

FINAL RESULTS OF REDETERMINATION

JTEKT Corporation v. United States

Court No. 06-00250, slip op. 09-147

Summary

This remand determination is submitted in accordance with the order of the U.S. Court of International Trade (the Court) of December 18, 2009 (slip op. 09-147) (the Court's order), and the extension granted by the Court on March 16, 2010. The remand redetermination involves a challenge by the plaintiffs to the determination of the U.S. Department of Commerce (the Department) in the administrative review of the antidumping duty order on ball bearings and parts thereof from Japan published in *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064 (July 14, 2006), and the accompanying Issues and Decision Memorandum (I&D Memo) (*AFBs 16*). The period of review (POR) is May 1, 2004, through April 30, 2005.

In accordance with the Court's order, we have considered and provided further explanation with respect to the following issues involving Nachi-Fujikoshi Corporation (Nachi), Nippon Pillow Block Co., Ltd. (NPB), and NTN Corporation (NTN): 1) NPB's proposal that the Department expand its window period for matching sampled transactions; 2) NTN's proposal to incorporate additional design types into the model-match methodology; 3) the argument The Timken Company (Timken) raised that the Department should have used U.S., not Japanese, interest rates to calculate a portion of certain respondents' inventory-carrying costs. Further, in accordance with the Court's order, we have redetermined our recalculation of NTN's freight expenses based on weight rather than value and our application of facts available and adverse facts available to Nachi's reported physical-characteristic data for similar merchandise except in specific instances where we found errors in reporting.

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

We released our draft remand results to interested parties on March 22, 2010. On April 6, 2010, we received comments from NPB, NTN, and Timken. The comments are discussed in the relevant sections, below. After analyzing parties' comments, we have revised our analysis from the draft remand results with respect to the issue of NTN's additional bearing-design classifications, as discussed below.

Discussion

NPB's Proposal To Expand the Department's Window Period for Matching Sampled Transactions

In the administrative reviews of the antidumping duty orders on ball bearings and parts thereof, as described in more detail below, depending on the number of home-market and U.S. sales a respondent makes during a given POR, the Department requires a respondent to report either *all* sales transactions to the home and U.S. markets for the given POR or a *sample* of the sales transactions that party made during the POR.

Under its normal methodology, the Department requires parties to report all export-price (EP) and constructed export-price (CEP) sales and all home-market sales that a respondent made during a given POR. In the bearings proceedings, the Department follows its normal methodology for respondents that made fewer than 10,000 CEP sales and/or fewer than 10,000 home-market sales of foreign like product during the POR. Respondents are required to report all of their EP sales. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews*, 71 FR 12170, 12172-74 (March 9, 2006) (*AFBs 16 Preliminary Results*) (the Department requires sampled reporting for respondents that made more than 10,000 CEP sales and/or 10,000 home-market sales during the POR), unchanged in *AFBs 16*.

Under its normal contemporaneity methodology, to find home-market sales that are

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

contemporaneous with the U.S. sale in question, the Department searches within the window period described in 19 CFR 351.414(e)(2). The Department normally will look first for home-market sales that were made in the same month in which the U.S. sale in question was made. If the Department finds no such home-market sales, it then searches for comparison sales within the most recent of the three months preceding the month in which the U.S. sale was made. If the Department finds no such sales, it looks for comparison-market sales in the earlier of the two months that follow the month in which the U.S. sale was made. Hereafter, we refer to this window period as the 90/60-day window period.

In the bearings proceedings, because of the “extremely large volume of transactions” and “the resulting administrative burden involved in calculating individual margins for all of these transactions,” the Department applies a sampling methodology for parties that made a certain threshold number of CEP and/or home-market sales. *See, e.g., AFBs 16 Preliminary Results*, 71 FR at 12172, unchanged in *AFBs 16*. To determine the window period under the sampling methodology, the Department divides the POR (*i.e.*, May 1 through April 30) into six two-month periods. The Department then selects one week from each of those two-month periods. Respondents with more than 10,000 CEP sales report the CEP sales that they made during the sample weeks. Respondents with more than 10,000 home-market sales of foreign like product report those sales that they made during the months that correspond to the CEP sample weeks. *Id.* at 12173. The Department also selects as a sample month one of the three months that precedes the POR and one of the two months that follows the POR. The six sample months from the POR as well as the sample month that precedes the first month of the POR and the sample month that follows the last month of the POR constitute the sample reporting period.

To find contemporaneous home-market sales when using our sampling methodology, we

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

first examine home-market sales transactions during the same month in which the U.S. sales transaction was made in order to determine normal value based on sales during the same month. If there are no matches in the same month, we examine the closest sample month prior to the month in which the U.S. sales transaction was made. Finally, if there are no matches in that sample month, we examine the closest sample month subsequent to the month in which the U.S. sales transaction was made. *See* Memorandum from Deputy Assistant Secretary Joseph Spetrini to Assistant Secretary Eric Garfinkel entitled “Recommendations on Sampling Technique and Methodological Approach for Administrative Reviews of Antifriction Bearings from Various Countries” dated July 30, 1990, at 6 (1990 Sampling Memo). Hereafter, we refer to this window period as the 30/30-day sample window period.

For the contested review, NPB reported CEP sales in sample weeks and home-market sales in sample months. NPB requested that we increase the search window around sampled sales by an additional sample month on each side of the sampled month to increase the possibility of finding more identical matches to U.S. sales. *See AFBs 16* and the accompanying I&D Memo at Comment 30. *See also* NPB’s case brief dated April 25, 2006, at 20-22. NPB argued that the use of a 30/30-day sample window period, combined with the changed model-match methodology, resulted in reducing the proportion of matches of identical U.S. and home-market products, thus creating an alleged distortion in matches. NPB claimed that most of the proposed additional sample months in the search window would stay within the traditional 90/60-day window period. NPB explained that the addition of a sample month to each direction would not create a distortion because NPB’s prices were very stable. For the final results, to follow the methodology encompassed in 19 CFR 351.414(e)(2) closely, which the Court has upheld in, *e.g.*, *Prodotti Alimentari Meridionali, S.R.L. v. United States*, 26 CIT 749, 755 (2002), we did not

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

expand the sample search window as NPB proposed. *See AFBs 16* and the accompanying I&D Memo at Comment 30.

The Court held that the Department erred in its rationale for continuing the use of the 30/30-day sample window period for NPB. The Court stated that our reliance on 19 CFR 351.414(e)(2) as a requirement is inconsistent with the language in 19 CFR 351.414(e)(2) which states that, “{n}ormally, the Secretary will select as the contemporaneous month the first of the following which applies.” The Court remanded for further reconsideration our decision to reject NPB’s proposal to expand the choice of sampled months from which to select sales to use as normal value.

With respect to the Court’s order, section 773(a)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the normal value shall be the price of the home-market sale made at a time corresponding reasonably to the time of the sale used to determine EP or CEP. Since the first administrative review of the antidumping duty order on ball bearings from Japan covering the period November 9, 1988, through April 30, 1990, we have used the 30/30-day sample window period for all CEP sales of respondents that made more than a certain threshold number of U.S. sales transactions during the POR.¹ *See* the 1990 Sampling Memo at 6 and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Antidumping Duty Administrative Reviews*, 56 FR 11186, 11187-88 (March 15, 1991), unchanged in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Final Results of Antidumping Duty Administrative Reviews*, 56 FR 31754 (July 11, 1991) (collectively *AFBs I*).

¹ CEP and EP were formerly known as exporter’s sales price and purchase price, respectively.

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

We find that NPB has not demonstrated that the 30/30-day sample window period is unreasonable nor has NPB provided a sufficient reason to justify the expansion of the 30/30-day sample window period. Specifically, NPB has not shown that exceptional circumstances exist such that we should expand the search period. NPB argues that the expansion of the window period would not create a distortion because its prices of bearings were very stable during the POR. The stability of the price of merchandise during the POR does not constitute an exceptional circumstance that justifies an expansion of the search period beyond the 30/30-day sample window period because the stability of the price of NPB's merchandise does not affect the reasonableness of our 30/30-day sample window period. NPB also argued that an expanded window period would lead to more identical matches and eliminate distortions of matches between similar merchandise. Although stating that the 30/30-day sample window period, combined with the changes to the model-match methodology, lowered the proportion of the identical matches, NPB has not demonstrated that the number of identical matches in the 30/30-day sample window period is unreasonable.

In the absence of a demonstration that circumstances exist which would make an expansion beyond our 30/30-day sample window period appropriate, an expansion of the window period as NPB suggests would not satisfy the statutory requirement of section 773(a)(1)(A) of the Act that we use the home-market sales transactions that correspond reasonably to the time of the U.S. sales transactions because such home-market sales transactions could be too far apart in time to be considered contemporaneous with the U.S. sales transactions. Using the sample months from this administrative review, the most extreme example of a potential match under NPB's proposed methodology would be a comparison of U.S. sales transactions made in August 2004 with home-market sales transactions made in February 2004. *See AFBs 16 Preliminary*

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

Results, 71 FR at 12172-74 (listing the sample weeks and months in the underlying administrative review). Absent exceptional circumstances, normally we would not consider a comparison between an August 2004 sale and a February 2004 sale to be contemporaneous for purposes of satisfying section 773(a)(1)(A) of the Act.

We examined all U.S. sample weeks and home-market sample months we selected for the contested review and found that nearly all of the additional sample months under NPB’s proposal will fall amply outside the traditional 90/60-day window period. We have prepared a table which illustrates how adding an additional sample month in either direction creates a contemporaneous window with a span well beyond our traditional six-month period. We have shaded the span of time in which we choose normal value under the 30/30-day sample window period and identified in boldface print the length of months NPB requested that we consider with the expansion of the search window for another sample month to be added in each direction.

Home-Market Sample Months	Months for U.S. Sample Weeks					
	June 2004	August 2004	September 2004	November 2004	February 2005	March 2005
February 2004	4 months	6 months				
June 2004	Same		3 months			
August 2004		Same		3 months		
September 2004	3 months		Same		5 months	
November 2004		3 months		Same		4 months
February 2005			5 months		Same	
March 2005				4 months		Same
May 2005					3 months	2 months
Total Window Span in Months	8 months	10 months	9 months	8 months	9 months	7 months

For reasons stated above, the 30/30-day sample window period approximates the 90/60-day window period more closely than NPB’s proposal. Additionally, NPB has not demonstrated that the window period in the underlying administrative review was unreasonable or that special circumstances existed that warranted an expansion of the window period. Therefore, we have not

expanded the window period as NPB proposed.

Comment 1: According to NPB, the Court's order contained the following comment:

Under the plain meaning of the regulation, Commerce is not precluded entirely from choosing as the "contemporaneous month" a sampled month outside of the total time span contemplated by § 351.414(e)(2). Instead, Commerce is free to exercise its discretion not to follow the normal procedure set forth in that provision. The regulation allows for an atypical circumstance under which it may be reasonable or appropriate to depart from the normal procedure. The court notes that § 351.414(e)(2) is a general provision that does not address specifically the special circumstances in which Commerce resorts to sampling under 19 U.S.C. § 1677f-1(a).

NPB argues that the Department did not provide its interpretation of section 773(a)(1)(A) of the Act and 19 CFR 351.414(e)(2) when it resorted to sampling. NPB argues also that the Department did not explain why the 30/30-day sample window period is consistent with these statutory and regulatory provisions. NPB asserts that this reasoning is critical to the Court's review of the Department's remand results because, without a reasonable interpretation or explanation, there is no basis upon which to evaluate the Department's conclusion that, under NPB's proposal, home-market sales transactions would be too far apart in time to be considered contemporaneous with U.S. sales transactions or how its current 30/30-day sample window period results in contemporaneous period.

According to NPB, instead of providing bases for its conclusion, the Department claims without any material evidence that the 30/30-day sample window period approximates the 90/60-day window period more closely than NPB's proposal and finds that NPB has not provided sufficient reason to justify the expansion of the 30/30-day sample window period. NPB claims that the Department's draft remand results do not demonstrate how the 30/30-day sample window period approximates the 90/60-day window period set forth in 19 CFR 351.414(e)(2). NPB explains that the Department's application of the 30/30-day sample window period deviates from

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

the 90/60-day window period in several critical areas.

NPB states that, for half of the U.S. sample weeks, the Department's application of the 30/30-day sample window period ignored sample months that fall within the traditional 90/60-day window period and thereby ignored home-market sales transactions that occurred in a contemporaneous month. According to NPB, for the U.S. sample week of September 5 through September 11, 2004, the Department limited its search for sales transactions to sales that occurred in the home market during August 2004 and November 2004 but it did not consider sales that occurred in June 2004, which was a home-market sample month within the 90-day window period prior to the U.S. sample week. NPB states that, for the U.S. sample week of October 31 through November 6, 2004, the Department limited its search for sales transactions to sales that occurred in the home market during September 2004 and February 2005 (which was three months subsequent to the U.S. sample week) but it did not consider sales that occurred in August 2004, which was a home-market sample month within the 90-day window period prior to the U.S. sample week. NPB states that, for the U.S. sample week of February 27 through March 5, 2005, the Department limited its search for sales transactions to sales that occurred in the home market during February 2005 and May 2005 but it did not consider sales that occurred in November 2004, which was within the 90-day window period prior to the U.S. sample week.

NPB claims that the Department has not selected the traditional 90/60-day window period for any of the U.S. sample weeks. NPB states that the span of the 30/30-day sample window period is four months for three U.S. sample weeks, *i.e.*, August 22 through August 28, 2004, September 5 through September 11, 2004, and February 27 through March 5, 2005. Referring to the Court's comments in the Court's order at 29, n. 9, NPB contends that the 30/30-day sample window period for U.S. sales occurring in June 2004 spans seven months. NPB reiterates that the

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

30/30-day sample window period for the U.S. sample week of October 31 through November 6, 2004, is not consistent with the traditional 90/60-day window period. NPB points out that the 30/30-day sample window period for U.S. sales occurring in the U.S. sample week of February 6 through February 12, 2005, spans five months.

NPB states that the average sample window under the 30/30-day sample window period spans only five months. NPB claims that the Department has provided no basis for adopting this more restrictive approach which, according to NPB, is not consistent with the Department's stated support for a change in its model-match methodology for more price-to-price comparisons in this administrative review.

NPB argues that the Department has not explained how its 30/30-day sample window period is more consistent with or more closely approximates the traditional 90/60-day window period. NPB argues further that the Department has not explained why (1) home-market sales transactions that fall within the 30/30-day sample window period but outside the traditional 90/60-day window period are contemporaneous for purposes of section 773(a)(1)(A) of the Act and 19 CFR 351.414(e)(2) but (2) NPB's proposal results in home-market sales transactions that are not contemporaneous with U.S. sales transactions when they are outside the traditional 90/60-day window period.

NPB acknowledges that the Department has used the 30/30-day sample window period since *AFBs I*. NPB claims that the 30/30-day sample window period is no longer consistent with the stated objective of the Department's model-match methodology or its sampling techniques. NPB states that, with respect to the Department's 1990 Sampling Memo and *AFBs I*, the Department's sample of U.S. sales transactions consisted of nine weeks, one week from each two-month period in the 18-month review period. NPB explains that, with the use of the 30/30-

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

day sample window period at that time, the Department searched for comparison sales using the family model-match methodology. NPB argues that in the underlying administrative review the Department limited the sample of U.S. sales transactions to six weeks, instead of nine sample weeks, and then, to increase the number of price-to-price comparisons, the Department abandoned the family model-match methodology in favor of the single-most-similar model-match methodology.

According to NPB, when the Department changed its model-match methodology, limited the sample to six weeks, and continued to limit its sample window to the 30/30-day sample window period, it defeated its stated objective in adopting the single-most-similar model-match methodology. NPB argues that, instead of increasing price-to-price comparisons, it reduced the likelihood of finding identical matches and increased the number of similar comparisons in instances where reasonably contemporaneous identical matches were available. NPB explains that the Department can lessen the limiting effect of the revised model-match methodology with widened contemporaneity windows. NPB asserts that the expanded contemporaneity window would be reasonable and consistent with section 773(a)(1) of the Act and 19 CFR 351.414(e)(2).

Department's Position: The statute does not define the “reasonably corresponding” contemporaneous period. *See* section 773(a)(1)(A) of the Act. It has been our practice generally to use the 90/60-day window period as a “reasonably corresponding” contemporaneous period that satisfies the statutory requirement in section 773(a)(1)(A) of the Act. *See, e.g., Color Televisions Receivers From Korea; Final Results of Antidumping Duty Administrative Review*, 51 FR 41365 (November 14, 1986), at Comment 6 and *Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Final Results of Antidumping Duty Administrative Review*, 61 FR 1328, 1332 (January 19, 1996). In 19 CFR 351.414(e)(2), we defined the “reasonably

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

corresponding” contemporaneous period as, normally, the 90/60-day window period. Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of the transactions in the proceedings concerning ball bearings and parts thereof from various countries, the use of the 30/30-day sample window period has been an established practice for two decades since *AFBs 1*. *See AFBs 1*, 56 FR at 11187. Our 30/30-day sample window period is a reasonable interpretation of section 773(a)(1)(A) of the Act and 19 CFR 351.414(e)(2) and NPB does not demonstrate otherwise.

We do not find that NPB’s proposed expanded window period is reasonable or consistent with section 773(a)(1)(A) of the Act and 19 CFR 351.414(e)(2). NPB’s proposed window period would expand the window period ranging from seven months for one U.S. sample week (February 27 through March 5, 2005) to ten months for another U.S. sample week (August 22 through August 28, 2004). NPB’s proposal would expand the window period to 8.5 months on average, which is well beyond the 90/60-day window period. Under NPB’s proposal, none of the U.S. sample weeks would have a window period that remains within the 90/60-day window period. We find that such a wide expansion of the window period does not reasonably satisfy the contemporaneity requirement set forth in section 773(a)(1)(A) of the Act and interpreted in 19 CFR 351.414(e)(2). Also, as NPB points out, because the average sample window under the 30/30-day sample window period spans only five months, we find that our 30/30-day sample window period approximates the 90/60-day window period more closely than NPB’s proposed expanded window period.

While NPB points out a number of examples in which our application of the 30/30-day sample window period does not examine sample months that would fall within the traditional

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

90/60-day window period and, therefore, does not consider home-market sales transactions that occurred within those months, based on the alternative methodology that NPB proposed, NPB does not ask us to consider home-market sales in those months that fall within the traditional 90/60-day window period but outside the 30/30-day sample window period. Instead, NPB requests that we expand the window period unilaterally by considering sales in an additional sample month both before and after the current 30/30-day sample window for all U.S. sample weeks. NPB's proposal would include not only those additional sample months that fall within the traditional 90/60-day window period but outside the 30/30-day sample window period; it would also include those sample months that fall outside the 90/60-day window period as well as the 30/30-day sample window period. As such, we do not find that NPB's proposal satisfies the contemporaneity requirement in section 773(a)(1)(A) of the Act and 19 CFR 351.414(e)(2). Moreover, NPB does not acknowledge that, as we demonstrated in the draft remand results, NPB's proposal would expand the sample window period for each U.S. sample week well beyond the traditional 90/60-day window period.

Thus, for example, for the U.S. sample week of September 5 through September 11, 2004, NPB's proposed window period would expand the search window forward to February 2005, which is five months after the U.S. sample week. For the U.S. sample week of October 31 through November 6, 2004, NPB's proposed window period would expand the search window forward to March 2005, which is four months after the U.S. sample week. Additionally, for the U.S. sample week of September 5 through September 11, 2004, NPB's proposed window period would expand the window period to a total of nine months and, for the U.S. sample week of October 31 through November 6, 2004, NPB's proposed window period would expand the window period to a total of eight months. NPB's proposal frequently goes beyond our 90-days-

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

back/60-days-forward practice as well as beyond the overall 90/60-day (*i.e.*, six-month) window period whereas our 30/30-day sample window period in this case goes beyond the 90/60-day window period by one month in an isolated instance.

The 30/30-day sample window period is designed to approximate the 90/60-day window period; it is not designed to fit exactly into the 90/60-day period. When we examine sales in sampled weeks and months, it is imperative that we ensure that the results of review with the limited sales transactions reasonably reflect the respondent's dumping margin for the whole POR. To do so, it has been our practice to select U.S. sample weeks and home-market sample months randomly so that parties cannot find or predict a pattern of selecting U.S. sample weeks and home-market sample months and determine discrete periods in which they could price unfairly with impunity. Therefore, it is inevitable and indeed necessary for the sampling to be effective that our home-market sample months may deviate slightly from the traditional 90/60-day window period; for example, the 30/30-day sample window period for comparisons of U.S. sales during the sample week of May 31 through June 5, 2004, spans seven, rather than six, months. It has been our practice to select the U.S. sample weeks and the home-market sample months to approximate the 90/60-day window period as closely as possible under the random-selection approach. NPB's proposal does not result in a close approximation of the 90/60-day window period; instead, it amounts to a different interpretation of contemporaneity that would expand all search windows and, therefore, consideration of home-market sales beyond the 90/60-day window period.

Our selection of six U.S. sample weeks for this review is consistent with our selection of nine weeks in *AFBs I*. In *AFBs I*, the POR was November 9, 1988, through April 30, 1990, which spanned just under 18 months. *See AFBs I*, 56 FR at 31754. In *AFBs I* and in this review,

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

we chose one U.S. sample week for every two months. *See AFBs 1*, 56 FR at 31755, and *AFBs 16 Preliminary Results*, 71 FR at 12172, unchanged in *AFBs 16*. Thus, we do not find that NPB's reference to the nine sample weeks in *AFBs 1* renders unreasonable our application of the 30/30-day sample window period to the six sample weeks in the underlying administrative review.

Also, we find that NPB has not demonstrated with examples that its proposed expanded search windows would result in more identical matches. Nor has NPB demonstrated that the number of identical matches generated under the 30/30-day sample window period methodology is unreasonable. Moreover, NPB has not provided a sufficient justification that we may expand the 90/60-day window period for all U.S. sample weeks and continue to satisfy the contemporaneity requirement set forth in section 773(a)(1)(A) of the Act. NPB did not request that, in order to expand the search window within the 90/60-day window period, we abolish the 30/30-day sample window period and apply the 90/60-day window period pursuant to 19 CFR 351.414(e)(2).

Finally, NPB argues that our change in model-match methodology, selection of six sample weeks, and use of the 30/30-day sample window period reduced the likelihood of identifying identical matches. Using the 30/30-day sample window period does not render a different result in terms of identical matches, regardless of whether we use the sum-of-the-deviations methodology or the family model-match methodology, because the difference in the two methodologies relates solely to the identification of similar matches; the identification of identical matches was unaffected by the adoption of the sum-of-the-deviations methodology. We did not change our model-match methodology to alter the number of identical matches but to find the most similar match sold during the contemporaneous period to that model sold to the United

States when there was no identical match. We found that this was more in line with statutory requirements than comparing a U.S. model to a family of varying home-market models.

NTN's Proposal to Incorporate Additional Design Types into the Model-Match Methodology

In the final results of the underlying review, we did not accept, with one exception, NTN's proposal that we use NTN's many internally designated bearing-design classifications instead of our seven pre-defined bearing-design classifications. The Court directed us to reconsider our decision to reject NTN's proposal to incorporate into our model-match methodology additional design-type categories. Specifically, the Court required us to explain how our model-match methodology handles situations in which certain of NTN's designs fall within more than one of our design-type designations. The Court stated that the answer to this question is relevant to the Court's consideration, in the entirety, of our decision to reject all of NTN's proposed designs other than the design for hub units incorporating angular contact bearings.

The relevant information pertaining to NTN's proposed designs appears in exhibits B-3 and B-3A of NTN's September 26, 2005, questionnaire response. Based on the narrative portion that NTN provided at the beginning of exhibit B-3, it appears that there are four NTN design designations that fall within more than one of our accepted design-type designations. These design types are [], [], [], and [].

With respect to NTN's design type [], at verification NTN explained that this design is for combination bearings which could be comprised of either two angular contact bearings or one angular contact bearing and one deep groove bearing. *See* the memorandum to file entitled "Home-Market and Export-Price Sales Verification Report of NTN Corporation: 2004-2005 Administrative Review of the Antidumping Duty Order on Ball Bearings and Parts

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

Thereof from Japan,” dated January 4, 2006, at 5. In situations where a sale involved a combination bearing comprised of two angular contact bearings, NTN reported our designation for “angular contact” design. NTN did not have and, thus, did not report U.S. sales of combination bearings comprised of an angular contact and a deep groove bearing during the POR. *Id.*

With respect to NTN design types [] and [], NTN reported that these bearings fall into both the “housed” and “deep groove” design-type categories. *See* NTN’s September 26, 2005, questionnaire response at Exhibit B-3. NTN reported the designation for “housed” bearings for these two NTN designs. *Id.* With respect to NTN design type [], NTN reported that these bearings fall into both the “angular contact” and “thrust ball” design-type categories. *Id.* From the list of all NTN design types provided in exhibit B-3 we identified another NTN design, [], which falls into both the “angular contact” and “thrust ball” categories for design type. *Id.* NTN reported the designation for “thrust ball” bearings for NTN designs [] and []. *Id.*

Our model-match methodology handled these NTN designs, with the exception of that for which NTN reported no sales (*i.e.*, design [] where a combination bearing is comprised of an angular contact and a deep groove bearing), based on which of the two of our accepted design classifications NTN chose to use in classifying these bearings.

Although we found in the draft remand results that we should create two new design types (thrust ball/angular contact and housed/deep groove) to prevent product overlap, we have reconsidered this decision in light of the comments we received in response to our draft remand results. As discussed in detail below, the current model-match methodology already has ways to handle the bearings that NTN reported may fall within more than one design-type category.

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

Accordingly, there is no need to add additional design types.

NTN claims that there is an overlap in the “housed bearing” and “deep groove” design types because certain bearings can be categorized as both a “housed bearing” design type and a “deep groove” design type. *See* NTN’s September 26, 2005, questionnaire response at Exhibit B-3. This is, in fact, not the case. A housed bearing is a bearing that is contained within a housing; such bearings were to be reported with the design code of “HB” for housed bearings. *See* questionnaire dated July 5, 2005, at page V-6. An insert bearing is a bearing that is specifically constructed to be inserted into a housing but is sold separately from the housing for which it is designed to be inserted; such bearings were to be reported with the design code of “IB” for insert bearings. *Id.* Any other (*i.e.*, non-housed, non-insert) bearings were to be reported with the other design codes indicated in the questionnaire; for example, deep groove bearings were to be reported with the design code of “DG” for deep groove bearings. *Id.* Thus, no bearing, housed or not housed, can be categorized as more than one of the three above categories (*i.e.*, a housed bearing, an insert bearing, or another bearing type that is neither a housed nor an insert bearing). Accordingly, there is no overlap between the “deep groove” design type and the “housed bearing” design type.²

We agree with NTN that, with respect to an angular contact thrust ball bearing, there is an “overlap” between the “thrust ball” and “angular contact” design types that we have established in our questionnaire (*see* exhibit B-3 of NTN’s September 26, 2005, questionnaire response), but, based upon further examination, we no longer agree that an additional design type is necessary to

² In the draft remand results, we had indicated that, to the extent that a housed bearing could be other than a housed deep groove bearing (*e.g.*, a housed angular contact bearing), it would be appropriate to make a distinction between these two types of housed bearings. In fact, NTN did not argue that we should not distinguish a housed deep groove bearing from, *e.g.*, a housed angular contact bearing. Nor is there any record evidence that suggests that NTN sold housed bearings other than housed deep groove bearings. Thus, there is no evidence on the record to support this distinction.

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

prevent comparisons between angular contact thrust ball bearing and a plain thrust ball bearing. Under the Department's model-match methodology in the bearings proceedings, an angular contact thrust ball bearing cannot be compared with a plain thrust ball bearing because the two types of thrust ball bearings have different load directions. Namely, NTN reported that plain thrust ball bearings have an [] load direction while thrust ball angular contact ball bearings have a [] load direction.³ The load direction of a bearing sold in the U.S. market must be the same load direction as the bearing sold in the comparison market for the Department to match such bearings. Because we "limited our examination to models sold in the home market that had the same . . . load direction" (*see AFBs 16 Preliminary Results*, 71 FR at 12174) and an [] load direction is not the same as a [] load direction, it is not possible that we would compare a thrust ball angular contact ball bearing to a plain thrust ball bearing. Thus, while there is an overlap in the design type for thrust ball angular contact ball bearings and plain thrust ball bearings, no additional design types are necessary because these two types of bearings cannot be compared because of the differences in load direction.⁴

Accordingly, we have not added any design types.

Comment 2: NTN agrees with the Department's decision in the draft remand results⁵ to create two new design types, thrust ball/angular contact and housed/deep groove. NTN disagrees with the Department's decision to reject NTN bearing designs that do not fall into more than one

³ See Exhibits B-1 and C-1 (sales files) of NTN's September 26, 2005, questionnaire response and July 5, 2005, antidumping questionnaire for explanation of load-direction codes.

⁴ In the draft remand results, we had indicated that a separate design type for thrust ball angular contact ball bearings would be appropriate. We have not created a separate design type for purposes of these remand results because it would not affect the margin as the differences in load direction already causes such bearings not to be matched to thrust ball bearings. Thus, creating a new design type in this situation would be redundant.

⁵ See footnotes 2 and 4, *supra*.

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

of the Department's design types. NTN alleges that the Department mischaracterizes the nature of the Court's order. Specifically, NTN argues that the Court directed the Department to examine NTN's proposed design types as part of a two-step process – first, a suitable explanation regarding the application of the model-match methodology to NTN designs that fall within more than one accepted design type; second, in light of that explanation, a reconsideration of the Department's decision to reject NTN's additional design types. NTN asserts that the Department did not address the second step of the Court's direction (*i.e.*, it did not provide any discussion or analysis, factual or legal, in the draft remand results that was any different from its determination in *AFBs 16*). Absent such a discussion or analysis, NTN argues, the Court is not able to consider, in the entirety, the Department's decision to reject all of NTN's proposed design types.

Department's Position: We disagree with NTN that we mischaracterized the Court's order. The Court sought an explanation regarding how our model-match methodology handles NTN bearings that overlap our established design types. Specifically, the Court stated:

Without a suitable explanation, the court is not able to discern how Commerce applied its model matching methodology to those of NTN's bearings that appear to fall within more than one accepted design type. The *answer to this question* is relevant to *the court's consideration, in the entirety*, of Commerce's decision to reject all of NTN's proposed design types other than the design-type category for hub units incorporating angular contact bearings.

See the Court's order at 33 (emphasis added). The Court stated that *it* will consider, in the entirety, our decision to reject all of NTN's proposed design types. The Court ordered us to reconsider NTN's proposal and referred back to its analysis, in which the Court said,

the court also observes that some of the bearings described in NTN's proposal for additional design types appear to fall within more than one of the Department's design-type categories. NTN raises this specific objection in support of its claim that Commerce should not have rejected its proposal. *See* NTN Mem. 28 (“Commerce's design codes do not take into account bearings, which fall into more than one category, such as bearings that are both ‘angular contact’ and ‘deep groove’ . . .”). Defendant does not respond to this issue in its briefs, nor is this

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

issue addressed in the Decision Memorandum. Without a suitable explanation, the court is not able to discern how Commerce applied its model matching methodology to those of NTN's bearings that appear to fall within more than one accepted design type.

Id. We have provided the explanation the Court sought in the discussion above. With respect to NTN designs that do not apparently overlap with more than one of our established design types, we continue to reach the same conclusion we reached in *AFBs 16*. Because the Court's order did not direct us to reexamine our rationale for rejecting NTN designs that do not apparently overlap our established design types, we perceive no reason to deviate from *AFBs 16* where we discuss, in detail, the reasons for rejecting NTN's proposed designs. Accordingly, we find that we have complied fully with the Court's instructions.

Comment 3: Timken asserts that the Department's proposal to create a new design type, housed/deep groove, and apply the new classification to two NTN designs that the Department identified in NTN's response is not supported by record evidence and does not address the concern of the Court. Timken argues that there is no evidence on the record that supports a conclusion that a housed bearing containing a deep groove bearing could not be compared with a similar housed bearing containing other types of insert bearings (such as an angular contact ball bearing), assuming that the Department's other model-match criteria are satisfied. In fact, Timken argues, there is no record evidence that NTN even reported housed bearings with insert bearings that are not deep groove ball bearings. This is so, argues Timken, because NTN never asserted that sales of such bearings were included in its databases or even argued that such comparisons were made, let alone argued that such comparisons were not appropriate. Timken points to the Department's statement in the draft remand results where it said that it could not discern whether there were other housed bearings, not already identified, that should be treated as housed/deep groove. Timken argues that NTN never claimed that the two NTN designs that the

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

Department identified were the only categories of housed units that contained deep groove bearings. Timken asserts that, while the record is not clear as to the type of insert bearings that are incorporated into NTN's reported housed bearings, the information in an NTN publication suggests that all of NTN's reported housed units contain deep groove ball bearings.

Timken asserts that, with respect to housed units, NTN argued only that the Department should not compare housed bearings that differed with respect to mounting mechanisms or the type of housing or the presence of dust covers; NTN did not argue that housed bearings containing deep groove bearings warrant a separate design type. In spite of the lack of record evidence and the lack of NTN's arguments on this point, Timken argues that the Department proposed, nevertheless, a housed/deep groove design type which will result in the preclusion of comparisons of bearings with this design type with other housed bearings, regardless of whether they contain deep groove ball bearings.

Timken argues that the Department's proposal does not address the Court's concern, which merely required an explanation of how the model-match methodology handled NTN designs that overlap the established design types. Timken suggests that the Department explain to the Court that the Department adopted a separate design type for housed bearings in response to concerns raised by certain parties in the 2003-2004 administrative review, citing *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 70 FR 54711 (September 16, 2005), and the accompanying I&D Memo at 30 (summarizing a respondent's comparison between housed and unhoused bearings).

With respect to the proposed design type "thrust ball/angular contact," Timken asserts that the Department should explain to the Court that, although NTN's materials illustrate that a

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

thrust bearing could contain an angular contact ball bearing, the record evidence supports the conclusion that NTN classifies such bearings as thrust ball bearings. As such, Timken argues, the record evidence supports the Department's similar classification of such bearings as thrust ball bearings.

Department's Position: As discussed above, we agree with Timken that we should not add new design types to our model-match methodology based on the record evidence and NTN's arguments.

Timken's Argument that We Should Have Used U.S. Rather than Japanese Interest Rates to Calculate a Portion of Certain Respondents' Inventory-Carrying Costs

For the part of the inventory-carrying period in the United States where Nachi and NTN – rather than their U.S. affiliates – bore the costs of carrying the merchandise at issue, we used the Japanese yen-based interest rates that Nachi and NTN incurred in Japan to quantify the costs borne by the parent companies on behalf of their U.S. subsidiaries during the inventory-carrying period. *See AFBs 16* and the accompanying I&D Memo at Comments 11 and 13. For each of these two companies, we used the payment terms between the parent company and its U.S. subsidiary to determine the period in which the parent company bore the cost of carrying inventory on behalf of its U.S. subsidiary.

Timken argued before the Court that, in relying on the payment terms between the Japanese parents and U.S. affiliates for its calculation of inventory-carrying costs incurred in the United States, the Department did not follow the evidentiary standards discussed in *Certain Welded Stainless Steel Pipe From Taiwan: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part*, 65 FR 39367 (June 26, 2000), and the accompanying I&D Memo at Comment 2 (*Welded Steel Pipe*), and *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty*

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

Changed Circumstances Review: Certain Softwood Lumber Products From Canada, 69 FR 75921 (December 20, 2004), and the accompanying I&D Memo at Comment 39 (*Softwood Lumber*). Specifically, Timken argued that payment terms that require an affiliate to pay its parent by a specific date do not constitute proof that the affiliate actually paid its parent on that date rather than before that date.

In its opinion, the Court quoted the Department's position in *Welded Steel Pipe* as follows:

It is the Department's practice to use the short-term borrowing rate in the currency in which the cost of the inventory is incurred by the entity that bears the cost of producing or acquiring such inventory. The Department deviates from this practice only in instances where there is clear evidence that an entity other than the one holding the merchandise in inventory absorbs the full cost of financing the cost of the merchandise during the time that the merchandise is held in inventory. In this case, Ta Chen {the foreign producer} provided no clear record evidence that it, and not TCI {the U.S. affiliate}, incurs the cost of the merchandise in inventory during the entire period of credit days given to TCI. Since there is no record evidence of when payment is made by TCI, the Department cannot assume that TCI does not pay Ta Chen until the last day of the payment period.

See the Court's order at 95. The Court also stated that, in *Softwood Lumber*, the Department agreed with the position of a respondent which commented that the correct interest rate to use in the calculation of inventory-carrying costs "is the short-term borrowing rate of the company that holds title to the subject merchandise and invoices the ultimate customer." *Id.* (quoting an argument a respondent made in *Softwood Lumber*, at page 141 of the *Softwood Lumber* I&D Memo). In light of these two administrative decisions, the Court found that there is a possibility that we departed from a practice or methodology in making a decision to use Japanese yen-based interest rates in *AFBs 16*. The Court found that we did not address Timken's arguments concerning whether our use of Japanese yen-based interest rates in *AFBs 16* was a departure from a practice or established methodology and, if it was, whether we departed knowingly from such

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

practice or methodology. The Court remanded our decision and directed us to include in our remand redetermination an analysis which responds to Timken's arguments with respect to a departure from an alleged practice or methodology and reconsider our decision to use Japanese yen-based interest rates when calculating Nachi's and NTN's inventory-carrying costs incurred in the United States.

While we recognize that there may be exceptions, it has generally been our longstanding practice that, if the payment terms that the parent company extends to its U.S. subsidiary, in combination with the time the merchandise remains in the U.S. subsidiary's inventory, indicates that the parent company bears the cost of carrying the merchandise for a portion of time the merchandise is in inventory in the United States, we use the parent company's short-term interest rate to calculate that portion of the inventory-carrying cost.⁶ Further, in previous administrative reviews of the antidumping duty orders on ball, cylindrical roller, and spherical plain bearings from Japan, when information on the record indicated that the parent company bore the cost of carrying inventory in the United States on behalf of its U.S. subsidiary, we used Japanese yen-based short-term interest rates for the portion of the inventory-carrying period in which the parent company bore the cost of carrying the inventory in the United States.⁷

⁶ See, e.g., the following decisions: *Timken Co. v. United States*, 858 F. Supp. 206, 213 (CIT 1994), affirming in part *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 65228, 65236 (December 16, 1991); *High Information Content Flat Panel Displays and Display Glass Therefor From Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32399-400 (July 16, 1991); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28410 (June 24, 1992) (AFBs 2); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590, 35619-20 (July 1, 1999) (AFBs 9); *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 6889 (February 11, 2003), and the accompanying I&D Memo at Comment 9; *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 69 FR 6259 (February 10, 2004), and the accompanying I&D Memo at Comment 8.

⁷ See AFBs 2, 57 FR at 28410, and AFBs 9, 64 FR at 35619-20.

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

Welded Steel Pipe is an isolated decision in which we stated that we cannot assume that the U.S. subsidiary paid the parent company on the last day under the payment term. Moreover, *Welded Steel Pipe* did not indicate that we were changing our longstanding practice with respect to this issue. Therefore, *Welded Steel Pipe* does not represent the establishment of a new practice or methodology.

Softwood Lumber does not indicate clearly whether we departed from our practice of basing the interest rate on the payment terms between the parent company and its U.S. subsidiary and, if we did depart from our practice, why we did so. In *Softwood Lumber*, it is also not clear whether the payment terms between the parent company and its U.S. subsidiary coincided with title change between the two entities. Like *Welded Steel Pipe*, *Softwood Lumber* is an isolated decision and it does not provide us with sufficient rationale to depart from our longstanding practice.⁸ Therefore, consistent with our longstanding practice as stated above, we have not changed our calculation methodology for Nachi's and NTN's inventory-carrying costs incurred in the United States.

No party commented on our explanation in the draft remand results.

Our Recalculation of NTN's Freight Expenses Based on Weight Rather than Value

During the administrative review, NTN claimed that it was unable to allocate freight expenses on the basis in which it is incurred, *i.e.*, weight, because it did not maintain this information in its records. *See, e.g.*, NTN's September 26, 2005, questionnaire response at pages B-29, B-30, and B-32. Instead, NTN reported its freight expenses using a value-based allocation.

At verification we learned that NTN did have certain weight information and we reallocated NTN's freight expenses on the basis of weight. We did not do so for other reviewed

⁸ *See* footnotes 6 and 7, *supra*.

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

firms because we did not have the data needed to implement a weight-based allocation. The Court directed the Department to redetermine NTN's freight expenses using a method that is consistent with the Department's treatment of the freight expenses of other respondents in the administrative review. We respectfully disagree with the Court's direction to calculate NTN's freight expenses in a manner consistent with our treatment of other respondents' reported freight allocations where, different from other respondents, we had certain weight information for NTN on the record. Nevertheless, in order to treat NTN's freight expense calculation in a manner consistent with our treatment of other respondents' reported freight allocations, pursuant to the Court's order, the only alternative is to accept NTN's allocation of freight expenses on the basis of value. To comply with the Court's order, we have recalculated NTN's margin using the freight-expenses data as reported originally by NTN.

No party commented on our revised calculations in the draft remand results.

Our Application of Facts Available and Adverse Facts Available to Nachi's Reported Physical-Characteristic Data for Similar Merchandise Except in Specific Instances Where We Found Errors in Reporting

The Court has ruled that our application of facts available for models which were not individually examined at verification of Nachi's questionnaire responses was unlawful and ordered that we must revise our analysis to use facts available only for the portion of Nachi's reported information that is the subject of a finding that is supported by substantial evidence on the record – *i.e.*, those models for which the physical characteristics we found to have been misreported – and to redetermine Nachi's margin accordingly. We respectfully disagree that our application of facts otherwise available was not supported by substantial evidence. Nevertheless, we have complied with the Court's order.

To implement the Court's order, we removed all facts-available substitutions from our

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

calculations of Nachi's margin. With respect to the models for which we found at verification that Nachi had reported physical-characteristic data incorrectly, we had collected at verification the actual physical characteristics on the record of the review and, in fact, had corrected the physical-characteristic information for these models in *AFBs 16*. See Memorandum entitled "Ball Bearings from Japan - Nachi-Fujikoshi Corporation (Nachi) Final Results Analysis Memo Sixteenth Administrative Review 5/1/04 - 4/30/05" dated July 7, 2006, and accompanying margin-calculation program log at lines 2014 through 2042. Because (1) we were able to verify that certain information we examined at verification was accurate, (2) at verification we obtained correct information for the physical-characteristic information that Nachi had reported incorrectly, and (3) the Court has concluded that the Department cannot make inferences with respect to the models that it did not examine individually at verification, for purposes of this remand determination, we are not applying facts available to certain U.S. sales by Nachi to redetermine Nachi's antidumping duty margin in accordance with the Court's order.

At the start of verification the Department examined the physical characteristics Nachi reported for several models of bearings which were identified in the Department's verification outline issued to Nachi prior to the scheduled verification. See Letter from Laurie Parkhill containing the verification agenda and preselected items for Nachi, dated December 1, 2005, at attachment 2, and Memorandum entitled "Verification of Nachi-Fujikoshi Corporation's home-market and reported export-price sales," dated February 9, 2006, at 4 (Nachi Verification Memo). After finding errors in the data concerning the outer diameter for certain models Nachi reported, which the Department had preselected for examination, the Department selected 10 additional models to ascertain whether the misreported physical characteristics were endemic to the response. See Nachi Verification Memo at 4. Because the Department found additional errors in

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

the expanded pool of sales of the additional models, the Department expanded the pool of sales of models again until it had examined a total of sales of 40 models. Each time the Department found Nachi's reporting of the physical characteristics to be rife with error. *Id.*

Verification is meant to be a spot-check, not a comprehensive audit of every piece of information a respondent submits to the Department. *See, e.g., Chrome-Plated Lug Nuts From Taiwan; Final Results of Antidumping Duty Administrative Review*, 64 FR 17314, 17316 (April 9, 1999) (“ . . . it became clear that the records that it was attempting to rely on could not adequately substantiate its response without requiring the Department essentially to perform a complete audit of {the respondent's} financial records. This is not the purpose of verification, which is fundamentally a spot check of selected data – not a detailed examination of a respondent's entire accounting system.”), and *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710, 30740 (June 8, 1999) (“ . . . due to the volume of information that must be verified in a limited amount of time, the Department does not look at every transaction, but rather samples and tests the information provided by respondents It has been the Department's long standing practice that if no errors are identified in the sampled transactions, the untested data are deemed reliable. Conversely, if errors are identified in the sample transactions, the untested data are presumed to be similarly tainted absent satisfactory explanation and quantification on the part of the respondent. . . This is especially so if, as here, the errors prove to be systemic in nature.”).

In *AFBs 16* it was appropriate, and necessary, to apply facts available for Nachi's similar matches because Nachi reported incorrect physical characteristics for a substantial proportion of

its models. Therefore, any attempt to identify the most similar model became fatally flawed.⁹ To illustrate this, consider an example where we attempt to match a U.S. model to one of two potentially similar home-market models. If any one of these three models has a misreported physical characteristic, that error could cause us to select a home-market model that is not the most similar to the U.S. model. This would be true even if we specifically examined and verified the physical characteristics of the other two models. We would expect that, on average, one of these three models would have at least one misreported characteristic based on the finding at verification that 40 percent of the models we examined had at least one misreported physical characteristic.

This effect is exacerbated by the fact that U.S. models may have more than two potential comparisons. If a U.S. model had four potential similar home-market models, we would expect, on average, two of the five models to have characteristics that were reported incorrectly due to our findings at verification. Furthermore, if the characteristic Nachi reported incorrectly caused the sum of the deviations of a model to be under 40 percent when it really should be greater than 40 percent, that would cause us to make a match to a product that is not comparable to the U.S. model.¹⁰ Conversely, if the characteristic Nachi reported incorrectly caused the sum of the deviations of a model to be greater than 40 percent when it really should be less than 40 percent, that would cause us to not consider a product that is actually comparable to the U.S. model. As a result, it is impossible for us to be sure we have the proper universe of potential comparisons for any U.S. model unless we were to verify all potential comparison models.

⁹ The following discussion does not include those models for which the Department made exceptions in *AFBs 16* (e.g., where its model-matching methodology resulted in a similar match to a model that was in the same bearing series) for the reasons described therein. These exceptions were not disputed.

¹⁰ Under the model-match methodology, any home-market models for which the sum of the deviations from the U.S. model exceeds 40 percent are not considered comparable merchandise. See *AFBs 16 Preliminary Results*, 71 FR at 12174 (unchanged in *AFBs 16*).

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

Because the Department found inaccuracies in a substantial portion of the sample reported physical-characteristic information that it examined at verification and used in the model-match methodology to determine similar matches, the Department could not rely on the physical characteristics Nachi reported to determine comparison sales of similar merchandise. Accordingly, the Department respectfully continues to believe that it was correct to rely on facts otherwise available pursuant to section 776(a)(2)(D) of the Act. Nevertheless, in light of the Court's order, the Department has ceased using facts otherwise available for Nachi in connection with physical characteristics that the Department did not examine and re-calculated the margin for Nachi using the reported data as corrected for specific verification findings.

No party commented on our revised calculations in the draft remand results.

Conclusion

In accordance with the Court's order, we have recalculated the antidumping duty margins for sales by Nachi and NTN to the United States. As a result, the weighted-average percentage margins for the period May 1, 2004, through April 30, 2005, for ball bearings and parts thereof from Japan have changed as follows:

<u>Company</u>	<u>Margin Percentage</u>
Nachi	
Original	16.02
Revised	13.91
NTN	
Original	9.32
Revised	8.02

PUBLIC VERSION ~~Contains Business-Proprietary Information~~

We are issuing these final results of redetermination pursuant to the remand of the Court in *JTEKT Corporation v. United States*, Court No. 06-00250, slip op. 09-147 (December 18, 2009).

/s/ John M. Andersen

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

May 17, 2010

Date