with the CIT (see *Zenith Electronics Corporation* v. *United States,* 770 F.Supp. 648 (CIT 1991)).

On January 17, 1995, the Department, consistent with the decision of the CAFC in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990), published a notice in the Federal Register stating that it would not order the liquidation of the subject merchandise entered or withdrawn from warehouse for consumption prior to a ''final and conclusive'' decision in this case. On June 20, 1996, the Department published amended final results of the first administrative review for those respondents not affected by the direct/indirect warranty issue (61 FR 31507).

On February 12, 1996, in *Zenith,* the CAFC upheld the Department's methodology for determining direct and indirect warranty expenses for purposes of making a COS adjustment in calculating AOC's final margin. The CAFC upheld the Department's practice of limiting adjustments to expenses that were reasonable identifiable, quantifiable, and directly related to the sales under consideration. It affirmed the Department's definition of ''direct'' as those expenses that vary with the quantity sold and ''indirect'' as those expenses that do not vary with the quantity sold. *Id.* (Citing *Koyo Seiko Co.* v. *United States,* 36 F.3d 1565, 1569 n.4 (Fed. Cir. 1994); *Torrington Co.* v. *United States,* 44 F.3d 1572, 1579 (Fed. Cir. 1995); *Consumer Prods. Div., SCM Corp.* v. *Silver Reed America, Inc.,* 753 F.2d 1033, 1035 (Fed. Cir. 1995)). In this instance, the CAFC concluded that evidence in the record failed to demonstrate that AOC's in-house warranty labor expenses varied with the quantity of CTVs sold. On July 18, 1996, the CIT remanded the case to the Department to recalculate AOC's dumping margin in accordance with the CAFC's February 12, 1996 opinion. The Department recalculated AOC's warranty expenses in response to the CIT's remand and in accordance with the CAFC's February 12, 1996 ruling, and filed the redetermination with the CIT on September 3, 1996.

As a result of the Department's recalculation of AOC's warranty expenses, designating in-house labor expenses incurred in the home market as indirect and the cost of parts as direct, the Department has determined the weighted-average dumping margin for CTVs from Taiwan, manufactured/exported by AOC, during the period October 19, 1983 through March 31, 1995, to be 0.17%. The CIT affirmed the Department's remand determination on September 19, 1996.

Accordingly, the Department will determine, and the Customs Service will assess, appropriate antidumping duties on entries of the subject merchandise made by AOC during the period October 19, 1983 through March 31, 1985. The Department will issue appraisement instructions directly to the Customs Service.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (f)) and 19 CFR § 353.28(c).

Dated: October 31, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–28678 Filed 11–6–96; 8:45 am]

**BILLING CODE 3510–DS–M**

---

**[A–588–054 and A–588–604]**

## 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

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative reviews and revocation in part of an antidumping finding.

**SUMMARY:** On May 5, 1995, the Department of Commerce (the Department) published the preliminary results of its 1992–93 administrative reviews of the antidumping finding on tapered roller bearing (TRBs), four inches or less in outside diameter, and components thereof, from Japan (A–588–054 finding) and the antidumping duty order on TRBs and parts thereof, finished and unfinished, from Japan (A–588–604 order). The review of the A–588–054 finding covers four manufacturers/exporters and ten resellers/exporters of the subject merchandise during the period October 1, 1992, through September 30, 1993. The review of the A–588–604 order covers five manufacturers/exporters of the subject merchandise, ten resellers/exporters of the subject merchandise, and 18 alleged forging producers for the period October 1, 1992, through September 30, 1993.

**EFFECTIVE DATE:** November 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Valerie Turoscy or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 5, 1995, the Department published in the Federal Register the preliminary results (60 FR 22349) of the 1992–93 administrative reviews of the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (41 FR 34974, August 18, 1976), and the antidumping duty order on TRBs and parts thereof, finished and unfinished, from Japan (52 FR 37352, October 6, 1987).

### Applicable Statute and Regulations

In accordance with section 751 of the Tariff Act of 1930, as amended (1988) (the Tariff Act), the Department has now completed these reviews for all firms except Koyo Seiko Company, Ltd. (Koyo). We will publish our preliminary and final results for Koyo at later dates. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

### Scope of the Reviews

Imports covered by the A–588–054 finding are sales and entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of the A–588–604 order, except for those manufactured by NTN Corporation (NTN). This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8484.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. These HTS item numbers and those for the A–588–054 finding are provided for convenience and Customs purposes.

The written descriptions remain dispositive.

In addition, on February 2, 1995, we published in the Federal Register our final scope determination regarding Koyo's rough forgings (60 FR 6519). Because we determined that these forgings are within the scope of the A–588–604 order on TRBs from Japan, we have considered such forgings as within the scope of this 1992–93 review of the order.

These reviews cover TRBs manufactured and exported by NTN, NSK Ltd. (NSK), Nachi-Fujikoshi (Nachi), and Maekawa Bearing Mfg., Co., Ltd. (Maekawa), and TRBs resold/exported by Honda Motor Co., Ltd. (Honda), Fuji Heavy Industries, Ltd. (Fuji), Kawasaki Heavy Industries, Ltd. (Kawasaki), Yamaha Motor Co., Ltd. (Yamaha), Sumitomo Corporation (Sumitomo), Itochu Co., Ltd. (Itochu), Suzuki Motor Co., Ltd. (Suzuki), Nigata Converter Co., Ltd. (Nigata), Toyosha Co., Ltd. (Toyosha), and MC International (MC Int'l). These reviews also cover U.S. sales of forgings by NTN and 18 other firms originally identified as Japanese forging producers (Daido Steel Co., Ltd., Asakawa Screw Co., Ltd., Fuse Rashi Co., Ltd., Hamanaka Nut Mfg. Co., Ltd., Ichiyanagi Tekko, Isshi Nut Industries, Kawanda Tekko, Kinki Maruseo Nut Kogyo Kumiai, Kitazawa Valve Co., Ltd., Nittetsu Bolten, Shiga Bolt, Shinko Bolt, Sugiura Seisakusho, Sumikin, Seiatsu, Toyo Valve Co., Unytite Fasterner Mfg. Co., Ltd., Gotoh Nut Seisakusho, and Kawada Tekkosho). However, as explained in our preliminary results for these reviews, we have terminated our review for 14 of these 18 firms (see 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; Preliminary Results of Antidumping Duty Administrative Reviews, Termination in Part, and Intent to Revoke in Part, 60 FR 22350 (May 5, 1995) (*TRB 90/92 Prelim*)). The period of review (POR) is October 1, 1992 through September 30, 1993.

## Analysis of Comments Received

We gave interested parties an opportunity to comment on our preliminary results. At the request of the Timken Company (Timken), the petitioner in these proceedings, NTN, and NSK, we held a hearing covering both the reviews on August 4, 1995. We received case briefs from Timken, NTN, NSK, Fuji, and Kawasaki, and rebuttal briefs from Timken, NTN, NSK, and Honda.

At the request of the presiding official at the hearing, on August 11, 1995, Timken, NSK, and NTN submitted additional comments regarding specific issues. These comments and those contained in the case and rebuttal briefs are addressed below in the following order:

1. Model Match, Difference-in-Merchandise (Difmer) Adjustments, 20-Percent Test, and Set-Splitting
2. Cost Test Methodology
3. Packing and Movement Expenses
4. Adjustments to USP
5. Samples, Prototypes, and Sales Not in the Ordinary Course of Trade
6. Discounts, Rebates, and Price Adjustments
7. Miscellaneous Comments Regarding Level of Trade, VAT Methodology, Assessment and Cash Deposit Rates, Supplier's Knowledge, and Honda's Revocation
8. Cost of Production and Constructed Value
9. Clerical and Computer Programming Errors

## Comments Regarding Model Match, Difference-In-Merchandise Adjustments, 20-Percent Test, and Set-Splitting

*Comment 1:* NTN and NSK argue that due to decisions by the Court of International Trade (the CIT) in litigation related to earlier TRB reviews, the Department is required to include in its sum-of-the deviations model-match methodology a ten-percent ''cap'' on deviations in each of the five physical criteria used in this methodology, *citing,* as examples, *NTN Bearing Corp.* v. *United States,* 881 F. Supp. 595 *(CIT 1995) (NTN1*), and *Koyo Seiko Co.* v. *United States,* 834 F. Supp. 431, 434–35 (CIT 1993) (*Koyol*). NSK adds that the Department's failure to apply the ten-percent deviation cap invites comparisons between physically dissimilar TRBs because the Department's use of the 20 percent diffmer cap alone does not adequately screen out dissimilar matches.

Petitioner argues that, because the issue of the ten-percent deviation cap is currently on appeal at the United States Court of Appeals for the Federal Circuit (Federal Circuit), the Department should decline to alter its methdology until the final judicial decision is made on this issue.

*Department's Position:* We disagree with respondents. Since the issuance of our preliminary results, the Federal Circuit has definitively ruled that our choice not to apply the ten-percent deviation cap is reasonable and that we are not required to apply such a cap in connection with our sum-of-the-deviations model-match methodology (*see Koyo Seiko Co.* v. *United States,* No. 94–1363 (Fed. Cir. September 20, 1995)). As a result, we have not applied a ten-percent deviation cap on our five model-match criteria for these final results.

*Comment 2:* NTN argues that the Department incorrectly split home market TRB sets which are ''unsplittable.'' NTN claims that because certain of its TRB models contain cups and cones which are never sold individually in any market, it is illogical to split such models into individual cup and cone sales. Furthermore, NTN states that because the rationale behind the Department's set-splitting methodology is to find merchandise ''such or similar'' to individual cups and cones sold in the United States, the Department may only split TRB sets sold in the home market which contain cups and cones identical or similar to those cups and cones sold individually in the United States. NTN argues that, because cups and cones contained in its ''unsplittable'' sets are never sold individually, they do not represent merchandise which is potentially similar to individually sold cups and cones. Therefore, NTN asserts, the Department, by splitting such sets, creates a pool of home market cups and cones which cannot be fairly considered as candidates for matching to cups and cones sold separately in the United States.

Timken argues that, in accordance with section 771(16) of the Tariff Act, the Department's model-match methodology reasonably assesses objective physical criteria and the variable costs of production when identifying that home market merchandise which is such or similar to merchandise sold in the United States. Because the Department does not consider other factors such as packaging or invoicing, if the cup or cone split from an ''unsplittable'' set is physically identical, or most physically similar to a cup or cone individually sold in the United States, there is no statutory basis for the Department to reject such a comparison. Timken further states the NTN's argument, which basically asserts that a cup or cone sold within a set can never be found to be such or similar to a cup or cone that is sold separately, calls for an additional matching factor which is unwarranted by the statute. Finally, Timken argues that if the Department were not to split NTN's claimed ''unsplittable'' sets, the pool of home market such or similar merchandise would be narrowed and the Department's ability to match U.S. and home market merchandise would be curtailed.

*Department's Position:* We agree with Timken. Section 771(16) of the Tariff Act does not require that such or similar merchandise be sold in the same manner as merchandise under review. TRB components that are sold solely within sets do not lose their status as merchandise such or similar to individually-sold TRB components simply by virtue of the fact that they are sold as components of sets instead of an individual cups and cones. The fact that a home market cup or cone was never sold individually in any market does not preclude the possibility that the cup or cone may be the most physically similar merchandise to cups and cones NTN sold separately in the United States. Because they may be the most similar products, it is appropriate to include this merchandise in the pool of home market sales and, if such cups and cone are determined to be the most similar merchandise to products sold in the United States, it is appropriate to use them in our dumping comparisons, as we have done in past reviews of NTN and as has been approved by the CIT (see, *e.g., Final Results of Antidumping Duty Administrative Reviews; 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,* 58 FR 64720 (December 9, 1992) (*TRBs 90/92*) and *NTN Bearing Corp.* v. *United States,* 747 F. Supp. 726, 741 (CIT 1990)).

*Comment 3:* NTN argues that the Department should not compare TRBs with different design types and, more specifically, that the Department should not compare TRBs of different precision ratings. NTN explains that not only is the physical nature of high precision TRBs much different than that for normal precision items, but high precision TRBs are sold at prices much higher than normal precision TRBs, and the two types of TRBs are never used interchangeably. Therefore, NTN asserts, the Department's comparison of normal precision TRBs to high precision TRBs is contrary to law. NTN also argues that, because the Department did not compare bearings with different precision ratings in the antifriction bearings (AFBs) investigation and subsequent reviews, and because the Department noted the use of bearing design type in its less-than-fair-value (LTFV) final determination in the A–588–604 TRB case, the Department should include design type and precision rating in its model-match methodology for these final results.

Timken contends that the Department's AFB model-match methodology, which reflects a ''family'' approach that includes design type and precision rating, does not serve as a basis for the use of design type and precision rating in the Department's TRB model-match methodology, because the AFB methodology was developed specifically for AFBs and neither NTN nor any other party has asserted that there are ''families'' of TRBs or identified characteristics of TRBs that would require a model-match methodology like that of AFBs. Timken also argues that NTN's reliance on the Department's LTFV determination in the A–588–604 case is incorrect in that the Department's referral to ''type of bearing'' in its determination did not encompass design types, but rather referred to the number of rows of rollers in a TRB, *citing Final Determination of Sales of Less than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan,* 52 FR 30700. Finally, Timken states that NTN has not provided evidence that the Department's TRB model-match methodology is contrary to law, and, absent such a demonstration, the Department is not required to alter its methodology.

*Department's Position:* We agree with Timken. As we explained in *TRBs 90/92,* design type categories are not consistent throughout the TRB industry. If we could not match across such categories, we would substantially limit the number of matches, thus working contrary to the statutory preference for price-to-price comparisons. If the physical nature of the compared bearings is significantly different, as NTN states is true for its high precision and low precision TRBs, the sum-of-the-deviations model-match methodology addresses the differences in physical criteria. In addition, if the bearings are not of equal commercial value, our 20 percent difmer cap precludes such a comparison (*see, e.g., TRBs 90/92* at 64721 and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan; Final Results of Administrative Review,* 57 FR 4960 (February 11, 1992) (*TRBs 89/90 (604)*)). Furthermore, concerning NTN's statement that high precision and low precision TRBs should not be compared because they are not interchangeable, ''interchangeability'' is not a requisite criterion for matching similar merchandise. If it were, it would effectively mandate that all comparison models be identical to ensure the ''interchangeability'' of the comparison merchandise. Finally, while all TRBs and AFBs are bearing products, because TRBs are different products than AFBs, it is reasonable for us to employ different model-match and other methodologies in our calculations for TRBs.

*Comment 4:* NSK argues that, in prior reviews, when determining the pool of potential similar home market merchandise, the Department has calculated its 20 percent difmer cap as 20 percent of the value of U.S. variable costs of manufacturing (VCOM). NSK states that in the preliminary results of these reviews the Department departed from its previous methodology and calculated its 20 percent difmer cap as 20 percent of the total cost of manufacture (TCOM) of the U.S. model. NSK concludes that, because the TCOM for a model is larger than the VCOM, the Department's new methodology resulted in an unreasonable and insupportable increase in the pool of similar home market merchandise. NSK further states that the Department's previous methodology was affirmed by the CIT in numerous cases, *citing NTN1.* NSK contends that because the Department has not adequately explained its reasons for using the new methodology, and given the CIT's approval of the Department's previous methodology, for these final results the Department should revert to its previous practice and use the VCOM as the denominator in its 20 percent difmer cap calculation.

Timken argues that the Department's use of the TCOM as the denominator in its calculation of the 20 percent difmer cap was not only explained, but, contrary to NSK's assertion, was given notice of in a 1992 Departmental ''Policy Bulletin.'' Timken adds that in the third AFBs review, the Department again explained its selection of TCOM as the reference point of the 20 percent difmer cap, *citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof, From France, Et. Al.; Final Results of Antidumping Administrative Reviews and Revocation in Part of an Antidumping Duty Order,* 58 FR 39729 (July 26, 1993) (*AFBs 91/92*).

*Department's Position*: In accordance with section 771 (16)(b)(iii) of the Tariff Act, in order to ensure that the home market merchandise being compared to the U.S. merchandise is commercially comparable, we automatically exclude from our pool of comparison home market merchandise those home market models for which the VCOM deviates by more than 20 percent from that of the U.S. model. In our preliminary results of review we calculated this deviation as the absolute value of the difference between the VCOMs for the home market and U.S. model divided by the TCOM for the U.S. model. In previous

TRB reviews we calculated this deviation as the absolute value of the difference between the VCOMs for the home market and U.S. model divided by the VCOM of the U.S. model. Our change in methodology for these preliminary results was based on a policy change announced in a 1992 Departmental policy bulletin which stated, ''because variable manufacturing costs change as a share of total manufacturing costs from product to product, the size of the 20 percent difference would vary as well in relation to both the price and total manufacturing costs. Therefore, a more stable basis for the denominator is the total manufacturing costs, and it has been chosen for uniform use'' (*see Import Administration Policy Bulletin*, No. 92.2, at 3 (July 29, 1992) (*Policy Bulletin*)). We also stated that this change would be implemented in all future and current reviews and investigations if the change could be made ''without delaying the cases beyond their due dates'' (*see Policy Bulletin* at 4). Upon review of the timing of this policy and the 1990–92 TRB reviews, the two TRB review periods for which we had initiated but not yet completed the reviews by the date of the policy bulletin, we determined that the implementation of this policy would serve to further delay those reviews. Because the implementation of this policy would not serve to delay these 1992–93 reviews, we adopted the policy in our preliminary results. In addition to this policy bulletin, our policy of using TCOM in the denominator when calculating our 20 percent difmer cap is apparent in the final results for several other cases published prior to the initiation of these 1992–93 reviews (*see, e.g., Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 43327, 43328 (August 16, 1993), *AFBs 91/92* at 39766, and *Paving Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Administrative Review of the Antidumping Finding*, 58 FR 15481, 15482 (March 23, 1993) (*Paving Parts*)). It is clear that NSK had notice of the Department's policy change and that the implementation of this policy in the TRB reviews was imminent. Concerning NSK's contention that we have not adequately explained our reasons for using the new policy, we disagree. As demonstrated above, the *Policy Bulletin* clearly stated that TCOM represents a more stable denominator than VCOM. In *AFBs 91/92* we explained that TCOM is the more appropriate denominator because, unlike VCOM, it more accurately reflects the value of the model. In addition, it provides a more stable benchmark against which the absolute size of physical differences in merchandise can be compared in order to determine if the difference is so large that the two products being compared cannot be considered similar for model-matching purposes (*AFBs 91/92* at 39766). Furthermore, in *Paving Parts* we again explained that ''because the proportion of variable to fixed costs can vary significantly among products, the Department chooses to use TCOM, rather than VCOM, as the appropriate denominator, thus providing a reasonable, stable basis for evaluating comparability which is not affected by a particular product's proportion of fixed to variable costs'' (*Paving Parts* at 15482).

In light of the above, we have not changed our policy for these final results and have continued to use the TCOM of the U.S. model as the denominator in our calculation of the 20 percent difmer cap.

*Comment 5:* Timken argues that for those comparisons in which the sum of the deviations is zero the Department should set the difmer adjustment equal to zero such that no difmer adjustment would be made for comparisons between physically identical merchandise.

NTN argues that the five physical criteria used by the Department in its sum-of-the-deviations methodology are not the only physical criteria which TRBs have. Rather, NTN notes, these are simply the five which the Department relies upon for its model-match methodology. NTN claims that Timken is attempting to effectively eliminate the difmer adjustment and the Department should reject the petitioner's argument.

*Department's Position:* We disagree with Timken. To determine those home market TRBs which are identical to U.S. products, we compare TRBs on the basis of nomenclature. Because there are numerous criteria which define TRBs, the comparison of actual product coding is the only way we can ensure that two TRBs are physically identical. If we are unable to match the U.S. merchandise with identical home market merchandise by means of nomenclature we conclude that there is no physically identical home market match for that U.S. model. It is at this point in our model-match methodology that we employ the sum-of-the-deviations methodology. Therefore, it is only when an identical match can not be found that we use a comparison between models based on the sum of the deviations. Once we have found the one home market model whose sum of the deviations is the closest to that of the U.S. model, we consider this home market model to be the most similar home market merchandise. When we begin our search for the most similar model using our sum-of-the-deviations methodology, it is possible that the most similar home market model will not differ from the U.S. model in any of the five physical criteria used in our model-match methodology. However, simply because the sum of the deviations is zero, we do not assume the merchandise is identical. There are numerous characteristics which affect the variable costs incurred when producing that TRB. While we use a methodology based on the five most prominent characteristics of TRBs, we do not presume that all TRBs with the identical five physical criteria are identical bearings. We therefore agree with Timken that a difmer adjustment should not be made when comparing identical merchandise and, accordingly, we did not make such an adjustment in these reviews. However, because the sum-of-the-deviations methodology does not account for all possible difmers, it is proper to make other difmer adjustments when we compare the U.S. model to the most similar, but not identical, home market merchandise, even though it is at times possible that the sum of the deviations for the two will be zero.

Comments Regarding the Cost Test Methodology

*Comment 6:* NTN argues that the Department should not have performed set-splitting of home market set sales prior to conducting its cost-of-production (COP) test (cost test). NTN contends that, by splitting sets prior to the cost test, the Department derived fictional COP figures for its split cup and cone sales which it used to determine whether a split cup or cone sale was at, above, or below COP. NTN argues that there is no authority under the antidumping statute or regulations which allows for the derivation of fictional COP figures. NTN states that because the Department's current methodology results in the calculation of split cup and cone COP figures on the basis of the set the components were split from, the split cup and cone COP figures are not based on costs and expenses incurred in producing such or similar merchandise. As a result, NTN contends that the Department is in violation of its own regulations, *citing* 19 CFR 353.51(c). Finally, NTN claims that splitting sets prior to the cost test allows for the absurd possibility of a split cup or cone sale passing the cost test while the parent set does not.

Timken argues that, contrary to NTN's assertion that the Department derived fictional COP figures for NTN's split cup and cone sales, the Department derived these figures from actual costs submitted by NTN. In addition, the petitioner points out that a review of the split component COP figures derived by the Department indicates that these split cup and cone COP figures are virtually identical to the component COPs NTN reported for its sales of individually sold cups and cones identical to those split from home market sets. As such, Timken argues, the split component COPs derived by the Department are accurate, fair, and reasonable. Timken further asserts that, in accordance with section 771(16) of the Tariff Act, the Department correctly determine whether the split cup and cone sales represented such or similar merchandise on the basis of the physical characteristics and VCOM of the split cup and cones and not the parent set. Likewise, Timken comments, in accordance with section 773(a)(1) of the Tariff Act, the prices and price adjustments used by the Department to determined the foreign market value (FMV) of the split cups and cones were correctly based on the prices and price adjustments attributable to the split cups and cones, and not the parent sets. Therefore, Timken concludes, just as it would be absurd for the Department to base the prices, price adjustment amounts, and the determination of such and similar merchandise for the split component sales on the parent set, it would be just as absurd to determine under section 773(b) of the Tariff Act that the split cups and cones sales were below cost based on the costs of the parent set rather than on the costs of the split component sales. In light of the above, Timken argues that NTN's ''absurd'' result that a split cup and cone sale may pass the cost test while the parent set does not is not absurd, but the exact result mandated by the statute.

*Department's Position:* We agree with Timken. It is consistent with our set-splitting methodology and with the statute to first conduct the splitting of sets in the home market and then perform the cost test on all sales of cups and cones, whether they be individually sold cups and cones or split cup and cone sales. The split-component COP figures we derive from set splitting are based on NTN's reported cup and cone ratios for each home market set. These ratios reflect the variable cost of the cup to the cost of the set and the variable cost of the cone to the cost of the set, and are based on costs NTN actually incurred in producing individual cups and cones. Therefore, the resulting split cup and cone COP figures are not fictional. We have not created COP data where none existed, but, rather have apportioned actual costs incurred by NTN for a set to the cup and cone contained in that set. Furthermore, NTN has not explained why it is unreasonable for us to use these actual cost-based ratios in deriving the split cup and cone COP figures.

Because split cups and cones may be found to be the most similar merchandise to the product sold in the United States, we must ensure, in accordance with section 773(b) of the Tariff Act and 19 CFR 353.51, that the transaction price for the split cup and cone is above COP. By splitting sets prior to the cost test, we are able to separately test each home market sale, whether it was an individually sold or split sale, to determine if the sale was at, above, or below COP, rather than imputing the results of the cost test for the parent set to the split component sales. Finally, section 771(16) of the Tariff Act requires us to compare the price of the imported cups and cones with such or similar home market merchandise. Clearly, the home market merchandise which is such or similar to the imported cups and cones are home market cups and cones, whether they are regular or split sales, and not home market sets. It is, therefore, necessary to perform the cost test on the merchandise that is actually being compared to the U.S. merchandise (home market cups and cones), rather than the merchandise that is not being compared (home market sets) (*see TRBs 90/92* at 64729).

*Comment 7:* NTN argues that the Department has provided no explanation why a period of 3 months or more represents an ''extended period of time'' in its analysis of whether to disregard sales NTN made in the home market at prices below the COP. NTN contends that by definition, extended means ''covering a great period of time.'' NTN claims that this indicates that an extended period of time should account for at least 6 months (fifty percent) of the 12-month review period.

Petitioner argues that, as the CIT has noted, Congress did not provide for a specified time period in section 773(b) of the Tariff Act for determining whether sales below cost were made ''over an extended period of time,'' *citing Toho Titanium Co., Ltd.* v. *United States,* 657 F. Supp. 1280, 1285 (CIT 1987). According to Timken, it has therefore been left to the Department to determine whether sales below COP were made over an extended period of time. Timken states that the Department has correctly selected a period of three months as the time necessary to meet the goal of the statute and retain for comparison home market sales of obsolete or end-of-model-year merchandise.

*Department's Position:* The CIT, ruling on this identical argument by NTN in *NTN Bearing Corporation of America, American NTN Bearing Mfg. Corporation, and NTN Corporation* v. *United States,* Slip. Op. 94–96 (CIT 1994), clearly stated that the Department's definition of ''extended period of time'' was reasonable and in accordance with the law. Because NTN did not provide any evidence indicating that below-cost sales are a normal and expected characteristic of the TRB industry, and because our definition of ''extended period of time'' for these reviews is identical to that which we applied in previous TRB reviews and has been upheld by the CIT, we have not changed our definition for these final results.

Comments Concerning Packing and Movement Expenses

*Comment 8:* Timken argues that while section 772(D)(2)(A) of the Tariff Act authorizes the deduction of U.S. pre-sale inland freight expenses from United States price (USP), there is no corresponding provision authorizing a parallel adjustment to foreign market value (FMV). Timken states that this, long with the Federal Circuit's decision in *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398 (Fed. Cir. 1994) (*Ad Hoc*), demonstrates that home market pre-sale inland freight charges should not be treated differently depending on the basis on which USP is determined and the Department should therefore not deduct pre-sale inland freight expenses in either purchase price or exporter's sales price (ESP) comparisons. Timken also argues that pre-sale movement expenses may not be deducted as indirect expenses in ESP comparisons because such expenses are not incurred in the selling of the merchandise, but rather before a sale occurred. Timken concludes that because the ESP offset is limited exclusively to selling expenses, pre-sale inalnd freight expenses cannot be adjsuted for under 19 CFR 353.56(b)(1) or (2) of the Department's regulations and, like pre-sale warehousing expenses, are best categorized as overhead or general and administrative expenses. Finally, the petitioner argues that, even if the Department adheres to its current methodology for adjusting FMV for pre-sale inland freight expenses, the Department should not have made a deduction to FMV for NTN's home market pre-sale inland freight expenses in purchase price situations because NTN failed to demonstrate that its pre-sale inland freight expenses were direct selling expenses.

NTN argues that Timken's position completely ignores the CIT's decision in *Federal-Mogul* v. *United States,* 17 CIT, Slip Op. 94–40 (March 7, 1994) (*Federal-Mogul*), in which the CIT stated that, in *Ad Hoc* the Federal Circuit limited its decision to the calculation of FMV in purchase price situations only and specifically noted that it was not ruling on the Department's authority to adjust for pre-sale inland freight pursuant to the circumstance-of-sale (COS) provisions in section 773(a)(4)(b) of the Tariff Act (*Federal-Mogul* at 7). NTN argues that not only does *Federal-Mogul* authorize the Department's current practice of deducting pre-sale inland freight in ESP situations, but, given the Department's broad authority to make COS adjustments, the Department may also legitimately make such a deduction from FMV in purchase price situations as well.

NSK argues that if pre-sale inland freight expenses are deducted from USP, the plain language of the statute requires that the Department should deduct pre-sale inland freight expenses from FMV, regardless of whether it is a purchase price or ESP calculation.

NSK asserts that the Department has correctly defined the place of shipment in the country of exportation as ex-factory and, having done so, is bound by section 772(d)(2)(A) of the Tariff Act to deduct ''post factory'' freight expenses from FMV regardless of whether the Department designates the freight expense as pre-sale or post-sale. Like NTN, NSK also argues that the antidumping law grants the Department the authority to deduct both direct and indirect movement expenses from FMV as a COS adjustment.

NSK also argues that the Department should not have deducted pre-sale inland freight expenses in NSK's USP calculations. NSK contends that section 772(d)(2)(A) of the Tariff Act refers only to those costs or expenses incident to bringing merchandise from the place of shipment in the country of exportation to the place of delivery in the United States. NSK states that the record demonstrates that, after manufacture, but prior to sale, NSK sends TRBs to distribution centers. NSK explains that these TRBs are then shipped from the distribution center to the customers. NSK asserts that, because the freight it incurred in transporting the merchandise from the factory to the distribution center was incurred prior to the date of sale, and because the places of shipment in the country of exportation in NSK's case are its distribution centers, this pre-sale inland freight expense does not constitute an expense which was incurred incident to bringing the TRBs from the place of shipment to the place of delivery and should not be deducted from USP.

*Department's Position:* We agree with NSK that the *Ad Hoc* decision was limited to the narrow question of our inherent authority to deduct pre-sale freight expenses in purchase price situations. However, as noted by the CIT in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 865 F. Supp. 857 (CIT 1994), the *Ad Hoc Committee* decision ''discussed *without disapproval,* Commerce's ESP–COS procedures where, as indicated, indirect expenses, such as most pre-sale transportation costs, are deductible from FMV to the extent of the USP level of expenses.'' (emphasis added)

As explained in numerous other Departmental decisions, we have determined, in light of *Ad Hoc* and its progeny, that the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. We instead adjust for those expenses under the COS provision of 19 CFR 353.56 and the ESP offset provision of 19 CFR 353.56(b) (1) and (2), as appropriate, in the manner described below *(see, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocations in Part of Antidumping Duty Orders,* 60 FR 10900 (February 28, 1995) *(AFBs 92/93), Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review,* 60 FR 2378 January 9, 1995)*, Final Determination of Sales at Less Than Fair Value; Canned Pineapple From Thailand,* 60 FR 29553 (June 5, 1995)).

When USP is based on either ESP or purchase price, we adjust FMV for home market movement charges through the COS provision of 19 CFR 353.56(a). Under this adjustment, we capture only direct selling expenses, which include post-sale movement expenses and, in some circumstances, pre-sale movement expenses. Specifically, we treat pre-sale movement expenses as direct expenses if those expenses are directly related to the home market sales of the merchandise under consideration.

In order to determine whether pre-sale movement expenses are direct, the Department examines the respondent's pre-sale warehousing expenses, since the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, linked to pre-sale warehousing expenses (*see Final Results of Redetermination Pursuant to Court Remand,* dated January 5, 1995 (pertaining to Slip. Op. 94–151)). If the pre-sale warehousing constitutes an indirect expense, the expense involved in getting the merchandise to the warehouse, in the absence of contrary evidence, also must be indirect; conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense. We note that although pre-sale warehousing expenses in most cases have been found to be indirect expenses, these expenses may be deducted from FMV as a COS adjustment in a particular case if the respondent is able to demonstrate that the expenses are directly related to the sales under consideration (*see Ad Hoc Committee of AZ–NM–TX–FL producers of Gray Portland Cement* v. *United States,* Slip Op. 95–91 (CIT May 15, 1995) (upholding the Department's pre-sale inland freight methodology set forth in its January 5, 1995, Remand Results)).

Additionally, when USP is based on ESP, under the ESP offset provision set forth in 19 CFR 353.56(b) (1) and (2), we adjust for any pre-sale movement expenses found to be indirect selling expenses.

We disagree with Timken that we deducted pre-sale inland freight expenses from FMV in our purchase price comparisons for NTN. In our preliminary results for NTN we determined that NTN's reported inland freight expenses were not directly related to its sales. As a result, in our preliminary results computer program for NTN we included pre-sale inland freight in our home market indirect expenses variable. However, we used this variable in our ESP calculations only for ESP offset purposes, in accordance with our policy to adjust FMV for pre-sale inland freight expenses which are indirect in nature, pursuant to the ESP offset provision set forth in 19 CFR 353.56(b) (1) and (2). We did not apply this home market indirect selling expenses variable in our purchase price calculations. Therefore, contrary to Timken's claim, in our preliminary results for NTN we did not deduct pre-sale inland freight from FMV in purchase price comparisons, and, as a result, we have not changed our calculations in these final results for NTN.

We also disagree with Timken's argument that pre-sale movement expenses should not be viewed as selling expenses. The only purpose of moving merchandise from the factory to a warehouse or distribution center is in furtherance of the process of selling that merchandise and no other characterization is sensible.

Concerning NSK's claim that we should not have deducted pre-sale inland freight from USP because its reported pre-sale inland freight expenses do not fall within the meaning section 772(d)(2)(A) of the Tariff Act, we disagree. The crux of NSK's argument is that because it reports the date the home market merchandise was shipped from the distribution center as its home market date of shipment, then, in terms of its U.S. sales, the distribution center must be the point of shipment from the country of exportation in accordance with section 772(d)(2)(A) of the Tariff Act. We have reviewed NSK's responses to our original and supplemental questionnaires and have determined that NSK has provided no evidence which demonstrates that its home market distribution centers constitute the ''point of shipment in the country of exportation.'' To the contrary, the evidence on the record suggests that, for that merchandise which is destined for export, NSK's home market distribution centers are intermediary points of shipment and not the original point of shipment in Japan, the country of exportation. For example, TRBs destined for exportation are first transported from the plant to distribution centers, and subsequently shipped to NSK's freight forwarder. From the freight forwarder the merchandise is then shipped to the port of exportation. The initial packing of all merchandise is done at the plant, and that merchandise destines for exportation receives additional packing for export by the freight forwarder. NSK provided no explanation of what type of processing takes place (such as what type of paperwork is generated or what type of activities occur) at the distribution centers with regard to export merchandise. Nor did NSK provide information on the record concerning any expenses it might have incurred at the distribution centers for TRBs destined for export. In other words, we have no information upon which to make a determination that these distribution centers should be considered as the shipment point in the country of exportation pursuant to section 772(d)(2)(A) of the Tariff Act. Rather, this record evidence leads us to conclude that NSK's home market distribution centers are merely one stopping point in the transit of merchandise destined for export, which begins at the factory door and ends with the port of exportation. Therefore, we have not changed our treatment of this expense and have deducted from USP NSK's reported pre-sale inland freight expenses for U.S. merchandise, including those expenses incurred for the transport of the merchandise from the factory door to the distribution centers.

*Comment 9:* Timken points out that NTN reported distinct pre-sale inland freight expenses for its U.S. and home market sales. Timken argues that, given the fact that NTN's pre-sale inland freight expenses represent the costs incurred when moving merchandise from the factory to the warehouse or distribution center, the allocation ratios NTN calculated for these expenses should be consistent, whereas NTN's vary. Timken contends that the Department should either make identical deductions from USP and FMV for pre-sale inland freight, or eliminate the adjustment entirely.

Citing previous Departmental decisions on this issue in both the TRB and AFB cases, NTN argues that the Department has acknowledged in the past that pre-sale freight expenses do not have to be the same in both markets and urges the Department to again reject Timken's position.

*Department's Position:* We agree with NTN. Because sales in each market may be handled differently and, thus, different freight expenses may be incurred, variations in these expenses between markets is reasonable and such variations are not an adequate basis upon which to reject NTN's claimed adjustment for home market and U.S. pre-sale inland freight expenses. Likewise, the deduction of pre-sale inland freight from either the home market or the U.S. market is not contingent on whether pre-sale inland freight occurred in the other market (*see TRBs 90/92* at 64723 and *AFBs 91/92* at 39768).

*Comment 10:* The petitioner argues that NSK's reported U.S. repacking material and labor expense factors, which NSK allocated on the basis of the total POR sales value of all products sold in the United States, is incorrect. Timken contends that, while NSK packs both domestically produced and imported TRBs in the United States, its allocation methodology does not accurately account for the repacking costs attributable to imported merchandise only. A a result, Timken argues that the Department should recalculate NSK's repacking expense factor by dividing NSK's reported repacking expenses during the POR by the reported sales value of only that subject merchandise which was imported during the POR.

NSK contents that, while it normally shipped merchandise from its U.S. warehouses in its original containers, it occasionally repacked merchandise to accommodate small orders. NSK added that because it ships both imported merchandise and domestically-produced merchandise from its U.S. warehouses, the repacked merchandise may have been imported or may have been domestically produced. NSK argues that, because it does not maintain records in the ordinary course of business concerning this distinction, it cannot calculate the exact repacking expenses attributable to its imported merchandise only and its calculation of its repacking expenses is therefore reasonable.

*Department's Position:* We agree with NSK. NSK explained in its response that it incurs repacking material and labor expenses for both imported and domestically-produced merchandise and does not maintain records which allow it to make a distinction between the repacking expenses incurred for its imported merchandise separate from those for its domestically-produced merchandise. As a result, NSK's inclusion in its numerator of all the repacking expenses it incurred during the POR for all products sold in the United States is acceptable, given its ordinary business practices. Because its numerator reflected the repacking expenses incurred on all products sold in the United States during the POR, NSK correctly used the total sales value of all products it sold in the United States as its denominator. In addition, because the fact that a particular product was imported or domestically produced did not affect the amount of materials NSK used or the labor required to repack that product, and because NSK's allocation methodology reflects the manner in which it incurred and booked its repacking expenses, we are satisfied that its reported repacking expenses are accurate and reasonable.

## Comments Concerning Various Adjustments to USP

*Comment 11:* Timken argues that, because NTN has failed to demonstrate that its allocation of U.S. selling expenses by level of trade was reasonable and accurate, the Department should re-allocate NTN's reported U.S. selling expenses without regard to levels of trade. In addition, Timken asserts that when re-allocating certain of NTN's reported U.S. selling expenses in its preliminary results, the Department used an incorrect allocation base such that the Department's calculated expense factors failed to yield the net expense figures NTN reported in its response.

NTN argues that its allocation of U.S. expenses by level of trade is directly based on its accounting and sales records. NTN also points out that the Department has consistently accepted all aspects of its U.S. selling expense allocation methodology in previous segments of these proceedings, and insofar as its methodology is not unreasonable, the Department should accept it in these final results as well.

*Department's Position:* In our preliminary results for NTN we slightly modified NTN's U.S. selling expense allocations such that certain expenses incurred by NTN Bearing Company of America (NBCA) in selling to U.S. customers were more appropriately expressed as a percentage of U.S. sales value rather than the transfer price between NTN and NBCA. However, in doing so we accepted NTN's level-of-trade methodology because we have determined that this methodology prevents, rather then creates, certain distortions. As demonstrated in NTN's response, NTN developed its level-of-trade allocations, which it based on regional sales and the regional average number of employees, to compensate for the fact that in certain regions NTN sells to only one level of trade. To avoid the distortions that would arise if expenses incurred in a region were allocated to a level of trade that does not exist in that region, NTN developed a complex allocation methodology which operates to attribute expenses incurred on sales to a particular level of trade only to that level of trade. NTN achieved this level of detail because it maintains its books and accounting records according to levels of trade. In this way, we are satisfied that NTN's detailed and often complex U.S. expense reporting methodologies result in reasonable allocations. Therefore, absent specific evidence demonstrating that NTN's level-of-trade allocations are unreasonable, we do not agree with Timken that we should disregard these allocations. However, for these final results, we have re-allocated NTN's U.S. selling expenses without regard to different levels of trade for a different reason, as discussed below.

To support its position that the Department's re-allocations of certain of NTN's reported U.S. expenses in the preliminary results failed to properly account for the gross expense amounts NTN reported in its response, the petitioner provided a detailed computer analysis demonstrating the discrepancy. In reviewing Timken's computer analysis, we discovered a significant error in NTN's response. In its supplemental questionnaire response dated May 31, 1994, NTN submitted a revised total U.S. in-scope sales value and stated that it discovered an error in its earlier reported figure. We compared this new figure to the total sales value we derived from NTN's submitted U.S. sales data computer files and verified its accuracy. However, our further review of NTN's response revealed that, in its U.S. selling expense allocations detailed in proprietary exhibit B–8 of its initial response, NTN did not use the same total sales value, but rather a figure much different from the revised figure submitted in its supplemental response, and even significantly different from its originally-reported ''incorrect'' figure (submitted in proprietary exhibit A–19 of its original response). We have examined NTN's responses in detail and are unable to find any explanation for this discrepancy. Because (1) NTN clearly reported that the sales figure submitted in its supplemental response was the ''corrected'' figure, (2) NTN reported this figure subsequent to its submission of proprietary exhibit B–8, and (3) the revised figure matches that which we derived from NTN's home market sales computer data files, we have determined that the figure contained in NTN's supplemental response is the correct U.S. total sales value for scope merchandise during the POR and that NTN's U.S. selling expense allocations should be revised to employ this total amount. However, the complex nature of NTN's U.S. selling expense reporting methodologies, which incorporate layers of allocations, makes it impossible for us to simply duplicate NTN's methodology and preserve any level-of-trade distinctions. We have therefore reallocated NTN's U.S. selling expenses using a simple method: we divided the expense amounts attributable to scope sales by the ''corrected'' total U.S. sales value for scope merchandise. We did this in our reallocations for NTN's U.S. inland freight from-warehouse-to-customer expenses, direct technical service expenses, indirect advertising expenses, other indirect selling expenses, U.S. repacking material expenses, and U.S. repacking labor expenses, all of which represent expenses incurred by NBCA on its sales to U.S. customers and are properly allocated on the basis of total U.S. sale value.

In sum, while we have completely re-allocated certain of NTN's U.S. expenses without regard to different levels of trade, our determination to do so in these final results was based solely on our discovery of a discrepancy in NTN's reported total U.S. sales value for scope merchandise during the POR.

*Comment 12:* Timken argues that it is apparent that respondents have adopted a strategy of absorbing antidumping duties, rather than correcting their price discrimination. Timken maintains that when a related U.S. importer absorbs antidumping duties as a cost of doing business, the duties themselves constitute a selling expense because the duty represents an additional cost, charge, expense, or import duty within the meaning of section 771(d)(2)(A) of the Tariff Act. Therefore, the petitioner contends that the Department must reduce USP by an amount equal to the antidumping duties absorbed. Timken further argues that if the Department refuses to treat antidumping duties as a cost of selling merchandise, then it should at least apply 19 CFR 353.41(a), which addresses situations in which a foreign producer reimburses its U.S. affiliates for antidumping duties paid. Timken contends that, contrary to the Department's position on this issue expressed in other cases, the regulation was always intended to apply to both ESP and purchase price situations. Timken states that because the objective of an ESP calculation is to arrive at an appropriate estimation of arm's-length ex-factory prices from the foreign producer to the related U.S. buyer, it is not possible to estimate the true f.o.b. price if the exporter is allowed to reimburse a related importer for antidumping duties. Timken also maintains that because it is conceptually incorrect to treat related exporters and importers as single entities for the purpose of identifying and deducting selling expenses incurred by the importing entity, it is likewise incorrect to treat the companies as a single entity for the purpose of determining whether duties have been reimbursed. Finally, Timken argues that *Outokumpu Copper Rolled Products AB* v. *United States,* 829 F. Supp. 1371 (CIT 1993) (*Outokumpu*), the case the Department has previously used to support its position on this issue, is irrelevant because these TRB reviews address exporters who, Timken asserts, reimburse the entities who actually pay duties to Customs, that is, the related U.S. importers.

NSK argues that antidumping duties do not constitute additional expenses included in USP but only exist as a result of the difference between USP and FMV, *citing Borusan Holding A.S.* v. *United States*, 16 CIT 278 (CIT 1992). NSK contends that to deduct antidumping duties from USP would double-count them and, as such, would constitute a violation of the antidumping duty law (*Holmes Prod. Corp.* v. *United States*, 795 F. Supp 1205 (CIT 1992)). NSK next argues that the Department and the CIT have consistently held that 19 CFR 353.26 (1992) does not authorize the deduction of reimbursed antidumping duties from USP, *citing Brass Sheet and Strip From Sweden; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 2706 (January 23, 1992) (*Swedish Brass*). NSK states that the regulation clearly calls for the deduction of antidumping duties that have been paid on behalf of the importer and that, because antidumping duties are only paid upon liquidation, the Department cannot logically adjust USP for an event that has not yet taken place. NSK also points out that 19 CFR 353.26(b) specifically requires an importer to file a certificate with Customs attesting to the fact that it has not entered into an agreement for the payment or refund of all or part of the antidumping duties due. NSK states that once an importer has indicated on this certificate that it has not been reimbursed for antidumping duties, the Department is not required to expend additional resources on the issue, *citing Outokumpu* at 1384.

NTN points out that the CIT and the Department have both rejected Timken's position concerning the reduction of USP for so-called absorbed antidumping duties and that there is no reason to depart from this practice in these present reviews. NTN also argues that the Department acted correctly by not adjusting USP for the alleged reimbursement of antidumping duties under 19 CFR 353.26 for several reasons. First, NTN claims that because this regulation does not implement a provision of the law and lacks a statutory nexus, it constitutes an impermissible interpretation and the Department lacks the authority to implement it. Second, NTN asserts that the regulation requires an adjustment only where there has been a reimbursement by the producer and Timken has provided no such evidence. Finally, NTN maintains that, as upheld in *Outokumpu,* the regulation permits the adjustment to USP only where the producer paid duties on behalf of the importer. NTN argues that because NBCA, for whose account the merchandise was imported, is a wholly-owned subsidiary of NTN Japan, NBCA is actually the exporter, not the importer.

*Department's Position:* We disagree with Timken. First, concerning Timken's position that we should deduct ''absorbed'' antidumping duties from USP, Timken has provided no evidence demonstrating that the U.S. affiliates of the manufacturers/exporters subject to these reviews have absorbed the antidumping duties as a cost of selling in the United States. In addition, we agree with NSK that to make this additional deduction for antidumping duties assessed on imports of subject merchandise would result in double-counting (*see AFBs 92/93* at 10907). Finally, as stated in *AFBs 92/93* at 10907, we do not agree that antidumping duties constitute a selling expense and should be deducted from ESP. This position was upheld by the CIT in *Federal-Mogul* v. *United States,* 813 F. Supp 856 (CIT 1993).

Concerning Timken's position that we should apply 19 CFR 353.26 of our regulations, we again disagree. We have consistently held that, absent evidence of reimbursement, we do not have the authority to make such an adjustment to USP (*see Swedish Brass* at 2708 and *Brass Sheet and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 54 FR 33257 (1989). Furthermore, in *Torrington Co. and Federal-Mogul Corp.* v. *United States,* 881 F. Supp. 622 (CIT 1995), the CIT clearly explained that in order for 19 CFR 353.26 to apply, it must be shown that the foreign manufacturer either paid the antidumping duty on behalf of the U.S. importer or reimbursed the U.S. importer and that the regulation does not impose upon the Department an obligation to investigate based on mere allegations. The CIT went on further to state that, before the Department is required to commit resources to investigate the transfer of funds between related corporations, the party who requests the investigation must produce some link between the transfer of funds and the reimbursement of antidumping duties. In addition, the CIT pointed out that once an importer has indicated on its certificate at the time of liquidation that it has not been reimbursed for antidumping duties, it is unnecessary for the Department to conduct additional inquiry absent a sufficient allegation of customs fraud. In the present reviews Timken has provided no evidence demonstrating a link between intracorporate transfers and the reimbursement of antidumping duties. Absent this evidence, we have not conducted an investigation concerning this issue and we have not made an adjustment to USP in accordance with 19 CFR 353.26.

*Comment 13:* The petitioner questions NTN's reported U.S. credit expenses, stating that the amounts NTN reported are unrealistic. Timken argues that the Department, therefore, should use as best information available (BIA) for NTN's reported U.S. credit expenses the highest credit expense amount reported for any transaction or a proxy amount from another respondent.

NTN argues that because Timken's argument is based on speculation and that Timken has offered no proof to support its assertions, there is no basis for the use of BIA.

*Department's Position:* NTN explained in its response that it derived a customer-specified U.S. credit expense ratio based on information from its accounts receivables ledgers concerning the average number of days payment was outstanding for each of its customers throughout the review period (*see* proprietary attachment 4 to NTN's March 31, 1994, supplemental response). As such, NTN's reported credit expense amounts are based on customer's actual payment information as maintained in NTN's books and records. We have verified this method in previous reviews, and, because NTN has not changed its methodology for these reviews, we are satisfied that NTN has again reported U.S. credit expense amounts which are derived directly from actual customer payment information. In its brief, Timken, by comparing the U.S. credit expenses to home market credit expenses, concludes that NTN's U.S. credit expenses are unrealistic. We disagree. In light of the fact that NTN's credit expenses are based on actual customer payment information and the fact that the home market and U.S. markets constitute two distinct markets with different customer payment histories, we are not persuaded that NTN's credit expenses are unrealistic and we have not altered our treatment of these claimed expenses for these final results.

*Comment 14:* The petitioner contends that NTN exclude certain commissions it paid on specific purchase price sales from its reported indirect selling expenses and did not otherwise report them as adjustments to USP. Timken argues that the Department should either adjust USP for NTN's purchase price commissions, or, in the alternative, include them in NTN's total U.S. indirect selling expense adjustment.

NRN argues that the Department has addressed this issue several times before and there is not reason for the Department to change its position in these current TRB reviews.

*Department's Position:* NTN explained in its response that, as a means of compensating NBCA for expenses it incurred with respect to services it provided for certain of NTN's purchase price sales, NTN made ''commission' payments to NBCA. Because these payments were not related to ESP sales, NTN excluded them from its reported U.S. indirect selling expenses for its ESP sales. As stated by the CIT in *Outokumpu Copper Rolled Products AB and Outokumpu Copper (USA) Inc.* v. *United States,* 850 F. Supp. 16 (March 16, 1994), the Department generally does not make an adjustment for commissions to related parties because such commissions are considered intra-company transfers of funds and, as such, do not qualify for COS adjustments. In order to determine whether an adjustment for related-party commissions is appropriate, we apply a two-pronged test. First, we determine if the commissions are directly related to specific sales and then whether the commission is at arm's length (*see LMI-La Metalli Industriale, S.p.A United States,* 912 F.2d 455, 458–459 (Fed. Cir. 1990) and *Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 57 FR 54360 (November 18, 1992)). To determine whether a related-party commission is at arm's length, where possible, we compare the related-party ''commissions'' to commissions paid to unrelated parties in the same market (*see Coated Groundwood Paper from the United Kingdom,* 56 FR 56403 (November 4, 1991)).

Because in the case of ESP sales NBCA paid commissions to unrelated sales representatives in the U.S. market, we have a benchmark to which we can compare NTN's related-party ''commission.'' NTN reported in its response the range of commission rates granted to its unrelated sales representatives. The only data we have about the related-party ''commission'' is the POR payment amount NTN reported as an adjustment to its ESP indirect selling expenses. Therefore, to determine a percentage rate for the NBCA ''commission,'' we divided this amount by the total sales value of those purchase price sales for which NBCA provided services. Our analysis revealed that NTN's percentage payment to NBCA was not at arm's length when compared to the commissions NBCA paid to unrelated U.S. commissionaires. As a result, we have treated this payment to NBCA as an indirect selling expense for NTN's purchase price sales and have deducted this payment amount from NTN's reported U.S. indirect selling expenses for its ESP sales.

*Comment 15:* Timken argues that the Department should not accept NTN's claimed downward adjustment to its reported U.S. indirect selling expenses for interest on cash deposits. Timken points out that the Department clearly rejected such a claim in its last AFB final results and should do so here as well, *citing AFBs 92/93* at 109182.

NTN argues that, just as antidumping duties are not the basis of an adjustment to ESP, so too the costs that are related to them should not be an adjustment to ESP. Therefore, the expenses should be treated as a deduction from its U.S. indirect selling expenses.

*Department's Position:* We disagree with NTN. Cash deposits of estimated antidumping duties are provisional in nature because they may be refunded, with interest, at some future date. Because the cash deposits are provisional in nature, so too are any interest expenses that respondents may incur in borrowing to finance cash deposits. To the extent that respondents receive refunds of cash deposits with interest, that interest will offset the interest expenses that respondents may have incurred in financing the cash deposits. Therefore, we have not allowed NTN's claimed offsets to its reported interest expenses in the United States to account for that portion of the interest expenses that NTN estimated to be related to payment of cash deposits of estimated antidumping duties.

*Comment 16:* The petitioner contends that the two additional export selling expenses NTN reported in its supplemental response, foreign exchange charges and commissions on export sales, were incorrectly allocated on the basis of the ratio of salaries in NTN's export sales department. Timken argues that these expenses, unlike NTN's other reported export selling expenses, are not general overhead expenses but expenses related to specific sales and, as such, should be allocated based on sales value.

NTN contends that its allocation of these expenses on the basis of the salaries of its export sales department is reasonable and should be accepted by the Department. NTN argues that because the export selling expenses it incurred bear no relationship to the size or identity of the export sales, its allocation is actually more accurate than one based on sales values.

*Department's Position:* We disagree with Timken. We have found NTN's export selling expense allocation methodology based on the salaries of its export department personnel a reasonable measure of its export selling expenses attributable to U.S. sales. Timken has provided no evidence demonstrating why the application of this methodology to these two expenses is distortive or why its suggested methodology would yield more accurate results. We therefore have no reason to suspect that an allocation methodology which is reasonable for the export selling expenses NTN originally reported in its response is unreasonable for the two additional expenses it reported in its supplemental questionnaire response. As a result, for these expenses we have accepted NTN's allocation methodology for these final results.

Samples, Prototypes, and Sales Not in the Ordinary Course of Trade

*Comment 17:* NTN contends that the Department improperly determined its reported home market sample and small-quantity sales to be within the ordinary course of trade and included such sales in its margin calculations. NTN argues that its home market sample sales cannot be considered as in the ordinary course of trade because they are items which enable a customer to make a buying decision. NTN also maintains that its reported home market small-quantity sales cannot be considered ordinary, given the extremely small quantities involved.

The petitioner argues that the Department incorrectly excluded from its analysis certain of NSK's U.S. and home market sales which the Department determined were outside the ordinary course of trade. Timken contends that because NSK failed to demonstrate that its reported home market sample and prototype sales were outside the ordinary course to trade in accordance with the standards set out by the CIT in *Murata Mfg. Co., Ltd.* v. *United States,* 820 F. Supp. 603, 606 (CIT 1993) (*Murata*), the Department must alter its determination for these final results and include such sales within NSK's home market data bases. Likewise, Timken argues that the Department should not have excluded NSK's reported U.S. zero-priced sample sales from its analysis. Timken states that not only is there no statutory basis for excluding any sales from the U.S. data base, but section 751(a)(2)(A) of the Tariff Act specifically requires that the Department calculate the amount of duty payable ''on each entry of merchandise'' into the United States.

NSK argues that the Department correctly treated its reported home market sample and prototype sales and U.S. zero-priced sample sales as sales outside the ordinary course of trade. NSK points out that the Department completely verified its classification of its home market sample and prototype sales as outside the ordinary course of trade and examined various documentation demonstrating the abnormal nature of these sales. In addition, NSK argues that the zero-priced sample sales given to U.S. customers constitute promotional expenses and not ''sales.'' NSK states that, as such, the expense of these zero-priced sales is considered in accord with NSK's normal accounting practices as an indirect selling expense, and, to avoid double-counting, the Department must exclude these samples from the U.S. database. NSK further argues that merchandise delivered free of charge clearly does not constitute merchandise ''sold,'' and, finally, citing *Ipsco Inc.* v. *United States,* 714 F. Supp. 1211, 1217 (CIT 1989), NSK claims that the Department may exclude from its U.S. sales data base those sales which are not representative of the seller's behavior and sales which are so small that they have an insignificant effect on the margin.

*Department's Position:* In the case of NSK's claim that its zero-priced U.S. sales should be considered as outside the ordinary course of trade and excluded from NSK's U.S. data base, other than for sampling, there is no statutory nor regulatory basis for excluding any U.S. sales from an administrative review. Section 751(a)(2)(A) of the Tariff Act requires that we analyze all U.S. sales within the review period (*see, e.g., AFBs 92/93 at* 10948 and *Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea,* 56 FR 12701, 12709 (March 27, 1991)). We disagree with NSK that *Ipsco* is applicable here because that case concerned a LTFV investigation in which we have the discretion to eliminate from our analysis unusual U.S. sales. The present proceeding is an administrative review and section 751(a)(2)(A) of the Tariff Act requires us to establish a dumping margin for ''each U.S. entry.'' In addition, in this review we have not used ''averages or generally recognized sampling techniques'' which, pursuant to section 777A of the Tariff Act, could also justify the exclusion of certain U.S. sales from our analysis. However, we do agree with NSK that to include its zero-priced sample sales in our U.S. data base and allow the inclusion of an expense in NSK's indirect selling expenses which reflects the cost of these sample sales would effectively be double-counting. Therefore, for these final results we have included NSK's zero-priced U.S. sample sales in our analysis, and, to avoid double-counting, we have deducted the cost of these samples from NSK's reported U.S. indirect selling expenses (*see AFBs 92/93* at 10948).

In contrast to the above, there is a clear statutory and regulatory basis for the exclusion from our analysis of those home market sales we determine to be outside the ordinary course of trade. Section 773(a)(1)(A) of the Tariff Act states that the Department is required to compare the price of the merchandise imported into the United States to the price of the merchandise sold or offered for sale ''in the principal markets of the country from which exported in the usual commercial quantities and in the ordinary course of trade for home market comparison.'' As defined in section 771(15) of the Tariff Act, ordinary course of trade means the ''conditions and practices which, for a reasonable time prior to exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind.''

Generally, when determining whether home market sales are within the ordinary course of trade, the Department applies the standards set forth in *Murata, Nachi-Fujikoshi Corp.* v. *United States,* 708 F. Supp. 716, 718 (1992) (*Nachi*), and *Mantex, Inc., Et. Al.,* v. *United States*, 841 F. Supp. 1290, 1305–1309 (CIT 1993) (*Mantex*). In *Murta* the CIT quoted with approval the Department's statement in *Certain Welded Steel Standard Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Reviews,* 56 FR 64753 (1991), that the Department, in determining whether home market sales are in the ordinary course of trade, does not rely on one factor considered in isolation, but rather considers all circumstances of the sales in question. In addition, the CIT noted that in other cases the Department determined that sales were outside the ordinary course of trade based not only on the presence of small quantities or high prices, but also because the Department found other factors that supported the outside-the-ordinary-course-of-trade categorization (*see Murata* at 9). In *Nachi* the CIT held that the Department must make determinations regarding sample sales by examining the relevant facts of each individual case and that the burden of proof in demonstrating that such sales are outside the ordinary course of trade lies with the respondent. In *Mantex* the CIT restated its previous opinion in *Nachi*.

In its response NTN described its sample sales as sales of items to a customer which are used by the customer to determine whether or not to buy the product. NTN explained that, through statements and other representations the customer makes, NTN determines the ''sample'' nature of the sale and codes the sale accordingly. Concerning its small-quantity sales reported as not in the ordinary course of trade, NTN explained that for each transaction where the total quantity was three units or less, and the total number of transactions during the POR was seven or less, NTN searched back to fiscal year 90 and, if certain conditions were met, it considered the sale as outside the ordinary course of trade. The only other information on the record regarding these sales are NTN's computer data files in which it reported such sales separately from the rest of its home market data base.

In accordance with *Murata,* we attempted to examine all factors surrounding NTN's reported sample and small-quantity sales to determine if they were outside the ordinary course of trade. However, NTN provided us with little information other than a general description of these sales upon which to base such a determination. We have no other narrative explanation, supporting documentation, or other evidence to demonstrate why these sales are not representative of NTN's normal practices in selling TRBs in Japan, or otherwise demonstrates the ''aberrational'' nature of these sales. For example, we have no evidence supporting the notion that NTN's sample sales were sold only for the purpose of allowing the customer to make a decision to buy. Likewise, we have no evidence supporting NTN's categorization of its ''small-quantity'' sales as abnormal, other than the fact that they were small-quantity sales. In accordance with *Nachi,* the burden of proving that its sales are outside the ordinary course of trade lies clearly with the respondent, and in this instance NTN has failed to meet that burden.

Furthermore, this is not the first review or the first case in which we have rejected NTN's categorization of certain of its sales as not in the ordinary course of trade. In our last TRB reviews we clearly explained that we applied the *Murata* and *Nachi* standards to our determination of whether NTN's alleged outside-the-ordinary-course-of-trade sales were indeed outside the ordinary course of trade (*see TRBs 90–92* at 64732). In these reviews we determined that NTN did not supply sufficient evidence to allow us to find these sales as outside the ordinary course of trade. NTN has had clear notice prior to these current reviews that its method of responding to our questionnaire failed to demonstrate the ''not-in-the-ordinary-course-of-trade'' status of its sample and small-quantity sales. However, NTN took no steps to improve its response regarding this issue, but rather provided only the same general information with little other explanation. Therefore, for these reasons we have not changed our treatment of NTN's sample and small-quantity home market sales for these final results. We have again determined these sales as within the ordinary course of trade and we have included them in our margin calculations.

We also re-examined the record to determine if evidence exists supporting NSK's categorization of its home market prototype and sample sales as outside the ordinary course of trade, and we agree with NSK that these sales represent ''atypical'' sales which we consider as outside the ordinary course of trade. In contrast to NTN, NSK provided ample narrative explanation and documentation allowing us to examine all factors of the sales it reported as not in the ordinary course of trade. Described by NSK as non-commercial quantity sales with abnormal prices, the small quantities and high-priced nature of these sales were not the only factors upon which NSK based its characterization of these sales as outside the ordinary course of trade. Rather, NSK provided at verification and in its response documentation which clearly demonstrated the unique circumstances surrounding the limited number of sales of those models it designated as sample/prototype models. In general, evidence provided by NSK demonstrated that (1) a prototype model is made only at the express request of a customer to address a specific need of the customer, (2) such models are used solely for testing purposes, (3) a specific prototype model was never sold to more than one particular customer, (4) there was no other demand for these models except for that of the specific customer who requested that the model be manufactured in the first place, (5) the price of the prototypes included tooling and die charges which are not included in the prices for ''normal'' home market sales, (6) several of those customers who requested and purchased a prototype model made only one purchase of the model during the entire review period, and (7) NSK's reported prototype/sample home market sales represent an insignificant portion of NSK's home market sales during the review period.

Clearly, in NSK's case we have been able to examine all factors surrounding the sale of NSK's home market prototypes/samples and, based on the evidence on the record, we have determined that these sales are not within the ordinary course of trade and have excluded them from our margin calculations.

Comments Concerning Discounts, Rebates, and Price Adjustments

*Comment 18:* The petitioner argues that in its preliminary results for NSK the Department incorrectly made direct adjustments to FMV for NSK's reported early payment discounts, return rebates, distributor incentives, performance incentives, post-sale price adjustments (PSPAs), lump-sum PSPAs, and stock transfer commissions. Timken also states that the Department, in its preliminary results for NTN, incorrectly allowed a direct adjustment for NTN's reported home market discounts. Timken contends that in light of recent CIT decisions and the Department's policy regarding such adjustments, as outlined in *AFBs 92/93,* the Department should reject entirely NSK's reported home market early payment discounts, distributor incentives, performance incentives, and lump-sum PSPAs, and NTN's home market discount adjustment. Timken also contends that, to the extent that any adjustment is allowed for NSK's reported home market return rebates and PSPAs, the Department should adjust for these expenses as indirect expenses.

NSK, citing numerous passages from the public version of the Department's 1992–93 NSK home market verification report dated July 8, 1994 (*NSK Report*), argues that the Department thoroughly verified each of these reported adjustments and correctly treated them as direct adjustments to FMV. NSK states that its distributor incentive rebate, early payment discount, and performance incentive rebate calculations reflect a fixed and constant percentage of sales and, as such, accurately reflect individual in-scope specific-transaction expense amounts. NSK adds that its PSPAs, lump-sum PSPAs, and return rebates also warrant direct adjustments to FMV. NSK further states that if the Department accepts Timken's position that none of these expenses warrant direct adjustment to FMV, the Department should, at a minimum, treat them as indirect adjustments to FMV.

NTN argues that it correctly allocated its discounts to in-scope merchandise and that there is no basis for the complete rejection of this expense.

*Department's Position:* In light of the CIT's decisions in *Torrington Co.* v. *United States,* 818 F. Supp. 1563, 1579 (1993) (*Torrington 1*), and *Torrington Co.* v. *United States,* 881 F. Supp. 622, 640 (March 31, 1995) (*Torrington II*), which state that the Department may not use a methodology which allows for the inclusion of PSPAs and rebates on out-of-scope merchandise when calculating adjustments to FMV, and the CIT's decision in *Torrington Co.* v. *United States,* 832 F. Supp. 379, 390 (1993), which restated the above and also applied the same rationale to discount adjustments to FMV, for these final results we have followed our policy as detailed in *AFBs 92/93.*

In general, we accept claims for direct discount, rebate, and price adjustments to FMV if actual amounts are reported for each transaction and the adjustment is not based on allocations. Discounts, rebates, and price adjustments based on allocations are not allowable as direct adjustments to FMV because allocated adjustments have the effect of distorting individual prices by diluting the discounts or rebates received on some sales, inflating them on other sales, and attributing them to still other sales that did not actually receive any. Thus, they have the effect of partially averaging prices. Just as we do not allow respondents to report average prices, we do not allow average direct additions to or subtractions from FMV. Although we usually average FMVs on a monthly or, where appropriate, annual basis, we require individual prices to be reported for each sale. However, if allocated scope-specific adjustments were granted as a constant and fixed percentage of sales on all transactions for which they were reported, such that the allocations reflected the actual amounts for each individual sale, we allow the adjustment as a direct adjustment to FMV. Alternatively, if these scope-specific adjustments were allocated on a customer- or product-specific basis, but there is no evidence of a fixed or constant percentage, we treat them as indirect selling expenses (*see AFBs 92/93* at 10929).

We also do not allow any direct adjustments to FMV if the allocation includes non-scope merchandise. The only exception is if the adjustment was granted as a fixed and constant percentage of all sales such that the apportionment of the total expense to in-scope and non-scope merchandise yielded the exact amount per unit paid on sales of in-scope merchandise (*see Torrington II* where the CIT cited the Federal Circuit's decision in *Smith Corona Group* v. *United States,* 713 F. 2d 1568, 1580 (Fed. Cir. 1983), *cert. denied,* 465 U.S. 1022 (1984)).

For these final results we have reviewed NTN's and NSK's reported discount, rebate, and price adjustments to FMV in light of this policy and we have made the following determinations:

(1) NSK's Early Payment Discounts: NSK calculated this adjustment using a distributor-specific allocation

methodology whereby it divided the total early payment discount amounts taken by a distributor during the POR by the total payments it received from the distributor during the review period. To derive its per-transaction discount expense amounts, NSK applied this ratio to the unit price of each of its reported transactions which reflected a sale to the specific distributor. While this adjustment reflects customer-specific allocations which include non-scope merchandise, we have determined that NSK's early payment discounts reflect a fixed and constant percentage of its sales to its distributors and warrant a direct adjustment to FMV.

NSK's distributors do not pay NSK each time a purchase is made (*i.e.*, on a transaction-specific basis). Rather, NSK bills the distributors and the distributors pay NSK for a month's purchases. This monthly payment reflects all purchases during the month of both in-scope and non-scope merchandise. Those distributors who pay early deduct from their monthly payment to NSK an amount equal to the discount rate NSK established for payment within that specific time period. The rate thus applies equally to all the merchandise covered by the payment. As stated by the CIT in *Torrington II,* ''in *Smith Corona* the court approved an apportionment of total rebates paid between in and out-of-scope sales because the apportionment yielded the actual amount per unit paid on sales of in-scope merchandise * * *. Such an apportionment was possible because the rebates in *Smith Corona* were granted as a fixed percentage of sales, regardless of the models sold.'' In the present case, regardless of the combination of in-scope and non-scope merchandise purchased by the distributor within the month, the discount rate granted remained the same and we found no evidence on the record to suggest that the distributor would have paid differently if only in-scope or only non-scope merchandise was purchased.

Furthermore, at verification we examined documentation that demonstrated that, for every distributor who received such discounts, the distributor's payments qualified it for the same discount category each month during the POR. In other words, each distributor consistently remitted payment to NSK the same number of days early each month during the POR. Although the rates a distributor received varied throughout the POR due to the fact that NSK altered its discount schedule throughout the POR, for the segment of the POR where each discount schedule was in effect, the rate granted to a distributor was fixed and constant within that segment because the distributor did not alter its payment pattern. When calculating its reported discounts NSK combined a distributor's rates throughout the POR such that the resulting factor reflected the average rate the distributor received throughout the POR. We have determined that, if NSK were simply to apply to a distributor's sales within each segment of the POR the rate in effect for the distributor during that same segment, the allocations would yield actual individual sale amounts and correctly apportion the expense to in-scope and non-scope merchandise. It was only when NSK combined its discounts into a single POR allocation that it distorted the fixed and constant discount percentages. Therefore, for these final results we have re-calculated NSK's reported discounts so that, each time a distributor's rate varied in the POR, that different rate is attributed to all of NSK's reported sales to that distributor within that segment of the POR. As a result, we have made a direct adjustment to FMV for NSK's early payment discounts, re-calculated as discussed above.

(2) NSK's Return Rebates: For certain home market sales made by related and unrelated distributors, NSK grants a return rebate on a customer- and part number-specific basis. To derive this expense factor, NSK totaled return amounts paid to a distributor for a specific part number during the POR, then divided this amount by the total sales value of that part from NSK to the distributor. NSK then applied this ratio to the unit price reported for each of its sales to the distributor of the specific part number to yield an expense for each transaction. Since the allocation was part-specific, it is necessarily scope-specific and accurately reflects an adjustment attributable to in-scope merchandise alone. At verification we verified that NSK correctly reported a return rebate adjustment only for those sales which may have involved return rebates. However, although NSK's calculations produce part-specific allocations, there is no evidence on the record that NSK granted these rebates as a fixed and constant percentage of its sales. As a result, we cannot ascertain that the transaction amounts NSK reported are identical to those that were actually incurred for each individual sale. Therefore, we have treated NSK's reported return rebates as indirect selling expenses and adjusted FMV accordingly.

(3) NSK's Distributor Incentives: For those distributors who sold in-scope and non-scope NSK merchandise to NSK-approved sub-distributors, NSK granted the distributors incentive rebates equal to a set percentage of the distributor's gross sales value (based on the distributor's price to the sub-distributor) to the approved sub-distributors. We verified that this percentage did not change during the POR, since throughout the POR the eligible distributors' rebate amounts were equal to a constant and fixed percentage of each distributor's sales to the approved sub-distributors. While we recognize that NSK incurred this expense as a fixed percentage of its distributors' sales to certain sub-distributors, we note that NSK did not report this expense in the same manner. Rather, NSK reported its rebate amounts as a percentage of its own sales to each distributor during the POR. In other words, the amount of rebates paid to a distributor during the POR was divided by NSK's sales to the distributor during the POR and the resulting ratio was applied to the unit price of each sales transaction to the distributor reported in NSK's response. While the rebate amounts NSK incurred where a function of NSK's distributors' sales to certain sub-distributors, they were not a function of NSK's sales to the distributor. NSK provided no evidence suggesting that the rebates were a function of the sales to the distributor over which they were allocated, nor did it provide evidence demonstrating that there was a direct relationship between its sales to a distributor and the distributor's sales to a sub-distributor. Therefore we are not convinced that NSK incurred this expense as a constant and fixed percentage of NSK's sales to its distributors. In addition, by reporting this expense on the basis of its sales to distributors, NSK neither calculated accurate individual-transaction expense amounts nor did it accurately apportion the expenses to in-scope and non-scope merchandise. We have, therefore, disallowed an adjustment to FMV for NSK's reported distributor incentives.

(4) NSK's performance Incentives: During the POR NSK granted to certain distributors an incentive rebate based on the distributors' improvement in sales over a specified time period. The percentage of the rebate granted was directly dependent upon a distributor's percentage increase in purchases from NSK. NSK calculated its performance rebates expense factor by dividing the total rebates granted to a distributor during the POR by NSK's totals sales of both in-scope and non-scope merchandise to the distributor during the POR. At verification NSK demonstrated that a distributor received a constant rebate percentage where its

percentage improvement in sales was unchanged throughout the POR. However, the distributor's improvement depended on additional purchases of both in-scope and non-scope merchandise. NSK did not identify what portion of that improvement was attributable to in-scope merchandise, and provided no means by which we could determine that portion attributable to in-scope purchases. As a result, it is reasonable to conclude that, if all additional non-scope purchases were excluded, the improvement attributable to only in-scope merchandise could be at a percentage rate different from the rate for the overall improvement in purchases. Based on the evidence, we have determined that NSK's allocation methodology does not result in an accurate apportionment of these expenses to in-scope merchandise. In addition, the evidence on the record does not provide an alternative method that would allow us to remove the expense amounts reported for non-scope merchandise. We have, therefore, disallowed this adjustment.

(5) NSK's PSPAs: NSK's PSPAs reflect NSK's alteration of prices for completed transactions, alterations to provisional prices to reflect negotiated price agreements, and corrections of clerical errors. NSK calculated its reported individual-transaction PSPAs by dividing the total PSPAs made for a customer per part number during the POR by NSK's total sales of the part to the customer during the POR. NSK applied the resulting ratio to the unit price for all its reported sales of the part to the customer. As we stated earlier when discussing NSK's return rebates, since a part-specific allocation is necessarily scope-specific, NSK's allocation methodology clearly calculates the actual expense attributable to in-scope merchandise. However, we have determined that this allocation is neither transaction-specific nor representative of a fixed and constant percentage. For example, NSK does not trace the adjustments directly to the actual transactions for which they were incurred, but rather aggregates all PSPAs by customer and by part, allocates them, and applies the allocation ratio equally to all transactions. In addition, there is no evidence demonstrating the NSK's PSPAs were granted as a fixed and constant percentage of all sales to the customer. Rather, the percentage adjustment for each PSPA varied according to the specifics of each negotiated price, clerical error, or other alteration in individual prices. We have, therefore, treated NSK's reported PSPAs as indirect selling expenses.

(6) NSK's Lump-Sum PSPAs: To derive its reported lump-sum PSPA individual-transaction expense amounts, for each customer NSK totaled the lump-sum price adjustment granted during the POR and then divided this by its total POR sales to the customer. Then, for each of its reported sales to the customer, NSK applied the resulting ratio to the reported unit price. We verified that NSK either attributed the lump-sum rebate correctly to the part number to which it applied (*i.e.*, the rebate was scope-specific), or it correctly attributed a PSPA amount granted on a group of products to the in-scope merchandise. However, we found no evidence on the record or at verification that supports the notion that NSK's lump-sum price adjustments were transaction-specific or granted as a fixed and constant percentage of all sales to a customer. Therefore, we have treated NSK's reported lump-sum PSPAs as indirect selling expenses.

(7) NSK's Stock Transfer Commission: When NSK does not have a specific part available, whether an in-scope or non-scope part, a distributor who needs the part may obtain it from another of NSK's distributors. NSK then grants the latter distributor a percentage of the price the needy distributor was ultimately paid for the part by its customer. In this way, these stock transfers are very similar to NSK's distributor incentive rebates in that the commission amount NSK pays to the distributor who locates the part is based on the needy distributor's price to the ultimate customer. Like its distributor incentive rebates, NSK allocated these commissions on the basis of its sales to the distributor to which the commission was paid. As a result, these commissions are reported as a function of a total sales value to which they have no direct relationship, and there is no evidence that a direct relationship exists between NSK's sales to the distributor which had the part and the needy distributor's sales to the end user to which the part was ultimately sold. Therefore, as we explained for NSK's distributor incentives, while the commissions were granted as a fixed and constant percentage of the needy distributor's sales to the end user, they were not granted as a fixed and constant percentage of NSK's sales to the supplying distributor. We have, therefore, disallowed this adjustment.

(8) NTN's Discounts: We have reexamined NTN's discount adjustment methodology and have concluded that, while NTN's reported discounts accurately reflect the actual per-unit discount expense NTN incurred on in-scope merchandise, NTN's allocation methodology is not transaction-specific and there is no evidence on the record that NTN grants its discounts as a fixed percentage of its sales. For these final results we have, therefore, treated NTN's reported home market discounts as indirect selling expenses.

With the exception of NSK's early payment discounts, our final determinations regarding the above adjustments to FMV reflect changes from our preliminary results. We have, therefore, adjusted our final results margin calculations for NSK and NTN accordingly.

## Comments Concerning Cost of Production and Constructed Value

*Comment 19:* The petitioner argues that, in accordance with section 773(e)(2) of the Tariff Act, when calculating statutory profits added to CV in accordance with section 773(e)(1)(B) of the Tariff Act, the Department should exclude those sales to related parties which it determined were not at arm's length.

NTN argues that nothing in the statute suggests that the Department should determine whether a sale was at arm's length when calculating profit for CV. NTN and NSK point out that the issue is moot in this current review because the Department found that all of NTN's and NSK's home market related-party sales were at arm's length.

*Department's Position:* As indicated by both NTN and NSK, the two respondents in this review for which an arm's-length test was required, we found all related-party home market sales at arm's length. As a result, Timken's concerns are unfounded in these reviews and we have not altered our calculations for NTN and NSK for these final results.

*Comment 20:* Timken argues that statutory profit calculations should also exclude home market below-cost sales which have been disregarded in accordance with section 773(b) of the Tariff Act. Timken argues that because CV is a proxy for FMV when prices and other data are inadequate or unavailable, and because below-cost sales are disregarded when sales form the basis of FMV, balance in the statute requires that the same sales be disregarded for CV as are disregarded for FMV, citing *Timken Company* v. *United States,* 11 CIT 785, 797, 673 F. Supp. 495, 507 (CIT 1987) and *Associacion Colombiana Exportadores de Flores* v. *United States,* 13 CIT 13, 19 704 F. Supp. 1117, 1124 (CIT 1989). Timken also argues that below-cost sales should be excluded from the CV profit calculation because such sales are not in the ordinary course of trade. Timken contends that because the definition of CV specifies that statutory profits should be calculated on the basis of sales in the ordinary course of trade (section 773(e)(1)(B) of the Tariff Act), below-cost sales, when in substantial quantities over an extended period of time, must be disregarded when calculating profit for CV.

Timken also points out that the United States has taken the position that disregarded below-cost sales are not considered as sales in the normal course of trade, as referred to in Article VI of the General Agreement on Tariffs and Trade (GATT) and the Antidumping Code. Finally, Timken recognizes the recent decision by the CIT against its position, but respectfully submits that the decision was in error.

NSK argues that the below-cost sales test (section 773(b) of the Tariff Act) applies only when the Department bases FMV on home market or third-country prices. It does not extend to the CV provision because, in NSK's view, Congress specifically did not intend to apply it to CV. NSK further adds that the statute's definition of ''ordinary course of trade'' (section 771(15) of the Tariff Act) does not limit sales in the ordinary course of trade to sales above cost. NSK also contends that the fact that section 771(15) of the Tariff Act as amended by the recently passed Uruguay Round Agreements Act (URAA) specifically characterizes below-cost sales as outside the ordinary course of trade constitutes evidence that the previous statute, the one in effect for these TRB reviews, meant the contrary.

NTN argues that the structure of the statute as a whole indicates that there was no Congressional intent to link the concepts of sales in the ordinary course of trade and sales below the cost of production. NTN contends that the Department correctly interprets the statute by making its ordinary-course-of-trade determination prior to the determination of whether sales are below cost. To do so any other way, argues NTN, would be redundant because sales below cost would have already been excluded as not in the ordinary course of trade. NTN maintains that the petitioner has provided no evidence of its position and further states that the very structure of the CV calculation demonstrates that it is intended to approximate a sale made above cost.

*Department's Position:* We disagree with Timken that, in these reviews, the calculation of profit for CV should be based only on sales that are priced above COP. While we recognize that section 771(15) of the URAA requires the exclusion of such sales from our CV profit calculation, these TRB reviews, which were initiated prior to January 1, 1995, are being conducted pursuant to previous law and regulations. In *Torrington II,* ruling on the law in effect prior to January 1, 1995, not only did the CIT affirm that CV is an alternative to price-based FMV and that sales prices are irrelevant to a CV calculation, but it specifically stated that ''nowhere does the statute require the exclusion of below-cost sales when determining the profit amount in calculating CV'' (*Torrington II* at 633). We have, therefore, not excluded below-cost sales from our CV profit calculation for these final results.

*Comment 21:* NSK claims that the Department violated the antidumping law by never establishing the grounds for collecting cost data from related-party suppliers. NSK contends that, pursuant to section 773(e)(3) of the Tariff Act, the Department has the right to disregard sales prices NSK paid to related-party suppliers in favor of the supplier's COP only if (1) the Department has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of the input, and (2) the information being requested is for a ''major'' input. NSK argues that, because the language in section 773(e)(3) of the Tariff Act is identical to that in 773(b) of the Tariff Act (the provision which grants the Department the authority to conduct cost investigations), the same threshold standard is applicable. In other words, NSK argues that, because the petitioner never alleged that NSK purchased an input from a related supplier at less than COP, and because the Department never alleged or substantiated that transfer prices from related suppliers were less than COP, let alone whether the input was a ''major'' input, reasonable grounds for the collection of this data did not exist.

NSK further contends that the Department has no other statutory authority for requesting related-supplier COP data and that there is no evidence on the record to support the Department's disregard of NSK's related-supplier transfer prices. Finally, NSK concludes that the Department should not use this illegally-obtained related-supplier information and should strike it from the record of these reviews.

Timken argues that the Department's preliminary results decision regarding NSK's related-supplier transfer prices was justified and in accordance with the law. Timken contends that the standard for analyzing below-cost sales pursuant to section 773(b) of the Tariff Act does not require any allegation by domestic parties. Likewise, accepting NSK's position that the identical language of section 773(e)(3) and 773(b) constitutes the application of the same standard, Timken maintains that there is therefore no requirement that the domestic party has the burden of submitting evidence of below-cost related-party supplier transfer prices. In fact, Timken maintains that the respondent should bear the responsibility of providing such evidence because domestic producers simply to not have access to the respondent's books and records, or access to what inputs were purchased from related suppliers. Timken adds that, given the nature of TRB production, it is also nearly impossible to submit data regarding the production costs at every stage of production that might be a transfer point. Furthermore, the petitioner states that to require allegations from the domestic party as a prerequisite for the Department's ability to investigate would effectively curtail the inherent authority of the Department to conduct below-cost sales and related-party transfer price investigations. Timken also maintains that the Department's collection of NSK's related-supplier transfer prices was justified because NSK has engaged in below-cost selling. Timken argues that, given that NSK does sell at below-cost prices, it is reasonable to infer that its losses are passed back to related suppliers which are forced to transfer inputs at a loss. Finally, Timken asserts that there is ample evidence on the record for these reviews supporting the Department's decision to disregard NSK related-party transfer prices.

*Department's Position:* We disagree with NSK. NSK erroneously argues that it was unlawful for the Department to request cost data for parts purchased from related suppliers. NSK's argument is grounded on the mistaken notion that section 773(e)(3) of the Tariff Act provides the sole basis for requesting cost information regarding inputs purchased from related suppliers. Two separate sections of the Tariff Act direct the Department to disregard transfer prices for certain transactions: section 773(e)(2) which directs us to disregard transfer prices if the transfer prices for ''any element of value'' do not reflect their normal market value, and section 773(e)(3) which directs the Department to disregard transactions if the transfer prices for ''major inputs'' are below cost of production.

For CV purposes, pursuant to section 773 (e)(2), the Department, in general, determines whether the transfer prices for any element of value occurred below the normal market value of that element of value. Pursuant to these statutory provisions, we do not use transfer prices between related companies to value any element of value if such prices do not fairly reflect the amount usually reflected in sales of the merchandise under consideration in the market under consideration. This is sometimes referred to as the requirement for an ''arm's-length'' price. To determine whether the transfer prices reflect arm's-length prices, we normally compare the transfer price to (1) the prices related suppliers charge to unrelated parties, or (2) the prices charged by unrelated suppliers to the respondent. If we disregard a transaction because the respondent cannot demonstrate that the transaction was made at arm's length, and there are no other transactions available for consideration, then we must rely on the ''best evidence available'' to determine the value of the element of value. In other words, if there are no arm's length prices for components to compare to transfer prices, ''Commerce generally use[s] the cost of the components as representative of the value reflected in the market under consideration'' (*see Final determinations of Sales at less Than Fair Value: Antifriction Bearings (Other Than tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany et al.,* 54 FR 18992 (1989) (*AFBs LTFV*). In that situation, we must determine whether to use the reported cost data as the ''best evidence available.'' Otherwise, we cannot fulfill our statutory obligation of valuing elements of value for CV purposes.

Furthermore, NSK erroneously argues that, before we can request cost data for inputs, we must have a specific and objective basis for suspecting that the transfer price paid to a particular related supplier for a major input is below the related supplier's COP. NSK's argument is based on the erroneous assumption that we must rely upon section 773(e)(3) to request information regarding transfer prices of components parts. As demonstrated above, section 773(e)(3) simply provides an alternative basis for requesting transfer price information. We agree with the petitioner's argument that, when a domestic party files a COP allegation, it does not necessarily have information about inputs which are obtained from related suppliers. We also agree that the petitioner does not have the information necessary to specifically allege that a particular input or element of value from a related party is priced below COP. Therefore, the petitioner cannot necessarily make COP allegations regarding specific related-party inputs. As a result, we consider our initiation of a cost investigation of the subject merchandise that is based on a petitioner's allegation a specific and objective reason to believe or suspect that the transfer price from a related party for any element of value may be below the related suppliers' COP.

In accordance with our standard practice (*see, e.g., Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From France,* 60 FR 10538, (February 27, 1995) and *AFBS LTFV*), we asked NSK to provide cost data for inputs produced by related parties. NSK complied with our request for information and supplied the transfer prices and cost of production of inputs from its related parties. The record for these reviews demonstrates that in its response NSK also submitted a comparison of the weighted-average transfer prices for those inputs NSK purchased from both related and unrelated suppliers. By this comparison NSK intended to show the arm's-length nature of its transfer prices where inputs were purchased from both related and unrelated suppliers. This comparison, however, was not useful in determining whether related-supplier transfer prices were at arm's length because it listed only a limited number of instances where NSK purchased an identical or similar input from both a related and unrelated supplier. Because we could not rely on NSK's related-party transfer price comparison, we examined in detail the submitted COP and transfer prices for all of NSK's related suppliers. We found that, contrary to NSK's claim, transfer prices from related suppliers were often below the suppliers' COP for that input (*see* the proprietary version of the Department's COP and CV adjustment memorandum for NSK dated August 9, 1994 (*NSK COP/CV Memo*)). Because NSK was unable to demonstrate that elements of value included in its submitted CV calculations were reflective of their normal market value, the submitted related-party cost information was required by law. Hence, we did not strike NSK's reported related-party cost information from the record for these reviews. To the contrary, for these final results, we relied on NSK's submitted related-party cost information if the COP for the input exceeded the transfer price NSK reported for the input.

*Comment 22:* NSK argues that the Department unreasonably adjusted its reported general and administrative (G&A) expenses to include certain non-operating expenses which were clearly not G&A expenses and not part of NSK's COP.

The petitioner argues that the Department's inclusion of certain expenses NSK omitted from its reported G&A expenses was proper and in accordance with past Departmental practice.

*Department's Position:* We agree with the petitioner. At verification we discovered that NSK excluded from its reported G&A expenses several items which we consider to be part of the cost of producing the subject merchandise (see the *NSK CV/COP Memo* for an itemization of these expenses). We therefore included these cost items in NSK's G&A expense calculation and adjusted NSK's reported COP and CV figures accordingly.

*Comment 23:* The petitioner argues that the revised credit expense ratio NTN reported for use in those margins calculations where the Department based FMV on CV is distortive. To eliminate this distortion, Timken contends that the Department should use a specific ratio originally submitted by NTN rather than this revised ratio.

NTN points out that the revised CV credit expense ratio it submitted was calculated at the specific request of the Department. NTN further states that the Department may choose to use either this revised ratio or the separate ratios it originally reported in its response.

*Department's Position:* We agree with the petitioner. In its initial questionnaire response NTN provided us with two separate credit ratios to be used for CV purposes. One was for NTN sales and it was based on the weighted-average POR credit expense for NTN. The other was for NTN Sales Company, Ltd. (NSCL), and it was based on NSCL's weighted-average POR credit expenses. Upon receipt of these ratios we agreed that they accurately reflected NTN's and NSCL's average credit expenses throughout the POR, but we were unable to separate certain of NTN's and NSCL's sales within our home market sales computer data bases. This precluded us from applying the separate credit expense ratios. In our supplemental questionnaire we asked NTN to either submit an NTN/NSCL combined credit expense ratio or indicate a way in which we could distinguish between certain of NTN's and NSCL's sales within our data bases. NTN chose to submit a combined ratio. We agree with Timken that this combined ratio is distortive. However, since the issuance of our preliminary results we have derived a method for distinguishing between certain of NTN's and NSCL's sales within our computer data bases. As a result, because they accurately reflect the average credit expenses incurred by NTN and NSCL during the POR, we have determined to use the separate NTN and NSCL credit expense ratios NTN initially reported in our CV margin calculations and we have done so for these final results.

*Comment 24:* Timken argues that NSK failed to demonstrate that interest income was related to the normal production of TRBs. Timken contends that the Department must recalculate NSK's financing expense by disallowing the interest income offsets.

NSK argues that at verification the Department reviewed and accepted its method for calculating interest expense. Therefore, NSK contends that the Department should not alter its preliminary results calculations by disallowing NSK's interest income offset.

*Department's Position:* We agree with NSK. We verified that the interest income offset was attributed to short-term investments of NSK's working capital. Therefore, we reduced NSK's interest expense by the amount of the company's reported short-term interest income.

*Comment 25:* NTN argues that the adjustment the Department made to its CV and further-manufacturing calculations with respect to a certain related party was incorrect for two reasons. First, NTN contends that the Department's re-calculations, which applied an overall figure to all products, were, in essence, a *de facto* use of BIA. NTN argues that BIA was not justified because it submitted all the necessary CV and further-manufacturing data the Department would need to recalculate its CV and further-manufacturing costs without restoring to an overall figure for all products. Second, NTN states that the Department's recalculations incorrectly used figures from an exhibit in its original questionnaire response and NTN indicated the correct figures the Department should have used from another exhibit in its response.

Timken argues that the Department's recalculations of NTN's reported CV and further-manufacturing costs were not based on BIA but on actual data from NTN's response. Timken further notes that the figures from the exhibit which NTN claims the Department should use are also incorrect. Timken provided figures from the same exhibit which it states should be used in the Department's recalculation.

*Department's Position:* We agree in part with the petitioner and the respondent. We used information that was submitted by NTN and its related supplier for our calculation of the adjustment in our preliminary results. Therefore, our adjustment was not based on BIA. The submitted cost of inputs from a related party were included at the transfer price which was below the COP. Therefore, we increased NTN's cost of manufacturing (COM) to reflect the related-supplier's COP. However, as both the petitioner and the respondent pointed out, one of the amounts we used in the related-party input adjustment calculation for the preliminary results was incorrect. We intended to use the cost of goods manufactured (COGM) from NTN's sample plant, but, instead, we used only the material cost of the sample plant. We revised our adjustment calculation for the final results to reflect the COGM of the sample plant as we had intended for the preliminary results. In calculating the COGM, we included the effect of the plant's change in the work-in-process inventory

*Comment 26:* Timken argues that NTN's reported repacking expenses for its further-processed merchandise are unrealistic and that the Department should re-examine NTN's further-processing calculations, determine if NTN has misreported these expenses, and make any appropriate adjustments for the final results.

NTN argues that the U.S. packing expenses it reported for its further-processed merchandise were accurate and that the Department should not change its treatment of these expenses for these final results.

*Department's Position:* We agree with the respondent. Based on the information on the record, we have no reason to conclude that NTN's submitted packing costs are understated. Accordingly, no adjustment to these packing costs is appropriate.

*Comment 27:* Timken argues that NTN incorrectly reported its depreciation on idle production assets by not treating it as an overhead expense in calculating COM, and that the Department should adjust NTN's COP calculation accordingly.

NTN argues that the method it used to report its idle asset depreciation is identical to that used by the Department's accounting office in a recent AFB verification. NTN further states that its depreciation on idle assets is unrelated to producing subject merchandise and is properly not part of COP. NTN also argues that it has reported its costs in accordance with the Generally Accepted Accounting Principles (GAPP) of Japan and that the Department should therefore accept its reported COP calculations.

*Department's Position:* We agree with NTN that it properly accounted for costs associated with depreciation of its idled equipment. The equipment at issue was never used to produce subject merchandise. In these instances we normally include the depreciation expense of idle production assets as part of G&A expenses. Because NTN included the depreciation expense associated with all idle equipment for the entire plant in its submitted G&A expense calculation, an adjustment for depreciation of idle equipment is unnecessary.

*Comment 28:* Timken argues that NTN has not demonstrated that its reported interest income offsets are related to normal operation or short-term deposits. in particular, Timken points out that NTN's interest income includes income from the sales of market securities, which Timken contends is unlikely to be derived from the short-term investment of working capital. Timken further argues that the Department should eliminate the effects of foreign exchange adjustments on NTN's corporate financing rate. The petitioner states that the Department has generally rejected accounting adjustments that influence corporate financing rates and should do so again here.

NTN argues that it has used the exact methodology in this review as it has in past reviews of TRBs and that, absent a reason for rejecting this methodology, the Department should accept its reported interest income offsets and financing expenses.

*Department's Position:* We agree in part with the petitioner. In our preliminary results we computed interest expense using the unconsolidated financial statements of NTN and its related selling entity NSCL. For the final results we recalculated interest expense using information from NTN's consolidated financial statements, which is consistent with our normal practice. We reduced NTN's consolidated interest expense by NTN's submitted unconsolidated short-term interest income and we excluded the income from the trading of marketable securities, gains on foreign exchange transactions, and NSCL's reported interest income from our recalculation of NTN's financing expense. In this case, we did not offset NTN's interest expense by amounts received from marketable securities investments because the income from these securities was not shown to be derived from the company's short-term working capital investments. We did not include the foreign exchange transaction gains because we could not confirm that the reported amounts related to costs included in NTN's COP and CV figures.

We excluded the submitted short-term interest income of NSC because the amount reported exceeded the total amount of interest income reported in NSCL's submitted financial statements.

*Comment 29:* Timken contends that level-of-trade differences have no meaning within the context of CV because CV is intended to reflect expenses generally incurred on sales of subject merchandise in the home market. Timken argues that the Department must therefore eliminate from NTN's CV calculations any data related to differences in levels of trade.

NTN argues that level-of-trade differences do have meaning within the context of CV because its selling expenses are incurred in different amounts for each level of trade. NTN contends that the Department has consistently accepted its home market expenses differentiated by level of trade and should not ignore this distinction in the context of CV.

*Department's Position:* We agree with NTN. We are satisfied that NTN's allocation of its home market selling expenses by level of trade reflects the fact that NTN incurs different selling expenses when selling at different levels of trade, and that these level-of-trade differences in selling expenses are reflective of NTN's experience in selling TRBs in Japan. Section 772(e)(B) of the Tariff Act states that the CV calculation must include ''an amount for general expenses and profit equal to that usually reflected * * *.'' By retaining its level of trade distinction for those expenses it included in its CV calculation, NTN reported CV amounts which captured its actual experience in selling TRBs in Japan and ensured that its CV calculations included expense amounts equal to those which are usually incurred.

Miscellaneous Comments Regarding Level of Trade, VAT-Adjustment Methodology, Assessment and Cash Deposit Rates, Suppliers' Knowledge, and Revocation

*Comment 30:* NSK contends that the Department should add taxes to USP whenever such taxes are assessed in the home market, but that it should not add taxes to FMV or otherwise calculate FMV so as to include taxes, whether FMV is based on home market price, third country sales, or CV. NSK argues that the plain language of the statute does not define FMV to include taxes imposed in the home market. Furthermore, NSK states that if Congress had meant to include taxes in every calculation of FMV, the statute, at a minimum, would have defined third country prices and CV to include such taxes. NSK also argues that, even if the Department rejects its position, the methodology the Department used in the preliminary results is incorrect. NSK maintains that in the preliminary results the Department did not apply the VAT to the proper tax base. NSK states that the CIT has made it very clear that the VAT must be applied to USP at the same point in the chain of commerce as the Japanese tax authorities apply the VAT on home market sales, citing *Federal-Mogul Corp.* v. *United States*, 834 F. Supp. 1391, 1396 (CIT 1993) (*Federal-Mogul*). NSK contends that, according to Japanese law, the VAT is applied to the net revenue of the sale with no offset for expenses, whereas the Department adjusted all expenses for VAT in its preliminary results.

Timken argues that, contrary to NSK's position, the Federal Circuit's decision in *Zenith Elec. Corp.* v. *United States*, 988 F.2d 1573 (Fed. Cir. 1993), is dispositive that FMV was intended to include VAT. Timken further contends that, given the language of section 772(d)(1)(C) of the Tariff Act, there is no question that the ''price'' referenced in section 773(a) of the Tariff Act must include VAT, if applicable. The petitioner also argues that the Department's preliminary results VAT-adjustment methodology did in fact correctly apply the tax rate to USP at the same point in the chain of commerce and appropriately implemented the statute and the CIT's instructions in *Federal-Mogul*.

*Department's Position:* Concerning NSK's first argument that taxes should never be added to FMV, we disagree. Taxes imposed in the foreign market are an integral part of the final price paid by the customer and are only ''added'' when reference is made to a tax-exclusive home market gross price. Furthermore, section 772(d)(1)(C) of the Tariff Act directs us to adjust for any taxes which are rebated or uncollected by reason of exportation to the extent that such taxes are added to or included in the price of home market such or similar merchandise. This means that taxes should be included in the prices used by the Department in its calculation of FMV.

Concerning our preliminary results VAT-adjustment methodology, in light of the decision by the United States Court of Appeals for the Federal Circuit (the Federal Circuit) in *Federal-Mogul* v. *United States*, CAFC No. 94–1097, we have changed our treatment of home market consumption taxes. For these final results, where merchandise exported to the United States was exempt from the consumption tax, we added to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that we adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F.2d 1573, 1582 (1993), and which was suggested by the Federal Circuit in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal-Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and we acquiesced to the CIT's decision. We then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; we made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal-Mogul* case, however, appealed the decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate taxneutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

We have determined that the ''*Zenith* footnote 4'' methodology should be used. First, as we have explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the Gatt and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the GATT. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section

772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, we have elected to treat consumption taxes in a manner consistent with our longstanding policy of tax-neutraility and with the GATT. We have applied this tax-neutral methodology to our final margin calculations for NTN, NSK, Fuji, and Honda, the four companies for which we made a VAT-adjustment in our preliminary margin calculations and for which a VAT-adjustment was again necessary for these final results.

*Comment 31:* NSK argues that the Department's margin calculations for NSK were artificially inflated because the Department failed to make an appropriate level-of-trade adjustment when comparing home market such or similar merchandise to U.S. merchandise sold at a different level of trade. NSK contends that there is sufficient evidence on the record to quantify a level-of-trade adjustment based on the weighted-average differences in prices at each level of trade and concludes that the Department must grant NSK such an adjustment when the comparison home market merchandise was sold at a different level of trade than the U.S. merchandise.

NTN argues that, while the Department correctly made a level-of-trade adjustment when comparing home market such or similar merchandise to U.S. merchandise sold at a different level of trade, the Department's adjustment, which was cost-based, did not take into account the full price differences between NTN's levels of trade. NTN contends that the recently-enacted URAA endorses such an adjustment, and that, in accordance with section 1677b(a)(A) of the URAA, the evidence in this review clearly demonstrates that differences in NTN's levels of trade affect price comparability based on a consistent pattern of price differences between sales at different levels of trade in Japan.

Timken argues that the Department properly did not grant NSK a level-of-trade adjustment because NSK failed to provide cost-based data documenting its entitlement to such an ajdustment. The petitioner points out that the Department and the CIT have consistently held that cost-based data, and not the existence of price differentials alone, constitute the evidence necessary to support a level-of-trade adjustment. Timken maintains that while the record demonstrates that there are price differences between NSK's reported home market levels of trade, NSK provided no evidence demonstrating that these price differences were due to the different costs NSK incurred in selling to different levels of trade.

The petitioner also argues that, under the governing law for these reviews, NTN still is not entitled to a price-based level-of-trade adjustment because it has not met the burden of quantifying the price-based level-of-trade adjustment that it seeks. Finally, Timken contends that, while these subject reviews are not governed by the URAA because they were initiated prior to January 1, 1995, even if the Department were to apply the requirements of the new law to NTN's analysis, NTN would still not be entitled to a price-based level-of-trade adjustment because it has not demonstrated that there is a consistent pattern of price differences between sales at different levels of trade.

*Department's Position:* We disagree with NTN and NSK. As described below, NSK's request for a level-of-trade adjustment was untimely, and NTN did not qualify for the price-based level-of-trade adjustment it seeks.

We have examined NSK's initial and supplemental questionnaire responses and, while NSK provided evidence demonstrating that it sells to distinct levels of trade, it did not request that we make a level-of-trade adjustment when comparing home market such or similar merchandise sold at one level to U.S. merchandise sold at another level. In fact, only in its case brief did NSK first argue that a level-of-trade adjustment should be made and first argue that this adjustment should be price-based. For this reason we find NSK's request for such an adjustment to be untimely and we have not considered it for these final results (*see, e.g., Fijitsu General Ltd.* v. *United States,* Slip Op. 95–44 at 28 (CIT March 14, 1995), *Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy: Final Results of Antidumping Duty Administrative Review,* 57 FR 8295 (March 9, 1992), *Final Determination of Sales at Less Than Fair Value: Certain Steel Pails From Mexico,* 55 FR 12245 (April 2, 1990), and *Final Determination of Sales at Less Than Fair Value: Stainless Steel Woven Wire Cloth From Japan,* 50 FR 10520 (March 15, 1985)).

We have examined the record evidence for NTN to determine if a price-based level-of-trade adjustment is warranted. Basically, in accordance with 19 CFR 353.58, in order to make the type of price-based level-of-trade adjustment NTN seeks, we would have to be satisfied that the full difference in prices between levels of trade was due solely to level-of-trade differences and no other factors. If quantitative analysis reveals that there is a pattern of price differences between levels of trade, then we can reasonably conclude that level-of-trade differences alone affected price comparability. If a pattern is not evident, then we can only conclude that other factors, and not level-of-trade differences alone, caused the price differences between levels of trade. For these final results we conducted such a quantatitive analysis on NTN's home market prices, as reported in its home market sales computer data base. For each home market model that NTN sold to each of its three distinct levels of trade, we calculated, for each level of trade, a weighted-average net price adjusted for all those home market selling expenses which we determined in our analysis warranted a direct adjustment to FMV. We then calculated the percentage differences in the weighted-average prices between levels of trade for all models in each month the models were sold throughout the POR. We then compared these monthly, model-specific percentage differences to determine if a pattern of price differences at different levels of trade was evident.

Our comparison of NTN's percentage price differences revealed that there were numerous models for which there was no pattern in price differences between levels of trade in that the pricing order for certain random months was the reverse of the pricing order in other months. For example, for many models the pricing order for several months was, from highest priced to lowest, level-of-trade 2, level-of-trade 3 and then level-of-trade 1. However, in other random months the order was reversed such that, from highest to lowest, the order was level-of-trade 3, level-of-trade 1, then level-of-trade 2. Furthermore, even in those months where the pricing order was the same, the range of percentage price differences between levels was erratic in that a model may have been sold at a price slightly higher at level 1 in one month, but much higher at level 1 in another month. Therefore, absent a discernible pattern in the price differences between level-of-trade, we lack the evidence necessary to grant NTN a priced-based level-of-trade adjustment.

*Comment 32:* Fuji agrees that the Department properly excluded from its preliminary results margin calculations that merchandise which met the criteria for the application of the ''Roller Chain'' principle, and which was, as a result, outside the scope of the Japanese TRBs order and finding. However, Fuji contends that unless the Department adopts one of the three assessment strategies Fuji proposes, the Department will overassess the amount of antidumping duties owed by Fuji and will be in violation of the antidumping duty law because it will apply antidumping duties to non-scope merchandise.

Fuji first proposes that because it had fewer than fifty entries during the review period, the Department should assess duties on an entry-by-entry basis. Alternatively, Fuji proposes that, because all of those TRBs which qualify for exclusion under the ''Roller Chain'' principle were imported by a single related importer, Subaru-Isuzu Automotive, Inc. (SIA), the Department should assess duties on an importer-specific basis and apply zero duties to all SIA imports. Fuji adds that if the Department selects this option it should also adjust its calculated cash deposit rate for Fuji to take into account the ''Roller Chain'' merchandise by including the value of the ''Roller Chain'' merchandise in the denominator. Finally, Fuji proposes that, if the Department rejects these first two proposals, the Department, at a minimum, should then adjust both Fuji's cash deposit and assessment rates by including the value of the TRBs meeting the ''Roller Chain'' criteria in the denominators the Department uses when calculating these rates.

Kawasaki argues that although the Department resorted to BIA for its preliminary results margins for Kawasaki, and will presumably do so again for these final results, this should not preclude the Department from determining that those TRBs which meet the ''Roller Chain'' criteria and those TRBs manufactured by a German company but sold by Kawasaki in the United States constitute out-of-scope merchandise and are therefore not subject to antidumping duty assessment. Kawasaki contends that there is sufficient evidence on the record to demonstrate that certain of its TRBs not only meet the criteria for the ''Roller Chain'' principle, but all such TRBs were imported only by Kawasaki Motors Manufacturing Corporation (KMM). Kawasaki further contends that it has demonstrated that certain other TRBs imported by Kawasaki Loaders Inc. (KLI) were originally manufactured by a German company and sold to Kawasaki in Japan by the German company's Japanese affiliate. Kawasaki maintains that the Department should ensure the exclusion of its German-made TRBs from assessment by simply identifying to Customs the unique model numbers for such TRBs as reported in its response. Kawasaki argues that the record in the A–588–054 case contains the information necessary for the Department to recalculate its BIA rate such that duties are not assessed on Kawasaki's ''Roller Chain'' TRBs. Finally, Kawasaki states that, because KMM did not import any TRBs which fell within the scope of the A–588–604 order, the Department's BIA rate would not require any recalculation.

The petitioner argues that because at the time of entry there is no way of knowing that a particular entry will meet the ''Roller Chain'' principle criteria, the Department should require cash deposits on all entries. Timken further argues that including the value of Fuji's and Kawasaki's ''Roller Chain'' TRBs in the denominator of the cash deposit calculations would result in the underassessment of antidumping duties because importers ultimately receive refunds of all duty deposits on ''Roller Chain'' entries.

*Department's Position:* We agree in part with the petitioner and in part with the respondents. It is important to first make clear that merchandise which meets the criteria of the ''Roller Chain'' principle is not out-of-scope merchandise. Our determination in an administrative review that the ''Roller Chain'' principle is applicable to certain merchandise is not the equivalent of a determination that the merchandise is non-scope merchandise. To the contrary, in these TRB reviews, that merchandise which we have deemed to be ''Roller Chain'' merchandise clearly falls within the scope of the A–588–054 finding and the A–588–604 order, as described earlier in this notice. Based on section 772(e)(3) of the Tariff Act and the applicable legislative history, we have developed a practice whereby we do not calculate and do not assess antidumping duties on subject merchandise which is imported by a related party and which is further processed where the subject merchandise comprises less than one percent of the value of the finished product sold to the first unrelated customer in the United States (*Roller Chain Other Than Bicycle From Japan*, 48 FR 51804 (November 14, 1983), and *AFBs 92/93* at 10937)). The statute provides for the assessment of antidumping duties only to the extent of the dumping that occurs. If there can be no determination of any dumping margin where the imported merchandise is an insignificant part of the product sold, then there is no dumping to offset and antidumping duties are not appropriate. We therefore do not consider ''Roller Chain'' merchandise as non-scope merchandise, but rather as scope-merchandise which is not subject to duty assessment.

We disagree with Fuji that our cash deposit rates should somehow take into account merchandise meeting the ''Roller Chain'' criteria because we have no way of knowing at the time of entry whether any particular entry qualifies under the ''Roller Chain'' principle for exclusion from assessment of antidumping duties. Our decision to exclude any merchandise is made on a case-by-case basis within the course of an administrative review, which takes place after the actual entry of the potentially excludable merchandise. For this reason, at the time of entry we must require cash deposits of estimated antidumping duties on all entries, including those entries of merchandise potentially excludable from assessment under the ''Roller Chain'' principle. Furthermore, cash deposit rates are estimates of dumping liability. Because at the time of entry we have no idea of the value of merchandise which we may ultimately determine as meeting the ''Roller Chain'' criteria, we cannot alter our cash deposit rate to effectively compensate for the value of the ''Roller Chain'' merchandise in the current review, which may be a value significantly different from that in the future.

We also disagree with Fuji that entry-by-entry assessment is a viable option for its assessment. Entry-by-entry assessment requires the traditional appraisement instructions which list each entry and the margin calculated for it. The disadvantages of such assessment are numerous. For example, because our dumping analysis focuses on sales, it is necessary for us to associate reviewed sales with entries in some way. However, companies are generally unable to make such a link. In addition, such appraisement instructions are burdensome, time-consuming, and at risk for error. It is therefore the position of the Department that assessment rates applicable to all covered entries are preferable. In comparison to entry-by-entry assessment, the use of an assessment rate which applies to all entries during the POR is far less burdensome and time-consuming. In addition, the risk of incorrect assessment is minimized. In general, we have tried to calculate assessment rates on an importer-specific basis to prevent one importer from paying antidumping duties attributable to margins found on sales to a different importer. However, this concern for importer-specific rates is limited to those instances where the importer is not related to the foreign exporter. Where the importer is related to the foreign exporter, we consider the related parties to constitute one corporate entity and the use of manufacturer/exporter-specific assessment rates to be appropriate. Therefore, we also reject Fuji's proposal that we adopt an importer-specific rate for SIA, its related U.S. subsidiary, and we will calculate one rate for Fuji's related importers.

We have determined that Fuji's final proposal, that the assessment rate take into account the value of the ''Roller Chain'' merchandise, is the most viable assessment option and would ensure that antidumping duties are not assessed on that merchandise we determined to meet the ''Roller Chain'' principle criteria. As explained above, we do not agree that the cash deposit rate should be altered in any way. Therefore, to ensure that assessment does not occur on ''Roller Chain'' merchandise, we will include the value of the ''Roller Chain'' merchandise in our denominator. This will have the effect of ''diluting'' the percentage assessment rate so that, even though antidumping duties will be assessed on all entries, the lower ''diluted'' percentage assessment rate (which will still result in the collection of the actual amount of antidumping duties owed) will effectively exclude the ''Roller Chain'' merchandise from assessment.

Concerning Kawasaki's alleged ''Roller Chain'' merchandise, as the record for these reviews demonstrates, due to a consistent pattern of late submissions in response to our questionnaires and the quality of the information contained in Kawasaki's timely responses, we rejected all of Kawasaki's untimely responses and used total cooperative BIA rates for Kawasaki in our 1992–93 reviews for both the A–588–054 and A–588–604 cases (*see, e.g.*, the Department's 1992–93 decision memorandum for Kawasaki, dated April 13, 1995). Kawasaki contends that information contained in its two timely responses, dated February 10, 1994, and May 24, 1994, respectively, which were not rejected by the Department and, as such, are part of the administrative record for these 1992–93 TRB reviews, demonstrates the ''Roller Chain'' nature of KMM's imports. For these final results we have reviewed Kawasaki's two timely submissions and have determined that neither submission contains evidence demonstrating the ''Roller Chain'' nature of KMM's imported TRBs. Our examination of Kawasaki's May 24, 1994, submission revealed that this submission dealt exclusively with TRBs imported and sold by KLI and did not contain any information concerning those TRBs imported by KMM. Our examination of Kawasaki's February 10, 1994, submission revealed that, while this submission contained information about KMM's imported TRBs, it did not contain sufficient evidence demonstrating the ''Roller Chain'' nature of KMM's imports. For example, page 4 of the submission indicates that all of KMM's imported TRBs are used solely in the manufacture of motorcycles and all-terrain vehicles (ATVs). Attachment 3 of the submission contains a listing of the product codes for the TRBs KMM imported along with the corresponding product copies of the finished motorcycle or ATV into which the TRBs were incorporated. Page 6 of the submission contains the POR total value of KMM's imports along with a statement by Kawasaki indicating that the value of these TRBs is less than one percent of the value of the finished ATVs and motorcycles. However, this submission does not contain any analysis, or the raw data necessary for us to conduct an analysis, comparing the value of the imported TRBs to the value of the finished motorcycles or ATVs. As a result, we lack the data necessary for use to determine with certainty that the value of those TRBs imported by KMM and used solely in the manufacture of motorcycles and ATVs in the United States was indeed less than one percent of the value of the finished motorcycles and ATVs. We therefore do not agree with Kawasaki that evidence on the record demonstrates the ''Roller Chain'' nature of KMM's imports and we will not calculate Kawasaki's assessment rate for the 1992–93 review of the A–588–054 case to reflect the value of its alleged ''Roller Chain'' merchandise. However, because KMM imported TRBs within the scope of the A–588–054 finding only, we agree with Kawasaki that no recalculation of its A–588–604 assessment rate is warranted.

As for Kawasaki's German-made TRBs, proper identification on entry documents by Kawasaki of the German origin of the merchandise should ensure that this merchandise is properly treated as outside the scope of these TRB cases and not assessed antidumping duties resulting from these reviews. However, to ensure that only Japanese-made TRBs are subject to antidumping duties, we will instruct Customs to apply Kawasaki's rates for both cases to Japanese-made TRBs only.

*Comment 33:* Timken argues that because Honda has been a part of numerous reviews and because in Japan a manufacturer/supplier participates actively in the design, technology, manufacture, and quality control of the products it supplies, all Japanese suppliers of TRBs to Honda know for a fact that a portion of the TRBs they supply to Honda, a reseller, are destined for export to the United States. The petitioner contends that simply because those of Honda's Japanese suppliers who are also subject to these reviews claim not to know which group of TRBs will in fact be shipped to the United States, this does not overshadow the fact that these suppliers have knowledge that a portion of those TRBs they supply to Honda are destined for exportation to the United States. Timken therefore concludes that this portion of Honda's purchases from its Japanese suppliers should be reclassified as suppliers' purchase price sales and the Department has an obligation to review these sales using the prices paid by Honda in Japan as USP.

Honda argues that section 772(b) of the Tariff Act does not apply to those instances where a supplier might have general knowledge that merchandise was destined for export to the United States, but only in those situations where the supplier knew or had reason to know that the specific merchandise it sold to Honda was subsequently exported by Honda to the United States. Honda, citing the Department's 1992–93 home market verification report for Honda dated July 20, 1994 (*Honda Ver. Report*), contends that there is no evidence on the record to support the conclusion that Honda's Japanese suppliers knew or had reason to know that TRBs purchased by Honda would be exported to the United States. Both Honda and NTN maintain that in prior reviews of the AFBs cases, the petitioner in that case raised the identical issue and the Department repeatedly rejected such a contention. Honda and NTN therefore conclude that, absent evidence to the contrary, the Department must reject Timken's position in these current TRB reviews.

*Department's Position:* We agree with the respondent. It has been our practice to define a U.S. sale as a sale in which a manufacturer is informed in advance or has reason to know at the time of sale that the product sold in the home market was destined for exportation to the United States. Furthermore, the evidence on the record must demonstrate this actual or constructed knowledge (*see AFBs 92/93* at 10950, *Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review,* 58 FR 11211 (February 24, 1993), *Oil Country Tubular Goods From Canada, Final Results of Antidumping Duty Administrative Review,* 55 FR 50739 (December 10, 1990), and *Ferrovanadium and Nitride Vanadium From the Russian Federation; Notice of*

*Final Determination of Sales at Less Than Fair Value,* 60 FR 27957 (May 26, 1995)). At our home market verification of Honda for the 1992–93 Japanese TRB reviews we specifically addressed the issue of supplier knowledge and examined various documents in an effort to determine whether Honda's Japanese suppliers knew at the time of sale that the merchandise they sold was to be exported to the United States (*see Honda Ver. Report* at 7–8). We concluded that, while Honda's Japanese suppliers may realize in general that a portion of the parts they supplied to Honda would eventually be shipped to the United States, we found no evidence that these suppliers could determine at the time of sale whether a part was to be sold by Honda domestically, for export, for export to the United States, or whether it would be sold for replacement purposes or for original equipment manufacture. We have therefore treated Honda as a TRB reseller for these final results and have not reclassified any portion of Honda's purchases from certain Japanese suppliers as suppliers' purchase price sales.

*Comment 34:* The petitioner argues that the Department should not proceed with the final revocation of Honda from the A–588–054 finding for two fundamental reasons. First, arguing that the determination to revoke must be based on the most up-to-date information available, Timken contends that the period of three consecutive years of no dumping margins which the Department has relied on for Honda is too outdated to serve as a basis for revocation. Second, Timken points out that, under the recently-enacted URAA, the ''Roller Chain'' principle has been effectively eliminated. Thus, Timken contends, imports previously excluded from margin calculations and assessment are, under the new law, subject to review and the application of antidumping duties. While Timken recognizes that these 1992–93 Japanese TRB reviews are governed by the pre-January 1, 1995, law, the petitioner contends that the Department cannot reasonably predict that Honda is not likely to dump in the future because there has never been an analysis of Honda's ''Roller Chain'' TRBs.

Honda argues that the period of three consecutive years of zero (0.0) margins the Department has relied on as a basis for revocation is adequate because there is no limitation on the ''remoteness'' of this period in 19 CFR 353.25(a)(2) of the Department's regulations. In addition, Honda states that Timken has overlooked the fact that, in accordance with its policy to conduct an ''update'' review when a significant delay in finalizing a tentative revocation has occurred, the Department has conducted such an update review in this 1992–93 review of the A–588–054 finding and has again found zero percent dumping margins for Honda. Honda further argues that Timken's position that the Department cannot reasonably predict that there is no likelihood that Honda will dump in the future is essentially an attempt by Timken to retroactively apply the new law to a revocation proceeding clearly governed by the pre-January 1, 1995, law. Honda maintains that such a retroactive application is in direct contradiction to Congress's expressed intent to apply the new law only to those administrative reviews requested on or after January 1, 1995.

*Department's Position:* We agree with Honda. As explained in our preliminary results of review for these 1992–93 reviews, we found no dumping margins for Honda's sales for the period January 1977 through July 1980. As a result, in accordance with our revocation requirements in effect at the time, on September 1, 1981, we published in the Federal Register (46 FR 43864) our tentative determination to revoke Honda from the A–588–054 finding. Based on the fact that we again found no dumping margin for Honda for the period August 1, 1980, through September 1, 1981 (the ''gap period''), on May 14, 1984, we published our intent to revoke Honda from the finding (*TRB 90/92 Prelim* at 22353). Due to a unique pattern of events which we thoroughly detailed in our preliminary results notice, we did not proceed with final revocation of Honda and, as a result, the ''Intent to Revoke'' notice we published in May 1984 has lost its official standing (*TRBs 90/92 Prelim* at 22353).

In October and November 1992 the petitioner requested and we initiated a review of Honda in the A–588–054 finding. We conducted a thorough verification of Honda and preliminarily determined that Honda again had no margin. As a result, we decided to publish, along with our preliminary results notice of these current reviews, our intent to revoke Honda from the A–588–054 finding. We also explained that, under the revocation procedures in effect at the time Honda's revocation proceeding began, the intent-to-revoke stage of the renovation usually covers the ''gap period.'' However, in accordance with our policy in similar situations, we conducted an update review of the most recent one-year period in lieu of the ''gap period.'' We first adopted this in light of the CIT's concern in *Freeport Minerals* v. *United States,* 776 F. 2d 1029 (CIT 1985), that revocation determinations be based on ''current data,'' and it reflects a consistent practice which has been approved by the CIT (*see Television Receivers, Monchrome and Color, From Japan,* 55 FR 35916 (September 4, 1990), *Roller Chain Other Than Bicycle, From Japan,* 56 FR 50093 (October 3, 1991), and *Matsushita Electric Industrial Company* v. *United States,* 12 CIT 455, 688 F. Supp. 617, 623 (1988), *aff'd,* 861 F.2d 257, 7 Fed. Cir. (T) 13 (1988)).

Therefore, Timken's contention that we did not base our revocation of Honda on the most current data available is unfounded. We clearly collected, analyzed, and verified the most current sales information and other data available from Honda. Thus, our decision to proceed with final revocation of Honda from the A–588–054 finding is not only based on a demonstrated past history of no dumping by Honda (the three-year period of no dumping margins pursuant to 19 CFR 353.25(a)(2)), but on a current confirmation that Honda has continued not to dump TRBs (the 1992–93 update review).

We also disagree with the petitioner's contention that the elimination of the ''Roller Chain'' principle under the new law precludes us from reasonably predicting that Honda is not likely to sell TRBs at LTFV in the future. As explained in our response to Comment 30 above, based on the relevant legislative history of section 772(e)(3) of the Tariff Act, we concluded that Congress did not intend that USP be calculated and that antidumping duties be assessed when the imported value of subject merchandise that is imported and then further-processed is insignificant in comparison to the value of the finished merchandise (*see* Rep No. 1298, 93d Cong. 2d Sess. 172–73, 245, *reprinted in* 1974 U.S.C.C.A.N. 7185, 7130). We therefore established the ''Roller Chain'' principle by which we consider as ''insignificant'' the value of imported merchandise that constitutes less than one percent of the value of the finished product (*see, e.g., AFBs 92/93* at 10937). In other words, because there can be no determination of dumping in situations where the value of certain imported subject merchandise is an insignificant part of the value of the product sold in the United States, then it follows that such merchandise does not play a role in a determination of whether dumping is likely to recur. Because we base our likelihood determination on evidence currently on the record, ''Roller Chain'' merchandise is not a factor in our likelihood determinations pursuant to the law and regulations governing these reviews. Were we to allow the exclusion of the ''Roller Chain'' principle under the new law and ''Roller Chain'' merchandise itself to influence our likelihood determination for Honda at this time, not only would we, in effect, be imposing an unreasonable burden on Honda to re-qualify for revocation under a new set of standards, but, most importantly, we would be retroactively applying the new statute, which is proscribed when Congress clearly expresses a statute's effective date, as it did here in section 291 of the URAA (*see Landgraf* v. *USI Film Products,* 114 S. CT. 1483 (1994)). For these reasons we do not agree that ''Roller Chain'' merchandise should be a factor in our likelihood determination and we have based our likelihood determination on the factors described below.

The evidence on the record clearly demonstrates that Honda has not dumped TRBs in the past and is not likely to dump TRBs in the future. We have found no margins for Honda in all the reviews of the A–588–054 finding in which we reviewed Honda. Not only has Honda demonstrated a consecutive three-year of no dumping margins, but it demonstrated that in the nearly 15 years since the Department's last review of the firm, it continued not to dump. It is also important to note that our consistent calculation of no margins for Honda is not dependent upon the presence of ''Roller Chain'' merchandise. In other words, not all of Honda's entries were exempt under the ''Roller Chain'' principle. Honda also exports to the United States a significant amount of TRBs which are imported by American Honda, Honda's sales subsidiary in the United States, and sold to unrelated U.S. customers for replacement purposes. These U.S. sales constitute Honda ESP sales and we have based our past and current margin calculations on these replacement-part TRB sales. As a result, our repeated determinations of no dumping margins for Honda reflect Honda's actual pricing practices in the United States and constitute clear and uncontroverted evidence that Honda does not engage in dumping pricing practices. There is no evidence on the record indicating that Honda is likely to dump in the future. In fact, since there was nearly a 15-year gap between this current review and our last review of Honda, we have had the rare opportunity to examine Honda's pricing practices after a nearly 15-year period of no examination whatsoever. The fact that, after 15 years of no review, we have found no dumping by Honda in the current review, only provides additional support for our determination that Honda is unlikely to sell TRBs at LTFV in the future. Furthermore, our calculation of no margin for Honda after 15 years is even more persuasive because the substantial appreciation of the yen against the dollar over the years would make the incidence of dumping margins after such an extended period even more likely. For these reasons, we have determined that Honda is not likely to sell TRBs at LTFV in the future, and, since Honda has met all other requirements for revocation, we are revoking the A–588–054 finding with respect to Honda.

Clerical Errors

*Comment 35:* The petitioner, providing two examples from the Department's preliminary results margin calculations for NTN, contends that the Department failed to apply set-splitting ratios to the home market commission and credit expense amounts NTN reported for TRB sets the Department split into individual cup and cone sales. Timken concludes that this error resulted in the failure to calculate accurate credit and commission expense amounts for individual cups and cones split from TRB sets, and, as a result, distorted the Department's margin calculations for NTN.

*Department's Position:* We agree in part with Timken. In the beginning of our preliminary results computer program for NTN we calculated home market net prices by deducting from NTN's reported gross prices several direct expenses, including home market commissions and credit. It is this net price variable which we split to derive the net price attributable to the individual cups and cones split from TRB sets, and it is the price which we eventually weight-averaged prior to comparison to U.S. sales. Because this net price reflects a price already adjusted for credit and commissions, it is unnecessary to carry the components we used to derive this price into the set-splitting portion of our programs. In other words, by splitting the net price, which is already adjusted for commissions, credit, and other direct expenses, it becomes unnecessary to split the components used to derive the net price. However, if for some reason it was necessary for us to retain one of these components for the final margin calculations we conduct at the end of our computer program, it would then be necessary to preserve the expense variable and calculate the amount of that expense attributable to split cups and cones.

For NTN we conduct our commission offset later in our margin calculation program. While we correctly weight-averaged this variable, we did not include it in the set-splitting portion of our program. This had the effect of overstating the weighted-average commission amounts because split cups and cones simply retained the commission amount NTN reported for the parent set. In this case we agree with Timken and corrected this error for these final results.

In contrast to commissions, we did not use the credit variable at any point after its original deduction from the net price. As a result, it was unnecessary to retain this variable for individual weight-averaging or later margin calculations and unnecessary to include it in the set-splitting portion of our calculations. Therefore, we disagree with Timken that there was an error in our treatment of the home market credit expense variable and we have not changed our treatment of this variable for these final results.

*Comment 36:* Timken contends that the Department failed to include all of NTN's U.S. expenses in its further-manufacturing calculations because the Department's calculated U.S. total direct selling expense amount, in comparison to its calculated U.S. manufacturing amount, appears to be ''exceptionally low.'' Timken argues that this discrepancy, of which it provided three examples from the Department's preliminary results NTN computer printouts, is due to either (1) the error it previously described in regard to NTN's home market credit expense variable, (2) some other error, or (3) NTN's failure to report accurate U.S. direct selling expense amounts.

*Department's Position:* We agree with the petitioner in part. First, as described in our response to Comment 35, there is no error in our treatment of NTN's home market credit expense variable. Furthermore, even if there were an error, this would have no effect on our calculation of total U.S. direct selling expenses for further-manufacturing purposes. However, based on the discrepancy in NTN's U.S. selling expense allocations addressed earlier in this notice, we have determined that the application of NTN's originally-calculated allocation ratios would have resulted in the understatement of NTN's U.S. selling expense amounts, including those direct selling expense amounts we relied on in our further-manufacturing calculations. Because we have re-allocated NTN's U.S. selling expense such that accurate per-unit expense amounts result, we have also eliminated those other discrepancies, such as the one Timken describes here, which stemmed from NTN's incorrectly allocated U.S. selling expenses.

*Comment 37:* NSK argues that the Department relied on an improper COP variable when determining whether a home market sale occurred at, below, or above COP.

The petitioner states that the Department properly relied on that COP variable which would correctly implement the Department's decision to use the higher of transfer price or the actual COP of inputs NSK purchased from related suppliers.

*Department's Position:* We agree with Timken. In its home market computer data base NSK reported two separate COP amounts for each home market model. The first amount (COP1) reflected the total COP of the model using the transfer prices between NSK and its related suppliers for those inputs used in the model's production. The second amount (COP2) reflected the total COP of the model using not the transfer prices but the related supplier's actual COP for the inputs. As explained in our response to Comment 21, because we found that NSK's related-supplier transfer prices were not at market value, we made the appropriate adjustments in our analysis. One of these adjustments was intended to ensure that, if the COP1 amount NSK reported for a model (which was based on related-supplier input transfer prices) was less than the COP2 amount (which reflected the COP of the model based on the related suppliers' actual COP for the inputs used), then we would use COP2 as the COP for the model. We therefore did not make a clerical error, but rather chose the appropriate COP for our cost test.

Final Results of Review

Based on our review of the arguments presented above, for these final results we have made changes in our margin calculations for NTN, NSK, Fuji, and Honda. As explained in our preliminary results of these reviews, we used a cooperative-BIA rate, based on the highest calculated rate for any firm in the A–588–054 review as Kawasaki's margin in the A–588–054 case *(see TRBs 92/93 Prelim* at 22350). Because the highest calculated rate for the A–588–054 review has changed for these final results, we have adjusted Kawaski's A–588–054 BIA rate accordingly. The preliminary margins we calculated for all other companies and our preliminary determinations concerning the use of BIA, no shipments, and the terminations of the review have remained unchanged for these final results (*see TRBs 92/93 Prelim* at 22353, 22354).

As a result of our comparison of USP to FMV, we have determined that margins exist for the period October 1, 1992, through September 30, 1993, as follows:

*For the A–588–054 Review*

| Manufacturer/reseller/exporter | Margin (percent) |
|---|---|
| Nachi-Fujikoshi Corp | [1] 18.07 |
| NSK Ltd | 11.62 |
| Fuji | 1.76 |
| Honda | 0.0 |
| Kawasaki | 11.62 |
| Yamaha | 47.63 |
| MC Int'l | 0.45 |
| Maekawa | [1] 0.0 |
| Toyosha | 47.63 |
| Nigata | 47.63 |
| Suzuki | 47.63 |

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

*For the A–588–604 Review*

| Manufacturer/reseller/exporter | Margin (percent) |
|---|---|
| NTN | 19.15 |
| Nachi-Fujikoshi Corp | 40.37 |
| NSK Ltd | 10.19 |
| Fuji | ([2]) |
| Honda | ([2]) |
| Kawasaki | 36.52 |
| Yamaha | 40.37 |
| MC Int'l | ([2]) |
| Maekawa | ([2]) |
| Toyosha | 40.37 |
| Nigata | 40.37 |
| Suzuki | 40.37 |
| Daido | ([2]) |
| Ichiyanagi Tekko | 40.37 |
| Nittetsu Bolten | 40.37 |
| Sumikin Seiatsu | 40.37 |

[2] No shipments or sales subject to this review. The firm has no rate from any segment of this proceeding.

As stated in our response to Comment 34 above, we have determined that Honda has met the requirements for revocation set forth in 19 CFR 353.54(f) (1988) of our regulations. We are therefore revoking the A–588–054 finding with respect to Honda. This revocation applies to all entries of TRBs and certain components thereof, four inches or less in outside diameter, subject to the A–588–054 case, exported by Honda, entered or withdrawn from warehouse, for consumption on after September 1, 1981, the date of the original tentative revocation, and for which liquidation remains suspended. The Department will instruct Customs to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1981, without regard to antidumping duties, to refund any estimated antidumping duties collected with respect to those entries, and to cease collecting cash deposits.

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rates for the reviewed companies other than Honda will be those rates outlined above;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise;

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate for the A–588–054 finding will be 18.07 percent and 36.52 percent for the A–588–604 order (*see Preliminary Results of Antidumping Duty Administrative Reviews; 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*, 58 FR 51058 (September 30, 1993)).

All U.S. sales by each respondent will be subject to one deposit rate according to the proceeding.

The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, the Department will use the entered value of the merchandise to determine the assessment rate. In the case of Fuji, the Department will calculate assessment rates which reflect the total value of that merchandise which we determined to meet the criteria for the ''Roller Chain'' principle.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.25 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews, revocation in part, and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 and 353.25.

Dated: October 29, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–28444 Filed 11–6–96; 8:45 am]

**BILLING CODE 3510–DS–M**

---

## National Oceanic and Atmospheric Administration

**[I.D. 103196C]**

## South Atlantic Fishery Management Council; Public Meetings.

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee, Ad Hoc Golden Crab Appeals Committee, joint Controlled Access and Snapper Grouper Committees and Snapper Grouper Advisory Panel, Snapper Grouper Committee, Advisory Panel Selection Committee, joint Shrimp Committee and Ad Hoc Shrimp Bycatch Advisory Panel, Highly Migratory Species Committee, and a Council session.

The Council welcomes written public comment on any of the agenda items. See **ADDRESSES** for the Council address to send in comments.

**DATES:** The meetings will be held from November 18-22, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Sheraton Atlantic Beach Resort, Salter Path Road, Atlantic Beach, NC 28512; telephone: (800) 624-8875 or (919) 240-1155.

*Council address*: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

**FOR FURTHER INFORMATION CONTACT:** Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan_buchanan@safmc.nmfs.gov

**SUPPLEMENTARY INFORMATION:**

### Meeting Dates

*November 18, 1996, 1:30 p.m. to 5:30 p.m.*—Scientific and Statistical Committee;

The Scientific and Statistical Committee will meet to review the new Black Sea Bass and Amberjack Assessments and other relevant snapper grouper data. The Committee will also review the Snapper Grouper Amendment 8 draft public hearing document;

*November 18, 1996, 6:30 p.m. until business is complete*—Ad Hoc Golden Crab Appeals Committee;

The Ad Hoc Golden Crab Appeals Committee will meet to review any appeals received concerning golden crab permit applications;

*November 19, 1996, 8:30 a.m. to 12 noon*—joint Controlled Access and Snapper Grouper Committees and the Snapper Grouper Advisory Panel;

The Controlled Access and Snapper Grouper Committees will meet with the Snapper Grouper Advisory Panel to review the

Snapper Grouper Amendment 8 draft public hearing document;

*November 19, 1996, 1:30 p.m. to 5:30 p.m.*—joint Controlled Access and Snapper Grouper Committees and the Snapper Grouper Advisory Panel;

The Controlled Access and Snapper Grouper Committees will meet with the Snapper Grouper Advisory Panel to develop recommendations for Snapper Grouper Amendment 8 options to take to public hearing;

*November 20, 1996, 8:30 a.m. to 12 noon*—Snapper Grouper Committee;

The Snapper Grouper Committee will meet to develop recommendations for Snapper Grouper Amendment 8 options to take to public hearing;

*November 20, 1996, 1:30 p.m. to 2:30 p.m.*—Advisory Panel Selection Committee (closed session);

The Advisory Panel Selection Committee will meet in closed session to develop recommendations for appointment of advisory panel members;

*November 20, 1996, 2:30 p.m. to 5:30 p.m.*—joint Shrimp Committee and Ad Hoc Shrimp Bycatch Advisory Panel;

The Shrimp Committee will meet jointly with the Ad Hoc Shrimp Bycatch Advisory Panel to review the NMFS analysis and develop the final bycatch reduction device (BRD) testing protocol, and to discuss Council/NMFS/Atlantic States Marine Fisheries Commission coordination of BRD usage;

*November 21, 1996, 8:30 a.m. to 12 noon*—Highly Migratory Species Committee;

The Highly Migratory Species Committee will meet to discuss the future function of the committee, review the NMFS Shark Proposed Rule and Amendment 1 to the Shark Fishery Management Plan (FMP), and to discuss State/Federal cooperation in closing shark pupping areas;

*November 21, 1996, 1:30 p.m. to 6:00 p.m.*—Council Session;

The Council will receive the Shrimp Committee Report from 1:45 p.m. to 2:30 p.m., and will approve the final BRD testing protocol; from 2:30 p.m. to 3:00 p.m. the Council will receive the Highly Migratory Species report; at 3:00 p.m. the Council will take public comment regarding the control date for the spiny lobster fishery before reconsidering the control date; from 3:45 p.m. to 6:00 p.m. the Council will receive the Snapper Grouper Committee report and take public comment at 3:45 p.m. before approving Snapper Grouper Amendment 8 for public hearing;

*November 22, 1996, 8:30 a.m. to 12:00 noon*—Council Session;

The Council will receive the Advisory Panel Selection Committee report in closed session and appoint advisory panel members from 8:30 a.m. to 9:00 a.m. Beginning at 9:00 a.m., the Council will make calendar year 1997 budget adjustments, receive the status of Atlantic king mackerel catches, hear a report on the recreational demand workshop, hear a report on the status of implementation of the Golden Crab FMP, receive agency and liaison reports, and discuss other business.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 11, 1996.