *Tianjin* is unpersuasive, as that case concerned the Department's previous policy. Moreover, the CAFC has 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). Accordingly, publication of the final results of review triggers the period for liquidation and, within the reasonable period provided under the Department's practice, interested parties must apply to the court for an injunction to prevent liquidation of entries pending judicial review.

Accordingly, the Department intends to issue liquidation instructions 15 days after publication of the final results.

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[1] The CIT has upheld the Department's prior practice of issuing liquidation instructions within 15 days of publication of the final results. See *Mittal Steel Galati S.A. Formerly Known as Ispat Sidex S.A. v. United States*, 502 F. Supp. 2d 1295, 1313-17 (CIT 2007), and *Mukand International Ltd. v. United States*, 452 F. Supp. 2d 1329, 1334 (CIT 2006).

4. CEP Offset and CEP Profit

Comment 4: Timken argues that Barden has not demonstrated that it is entitled to a CEP offset. Timken contends that the fact that Barden reported identical expense ratios for ISEs and ICCs incurred in the country of manufacture for both home-market and U.S. sales demonstrates that Barden's sales to home-market customers are at the same level of trade as its sales to its U.S. affiliate. Timken asserts that the Department only grants CEP offsets when the home-market sales are at a more advanced level of trade than the sales to the U.S. affiliate.

Barden argues that, in assessing whether a CEP offset is appropriate, the Department examines the various selling activities conducted at the respective levels to determine whether they are at the same or at different levels of trade or whether one is more advanced than another. Barden asserts that the Department determined correctly that the home-market level of trade was more advanced than the CEP level of trade based on the difference in selling activities. Barden contends that the fact that the expense ratios are the same was based solely on Barden's inability to segregate ISEs or inventory-carrying periods between home-market and U.S. sales. Thus, according to Barden, the ratios are not representative of the sales activities conducted on sales made to the constructed level of trade.

Department's Position: The evidence on the record supports a CEP offset for Barden. In our analysis for the *Preliminary Results*, we determined that, "{a}fter eliminating selling functions corresponding to economic activities in the United States (*i.e.*, those performed by Barden U.S.), we found that there were significant differences between the selling activities associated with the CEP level of trade and those associated with the {home-market} levels of trade. For example, the CEP level of trade involved little or no sales activity such as after-sale services and warranties, marketing support, technical services, or advertising. Thus, we considered the CEP level of trade to be different from the {home-market} levels of trade and at a less advanced stage of distribution than the {home-market}levels of trade." See the Barden preliminary results analysis memorandum dated April 21, 2009, at page 3. Timken does not challenge any of our findings *vis-à-vis* the selling functions involved between the different levels of trade. Rather, Timken rests its argument wholly upon the fact that the expense ratios for ISEs and ICCs between the two levels of trade are identical.

The record demonstrates that these expense ratios are identical merely as a result of the allocation of expenses. For example, the ISE ratios are the same because Barden calculated them using the same figures. See the worksheet entitled "Total ISE Percentage for INDIRSH/DINDIRSU" which Barden submitted in Exhibit B-6 and in Exhibit C-9 of its October 21, 2008, response. Barden was not able to segregate the expenses it allocated between those it incurred for home-market sales and those it incurred on sales to its U.S. affiliate. Thus, while it is true that Barden reported identical expense ratios for the two sets of sales, it is the selling functions actually involved, not the reported allocated expenses, that informs our determination of the levels of trade of the two categories of sales in question. Because the evidence on the record with regard to the actual selling functions is clear and undisputed, leading to our conclusions regarding the different levels of trade in the two markets, we continue to find it appropriate to make a CEP offset to Barden's U.S. sales.

Comment 5: Timken argues that the Department should subtract ISEs incurred in the home market for GRW's sales to its U.S. affiliate (reported in the DINDIRSU computer field) or, alternatively, that the Department should deny GRW a CEP offset to normal value. Timken argues that, while 19 CFR 351.402(b) does not require the Department to make an adjustment to CEP for expenses related to sales to an affiliated U.S. importer, it does require the Department to make an adjustment to CEP for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated customer if such expenses were incurred in the foreign market. In support of its argument, Timken cites *Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000), and accompanying I&D Memo at Comment 3.

Timken argues that the respondent must demonstrate that expenses it reports in DINDIRSU relate to the sale to its U.S. affiliate and not to its U.S. affiliate's re-sales to the unaffiliated U.S. customers. Citing *Oil Country Tubular Goods, Other Than Drill Pipe From Korea: Final Results of Antidumping Duty Administrative Review*, 67 FR 12520 (March 19, 2002), and accompanying I&D Memo at Comment 2 and *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 68 FR 2566 (January 16, 2004), and accompanying I&D Memo at Comment 3, Timken argues that it is the Department's practice to subtract DINDIRSU from CEP in cases where a respondent does not meet this requirement. Timken argues that GRW provided no information that supports its assertion that all expenses captured in DINDIRSU support only its sales to its U.S. affiliate rather than its U.S. affiliate's re-sales to unaffiliated customers in the United States. Timken focuses on GRW's statement in its supplemental questionnaire response where GRW states that it has used the ISEs incurred in the home market for home-market sales (reported in the INDIRSH computer field) to also report DINDIRSU because the costs relating to the U.S. market are not identifiable separately in the pool of all ISEs in GRW's accounting system. Timken argues that, because GRW cannot distinguish expenses attributable to home-market sales from expenses attributable to its U.S. affiliate's sales, its assertion that the same expenses support its sales to the U.S. affiliate, and not the U.S. affiliate's re-sales, is not credible. Finally, Timken argues that the Department should not accept GRW's claim that the CEP level of trade is at a less advanced stage of distribution than the home-market levels of trade. Timken argues that GRW's reporting of identical ratios for INDIRSH and DINDIRSU and its reporting no direct selling expenses in either market renders its information regarding the differences in selling functions, as criteria for establishing different levels of trade, moot.

GRW argues that section 772 of the Act and 19 CFR 351.402(b) do not require a deduction from CEP of ISEs incurred outside the United States if they do not support sales to unaffiliated customers in the United States. GRW cites *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part*, 70 FR 7237 (February 11, 2005), and accompanying I&D Memo at Comment 4 and *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 70 FR 3677 (January 26, 2005), and accompanying I&D Memo at Comment 7. GRW argues that it demonstrated, by way of its narrative explanation in the questionnaire response, that the ISEs incurred in Germany are related to its sales to its U.S. affiliate and not to sales to unaffiliated

U.S. customers; GRW contends that the U.S. affiliate is responsible for all facets of its sales in the United States. GRW argues that Timken did not provide any contrary evidence.

GRW argues that its reporting of the same expense factor in both INDIRSH and DINDIRSU, arising from its inability to segregate expenses relating specifically to particular markets, is not an indication that these expenses are incurred in support of sales to unaffiliated U.S. customers.

GRW contends that the Department must reject Timken's argument for denying a CEP-offset adjustment to normal value. GRW argues that the value of ISEs reported in DINDIRSU bears no relation to the accuracy of GRW's reported selling functions and does not play into the Department's level-of-trade analysis. Citing *AFBs 13* and accompanying I&D Memo at Comment 9, GRW argues that the Department determines whether a home-market level of trade is more advanced than the CEP level of trade on the basis of the selling functions performed by a respondent for each level of trade. GRW argues that it satisfied the statutory and regulatory elements for its entitlement to a CEP offset and the Department granted a CEP offset to normal value in the *Preliminary Results*. GRW argues further that Timken presented no argument as to whether GRW has met the requirements for the CEP-offset adjustment nor challenged the legality of Department's level-of-trade analysis.

<u>Department's Position</u>: We find that the information on the record of this review does not warrant an adjustment to CEP for expenses GRW reported in DINDIRSU. We also find that our decision to grant a CEP offset to normal value is supported by record evidence. The regulations at 19 CFR 351.402(b) state that, "{i}n establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid..." Consistent with these regulatory requirements, we must ascertain whether GRW incurred any selling expenses on behalf of its U.S. affiliate (or in addition to the selling expenses its U.S. affiliate incurred) and/or whether GRW reimbursed its U.S. affiliate for selling expenses its affiliate incurred in selling to unaffiliated customers in the United States.

Our examination of the information on the record of this review, including our analysis of the nature of the selling expenses GRW reported for INDIRSH and DINDIRSU, does not lead us to suspect that such activities took place during the POR. In its questionnaire response, GRW stated that, "{r}egarding sales to the U.S. market, GRW provides little or no sales support to its U.S. affiliate. The U.S. affiliate is responsible for selling functions and activities on its sales to unaffiliated U.S. customer." See GRW's October 15, 2008, response at page 16. In exhibit 6 of same response, GRW provided a selling-functions chart that supported its assertions. Nowhere in the response did GRW state that it enables its U.S. affiliate in its efforts to sell in the United States or reimburses the U.S. affiliate for undertaking selling activities in connection with sales in the United States.

Timken speculates that all expenses captured in DINDIRSU support not only GRW's sales to its U.S. affiliate but also its U.S. affiliate's resales to unaffiliated customers in the United States. In fact, GRW reported (in the INDIRSU computer field) the U.S. ISEs. The reported U.S. ISEs are significant in relation to the value of U.S. sales. Also, the reported U.S. ISEs factor is several times greater than the reported factor for DINDIRSU and the home-market ISEs factor. See

GRW's October 15, 2008, response at Exhibits 23 and 30. This demonstrates a significant involvement of GRW's U.S. affiliate in connection with sales in the United States which, in turn, indicates GRW's diminished involvement in these sales.

Timken argues that GRW's inability to identify, from a pool of home-market ISEs, expenses attributable to home-market sales and expenses attributable to sales to its U.S. affiliate casts doubt on GRW's assertion that home-market ISEs do not support selling activities related to sales in the United States. We disagree. GRW provided a clear statement that its U.S. affiliate is a party fully responsible for selling functions with respect to its sales to unaffiliated U.S. customers. Absent contrary information on the record, we do not question the credibility of GRW's statement.

Finally, we disagree with Timken that GRW's use of the INDIRSH factor in reporting the DINDIRSU factor is grounds for finding no differences between the CEP and the home-market levels of trade. GRW's use of the same factor was documented to have resulted from its inability to segregate expenses attributable to sales to its U.S. affiliate. As such, GRW's reporting of the same factor merely suggests that it applies to both GRW's home-market sales and GRW's sales to its U.S. affiliate. It does not suggest that it applies equally to both, or that it applies at all, to sales by the U.S. affiliate in the United States. Our level-of-trade analysis is focused on analyzing qualitatively the differences in selling activities undertaken by a respondent in making sales to different markets. It does not involve the quantitative analysis of ISEs factors that support sales to different markets. In the *Preliminary Results*, we explained our rationale for making a CEP offset to normal value in the calculation of GRW's margin. We find that Timken's argument is not persuasive in its rationale to require us to reverse the level-of-trade conclusion we reached in the *Preliminary Results* for GRW. Accordingly, we continue to find that a CEP offset is warranted in the margin calculations for GRW.

Comment 6: SKF Italy and SKF UK argue that the Department should not deduct CEP profit from the U.S. sales price of bearings sold through the commissioned sales agent in the United States. The respondents contend that this adjustment to CEP was improper because their commissioned sales agent is an unaffiliated party and that, by deducting from CEP both CEP profit and the commission paid, the Department effectively double-counted profit. The respondents cite *AFBs 11*, in which the Department agreed that it should not make a CEP-profit adjustment to U.S. price when U.S. sales are made through an unaffiliated consignee.

Timken argues that the statute requires the deduction of CEP profit from the U.S. sales price. Timken alleges that there is no double-counting and that SKF confuses the profit to be made by an affiliated seller (SKF UK's SNFA operations) with the profit to be made by a sales agent. Timken contends that many CEP expenses likely include an element of profit, such as when an affiliated U.S. sales company uses outside computer services to support its sales efforts. Timken asserts that the fact that a profit is made by the agent in providing those services is not relevant to the calculation of a profit ratio or calculation of a CEP profit amount using that ratio.

Department's Position: We deduct CEP profit pursuant to section 772(d)(3) of the Act which indicates that we deduct "profit allocated to the expenses described in paragraphs (1) and (2)." Section 772(d)(1)(A) of the Act directs that we deduct from CEP "commissions for selling the subject merchandise in the United States." Thus, the antidumping law directs that part of the profit we deduct from CEP be allocated to commissions for selling the subject merchandise in the United States.

Moreover, while we acknowledge that there is an element of profit in the commissions SKF pays to its unaffiliated sales agent, section 772(f)(2)(D) of the Act, which defines the profit which is allocated to "the expenses described in paragraphs (1) and (2)" of section 772(d) of the Act, instructs that the profit to be allocated is the "profit earned by the foreign producer, exporter, and affiliated parties…" As the unaffiliated sales agent is not the producer, exporter, or an affiliated party, any profit it realizes is not contemplated by section 772(f)(2)(D) of the Act. Rather, section 772(f)(2)(D) of the Act refers to the profit of the producer/exporter which, in this case, is SKF and its SNFA operations. Furthermore, there is no double-counting because SKF's profit is calculated by subtracting SKF's expenses, which include the entire amount of the commission – including any profit element – paid to the unaffiliated agent, from SKF's revenues.

We acknowledge that this differs from the position we took in *AFBs 11* where we declined to deduct CEP profit on the grounds that, "{b}ecause an amount for profit is already included in the arm's-length commissions SKF UK's SNFA operations paid to the consignee," deducting an amount for CEP profit "would result in double-counting." See *AFBs 11*, 66 FR 36551, and accompanying I&D Memo at Comment 13. As explained above, however, the statute supports our determination to deduct CEP profit from the U.S. sales price.

5. Sample Sales

Comment 7: Timken argues that the Department should not accept Schaeffler Germany's claims that the Department should exclude certain U.S. transactions from its dumping analysis because they were zero-priced sample sales.

Timken asserts that the Department does not automatically exclude every sale with a zero price, as the sale may not be a sample sale but a means of providing a discount. Timken argues that, in order to distinguish between zero-priced sample sales from zero-priced discount sales, the Department looks at the sequence of sales to determine whether the alleged samples were shipped prior to or following shipments of the same product to the same customer.

Based on information Schaeffler Germany submitted, Timken demonstrates that for certain alleged sample sales the shipment sequence suggests that the sales do not qualify as sample sales. Timken also argues that Schaeffler Germany has not demonstrated that the alleged sample sales have unique characteristics to distinguish them from ordinary sales. Timken claims that the reported information on certain alleged sample sales is inconsistent with Schaeffler Germany's statement in its narrative response that the samples are a particular customer's first request for that type of bearing for a particular application. Timken concludes that the Department should deny Schaeffler Germany's sample claims for certain zero-priced transactions and treat these zero-priced transactions as discounts to certain transactions, recalculating the reported gross unit price for the transactions in question.

Schaeffler Germany acknowledges that the transactions in question by one of Schaeffler

Germany's U.S. affiliates were not zero-priced samples but replacements under warranty. Schaeffler Germany explains that a customer ordered bearings with seals but some of the bearings shipped to the customer were without seals. Schaeffler Germany claims that the customer notified it of the missing seals upon receipt of the merchandise and Schaeffler Germany sent replacement bearings with seals the following day at no cost to the customer. Schaeffler Germany concludes that the Department should consider the value of the zero-priced replacement bearings as a warranty expense against the previous sale.

Department's Position: In light of the information on record[2] and Schaffler's admission that the transactions in question were warranty replacements, we have concluded that the sales in question by one of Schaeffler Germany's U.S. affiliates did not qualify as sample sales.[3] The information on the record suggests that the transactions were replacements under warranty. According to our practice and consistent with Schaeffler Germany's reporting methodology for other warranty expenses, we have allocated the costs of the replacement bearings to the affiliate's U.S. sales and deducted an amount for the expenses in question from the U.S. price of the affiliate's sales. See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Changed Circumstance Review and Reinstatement of Antidumping Duty Order*, 74 FR 22885 (May 15, 2009), and accompanying I&D Memo at Comment 4.

6. Short-Term U.S. Interest Rate

For the calculations of U.S. credit expenses and U.S. ICCs incurred in the United States, SKF used the U.S. short-term interest rate which it calculated by averaging the daily federal funds interest rate for the POR because SKF did not have any U.S. short-term borrowings during the POR. The U.S. short-term interest rate SKF reported was 4.25 percent. Because SKF's use of the federal funds interest rate for the calculation of its U.S. short-term interest rate is not consistent with our practice of calculating the U.S. short-term interest rate for a respondent which did not have U.S. short-term borrowings during the POR, for the *Preliminary Results* we recalculated SKF's U.S. short-term interest rate based on the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made (Federal Reserve statistical release). The recalculated U.S. short-term interest rate is 6.64 percent. See *Preliminary Results*, 74 FR at 19060, for details.

For U.S. credit expenses and U.S. ICCs incurred in the United States for subject merchandise SKF USA sold, we used 6.64 percent as the U.S. short-term interest rate. For U.S. credit expenses SKF UK incurred for sales of subject merchandise Somecat produced in Italy, we used 5.29 percent, which is the weighted average of the official rate of the Bank of England for the POR applicable to Somecat's merchandise, which is January 1, 2008, through April 30, 2008. For U.S. ICCs incurred in the United States for subject merchandise Somecat produced and SKF UK sold, we used 6.64 percent as the U.S. short-term interest rate.

[2] Although Schaeffler's submission of factual information on the sales in question was untimely, the Department has exercised its discretion to accept this factual information in order to make a finding on the sales in question. See 19 CFR 351.302(b). No party has objected to Schaeffler's submission of this new factual information.

[3] The information on these transactions and their sequencing is business-proprietary information. For additional discussion, see the August 25, 2009, final analysis memo for Schaeffler Germany.

Comment 8: SKF argues that the Department's use of 6.64 percent as the U.S. short-term interest rate is unreasonable because it does not account for SKF's creditworthiness. Citing *LMI-LA Metalli Industriale, S.p.A. v. United States,* 912 F.2d 455, 460-61 (CAFC 1990) (*LMI-LA Metalli Industriale, S.p.A.*), which rejected the Department's selection of an interest rate for imputed credit expenses, SKF asserts that "the time value of money" must correspond reasonably to a dollar figure calculated to account for such value during the time between delivery and payment. Citing *LMI-LA Metalli Industriale, S.p.A.*, at 461, SKF argues that the imputed credit expenses must be based on "usual and reasonable commercial behavior" if the credit expenses are to be imputed to conform with commercial reality.

According to SKF, the CIT rejected the Department's selection of a surrogate third-country interest rate in *Maui Pineapple Company, Ltd. v. United States*, 264 F. Supp. 2d 1244, 1263 (CIT 2003) (*Maui Pineapple Company, Ltd.*) because the Department did not address the party's argument that the rate did not reflect the respondent's creditworthiness and remanded the case to the Department to address this argument and explain how the rate the Department chose reflected the respondent's usual and reasonable commercial behavior. In *Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order, Maui Pineapple Company, Ltd., v. United States*, at 7-9 (June 16, 2003) (http://ia.ita.doc.gov/remands/03-42.pdf), aff'd, 286 F. Supp. 2d 1244 (CIT 2003) (*Maui Pineapple Company, Ltd. – Final Remand*), SKF states that the Department took into consideration the respondent's creditworthiness in reevaluating the applicability of alternative interest rates to the respondent. Specifically, SKF contends, in *Maui Pineapple Company, Ltd. – Final Remand* the Department compared the respondent's actual short-term U.S. borrowings to the published U.S. prime rate and concluded that the respondent was a favored borrower that qualified for lower rates because the respondent obtained lower interest rates than the published rates. As a result, SKF explains, the Department selected a published 30-day commercial paper rate, which was lower than the local Canadian prime rate, as a surrogate third-country interest rate in *Maui Pineapple Company, Ltd. – Final Remand*.

SKF argues that the Department has diverged from its Policy Bulletin 98.2, Imputed Credit Expenses and Interest Rates (February 23, 1998) (Policy Bulletin 98.2), in past cases when it determines that the rates published in the Federal Reserve's statistical release are less reflective of a respondent's actual commercial activity. SKF cites *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 1816 (January 14, 2003), and accompanying I&D Memo at Comment 8 (*Gray Portland Cement*), in which the Department recalculated a U.S. short-term interest rate based on the LIBOR rate, which is an interbank loan rate equivalent to the federal funds interest rate, rather than the Federal Reserve statistical release because the respondent demonstrated that it had access to the LIBOR rate.

SKF argues that the Department has recognized that the surrogate rate must reflect a respondent's creditworthiness and the commercial reality of short-term interest rates at which a respondent would have borrowed during the POR from a commercial bank in the United States. SKF claims that it has an excellent credit history with preferential U.S. interest rates that it had received from its lenders before the POR. SKF disagrees with the Department's decision not to use SKF's prior lending history in the calculation of its short-term U.S. interest rates on the grounds that it reflected the 2006-07 review period, not the current POR. SKF explains that it used the prior lending history to demonstrate the extent to which SKF received preferential rates in the past and that, if it could provide evidence of the current interest rate it is charged on its loans, the use of surrogate rate would be unnecessary. SKF claims that 4.25 percent is the correct surrogate for calculating U.S. credit expenses and U.S. ICCs incurred in the United States because this rate best demonstrates SKF's usual commercial behavior and approximates most closely the U.S. commercial rate at which SKF borrowed recently. SKF contends that, despite the Department's concern over the time gap between SKF's recent U.S. borrowings and the POR, SKF's most recent U.S. commercial borrowing rates were actually lower than 4.25 percent. SKF claim that 4.25 percent is the most reasonable and accurate proxy for the U.S. short-term interest rate it would have received if it had borrowed externally during the POR.

SKF suggests that, if the Department decides to calculate SKF's U.S. short-term interest rate based on the Federal Reserve statistical release, the Department should use the POR average of the minimal-risk rates published in the Federal Reserve statistical release which would be 5.28 percent. SKF argues that the minimal-risk rates are most reflective of the U.S. short-term interest rate SKF would have received if it had U.S. short-term borrowings from unaffiliated sources during the POR. Citing *LMI-LA Metalli Industriale, S.p.A.*, at 460, SKF claims that the minimal-risk loan rate yields U.S. credit expenses and U.S. ICCs incurred in the United States that "correspond to a dollar figure reasonably calculated" to approximate those imputed expenses and costs SKF incurred. SKF asserts that its most recent U.S. short-term interest rate was comparable to the federal funds interest rate and that this rate is lower than weighted average of the minimal-risk loan rates in the Federal Reserve statistical release for the POR. SKF contends that the weighted-average interest rate for the minimal-risk loans is the closest proxy in the Federal Reserve statistical release that SKF would have been able to obtain during the POR.

In the alternative, SKF suggests that the Department use a combination of the minimal-risk rates and the low-risk rates from the Federal Reserve statistical release as the U.S. short-term interest rate, which would be 5.64 percent, if the Department decides that SKF would not have qualified for the minimal-risk rates. SKF states that Moody's and Standard & Poor's rate its public debt rating as A3 and A-, respectively. SKF argues that the A3 and A- ratings are slightly lower than the AA rating, which qualifies for the minimal-risk rates published in the Federal Reserve statistical release, but are well above the BBB rating, which qualifies for the low-risk rates published in the Federal Reserve statistical release. SKF contends that the Department's use of the all-loans rate, which includes the moderate-risk rates and the other rates as well as the low-risk rates and the minimal-risk rates, to calculate a U.S. short-term interest rate for SKF is unreasonable because the all-loans rate does not reflect SKF's creditworthiness which Moody's and Standard & Poor's have evaluated and determined. SKF asserts that the use of the all-loans rate does not serve as a reasonably calculated proxy based on the "commercial reality of short-term interest rates at which SKF USA Inc. would have borrowed during the POR from a commercial U.S. bank" as the Department stated in the SKF Italy preliminary analysis memorandum dated April 21, 2009, at page 8.

SKF explains that, for the calculation of the 5.64 percent rate, it used 6.78 percent, which is the moderate-risk rate for the May 7-11, 2007, rate published in the Federal Reserve statistical release, instead of 7.62 percent, which is the low-risk rate published for the same period in the

Federal Reserve statistical release, because it is reasonable to assume that a company will borrow at the most favorable rate that is available. SKF states that, in *LMI-LA Metalli Industriale, S.p.A.*, at 461, the CAFC rejected the Department's presumption that an Italian company would borrow in Italy when a lower rate was available in the United States. SKF asserts that, if SKF were considered as a low-risk borrower, the lowest weighted-average borrowing rate that it could have obtained during the May 7-11, 2007, period is 6.78 percent, which is the moderate-risk rate. SKF requests that, consistent with the commercial reality, the Department use the interest rate SKF would have obtained reasonably during the POR in the calculation of the U.S. short-term interest rate.

Timken argues that there is no reason to depart from the Department's practice of using the all-loans rate in the calculation of the U.S. short-term interest rate, which is set forth in Policy Bulletin 98.2. Timken claims that there is no contemporaneous evidence of commercial lending to support SKF's assertion that it would have been able to borrow at better rates than the U.S. short-term interest rate the Department used. Timken states that the Department must use a published rate which is predictable and can be applied in all cases if evidence of actual commercial borrowing during the POR is absent. Citing Policy Bulletin 98.2 at 3, which states, "Although all the methodologies employed by the Department since {*LMI-LA Metalli Industriale, S.p.A.,*} have been reasonable, each of the methodologies has certain flaws. A letter from a bank purporting to establish the rate at which the respondent would have borrowed is often difficult to substantiate," Timken explains that Policy Bulletin 98.2 recognizes and takes account of the fact that establishing the rate at which a company could have borrowed during the POR is difficult in the absence of contemporaneous evidence of actual borrowing.
Timken argues that SKF has provided only an assumption without contemporaneous evidence that SKF would have received the same rates available in the POR as it did in the prior review period. Timken claims that SKF has not provided even a letter from a bank purporting to establish the rate at which it would have borrowed in the POR, thus weakening its argument concerning this issue. Timken states that the Department provided SKF with an opportunity to submit in a supplemental response its supporting documentation concerning its use of the federal funds interest rate but SKF did not provide such information.

Timken distinguishes SKF from the respondent in *Gray Portland Cement*, arguing that, in *Gray Portland Cement*, the Department appeared to have had specific evidence that the respondent had access to the alternative published rate whereas SKF has put forth no evidence that it had access to a rate similar to the federal funds interest rate during the POR. Timken also states that SKF's reliance on *Maui Pineapple Company, Ltd. – Final Remand* is unavailing because, unlike in these administrative reviews for SKF, the Department seems to have had record evidence supporting its decision to deviate from its practice.

<u>Department's Position</u>: For the final results, we have continued to use the U.S. short-term interest rate we calculated for SKF's U.S. credit expenses and U.S. ICCs incurred in the United States for subject merchandise SKF USA sold in the United States using the all-loans rate in the Federal Reserve statistical release, which we used in the *Preliminary Results*. It is our practice to calculate a respondent's U.S. short-term interest rate based on the all-loans rate in the Federal Reserve statistical release if the respondent did not provide its own U.S. short-term interest rate based on its own U.S. short-term borrowing rates during the POR and if the respondent was

unable to demonstrate the rate it would have received during the POR. See, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia*, 71 FR 7016 (February 10, 2006), and accompanying I&D Memo at Comment 4.

SKF reported that it did not borrow U.S. short-term loans during the POR. SKF did not provide documentation supporting its claim that during the POR it would have received U.S. short-term interest rates which are lower than the U.S. short-term interest rate we used in the *Preliminary Results*. SKF's claim concerning the calculation of the U.S. short-term interest rate is based only on its past borrowing history prior to the POR, not based on supporting documentation demonstrating that it would have continued to receive a low U.S. short-term interest rate during the POR. SKF did not provide any source documentation demonstrating what rate it would have received during the POR. Moreover, the federal funds interest rate is the interest rate at which private depository institutions lend balances at the Federal Reserve to other depository institutions. This rate is not an accurate reflection of the interest rate SKF would have received in the normal course of business. Because SKF is a producer of merchandise, not a bank, the federal funds interest rate is not applicable to SKF in its normal course of business. Therefore, we have decided that it is not appropriate to use the U.S. short-term interest rate based on the federal funds interest rate or the minimal-risk rate from the Federal Reserve statistical release, absent a showing by SKF that such interest rates were available to the company during the POR.

We have also decided that it is not appropriate to use the average of the minimal-risk rate and the low-risk rate published in the Federal Reserve statistical release as the U.S. short-term interest rate as SKF suggests. The Federal Reserve statistical release entitled *Survey of Terms of Business Lending (FR 2028A) Instructions, Paragraph 13. Risk Rating* (*Survey of Terms of Business Lending Instructions*), which SKF submitted for the record, indicates that a public debt rating alone is a necessary but not sufficient characteristic in deciding whether a company qualifies for the minimal-risk rate or the low-risk rate. To qualify as a minimal-risk or low-risk borrower, a company has to meet all characteristics listed in the *Survey of Terms of Business Lending Instructions*.

Because the *Survey of Terms of Business Lending Instructions* states that these loans would have the risk levels similar to loans with all listed characteristics, not just one of the listed characteristics, we are not able to determine that SKF would have qualified for minimal- to low-risk rates for U.S. short-term borrowings during the POR based only on SKF's public debt ratings. SKF has not submitted sufficient information for us to decide that SKF had all listed characteristics during the POR to qualify for the minimal-risk rate or the low-risk rate. Moreover, with the information SKF submitted for purposes of these administrative reviews of the antidumping duty orders, we are not able to determine whether a U.S. bank would find that a company possessed all listed characteristics to qualify for minimal- or low-risk rates as specified in the Federal Reserve statistical release. Because we are not able to decide that SKF would have qualified for a minimal-risk loan, a low-risk loan, or an average of the minimal-risk loan and the low-risk loan during the POR based on the public debt rating provided by corporate rating agencies and other information on the record of these reviews, we have not used the average of the minimal-risk rate and the low-risk rate published in the Federal Reserve statistical release.

We also find that SKF is distinguishable from Metalli Industriale S.p.A., a respondent in *LMI-LA Metalli Industriale, S.p.A.*, in that Metalli Industriale S.p.A. submitted sufficient evidence to demonstrate that during the period of investigation it had access to U.S. short-term interest rates which were slightly lower than the rate published by the Federal Reserve and substantially lower than the Italian lira-denominated rate we used in *Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From Italy*, 52 FR 816 (January 9, 1987). See *LMI-LA Metalli Industriale, S.p.A.*, at 460-61. SKF did not provide evidence demonstrating that during the POR it had access to U.S. short-term interest rates which were lower than the rate we calculated based on the all-loans rate published in the Federal Reserve statistical release. SKF's claims that it had received low short-term interest rates in the past prior to the POR is not sufficient to support SKF's claim that, during the POR, it had access to short-term loan rates comparable to the federal funds interest rate, which SKF used to calculate its U.S. short-term interest rate but to which it does not have access as a manufacturer. Although SKF provided its public debt ratings determined by Moody's and Standard & Poor's to demonstrate that its public debt ratings qualify it for short-term borrowings at a rate above low-risk rates published in the Federal Reserve statistical release, a public debt rating alone is not sufficient for us to rely on to determine that SKF is qualified for certain short-term interest rates which are lower than the rates we would normally determine consistent with our practice because, as we discuss above, the *Survey of Terms of Business Lending Instructions* provides, in addition to the public debt rating, several additional criteria which a company needs to meet to be qualified for an interest rate published in the Federal Reserve statistical release.

<u>Comment 9</u>: SKF Italy argues that the Department's use of a 6.64 percent short-term interest rate for U.S. ICCs incurred in the United States for subject merchandise Somecat produced and SKF UK sold is unreasonable. SKF Italy states that SKF UK maintains the inventory of Somecat ball bearings in the United States, invoices the customers for the sales of ball bearings, and receives payment for the ball bearings when they are sold. SKF Italy argues that the 6.64 percent short-term interest rate is unreasonable because it does not account for SKF Italy's creditworthiness and because it is based on the full POR, not the period during which Somecat made the reported sales, *i.e.*, January 1, 2008, through April 30, 2008. SKF Italy suggests that, if the Department decides to rely on the Federal Reserve statistical release for the U.S. short-term interest rate for SKF UK, the Department should choose the minimal-risk commercial and industrial loan rate for the week of February 4-8, 2008, which is 3.99 percent. SKF Italy suggests that, in the alternative, the Department should choose the average of the minimal-risk rate and the low-risk rate for the week of February 4-8, 2008, which is 4.35 percent.

SKF Italy claims that SKF UK is a favored borrower, as evidenced by the Department's use of the surrogate home-market short-term interest rate based on the published British pound interest rate for SKF UK, which is 5.29 percent. SKF Italy asserts that 5.29 percent is even lower than the LIBOR rate for the same period. According to SKF, the Department used the LIBOR rates as the surrogate interest rates for SKF UK in the UK review. SKF argues that this low interest rate establishes that SKF UK is a low-risk borrower and requires that the Department select the minimal-risk rate from the Federal Reserve statistical release for the Somecat-specific POR.

SKF Italy argues that the Department should use SKF UK's surrogate British pound interest rate of 5.29 percent for both U.S. credit expenses and U.S. ICCs incurred in the United States for subject merchandise Somecat produced and SKF UK sold. SKF Italy explains that the use of 5.29 percent is the highest possible surrogate interest rate which is reasonable for subject merchandise Somecat produced. SKF Italy states that a rate higher than 5.29 percent is unreasonable because it assumes that SKF UK would borrow in the United States at an interest rate above the rate available to it in the United Kingdom. Citing *LMI-LA Metalli Industriale, S.p.A.*, at 461, which rejected the Department's presumption that an Italian company would borrow in Italy when a lower rate was available in the United States, SKF Italy claims that assigning a higher U.S. interest rate does not reflect SKF UK's commercial reality because, if the rate were any higher than 5.29 percent, it would be SKF UK's usual and reasonable commercial practice to borrow in the United Kingdom, not in the United States, to finance its U.S. sales. According to SKF Italy, the Department determined in the *Preliminary Results* that 5.29 percent is a reasonable proxy for SKF UK's short-term British pound borrowing rate. Thus, SKF asserts, this rate should be applied to U.S. ICCs for subject merchandise Somecat produced and SKF UK sold.

SKF Italy describes SKF UK's British pound interest rate as an indicator of SKF UK's creditworthiness that the Department must consider in selecting a surrogate U.S. interest rate even if SKF UK's British pound interest rate is not itself used for U.S. sales of ball bearings Somecat produced. Citing *Maui Pineapple Company, Ltd. – Final Remand*, where the Department gauged a respondent's risk level in Canada by comparing its U.S. borrowing rate with the published U.S. prime rate, SKF Italy comments that the Department has evaluated a company's creditworthiness in one country by reference to the spread between its borrowing rate in a third country and the published interest rate in that country.

Timken opposes SKF Italy's arguments in support of lower interest rates. Timken states that, as in the calculation of the U.S. short-term interest rate for U.S. credit expenses and U.S. ICCs incurred for subject merchandise which SKF USA sold, there is no reason to depart from the Department's practice as stated in Policy Bulletin 98.2. Timken explains that, in the absence of POR-specific evidence that SKF had access to particular U.S. short-term interest rates, Policy Bulletin 98.2 requires that the Department use a published average rate during the POR. Timken refers to Policy Bulletin 98.2, which states, "foreign market borrowing rates, even if adjusted to account for changes in the exchange rate, do not necessarily provide an accurate valuation of the loans extended by respondents to the U.S. customers in dollars" and *Certain Cut-to-Length Carbon Steel Plate From Sweden; Final Results of Antidumping Duty Administrative Review*, 61 FR 15772, 15789 (April 9, 1996). Timken also cites to *Certain Corrosion-Resistant Carbon Steel Flat Products From Australia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 14049 (March 29, 1996), in which the Department stated that it uses interest rates applicable to the currency in which the sales were made; Timken argues that the rates published by the Bank of England are less appropriate because SKF Italy's U.S. credit expenses are associated with sales in U.S. dollars.

<u>Department's Position</u>: For the final results, we used the U.S. short-term interest rate of 6.64 percent, which we calculated based on the all-loans rate in the Federal Reserve statistical release, for the U.S. credit expenses and U.S. ICCs incurred in the United States for subject merchandise Somecat produced and SKF UK sold. We find it reasonable to use the U.S. short-term interest rate based on the full POR covering May 1, 2007, through April 30, 2008, instead of the period

for which Somecat reported its U.S. sales because SKF Italy calculated both U.S. credit expenses and U.S. ICCs incurred in the United States for subject merchandise Somecat produced and SKF UK sold using a 365-day period, not a 120-day period. See SKF Italy's March 2, 2009, supplemental response at page 47 and at Appendix C55. Moreover, because Somecat is a collapsed entity of SKF Italy for purposes of this administrative review, we find it appropriate to use the same U.S. short-term interest rate for Somecat and SKF Italy.

We find that the facts of *LMI-LA Metalli Industriale, S.p.A.,* differ from SKF in these reviews. *LMI-LA Metalli Industriale, S.p.A.,* is silent on the issue of whether the U.S. short-term interest rate would have been reasonable if it had been higher than the home-market rate or a third-country rate. Following the CAFC's instructions in *LMI-LA Metalli Industriale, S.p.A.*, that "the imputation of credit cost . . . is a reflection of the time value of money," that it "must correspond to a . . . figure reasonably calculated to account for such value during the gap period between delivery and payment," and that it should conform with commercial reality, it is our practice consistent with Policy Bulletin 98.2 to measure the value of short-term loans by "a short-term interest rate tied to the same currency as the sale." See, *e.g.*, *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 67 FR 6490 (February 12, 2002) (*Sheet and Strip*), and accompanying I&D Memo at Comment 3, and *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Final Results of Antidumping Duty Administrative Review*, 66 FR 11557 (February 26, 2001), and accompanying I&D Memo at Comment 4 (*Printing Presses*). For the sales transactions made in U.S. dollars, in general we use the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made. *Id.*

SKF Italy reported that SKF UK invoiced its U.S. sales transactions involving subject merchandise Somecat produced in U.S. dollars. See SKF Italy's October 21, 2008, original response at Appendix A40, and March 2, 2009, supplemental response at page 47. Therefore, consistent with our practice of calculating credit expenses using "a short-term interest rate tied to the same currency as the sale," we used 6.64 percent for U.S. credit expenses for subject merchandise Somecat produced.

Consistent with Policy Bulletin 98.2, we find that the short-term interest rates based on U.S. dollars, not foreign currencies, reflect most accurately the commercial realities of a respondent's normal business activities involving sales of subject merchandise in U.S. dollars. With respect to the U.S. credit expenses for Somecat ball bearings, we find that the use of a U.S. short-term interest rate based on the all-loans rates published in the Federal Reserve statistical release conforms to SKF UK's commercial reality because SKF UK invoiced all reported sales transactions to U.S. customers in U.S. dollars, thus effectively lending imputed credit-expense amounts in U.S. dollars, not in British pounds, to its U.S. customers between the time it ships the subject merchandise and the time it receives payment. With respect to the U.S. ICCs incurred in the United States for Somecat ball bearings, we find that the use of a U.S. short-term interest rate based on the all-loans rates published in the Federal Reserve statistical release reflects most accurately the imputed ICCs incurred in the United States. SKF Italy reported that all U.S. sales of Somecat ball bearings were made after the importation of the subject merchandise into the United States. See SKF Italy's March 2, 2009, supplemental response at page 37. For the

Somecat ball bearings SKF UK sold in U.S. dollars to U.S. customers, SKF Italy has not provided any evidence to support its claim that it would have borrowed at a lower short-term interest rate based on British pounds, which reflects commercial realities of normal business transactions in British pounds, not U.S. dollars, to finance its U.S. sales of Somecat ball bearings invoiced in U.S. dollars. Therefore, we find that the use of a U.S. short-term interest rate based on the all-loans rates published in the Federal Reserve statistical release reflects the commercial reality of SKF UK's sales of subject merchandise which SKF UK invoiced in U.S. dollars after the importation of subject merchandise into the United States.

SKF's situation is distinguishable from the respondent in *Maui Pineapple Company, Ltd. – Final Remand*. In *Maui Pineapple Company, Ltd. – Final Remand*, we calculated a simple POR average of monthly prime corporate paper rates the Bank of Canada published to apply this surrogate interest rate in the calculation of the respondent's credit expense for sales transactions made in Canadian dollars. See *Maui Pineapple Company, Ltd. – Final Remand* at 5, 8-9. Because SKF has not reported subject merchandise from Italy sold in British pounds, the use of a short-term interest rate based on the Bank of England's official rates would be a departure from our normal practice. Other than stating an assumption that it would have received a short-term loan at a lower rate in the United Kingdom than in the United States, SKF has not provided sufficient evidence to justify a departure from our normal practice in selecting a U.S. short-term interest rate.

For the reasons stated above in response to Comment 8, we did not calculate the U.S. short-term interest rates for SKF UK using the minimal-risk rate or the low-risk rate published in the Federal Reserve statistical release.

Comment 10: SKF UK argues that, if the Department decides not to lower the U.S. short-term interest rate as SKF UK requests, the Department should adjust the LIBOR-based home-market short-term interest rates for SKF UK. SKF UK reiterates that the rates from the Federal Reserve statistical release are not accurate and reasonable reflections of SKF UK's commercial reality. SKF UK claims that the Department should add one percent to the LIBOR rates used as SKF UK's home-market short-term interest rates because this is the prevailing rate for commercial loans. SKF UK explains that this adjustment would be equivalent to the Federal Reserve commercial and industrial loan rates the Department used for SKF UK's U.S. short-term interest rate in the *Preliminary Results*.

Citing *LMI-LA Metalli Industriale, S.p.A.,* at 461, SKF UK contends that assigning SKF UK a significantly higher U.S. short-term interest rate does not make sense because it would borrow in the United Kingdom, not in the United States, if lower rates were available in the United Kingdom. SKF UK asserts that this is true particularly with respect to SKF UK's Stonehouse Operations, which made only EP sales during the POR and delivered all subject merchandise to its U.S. customers in the United Kingdom. SKF UK argues that the Department should give the same consideration to creditworthiness in selecting both home-market and U.S. short-term interest rates.

Timken argues that the Department's acceptance of the home-market short-term interest rates SKF UK used in its response conforms with Policy Bulletin 98.2 because the LIBOR rate is a published rate which is reasonable, readily available, and representative of usual commercial behavior. Timken states that there is "no more evidence to deviate from this standard" than with respect to the Department's calculation of a U.S. short-term interest rate for SKF UK.

Department's Position: For the final results, we have continued to calculate SKF UK's home-market short-term interest rate using the LIBOR rate. When we calculate "imputed credit expenses, we will use a short-term interest rate tied to the currency in which the sales are denominated" and "where a respondent has no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction. For foreign currency transactions, we will establish interest rates on a case-by-case basis using publicly available information, with a preference for published average short-term lending rates." See Policy Bulletin 98.2. Consistent with Policy Bulletin 98.2, for SKF UK, we have continued to use the LIBOR rates which are available publicly and on the record of this administrative review because SKF UK had no short-term borrowings in British pounds during the POR. See *Sheet and Strip* and accompanying I&D Memo at Comment 3 and *Printing Presses* and accompanying I&D Memo at Comment 4.

SKF UK argues that the Department should add one percent to the LIBOR rates used as SKF UK's home-market short-term interest rates because, according to SKF UK, this is the prevailing rate for commercial loans and this adjustment would be equivalent to the Federal Reserve commercial and industrial loan rates the Department used for SKF UK's U.S. short-term interest rate in the *Preliminary Results*. We are not aware of, nor does SKF UK cite to, any evidence on the record of the review to support SKF UK's assertion.

SKF UK argues that assigning it a significantly higher U.S. surrogate interest rate is nonsensical because it would borrow in the United Kingdom instead if a lower rate were available. SKF UK's argument rests in comparing a U.S. dollar borrowing rate with a British pound borrowing rate. As explained in Policy Bulletin 98.2, we use short-term interest rates tied to the currency in which the sales are denominated because the short-term borrowing rate in the relevant currency is the best measure of the time value of money and the cost incurred by the respondent in extending credit to its customers in the particular currency. Thus, it is entirely possible, and not unexpected, that a borrowing rate in one currency can be significantly different from a borrowing rate in a different currency. Because SKF UK's home-market sales are denominated in British pounds, it is appropriate to use a published, publicly available average short-term British pound interest rate to calculate the imputed credit expense for these sales.

7. Freight, Insurance, and Packing Revenue

Comment 11: SKF Italy argues that the Department erred in treating SKF Italy's home-market freight and packing revenues as offsets to corresponding expenses by including certain inland-freight and packing expenses unrelated to the freight- and packing-revenue offset caps. SKF Italy claims that the inland-freight expenses unrelated to the freight-revenue offset caps which were included improperly in the Department's calculation of the freight-revenue offset caps are the inland-freight expenses incurred for shipping SKF Italy-manufactured ball bearings (1) from SKF Germany in Schweinfurt, Germany, to SKF Industrie in Airasca, Italy, and (2) from the European Distribution Center (EDC), an affiliate of SKF Italy, to a transportation hub in Italy.

SKF Italy claims that the packing expenses unrelated to the packing-revenue offset caps but included in the Department's calculation of the packing-revenue offset cap are the packing expenses incurred by (1) SKF Germany for a small volume of ball bearings sold by SKF Industrie in the home market and (2) the EDC on home-market sales of ball bearings produced by SKF Industrie and warehoused at the EDC. SKF Italy explains that SKF Germany or the EDC, not SKF Italy, incurred these freight and packing expenses. SKF Italy argues that it does not offset these freight and packing expenses incurred with the reported freight and packing revenues because it did not charge these freight and packing expenses to its home-market customers.

SKF Italy contends that the inland-freight and packing expenses SKF Industrie incurred for ball bearings shipped from SKF Industrie to home-market customers are the expenses for which the corresponding revenues were intended to compensate. SKF claims that the Department should use only these inland-freight and packing expenses incurred by SKF Industrie as the freight- and packing-revenue offset caps. SKF Italy argues that its October 21, 2008, original response at page B-66 distinguishes the inland-freight expenses SKF Industrie incurred from the inland-freight expenses its affiliates incurred with a specific statement concerning its freight revenue. SKF Italy also argues that its October 21, 2008, original response at page B-67 distinguishes the packing expenses SKF Industrie incurred from the packing expenses its affiliates incurred with a specific statement concerning its packing revenue. Citing its statement in its October 21, 2008, original response at page B-66, that it invoices its customers for the inland-freight expenses which it paid to the freight carrier, SKF Italy states that it does not charge customers for freight revenues with respect to the inland-freight expenses at issue.

SKF Italy asserts that, consistent with the Department's description of the offset calculation in the *Preliminary Results*, the Department's past practice is to treat freight and packing revenues as offsets only to the specific corresponding freight and packing expenses. Citing *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009), and accompanying I&D Memo at Comment 6 (*PRCBs from the PRC*), SKF Italy explains that the Department limited the category of expenses included in the freight-revenue offset cap to the corresponding inland-freight expense based on the respondent's submission in that proceeding indicating that it earned freight revenue in connection with deliveries from regional warehouses to the customer. SKF Italy states that the Department removed U.S. brokerage and handling fees from the offset cap in *PRCBs from the PRC* because freight revenue did not compensate for these expenses.

Timken supports the Department's use of the inland-freight and packing expenses at issue as the freight and packing-revenue offset cap. Timken points out that, while SKF Germany and the EDC may have incurred some of the reported inland-freight and packing expenses, SKF Italy has not explained why this should make any difference because SKF Italy has received the benefits of all reported freight and packing revenues and because the Department deducted from normal value all freight and packing expenses that SKF Italy reported. Citing *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008) (*Orange Juice from Brazil*), and accompanying I&D Memo at Comment 7, and *PRCBs from the PRC* at Comment 6, Timken distinguishes the Department's calculation of the revenue-offset cap for SKF Italy from its exclusion of U.S. brokerage and handling fees from the calculation of the revenue offset in the above-cited case. According to Timken, unlike the inland-freight and packing expenses SKF Italy opposes using to cap the inland-freight and packing revenues, U.S. brokerage and handling fees are not freight expenses.

Department's Position: For the final results for SKF Italy, we have continued to use all inland-freight and packing expenses that we used in the *Preliminary Results* to cap SKF Italy's freight and packing revenues to add to normal value. Our decision to do so is consistent with *Orange Juice from Brazil* and *PRCBs from the PRC* in that, as in those two cases, we capped these revenues using the corresponding expenses which SKF Italy incurred. For example, with respect to the inland-freight revenues and expenses, it is our practice to incorporate "freight-related revenues as offsets to movement expenses because they all relate to the movement and transportation of subject merchandise." See *Orange Juice from Brazil* at Comment 7 and *PRCBs from the PRC* at Comment 6. Therefore, we treat certain revenue as an offset to the corresponding expenses "that are associated with the same type of activity in our calculations." *Id.* We excluded U.S. brokerage and handling fees from the offset cap in *PRCBs from the PRC* because they did not correspond to the freight revenues involved in the case. *PRCBs from the PRC* is not a case with respect to the freight and packing expenses at issue here. Therefore, we have not changed our calculation methodology of capping freight and packing revenues for the final results with respect to SKF Italy.

Comment 12: Schaeffler and GRW argue that the Department should increase U.S. price for freight and insurance revenue received over and above the amount of the expense. Schaeffler and GRW claim that the Department's practice to cap the adjustment at the amount of the expense does not take into account the service mark-up and, therefore, does not account for the full net U.S. price paid by the customers, resulting in an inaccurate measure of Schaeffler's and GRW's dumping activity.

Schaeffler and GRW argue that the Department's recent precedent does not prevent the addition of the full amount of freight and insurance revenue to U.S. price in this review. Schaeffler and GRW allege that in the *Preliminary Results* the Department cites two cases to support this methodology, *Orange Juice from Brazil* and *PRCBs from the PRC*, which Schaeffler and GRW argue do not provide reasons for treating freight and insurance revenue as offsets to shipping expense rather than as an addition to the U.S. price. Schaeffler and GRW assert that the Department's current methodology is a recent departure from past procedure where the Department included such shipping revenues in the U.S. price and that *Allegheny Ludlum Corp. v. United States*, 346 F.3d 1368, 1373 (CAFC 2003), directs the Department to explain its reasons for deviating from past practices.

Schaeffler and GRW argue that, although no statutes or regulations provide specific directions concerning the Department's treatment of freight and insurance profits in its dumping calculations, the Department is obligated to calculate the most accurate dumping margins considering all relevant factors and employing a method reflecting economic reality, as supported by, *e.g.*, *Shakeproof Assembly Components Div. of Ill. Tool Works Inc. v. United States*, 268 F.3d 1376, 1382 (CAFC 2001) (*Shakeproof*).

Schaeffler and GRW argue that section 773(a)(6)(c)(iii) of the Act authorizes the Department to adjust normal value to account for "other differences" in circumstances of sale. According to Schaeffler and GRW, the regulations at section 351.401(c) state that EP, CEP, and normal value are to be derived from a price net of any adjustments as defined in section 351.102(b). Schaeffler and GRW maintain that section 351.102(b) defines price adjustments as price changes such as discounts, rebates, and post-sale price adjustments reflected in the purchaser's net outlay. Citing *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997), Schaeffler and GRW claim that, although these adjustments affect prices, they are not considered "expenses" and must be included in the starting-price calculations. Thus, Schaeffler and GRW continue, freight and insurance revenue qualifies as a price change the Department must include in its calculations of actual starting price.

Schaeffler and GRW contend that, in treating freight and insurance revenue as an offset of shipping costs, the Department ignores the premium price paid by the customer for the product. According to Schaeffler and GRW, the Department's methodology elevates form over substance by treating the price differently depending on how it is characterized on the invoice. Schaeffler and GRW argue that the amount of additional revenue from freight and insurance could be included in the price of the bearings, thus charging the customer more for the product, but under the current methodology this would yield the same dumping margin as when the respondents bill the customer directly for the freight and insurance.

Timken argues that the Department's decision comports with precedent in *Orange Juice from Brazil* and *PRCBs from the PRC*. Timken also argues that the Department's explanation of its preliminary decision focuses properly on the requirements of the statute and the regulations. Specifically, Timken claims, the statute and the regulations enumerate the additions and reductions that are made to U.S. price and that profits realized on the provision of freight or insurance are not included in the enumeration of additions to U.S. price.

Timken states that the Department made deductions pursuant to section 772(c)(2)(A) of the Act only up to the amounts not reimbursed by the customers. Timken explains that, where the revenue exceeded the actual charge for the subject merchandise, the Department did not deduct expenses from the U.S. price. Timken claims that the Department's decision was correct because the regulations provide for price adjustments when calculating the changes in the price charged for the subject merchandise, not for changes in price for the provision of freight and insurance.

Finally, Timken argues, the Department has not elevated form over substance because freight and insurance costs incurred by the seller and presumed to be reflected in the price differ in substance from profits realized from charging the customer separately for these services. Timken concludes that the subject merchandise is bearings and the profit from its sale should be reflected in the price while the sale of freight and insurance services is not subject merchandise and should not be reflected in the price of the bearings used for the Department's dumping analysis.

<u>Department's Position</u>: In accordance with *PRCBs from the PRC*, we have capped the amount of freight and insurance revenue at no greater than the amount of corresponding movement expenses for sales of subject merchandise to the United States and in the home market. See

PRCBs from the PRC and accompanying I&D Memo at Comment 4. As the Department explained in *PRCBs from the PRC*, section 772(c)(1) of the Act provides that the Department shall increase the price used to establish either EP or CEP in only the following three instances: (1) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States; (2) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States; (3) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy. Revenue received by a respondent on the service of freight and insurance is not included as an upward adjustment to U.S. price.

Section 773(a)(6) of the Act provides that the Department shall increase the price used to establish normal value by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States. Revenue received by a respondent on the service of freight and insurance is not included as an upward adjustment to normal value. In addition, section 351.401(c) of the Department's regulations directs the Department to use a price in the calculation of U.S. price and normal value that is net of any price adjustments that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable). The term "price adjustment" is defined under 19 CFR 351.102(b)(38) as a "change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates, and post-sale adjustments, that are reflected in the purchaser's net outlay." The definition specifies that the adjustment applies to changes in the price charged for subject merchandise, *i.e.*, bearings.

In past cases, we have declined to treat freight-related revenues as additions to U.S. price under section 772(c) of the Act or price adjustments under 19 CFR 351.102(b). Rather, we have incorporated these revenues as offsets to movement expenses because they relate to the transportation of subject merchandise or the foreign like product. See, *e.g.*, *Stainless Steel Wire Rod from Sweden: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 51411, 51415 (September 7, 2007) (*SSWR Preliminary Results*), unchanged in *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008). Further, our offset practice limits the granting of an offset to situations where a respondent incurs expenses and realizes revenue for the same type of activity. See *SSWR Preliminary Results*, 72 FR at 51415, *PRCBs from the PRC* and accompanying I&D Memo at Comment 4, and *Orange Juice from Brazil* and accompanying I&D Memo at Comment 7.

According to Schaeffler's and GRW's questionnaire responses, freight and insurance revenues are revenues received from customers for invoice items covering transportation and insurance expenses and arise when freight and insurance are not included in the selling price under the applicable terms of delivery but when the respondent arranges and prepays freight and insurance for the customer. Accordingly, the respondents incurred expenses and realized revenue for these activities. Therefore, we have limited the amount of the freight and insurance revenue used to offset the respondent's movement expenses to the amount of movement expenses incurred on the sale of subject merchandise or the foreign like product.

8. Rate for Firms Not Selected for Individual Examination

Comment 13: Schaeffler Italy argues that the Department's use of a selected respondent's weighted-average margin to establish the rate for a non-selected respondent which requested a review (or had a review requested of it) is unreasonable, inequitable, and contrary to the Department's mandate to calculate dumping margins as accurately as possible. Citing *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1359 (CIT 2008), and *Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review*, 74 FR 17149 (April 14, 2009), and accompanying I&D Memo at Comment 1 (*Lined Paper from India*), Schaeffler Italy explains that, because the statute and regulations are silent on how the Department should decide the margin to be applied to companies not selected for individual review, the Department may develop a reasonable methodology at its own discretion. Citing *Mitsubishi Heavy Indus. v. United States*, 15 F. Supp. 2d 807, 813 (CIT 1998), Schaeffler Italy requests that the Department exercise its discretion within the limit of the guiding precepts of equity, accuracy, and economic reality.

Citing *SNR Roulements v. United States*, 402 F.3d 1358, 1363 (CAFC 2005), and *Shakeproof* at 1382, Schaeffler Italy explains that the Department's primary responsibility in administering the antidumping laws is "to calculate antidumping duties on a fair and equitable basis" and that determining antidumping margins as accurately as possible is an equally important statutory purpose. Moreover, citing *United States v. Eurodif S.A.*, 129 S. Ct. 878, 887 (U.S. 2009), Schaeffler Italy argues that "form should be disregarded for substance and the emphasis should be on economic reality." Additionally, citing *Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077, 1085 (CAFC 2001), Schaeffler Italy requests that the Department consider all relevant factors including those "not present in most antidumping determinations."

Citing *Rhodia, Inc. v. United States*, 185 F. Supp. 2d 1343, 1348 (CIT 2001), Schaeffler Italy explains, the Department's use of the methodology for the application of the all-others rate must have a rational connection to the facts. Schaeffler Italy asserts that the application of SKF Italy's weighted-average margin to Schaeffler Italy is unfair and inaccurate because, as a result of Schaeffler Italy's participation in numerous administrative reviews, the Department has access to Schaeffler Italy's sales history and previous dumping analyses which demonstrate a lack of comparability between SKF Italy's margin for the preliminary results (10.94 percent) and any of the weighted-average margins calculated previously for Schaeffler Italy. Schaeffler Italy claims that the Department's reliance upon the principle that it must calculate a new rate for each non-selected company in an administrative review ignores the spirit of the antidumping laws because the statute's plain language allows the Department the flexibility to formulate a methodology that best complies with its mandate to calculate an accurate margin as the CIT stated in *Yantai Oriental Juice Co. v. United States*, 27 CIT 477, 488 (2003).

Schaeffler Italy argues that, because section 735 of the Act addresses investigations only and section 735(c)(5) of the Act recognizes implicitly that the all-others rate is a one-time fixed rate, the calculation methodology for the all-others rate is intended to result in an overly broad and baseline rate, not as a proxy for an individually calculated rate for each review. Citing *Thai Pineapple Canning Indus. v. United States*, 24 CIT 107, 118 (2000), and *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (CAFC 1995) (*NTN*), Schaeffler Italy argues further that the use of an all-others rate, which is intended to be only an estimate rather than an actual assessment rate, creates an inherent inaccuracy in the calculation methodology.

Citing *Koenig & Bauer-Albert AG v. United States*, 15 F. Supp. 2d 834, 841 (CIT 1998), Schaeffler Italy explains that the purpose of an investigation is to determine an estimated margin to be deposited on future entries whereas the purpose of an administrative review is to assess actual dumping duties and give the parties an opportunity to adjust prices on an annual basis to avoid unfair pricing and dumping duties. Moreover, citing *AK Steel Corp. v. United States*, 21 CIT 1204, 1215 (1997), Schaeffler Italy claims that the goal of an assessment rate is accuracy, rather than estimation, and that the Department's use of SKF Italy's margin as the assessment rate for Schaeffler Italy violates this plain, obvious tenet by reducing the review to one respondent and providing an inaccurate, estimated assessment rate. Citing *Antidumping and Countervailing Duty Proceedings; Assessment of Antidumping Duties*, 63 FR 55361, 55362 (October 15, 1998), Schaeffler Italy explains that the Department has recognized that "any company-specific assessment rate must reflect that company's sales prices to the United States." Schaeffler Italy states that, while any margin not based on Schaeffler Italy's own sales during the POR will be an estimate, the most accurate estimate is the margin based on Schaeffler Italy's own sales from a relatively contemporaneous review period.

Citing *NTN* at 1208, Schaeffler Italy argues that, while equity is inherent in the statute because the antidumping laws are remedial rather than punitive, the weighted-average methodology as applied to Schaeffler Italy is categorically punitive, not equitable or remedial. Schaeffler Italy claims that a preliminary margin which is over five times greater than the margin it received in the two previous years and by far the highest it has ever received in an administrative review is punitive, lacks any rational connection to Schaeffler Italy's actual dumping situation, and disregards any attempt at accuracy.[4] Schaeffler Italy asserts that, because its history and the minor fluctuations in its margins from year to year demonstrate that the margin it received in the last review (*AFBs 17*) is decidedly not punitive and is the most accurate reflection of its U.S. sales during the POR, the cash-deposit and assessment rates that it received in *AFBs 17* is the most reasonable margin for this administrative review.

Citing the August 12, 2008, memorandum to Laurie Parkhill entitled "Ball Bearings and Parts Thereof from Italy – Respondent Selection" (*Respondent-Selection Memo*), Schaeffler Italy explains that the Department selects respondents to conserve its own resources, not to penalize a non-selected respondent. Schaeffler Italy states that there is no statutory or regulatory provision that prohibits the Department from (1) not calculating a new margin for non-selected companies or (2) using sales from a previous review to establish the margin for non-selected companies. Citing *Helmerich & Payne v. United States*, 24 F. Supp. 2d 304, 310 (CIT 1998), which states that the statute does not limit the Department to using sales within a specified period to determine the EP, Schaeffler Italy asserts that the Department has the flexibility to use the most accurate and reasonable method for establishing a rate for Schaeffler Italy such as one that is in line with Schaeffler Italy's experience over many years of participation in this proceeding, not that of SKF Italy which is an entirely different company.

[4] Schaeffler Italy acknowledges that a non-selected respondent can benefit from receiving a selected respondent's margin that is lower than that non-selected respondent's margin from a previous segment of a proceeding.

Schaeffler Italy lists two critical factors that it claims mandate an alternative approach in establishing the margin for Schaeffler Italy: the fact that only one selected respondent and one non-selected respondent are covered by this review and the non-selected company's long history of individually calculated margins within similar ranges. Schaeffler Italy also comments that, when the Department has addressed this issue in, for example, *Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review*, 72 FR 42386 (August 2, 2007), and accompanying I&D Memo at Comment 5 (*Brake Rotors 2005-06*), the Department appeared to conclude that a determination under section 751(a)(2)(C) of the Act must be based on entries made during the current review period regardless of whose entries they were and that a determination cannot be based upon entries made by the company during a previous period. Schaeffler Italy argues that this is an incorrect reading of the statute which does not take into account the effect selection of respondents for individual examination has on this provision. Schaeffler Italy argues that section 751(a)(2)(C) of the Act does not specify the basis upon which the determination is to be made nor does section 751(a)(2)(C) prohibit a determination from being based upon a result from a previous segment of the proceeding. Indeed, Schaeffler Italy explains, the Department often looks to other reviews for information in circumstances where facts available are applied.

Schaeffler Italy claims that, if the Department's strict interpretation of section 751(a)(2)(C) of the Act is correct, then it is correct to apply such a strict interpretation to other statutory provisions. Moreover, Schaeffler Italy explains that a strict interpretation of section 751(a)(2)(A) of the Act would prohibit sampling or selection of respondents for individual examination altogether. According to Schaeffler Italy, a strict reading of sections 751(a)(2)(A) (that the normal value and EP/CEP be determined for each entry for each exporter) would prohibit sampling and the application to non-selected companies of a weighted-average margin based on another company's sales altogether. Accordingly, citing *Laizhou Auto Brake Equip. Co. v. United States*, 30 Int'l Trade Rep. (BNA) 1878 (CIT 2008) (*Laizhou Auto Brake Equip. Co.*), Schaeffler Italy argues that such a strict interpretation cannot stand because the Department's authority to sample or select respondents in administrative reviews nullifies the requirement that a margin be determined for each entry for each company that requested a review. Moreover, citing *Laizhou Auto Brake Equip. Co.*, Schaeffler Italy argues that an authority to sample or select respondents is an exception to the requirement to determine the margin for each entry of each company for which a review was requested. Schaeffler Italy argues that, if the section 751(a)(2)(A) requirement is rendered flexible by selection or sampling, then so too is any statutory provision that requires a "determination" for non-selected respondents to be based on sales that occurred during the period regardless of whose sales those were. Schaeffler Italy explains that, because in *Laizhou Auto Brake Equip. Co.* the CIT recognized that the sampling/selection provision permits the Department to depart from the requirements of section 751(a)(2)(C) of the Act, any reliance on section 751(a)(2)(C) of the Act to invalidate the use of rates from previous reviews for this review is inappropriate and plainly wrong because neither section 751(a)(2)(C) of the Act nor the sampling/selection provision at section 777A(c)(2) of the Act directs the Department to use rates determined in the current review for non-selected respondents.

Schaeffler Italy acknowledges that applying a weighted average of the rates determined for selected respondents to non-selected respondents may be necessary and reasonable in certain circumstances such as for a company that does not have a previously calculated rate or when a company's last participation in an administrative review was not relatively contemporaneous, *e.g.,* within the past three years, but it asserts that these decisions should be made on an *ad hoc* basis and reflect consideration of the facts and circumstances of each special situation. Schaeffler Italy states that it is not recommending a broad policy change by the Department; rather, it requests that the Department use the non-selected respondent's most recently calculated deposit and assessment rates for the final results in a case in which (1) the non-selected respondent has a long history of administrative-review results within a narrowly confined range, (2) the results for the selected respondent bear no reasonable relationship to those results, and (3) there is only one selected company and one non-selected company.

Timken disagrees with Schaeffler Italy's assertions that it has never received a margin in a review over 7.5 percent and that its average margin has been 2.8 percent since *AFBs 3* due to careful control of dumping. Timken explains that the margins for both Schaeffler Italy and SKF Italy have varied greatly over the course of administrative reviews. Timken describes the variation in margins between the two companies as smaller than the variation in margins for the same company over different PORs. Timken argues that Schaeffler Italy's margins have exceeded the margins calculated for SKF Italy in certain reviews and that SKF Italy's margin for the *Preliminary Results* is higher than its prior margins.

Timken states that the margin for SKF Italy in this review reflects the economic conditions during the POR in the home and U.S. markets. Timken explains that Schaeffler Italy has not demonstrated why the margin for SKF Italy is not appropriate in this review. Timken doubts that Schaeffler Italy's *AFBs 17* margin, which was 1.57 percent, is more probative of the margin it would have received during the instant POR.

Citing section 735(c)(1)(B)(i)(II) of the Act, Timken explains that the Department is required to determine the estimated all-others rate for all companies which the Department did not select in accordance with section 777A(c)(2) of the Act for individual examination. In accordance with section 735(c)(5) of the Act, Timken argues, the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average margins established for individually examined companies excluding any zero and *de minimis* margins and any margins determined entirely on the basis of facts available. Citing section 735(c)(5)(B) of the Act, Timken asserts that the Department may use any reasonable method to establish the estimated all-others rate for companies not selected for individual examination if the estimated weighted-average margins established for individually examined companies are zero percent or *de minimis* margins.

Citing *Chevron,* Timken supports the Department's methodology as a permissible construction of the statutory method prescribed in section 735(c)(5) of the Act for calculating margins for respondents not selected for individual examination in an investigation because the statute is silent with respect to the methodology for calculating margins for respondents not selected for individual examination in an administrative review.

In addition, Timken contends, the SAA at 872 contemplates the application of the all-others rate expressly to companies not selected for individual examination in administrative reviews. Citing 19 USC 3512(d), Timken states that the SAA is "an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and the {URAA} in any judicial proceeding in which a question arises concerning such interpretation or application."

Citing, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada*, 70 FR 73437, 73440 (December 12, 2005) (*Softwood Lumber*), and *Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53289 (October 14, 1997) (*Fresh Cut Flowers*), Timken states that the Department's decision to apply the margin for SKF Italy to Schaeffler Italy in this administrative review is consistent with its practice of averaging margins of selected respondents and applying the averaged rate to respondents not selected for individual examination. Timken states further that the CIT has upheld the Department's practice.

Citing, *e.g.*, *Brake Rotors 2005-06* and *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438 (June 22, 2007), Timken argues that it is the Department's practice to use the weighted average of the margins calculated for selected respondents in an administrative review as the cash-deposit rate for respondents not selected for individual examination in the same administrative review. Timken also argues that section 751(a)(2)(C) of the Act requires that the Department use the margin determined in that administrative review as the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

Citing, among others, *AFBs 18* and accompanying I&D Memo at Comment 16 and *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52273 (September 9, 2008), and accompanying I&D Memo at Comment 6 (*Vietnam Shrimp*), Timken explains that the Department has assigned the margins calculated in prior administrative reviews of the same proceeding to respondents not selected for individual examination only in very limited circumstances in which all margins for selected respondents in the current administrative review were zero percent, *de minimis*, or based entirely on facts available.

Citing *Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 72 FR 51595 (September 10, 2007), and accompanying I&D Memo at Comment 1, Timken argues that, because the Department has calculated in this administrative review a margin which is not zero percent, *de minimis*, or based entirely on facts available, the Department does not need to use a rate from a previous administrative review.

Timken contends that Schaeffler Italy has not pointed to any record evidence to support its suggestion that the use of a calculated margin of a single company is unreasonable. Citing, *e.g.*, *Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review*, 74 FR 17149 (April 14, 2009), and accompanying I&D Memo at Comment 1, Timken explains that the Department applied the calculated margin of a single selected respondent to respondents not selected for individual examination.

Department's Position: Section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known exporters and producers of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act permits the Department to limit its examination to either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection or (2) exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined.

In the instant review, the Department faced resource constraints and therefore limited its examination to the exporter/producer which accounted for the largest volume of subject merchandise that could be reasonably examined. See *Respondent-Selection Memo* at 4. Consequently, the Department selected SKF Italy, the largest exporter/producer for which a review had been requested. *Id*.

When the large number of exporters or producers makes it impracticable for the Department to examine all such companies, the Department has had a longstanding practice of exercising its discretion to limit the number of respondents individually examined. See, *e.g., Floral Trade Council v. United States*, 775 F. Supp. 1492 (CIT 1991). In the instant review, resource constraints prevented us from examining both respondents which either requested a review or had a review requested of them. See *Respondent-Selection Memo* at 3. Thus, the Department selected the largest exporter/producer of subject merchandise during the POR.

The Act and the Department's regulations do not address directly how the Department is to establish a rate to be applied to companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. 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 establishing the rate for respondents we did not examine individually 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. Thus, in cases involving limited selection based on exporters accounting for the largest volume of trade, the Department's uniform practice has been to average the margins for the selected companies, excluding zero and *de minimis* rates and rates based entirely on adverse facts available.

Where the margins for all selected respondents are zero, *de minimis*, or based entirely on facts available, the statute provides that the Department will use a "reasonable method" for assigning the rate to non-selected respondents. See section 735(c)(5)(B) of the Act. One method that section 735(c)(5)(B) of the Act contemplates as a possibility is "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." The Department has stated that the selection of a "reasonable method" to use when the margins of the selected respondents are zero, *de minimis*, and/or based on total facts available "must be made on a case-by-case basis and would depend on the facts of the case." See *Brake Rotors From the People's Republic of China: Final Results of 2006-2007*

Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review, 73 FR 32678 (June 10, 2008), and accompanying I&D Memo at Comment 1.

In the instant review, we calculated a margin for SKF Italy. Using section 735(c)(5)(A) of the Act as guidance, because the margin for SKF Italy is not zero, *de minimis*, or based entirely on facts available, we applied SKF Italy's margin to Schaeffler Italy in the *Preliminary Results* and continue to do so for the final results. The existence of a margin that is not zero, *de minimis*, or based entirely on facts available makes it unnecessary for us to apply an alternative "reasonable method" to determine the appropriate margin to apply to Schaeffler Italy. The methodology we have used in the instant case is in keeping with past determinations. See *Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part*, 74 FR 32107 (July 7, 2009), and accompanying I&D Memo at Comment 6, *Lined Paper from India* and accompanying I&D Memo at Comment 1, and *Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 72 FR 51595, and accompanying I&D Memo at Comment 1 (September 10, 2007).

Concerning Schaeffler Italy's arguments that it is inappropriate to base its assessment rate on the methodology for determining the all-others rate, we disagree. We do not find that there is a compelling basis to deviate from our normal practice in this instance. For example, although the rate assigned to Schaeffler Italy is higher than rates previously calculated for Schaeffler Italy, it is also the highest rate calculated for SKF Italy. Further, in certain review periods we have found Schaeffler Italy to have dumping margins higher than the margins calculated for SKF Italy. Therefore, Schaeffler Italy has not demonstrated that the margin applied in this case is inaccurate, based on the record before the Department. In conclusion, we find that it is reasonable and appropriate to follow our normal practice and assign the rate calculated for SKF Italy for this POR to Schaeffler Italy for the same POR.

9. Miscellaneous Issues

A. *Freight Expense*

<u>Comment 14</u>: Timken argues that the Department should ensure that the amounts of international freight deducted from U.S. price are supported by the record. Timken asserts that, in response to the Department's questionnaire, Barden provided invoices for January 2008 to support the freight amount for that month. According to Timken, these invoices show that the weight figures are different from those Barden used to calculate its freight adjustment. Timken contends that the Department should adjust Barden's reported international-freight expenses to account for the difference in weights between the invoices and Barden's calculation.

Barden acknowledges that the weights shown on the invoices do not agree with the weights it used to allocate the expense. Barden argues that the freight invoices it submitted were meant to support the freight charges incurred for January 2008, not all of the weight amounts it used, because the Department only asked for support for the charges. Barden contends that the weights it used to allocate the expense were not taken from the freight invoices but, rather, from the sales invoices from Barden to its U.S. affiliate. Barden claims that it used the net product weight in accordance with the Department's instructions to allocate the expense and that it could not have used the weights appearing on the freight invoices because they did not contain the relevant information concerning net weight and quantity per model which is necessary for a proper allocation. Barden also asserts that, because the total POR weight it used was derived from its sales invoices to its U.S. affiliate, there can be and typically are variances in monthly weight totals that will occur from month to month depending on the date of the invoices, which were used to define the POR in the weight calculation, and the actual dates of U.S. importation, which were used to define the POR for purposes of deriving international-freight costs. Barden claims that these variances even out over the course of the POR to ensure the accuracy of the annualized factor.

Department's Position: We find that it is not appropriate to adjust Barden's reported international-freight expenses. While it is true that the weights in the spreadsheet for January 2008 do not match the weights on the freight invoices, Barden did not claim to have used the weights from the freight invoices to allocate international-freight expenses. Rather, Barden stated that it allocated its international-freight expenses on the basis of "the total net weight of bearings shipped." See Barden's response to section C of the questionnaire dated October 31, 2008, at page 27. Because the weights on the freight invoices are, presumably, gross weights, we would not expect them to match the net weights Barden used to allocate freight expenses. Furthermore, we did not ask Barden to reconcile the weights in the spreadsheet with the weights on the freight invoices. Thus, it would be inappropriate to deny or alter the adjustment without affording Barden the opportunity to remedy or explain any apparent inconsistency. Accordingly, we have accepted Barden's reported international-freight expenses for these final results.

B. *Packing Expense*

Comment 15: SKF UK argues that the Department properly accepted its value-based allocation of transport packing expense because its methodology was reasonable and results in a reasonable approximation of the per-unit packing cost. While acknowledging that the Department normally prefers to allocate packing expenses on the basis of weight, SKF UK claims that it does not incur transport packing expenses on the basis of weight and that the Department has verified this fact. SKF UK asserts that, in any event, it does not maintain product-specific or transaction-specific records with respect to transport packing expenses and that it does not maintain weight records for a large portion of the bearings it produces. Thus, according to SKF UK, its allocation methodology is reasonable given the records it keeps in the ordinary course of business. Citing *Final LTFV*, 54 FR 18992, at Comment 7 and *AFBs 16*, 71 FR 40064, and accompanying I&D Memo at Comment 28, SKF UK contends further that the Department has found the allocation of packing costs based on value to be reasonable. Finally, while acknowledging that its allocation methodology may result in different packing expenses being reported for two different sales of the same bearing at different prices, SKF UK claims that its prices generally do not vary within a given year. Thus, according to SKF UK, the few instances in which its methodology resulted in different packing expenses for different sales of the same bearing merely reflect the fact that all allocations are inexact to some extent and do not render the methodology unreasonable or distortive.

Timken argues that the Department prefers transaction-specific reporting and that, if an allocation is used, the respondent must show that the methodology is as specific as possible and does not cause unreasonable distortions. Timken contends that SKF UK's allocation methodology does not account for differences in shipment size even though SKF UK stated that its packing methods and materials differed depending on the size of the shipment. Timken argues that the Department should accept the allocation only if it is satisfied that the allocation is not distortive.

Department's Position: Section 351.401(g)(1) of the Department's regulations states that "{t}he Secretary may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions."

We have reallocated the reported packing expenses of SKF UK's Stonehouse operations on a weight basis. We have done this because we find that SKF UK's allocation of packing expenses to individual transactions on the basis of value to be unreasonably distortive. At verification of SKF UK's responses which we conducted after the *Preliminary Results*, we found that "two different sales of the same bearing, packed in the same manner, could have different reported packing expenses solely because of differences in price" as a result of SKF UK's methodology. See SKF UK verification report dated May 26, 2009, at page 2. This does, in fact, happen. For example, home-market transactions 511 and 920 are sales of the same model during the same year but during different months. The reported packing expense for the first transaction is significantly different from the reported packing expense for the second transaction as a result of SKF UK's allocation despite the fact that there is no evidence on the record that the bearings are packed any differently. Thus, a U.S. sale compared to the home-market transaction with the higher packing expense may indicate no dumping margin for a dumped sale or indicate a lower margin than we would otherwise calculate because that home-market transaction will have a relatively lower normal value as a result of the relatively higher packing expense reported. Conversely, a U.S. sale compared to the home-market transaction with the lower packing expense may indicate a dumping margin where none should exist or indicate a higher margin than we would otherwise calculate because that home-market transaction will have a relatively higher normal value as a result of the relatively lower packing expense reported.

Moreover, this problem affects a significant proportion of SKF UK's reported home-market and U.S. sales. Because the figures involved are proprietary information, see the SKF UK final results analysis memorandum dated August 25, 2009, and the packing-analysis computer program attached to that memorandum for the proportions by number of sales and by quantity.

Although we recognize that packing expenses are not incurred by weight, we determine that weight is a better method for allocating packing expenses than price because it avoids the problem described above. While no allocation methodology may be completely free from distortion, we find that a weight-based allocation does not include the distortions to packing expenses described above. Moreover, using weight as a means for allocating the packing expenses of SKF UK's Stonehouse operations is consistent with the methodology SKF UK used to allocate the packing expenses of SNFA operations because SKF UK allocated the latter expenses by weight. See SKF UK's January 5, 2009, section B response at page B-54 and its January 5, 2009, section C response at page C-71. Accordingly, we have reallocated the reported packing expenses of SKF UK's Stonehouse operations on the basis of weight using the reported weights that SKF UK reported.

In the *Final LTFV*, we accepted a value-based allocation because "the respondents were unable to allocate these charges on this basis." See *Final LTFV*, 54 FR 18992, at Comment 7. In this review, however, we have the packing expenses SKF reported for all of its home-market and U.S. sales and the per-unit weight of each of those sales. Thus, unlike in the *Final LTFV*, we have the data available to us to reallocate SKF UK's reported packing expenses.

SKF UK's citation to *AFBs 16* is not dispositive because the issue before us with respect to packing expenses was whether the methodology NTN used to distinguish among the various packing requirements with respect to different customer categories was proper. See *AFBs 16*, 71 FR 40064, and accompanying I&D Memo at Comment 28. Whether we should use a value-based methodology or a weight-based methodology for allocating NTN's packing expenses was not raised. *Id*.

C. *Imputed Credit*

<u>Comment 16</u>: Timken argues that the Department should use the facts available for information missing from Barden's questionnaire response. Timken asserts that Barden explained that it used the average number of days taken by the customer to pay to calculate credit expense for those invoices for which it had not received payment by the time it submitted its questionnaire response. Timken alleges that Barden did not update its U.S. sales database when it submitted its supplemental response nor did it identify which sales had not been paid. Timken contends that the Department's usual practice when a respondent has not provided complete information on payment dates and the resulting credit expenses is to extend the number of days for which credit was granted up to the date of the respondent's most recent submission as facts available. Timken urges the Department to apply this practice with respect to all of Barden's U.S. sales.

Barden contends that there were no unpaid invoices and that this can be seen from the fact that it reported payment dates for all transactions. According to Barden, had any invoices not been paid at the time of its response, it would have left the payment-date field blank in its U.S. sales database. Barden asserts that the language regarding average number of days take by the customer is standard language it uses in all initial questionnaire responses but that this language is inoperative in this review because all invoices were paid.

<u>Department's Position</u>: Barden reported payment dates for all U.S. sales and all of these payment dates occurred prior to August 21, 2008, the date which Barden indicated it would use to report as payment date for any as-yet-unpaid sales. See Barden's U.S. sales database and its October 21, 2008, section C response at pages 35-36. Furthermore, Barden stated in its response that, "{f}or all transactions reported during the POR, Barden has used the actual date of payment…" See Barden's October 21, 2008, section C response at page 12. Thus, there is no information missing from the record of the review with respect to U.S. payment dates and no adjustment concerning payment dates to our calculation of Barden's margin is necessary.

D. *Completeness of Database*

Comment 17: Timken alleges that Barden did not provide all sales transactions of the foreign like product because it omitted certain sales of components. Timken urges the Department to control Barden's database reporting and to take whatever action is required to ensure that all sales are reported properly.

Barden contends that it reported all home-market sales requested by the Department properly. Barden asserts that the Department's questionnaire indicated that it need not report home-market sales of parts that were not sold in the United States.

Department's Position: We find that Barden reported its home-market sales properly. In our questionnaire, we told respondents that they "do not need to report comparison-market sales of bearing parts that are not identical to parts sold in the United States." See, *e.g.*, Appendix V of the questionnaire dated August 14, 2008, at page V-11. Thus, we never required Barden to report the sales in question. This is because we do not attempt to find similar matches with respect to parts of ball bearings. Accordingly, we find that Barden complied with our request for information and there is no reason to solicit further information.

E. *Cost of Grease*

Comment 18: Timken argues that, with respect to bearings which GRW purchased from an unaffiliated supplier and where GRW provides the preferred grease to such supplier free of charge, the Department should require GRW to alter its cost response to reflect the full cost of the bearing, including the cost of supplying grease.

GRW argues that Timken's assertion is speculative because there are no facts on the record indicating that the single model which GRW purchased from a single unaffiliated supplier and sold in the United States and in the home market during the POR contained any grease that GRW provided to this supplier. Nevertheless, argues GRW, Timken should have pursued this issue in its pre-verification comments for GRW's cost verification or in any other submission Timken filed prior to verification.

Citing *AFBs 15*, GRW argues that, in situations where the record was inconclusive as to whether a respondent had already accounted for an expense, the Department has deferred from making any conclusions on the issue because it was unable to obtain further information due to the late stage of the proceeding. GRW argues that reasons for rejecting Timken's late claim is similar and even more compelling in this review. At this late stage of the review, GRW argues, the Department is unable to determine whether the bearing model supplied by an unaffiliated supplier contained grease provided by GRW, segregate from the relevant cost center's costs the value of expenses that relate to the provision of free grease from costs of other auxiliary materials and supplies, or ascertain whether GRW could tie the cost of grease to a particular model. Further, GRW argues, in contrast with *AFBs 15*, the record is clear that the cost of any grease has been reported as ISEs and, thus, allocated to sales of purchased bearings. GRW argues that its classification of grease costs as ISEs is appropriate. GRW argues that it is not a manufacturing cost because grease is provided to the bearing producer and GRW does not engage in any manufacturing activity under this scenario.

Given that the grease for the model in question is a standard, low-temperature grease, GRW argues, it is highly unlikely that the unaffiliated supplier would have required GRW to provide it. Finally, argues GRW, the Department verified GRW's methodology for reporting costs (which involved separation of manufacturing and selling expenses) and did not find any element of reported costs or categorization thereof that were distortive or underreported the cost of manufacturing.

Department's Position: We find that the record is inconclusive as to whether the bearing model for which GRW reported certain home-market and U.S. sales actually contained any grease which GRW provided free of charge to its unaffiliated manufacturer. Even were it not so, given the detail and structure of GRW's reporting of sales and cost information, we do not find it is possible to isolate the cost of grease. Further, GRW responded fully to all of our requests for information and we verified GRW's cost response, which included our examination of the methodology GRW used to segregate production and selling expenses. We found no instances where GRW misclassified or misreported any cost or sales information that we examined in the context of this review. Moreover, this involved a single unaffiliated supplier from which GRW sourced a single ball-bearing model for sales during the POR, there was an equal chance that GRW may have or may not have provided the grease, and GRW confirmed that the grease in question is not a high-performance or specialty type of grease; any alteration of GRW's reported costs are likely to be *de minimis*. Finally, we are satisfied that GRW reported the costs in its reporting of ISEs and, as GRW argues, it remains disputable whether the costs in question are classified properly as selling expenses or manufacturing costs. For these reasons, we do not find it appropriate to require GRW to restructure its cost response.

10. Ministerial Errors

Comment 19: Timken alleges that the Department made a ministerial error with respect to SKF Italy's home-market rebate number 5. Timken claims that, despite SKF Italy's narrative response stating that there was no home-market rebate 5 during the POR, there are certain values in SKF Italy's home-market sales database for SKF Italy's home-market rebate number 5 due to an apparent error. Timken requests that the Department correct this error.

SKF Italy explains that this error may have occurred while the Department converted SKF Italy's text file of the home-market sales database into a SAS database, which the Department used in the calculation, because SKF Italy's text file does not contain the error Timken alleges. SKF Italy explains that it cannot examine the extent of the error fully because the Department does not disclose its methodology for conversion of SKF Italy's text file into a SAS database and the converted SAS database in either an electronic or printed version. SKF Italy states that it is uncertain whether the errors Timken alleged are the only errors or consistent throughout the SAS database. SKF Italy requests that the Department convert the text version to a SAS database using the file layouts SKF Italy provided in its questionnaire response.

Department's Position: We have determined that we made an isolated error in converting the text file of SKF Italy's home-market sales database to a SAS database. For the final results, we have corrected the error. See the SKF Italy final analysis memorandum at page 2 for more details which contain SKF Italy's business-proprietary information.

Comment 20: SKF Italy states that the Department's preliminary draft liquidation instructions are missing reference to SKF Italy's entries of Somecat-made ball bearings during the period January 1, 2008, through April 30, 2008.

SKF Italy comments that the Department did not include ball bearings from Italy produced by Somecat and exported by Somecat and/or SNFA UK before January 1, 2008, in the calculation of the margin. SKF Italy states that, arguably, entries of Somecat-made ball bearings became subject to the Italy order on January 1, 2008, when SKF UK acquired the assets of SNFA UK and exports by SNFA UK ceased. Therefore, SKF Italy argues, the Department needs to instruct CBP concerning the disposition of entries of ball bearings produced by Somecat. SKF Italy requests that the Department add language to its draft liquidation instructions which instructs CBP to liquidate entries of ball bearings and parts thereof from Italy produced by Somecat and exported by Somecat or SKF UK and imported by or sold to SKF UK during the period January 1, 2008, through April 30, 2008.

SKF Italy also requests that the Department add language to the liquidation instructions ensuring that ball bearings and parts thereof from Italy produced by Somecat and exported to the United States by SNFA UK for the period May 1, 1999, through December 31, 2007, are liquidated without regard to antidumping duties. SKF Italy requests the addition of language in the liquidation instructions which reiterates the fact that the order was revoked in part with respect to ball bearings and parts thereof from Italy produced by Somecat and exported by SNFA UK effective May 1, 1999, instructs CBP to liquidate without regard to antidumping duties ball bearings and parts thereof produced by Somecat and exported to the United States by SNFA UK for the period May 1, 1999, through December 31, 2007, and states that, with the purchase of SNFA UK's assets by SKF UK, effective January 1, 2008, Somecat ball bearings "arguably again became subject to the antidumping duty order covering" ball bearings and parts thereof from Italy.

SKF Italy also requests that the Department instruct CBP to assess antidumping duties at the all-others rate in effect on the date of entry for all shipments of ball bearings and parts thereof from Italy produced by Somecat and not exported by Somecat or SKF UK during the period January 1, 2008, through April 30, 2008. SKF Italy suggests the insertion of this language as a result of the Department's clarification of its assessment regulation in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of AD Duties*).

Timken did not comment on this issue.

Department's Position: With respect to Somecat, the August 11, 2000, revocation covered ball bearings and parts thereof produced by Somecat and exported by either Somecat or SNFA UK on or after May 1, 1999. Therefore, Somecat-produced subject merchandise exported to the United States by SKF UK were not subject to the revocation. Because SKF Italy reported that ball bearings produced by Somecat were exported to the United States by SKF UK starting on January 1, 2008, we have inserted a paragraph to cover such sales. We have inserted a paragraph which instructs CBP to liquidate at the all-others rate any entries of Somecat-produced ball bearings during the POR which were exported by firms other than those discussed above. See the SKF Italy final draft liquidation instructions.

Finally, because we have issued messages which instruct CBP to liquidate entries of ball bearings and parts thereof produced by Somecat and sold by either Somecat or SNFA UK effective May 1, 1999 (see message numbers 7136202 dated May 17, 2007, and 8115201 dated April 24, 2008), in accordance with the revocation of the order in part (see *AFBs 10*), any entries produced by Somecat and sold by either Somecat or SNFA UK should have been liquidated already. Thus, there is no reason to change the liquidation instructions on this point as SKF Italy suggests.

<u>Comment 21</u>: SKF UK argues that the Department should change its draft liquidation instructions on three points. SKF UK contends that there were typographical errors concerning the period for which CBP was to collect duties and application of the all-others rate pursuant to *Assessment of AD Duties*.

SKF UK also argues that, because the Department determined that bearings produced and exported by SNFA UK prior to January 1, 2008, are not subject merchandise due to the 2001 revocation in part, the Department should include language to ensure that such bearings are liquidated without regard to antidumping duties.

Timken did not comment on SKF UK's first two arguments. With respect to the third argument, Timken contends that the proposed change appears to be unnecessary because the imports in question were not suspended in light of the Department's revocation in part.

<u>Department's Position</u>: First, we did have a typographical error in our draft liquidation instruction with respect to the period. The correct period for assessment of duties is May 1, 2007, through April 30, 2008. We have corrected the error for purposes of the final liquidation instructions. Second, we only revoked the order with respect to those entries produced and exported by SNFA UK. Any SNFA UK-produced bearings shipped by another party (such as SKF UK) continued to be subject to the order.

We have also corrected the liquidation instructions to clarify the kinds of entries which are covered by the instructions pursuant to *Assessment of AD Duties*.

Finally, SNFA UK is not covered by this administrative review. Because SNFA UK was revoked from the order (see *AFBs 11*), and liquidation instructions were already issued to CBP (see message number 7341205 dated 12/7/2007), any entries produced and exported by SNFA UK should already have been liquidated. Thus, there is no reason to change SKF UK's liquidation instructions on this point as SKF UK suggests.

<u>Comment 22</u>: Timken asserts that there is an apparent ministerial error in the calculation of SKF France's margin. Specifically, Timken observes that the home-market sales database which was submitted with SKF France's supplemental questionnaire response contained fewer observations than the home-market sales database which was submitted with SKF France's original questionnaire response. Timken requests that the Department ensure that it is using the complete universe of SKF France's home-market sales.

SKF France explains that, while Timken is correct in its observation, SKF France properly removed the sales in question from the home-market sales database, which it submitted with its supplemental questionnaire response. Specifically, SKF France explains that, because it does not export bearing kits to the United States, it has consistently, and with the Department's authorization, only reported home-market sales of bearing kits which consist of a single bearing and no other components. SKF France explains that, in the home-market sales database submitted with its original questionnaire response, it had inadvertently included a *de minimis* number of home-market sales of bearing kits which contained components other than a single bearing. SKF France explains that it removed these observations from its home-market sales file when it submitted a revised home-market sales database with its supplemental questionnaire response. SKF France apologizes for not notifying the Department of this change. SKF comments that, both in terms of sales quantities and the effect on the margin calculation, the impact of these removed observations is *de minimis*.

Department's Position: The Department has determined that SKF France's margin-calculation in the *Preliminary Results* did not contain a clerical error. The Department has determined previously that a comparison of a bearing kit sold in the comparison market with a bearing sold in the United States would create an unreasonable price comparison. See *AFBs 18* and accompanying I&D Memo at Comment 10. Moreover, because SKF France's original and supplemental questionnaire responses were subject to verification, we are satisfied with SKF France's explanation for its removal of these observations from its home-market sales list. See *AFBs 7* at Comment 17.B (stating "{t}he fact that respondents' data is subject to verification serves to ensure its accuracy"). Accordingly, we have not made a change in our calculations for these final results.

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 ___X_____ Disagree _________

/S/ CAS

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Carole A. Showers
Acting Deputy Assistant Secretary
for Policy and Negotiations

August 25, 2009

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Date