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January 9, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the 17th Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China

SUMMARY

We have analyzed the comments of the interested parties in the antidumping duty administrative review on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished ("TRBs"), from the People's Republic of China ("PRC"). As a result of our analysis of these comments, we made the changes to our margin calculations addressed in the "Changes Since the Preliminary Results" section of the accompanying Federal Register notice. We recommend that you approve the positions we develop in the "Discussion of the Issues" section of this memorandum. China National Machinery Import & Export Corporation ("CMC"), Luoyang Bearing Corporation (Group) ("LYC"), Yantai Timken Company Limited ("Yantai Timken"), exporters of the subject merchandise, and Peer Bearing Company, an importer, were the only interested parties to comment on the preliminary results of review. Below is the complete list of the issues that were raised in these briefs:

CMC

Comment 1: Clerical Error in CMC's Skilled Packing Labor

LYC

Comment 2: Application of Adverse Facts Available ("AFA") to Value Certain Merchandise of LYC
Comment 3: Application of Adverse Facts Available to Value Inventory Carrying Costs ("ICC") for Certain Constructed Export Price ("CEP") Sales
Comment 4: Federal Reserve Board Prime Rate Used to Value ICC
Comment 5: Excise Duties on Closing Stock
Comment 6: Calculation of the Surrogate Value for the Raw Material Input "Cage"

YANTAI TIMKEN

BACKGROUND

On July 28, 2004, the Department of Commerce ("Department") published in the Federal Register a notice of the initiation of the antidumping duty administrative review of TRBs from the PRC for the period June 1, 2003, through May 31, 2004. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 69 FR 45010 (July 28, 2004). The respondents included CMC, Chin Jun Industrial Ltd. ("Chin Jun"), Peer Bearing Company - Changshan ("CPZ"), LYC, Shanghai United Bearing Co., Ltd. ("Shanghai United"), Weihai Machinery Holding (Group) Company, Ltd. ("Weihai Machinery"), Zhejiang Changshan Bearing (Group) Co., Ltd. ("Changshan Bearing"), Zhejiang Changshan Change Bearing Co. ("ZCCBC"), Zhejiang Machinery Import & Export Corp ("ZMC") and Yantai Timken.

On February 4, 2005, the Department published a notice of partial rescission, which rescinded the administrative review for CPZ. See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the People's Republic of China: Notification of Partial Rescission of the Antidumping Duty Administrative Review, 70 FR 5966 (February 4, 2005).

On July 11, 2005, the Department published its preliminary results of review. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of 2003-2004 Antidumping Administrative Review, and Notice of

Intent to Rescind in Part 70 FR 39744 (July 11, 2005) ("Preliminary Results"). On August 10, 2005, Yantai Timken requested a hearing. Yantai Timken, CMC and LYC submitted case briefs on October 5, 2005. On October 13, 2005, the Department rejected Yantai Timken's case brief because it contained new factual information. On November 8, 2005, the Department published a notice extending the time limit for the final results of review until January 7, 2006. See Notice of Extension of Final Results of the 2003-2004 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the People's Republic of China, 70 FR 67668 (November 8, 2005). On November 30, 2005, Yantai Timken resubmitted its case brief. On December 5, 2005, Peer Bearing Company ("Peer") and Petitioner (the Timken Company) submitted rebuttal briefs. On December 9, 2005, the Department held a public hearing in this proceeding.

DISCUSSION OF THE ISSUES

CMC

Comment 1: Clerical Error in CMC's Skilled Packing Labor

For the preliminary results, the Department added "_SV" as an extension to all surrogate value variables to distinguish the surrogate value from its corresponding factor. CMC argues that the Department designated PAKSKLBU as the surrogate value variable for skilled packing labor ignoring the extension "_SV". As a result, the formula for skilled packing labor was erroneously stated as: PACKING_LABOR_SK = PAKSKLBU * PAKSKLBU. CMC contends that the Department should correct this error in the margin program to reflect the correct surrogate value for skilled packing labor.

Department's Position: We inadvertently failed to include the extension "_SV" in the calculation of skilled packing labor. The formula for skilled packing labor should state: PACKING_LABOR_SK = PAKSKLBU * PAKSKLBU_SV. We have corrected this calculation for these final results of review.[1]

LYC

Comment 2: Application of Adverse Facts Available ("AFA") to Value Certain Merchandise of LYC

LYC argues that the Department should not apply AFA to value the raw material steel inputs for certain merchandise reported by LYC in its section C and D databases. LYC contends that record evidence shows that the merchandise at issue was processed by LYC under a tolling

[1]See memorandum to the file from Hua Lu, Case Analyst, through Robert Bolling, Program Manager, "Analysis Memorandum for the Final Determination of Administrative Review on Tapered Roller Bearings and Parts Thereof from the People's Republic of China: National Machinery Import & Export Corp.," dated January 9, 2006.

arrangement with the U.S. customer. LYC asserts that the Department's regulations dictate that the Department will not consider a subcontractor to be a manufacturer or producer where the subcontractor does not acquire ownership or control the sale of the subject merchandise. LYC argues that, therefore, the sale of this merchandise should not be included in the margin calculation for LYC.

LYC further contends that it is Department practice not to analyze tolled sales. LYC cites Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14064 (March 29, 1996), where, it asserts, the Department determined that it was not necessary to analyze tolled sales. LYC states that, similarly, in Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909 (February 23, 1998), the Department did not consider the subcontractor to be the manufacturer, but rather considered the entity that controlled the product and the sale of the subject merchandise as the manufacturer of the merchandise.

LYC asserts that it provided substantial record evidence to demonstrate that it was not the producer or manufacturer of the merchandise at issue. LYC contends that it thoroughly explained the processing services it provided for the merchandise at issue in its March 7, 2005, second supplemental questionnaire response and May 16, 2005, third supplemental questionnaire response. LYC contends that it explained the tolling arrangement between the U.S. customer and itself, and submitted documentation supporting its explanation in the form of e-mail correspondence between LYC and the U.S. customer in its June 22, 2005, fifth supplemental questionnaire response. LYC contends that in Exhibit 4 of the same response it also submitted record evidence in the form of accounting records showing that it did not incur any raw material costs under the tolling arrangement for the merchandise at issue, and that it submitted evidence in the form of a U.S. entry summary demonstrating that the price of the merchandise at issue was reflected as a processing service charge rather than a sale of goods when it entered the United States.

Petitioner argues that the Department should maintain its decision to treat the transaction at issue as a sale of goods, rather than a sale of services. Petitioner argues that the record contradicts LYC's assertions that this was a sale of services in which LYC acted solely as a toller.

Petitioner asserts that the U.S. customer, who was also the importer, clearly considered the transaction a sale of goods. Petitioner notes that the importer declared the basis of appraisement for U.S. Customs and Border Protection ("CBP") purposes as "transaction value," which is defined by the customs valuation statute, 19 U.S.C. 1401a, as "the price actually paid or payable for the merchandise when sold for exportation to the United States." Petitioner argues that if the U.S. customer had considered the transaction as a sale of services, it would have declared a different basis of appraisement, such as "computed value." Petitioner argues that it is reasonably inferred from the facts on the record that the U.S. customer declared "transaction value" as the basis for appraisement by the fact that the entered value of the goods was virtually identical to the price paid by the customer to LYC for the merchandise.

Petitioner contends that LYC's explanation that the U.S. importer declared the transaction as "merchandise processing fee" is fundamentally incorrect. Petitioner asserts that "merchandise processing fee" is simply an ad valorem fee paid on almost all imports, pursuant to 19 CFR 24.23(b)(1).

Petitioner argues that the commercial invoice submitted with the customs entry identifies the transaction as a sale of "tapered roller bearing components," not as processing fees or service charges. Finally, Petitioner argues that the subject line of the e-mail regarding the transaction refers to the price of certain goods, which indicates that this was a sale of goods, not services.

No other party provided comments on this issue.

Department's Position: We have determined to continue to apply partial AFA in valuing the sale at issue. Pursuant to section 351.401(h) of the Department's regulations and past Department practice, it is inappropriate to treat a toller or subcontractor as the producer or manufacturer of subject merchandise. The commercial invoice submitted by LYC established the transaction as a sale of goods. As LYC has not submitted sufficient evidence to the contrary, we have determined the transaction at issue is a sale of goods.

In its October 4, 2004, Section C response, LYC reported the sale at issue as a sale of subject merchandise. However, in response to a supplemental questionnaire from the Department, LYC reported that it was a sale of services, not goods, and requested that the Department exclude the sale from the margin calculation. Notwithstanding this claim, LYC has not provided the appropriate evidence to show that this was a sale of services and not goods. As the party in possession of the supporting documentation, LYC has the burden of submitting evidence in order to obtain a requested adjustment or exclusion.[2]

Specifically, LYC was unable to provide the Department with either a tolling contract or purchase contract showing the terms of the tolling arrangement. Further, the commercial invoice submitted by LYC for this sale simply states that it is a sale of "tapered roller bearing components" and makes no reference to a sale of services. Furthermore, the entry documents provided by LYC show an entered value for the merchandise at the same amount as the price that LYC charged to its U.S. customer.

[2] See NTN Bearing Corp. of America v. United States, 248 F. Supp. 2d 1256, 1286 (CIT 2003) ("Commerce is correct in its observation that it is well settled that the party in possession of information has the burden of producing that information in order to obtain a favorable adjustment or exclusion"(internal citation and quotation marks omitted)) ("NTN Bearing")..

Further, and contrary to LYC's claim, the customs entry documents submitted by LYC do not declare the entered value as a processing or service charge.[3] Finally, while LYC provided cost of production worksheets and accounting ledgers purporting to show that LYC incurred no expense for raw materials for the merchandise at issue, it did not tie these documents to any source documents to substantiate its calculations.

The Department provided LYC with ample opportunity to submit the steel consumption values for this sale by issuing two supplemental questionnaires requesting this information.[4] However, LYC never submitted steel consumption values for the merchandise associated with this sale, despite the Department's repeated requests for this information.

Accordingly, for the final results, because LYC did not demonstrate that this transaction was not a sale of goods, and did not submit the required factor values for its steel consumption, we have determined that it did not act to the best of its ability with respect to providing information and have further determined that partial AFA is warranted for the value of the steel inputs for this merchandise. Therefore, as AFA for this merchandise, we continue to apply, as in the preliminary results, the highest factor usage rate for steel inputs for similar subject merchandise reported by LYC in its FOP database.[5]

Comment 3: Application of Adverse Facts Available to Value Inventory Carrying Costs ("ICC") for Certain Constructed Export Price ("CEP") Sales

LYC argues that the Department should not apply partial AFA to value ICC for certain CEP sales because the record shows that LYC could not report the actual time in inventory for these sales, and that LYC used a reasonable allocation methodology to calculate ICC for the CEP sales in question.

LYC asserts that it is the Department's preference to use information provided by the respondent to calculate margins. LYC contends that section 776(a) of the Tariff Act of 1930, as amended ("the Act") dictates that the use of facts available is only appropriate if the necessary information is not on the record, or a party fails to provide information requested by the Department, impedes a proceeding, or provides information that cannot be verified. Citing Peer Bearing Company v. United States, 182 F. Supp.. 2d 1285 (CIT 2001) ("Peer Bearing"), LYC further asserts that the Department cannot penalize a respondent for not providing information that does not exist.

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[3] The "merchandise processing fee" referred to by LYC is a standard ad valorem fee accessed by CBP pursuant to 19 CFR 24.23(b)(1).

[4] See the Department's February 7, 2005, and June 13, 2005, supplemental questionnaires.

[5] See the proprietary discussion of this issue in the memorandum from Eugene Degnan, Case Analyst, through Robert Bolling, Program Manager, to the file, "Preliminary Results of Review of Tapered Roller Bearings and Parts Thereof from the People's Republic of China: Program Analysis for the Preliminary Results of Review: LYC Bearing Corporation (Group) ("LYC")," dated June 30, 2005.

LYC argues that it could not report the actual time in inventory because that information does not exist in LYC's accounting records. LYC contends that it explained to the Department its accounting methodology and why that methodology does not allow for it to calculate the inventory turn-over days of the subject merchandise on a sale-specific or model-specific basis. Further, LYC argues that because this information does not exist, it is improper for the Department to apply AFA to value ICC.

Finally, LYC argues that the Department should value ICC for these CEP sales using the company-wide costs it reported according to its normal accounting procedures. LYC contends that it calculated ICC on a reasonable basis that has been accepted by the Department in past proceedings.

No other party provided comments on this issue.

Department's Position: The Department has determined not to apply AFA to value ICC for certain CEP sales of LYC. We have determined that LYC's accounting methodology kept in its normal course of business, i.e., the moving-average method, does not allow it to account for the number of days in inventory of the subject merchandise on a CONNUM-specific basis.[6] Additionally, the Department examined the allocation methodology used by LYC as reported in its October 4, 2004, Section C questionnaire response and found it to be reasonable. Thus, for the final results, the Department will apply the ICC values submitted by LYC in its U.S. sales database to calculate the antidumping duty margin because LYC has used a reasonable allocation methodology based on its records kept in the normal course of business, and because the CONNUM-specific information sought by the Department does not exist in LYC's records.[7]

Comment 4: Federal Reserve Board Prime Rate Used to Value ICC

LYC contends that the Department used an incorrect Federal Reserve Board prime rate for the period of review ("POR") of 0.0413 in the calculation of ICC for certain of its CEP sales. LYC argues that the correct Federal Reserve Board prime rate for the POR is 0.040208, and the Department should use this rate in its calculation of ICC expenses.

No other party provided comments on this issue.

Department's Position: The average Federal Reserve prime rate used by the Department in applying AFA to value the ICC for certain of LYC's CEP sales is no longer an issue in this

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[6] See LYC May 16, 2005, third supplemental response at 2-4.

[7] See memorandum to the file from Eugene Degnan, Case Analyst, through Robert Bolling, Program Manager, "Final Results of Review of the Order on Tapered Roller Bearings and Parts Thereof from the People's Republic of China: Program Analysis for the Final Results of Review: Luoyang Bearing Corporation (Group)," dated January 9, 2006.

review because the Department has decided to use the values reported by LYC to value ICC for these sales. Further, LYC's methodology for allocating ICC for these sales used the average of the Federal Reserve prime rate for the entire year of 2003.[8] Because the allocation employed by LYC used the values from LYC's 2003 financial statements, it is proper to use the average prime rate for the entire 2003 calendar year.

Comment 5: Excise Duties on Closing Stock

LYC argues that the Department should exclude excise duties from the cost of manufacturing ("COM") when calculating the financial surrogate ratios from the SKF Bearings India Ltd. financial statements.

No other party provided comments on this issue.

Department's Position: Consistent with our practice, we determine that the excise tax paid by the Indian bearings producers should not be included in the cost of materials for purposes of calculating the surrogate financial ratios. In the 1996-1997 administrative review of this case, we stated that ". . . it is the Department's practice to use, if possible, tax exclusive values as surrogates in NME cases. Moreover, we have found in previous cases involving products from India that excise duties and/or taxes paid by Indian producers were refundable to the producer by the Indian government."[9]

Accordingly, for the final results, we have excluded excise duties from the COM when calculating the surrogate financial ratios. Further, we have applied the revised surrogate financial ratios to all respondents in this review for whom we are calculating a margin.[10]

Comment 6: Calculation of the Surrogate Value for the Raw Material Input "Cage"

LYC asserts that the Department failed to convert the surrogate value for "cage" from Indian rupees to U.S. dollars in the margin calculation program for LYC.

No other party provided comments on this issue.

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[8] See LYC's October 4, 2004, Section C response at Exhibit C-8.

[9] See 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 Order in Part, 63 FR 63842 (November 17, 1998) (quoting Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026, 19027 (April 30, 1996).

[10] See Final Results Surrogate Value Memorandum.

Department's Position: We agree and for these final results of review, we have converted the surrogate value for "cage" from Indian rupees to U.S. dollars.[11]

YANTAI TIMKEN

Comment 7: The Department Should Find That Yantai Timken Was Cooperative and Use Yantai Timken's Data as Modified by the Results of Verification.

Yantai Timken contends that it provided all of the information that the Department requested in its original and six supplemental questionnaires and during the course of the FOP and CEP verifications in the PRC and the United States. Thus, Yantai Timken disagrees that it failed to cooperate with the Department's requests for information during the review. Yantai Timken argues further that the Department verified every reported FOP except natural gas, electricity, and supplier distances for packing materials, and every adjustment to U.S. sales except commissions and rebates. Yantai Timken argues that it either provided all of the information requested, or, at least, provided sufficient information to calculate the margin using the total factor consumption rate or the total value of expenses during the POR for all of the items that the Department claims were not verified. Thus, Yantai Timken maintains that the Department verified 70 percent of the information it intended to verify; 82 percent, if it reverses its adverse determinations with respect to ISEs, marine insurance, ocean freight, and warehousing. As a result, Yantai Timken argues that the record of this review demonstrates that it consistently provided reliable and accurate information which tied to its audited financial statements. According to Yantai Timken, this clearly demonstrates that it acted to the best of its ability to cooperate with the Department, and thus, use of total AFA is not warranted for these final results of review. Yantai Timken concludes, based on the above, that the Department should reverse its preliminary determination to apply total AFA to its margin and should use Yantai Timken's data to calculate a margin for the final results of review.

Yantai Timken claims that all of the items that failed verification were very small and had no impact on the margin. According to Yantai Timken, the SAA at 870 states that "[i]n employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation. Yantai Timken also notes that the Court of International Trade ("CIT"), in Mannesmannrohren-werke Ag and Mannesmann Pipe & Steel Corp. v. the United States, 77 F. Supp. 2d 1302, 1322, (CIT 1999) (Mannesmannrohren-werke I) held that Commerce . . . must interpret this provision [Section 776(b) of the Act] in light of the principle that the law does not care for, or concern itself with, small or trifling errors. In this context, Yantai Timken argues that its minor corrections to the response do not indicate that it

[11] See memorandum to the file from Eugene Degnan, Case Analyst, through Robert Bolling, Program Manager, China/NME Unit, Office 8, "Analysis Memorandum for the Final Determination of Administrative Review on Tapered Roller Bearings and Parts Thereof from the People's Republic of China: Luoyang Bearing Corporation (Group) ("LYC")," dated January 9, 2006.

failed to provide essential information within the established deadlines or in a manner requested by the Department, or inhibited the Department from asking meaningful questions concerning the information, significantly impeding the proceeding, as the Department stated in the Preliminary Results. Thus, citing Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States, 44 F. Supp. 2d 229, 236 (CIT 1999), Yantai Timken argues that the Department's acceptance of minor corrections at verification conforms with the statutory directive of section 782(d) of the Act.

Yantai Timken contends that most of the items the Department identified as unverified were in fact verified, and that the Department has the discretion to treat the verification items that it did not complete as verified. Citing Monsanto Co. v. United States, 698 F. Supp. 275 (CIT 1988) ("Monsanto"), Yantai Timken claims that the Department has considerable latitude in picking and choosing which items it will examine in detail. Yantai Timken states further that, in the Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38756, 38771, (July 19, 1999), the Department explained that it exercised its discretion to rely on what it found with those items that were verified and treat items that it did not consider verified.

In addition, Yantai Timken explains that its frequent requests to supplement the record after verification, in order to respond to questions it believes were not asked at verification, or to clarify items with which the Department disagreed, testify to its willingness to cooperate to the best of its ability with the Department's requests for information.

Yantai Timken argues that it should not be put into the same category as a respondent that did not provide a questionnaire response,[12] or refused to answer supplemental questionnaires.[13] Further, Yantai Timken maintains that it should not be treated as a company that failed to report a whole category of sales or failed to bring verification documents to the verification site.[14] Further, Yantai Timken claims that the CIT has typically upheld treatment of respondents as non-cooperative when they chose not to supply significant types of requested information. For example, in China Steel Corp. v. United States, 306 F. Supp. 2d 1291 (CIT 2004), the respondent provided deficient sales data, incomplete product characteristics data, and no data on affiliated downstream sales. In Shandong Huarong General Group Corporation and Liaoning Machinery Import & Export Corporation, v. United States, Court No. 01-00858, 2003 Ct. Intl. Trade LEXIS

[12] See Steel Concrete Reinforcing Bar From The Republic of Korea: Notice of Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review, 69 FR 31961, 31963, (June 8, 2004), Stainless Steel Butt-Weld Pipe Fittings From Korea; Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 55935, 55936 (September 29, 2003); Silicon Metal from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11369, 11370 (March 10, 2003).

[13] See Certain In-shell Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review, 68 FR 16473, 16474 (April 4, 2003); Sorbitol From France: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 71727 (December 22, 1999).

[14] See Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review, 66 FR 8939, 8941 (February 5, 2001).

153; (October 22, 2003)("Huarong I"), Yantai Timken maintains that the respondents failed to supply information. For the foregoing reasons, Yantai Timken requests that the Department consider the quantity of information that it provided and the efforts that it made during the proceeding in determining whether Yantai Timken has been an uncooperative respondent. In that light, Yantai Timken asserts that the record evidence in this case shows that it acted to the best of its ability to provide the information requested by the Department throughout the proceeding, and that the Department should not hold that it failed to cooperate to the best of its ability with the Department's requests for information in the final results.

Peer Bearing argues that substantial evidence on the record supports the Department's determination that Yantai Timken withheld information, failed to provide information requested by the Department in a timely manner and in the form required, significantly impeded the proceeding, and provided unverifiable information, thus failing to act to the best of its ability to cooperate with the Department in this review.

Peer Bearing contends that in the Preliminary Results, the Department concluded that it was not able to use Yantai Timken's questionnaire responses to calculate an accurate antidumping duty margin and resorted to total AFA. Peer Bearing argues that this determination is supported by substantial evidence on the record and is in accordance with law because the Department found: (1) Yantai Timken failed to substantiate the preponderance of its reported adjustments to U.S. price; (2) Yantai Timken did not provide sub-ledgers and other source documents to tie reported expenses such as marine insurance, warehousing expenses, commissions, rebates or ISEs to its audited financial statements; (3) Yantai Timken could not demonstrate at verification that the expenses it reported in its Section C response for warehousing, selling, general and administrative expenses ("SG&A"), marine insurance, international freight commissions and certain rebates represent the total value of these expenses applicable to the subject merchandise during the POR; (4) Yantai Timken misreported its factor consumption rates for electricity and natural gas, provided erroneous translations of its primary source documents for those items, and (5) failed to provide the distance from the supplier to the factory for its packing materials.

In addition, Peer Bearing contends that Yantai Timken reported preliminary or hypothetical data in its questionnaire responses for distributor warehousing expenses, U.S. inland freight, commissions and certain rebates without informing the Department of the imaginary nature of these data until the Department tried to verify them. Further, Peer Bearing argues, while Yantai Timken asserts that its estimates for these data were overly conservative and to its detriment, the Department was not able to verify that claim.

Peer Bearing argues that Yantai Timken, as a reasonable and responsible producer and importer, should have known which records to maintain and have available for the Department, particularly in view of its participation in two prior antidumping proceedings, and one prior FOP and one prior CEP verification. Therefore, Peer Bearing contends, Yantai Timken is fully aware of the rules and regulations that apply to the import activities it has undertaken.

Peer Bearing points out that this is the 17th administrative review of this order; the Timken Company, which owns 100 percent of Yantai Timken, has been an active participant in all 17

reviews, pointing out deficiencies in the records and responses of other parties and arguing for AFA. Thus, Peer Bearing contends, Yantai Timken should have been well aware of the information it needed to keep. For example, Peer Bearing points out that in 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 Order in Part, 63 FR 63842, 63857 (November 17, 1998), the Timken Company argued that the Department should rely upon AFA when substantial data are missing for a particular respondent, when the respondent has not shown that it has acted to the best of its ability to provide factor information in the review. According to Peer Bearing, in that case, the Timken Company reminded the Department that the respondent had participated in all of the reviews of the proceeding.

Peer Bearing argues that the Department issued six supplemental questionnaires to Yantai Timken which requested information to support or clarify the information Yantai Timken placed on the record. And yet, Peer Bearing argues, Yantai Timken's records covering the POR remained incomplete or inaccurate eliciting statements in the Preliminary Results that Yantai Timken did not provide sub-ledgers or other supporting documents to substantiate its reported values for ocean freight, marine insurance, warehousing expenses, commissions, rebates and ISEs.

Specifically, Peer Bearing contends that the Department was unable to verify a number of U.S. price adjustments due to the extensive amount of time dedicated to reconciling incorrectly reported items. Peer Bearing contends that the Department could not verify Yantai Timken's ("FOPs"), because, as stated in the FOP verification report, Yantai Timken (1) did not report supplier distances for packing materials; (2) understated the consumption of electricity; and (3) did not substantiate its consumption of natural gas. Peer Bearing argues that Yantai Timken should have known to maintain these records and had ample time to prepare and present documentation to the Department supporting all of its reported data. Peer Bearing contends that Yantai Timken's failure to do so means that it did not "act to the best of its ability in supplying the Department with the requested information." Peer Bearing agrees with the Department's finding in the Preliminary Results that the information that was unsubstantiated, inaccurate, or unverified was so substantial that the Department could not use Yantai Timken's questionnaire responses to calculate the margin. Peer Bearing concludes the record evidence has not changed since the Preliminary Results such that a different determination is warranted by the Department.

No other party provided comments on this issue.

Department's Position: We have determined that the use of total AFA is not warranted for the final results of this review. We have determined, however, that the use of partial AFA is warranted with respect to Yantai Timken. In response to the arguments raised by the parties in the case and rebuttal briefs, we have examined the record of this review, including the verification reports and the documentation provided at verification. In so doing, we have determined that Yantai Timken was able to substantiate one of its reported expenses, marine insurance. However, we continue to conclude that Yantai Timken was unable to substantiate two reported FOPs (natural gas and electricity) and several other expenses reported as adjustments to

U.S. price. With respect to the unsubstantiated items, while verification did not support Yantai Timken's reported values, we were able to quantify the full amount of the factor consumption rates and the total expenses incurred for most of these items from Yantai Timken's accounting records and/or financial statements. As a result, the application of total AFA is not warranted.

Section 776(a)(2) of the Act holds that the Department, subject to the provisions of sections 782(d) and (e), may use facts otherwise available in reaching a determination if an interested party withholds information that has been requested, or fails to provide such information in a timely manner or in the form requested. In this review, Yantai Timken did not provide sub-ledgers and other source documents to tie reported expenses such as warehousing expenses, international freight, commissions, rebates or ISEs to its audited financial statements.[15] Further, Yantai Timken could not demonstrate at verification that the expenses reported in its Section C response for warehousing, SG&A, international freight, ISEs, commissions and rebates account for the total value of the respective expenses as applicable to the subject merchandise during the POR.[16] Further, it based its reported distributor warehousing expenses, U.S. inland freight, commissions and certain rebates on preliminary or hypothetical data, without notifying the Department prior to verification of the preliminary nature of its response.[17] Finally, Yantai Timken reported certain rebates and commissions based on the maximum contractual amount that certain customers or sales agents could earn,[18] and at verification could not substantiate the actual amount of commissions and/or rebates paid for subject merchandise during the POR.[19]

Section 782(d) of the Act stipulates that if the Department determines that a response to a request for information does not comply with that request, it "shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title." Because Yantai Timken did not advise the Department of the preliminary nature of the information with respect to commissions, rebates, distributor warehousing, and U.S. inland freight provided in its

[15] See memorandum to the file from Laurel LaCivita, Senior Case Analyst and Hua Lu, Case Analyst, through Robert Bolling, Program Manager, and Wendy J. Frankel, Director, NME/China Unit, Office 8, "Verification of the Constructed Export Price Sales Reported by The Yantai Timken Company in the Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts, Thereof from the People's Republic of China," dated June 30, 2005 ("CEP Verification Report") at 6, 7, 14, 16, 18, 20, and 22, and Preliminary Results at 39749.

[16] See Yantai Timken CEP Verification Report at 2, 14, 25, 20, and 22, and Preliminary Results at 39749.

[17] See Yantai Timken CEP Verification Report at 2, 3, 20, and 21, and Preliminary Results at 39749.

[18] See Yantai Timken CEP Verification Report at 2 and Preliminary Results at 39749.

[19] See Yantai Timken CEP Verification Report at 2, 20, and 22, Preliminary Results at 39749.

questionnaire response and six supplemental questionnaire responses, the Department did not have sufficient information to determine that a deficiency existed before verification.

Further, the Department's verification outline describes the respondent's obligation to prepare for verification:

> At the beginning of the verification, your client must have complete supporting documentation for each pre-selected sales transaction and each verification procedure. Complete supporting documentation would consist of a complete trail of calculations, supporting schedules, selected invoices and copies of pages from sub-ledgers tracing the reported per unit cost back to the general ledger accounts and source documents. The verifier will require copies of certain documents as verification exhibits. You should make copies of the complete supporting documentation before the verification. As you will note, the time available for the verification is limited. Consequently, the appropriate personnel must gather the information requested prior to the verifier's arrival.[20]

Thus, the Department adequately informed Yantai Timken of its obligation to account for the total value of each of its expenses, and trace them to the audited financial statements and to the proof of payment. Nevertheless, Yantai Timken was unable to substantiate its reported values for these items at verification. Thus the Department determined that Yantai Timken failed to cooperate to the best of its ability in providing this information. As a consequence, section 782(d) is not applicable in this instance.

Section 782(e) of the Act stipulates that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission, if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and (5) the information can be used without undue difficulties."

Nippon Steel Corporation v. United States, 337 F.3d 1373 (Fed. Cir. 2003) ("Nippon") holds that:

> Compliance with the "best of its ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that

[20] See Letter to Yantai Timken from Robert Bolling, Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the People's Republic of China, May 6, 2005 at 1 and 2 ("CEP Verification Outline").

> importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.[21]

In the instances enumerated above, Yantai Timken was in control of the information requested by the Department, but did not respond adequately to the Department's requests for this information. Thus, Yantai Timken failed to cooperate to the best of its ability to comply with the Department's requests for information. As a result, the Department may use an inference that is adverse to the interests of Yantai Timken in selecting among the facts otherwise available.

Therefore, we have determined that use of partial AFA is warranted with respect to each of these items and have relied upon Yantai Timken's verified data as our source of partial AFA. To do otherwise would reward Yantai Timken for failure to fully cooperate in this review because use of other data could potentially result in a lower margin than would have resulted from use of Yantai Timken's actual factor consumption rate and actual expenses incurred. Each item is discussed in turn in Comments 8 through 15 and the respective Department's Positions, below.

Comment 8: Yantai Timken's Verification Results and Level of Cooperation - Natural Gas

Yantai Timken disagrees that it failed to document the information provided in the questionnaire response regarding natural gas as claimed in the FOP verification report.[22] Rather, Yantai Timken contends, the Department verified all but three of its reported FOPs (natural gas, electricity and supplier distances for packing materials). Yantai Timken further claims that the Department confirmed sufficient information concerning these items to be able to use adjusted data taken from verification in the final margin calculations. Consequently, Yantai Timken argues that the Department should base its final results on the record as a whole, using the factors and sales adjustments as verified and adjusted by the Department as the basis of its margin calculations.

Regarding natural gas, Yantai Timken argues that the Department verified the total quantity and value of Yantai Timken's natural gas consumption during the POR, and traced the allocated

[21] See Nippon at 1382.

[22] See Memorandum to the File, from Laurel LaCivita, Senior Case Analyst and Eugene Degnan, Analyst, through Robert Bolling, Program Manager, and Wendy Frankel, Director, NME/China Unit, Office 8, "Verification of Sales and Factors of Production Reported by the Yantai Timken Company in the 2003/2004 Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts, Thereof from the People's Republic of China," dated June 30, 2005 ("FOP Verification Report").

amounts of natural gas to Yantai Timken's general ledger accounts for "basic production" and "administration for welfare fund for cafeteria." Yantai Timken claims that it determined its allocation based on experience and, thus, has no documentation to support its methodology. Yantai Timken further claims that, at verification, it demonstrated the reasonableness of its allocation methodology by turning off the water heaters for employee showers thus demonstrating the level of gas used for production. Despite the fact that the gas meters slowed down dramatically, Yantai Timken claims that the Department rejected the accuracy of its allocation of natural gas consumption. Nevertheless, Yantai Timken contends, even though the Department disagrees with the accuracy of its allocation of natural gas, the Department confirmed sufficient information about Yantai Timken's reported natural gas consumption to use its actual data in the margin calculations for the final results.

Department's Position: At verification, we traced the value of the natural gas bills to the proof of payment and into the audited financial statements. We also examined the documents which Yantai Timken used to allocate natural gas to the "administration for welfare fund for cafeteria" account, and to "basic production," and traced the allocated expenses into its audited financial statements.

During verification, Yantai Timken initially claimed that it used natural gas to keep heat treatment furnaces warmed to a certain temperature,[23] then revised its explanation, claiming that it used natural gas to create an "airlock" by blasting flames at the mouth of the furnaces as pieces were inserted or removed from heat treatment.[24] In support of its methodology, Yantai Timken attempted to demonstrate the practical impact of turning off the water heaters for the showers on the natural gas meters. However, the water heaters, furnaces and meters were located in different buildings, so that the Department could not determine the reliability of these tests by reviewing the results of shutting off certain heaters. Accordingly, we disagree with the reasonableness of Yantai Timken's claim that employee showers constitute the vast majority of its natural gas consumption.[25]

We confirmed the accuracy of its total natural gas consumption during the POR, thus the nature of our disagreement with Yantai Timken with respect to natural gas rests on the appropriateness of its allocation of 90 percent of its natural gas consumption to non-production-related departments. Because Yantai Timken was unable to substantiate its reported allocation methodology, we applied, as AFA, 50 percent of its total gas consumption during the POR to the production of subject merchandise for the final results. While the allocation of 50 percent of Yantai Timken's consumption of natural gas to subject merchandise is based on our review of Yantai Timken's production process, and is intended to be adverse to Yantai Timken's interests, we note that Yantai Timken's failure on this point prevents us from determining whether the allocation is, in fact, adverse.

[23] See FOP Verification Report at 20.

[24] See FOP Verification Report at 17.

[25] See FOP Verification Report at 20.

Comment 9: Yantai Timken's Verification Results and Level of Cooperation - Electricity

Yantai Timken contends that the Department confirmed the accuracy of its total factory-wide consumption of electricity during the POR, even though it failed to report all of the elements of its consumption of electricity in the questionnaire response.

Further, Yantai Timken claims that it did not have an opportunity to explain the following issues, which were raised in the FOP Verification Report, but not at verification: (1) the word on the electricity worksheet translated as "total" which, in fact, represents the main meter of the company; (2) the sum of the total electricity consumption for each metered department did not equal the electricity consumption recorded by the main meter, and (3) most of the meters had entries under the previous month, current month, and factor columns, while a few did not. Thus, Yantai Timken claims that it did not have an opportunity to explain that certain parts of the factory were un-metered and that the sum of the consumption recorded by the individual meters does not equal the consumption rate recorded by the main meter. Further, it claims that it cannot "believe" that its mistranslation on the worksheet could mislead the Department. Yantai Timken further claims that it is the Department's responsibility to independently check all values and translations at verification. Consequently, Yantai Timken contends that the Department should use the verified, total factory-wide consumption of electricity during the POR in its calculation of the dumping margin for the final results.

Department's Position: At verification, the Department confirmed the factory-wide consumption of electricity during the POR. During verification, we compared the total consumption of electricity recorded on Yantai Timken's electric bills with the consumption recorded as "total" on the worksheet entitled "Meter Reading by Workshop"("meter reading worksheet") provided in verification exhibit 12, which lists Yantai Timken's total electricity consumption, and provides a breakdown by workshop. We traced a number of meter readings from the meter reading worksheet to Yantai Timken's summary worksheet entitled "Manufacturing Electricity Usage." We examined the workshops identified on the summary worksheet in order to determine whether Yantai Timken properly accounted for all its production-related electricity consumption in its questionnaire response. We found that Yantai Timken classified the electricity consumption for several production-related workshops (e.g., compressed air, coolant, oil stone, final inspection, clinic, office, the tooling plant, 4 ½-inch bearing plant)[26] to factory overhead and/or SG&A,[27] and did not report these amounts in its questionnaire response.[28] By mis-allocating the electricity consumption

[26]See FOP Verification Report at 17.

[27]See ibid. at 17-18.

[28]See FOP Verification Report at Attachment IV.

in these workshops, Yantai Timken improperly failed to include 22 percent of its total electricity consumption in its reported FOPs.[29]

Following standard verification procedures, at the beginning of each section of the verification, including this one, we offered Yantai Timken an open opportunity to present its verification exhibits and explain how it derived the figures reported in the questionnaire response. Yantai Timken presented FOP verification exhibit 12, and demonstrated how the electricity consumption it reported for each department traced to the meter reading worksheet. It did not explain that some of the departments on the meter reading worksheet were not metered, nor did it explain that the sum of all the figures on the meter reading worksheet did not total the amount translated as "total" at the bottom of the worksheet. Rather, Yantai Timken demonstrated how the figure translated as "total" traced to the invoices issued by the electric company, and to the company's accounting records, thus giving the Department the impression that the workshop breakout accounted for all of the electricity consumed by the company when, in fact, it did not. Furthermore, Yantai Timken did not present a comprehensive explanation of how it classified its electricity consumption as production, overhead or SG&A, or why it excluded the consumption for a significant number of departments from its questionnaire response. At verification, the Department interviewed company officials to determine whether the electricity consumption Yantai Timken identified as not allocated to production did in fact relate to production activity and therefore, should be attributed to production or overhead. During this discussion, Yantai Timken did not explain that the electricity consumption by workshop recorded on the meter reading worksheets did not equal the amount of electricity recorded as "total" on the worksheet and thus did not reflect total electricity consumption by Yantai Timken during the POR.

After verification, we reviewed the verification exhibits in order to quantify the amount of electricity that Yantai Timken excluded from its questionnaire response. In so doing, we discovered that the sum of the values reported on the meter reading worksheets did not equal the "total" recorded at the bottom of the worksheet. We then determined that Yantai Timken failed to account for an additional 19 percent of its total factory-wide consumption of electricity[30] anywhere in its questionnaire response.

At this point, we reviewed the translations on the document and learned that what had been translated as "total" in fact meant "main meter." Thus, there was clearly an additional electricity consumption amount not reported in Yantai Timken's questionnaire response, or included within the workshop-specific meter values as presented in the verification exhibits. As a result, the Department's post-verification analysis of the electricity worksheet determined that Yantai Timken failed to account for 41 percent of the total electricity consumed by the factory during the POR in

[29]Analysis for the Final Results of the 2003-2004 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Yantai Timken Company, Ltd. ("Yantai Timken Final Analysis Memorandum"), at Attachment VI.

[30] See Yantai Timken Final Analysis Memorandum at Attachment VI.

its questionnaire response (22 percent that had been misallocated and 19 percent that was not accounted for at all).[31]

For these final results of review, we disagree with Yantai Timken's argument that it "never had the opportunity to explain what parts of its plant were un-metered or to account for the difference between the electricity consumption recorded on the worksheet for the individual meters and the total amount of electricity recorded on its worksheet for its main meter" or that it was never "allowed to provide the underlying worksheets analyzing the line items that did not have meter readings," as it claimed in its case brief.

It is significant that Yantai Timken did not allege that the Department's analysis of its electricity consumption worksheets was inaccurate. Rather, it claims that the Department's post-verification analysis deprived it of due process because it could no longer explain its reasons for excluding the significant portion of its consumption of electricity from its questionnaire response. Thus, Yantai Timken reveals that it was aware that the information reported to the Department was not complete, but that it chose not to disclose that information until and unless the Department identified the discrepancy on its own. "{I}t is well settled that the party in possession of information has the burden of producing that information in order to obtain a favorable adjustment or exclusion."[32] In this case, Yantai Timken was the party in possession of the information, yet it failed to provide full and complete explanations of the documents it had provided to support its reported electricity consumption and allocations. Yantai Timken's failure to provide any such information does not impose an obligation on the Department to interpret the gaps of information in Yantai Timken's favor. As a result of its significant understatement of its electricity consumption in its questionnaire response, we determine that Yantai Timken did not cooperate to the best of its ability to respond to the Department's requests for information during the review with respect to its consumption of electricity. As partial AFA, we are increasing Yantai Timken's reported electricity consumption to account for the unreported portion of factory-wide electricity consumption during the POR.

We also disagree that the Department was remiss in not performing certain calculation or translation checks at verification. The overwhelming majority of the documents presented at the FOP verification are in Chinese. The verification outline explains that all documents presented at verification should be translated into English,[33] and, in general, Yantai Timken was conscientious in presenting translated documents to the Department. Thus, at the time of the verification, we had no reason to question Yantai Timken's translation of the word "total" on the meter reading sheets and understood that the word "total" meant the total of the department-specific electricity

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[31] See FOP Verification Report at Appendix IV and Yantai Timken Final Results Analysis Memo at Attachment VI.

[32] See, e.g., NTN Bearing at 1287.

[33] See the Department's April 18, 2005, verification outline, "Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the People's Republic of China" at 1 and 3.

consumption amounts recorded on the worksheets. The process of verification is only a "spot check" and is not intended to be an exhaustive examination of a respondent's business.[34] Thus, we determine that Yantai Timken significantly understated its consumption of electricity in its questionnaire response, and thus, failed to cooperate to the best of its ability with the Department's requests for information.

Comment 10: Yantai Timken's Verification Results and Level of Cooperation - Supplier Distances for Packing Materials

Yantai Timken argues that it is not responsible for providing supplier distances for packing materials in its questionnaire responses because the Department did not request this information in its original questionnaire, six supplemental questionnaires or FOP verification outline. Further, Yantai Timken argues, the issue is moot because Yantai Timken is located only 4 kilometers from the nearest deep-water port. Thus, Yantai Timken argues, the Department should calculate the margin for the final results using the distance from Yantai Timken to the nearest port for supplier distances for packing materials in accord with Sigma Corporation, et al. v. United States, No. 91-02-00154, 21 C.I.T. 1041; 1997 Ct. Intl. Trade LEXIS 186; SLIP OP. 97-125 ("Sigma").

Department's Position: We agree with Yantai Timken that the Department did not request supplier distances for packing materials in the original questionnaire, the six supplemental questionnaires or the verification outline. We also agree with Yantai Timken that the Sigma rule applies here and the appropriate distance to use for Yantai Timken's suppliers is the distance from Yantai Timken to the nearest deep-water port.

Comment 11: Yantai Timken's Verification Results and Level of Cooperation - ISEs in the U.S. Market

Yantai Timken disagrees that it failed to provide supporting documentation for its ISEs and could not demonstrate the completeness and accuracy of its claimed adjustment for ISEs in the United States. Yantai Timken contends that the Department based its determination on the following verification failures: (1) Yantai Timken's exclusion of certain costs from SG&A; (2) its failure to provide the ratios used to allocate its ISEs among its auto bearing, industrial bearing, and steel businesses; and, (3) its failure to provide a list of cost centers until the end of the verification. Yantai Timken disagrees with the Department's conclusions and explains its position as follows:

(1) Yantai Timken's Exclusion of Certain Costs from ISEs

Yantai Timken claims that it explained at verification that it excluded reorganization costs, emerging market expenses, and provisions for restructuring from its calculation of ISEs because

[34] See Corus Eng'g Steels Ltd v. United States, 02-0083, 2003 Ct. Int'l Trade LEXIS 110, 21-22 (Ct. Int'l Trade August 27, 2003) (citing Monsanto and Hercules, Inc. v. United States, 673 F. Supp. 454, 469 (Ct. Int'l Trade 1987)), and, Maui Pineapple Company, Ltd., v. United States, 264 F. Supp. 2d 1244 (CIT 2003).

they did not pertain to the production of the subject merchandise in the PRC or the sale of the subject merchandise in the United States. Similarly, Yantai Timken argues that it reported at verification that it excluded special reorganization expenses and all of its inter-company expenses because they represented inter-company service expenses and were eliminated upon consolidation. It further contends that a number of the additional expenses that the CEP verification veport claims were not included in Yantai Timken's reported ISEs, were included in emerging market expenses or inter-company expenses.

Yantai Timken claims that in the Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160, 9167 (February 28, 1997), the Department used verified information to correct errors in the questionnaire response stating that the "errors that are not substantial do not affect the integrity of the response." Similarly, Yantai Timken contends, the Department has sufficient verified information to calculate the final antidumping duty margin using its reported ISEs data, and that such adjustments do not harm the integrity of Yantai Timken's questionnaire response.

(2) Yantai Timken's Failure to Provide the Ratios Used to Allocate its ISEs

Yantai Timken contends that it did not provide the ratios used to allocate its ISEs among the auto bearing, industrial bearing, and steel businesses because it was not asked to do so during verification. Nevertheless, Yantai Timken claims that the ratios can be derived from the figures reported on CEP verification exhibit 8, which records the total value of each expense after its allocation to each of Yantai Timken's three business groups.

(3) The List of Cost Centers

Yantai Timken disagrees with the assertion in the CEP verification report that it failed to provide a list of cost centers for the entire company until after the Department completed verification of ISEs. Yantai Timken argues that it based its reported ISEs on the aggregated expenses recorded on the audited financial statements and that this information is sufficient for verification so that no further documentation is required. Yantai Timken further claims that it provided the requested cost center data in the last 33 pages of CEP verification exhibit 8. Thus, Yantai Timken contends, the Department had the appropriate data available for review.

Yantai Timken claims that the documentation provided in exhibit 5 of the case brief and the explanations provided in exhibits 3 and 4 of the case brief demonstrate that Yantai Timken's audited financial statements support its reported ISEs and that the Department should accept such information as verified.

Department's Position: We do not agree with Yantai Timken that it successfully substantiated its reported ISEs incurred in the U.S. market at verification. First, Yantai Timken's original questionnaire response explains that it "took ISEs as classified in its accounting system, and added

corporate center charges to arrive at an indirect selling expense factor."[35] Thus, prior to verification, the Department did not request Yantai Timken to further explain its methodology for reporting ISEs because the information in the questionnaire response appeared to be complete.

However, at verification, the Department discovered that Yantai Timken did not report all of the ISEs on Yantai Timken's audited financial statements, despite the statement in its questionnaire response that it included ISEs as classified in its accounting system. At verification, Yantai Timken explained that it excluded reorganization costs, emerging market expenses, and provisions for restructuring from its calculation of ISEs because it believed that those expenses did not pertain to the production of the subject merchandise in the PRC or the sale of the subject merchandise in the United States.[36]

The CEP Verification Report notes that the Department identified additional expenses that Yantai Timken failed to include in its questionnaire response, in addition to the three line items that Yantai Timken identified: realized exchange rate gains (loss) - operating, Project One expenses, special reorganization expenses – cost of sales, donations, sundry deductions - external, IC technical assistance expense, IC service expenses, IC royalty expense, realized exchange gains (losses) financial, special charges - other (inc)expense, interest expense external and interest earned. Each of these represent separate line items from the ones that Yantai Timken identified.

An examination of the profit and loss statement provided in CEP verification exhibit 8 reveals that reorganization costs, emerging market expenses, and provisions for restructuring, the three expenses that Yantai Timken acknowledges excluding from its reported ISEs, represent separate line items in corporate cost center costs or business unit costs.[37] The other items that Yantai Timken failed to include in its calculation of ISEs are also recorded on the income statement for December 2003 on pages 55 and 56, demonstrating quite clearly that the additional expenses are not included in the reorganization costs, emerging market expenses, and provisions for restructuring as Yantai Timken claims in its case brief.

Further, it is the Department's practice to include all of the ISEs recorded on the unconsolidated financial statement of the U.S. entity in its calculation of ISEs, with the exception of an allocated amount of interest expense.[38] Thus, Yantai Timken has the burden of explaining why any expense should be excluded from the questionnaire response, including those that are eliminated on

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[35]See Yantai Timken's October 4, 2004, Section C response at C-37.

[36]See CEP Verification Report at 13.

[37] See FOP Verification Report, exhibit 8 at page 54 which summarizes Yantai Timken's calculation of ISEs. The specific figures for December 2003 are recorded on the income statements on page 56.

[38]See Stainless Steel Plate in Coils From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 66 FR 64017 (December 11, 2001), and accompanying Issues and Decision Memorandum at Comment 4.

consolidation with its foreign entities. Yantai Timken's questionnaire response failed to include a significant portion of the ISEs recorded on its audited financial statements, and Yantai Timken did not demonstrate to the Department the appropriateness of these exclusions at verification.

Second, Yantai Timken's contention that the referenced allocation ratios can be derived from the figures reported in CEP verification exhibit 8 misses the mark. Yantai Timken claims that it allocated expenses to the auto bearing business, the industrial bearing business and the steel business based on how each division "benefitted" from the expense. Thus, based on Yantai Timken's explanation at verification, it developed the ratios prior to allocating the expense. In the case brief, however, Yantai Timken presents the issue as if it derived the ratios after the expenses were allocated, stating that the Department could easily re-calculate the worksheets if it wished to examine the ratio. Because the ratios were not available at verification, the Department was unable to examine Yantai Timken's methodology for determining how each division "benefitted" from the relevant expense.

The Department disagrees with Yantai Timken's contention that the Department's discussion of the allocation of corporate center SG&A, in the first full paragraph on page 14 of the CEP Verification Report, appears to reference two different sets of ratios. Rather the Department is referring to the fact that Yantai Timken's explanation that it allocated expenses across departments based on benefit, as opposed to sales, for example, implies that it used some type of expense-specific methodology to determine the ratio for each expense. However, Yantai Timken did not present any information at verification to explain or support its allocations of these expenses.

Third, contrary to Yantai Timken's claims that complete cost center information was included in the last 33 pages of CEP verification exhibit 8,[39] a careful examination of these documents reveals that they do not constitute a comprehensive list of cost centers for Yantai Timken's U.S. entity, but rather cover the corporate center costs, which represents only a portion of the ISEs on the income statement. Thus, the information provided in CEP verification exhibit 8 cannot be used to demonstrate completeness, or as a basis for tracing down from the financial statements to proof of payment for these expenses.

Finally, while we do not agree that Yantai Timken cooperated to the best of its ability with respect to substantiating its reported ISE information, we have determined that, based on information gathered at verification, we have sufficient information to calculate an ISE adjustment to U.S. price for Yantai Timken's U.S. sales. As stated earlier, it is the Department's practice to use all the ISEs recorded on the U.S. entity's audited financial statements with a few minor exceptions. In this instance, because Yantai Timken was unable to substantiate the appropriateness of its exclusion of certain expenses, and we have confirmed the accuracy of the total amount of ISEs incurred by Yantai Timken in the United States and recorded on its audited financial statements, as partial AFA, we will apply the full ISE amount as recorded on those financial statements.

[39] See "Case Brief of Yantai Timken Company Limited and The Yantai Timken Company," dated November 30, 2005 ("Yantai Timken's Case Brief") at 16.

Comment 12: Yantai Timken's Verification Results and Level of Cooperation - Warehouse Expense

Yantai Timken claims it demonstrated the completeness and accuracy of its reported warehouse expenses, even though it did not report all of the expenses incurred in the warehouse during the POR. Further, Yantai Timken claims that the value of the unreported expenses was very small and does not compromise the accuracy of its reported expenses. Thus, because it demonstrated how its warehouse expenses were calculated and how they tied to the audited financial statements, Yantai Timken contends that the Department has sufficient information to accurately identify the total value of its warehouse expense, and should use that total in the calculation of the margin for the final results.

Department's Position: We disagree with Yantai Timken's claims that it explained how it calculated its reported warehouse expenses and how they tied to the audited financial statements, or that Yantai Timken demonstrated the completeness of its reported expenses. At the beginning of the CEP verification, Yantai Timken reported that it inadvertently failed to include the value of overhead in its warehousing expense. We accepted this information as a minor correction to the response.[40] However, our detailed examination of the completeness of Yantai Timken's reported expenses revealed that Yantai Timken did not include the May 2004 building expenses, electricity, general shipping center expense, general service cart, print box maker, air compressors, automotive full line, TWS - distribution of process components in the unabsorbed line, or the November 2003 expenses for distribution systems, logistics and certain variance accounts in its reported warehouse expenses.[41] However, the Department has sufficient information to accurately identify the total value of Yantai Timken's total warehouse expense. Therefore, as partial AFA we shall apply the full warehousing expense from Yantai Timken's financial statements to its U.S. sales of subject merchandise for these final results of review.

Comment 13: Yantai Timken's Verification Results and Level of Cooperation - Marine Insurance

Yantai Timken argues that the Department confirmed sufficient information about Yantai Timken's reported marine insurance to use the information in the margin calculations for the final results. Yantai Timken claims that the Department examined copies of its insurance policy and endorsements, invoices, accounting records, checks, and general ledger accounts for inter-company insurance. Yantai Timken further claims that the general ledger does not indicate any activity but the allocation of pre-paid insurance to its productive cost centers, which Yantai Timken explained and documented at verification. Yantai Timken further claims that Yantai Timken does not maintain any other expense sub-ledgers for marine insurance. Finally, Yantai Timken argues that the expense at issue is very small. Thus, Yantai Timken maintains that the Department should accept Yantai Timken's insurance policy, endorsements and proof of payment documents as

[40] See CEP Verification Report at 3.

[41] See CEP Verification Report at 17.

evidence of the total value of marine insurance incurred for subject merchandise during the POR, and use these figures in the margin calculations for the final results.

Department's Position: In our Preliminary Results, we determined that Yantai Timken could not demonstrate at verification that the expenses it reported in its Section C response for marine insurance represent the total value of these expenses applicable to the subject merchandise during the POR and did not provide the appropriate source documents to tie its reported expenses to its audited financial statements.[42] However, a careful examination of the record reveals that Yantai Timken paid its marine insurance expense according to the terms of the contract which it provided at verification.[43] In addition, it provided a series of computer screen printouts for all the activity in its general ledger asset account for prepaid insurance for the months of January 2003 and 2004, and we found no evidence of other activities in this account.[44] Therefore, for the final results, we determine that Yantai Timken appropriately reported all of its marine insurance in the Section C questionnaire response. As a result, we will use Yantai Timken's marine insurance expense as reported in the margin calculations for the final results of review.

Comment 14: Yantai Timken's Verification Results and Level of Cooperation - International Freight

Yantai Timken contends that the Department confirmed the accuracy of its reported international freight expenses for every shipment of subject merchandise from Yantai Timken to the United States during the POR at the CEP verification, and traced the expenses into its internal accounting books and records. Similarly, Yantai Timken argues that during the FOP verification, the Department confirmed the shipping details for all of Yantai Timken's shipments from the PRC to the United States. Thus, Yantai Timken argues, since the Department identified the universe of shipments from Yantai Timken to the United States, and confirmed the shipment-specific freight charges for those shipments, the Department should accept Yantai Timken's international freight expense as reported, without further comparing their payments with the total amount of international freight recorded in the audited financial statements.

Department's Position: We do not agree with Yantai Timken. However, at verification, we confirmed sufficient information about Yantai Timken's international freight expense to calculate this adjustment to Yantai Timken's U.S. prices for the final results.

We agree with Yantai Timken's description of the documents that we examined at verification and the tests that we conducted to determine the accuracy and completeness of its reported international freight expenses: in the PRC, we confirmed the accuracy and completeness of its shipments to the United States; in the United States, we matched Yantai Timken's reported exports to Yantai Timken's reported imports. We traced the shipment-specific freight expenses to proof of payment.

[42] See Preliminary Results at 70 FR 39744, 39749.

[43] See CEP Verification Report at 15.

[44] See CEP Verification Report at 15.

We traced selected payments to the appropriate account trial balance account, which Yantai Timken explained is dedicated to international freight for bearings from Yantai Timken to the Timken Company in the United States. However, as our verification report stated, "the total value of freight recorded in the audited financial statements did not match the total value of expenses that Yantai Timken reported that it paid for shipments of subject merchandise from Yantai Timken to the United States during the POR."[45] While at verification, we derived the total actual monthly expenses for international freight reported on a year-to-date basis,[46] but could not reconcile these figures to the shipment specific information provided in CEP verification exhibit 9. Yantai Timken was unable to explain the discrepancies.[47]

Further, we disagree with claims that Yantai Timken made in the hearing that it was not aware that the Department was not satisfied with the information presented at verification. We repeatedly asked Yantai Timken if it had resolved the differences between the reported international freight expenses and the trial balance, but, by the end of the verification, Yantai Timken did not provide any reconciliation for this discrepancy. Thus, because Yantai Timken's financial statements do not support the details of its shipment specific expenses, the Department cannot be certain of the completeness of Yantai Timken's reported international freight expenses. Therefore, as partial AFA, we will apply the total value of international freight expenses recorded in Yantai Timken's audited financial statements as the international freight adjustment for U.S. price.

Comment 15: Yantai Timken's Verification Results and Level of Cooperation - Rebates and Commissions

Yantai Timken disagrees that it reported rebates and commissions on a preliminary basis in its questionnaire response. Yantai Timken states that it reported the maximum amount of rebates and commissions that its customers and agents were entitled to earn under their contractual agreements and incentive programs. Yantai Timken denies that it maintains the customer-specific accounts receivable or general ledger accounts that the Department requested to examine at verification. However, Yantai Timken argues that it provided extensive documentation concerning its rebates and commissions including canceled checks, rebate payment invoices, and service agreements signed between Yantai Timken and its sales agents.

Yantai Timken also claims that the CEP verification revealed that customers and agents earned less commissions and rebates than the amount reported in the questionnaire response, which is adverse to its interests. Yantai Timken asserts that in past cases, the Department accepted as conservative reporting, erroneous sales adjustment data reported against a respondent's interest. Citing Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review, 64 FR 49150, 49154 (September 10, 1999), Yantai Timken

[45] See CEP Verification Report at 17.

[46] See CEP verification exhibits 13A and 13B and CEP Verification Report at Attachment V.

[47] See CEP Verification Report at 17.

claims that the Department accepted Ekinciler's decision not to report ISEs incurred in the home market for U.S. sales because it would only affect CEP profit, stating, "Therefore, even if Ekinciler had incurred ISEs in Turkey related to U.S. sales, it was conservative for Ekinciler not to report these expenses." Further, in Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17162 (April 9, 1997), Yantai Timken contends that the Department accepted under-reported freight expenses for home market sales a "conservative estimate of actual transaction specific freight expenses." Similarly, Yantai Timken argues, the Department should treat Yantai Timken's over-reported rebates and commissions in the U.S. market as evidence of conservative reporting.

Yantai Timken also notes that rebates and commissions were paid only for aftermarket customers, and thus were not a significant element of cost. Yantai Timken contends that the Statement of Administrative Action, Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. I, 103d Cong., 2d Sess. 656, 823, 870 (1994) ("SAA") requires the Department to consider "the extent to which a party may benefit from its own lack of cooperation," in determining whether to apply AFA. Yantai Timken argues, by over-reporting rebates and commissions, it was harming itself in that such reporting would increase the possibility of dumping margins.

Yantai Timken asserts that the Department is not allowed to resort to facts available when a respondent does not produce information that it does not have, in accord with Olympic Adhesives, Inc. v. United States, 899 F.2d 1565 (Fed. Cir. 1990)("Olympic Adhesives") at Comment 3. Yantai Timken reiterates that it offered to supplement the record after verification, but the Department refused to accept additional information.

Department's Position: As Yantai Timken acknowledged, it reported the maximum amount of rebates and commissions that certain customers and agents were entitled to earn under their contractual agreements and incentive programs, rather than the actual amounts earned. Moreover, during verification, Yantai Timken explained that the sales agents and customers did not actually earn the maximum possible amount of rebates and commissions as reported in its questionnaire response.

At verification, we asked Yantai Timken to provide documents such as the general ledger, or sub-ledger accounts for accounts receivable or rebate expense for all rebates paid to relevant customers during the POR, in order to demonstrate the actual amount of rebates and commissions paid to its sales agents and customers. Yantai Timken was not able to provide such documentation. Rather, Yantai Timken provided worksheets indicating that no payments were made, but could not tie these worksheets to internal accounting documents.[48] Moreover, the worksheets could not identify whether the rebates and/or commissions identified therein applied to the subject merchandise in

[48] See CEP Verification Report at 19, 20, 22.

general or to any specific sales.[49] Yantai Timken proposed no other means of demonstrating the completeness of its initially reported commissions and rebates or modified reported rebates and commissions. Thus, Yantai Timken could not tie the total annual amount of commission and rebate payments to its audited financial statements, and could not demonstrate the total value of commissions and rebates paid to each of its customers or sales agents.

Finally, we disagree with Yantai Timken's contention that the verification reveals that customers and agents earned a lower amount for rebates and commissions than that reported in the questionnaire response. Because Yantai Timken was not able to tie its worksheets to its financial statements or to demonstrate the completeness of its reported expenses, the Department cannot ascertain the amount of commissions and rebates paid. Thus, without a clear chain of documents to the audited financial statements, the Department cannot accept the reported expenses as conservative reporting, as requested by Yantai Timken.

Finally, we disagree that the decision in Olympic Adhesives, which holds that the Department may not resort to facts available when a respondent cannot produce information that it does not have, is relevant in this case. The Department offered Yantai Timken ample opportunity to demonstrate the completeness of its reporting method at verification. When Yantai Timken could not substantiate the completeness of the rebates and commissions paid during the POR, the Department suggested documents that might demonstrate completeness. Thus, if Yantai Timken could not tie its total commission and rebate payments to the audited financial statements in the manner suggested by the Department, it was free to demonstrate the completeness of its reporting methodology using any documentation it maintains in the normal course of business. Yantai Timken did not make any attempt to tie the provided worksheets to its financial statements. It is well established that "The United States Department of Commerce (Commerce) is obligated to calculate antidumping margins in the most accurate way possible. To this end, the respondent must provide Commerce with the most accurate, credible, verifiable information. Ultimately, the burden of creating an adequate record lies with the respondents, not Commerce."[50] Moreover, as discussed above in the Department Position to Comment 7,

> In an antidumping case, before making an adverse inference, the Department [] must examine a respondent's abilities, efforts, and cooperation in responding to [the Department's] requests for information. Compliance with the "best of its ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to

[49] See CEP Verification Report at 19, 21 and 22.

[50] See Chia Far Industrial Factory Co., Ltd. v. United States, 343 F. Supp. 2d 1344, 1362 (CIT 2004) (internal citations omitted).

> Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce.[51]

In this instance, Yantai Timken did not meet its burden of creating an adequate record for rebates and commissions. Yantai Timken was unable to substantiate whether its reported rebate and commission amounts tied to its accounting records and/or audited financial statements. Therefore, the Department must resort to the use of partial AFA for this adjustment to U.S. price. As partial AFA, the Department will apply the highest amount of rebate or commissions that could have been incurred for each U.S. sale based upon Yantai Timken's rebates and commissions agreements with its customers and sales agents.

Comment 16: Yantai Timken's Request to Supplement the Record

In response to issues raised after verification, Yantai Timken reiterates its written and oral requests of July 19, 2005, August 4, 2005, and August 8, 2005, to supplement the record with additional information concerning the CEP and FOP verifications, to provide any additional information that the Department might request, and to return to its headquarters in Canton, Ohio, to complete the U.S. verification.

Yantai Timken claims that the record includes certain questions that were unanswered during the verification and additional questions that remain unanswered because they were not asked during verification but only appeared in the FOP and CEP verification reports. Thus, it again requests to supplement the record for electricity, ISEs, and warehouse expenses in accord with section 782(d) of the Act, which according to Yantai Timken, instructs the Department to provide respondents with an opportunity to clean up deficiencies in its reporting.

Yantai Timken claims that it thought that the information it provided the Department had been verified, whereas it learned of the Department's questions only after the verification was completed. According to Yantai Timken, the CIT, in New World Pasta Company, v. United States, 316 F. Supp. 2d 1338, 1349 (CIT 2004), held that section 782(d) of the Act "requires the Department, if it finds a submission from a party to be deficient, to inform the party of the deficiencies and to allow for remedy or explanation." Yantai Timken contends that the Department used unasked questions as part of its grounds for determining Yantai Timken to be uncooperative. Thus, it requests to answer the questions it feels that the Department did not afford it an adequate opportunity to answer. Further, Yantai Timken claims that SKF USA Inc. v. United States, 391 F. Supp. 2d 1327 (CIT 2005) ("SKF"), indicates that the Department was willing to accept post-verification supplemental information in circumstances similar to the present case.

Yantai Timken contends that it made its first requests to provide supplemental information shortly after the Department issued the CEP and FOP verification reports and the preliminary results long before the case briefs were originally due. Yantai Timken maintains that it is still willing to submit the information and simply asks the Department to authorize it to do so.

[51] See Nippon at 1382.

Yantai Timken contends that the Department frequently accepts supplemental information following verification. For example in Monsanto, Yantai Timken argues that the CIT stated that the ITA may accept "post-verification information which indicates that the original questionnaire response was correct or clarifies it." With its request to submit supplemental information, Yantai Timken primarily seeks to submit information that would confirm its existing data. Thus, Yantai Timken argues that its request is consistent with the Department's actions in the past.

Peer Bearing notes that Yantai Timken, even at this late date, is requesting the Department to allow it to submit new information in an attempt to rectify the multitudes of deficiencies cited above. Peer Bearing reiterates that the Department has already given Yantai Timken's request to submit new information due consideration. Peer Bearing points out that in a letter to Yantai Timken, dated September 21, 2005, the Department rejected Yantai Timken's August 2, 2005, and August 8, 2005, requests to supplement the record with additional information, stating that granting Yantai Timken's request would be inappropriate and a departure from its existing practice. Further, Peer Bearing notes, the Department must set a date certain to close the administrative record in order to be able to meet its obligations for completing any segment of a proceeding. Peer Bearing contends that nothing has changed since the preliminary results to alter the record upon which the Department based its decision not to allow Yantai Timken to supplement the record with additional information.

Peer Bearing distinguishes the facts of this proceeding from SKF, where Yantai Timken requested the Department to impose AFA on the respondent, SKF, because the Department stated that it was unable to verify from source documents in the underlying review of Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and Singapore: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not To Revoke Order in Part, 68 FR 35623 (June 16, 2003), and accompanying Issues and Decision Memorandum at Comment 25. In SKF, Peer Bearing argues, the Department applied partial AFA because the Department claimed that at verification, SKF did not provide evidence to support its reported data. Nevertheless, Peer argues, contrary to the scenario in SKF, where the facts were disputed by the parties and the CIT ruled that the respondent did not refuse to provide information at verification, in this case, the facts are not in dispute. Yantai Timken was unable to substantiate several reported data items at verification. Rather, Peer Bearing claims that the Department found a significant number of mistakes and problems at verification on issues for which Yantai Timken knew it should have been prepared. Therefore, Peer Bearing contends, the unique facts of SKF are not present.

Peer Bearing further argues, citing the Preliminary Results, that the purpose of the verification outline is to provide respondents with sufficient notice about the types of source documents that the Department seeks to examine during verification, and to afford respondents sufficient time to compile source documents and prepare them as verification exhibits. Peer Bearing points out that, in the Preliminary Results, the Department also reported that "at no time prior to verification did Yantai Timken contact the Department with questions concerning verification procedures, documents required for verification, or the verification outline. Further, Peer Bearing states that the Preliminary Results, 70 FR at 39750, states that Yantai Timken did not indicate at any time

prior to verification that it was experiencing difficulties in supplying the information requested in the verification outline." Thus, Peer Bearing argues, Yantai Timken had sufficient time to prepare for a complete verification by the Department and the highly unique facts of SKF which may require the Department to re-open the record for additional information are not present in this review.

No other party provided comments on this issue.

Department's Position: We disagree that Yantai Timken should be allowed to reopen the record after the Preliminary Results to clarify its response or to provide explanations for its methodology for reporting FOPs or expenses that it failed to provide at verification. Section 351.301(b)(2) of the Department's regulations sets the time limit for submitting factual information in an administrative review as 140 days after the last day of the anniversary month, except that factual information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed.

On September 21, 2005, the Department denied Yantai Timken's request to supplement the record[52] with additional information, to provide worksheets clarifying electricity usage at Yantai Timken and identifying the un-metered items in Yantai Timken's electricity usage, and to return to Canton Ohio.[53] It explained that the Department had already afforded Yantai Timken numerous opportunities to provide complete and accurate information through its six supplemental questionnaires and its timely verification outlines. It further explained that:

> The Department must set a date certain to close the administrative record in order to be able to meet its obligations for completing any segment of a proceeding. Such deadlines are established to facilitate the Department's ability to administer the antidumping duty law. As such, after the completion of verification, the Department does not accept completely new factual information, and does not return to a verification site to address items that the respondent did not previously

[52]See letters from Yantai Timken to the Department, "Re: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: *Yantai Timken Co. Ltd. Request for Extension of Time*," dated August 2, 2005; "Re: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: *Yantai Timken Co. Ltd. Request to Submit Additional Information*," dated August 4, 2005; "Re: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: *Supplement to Yantai Timken Co. Ltd. Request to submit Additional Information*," dated August 8, 2005.

[53]See letter from Wendy J. Frankel, Director AD/CVD Operations, Office 8, Import Administration to Yantai Timken Co., Ltd. and The Yantai Timken Company, "Re: Seventeenth Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the People's Republic of China: Yantai Timken Company's Request to Submit New Factual Information on the Record," dated September 21, 2005 ("September 21 Letter").

substantiate or that could not be verified as a result of time spent on other verification items.

See September 21 Letter at 1 and 2.

In addition, we explained that to allow Yantai Timken to correct or to supplement information provided in the questionnaire responses or at verification would be inappropriate and a departure from our existing practice.[54]

We are fully aware that section 351.301(b)(2) of the Department's regulations allows that Department to request respondents to provide information after verification. However, the facts of this case do not warrant such treatment. Record evidence shows that Yantai Timken was afforded ample opportunities to respond to our questionnaires and to substantiate the information contained in its responses at verification. Yantai Timken indicates that it was aware prior to verification that its questionnaire response did not account for all of its consumption of electricity or ISEs, yet, at verification, it concealed these omissions rather than present a complete and accurate explanation of its reporting methodology. Thus, Yantai Timken left the Department to discover these errors on its own at verification. Therefore, the data that Yantai Timken requests to correct and place on the record after verification represents, in effect, the provision of a new questionnaire response and the Department cannot assent to Yantai Timken's request to supplement the record for these items. "It is incumbent upon parties that choose to participate in an antidumping duty investigation to accurately provide information to Commerce in the first instance. . . . Indeed, verification is not an opportunity to submit new answers to previously posed questions, but is more like an audit of information previously submitted."[55]

Thus, the time for Yantai Timken to substantiate its questionnaire response was at verification, not after verification is completed. In this instance, Yantai Timken has not demonstrated any exceptional circumstances that would explain why it could not provide the requisite information at verification and that warrant the department to move away from its practice of closing the record prior to verification.

Comment 17: The Department Should Determine a Margin That Is Not Punitive

Yantai Timken claims that even if the Department continues to find that Yantai Timken was uncooperative, it should not apply total AFA to determine a margin for Yantai Timken, as to do so would be punitive. Citing Court of Appeals of the Federal Circuit ("CAFC") ruling in F.Lii de Cecco di Filippo Fara S. Martino S.P.A., V. United States, 216 F.3d 1027 (Fed. Cir. 2000), Yantai Timken argues the CAFC stated that "{i}t is clear from Congress's imposition of the corroboration requirement in [section 776(c) of the Act] that it intended for an AFA rate to be a reasonably

[54]See September 21 Letter at 1.

[55]See Shandong Huarong I. See also Bomont Industries v. United States, 733 F. Supp.. 1507, 1508 (Ct. Int'l Trade 1990) ("Verification is like an audit, the purpose of which its to test information provided by a party for accuracy and completeness.")

accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance."

Yantai Timken claims that unlike many respondents whose margins were based on total AFA, it responded to the Department's original and six supplemental questionnaires. Further, Yantai Timken claims that it did not provide any information that the Department found to be incorrect except natural gas and electricity consumption and rebate and commission expenses, which were over-reported in a manner that is adverse to its interests. Therefore, Yantai Timken argues that the Department should use the data that it verified for the margin calculations for the final results, applying partial AFA based on the total verified quantity of natural gas and electricity consumption during the POR, and the maximum contractual amounts of rebates and commissions. Yantai Timken contends that such calculations would result in a de minimis margin. Yantai Timken contends that given its prior history of no dumping, the total AFA rate of 60.95 percent is punitive, and thus consistent with the intent of the statute and the guidance of the CAFC, it should not be used for Yantai Timken for these final results of review. In further support of this argument, Yantai Timken cites Shandong Huarong General Group Corporation & Liaoning Machinery Import & Export Corporation, v. United States, Court No. 01-00858, 2004 Ct. Intl. Trade LEXIS 121, (September 13, 2004)("Huarong II"), where the Court indicated that the Department is required to determine a non-punitive margin based on partial AFA that provides "a reasonably accurate estimate of [plantiff's] actual rate, albeit with built-in increase intended as a deterrent to non-compliance."

Yantai Timken argues that, in past cases, the Department recognized that its choice of facts available is limited by verified data. For example, Yantai Timken claims that in Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004), and accompanying Issues and Decision Memorandum at Comment 24, the Department determined that it would be inappropriate to use facts available, adverse or otherwise, that resulted in a total usage rate greater than the actual verified usage rate of the relevant FOP. Thus, Yantai Timken argues, the Department's selection of AFA for natural gas and electricity in this instance should be limited to the total consumption of these energy sources that was verified at the plant. In addition, Yantai Timken claims that if the Department chooses not to accept Yantai Timken's reported ISEs, it may supplement them by an amount for interest. Yantai Timken argues that if the Department chooses not to accept Yantai Timken's warehouse expenses, it should use the revised amount calculated in the CEP Verification Report at Attachment IV.

Peer Bearing contends that the Department's decision to apply total AFA to Yantai Timken is supported by substantial evidence on the record and in accordance with law. Peer Bearing claims that section 776(a) of the Act authorizes the Department to use facts otherwise available to fill in the factual gaps where it has received insufficient information from a party. Further, where a party causes those gaps by "fail[ing] to cooperate by not acting to the best of its ability to comply with a request for information," Peer Bearing contends that section 776(b) of the Act provides that the Department "may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available."

Peer Bearing contends the AFA rate of 60.95 percent is consistent with the Department's practice to use the highest rate calculated from any segment of the proceeding where that rate is corroborated. Citing Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 70 FR 54023 (September 13, 2005), and accompanying Issues and Decisions Memorandum at Comment 1, Peer Bearing contends that it is the Department's practice to use the highest calculated rate from any segment of the proceeding as AFA so long as that rate can be corroborated in accordance with the statute. Peer Bearing contends that the Department's rate of 60.95 percent represents the highest calculated margin from any prior segment of the proceeding as AFA. Peer Bearing explains that the Department corroborated that rate through information on the record and stated in the Preliminary Results that "the margin of 60.95 percent was within the range of the highest margins calculated on the record of this administrative review." Therefore, Peer Bearing contends, the Department's determination to use 60.95 percent as the total AFA rate is consistent with its prior practice and in accordance with law.

Peer Bearing contends that the Department should reject Yantai Timken's request to apply partial AFA which would result in a de minimis margin. Peer Bearing contends that Yantai Timken's proposed calculation is not supported by substantial evidence on the record since it includes information that was not verified by the Department. Moreover, Peer Bearing argues, Yantai Timken fails to take into account the Department's inability to substantiate reported values for ocean freight, marine insurance, commissions, rebates and ISEs; its inability to prove the completeness and accuracy of its reported ISEs and U.S. warehousing expenses; and, its inability to substantiate its reported electricity and natural gas consumption because of the contradictory information presented at verification. Peer Bearing argues further that the problems with the above-mentioned expenses at verification caused the Department to be unable to verify other critical adjustments, such as billing adjustments, U.S. inland freight to warehouse, imputed credit expense, and ICC. Thus, Peer Bearing contends, Yantai Timken's proposed remedy represents a second bite of the apple, which is an opportunity not normally afforded to respondents. Furthermore, Peer Bearing contends, Yantai Timken's solution does not address all of the problems identified by the Department.

Peer Bearing contends that in Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review, 64 FR 69488, 69490 (December 13, 1999), the Department stated, in certain circumstances, that the application of partial AFA is sufficiently adverse to induce [a respondent's] cooperation in future reviews. In the current review, Peer Bearing argues that calculating a de minimis margin for Yantai Timken would not be sufficiently adverse to induce Yantai Timken's future cooperation because it would result in a favorable de minimis margin and possibly even revocation. Accordingly, Peer Bearing argues, the Department should reject Yantai Timken's request.

No other party provided comments on this issue.

Department's Position: As discussed above, the Department has determined that the use of total AFA with respect to Yantai Timken is not warranted for these final results of review. Therefore, comments raised with respect to the total AFA rate are no longer relevant and there is no need to address them here.

Moreover, as Yantai Timken suggests, we are applying information taken from its accounting records and/or financial statements obtained at verification as partial AFA to the items that Yantai Timken did not properly report in its questionnaire responses. These items are natural gas consumption and electricity consumption with respect to FOPs, and ISEs, international freight expenses, warehousing expenses, rebates, and commissions incurred with respect to U.S. sales of subject merchandise.

As discussed in Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review, 64 FR 69488, 69490 (December 13, 1999), the Department has stated that there are instances where the application of partial AFA is sufficiently adverse to induce [a respondent's] cooperation in future reviews. This applies in the instant review with respect to Yantai Timken. In applying partial AFA for the information not properly reported by Yantai Timken, we have ensured that the selection of partial AFA is sufficiently adverse to induce Yantai Timken's cooperation in future reviews.

Comment 18: Continued Application of the Order to Yantai Timken Is Necessary to Offset Dumping

Peer Bearing argues that in the unlikely event that the Department determines that Yantai Timken's final margin is de minimis, the Department should not revoke the order with respect to Yantai Timken. Peer Bearing claims that section 351.222(b)(2)(i)(A)-(C) of the Department's regulations allow for an antidumping duty order to be revoked with respect to a specific company, where that company (1) has sold the merchandise at not less than normal value for a period of at least three consecutive years, (2) agrees in writing to its immediate reinstatement in the order should the Department later determine that dumping as resumed, and (3) the Department determines that the continued application of the antidumping duty order is [not] otherwise necessary to offset dumping.

However, Peer Bearing contends, the continued application of the order to Yantai Timken is necessary to offset dumping. As a preliminary matter, the huge deficiencies identified in Yantai Timken's reported data clearly indicate that the Department is unable to determine whether Yantai Timken was dumping and thus any margin calculated based on this data should not be relied on for revocation purposes. Moreover, Peer Bearing claims that the inability to account for these potentially significant adjustments to U.S. price and FOPs means that Yantai Timken will not be able to appropriately price its products for future sale in the United States in order to avoid dumping. Thus, Peer Bearing contends that Department should not revoke the order with respect to Yantai Timken, even if the Department calculates a de minimis margin for Yantai Timken in this review.

No other party provided comments on this issue.

Department Position: Yantai Timken's calculated margin in these final results of review is above de minimis; therefore, Yantai Timken is not eligible for revocation from this antidumping duty

order. As a result, this issue is no longer relevant and we need not address it for these final results of review.

Comment 19: Separate Rate Status for Yantai Timken

Yantai Timken argues that it is entitled to a separate rate. Yantai Timken argues that Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588, (May 6, 1991) ("Sparklers") at Comment 3 established that a respondent is entitled to a separate rate whenever it demonstrates de jure and de facto absence of central government control. Yantai Timken claims that it provided, and the Department verified, evidence of de jure and de facto absence of central government control in this administrative review.

Yantai Timken further claims that the Department's FOP Verification Report found "no discrepancies" with respect to Yantai Timken's claim for a separate rate, and thus, argues that it is entitled to a separate rate despite its numerous verification failures. Yantai Timken claims that the CIT overturned the Department's practice of assigning the PRC-wide rate to respondents whose margins were determined on the basis of total AFA in Huarong I and Huarong II. Therefore, Yantai Timken argues, Huarong I and Huarong II require the Department to grant separate rates whenever the Department verifies that the respondent enjoys the de jure and de facto absence of central government control, regardless of whether the respondent failed verification of its sales or FOP response. Yantai Timken argues that the Department erroneously applied the PRC-wide rate to Yantai Timken in this review as a consequence of its determination to base Yantai Timken's margin on total AFA. Thus, Yantai Timken argues, because the Department verified the de jure and de facto absence of central government control with respect to its operations, it is entitled to a separate rate for the final results.

Peer Bearing agrees with the Department's decision in the preliminary results to deny a separate rate to Yantai Timken and include it in the PRC-wide entity. Peer Bearing contends that the Department's treatment of Yantai Timken is consistent with its current practice, articulated in Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 54897 (September 19, 2005), and accompanying Issues and Decision Memorandum at Comment 9. Thus, Peer Bearing contends that the Department should continue to include Yantai Timken in the PRC-wide entity for the final results.

No other party addressed this issue.

Department's Position: We agree that Yantai Timken has demonstrated its eligibility for a separate rate in this review. Our Preliminary Results stated that Yantai Timken was not entitled to

a separate rate because we based its margin on total AFA.[56] However, for these final results, we are not basing our determination on total AFA, as discussed above. Therefore we have fully analyzed the information Yantai Timken submitted on the record to support its eligibility for separate-rates status.

Yantai Timken reported that it is a wholly owned subsidiary of The Timken Company, registered in the city of Yantai, Shandong Province as a wholly foreign-owned enterprise in accord with the "Law of the PRC on Foreign Capital Enterprises" in its August 26, 2004, Section A response ("AQR"). We examined the documents at verification which Yantai Timken claims demonstrate a de jure and de facto absence of control on the part of the government of the PRC: the foreign trade law of the PRC; Yantai Timken's business plan for 2003, 2004 and 2005; and the export control items maintained by the Ministry of Foreign Trade and Economic Co-operation ("MOFTEC") for 2003 and 2004.[57] In addition, we examined evidence of Yantai Timken's ability to appoint and remove directors of the board, to set prices, and to earn and control the use of export earnings, and a list of all of its bank accounts.[58] We confirmed that the subject merchandise is not subject to export controls by the government of the PRC as reported in the questionnaire response.[59] Thus, for the final results, we will grant Yantai Timken a separate rate.

RECOMMENDATION

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

Agree_____ Disagree_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
(Date)

[56]See Preliminary Results at 70 FR 39744, 39747.

[57]See FOP Verification Report at 9.

[58]See FOP Verification Report at 9.

[59]See FOP Verification Report at 10.