



A-580-894
Investigation
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James P. Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Certain Tapered Roller Bearings from the Republic of Korea

I. Summary

The Department of Commerce (Commerce) finds that certain tapered roller bearings (TRBs) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

After analyzing the comments submitted by interested parties, and based on our findings at verification, we made changes to the margin calculations for Iljin Group¹ and Schaeffler Korea Corporation (Schaeffler), the mandatory respondents in this investigation. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. We received comments from interested parties for the following issues in this LTFV investigation:

General

1. Allegation of a Particular Market Situation (PMS) in Korea

¹ Iljin Group is the name used for the collapsed-entity comprised of the following three affiliated companies: Bearing Art Corporation (Bearing Art), Iljin Bearing Corporation (Iljin Bearing), and Iljin Global Corporation (Iljin Global).



Iljin Group

2. Affiliation with Hyundai Motor Company (HMC)
3. Using New Prototype Sales in the Calculation of Normal Value (NV) and U.S. Price
4. Reclassifying Certain Prototype Sales as Export Price (EP)
5. Post-Sale Price Adjustments
6. Constructed Export Price (CEP) Offset
7. Calculating Financial Expenses
8. Applying Partial Adverse Facts Available (AFA) to Direct Material Costs

Schaeffler

9. Unreported Home Market Sales
10. Level of Trade (LOT) and CEP Offset
11. Home Market Rebates
12. Home Market Billing Adjustments
13. U.S. Movement Expenses in Korea
14. U.S. Movement Expenses in the United States
15. U.S. Warehousing Expenses
16. Calculation of U.S. Duties
17. U.S. Billing Adjustments
18. Rebates Granted on U.S. Sales
19. Borrowing Rate for U.S. Credit Expenses
20. Classifying Certain Sales as EP
21. Calculating Financial Expenses
22. Commerce's Schedule for Submitting Case Briefs

II. Background

On February 2, 2018, Commerce published the *Preliminary Determination* of sales of TRBs from Korea at LTFV.² We invited parties to comment on the *Preliminary Determination*.

From February through April 2018, we conducted verification, in accordance with section 782(i) the Act, of the sales and cost of production (COP) data reported by Iljin Group and Schaeffler (collectively, the respondents). In June 2018, at Commerce's request, Iljin Group submitted revised home and U.S. market sales data.³

² See *Certain Tapered Roller Bearings from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 4901 (February 2, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

³ See Memorandum, "Request for Revised Home Market and U.S. Sales Listings for Bearing Art Corporation, Iljin Bearing Corporation, and Iljin Global Corporation (collectively, Iljin Group) in the Antidumping Duty Investigation of Tapered Roller Bearings from Korea," dated June 6, 2018.

On May 17 and 22, 2018, respectively, we received case and rebuttal briefs from interested parties.⁴ On May 31, 2018, Commerce held a public hearing at the request of the petitioner and the respondents. Based on our analysis of the comments received, as well as our verification findings, we have made changes to our *Preliminary Determination*.

III. Scope of the Investigation

The scope of this investigation is certain tapered roller bearings. The scope covers all tapered roller bearings with a nominal outside cup diameter of eight inches and under, regardless of type of steel used to produce the bearing, whether of inch or metric size, and whether the tapered roller bearing is a thrust bearing or not. Certain tapered roller bearings include: finished cup and cone assemblies entering as a set, finished cone assemblies entering separately, and finished parts (cups, cones, and tapered rollers). Certain tapered roller bearings are sold individually as a set (cup and cone assembly), as a cone assembly, as a finished cup, or packaged as a kit with one or several tapered roller bearings, a seal, and grease. The scope of the investigation includes finished rollers and finished cones that have not been assembled with rollers and a cage. Certain tapered roller bearings can be a single row or multiple rows (*e.g.*, two- or four-row), and a cup can handle a single cone assembly or multiple cone assemblies.

Finished cups, cones, and rollers differ from unfinished cups, cones, and rollers in that they have undergone further processing after heat treatment, including, but not limited to, final machining, grinding, and/or polishing. Mere heat treatment of a cup, cone, or roller (without any further processing after heat treatment) does not render the cup, cone, or roller a finished part for the purpose of this investigation. Finished tapered roller bearing parts are understood to mean parts which, at the time of importation, are ready for assembly (if further assembly is required) and require no further finishing or fabrication, such as grinding, lathing, machining, polishing, heat treatment, *etc.* Finished parts may require grease, bolting, and/or pressing as part of final assembly, and the requirement that these processes be performed, subsequent to importation, does not remove an otherwise finished tapered roller bearing from the scope.

Tapered roller bearings that have a nominal outer cup diameter of eight inches and under that may be used in wheel hub units, rail bearings, or other housed bearings, but entered separately, are included in the scope to the same extent as described above. All tapered roller bearings meeting the written description above, and not otherwise excluded, are included, regardless of coating.

⁴ See Petitioner's Case Brief, "Certain Tapered Roller Bearings from the Republic of Korea – Petitioner's Case Brief," dated May 17, 2018 (Petitioner's Case Brief); Iljin Group's Case Brief, "Certain Tapered Roller Bearings from the Republic of Korea: Bearing Art's Case Brief," dated May 17, 201 (Iljin Group Case Brief); Schaeffler's Case Brief, "Schaeffler Administrative Case Brief: Antidumping Duty Investigation on Tapered Roller Bearings from Korea (A-580-894)," dated May 17, 2018 (Schaeffler Case Brief); Petitioner's Rebuttal Brief, "Certain Tapered Roller Bearings from the Republic of Korea – Petitioner's Rebuttal Brief," dated May 21, 2018 (Petitioner's Rebuttal Brief); Iljin Group's Rebuttal Brief, "Certain Tapered Roller Bearings from the Republic of Korea: Bearing Art's Rebuttal Brief," dated May 21, 2018 (Iljin Group Rebuttal Brief); and Schaeffler's Rebuttal Brief, "Schaeffler Rebuttal Case Brief: Antidumping Duty Investigation on Tapered Roller Bearings from Korea (A-580-894)," dated May 21, 2018 (Schaeffler Rebuttal Brief).

Excluded from the scope of this investigation are:

- 1) unfinished parts of tapered roller bearings (cups, cones, and tapered rollers);
- 2) cages, whether finished or unfinished;
- 3) the non-tapered roller bearing components of subject kits (*e.g.*, grease, seal); and
- 4) tapered roller bearing wheel hub units, rail bearings, and other housed tapered roller bearings (flange, take up cartridges, and hanger units incorporating tapered rollers).

Tapered roller bearings subject to this investigation are primarily classifiable under subheadings 8482.20.0040, 8482.20.0061, 8482.20.0070, 8482.20.0081, 8482.91.0050, 8482.99.1550, and 8482.99.1580 of the Harmonized Tariff Schedule of the United States (HTSUS).⁵ Parts may also enter under 8482.99.4500. While the HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

IV. Margin Calculations

We calculated CEP, EP, NV, and COP for the respondents using the same methodology as stated in the *Preliminary Determination*, except as follows:

1. We made certain changes to Iljin Group's and Schaeffler's reported data based on our findings at verification.⁶
2. We excluded from our analysis Iljin Group's home market sales of newly-developed prototype TRB models as transactions made outside the ordinary course of trade. We also excluded all of Iljin Group's U.S. sales of prototype TRB models because Iljin Group's total sales of these products were insignificant during the POI. *See* Comment 4.

⁵ Prior to July 2016, products entering under 8482.20.0061 entered under 8482.20.0060, products entering under 8482.20.0081 entered under 8482.20.0080, and products entering under 8482.99.1550 entered under 8482.99.1540.

⁶ *See* Memoranda, "Final Determination Calculations for Iljin Group," dated June 18, 2018 (Iljin Group Final Sales Calculation Memo); "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Iljin Group," dated June 18, 2018; "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Schaeffler," dated June 18, 2018; and "Final Determination Calculations for Schaeffler Korea Corporation," dated June 18, 2018 (Schaeffler Final Sales Calculation Memo). *See also* Memoranda, "Verification of Iljin USA Corporation in the Antidumping Duty Investigation of Certain Tapered Roller Bearings from the Republic of Korea," dated April 24, 2018 (Iljin USA Verification Report); "Verification of the Sales Response of Schaeffler Group U.S.A., Inc. in the Antidumping Duty Investigation of Tapered Roller Bearings from Korea," dated April 25, 2018 (Schaeffler USA Verification Report); "Verification of the Cost Response of Bearing Art Corporation in the Less-than-Fair-Value Investigation of Tapered Roller Bearings from the Republic of Korea," dated May 2, 2018 (Bearing Art Cost Verification Report); "Verification of the Cost Response of Schaeffler Korea Corporation and Schaeffler Group USA Inc., ('Schaeffler') in the Antidumping Duty Investigation of Tapered Roller Bearings from Korea," dated May 3, 2018 (Schaeffler Cost Verification Report); "Verification of Bearing Art Corporation in the Antidumping Duty Investigation of Certain Tapered Roller Bearings from the Republic of Korea," dated May 9, 2018 (Bearing Art Sales Verification Report); "Verification of Iljin Bearing Corporation in the Antidumping Duty Investigation of Certain Tapered Roller Bearings from the Republic of Korea," dated May 10, 2018 (Iljin Bearing Sales Verification Report); and "Verification of the Sales Response of Schaeffler Korea Corporation in the Antidumping Duty Investigation of Tapered Roller Bearings from Korea," dated May 10, 2018 (Schaeffler Sales Verification Report).

3. We recalculated Bearing Art's financial expense ratio to include losses attributable to derivative transactions. *See* Comment 7.
4. We disregarded certain retroactively-applied post-sale price adjustments that Iljin Group and Schaeffler reported in the home and U.S. markets. *See* Comments 5 and 11.
5. We based certain of Schaeffler's U.S. movement expenses on AFA because Schaeffler was unable to support the reported amounts at verification. *See* Comments 13 and 14.
6. We adjusted Schaeffler's U.S. warehousing expenses charged by an affiliated party to place them on an arm's-length basis. *See* Comment 15.
7. We recalculated Schaeffler's U.S. duty expenses to apply the rate which would have been in effect on the date that the TRBs entered the United States, rather than the date that Schaeffler or Schaeffler USA issued the invoice. *See* Comment 16.
8. We recalculated Schaeffler's financial expense ratio to exclude packing and warranty from the denominator. *See* Comment 21.

V. Discussion of the Issues

General Issues

Comment 1: Allegation of a PMS in Korea

In October 2017, the petitioner made a particular market situation (PMS) allegation, in which it argued that the respondents' costs for producing TRBs in Korea are distorted due to the existence of the following four market conditions: 1) below-market prices for input steel in Korea due to dumped Chinese steel imports; 2) Korean government subsidies to domestic steel producers; 3) Korean government subsidies in the electricity market; and 4) a strategic alliance between Iljin Group and the "Hyundai Group."⁷ Based on our analysis of the information provided, we preliminarily found that the petitioner's PMS allegation and supporting factual information were not sufficient to find that a PMS existed during the POI.⁸

Petitioner's Arguments

- The petitioner argues that Commerce should make an adjustment to each of the respondent's costs of production (COP) to account for a PMS distorting the cost of steel used in the production of TRBs.⁹ The petitioner argues that Section 504 of the TPEA

⁷ *See* Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea—Petitioner's Preliminary Particular Market Situation Comments and Section D RFI," dated October 24, 2017 (PMS Allegation). The petitioner submitted additional factual information to support its PMS allegation in December 2017. *See* Petitioner's Letter, "Certain Tapered Roller Bearings from Korea: Petitioner's Pre-Preliminary Determination Comments," dated December 15, 2017 (Petitioner Pre-Prelim Comments).

⁸ *See Preliminary Determination PDM* at 7-15.

⁹ *See* Petitioner's Case Brief at 1.

grants Commerce the authority to use an alternative calculation methodology, where a PMS exists such that the cost of materials does not accurately reflect the COP in the ordinary course of trade.¹⁰

- The petitioner argues that overcapacity in steel production in China resulted in the massive dumping of steel products in Korea, depressing the cost of Korean steel products (including steel bar and tube, the most significant inputs into TRBs).¹¹ The data the petitioner provided to demonstrate this point includes: 1) import data for “other” steel bar and tube from four HTS subheadings which showed an increase in Chinese imports and a downward trend in the average unit values of Korean imports;¹² and 2) a 2016 statement from Korea’s largest steel producer blaming its first loss on a flood of imports of cheap Chinese steel.¹³ The petitioner argues that while other countries have implemented trade remedies against dumped steel from China, Korea has only implemented such remedies on one type of Chinese produced steel (*i.e.*, structural steel sections).¹⁴
- The petitioner states that although Commerce did not request data on specific inputs from the respondents, there is information on the record to demonstrate that the costs of inputs were outside of the ordinary course of business. For instance, the petitioner states that the impact of subsidization can be seen from a comparison between the prices for steel bar purchased by the petitioner from the Petition, and prices from each of the respondent’s responses showing that the petitioner paid a higher cost from a non-Korean supplier.
- According to the petitioner, rather than blocking unfairly priced Chinese steel imports, the GOK has elected to heavily subsidize Korean steel producers which has further depressed prices for input steel in Korea. The petitioner also points out that Commerce has found that these subsidies provided by the GOK to HRC producers are countervailable and, thus, petitioner claims that these countervailed subsidies are market distorting.
- The petitioner claims that Commerce has multiple countervailing duty (CVD) orders demonstrating that the GOK heavily subsidizes various types of steel products resulting in distortion of input prices (*i.e.*, corrosion resistant steel products, cold-rolled steel flat products, certain carbon and alloy steel cut-to-length plate, and hot-rolled steel flat products from Korea).¹⁵ According to the petitioner, these subsidies help the producers

¹⁰ *Id.* at 3 (citing Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA), and section 773(e) of the Act).

¹¹ *Id.* at 4 (citing Petitioner’s Letter, “Certain Tapered Roller Bearings from Korea: Petitioner’s Pre-Preliminary Determination Comments,” dated December 15, 2017 at 6-10 (Petitioner Pre-Prelim Comments)).

¹² *Id.* at 8-9 (citing Petitioner Pre-Prelim Comments at 13-15 and Attachment 12-13.)

¹³ *Id.* at 4-5 (citing Petitioner Pre-Prelim Comments at 11-12).

¹⁴ *Id.* at 5 (citing Petitioner Pre-Prelim Comments at 11).

¹⁵ *Id.* at 5 (citing Petitioner Pre-Prelim Comments at 12-13 citing *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016) *Certain Carbon and Alloy*

maintain low prices and over-production on all types of steel.¹⁶ In light of these subsidies, the reported costs are not an accurate measure of fair market value.¹⁷

- The petitioner states that Commerce has always had the authority to address the market distortions caused by Chinese imports and the GOK's subsidization of inputs and the TPEA has expanded Commerce's authority to use "any other calculation methodology" to implement a needed adjustment. Thus, the petitioner's argument that even if the agency's time and budget constraints or failures in data collection may prevent precise quantification, this should not prevent it from acting to address a universally recognized distortion.
- The petitioner states that in *OCTG from Korea 2015-2016*, Commerce found PMS conditions existed even though Commerce was unable to quantify an impact with respect to Chinese HRC, strategic alliances, or the Korean electricity market.¹⁸ Further, Commerce rejected one respondent's arguments that its supplier of steel was neither Korean nor Chinese, and thus minimized the effects of Korean subsidies to Korean producers. However, Commerce stated that it found the Korean steel market to be distorted, and that all companies supplying steel to the investigated Korean users would be affected, even if they were neither Chinese nor Korean. Thus, the petitioner states that even if the particular steel input was excluded from prior CVD determinations, the fact remains that the GOK programs which Commerce countervailed in its prior decisions were general and enabled Korean suppliers to supply steel at low prices. As a result, the petitioner argues that the steel costs, including that for producing TRBs, are distorted and should not be relied upon to calculate normal value.
- With respect to Korean government subsidies, the petitioner claimed that the Korean government heavily subsidizes Korean steel producers, further depressing steel prices. As evidence for this assertion, the petitioner cited multiple U.S. CVD orders on Korean steel products. In addition, the petitioner notes that Commerce previously found that government subsidies to a government-controlled electricity supplier known as "KEPCO" distorted its electricity costs, a determination consistent with the U.S. Energy Information Administration's finding that found KEPCO's pricing for low-income and industrial consumers has, historically, not reflected true electricity costs;¹⁹ and the

Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination, 82 FR 16341 (April 4, 2017) (*CTL Plate from Korea*); *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel from Korea*), and accompanying Issues and Decision Memorandum (IDM) at 17-25; and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*Cold-Rolled Steel from Korea*), and accompanying IDM at 7-8).

¹⁶ *Id.* at 5, fn 9.3

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 6 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Annual Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17145 (April 18, 2018) (*OCTG from Korea 2015-2016*)).

¹⁹ *Id.* at 12 (citing Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea—Petitioner's Preliminary Particular Market Situation Comments and Section D RFI," PMS Allegation at 6 and Attachment 6.)

Korea's Audit Board's 2013 holding that KEPCO's prices to industrial customers were 85.8 percent of the production cost.²⁰ The petitioner states that in *OCTG from Korea and OCTG from Korea 2015-2016* Commerce recognized that "electricity in Korea functions as a tool of the government's industrial policy" and was a contributing factor to finding a PMS,²¹ and in *Welded Line Pipe from Korea Prelim* Commerce found that the GOK has traditionally maintained low electricity tariffs for industry and set rates for agricultural and industrial users at below market costs.²²

- The petitioner argues since the electricity costs in Korea were about 85.8 percent of the production cost, according to the Korea Audit and Inspection Board's 2013 report, Commerce should make an adjustment to the electricity costs of the respondents using company-specific variable overhead information on the record, and the 85.8 percent coverage of costs by KEPCO.²³
- According to the petitioner, Commerce does not require that a party prove that all aspects of a PMS exist before accepting an allegation, but instead the party must only provide a basis to suspect that one does. The petitioner argues that Commerce could not reasonably expect it to provide all information necessary to conduct a full PMS inquiry, given that much of this information comes from questionnaire responses.

Respondents' Arguments

- The respondents argue that Commerce should continue to find that there is no evidence to find that a PMS exists, because the petitioner offers no new information to change Commerce's finding.²⁴ Further, the respondents claim that the petitioner has failed to demonstrate that a PMS exists,²⁵ and to establish why Commerce should depart from its long-standing practice to use a respondent's own books and records to determine costs in antidumping proceedings.²⁶

²⁰ *Id.* at 12-13.

²¹ *Id.* at 12 (citing *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Annual Review; 2014-2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea*), and accompanying IDM at 41; and *OCTG from Korea 2015-2016* IDM at 18).

²² *Id.* at 12 (citing *Welded Line Pipe from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 80 FR 14907 (March 20, 2015) (*Welded Line Pipe from Korea Prelim*), and accompanying PDM at 15-16).

²³ *Id.* at 13.

²⁴ *See* Iljin Group Rebuttal Brief at 4; and Schaeffler Rebuttal Brief at 16-24.

²⁵ *Id.* at 4 (citing *e.g., QVD Food Co. v. United States*, 658 F.3d 1318 1324 (Fed. Cir. 2011) (noting that "the burden of creating an adequate record lies with interested parties and not with Commerce"); and Schaeffler Rebuttal Brief at 16.

²⁶ *Id.* at 4 (citing *Certain Steel Concrete Reinforcing Bars from Turkey*, 66 FR 56274 (November 7, 2001) (*Rebar from Turkey*) (noting that "the Department's long-standing practice, codified at section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records where those records are prepared in accordance with home country accounting principles and reasonably reflect the costs of producing the merchandise); Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, Art. 2.2.1.1. 33 I.L.M. 1154 (1994) "{f}or the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the

- The respondents also claim that, as mentioned by Commerce in the *Preliminary Determination*, the petitioner fails to demonstrate that the same factors in *OCTG from Korea* and *OCTG from Korea 2015-2016* apply in this case. According to the respondents, Commerce appropriately found there is no evidentiary basis that a particular market situation exists because the petitioner: 1) provides no specific evidence of subsidies for the specific major inputs of TRBs; 2) is unable to show that Chinese steel depressed prices for the specific steel inputs in TRB production; and 3) failed to demonstrate that Bearing Art or Schaeffler benefited from a strategic alliance with its suppliers.²⁷ Furthermore, Schaeffler states that *OCTG from Korea* represents exceptional circumstances in which the main supplier of the main input in the subject merchandise was subject to a CVD order, which is not present in this case.²⁸
- According to the respondents, the petitioner has made no arguments in its case brief regarding a strategic alliance between either respondent and another company.²⁹ Iljin Group states that, in so doing, its claim is waived pursuant to 19 CFR 351.309(c)(2), which states “the case brief must present all arguments that continue in the submitter’s view to be relevant to the Secretary’s final determination...including any arguments presented before the date of publication of the preliminary determination.”³⁰
- With respect to Chinese imports, each of the respondents argue that: 1) Chinese steel overcapacity is a global phenomenon, not particular to the Korean market;³¹ 2) the petitioner’s data, at best, show that Chinese steel imports have impacted prices globally but no evidence was provided linking this to the steel inputs used to produce TRBs;³² 3) the petitioner bases its arguments on biased sources that overstate the impact of dumped Chinese steel;³³ 4) Chinese steel prices rose steadily during the POI;³⁴ 5) the petitioner’s import price analysis is flawed because it includes large volumes of imports from countries other than China and aggregates data from four basket HTS subheadings that

product under consideration”; and 19 U.S.C. § 1677b(f)(1)(A). See also Schaeffler Rebuttal Brief at 16-17 (citing *Preliminary Determination* PDM at 12; Schaeffler’s Letter, “Submission of Factual Information to Rebut, Clarify, or Correct Petitioner’s Pre-Preliminary Determination Particular Market Situation Submission – Less Than Fair Value Investigation of Tapered Roller Bearings from the Republic of Korea,” dated January 5, 2017 (Schaeffler Second PMS Comments) at 5 and 12; and Memorandum “Less-Than-Fair-Value Investigation of Steel Concrete Reinforcing Bar from Taiwan: Particular Market Situation Allegation” dated June 20, 2017 at 5.

²⁷ *Id.* at 6; and Schaeffler Rebuttal Brief at 18-19 (citing the *Preliminary Determination* PDM at 11-15).

²⁸ See Schaeffler Rebuttal Brief at 20 (citing Schaeffler Second PMS Comments 3-5).

²⁹ See Iljin Group Rebuttal Brief at 6; and Schaeffler Rebuttal Brief at 18-19 (citing the *Preliminary Determination* PDM at 19-20).

³⁰ *Id.* at 6 (citing 19 CFR § 351.309(c)(2)).

³¹ See Schaeffler Rebuttal Brief at 17 (citing Schaeffler Second PMS Comments at 5 and 7).

³² See Iljin Group Rebuttal Brief 7 and Schaeffler Rebuttal Brief at 17 (citing Schaeffler Second PMS Comments at 5).

³³ *Id.*

³⁴ See Iljin Group Rebuttal Brief at 7 (citing Schaeffler Second PMS Comments at 7); and Schaeffler Rebuttal Brief at 18 (citing *Preliminary Determination* PDM at 12-13; and Schaeffler Second PMS Comments at 7).

may not include bearing quality steel bar;³⁵ 6) the petitioner misstated the financial position of Korea's largest steel producer, given that its 2016 financial statement (which covers a portion of the POI) showed a net profit; and 7) the petitioner's general and unsupported allegations fall short of the particularized evidence required to support a PMS finding.³⁶

- Schaeffler states that the petitioner's allegations specific to Schaeffler's purchases of steel bar do not support a PMS finding because: 1) the petitioner has cherry-picked its own self-serving benchmark; 2) the petitioner provides no support to demonstrate that its benchmark is a suitable comparison for the materials used by Schaeffler; and 3) Schaeffler's own POI data from a wide variety of steel suppliers demonstrate that the benchmark provided by the petitioner is aberrational. Finally, Schaeffler states that there is no basis for a PMS adjustment against Schaeffler, and no basis to use data from another respondent to do so.³⁷
- Regarding Korean CVD orders, each of the respondents argue that: 1) the petitioner ignores the fact that the Korean government subsidized the largest raw material input for *OCTG* (i.e., HRC, accounting for 80% of costs), and there is no CVD order on the inputs used in TRB production;³⁸ 2) the petitioner failed to provide evidence that respondents purchased subsidized inputs;³⁹ and 3) the petitioner has not established the relevance of the existing CVD orders on Korean steel products.⁴⁰
- Each of the respondents claim that the petitioner failed to demonstrate that either respondent has benefited from electricity subsidies and find that: 1) the KEPCO article is outdated;⁴¹ 2) KEPCO's financial statements show that its profitability has increased every year since 2012; 3) in the CVD final on *Welded Line Pipe from Korea*,⁴² Commerce found that KEPCO's prices provided "adequate remuneration" and, in *Maverick*,⁴³ the Court of International Trade (CIT) upheld that this pricing was "consistent with market principles"; 4) in *CTL Plate from Korea*, *Hot-Rolled Steel from Korea*, and *Cold-Rolled Steel from Korea*,⁴⁴ Commerce found no countervailable subsidy

³⁵ See Iljin Group Rebuttal Brief at 7-8 (citing Schaeffler Second PMS Comments at 7); and Schaeffler Rebuttal Brief at 21.

³⁶ See Iljin Group Rebuttal Brief at 8; and Schaeffler Rebuttal Brief at 17-18 (citing Schaeffler Second PMS Comments at 7).

³⁷ See Schaeffler Rebuttal Brief at 21 (citing Petitioner's Case Brief at 11).

³⁸ See Iljin Group Rebuttal Brief at 10; and Schaeffler Rebuttal Brief at 18.

³⁹ See Iljin Group Rebuttal Brief at 9-10.

⁴⁰ *Id.* at 9-11; and Schaeffler Rebuttal Brief at 18.

⁴¹ See Schaeffler Rebuttal Brief at 24 (citing Schaeffler Second PMS Comments at 8-9).

⁴² *Id.* at 24 (citing *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying IDM at 17.

⁴³ *Id.* (citing *Maverick Tube Corporation v. United States*, Slip Op. 17-146, Ct. No. 15-00303 (CIT 2001) (*Maverick*) at 17).

⁴⁴ *Id.* at 7 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017), and accompanying IDM at "Programs Determined to Be Not Countervailable"; (*CTL Plate from Korea*); *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of*

with respect to electricity in Korea; and 5) even in *OCTG from Korea*, where Commerce found the existence of a PMS, it declined to adjust costs with respect to electricity.⁴⁵

- Finally, Schaeffler states that Commerce should not allow the petitioner to abuse the TPEA, which was intended to guard against cost concerns arising from China's anticipated graduation to a market economy status, not to attack the costs of production in market economies such as Korea.⁴⁶

Commerce's Position

As noted above, in the *Preliminary Determination* we found that the petitioner did not submit sufficient evidence to find that a PMS exists. After analyzing the case and rebuttal briefs submitted by interested parties, we find that petitioner's arguments do not give us cause to change our *Preliminary Determination*.

Section 771(15) of the Act states, in relevant part:

The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

...

(C) Situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price.

Section 773(e) of the Act states, in relevant part:

For purposes of paragraph (1), if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.

Pursuant to these provisions, if Commerce determines that a PMS exists such that a respondent's input or fabrication costs do not reflect costs in the ordinary course of trade, it may adjust the costs used in its margins calculations. Therefore, when a petitioner alleges that a PMS impacts a

Korea: Final Affirmative Determination, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel from Korea*), and accompanying IDM at 44-45; and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*Cold-Rolled Steel from Korea*), and accompanying IDM at 45).

⁴⁵ *Id.* at 23-24 (citing Schaeffler Second PMS Comments at 9; and *POSCO v. United States*, 296 F. Supp. 3d 1320 (CIT 2018) (*POSCO v. United States*)).

⁴⁶ *Id.* at 25-26.

respondent's costs, Commerce must consider whether market conditions give rise to a cost distortion.⁴⁷

In Commerce's *Preliminary Determination*, we analyzed the four market conditions that the petitioner alleges give rise to a PMS in the instant case. We concluded that none of the factors, individually or as a whole, were supported by persuasive evidence that costs directly related to the production of the subject merchandise do not reasonably reflect the COP in the ordinary course of trade. The petitioner asserts that Commerce improperly weighed the evidence concerning each of these three market conditions: (i) the Korean government's subsidization of the steel industry, (ii) low-priced steel exports from China, and (iii) the Korean government's distortion of the electricity market. The petitioner provides no argument with respect to the fourth market condition (*i.e.*, that a strategic alliance exists such that it impacts the price of inputs used in the respondents' production of TRBs), and, therefore we have not reconsidered our finding from the *Preliminary Determination* on this point. The petitioner also asserts that Commerce should have provided an additional opportunity to develop the record here. We address each set of claims below.

(i) *Subsidization of the Steel Industry*

The petitioner emphasizes that a PMS exists even if the specific steel input used in TRB production is not subject to a CVD determination because the fact remains that the GOK's programs, which Commerce countervailed in prior decisions, enabled Korean suppliers to supply all kinds of steel at low prices in response to the supply of low-price Chinese steel. We disagree.

In Commerce's *Preliminary Determination*, we distinguished the facts in this investigation between the facts in *OCTG from Korea*, with regards to the subsidization of inputs into the production of TRBs. We determined that the petitioner failed to establish the relevance of any of the existing CVD orders on Korean steel products. Specifically, we stated:

While Commerce did consider a CVD order on Korean hot-rolled coil germane in *OCTG from Korea*, hot-rolled coil was the largest material input in that case, accounting for approximately 80 percent of production costs.⁴⁸ In this case, the petitioner has provided no evidence to show that the Korean government subsidized the major material inputs used to produce TRBs in Korea.⁴⁹

We disagree with the petitioner that we should find a PMS exists because there are generally multiple CVD orders on Korean steel, and because these subsidies are generally applied, that it allegedly impacts the production of all steel products, including TRBs. The petitioner continues to make general conclusions and does not provide direct evidence to link the CVD orders it

⁴⁷ See, e.g., *OCTG from Korea* IDM at Comment 3 (finding that four intertwined market conditions give rise to a PMS); see also *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017) (*Rebar from Taiwan*), and accompanying IDM at Comment 1 (finding insufficient evidence to conclude that a PMS existed with regard to respondent's purchase of Chinese billets in the instant investigation).

⁴⁸ See *OCTG from Korea* IDM at Comment 3.

⁴⁹ See *Preliminary Determination* PDM at 13.

references (*i.e.*, *Hot Rolled Flat Products and Corrosion Resistant Products*) to the production of TRBs or distortions of the prices of inputs used in TRB production. Further, unlike in *OCTG from Korea* and *OCTG from Korea 2015-2016*, the petitioner fails to identify a supplier, subject to a CVD order, that has supplied inputs used in TRBs at distorted prices. For instance, while the petitioner argues that the prices of steel bar purchased by the respondents are significantly lower than the price the petitioner paid, it fails to demonstrate: 1) why the benchmark it uses is the most appropriate and non-aberrational; 2) fails to tie a particular CVD order to bearing-quality steel bar, and (3) show that a supplier subject to a CVD order sold bearing-quality steel bar to the respondents at a distorted price. The fact that allegations regarding the subsidization of Korean steel inputs were present in both this investigation and in *OCTG from Korea* does not necessarily require that Commerce reach identical conclusions in both situations. Especially, in this instance, in which the petitioner provides no new evidence to link a particular CVD order to a specific TRB input.

(ii) *Low-Priced Steel Exports from China*

The petitioner emphasizes that, in *OCTG from Korea*, Commerce found that a PMS existed in Korea in part due to allegations regarding the impact of Chinese exports on global prices. The petitioner further argues that we “failed to distinguish the present record evidence from the record evidence in *OCTG from Korea* in this regard.”⁵⁰ We disagree.

In our *Preliminary Determination*, we detailed the important differences between this investigation and *OCTG from Korea*; indeed, the parties’ case and rebuttal briefs centered upon the parallels and distinctions between the two situations. We ultimately determined in the *Preliminary Determination* that “the petitioner’s allegations regarding Chinese steel overcapacity and unfairly traded Chinese steel provide limited support for the petitioner’s allegation that a PMS exists here.”⁵¹ We did not determine that Chinese steel overcapacity could not contribute to an affirmative PMS finding – in fact, we explicitly noted that the factor was a contributory consideration in Commerce’s previous decision in *OCTG from Korea*.⁵² Rather, we explained that the petitioner’s general allegation concerning Chinese steel exports could not sustain a PMS finding without additional information concerning the tangible price effect specific to the inputs for TRBs of the allegedly distortive market condition. We stated:

{a}lthough the petitioner provides voluminous information concerning steel overcapacity in China, we preliminarily find that the petitioner has not identified any relationship between steel exports from China and steel prices in Korea for the inputs for producing TRBs in Korea, or distortions to the production costs of TRBs in Korea. Rather, we preliminarily find that the petitioner provides only general and unquantified assertions regarding the impact of steel exports from China on global market prices, for instance, stating that Chinese steel trade has impacted the Korean market generally, including the types of steel used to produce tapered roller bearings, driving prices in Korea below market levels.⁵³

⁵⁰ See Petitioner PMS Brief at 10.

⁵¹ See *Preliminary Determination* PDM at 12.

⁵² See, *e.g.*, *id.* at 5 and 11.

⁵³ *Id.* at 12 (internal quotations omitted).

In other circumstances, such as where a PMS claim is supported with quantifiable evidence of price distortion in the comparison market, a general allegation concerning Chinese steel exports may serve to contribute to an affirmative finding. That was the situation in *OCTG from Korea*, where the record provided quantifiable evidence of one of the four factors (*i.e.*, an affirmative finding by Commerce of Korean subsidization of a major input that was purchased by the respondent) which contributed to the final determination of the existence of a PMS. As a result, other factors, such as Chinese steel imports, were found to be additional contributory factors when viewed in conjunction with such subsidization. In contrast, here, the petitioner has presented an allegation concerning general Chinese steel imports, not to the bearing-quality steel required to produce TRBs, and without the support of one or more allegations that provide a direct and quantifiable link between market distortions and the experience of Korean TRB producers.

Accordingly, we continue to find the facts in this investigation to be readily distinguishable from the evidence-based information in *OTCG from Korea*. Although the petitioner asserts that the record for this investigation is “identical” to the record in *OTCG from Korea*, there are substantial differences between the two proceedings.⁵⁴ We acknowledge that the petitioner’s allegation concerning Chinese steel imports is similar to the allegation in *OCTG from Korea*. However, the facts in *OCTG from Korea* were specific to the input for OCTG, and this factor was only one of four factors that contributed to an affirmative finding in that administrative review. Here, we do not find that the petitioner’s allegation regarding Chinese steel imports, when considered in conjunction with the rest of the record developed in this proceeding, is sufficient to substantiate an affirmative PMS determination.

(iii) *The Korean Electricity Market*

With respect to the price of electricity in Korea, the petitioner again draws similarities between this investigation and *OCTG from Korea*. There, Commerce found that a PMS existed in Korea due, in part, to allegations regarding distortions in the Korean electricity market. The petitioner repeatedly alleges that the circumstances in this investigation are similar. In its PMS allegation, the petitioner stated that “[i]n recent reviews of *Oil Country Tubular Goods from Korea* (*‘OCTG’*), Commerce has found that a particular market situation exists in Korea, particularly with respect to steel and electricity costs... the same concerns exist in this investigation and should be examined by Commerce.”⁵⁵ The petitioner reiterated this argument in its case brief by stating that “[i]n the *OCTG* reviews... Commerce found that ‘electricity in Korea functions as a tool of the government’s industrial policy’ and was a contributing factor to its affirmative finding.”⁵⁶

For reasons similar to those discussed with regard to Chinese steel, we disagree. In our *Preliminary Determination*, we explained at length why the facts of this investigation are decidedly different from the facts presented in *OCTG from Korea*. The fact that in *OCTG from Korea* our affirmative PMS finding relied in part on an allegation that the Korean government’s

⁵⁴ *Id.*

⁵⁵ See PMS Allegation at 2.

⁵⁶ See Petitioner’s Case Brief at 17.

involvement in the domestic electricity market contributed to an affirmative PMS finding does not mean that, taken individually or as a whole, record evidence in this instance supports an affirmative PMS finding.

Although the petitioner repeatedly asserts that the record of this investigation and the record of *OCTG from Korea* are identical or indistinguishable,⁵⁷ we noted at numerous points throughout the *Preliminary Determination* that the parallels between the two records are limited.⁵⁸ Whereas a PMS claim can be supported with quantifiable evidence of market distortion, a general allegation concerning distortions in the Korean electricity market may serve to contribute to an affirmative PMS finding. That was the situation in *OCTG from Korea*.

In contrast, in the instant investigation, the petitioner has presented a generalized allegation concerning the Korean electricity market without the support of one or more allegations that provide a link between market distortions and the experience of respondents or TRB producers in general. While the petitioner provides the electricity costs of each respondent in its case briefs, it does not show how the Korean government's pricing impacts these costs, other than to cite to an outdated report from the Korea Audit and Inspection Board's 2013 report which states that KEPCO's prices to industrial conglomerates were about 85.8 percent lower than production costs. Further, this information conflicts with other court decisions such as *Nucor Corp. v. United States* and *Posco v. United States*, where the CIT upheld Commerce's determination that the GOK's standard pricing mechanism for electricity does not confer a benefit and that an adverse inference is not warranted concerning government involvement in electricity pricing.⁵⁹ Moreover, we point out that in *OCTG from Korea* and *OCTG from Korea 2015-2016*, Commerce did not adjust the costs of electricity, as suggested by the petitioner. Thus, the fact that the allegation regarding the Korean electricity market were present in both this investigation and in *OCTG from Korea* does not necessarily require that Commerce reach identical conclusions in both proceedings.

(iv) *Summary*

As we explained in the *Preliminary Determination*, a petitioner must identify a connection between allegedly distortive market conditions and reported costs for the particular industry or respondents.⁶⁰ However, we did not state that a petitioner must identify the precise degree of distortion attributable to *every* alleged market condition. In fact, we noted that identifying the measurable impact of one of four alleged market conditions was sufficient, as was the case in *OCTG from Korea*. We stated:

{w}ith respect to the other market conditions alleged by the petitioner – a distorted electricity market in Korea and unfairly traded steel from the PRC – we agree that these considerations may support a PMS allegation. However, these

⁵⁷ See PMS Allegation at 2; and Petitioner's Case Brief at 17.

⁵⁸ See *Preliminary Determination* PDM at 11 and 13-14.

⁵⁹ See *Nucor v. United States*, 286 F. Supp. 3d 1364, 1377-82 (CIT 2018); and see *POSCO v. United States*, 296 F. Supp. 3d at 1355-61.

⁶⁰ See *Preliminary Determination* PDM at 14.

considerations alone do not warrant the application of cost adjustments under our PMS methodology, because neither consideration is supported by information demonstrating the impact of such factors on production costs for TRB producers in Korea.⁶¹

Here, unlike *OCTG from Korea*, the petitioner did not identify a connection between *any* of the allegedly distortive market conditions and the respondents' costs. In the absence of a demonstrated connection between the alleged market conditions and COP for the respondents or the TRBs industry, general allegations regarding Chinese steel exports and electricity subsidies are insufficient to support a PMS.

Commerce continues to develop its practice regarding PMS, and a PMS allegation and our resulting analysis will necessarily be case specific. However, as we stated in our *Preliminary Determination*, to support a PMS allegation, the petitioner should provide a specific and quantifiable analysis of the alleged distortions that is particular to the industry or the respondents in question. For instance, an allegation may analyze market conditions that impact input costs,⁶² the prices of key inputs when sourced in the subject country and when sourced from a third country,⁶³ or other factors that have an effect on supply or demand in the comparison market. Regardless of how a petitioner may choose to substantiate its allegation, the burden remains with the petitioner to sufficiently substantiate its allegation so as to prompt further investigation by Commerce. Thus, with respect to the petitioner's request that Commerce solicit additional information from respondents regarding its PMS allegation, the burden is on the petitioner, not Commerce or respondents, to substantiate its PMS allegation. Because the petitioner failed to sufficiently substantiate its PMS allegation, for the reasons discussed above, Commerce continues to determine that the PMS allegation does not warrant further investigation.

Iljin Group Related-Issues

Comment 2: Affiliation with HMC

Iljin Group reported that Bearing Art sold TRBs during the POI to certain U.S. and home market customers which are affiliated with HMC.⁶⁴ HMC also has an equity ownership stake in Iljin Bearing, one of the companies which have been collapsed as the Iljin Group. In the *Preliminary Determination*, we did not treat the customers in question as affiliated with the collapsed entity. Instead, we invited interested parties to comment on the issue in their case briefs.

⁶¹ *Id.*

⁶² See *OCTG from Korea*.

⁶³ See e.g., *Rebar from Taiwan*. In *Rebar from Taiwan*, the petitioner provided a comparison of prices for the key input (steel billets) when sourced from China, and when sourced domestically, to demonstrate that Chinese prices were artificially low. See *Rebar from Taiwan* IDM at Comment 1. Although Commerce ultimately determined that the petitioner did not establish that a PMS existed, the petitioner provided a quantitative analysis to attempt to demonstrate the presence, and significance of, the alleged market distortions. *Id.*

⁶⁴ See *Preliminary Determination* PDM at 7. These customers are hereinafter referred to as the "Hyundai customers." These Hyundai customers are listed in the Iljin Group Final Sales Calculation Memo.

Iljin Group's Arguments

- Iljin Group argues that evidence on the record demonstrates that Commerce should find it to be affiliated with the Hyundai customers in the final determination.⁶⁵ Iljin Group points out that, even prior to Commerce's decision to collapse Bearing Art with Iljin Bearing and Iljin Global, the petitioner argued, on multiple occasions, that Commerce should consider Bearing Art to be affiliated with the Hyundai customers.⁶⁶
- Iljin Group contends that Commerce and the CIT have agreed that "{c}ollapsed companies constitute a single entity and therefore affiliates of either company are affiliates of the collapsed entity."⁶⁷ Therefore, Iljin Group argues that Commerce must find that any affiliate of Bearing Art, Iljin Bearing, or Iljin Global is an affiliate of the collapsed entity, Iljin Group, in the final determination.⁶⁸
- According to Iljin Group, Commerce finds that two parties are affiliated if one such party holds five percent or more of voting stock in the other, or if one such party is directly or indirectly controlled by the other.⁶⁹ Iljin Group notes that Commerce has previously stated that it need only be convinced that one of these conditions is satisfied in order to find that parties are affiliated.⁷⁰ In the current investigation, Iljin Group argues that Commerce can find it to be affiliated with its Hyundai customers on the basis of either direct shared ownership or control.
- Regarding shared ownership, Iljin Group states that Iljin Bearing's predecessor company partnered with HMC (the controlling parent company of the Hyundai customers) at its inception and HMC continues to directly own a sufficient percentage of Iljin Bearing's voting shares⁷¹ to satisfy Commerce's affiliation standard.⁷² Therefore, Iljin Group

⁶⁵ See Iljin Group Case Brief at 14 and 19 (citing *Preliminary Determination* PDM at 6-7; and Memorandum, "Preliminary Affiliation and Collapsing for Bearing Art," dated January 29, 2018).

⁶⁶ *Id.* at 15 (citing, e.g., Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea – Petitioner's Deficiency Comments on Iljin's Section A Response," dated September 25, 2017 (Petitioner's September 25, 2017 Letter) at 8-12; Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea – Petitioner's Deficiency Comments on Iljin's Sections B and C Responses," dated October 24, 2017 at 2-3; and Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea – Petitioner's Deficiency Comments on Iljin's Supplemental Section A Response," dated November 21, 2017 at 2-12).

⁶⁷ *Id.* at 18 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Taiwan*, 66 FR 49618 (September 28, 2001), and accompanying IDM at Comment 2 (affirmed in *China Steel Corp. v. United States*, 264 F. Supp.2d 1339, 1354 (CIT 2003) (*China Steel*)); and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 70 FR 28271 (May 17, 2005) (*Steel Wire Rod from Brazil*), and accompanying IDM at Comment 4).

⁶⁸ *Id.* at 19 (citing *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002); and Petitioner's September 25, 2017 Letter at 10 (citing *Steel Wire Rod from Brazil* IDM at Comment 4)).

⁶⁹ *Id.* at 17-18 (citing e.g., section 771(33) of the Act; 19 CFR 351.102(b)(37); and 19 CFR 351.401(f)).

⁷⁰ *Id.* at 18 (citing, e.g., *Certain Welded Stainless Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 74 FR 31,242 (June 30, 2009), and accompanying IDM at Comment 2).

⁷¹ *Id.* at 20 (citing Bearing Art Sales Verification Report at Exhibit 2, pages 3-4 and 6-10).

⁷² *Id.* at 16 and 20 (citing section 771(33)(E); and e.g., *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances*,

contends that it is affiliated with HMC by virtue of “shared ownership.” Furthermore, Iljin Group argues that, consistent with both economic reality⁷³ and the “cross-ownership” among HMC and the Hyundai customers,⁷⁴ Commerce has treated these companies as a single entity in past decisions⁷⁵ and it should continue to do so in the current investigation. Iljin Group asserts that such treatment is consistent with the broader purpose of the affiliation statute, which instructs Commerce to identify control exercised through corporate or family groupings with the factors of control being considered in the aggregate.⁷⁶

- Iljin Group states that, under the Act and Commerce’s regulations, Commerce finds two parties affiliated when they are directly or indirectly under the control of a third party or when “the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.”⁷⁷ Iljin Group maintains that, in making a determination of control, Commerce considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships.⁷⁸ Additionally, Iljin Group declares that the Act and regulations afford Commerce broad discretion to determine that entities are affiliated when their relationship is such that one may influence the other’s commercial activities and that actual control does not have to be demonstrated; rather, Commerce may find that control exists where the relationship merely has the potential to impact commercial decisions.⁷⁹
- Iljin Group contends that record evidence demonstrates it is affiliated with its Hyundai customers through HMC’s ability to exercise control over the Iljin Group,⁸⁰ seen through

in Part; 82 FR 50391 (October 31, 2017), and accompanying PDM at 8-12; and *Certain Softwood Lumber Products from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 29833 (June 30, 2017), and accompanying PDM at 10-12).

⁷³ *Id.* at 19 (citing *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 69 FR 33626 (June 16, 2004) (*Garlic from China*), and accompanying IDM at Comment 19(A)).

⁷⁴ *Id.* at 19 (citing Bearing Art Sales Verification Report at Exhibit 2, page 5).

⁷⁵ *Id.* at 19 (citing *Structural Steel Beams from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 68 FR 2499 (January 17, 2003) (*Steel Beams from Korea*), and accompanying IDM at Comment 1).

⁷⁶ *Id.* at 19 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. No. 316, 103d Cong., 2d Sess. at 838 (1994); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 65 FR 5554, 5566 (February 4, 2000) (*Steel Products from Brazil*)).

⁷⁷ *Id.* at 21 (citing section 771(33)(F) of the Act; 19 CFR 351.102(b)(3); and, e.g., *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*, 71 FR 54269 (September 14, 2006), and accompanying IDM at Comment 10A; and *Mitsubishi Heavy Industries v. United States*, 54 F. Supp. 2d 1183 (CIT 1999) (*Mitsubishi v. United States*)).

⁷⁸ *Id.* at 21 (citing 19 CFR 351.102(b)(3)).

⁷⁹ *Id.* at 21-22 (citing *Mitsubishi v. United States*, 54 F. Supp. 2d at 335-336; SAA H.R. Doc. No. 316, 103d Cong., 2d Sess. at 838 (1994); and *TIJID, Inc. v. United States*, 366 F. Supp.2d 1286, 1299 (CIT 2005)).

⁸⁰ *Id.* at 21 (citing Collapsing Memo at 3 (referencing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27297-98 (May 19, 1997) (*Preamble*)).

their close commercial cooperation and intertwined businesses, Iljin Group’s reliance on sales to its Hyundai customers in the home and U.S. markets, and through the companies’ shared employment histories of key executives and board members.⁸¹ Moreover, Iljin Group points out that HMC is listed as a “significant influencer on the Company” in Iljin Bearing’s financial statements.⁸²

- Iljin Group contends that, consistent with the CIT’s finding in *Mitsubishi v. United States*,⁸³ its heavy reliance on the Hyundai customers for sales of its TRBs demonstrates that these customers are in a position to influence its commercial activities. Additionally, Iljin Group argues that certain, unique characteristics of its sales to the Hyundai customers demonstrate the close commercial relationship between the companies. Specifically, Iljin Group notes that it permits only its Hyundai customers to pay on an “open account” basis, and Iljin Group accesses the Hyundai customers’ online inventory system to determine how many parts it should supply.⁸⁴ Further, Iljin Group asserts that it has special arrangements with the Hyundai customers for the handling and payment of newly-developed prototypes that further demonstrate the companies’ close relationship.⁸⁵
- Finally, Iljin Group claims that Iljin Bearing and Bearing Art essentially function as a single company when selling TRBs to the Hyundai customers.⁸⁶ Therefore, Iljin Group asserts that, consistent with 19 CFR 351.401, because Iljin Bearing is affiliated with HMC, Commerce must consider Bearing Art (and, by extension, Iljin Group) to also be affiliated with HMC and the Hyundai customers.⁸⁷
- Iljin Group argues that all these factors demonstrate that it is affiliated with its Hyundai customers under the Act and Commerce’s regulations, practice, and precedent. Accordingly, Iljin Group asserts that, consistent with 19 CFR 351.403(c), Commerce must test whether the sales between it and the Hyundai customers were made at arm’s-length prior to using them in its NV calculations. In the final determination, Iljin Group urges Commerce to conduct its arm’s-length test on these sales and to revise its calculation of NV based on the results of this test.

Petitioner’s Arguments

- The petitioner notes that Iljin Group reversed its prior position on this topic (*i.e.*, previously claiming that Bearing Art is not affiliated with the Hyundai customers), showing that Iljin Group’s current claim is results-driven. The petitioner urges

⁸¹ *Id.* at 15 and 23 (citing Bearing Art Sales Verification Report at Exhibit 2, pages 41-51).

⁸² *Id.* at 23 (citing Iljin Group’s November 6, 2017, Supplemental Section A Questionnaire Response (Iljin Group November 6, 2017 SAQR) at Exhibit SA-6-A).

⁸³ *Id.* at 23 (citing *Mitsubishi v. United States*, 54 F. Supp. 2d at 1191).

⁸⁴ *Id.* at 24 (citing Iljin Group’s November 21, 2017, Supplemental Section B Questionnaire Response (Iljin Group November 21, 2017 SBQR) at SB-13 – SB-15; and Bearing Art Sales Verification Report at 7).

⁸⁵ *Id.* at 24.

⁸⁶ *Id.* at 24-25 (citing Iljin Group’s September 12, 2017, Section A Questionnaire Response (Iljin Group September 12, 2017 AQR) at A-11, A-14, A-15, A-22, A-23, A-25, A-26, and A-32).

⁸⁷ *Id.* at 24 (citing *Steel Wire Rod from Brazil* IDM at Comment 4).

Commerce to reject Iljin Group's arguments not only on this basis, but also because Iljin Group made them too late in the investigation and it failed to provide information necessary to treat the sales as if they were made to affiliated parties.⁸⁸

- The petitioner notes that Iljin Group based its previous claim that it was not affiliated with its Hyundai customers on the facts that: 1) it had no overlapping board members or managers with its Hyundai customers; 2) the ownership of a sister company of Bearing Art does not constitute affiliation or put the sister company's owner in a position of control over Bearing Art; and 3) Bearing Art's sales to its Hyundai customers were made through the same competitive bidding process used by Hyundai's other suppliers.⁸⁹
- The petitioner contends that Iljin Group's reversal is significant because: 1) Iljin Group failed to provide an analysis as to whether the sales to the Hyundai customers were made at arm's length,⁹⁰ and, as a result, there is no evidence on the record indicating that any of these sales would pass the arm's-length test⁹¹; and 2) an affiliation finding could also impact the reporting of key adjustments, given that Iljin Group used a Hyundai company for certain freight forwarding and logistics services. Thus, according to the petitioner, Iljin Group's reversal of position here raises complex issues, may require additional fact finding, and potentially profoundly affects Commerce's analysis.⁹²
- Finally, the petitioner argues that Commerce's affiliation approach is designed to prevent manipulation⁹³ and, thus, it is dependent on the orderly development of the appropriate factual record. In the current investigation, the petitioner points out that the factual record indicates that the only statutory affiliation⁹⁴ exists between Iljin Bearing and HMC; yet, the transactions at issue are not between these two companies but between Bearing Art and various other Hyundai customers. Therefore, the petitioner asserts that Commerce's purpose would not be served here if it were to allow Iljin Group to engage in an exercise that should have taken place at the outset of the investigation.⁹⁵

⁸⁸ See Petitioner's Rebuttal Brief at 15-16 (citing Iljin Group's October 2, 2017 Section B Questionnaire Response (Iljin Group October 2, 2017 BQR) at B-6 – B-7).

⁸⁹ *Id.* at 14-15 (citing Iljin Group September 12, 2017 AQR at A-14, A-22, A-39, and A-47; and Iljin Group November 6, 2017 SAQR at SA-16).

⁹⁰ *Id.* at 15 (citing Iljin Group October 2, 2017 BQR at B-6 – B-7; and Petitioner's September 25, 2017 Letter at 8-12).

⁹¹ *Id.* at 16 (citing *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186-87, 69193, and 69197 (November 15, 2002)).

⁹² *Id.* at 16 (citing *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 37638 (July 19, 2001), and accompanying IDM at Comment 2; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Administrative Review*, 66 FR 18747 (April 11, 2001), and accompanying IDM at Comment 1; and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 4).

⁹³ *Id.* at 19 (citing *Garlic from China* IDM at Comment 19(A)).

⁹⁴ *Id.* at 18 (citing Section 771(33)(E) of the Act).

⁹⁵ *Id.* at 19.

Commerce's Position

In the *Preliminary Determination*, Commerce collapsed Bearing Art, Iljin Bearing, and Iljin Global as a single-entity herein referred to as Iljin Group.⁹⁶ No party is challenging Commerce's preliminary decision to collapse these companies and, accordingly, this decision is continued in the final determination.

First, we address whether Iljin Group is affiliated with HMC. Section 771(33) of the Act defines the following to be affiliated parties:

(A) Members of a family; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employees; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person.

The information on the record indicates that a statutory affiliation exists between Iljin Bearing and HMC pursuant to section 771(33)(E) of the Act. Specifically, through partial ownership of Iljin Bearing, one member of Iljin Group, HMC maintains a sufficient equity ownership in Iljin Group to satisfy the five percent equity ownership threshold provided in section 771(33)(E) of the Act.⁹⁷

Second, we consider whether there is available record information to determine that Iljin Group is affiliated, through HMC, with its Hyundai customers, as defined in section 771(33) of the Act. Specifically, we examined whether Iljin Group and the Hyundai customers are affiliated as companies controlled by HMC under section 771(33)(F) of the Act. In examining this issue, we disagree with the petitioner that Commerce is somehow prohibited from addressing complex issues such as this in a final determination. In the *Preliminary Determination*, we specifically flagged this as an outstanding question and invited parties to comment on it in their case briefs.⁹⁸ It would then be counter to Commerce's intention in the *Preliminary Determination* to deny consideration of the issue in the final determination. That said, as discussed below, we note that the record evidence, and lack thereof, is reflective of the fact that Iljin Group consistently reported in its questionnaire responses that it was not affiliated with its Hyundai customers. Thus, the record – based on information submitted by Iljin Group – largely does not support Iljin Group's later position that it is in fact affiliated with these customers.

Section 771(33)(F) of the Act provides that two parties (*i.e.*, Iljin Group and the Hyundai customers) may be found affiliated when they are under the common control of a third party (*i.e.*, HMC). We find that there is insufficient information on the record to find that HMC controls

⁹⁶ See *Preliminary Determination* PDM at 6-7.

⁹⁷ See Iljin Group September 12, 2017 AQR at A-14 and Exhibit A-21. See also Iljin Group Final Sales Calculation Memo at 2-3.

⁹⁸ See *Preliminary Determination* PDM at 7.

Iljin Group (*i.e.*, is in a position to exercise restraint or direction over Iljin Group). With respect to HMC's control of Iljin Group, we first note that, in its responses, Iljin Group stated that, "The {Iljin} Group is comprised of a number of related companies that are directly or indirectly owned and controlled by the founder of the Group, Mr. Sang-Il Lee and members of his family."⁹⁹ We also note that Iljin Group stated, "In fact, Iljin Group and Hyundai Motor are entirely distinct corporate groupings under separate and independent ownership and management."¹⁰⁰ Thus, at no time in its responses did Iljin Group indicate that it is controlled by any entity other than Mr. Sang-Il Lee and members of his family. We further note that Iljin Group and HMC did not share board members or managers during the POI.¹⁰¹

We understand that Iljin Group's arguments rely heavily on a finding that HMC controls or is otherwise affiliated with Iljin Group's Hyundai customers. Even assuming *arguendo* that HMC is correct, we find that this is insufficient to demonstrate that HMC controls Iljin Group. For instance, while Iljin Group points to certain board members or managers that were previously employed by certain of the Hyundai customers, the record is unclear of the role played by, the tenure of, or the Hyundai customer that previously employed, these Iljin Group board members or managers. Moreover, although the record does provide some evidence of "close commercial cooperation and intertwined businesses" between Iljin Group and its Hyundai customers through past history and home market sales,¹⁰² we still find that this is insufficient to establish HMC's control of Iljin Group. Nor is the fact that HMC is listed as a "significant influencer on the Company" in Iljin Bearing's financial statements sufficient to demonstrate control of Iljin Group. While it is clear that the companies have a shared history and close commercial ties, we find that this serves to reinforce the affiliate relationship between HMC and Iljin Group, and does not rise to the level of control within the meaning of the statute.

In short, in weighing the available record evidence, we find that HMC's ownership stake in Iljin Group, which as noted above is sufficient to show affiliation under section 771(33)(E) of the Act, without other factors of control such as overlapping board members, managers, or further evidence of control over production, pricing, or cost decisions, is insufficient to demonstrate that HMC exercises control over Iljin Group within the meaning of section 771(33)(F) of the Act. Moreover, as noted above, at no time in its questionnaire response did Iljin Group provide that it was controlled by any other entity beyond the Lee family. Because we do not find HMC control of Iljin Group, we find that we do not need to further address HMC's affiliation with or control of Iljin Group's Hyundai customers pursuant to section 771(33)(F) of the Act, beyond our discussion herein.

Iljin Group argues that Commerce treated HMC and the Hyundai customers as a single-entity in *Steel Beams from Korea* and it should continue to treat these companies as a "corporate

⁹⁹ See Iljin Group September 12, 2017 AQR at A-17.

¹⁰⁰ See Iljin Group's letter, "Certain Tapered Roller Bearings from Korea: Bearing Art's Pre-Preliminary Determination Comments," dated January 8, 2018 (Iljin Group Pre-Preliminary Comments) at 3.

¹⁰¹ See Iljin Group September 12, 2017 AQR at A-14, where Iljin Group states, "There are no overlapping board members or managers between the Iljin Group companies and the Hyundai Motor Group companies."

¹⁰² We note that no single Hyundai customer accounted for over 50 percent of Iljin Group's sales of TRBs during the POI. Thus, we find that Iljin Group's sales relationships with these Hyundai customers do not rise to the level of a predominant supplier, as outlined in *Mitsubishi v. United States*, for affiliation analysis.

grouping”, and therefore a single entity, in this investigation. However, we find that Iljin Group’s reliance on *Steel Beams from Korea* is misplaced because the companies at issue and their ownership structures discussed therein¹⁰³ do not appear anywhere in the record of the current proceeding. Commerce’s determinations must be based on the facts and record of each individual segment of a proceeding. In this investigation, Commerce cannot simply conclude that all companies with a name that includes the term “Hyundai” constitute a single entity; and we do not find information on this record to conclude that the Hyundai companies at issue here are at all related to those discussed in *Steel Beams from Korea*.

To the extent Iljin Group argues that we must find HMC and the Hyundai customers to constitute a “corporate group,” and therefore, a single entity, we disagree. As an initial matter, we note that Iljin Group does not argue that we should find HMC and the Hyundai customers to be a collapsed entity pursuant to 19 CFR 351.401(f), nor is there sufficient record evidence to support such a finding. We note that, in its responses Iljin Group provided a chart that contains partial ownership information for HMC, certain of the Hyundai customers, and a Hyundai company used by Iljin Group for certain freight forwarding and logistics services.¹⁰⁴ However, this information, at most, would only speak to affiliation under section 771(33) of the Act, and not a collapsing determination pursuant to 19 CFR 351.401(f).

With respect to the concept of a “corporate group,” the SAA recognizes that control may be established “through corporate or family groupings,”¹⁰⁵ *i.e.*, a corporate or family group may constitute a “person” within the meaning of section 771(33) of the Act.¹⁰⁶ While the SAA does not define what constitutes a “corporate group,” the situations in which Commerce has recognized that affiliation exists by virtue of participation in the same corporate or family group involved common control of the firms at issue by members of the same family, the same group of investors, or the same group of corporations. In other words, the “control group” language in the SAA does not add a new criterion to the statutory definition of “affiliation.” It merely acknowledges that the controlling entity of the “common control” provision can be something other than a physical or legal person, and can exercise that common control by means other than equity ownership. It does not, however, allow for treating all affiliation relationships as if they created new “control groups.”¹⁰⁷

Iljin Group argues that Commerce should consider the control factors of individual members of the group (*e.g.*, stock ownership, management positions, board membership) in the aggregate in determining that its Hyundai customers and HMC constitute a “corporate group.” As a basis for its argument, Iljin Group states that HMC is “the controlling parent entity” for the Hyundai customers. However, beyond this statement, Iljin Group provides little evidence to support its claim that its Hyundai customers and HMC should be considered a “corporate group.” As noted

¹⁰³ See *Steel Beams from Korea* IDM at Comment 1.

¹⁰⁴ We note that this chart is incomplete because it does not provide information about all the owners of HMC or of the Hyundai customers. Additionally, certain of the Hyundai customers are completely omitted from the chart. See Iljin Group November 21, 2017 SBQR at Exhibit SB-12. Due to the business proprietary nature of this ownership information, see the Iljin Group Final Sales Calculation Memo for a more detailed discussion.

¹⁰⁵ See SAA at 838.

¹⁰⁶ See *Ferro Union v. United States*, Slip Op. 99–27 (CIT 1999).

¹⁰⁷ See *Steel Products from Brazil* at 5566.

above, Iljin Group’s attempt to support this claim by citing to Commerce’s treatment of other Hyundai-named companies as a single-entity in *Steel Beams from Korea* is not supported by information on the record of this investigation.¹⁰⁸ Moreover, even assuming *arguendo* that HMC and certain the Hyundai customers are affiliated under section 771(33) of the Act by virtue of HMC’s equity ownership, that by itself is not sufficient to consider them a “corporate grouping” for purposes of our analysis. Beyond the ownership chart detailed above, Iljin Group has provided insufficient evidence to demonstrate that HMC and the Hyundai customers should be defined as a “corporate group.” For example, there is no information on the record to determine 1) the other owners of the Hyundai customers or these owners’ relationship with HMC; 2) if HMC and the Hyundai customers share board members or managers; or 3) other factors that HMC may impact the Hyundai customers’ decision-making on issues of production, pricing, or costs. The onus of creating a complete and accurate record rests with the respondent, not Commerce, to support its claims.¹⁰⁹

Thus, we find that Iljin Group and HMC are affiliated pursuant to section 771(33)(E) of the Act. We have further determined that the information on the record does not support a finding that Iljin Group is affiliated with its Hyundai customers through HMC’s joint control within the meaning of section 771(33)(F) of the Act. Moreover, regardless of whether the record supports a finding that HMC is affiliated with or controls the Hyundai customers within the meaning of section 771(33) of the Act, we do not find a corporate grouping that includes both HMC and the Hyundai customers, nor that HMC and the Hyundai customers constitute a single entity. Accordingly, there is no basis in the record to find affiliation between Iljin Group and its Hyundai customers under section 771(33) of the Act.

Comment 3: Using New Prototype Sales in the Calculation of NV and U.S. Price

During the POI, Iljin Group sold two types of “prototype” TRB models in the home and U.S. markets: 1) prototypes of newly-developed products; and 2) existing TRB models, currently in commercial production, which Iljin Group sold to a customer for a new application. In the *Preliminary Determination*, we found that Iljin Group sold these prototype models at a single, different LOT than the LOT of its commercial sales.

¹⁰⁸ Commerce also notes that it has declined to find that Hyundai and its affiliated companies constitute either a corporate grouping or a single entity. See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016), and accompanying IDM at Comment 13; and *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016), and accompanying IDM at Comment 17. However, as with *Steel Beams from Korea*, the information from each of these investigations are not on the record of this investigation.

¹⁰⁹ See e.g., *Ta Chen Stainless Steel Pipe v. United States*, Slip Op. 00-107 (CIT 2000) (citing *Tianjin Machinery Import & Export Corp. v. United States*, 16 CIT 931, 936, 806 F. Supp. 1008, 1015 (1992) and *Chinsung Indus. Co. v. United States*, 13 CIT 103, 705 F.Supp. 598 (1989)).

Iljin Group's Arguments

- Iljin Group argues that its sales of newly-developed prototypes to its Hyundai customers were made outside the ordinary course of trade.¹¹⁰ According to Iljin Group, these sales were 1) made in smaller quantities for higher prices than sales of comparable commercial models;¹¹¹ 2) designed and developed to fill a specific customer's need;¹¹² 3) used solely for testing and evaluation by a specific customer, never in commercial products;¹¹³ 4) produced on lines that are unfit for commercial production;¹¹⁴ 5) negotiated in an entirely different manner from sales of commercial products;¹¹⁵ and 6) recorded differently from sales of commercial products in Iljin Group's accounting systems.¹¹⁶ Therefore, Iljin Group asserts that these sales of newly-developed prototypes meet the criteria for outside of the ordinary course of trade previously outlined by the Court and Commerce¹¹⁷ and, as such, they should be excluded from Commerce's calculation of NV in the final determination.
- Iljin Group contends that Commerce has an established practice of excluding sales of prototypes in prior proceedings that concerned similar products, including bearings. In particular, Iljin Group notes that Commerce has found sales to be outside the ordinary course of trade where the respondent's claim was supported by more than evidence of high prices and low quantities, including evidence related to the physical nature of the prototype (*i.e.*, a new model versus a model previously sold) and its use (*i.e.*, prototypes produced exclusively for testing versus commercial sale).¹¹⁸ Accordingly, Iljin Group

¹¹⁰ See Iljin Group Case Brief at 6 (citing Section 771(15) of the Act; 19 CFR 351.102(b)(35); and SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. at 838 (1994)).

¹¹¹ *Id.* at 10 and 12 (citing Bearing Art Sales Verification Report at 7-8).

¹¹² *Id.* at 11-13 (citing Bearing Art Sales Verification Report at Exhibit 4, pages 52, and 69-83; and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320 (June 18, 1998), and accompanying IDM at Comment 6).

¹¹³ *Id.* at 12-13 (citing Bearing Art Sales Verification Report at Exhibit 4, pages 100-106; and Iljin Group Pre-Preliminary Comments at 6).

¹¹⁴ *Id.* at 11-14 (citing Bearing Art Sales Verification Report at Exhibit 4, pages 85-87 and 96-99).

¹¹⁵ *Id.* at 12-13 (citing Bearing Art Sales Verification Report at 7-8).

¹¹⁶ *Id.* at 12-13 (citing Iljin Bearing Sales Verification Report at 4; and Iljin Group November 21, 2017 SBQR at SB-3).

¹¹⁷ *Id.* at 6 and 13 (citing *Murata Mfg. Co. v. United States*, 820 F. Supp. 603, 601 (CIT 1993); *U.S. Steel Group v. United States*, 177 F. Supp. 2d 1325, 1333 (CIT 2001); and 19 CFR 351.102(b)(35), “[e]xamples of sales that the Secretary might consider as being outside the ordinary course of trade” include “merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price,” and “transactions involving off-quality product merchandise”).

¹¹⁸ *Id.* at 7-8 (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding*, 61 FR 57629 (November 7, 1996) (TRBs from Japan) at Comment 17; *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom*, 58 FR 39729 (July 26, 1993) (AFBs from France etc. 1991-1992) at Comment 12; *Antidumping: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts from France, et al.; Final Results of*

argues that it is Commerce’s established practice to exclude sales of prototype bearings when the record evidence demonstrates that these prototypes are newly-developed models sold for testing in small quantities, at high prices and that other circumstances exist that distinguish the sales from respondent’s ordinary commercial transactions.

Petitioner’s Arguments

- The petitioner asserts that Iljin Group made no distinctions between types of prototype sales in its response,¹¹⁹ and Iljin Group’s claim now that a subset of its prototypes are “newly-developed” is improper. The petitioner maintains that Iljin Group based its claim on new factual information discussed at verification and, because that information was untimely, it should be stricken from the record.¹²⁰
- According to the petitioner, it is Commerce’s practice not to accept new factual information submitted at verification (or afterwards),¹²¹ especially when that information applies to an issue requiring Commerce to look at the totality of circumstances – such as the claim here that certain sales were made outside the ordinary course of trade.¹²² Furthermore, the petitioner asserts that Commerce has previously found that when new factual information is available at verification, the implication is that the respondent could have also previously provided this information.¹²³
- Finally, the petitioner disagrees that the cases cited by Iljin Group are on point, given that those decisions did not involve a respondent that formulated new claims at or after verification.¹²⁴ Rather, the petitioner asserts that Commerce’s prior determinations to exclude sales of prototype bearings were based on claims identified in the respondent’s submissions and supporting evidence contained therein.

Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992) (*AFBs from France etc. 1990-1991*) at Comment 5; and *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and Singapore: Final Results of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke Order in Part*, 68 FR 35623 (June 16, 2003) (*Ball Bearings from France etc.*), and accompanying IDM at Comment 12).

¹¹⁹ See Petitioner’s Rebuttal Brief at 11-12.

¹²⁰ *Id.* at 10 (citing *e.g.*, *Cut-to-Length Carbon Steel Plate from the United Kingdom: Final Results of Full Sunset Review*, 71 FR 58587 (October 4, 2006), and accompanying IDM at Comment 1).

¹²¹ *Id.* at 12-13 (citing *Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Affirmative Final Determination of Sales at Less Than Fair Value and Affirmative Finding of Critical Circumstances*, 83 FR 2141 (January 16, 2018) (*Steel Wire Rod from South Africa*), and accompanying IDM at 8; *Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14092 (March 16, 2016) (*Nails from China*), and accompanying IDM at 43-49; *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from Germany*, 64 FR 30710 (June 8, 1999) (*SSSSC from Germany*), and accompanying IDM at Comment 10; and *Rebar from Turkey* IDM at Comment 26).

¹²² *Id.* at 13 (citing Iljin Group Case Brief at 7).

¹²³ *Id.* at 13 (citing *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015), and accompanying IDM at Comment 5).

¹²⁴ *Id.* at 13-14 (citing *AFBs from France etc. 1990-1991*, 57 FR at 28394; *AFBs from France etc. 1991-1992* at 39774-39776; *TRBs from Japan*, 58 FR at 57638-57640; and *Ball Bearings from France etc.* IDM at Comments 12-14).

Commerce's Position

We agree with Iljin Group that its sales of “newly-developed” prototypes were made outside the ordinary course of trade because these sales were 1) made in small quantities; 2) priced significantly higher than comparable commercial products with abnormally high profit margins; 3) were not produced in commercial quantities; and 4) developed, manufactured, and sold under special circumstances.¹²⁵ In making this finding, we did not limit our analysis solely to Iljin Group's sales of newly-developed prototypes to its Hyundai customers, because the record shows that all of Iljin Group's sales of newly-developed prototypes were made under similar circumstances as those listed above.¹²⁶

Commerce's regulations state that:

The Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.¹²⁷

In the current investigation, we find that, consistent with 19 CFR 351.102(b)(35), Iljin Group's sales of newly-developed prototypes involve “merchandise produced according to unusual product specifications” and were “sold at aberrational prices.” Furthermore, Commerce has found in prior determinations that prototype bearings were sold outside the ordinary course of trade under similar circumstances.¹²⁸ Therefore, consistent with our practice and regulations, we have excluded Iljin Group's sales of its newly-developed prototypes from the calculation of NV in the final determination.

Additionally, while no party argued about Iljin Group's U.S. sales of prototypes, we note that the record does not contain information to differentiate Iljin Group's sales of newly-developed prototypes from its sales of TRB models qualified for a new use in the U.S. market. Therefore, we have excluded all Iljin Group's U.S. sales of prototypes from our analysis as well, because the volume of these sales is insignificant. If an antidumping duty order is issued in this proceeding, then we will further consider the appropriate treatment of Iljin Group's U.S. sales of prototypes in a subsequent administrative review, if one is requested.

¹²⁵ Due to the business proprietary nature of this analysis, for further discussion *see* Iljin Group Final Sales Calculation Memo at 3-4. *See also e.g.*, Bearing Art Sales Verification Report at 7-8; Iljin Bearing Sales Verification Report at 5; Iljin USA Verification Report at 6-7; and Iljin Group Pre-Preliminary Comments at 4-10.

¹²⁶ *See* Bearing Art Sales Verification Report at 7-8.

¹²⁷ *See* 19 CFR 351.102(b)(35) (emphasis added).

¹²⁸ *See e.g.*, *TRBs from Japan*, 57 FR at 57640; *AFBs from France etc. 1991-1992*, 58 FR at 39775 12; and *Ball Bearings from France etc.* IDM at Comment 12.

We disagree with the petitioner that Iljin Group based its claim on new factual information obtained at verification. In reaching the conclusion noted above, we relied on information contained on the record of this investigation, much of which (*e.g.*, price and quantity data, descriptions of product development and sales process, etc.) was submitted by Iljin Group prior to the *Preliminary Determination* and verification.¹²⁹ Further, the remainder of the information relates to the sales process for prototypes, and it consists of the type of information generally discussed at verification (*e.g.*, how the customer places the order, how the final price is established, etc.).¹³⁰ In fact, in this investigation, we included specific procedures in the sales verification agenda issued to Bearing Art, related to the sales process for its home market sales of TRBs in each sales channel and differences between the activities it performed to sell prototype and non-prototype models.¹³¹ Therefore, this information was gathered in response to Commerce's request for further explanation of Iljin Group's procedures for making its prototype sales at verification.

Comment 4: Reclassifying Certain Prototype Sales as EP

Petitioner's Arguments

- In its verification report, Commerce questioned whether it should treat certain of Iljin Group's U.S. prototype sales as EP sales because Bearing Art, one of the Iljin Group producers, invoiced the U.S. customer for them.¹³² The petitioner argues that Commerce correctly classified these sales as CEP transactions in the *Preliminary Determination* because the salient fact is that these sales were made in the United States.¹³³
- The petitioner contends that record evidence¹³⁴ demonstrates that Iljin USA developed the price, negotiated with the customer, and accepted the customer's price quote.¹³⁵ Therefore, the petitioner argues that, despite the suggestion to the contrary in its

¹²⁹ For example, the Bearing Art Sales Verification report sets forth a price for prototypes sold to a particular group of customers; this price can be tied to the sales listing. *See* Bearing Art Sales Verification Report at 7-8. Further, the same verification report discusses the various types of testing that Iljin Group and its customers perform on newly-developed prototypes and the design and production process for newly-developed prototypes. *Id.* *See also* Iljin Group's January 2, 2018 Supplemental Section C Questionnaire Response at SC-12 – SC-17.

¹³⁰ *See TMK IPSCO v. United States*, 179 F.Supp.3d 1328, 1354-55 (CIT 2016), n.34 (Explaining that Commerce has a practice of accepting new factual information at verification when “(1) the need for the information was not evident previously, (2) the information makes minor corrections to evidence already on the record, or (3) the information corroborates, supports, or clarifies information already on the record” (citation omitted)).

¹³¹ *See* Bearing Art Sales Verification Report at 6-7.

¹³² *Id.* at 2.

¹³³ *See* Petitioner's Case Brief at 21 (citing Iljin Group September 12, 2017 AQR at A-33; and *Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from The Netherlands*, 67 FR 62112 (October 3, 2002) (*Cold-Rolled Steel from Netherlands*), and accompanying IDM at 7).

¹³⁴ *Id.* at 20-21 (citing Iljin Group September 12, 2017 AQR at A-23 and A-33; and Iljin USA Verification Report at 6-7).

¹³⁵ *Id.* at 21 (citing Iljin Group's October 2, 2017, Section C Questionnaire Response (Iljin Group October 2, 2017 CQR) at C-21).

verification report, Commerce should continue to treat the U.S. prototype sales in question as CEP transactions in the final determination.

Iljin Group's Arguments

- Iljin Group disagrees that these U.S. prototype sales should be treated as CEP transactions. Iljin Group notes that: 1) the U.S. customer places the purchase order directly with Bearing Art; 2) Bearing Art invoices the U.S. customer and accepts payment from it; and 3) Bearing Art ships the TRBs to the customer from Korea.¹³⁶
- Iljin Group also disagrees that *Cold-Rolled Steel from Netherlands* supports the petitioner's argument. According to Iljin Group, that case indicates that the relevant inquiry is where the sales occurred, not the role the U.S. affiliate plays in the transaction.¹³⁷ Iljin Group argues that Commerce deems sales transacted directly between a foreign producer and its unaffiliated U.S. customer as EP transactions, even where a U.S. affiliate performs some related selling functions.¹³⁸ Thus, Iljin Group contends that Commerce should find Bearing Art's U.S. prototype sales to be EP sales in the final determination.

Commerce's Position

As detailed above, Commerce excluded all Iljin Group's U.S. sales of prototypes from our analysis because the volume of these sales is insignificant. *See* Comment 3. Therefore, any questions of whether certain of Iljin Group's U.S. prototype sales should be considered EP or CEP transactions are moot. Accordingly, we have not addressed this issue for purposes of the final determination.

Comment 5: Post-Sale Price Adjustments

In the *Preliminary Determination*, we accepted Iljin Group's post-sale price adjustments as reported. We examined these adjustments at verification and found that certain of them functioned as retroactive discounts.¹³⁹ We noted that, because the customer did not know the amount of these particular adjustments at the time of sale, it may be appropriate to disregard them in the final determination.¹⁴⁰

¹³⁶ *See* Iljin Group Rebuttal Brief at 15 (citing Bearing Art Sales Verification Report at 6-7; and Iljin Group September 12, 2017 AQR at A-17).

¹³⁷ *Id.* at 16 (citing *Cold-Rolled Steel from Netherlands* IDM at Comment 7; and *AK Steel Corporation v. United States*, 227 F.3d 1361 (CAFC 2000) (*AK Steel*)).

¹³⁸ *Id.* at 16 (citing *Certain Pasta from Italy: Notice of Final Results of the Eleventh Administrative Review and Partial Rescission of Review*, 73 FR 75400 (December 11, 2008), and accompanying IDM at Comment 7; and *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Final Results of Antidumping Duty Administrative Review*, 66 FR 11557 (February 26, 2001), and accompanying IDM at Comment 2).

¹³⁹ *See* Iljin Bearing Sales Verification Report at 2 and 10-11.

¹⁴⁰ *Id.*

Petitioner's Arguments

- The petitioner argues that, consistent with its practice and similar findings in the *Preliminary Determination*, Commerce should disregard the price adjustments in question that Iljin Group reported on certain U.S. sales because, at verification, Commerce found that they were applied retroactively and, thus, could not have been known by the customer at the time of the sale.¹⁴¹

Iljin Group's Arguments

- Iljin Group argues that 19 CFR 351.401(c) does not require Commerce to categorically reject retroactive post sale price adjustments. Rather, Iljin Group contends that Commerce applies a multi-factor analysis to evaluate the legitimacy of the adjustments and whether they may be the result of manipulation.¹⁴²
- Iljin Group asserts that the purpose of the *Final Modification* was to address the potential for “manipulation.”¹⁴³ However, Iljin Group argues that there is no evidence here that its post-sale price adjustments were the result of manipulation. To the contrary, Iljin Group contends that the terms and conditions of these adjustments demonstrate their legitimacy. Specifically, Iljin Group argues that it: 1) made the adjustments many months prior to the filing of the Petition; 2) applied the same type of adjustments to sales to the same customers in both the home and U.S. markets; and 3) clearly disclosed the existence of these retroactive post-sale price adjustments in its responses.¹⁴⁴
- Iljin Group contends that its post-sale price adjustments merely reflect the fact that it was still in the process of negotiating prices with the customer when the products were originally shipped and invoiced and that, under these circumstances, the customer is aware that the price would be subject to a retroactive adjustment once the final terms were agreed. Further, Iljin argues that Commerce has found this type of post-sale price adjustments to be a common practice in the TRB industry and has generally accepted them where they are reported accurately and on a transaction-specific basis.¹⁴⁵

¹⁴¹ See Petitioner's Case Brief at 21 (citing Iljin Bearing Sales Verification Report at 2 and 11; and *Preliminary Determination* PDM at 2, where Commerce disregarded certain billing adjustments reported by Schaeffler because it “did not demonstrate that their terms and conditions were known to the customer at the time of the sale, as required by 19 CFR 351.401(c)”).

¹⁴² See Iljin Group Rebuttal Brief at 3 and 17 (citing *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641 (March 24, 2016) (*Final Modification*)).

¹⁴³ *Id.* at 18 (citing *Koenig & Bauer-Albert AG v. United States*, 15 F. Supp. 2d 834, 840 (CIT 1998) (*Koenig v. United States*); and *Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538, 555 (CIT 1988)).

¹⁴⁴ *Id.* at 18 (citing Iljin Group's October 2, 2017 Section C Questionnaire Response at C-30).

¹⁴⁵ *Id.* at 19-20 (citing *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 47465, 47468 (September 8, 1998); *Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, from Japan: Final Results of Antidumping Duty Administrative Review*, 57 FR 4960, 4969 (February 11, 1992); *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan: Final Results of Antidumping Duty Administrative Review*, 56 FR 26054 (June 6, 1991); and Iljin Bearing Sales Verification Report at 10-11).

- Therefore, Iljin Group urges Commerce to accept its post-sale price adjustments in the final determination. Iljin Group argues that, if Commerce decides to disregard its post-sale price adjustments on certain U.S. sales, then it should also disregard this same type of adjustment in the home market.¹⁴⁶

Commerce's Position

Commerce's regulations, at 19 CFR 351.401(c), direct it to "use a price that is net of any price adjustment, as defined in section 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product..." Under 19 CFR 351.102(b), the term "price adjustments" is defined to include rebates. Commerce interprets these regulations as requiring it to deduct rebates from the starting price, where, among other factors, those rebates are known to the customer prior to the sale and are customer-specific.¹⁴⁷

In this investigation, Iljin Group reported that it made post-sale price adjustments on certain transactions in the home and U.S. markets. Specifically, Iljin Group retroactively applied the price changes in question to sales that were made up to eight months prior to the new price agreement being made.¹⁴⁸ During verification, we examined the terms of these adjustments, as indicated on price agreements between Iljin Group and its customers.¹⁴⁹ We noted that these post-sale price adjustments functioned as retroactive reverse-rebates (*i.e.*, they resulted in increases to home market and U.S. prices) applied to sales made prior to when Iljin Group and its customers agreed on the new prices.¹⁵⁰ We also note that Iljin Group's price agreements do not contain any correspondence or negotiation information that would support Iljin Group's assertions that 1) its customers were aware that an adjustment would be made to the price in the future; 2) its customers were aware that this price adjustment would be applied retroactively to sales made prior to the new price agreement being established; or 3) its customers consider this kind of adjustment to be a common practice in the Korean TRBs industry. Nor does any other documentation exist on the record that supports these claims. Therefore, we find that the information on the record does not support a conclusion that Iljin Group's customers knew the terms of these price adjustments at the time of the original sale; to the contrary, the record information indicates that it was not possible for these customers to know the terms of these price adjustments at the time that the original sale was transacted. Accordingly, we agree with the petitioner that, consistent with 19 CFR 351.401(c), it is appropriate to disallow these retroactively-applied reverse-rebates because the customer did not have knowledge of the price adjustment at the time of sale.

The *Final Modification* and accompanying regulatory changes clarified Commerce's pre-existing practice concerning price adjustments, such as rebates. Section 351.401(c) of Commerce's regulations now provide that Commerce "will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Secretary, its

¹⁴⁶ *Id.* at 20.

¹⁴⁷ See, e.g., *Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35313 (June 2, 2016) (*CORE from Taiwan*), and accompanying IDM at Comment 2.

¹⁴⁸ See Iljin Bearing Sales Verification Report at 10-11 and verification exhibit 24.

¹⁴⁹ See Bearing Art Sales Verification Report at 13-14; and Iljin Bearing Sales Verification Report at 10-11.

¹⁵⁰ *Id.*

entitlement to such an adjustment.” In the *Final Modification*, we state that, in determining whether a party has demonstrated its entitlement to a rebate adjustment, Commerce may consider a number of factors including:

(1) Whether the terms and conditions of the adjustment were established and/or known to the customer at the time of sale, and whether this can be demonstrated through documentation; (2) how common such post-sale price adjustments are for the company and/or industry; (3) the timing of the adjustment; (4) the number of such adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment.¹⁵¹

To the extent Iljin Group argues that its post-sale price adjustments at issue must be accepted because there is no evidence of manipulation, we disagree. Although the *Final Modification* cites manipulation concerns, it further makes clear that there are numerous factors to consider in determining whether to accept a post-sale price adjustment. Further, the *Final Modification* explains:

We have not adopted the one commenter's suggestion, either in the regulation itself, or in this final rule, to accept post-sale price adjustments if a company can demonstrate that the adjustment at issue is part of its standard business practice that existed prior to the initiation of the proceeding. We believe that the list we have identified above provides adequate factors for the Department to consider in determining whether a company has demonstrated its entitlement to an adjustment. We also note that the timing of the adjustment is one of those criteria. However, we believe that allowing a company to simply show that certain adjustments are part of its standard business practice might permit certain adjustments,

Therefore, we disagree with Iljin Group that because it made the adjustments at issue many months prior to the filing of the Petition and applied the same type of adjustments to sales to the same customers in both the home and U.S. markets, this warrants acceptance of the adjustments. As noted above, the adjustments at issue were made up to eight months after the sale, and we find that Iljin Group has failed to demonstrate, with documentation, that the terms and conditions of the adjustments were established or known to the customer at the time of sale.

Finally, we find that the fact that Iljin Group clearly disclosed the existence of these retroactive post-sale price adjustments in its responses is of no moment. We also disagree with Iljin Group that the cases to which it cites apply here because the decisions made in those cases predate the establishment of the *Final Modification* on March 24, 2016. Accordingly, consistent with 19 CFR 351.401(c), the *Final Modification*, and Commerce's current practice (where we applied the practice later outlined in the *Final Modification*),¹⁵² we have disallowed Iljin Group's retroactive applied reverse-rebates in both the home and U.S. markets for the final determination.

¹⁵¹ *Final Modification*, 81 FR at 15644-45.

¹⁵² See, e.g., *Certain Oil Country Tubular Goods from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 41979 (July 18, 2014), and accompanying IDM at Comment 3 (citing *Koenig v. United States* at 840); *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*;

Comment 6: CEP Offset

As noted above, Iljin Group sold both commercially-produced TRBs and TRB prototypes in the home market and United States during the POI. In the *Preliminary Determination*, we found that Iljin Group performed a number of selling functions either exclusively or more heavily related to sales of prototype models.¹⁵³ After analyzing these selling functions, consistent with 19 CFR 351.412(c)(2), we determined that sales of non-prototype models, in each market were made at one LOT, while sales of prototype models are at another LOT, and we compared Iljin Group's U.S. sales to sales at the same LOT in the home market, where possible. Where we could not compare Iljin Group's U.S. sales to home market sales of the most similar product at the same LOT, we made an LOT adjustment, where warranted, pursuant to section 773(a)(7)(A) of the Act.

Iljin Group's Arguments

- Iljin Group contends that there is only one LOT in the home market¹⁵⁴ and it is further advanced from the factory, involving more selling functions performed at a higher level of intensity, than the comparison LOT for Iljin Group's CEP sales to Iljin USA Corporation (Iljin USA). Further, Iljin Group argues that, because it did not sell TRBs in the home and U.S. markets at equivalent LOTs, Commerce cannot calculate an LOT adjustment; therefore, Commerce must, instead, grant Iljin Group a CEP offset under the Act¹⁵⁵ and Commerce's established practice.
- In particular, Iljin Group claims that it performs ten significant selling functions in Korea that it does not perform, or that it performs at a very low level, for CEP sales: 1) business development and pursuing customer leads; 2) qualifying customers; 3) processing customer orders; 4) negotiating long-term agreements with customers; 5) conducting customer relationships and communications; 6) engaging in sales-related international travel; 7) supporting new product development; 8) supporting industry associations; 9) conducting sales forecasting and marketing research; and 10) credit and collections. Further, Iljin Group claims that, for selling functions common to both markets, it undertakes the functions in the home market at significantly higher levels of intensity and variability than those performed to sell to Iljin USA.
- Further, Iljin Group argues that its home market sales are made closer to the end of the distribution chain than are its sales to Iljin USA. Thus, Iljin Group states that it must perform a full range of selling activities to make its home market sales, including certain selling functions that are performed by Iljin USA itself in the U.S. market.¹⁵⁶

2012-2013, 80 FR 17034 (March 31, 2015), and accompanying IDM at Comment 12; and *CORE from Taiwan* IDM at Comment 2.

¹⁵³ See *Preliminary Determination* PDM at 25-27.

¹⁵⁴ See Iljin Group Case Brief at 29 (citing *Preliminary Determination* PDM at 2).

¹⁵⁵ *Id.* at 29 (citing Section 773(a)(7)(B) of the Act).

¹⁵⁶ *Id.* at 28-29.

- Iljin Group contends that, in contrast, its CEP sales to Iljin USA occur at a point in the distribution chain that is very close to an ex-factory sale and, as such, are little more than logistical transfers of inventory to Iljin USA's warehouse. Iljin Group claims that, in making these sales, it performs only routine activities such as order processing and arranging freight and delivery services.¹⁵⁷ According to Iljin Group, Iljin USA performs more complex and staff-intensive selling activities when reselling merchandise to its downstream U.S. customers.
- Iljin Group claims that, given the above facts, Commerce must have erred in its preliminary analysis by examining the wrong U.S. sales transaction (*i.e.*, by Iljin USA, rather than to Iljin USA).¹⁵⁸ Thus, Iljin Group argues that Commerce should reverse its preliminary decision not to grant it a CEP offset.

Petitioner's Arguments

- The petitioner claims that Commerce correctly denied Iljin Group a CEP offset in the *Preliminary Determination* and this decision should be upheld in the final determination. The petitioner disagrees that Commerce focused on the "wrong transaction," noting that it found that Iljin Group performed the same types of selling activities¹⁵⁹ when making all its sales in both the home and U.S. markets. The petitioner points out that Commerce found that Iljin Group performed the following 11 selling activities at similar levels for its home market and U.S. sales: 1) qualifying customer; 2) planning of advanced product quality; 3) establishment of target pricing/quoting; 4) processing of customer orders; 5) handling of quality issues; 6) inventory maintenance and just-in-time inventory services; 7) arranging of freight and delivery; 8) provision of warranty services; 9) development of business and customer leads; 10) communication with customers and development of customer relationships; and 11) sales forecasting and market research.¹⁶⁰ Accordingly, the petitioner argues that Commerce correctly determined that Iljin Group's U.S. sales (including its sales to Iljin USA) were made at the same LOT as its home market sales.
- The petitioner asserts that Commerce should continue to deny Iljin Group's request for a CEP offset in the final determination.

Commerce's Position

We continue to find that a CEP offset is not warranted for Iljin Group in the final determination. Section 773(a)(7)(B) of the Act requires an adjustment to NV in the form of a CEP offset if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP transaction and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. In this case, because we find that Iljin Group sold TRBs at two LOTs in the

¹⁵⁷ *Id.* at 3 and 28.

¹⁵⁸ *Id.* at 3 and 27.

¹⁵⁹ These categories of selling activities are: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) technical support.

¹⁶⁰ See Petitioner's Rebuttal Brief at 21 (citing *Preliminary Determination* PDM at 26-27).

home market, and these LOTs were the same as the LOTs at which Iljin Group sold TRBs to the U.S. market, there is no basis to make a CEP offset in this case.

Commerce's regulations at 19 CFR 351.412(c)(2) outline Commerce's policy regarding differences in the LOTs as follows:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.¹⁶¹

In the *Preliminary Determination*, we analyzed Iljin Group's home market and U.S. market selling functions, and we organized them into the following four categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. For Iljin Group's home market sales, we stated:

According to Iljin Group, it performed the following selling functions for sales to all home market customers: establishment of target pricing/quoting, processing of customer orders, handling of quality issues, inventory maintenance and just-in-time inventory services, arranging of freight and delivery, provision of warranty services, acceptance of customer rating feedback, negotiation of long-term agreements, communication with customers and development of customer relationships, sales forecasting and market research, extension of credit and performance of collection services, and the acceptance of material risk.

Bearing Art also reported that it performed a number of selling functions which appear to be either exclusively or more heavily related to sales of prototype models to home market customers. These selling functions include: provision of application engineering services, customer-specific development of new products, "Advanced Product Quality Planning," qualifying customers, and development of business and customer leads. Bearing Art generally described that these selling functions were performed at "first contact with a customer," "as needed for new launches," to "design a unique part number" or to "determine which companies may buy products." Furthermore, according to Bearing Art, prototype design is a long and expensive process and requires custom designing for the customer's application (*e.g.*, providing a high level of technical assistance to the customer), retooling of the production line to produce a low volume of prototype bearings, and one-time invoicing.

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Bearing Art performed sales and marketing, inventory maintenance and warehousing, freight and delivery services, and technical support functions for all of its reported home market sales. Further,

¹⁶¹ See 19 CFR 351.412(c)(2) (emphasis added).

we find that Bearing Art performed significant, additional services related to sales of prototypes through its prototype-development services and customer-specific design process.

According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Commerce's LOT analysis takes into account qualitative factors, such as the significance of the activities themselves and the extent to which the activities are performed. In this case, as noted above, we find substantial qualitative differences in the selling activities performed to sell prototypes versus non-prototypes. Therefore, because we determine that substantial differences in Bearing Art's selling activities exist to sell prototype and non-prototype models in the home market, we determine that prototype and non-prototype sales in the home market during the POI were made at different LOTs.¹⁶²

Given the above analysis, we disagree with Iljin Group that it sold TRBs in the home market at only one LOT. Iljin Group reported that it undertook certain selling activities solely to sell prototype models in the home market. We examined these selling activities at verification and found nothing that calls into question Iljin Group's reported information. Further, Iljin Group did not comment on this aspect of Commerce's LOT analysis in its case brief. Therefore, we find no basis to revisit in the final determination our conclusion that the activities performed to sell prototypes to be so significant that prototype sales are at a different marketing stage.

With respect to the U.S. market, we also found that Iljin Group sold TRBs at two LOTs. We disagree with Iljin Group that we reached this conclusion using the wrong U.S. sales transaction. Specifically, in our *Preliminary Determination* we stated:

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison sales, *i.e.*, NV based on either home market or third country prices, we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.¹⁶³

Consistent with this practice, we considered only the selling expenses incurred by Iljin Group in Korea to make the sale to Iljin USA (*i.e.*, the selling expenses associated with the "constructed" export price sale).¹⁶⁴ Specifically, our *Preliminary Determination* states:

¹⁶² *Id.* at 25 (footnotes omitted).

¹⁶³ *Id.* at 24 (citing *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001)) (footnotes omitted).

¹⁶⁴ As stated in the *Preliminary Determination*, Iljin Group reported that it made U.S. sales through the following three distribution channels: 1) sales through Iljin USA (CEP sales); 2) sales to a customer in the Hyundai Motor Group (EP sales); and 3) sales of prototypes (CEP sales). See *Preliminary Determination* PDM at 26.

{Iljin Group} reported that it performed the following selling functions for sales in all three distribution channels: qualifying customers, planning of advanced product quality, establishment of target pricing/quoting, processing of customer orders, handling of quality issues, inventory maintenance and just-in-time inventory services, arranging of freight and delivery, provision of warranty services, development of business and customer leads, communication with customers and development of customer relationships, and sales forecasting and market research. Additionally, {Iljin Group} reported that it: 1) accepted customer rating feedback, accepted material risk, and negotiated long-term agreements for its sales through Iljin USA and to Hyundai Motor Group customers; 2) performed international travel and incurred currency risk for its sales through Iljin USA and prototype sales; and 3) extended credit and made collections for its sales to Hyundai and prototype sales.¹⁶⁵

As in the home market, {Iljin Group} also reported that it performed a number of selling functions which appear to be either exclusively or more heavily related to sales of prototype models to U.S. customers.¹⁶⁶ These selling functions include: provision of application engineering services, customer-specific development of new products, “Advanced Product Quality Planning,” qualifying customers, and development of business and customer leads. {Iljin Group} described these selling functions in the same manner as it did in the home market.

Based on the selling function categories noted above, we find that {Iljin Group} performed sales and marketing, inventory maintenance and warehousing, freight and delivery services, and provided technical support for all of its reported U.S. sales. Further, as in the home market, we find that {Iljin Group} performed significant, additional services related to sales of prototypes through its prototype-development services and customer-specific designed process.

Given the above analysis, we also disagree with Iljin Group that there is only one LOT in the U.S. market, and that LOT is at a less advanced stage of distribution than the LOT(s) in the home market. In the *Preliminary Determination*, we stated:

According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). As noted above, Commerce’s LOT analysis takes into account qualitative factors, such as the significance of the activities themselves and the extent to which the activities are performed. In this case, like in the home market, we find substantial qualitative differences in the selling activities performed to sell prototypes versus non-prototypes. Therefore, because we determine that substantial differences in {Iljin Group}’s selling activities exist to sell prototype and non-prototype models in the U.S. market, we determine that U.S. prototype and non-prototype sales during the POI were made at different LOTs.

¹⁶⁵ See *Preliminary Determination* PDM at 26-27 (footnotes omitted and emphasis added).

¹⁶⁶ See Bearing Art September 12, 2017 AQR at Exhibit A-10.

Finally, we compared the U.S. LOTs to the home market LOTs. We preliminarily find that the selling functions performed for {Iljin Group}'s non-prototype sales to its U.S. and home market customers do not differ significantly, nor do the selling functions performed for {Iljin Group}'s prototype sales to its U.S. and home market customers. Therefore, we preliminarily find that sales of non-prototype models are made at one LOT, while sales of prototype models are at another LOT. Consequently, we compared {Iljin Group}'s U.S. sales to sales at the same LOT in the home market, where possible. Where we could not compare {Iljin Group}'s U.S. sales to home market sales of the most similar product at the same LOT, we made an LOT adjustment, where warranted, pursuant to section 773(a)(7)(A) of the Act.

In this investigation, Iljin Group claims that it performed ten significant selling activities in the home market that it either did not perform when selling to Iljin USA or that it did perform, but at a lower level of intensity. These selling functions are: 1) developing the company's business and pursuing customer leads; 2) qualifying customers; 3) processing customer orders; 4) negotiating long-term agreements with customers; 5) conducting customer relationships and communications; 6) engaging in sales-related international travel; 7) supporting new product development; 8) supporting industry associations; 9) conducting sales forecasting and marketing research; and 10) extending credit and making collections. While we acknowledge that the selling functions performed to sell to home market customers and Iljin USA were not identical, we disagree that these activities were so significant that they constituted a different marketing stage. Further, Iljin Group was unable to support its claimed levels of intensity for any of these activities. Given these facts, as discussed further below, Commerce correctly concluded that the selling activities performed by Iljin Group to make non-prototype sales in the home market and to its U.S. affiliate were similar based on a finding that Iljin Group performed the same four categories of selling functions and that these activities were not substantially different.¹⁶⁷

Under 19 CFR 351.412(c)(2), Commerce must find "substantial differences in selling activities" (emphasis added) between markets before making an adjustment to NV to account for a difference in LOT. Moreover, Commerce's regulations make clear that the respondent bears the burden of demonstrating its entitlement to such an adjustment:

{i}f a respondent claims an adjustment to decrease normal value, as with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment.

Commerce will require evidence from the foreign producers that the functions performed by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade. Nominal reference to a company as a "wholesaler," for example, will not be sufficient. On the other hand, Commerce need not find that the two levels involve no common selling activities to determine that there are two levels of trade. Because level of trade adjustments may be susceptible to manipulation, Commerce will closely scrutinize claims for

¹⁶⁷ See Preliminary Determination PDM at 27.

such adjustments. For example, a sales subsidiary created merely to perform the role of a *de facto* sales department is not an appropriate basis for adjustment.¹⁶⁸

We analyzed Iljin Group's claim for a CEP offset in the initial stages of this investigation and requested additional information from it to support the claim.¹⁶⁹ However, Iljin Group was unable to provide documentation related to the frequency or intensity at which it performed each of its reported selling functions.¹⁷⁰ Instead, Iljin Group merely pointed to its selling activity charts and associated descriptions of the listed activities. We disagree that this information constitutes sufficient "evidence" that "different selling activities are actually performed at the allegedly different levels of trade."¹⁷¹ Further, although Iljin Group provided a description of its selling functions at verification which was consistent with that set forth in its questionnaire responses, it provided no underlying, specific evidence to support Iljin Group's CEP LOT claim.¹⁷² As a result, there is no information on the record of this investigation that would cause us to reconsider our preliminary decision.

With respect to the specific activities highlighted by Iljin Group, we disagree that the record contains evidence of significant differences between markets. As an initial matter, we note that Iljin Group claimed for the first time in its case brief that it engaged in sales-related international travel or that it supported industry associations in the home market, and the record contains no evidence related to these activities. Further, we note that Iljin Group reported that it performed new product development¹⁷³ equally in the home market and on behalf of sales to Iljin USA, and the record also shows that it extended credit to home market customers and to Iljin USA (despite its failure to acknowledge this in its selling activities chart).¹⁷⁴

Regarding the remaining six "significant" home market selling activities cited by Iljin Group, Iljin Group also reported performing each of these to make its CEP sales to Iljin USA.¹⁷⁵ Finally, Iljin Group states that it performed sales forecasting and market research and negotiating

¹⁶⁸ See SAA, H.R. Rep. No. 103-316, 870 (1994), at Section B.2.c.(4) of the Agreement On Implementation Of Article VI (emphasis added).

¹⁶⁹ See Commerce Letter re: Antidumping Duty Investigation on Tapered Roller Bearings from Korea (A-580-894): Supplemental Section A Questionnaire, dated October 13, 2017 at 7-8.

¹⁷⁰ See Iljin Group November 6, 2017 SAQR at SA-27, where Iljin Group states, "With regard to the request for documentation, we note that it is not possible to directly quantify and document the number of times a particular selling activity is conducted in connection with a particular sales channel or customer category because the frequency of the selling activity is not recorded on a transaction-specific basis or in any systematic manner."

¹⁷¹ See SAA, H.R. Rep. No. 103-316, 870 (1994), at Section B.2.c.(4) of the Agreement On Implementation Of Article VI.

¹⁷² See Bearing Art Sales Verification Report at 9-10.

¹⁷³ We also note that this activity is primarily related to Iljin Group's prototype sales, not its sales of commercial parts which are the focus of this discussion. See Iljin Group November 6, 2017 SAQR at Exhibit SA-16-D.

¹⁷⁴ See Iljin Group November 6, 2017 SAQR at Exhibit SA-16-B. See also Bearing Art Sales Verification Report at 8, where Iljin Group describes Bearing Art's provision of credit to Iljin USA when it states, "Bearing Art issues an invoice, bill of lading, and packing list for the merchandise to Iljin USA, and Iljin USA remits payment for the merchandise to Bearing Art via a funds transfer within 90 days of receipt of the merchandise" (emphasis added).

¹⁷⁵ Iljin Group reported that it also performs the following home market selling activities for its CEP sales to Iljin USA: business development and pursuing customer leads; qualifying customers; processing customer orders; negotiating long-term agreements with customers; conducting customer relationships and communications; and conducting sales forecasting and marketing research. See Iljin Group November 6, 2017 SAQR at Exhibit SA-16-B.

long-term agreements with customers at higher levels of intensity in the home market than for its CEP sales. However, this contradicts record evidence stating that Iljin Group performed sales forecasting and market research with the same frequency, and negotiated long-term agreements with customers more frequently, for its CEP sales to Iljin USA.¹⁷⁶

Based on the foregoing, we disagree that Iljin Group's home market selling activities differed so significantly from those performed to sell to Iljin USA that they constituted a different marketing stage. We note that Iljin Group reported performing many of the same selling activities in both markets (including several not cited in its arguments¹⁷⁷), and it failed to establish that it performed any of these selling activities at markedly different levels of activity. Therefore, when the activities that Iljin Group performs to sell in the home market and to its U.S. affiliate are viewed as a whole, we find that differences do not rise to the level of a "substantial difference in selling activities," a necessary, but not sufficient, condition to finding different LOTs.

As noted above, in conducting its LOT analysis, Commerce examines the extent of the activities performed and their significance to the company's selling operations. After a close examination, we find that certain of the home market selling functions claimed by Iljin Group were not actually performed during the POI, and of those remaining that Iljin Group did perform, none were performed at a significantly higher level of intensity in the home market than in the U.S. market. With respect to the U.S. market, although Iljin Group claims that the CEP price involves virtually no selling functions, we find that Iljin Group did in fact perform many of the same selling functions related to its CEP sales that it performed in its home market. Therefore, on balance we find that, during the POI, the selling activities performed by Iljin Group related to its home market and CEP sales were more similar than different. Thus, we do not find that Iljin Group's home market sales were at a different LOT than its sales to Iljin USA, and, accordingly, we find no basis for either making an LOT adjustment for comparisons involving these sales or granting a CEP offset for purposes of the final determination.

Comment 7: Calculating Financial Expenses

Petitioner's Arguments

- The petitioner argues that Commerce should recalculate Bearing Art's financial-expense rate to include losses pertaining to Bearing Art's efforts to hedge against foreign-exchange risks. According to the petitioner, while Commerce may exclude investment-related gains and losses, Commerce's practice is to include foreign-exchange related gains and losses "associated with the company's cash management and how an entity as a whole manages its foreign currency exposure."¹⁷⁸

¹⁷⁶ *Id.* at Exhibit SA-16-D. We note that, while Iljin Group's selling functions chart indicates that these activities are performed at a higher level of intensity in the home versus U.S. market, the accompanying descriptions of these selling activities contains alternative information.

¹⁷⁷ These selling functions are: providing warranty services, inventory maintenance and just-in-time performance, arranging freight and delivery services, and addressing material risks. *Id.* at Exhibit SA-16-B. *See also* Bearing Art Sales Verification Report at 9-10.

¹⁷⁸ *See* Petitioner's Case Brief at 19 (citing *Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical*

Iljin Group's Arguments

- Iljin Group argues that Commerce should not include losses pertaining to derivatives in the calculation of the financial-expense rate because they pertain to investment-related activity and Commerce did not request information related to these losses in its supplemental questionnaire.
- Iljin Group contends that Commerce's practice is to exclude gains and losses attributable to investing activities.¹⁷⁹ According to Iljin Group, investing is a separate profit-making activity not related to Bearing Art's normal operations; Bearing Art is neither in the business of making transactions on the derivative markets nor attempting to diminish risks related to the volatility in the price of inputs used to produce the merchandise under consideration.¹⁸⁰

Commerce's Position

We disagree with Iljin Group, and have revised the calculation of Bearing Art's financial-expense rate to include losses attributable to certain derivatives transactions. Commerce's practice is to include gains and losses attributable to derivative transactions related to a company's overall cash management in the calculation of financial expenses.¹⁸¹ While Commerce accepted Iljin Group's classification of the loss as investment-related for the purposes of the preliminary determination, at verification we observed that Note 8 of Bearing Art's audited financial statements indicates that the company uses derivatives to hedge against foreign exchange risks arising from the company's operations.¹⁸² Accordingly, contrary to Iljin Group's claim, record evidence indicates that the losses in question are attributable to Bearing Art's overall cash management strategy pertaining to its operations, rather than to the company's

Circumstances, in Part, 81 FR 49950 (July 29, 2016) (*Russian Cold-Rolled*), and accompanying IDM at Comment 6; and *Certain Preserved Mushrooms from Indonesia: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part*, 68 FR 11051, 11054 (March 7, 2003), unchanged in *Certain Preserved Mushrooms from Indonesia: Final Results of Antidumping Duty Administrative Review and Final Determination to Revoke Order in Part*, 68 FR 39521 (July 2, 2003)).

¹⁷⁹ See Iljin Group's Case Brief at 32 (citing *Russian Cold-Rolled* IDM at Comment 6).

¹⁸⁰ See Iljin Group's Rebuttal Brief at 14 (citing *Phosphor Copper from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 82 FR 12433 (March 3, 2017) (*Korean Phosphor Copper*), and accompanying IDM at Comment 2; and *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016), and accompanying IDM at Comment 8).

¹⁸¹ See *Korean Phosphor Copper* IDM at Comment 2 (explaining that certain derivative transactions are a cost management mechanism); and *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011), and accompanying IDM at Comment 19 (explaining that forward contracts, interest swap contracts, currency swaps, and currency future swaps are hedging vehicles used by entities to manage interest-rate and foreign exchange exposure).

¹⁸² For further discussion, see Bearing Art Cost Verification Report at 35.

separate profit-making investment activity. Therefore, as in *Korean Phosphor Copper*, for the final determination we have included the loss in the calculation of the financial expense rate.¹⁸³

Comment 8: Applying Partial AFA to Direct Material Costs

Petitioner's Arguments

- The petitioner argues that, because Iljin Group's response to Commerce's March 13th supplemental questionnaire did not contain a worksheet with the precise calculations Commerce had requested, Commerce should rely on an adverse inference to adjust Bearing Art's reported direct materials cost of all control numbers (CONNUMs) which contain materials purchased from Iljin Global. According to the petitioner, Commerce does not need to determine whether the Iljin Group's interpretation of the question was unreasonable.¹⁸⁴
- The petitioner argues that Commerce should not rely on information submitted for the first time at verification, especially when the information had been requested prior to verification.¹⁸⁵ According to the petitioner, Iljin Group's untimely submission of the requested information impeded Commerce's investigation and warrants the use of facts available pursuant to sections 776(a)(2)(B) and 776(a)(2)(C) of the Act.
- The petitioner argues that, because Iljin Group had the requested information in its possession and used the information to prepare the cost database submitted on January 5, 2018, Iljin Group's failure to submit the requested information in a timely manner constitutes a failure to act to the best of its ability and thus warrants the use of an adverse inference pursuant to section 776(b) of the Act.

Iljin Group's Arguments

- Iljin Group contends that there is no information pertaining to its direct materials costs that is either missing or remains unverified, because Commerce obtained and verified the requested worksheets during the cost reconciliation without noting any discrepancies. According to Iljin Group, the worksheets at issue simply clarify information in the cost database which had been submitted previously. Thus, Iljin Group argues that they are not "new" information but instead are the type of information collected by Commerce during verification routinely.

¹⁸³ See *Korean Phosphor Copper* IDM at Comment 2 (stating "Bongsan's derivative transactions at issue are part of the company's overall net financing activity, and we have added the gains and losses on derivative transactions to Bongsan's financial expense rate calculation").

¹⁸⁴ See Petitioner's Case Brief at 25 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (CAFC 2003) (*Nippon Steel*) (stating that the "statutory trigger for Commerce's consideration of an adverse inference is a simple failure to cooperate to the best of the respondent's ability, regardless of motivation or intent")).

¹⁸⁵ *Id.* at 26 (citing *Steel Wire Rod from South Africa* IDM at Comment 8; *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017), and accompanying IDM at Comment 27; *Nails from China*, and accompanying IDM at Comment 4; *SSSSC from Germany*, 64 FR at 30732; and *Rebar from Turkey* IDM at Comment 26).

- Iljin Group argues that, rather than fail to act to the best of its ability, it misinterpreted an ambiguous question and responded accordingly; upon learning that it had misinterpreted Commerce's request, it offered to submit the worksheets immediately but was told the information could be obtained at verification. Iljin Group notes that Commerce obtained and verified the information during the cost verification.

Commerce's Position

We disagree with the petitioner that the application of partial AFA is warranted with regard to Iljin Group's reported material costs. On January 5, 2018, in response to Commerce's request, Iljin Group revised its submitted costs so that the reported direct materials cost reflected Iljin Global's actual cost of producing raw materials consumed in the production of the merchandise under consideration, rather than the transfer price paid by Bearing Art.¹⁸⁶ Along with its revised cost data, Iljin Group submitted a worksheet which, for two products included in a sample CONNUM, illustrated the cost calculation methodology Iljin Group used to prepare its revised costs.¹⁸⁷

On March 13, 2018, Commerce issued a supplemental questionnaire which referenced the illustrative calculation and requested that Iljin Group "submit an Excel worksheet which shows the details of this calculation, as reflected in Exhibit SSD-1.3 for the two sample products, for each CONNUM in your submitted costs."¹⁸⁸ On March 20, 2018, Iljin Group submitted a response to Commerce's questionnaire in which it provided further details of the cost calculation for the two products submitted in Exhibit SSD-1.3. However, Commerce's question was aimed at obtaining the details of Iljin Group's adjustment to the transfer price paid by Bearing Art for materials purchased from Iljin Global for all CONNUMs in the cost database.¹⁸⁹

Understanding that Iljin Group did not provide the requested details for all CONNUMs because our question was ambiguous and Iljin Group's interpretation of it was reasonable, and considering the fact that the information requested was in support of the amounts already on the record, on March 22, 2018 Commerce issued a cost verification agenda to Iljin Group which included a step to obtain a worksheet with the information requested in Commerce's supplemental questionnaire dated March 13, 2018.¹⁹⁰ During the cost verification, Commerce obtained and verified the worksheet finding no discrepancies.¹⁹¹

Section 776(a) of the Act provides that Commerce can apply facts available if (1) the necessary information is not available on the record or (2) an interested party (A) withholds requested information, (B) subject to sections 782(c)(1) and (e) of the Act, fails to provide requested information by the established deadlines in the form and manner requested, (C) significantly impedes the proceeding, or (D) provides information which cannot be verified. Section 782(e) of

¹⁸⁶ See Iljin Group's Second Supplemental Section D Questionnaire Response, dated January 5, 2018 at Exhibit SSD-1.2.

¹⁸⁷ *Id.* at Exhibit SSD-1.3.

¹⁸⁸ See Letter from Commerce to Bearing Art Corporation, dated March 13, 2018.

¹⁸⁹ See Iljin Group's Third Supplemental Section D Questionnaire Response, dated March 20, 2018.

¹⁹⁰ See Letter from Commerce to Bearing Art Corporation, dated March 22, 2018, at 10.

¹⁹¹ See Bearing Art Cost Verification Report at 33.

the Act provides that, in the event that a submission does not meet all of the applicable requirements, Commerce shall not decline to consider submitted information if (1) the information is submitted by the established deadline, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the determination, (4) the interested party has demonstrated that it acted to the best of its ability, and (5) the information can be used without any undue difficulties.

As discussed above, on January 5, 2018, Iljin Group submitted cost data which reflected Iljin Global's cost of producing material inputs consumed by Bearing Art rather than the transfer price paid by Bearing Art along with an illustrative worksheet. Accordingly, Commerce had the information that was necessary to calculate an estimated weighted-average dumping margin within the meaning of section 776(a)(1) of the Act. Commerce's March 13, 2018 supplemental questionnaire intended to obtain the details of the adjustments made to Bearing Art's transfer price to reflect Iljin Global's costs for each CONNUM, where such costs were already on the record. While Iljin Group's March 20, 2018 supplemental questionnaire response did not contain the requested information, we find Iljin Group's interpretation of our question reasonable. We further find that Iljin Group neither impeded the proceeding within the meaning of section 776(a)(2)(C) of the Act nor provided information which could not be verified within the meaning of section 776(a)(2)(D) of the Act. Indeed, Commerce verified information that was already on the record concerning the difference between Iljin Global's cost of producing the materials consumed by Bearing Art and Bearing Art's transfer price with Iljin Global. Accordingly, Iljin Group did not withhold information within the meaning of section 776(a)(2)(A) of the Act.

While Iljin Group's March 20, 2018 questionnaire response did not contain the information we had expected, within the meaning of section 776(a)(2)(B) of the Act, we determine that Iljin Group acted to the best of its ability within the meaning of section 782(e)(4) of the Act. Specifically, we acknowledge that there was ambiguity in Commerce's question and that Iljin Group's good faith reasonable response was based on a misinterpretation of the question. Moreover, Commerce's verification of the explanatory worksheets did not constitute the acceptance of new information because the worksheets simply expanded on the details of the cost data submitted on January 5, 2018. Because the information contained in the worksheets is the type of information that Commerce collects routinely during verifications, Iljin Group did not cause undue difficulties within the meaning of section 782(e)(5) of the Act. Therefore, for the final determination Commerce has not relied on facts available with an adverse inference to adjust Iljin Group's reported material costs.

Schaeffler-Related Issues

Comment 9: Unreported Home Market Sales

Petitioner's Arguments

- The petitioner maintains that, at verification, Commerce found that Schaeffler failed to report a significant portion of its POI home market sales. The petitioner contends that, although the TRBs subject to these sales were ultimately incorporated into downstream

products and exported, Schaeffler should have reported them because it believed at the time of the sale that the transactions were destined for the home market.¹⁹²

- The petitioner disagrees with Schaeffler (*see below*) that documentation on the record establishes that it reported the sales at issue. According to the petitioner, while most of this documentation does not contradict Schaeffler's assertions, this is not uniformly true. The petitioner contends, for example, that Schaeffler provided documentation related to one sale which should have been reported, but which does not appear in the home market sales listing.¹⁹³ The petitioner states that Schaeffler's failure to provide complete documentation proving its assertions is significant, because it signifies that Schaeffler could have removed any sales from the home market database that it chose without anyone knowing.¹⁹⁴
- According to the petitioner, where a respondent has failed to report a substantial portion of its home market sales, Commerce has found that total AFA is appropriate. In support of this statement, the petitioner cites *Stainless Steel from Taiwan*,¹⁹⁵ where Commerce based the respondent's final margin on total AFA after finding that it omitted approximately 20 percent of its sales; the petitioner notes that the CIT upheld Commerce's determination in that case,¹⁹⁶ and the facts are even stronger here. As AFA, the petitioner argues that Commerce should use the highest rate stated in the Petition (*i.e.*, 132.24 percent).

Schaeffler's Arguments

- Schaeffler does not dispute that subject merchandise sold to home market customers and later exported should be reported as home market sales.¹⁹⁷ However, Schaeffler contends that the petitioner's argument is not valid because Schaeffler reported the original sales to those customers.¹⁹⁸
- Schaeffler argues that the language included in the Schaeffler Sales Verification report suggesting that Schaeffler omitted the sales is inaccurate, and it claims that Commerce spent significant time at verification confirming that its home market sales database was complete.¹⁹⁹ Further, Schaeffler asserts that it disclosed the existence of these types of

¹⁹² See Petitioner's Case Brief at 31-32 (citing Schaeffler Sales Verification Report at 2 and 9-10, section 773(a)(1)(A) of the Act; and *Tung Mung Dev. Co. v United States*, 25 CIT 752, 783 (CIT 2001) (*Tung Mung*)).

¹⁹³ See Petitioner's Rebuttal Brief at 26 (citing *See Petitioner's Rebuttal Brief at 26* (citing Second Supplemental Section B Questionnaire Response (Schaeffler January 18, 2018 SBQR) at 11-12 and Exhibit SBC-7)).

¹⁹⁴ *Id.* at 25-27.

¹⁹⁵ *Id.* at 36 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan*, 64 FR 30592, 30598 (June 8, 1999) (*Stainless Steel from Taiwan*)).

¹⁹⁶ *Id.* at 36 (citing *Tung Mung Dev. Co. v United States*, 25 CIT at 786).

¹⁹⁷ See Schaeffler Rebuttal Brief at 5-6.

¹⁹⁸ See Schaeffler Case Brief at 4-6.

¹⁹⁹ *Id.* at 5-6.

sales in its questionnaire response prior to verification, and it provided source documentation supporting its description.²⁰⁰

- According to Schaeffler, given the above facts, there are no grounds for AFA,²⁰¹ and thus, the petitioner's reliance on *Stainless Steel from Taiwan* is misplaced. In any event, Schaeffler asserts that, Commerce must find that a company must do more than determine that certain information was unavailable or could not be verified before resorting to total AFA, and Schaeffler argues it cooperated to the best of its ability here.²⁰²

Commerce's Position

After reviewing the information on the record of this investigation, and as discussed below, we find that total AFA is not warranted for Schaeffler for the final determination. While we agree with the petitioner that Schaeffler's reporting has not been clear or consistent, we found no discrepancies at verification with the overall quantity and value of Schaeffler's reported home market sales.

In its sales reconciliation, provided in its initial questionnaire response, Schaeffer indicated that it had removed a significant portion of its home market sales.²⁰³ When we asked Schaeffler about these eliminated sales in a supplemental questionnaire, Schaeffler stated:

The eliminations are related to the answer to question II-A-2, where it was explained that the difference was caused by credit notes (returns) which were linked to the HM database. For most of the credit notes, Schaeffler Korea had to manually link the credit notes to the corresponding invoices. After establishing these links, certain HM sales transactions were fully credited and therefore deleted from the sales listing.

The credit notes are issued to customers who export a finished product that incorporates Schaeffler's TRBs, a condition that eliminates the need of the customer to pay consumption taxes on the purchase from Schaeffler Korea of those TRBs. Thus, when this occurs, Schaeffler {rebill} related to the original TRBs purchase excluding the tax. . . Schaeffler creates a credit note against the first} invoice and {also issues a new invoice}. This explains the large amount of eliminations, where the credit note and the {first} invoice have to offset each

²⁰⁰ *Id.* at 5 (citing Schaeffler's December 8, 2017 Supplemental Sections B and C Questionnaire Response (Schaeffler December 8, 2018 SBCQR) at 12 and Exhibit SBC-7).

²⁰¹ See Schaeffler Rebuttal Brief at 3-4 (citing 19 U.S.C. § 1677e; *JSW Steel Ltd. V. United States*, 2018 CIT Trade Lexis 54 at 6; *Ferror Union, Inc. v. United States* 44 F. Supp. 2d 1310, 1331 (CIT 1999); *Citic Trading Co. v. United States*, 27 CIT 356, 356 (2003); *Werke AG & Mannesmann Pipe & Steel Corp. v. United States*, 77 F. Supp. 2d 1302, 1316 (CIT 1999); *CP Kelco US, Inc. v United States*, 2018 CIT Trade Lexis 39 at 9 (April 5, 2018)).

²⁰² *Id.* at 6.

²⁰³ See Schaeffler's October 2, 2017 Section B and C Questionnaire Response (Schaeffler October 2, 2017 BCQR) at B-6 and Exhibit B-3.

other. Please see Exhibit SBC-7 (Credit Notes) for the requested first and last credit notes of each month of the POI.²⁰⁴

Further, Schaeffler stated the following in response to question II-A-2:

Schaeffler has provided a revised Q&V chart in Exhibit SBC-5 (Revised Exhibit A-1 (Q&V)). The difference for the HM sales is caused by credit notes (returns). For most of the credit notes, Schaeffler Korea had to manually link the credit notes to the corresponding invoices. After establishing these links, certain home market sales transactions were fully credited and therefore deleted from the sales listing. At the time of filing of the Section A submission, due to time constraints, Schaeffler had not yet completed all the necessary links.²⁰⁵

We relied on Schaeffler's reported information in the *Preliminary Determination*.

At verification, we discussed the eliminated sales with company officials, and, for the two reissued invoices we examined, we ultimately were able to tie the eliminated transactions to the credit notes, as well as to the underlying, original sales. Specifically, our verification report states:

We asked company officials how they determined the total quantity and value of the sales reflected in the "Eliminations" column in their reconciliation worksheet. Company officials stated that Schaeffler identified all debits and credits in its "SD" system during the POI and then it manually reviewed each debit/credit note on the list. Therefore, we obtained a list of all the credit notes associated with the reissued invoices and selected two for review . . . We tied these credit notes to the associated reissued invoices and noted no discrepancies. We then requested that Schaeffler provide the original invoices for these transactions. Company officials stated that there is no direct link between the original and reissued invoices because return invoices may cover multiple sales to the customer in question (*i.e.*, the customer sometimes asks for a reissued invoice covering products from multiple original invoices). Therefore, they offered to link individual line items on the reissued invoices to corresponding line items on the original invoice using information from Schaeffler's customer portals.

We tied the two reissued invoices to the customer portal using a spreadsheet created Schaeffler. We then selected two line items associated with these invoices from the customer portals for {two customers}. Company officials provided {one} invoice . . ., dated {prior to the POI}, and they stated that this document is the original invoice associated with the second transaction, as evidenced by the fact that the customer name, product code, and unit price match.

²⁰⁴ See Schaeffler December 8, 2018 SBCQR (Public Version) at 12 and Exhibit SBC-7.

²⁰⁵ *Id.* at 7 (emphasis added).

Company officials stated that they were unable to provide the original invoice associated with the first transaction because Schaeffler had issued it prior to the POI.²⁰⁶

Thus, at verification Schaeffler was able to demonstrate how its credit notes linked to the second (*i.e.*, rebilled) invoice, a transaction that is not at issue here. We note that, while Schaeffler offered to “link individual line items on the reissued invoices to corresponding line items on the original invoice,” it could not provide any documentation establishing a definitive link but rather pointed to products previously sold to the same customer in approximately the same quantities.

That said, we acknowledge that the two reissued invoices/credit notes selected for testing were at the beginning of the POI. Further, while Schaeffler could not provide the original invoice for one of the selected items and it could only provide a weak linkage to a pre-POI invoice for the other, we find Schaeffler’s explanation in its case brief plausible, given that, at verification, we reconciled the total value and quantity of Schaeffler’s reported home market sales to its audited financial statements.

Finally, we disagree with the petitioner that the sales documents provided by Schaeffler in its supplemental response demonstrate that Schaeffler did not report the original sales at issue. We examined these documents and found that the majority of the transactions could be linked to the sales listing using the same assumptions provided by Schaeffler at verification,²⁰⁷ and, for the remainder, there is no evidence to show that the original sales were not made prior to the POI.

Section 776(a) of the Act provides that Commerce can apply facts available if (1) the necessary information is not available on the record or (2) an interested party (A) withholds requested information, (B) subject to sections 782(c)(1) and (e) of the Act, fails to provide requested information by the established deadlines in the form and manner requested, (C) significantly impedes the proceeding, or (D) provides information which cannot be verified. Section 782(e) of the Act provides that, in the event that a submission does not meet all of the applicable requirements, Commerce shall not decline to consider submitted information if (1) the information is submitted by the established deadline, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the determination, (4) the interested party has demonstrated that it acted to the best of its ability, and (5) the information can be used without any undue difficulties.

Because Schaeffler submitted home market sales information and Commerce verified that this information was accurate, Commerce had the information that was necessary to calculate a weighted-average dumping margin within the meaning of section 776(a)(1) of the Act. As noted above, we find Schaeffler’s explanation of the “eliminated” sales at issue to be reasonable. We further find that Schaeffler neither impeded the proceeding within the meaning of section 776(a)(2)(C) of the Act nor provided information which could not be verified within the meaning of section 776(a)(2)(D) of the Act. At verification we reconciled Schaeffler’s total sales value

²⁰⁶ See Schaeffler Sales Verification Report at 10 (emphasis added).

²⁰⁷ With respect to the example cited by the petitioner, we found that Schaeffler reported sales of the same part number (with an added suffix) at the same price and quantity.

and quantity and tied the amount to Schaeffler's financial statements. We also identified Schaeffler's universe of credit and debits and tied the total quantity and value to Schaeffler's reconciliation worksheets and to Schaeffler's accounting system and noted no discrepancies.²⁰⁸ Accordingly, Schaeffler did not withhold information within the meaning of section 776(a)(2)(A) of the Act.

Therefore, after considering Schaeffler's explanation, and reexamining the information on the record, we find there is an insufficient basis to reject Schaeffler's reported data in favor of AFA. Thus, the petitioner's reliance on *Stainless Steel from Taiwan* is misplaced.

Comment 10: LOT and CEP Offset

In the preliminary determination, we compared Schaeffler's U.S. LOT to the home market LOT and preliminarily found that the selling functions performed for the U.S. and home market customers did not differ significantly. In making this finding, we noted that Schaeffler failed to provide an adequate description of many of its reported selling functions or indicate how often it performed them, and, thus, we did not consider these functions in our analysis. Therefore, we preliminarily found that sales to the home market during the POI were made at the same LOT as sales to the United States, and, thus, a CEP offset was not warranted.²⁰⁹

Schaeffler's Arguments

- Schaeffler argues that it provided sufficient information for Commerce to: 1) find two LOTs in the home market (*i.e.*, one for sales to original equipment manufacturers (OEMs) and another for sales to distributors); 2) find two LOTs in the U.S. market (*i.e.*, one for EP sales and another for sales to Schaeffler USA); and 3) grant Schaeffler a CEP offset.²¹⁰
- Schaeffler contends that Commerce erred when it found Schaeffler's descriptions of its selling activities, and the intensity at which the activities were performed, inadequate. According to Schaeffler, it referred to most of these categories in a self-explanatory manner, and it provided additional explanations for its selling functions in its supplemental section A questionnaire response.²¹¹ Schaeffler states that these descriptions were clear and directly responsive to Commerce's supplemental questionnaire and Commerce did not advise Schaeffler that further explanation was required.²¹²

²⁰⁸ *Id.* at 9-11.

²⁰⁹ See *Preliminary Determination* PDM at 30.

²¹⁰ See Schaeffler Case Brief at 7, 14, and 18.

²¹¹ *Id.* at 11 (citing Schaeffler's October 26, 2017 Supplemental Section A Questionnaire Response (Schaeffler October 26, 2017 SAQR)); and Schaeffler Case Brief at 15 (citing Schaeffler September 12, 2017 AQR at Exhibit A-9).

²¹² *Id.* at 12 and 15 (citing Schaeffler October 26, 2017 SAQR at 17-22).

- Schaeffler argues that Commerce very broadly asked for “sample documentation supporting each of these activities in each market and the frequency at which they were performed,” without giving guidance as to what documents would satisfy this request or taking into consideration that the documentation either does not exist, or there was insufficient time provide it within the required timeframe. For instance, Schaeffler claims Commerce does not explain why an exhibit with charts and graphs is not sufficient support for market research and provides no rationale for its claim that Schaeffler USA prepared certain materials, instead of Schaeffler.²¹³
- Schaeffler argues that, in claiming that it failed to substantiate how often it performed certain selling functions for its home and U.S. markets, Commerce ignored Schaeffler’s comments that: 1) it is impossible to quantify how often the activities are performed; 2) Schaeffler does not maintain electronic records that would enable it to determine this information (and, thus, providing it would involve a manual review of thousands of vouchers and records); and 3) Schaeffler estimated the frequency of these activities based on anecdotal evidence from its sales personnel.²¹⁴ Schaeffler further points out that the magnitude of each selling function was also evident on other parts of the record, such as Schaeffler’s distribution and sales process.²¹⁵
- Schaeffler takes issue in particular with the following findings in the *Preliminary Determination*, disagreeing that:
 - there is no evidence on the record demonstrating it conducted sales promotion activities or trained any dealers in the home market during the POI.²¹⁶ Schaeffler argues that: 1) it had no need to train OEM customers, but it did perform some training for distributors; and 2) Commerce verified that Schaeffler held an annual luncheon to hand out cash awards to distributors.²¹⁷
 - Schaeffler incurred no warranty expenses on U.S. sales during the POI.²¹⁸ Schaeffler maintains that, to the contrary, its sales contracts with certain EP customers contain provisions for warranties.²¹⁹
 - Schaeffler performed its “employment of direct sales personnel” equally for all U.S. sales. However, according to Schaeffler, Schaeffler USA orders subject merchandise from Schaeffler without the assistance of in-house direct sales

²¹³ *Id.* at 16, footnote 1 (citing *Preliminary Determination* PDM at 28, footnote 152).

²¹⁴ *Id.* at 13 (citing Schaeffler October 26, 2017 SAQR at 20 and 15-24); and *see* Schaeffler Case Brief at 15-16 (citing Schaeffler October 26, 2017 SAQR at 20).

²¹⁵ *Id.* at 13 (citing Schaeffler September 12, 2017 AQR at 15-24).

²¹⁶ *Id.* at 13 (citing *Preliminary Determination* PDM at 28).

²¹⁷ *Id.* at 13 (citing Schaeffler Sales Verification Report at 30 and Exhibit 39, where it claims that Schaeffler provided documentary evidence of an annual luncheon at which distributors are given cash awards for reaching certain targets to encourage sales).

²¹⁸ *Id.* at 16 (citing *Preliminary Determination* PDM at 29 (citing Schaeffler’s December 29, 2017 2nd Supplemental Sections A and C Questionnaire Response (Schaeffler December 29, 2017 SACQR) at 17-19)).

²¹⁹ *Id.* at 16-17 (citing Schaeffler December 29, 2017 SACQR at 18).

personnel, unlike its EP and home market customers, for whom direct sales personnel were on hand.²²⁰

- Schaeffler argues that, when Commerce corrects its errors, it will find that Schaeffler performed its selling functions at significantly different degrees of intensity for each customer category in the home market and United States,²²¹ and that these differences demonstrate that there is a difference in marketing level between sales to OEMs and distributors and between EP sales and sales to Schaeffler USA.²²² Further, Schaeffler contends that, because there is no “related reseller” in the home market, Commerce cannot make an LOT adjustment when making CEP comparisons, and, as a result, the only remedy is a CEP offset.
- Schaeffler argues that finding separate home market levels of trade for OEMs and distributors, and granting a CEP offset, is consistent with other bearing cases in which a CEP offset was consistently granted to Schaeffler and other respondents, under similar factual situations.²²³ Schaeffler argues that Commerce should not establish a higher standard of proof in this investigation than is different from other cases, especially when the information requested by Commerce does not exist.²²⁴

Petitioner’s Arguments

The petitioner claims that Commerce correctly denied Schaeffler a CEP offset in the *Preliminary Determination* and this decision should be upheld in the final determination. The petitioner states that Commerce appropriately found that: 1) there are no differences in the selling activities performed in the two channels for either Schaeffler’s home or U.S. markets; 2) Schaeffler failed to provide adequate descriptions of its supporting selling activities; and 3) Schaeffler failed to indicate how often an activity was performed.²²⁵

- In support of its arguments, the petitioner provided a table summarizing Commerce’s findings, and it contends that this table supports the conclusion that the two comparison market channels and two U.S. market channels are either similar or identical in nearly

²²⁰ *Id.* at 17 (citing Schaeffler October 26, 2017 SAQR at 21).

²²¹ *Id.* at 9 (citing Schaeffler’s September 12, 2017 Section A Questionnaire Response (Schaeffler September 12, 2017 AQR) at Exhibit A-9, which identifies the degrees of intensity for each of Schaeffler’s selling activities).

²²² *Id.* at 10 and 17.

²²³ *Id.* at 20 (citing *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Revoke Order in Part*, 74 FR 19056 (April 27, 2009), and accompanying PDM at 3-4; *Ball Bearings from France etc. IDM at Comment 10*; *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Rescind Review in Part*, 72 FR 31271, 31272 (June 6, 2007); Memorandum, “Antifriction Bearings and Parts Thereof from Various Countries-2005/2006 Level-of-Trade Analysis Memorandum (POR; May 1, 2005 – April 30, 2006),” dated May 29, 2017; and *Ball Bearings and Parts Thereof from Germany: Final Results of Antidumping Duty Administrative Review: 2011-2011*, 78 FR 29702 (May 21, 2013), and accompanying PDM at 2.

²²⁴ *Id.* at 20.

²²⁵ See Petitioner’s Rebuttal Brief at 28 (citing *Preliminary Determination* PDM at 28-29).

every category. Thus, the petitioner asserts that Commerce has no reason to reverse its position for the final determination.²²⁶

- Finally, the petitioner argues that Commerce should reject Schaeffler's argument that Commerce's determination is inconsistent with other bearings cases because, as Schaeffler concedes in its case brief, Commerce makes its determinations based on the record before it.²²⁷

Commerce's Position

We continue to find that a CEP offset is not warranted for Schaeffler in the final determination. Section 773(a)(7)(B) of the Act requires an adjustment to NV in the form of a CEP offset if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP transaction and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Commerce's regulations at 19 CFR 351.412(c)(2) outline Commerce's policy regarding differences in the LOTs as follows:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.²²⁸

In the *Preliminary Determination*, we analyzed Schaeffler's home market and U.S. selling functions, and we organized them into the following four categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. After considering the evidence on the record with respect to the selling functions performed in each market, we found that Schaeffler sold at a single LOT in each market, and this LOT was the same for sales to all home market and U.S. customers.

Specifically, for Schaeffler's home market sales, we stated:

In the home market, Schaeffler reported that it made sales through two channels of distribution: 1) direct sales to original equipment manufacturers (OEMs); and 2) direct sales to distributors. According to Schaeffler, it performed the following selling functions for sales to all home market customers: sales forecasting, strategic/economic planning, personnel training, provision of engineering services, advertising, packing, inventory maintenance, order input/processing, employment of direct sales personnel, provision of sales/marketing support, performance of market research, provision of technical assistance, provision of warranty services, after-sale services, provision of cash discounts and rebates, and arranging for freight and delivery. Additionally, Schaeffler claims that, for its distributors alone, it conducted sales promotions and provided distributor/dealer training.

²²⁶ *Id.* at 28-29.

²²⁷ *Id.* at 30 (citing Schaeffler Case Brief at 20).

²²⁸ *See* 19 CFR 351.412(c)(2) (emphasis added).

However, Schaeffler failed to provide an adequate description of the following functions or to indicate how often it performed them, despite Commerce's direct request that it do so: personnel training, provision of engineering services, sales/marketing support, performance of market research, provision of technical assistance, after-sale services, sales promotions, and distributor/dealer training. For example, Schaeffler described sales promotions as "special promotional functions conducted for sales personnel" and distributor/dealer training as "special distributor and dealer training sessions to acquaint outside sales personnel with new products"; further, there is no evidence on the record demonstrating that Schaeffler conducted any sales promotion activities or trained any dealers during the POI. Therefore, because the evidence on the record does not support Schaeffler's claims, we have not considered these selling functions in our analysis.

. . . {W}e find that Schaeffler performed sales and marketing, inventory maintenance and warehousing, freight and delivery services, and warranty and technical support for all of its reported home market sales. Because we find no differences in selling activities performed by Schaeffler to sell to its home market customers, we determine that there is one LOT in the home market for Schaeffler.²²⁹

Further, for Schaeffler's U.S. sales we found that:

With respect to the U.S. market, Schaeffler reported that it made sales through two channels of distribution 1) sales to U.S. OEM customers (EP sales); and 2) shipments to its U.S. affiliate, Schaeffler USA for resale to U.S. customers (CEP sales). Schaeffler reported that it performed the following selling functions for sales in both distribution channels: sales forecasting, strategic/economic planning, packing, inventory maintenance, order input/processing, and arranging for freight and delivery. Schaeffler also claimed that it performed the following selling functions only for its EP sales: engineering services, advertising, employment of direct sales personnel, provision of sales/marketing support, performance of market research, provision of warranty services, and provision of after-sales services. Finally, Schaeffler claimed personnel training/exchanges only for sales to Schaeffler USA.

As in the home market, however, Schaeffler failed to provide an adequate description of the following functions or to indicate how often it performed them, despite Commerce's direct request that it do so: engineering services, personnel training/exchange, provision of sales/marketing support, performance of market research, and provision of after-sales services. Further, despite its claim, Schaeffler reported no warranty or advertising expenses in its U.S. sales listing, and there is no evidence on the record that it performed any selling functions related to them during the POI. Therefore, because the evidence on the record

²²⁹ See *Preliminary Determination* PDM at 28.

does not support Schaeffler's claims, we have not considered these selling functions in our analysis.

Based on the selling function categories noted above, we find that Schaeffler performed sales and marketing, inventory maintenance and warehousing, and freight and delivery services for all of its reported U.S. sales. According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Because we find no differences in selling activities performed by Schaeffler to sell to its home market {sic} customers, we determine that sales to the U.S. market during the POI were made at the same LOT.²³⁰

We addressed Schaeffler's claim in our *Preliminary Determination* as follows:

Finally, we compared the U.S. LOT to the home market LOT, and we preliminarily find that the selling functions performed for the U.S. and home market customers do not differ significantly. Specifically, we found that the differences were limited to the following activities: 1) provision of cash discounts and rebates; and 2) provision of warranty services. We find that Schaeffler's description of its cash discounts and warranty program is not significant enough to support that the U.S. and home market LOTs are different. Therefore, Commerce preliminarily finds that sales to the home market during the POI were made at the same LOT as sales to the United States, and, thus, a CEP offset is not warranted.²³¹

Given the above analysis, we disagree that Schaeffler sold TRBs in either the home or U.S. market at two LOTs. Schaeffler's renewed claim is based on several arguments: 1) Commerce has consistently determined that there are two LOTs for OEMs and distributors in previous cases, including for Schaeffler; 2) Commerce failed to take into account that Schaeffler performed its selling activities at significantly different degrees of intensity for each customer category; and 3) Commerce made incorrect findings related to some of Schaeffler's selling functions (*i.e.*, promotion activities/dealer training for home market OEM customers, warranty expenses for its U.S. EP customers, employment of direct sales personnel for sales to its U.S. affiliate).

As an initial matter, we disagree with Schaeffler that Commerce should grant it a CEP offset based on decisions made in past bearings cases, separate proceedings with separate facts concerning a different product and different Schaeffler companies (*i.e.*, not Schaeffler Korea Corporation). Our decision here is based on specific evidence on this record, and, as noted above, that evidence shows that Schaeffler has not met the standard required to find that multiple

²³⁰ *Id.* at 29 (footnotes omitted).

²³¹ *Id.* at 30.

LOTs exist, and, thus, a CEP offset is not warranted in this case. This position is consistent with Commerce's determination in other cases.²³²

With respect to the specifics of Schaeffler's claim in this proceeding, we disagree with Schaeffler that it provided adequate descriptions of its selling expenses. In many cases, Schaeffler's descriptions were limited to generic statements, devoid of specific details related to the activities that it performed or explanations as to how these activities furthered Schaeffler's LOT and CEP offset claims. Specifically, we requested Schaeffler to:

“{d}escribe in detail each of the following selling activities/functions that you listed in the exhibit. Where the activities/functions differ across channels of distribution or markets, identify all differences. . .²³³

In response, Schaeffler stated that the “selling functions listed do not differ across channels of distribution or markets,” and it proceeded to provide one- to three- line descriptions of each function.²³⁴ For example, Schaeffler stated described its sales promotion activities in one sentence, stating “{t}hese represent special promotional functions conducted for sales personnel, and applies only to {one channel}.”²³⁵ Similarly, Schaeffler described engineering services as “{t}hese services are needed when designing new products at a customer's request or redesigning or re-engineering existing products for revised or alternative applications.”²³⁶ As these examples show, Schaeffler failed to describe the selling functions performed on more than a cursory level, or to differentiate how the activities/function differ across channels of distribution or markets.²³⁷ and, thus, we disagree with Schaeffler that it provided information that was directly responsive to the supplemental questionnaire, or that its “self-explanatory” titles were clear or sufficient.

We also disagree with Schaeffler that our request for sample documentation was unreasonable or that it that it was incumbent upon Commerce to provide it additional guidance on how to respond to our questions. Specifically, in response to the questions “provide sample documentation supporting each of these activities in each market and the frequency at which they were performed” and “describe the threshold that you used to determine the degree (*i.e.*, high, low, and medium) to which each selling activity was performed... and {i}llustrate your description using the sample documentation provided in response to the preceding question,” Schaeffler stated:

²³² See, e.g., *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Determination of Sales at Less Than Fair Value*, 81 FR 47352 (July 21, 2016), and accompanying IDM at 30.

²³³ See Schaeffler October 26, 2017 SAQR at 18. This question identified 18 selling expenses, including sales forecasting, strategic/economic planning, personnel training/exchange, engineering services, advertising, sales promotion, distributor/dealer training, packing, inventory maintenance, order input/processing, direct sales/personnel, sales/marketing, market research, technical assistance, warranty service, guarantees, after-sales services; and repacking.

²³⁴ *Id.* at 19-20 (emphasis added).

²³⁵ *Id.* at 19.

²³⁶ *Id.*

²³⁷ Indeed, as noted above Schaeffler stated explicitly that the selling functions did not vary by channel or market.

See attached Exhibit SA-14A to SA-14I for sample documentation supporting the foregoing activities, where such documents are readily available. It is virtually impossible given the absence of electronic records for these functions and the brief time permitted within which to respond to this question to extract and segregate this documentation by functional category and by market and, as noted above, to demonstrate the frequency with which these activities were performed during the POI with respect to scope merchandise.

The magnitude of the various selling functions by channel of distribution was estimated by sales personnel operating in the various channels based upon their day-to-day and historical experience and knowledge of those channels. Accordingly, Exhibit A-9 was based upon this anecdotal information rather than an in-depth analysis of the frequency with which the different selling functions were performed by channel. As noted, above, the latter was not possible given the state of Schaeffler's electronic records.

As can be seen from these responses, Schaeffler did not put forth a good faith effort to provide the requested information. Rather, it claimed that a response was "virtually impossible given the absence of "electronic records" under the "brief time" allotted to respond. Further, rather than indicating how frequently it performed any of the activities, it merely asked its sales personnel to estimate whether the functions were performed to a "high," "medium," or "low" degree. We disagree with Schaeffler, however, that Commerce's question was difficult to answer. For example:²³⁸

- Schaeffler stated that it performed not insignificant distributor/dealer training activities in the home market during the POI; thus, Schaeffler could have indicated: 1) the type of training activities conducted (*e.g.*, in person training sessions, preparation of training materials, etc.); and 2) how frequently it performed these activities (*e.g.*, once a month, semi-annually, etc.), and it could have provided evidence that it actually undertook such training, such as email correspondence, fliers to dealers, etc. Instead, Schaeffler provided a brochure from FAG Germany which references a training center in an unspecified country.²³⁹ Not only does this documentation not address the intensity or frequency component of the analysis, but it is unclear how it related to Schaeffler's claim at all.
- Similarly, Schaeffler reported that it performed limited warranty-related activities on all home market, and U.S. EP, sales; thus, Schaeffler could have indicated: 1) the type of warranty activities undertaken (*i.e.*, acceptance and repair of returned products, visits to customers, etc.); and 2) how frequently it performed these activities (*e.g.*, received x (state number) product returns for OEM customers, y returns for EP customers, performed z visits to home market distributors), and it could have provided evidence that it actually undertook such activities, such as email correspondence, product return reports, etc. Again, Schaeffler made no such statements and provided no documentation at all to support its home market claim. While Schaeffler did provide email

²³⁸ The following examples are illustrative of Schaeffler's response, rather than an exhaustive list of problems.

²³⁹ See Schaeffler October 26, 2017 SAQR at Exhibit SA-14C.

correspondence related to a visit report for a warranty claim in the United States,²⁴⁰ this was written in English and made no mention of Schaeffler Korea, and, thus, it is unclear how it supported Schaeffler's claim that its Korea office handled U.S. warranty claims.

- Schaeffler stated that it performed limited home market sales promotion activities, as described above; Schaeffler could have provided a full description of these activities (e.g., a luncheon) and how frequently it performed them (e.g., annually, semi-annually, etc.), the types of products promoted, or the customers subject to the promotion; instead, Schaeffler provided minutes of a meeting held in a U.S. city which does not reference the home market or any sales promotion activities.²⁴¹ Again, it is unclear how this documentation was responsive to the questions posed.

Thus, we disagree with Schaeffler that provision of the information requested by Commerce requires extensive "electronic records," "an in-depth analysis," or a significant time commitment to gather.

With respect to Schaeffler's specific points of contention, we disagree with Schaeffler that it properly supported its claim with respect to dealer training and warranties. As noted above, Schaeffler provided no documentation with respect to its home market dealer training or warranty claims, and it supplied a single U.S. visit report related to EP warranty claims which did not reference Schaeffler's operations in Korea. Further, while Schaeffler now points to the provision for warranty services in contracts with certain EP customers, it does not demonstrate how the theoretical provision of services translates to actual selling activities performed during the POI. In fact, Schaeffler itself affirmatively stated that it did not perform these activities,²⁴² and we confirmed this statement at verification.²⁴³

After reexamining the record with respect to promotion and employment of direct personnel, we acknowledge that Schaeffler held a luncheon for its home market distributors during the POI, and it did not put forth the same amount of effort to take orders from its U.S. affiliate. However, Schaeffler acknowledges that it performed only limited selling activities with respect to these selling functions, and, as discussed further below, we continue to find that the differences in activities are not significant enough to find a difference in marketing stage either between or within markets.

Finally, we disagree with Schaeffler that it was incumbent upon Commerce to notify Schaeffler in a second supplemental questionnaire that additional explanation was required. We provided Schaeffler two opportunities to support its LOT and CEP offset claims, and in each case, Schaeffler did not provide an adequate response.

²⁴⁰ *Id.* at Exhibit SA-14G.

²⁴¹ *Id.* at Exhibit SA-14E.

²⁴² See Schaeffler December 29, 2017 SACQR at 17-19.

²⁴³ See Schaeffler Korea Verification Report (Public Version) at 27, "Finally, we requested that company officials demonstrate that Schaeffler incurred no warranty expenses in the three years prior to the POI. In response, company officials provided a list of warranty expenses from account [] from its [] system for 2013-2015. We reviewed these lists and noted no transactions related to U.S. customers."

Under 19 CFR 351.412(c)(2), Commerce must find “substantial differences in selling activities” (emphasis added) between markets before making an adjustment to NV to account for a difference in LOT. Moreover, Commerce’s regulations make clear that the respondent bears the burden of demonstrating its entitlement to such an adjustment:

{i}f a respondent claims an adjustment to decrease normal value, as with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment.

Commerce will require evidence from the foreign producers that the functions performed by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade. Nominal reference to a company as a “wholesaler,” for example, will not be sufficient. On the other hand, Commerce need not find that the two levels involve no common selling activities to determine that there are two levels of trade. Because level of trade adjustments may be susceptible to manipulation, Commerce will closely scrutinize claims for such adjustments. For example, a sales subsidiary created merely to perform the role of a *de facto* sales department is not an appropriate basis for adjustment.²⁴⁴

We analyzed Schaeffler’s claim for a CEP offset in the initial stages of this investigation and requested additional information from it to support the claim.²⁴⁵ However, as discussed above, Schaeffler was unable to provide adequate support for its claim. We disagree with Schaeffler that its Selling Activity Charts and descriptions of the activities contained therein constitute “evidence” that “different selling activities are actually performed at the allegedly different levels of trade,”²⁴⁶ and the supplemental information provided by Schaeffler provided inadequate additional support. Therefore, Schaeffler’s arguments provide no basis to reconsider our preliminary decision.

As noted in the *Preliminary Determination*, when Schaeffler’s selling activities are viewed as a whole, we find that the differences between the activities performed to make sales within each market do not rise to the level of a “substantial difference in selling activities,” or that Schaeffler’s U.S. and home market sales were at different stages of marketing (or their equivalent). As noted above, in conducting its LOT analysis, Commerce examines the extent of the activities performed and their significance to the company’s selling operations. After a close examination, we find that certain of the home market selling functions claimed by Schaeffler were not actually performed during the POI, and of those remaining that Schaeffler did perform, only two were performed at a significantly higher level of intensity in the home market than in the U.S. market (*i.e.*, provision of cash discounts and rebates; and 2) provision of warranty services). However, we found that Schaeffler’s description of its cash discounts and warranty

²⁴⁴ See SAA, H.R. Rep. No. 103-316, 870 (1994), at section B.2.c.(4) of the Agreement On Implementation Of Article VI (emphasis added).

²⁴⁵ See Commerce Letter re: Antidumping Duty Investigation on Tapered Roller Bearings from Korea (A-580-894): Supplemental Section A Questionnaire, dated October 2, 2017 at 6-8.

²⁴⁶ See SAA, H.R. Rep. No. 103-316, 870 (1994), at section B.2.c.(4) of the Agreement On Implementation Of Article VI.

program are not significant enough to support the U.S. and home market LOTs are different. With respect to the U.S. market, although Schaeffler claims that the CEP price involves virtually no selling functions, we find that Schaeffler did in fact perform many of the same selling functions related to its CEP sales that it performed in its home market. Therefore, on balance we find that, during the POI, the selling activities performed by Schaeffler related to its home market and CEP sales were more similar than different. Thus, we do not find that Schaeffler's home market was at a more advanced LOT, a precondition for the granting of a CEP offset. Accordingly, we have continued to deny Schaeffler's claim for a CEP offset for purposes of the final determination.

Comment 11: Home Market Rebates

Schaeffler's Arguments

- In the *Preliminary Determination*, we denied Schaeffler's home market rebates because Schaeffler did not demonstrate that their terms and conditions were known to the customer at the time of the sale, as required by 19 CFR 351.401(c).²⁴⁷ Schaeffler disagrees with this finding, arguing that Commerce should accept its home market rebates for the final determination.²⁴⁸
- Schaeffler claims there is no strict legal requirement that Commerce grant only post-sale adjustments known to the customer at the time of sale. According to Schaeffler, Commerce's current regulations only require that Commerce not accept price adjustments "made after the time of sale unless the interested party demonstrates, to the satisfaction of the Secretary, its entitlement to such an adjustment."²⁴⁹
- Schaeffler notes that Commerce originally proposed a rule²⁵⁰ stating that the terms and conditions of the post-sale adjustment must be established and known to the customer at the time of the sale; however, in the final rule, Commerce replaced this language with the requirement that an interested party must merely demonstrate, to the satisfaction of Commerce, its entitlement to such an adjustment based on a non-exhaustive list of criteria.²⁵¹

²⁴⁷ See *Preliminary Determination* PDM at 32 (citing *Final Modification*, 81 FR at 15641, 15645).

²⁴⁸ See Schaeffler Case Brief at 27-31.

²⁴⁹ *Id.* at 28 (citing 19 CFR 351.401(c)).

²⁵⁰ *Id.* at 28 (citing *Final Modification*, 81 FR at 15641, 15645).

²⁵¹ Schaeffler notes that the final rule has the following guidelines: (1) how common such post-sale price adjustments are for the industry; (2) the timing of the adjustment; (3) the number of such adjustments in the proceeding; (4) whether the reported changes reflect both increases and decreases to the originally negotiated prices in the relevant markets; (5) whether there is commercial documentation maintained in the ordinary course of business demonstrating that the price changes were negotiated by the parties and resulted in a change in the purchaser's net outlay and a change in the producer's net revenues; and (6) any other factors tending to reflect on the legitimacy of the claimed adjustment. *Id.* at 29 (citing *Final Modification*, 81 FR at 15641, 15645).

- Schaeffler argues that in *Prosperity*,²⁵² the CIT held that post-sale adjustments must be allowed if a company provides evidence of payment to its customer, consistent with the definition of price adjustment in 19 CFR 351.102(b)(38) (*i.e.*, “a change in the price charged for subject merchandise or foreign like product...that is made after the time of sale (*see* § 351.401(c)), that is reflected in the purchaser’s net outlay.” Therefore, Schaeffler states that Commerce should accept these rebates because it verified that Schaeffler paid them.²⁵³
- Finally, Schaeffler maintains that it demonstrated at verification that the customers were aware of the terms of the home market rebate program at the time of sale.²⁵⁴

Petitioner’s Arguments

- The petitioner did not comment on this issue.

Commerce’s Position

Commerce’s regulations, at 19 CFR 351.401(c), direct it to “use a price that is net of any price adjustment, as defined in section 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product...” Under 19 CFR 351.102(b), the term “price adjustments” is defined to include rebates. Commerce interprets these regulations as requiring it to deduct rebates from the starting price, where those rebates are known to the customer prior to the sale and are customer-specific.²⁵⁵

In this case, Schaeffler stated that, in its home market, it did not have a “central or general rebate program for all customers or any class or category of customers in effect during the POR {sic}.” However, Schaeffler stated that it provided rebates to certain customers as part of a rewards program.²⁵⁶ On January 18, 2018, Schaeffler responded to supplemental questions raised by

²⁵² *Id.* at 29 (citing *Prosperity Tieh Enter. Co. v. United States*, 284 F. Supp. 3d 1364 (CIT 2018) (*Prosperity*)).

²⁵³ *Id.* at 30 (citing Schaeffler Sales Verification Report at 30 and verification exhibit 39; and Schaeffler’s January 18, 2018, Second Supplemental Section B Questionnaire Response (Schaeffler January 18, 2018 SBQR) at 6-11 and Exhibits SB2-7 – SB2-11).

²⁵⁴ *Id.* at 29-30 (citing Schaeffler January 18, 2018 SBQR at 7-8; and Schaeffler Sales Verification Report at 30-31).

²⁵⁵ *See CORE from Taiwan* IDM at Comment 2.

²⁵⁶ *See* Schaeffler October 2, 2017 BCQR at B-31 and B-32. We also note that these “reward” programs may not be traditional rebate programs contemplated by the law, pursuant to 19 CFR 351.102(b)(38), which defines a price adjustment as “a change in the price charged for subject merchandise or the foreign like product, (emphasis added) such as a discount, rebate, or other adjustment, including, under certain circumstances, a change that is made after the time of sale (*see* § 351.401(c)), that is reflected in the purchaser’s net outlay.” Schaeffler’s prize awards are not tied directly to the sales of subject merchandise or foreign like product or are an adjustment to the price itself, in the same way as volume rebates and price discount programs. Instead, Schaeffler states that these are “rewards” or “prizes” based on categories such as “profit,” “team recommendation,” and “improved sales,” which may change from year-to-year and do not reflect an adjustment made to a specific product. *See* Schaeffler Sales Verification Report at 30-31. We also note that this program is only for certain customers and no distinction is made between non-subject and subject merchandise when determining the prizes to award. *See* Schaeffler January 18, 2018, SBQR at 6-11.

Commerce concerning the rebates offered to its customers.²⁵⁷ In the supplemental response, Schaeffler provided the sales policy concerning its reported rebates, and it further discussed this sales policy with Commerce officials at verification.²⁵⁸ This policy shows that Schaeffler established the rebate program prior to the POI, before the petition was filed. However, Schaeffler provided no evidence to show that its customers knew the terms and conditions of the rebate at the time that the home market sale was made.²⁵⁹ In addition, we examined information regarding this policy at verification and further confirmed that the terms and conditions were unknown by the customers. At verification, Schaeffler stated:

Company officials stated that Schaeffler maintains long-standing rebate programs for its distributor customers. Company officials stated that Schaeffler offers these rebate “rewards” to its distributors based on annual sales totals and it grants rebates in the following categories: “Total Sales (and a Consolation),” “Sales Growth,” “Profit,” “Team Recommendation,” “Improved Sales,” and “Sales Achievement.”

Company officials stated that these rebate rewards are given out at Schaeffler’s New Year’s meeting with its distributors, which occurs in late January or early February of the following year. Company officials stated that Schaeffler gives its distributors certificates that show the amount of rebate that they have “won” for their previous year’s sales at this meeting and then pays the reward amount via a wire transfer to the distributors.

Company officials stated that Schaeffler’s distributor customers are aware of the terms of Schaeffler’s rebate programs in advance because these programs have been in existence for over 20 years and Schaeffler discusses these terms with new distributor customers. Company officials stated that, while not all the terms of these rebate programs are provided in writing, Schaeffler explicitly provides general sales targets and price incentives via correspondence with its customers. Company officials stated that, given Korea’s strict anti-trust laws (that prohibit price discrimination between customers), Schaeffler does not issue written contracts for these rebate programs.²⁶⁰

As noted above, Schaeffler was unable to provide any written evidence that demonstrates that the customers knew the specific terms and conditions of the rebate program prior to

²⁵⁷ See Schaeffler January 18, 2018 SBQR at 6-11.

²⁵⁸ See Schaeffler Sales Verification Report at 30-31.

²⁵⁹ See Schaeffler January 18, 2018 SBQR at 6-11. Schaeffler states that “[t]o clarify, there were no formal written agreements with customers regarding Schaeffler’s rebate programs.” Schaeffler also states, “... there are no written agreements/contracts for the rebates reported in the home market sales listing.” *Id.* at 7, where Schaeffler states, “[t]his program was already in effect prior to the POI. Schaeffler does not communicate the specific terms of its rebate (prizes) program to home market customers. *Id.* Schaeffler states that “[a]t the time of the sale, Schaeffler’s home market [] customers are aware they are eligible for Schaeffler’s rebate program. However, they are not aware of their specific score or ranking prior to the annual [] Meeting...An internal evaluation sheet is used to score [], but this is for internal approval purposes only and is not shared with the []. Therefore, no chart is necessary.”

²⁶⁰ See Schaeffler Sales Verification Report at 30-31.

receiving the reward (*i.e.*, the categories on which these awards were based such as sales growth, profit, etc.). As a result, we have continued to disallow Schaeffler's rebates for the final determination, in accordance with our practice.

Commerce's rebate practice is discussed in the *Final Modification*, which states that, since enacting the 1997 regulations:

the Department has consistently applied its practice of not granting price adjustments where the terms and conditions were not established and known to the customer at the time of sale (sometimes referred to as determining the "legitimacy" of a price adjustment) because of the potential for manipulation of the dumping margins through so-called "after-the-fact", or post-sale, adjustments.

The *Final Modification* clarified Commerce's pre-existing practice concerning price adjustments, such as rebates. In the *Final Modification*, we state that, in determining whether a party has demonstrated its entitlement to a rebate adjustment, Commerce may consider a number of factors including, among other things, whether the terms and conditions of the adjustment were established and/or known to the customer at the time of sale, and whether this can be demonstrated through documentation.

We disagree with Schaeffler that, in the *Final Modification*, there is no strict legal requirement that Commerce grant only post-sale adjustments known to the customer at the time of sale and that the only requirement is that Commerce does not accept "a price adjustment made after the time of sale unless the interested party demonstrates, to the satisfaction of the Secretary, its entitlement to such an adjustment." The *Final Modification* states the following:

in determining whether a party has demonstrated its entitlement to such an adjustment, the Department may consider: (1) whether the terms and conditions of the adjustment were established and/or known to the customer at the time of the sale, and whether this can be demonstrated through documentation (emphasis added).

Thus, this is one of several factors that Commerce considers in making a determination regarding whether "the interested party demonstrates, to the satisfaction of the Secretary, its entitlement to such an adjustment." As noted above, Schaeffler failed to demonstrate through documentation in its response or at verification that its customers knew the terms and conditions of the award program. The only documentation sent to customers was proof of payment of the award.²⁶¹ Further, Schaeffler only informs its customers about the amount of the award at their annual meeting, when the award winners are announced.²⁶²

Finally, we disagree with Schaeffler that *Prosperity* applies here. *Prosperity* covers the investigation of *CORE* from India, Italy, China, Korea and Taiwan, with a POI from April 1, 2014 through March 31, 2015. Thus, the period on which this decision was made predates the

²⁶¹ See Schaeffler January 18, 2018 SBQR at 9-10.

²⁶² *Id.* at 7.

establishment of the *Final Modification* on March 24, 2016. Therefore, the regulatory language at issue in *Prosperity* differs from the language at issue here.

Comment 12: Home Market Billing Adjustments

On January 16, 2018, Commerce rejected Schaeffler's December 18, 2017, 2nd supplemental section B response because it contained negative home market billing adjustments. We found that these adjustments constituted new factual information because: 1) Schaeffler failed to report billing adjustments in its original questionnaire response; and 2) we requested that Schaeffler report only positive home market billing adjustments in a supplemental questionnaire.²⁶³

Schaeffler's Arguments

- Schaeffler argues that Commerce should accept the rejected adjustments,²⁶⁴ because the rejection was improper, and there was no basis for accepting positive billing adjustments without accounting for negative billing adjustments.²⁶⁵

Petitioner's Arguments

- The petitioner argues that Commerce appropriately rejected Schaeffler's negative billing adjustments because Schaeffler: 1) failed to submit its billing adjustments by the deadline; 2) did not request an extension, pursuant to 19 CFR 351.301(c)(1)(iii); 3) provided its negative billing adjustments against Commerce's instructions to only provide positive billing adjustments; 4) failed to provide sufficient evidence describing the adjustments; and 5) did not address any of the five factors in the *Final Modification*, considered by the agency.²⁶⁶
- The petitioner notes that the CIT upheld different treatment of positive and negative billing adjustments in *SKF USA*.²⁶⁷

Commerce's Position

We disagree the rejection of Schaeffler's home market negative billing adjustments was improper. In the Schaeffler NFI letter, we stated the following:

On December 18, 2017, the Department of Commerce (Commerce) received a revised database in response to Commerce's November 20, 2017, 2nd Supplemental Section B questionnaire, which you filed on behalf of your client, Schaeffler Korea Corporation (Schaeffler). Because this response contains certain

²⁶³ See Commerce Letter, "Less-than-Fair-Value Investigation on Certain Tapered Roller Bearings from Korea: Rejection of Home Market Sales Database," dated January 16, 2018 (Schaeffler NFI Letter).

²⁶⁴ See Schaeffler Case Brief at 31 (citing Schaeffler NFI Letter)

²⁶⁵ *Id.* at 31.

²⁶⁶ See Petitioner's Rebuttal Brief at 37-39 (citing *Final Modifications* at 15644-15645).

²⁶⁷ *Id.* at 39 (citing *SKF USA Inc. v. United States*, 77 F. Supp. 1335, 1338-1340 (CIT 1999)) reversed and remanded on a different issue, 254 F.3d 1022 (CAFC 2001) (*SKF USA*).

untimely and unsolicited information, we are rejecting this submission pursuant to 19 CFR 351.301(c)(1) and 19 CFR 351.302(d)(1)(ii) and (2).

On August 10, 2017, Commerce issued Schaeffler its initial Section B questionnaire, in which it requested that Schaeffler report any price adjustments made for reasons other than discounts or rebates and to state whether these billing adjustments are reflected in the gross unit price. On September 29, 2017, Schaeffler responded by stating

Schaeffler has identified [] such instances in its records for billing adjustments related to TRBs. However, Schaeffler's computerized records do not link these billing adjustments to the underlying sales transaction. Therefore, each of these [] billing adjustments requires manual review. For this response, Schaeffler has reported [] billing adjustments, but it is continuing to manually investigate the billing adjustments made during the POI on its sales of TRBs.

According to 19 CFR 351.301(c)(1)(iii), an interested party must notify Commerce of difficulties in submitting information in response to a questionnaire issued by the Secretary in writing within 14 days after the date of the questionnaire or, if the questionnaire is due in 14 days or less, within the time specified by the Secretary. Schaeffler did not take such actions. Further, although Schaeffler stated that it was continuing to investigate the issue, it did not request an extension of the October 2, 2017, deadline pursuant to 19 CFR 351.302(c), *i.e.*, it did not request an extension of the deadline to provide this specific information, in a separate, stand-alone document, prior to the deadline.

On November 20, 2017, we requested that Schaeffler report certain billing adjustments that were not included in its October 2, 2017. In response, Schaeffler reported those billing adjustments, as well as additional billing adjustments which were not requested by Commerce in its November 20, 2017, 2nd Supplemental Section B questionnaire. As indicated above, the deadline for providing this additional information (*i.e.*, information pertaining to billing adjustments that decreased home market prices) was October 2, 2017. Given that Schaeffler did not request an extension to provide this additional information in its original response within the specified timeframe, the opportunity to submit this information passed with this deadline. Thus, Schaeffler's database and its response contained untimely and unsolicited filed factual information under 19 CFR 351.301(c)(1) and 19 CFR 351.302(d)(1)(ii) and (2).²⁶⁸

Schaeffler acknowledges that an interested party must “demonstrate, to the satisfaction of Commerce, its entitlement to such an adjustment” (emphasis added).²⁶⁹ We find that Schaeffler did not demonstrate it is entitled to its claim for negative billing adjustments because Schaeffler

²⁶⁸ See Schaeffler NFI letter at 1-2 (footnotes omitted).

²⁶⁹ See *Final Modification* at 15644.

did not provide them upon Commerce’s original request, and did not ask for an extension to submit this information, which was provided after the deadline for new factual information. Thus, we appropriately, rejected these adjustments, in accordance with 19 CFR 351.301(c)(1) and 19 CFR 351.302(d)(1)(ii) and (2).

Finally, we find that the petitioner’s reference to *SKF USA* supports the different treatment of positive and negative billing adjustments. In this determination, the CIT upheld Commerce’s decision to reject the respondents positive billing adjustments because they were not appropriately applied, stating:

Because SKF’s improper reporting made it impossible for Commerce to determine if the claimed adjustment pertained to the subject merchandise, Commerce determined that SKF had not met its burden. The Court finds, therefore, that Commerce properly declined to make the negative adjustments because SKF’s failure to tie specific transactions or products.

The Court, however, finds that Commerce properly accepted the positive billing adjustment. SKF itself indicated that there were positive billing adjustments which increased the dumping margins. Commerce exercised its discretion to grant the adjustment as reported. Prohibiting Commerce from granting the positive adjustment in this case, especially when the adjustment was reported by respondent, would limit Commerce’s ability to obtain the information it requires in the appropriate form. As Commerce stated in the *Final Results*, if Commerce disregarded positive billing adjustments, “respondents would have no incentive to report these adjustments on a transaction-specific basis, as requested.”

The Court, therefore, finds Commerce’s application of the billing adjustments to be a proper exercise of its authority to grant or deny adjustments. Because Commerce’s decision to grant the positive adjustment and to deny the negative adjustment was in accordance with law, Commerce’s determination is affirmed.

Here, as in *SKF USA*, if Commerce disregarded billing adjustments that increased their margin, “respondents would have no incentive to report these adjustments.” Schaeffler’s failure to report its billing adjustments that decreased its margin within the deadline does not suggest that Commerce should similarly disregard billing adjustments that increase normal value.

Comment 13: U.S. Movement Expenses in Korea

Petitioner’s Arguments

- The petitioner contends that, at the Schaeffler sales verification in Korea, Commerce found Schaeffler was unable to support its reported expenses for foreign inland freight and U.S. brokerage expenses for consignment customers. The petitioner asserts that each of the failed elements consisted of information that a company like Schaeffler would

have maintained and should have been able to report in an accurate manner, it is clear that Schaeffler failed to act to the best of its ability in reporting these expenses.²⁷⁰

- Therefore, the petitioner argues that Commerce should base the amount of these expenses on AFA for the final determination. As AFA, the petitioner contends that Commerce should use the highest reported amount for any transaction.²⁷¹

Schaeffler's Arguments

- Schaeffler disagrees that Commerce should base its foreign inland freight and U.S. brokerage expenses on consignment sales on AFA. According to Schaeffler: 1) there is nothing on the record to demonstrate that Schaeffler failed to cooperate, given that it complied with every request made by Commerce.²⁷²
- Schaeffler argues that, instead, Commerce should base the amount of these two expenses on facts available (FA). As FA, Schaeffler argues that Commerce should use the reported rates for Iljin Group.

Commerce's Position

At verification, Schaeffler was unable to support its calculation of two U.S. movement expenses incurred by Schaeffler in Korea, foreign inland freight and brokerage and handling expenses incurred on shipments to its U.S. consignment customer. Specifically, at verification, we noted that: 1) the source documentation provided by Schaeffler to support its reported foreign inland freight expenses contained customer- and market-specific shipment information (although Schaeffler had not reported these expenses on a customer- or market-specific basis); 2) the expenses varied widely on a per-unit basis (although Schaeffler reported a single, average figure); and 3) Schaeffler was unable to tie the reported information to its accounting system in the aggregate.²⁷³ Further, for brokerage expenses to Schaeffler's U.S. consignment customer, we noted that: 1) we could not tie the expenses listed on any of the brokerage invoices examined at verification (either in amount or by description) to Schaeffler's source documentation; and 2) Schaeffler failed to include merchandise processing fees on the brokerage invoice in its calculation.²⁷⁴

Based on the extent of these errors, we disagree that Schaeffler cooperated to the best of its ability in this investigation, and, therefore, we find it appropriate to base these expenses on facts available with an adverse inference for the purposes of this final determination. As AFA for each expense,²⁷⁵ we have used the highest per kilogram amount on the record of this

²⁷⁰ See Petitioner's Case Brief at 38 and 40.

²⁷¹ *Id.* at 40.

²⁷² See Schaeffler Case Brief at 12.

²⁷³ See Schaeffler Sales Verification Report at 2 and 18-19.

²⁷⁴ *Id.* at 2 and 21-22.

²⁷⁵ We disagree with Schaeffler that it is possible to consider Iljin Group's reported information because this information is not publicly available.

investigation for foreign inland freight and the highest brokerage expense reported in the sales listing for consignment sales.²⁷⁶

In *Nippon Steel*, the CAFC noted that, while the statute does not provide an express definition of the “failure to act to the best of its ability” standard, the ordinary meaning of “best” is “one’s maximum effort.” Thus, according to the CAFC, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency’s inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the “best of its ability” standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping. The “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, “have familiarity with all of the records it maintains,” and “conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of” its ability to do so.

In this case, we find that the Schaeffler provided information for foreign inland freight and certain U.S. brokerage expenses that could not be verified, and, thus, facts available is appropriate under section 776(a)(2)(D) of the Act. Further, we find that Schaeffler failed to cooperate to the best of its ability in this investigation because it failed to maintain adequate records to support its reporting methodologies, and, thus, an adverse inference is warranted under section 776(b) of the Act. As noted above, the CAFC has held that the use of AFA in similar circumstances is appropriate.

Comment 14: U.S. Movement Expenses in the United States

At verification, Commerce found that Schaeffler USA was unable to support a number of its movement expenses, including international freight, inland freight from the port to the warehouse, harbor maintenance fees, and that its calculation of certain other movement expenses contained errors. Given the extent of the observed problems, we questioned whether some, or all, of Schaeffler’s reported movement expenses were reliable.²⁷⁷

Schaeffler’s Arguments

- Schaeffler does not dispute that it could not support its international freight expenses at verification, nor that it was unable to demonstrate that it where it had reported harbor maintenance fees. However, it argues that these are merely two items and have no implication on the rest of Schaeffler’s reported movement expense fields, which

²⁷⁶ Because the invoices containing Schaeffler’s brokerage expenses do not clearly identify which expenses are brokerage and which expenses have been reported elsewhere (*e.g.*, as international freight), we have not relied on these invoices as a source for AFA for brokerage expenses. For the expenses selected, *see* Schaeffler Final Sales Calculation Memo.

²⁷⁷ *See* Schaeffler USA Verification Report at 2. On May 18, 2018, we supplemented the verification report with respect to these findings and permitted parties to comment. *See* Memorandum, “Memorandum Supplementing the Verification Report for Schaeffler Group U.S.A. Inc. in the Antidumping Duty Investigation of Tapered Roller Bearings from Korea,” dated May 22, 2018 (Schaeffler USA Verification Report Supplement).

Commerce did not verify.²⁷⁸ Schaeffler argues that, when Commerce does not verify particular reported information, and there is no record evidence suggesting that the reported information itself is unreliable, Commerce must accept the reported information on its face.²⁷⁹

- Schaeffler disagrees that it failed at verification to provide any requested information related to inland freight to warehouse, claiming that it was prepared to present the information and was available to discuss the adjustment. Instead, Schaeffler claims that Commerce did not verify the information because it “ran out of time” because it only scheduled three days for verification.²⁸⁰ In particular, Schaeffler disputes Commerce’s statement that it requested information on multiple occasions, or the Commerce informed Schaeffler that Commerce considered inland freight unverified; Schaeffler concedes, however, that recollections may honestly differ.²⁸¹ Thus, Schaeffler argues that Commerce should accept its inland freight expenses as reported.
- With respect to international freight, Schaeffler disagrees that Commerce should base international freight expenses on AFA, because: 1) there is nothing on the record to demonstrate that Schaeffler failed to cooperate; and 2) Schaeffler complied with every request made by Commerce. Thus, Schaeffler argues that the use of the air freight rate suggested by the petitioner (*see* below) would be unduly punitive because Schaeffler shipped most of its TRBs to the United States by sea. Schaeffler suggests that, instead, Commerce use the international freight factor reported by Iljin Group, because this factor contains an amalgamation of sea freight and air freight.²⁸²
- Schaeffler similarly disagrees that AFA is warranted with respect to its U.S. brokerage and handling expenses. Schaeffler asserts that it informed Commerce in its questionnaire responses that it reported harbor maintenance taxes and merchandise processing fees in the field USBROKU, a field which Commerce did not verify.²⁸³

²⁷⁸ See Schaeffler Case Brief at 21.

²⁷⁹ *Id.* at 21 (citing *e.g.*, *Micron Tech., Inc. v. United States*, 44 F. Supp. 2d 216, 221 n. 4 (CIT 1999) (*Micron Tech., Inc. v. United States*); *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (*OCTG Turkey*), and accompanying IDM at Comment 9; *China Kingdom Import and Export Company vs. United States*, 507 F. Supp 2d 1337, 1349 n. 7 (CIT 2007); *Since Hardware (Guangzhou) Co. v. United States*, 2013 CIT Trade Lexis 78, 27-30 (May 31, 2013); and *JTEKT Corp. V. United States*, 675 F. Supp. 2d 1206, 1253 (CIT 2009)).

²⁸⁰ *Id.* at 31. See also Schaeffler Rebuttal Brief at 14 (citing *OCTG Turkey*, “[f]or topics in this investigation that Commerce did not verify, we accepted the accuracy of the information that GOT submitted on its face”); and *Micron Tech vs. United States*, 44 F. Supp. 2d 216, 221 n.4, “[m]oreover, it is well established that Commerce has the discretion not to verify each piece of evidence made part of the record”).

²⁸¹ See Schaeffler’s Letter, “Resubmitted Comments in Response to the Department’s May 22, 2018, Memorandum in the Antidumping Duty Investigation of Tapered Roller Bearings from the Republic of Korea (POI: 4/1/16-3/31/17), dated May 31, 2018 (Schaeffler Brief Supplement).

²⁸² See Schaeffler Rebuttal Brief at 12-13. According to Schaeffler, its verification failure was attributable to the extended medical leave of a key Schaeffler USA employee. *Id.*

²⁸³ *Id.* at 13-14 (citing Schaeffler October 2, 2017 BCQR at C-35).

Petitioner's Arguments

- The petitioner notes that, at the verification of Schaeffler USA, Schaeffler was unable to support reported international freight expenses, nor was it able to provide supporting documentation for its reported U.S. freight from the port to the warehouse. As a result, the petitioner argues that Commerce should base these expenses on AFA for the final determination.²⁸⁴
- As AFA for international freight, the petitioner requests that Commerce use the highest air freight rate on the record of the investigation for all reported CEP transactions. The petitioner contends that this rate is appropriate because of the extent of the errors and the large proportion of TRBs shipped by air.²⁸⁵ As AFA for inland freight to the warehouse, the petitioner requests that Commerce use the highest per-unit amount reported for any transaction.²⁸⁶
- The petitioner agrees that Commerce determines at its discretion what to verify, and that, if Commerce does not select particular facts for verification does not call into question their reliability. The petitioner notes, however, that this is not the situation in this case, given that Commerce did attempt to verify Schaeffler's reported movement expenses and found that either the company could not supply the requested information or that the information examined at verification did not support the data in the response. Thus, the petitioner argues that Commerce should reject Schaeffler's argument that it should ignore its own verification findings.²⁸⁷

Commerce's Position

At the CEP sales verification, Schaeffler was unable to support its calculation of various U.S. movement expenses incurred by Schaeffler USA. After considering the arguments by the parties with respect to these expenses, we agree with Schaeffler that it would be inappropriate to disregard Schaeffler USA's reported movement expenses in their entirety. Therefore, for the final determination, we have disregarded Schaeffler USA's reported data only where Schaeffler USA either did not provide information requested at verification or where it could not support the reported expenses. These expenses are international freight, U.S. inland freight to the warehouse, and U.S. brokerage and handling expenses.

Specifically, our verification report states the following with respect to these expenses:

- The amounts Schaeffler USA provided for international freight at verification: 1) differed significantly from the amounts reported in Schaeffler USA's sales listing; 2) contained embedded currency conversions; and 3) could not be tied to Schaeffler

²⁸⁴ See Petitioner's Case Brief at 38-40. See also Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea—Petitioner's Comment on Commerce's Memorandum Supplementing its Verification Report," dated May 24, 2018.

²⁸⁵ *Id.* at 39.

²⁸⁶ *Id.* at 39. However, the petitioner did not identify where in the record it obtained this rate.

²⁸⁷ See Petitioner's Rebuttal Brief at 31-32.

USA's accounting system in total (*see* the "International Freight (INTNFRU)" section of this report, below);

- Schaeffler USA was unable to provide any documentation supporting its calculation of U.S. inland freight from the port to the warehouse (*see* the "U.S. Inland Freight from Port to Warehouse (INLFPWU)" section of this report, below); and
- Schaeffler USA was unable to demonstrate where it had reported harbor maintenance and merchandising processing fees in its response (*see* the "U.S. Customs Duty (USDUTYU)" section of this report, below).²⁸⁸

Schaeffler does not dispute that it could not support its international freight expenses at verification. Instead, it argues that it did not fail to act to the best of its ability, and, thus, an adverse inference is not appropriate. We disagree. In *Nippon Steel*, the CAFC noted that, while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort." Thus, according to the CAFC, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping. The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.

In this case, Schaeffler USA was unable to support its calculation methodology or tie the reported information to its accounting system. Specifically, our verification report states:

We discussed with company officials the methodology used to calculate the international freight expenses shown on the worksheet. . . We asked company officials to demonstrate how the figures on the worksheet tie to Schaeffler USA's accounting system. In response, company officials provided a spreadsheet from the company's freight forwarder, which company officials stated contained all of the international freight expenses recorded in Schaeffler USA's SAP system. These officials stated that the figures on the spreadsheet also served as the basis for the information in the calculation worksheet.

However, when we attempted to tie the total expenses and weights on the freight forwarder's spreadsheet to Schaeffler USA's calculation worksheet, we found that the amounts differed significantly. . . Company officials were unable to explain or reconcile these differences.

²⁸⁸ *See* Schaeffler USA Verification Report at 2. We note that harbor maintenance fees are a type of U.S. customs duties and are typically reported in the USDUTYU field. However, in this case, Schaeffler claims that it reported these fees in U.S. brokerage and handling expenses.

We selected three of the transactions shown on the spreadsheet and tied them to the corresponding freight invoices and payment documentation. We noted that Schaeffler USA had included expenses which appear to be unrelated to international freight (*e.g.*, “customs entry fees,” “chassis rental fee destination,” “storage charge destination,” in its calculations. Company officials were unable to describe these charges or explain why they were included.

Finally, we requested that company officials tie the revised numbers on the spreadsheet to Schaeffler USA’s accounting system. However, company officials stated that it was not possible. Therefore, we were unable to confirm the completeness of the spreadsheet at verification.²⁸⁹

We disagree with Schaeffler that, given the extent of the errors described above, that Commerce should find that it acted to the best of its ability when reporting its international freight expenses. We acknowledge that one of Schaeffler USA’s key employees was unable to attend the verification;²⁹⁰ however, Schaeffler informed us of this employee’s limited availability well in advance of the verification, and we rescheduled the dates to permit Schaeffler USA to prepare its documentation without him. The absence of this employee does not excuse Schaeffler USA from “hav{ing} familiarity with all of the records it maintains,” and “conduct{ing} prompt, careful, and comprehensive investigations of all relevant records.”²⁹¹

We also disagree that Schaeffler acted to the best of its ability with respect to its reported inland freight expenses from the port to the warehouse. Our verification outline notified Schaeffler USA to be prepared to support this expense, and we requested multiple times that Schaeffler USA provide source documentation during verification. However, Schaeffler USA was unprepared for these requests and provided no source documentation. Specifically, the Schaeffler USA Verification Report Supplement states:

On February 20, 2018, the Commerce verifiers informed Schaeffler USA that company officials should be prepared to present information on Schaeffler USA’s freight expenses on the following day, along with any other topics in the verification agenda which had not yet been covered. On February 21, 2018, the verifiers made multiple requests that company officials provide documentation supporting the reported inland freight expenses, as required by the verification agenda issued to Schaeffler USA. The first request was made mid-afternoon, and the last request was made at approximately 7 p.m.

Further, at the time that Commerce made its last request for the information, the verifiers informed the company that: 1) it was important to provide the information, given that Schaeffler USA had been unable to support its reported international freight expenses; and 2) the verifiers were willing to stay “as long as

²⁸⁹ *Id.* at 2 (footnotes omitted, including a footnote describing additional errors).

²⁹⁰ See Schaeffler’s Letter, “Schaeffler’s Objection to Proposed CEP Verification Dates,” dated January 10, 2018, and Schaeffler USA Verification Report at 1 (documenting verification dates of February 19-21, 2018).

²⁹¹ See *Nippon Steel*, 337 F.3d at 1382.

it took” to review the freight information, if Schaeffler USA provided it. However, Schaeffler USA elected not to provide the information, with Schaeffler's counsel stating that Commerce “had verified enough already.”²⁹²

Schaeffler claims that it has no memory of the above events. However, it acknowledges in its submission on the topic that “recollections of the parties present. . . may honestly differ.” In this case, the verification report clearly sets forth the events that occurred, and it provides documentary evidence of a type normally relied upon by Commerce as the basis of its determinations. In contrast, Schaeffler’s statements in its case brief and subsequent submission are uncertified assertions related to events which Schaeffler admits that it may not clearly recall. In light of the information on the record, we find that Schaeffler also failed to act to the best of its ability with respect to U.S. inland freight to the warehouse.²⁹³

Finally, we disagree with Schaeffler that there is no basis to apply AFA to its U.S. brokerage and handling expenses on CEP sales. At verification, we requested that Schaeffler USA demonstrate where it had reported certain brokerage-related expenses. Specifically, our report states:

Finally, we requested that Schaeffler USA demonstrate where it had reported U.S. merchandise processing and harbor maintenance fees. Company officials could provide no documentation related to these fees; however, they stated that Schaeffler USA’s customs broker charged Schaeffler for all duty-related expenses and, thus, they presumed that they were included as part of brokerage and handling.²⁹⁴

Because Schaeffler USA was unable to provide any information in response to our request, we find that Schaeffler USA’s U.S. brokerage and handling expenses could not be verified. Further, because the necessary records were within Schaeffler USA’s possession and Schaeffler USA did not “conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate” to the requested expenses,²⁹⁵ we also find that Schaeffler failed to act to the best of its ability with respect to this expense as well.²⁹⁶

In summary, we find that the Schaeffler provided information for certain expenses that could not be verified, and, thus, facts available is appropriate under section 776(a)(2)(D) of the Act. Further, we find that Schaeffler failed to cooperate to the best of its ability in this investigation

²⁹² See Schaeffler USA Verification Report Supplement at 2.

²⁹³ We disagree with Schaeffler USA that the length of the verification played a role in its failure to provide information at verification. Commerce typically schedules only three days for CEP verifications (*see, e.g.*, Iljin USA Verification Report), and, in this case, we did not attempt to verify every expense (*e.g.*, U.S. inventory carrying costs, inland insurance expenses, billing adjustments, etc.) listed in the verification agenda. Thus, Schaeffler’s failure to provide the requested information cannot be explained by timing.

²⁹⁴ See Schaeffler USA Verification Report at 13.

²⁹⁵ See *Nippon Steel*, 337 F.3d at 1382.

²⁹⁶ Further, we disagree with Schaeffler that it clearly reported these fees as part of brokerage and handling. When examining similar brokerage expense incurred on CEP sales made by Schaeffler in Korea, we found that Schaeffler failed to include certain merchandise processing fees in its brokerage calculations. See Schaeffler Sales Verification Report at 2.

because it failed to maintain adequate records to support its freight expense methodologies and/or to provide information which could be verified, and, thus, an adverse inference is appropriate under section 776(b) of the Act. As noted above, the CAFC has held that the use of AFA in similar circumstances is appropriate.

Therefore, because Schaeffler failed to act to the best of its ability, we find it appropriate to base these movement expenses on facts available with an adverse inference for the purposes of this final determination. As AFA, for international freight, inland freight to the warehouse, and U.S. brokerage and handling expenses, we have used a combination of the highest per kilogram expenses on the record of this investigation for sea freight and for air freight; we calculated an average of this rate, weighted by the proportion of each mode of transportation, using documents accepted at the CEP verification.²⁹⁷ Specifically, we relied on Schaeffler USA's international freight bills, which appear to contain not only international freight expenses, but also freight to the warehouse and brokerage and handling expenses.²⁹⁸

We disagree with the petitioner that it is appropriate to base the AFA rate for international freight solely on air freight expenses. Documentation on the record shows that Schaeffler shipped TRBs to the United States by both air and sea, and the rates that Schaeffler USA paid for these shipments varied significantly. Because Schaeffler's air freight accounts for less than half of its total shipments, we find applying an AFA rate for air freight for all sales unreasonable.²⁹⁹

Comment 15: U.S. Warehousing Expenses

Schaeffler's Arguments

- Schaeffler notes that Commerce questioned at verification whether certain of Schaeffler USA's warehousing and movement services provided by an affiliated party named "Co-Linx" were at arm's length. Schaeffler argues that Commerce should accept the movement expenses as reported for the final determination because: 1) Co-Linx merely passed through the cost of any services arranged by it but provided by other, unaffiliated service providers; and 2) as a result, Co-Linx's charges were at arms-length.³⁰⁰
- With respect to warehousing, Schaeffler asserts that Co-Linx charges Schaeffler the same amount that it charges its other equity owners, and, thus, the prices must be at arm's length.³⁰¹

²⁹⁷ We disagree with Schaeffler that it is possible to consider Iljin Group's reported information because this information is not publicly available.

²⁹⁸ For the expenses selected, *see* Schaeffler Final Sales Calculation Memo. Because Schaeffler was unable to describe these charges at verification, we treated all expenses on these invoices as international freight, brokerage and handling expenses, and freight to the U.S. warehouse, as AFA.

²⁹⁹ *See* Schaeffler Rebuttal Brief at 13; *see also* Schaeffler USA Sales Verification Report at 15-16, showing the weight of the TRBs shipped by ocean versus air.

³⁰⁰ *See* Schaeffler Case Brief at 32-33.

³⁰¹ *Id.* at 32.

Petitioner's Arguments

- The petitioner agrees that Commerce was right to question whether Co-Linx's charges to Schaeffler were at arm's length.³⁰² Further, the petitioner asserts that, because certain of the expenses for services through Co-Linx could not be verified, Commerce should base these expenses on AFA.

Commerce's Position

At the CEP sales verification, we discussed Schaeffler USA's affiliation with other companies involved in this investigation. Our report states:

Company officials stated that Schaeffler USA is not affiliated with any of its customers, and was affiliated with only one of its suppliers during the POI. With respect to this latter company, company officials stated that Schaeffler USA owns 20 percent of a company named Co-Linx, LLC (Co-Linx), which provided warehousing and movement services to Schaeffler USA during the POI.

Company officials stated that Co-Linx charges its equity owners, to whom it provides the services, Co-Linx's actual charges, instead of a fee which includes a mark-up. In order to demonstrate this, company officials provided Co-Linx's 2016 financial statements. These financial statements contain a note stating that "services for the benefit of the Company's Equity Members are invoiced to the Equity Members at amounts equal to actual costs incurred by the Company (exclusive of depreciation expense) ..." According to the financial statements, in 2016, Co-Linx incurred a total loss of [], which is [...] percent of its total revenue for that year.³⁰³

During the course of this discussion, Schaeffler USA officials stated that Co-Linx has only one non-equity customer, and it charges it fees in the amount of costs plus plus a percent increase.³⁰⁴

Where costs for movement expenses are based on affiliated party transactions, it is Commerce's practice, pursuant to section 773(f)(2), to test whether they represent arm's lengths transactions by comparing the affiliated party transactions to transactions of unaffiliated parties,³⁰⁵ or the actual costs incurred by the affiliated party (in the absence of unaffiliated party transactions).³⁰⁶

³⁰² See Petitioner's Rebuttal Brief at 33 (citing Schaeffler USA Verification Report at 2).

³⁰³ See Schaeffler Sales Verification Report at 4-5 (footnote omitted).

³⁰⁴ *Id.* (footnote 4).

³⁰⁵ See e.g., *Certain Cut-to-Length Carbon Steel Plate from Finland; Final Results of Antidumping Duty Administrative Review*, 69 FR 2952 (January 20, 1998) at Comment 5; and *Final Determination of Sales at Not Less than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Taiwan*, 70 FR 13454 (March 21, 2005), and accompanying IDM at Comment 4.

³⁰⁶ See e.g., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 65082 (November 7, 2006) and accompanying IDM at Comment 8; and see *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (August 11, 2009) at Comment 10 (stating "if no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated. See section 773(f)(2) of the Act").

In this circumstance, we find that Schaeffler did not pay arm's length prices Co-Linx charged affiliated parties less than it charged unaffiliated parties for the same services. Therefore, we have adjusted the warehousing expenses to correspond to expenses associated with transactions with unaffiliated parties. Because we are not relying on Schaeffler USA's inland freight expenses to the warehouse for purposes of this final determination (*see* Comment 14, above), any adjustment to these expenses is moot.

We disagree with Schaeffler that it is appropriate to compare the amount that Schaeffler USA pays to Co-Linx to Co-Linx's charges to other affiliated parties when performing the arms-length test. It is irrelevant that Schaeffler USA has no affiliation with the other equity owners of Co-Linx; the purpose of this test is to determine whether the prices charged by Co-Linx are affected by affiliation. In this case, it is clear that they are, given that Co-Linx charges unaffiliated parties higher prices.

Finally, we disagree with the petitioner that it is appropriate to base Schaeffler USA's warehousing expenses on AFA. Because we found no additional errors in these expenses at verification, we have no basis to reject them in the final determination.

Comment 16: Calculation of U.S. Duties

Schaeffler based its reported U.S. customs duties on the rates stated in the Korea-U.S. Free Trade Agreement; these rates changed during the POI. At verification, we noted that Schaeffler determined the applicable rate using the U.S. invoice date, and we also noted that Schaeffler held TRBs in inventory in the United States before selling them to unaffiliated customers. Thus, we questioned whether it would be appropriate to recalculate U.S. duty expenses to account for the inventory holding period.³⁰⁷

Petitioner's Arguments

- The petitioner argues Commerce should revise Schaeffler's reported U.S. customs duties to account for the U.S. inventory carrying period.³⁰⁸

Schaeffler's Arguments

- Schaeffler does not dispute that it is reasonable to compute the duties as of the date of entry, rather than as of the date of invoice, for Schaeffler USA's CEP sales.³⁰⁹ However, Schaeffler argues that, should Commerce treat its consignment sales as CEP sales, it should use Schaeffler's inventory carrying period, instead of Schaeffler USA's, because Schaeffler made those sales.³¹⁰

³⁰⁷ See Schaeffler USA Verification Report at 2 and 16; and Schaeffler Sales Verification Report at 2 and 23.

³⁰⁸ See Petitioner's Case Brief at 37-38.

³⁰⁹ In Schaeffler's case brief, Schaeffler argued that Commerce should continue to base its U.S. duties on the invoice date for its CEP and consignment sales. See Schaeffler Case brief at 33-34. However, Schaeffler revised its argument in its rebuttal brief.

³¹⁰ See Schaeffler Rebuttal brief at 15 (citing Schaeffler October 2, 2017 BCQR at Exhibit B-16).

Commerce's Position

At verification, we found that Schaeffler held TRBs in inventory after the merchandise entered the United States.³¹¹ Thus, we agree that it is appropriate to recalculate Schaeffler's U.S. duty expenses to apply the rate which would have been in effect on the date that the TRBs entered the United States, rather than the date that Schaeffler or Schaeffler USA issued the invoice.

We disagree with Schaeffler that its U.S. consignment sales are EP sales (*see* Comment 16) or that we should use the weighted-average number of days Schaeffler holds goods in inventory in Korea. Schaeffler reported an inventory carrying period for its consignment sales in the United States, and this period differs from the length of time that Schaeffler holds inventory in Korea. We find that it is more accurate to use the consignment sale-specific period in our recalculations, and, therefore, we have done so for purposes of the final determination.

Comment 17: U.S. Billing Adjustments

Schaeffler reported that, during the POI, it entered into post-sale price negotiations with its U.S. consignment customer, and it retroactively applied the new prices to sales made in prior months; Schaeffler reported the price changes as billing adjustments in the U.S. sales listing. In the *Preliminary Determination*, Commerce made no adjustment for these post-sale price adjustments because Schaeffler did not demonstrate that their terms and conditions were known to the customer at the time of the sale, as required by 19 CFR 351.401(c).³¹²

Schaeffler's Arguments

- Schaeffler argues that Commerce should accept post-sale billing adjustments for its U.S. consignment sales because: 1) there is no legal requirement to only grant post-sale adjustments that the customer knew at the time of sale; and 2) Schaeffler demonstrated in its questionnaire responses and at verification that it met all criteria to accept these adjustments. Schaeffler asserts that it demonstrated that the adjustments were legitimate, common for the industry, the result of long negotiations that occurred prior to the filing of the Petition, and reflected in the consignment customer's net price outlay.³¹³

Petitioner's Arguments

- The petitioner states that Commerce should continue to deny Schaeffler's billing adjustments for its U.S. consignment sales. The petitioner questions the legitimacy of the adjustments based on the following: 1) Schaeffler did not provide these adjustments until its December 29, 2018, submission; 2) all, but one adjustment, increases the U.S. price; and 3) the adjustments substantially reduce Schaeffler's margin.³¹⁴

³¹¹ See Schaeffler USA Verification Report at 2 and 16; and Schaeffler Sales Verification Report at 2 and 23.

³¹² See *Preliminary Determination* PDM at 23 (citing *Final Modification*, 81 FR at 15641, 15645).

³¹³ See Schaeffler Case Brief at 33-34 (citing Schaeffler Sales Verification Report at 32).

³¹⁴ See Petitioner's Rebuttal Brief at 35-37.

- The petitioner also argues that Schaeffler failed to explain how the following five factors listed in the *Final Modification* apply: (1) whether the terms and conditions of the adjustment were established and/or known to the customer at the time of the sale, and whether this can be demonstrated through documentation; (2) how common such adjustments are for the company and/or industry; (3) the time of the adjustment; (4) the number of adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment.³¹⁵
- According to the petitioner, Schaeffler: 1) did not demonstrate that the terms and conditions of the adjustment were established and/or known to the customer at the time of the sale; 2) did not explain whether the adjustments were a common occurrence; 3) did not elaborate on the timing of the adjustment; and 4) did not discuss the number of adjustments.³¹⁶
- Finally, the petitioner states that, at verification, Commerce sought to obtain documentation demonstrating the customer was aware of the price changes at the time of sale, but according to the report, “company officials stated that Schaeffler could not provide any such documentation.”³¹⁷ Further, the petitioner argues, that, according to the verification report, Schaeffler “did not provide any documentation related to the price negotiations themselves.”³¹⁸

Commerce’s Position

We have continued to disallow Schaeffler’s U.S. billing adjustments for the final determination, in accordance with our practice.

On December 29, 2018, Schaeffler reported billing adjustments on U.S. consignment sales, at Commerce’s request.”³¹⁹ Schaeffler stated that these “adjustments resulted from price negotiations between the parties that were applied retroactively to product previously acquired by [] and previously invoiced by Schaeffler Korea.”³²⁰ Therefore, in the *Preliminary Determination*, we rejected these adjustments because they resulted from post-sale price negotiations (and, thus, Schaeffler’s customer had no knowledge of them at the time of the sale).

At verification, we discussed these adjustments with Schaeffler. Our verification report states:

We asked company officials to provide documentation demonstrating for the ten transactions noted above when the customer became aware of the billing adjustment. However, company officials stated that Schaeffler could not provide any such documentation. Company officials pointed out that there are provisions

³¹⁵ *Id.* (citing *Final Modification*, 81 FR at 15642, 15644).

³¹⁶ *Id.* at 36.

³¹⁷ *Id.* (citing Schaeffler Sales Verification Report at 32).

³¹⁸ *Id.*

³¹⁹ See Schaeffler December 29, 2017 SACQR at 2.

³²⁰ *Id.* at 2-3.

in the contracts for both [] sales and home market customers that provide the possibility of price changes after a sale is made.

According to company officials, Korean law strongly prohibits customers from asking small- and medium-sized companies for retroactive price reductions. While company officials noted that Schaeffler is considered a large-sized company, it does not have written agreements covering such adjustments in order to ensure that its customers are compliant with Korean law. Therefore, they stated that Schaeffler only negotiates price adjustments through verbal communication.

With respect to U.S. sales, company officials provided purchase order change agreements with [] showing price changes retroactive to January 1, 2016. However, Schaeffler did not provide any documentation related to the price renegotiations themselves.

Based on the description above, we disagree with Schaeffler that the adjustments in question are properly characterized as billing adjustments (which are typically granted to correct billing errors, shipping problems, etc.). Rather, these adjustments are more akin to price additions because they involved post-sale price negotiations and an additional payment by the customer. Commerce's post-sale price adjustment practice is discussed in the *Final Modification*, which requires, among other things, that the terms and conditions of the adjustment be established and/or known to the customer at the time of sale, and that respondents demonstrate this through documentation. For further discussion of the *Final Modification*, see Comment 11, above.

In this case, when asked to provide supporting documentation of when the customer became aware of the price changes, Schaeffler could not do so. Further, while Schaeffler provided purchase order changes showing that the price changed,³²¹ it provided no documentation related to the price negotiations themselves (including no documentation related to the date of the price changes).³²² Therefore, consistent with our practice, we have disregarded these adjustments for purposes of the final determination.

Comment 18: Rebates Granted on U.S. Sales

Petitioner's Arguments

- In the *Preliminary Determination*, Commerce accepted Schaeffler's reported U.S. rebates, because there was evidence that Schaeffler's customers knew the terms and conditions of the rebate programs at the time of sale. The petitioner argues that, in the final determination, Commerce should continue to include Schaeffler's reported U.S. rebates in its calculation since the reported amounts were examined at verification.³²³

³²¹ See Schaeffler Sales Verification Report at Exhibit verification exhibit 45. These purchase order agreements show the date the prices were retroactively applied as of January 1, 2016, but do not demonstrate that the customers knew at this time that the customer had knowledge of the billing adjustment at the time of sale.

³²² *Id.* at 32-33.

³²³ See Petitioner's Case Brief at 41.

Schaeffler's Arguments

- Schaeffler disagrees with this approach, arguing that, if Commerce decides to accept U.S. rebates, it must also accept home market rebates because they are made on the same basis as in the United States.³²⁴

Commerce's Position

We agree with the petitioner. Schaeffler reported that its U.S. customers knew the terms and conditions of the U.S. rebate programs prior to the sale, and, at verification, Schaeffler demonstrated that this was true. Therefore, we find no basis to reject these rebates and we have continued to rely on them for purposes of the final determination.

Specifically, in Schaeffler's December 29, 2017, submission Schaeffler stated that "Schaeffler Group USA agrees to a rebate program with each rebate customer before the beginning of each year. Schaeffler communicates with each customer outlining the rebate program."³²⁵ Schaeffler also provided agreements³²⁶ for its rebate programs in its response along with an exhibit that contains, among other things, the date that the customer was informed that the program was in place.³²⁷ Further, at verification, Schaeffler stated the following regarding its corporate rebate program:

Company officials stated that corporate rebate agreements are typically established at the beginning of each year, with Schaeffler USA's internal discussions as to rebate levels beginning in the fourth quarter of the prior year. Company officials stated that, once the agreement is approved internally, it is sent to the customer for signature. According to company officials, Schaeffler USA's customers expect these annual rebate agreements to be put in place.³²⁸

Therefore, we have accepted these rebates as reported for the final determination.

We disagree with Schaeffler that its U.S. and home market programs are similar, or that our acceptance of U.S. rebates should result in a similar acceptance of home market rebates. As discussed in Comment 11, above, Schaeffler had no contracts or written agreements with its home market customers, and it provided no evidence that those customers knew the terms and conditions of the rebate programs at the time of sale. Finally, we find that there are no other factors that would cause us to question the legitimacy of the claimed adjustment as contemplated in the *Final Modification*. Thus, we find that it is appropriate to make an adjustment for U.S., but not home market, rebates in the final determination.

³²⁴ See Schaeffler Rebuttal Brief at 15 (citing Schaeffler Case Brief at 27-31).

³²⁵ See Schaeffler December 29, 2017 SACQR at 3.

³²⁶ *Id.* at 5 and Exhibits SC2-5 and SC2-6.

³²⁷ *Id.* at 4 and Exhibit SC2-4.

³²⁸ See Schaeffler USA Verification Report at 19-20 and verification exhibit 23 at pages 1-2.

Comment 19: Borrowing Rate for U.S. Credit Expenses

Both Iljin Group and Schaeffler reported that they had no U.S. short-term borrowings during the POI, and both computed their U.S. credit expenses using borrowing rates obtained from the U.S. Federal Reserve. Because these rates differed, in the *Preliminary Determination*, Commerce recalculated Schaeffler's U.S. credit expenses and inventory carrying costs using the U.S. dollar borrowing rate provided by Iljin Group.

Schaeffler's Arguments

- Schaeffler argues that Commerce provided no justification for using Iljin Group's rate instead of the borrowing rate it used to calculate its credit and inventory carrying costs (*i.e.*, the average low risk short-term interest rate for all commercial and industrial loans). Schaeffler claims its borrowing rate is consistent with: 1) Commerce's AD Manual which states that Commerce "calculate(s) credit expenses based upon the weighted-average borrowing rate realized by the respondent,"³²⁹ and 2) the Import Administration Policy Bulletin No. 98-2, which states "in cases where a respondent has no short-term borrowing...we will generally use Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made."³³⁰

Petitioner's Arguments

- The petitioner contends that Commerce used the appropriate borrowing rate to calculate Schaeffler's U.S. credit expenses and inventory carrying costs. The petitioner notes that Import Administration Policy Bulletin No. 98-2 provides that, if the respondent has no actual borrowing in the transaction currency, Commerce uses the Federal Reserve rate "for commercial and industrial loans maturing between one month and one year from the time the loan is made."³³¹

Commerce's Position

For the final determination, we have continued to use the borrowing rate provided by Iljin Group of 3.12 percent to calculate Schaeffler's U.S. credit expenses. Policy Bulletin 98.2, which describes our practice, states:

In cases where a respondent has no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction. . . . For dollar transactions, we will generally use the average short-term lending rates calculated

³²⁹ See Schaeffler Case Brief at 23 (citing the Enforcement and Compliance Antidumping Manual (AD Manual), Chapter 8, at 31).

³³⁰ *Id.* (citing Import Administration Policy Bulletin No. 98-2 (Policy Bulletin 98-2), "Imputed Credit Expenses and Interest Rates," dated February 23, 1998).

³³¹ See Petitioner's Rebuttal Brief at 34 (citing Policy Bulletin 98-2).

by the Federal Reserve to impute credit expenses. Specifically, we will use the Federal Reserve's weighted average data for commercial and industrial loans maturing between one month and one year from the time the loan is made.³³²

In this case, Iljin Group based its U.S. short-term interest rate on the Federal Reserve's average risk level for commercial and industrial loans maturing between month and one year from the time the loan is made (*i.e.*, the top line rate for the 31-365 days category), consistent with Policy Bulletin No. 98-2. In contrast, Schaeffler based its reported U.S. interest rate on the Federal Reserve's low risk rate for all commercial and industrial loans, a much broader category of loans than is specified in the Policy Bulletin. Because Schaeffler's reported rate is not based on 31 to 365-day loans published by the Federal Reserve, we have not relied on it, in accordance with our practice.³³³ Therefore, we have continued to use 3.12 percent to calculate Schaeffler's U.S. credit and inventory carrying expenses.

Comment 20: Classifying Certain Sales as EP

Schaeffler's Arguments

- In the *Preliminary Determination*, Commerce classified Schaeffler's consignment sales as CEP sales because the material terms for these sales were not established until the merchandise was withdrawn after importation into the United States.³³⁴ Schaeffler argues that Commerce should, instead, treat these sales as EP sales, consistent with Schaeffler's original classification, because evidence on the record shows that the sales were "conducted" between Schaeffler Korea and the customer prior to importation.³³⁵
- Schaeffler bases its argument on the following assertions: 1) the customer places its order with Schaeffler in Korea; 2) Schaeffler ships the product from Korea to the customer; 3) Schaeffler and the customer agree on the price for these shipments prior to their importation into the United States; and 4) the U.S. warehouse is merely a holding facility to allow the customer immediate access to the product as the customer requires it.³³⁶
- Schaeffler acknowledges that Commerce's AD Manual classifies consignment sales as CEP sales. However, Schaeffler notes that the example in the AD Manual involves prices which are not set prior to importation,³³⁷ and, thus, it is not applicable. Schaeffler

³³² See Policy Bulletin 98-2 (emphasis added).

³³³ See, e.g., *Certain Carbon and Alloy Steel Cut-to Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017), and accompanying IDM at Comment 9; and *Certain Oil Country Tubular Goods from the Republic of the Philippines: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41976 (July 18, 2014), and accompanying IDM at 16.

³³⁴ See *Preliminary Determination* PDM at 22; and Schaeffler Preliminary Calculation Memo at 3.

³³⁵ See Schaeffler Case Brief at 26 (citing section 772(a) of the Act).

³³⁶ *Id.* at 25 (citing Schaeffler October 26, 2017 SAQR at Exhibit SA-6, Schaeffler acknowledges that the quantity of individual sales is not known until the customer withdraw the product from the warehouse).

³³⁷ *Id.* at 26-27 (citing the AD Manual at 9 of Chapter 7).

claims that, because the facts are different here, Commerce should consider its consignment sales to be EP sales.³³⁸

Petitioner's Arguments

- The petitioner argues that Commerce should continue to classify Schaeffler's consignment sales as CEP sales because a material term of sale (*i.e.*, quantity) was not set until after the product was imported. The petitioner notes that Commerce generally treats consignment sales from U.S. warehouses as CEP sales, even when the selling activity was not in the United States.³³⁹

Commerce's Position

We disagree with Schaeffler that its consignment sales should be appropriately categorized as EP sales. Therefore, for the final determination, we have continued to classify these sales as CEP sales.

Section 772(a) of the Act, defines EP sales as follows:

Export price. The term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).

Commerce determines that merchandise "is first sold" on the date that the material terms of sale are established between the parties, consistent with 19 CFR 351.401(i).³⁴⁰ In this case, Schaeffler appropriately reported the date of sale to its consignment customer as the date that its merchandise is removed from consignment from a U.S. warehouse, in accordance with

³³⁸ *Id.* at 27.

³³⁹ See Petitioner's Rebuttal Brief at 40 (citing *Carbon and Certain Alloy Steel Wire from Canada, Final Affirmative LTFV Determination*, 67 FR 55782 (August 30, 2002), and accompanying IDM at comment 3).

³⁴⁰ Specifically, this regulation directs Commerce to presume that the date that merchandise is first sold is the date of the invoice, unless it is "satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." See 19 CFR 351.401(i) (emphasis added). This language is echoed in Commerce's standard AD questionnaire, at Appendix I, which defines the date of sale as "...the date on which the exporter or producer establishes the material terms of sale (e.g., price, quantity)" (emphasis added).

Commerce’s policy for consignment sales,³⁴¹ because that is date the material terms of sale (*i.e.*, price and quantity) are fixed.³⁴²

Although Schaeffler claims that the price of the TRBs sold on consignment may be fixed at the time that the merchandise leaves Korea, the sale itself has not yet been finalized because the specific quantity of the sale is unknown until the customer withdraws the merchandise from the consignment warehouse. Given these facts, these sales cannot be classified as EP sales because the subject merchandise is not “first sold (or agreed to be sold) before the date of importation.”

Finally, we disagree that we should consider the consignment warehouse merely as a “holding facility,” given that Schaeffler still owns the TRBs while they are stored there. Further, as noted above, Commerce considers consignment sales made to unaffiliated customers as CEP sales.³⁴³ Therefore, we continue to find that these sales are appropriately classified as CEP sales for the final determination.

Comment 21: Calculating Financial Expenses

Petitioner’s Arguments

- At verification, Commerce noted that the packing and warranty expenses were not excluded from the cost of goods sold (COGS) denominator used in the financial expense ratio calculation. The petitioner argues that Commerce should modify the financial expense ratio based on the verification finding.

Schaeffler’s Arguments

- Schaeffler did not comment on this issue.

³⁴¹ See *Emulsion Styrene-Butadiene Rubber from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 11534, (February 24, 2017), and accompanying PDM at 6 (unchanged in *Emulsion Styrene-Butadiene Rubber from Mexico: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 33062 (July 19, 2017), stating “for consignment sales such as these, it is our practice to establish the date of sale as the warehouse withdrawal date, as the final terms of sale (*i.e.*, quantity) are not set until the merchandise is withdrawn from the warehouses”); and *Seamless Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 33482 (June 12, 2015), and accompanying IDM at Comment 1.

³⁴² See Schaeffler Sales Verification Report at verification exhibits 13 and 22, where documentation shows that payment summaries with the quantity and price are issued upon withdrawal of inventory in the United States.

³⁴³ See *Stainless Steel Bar from Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 12806 (March 11, 2015), and accompanying PDM at 5, stating “[f]or all U.S. CEP sales, based on record evidence, and consistent with previous administrative reviews, we determine that the material term of sale, quantity, is established on the date of release from the unaffiliated, third-party warehouse for U.S. sales, *i.e.*, the date Villares issues the ‘child invoice.’”

Commerce's Position

We agree with the petitioner. For the final determination, we revised the financial expense ratio by incorporating the verification findings noted in the Schaeffler Cost Verification Report.³⁴⁴ At verification, we found that, in Schaeffler's calculation of the financial expense ratio, it did not exclude the packing and warranty expenses from the COGS denominator. Therefore, we excluded the amounts in question from Schaeffler's COGS denominator and recalculated the financial expense ratio accordingly.

Comment 22: Commerce's Schedule for Submitting Case Briefs

Schaeffler's Arguments

- Schaeffler notes that the briefing schedule outlined in the *Preliminary Determination* provided for case briefs to be filed seven days following the issuance of the final verification report issued in this case. Schaeffler claims that Commerce issued the last verification report on May 11, 2018, at which time it shortened the briefing schedule by two days.³⁴⁵
- Schaeffler argues that Commerce's truncation of the briefing period without notifying parties in advance was contrary to law;³⁴⁶ 2) permitting only five calendar, or three business, days to submit briefs was inadequate to cover all the complex legal issues in this case, many of which arose in the verification reports; and 3) Commerce finished verification eight weeks prior to issuance of its final verification report, and, thus, had no basis for expediting the briefing schedule.³⁴⁷
- Schaeffler acknowledges that Commerce extended the briefing period by one day. However, it claims that this extension was inadequate, and, because it shortened the rebuttal period to four days, Commerce's timetable remained "arbitrary, capricious, and not in accordance with law."³⁴⁸

Petitioner's Arguments

- The petitioner did not comment on this issue.

Commerce's Position

We disagree with Schaeffler that the briefing period established in this was contrary to law. Under Commerce's regulations, Commerce has broad discretion in establishing deadlines.

³⁴⁴ See Schaeffler Cost Verification Report at 19.

³⁴⁵ See Schaeffler Case Brief at 35.

³⁴⁶ *Id.* (citing *Preliminary Determination*, 83 FR at 4902; and Memorandum, "Briefing Schedule in the Antidumping Duty Investigation of Tapered Roller Bearings from Korea," dated May 11, 2018 (Briefing Schedule Memo)).

³⁴⁷ See Schaeffler Case Brief at 35.

³⁴⁸ *Id.* (citing Memorandum, "Briefing Schedule in the Antidumping Duty Investigation of Tapered Roller Bearings from Korea," dated May 15, 2018 (Briefing Schedule Extension Memo)).

Specifically, 19 CFR 351.309(c)(ii) states that parties can submit case briefs “{f} or a final determination in {an} . . . antidumping duty investigation . . . 50 days after the date of publication of the preliminary determination . . . unless the Secretary alters the time limit” (emphasis added)). Similarly, 19 CFR 351.309(d)(ii) states that parties can submit rebuttal briefs “within five days after the time limit for filing the case brief, unless the Secretary alters the time limit (emphasis added).

In this case, we initially notified parties that they would have a maximum of seven days after issuance of the last verification report to file case briefs and a maximum of five days thereafter to submit rebuttal briefs.³⁴⁹ We then conducted verification of the reported data and issued seven verification reports, dated April 24, 2018, through May 11, 2018,³⁵⁰ the last of which was issued just over five weeks prior to the statutory date for the final determination. Because a significant portion of that five weeks was allotted to the parties to prepare case and rebuttal briefs, we set a briefing schedule which afforded parties less the maximum of seven and five days initially contemplated.³⁵¹

We disagree with Schaeffler that Commerce’s briefing schedule was unlawful, or that there was “no basis to expedite it.” As noted above, Commerce’s regulations give it full discretion to set the deadlines for case and rebuttal briefs. Further, given that Commerce had less than one month to complete the final determination after receipt of case and rebuttal briefs in this case, a slightly expedited briefing schedule was not only appropriate, it was essential.

In any event, we disagree with Schaeffler that the schedule established in this case unfairly disadvantaged it. Despite Schaeffler’s assertions to the contrary, Schaeffler had almost four months to comment on Commerce’s *Preliminary Determination*, three weeks to comment on issues arising from the U.S. sales verification, two weeks to comment on issues arising from the cost verification, and a full seven days to comment on the issues in the final verification report provided to it.³⁵² In light of these facts, we find Schaeffler’s argument to be not only misleading but inaccurate.

Finally, with regard to Schaeffler’s complaint that it received a rebuttal period of only four days, as noted above, there is no requirement that Commerce give parties five days to provide rebuttal comments. Schaeffler did not ask for an extension for its rebuttal brief and according to 19 CFR 351.309 “{a}ny interested party or U.S. Government agency may submit a ‘rebuttal brief’ within five days after the time limit for filing the case brief, unless the Secretary alters this time limit.”

³⁴⁹ See *Preliminary Determination*, 83 FR at 4902, which states that “{c}ase briefs or other written comments may be submitted . . . no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs” (emphasis added).

³⁵⁰ Specifically, we issued these reports as follows: Iljin USA Sales Verification Report (April 24, 2018); Schaeffler USA Verification Report (April 26, 2018); Bearing Art Cost Verification Report (May 2, 2018); Schaeffler Cost Report (May 3, 2018); Bearing Art Sales Verification Report (May 10, 2018); Iljin Bearing Sales Verification Report (May 11, 2018); and Schaeffler Sales Verification Report (May 11, 2018).

³⁵¹ After we established this schedule, Schaeffler requested additional time to submit its case brief, and we granted all parties an additional day. See Briefing Schedule Memo and Briefing Schedule Extension Memo, respectively.

³⁵² See footnote 350, above. See also Memorandum, “Receipt of Schaeffler Korea Corporation’s Verification Report in the Antidumping Duty Investigation of Tapered Roller Bearings from Korea,” dated May 17, 2018, which documents Schaeffler’s receipt of the Schaeffler Sales Verification Report on May 10, 2018.

In this case, Commerce exercised its discretion to shorten the schedule in order to meet its statutory deadline.

VI. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, then we will publish the final determination in the investigation and the final, estimated weight-average dumping margins in the *Federal Register*.

☒

Agree

☐

Disagree

6/18/2018

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance