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**MEMORANDUM TO:** Faryar Shirzad  
Assistant Secretary  
for Import Administration

**FROM:** Richard W. Moreland  
Deputy Assistant Secretary  
Import Administration, Group I

**SUBJECT:** Issues and Decision Memo for the 2000-2001 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results

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**Summary**

We have analyzed the briefs and rebuttal briefs of interested parties in the 2000-2001 administrative review of the antidumping duty order covering tapered roller bearings and parts thereof, finished and unfinished ("TRBs" or "subject merchandise"), from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. We recommend that you approve the positions we have developed in the "Discussion of Issues" section of this memorandum. Below is a complete list of the issues in this administrative review for which we received comments and rebuttal comments from parties:

- Comment 1: Steel Data Used for Valuing Cups and Cones is Aberrational
- Comment 2: Excluding Certain Data from the Cups and Cones Valuation
- Comment 3: Steel Data Used for Valuing Rollers and Cages is Aberrational
- Comment 4: Excluding Certain Data Used in Steel and Scrap Surrogate Values
- Comment 5: Overhead, Selling, General, and Administrative Expense ("SG&A"), and Profit Ratios
- Comment 6: Marine Insurance
- Comment 7: Energy Factors
- Comment 8: Seals Allegedly Used in the Manufacture of TRBs
- Comment 9: Treatment of Sales Above Normal Value ("NV")
- Comment 10: Revocations

- Comment 11: Wanxiang Group Corporation (“Wanxiang”) Constructed Export Price (“CEP”) vs. Export Price (“EP”) Sales
- Comment 12: Wanxiang Domestic Brokerage and Handling
- Comment 13: Wanxiang Credit Expenses
- Comment 14: Zhejiang Machinery Import & Export Corp.’s (“ZMC”) Market Economy Steel
- Comment 15: ZMC Ocean Freight
- Comment 16: Valuation of ZMC’s Ocean Freight Costs on a Packed Weight Basis
- Comment 17: ZMC Labor Hours
- Comment 18: China National Machinery Import & Export Corporation (“CMC”) Cage Steel
- Comment 19: Valuation of CMC’s U.S. Inland Freight Costs on a Packed Weight Basis

## **Background**

On July 9, 2001, the Department of Commerce (“the Department”) published the preliminary results and partial rescission of this administrative review of TRBs from the PRC. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Preliminary Results of 2000-2001 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part, 67 FR 45451 (July 9, 2002) (“Preliminary Results”). The period of review (“POR”) is June 1, 2000, through May 31, 2001. We invited parties to comment on the Preliminary Results.

## **Discussion of Issues**

### **Common Issues**

#### **Comment 1: Steel Data Used for Valuing Cups and Cones is Aberrational**

*Respondents’ Argument:* CMC, Wanxiang, Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory (“Hailin”), and Luoyang Bearing Corporation (Group) (“Luoyang”) (collectively, “CMC et al”) argue that the Department acted appropriately in rejecting as aberrational Indian import data for the valuation of hot-rolled alloy steel bars used in the production of cups and cones. However, CMC et al claim that the data on Japanese exports to India (“Japan/India prices”) used by the Department instead is also aberrational and should not be relied upon for the final results of this review.

CMC et al first argue that, in comparing the Japan/India prices to the U.S. benchmark, the Department should adjust the Japan/India price to include ocean freight and marine insurance incurred in shipping the product from Japan to India. CMC et al then argue that the adjusted Japan/India value of \$894/MT is aberrational because it exceeds the U.S. benchmark range of

\$510-848/MT. Citing to the Final Results of Redetermination Pursuant to Court Remand in Olympia Industrial, Inc. v. United States, Slip Op. 98-49 (Court of International Trade's ("CIT") 1998) ("Olympia II Remand Redetermination") and the Final Results of Redetermination Pursuant to Court Remand in Timken Company v. United States, Slip Op. 02-38 (CIT 2002) ("TRBs X Remand Redetermination"), CMC et al contend that it is the Department's practice to reject as aberrational data that exceeds the U.S. benchmark. According to CMC et al, because the U.S. benchmark is representative of the world market price for this type of steel, any data higher than this benchmark is aberrational because no producer in the world market would purchase at that price. Relying on such aberrational data for the final results would, according to CMC et al, lead to an inaccurate margin.

CMC et al argue that, for the final results, the Department should instead rely upon either Indonesian import data or Japanese exports to Indonesia data on the record of TRBs XIII.<sup>1</sup> CMC et al claim that the Indonesian import data yields an average value for steel bar used to produce cups and cones of approximately \$657/MT, which falls within the range of the U.S. benchmark values. Alternatively, CMC et al argue that the value of Japanese exports to Indonesia was \$520/MT, which also falls within the benchmark range. CMC et al conclude that, since both sets of data fall within the U.S. benchmark range, either could be used for the final results.

*Petitioner's Argument:* The petitioner disagrees with CMC et al's argument that data that exceeds the benchmark is aberrational, and contends that CMC et al never cite to any statutory authority mandating that the Department consider data higher than the benchmark to be aberrational. The petitioner argues that the only support cited by CMC et al for this claim are two remand determinations in which the Department determined that certain specific values on the record in those two cases were too high and excluded them from the calculations. However, the petitioner notes that those remand determinations do not indicate a general policy in which the Department automatically rejects surrogate values that are outside of the U.S. benchmark. The petitioner argues that the Department has broad discretion in selecting the surrogate values for factors of production, and that its practice is to decide such issues on a case-by-case basis. The petitioner claims that the Department has never suggested, nor have the courts mandated, that values selected by the Department should fall within a certain benchmark range, or within a specific percentage above or below such a range. Rather, the petitioner argues, the purpose of the benchmark price range selected by the Department is to determine which potential surrogate prices are reasonable in comparison to the benchmark. The petitioner argues that a closer conformity between the U.S. benchmark and the surrogate values actually used would, in effect, mean using the United States as a surrogate country, which would violate statutory requirements that the surrogate be at a level of comparable economic development to the nonmarket economy ("NME") country.

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<sup>1</sup>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 57420 (November 15, 2001) ("TRBs XIII").

The petitioner also contends that, if the Japan/India price is not adjusted for ocean freight and marine insurance, it is well within the benchmark range. Even if it were adjusted for freight and insurance, the petitioner argues that the average value remains only slightly above the benchmark range. Moreover, the petitioner contends that the six-digit Harmonized Schedule (“HS”) Indonesian import data is less accurate than the eight-digit HS data available for India. Therefore, the petitioner argues that there is no reason for the Department to reject the Japan/India data and resort to the less accurate secondary surrogate country data for valuing steel used in the production of cups and cones.

*Department’s Position:* We disagree with CMC et al that the Department should reject the Japan/India data for valuing steel used in the production of TRBs cups and cones simply because the data exceeds the U.S. benchmark range.

We first note that, in making our comparison between the U.S. benchmark data and the Japan/India data, we do not agree that the Japan/India values should be adjusted to include freight and marine insurance. This is because we calculate the U.S. benchmark using the Free On Board (“FOB”) value of the steel input(s), a value that does not include freight or marine insurance. Consequently, we have compared like values.

Regarding our application of the benchmark, according to section 773(c)(1) of the Tariff Act of 1930, as amended (“the Act”), the Department values the factors of production reported by an NME producer based on “the best available information regarding the value of such factors in a market country or countries considered to be appropriate by the {Department}.” Section 773(c)(4) of the Act further stipulates that the Department should value such factors, to the extent possible, using prices or costs of production in one or more market economy countries that are “at a level of economic development comparable to that of the nonmarket economy country” and are “significant producers of comparable merchandise.” The courts have determined in several past cases that the statute grants the Department broad discretion to determine the “best available information” in a reasonable manner on a case-by-case basis. See, e.g., Lasko Metal Prods., Inc. v. United States, 43 F.3d 1442, 1446 (Federal Circuit (“CAFC”) 1994) (“Lasko”) and Luoyang Bearing Factory v. United States, Slip Op. 02-118 (CIT 2002) (“Luoyang”).

As we noted in the TRBs X Remand Redetermination, as well as in past TRBs reviews (see, e.g., TRBs X<sup>2</sup>), the purpose of a benchmark is to test the reliability of certain values under consideration as surrogate values. For cups and cones, we have used U.S. prices as a benchmark because the Harmonized Tariff Schedule of the United States (“HTS”) category is the only world market HS category of which we are aware that explicitly contains only bearing quality steel, the type of steel used to manufacture TRBs cups and cones. By using values from the U.S. HTS

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<sup>2</sup>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke in Part, 63 FR 63842, 63851 (November 17, 1998) (“TRBs X”).

category, we are able to test whether the broader surrogate country HS categories likely reflect imports of bearing quality steel or whether they likely reflect imports of other types of steel. The use of the U.S. data for this purpose has been upheld by the CIT. See, e.g., Timken Company v. United States, 59 F. Supp. 2<sup>nd</sup> 1371, 1376 (CIT 1999) and Timken Company v. United States, Slip Op. 02-38 (CIT 2002).

In the instant proceeding, CMC et al argue that the Department should reject the Japan/India data for valuing steel used in the production of TRBs cups and cones simply because the value is outside of and above the U.S. benchmark range. By making such an argument, CMC et al are essentially arguing that, if something is not exactly the same as the benchmark, then it must be aberrational and unreliable. However, as noted above, the purpose of the benchmark is to test the reliability of potential surrogate values based on broader HS categories against more narrow categories that more accurately reflect world market prices for the steel in question. As long as a surrogate value is reasonably close to the benchmark value or range of benchmark values, we will not treat that surrogate value as being aberrational.

Regarding CMC et al's citations to the Olympia II Remand Redetermination and the TRBs X Remand Redetermination, we note that in neither case did we specify a general practice of rejecting data that was above or below the benchmark as aberrational. Rather, we made the determinations to not use certain values and instead to rely on other values based on the facts specific to those cases. As the above-noted determinations illustrate, the Department views the consistency, or inconsistency, of any proposed surrogate data with the benchmark on a case-by-case basis. See, e.g., Lasko and Luoyang.

In the instant review, we have revised the Japan/India value, as discussed in Comment 2, with a resulting Japan/India value of approximately \$848/MT. The U.S. benchmark range is \$510-847/MT. In comparing these data, we determine that the Japan/India data is consistent with the benchmark data. Therefore, as discussed in the Preliminary Results and in past TRBs cases, because the Japanese tariff category is the narrowest category which could contain bearing quality steel, because it is consistent with our benchmark, and because we have chosen India as our primary surrogate country, we believe that the Japan/India data continues to provide the best available information for valuing steel used in the production of cups and cones.

## **Comment 2: Excluding Certain Data from the Cups and Cones Valuation**

*Respondents' Arguments:* CMC et al also argue that the Japan/India data relied upon by the Department in the Preliminary Results to value steel used to produce cups and cones ranged from \$270/MT in June 1999 to \$2,062/MT in July 1999. Due to the wild variance from month to month, CMC et al urge the Department to treat these values as aberrational and unreliable. CMC et al argue that these aberrations become even more evident after the Department adjusts the Japan/India data to include marine insurance and ocean freight. Therefore, CMC et al argue that, instead of relying on this faulty data for the final results, the Department should rely on the

Indonesian data cited above in Comment 1 to value the steel used in the manufacture of TRBs cups and cones.

Similarly, ZMC argues that, if the Department continues to reject the market economy import prices submitted by ZMC (see Comment 14, below), the Department should revise the cups and cones surrogate value used in the Preliminary Results to exclude certain data. Specifically, ZMC argues that, with respect to the Japan/India data from June 1999 through March 2000, the data for four of the ten months in the range are significantly over or under the U.S. benchmark range. For the final results, ZMC argues that the Department should use only data that falls within the U.S. benchmark range.

Furthermore, ZMC argues that, if the Department does not reject all prices outside of the benchmark range, the Department should eliminate the July 1999 data because of its small quantity and extremely high price. ZMC argues that the Department is justified in its exclusion of this data because it is consistent with the Department's practice of excluding data pertaining to small quantities of imports from individual countries when the per-unit value is at variance with other information on the record.

*Petitioner's Argument:* The petitioner disagrees with CMC et al and ZMC. The petitioner first notes that ZMC never cites to any statutory authority mandating that the Department consider data outside of the benchmark range to be aberrational. According to the petitioner, the Department has broad discretion in selecting the surrogate values for factors of production, and that its practice is to decide such issues on a case-by-case basis. The petitioner argues that the Department has never suggested, nor have the courts mandated, that values selected by the Department should fall within a certain benchmark range, or within a specific percentage above or below such a range. Rather, the petitioner claims that the purpose of the benchmark price range selected by the Department is to determine which potential surrogate prices are reasonable in comparison to the benchmark. The petitioner argues that a closer conformity between the U.S. benchmark and the surrogate values actually used would, in effect, mean using the United States as a surrogate country, which would violate statutory requirements that the surrogate be at a level of economic development comparable to that of the NME country.

Furthermore, according to the petitioner, values in only two of the ten months are out of line with the values in the other months. Six of the eight remaining numbers that make up the data, the petitioner argues, are almost identical, while the remaining two are somewhat higher than the average. According to the petitioner, this by itself is no basis to deem the data to be completely aberrational. The petitioner contends that it is reasonable to expect that, within an average, individual values will vary, which is why an average is used in the first place. Therefore, the petitioner argues that the Department should not adjust the data for the steel used to manufacture cups and cones. At most, the petitioner notes, the Department could determine that the lowest and highest values vary significantly and exclude them from the final calculation.

*Department's Position:* We agree, in part, with both the respondents and the petitioner. First, we disagree with CMC et al that we should determine that all of the Japan/India data is aberrational based on perceived irregularities with data from certain months. Although we have, in past reviews of this order (see, e.g., TRBs XII<sup>3</sup>), eliminated monthly Japanese export data from our surrogate cup and cone calculations, we did so because the values of the data in question were unreliable when compared to the other data being examined. As noted by the petitioner, and as discussed below, because there is no indication that data from most of the months in question are unreliable, there is no reason to exclude that data from our calculation.

Second, with respect to ZMC's argument that Japan/India data from certain months (i.e., June, July, August, and December 1999) should be excluded from the cup and cone calculation, we first note that, as we stated in TRBs XII, it is not our practice to exclude certain months of a country's data from our surrogate value calculation based solely on the fact that the volume of imports or exports in that month is small. Moreover, as discussed in Comment 1, above, we also do not exclude data simply because it is below or above the benchmark to which we are comparing it. We do agree, however, that on a case-by-case basis we should exclude data that is unreliable when compared to the other data in the calculation and the benchmark we are using for comparison purposes, as we did in TRBs XII.

In this case, our examination of the unadjusted monthly Japan/India data shows that the unit values for June 1999 and July 1999 differ substantially from the unit values for the other months, from the U.S. data used for benchmark purposes, and also from the monthly value data from the top two countries within our U.S. benchmark category. Specifically, the unit values of Japanese exports to India for June 1999 and July 1999 are \$270/MT and \$2,062/MT, respectively. At the same time, the range for the remainder of the Japan/India values during the POR is \$796/MT to \$1,126/MT. Similarly, with respect to the U.S. benchmark, import values from the two countries (Japan and Sweden) which account for the majority of imports into the United States for the corresponding U.S. import category (HTS category 7228.30.2000), and for the same time period, range from \$439/MT to \$1,159/MT. We further examined monthly imports from these two countries to see if there were any variances by month during the POR that were similar to those seen in the Japan/India values in June 1999 and July 1999. We noted that, for Japan, the range of prices for all months was \$439/MT to \$1,159/MT; for Sweden, the range of prices for all months was \$728/MT to \$1,077/MT. Thus, the monthly variations for the values in both of these countries were significantly less than the variations seen in June 1999 and July 1999 for the Japan/India data.

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<sup>3</sup>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 1953 (January 10, 2001) and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998-1999 Administrative Review and Determination to Revoke Order in Part, 66 FR 11562 (February 26, 2001) (collectively, "TRBs XII").

However, utilizing this same analysis, we find that the Japan/India values for August and December 1999, \$1,125/MT and \$1,126/MT, respectively, do not differ substantially from the unit values of the other months, from the U.S. data used for comparison purposes, and also from the monthly value data from the top two countries within our U.S. benchmark category. Specifically, the data from August and December 1999 differs only slightly from the other monthly Japanese export data and the average U.S. benchmark data, and is similar to the monthly value data from the top two countries within our U.S. benchmark category.

Thus, because the values of the data from June and July 1999 appear to be unreliable when compared to the other data, as described above, we are excluding the data from those two months from our surrogate value calculations for steel used to manufacture cups and cones. However, we are not excluding the data from August and December 1999 because it is not unreliable when compared to the other data, as described above.

### **Comment 3: Steel Data Used for Valuing Rollers and Cages is Aberrational**

*Respondents' Argument:* CMC et al contend that, in the TRBs X Remand Redetermination, the Department held that surrogate values were unreliable when they were higher than their benchmark values. In this instance, CMC et al point out that the Indian import value used to calculate the surrogate value for rollers in the Preliminary Results was \$1838/MT, while the benchmark value was \$1108/MT. Similarly, CMC et al point out that the Indian import value used by the Department to calculate a surrogate value for cages in the Preliminary Results was \$477/MT, while the benchmark value was \$362/MT. Therefore, because the Indian import values for roller and cage steel were above the U.S. benchmark values, CMC et al contend that the Department should find these values to be aberrational and should reject the use of these Indian roller and cage values for the final results.

For rollers, CMC et al argue the Department should instead use data from the record of TRBs XIII to calculate a surrogate value for rollers. CMC et al claim that Indonesian import data from that review yields a price of \$732/MT for the period of June 1999 through May 2000, and the Japanese exports to Indonesia data yields a price of \$1278/MT. CMC et al did not provide alternate suggestions for valuing TRBs cage steel.

*Petitioner's Argument:* The petitioner argues that the Department should reject CMC et al's claims that such data are aberrational and should continue to use the data it used in the Preliminary Results in calculating surrogate values for rollers and cages. The petitioner echoes its reasons detailed above in Comment 1 to refute CMC et al's argument that the Department should reject the use of the Indian import statistics for valuing TRBs rollers and cages because this data exceeds the U.S. benchmark for each component.

With respect to rollers, the petitioner claims that the Indonesian import data CMC et al urge the Department to use are themselves aberrational using the respondents' logic because they either above or below the benchmark. Similarly, the petitioner argues that the Indonesian import data



cited by CMC et al is available only at the six-digit category level for steel used to produce rollers, as compared to the more detailed eight-digit level available for the Indian data. Therefore, the petitioner contends that the Indonesian data is “inherently less accurate” than the more detailed and specific eight-digit category level available for the Department’s calculations. Moreover, the petitioner notes, the time period of the Indonesian data does not cover any portion of the POR, unlike the Indian import data which covers the entire POR. Therefore, the petitioner contends that the Department should disregard CMC et al’s arguments.

As for cages, the petitioner argues that, in examining the Indian import data in question, the fact that this data is generally consistent in terms of price and quantity from most countries illustrates that there is nothing aberrational about the data. Moreover, the petitioner contends that the difference between the average Indian import price and the U.S. benchmark is not enough to warrant the Department resorting to a secondary surrogate country. Finally, the petitioner argues that it was unable to find any data pertaining to HS category 7209.1600, the tariff category selected by the Department to value steel used to manufacture cages, in either of the alternative data sources suggested by CMC et al, Indonesian imports or Japanese exports to Indonesia.

*Department’s Position:* We disagree with CMC et al that the Department should reject the Indian import data for valuing steel used in the production of TRBs rollers and cages simply because the data exceeds the benchmark. As discussed above in Comment 1, we have noted in past TRBs reviews and court cases (see, e.g., TRBs X Remand Redetermination and TRBs X) that the purpose of a benchmark is to test the reliability of certain values under consideration as surrogate values. The use of a benchmark for this purpose has been upheld by the CIT. See, e.g., Timken Company v. United States, 59 F. Supp. 2<sup>nd</sup> 1371, 1376 (CIT 1999) and Timken Company v. United States, Slip Op. 02-38 (CIT 2002).

As noted above, by arguing that a value is aberrational simply because it exceeds the benchmark, CMC et al are essentially arguing that, if something is not exactly the same as the benchmark, then it must be aberrational and unreliable. However, as noted above, the purpose of the benchmark is to test the reliability of potential surrogate values based on broader HS categories against more narrow categories that more accurately reflect world market prices for the steel in question. As long as a surrogate value is reasonably close to the benchmark value or range of benchmark values, we will not treat that surrogate value as being aberrational.

Moreover, in this instance, because the data being utilized as benchmark data is U.S. data, by adopting a policy that all surrogate values that differ from our U.S. benchmark are unreliable, we would essentially be adopting the U.S., a country not comparable to the PRC in terms of economic development, as a surrogate country, which would be contrary to the statute. See section 773(c)(4) of the Act (which stipulates that the Department should value such factors, to the extent possible, using prices or costs of production in one or more market economy countries that are “at a level of economic development comparable to that of the nonmarket economy country” and are “significant producers of comparable merchandise”). As noted above, it is not our intention in this case to use the U.S. benchmark data as a surrogate, but to use the data as a

measure of world market prices to see if the potential surrogates are reliable in comparison to world market prices.

Therefore, as discussed in the Preliminary Results, as well as in the Steel and Surrogate Country Memo,<sup>4</sup> in light of the limited alternatives available on this record, we continue to find that the Indian import data used in the Preliminary Results to value roller and cage steel is the best available information for valuing roller and cage steel and are not revising these values for the final results.

#### **Comment 4: Excluding Certain Data Used in Steel and Scrap Surrogate Values**

*Respondent's Argument:* ZMC argues that, because revised data has been submitted on the record since the Preliminary Results, the Department should adjust the values that it used in the Preliminary Results for rollers, cages, and scrap by deleting the Indian import data for April and May 2000, thus making the data more contemporaneous with the POR. ZMC also contends that the Department should correct a transposition error relating to import data from Japan and Korea.

*Petitioner's Argument:* The petitioner argues that the Department should reject ZMC's request that the Department exclude Indian statistics for the two months that immediately precede the POR. The petitioner argues that ZMC does not refer to any statutory or regulatory authority mandating that the Department use only data contemporaneous with the POR. The petitioner argues that the Department is fully within its discretion to use data that does not conform strictly to the POR. Thus, the petitioner contends that there is no reason to revise the data used in the Preliminary Results.

*Department's Position:* Whenever possible, the Department attempts to use data that are contemporaneous with the POR. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review, 62 FR 61276, 61283 (November 17, 1997). Since we now have information on the record that allows us to exclude data that are not contemporaneous with the POR, we are able to remove the April and May 2000 data that are outside the POR. Therefore, for the final results, we have revised our calculations with respect to rollers, cages, and scrap to include only data that corresponds directly to the POR, *i.e.*, June 2000 through May 2001. See the Memorandum to Susan Kuhbach, "Factors of Production Values Used for the Final Results," dated November 6, 2002. We have also corrected the transposition error pointed out by ZMC.

#### **Comment 5: Overhead, SG&A, and Profit Ratios**

*Petitioner's Argument:* The petitioner argues that the Department should recalculate the average profit ratio used in the Preliminary Results to exclude the negative profit of a company (SNL

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<sup>4</sup>Memorandum to Susan Kuhbach, dated July 1, 2002, entitled "Selection of a Surrogate Country and Steel Values Sources" ("Steel and Surrogate Country Memo").

Bearing (“SNL”) that showed a loss in its annual report. Citing to TRBs XII and ARG Windshields,<sup>5</sup> the petitioner argues that, in calculating a surrogate profit rate, it is the Department’s practice to treat any reported negative profits as zero profits. The petitioner argues that the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“URAA”), H.R. Doc. No. 103-316 (1994) (“SAA”) similarly supports this position, at 840, by stating that, “in most cases, Commerce would use profitable sales as the basis for calculating profit for the purposes of constructed value.” Based on this past case precedent, and in accordance with the SAA, the petitioner argues that the Department should exclude SNL’s loss from the calculation of the surrogate value for profit used in the final results.

*Respondents’ Argument:* CMC et al first argue that the Department should reject the petitioner’s request for exclusion of SNL’s negative profit from the surrogate value profit calculation because, according to CMC et al, excluding a company’s loss that occurred in the ordinary course of business would lead to both skewed data and a skewed profit ratio.

In the alternative, CMC et al argue that the Department should exclude SNL’s financial data in its entirety from the calculation of the surrogate values for SG&A, overhead, and profit. CMC et al first argue that the Department should not use SNL’s financial data in the calculation of surrogate profit at all because the statistical bias built into the “zeroing out” methodology precludes an apples to apples comparison and introduces a statistical bias in the calculation of dumping margins. See, e.g., Bowe Passat Reinigungs-und Washereitechnik GmbH v. United States, 926 F. Supp. 1138, 1150 (CIT 1996). Moreover, CMC et al argue that SNL’s SG&A data is three and a half times more than the next highest surrogate company’s SG&A ratio. CMC et al argue that this discrepancy from the other surrogate companies’ financial data makes SNL’s SG&A data aberrational. Accordingly, based on these perceived data irregularities, CMC et al argue that the Department should exclude SNL’s financial data in its entirety from the Department’s surrogate value calculations.

*Department’s Position:* First, with respect to the inclusion of a negative profit in the profit surrogate value calculation, it is the Department’s practice to exclude from the profit calculation information from companies that recorded losses. See, e.g., Redetermination Pursuant to Court Remand in Rhodia, Inc. V. United States and Jilin Pharmaceutical Co. Ltd.; Shandong Xinhua Pharmaceutical Factory, Ltd., Court No. 00-08-00407 (March 29, 2002). Therefore, because SNL experienced losses, we did not use SNL’s information to calculate surrogate profit for the final results.

Second, we agree with the petitioner that there are no grounds for completely rejecting the data for SNL for SG&A and overhead on the basis that they are aberrational. In past TRBs reviews, we have excluded from the calculation of overhead, SG&A, and profit ratios the financial data of

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<sup>5</sup>Final Determination of Sales at Less Than Fair Value: Certain automotive Replacement Glass Windshields From the People’s Republic of China, 67 FR 6482 (February 12, 2002) (“ARG Windshields”).

certain Indian companies on the basis that their financial data were not reported in accordance with the generally accepted accounting principles of India, or because they had been deemed “sick companies” under Indian law. See, e.g., TRBs X. These characterizations do not apply to SNL in this review, however. Therefore, consistent with TRBs X, we have continued to include the data for SNL in the calculations of surrogate overhead and SG&A.

#### **Comment 6: Marine Insurance**

*Respondents’ Argument:* CMC et al argue that the Department’s calculation of a surrogate value for marine insurance overstates the value of marine insurance because the Department inappropriately applies the marine insurance rate to the cost, insurance, and freight (“CIF”) value of the subject merchandise. According to CMC et al, the respondent companies insure only the value of their cargo, rather than the “fully loaded” value that includes amounts for international freight and marine insurance. Therefore, CMC et al argue that the Department should make an adjustment to its calculation of the surrogate value for marine insurance to deduct these amounts.

For CEP sales, CMC et al argue that the Department should subtract amounts for international freight and marine insurance from the entered value thus yielding a value which should then be applied 110 percent times the marine insurance rate. For EP sales, CMC et al argue that the Department should subtract amounts for international freight and marine insurance from the CIF value thus yielding a value which should then be applied against the marine insurance rate. In those cases when the Department cannot separately identify insurance expense, CMC et al argue that the Department should deduct amounts for international freight for EP sales and all expenses incurred in the United States for CEP sales prior to computation of the marine insurance value.

*Petitioner’s Argument:* The petitioner argues that the Department properly applied the formula it obtained from the owner of a marine insurance company. The petitioner asserts that CMC et al’s argument that they only insure the value of their cargo has nothing to do with the way an insurance company calculates the premium. Therefore, because there is no error in calculation, the petitioner argues that the Department should not recalculate marine insurance for the final results.

*Department’s Position:* There is no evidence on the record to support CMC et al’s allegations that the respondent companies insure only the value of the subject merchandise. Furthermore, based on information obtained in further researching this issue (see, November 6, 2002, memorandum entitled “Marine Insurance,” which is on file in the Department’s Central Records Unit located in the main Commerce building in Room B-099 (“CRU”)), we have found that it is standard industry practice to base marine insurance costs on a CIF basis. Therefore, we are not revising the marine insurance calculations with respect to CIF or FOB sales (as FOB sales are, by their nature, already exclusive of insurance and freight costs). However, with respect to the direct, duty paid sales reported by certain respondents, we are revising the calculation of marine insurance for those sales by using entered value instead of gross unit price in the calculation in order to derive a value that is based more closely on the CIF value of the shipments.

## **Comment 7: Energy Factors**

*Petitioner's Argument:* The petitioner contends that the average energy consumption factors reported by Wanxiang, Luoyang, and ZMC should not be used in the final results because these respondents did not justify why reporting energy factors on an average basis was more accurate than reporting this data on a model-specific basis. The petitioner claims that the reporting methodologies utilized by these companies can lead to flawed amounts. Furthermore, the petitioner contends that, in comparing the energy factors reported by each company to those reported by one of the other respondents, there are unexplained differentials in energy usage for several of the models which render the energy factors submitted by Wanxiang, Luoyang, and ZMC unreliable. Because of these perceived inconsistencies, the petitioner argues that the Department should verify the energy consumption reported by Wanxiang, Luoyang, and ZMC, examining energy data in model-specific terms. Otherwise, the petitioner argues that the Department should, as facts available, utilize the data reported by another of the respondents for each of the three companies.

*Respondents' Arguments:* ZMC, Luoyang, and Wanxiang disagree with the petitioner. First, Luoyang and Wanxiang note that the Department rejected this same argument from the petitioner in TRBs XIII. Furthermore, ZMC, Luoyang, and Wanxiang argue that the methodology used to calculate these two companies' energy factors has been reviewed, clarified, and verified by the Department in prior reviews (see, e.g., TRBs XIII, TRBs XII, and TRBs X). These respondents point out that no changes have been made to this reporting methodology since the last verifications for these companies, and that data generated using these methodologies has been accepted by the Department in past reviews (see, e.g., TRBs XII and TRBs XIII).

Moreover, Luoyang and Wanxiang contend that the petitioner again has no support for its allegation that each of these company's reported energy costs are somehow deficient because they differ from the energy costs reported by another of the respondents. These companies argue that the petitioner has itself in past cases (see, e.g., TRBs XII) argued that "different producers manufacture at different levels of efficiency," which was the reason why the Department requests factors of production ("FOP") data from each supplier of the subject merchandise. Luoyang and Wanxiang argue that there are variances between and among respondent's reported energy factors due to, among other things, varying machines, production techniques, personnel efficiencies and other variations due to facility and locale differences.

Luoyang and Wanxiang contend that there is no reason for the Department to reject Luoyang and Wanxiang's own legitimate and verified data, and that accepting one respondent's data for use as facts available as somehow better than another respondent's data would be in complete disregard of the Act's principles to calculate antidumping duty margins as fairly and accurately as possible.

*Department's Position:* We agree with the arguments made by Luoyang, ZMC, and Wanxiang. As we discussed in response to this same argument in TRBs XIII, the Department has stated in past reviews of this proceeding that we agree that there is generally little variation in factor

utilization rates among TRBs producers (see, e.g., TRBs XII and TRBs XIII). However, we have also noted in past reviews of this case (see, e.g., TRBs XII and TRBs XIII), and the petitioner itself has argued, that different producers manufacture at different levels of efficiency. This, according to the petitioner itself, is the very reason why the Department requests FOP data from each supplier of subject merchandise. Thus, although overall factor utilization rates are, in general, similar amongst PRC TRBs manufacturers, if comparisons are made in which limited examples have been provided to show that differences exist between a limited number of manufacturers for a limited number of products, it will inevitably be found that some differences exist. If a larger number of manufacturers were used and the comparisons were made on a broader basis, the Department has, as noted above, found rates to be generally similar.

Furthermore, the Department verified Luoyang's reported factors of production information in TRBs X and Wanxiang and ZMC's factors in TRBs XII and noted no irregularities in each company's energy reporting methodology. Moreover, 19 CFR 351.307(b)(1)(5)(A) stipulates that the deadline for a domestic interested party to request verification of a company's information in a review is 100 days after the date of publication of the notice of initiation of review. In this review, the deadline for requesting a verification of the data submitted by Wanxiang, Luoyang, and ZMC was in October 2001, 11 months before the petitioner's request in its case brief for verification of these companies' energy data. Thus, the petitioner's request for verification for these companies was untimely pursuant to 19 CFR 351.307(b)(1)(5)(A).

Therefore, because 1) there is no conclusive evidence in this situation that would show that any of these companies' energy factors were distortive in comparison with a broad range of TRBs producers; 2) we have in the past verified these companies' data and have noted no irregularities; and 3) the Department has a preference to use a company's own data unless there is a record basis to favor other data, we are not revising or rejecting Luoyang, ZMC, or Wanxiang's reported energy factors.

#### **Comment 8: Seals Allegedly Used in the Manufacture of TRBs**

*Petitioner's Argument:* The petitioner argues that the Department should confirm whether CMC, ZMC, Luoyang, and Wanxiang utilize seals in the manufacture of TRBs sold to the United States during the POR. The petitioner states that seals are listed as a component in CMC's product catalog, and that none of the above manufacturers listed seals as a factor of production. According to the petitioner, if the Department cannot confirm whether seals are utilized in the manufacture of TRBs by the above four companies, the Department should adjust each company's NV to include an appropriate amount for seals. The petitioner argues that the Department should utilize facts available in determining the appropriate quantity to add, and should utilize as a surrogate value data either from HS category 4016.93.03 (rubber seals (oil seals, etc)) or HS category 4001, 4002, or 4009, depending on whether the seals are purchased or manufactured.

*Respondents' Arguments:* CMC, Luoyang, Wanxiang, and ZMC disagree with the petitioner, arguing that none of these respondents use seals as components in their production of subject merchandise. According to CMC, Luoyang, and Wanxiang, although seals may be utilized in other bearings manufactured by these respondents that are sold in other markets (and, thus, included in catalogs like CMC's), they were not used in the TRBs sold to the United States. CMC, Luoyang, and Wanxiang contend that the Department has verified this fact over the course of several past administrative reviews (see, e.g., TRBs XII). Thus, the respondents contend that their questionnaire responses were complete and no modification is needed for the purposes of the final results.

*Department's Position:* We do not agree that we have evidence indicating that seals are used in the TRBs that were sold to the United States by any of the above-noted companies during the POR. The only evidence provided by the petitioner of the possible existence of seals was a CMC product brochure that indicated that CMC utilized seals as components in one or some of the products manufactured by CMC.

We first note that, in verifying the subject TRBs manufactured by Wanxiang, CMC, and ZMC, we have never found any evidence that seals were used in TRBs sold to the United States (see TRBs XII). Moreover, although we found in TRBs XIII that Luoyang used seals in the manufacture of certain TRBs, Luoyang did not sell those particular TRBs to the United States during the POR. We have found no evidence in any past cases or verifications relating to Luoyang (see TRBs X) that Luoyang uses seals in the manufacture of any other TRBs sold to the United States.

Moreover, there is no record evidence in this proceeding indicating that CMC, ZMC, Luoyang, or Wanxiang used seals in the manufacture of subject TRBs during the POR. An examination of record evidence submitted by ZMC, Luoyang, and Wanxiang, including product brochures, product lists, and descriptions of manufacturing processes, does not offer any suggestion that seals are used in the manufacture of subject TRBs. With respect to CMC, although its product brochure does list seals as a part of bearings manufactured by CMC, there is no evidence that seals were specifically used in the manufacture of TRBs that were sold to the United States. Moreover, there is no indication from past verifications of CMC, as noted above, that seals are utilized in TRBs that are sold in the United States.

Finally, we note that the petitioner did not bring up this issue as a matter of concern for any of these companies prior to submitting its case brief. This brief was filed less than two months before the scheduled date of the Department's final results decision and more than fourteen months after the initiation of this proceeding. Although the Department may, pursuant to 19 CFR 351.301(c)(2), request the submission of factual information at any point during a proceeding, the Department must allow a reasonable amount of time for the responding parties to submit this information, and also must have sufficient time to examine this information. In this case, and in general, the late date of the petitioner's request in essence precludes the Department

from having sufficient time to examine any issue raised by the petitioner even if the Department deemed it necessary to do so.

#### **Comment 9: Treatment of Sales Above NV**

*Respondent's Argument:* ZMC argues that, in calculating the dumping margin for this review, the Department improperly disregarded the amounts by which particular U.S. sales were made in excess of normal value ("zeroing"), which had the effect of inaccurately inflating ZMC's dumping margin. ZMC argues that this practice violates Article 2 of the World Trade Organization ("WTO") Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade ("WTO Antidumping Agreement") and should be corrected for the final results.

Specifically, according to ZMC, the WTO Antidumping Agreement directs that the Department must make a fair comparison between EP or CEP and NV when calculating a dumping margin. ZMC claims that the Department's practice of aggregating only the dumping margins and disregarding any negative margins (representing sales in excess of NV) when calculating the weighted-average dumping margin does not result in a fair comparison. Additionally, ZMC asserts that the Department has incorrectly interpreted sections 771(35)(A) and 771(35)(B) of the Act as directing margins to be calculated on an individual basis.

ZMC notes that the practice of zeroing was found to violate the WTO Antidumping Agreement by a WTO Panel and subsequently by a WTO Appellate Body in a case involving the European Union and India.<sup>6</sup> In urging the Department to adhere to these rulings, ZMC cites the Charming Betsy doctrine, which, according to ZMC, requires a federal statute to be construed consistently with the United States' international obligations. The respondent further avers that Congress unambiguously expressed that the URAA was intended to bring United States law into compliance with the WTO Antidumping Agreement, and that the Department's methodology is inconsistent with such intent. Thus, ZMC concludes that the Department should adjust its methodology in the final determination by eliminating its practice of zeroing certain underlying comparisons that actually resulted in negative values in order to make a fair comparison under Article 2.4 of the WTO Antidumping Agreement.

*Petitioner's Argument:* The petitioner contends that the Department's practice of zeroing has recently been affirmed by the CIT as being a reasonable interpretation of the antidumping statute. As noted by the petitioner, the CIT reasoned that the Bed Linen from India case does not invalidate the subject practice because the case did not concern U.S. law. Furthermore,

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<sup>6</sup>See European Communities–Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, Report of the Appellate Body, WT/DS141/AB/R (March 1, 2001), affirming European Communities–Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, Report of the Panel, WT/DS141/R (October 30, 2000) ("Bed Linen from India").



according to the petitioner, the practice serves the important objective of combating targeted dumping.

*Department's Position:* As we have discussed in prior cases, our methodology is consistent with our obligations under the Act. (See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy, 67 FR 3155 (January 23, 2002), and accompanying Issues and Decision Memorandum, at Comment 1.) Moreover, the Department's use of this methodology has been upheld by the CIT. See, e.g., Timken Company v. United States and Koyo Seiko, et al, Slip Op. 02-106 (CIT September 5, 2002) ("Koyo Seiko") at 28-32.

First, sales that did not fall below normal value are included in the weighted-average margin calculation as sales with no dumping margin. The value of such sales is included in the denominator of the weighted-average margin along with the value of dumped sales. We do not, however, allow sales that did not fall below normal value to cancel out dumping found on other sales.

Second, the Act requires that the Department employ this methodology. Section 771(35)(A) of the Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) of the Act defines "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margins" in section 771(35)(B) makes clear that the singular "dumping margin" in section 771(35)(A) applies on a comparison-specific level, and does not itself apply on an aggregate basis. At no stage in this process is the amount by which EP or CEP exceeds normal value on sales that did not fall below normal value permitted to cancel out the dumping margins found on other sales. This does not mean, however, that sales that did not fall below normal value are ignored in calculating the weighted-average rate. It is important to note that the weighted-average margin will reflect any "non-dumped" merchandise examined during the investigation, the value of such sales is included in the denominator of the dumping rate, while no dumping amount for "non-dumped" merchandise is included in the numerator. Thus, a greater amount of "non-dumped" merchandise results in a lower weighted-average margin.

Finally, the Bed Linen from India WTO Panel and WTO Appellate Body decisions concerned a dispute between the European Union and India. We have no WTO obligation to act based on these decisions. See, also, Mushrooms from India, 66 FR 42507 (August 13, 2001). Moreover, in Koyo Seiko, the CIT notes that the Bed Linen from India case concerns an antidumping investigation, as opposed to an administrative review such as the instant proceeding.

## **Comment 10: Revocations**

*Respondents' Arguments:* Hailin agrees with the Department's Preliminary Results finding that the antidumping order with respect to Hailin should be revoked. Hailin contends that verification served to confirm the Department's Preliminary Results findings with respect to revocation of the order as it pertains to Hailin. Furthermore, Wanxiang (the only other respondent in the instant proceeding that both requested revocation and made an argument with respect to revocation in its briefs) also contends that it will be eligible for revocation upon calculation of its final dumping margin. Both Wanxiang and Hailin contend that they are eligible for revocation of the order as it pertains to them due to the fact that each has had three consecutive years of no dumping, and because each meets all of the other criteria stipulated in 19 CFR 351.222. Thus, Hailin and Wanxiang argue that the order with respect to each company should be revoked in the final results.

*Petitioner's Argument:* The petitioner argues that the Department should not consider revoking the antidumping order with respect to Hailin, or any other respondent, prior to taking into consideration the petitioner's arguments in Comment 5 above, and then recalculating each company's final dumping margin. Furthermore, the petitioner contends that revocations are not automatic with three years of zero margins. According to the petitioner, 19 CFR 351.222(b)(2)(i)(A) merely provides a pretext for the Department to consider an application to revoke an antidumping order, in part, and revocation therefore is not automatic. The petitioner suggests that revocation with respect to Hailin is improper because the number of Hailin's U.S. sales transactions during the POR was too few to provide a meaningful basis for revocation. Moreover, the petitioner contends that there is no basis for revoking the order with respect to any other respondent.

*Department's Position:* With respect to the arguments pertaining to Hailin, we agree with Hailin. The Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise in commercial quantities at not less than NV for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV; and (3) the continued application of the antidumping duty order is not otherwise necessary to offset dumping. See 19 CFR 351.222(b)(2).

As noted in the Preliminary Results, pursuant to 19 CFR 351.222(e)(1), Hailin requested revocation of the dumping order, in part, based on an absence of dumping for three consecutive years. In accordance with 19 CFR 351.22(e), the company's request was accompanied by a certification that it had sold the subject merchandise at not less than normal value during the current period of review, and that it would not sell the subject merchandise at less than normal value in the future.

Pursuant to the requirements set forth in 19 CFR 351.222(b), and as discussed in the Preliminary Results, Hailin sold the subject merchandise at not less than NV for a period of at least three

consecutive years. Hailin has also agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that Hailin, subsequent to revocation, sold the subject merchandise at less than NV. Finally, as discussed in the Preliminary Results, based upon our examination of the sales data submitted by Hailin, we determine that Hailin sold the subject merchandise in the United States in commercial quantities in each of the three years cited by Hailin to support its request for revocation.

Therefore, based on the above facts, and absent evidence on the record that the continued application of the antidumping order is otherwise necessary to offset dumping from Hailin, we determine that Hailin qualifies for revocation of the antidumping order pursuant to 19 CFR 351.222(b)(2), and that the order with respect to merchandise produced and exported by Hailin should be revoked.

With respect to the revocation arguments pertaining to other respondents, as discussed in the notice of final results in this review published in the Federal Register, neither ZMC nor Wanxiang (the only two respondents other than Hailin that requested revocation in the instant proceeding) qualifies for revocation of the order on TRBs pursuant to 19 CFR 351.222(b). Specifically, ZMC does not qualify for revocation because ZMC does not have three consecutive years of sales at not less than NV pursuant to 19 CFR 351.222(b). Additionally, Wanxiang did not make sales in commercial quantities in each of the three years cited by the company to support its revocation request pursuant to 19 CFR 351.222(b). Therefore, we are not revoking the order with respect to merchandise produced and exported by ZMC and Wanxiang.

#### Company-Specific Issues

##### **Comment 11: Wanxiang CEP vs. EP Sales**

*Petitioner's Argument:* According to the petitioner, record evidence shows that Wanxiang has a U.S. affiliate, Wanxiang America Corporation ("Wanxiang America"), and that this affiliate's web site states that it is "the source for all of Wanxiang's products in the United States." The petitioner states that there is no record evidence, other than assertions made by Wanxiang, demonstrating that this U.S. affiliate was not involved in the sale of TRBs. Moreover, the petitioner points out that, in a separate ongoing investigation relating to ball bearings, Wanxiang reports that all of its U.S. sales of ball bearings were made through its U.S. affiliates and, thus, Wanxiang reported these ball bearing sales as CEP sales.

Based on this, the petitioner argues that Wanxiang should demonstrate that all of its U.S. sales of TRBs were EP sales made directly between Wanxiang in the PRC and its unrelated U.S. customers and that Wanxiang America was in no way involved in these sales. However, if the Department finds that Wanxiang America was involved in the transaction, the petitioner contends that these sales must be reclassified as CEP sales, and the Department should determine selling expenses and calculated U.S. prices accordingly.

*Respondent's Argument:* Wanxiang disagrees with the petitioner. Wanxiang contends that the fact that Wanxiang has U.S. affiliates does not mean that these affiliates necessarily must be involved in the sales of TRBs to the United States. Wanxiang points out that it noted in its questionnaire response that its U.S. affiliates were not involved in the sale of TRBs in the United States. Wanxiang concurs that its U.S. affiliates do sell ball bearings in the U.S. market, but notes that ball bearings are not subject merchandise in this review and, thus, the petitioner's argument with respect to ball bearings is irrelevant. Wanxiang argues that record evidence provided by Wanxiang does, in fact, demonstrate that Wanxiang's U.S. affiliates were not involved in the sale of TRBs in the U.S. market during the POR. Wanxiang notes that, if the Department had any concerns with respect to this issue, it had ample opportunities to query Wanxiang throughout the course of the review. Thus, Wanxiang contends that the Department should reject the petitioner's argument with respect to the classification of its U.S. sales.

*Department's Position:* In examining the sales documentation submitted by Wanxiang for its U.S. sales, there is no indication that Wanxiang's U.S. affiliates were involved in any way in Wanxiang's U.S. sales transactions. We note that, because the subject merchandise in this case is TRBs, and not ball bearings, the petitioner's reference to a separate ongoing case involving ball bearings is misplaced. Moreover, we have verified in past cases that no U.S. affiliate of Wanxiang is involved in the sale of TRBs to the United States (see TRBs XII). Therefore, because there is no evidence that Wanxiang's sales were CEP and not EP sales as had been reported, we have no reason to reclassify Wanxiang's reported EP sales as CEP sales.

#### **Comment 12: Wanxiang Domestic Brokerage and Handling**

*Petitioner's Argument:* According to the petitioner, Wanxiang reports in its supplemental questionnaire response that it performs its own brokerage and handling duties, and that the cost of the activities is included in Wanxiang's reported SG&A labor hours. According to the petitioner, these expenses are movement expenses, not costs of production. Therefore, the petitioner contends that appropriate amounts for brokerage and handling should be deducted from the U.S. price calculations.

*Respondent's Argument:* Wanxiang disagrees with the petitioner, stating that it accurately reported in its responses that Wanxiang's domestic brokerage and handling activities are handled internally. According to Wanxiang, section 772(c)(2)(A) of the Act stipulates that such activities on EP sales are not "incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." Rather, Wanxiang argues that these activities are the type of expenses "incident to placing the subject merchandise in condition packed and ready for shipment to the United States" pursuant to section 772(c)(1)(A) of the Act. Thus, Wanxiang contends that these expenses were properly reported and treated by the Department in the Preliminary Results, and no modification is necessary for the final results.

*Department's Position:* We agree, in part, with the petitioner. As noted in the Department's questionnaire that was sent to the respondents in this proceeding, brokerage and handling expenses are considered by the Department to be one of several "activities undertaken to bring the merchandise from the place of manufacture to the customer's place of delivery (if FOB, e.g., from factory to port in country of manufacture or if CIF, from factory to delivery port in United States)." Pursuant to section 772(c)(2)(A) of the Act, these types of expenses are to be deducted from the reported gross unit price. In this instance, because Wanxiang has reported that it has incurred brokerage and handling expenses, these should be removed from gross unit price pursuant to section 772(c)(2)(A) of the Act.

However, Wanxiang reported that it included costs related to its brokerage and handling duties as part of its reported SG&A labor hours. In order to avoid double-counting these costs in Wanxiang's final margin calculations, we first adjusted Wanxiang's reported SG&A labor hours to deduct a cost for brokerage and handling so that these costs were excluded from the calculation of NV. We then included these brokerage and handling expenses as part of our movement expense deduction from the gross unit price on U.S. sales.

### **Comment 13: Wanxiang Credit Expenses**

*Petitioner's Argument:* The petitioner contends that, because Wanxiang reported that it incurred credit expenses on its U.S. sales, the Department should deduct these expenses in the final results calculations for Wanxiang. Moreover, the petitioner argues that the credit expenses reported by Wanxiang were calculated incorrectly. According to the petitioner, because Wanxiang claims that its sales are EP sales and not CEP sales, the interest rate used in the calculation should be a PRC rate, not a U.S. rate, and, thus, a surrogate interest rate should be utilized in the calculation. The petitioner states that an appropriate rate for use would be the Indian "Lending Rate" as reported by the International Monetary Fund in its International Financial Statistics.

According to the petitioner, although the Department in the past has not made credit deductions in NME U.S. price calculations (see, e.g., TRBs XII), section 772(d)(1)(B) of the Act expressly indicates that the Department should deduct credit expenses in U.S. price calculations. The petitioner argues that the Department must follow the statute as written according to Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43, 81 L.Ed.2d 694 (1984), as elaborated in Torrington Company v. United States, 82 F.3d 1039, 1044 (CAFC 1996).

*Respondent's Argument:* Wanxiang contends that the Department has consistently rejected the petitioner's recommendation with respect to adjustments relating to credit expenses (and other circumstances of sale differences) in NME cases (see, e.g., TRBs XII, Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56045, 56052 (November 6, 1995) ("Manganese Metal from the PRC"), and Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19031 (April 30, 1991) ("Bicycles from the PRC")). Moreover, Wanxiang points

out that the petitioner, in making its argument, relied upon the statutory provision related to CEP sales. Wanxiang contends (as discussed above in Comment 11) that its POR sales were EP, not CEP sales and, thus, the petitioner's argument is not applicable in this instance.

*Department's Position:* As noted by Wanxiang, and as discussed above in Comment 11, Wanxiang made only EP sales during the POR. Section 772(d)(1)(B) of the Act, which calls for the Department to make adjustments for credit expenses in certain calculations, applies only to CEP, not EP, sales. Thus, because Wanxiang made only EP sales, that section of the Act is not applicable. Moreover, as noted in past cases, it continues to be the Department's position in NME cases not to adjust for differences in circumstances of sale in EP situations because we usually do not have enough information about the selling expenses included in the surrogate SG&A to make an adjustment. (See, e.g., Manganese Metal from the PRC, Bicycles from the PRC, and TRBs XII.)

#### **Comment 14: ZMC Market Economy Steel**

*Respondent's Argument:* ZMC argues that the Department incorrectly found in the Preliminary Results that there was sufficient evidence to believe that the imported steel prices submitted by ZMC were subsidized. Therefore, ZMC contends that the Department should use the actual price ZMC paid for the steel inputs it purchased from a market-economy country and paid for in a market-economy currency.

According to ZMC, the Department's regulations provide that "where a factor is purchased from a market-economy supplier and paid for in a market-economy currency, the Secretary normally will use the price paid to the market-economy supplier." Furthermore, ZMC states that the Conference Report on the 1988 amendments to the Act that added the NME methodology provision to the statute, explained that the Department

shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices. However, the conferees do not intend for Commerce to conduct a formal investigation to ensure that such prices are not dumped or subsidized, but rather intended that Commerce base its decision on information generally available to it at that time.<sup>7</sup>

ZMC claims that the Department has interpreted this legislative history to mean that it need not conduct a formal investigation to determine whether prices are dumped or subsidized. ZMC

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<sup>7</sup>See Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompany H.R. 3, H. Report No. 578, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess. At 590-591, 1988 U.S. Code and Adm. N. 1547, 1623 (1988) ("legislative history").

cites to the New Shipper Reviews<sup>8</sup> where, according to ZMC, the Department stated that any generally-available export subsidies in a country are sufficient for the Department to have reason to believe or suspect that the price of any supplier from that country may be subsidized. ZMC argues that this interpretation is contrary to the plain language of the Conference Report, which ZMC contends requires the Department to presume prices are not distorted by dumping or subsidies unless there is a factual finding with respect to the supplier or the product at issue.

ZMC further contends that the Department has not defined, either in a policy statement or a regulation, a standard for finding reason to believe or suspect that prices may be dumped or subsidized. ZMC also argues that Departmental practice is inconsistent in regard to the market-economy country in question under this review. To support this position, ZMC cites to TRBs XII and ARG Windshields, where ZMC argues the Department rejected supplier prices from this market-economy country, while in Tables from the PRC<sup>9</sup> the Department accepted market prices from the country in question because the specific suppliers were previously investigated and found to have received de minimis subsidies.

According to ZMC, in AL Tech Specialty Steel Corp. v. United States, 575 F. Supp. 1277 (CIT 1983), aff'd, 745 F.2d, the CIT ruled that, in order to find a reasonable basis to believe or suspect, “particularized evidence is the touchstone.” Because ZMC’s supplier has never been investigated for receiving subsidies nor a respondent in any of the reviews relied upon by the Department to make its preliminary finding, ZMC argues that there is no evidence, much less particularized evidence, to call into question the market prices paid to the supplier. Moreover, ZMC disagrees with the Department’s preliminary finding in this review that the existence of generally-available export subsidies in the supplier’s country was sufficient to believe or suspect the prices were subsidized.

It is ZMC’s position that the Department’s rejection of surrogates based on the mere possibility that prices may be subsidized is refuted by CNART.<sup>10</sup> ZMC argues that, in CNART, the court ruled that preliminary and de minimis countervailing duty findings cannot serve as the basis for finding reason to believe or suspect that prices may be subsidized. ZMC argues that in the final results of a recent review involving the market-economy country in question, the Department found that the subsidies it relied upon to find a reason to believe or suspect that ZMC’s market-

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<sup>8</sup>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Final Results of New Shipper Reviews, 67 FR 10665 (March 8, 2002) (“New Shipper Reviews”).

<sup>9</sup>Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People’s Republic of China, 67 FR 20090 (April 24, 2002), and accompanying Decision Memorandum (“Tables from the PRC”).

<sup>10</sup>China Nat’l Arts and Crafts Import and Export Corp., Tianjin Branch v. United States, 771 F. Supp. 407 (CIT 1991) (“CNART”).

economy supplier's prices may be subsidized were reduced to de minimis. Therefore, ZMC contends that the Department has no evidence to support its preliminary finding that there was a reason to believe or suspect ZMC's supplier's prices may be subsidized.

According to ZMC, based on the New Shipper Reviews and Tables from the PRC, respondents are required to demonstrate that a countervailing duty investigation has ruled out the possibility that their suppliers' prices are subsidized. ZMC argues that this creates a situation where the only way respondents can dispel any suspicion that prices were subsidized is through an investigation of the market-economy supplier by the Department. However, ZMC claims that the Department has misinterpreted the statute's legislative history to preclude such an investigation while, at the same time, using the results of such an analysis to determine the viability of the alternative surrogate data submitted by ZMC. ZMC argues this methodology is flawed and sets a nearly-impossible standard for respondents to meet in avoiding suspicion and acceptance by the Department of alternative surrogate values.

ZMC argues that the Department's misinterpretation of the statute and the legal history has resulted in the Department developing, without providing parties an opportunity to comment, a standard for determining whether prices are being subsidized or set at a less than fair value without a finding of injury. ZMC argues that by following this practice the Department has asserted its authority to interpret the statute in a manner that goes beyond the Department's prerogative. According to ZMC, if the Department is going to engage in rule-making it should do so in accordance with prescribed procedures and not as a case decision. Therefore, ZMC argues that the Department must use ZMC's market-economy supplier's prices to calculate normal value.

*Petitioner's Argument:* The petitioner argues that the Department should continue to reject ZMC's reported market-economy steel prices. According to the petitioner, ZMC makes no new arguments or justifications to cause the Department to change its practice established in TRBs XII, TRBs XIII, and New Shipper Reviews. The petitioner states that ZMC's arguments are repetitions of previously rejected arguments by prior determinations and appear to have been made only to preserve a position. Accordingly, the petitioner argues that the Department should follow its "now-established" practice and continue to reject the prices in question.

*Department's Position:* In these final results we have continued to reject the prices paid by ZMC for the steel inputs used to manufacture the subject merchandise. For the reasons explained in prior reviews of this order, we believe that the Department cannot use import prices when it has reason to believe or suspect that those prices are dumped or subsidized. See New Shipper Reviews, TRBs XIII, and TRBs XII.

ZMC has made various arguments purporting to demonstrate that the steel inputs in question are not subsidized. In agreement with the petitioner, we find that the majority of these arguments were previously made in the New Shipper Reviews and TRBs XIII. In those reviews we found that these arguments did not refute the Department's reason to believe or suspect standard.



As established in TRBs XII and TRBs XIII, the legislative history states that “in valuing such (nonmarket economy) factors, Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized.”<sup>11</sup> As noted by ZMC, this legislative history further states that “the conferees do not intend for Commerce to conduct a formal investigation to ensure that such prices are not dumped or subsidized, but rather intend that Commerce base its decision on information generally available to it at the time.”<sup>12</sup> Consistent with this principle, we disregard prices that are distorted or aberrational in order to ensure accuracy.<sup>13</sup> Additionally, we disagree with ZMC’s interpretation of this history that unless there is a formal investigation finding otherwise, it is assumed that such prices are not dumped or subsidized. See Certain Helical Spring Lock Washers From the People’s Republic of China; Final Results of Antidumping Administrative Review, 61 FR 66255, 66257 (Comment 1). As noted in TRBs XIII, the Department has reason to believe or suspect that input prices may be dumped or subsidized when there exists, based on all the circumstances, particular and objective evidence that supports such a belief or suspicion. Furthermore, in that review we concluded that the “believe or suspect” standard is met when the importing country has a dumping or subsidy finding on the input in question.

Consistent with TRBs XIII, we consider antidumping findings by their nature to be narrowly focused. However, we find that countervailing duty findings can provide information beyond the specific conclusion that a particular product shipped to a particular market is subsidized. This means that even if the importing surrogate country or NME country does not have a subsidy finding, it may be possible to have reason to believe or suspect that the prices of the input in question are subsidized. In instances where the facts of a U.S. or third-country findings are sufficient to allow the Department to infer that there are broadly available subsidies, *i.e.*, “general subsidies,” the Department will consider that it has particular and objective evidence and, hence, a reason to believe or suspect that prices of the input from that country are subsidized. See TRBs XII and TRBs XIII.

ZMC contends that the Department does not have “particularized” evidence that the material inputs used to produce the subject merchandise were dumped or subsidized. However, our analysis in TRBs XII of countervailing duty (“CVD”) findings continues to provide a basis in the instant review to believe or suspect that certain market economy prices paid by PRC producers of TRBs for their steel inputs are subsidized. See Memorandum to the File, “Market Economy Steel Memo,” dated November 6, 2002 (incorporating from TRBs XII the proprietary

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<sup>11</sup>See H.R. Rep. 100-576 at 590-591 (1988). Although this section of the Act has been revised since this legislative history was written, there were no changes made to section 773(c) of the Act in the URAA.

<sup>12</sup>H.R. Rep 100-576, at 590-591.

<sup>13</sup>See Antidumping Duties, Countervailing Duties; Final Results, 62 FR 27295, 27366 (May 19, 1997) (responding to comments regarding valuation of FOP in NME cases).

Memorandum to Richard W. Moreland regarding Allegation of Unfair Steel Prices, dated January 3, 2001).

ZMC alleges that this reason to believe or suspect input prices are subsidized because of the existence of general subsidies is refuted by the final results of a recently concluded administrative review involving ZMC's market-economy supplier's country. Based on the results of this review, ZMC argues that because three of the four programs reviewed were de minimis the Department no longer has support for its finding that the specific subsidies it relied upon to find a reason to believe or suspect that ZMC's market-economy supplier's prices may be subsidized. In our original analysis conducted in TRBs XII, we reviewed the three most recent countervailing duty investigations involving the country in question and found that the aggregate of the general subsidies available in two of the three cases was greater than de minimis. The recent Department finding cited by ZMC was the first administrative review of one of those two investigations that were above de minimis at the time of our original analysis. In the final results of this administrative review, the aggregate of the general subsidies reviewed<sup>14</sup> was found to be above de minimis. Therefore, these results bolster our original analysis and further support our finding that there is reason to believe or suspect that prices for steel produced by the company in question are subsidized.

We further disagree with ZMC's argument that the Department's analysis is flawed because we have not determined that the subsidies in question are injurious. As noted in the New Shipper Reviews, the legislative history we relied upon states that the Department "should avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices." (See H.R. Rep. 100-576 at 590-591 (1988).) This language does not require that a separate injury analysis be conducted.

Accordingly, consistent with TRBs XII, TRBs XIII, and New Shipper Reviews, we have not used these subsidized prices to value ZMC's factors of production and have continued to rely on surrogate values. This is because it would be inappropriate for the Department to use a market economy import price if it has reason to believe or suspect that the import price was dumped or subsidized. Thus, although a market economy price will normally be the best available information to accurately value a factor of production in a nonmarket-economy case, if there is reason to believe or suspect that the market-economy price is dumped or subsidized, then we will rely instead on surrogate values.

#### **Comment 15: ZMC Ocean Freight**

*Respondent's Argument:* ZMC disagrees with the Department's methodology used to calculate ZMC's ocean freight costs for shipments made by NME carriers. According to ZMC, the Department's methodology is inconsistent with the statute, with the Department's regulations,

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<sup>14</sup>This administrative review was of only one company and only covered four of the 13 programs covered in the original investigation.

with controlling relevant Court decisions, and with long-established Department practice. ZMC argues that section 773(c)(1) of the Act expressly provides that the Department must use the best available information when valuing the factors of production. ZMC further notes that in Lasko, the Court affirmed the Department's use of actual market-economy prices to value factor inputs and that this position was reaffirmed in Shakeproof Assembly.<sup>15</sup> Therefore, ZMC contends that, since the shipments it made using market-economy carriers were significant in relation to all of ZMC's shipments, the Department should use those market-determined rates to calculate an average market value to use in valuing ZMC's shipments made using NME carriers as the best available information.

*Petitioner's Argument:* The petitioner states that ZMC's argument appears to be based on a misunderstanding. The petitioner argues that, in the Memorandum from Case Analyst to File, "Preliminary Results Calculation Memorandum for Zhejiang Machinery Import and Export Corporation," dated July 1, 2002 ("ZMC Preliminary Calc Memo") (which is on file in the Department's CRU), it is clearly stated that the Department did not use a surrogate value for ZMC's shipments made by NME carriers, but applied the average of the market-prices actually paid by ZMC. According to the petitioner, this is exactly what ZMC is asking the Department to do.

*Department's Position:* We agree with the petitioner and, in part, with ZMC. In the ZMC Preliminary Calc Memo (at page 3) we wrote:

In its October 15, 2002 questionnaire response, ZMC reported that ocean freight for at least some of its shipments was provided by market economy shippers. . . For ocean freight, rather than relying upon a surrogate value to determine the amount of ocean freight for shipments by non-market economy carriers, we instead calculated a weighted-average ocean freight value based on ZMC's reported international freight charges by market-economy carriers. We applied this value only to those sales for which ZMC reported that it relied upon non-market economy carriers for shipments to the United States.

Upon reviewing the preliminary margin program, which was included with the ZMC Preliminary Calc Memo as Attachment II, we confirmed that our calculations matched our narrative description. For those instances where ZMC used a market-economy carrier, we applied ZMC's reported international freight values. For those instances where ZMC used an NME carrier, we applied a weighted-average ocean freight value based on ZMC's reported international freight charges by market-economy carriers. See ZMC Preliminary Calc Memo, Attachment 2, at lines 251-264, 324-326 and 329.

As we noted no instances in the margin program where the surrogate ocean freight rate was

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<sup>15</sup>Shakeproof Assembly Components Division of Illinois Tool Works, Inc. v. United States, Slip Op. 99-70 (CIT 1999) ("Shakeproof Assembly").

applied to any of ZMC's shipments, we find ZMC's argument to be misplaced. Therefore, for the final results, we continued to use ZMC's market-economy prices to value ZMC's international ocean freight costs.

**Comment 16: Valuation of ZMC's Ocean Freight Costs on a Packed Weight Basis**

*Petitioner's Argument:* The petitioner argues that all freight costs should be based on the fully packed weight of the merchandise. According to the petitioner, ZMC incorrectly allocated its ocean freight/U.S. inland freight charge based on the net weight of the subject merchandise. Additionally, the petitioner argues that the Department did not calculate ZMC's freight costs in accordance with the explanation provided in the ZMC Preliminary Calc Memo. The petitioner argues that upon its review of the Department-calculated packing ratios and preliminary margin program, the petitioner was not able to find any supporting data or calculations of ZMC's packing weight. Therefore, the petitioner argues that the Department should use a packed weight instead of net weight to value ZMC's ocean freight costs, and that prior to the final results the Department should review its calculations to ensure that the appropriate values were used and the appropriate calculations made.

*Respondent's Position:* ZMC argues that it did properly report its freight costs based on the net weight of each item. According to ZMC, by using the actual market-prices in accordance with Shakeproof Assembly to value ZMC's ocean freight, the Department's calculation will be essentially the same regardless of whether freight costs are reported on a packed weight or net weight basis.

*Department's Position:* We agree, in part, with both the petitioner and ZMC. In the ZMC Preliminary Calc Memo (at page 3), we state that we "calculated the subject merchandise's packed weight as a percentage of net weight based on the information submitted in the tenth administrative review, and applied this ratio to the subject merchandise's net weight to derive a product specific packed weight. See Attachment 1." After review of Attachment 1, we agree with the petitioner that, contrary to the narrative of the ZMC Preliminary Calc Memo, we had not calculated a packed rate ratio for ZMC. Additionally, we agree with the petitioner that to value ZMC's foreign inland freight we used the net weight instead of the packing weight in ZMC's preliminary margin calculation. However, we do not agree with the petitioner that we incorrectly calculated ZMC's international (ocean) freight. See Comment 15, above.

In accordance with Department practice, to calculate freight expenses incurred on shipments by NME carriers, we multiply the surrogate value (per mode of transportation) by the distance covered and by the packed weight of the subject merchandise. See, e.g., TRBs XII, TRBs XIII, and New Shipper Reviews. When a market-economy carrier is used to transport goods, we generally apply the actual costs incurred. See Comment 15, above.

Therefore, for these final results, we calculated the subject merchandise's packed weight as a percentage of net weight based on information submitted in TRBs X, and applied this ratio to the

subject merchandise's net weight to derive a product specific packed weight for this review. We then calculated ZMC's foreign inland freight expense using the packed weight of the subject merchandise. We did not make any adjustments to ZMC's international freight expenses as explained in Comment 15, above.

#### **Comment 17: ZMC Labor Hours**

*Petitioner's Argument:* The petitioner argues that ZMC, as a trading company which does not manufacture the subject merchandise, may not have included its own worker labor hours in its FOP data. Therefore, the petitioner urges the Department to request a clarification of whether ZMC included its own labor hours in its FOP data.

*Respondent's Argument:* ZMC asserts that the Department rejected the petitioner's same request in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results and Partial Termination of Antidumping Duty Administrative Review, 62 FR 6173 (February 11, 1997). Additionally, ZMC argues that it has reported labor factors as required by the Department, insofar as the Department seeks information concerning the production of the subject merchandise. Finally, ZMC argues that its reporting of labor hours was verified in TRBs XII.

*Department's Position:* According to our NME methodology, the factors of production are inputs such as materials, labor, and energy used in producing a product. Moreover, the Department's questionnaire requests information on the quantity of inputs actually used to produce the subject merchandise in the NME country. Therefore, as ZMC is a reseller and performs no role in the TRBs production process, we do not find it necessary to add ZMC's indirect and SG&A labor hours to those already reported for ZMC's supplier. As such, the clarification which the petitioner seeks with regard to ZMC's labor factors is neither necessary nor warranted (see, e.g., TRBs XIII, and accompanying Decision Memorandum at Comment 20).

#### **Comment 18: CMC Cage Steel**

*Respondent's Argument:* CMC argues that in this review the Department properly used reported market-economy steel prices paid by CMC for cage steel-inputs. For the final results, CMC argues that the Department should continue this application.

According to CMC, both the CAFC and the CIT have supported the use of prices paid in convertible currencies to market-economy suppliers to value inputs in NME proceedings because those prices enhance fairness, accuracy, and predictability. Additionally, CMC argues that the Department has historically used prices paid to market-economy suppliers and contends that this practice is supported by the statute. CMC notes that 19 CFR 351.408(c)(1) states that "where a factor is purchased from a market economy supplier and paid for in a market-economy currency, the Secretary normally will use the price paid to the market-economy supplier." (See, also, Antidumping Duties; Countervailing Duties, 62 FR 27296, 27366 and 27413 (May 19, 1997))

(“the only situation in which {the Department} would not rely on the price paid by an NME producer to a market economy supplier is where the quantity of the input purchased was insignificant.”).) As CMC purchased the steel inputs in question from a market-economy supplier and paid for them in a market-economy currency, CMC argues that these market-driven prices constitute the best available information. Therefore, CMC contends that the Department should continue to follow its established practice of using prices paid to market-economy suppliers rather than using surrogate values and should continue to calculate CMC’s final margin using the reported market-economy prices for the final results.

CMC disagrees with the petitioner’s arguments that the Department reject the actual market-economy prices paid by CMC because of a recent preliminary determination and certain “dated” countervailing and antidumping duty investigations. According to CMC, the recent decisions in all of the cases cited by the petitioner negate any suspicion or belief that such prices were subsidized or dumped. CMC further argues that the Department’s analysis should only focus on orders covering the period of review, the particular material input, and supplier at issue, as the Department did in TRBs XII and TRBs XIII. By doing so, CMC contends that the Department will find that there are no antidumping or countervailing duty orders in place on the steel-inputs in question to support rejecting the market-prices paid. Moreover, CMC argues that the Department may not reject import data unless the importing country has conclusively determined through a final order that the input imported is dumped or subsidized. In support of these arguments CMC cited to CNART, at 771 F. Supp. 407, 411-413 and Certain Helical Spring Lock Washers From the People’s Republic of China, Final Results, 61 FR 66255, 66256-7 (December 17, 1996).

In response to the recent preliminary determination cited by the petitioner, CMC argues that, according to a ruling in CNART, a preliminary finding is not sufficient evidence for the Department to reject market-economy prices as the petitioner argued. See CNART, at 771 F. Supp. 407, 412. Moreover, CMC argues that the verification report from the investigation cited by the petitioner demonstrates that the export subsidy programs upon which the petitioner’s argument relies were terminated prior to the investigation. According to CMC, these programs were terminated in order that the country in question could conform to the WTO’s requirements. CMC also notes that section 771(5B)(E)(I) of the Act treats such “notified” programs as non-countervailable. Furthermore, CMC argues that the preliminary rate cited by the petitioner was de minimis and that in Tables from the PRC (see Comment 1) the Department found that a de minimis rate is not sufficient reason to disregard prices from a market-economy supplier. Finally, CMC argues that previous cases and the court rulings demonstrate that the data on which the Department relies in establishing an antidumping duty order must be based on current and up-to-date information in regard to the period of investigation/review. CMC argues that the Department recognized this in TRBs XII, TRBs XIII, and Nation Ford Chem. Co. v. United States, 985 F. Supp. 138 (CIT 1997).

In regard to the petitioner’s references to certain antidumping and countervailing duty cases from prior periods, CMC argues that the petitioner is again trying to somehow argue around the fact

that these orders were revoked. CMC does not consider the periods covered by these cases to be relevant and maintains only one argument in opposition to the petitioner's position: the orders were revoked prior to the current period of review. CMC also argues that the Department should not rely on its determinations from certain sunset investigations to find that these steel-inputs were unfairly traded as proposed by the petitioner. CMC argues that the Department's findings do not equate a final order for countervailable subsidies or antidumping duties without an injury finding by the United States International Trade Commission ("ITC") as occurred in the sunset reviews cited by the petitioner.

Therefore, CMC contends that the particularized information covering the most current and relevant time period demonstrate that the company in question is neither benefitting from any countervailing subsidy nor dumping the steel at issue in the United States. Based on these facts, CMC argues that there is no reason to believe or suspect otherwise and, as such, the Department properly used the actual prices CMC paid for cage steel in the Preliminary Results and should continue likewise for the final results.

*Petitioner's Argument:* The petitioner argues that the Department should reject CMC's reported market-economy prices for the steel it purchased to produce cages and instead use a surrogate value. The petitioner notes that, in the Preliminary Results, the Department used CMC's reported market-economy prices because the Department believed that the country in question did not subsidize CMC's supplier. However, the petitioner argues that there is an ongoing countervailing duty investigation of the country and company in question (i.e., CMC's market-economy supplier) in which the Department recently preliminarily determined that the level of subsidization received by this company is de minimis. However, by arguing that this company would have been above de minimis in an administrative review, the petitioner contends that this country and the company are subsidized. Furthermore, the petitioner argues that the steel manufactured by the country and company in question is the same imported by CMC to manufacture cages. Therefore, the petitioner contends that the Department now has reason to believe or suspect that the market-economy steel purchased by CMC was subsidized.

The petitioner further argues that for a number of years the Department has had ongoing antidumping and countervailing orders against the company in question for the same type of steel used by CMC to produce the subject merchandise. Although these orders were revoked after sunset reviews, the petitioner argues that revocation was based on the ITC's findings of no injury, which was, according to the petitioner, contrary to the Department's findings that the orders should remain in effect. According to the petitioner, the Department's position was that these orders were necessary to avert future unfair trading. Therefore, the petitioner argues that the Department has determined that the steel produced by the company in question is subsidized and the Department should reject CMC's actual market-economy steel prices for cages.

The petitioner disagrees with CMC's position that 19 CFR 351.408(c)(1) allows for only one exception to the Department's "normal" practice of using actual market-prices paid to market-economy suppliers, which is when the quantity purchased is insignificant. According to the

petitioner, it is able to cite to at least four determinations wherein the Department recognized a second exception to the “normal” rule in the regulation: TRBs XII, TRBs XIII, New Shipper Reviews, and ARG Windshields. Additionally, the petitioner contends that the court decisions cited by CMC are off point as none of those cases included situations where the Department had reason to believe or suspect that the market-economy prices were unfair.

In conclusion, it is the petitioner’s position that based on the Department’s recent determination that the company in question is subsidized, the Department should reject CMC’s actual market-economy steel prices for cages and use surrogate values in the final results.

*Department’s Position:* We disagree with the petitioner that the Department should not utilize CMC’s reported market economy steel values. In all of the Department’s most recent cases, the company in question has been found to have de minimis subsidies. Therefore, based on the record evidence in this review, we have no reason to believe or suspect that the cage steel used by CMC was unfairly dumped or subsidized. Additionally, we do not find any merit in the petitioner’s argument that the market-economy company in question is subsidized due to a recent preliminary determination in an ongoing CVD investigation. We agree with CMC that preliminary findings are not sufficient evidence to support excluding market-economy prices paid to a market-economy supplier. See CNART, 771 F. supp. 407, 412 (1991).

Therefore, because we are satisfied that CMC used market economy steel to manufacture the subject merchandise and paid for this steel in a market economy currency, we are continuing to use CMC’s reported market economy steel values for the final results.

#### **Comment 19: Valuation of CMC’s U.S. Inland Freight Costs on a Packed Weight Basis**

*Petitioner’s Argument:* The petitioner argues that all of CMC’s freight costs should be calculated on a packed weight basis. According to the petitioner, the Department properly calculated ocean freight and foreign inland freight costs using CMC’s packed weight. However, the petitioner argues that the Department did not calculate CMC’s U.S. inland freight costs in a like manner. Accordingly, the petitioner contends that the Department should correct this “error” and for the final results calculate CMC’s U.S. inland freight costs by multiplying the reported U.S. inland freight by CMC’s packing weight ratio.

*Respondent’s Argument:* CMC disagrees with the petitioner. CMC argues that it properly reported, in accordance with the instructions of the questionnaire, its U.S. inland freight expenses as actually incurred. The formula applied by CMC was “merely” to allocate the actual expenses incurred to each model sold. According to CMC, if the Department adjusted the U.S. inland freight paid by multiplying the value reported by a “packing weight ratio,” as proposed by the petitioner, it would result in an overstatement of the expense actually paid. CMC notes that in Sigma v. United States, 117 F.3d 1401, 1407-8 (Fed. Cir. 1997), a basic understanding was established that expenses should not be double-counted when calculating antidumping duty margins.



*Department's Position:* In the Department's questionnaire, we ask respondents to report the unit cost of any freight incurred on shipments from the U.S. port of entry to the final recipient. In this review CMC reported, as requested, the unit costs incurred to deliver the subject merchandise from the U.S. port to its affiliate. Therefore, it would be inappropriate to calculate CMC's U.S. inland freight expenses, which were incurred using market-economy carriers, in a like manner to the Department's calculation of CMC's international freight and foreign inland freight expenses, which were incurred using NME country carriers, as suggested by the petitioner.

### **Recommendation**

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for all reviewed firms in the Federal Register.

AGREE       \_\_\_\_\_       DISAGREE       \_\_\_\_\_

\_\_\_\_\_  
Faryar Shirzad  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date