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January 8, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China

SUMMARY:

We have analyzed the case briefs and rebuttal briefs submitted by interested parties in the AD AR of TRBs and parts thereof, finished and unfinished from the PRC. As a result of our analysis, we have made changes to the *Preliminary Results*.[1]

We recommend that you approve the positions described in the "Discussion of the Issues" section of this IDM. Below is the complete list of the issues in this AD AR for which we received comments.

Case Issues:

Comment 1: Targeted Dumping
Comment 2: Financial Ratios
Comment 3: Surrogate Value for Labor
Comment 4: Surrogate Value and Labor Hours for Roller Steel
Comment 5: Valuation of Steel for CPZ/PBCD-Produced Merchandise
Comment 6: Steel Bar Transportation

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[1] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2010–2011 Antidumping Duty Administrative Review, Rescission In Part, and Intent To Rescind in Part*, 77 FR 40579 (July 10, 2012) ("*Preliminary Results*").

Background:

The Department published its *Preliminary Results* on July 10, 2012. Between April 16, 2012, and April 25, 2012, the Department conducted verification of mandatory respondent CPZ/SKF and its U.S. affiliate Peer/SKF. On June 5, 2012, at the Department's request, CPZ/SKF submitted a supplemental questionnaire response.

Petitioner and CPZ/SKF submitted case briefs on August 9, 2012, and rebuttal briefs on August 14, 2012.[2] On October 17, 2012, the Department extended the deadline for the final results for 60 days, until January 7, 2013.[3] On October 31, 2012, the Department tolled the deadline for the final results until January 8, 2013.[4] The Department released its post-preliminary results on December 7, 2012. Petitioner and CPZ/SKF submitted additional case briefs on December 14, 2012, and additional rebuttal briefs on December 18, 2012.

List of Abbreviations

Act or Statute	Tariff Act of 1930, as amended
A-to-A	Average-to-Average
A-to-T	Average-to-Transaction
AD	Antidumping
AR	Administrative Review
AUV	Average Unit Value
CAFC	U.S. Court of Appeals for the Federal Circuit
CFR	Code of Federal Regulations
CPZ/PBCD	Changshan Peer Bearing Co., Ltd., prior to its acquisition by SKF
CPZ/SKF	Changshan Peer Bearing Co., Ltd.
CVD	Countervailing Duty
Department	Department of Commerce
FOP(s)	Factor(s) of Production
HTS	Harmonized Tariff System
IDM	Issues and Decision Memorandum
ILO	International Labor Organization
IPA	Investment Promotion Act

[2] *See* Case Brief of the Timken Company, Petitioner, dated August 9, 2012 ("Petitioner Case Brief"); *see also* Tapered Roller Bearings and Parts Thereof from The People's Republic of China: Case Brief of CPZ/SKF and Peer/SKF, dated August 9, 2012; Rebuttal Brief of the Timken Company, Petitioner, dated August 14, 2012; Tapered Roller Bearings and Parts Thereof from The People's Republic of China: Rebuttal Brief of CPZ/SKF and Peer/SKF, dated August 14, 2012.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, titled "Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated October 17, 2012.

[4] *See* Memorandum from Paul Piquado, "Tolling of Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy," dated October 31, 2012.

ISIC	International Standard Industrial Classification of All Economic Activities
JTEKT	JTEKT (Thailand) Co., Ltd.
Koyo	Koyo Joint (Thailand) Co., Ltd.
ME	Market Economy
NESOI	Not Elsewhere Specified or Included
NME	Non-Market Economy
NSK	NSK Bearing Manufacturing (Thailand) Co., Ltd.
Peer/PBCD	Peer Bearing Company, prior to its acquisition by SKF
Peer/SKF	Peer Bearing Company
Petitioner	The Timken Company
POR	Period of Review
PPI	Producer Price Index
PRC	People's Republic of China
SAA	Statement of Administrative Action
SG&A	Selling, General, and Administrative Expenses
SV(s)	Surrogate Value(s)
TRB(s)	Tapered Roller Bearing(s)
URAA	Uruguay Round Agreements Act
WTO	World Trade Organization

DISCUSSION OF THE ISSUES

Comment 1: Targeted Dumping

Petitioner Argument:

- Petitioner argues that the there is a pattern of significant pricing differences such that the Department should use the A-to-T method rather than the A-to-A method to calculate CPZ/SKF's weighted-average dumping margin in the final results.
- Petitioner argues that the Department's past practice is to consider any sales which pass the *Nails* test[5] to constitute a pattern. Therefore, any sales which pass the *Nails* test should be considered a sufficient volume, including the results found in the post-preliminary analysis.
- Petitioner contends that a pattern of significant price differences should be determined on a case-by-case basis, pursuant to the SAA at 843, because small differences may be significant for one industry or product, but not another, and that in the TRBs industry, CPZ/SKF's U.S. sales and CPZ/SKF's selling patterns dictate that a pattern of significant price differences exists.
- Petitioner asserts that given the number of customers, the variety of products and the types of prices in this industry, it may be difficult to identify a pattern of significant price

[5] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (*Nails*), and as modified in *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011)

differences. Therefore, the Department should apply a less stringent application of the *Nails* test, using one half of one standard deviation in the first stage of the *Nails* test. This would result in significantly more sales passing the Nails test, and a finding of significant targeted dumping.

- Petitioner also argues that the large difference in the weighted-average dumping margins calculated using the A-to-A method and the A-to-T method provides ample evidence of significant masked dumping. This, coupled with the results of the *Nails* test based on Petitioner's recommended use of one half of one standard deviation in the test, should compel the Department to use the A-to-T comparison methodology for the final results.
- Petitioner argues that the Department has changed its practice without explanation and, thereby, has acted in an arbitrary and capricious manner. In the *Final Modification for Reviews*,[6] the Department explicitly linked its new practice in ARs to that which it has followed in AD investigations. However, the Department has introduced a new requirement for a significant volume of sales evincing a pattern before it will consider the use of an alternate comparison method. As noted earlier, Petitioner states that the Department's practice has been to consider any sales which pass the *Nails* test as having established a pattern of significant price differences. Petitioner also notes that in other proceedings, the Department has rejected the concept that there should be a specific *de minimis* requirement that the results of the *Nails* test should fulfill. Lastly, Petitioner argues that the Department should explain what significant volume of sales is required to find a pattern of significant price differences. As with the instant review, Petitioner even notes that in the one investigation in which the Department did not find a pattern of significant price differences when some sales passed the Nails test, that the Department did not even state what constituted an insufficient volume of sales.

CPZ/SKF Argument:

- CPZ/SKF agrees with the Department's conclusion that its allegedly targeted sales are insufficient to establish significance and, thus, CPZ/SKF's U.S. sales do not reflect a pattern of export prices that differ significantly among certain purchasers, and the application of the A-to-T method is inappropriate.
- CPZ/SKF argues that the Department does not have the statutory authority to conduct a targeted dumping analysis in ARs. According to CPZ/SKF, the statutory provision authorizing a targeted dumping analysis is provided only for investigations and not for ARs. CPZ/SKF argues that the Department's reliance on its regulatory shift propagated in the *Final Modification for Reviews* is inadequate to override its statutory mandate which does not permit the application of a targeted dumping analysis in ARs.
- CPZ/SKF contends that it would be against U.S. law as well as the WTO Antidumping Agreement for the Department to use its zeroing methodology, as neither mentions the use of zeroing. This prohibition on zeroing is not only for A-to-A comparisons but also for A-to-T comparisons. Further, the CAFC has effectively prohibited the Department's

[6] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*").

practice of zeroing with A-to-T comparisons in ARs in the CAFC's rulings in *Dongbu*[7] and *JTEKT*.[8]

- Assuming that the Department does have the authority to conduct a targeted dumping analysis in an AR, CPZ/SKF argues that Petitioner has failed to explain why and how CPZ/SKF supposedly selected the allegedly targeted customers, and, thus, allegedly engaged in targeted dumping. CPZ/SKF insists that this is required in order for the Department to initiate a targeted dumping inquiry, and to determine whether any observed pricing pattern is the result of an intentional targeted dumping strategy or is simply an unintended result of a variety of other, unrelated factors. CPZ/SKF argues that Petitioner must provide a logical explanation of the intentional pricing patterns, and not merely a selected list of allegedly targeted customers put together with the sole goal of passing a mechanical test.
- CPZ/SKF also states, assuming that the Department can conduct a targeted dumping analysis in an AR and that the analysis is valid, that the Department can only apply the A-to-T comparison methodology to those sales which are found to be targeted and dumped. It would be unreasonable to apply the special (*i.e.*, A-to-T) comparison methodology to non-targeted sales. Further, the Department's consideration of whether the A-to-A comparison methodology can take into account the observed price differences should be limited to those sales which exhibit the pattern of significant price differences.
- CPZ/SKF argues that the Department's targeted dumping analysis is unreasonable because it is statistically invalid and not justified based on the facts of this case. CPZ/SKF contends that the Department's targeted dumping analysis relies on an erroneous assumption that its U.S. sales exhibit a normal distribution. However, CPZ/SKF claims that its pricing data generally do not conform to a normal distribution and, therefore, a standard deviation test is not indicative of price distribution among the allegedly targeted customers. CPZ/SKF further argues that the *Nails* Test makes statistical inferences without the benefit of statistically valid procedures.

Petitioner Rebuttal:

- Petitioner argues in rebuttal that the Department does have statutory authority to use an alternative comparison methodology to address masked dumping in ARs. Petitioner notes that the statute gives direction in the selection of the appropriate comparison method in AD investigations, but the manner in which a comparison methodology is selected in ARs has been left to the Department's discretion, as presented in the Department's *Final Modification for Reviews*. Petitioner continues that the statute's requirements regarding ARs are limited to (1) calculating an AD, (2) calculating a dumping margin for each entry, and (3) basing averages over a time period not exceeding one calendar month. Petitioner concludes that the fact that the Department now follows the statutory requirements for AD investigations to make a reasoned determination as to which comparison methodology to use in ARs in no way makes the Department's practice inconsistent with the statute.

[7] *See Dongbu Steel Co., Ltd. v. United States*, 635 F.3d 1363 (Fed. Cir. 2011) ("*Dongbu*").
[8] *See JTEKT Corp. v. United States*, 642 F.3d 1378 (Fed. Cir. 2011) ("*JTEKT*").

- Petitioner contends that CPZ/SKF's argument that some additional showing of intent is required is in error. Petitioner claims that the intent to target particular customers, regions, or time periods has never been an element of the Department's analysis. Petitioner states that the Department has also rejected in past proceedings CPZ/SKF's contention that use of the standard deviation is unreasonable. Petitioner argues that the Department uses the standard deviation as a measure of low prices, not as a predictor of the characteristics of sampled data.
- Petitioner rejects CPZ/SKF's argument that the Department's analysis identified an insufficient volume of U.S. sales that passed the *Nails* test. Petitioner reiterates that significant masking may occur by non-dumped sales even when a small volume of sales, perhaps even to a single customer, is found to pass the *Nails* test. Petitioner dismisses the reference to *Taiwan SBAs*[9] because no percentages were reported, and this decision was for an investigation whose purpose is to evaluate an exporter's overall pricing behavior, whereas in an AR the purpose is to examine an exporter's pricing behavior for each individual entry or transaction. Further, Petitioner argues that the Department's overly restrictive identification of a pattern of significant price differences ignores all of CPZ/SKF's U.S. sales which did not pass the *Nails* test, but which have prices below the mean price, and these sales also should be considered when assessing whether a pattern exists.
- Petitioner rejects CPZ/SKF's arguments that the use of the zeroing methodology is unlawful and inconsistent with the WTO Antidumping Agreement. Petitioner notes that the Department has already addressed and rejected such arguments in other proceedings, as well as in the Department's *Final Modification for Reviews*.
- Petitioner argues that the Department must apply the alternative comparison methodology to all U.S. sales, and not just those which pass the *Nails* test as advocated by CPZ/SKF. Petitioner states that the purpose of using the alternative comparison methodology is to unmask the dumping to a particular customer, region or time period. However, if offsets continue to be granted to some sales, then this purpose will be thwarted.

CPZ/SKF Rebuttal:

- CPZ/SKF rejects Petitioner's assertion that the small amount of U.S. sales which passes the *Nails* test is adequate to find that a pattern of significant price differences exists. CPZ/SKF asserts that this is consistent with the final determination for *Taiwan SBAs* and the final results for *Ball Bearings from France, Germany and Italy*.[10]
- CPZ/SKF continues to contradict Petitioner's assertion that the Department does have the statutory authority in an AR to address a targeted dumping allegation and consider whether an alternative comparison methodology is appropriate. CPZ/SKF emphasizes that the statute only authorizes the Department to perform a targeted dumping allegation in an AD investigation.

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[9] *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012) ("*Taiwan SBAs*"), and accompanying IDM at Comment 1.

[10] *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) ("*Ball Bearings from France, Germany, and Italy*"), and accompanying IDM at Comment 1.

- CPZ/SKF repeats its earlier argument that the *Nails* test is unreasonable and statistically invalid.
- CPZ/SKF argues that Petitioner has merely cherry-picked the customers included in its targeted dumping allegation based on the results of the *Nails* test, and has presented no additional evidence that demonstrates the existence of masked dumping. Consequently, CPZ/SKF contends that the Department has failed to justify its application of the Nails test given the specific factual circumstances of this review. In particular, CPZ/SKF states that this is required given the Department's statement when it withdrew its targeted dumping regulation that it would consider this issue on a case-by-case basis.

Department's Position: We continue to find that a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods does not exist and, therefore, the Department has not considered whether the A-to-A method can account for the observed price differences.[11]

Legal Framework for the Application of an Alternative Methodology

In this review, Petitioner submitted an allegation of targeted dumping by CPZ/SKF prior to the *Preliminary Results*.[12] Petitioner asserted that there is a pattern of U.S. sales prices for comparable merchandise that differ significantly among customers. As a consequence, Petitioner requested that the Department employ an alternative comparison method to calculate CPZ/SKF's weighted-average dumping margin in this review.

CPZ/SKF claims that the Department does not have the statutory authority to employ an alternative comparison method based on a targeted dumping allegation in ARs. We disagree. Section 771(35)(A) of Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." The definition of "dumping margin" calls for a comparison of normal value and export price or constructed export price. Before making the comparison called for, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act describes three methods by which the Department may compare normal value and export price (or constructed export price) and places certain restrictions on the Department's selection of a comparison method in AD investigations. The statute places no such restrictions on the Department's selection of a comparison method in an AR. 19 CFR 351.414 describes the methods by which normal value may be compared to export price or constructed export price in administrative reviews: A-to-A, transaction-to-transaction, and A-to-T. These comparison methods are distinct from each other. When using transaction-to-transaction or A-to-T comparisons, a comparison is made for each export transaction to the United States. When using A-to-A comparisons, a comparison is made for each group of comparable export transactions for which the export prices or constructed export prices have been averaged together (*i.e.*, for an averaging group). 19 CFR 351.414(c)(1) fills the silence in the statute on the choice

[11] *See* the post-preliminary analysis memorandum for SKF dated December 7, 2012, and the final calculation memorandum for SKF dated concurrently with this memorandum.

[12] *See* Timken's pre-preliminary comments, which include its targeted dumping allegation, dated May 15, 2012.

of comparison method in the context of ARs. In particular, the Department has determined that in both AD investigations and ARs, the A-to-Ae method will be used "unless the Secretary determines another method is appropriate in a particular case."

The AD statute, the SAA, and the Department's regulations do not address directly whether the Department should use an alternative comparison method in an AR based upon a targeted dumping analysis conducted pursuant to section 777A(d)(1)(B) of the Act.[13] In light of the statute's silence on this issue, the Department recently indicated that it would consider whether to use an alternative comparison method in ARs on a case-by-case basis, but declined to "speculate as to either the case-specific circumstances that would warrant the use of an alternative methodology in future reviews, or what type of alternative methodology might be employed."[14] At that time, the Department also indicated that it would look to practices employed by the agency in AD investigations for guidance on this issue.[15]

In AD investigations, the Department examines whether to use an A-to-T method by using a targeted dumping analysis consistent with section 777A(d)(1)(B) of the Act:

> The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if
>
> (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
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> (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of an AR, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an AR is, in fact, analogous to the issue in AD investigations. Accordingly, the Department finds the analysis that has been used in AD investigations instructive for purposes of examining whether to apply an alternative comparison method in this AR.

The SAA does not demonstrate that the Department should conduct targeted dumping analysis in investigations only. The SAA does discuss section 777A(d)(1)(A)(i) of the Act, concerning the types of comparison methods that the Department may use in investigations. That provision, however, is silent on the question of choosing a comparison method in ARs. Section 777A(d)(1)(A) of the Act does not require, or prohibit, the Department from adopting a similar or a different framework for choosing a comparison method in ARs as compared to the framework required by the statute in investigations. The SAA states that "section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed

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[13] *See* section 777A(d)(1)(B) of the Act; SAA at 842-43; 19 CFR 351.414.
[14] *See Final Modification for Reviews*, 77 FR at 8107.
[15] *See id.*, 77FR at 8102.

export prices in situations where an A-to-A or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods." Like the statute, the SAA does not limit the proceedings in which the Department may undertake such an examination.

We disagree with CPZ/SKF that the silence of the statute with regards to application of an alternative comparison methodology in administrative reviews precludes the Department from applying such a practice. Indeed, the court has stated that the "court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances."[16] Further, the court has stated that this "silence has been interpreted as 'an invitation' for an agency administering unfair trade law to 'perform its duties in the way it believes most suitable' and courts will uphold these decisions '{s}o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious.'"[17] We find that the above discussion of the extension of the statute with respect to investigations is a logical, reasonable and deliberative method to fill the silence with regard to ARs.

Further, the Department's revision of its practice with regards to ARs, and to follow its WTO-consistent practice for investigations, was a deliberate decision on the part of the Executive Branch pursuant to the authority provided in section 123 of the URAA. Specifically, the Executive Branch solicited public comments, consulted with the appropriate congressional committees, and issued a proposed and final announcement of the modification. This decision was made in order to implement several adverse WTO reports in which it was found that the United States was not meeting its WTO obligations. As such, the wisdom of the Department's legitimate policy choices in this situation is not subject to judicial review.[18]

Application of Zeroing With an Alternative Comparison Methodology

We disagree that *Dongbu* and *JTEKT* call into question the Department's zeroing methodology in ARs. Instead, the CAFC found the Department had provided insufficient explanation for its interpretation of section 771(35) of the Act such that the ambiguity in that provision was resolved differently when using the A-to-A comparison methodology in AD investigations as compared to when using the A-to-T comparison methodology in ARs.[19] The CAFC has not held that the Department's interpretation cannot be explained and is, therefore, unlawful; rather, the Department was provided the opportunity on remand to provide further explanation in support of the Department interpretation of section 771(35) of the Act.[20] The Department has now provided

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[16] *See U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir. 2010) (citations omitted).
[17] *See Mid Continent Nail Corp. v. United States*, 712 F.Supp. 2d 1370,1376 (CIT 2010) (*Mid Continent Nail*) citing *U.S. Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996)*.
[18] *See Suramerica de Aleaciones Laminadas, C.A. v. United States*, 966 F.2d 660, 665 (Fed. Cir. 1992).
[19] We note that since the CAFC issued its opinions in *Dongbu* and *JTEKT*, the Department has revised its practice in administrative reviews to follow that in antidumping investigations. *See Final Modification in Reviews.* Thus, this administrative review is not similarly situated with the administrative review at issue in *Dongbu* and *JTEKT*. *See Dongbu*, 635 F.3d at 1371, and *JTEKT*, 642 F.3d at 1381-1383.
[20] *Id.*

its explanation in numerous proceedings justifying its interpretation of section 771(35) of the Act where offsets are granted when using the A-to-A method, and offsets are not granted when using the A-to-T method. The Court of International Trade has affirmed this explanation on several occasions.[21]

We further reject CPZ/SKF's assertion that the Department's determination in this AR is in conflict with the *Final Modification for Reviews* because it asserts that the result is inconsistent with the relevant obligations under the WTO agreements. The *Final Modification for Reviews* was implemented by the Executive Branch, pursuant to section 123 of the URAA, to change the Department's practice related to zeroing in ARs in order to make it consistent with certain WTO panel and appellate body determinations. The *Final Modification for Reviews* explains, "The methodologies and interpretations set forth and adopted in the *Final Modification for Reviews* fully address the findings of WTO inconsistency."[22] The WTO agreements and WTO dispute settlement reports themselves are without direct effect under U.S. law.

Analysis of the Targeted Dumping Allegation

In recent AD investigations and ARs where the Department has addressed targeted dumping allegations, the Department has employed the *Nails* test for each respondent subject to an allegation to determine whether a pattern of export prices or constructed export prices for comparable merchandise that differ significantly among purchasers, regions or time periods existed within the U.S. market. The *Nails* test involves a two-step process, as described below, that determines whether the Department should consider whether the A-to-A method is appropriate in a particular situation.

In the first stage of the test, the "standard-deviation test," we determined the volume of the allegedly targeted group's (*i.e.*, purchaser, region or time period) sales of subject merchandise that are at prices more than one standard deviation below the weighted-average price of all sales under review, targeted and non-targeted. We calculated the standard deviation on a product-specific basis (*i.e.*, by control number or CONNUM) using the weighted-average prices for the allegedly targeted group and the groups not alleged to have been targeted. If that volume did not exceed 33 percent of the total volume of the respondent's sales of subject merchandise for the allegedly targeted group, then we did not conduct the second stage of the *Nails* test. If that volume exceeded 33 percent of the total volume of the respondent's sales of subject merchandise for the allegedly targeted group, on the other hand, then we proceeded to the second stage of the *Nails* test.

In the second stage, the "gap test," we examined all sales of identical merchandise (*i.e.*, by CONNUM) sold to the allegedly targeted group which passed the standard-deviation test. From those sales, we determined the total volume of sales for which the difference between the

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[21] *See Union Steel v. United States*, 823 F. Supp. 2d 1346 (Ct. Int'l Trade 2012); *Grobest & I-Mei Indus. Vietnam Co. v. United States*, 853 F. Supp. 2d 1352 (Ct. Int'l Trade 2012); *Far Eastern New Century Corp. v. United States*, Slip Op. 12-110 (Ct. Int'l Trade August 29, 2012); and *Camau Frozen Seafood Processing Imp. Exp. Corp. v. United States*, Slip Op. 12-137 (Ct. Int'l Trade November 15, 2012); *Fischer S.A. Comericio, Industria v. United States*, 2012 Ct. Intl. Trade LEXIS 149, Slip-Op 12-149 (Ct. Int'l Trade December 6, 2012).

[22] *See Final Modification for Reviews*, 77 FR 8101, 8106.

weighted-average price of sales for the allegedly targeted group and the next higher weighted-average price of sales for a non-targeted groups exceeds the average price gap (weighted by sales volume) between the non-targeted groups. We weighted each of the price gaps between the non-targeted groups by the combined sales volume associated with the pair of prices for the non-targeted groups that defined the price gap. In doing this analysis, the allegedly targeted group's sales were not included in the non-targeted groups; the allegedly targeted group's weighted-average price was compared only to the weighted-average prices for the non-targeted groups. If the volume of the sales that met this test exceeded five percent of the total sales volume of subject merchandise to the allegedly targeted group, then we determined that targeting occurred and these sales passed the *Nails* test.

As explained in the post-preliminary analysis, if the Department determined that a sufficient volume of U.S. sales were found to have passed the *Nails* test, then the Department considered whether the A-to-A method could take into account the observed price differences. To do this, the Department evaluated the difference between the weighted-average dumping margin calculated using the A-to-A method and the weighted-average dumping margin calculated using the A-to-T method. Where there is a meaningful difference between the results of the A-to-A method and the A-to-T method, the A-to-A method would not be able to take into account the observed price differences, and the A-to-T method would be used to calculate the weighted-average margin of dumping for the respondent in question. Where there is not a meaningful difference in the results, the A-to-A method would be able to take into account the observed price differences, and the A-to-A method would be used to calculate the weighted-average dumping margin for the respondent in question.

Petitioner asserted that the Department has changed its past practice and has created an additional threshold to use the A-to-T method under section 777A(d)(1)(B) of the Act. We disagree. In *Taiwan SBAs*, *Ball Bearings from France, Germany and Italy*, and *Welded Pipe from Turkey*,[23] as in this review, even though the Department found sales that passed the *Nails* Test, this was not sufficient to satisfy the pattern requirement of the first prong of the targeted dumping analysis, corresponding to section 777A(d)(1)(B)(i) of the Act.

> As a result of our analysis, we preliminarily determine that the overall proportion of TRM's U.S. sales during the POI that satisfy the criteria of section 777A(d)(1)(B)(i) of the Act and our practice as discussed in *Nails* is insufficient to establish a pattern of EPs for comparable merchandise that differ significantly among certain customers or regions. Accordingly, the Department has determined that criteria established in 777A(d)(1)(B)(i) of the Act have not been met.[24]

The Department applied the same analysis in *Welded Pipe from Turkey*, stating "if the Department determined that a sufficient volume of U.S. sales were found to have passed the two-

[23] *See Circular Welded Carbon Steel Pipes and Tubes From Turkey; Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 77 FR 72818 (December 6, 2012) and accompanying IDM at Comment I (*Welded Pipe from Turkey*).

[24] *See Certain Stilbenic Optical Brightening Agents From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 76 FR 68154, 68156 (November 3, 2011), unchanged in the final determination.

step Nails test, then the Department considered whether the average-to-average method could take into account the observed price differences."[25]

We agree with Petitioner that the Department has not specified a *de minimis* threshold. Indeed, in the *Final Modification for Reviews*, the Department states that it "will determine, on a case-by-case basis, whether it is appropriate to use an alternative comparison methodology by examining the same criteria the Department examines in original investigations pursuant to sections 777A(d)(1)(A) and (B) of the Act."[26] Further, 19 CFR 351.414(c)(1) states that the Department will use the A-to-A method in ARs "unless the Secretary determines another method is appropriate in a particular case."[27] Accordingly, the Department has not specified a *de minimis* threshold. Instead, the Department examines the results of the *Nails* test as described above and determines, on a case-by-case basis, whether the volume of sales found to be targeted are sufficient to justify a finding that the pattern requirement has been satisfied.

Even if Petitioner's argument that the Department had changed its practice to adopt a new *de minimis* threshold were accurate, it would not be unreasonable, and therefore not unlawful, for the Department to explain that in some cases, the results of the *Nails* test are simply insufficient to make the necessary finding contemplated by section 777A(d)(1)(B(i) of the Act.

Moreover, even if the Department did not reasonably consider it necessary for a sufficient volume of sales to be found targeted using the *Nails* test as part of the pattern requirement, the Court of International Trade has opined on this issue in *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221, 1228 (Ct. Int'l Trade 1998), where the Court stated

> Under the appropriate circumstances Commerce has the discretion to not *apply* the targeted dumping exception to its normal methodology, even upon a finding of targeted dumping.

In that regard, section 777A(d)(1)(B) of the Act states that the Department "may" determine whether to use the A-to-T method to calculate the weighted-average dumping margin if the two criteria, (i) and (ii), are satisfied. Therefore, even if both prongs are met, the statute does not obligate the Department to use the A-to-T method, or any alternative method, to calculate the weighted-average dumping margin.

We disagree with CPZ/SKF's argument that the Department should reject Petitioner's targeted dumping allegation because Petitioner provided no explanation as to why or how CPZ/SKF selected the allegedly targeted customers. The Department is not required to discern the intent or motivations of the exporter in its pricing decisions. Congress did not speak to the "intent" of the producers or exporters in setting prices that are significantly different. Instead, Congress stated that "the Administration intends that in determining whether a pattern of significant prices differences exist, Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another."[28] Consistent with the

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[25] *See Welded Pipe from Turkey,* and accompanying IDM at Comment 1.
[26] *See Final Modification for Reviews*, 77 FR 8101, 8102.
[27] *See Final Modification for Reviews*, 77 FR 8101, 8114,
[28] *See* SAA at 843.

analysis applied in AD investigations under section 777A(d)(1)(B) of the Act and with regard to the language of the SAA, the Department's analysis examines the question of whether a pattern of significant price differences exists. The Act and legislative history do not require that the Department conduct an additional analysis to determine the reasons that significant differences in prices exist. As stated in *Nails from the UAE*,[29] the Department is not required to determine:

> "why" an exporter's pricing behavior may differ significantly as between different customers, regions or time periods. Indeed, inserting this kind of standard into a targeted dumping analysis is nowhere found in the Act and it would likely create an unmanageable standard for the Department. Instead, the Act requires the Department to determine whether a pattern of export price differences exists without regard to "why." When such a pattern exists, the Act indicates that export prices may not be appropriate for application of the A-A comparison methodology.[30]

The Department rejects Petitioner's suggestions that (1) the basis for the analysis in the standard-deviation test should be one half of one standard deviation rather than one standard deviation, and (2) that the Department should include all sales priced below the average price as being targeted. The Department has determined the one-standard-deviation threshold to be a distinct and reasonable bright line to quantitatively measure significant price differences.[31] Further, the court has affirmed the Department's use of the standard deviation test as part of the *Nails* test.[32] In addition, Petitioner has not demonstrated that the Department's use of one standard deviation is unreasonable or unlawful, only that it reduces that universe of U.S. sales which Petitioner claims represent a pattern of significant price differences.

Petitioner contends that the difference between the weighted-average dumping margins calculated using the A-to-A method and the A-to-T method demonstrates masked dumping which must be addressed. The Department continues to find that it is appropriate to apply the same targeted dumping analysis in this AR as it applied in the context of AD investigations, where section 777A(d)(1)(B) of the Act first requires the Department to find that there exists a pattern of export prices that differ significantly. The fact that differences in the results of the margin calculations exist, in and of itself, is not sufficient to abandon the usual A-to-A comparison method provided for in the Department's regulations. For CPZ/SKF in this review, the Department has not identified a pattern of export prices that differ significantly and, therefore, has continued to use the A-to-A method to calculate the weighted-average dumping margin for CPZ/SKF. As noted above, this determination is consistent with recent Department determinations.

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[29] *See Certain Steel Nails From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012) ("*Nails from the UAE*").

[30] *See Nails from the UAE,* and accompanying IDM at Comment 1.

[31] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413 (March 26, 2012), and accompanying IDM at Comment 1, and *Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 64475 (October 22, 2012), and accompanying IDM at Comment 12.

[32] *See Mid Continent Nail,* 712 F.Supp. 2d 1370 at 1377.

With respect to the remaining arguments by CPZ/SKF that the *Nails* test is statistically invalid and that the Department should only apply the A-to-T method to the sales which passed the *Nails* test, we find that none of these can affect our decision to not depart from the A-to-A method to calculate the weighted-average dumping margin for CPZ/SKF. Therefore, for purposes of these final results of review, we have not addressed these remaining arguments.

Comment 2: Financial Ratios

- Petitioner argues that the Department should use the financial statements of only NSK for the final results, rather than also using the financial statements of Koyo or JTEKT, as in the *Preliminary Results*. Petitioner argues that NSK produces only ball bearings, wheel hub bearings, and bearings, which are all comparable to TRBs, and that the same production processes apply to the manufacture of all types of bearings.[33] Petitioner argues that Koyo and JTEKT manufacture products other than TRBs and, therefore, their financial statements should not be relied upon for calculation of surrogate financial ratios.
- Petitioner contends that Koyo manufactures steering shafts and automotive products other than bearings, and that JTEKT manufactures both steering products and other automotive products, including bearings. Petitioner argues that Koyo's products are not identical or comparable to TRBs, and that JTEKT's mix of products would result in financial ratios which are not representative of bearing production.
- CPZ/SKF argues that the Department should reject the financial statements of NSK because it received subsidies based on export performance under Thailand's IPA, specifically an exemption from import duties on raw materials imported for use in production for export.
- CPZ/SKF states that the Department should continue to rely on the financial statements of Koyo because the evidence submitted by Petitioner does not prove that Koyo does not produce bearings.
- CPZ/SKF also argues that the Department should continue to rely on the financial statements of JTEKT because the fact that it produces some non-bearing products in addition to TRBs does not make its financial statements unusable for calculation of financial ratios, and that the Department has a preference for using multiple financial statements to calculate surrogate financial ratios.[34]
- Additionally, CPZ/SKF states that NSK also produces products other than bearings, that there is no evidence that NSK produces tapered roller bearings, and that there is no information regarding the relative production volumes of NSK's bearings and bearing accessories.

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[33] Petitioner cites *Certain Bearings From China, France, Germany, Italy, Japan, Singapore, and the United Kingdom*, Inv. Nos. 731-TA-344, 391-A, 392-A and C, 393-A, 394-A, 396, and 399-A (Second Review), USITC Pub. 3876, at Overview-10 (August 2006), excerpts included as Exhibit 4 to Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China (06/01/10-05/31/11): The Timken Company's Factual Submission (December 2, 2011) ("Petitioner's Factual Submission").

[34] CPZ/SKF cites *Chlorinated Isocyanurates From the People's Republic of China: Final Results of 2008-2009 Antidumping Duty Administrative Review*, 75 FR 70212 (November 17, 2010) ("*Chlorinated Isocyanurates*"), and accompanying IDM at Comment 3, and *Qingdao Sea-Line Trading v. United States*, Slip Op. 12-39, 2012 Ct. Intl. Trade LEXIS 44 (March 21, 2012).

- Further, Petitioner argues the financial statements on the record indicate that all of the companies have participated in government subsidy programs under Thailand's IPA but the extent and timing of benefits received is not clear. Petitioner argues that any subsidies received by NSK do not necessarily distort NSK's financial data, and that NSK's financial statements are the best information on the record with which to calculate surrogate financial ratios.[35]

Department's Position: For the final results, we have valued factory overhead, SG&A expenses, and profit using the financial statements of NSK and JTEKT. These financial statements contain the details required to calculate surrogate financial ratios and conform to the additional criteria considered by the Department when choosing the best available information to calculate surrogate financial ratios.

In accordance with section 773(c)(1) of the Act, the Department bases normal value on the value of the FOPs used to produce the merchandise, plus an amount for general expenses and profit, based on the best available information regarding the values of such factors in an ME country or countries considered to be appropriate. In choosing the best available information to value factory overhead, SG&A expenses, and profit, the Department prefers to use publicly available financial statements from producers of identical or comparable merchandise in the selected surrogate country[36] which are complete, free of evidence of receipt of countervailable subsidies, and contemporaneous with the period under consideration.[37] The Department also may disregard financial statements that are not sufficiently detailed to permit the calculation of one or more of the surrogate financial ratios.[38]

In this case, we began by evaluating the three financial statements of Thai producers on the record to determine which statements contained the details necessary to calculate the financial ratios. All three of the financial statements are publicly available, contemporaneous with the POR, and from the Department's primary surrogate country, Thailand. Additionally, all contain sufficient detail to permit the calculation of all of the surrogate financial ratios.

Concerning the production of identical or comparable merchandise, information on the record indicates that JTEKT and NSK both produce bearings. Specifically, JTEKT's financial statements state that it produces bearings, among other products,[39] and in the Thailand Board of Investment Promoted Company Database, JTEKT is identified as a producer of TRBs.[40] We

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[35] Petitioner cites *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 68030 (December 5, 2003) ("*Persulfates*"), and accompanying IDM at Comment 3.

[36] *See* 19 CFR 351.408(c)(4).

[37] *See Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) ("*Wood Flooring*"), and accompanying IDM at Comment 1.

[38] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009), and accompanying IDM at Comment 1; *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 9753 (February 22, 2011), and accompanying IDM at Issue 1.

[39] *See* Tapered Roller Bearings and Parts Thereof from The People's Republic of China: SKF's Surrogate Country and Surrogate Value Comments, dated December 15, 2011, ("CPZ/SKF Surrogate Country and Value Comments") at Appendix S-13.

[40] *See* The Timken Company's Post-Preliminary Surrogate Value Information, dated July 30, 2012, ("Petitioner Post-Preliminary SV Information") at Attachment 6.

disagree with Petitioner that the statement in JTEKT's financial statements that JTEKT is "principally engaged in" the manufacture, import, and export of steering products demonstrates that a significant portion of its assets are devoted to manufacturing steering products because the statement refers to manufacturing, importing, and exporting, not solely manufacturing.[41] Also, JTEKT's financial statements list several products among its principle manufacturing activities, including bearing systems. As discussed in *Steel Nails 09/10*, where financial statements include details concerning the percentage of production, the Department will conduct an analysis of the company's product mix.[42] However, as Petitioner acknowledges, JTEKT's financial statements do not include this level of detail. NSK's financial statements indicate that NSK produces "automobile bearings and their components and accessories," and Petitioner notes that the Thai Board of Investment's Promoted Company Database identifies NSK being a producer of ball bearings, wheel hub bearings, and bearings.[43] Petitioner states that this demonstrates that NSK is a producer of comparable merchandise.[44] We note that NSK's financial statements do not indicate whether any of NSK's production of automobile bearings includes production of TRBs, nor do they provide information concerning the "components and accessories" also produced by NSK. While a portion of JTEKT's production is of TRBs, and the Department has a preference for using data from producers of identical merchandise,[45] JTEKT also produces a number of other products aside from TRBs. In the absence of information on the record regarding the percentages of products produced by JTEKT and NSK, we find that it is appropriate to conclude that both JTEKT and NSK equally fit the requirement of being producers of identical or comparable merchandise, and that both should be included in the Department's calculation of the surrogate financial ratios.

While information on the record indicates that JTEKT and NSK produce identical or comparable merchandise, the record does not indicate that Koyo does. Koyo's financial statement indicates that the company's product range consists of steering and auto parts, but it does not state that the company produces bearings.[46]

Guidance regarding SVs for factory overhead, SG&A expenses, and profit is provided at 19 CFR 351.408(c)(4), which states that these items will normally be based on public information from companies that are in the surrogate country and that produce merchandise that is identical or comparable to the subject merchandise. Although the statute does not define "comparable merchandise," to determine whether products are comparable, the Department has considered whether the surrogate company's products have production processes, end-uses, and physical characteristics similar to the respondents' products.[47]

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[41] *See* Petitioner Case Brief, at 10, citing Petitioner Post-Preliminary SV Information at Exhibit 6.

[42] *See Certain Steel Nails from the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) ("*Steel Nails 09/10*"), and accompanying IDM at Comment 2.

[43] *See* Petitioner Post-Preliminary SV Information, at Exhibit 5.

[44] *See* Petitioner Case Brief, at 7.

[45] *See Persulfates,* and accompanying IDM at Comment 3.

[46] *See* CPZ/SKF Surrogate Country and Value Comments, at Appendix S-13.

[47] *See, e.g., Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652 (June 24, 2008), and accompanying IDM at Comment 3; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004), and accompanying IDM at Comment 9F.

With regard to physical characteristics and end-uses, we find that the major material input (*i.e.*, steel) in Koyo's production may be similar to that used in TRBs, but that the majority of Koyo's production appears to be steering shafts, which are not physically similar and do not have the same end use as TRBs. Additionally, Koyo's financial statements do not indicate that TRBs or comparable bearings are being manufactured by Koyo as part of its production of auto parts. Furthermore, we find that the category of "auto parts" is too general to indicate whether the production processes are similar to the process of producing TRBs. Thus, Koyo's financial statements do not indicate that it produced merchandise that is identical or comparable to the subject merchandise.

Finally, although all three financial statements on the record reference Thailand's IPA, the Department has determined that this reference is not a sufficient reason to discard any of the financial statements. As noted above, the Department prefers to use financial statements from companies that have not benefitted from countervailable subsidies.[48] However, the Department's determination of whether to use the financial statements of a producer that potentially received a countervailable subsidy cannot be, nor is it intended to be, a full investigation of the subsidy program in question.[49] Instead, the Department's practice is to review the financial statements to determine whether the evidence indicates that the company received a countervailable subsidy during the relevant period from a program previously investigated by the Department. In this case, the financial statements of all three companies indicate that they were granted "promotional privileges" by the Thai government under the IPA. The Department has found that the IPA is not *per se* countervailable; instead, the program has been found countervailable when the approval of promotional privileges was determined to be based on an export commitment or the company's location in a regional investment zone.[50] None of the financial statements from the three Thai producers contains evidence that the companies were provided their IPA promotional privileges based on these criteria. Therefore, there is not sufficient evidence that any of the three companies received countervailable subsidies during the period in question.

For the reasons above, the Department has used the financial statements of JTEKT and NSK to value factory overhead, SG&A expenses, and profit for the final results because these financial statements constitute the best available information.

Comment 3: Surrogate Value for Labor

- CPZ/SKF contends that the Department should rely upon 2000 ILO Chapter 6A wage data from Thailand for ISIC category 29 (manufacture of machinery and equipment) to value labor.

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[48] *See Chlorinated Isocyanurates*, and accompanying IDM at Comment 3.

[49] *See* Omnibus Trade and Competitiveness Act of 1988, H.R. REP. No. 576, 100th Cong., 2d Sess. 590 (1988) (Conf. Rep.) reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24 ("In valuing such factors, Commerce 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 intend that Commerce base its decision on information generally available to it at the time.").

[50] *See Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand*, 70 FR 13462 (March 21, 2005), and accompanying IDM at II.D, Comment 3.

- CPZ/SKF argues that the Department failed to apply its labor data filtering parameters in the correct order according to its practice because it considered contemporaneity before sub-classification and type of data.[51]
- Petitioner argues that the Department should continue using 2005 ILO Chapter 6A total manufacturing wage data from Thailand as the SV for labor, as it did in the *Preliminary Results*, because this is consistent with its statement in *Labor Methodology* that, if industry-specific data are not available for the surrogate country in its ILO Chapter 6 data, the Department will then look to national data for the surrogate country.
- Petitioner contends that although the 2005 labor data covers all manufacturing categories, rather than being specific to the TRB-manufacturing industry, it is the best information available with which to value labor because it is more recent to the POR.
- Petitioner states that the Thai PPI increased 34.11 percent from 2000 to the POR, and so inflating the 2000 industry-specific Thai labor data per the Department's normal practice would result in an inaccurate labor surrogate value. Petitioner argues that a comparison of the actual total manufacturing wages shows a greater increase from 2000 to 2005 than the Thai PPI shows between 2000 and the POR.
- Petitioner notes that the Department's practice in selecting SVs is to consider the quality, specificity, and contemporaneity of the data, and argues that continuing to use the 2005 total manufacturing wage data is consistent with the Department's practice in *Labor Methodology*, and as applied in other proceedings.[52]

Department's Position: For the final results, we have continued to value labor using the 2005 ILO Chapter 6A labor cost data from Thailand for the manufacturing sector.

We disagree with CPZ/SKF that the Department departed from its practice, as established in *Labor Methodology*. We continue to find that subcategory 29 (*i.e.*, "Manufacture of Machinery and Equipment NEC"), is the most specific subcategory to the manufacture of TRBs. In the *Preliminary Results*, however, we stated that the industry-specific data were unusable because Thailand had not reported industry-specific labor data since 2000. The Department's preference is to not rely on labor data "when there is a significant lag between the reporting date of that data and the period of review."[53] Because the industry-specific data is not available as an SV, the Department's *Labor Methodology* states that the Department will use the surrogate country's data for the manufacturing sector.[54] Thus, we relied on Thai labor 6A data for the manufacturing sector, which is consistent with our practice and the *Labor Methodology*.

We also note that the Department has recently used Thai labor data from the manufacturing sector in the final results of the new shipper review of TRBs from the PRC.[55] We continue to find that the SV for labor used in the *Preliminary Results* is the best available information

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[51] CPZ/SKF cites *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) ("*Labor Methodology*").

[52] Petitioner cites, *e.g.*, *Folding Metal Tables and Chairs From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 39680 (July 5, 2012) ("*FMTCs*"), and accompanying IDM at Comment 5. .

[53] *See FMTCs*, and accompanying IDM at Comment 5.

[54] *See Labor Methodology,* 76 FR at 36094, n. 11.

[55] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 77 FR 65668 (October 30, 2012).

pursuant to section 773(c)(4) of the Act and, therefore, we have not changed it for the final results.

Comment 4: Surrogate Value and Labor Hours for Roller Steel

- CPZ/SKF originally stated that its roller subcontractors used hot-rolled steel, and suggested that the steel be valued using Thai import data under HTS category 7227.90 ("Bars and rods of alloy steel (other than stainless), hot-rolled, in irregularly wound coils, NESOI") in its surrogate value submission. In the *Preliminary Results*, the Department valued roller steel using HTS 7227.90.
- Petitioner argues that roller steel should be valued with HTS category 7228.50.10 ("Other bars and rods, not further worked than cold-forming or cold-finished: of circular cross-section"), and states that CPZ/SKF recommended the same HTS category as an SV for roller steel in the prior administrative review.[56]
- Petitioner claims that cold-rolled steel is required for roller production,[57] and argues that if CPZ/SKF's roller subcontractors were using hot-rolled steel, as CPZ/SKF asserted for the *Preliminary Results*, then CPZ/SKF should have reported the additional labor required to perform a cold-drawing or cold-rolling step in the roller production process. Petitioner argues that a comparison of labor values from the current POR and the previous POR show that the labor values for the previous POR were significantly higher, demonstrating that labor was underreported.
- CPZ/SKF states that neither it nor its subcontractors perform any cold-drawing or cold-rolling of the roller steel, and that the response upon which Petitioner relies included a typographical error, which is why this additional production step was not included in CPZ/SKF's reported production process. Thus, CPZ/SKF claims that no additional labor was performed beyond what it originally reported.
- Further, CPZ/SKF states that it should have reported cold-finished steel wire rod as an input for roller production, rather than hot-rolled steel rod, because it used cold-finished steel wire rod to produce rollers, as in the previous AR.
- CPZ/SKF argues that labor was higher in the previous POR due to the fact that significantly fewer finished products were produced during the previous POR using approximately the same workforce, and not because CPZ/SKF underreported labor.

Department's Position: For the final results, we have valued CPZ/SKF's roller steel using HTS category 7228.50.10 ("Other bars and rods, not further worked than cold-forming or cold-finished: of circular cross-section"), rather than HTS category 7227.90 ("Bars and rods of alloy steel (other than stainless), hot-rolled, in irregularly wound coils, NESOI"), which was used in the *Preliminary Results*.

Petitioner originally argued in favor of HTS category 7228.50.10 for roller steel based on the fact that it was the SV used in previous reviews of TRBs.[58] In the *Preliminary Results*, we selected

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[56] *See* Petitioner's Factual Submission at Exhibit I0 (including SKF Section D Questionnaire response at d-5 & Appendix D-4 (December 3, 2010)).

[57] *See* Petitioner's Factual Submission, at Exhibit 1.

[58] *See* The Timken Company's Rebuttal Surrogate Value Comments, dated December 23, 2011 ("Petitioner Surrogate Value Rebuttal"), at Attachment 1.

an SV for hot-rolled roller steel based on an error in CPZ/SKF's questionnaire response, which indicated that its subcontractors engaged in cold rolling.[59] CPZ/SKF now states that its original SV suggestion of HTS category 7227.90 for roller steel was in error, because it mistakenly reported using hot-rolled roller steel rather than cold-formed roller steel. Petitioner and CPZ/SKF now agree that the roller steel is cold-formed, and so the description of HTS category 7228.50.10 matches CPZ/SKF's corrected description of its input. Further, an AUV for HTS category 7228.50.10 is available on the record for the surrogate country during the POR. We find that HTS category 7228.50.10 is the best available information to value CPZ/SKF's roller steel input, pursuant to section 773(c)(1) of the Act, because it is publicly available, contemporaneous with the POR, specific to the input to be valued, representative of broad-market averages, tax-exclusive, and from the primary surrogate country, Thailand.[60]

Petitioner also advanced an alternative argument that, in the event that we continued to value roller steel using the SV for hot-rolled roller steel from HTS category 7227.90, the labor hours reported for CPZ/SKF's roller subcontractors should be increased to account for the cold-rolling manufacturing process. However, because CPZ/SKF has explained that cold-formed roller steel is used in the production of rollers, we find it appropriate for the final results to change the SV for roller steel to the cold-formed steel HTS category 7228.50.10, without modifying CPZ/SKF's reported labor hours as suggested by Petitioner.

Comment 5: Valuation of Steel for CPZ/PBCD-Produced Merchandise

- CPZ/SKF argues that the Department should not have valued the steel used in production by CPZ prior to its acquisition by SKF ("CPZ/PBCD") with the steel bar SV alone.
- CPZ/SKF states that the Department should have instead valued CPZ/PBCD's steel with the same method used to value CPZ/SKF's steel, *i.e.*, by weight-averaging the steel SV with the ME steel purchase price. CPZ/SKF argues that this is consistent with the Department's determination that CPZ/PBCD is an unaffiliated supplier, and consistent with the Department's determination in the prior AR to value the steel used to produce forged rings using CPZ/SKF's ME purchase prices, even though CPZ/SKF did not produce the forged rings, but instead purchased them from an unaffiliated supplier.[61]
- CPZ/SKF argues that the weighted-average price of CPZ/SKF's steel is more representative of the steel prices during the POR than the SV by itself.[62]

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[59] *See* Memorandum to the File from Brandon Farlander and Erin Kearney, International Trade Compliance Analysts, Office 4, AD/CVD Operations, "Antidumping Duty Administrative Review of Tapered Roller Bearings from the People's Republic of China: Surrogate Value Memorandum," dated June 28, 2012, ("Preliminary Surrogate Value Memo"), at 4-5; *see also* Tapered Roller Bearings and Parts Thereof from The People's Republic of China: SKF's Response to the Department's Sections A and C Second Supplemental Questionnaire and Section D Supplemental Questionnaire, dated March 9, 2012, ("CPZ/SKF March 9 Supplemental Response"), at 18.

[60] *See Wood Flooring*, and accompanying IDM at Comment 13; *see also* 19 CFR 351.408(c)(2).

[61] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part*, 77 FR 2271 (January 17, 2012) ("*TRBs 09/10*"), and accompanying IDM at Comments 1 and 2.

[62] CPZ/SKF cites *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61718-19 (October 19, 2006) ("*Antidumping Methodologies*").

- Petitioner argues that the Department should continue valuing the steel in CPZ/PBCD-produced merchandise with an SV alone, rather than weight-averaging the SV with the ME prices paid by CPZ/SKF because CPZ/PBCD is a separate company from CPZ/SKF, and may not have been able to obtain the same ME prices as CPZ/SKF.
- Petitioner argues that CPZ/SKF confuses two factually different situations because unlike the purchase of forged rings, CPZ/PBCD did not supply CPZ/SKF with an input into the finished product. Instead, Petitioner argues that CPZ/SKF purchased the finished product, which CPZ/SKF then sold in the United States. Thus, Petitioner contends that CPZ/PBCD's own inputs should not be included in the analysis of ME and NME inputs.

Department's Position: For the final results, we have continued valuing the steel bar in the CPZ/PBCD-produced merchandise with an SV for steel bar, which is unchanged from the *Preliminary Results*.[63]

The Department has a rebuttable presumption that ME input prices are the best available information for valuing all of an input when the total volume of the input purchased by the respondent from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period.[64] Under this practice, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department uses the weighted-average ME purchase price to value all of the input.[65] Alternatively, when the volume of an NME firm's purchases of a particular input from ME suppliers during the period of investigation or review does not exceed this 33-percent threshold, the Department weight averages the (weighted-average) ME purchase price and an appropriate SV, using as weights the relative quantities of the input purchased from the ME sources and purchased from domestic sources.[66] In determining whether ME purchases meet this 33-percent threshold, the Department compares the volume that the respondent purchased from ME sources during the period of investigation or review with the respondent's total purchases during the period.[67]

The Department's practice when selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act is to select, to the extent practicable, SVs which are publicly available, product-specific, representative of a broad market average, tax-exclusive, and contemporaneous with the POR.[68] Consistent with the practice of selecting SVs which are contemporaneous with the POR, where it is appropriate for the Department to use a respondent's ME weighted-average purchase price to value an input,[69] the Department relies on those ME

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[63] *See* Memorandum to the File from Brandon Farlander and Erin Kearney, International Trade Compliance Analysts, Office 4, AD/CVD Operations, "Antidumping Duty Administrative Review of Tapered Roller Bearings from the People's Republic of China: Preliminary Results Analysis Memorandum for Changshan Peer Bearing Co., Ltd.," dated June 28, 2012, ("Preliminary Analysis Memorandum"), at 8.

[64] *See Antidumping Methodologies,* 71 FR at 61718-19; *Proposed Modification to Regulation Concerning the Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 77 FR 38553, 38554 (June 28, 2012); *see also* 19 CFR 351.408(c)(1).

[65] *See Antidumping Methodologies,* 71 FR at 61718-19.

[66] *See id.*

[67] *See id.*

[68] *See Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006), and accompanying IDM at Comment 2.

[69] *See Antidumping Methodologies*, 71 FR at 61718-19.

purchases which were made during the period of investigation or review.[70] Furthermore, the Department's practice is to use ME purchase prices to value inputs only for the respondent that demonstrated that it purchased significant amounts of these inputs from ME suppliers.[71] These practices are consistent with the Department's standard AD questionnaire, which directs respondents, in the event that they did not produce the merchandise under consideration, to request FOP data from "the company that produces the merchandise," and also directs respondents to list the inputs "purchased from a market economy supplier and paid for in a market economy currency during the POR."[72]

In the present case, "CPZ/PBCD" refers to CPZ prior to its acquisition by SKF, and we note that the Department has treated CPZ/SKF and CPZ/PBCD as separate entities in this and prior reviews.[73] Additionally, CPZ/SKF has reported different FOPs for products manufactured by CPZ/SKF and products manufactured by CPZ/PBCD.[74] Although the Department prefers contemporaneous production data, the Department may use a producer's pre-POR data when current production data are unavailable.[75] CPZ/SKF provided evidence of its ME purchases of steel bar during the POR, but it provided no documentation relating to ME purchases made by CPZ/PBCD. Moreover, CPZ/PBCD is the company prior to CPZ's acquisition by SKF in 2008, meaning that it no longer existed as a producer during the instant POR and, therefore, could not have made ME purchases during the POR. Because CPZ/SKF and CPZ/PBCD are separate manufacturers and only CPZ/SKF made ME purchases during the POR, we continue to find it appropriate to value each manufacturer's inputs using ME purchase prices only when we have evidence of ME purchases made during the POR by that particular manufacturer.

We disagree with CPZ/SKF that the use of CPZ/SKF's ME weighted-average purchase price to value a portion of CPZ/SKF's steel bar demonstrates that these prices are more representative of

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[70] *See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part*, 76 FR 49729 (August 11, 2011), and accompanying IDM at Comment 20 (stating that contemporaneous SVs represent the best available information for valuing the FOPs, as compared to non-contemporaneous ME prices); *see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006), and accompanying IDM at Comment 23 (stating that the Department's preference is to consider only prices paid to ME suppliers during the POI, and disregarding ME purchases made prior to the POI in favor of contemporaneous SVs).

[71] *See Certain Activated Carbon from the People's Republic of China: Notice of Preliminary Results of the Second Antidumping Duty Administrative Review, and Preliminary Rescission in Part*, 75 FR 26927 (May 13, 2010), unchanged in *Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 70 FR 70208 (November 17, 2010).

[72] *See* Section D of the Department's AD questionnaire, "General Explanation: Reporting Requirements" and "Market Economy Inputs."

[73] *See Preliminary Results*; *see also TRBs 09/10*; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011).

[74] *See* Joint Response of CPZ/SKF, Peer/SKF, CPZ/PBCD and Peer/PBCD in Section D of the Department's Questionnaire for the June 1,2010 to May 31, 2011 Review Period in Tapered Roller Bearings and Parts Thereof (Finished and Unfinished) from The People's Republic of China, dated November 21, 2011 ("CPZ/SKF Section D Response"); *see also* CPZ/SKF March 9 Supplemental Response; Tapered Roller Bearings and Parts Thereof from The People's Republic of China: SKF's Response to the Department's Sections A and C Third Supplemental Questionnaire and Second Section D Supplemental Questionnaire, dated March 30, 2012, ("CPZ/SKF March 30 Supplemental Response").

[75] *See, e.g., TRBs 09/10*, and accompanying IDM at Comment 3.

steel prices during the POR than the SV. The use of ME purchase prices to value a portion of an input is only appropriate where the respondent demonstrates that it purchased the input from an ME country using ME currency during the POR. If a respondent does not demonstrate this, the Department's practice mandates the use of an SV. We also note that the SV used to value steel bar (*i.e.*, Thai import data under HTS 7228.30.10) was suggested by CPZ/SKF[76] as the appropriate SV for steel bar inputs.[77] We continue to find that this SV constitutes the best available information to value CPZ/PBCD's consumption of steel bar, as well as the percentage of steel bar consumed by CPZ/SKF that was not purchased from ME sources during the POR.[78] In addition, we disagree with CPZ/SKF's argument that the Department's valuation of CPZ/PBCD's steel bar input is inconsistent with its determination in the prior review to value the steel bar used in forged rings, which CPZ/SKF purchased from unaffiliated suppliers and used in the production of TRBs, using CPZ/SKF's ME weighted-average purchase price. The forged rings were incorporated into TRBs ultimately produced by CPZ/SKF, in contrast to the finished TRBs produced by CPZ/PBCD that were only sold by CPZ/SKF.[79]

Therefore, for the final results, we are continuing to value CPZ/SKF's steel bar with the weighted-average of the appropriate SV and the weighted-average ME purchase price (because the volume of ME purchases of steel bar was less than 33 percent of total volume of POR purchases of steel bar). We are also continuing to value CPZ/PBCD's steel bar consumption using the SV alone. This is consistent with our determination on this issue in the prior AR.[80]

Comment 6: Steel Bar Transportation

- CPZ/SKF contends that, as a result of a programming error in the *Preliminary Results*, its steel bar transportation cost was overstated. CPZ/SKF argues that the weight-averaged percentages for ME and NME purchases of steel bar were applied to the value of the steel bar input, but those percentages were mistakenly not applied to the cost of transporting the steel bar.
- Petitioner did not comment on this issue.

Department's Position: We agree with CPZ/SKF. For the final results, we have corrected the SAS programming to apply the weight-averaged percentages for the ME and NME purchases of steel bar to the cost of transporting the steel bar. We agree with CPZ/SKF that we inadvertently applied the ME and NME percentages only to the steel bar value in the *Preliminary Results*, rather than to both the value of the steel bar input and to the cost of transporting the steel bar. Therefore, we have changed the programming to correctly apply these percentages in the final results.

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[76] *See* CPZ/SKF Surrogate Country and Value Comments, at Surrogate Value Comments 2.

[77] *See* Preliminary Surrogate Value Memorandum dated June 28, 2012, at 5 (stating, "For steel bar, we found that the Thai HTS code suggested by CPZ/SKF (*i.e.*, HTS 7228.30.10) was more specific to CPZ/SKF's production experience than that suggested by Petitioner (*i.e.*, HTS 7228.30) because HTS 7228.30.10 indicates that the steel bars and rods have a circular cross-section").

[78] *See* section 773(c)(4) of the Act. We also note that CPZ/SKF has not argued that the Department should have valued all of CPZ/SKF's steel bar input using the ME purchase prices.

[79] *See TRBs 09/10*, and accompanying IDM at Comment 1.

[80] *See TRBs 09/10*, and accompanying IDM at Comment 3.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

AGREE ✓ DISAGREE _____

Paul Piquado
Assistant Secretary
for Import Administration

8 JANUARY 2013
Date