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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Antidumping Duty Investigation of Certain Ball Bearings and
Parts Thereof from the People's Republic of China

Summary

We have analyzed the comments and rebuttal comments of interested parties in the antidumping duty investigation of certain ball bearings and parts thereof (ball bearings) from the People's Republic of China (PRC). As a result of our analysis of these comments, we have made changes in the margin calculations, including corrections of certain inadvertent errors from the preliminary determination. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum for this final determination.

Below is the complete list of issues in this investigation for which we received comments and rebuttal comments from parties:

I. General Issues

- Comment 1: Valuation of Overhead, SG&A, and Profit Ratios ("Financial Ratios")
- A. Whether Companies Which Reported a Loss Should Be Excluded from Profit Ratios Calculation
 - B. Whether the Department Should Use a Weighted Average or a Simple Average to Calculate Financial Ratios
 - C. Whether the Department Should Exclude Companies Which Did Not Manufacture the Merchandise under Investigation

- D. Whether the Department Should Exclude Financial Data That Are Not Contemporaneous with the POI
- E. Whether the Department Should Exclude Companies That Were Owned and Controlled by the Indian Government
- F. Whether the Department Should Exclude Company Data Where the Company Is Less Integrated
- G: Whether the Department Should Restate Indian Surrogate Producers' FOH and SG&A to Eliminate Certain Distortions
- H. Whether the Department Should Exclude the Financial Statements of Indian Producers Which Are Affiliated with Petitioner
- I: Whether the Department Should Exclude the Financial Data of Multinational Corporations: SKF, FAG, and TIL
- J. Which Indian Surrogate Producers Should Be Included as Surrogate Source for Valuing Financial Ratios

- Comment 2: Respondent Selection
- Comment 3: GAM Mast Guide Bearings and Chain Wheels
- Comment 4: Corporate Name Change Filing
- Comment 5: PRC-Wide Rate
- Comment 6: Valuation of Purchased Components
- Comment 7: Calculating Margins on a Per-Unit Basis
- Comment 8: Market Economy Steel Values–Korea/India

II. Company-Specific Issues

A. Peer

- Comment 9: Correction of Errors Made in the Preliminary Margin
- Comment 10: Incorporation of Corrections Made Prior to Verification
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- Comment 12: Require Peer to Provide Complete and Accurate Data for Certain CONNUMs or Use Facts Available
- Comment 13: Whether the Department Should Correct Peer's Scrap Recycle Ratio and Recalculate Peer's Material Costs
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- Comment 15: Whether the Department Should Examine or Restate Peer's Reported "Section E" Costs
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- Comment 19: Whether The Department Should Use Facts Available for Peer's U.S. Unaffiliated Commissions
- Comment 20: Whether the Department Should Revise Its Margin Calculation Methodology
- Comment 21: Whether the Department Should Exclude Certain Non-Operational Expenses and Reclassify Certain Operational Expenses in Calculating Financial Ratios
- Comment 22: Whether the Department Should Use More Contemporaneous Electricity Data
- Comment 23: Whether the Department Should Use More Contemporaneous Data Involving Full Shipments for Brokerage and Handling Charges

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- Comment 24: Surrogate Value for Wooden Packing Pallets, Boxes
- Comment 25: Wanxiang's EMQ Bearings
- Comment 26: Wanxiang's CEP and Commission Offset
- Comment 27: Wanxiang's Steel and Scrap Data
- Comment 28: Wanxiang's Brokerage & Handling
- Comment 29: U.S. Inland Freight
- Comment 30: Ocean Freight
- Comment 31: Computer Programming Error (ELASCLP2)
- Comment 32: Steel Type for Rings and Balls
- Comment 33: Steel Wire Rod (for Balls)
- Comment 34: Surrogate Value for SAE 1045 Plain Carbon Steel for Hubs, Spindles and Circlips, Bolts
- Comment 35: Surrogate Value for SAE 1566 Structure Carbon Steel for Certain Outer Rings and Spindles
- Comment 36: Surrogate Value for Steel Bar (for Rings)
- Comment 37: Surrogate Value for Steel Tube (for Rings)
- Comment 38: Surrogate Value for Cold-Rolled Steel for Shields, Cages, Rubber Seals, Rivets
- Comment 39: Empty Wheel Hub Units

C. Cixing

- Comment 40: The Department Made an Error in Calculating the Regression-Based Wage Rate for China
- Comment 41: Cixing's Market Economy Purchases of Balls
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- Comment 45: Cixing's Marine and Inland Insurance
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Comment 50: Cixing's CONNUM Reporting Methodology and Ball Weights

Comment 51: Clerical Errors in the Amended Preliminary Program

Background

On October 15, 2002, the Department of Commerce (the Department) published its preliminary determination of sales at less-than-fair-value (LTFV) in the antidumping duty investigation of ball bearings from the PRC. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Ball Bearings and Parts Thereof from the People's Republic of China, 67 FR 63609 (October 15, 2002) (Preliminary Determination).

On November 20, 2002, the Department published the amended preliminary determination of sales at LTFV in the antidumping duty investigation of ball bearings from the PRC. See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof from the People's Republic of China, 67 FR 70053 (November 20, 2002) (Amended Preliminary Determination). The period of investigation (POI) is July 1, 2001, through December 31, 2001. Since the preliminary determination, the following events have occurred.

During November and December 2002, the Department conducted verifications of the mandatory respondents'¹ sales and factors of production (FOP) information.

Both the petitioner² and the mandatory respondents (respondents) filed surrogate value information and data on December 13, 2002. On December 23, 2002, petitioner and respondents filed information rebutting the December 13 factor value submissions.

Parties filed case and rebuttal briefs on January 13 and January 21, 2003, respectively. On January 22, 2003, a public hearing was held at the Department of Commerce.

We note that although we stated in our Amended Preliminary Determination that we would make the final determination no later than February 26, 2003, the actual statutory deadline pursuant to section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), is February 27, 2003. Accordingly, we are issuing our final determination on February 27, 2003, in accordance with the statutory requirement.

¹ The mandatory respondents in this investigation are Zhejiang Xinchang Peer Bearing Company Ltd. (Peer), Wanxiang Group Corporation (Wanxiang), and Ningbo Cixing Group Corp. and its U.S. affiliate, CW Bearings USA, Inc. (collectively, Cixing).

² The petitioner in this case is the American Bearing Manufacturers Association (ABMA).

Discussion of the Issues

I. General Issues

Comment 1: Valuation of Overhead, SG&A, and Profit Ratios (“Financial Ratios”)

In the Preliminary Determination, we relied on the financial data of the following five Indian surrogate producers to calculate financial ratios: Antifriction Bearing Corporation, Ltd., (ABC), HMT Bearings, Limited (HMT), FAG Bearings India Ltd. (FAG), SKF Bearings India Ltd. (SKF), and NRB Bearings Ltd. (NRB). Since the Preliminary Determination, petitioner and respondent, Peer, have placed on the record financial data from three additional Indian surrogate producers: Asian Bearing Ltd. (ABL), Austin Engineering (AEC), and Timken India Limited (TIL).

For the final determination, we have calculated financial ratios based on financial data from three surrogate companies: HMT, SKF, and NRB. We excluded the other five Indian surrogate financial data from financial ratio calculations because two producers (ABC and FAG) are significantly less integrated than the three Chinese respondents, and, therefore, are not comparable (as defined in Comment 1.F below). Moreover, one producer (TIL) did not produce subject merchandise during the POI, and two’s financial data (AEC and ABL’s) are not contemporaneous.

A. Whether Companies Which Reported a Loss Should Be Excluded from Profit Ratios Calculation

The ABMA submits that the Department should recalculate the average profit ratio used in the Preliminary Determination and exclude the financial statements of the following four surrogate companies from the profit calculation—ABC, ABL, AEC, and SKF—because these firms showed negative profits. Citing TRBs XIV,³ and ARG Windshields,⁴ petitioner argues, in calculating a surrogate profit rate, it is the Department’s practice to exclude negative profit from its profit ratio calculation to prevent distortion. Therefore, petitioner requests that the Department follow case precedent and exclude ABC, ABL, AEC, and SKF’s financial statements from the profit ratios calculation.

³ Final Results of 2000-2001 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People’s Republic of China; 67 FR 68990 (November 14, 2002) (TRBs XIV).

⁴ Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People’s Republic of China; 67 FR 6482 (February 12, 2002) (ARG Windshields).

Specifically, petitioner urges the Department to recalculate the overhead and surrogate overhead, selling, general and administrative (SG&A) expenses ratios using only the data provided in the 2000 Annual Financial reports of SKF and NRB Bearings Ltd. (NRB), and to recalculate the profit ratio using only NRB's data in the final determination.

The three mandatory respondents, Peer, Wanxiang, and Cixing (hereinafter collectively referred to as respondents) argue that the Department should reject petitioner's request for exclusion of ABC, ABL, AEC, and SKF's negative profit from the surrogate value profit calculation. According to respondents, there is no legal basis for excluding negative profit because the statute directs the Department to calculate normal value (NV) in nonmarket economy (NME) cases based on the factors of production plus "an amount" for profit, which can be zero or even negative profit. Respondents point out that the reason that SKF had a loss was because it had extraordinary high overhead and SG&A. It would be incongruous, they assert, to use SKF as representative for purposes of overhead and SG&A, but not for profit, and it is nonsensical to use high overhead and SG&A ratios from one set of sources and obtain profit from another set of sources. Respondents cite Rhodia⁵ and argue that while the Court of International Trade (CIT) allowed the Department to exclude negative profits in that case, the Court did not say it was mandatory. They quote the Court's decision, which states: "barring evidence to the contrary," the negative profit "surrogate values are equally representative of the surrogate experience." Because petitioner has not cited any evidence as to why the negative surrogate profit values of any of these companies are not equally representative, respondents counter, a decision to exclude the profit ratios of Indian bearing producers is arbitrary and contrary to law in light of the CIT's decision to use a simple average (see Comment 1.B below).

Taken together with other arguments discussed below (Comments 1.B to 1.J), respondents are against excluding ABC and AEC, but they maintain that SKF's financial data should be excluded from the calculations of financial ratios in this final determination.

Department's Position:

We agree with petitioner that the financial data of Indian Surrogate producers which reported a negative profit should be excluded from the surrogate profit calculation. It is the Department's practice to exclude from the profit calculation information from companies that recorded losses. See e.g., TRBs XIV, ARG Windshields, and Redetermination Pursuant to Court Remand in Rhodia, Inc. V. United States and Jilin Pharmaceutical Co. Ltd: Shandong Xinhua Pharmaceutical Factory, Ltd., Court No. 00-08-00407 (March 29, 2002). Therefore, because ABC, ABL, AEC, and SKF experienced losses, we did not use the information of these companies to calculate surrogate profit for the final determination.

⁵ Rhodia, Inc. v. United States, Slip Op. 2-109 at 9 (Ct. Int'l Trade, 2002) (Rhodia).

B. Whether the Department Should Use a Weighted Average or a Simple Average to Calculate Financial Ratios

Petitioner argues that the Department in the Preliminary Determination factors of production memorandum described its methodology as producing weighted-average ratios for factory overhead (FOH), SG&A, and profit, which is consistent with the approach the Department has taken in TRBs reviews.⁶ Yet, petitioner contends the Department's actual calculations did not compute a weighted average, but only a simple average of the five companies' FOH, SG&A, and profit ratios. It claims that the simple averaging methodology is inconsistent with the Department's past practice and is inappropriate because it values the ratios of minor producers the same as those of larger producers. Petitioner, therefore, urges the Department to compute a weighted average when calculating the financial ratios.

Respondents argue that if multiple financial statements are used, a simple-average, rather than weighted-average, should be used to calculate overhead, SG&A, and profit. According to respondents, the purpose of using a simple average is to find a representative sampling of companies and if a single large company has outlier data, the use of a weighted-average can result in skewing the data. In this instance, respondents point out that SKF is a large multinational company and a weighted-average would disproportionately weight SKF's data over all other companies, which would render a flawed weighted-average (see Comment 1.J below). Citing Reinforcing Bars and 1995 Brake Rotors,⁷ respondents allege that the Department has used simple averages in most NME cases. Furthermore, they refer to a recent CIT decision in Rhodia which rejected the Department's apparent departure in Bulk Aspirin⁸ from its long-standing practice of using simple averages to blend multiple Indian producers' overhead, SG&A, and profit ratios. In the Court remand of that case, respondents add, the

⁶ See e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1998-1999 Administrative Review, Partial Rescission of Review and Determination Not to Revoke Order in Part, 66 FR 1953 and the accompanying Decision Memorandum at Comment 7 (January 10, 2001); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of New Shipper Reviews, 66 FR 8383 and the accompanying Decision Memorandum at Comment 12 (February 26, 2001).

⁷ Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the People's Republic of China, 66 FR 33522 (June 22, 2001) (Reinforcing Bars) ; See also, Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors From the People's Republic of China, 61 FR 53190, 53196 (October 10, 1996) and Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160 (February 28, 1997) (1995 Brake Rotors).

⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000) (Bulk Aspirin) and the accompanying Decision Memorandum at Comment 4.

Department agreed that its usual practice is to use a simple average when combining data for these types of calculations and found no facts that warrant deviation from that practice.

Department's Position:

We agree with respondents. The Department has consistently used simple averages in most NME cases to derive overhead, SG&A, and profit. The CIT also found in its recent ruling in Rhodia that when the Department uses only a few surrogate companies, its usual practice is to apply a simple average to derive overhead, SG&A, and profit. On remand, the Department agreed that its usual practice is to use a simple average when combining data for these types of calculations and found no facts in that proceeding that warrant deviation from that practice. The Department continued this practice by using a simple average in its most recent NME review in Fifth Brake Rotors.⁹

In the current proceeding, we used only a few surrogate companies and found no facts that warrant deviation from our previous practice. Therefore, we have used a simple average to derive financial ratios in the final determination.

C. Whether the Department Should Exclude Companies Which Did Not Manufacture the Merchandise under Investigation

Petitioner alleges that the Department should not use the annual financial reports of ABC or TIL as a source for any factor of production data because these companies did not manufacture ball bearings or ball bearing parts during the POI. Specifically, it claims that ABC withdrew from the ball bearing business in the last quarter of 2001 and TIL specializes in the manufacture of tapered roller bearings. Therefore, petitioner argues that ABC and TIL's financial data do not provide an account of the FOH, SG&A, or profits of a ball bearing producer. Furthermore, the petitioner alleges that there is ample financial data on the record for Indian companies that did produce ball bearings during the POI, and there is no reason for the Department to use ABC's or TIL's data. Accordingly, petitioner urges the Department not to use any financial data in ABC's and TIL's 2000-2001 or 2001-2002 annual financial statements for financial ratios calculations.

With respect to ABC, respondents counter that the petitioner's arguments against using ABC are unconvincing and urge the Department to disregard them. Citing ABC's 2001-2002 annual report which was submitted by Peer on December 13, 2002, respondents allege that the record shows that ABC did produce ball bearings throughout 2001, including in the third and fourth

⁹ See Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of Seventh New Shipper Review, 68 FR 1031 (January 8, 2003) (Fifth Brake Rotors).

quarters. Specifically, respondents point out that ABC's annual report groups its sales as "ball and roller bearings" and it buys steel and uses rolled and forged rings which implies that ABC's production process is essentially the same as the other ABMA producers.

In an alternative argument, respondents claim that petitioner's logic was specious in that it urges the Department to use its preferred companies' (i.e., SKF and NRB) financial data to calculate surrogate financial ratios while it also urges the Department to disregard ABC. According to respondents, ABC is similar to SKF and NRB because all three are not exclusively producers of ball bearings. They also argue that there is no proof on the record that SKF and NRB are significant producers of ball bearings, and, therefore, the record does not necessarily support a position that SKF and NRB are better surrogates than ABC. Furthermore, respondents claim that the Department's precedent does not require surrogate companies to manufacture only the subject merchandise. Citing TRBs XIV, respondents argue that the Department used annual reports from SKF, FAG, etc., even though they manufacture products in addition to tapered roller bearings. Thus, respondents concluded that petitioner's "purist" attitude with respect to ABC is neither convincing nor supportable and urge the Department to disregard such a request.

With respect to TIL, respondents also request that the Department not exclude TIL's data in the event it decides to use affiliated party data. Respondents allege, while there is no question that TIL is primarily a producer of tapered bearings, its annual report does not break out the types of bearings (e.g., ball bearings or tapered roller bearings) that it produces. Thus, TIL too, likely produces ball bearings, they claim. Finally, relying on TRBs XIV, respondents point out that as long as a company produces tapered or ball bearings, it is "comparable" and can be used as surrogate company.¹⁰

Department's Position:

We agree, in part, with both petitioner and respondents. We agree with petitioner that TIL's financial data should be excluded from financial ratios calculations. As pointed out by both petitioner and respondents, TIL specializes in the manufacture of tapered roller bearings. As TIL's annual report does not break out the types of bearings (e.g., ball bearings or tapered roller bearings) that it produces, we cannot draw a conclusion that TIL likely produces ball bearings. To the extent that TIL did not produce the merchandise under investigation, TIL's financial data does not provide an account of the FOH, SG&A, or profits of a ball bearing producer. Because we have on the record of the instant investigation the financial data from several other Indian ball bearing producers during the POI, we have excluded TIL's financial data from financial ratios calculations for purposes of the final determination.

¹⁰ See TRBs XIV. Factors Valuation Memorandum at Att. 6.

We agree with respondents regarding ABC's financial data. Although ABC withdrew from the ball bearing business during the last quarter of 2001, ABC was a bearing producer during half of the POI. Therefore, ABC's financial data reflects comparable experience of a ball bearing producer, and, thus, can reasonably be used as surrogate company. However, as stated below in Comment 1.F, we are ultimately excluding ABC from the financial ratio calculations due to the fact that ABC is significantly less integrated than the mandatory respondents.

D. Whether the Department Should Exclude Financial Data That Are Not Contemporaneous with the POI

Petitioner alleges that the Department should exclude the financial data of AEC and ABL from the ratio calculations because these data are from outside the POI. Specifically, petitioner points out that the annual report on the record for AEC covers the period April 1, 2000 to March 31, 2001, and the annual report on the record for ABL covers the period April 1, 2000 to June 30, 2001, and, therefore, contains no data from the POI. Thus, the petitioner urges the Department to follow its precedent and exclude data from these reports when calculating the final financial ratios because the data are not representative of the experiences of ball bearing and ball bearing part producers from July to December 2001.

Respondents argue that the Department should not exclude AEC's data from ratio calculations.¹¹ While acknowledging that AEC's data is outside the POI by three months, respondents maintain that the Department will look at a variety of factors, not just contemporaneity, in selecting a company's data from which to derive financial ratios. For example, respondents allege that in Pure Magnesium from the Russian Federation the Department considered the accuracy of the data in addition to its contemporaneity.¹² Furthermore, respondents claim that AEC's Annual Report and website show it produces ball bearings and purchases steel bar and tubes. This implies, according to respondents, that AEC produces its own rings, and, therefore, it resembles the Chinese producers. By contrast, respondents allege that SKF is a significant player in this industry and a multinational corporation, totally unlike the Chinese respondents. As such, respondents believe that AEC is more comparable in size and management to the Chinese respondents than is SKF. For purposes of the final determination, they request that the Department include AEC's financial data because they believe AEC's accuracy and comparability to the Chinese producers can offset its lack of contemporaneity.

Department's Position:

¹¹ Respondents did not provide comments on ABL's financial data.

¹² See Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 27, 2001) (Pure Magnesium from the Russian Federation) and the accompanying Decision Memorandum at Comment 1.

We agree with petitioner that AEC's and ABL's financial data should be excluded from the financial ratios calculations because they are not contemporaneous with the POI and we have on the record appropriate data that are contemporaneous.

In support of their argument that the Department should include ABL's financial data, despite its lack of contemporaneity, the respondents cited Pure Magnesium from the Russian Federation; however, the Department finds that the factual scenario in that case is distinguishable from the facts in the instant investigation. First, in Pure Magnesium from the Russian Federation, there was only one comparable surrogate producer, Zincor, which had its operations located entirely in the preferred surrogate country, South Africa, from which publicly available information could be drawn. Moreover, while the company suggested by petitioners, Billiton, had more contemporaneous financial data and was a multinational conglomerate with operations in many different countries, its subsidiaries did not have separate financial data. In the instant investigation, however, there are several comparable surrogate producers in the preferred surrogate country, and although some producers are subsidiaries of multinational operations, each subsidiary does have its own separate financial statement that is publicly available.

Second, the information contained in Billiton's financial statements did not contain sufficient detail to enable the Department to calculate factory overhead and SG&A expenses. As such, the Department found that the calculation is not appropriate, given that 19 CFR 351.408(c)(4) requires that the Department value overhead, general expenses, and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. Under these circumstances, the Department used the less contemporaneous but more accurate and publicly available data to value financial ratios.

As respondents correctly point out, the Department has, in the past, considered a variety of factors, not just contemporaneity, in selecting a company's data from which to derive financial ratios. Although, in most cases, we prefer to use more contemporaneous financial statements, using financial data that are more representative and more accurate is equally important. However, in the present investigation, because the Department has adequate data that are contemporaneous with the POI, it does not require AEC's and ABL's data to reach an accurate calculation. Accordingly, we have excluded AEC's and ABL's financial data.

E. Whether the Department Should Exclude Companies That Were Owned and Controlled by the Indian Government

Petitioner and Torrington claim that the Department should exclude ABL's and HMT Bearing's (HMT) data from the financial ratio calculations because these companies are influenced by the Indian government. They note that ABL's 2000-2001 annual report provides considerable and convincing evidence that ABL is subject to a substantial degree of government ownership and control. With respect to HMT, they claim that HMT's 2000-2001 and 2001-2002 annual

reports contain several facts that indicate that its parent company is partly owned by and receives financial support from the Indian government. Moreover, petitioner and Torrington suspect that as a result of HMT's parent company being a central public enterprise, HMT's repair, miscellaneous, and interest expenditures are extraordinarily low. Therefore, they submit that it is not appropriate to use ABL's or HMT's financial statements as sources of information for overhead, SG&A, or profit.

Furthermore, petitioner and Torrington argue that HMT and its parent are experiencing various financial problems and certain irregularities which render the financial statements of HMT and its parent too unreliable to serve as a source of data for calculating FOH and SG&A ratios. In an alternative argument, Torrington also suggests that HMT be excluded because it is less integrated than the mandatory respondent producers (see Comment 1.F below).

Respondents argue that the Department should not exclude HMT's data from its financial ratio calculations. They note that India is a market economy and its companies, by law, are deemed to be market driven. Citing Romanian Hot-rolled,¹³ they claim that the Department used financial data of companies that were government-owned.

With respect to petitioner's argument that HMT's repair, miscellaneous, and interest expenditures are extraordinarily low, respondents suggest that the Department use the 2001-2002 HMT Annual Report.

Finally, respondents counter that petitioner and Torrington seem to find fault in that HMT is a subsidiary of another company while their choice, SKF, has a corporate parent which is involved in every aspect of SKF's business, including the provision of loans. Respondents further respond that if petitioner and Torrington believe that having a corporate parent disqualifies a company from being considered as a surrogate, then SKF, FAG, NRB and TIL would also be not appropriate sources for surrogate values.

Respondents did not comment on ABL.

Department's Position:

With respect to ABL, we agree with petitioner and Torrington that it should be excluded, but for a different reason. See Comment 1.D above.

¹³ See Final Determination in the Antidumping Duty Investigation: Certain Hot-rolled Carbon Steel Flat Products from Romania, 66 FR 49625 (September 28, 2001) (Romanian Hot-rolled) and the accompanying Decision Memorandum at Comment 19.

With respect to HMT, however, we disagree with petitioner and Torrington. In selecting a surrogate company in a comparable market economy, the Department does not make a distinction as to whether a company is controlled by its government, or how heavily it is influenced by its government. Financial support from the government may exist whether or not there is government ownership. However, we find no evidence that HMT's financial data are distorted. Because HMT is a producer of merchandise under investigation in the preferred surrogate country, we determine that it is appropriate to include it as a surrogate producer.

Regarding petitioner's argument that HMT and its parent are experiencing various financial problems and certain irregularities which render the financial statements of HMT and its parent too unreliable to serve as a source of data for calculating FOH and SG&A ratios, we disagree. In TRBs reviews, the Department has excluded from the calculations of the overhead, SG&A, and profit ratios the financial data of certain Indian companies on the basis that their financial data does not conform with the generally accepted accounting principles (GAAP) in India or the company is considered a "sick" company under Indian law. Neither petitioner nor respondents have provided evidence that HMT and its financial data meet these criteria. Therefore, consistent with Romanian Hot-rolled, we have included the financial data of HMT in the financial ratios calculations.

F. Whether the Department Should Exclude Company Data Where the Company Is Less Integrated

Petitioner alleges that the Department should exclude FAG's financial data from the surrogate ratio calculations because FAG purchases a large percentage of finished components and is a mere assembler.¹⁴ Citing Bulk Aspirin, petitioner alleges that the Department has stated that: 1) the degree of integration is a relevant factor that can affect overhead rates; and 2) a fully integrated producer will have an overhead to raw material input ratio that is higher than the same ratio for a non-integrated producer, other things being equal. Because FAG is basically an assembler, petitioner argues, its FOH, SG&A, and profits are not representative of ball bearing manufacturers such as the mandatory respondents. Thus, petitioner urges the Department to exclude FAG's financial data from its ratio calculations.

In its case brief, Torrington also suggests that FAG, ABC, and HMT be excluded because these three Indian surrogate producers purchase a high percent of components, which makes them non-comparable to any of the three Chinese mandatory respondents. According to Torrington, there is a general correlation between a company's degree of vertical integration and its overhead ratio. Torrington notes that FAG, ABC, and HMT purchased approximately 97 percent, 85

¹⁴ According to petitioner, FAG's 2001 Annual Report shows that its purchased components comprise approximately 97 percent of FAG's total materials. In contrast, purchased components comprise only 57 percent of SKF's total materials and only 21 percent of NRB's total materials.

percent, and 66 percent of its inputs, respectively. In contrast, SKF purchases approximately half of its components, which is comparable to the respondents; therefore, Torrington urges the Department to limit its surrogate selection to SKF for purposes of overhead and SG&A calculation.

Respondents first argue that the Department should exclude FAG's and NRB's financial data on the grounds that these companies are affiliated to petitioner (see Comment 1.H. below). However, should the Department decide to use surrogate data from affiliated parties, they allege that FAG is an entirely appropriate surrogate, and, therefore, FAG's data should be included in a surrogate calculation of financial ratios. Further, respondents submit that there is no evidence on the record to indicate the quantity of components versus raw materials that each mandatory respondent purchased. It would be speculation for the Department to determine that FAG is more or less integrated than the respondents. Moreover, they counter that FAG's annual reports do not indicate which type of components are being purchased. Accordingly, respondents request that the Department reject petitioner's arguments for excluding FAG's data.

Respondents counter that with petitioner's and Torrington's reasoning, SKF, which purchases well over 50 percent of its raw material in the form of components, must have overhead significantly lower than that of NRB, which purchases only 20 percent of its raw materials in the form of components. However, respondents note that these two companies have exactly the opposite trends. Thus, they assert that there is no general trend because each company is unique. However, they continue, even if one accepts petitioner's and Torrington's thesis regarding the integration of companies, the evidence simply does not support their assertion that Chinese companies are just like SKF. As such, respondents argue that petitioner's and Torrington's argument that the level of purchased components is the key factor in the selection of surrogate companies must be ignored.

Responding to Torrington's assertion that the Department should apply the financial ratios of a fully-integrated bearing producer to the factor values of the purchased or subcontracted inputs, and add the amount to the normal value calculation, respondents counter that Torrington's analysis is wrong and impractical. First, respondents argue, they reported full FOP data, and the data have been fully verified by the Department. Therefore, respondents maintain, the Department's application of the financial ratios already fully assigns the surrogate overhead, SG&A, and profit values for Peer. Second, respondents note that Torrington's proposed methodology is impractical because the surrogate financial ratios on the record cannot perfectly fit any other companies, and, therefore, no surrogate financial ratios the Department assigns would be fair.

Department's Position:

We agree with petitioner and Torrington, in part. We agree that the degree of integration is a relevant factor that can affect overhead rates. Because both FAG and ABC purchased a large percentage of components (97 percent and 85 percent, respectively), we determined that their low level of integration makes them reasonably non-comparable to any of the three mandatory respondents, and, therefore, they should be excluded from the list of surrogate producers. However, we disagree with Torrington that HMT should be excluded because HMT only purchased 66 percent of its components which. We believe that HMT's integration is sufficient to consider it comparable to the three Chinese respondents.

We disagree with petitioner's reliance on Bulk Aspirin because the factual situation in that case is different from the instant case. In Bulk Aspirin, two of the Indian companies produced an input into aspirin and the third only produced a small amount of aspirin and a larger volume of aspirin inputs. Because none of the potential Indian surrogate producers reflected the degree of integration represented by the respondents, the Department determined that the surrogate overhead did not reflect the expense incurred to produce two additional major inputs into aspirin and the final aspirin product. Accordingly, the Department took the surrogate overhead and applied it to each upstream stage of input production and again to the aspirin processing stage of the production to account for the additional overhead expenses incurred at the various stages of aspirin production.

In the instant case, FAG, ABC, and HMT are all producers of finished ball bearings, similar to the three PRC mandatory respondents. However, FAG and ABC differ from the three Chinese respondents in terms of the level of integration, *i.e.*, the three Chinese respondents are significantly more integrated than FAG and ABC. Specifically, the three Chinese respondents either produce major components such as inner rings, outer rings, balls, shields, and seals in their own factories, or produce these components through toll production arrangements with subcontractors or suppliers. As with HMT, all three Chinese producers also purchased certain components from other suppliers.

Based on the foregoing, we have excluded the financial data from FAG and ABC but have included the financial data from HMT in the final determination for valuing financial ratios.

G: Whether the Department Should Restate Indian Surrogate Producers' FOH and SG&A to Eliminate Certain Distortions

Torrington requests that the Department make adjustments to the financial ratios for FOH and SG&A to strive for comparability and eliminate demonstrable distortions which it claims exist because of differences in the surrogate values for raw materials and the material costs included in the Indian financial ratios. Specifically, Torrington argues that in the Preliminary Determination, the Department selected certain Indian companies as surrogate producers including NRB, SKF, FAG, and ABC, and each of these producers has its respective way of breaking out its direct

input materials (e.g., steel wire and rods, steel tubes, forged rings, components). Nonetheless, Torrington alleges that these companies' financial data show that in many instances the associated costs for their direct materials are significantly higher than the factor values assigned by the Department to the various Chinese respondents. For example, Torrington points out, the Department used \$0.7367 per kilogram to value steel wire and rod, while NRB uses a value of \$1.05 per kilogram. As such, Torrington claims that the Department introduced systematic distortions that requires systematic correction.

To correct the alleged distortion, Torrington proposes that the Department revalue NRB, SKF, FAG, and ABC's respective raw material costs, as reported in their annual reports, by using the same surrogate factor values which the Department applied to the Chinese respondents' calculations. According to Torrington, if the Department makes appropriate adjustments to harmonize the Indian reports to the chosen surrogate Chinese values, Chinese overhead and SG&A logically increase due to the shrinkage in the denominator.¹⁵

Further, Torrington argues that it is possible to adjust the ratios for surrogate overhead and SG&A, and accuracy compels that this be done. Therefore, Torrington asserts that the Department should restate the ratios for overhead and SG&A.

Peer, contends that Torrington's proposed adjustments should be dismissed by the Department as a self-serving, results-oriented attempt to inflate the surrogate producers' financial ratios. According to Peer, Torrington did not cite any precedent for this approach because the Department has never performed the types of radical adjustments suggested by Torrington. Further, Peer claims, it is disturbing for Torrington to now suggest that the Department must adjust NRB's audited financial data considering that throughout the course of this investigation NRB has been presented by petitioner as an appropriate surrogate producer. Moreover, Peer argues that for the Department to begin adjusting audited financial data would require a great deal of speculation by the Department as to the true nature of certain components of audited financial data.

Citing TRBs IX¹⁶, Peer responds that there is clear precedent for refusing to make similar adjustments proposed by Torrington. Specifically, it claims that in TRBs IX, the Department found that the methodology used allowed it to derive internally consistent ratios of SKF's overhead and SG&A expenses. Further, the Department determined that adjusting the underlying values of SKF, would create a result no longer representative of SKF's costs,

¹⁵ For example, Torrington's calculation of NRB's overhead and SG&A rate rise to 60.61 percent and 49.22 percent, respectively, compared to the Department's 51.89 percent and 42.14 percent.

¹⁶ Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Administrative Review, 62 FR 61276 at 61287 (November 17, 1997) (TRBs IX).

because petitioner's (Timken's) recommended adjustment would reduce the denominator but would leave the overhead and SG&A expenses in the numerator unchanged. As such, Peer claims that the Department found that this adjustment would distort the resulting ratio, rather than cure the alleged distortion in the Department's calculations.

With respect to Torrington's proposed adjustments to material values, Peer submits that the Department must reject them because those proposed adjustments are highly selective and results-oriented. It further argues, there are many differences between companies that manifest themselves in the financial statements of those companies, and these differences cannot easily be adjusted away without damaging the integrity of a company's original financial data. Therefore, Peer maintains that one cannot simply change the amount for direct materials and expect all other amounts to remain unchanged.

Department's Position:

We disagree with Torrington, and for the final determination we have not made the requested adjustment to the surrogate factory overhead and SG&A ratios. We disagree that Torrington has demonstrated that a distortion exists; more importantly, Torrington has not demonstrated that its proposed recalculation is not itself distortive. The Department has rejected this exact proposed recalculation in previous cases. For example, in rejecting this adjustment in TRBs IX the Department stated:

We also disagree with petitioner's contention that we should adjust the overhead and SG&A rates if we continue to use the SKF report to value these rates while valuing the material and labor FOP using other sources. As noted above, we prefer to base our factors information on industry-wide PI. Because such information is not available regarding overhead and SG&A rates for producers of subject merchandise during the POR, we used the overhead and SG&A rates applicable to SKF India, a company that produces subject and non-subject merchandise.

In deriving these rates, we used the SKF India data both with respect to the numerators (total overhead and SG&A expenses, respectively) and denominator (total cost of manufacturing). This methodology allowed us to derive ratios of SKF India's overhead and SG&A expenses. These ratios, when multiplied by the FOP we used in our analysis, thereby constitute the best available information concerning the overhead and SG&A expenses that would be incurred by a bearings producer given such FOP. Petitioner's recommended adjustment would affect (reduce) the denominator, but it would leave the overhead and SG&A expenses in the numerator unchanged. As such, we find that this

adjustment would itself distort the resulting ratio, rather than curing the alleged distortion in our calculations.

Consistent with the Department's practice, for the final determination, we have continued to rely on the factory overhead ratio derived from Indian surrogate producers' financial statements, without restatement.

H. Whether the Department Should Exclude the Financial Statements of Indian Producers Which Are Affiliated with Petitioner

Peer alleges that in the Preliminary Determination the Department erred in using data from parties related to petitioner to value overhead, SG&A, and profit. Peer lists legal and policy reasons to support its arguments that the Department should not use financial statements from parties related to the petitioner in the final determination. In this regard, Peer believes that for purposes of the final determination, the Department should rely solely on non-tainted financial information contained in the financial statements of ABC, HMT and AEC.

In its case brief, Peer points out that of the five Indian bearing producers which were selected by the Department to value overhead, SG&A, and profit in the Preliminary Determination, three companies (SKF, FAG, and NRB) are related to members of the ABMA, the petitioner. Respondent believes that affiliated companies' financial data is unreliable because it is petitioner's own data. In addition, Peer points out there are other problems with the financial data. First, Peer submits, any time an affiliation exists between entities there is the potential that one entity can exercise "control" over the operations of another. Quoting the definition of "affiliated" included in Department's questionnaire,¹⁷ Peer alleges that each of the situations described in the questionnaire exist with respect to NRB, SKF, FAG, and TIL. As such, it claims that the petitioner is in a position to control these Indian companies, and, therefore, it is improper to use the financial statements from petitioner to calculate surrogate overhead, SG&A, and profit values.

On legal grounds, Peer claims that in interpreting 19 CFR 351.408,¹⁸ the CIT in Union Camp Corporation v. United States (Union Camp) Slip Op. 99-40 (CIT 1999) approved the Department's rejection of using the petitioner's internal cost to value a factor of production. Peer

¹⁷ Respondents claim the Department has long-established criteria for determining whether or not two or more entities are affiliated, including "an officer or director of an organization and that organization," and "any person or organization directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and that organization."

¹⁸ Which lists the requirements for how to determine normal value in a non-market economy case.

asserts that the current situation is no different. In addition, it argues that section 772 of the Act¹⁹ intends to deal with the inherent possibility that the price between a foreign exporter and an affiliated importer could be manipulated for purposes of the antidumping case. According to Peer, this same principle should apply to using financial data from companies related to the petitioner because the possibility of manipulation of that data for purposes of the antidumping case is inherent in the mere fact that the parties are related. Finally, citing 19 CFR 351.308(d), Peer claims that for the same reason that information contained in a petition is deemed “secondary information” that must be corroborated from independent sources,²⁰ the financial data submitted by petitioner would also have to be corroborated.

On policy grounds, Peer submits that the Department itself has previously rejected the use of surrogate values from parties related to petitioner on the grounds that such information is tainted. For example, it argues, in TRBs from Romania²¹, TIL, the petitioner, filed surrogate information from its Brazilian subsidiary, but the Department refused to accept the TIL Brazil data on the grounds that it might raise questions as to the propriety of the information submitted. In addition, Peer notes that in a subsequent ball bearings investigation from Romania and Hungary,²² the Department decided not to send surrogate company questionnaires to producers that were related to the petitioner. Peer adds that more recent cases demonstrate that the Department continues to look carefully at the propriety of basing surrogate values on data potentially controlled by a party to the proceeding. For example, Peer cites a recent Chinese case involving 1999-2000 Crawfish²³ where the Department stated the importance of selecting the best available information (in accordance with section 773(c)(1) of the Act, which involves weighing all of the relevant characteristics of the data . . .). Peer points out that in that same decision, the Department rejected using a study conducted of the Spanish crawfish industry as a basis for valuing a factor of production because it could not reasonably conclude the study was not potentially distorted by the influence and/or special interests of any private sector parties.

¹⁹ Which requires the Department to calculate normal value on a constructed export price (CEP) basis when the first sale to an unaffiliated person occurs after importation.

²⁰ Statement of Administrative Action (SAA) at 870 and section 776(c) of the Act.

²¹ Final Determination of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the Socialist Republic of Romania, 52 FR 17433, 17436 (May 8, 1987) (TRBs from Romania).

²² See Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Hungarian People’s Republic, 52 FR 17428, 17430 (May 8, 1987) (TRBs from Hungary).

²³ Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) (1999-2000 Crawfish), and the accompanying Decision Memorandum.

With respect to the issue of manipulation, Peer maintains that the Department has never required the showing of actual manipulation of data; the mere possibility of manipulation is enough to cast doubt on the propriety of information. In this investigation petitioner advocates a finding based upon financial data completely controlled by petitioner. This in itself is enough to deem the data unreliable, Peer argues.

Moreover, Peer alleges that it would be absurd to believe that the petitioner in this case could not have manipulated the financial data submitted to their benefit, because the GAAP in India and elsewhere allow companies a considerable degree of latitude in a number of areas. For example, Peer believes that a company has the ability, within the bounds of its GAAP, to make decisions that will determine the amount of revenues, expenses, and the resulting profits, which will, in turn, have an impact on the financial ratios.²⁴ In this regard, Peer asserts that petitioner had the ability to manipulate the financial data put on the record and has shown the propensity to do so. In the current proceeding, Peer contends that all of the four annual reports supplied by petitioner, three of which were used in the Preliminary Determination, come from affiliated companies with much to gain if high margins are found in the investigation. As such, Peer submits that the annual reports from SKF, FAG, and TIL should be rejected as possible sources of surrogate values.

With respect to NRB, however, Peer argues that NRB is uniquely not viable as a producer of the subject merchandise and thus, its financial statements are not suitable for valuing overhead, SG&A, or profit in this investigation (see Comment 1.J below).

Finally, Peer requests that, to the extent that related party data is used, TIL's data should be used as well.

Petitioner counters that Peer's argument is wrong on several grounds. Petitioner submits that, for purposes of the final determination, the Department should use the methodology it used in the Preliminary Determination to generate ratios for FOH, SG&A, and profit using financial data from NRB and SKF.

Regarding Peer's allegations of petitioner's manipulation of the data, petitioner counters that they are entirely without merit.

In support of its argument against Peer's assertion, petitioner first points out that the cases and determinations cited by Peer in its case brief, where the Department has declined to use a petitioner's own data to calculate antidumping margins, have facts that are easily distinguished from the present situation. For example, petitioner notes that in Union Camp, the CIT approved

²⁴ Peer notes that a company's decisions regarding inventory flows, capitalization or expensing of certain expenses, depreciation, provisions for bad debt, and classifications of certain expenses are a few examples of decisions that will have an impact on the financial ratios that can be calculated for that company.

the Department's actions for declining to use a petitioning company's own internal, unverified crude octanol-2 costs as the surrogate value for octanol-2 on the grounds that the Department favors using publicly available information to value factors of production. Petitioner argues that this scenario is materially different from the factual situation in this investigation, where the Department has used publicly available and professionally audited financial data to value FOH, SG&A, and profit.

Furthermore, petitioner counters that in TRBs from Romania and TRBs from Hungary, in which the Department decided not to send surrogate company questionnaires to producers that were related to the petitioner, the Department also faced a very different scenario. Specifically, petitioner alleges that in the TRB investigations, the Department determined that the related companies' information was not verifiable, and there would have been no way to address its concern that the petitioner could potentially have influenced the way in which the related companies responded to the questionnaires. In contrast, petitioner argues, audited financial reports are by their very nature more reliable than questionnaire responses because the annual reports have been audited by professional, independent auditors. Petitioner contends that it is inconceivable that ABMA or individual Indian companies could (or did) influence or manipulate the data reported in the Indian annual financial reports. Therefore, petitioner contends that Peer's argument is wholly without merit.

In addition, petitioner asserts that neither individual ABMA member companies nor FAG, NRB, and SKF are the petitioner in this investigation. According to petitioner, when an association and not an individual company is the petitioner, the relationship between the individual member companies and potential surrogate companies is more attenuated and thus, less important, than when an individual company is the petitioner. Consequently, the relationship between the individual ABMA member companies and the potential Indian surrogate companies should be irrelevant for purposes of whether the Department should use the Indian companies' publicly available financial data.

Further, petitioner argues that although Peer made numerous allegations about the ability and propensity of petitioner's member companies to manipulate annual financial data, Peer has provided no evidence of any actual manipulation. Moreover, petitioner adds, Peer has not demonstrated any accounting irregularities or improper adjustments in any of the relevant annual reports. According to petitioner, the Department should not exclude data from annual financial reports unless there are well-documented and well-reasoned grounds for doing so. Finally, petitioner alleges that if the Department were to exclude the financial data of all companies affiliated with petitioner's member companies, the Department would be left without any useable financial data because the other financial data on the record is fundamentally flawed and must be excluded from the FOH, SG&A, and profit calculations.

With respect to Peer's proposal regarding certain "methodological issues," petitioner claims that Peer's proposal contains inconsistent reasoning, and is, therefore, inappropriate. (See Comment 21, below.) Specifically, petitioner counters that Peer has proposed several reasons why the financial data of specific companies should be excluded, but has failed to articulate why the financial data of other similarly-situated companies should not also be excluded. Thus, petitioner urges the Department not to base its decisions regarding financial data on such inconsistent reasoning.

Finally, regarding NRB and ABC, petitioner maintains that Peer's reasoning is both inconsistent and illogical for arguing that NRB should be excluded and ABC should be included. Petitioner urges the Department to continue to use NRB's financial data because, although NRB manufactured needle roller bearings during the POI, it also produced a substantial quantity of ball bearings. Its financial data is therefore representative of an Indian ball bearing producer. In contrast, petitioner requests that the Department exclude ABC's financial data because ABC did not manufacture any ball bearings during the POI (see Comment 1.C above).

Department's Position:

We have determined that FAG is reasonably non-comparable to the three mandatory respondents, and, therefore, should be excluded from the surrogate list (see Comment 1.F above).

With respect to SKF and NRB, we disagree with respondent that the financial data of SKF and NRB should be excluded from the calculations of financial ratios on the grounds that they are affiliated with petitioner. In the past, the Department has not ruled out using financial statements from surrogate producers that are affiliated with petitioners. For example, in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Notice Not to Revoke Order in Part, 66 FR 57420 (November 15, 2001) and the accompanying Decision Memorandum (TRBs XIII), the Department used annual reports from SKF, FAG, SNL, TIL, and NRB, and in TRBs XIV, the Department used annual reports from SKF, ABC, SNL, TIL, and NRB. We noted that some of the same surrogate producers (SKF, FAG, and NRB) were included in the TRBs surrogate producers list even though they are affiliated with petitioner.

Peer's concern that affiliated companies' financial data is unreliable because of the possibility that the petitioner is in a position to control these Indian companies is unfounded. We are relying on audited, publicly available financial statements. There is no evidence on the record of accounting irregularities or improper adjustments in any of the relevant annual reports.

With respect to the cases cited by Peer in its case brief, where the Department has declined to use a petitioner's own data to calculate dumping margins, the factual situation in those cases is different from the instant case. For example, in Union Camp, the Department declined to use a petitioning company's own internal, unverified cost as the surrogate value for an input (octanol-2) because such information is not publicly available. However, in the present case the Department has used publicly available and professionally audited financial data to value FOH, SG&A, and profit.

The Department also faced a very different situation in TRBs from Romania and TRBs from Hungary. In those cases, the Department determined that the related companies' information was not verifiable as the petitioner could have influenced its related companies' questionnaire responses. However, in the instant case, the question at issue is the reliability of audited financial statements from certain affiliated Indian surrogate producers. In this regard, we agree with petitioner that financial reports are by their very nature more reliable than questionnaire responses because the annual reports have been audited by professional, independent auditors. Since there is no evidence that the ABMA or any individual Indian company has manipulated the data reported in the Indian annual financial reports, we have continued to include SKF and NRB as surrogate producers for purposes of calculating financial ratios in the final determination. However, for reasons stated above in Comment 1.C, we continued to exclude TIL's financial data in the final determination.

With respect to Peer's and petitioner's argument about the choice of proper surrogate producers in the final determination, refer to Comment 1.J below.

I: Whether the Department Should Exclude the Financial Data of Multinational Corporations: SKF, FAG, and TIL

Peer submits that the financial data of SKF, FAG, and TIL should be excluded for the final determination. In addition to the affiliation argument raised in Comment 1.H above, Peer claims that SKF, FAG, and TIL are all a part of huge multinationals, and some of whose subsidiaries focus on automobile bearings and other high-end markets²⁵, and, therefore, they are much larger and more sophisticated than Chinese bearing companies. Accordingly, they are unsuitable as

²⁵ According to SKF's 2001 Annual Report at page 10, SKF is launching advanced products, such as "intelligent" bearings, i.e., sensorized bearings for use in vehicles' anti-lock brake systems.

surrogate companies.²⁶ For purposes of the final determination, Peer requests that the Department use the financial statements of ABC, HMT, and AEC to calculate financial ratios.

Petitioner agrees with Peer that TIL should be excluded because TIL stopped producing the subject merchandise during the POI. However, as discussed above, petitioner and Torrington request that the Department exclude the financial data of ABC, HMT, but use SKF and NRB.

Department's Position:

We agree with Peer, petitioner, and Torrington that TIL should be excluded, based on the reason stated above in Comment 1.C (i.e., TIL did not produce merchandise under investigation during the POI and we have financial data of producers that did). We have also determined that FAG is reasonably non-comparable to the three Chinese respondents, and, therefore, should be excluded from the surrogate list (see Comment 1.F above).

However, we disagree with Peer that SKF should be excluded on the grounds that it is part of multinational corporation and may have a different focus than the Chinese companies. The fact that SKF is a part of large multinational corporation which produces a broad range of products, including automobile bearings, does not make it non-comparable to the Chinese respondent producers. The Department has frequently used subsidiaries of multinational corporations as surrogate producers when they produce the merchandise under investigation. Following the Department's precedent in TRBs XIV, we find that a company that is a producer of merchandise under investigation can be used as a surrogate company whether or not it is affiliated with foreign firms. In the present investigation, SKF is a significant producer of ball bearings, the merchandise under investigation, and, therefore, it can be used as a surrogate producer. For purposes of the final determination, we have included SKF as a surrogate source for valuing financial ratios.

With respect to Peer's and petitioner's argument about the choice of proper surrogate producers in the final determination, refer to Comment 1.J below.

J. Which Indian Surrogate Producers Should Be Included as Surrogate Source for Valuing Financial Ratios

Petitioner asserts that after excluding all potential surrogate companies that have fundamentally flawed data, the Department is left with two companies, NRB and SKF, whose data are reliable and may appropriately be included in the final financial ratio calculations. Accordingly, petitioner

²⁶ According to Peer, multinational companies can also manipulate data through the use of transfer prices. “[W]e recognize respondent’s concerns regarding the potential overstatement of overhead due to transfer prices.” Tapered Roller Bearing and Parts Thereof: Finished and Unfinished from Romania; Results of Antidumping Duty Administrative Review; 56 FR 1169, 1172 (January 11, 1991).

urges the Department to calculate FOH and SG&A using data from NRB's 2001-2002 Annual Report and SKF's 2001 Annual Report. In an alternative argument, Torrington maintains that the Department should only use SKF's financial data for FOH and SG&A calculations (see Comment 1.F above).

With respect to profit ratio, both petitioner and Torrington urge the Department to rely only on NRB's 2001-2002 Annual Report because SKF's suffered a loss in 2001 (see Comment 1.A above).

Respondents first point out that petitioner and Torrington diverge on the "best" companies from which they believe the Department should derive surrogate values. Torrington prefers SKF and petitioner prefers SKF and NRB.

In various arguments as stated above, respondents dispute with petitioner and Torrington on their choice of Indian surrogate producers. Specifically, respondents reject the use of financial data from SKF or NRB on the following grounds: First, both NRB and SKF are affiliated with petitioner (see Comment 1.H above). Second, NRB is the company most dissimilar to the Chinese respondents because it is primarily a producer of needle rollers (non-subject merchandise) and not bearings. Furthermore, NRB's financial statements, which include a "sick company," are consolidated and the Department has previously rejected the use of consolidated financials.²⁷ Finally, NRB's consolidated financials reveal even less knowledge about NRB's bearing production than any other possible surrogate. Moreover, SKF and NRB are multinational companies which are controlled by large multinationals and thus operate in a completely different way than Chinese companies; therefore, they are not proper surrogates. And, finally, SKF and NRB are huge monoliths. In contrast, Peer and the other respondents are small enterprises which are similar in size to AEC, ABC, and HMT. Based on the above, Peer argues that the Department should reject petitioner's arguments and use the annual reports of ABC, HMT, and AEC to value financial ratios.

Department's Position:

We agree with petitioner, Torrington, and respondents, in part. In the final determination, we have calculated FOH and SG&A ratios based on the financial data of the following three Indian

²⁷ See Peer Case Brief at 43. NRB's Annual Report also includes a "consolidated" financial statement which contains data from Essar Marketing Services Ltd. and SNL Bearings Ltd. It is unclear what SNL Bearings Ltd. produces and what Essar Marketing Services Ltd. sells. The NRB Annual Report specifically states that SNL has been designated a "sick company." The Department has consistently ruled that annual reports from "sick" companies are not proper sources for surrogate values. See e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997-1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837, 61383 (November 15, 1999) (TRBs XI).

surrogate producers: HMT, SKF, and NRB. For profit calculations, however, we relied only on the financial data from HMT and NRB. We excluded ABC's and SKF's financial data because they had a loss (see Comment 1.A above).

As noted above, for purposes of this final determination, petitioner proposes to use two Indian surrogate producers, SKF and NRB, for valuing FOH and SG&A, but only one surrogate, NRB, for valuing profit. Torrington proposes the same surrogate for valuing profit, but only one surrogate, SKF, for valuing FOH and SG&A. Respondents, on the other hand, propose two scenarios: in scenario 1 (their preferred choice), using ABC, HMT, and AEC as surrogate producers; in scenario 2, using ABC, HMT, AEC, SKF, FAG, and TIL as surrogate producers.

During the course of this investigation, petitioner and respondents have placed on the records financial statements of the following eight Indian producers: ABL, TIL, AEC, ABC, HMT, FAG, SKF, and NRB. Based on reasons discussed above in Comments 1.A through Comment 1.I, we determined that the following five Indian producers should not be included as surrogate producers: AEC, ABL, TIL, ABC, and FAG. Specifically, we determine that: 1) AEC and ABL should be excluded because their financial data are not contemporaneous; 2) TIL should be excluded because it did not produce the merchandise under investigation during the POI; and 3) ABC and FAG should be excluded because they are not comparable to the three Chinese respondents due to their low level of integration.

After excluding five Indian producers, we are left with three surrogate producers in India which are comparable to the three Chinese respondents and whose financial data can reasonably serve as the basis for valuing financial ratios. Accordingly, for purposes of the final determination, we have relied on the financial data of the remaining surrogate producers, HMT, SKF, and NRB, for calculating financial ratios.

Comment 2: Respondent Selection

Ningbo TSB Bearing Co., Ltd., TSB Group USA, Inc. and TSB Bearing Group America, Co. (collectively, TSB Group) as well as General Bearing Co. Ltd., Jiangsu General Ball & Roller Co., Ltd., and Shanghai Pudong General Bearing Co., Ltd. (collectively, General Bearing Respondents) challenge the Department's decision in the Preliminary Determination and Amended Preliminary Determination to only investigate three mandatory respondents and not to accept the TSB Group or the General Bearing Respondents as voluntary respondents in this investigation.

The TSB Group asserts that the Department violated the statutory requirement, under section 777A(b) of the Act (19 U.S.C. § 1677f-1(b)), to consult with exporters and producers prior to deciding to investigate only a very small sample of mandatory respondents and no voluntary

respondents, and to select the particular mandatory respondents on the basis of the value of their U.S. sales. The TSB Group also asserts that this case involves hundreds of producers and exporters and the Department's selection of three respondents was unrepresentative of the industry and thus erroneous.

The General Bearing Respondents argue that the Department violated Congress's intent, as reflected in the statute and Statement of Administrative Action (SAA), that voluntary respondents be investigated. Additionally, the General Bearing Respondents claim that in a case involving hundreds of producers and exporters, the Department's selection of three respondents was insufficient to insure a representative "all others" rate. Thus, the General Bearing Respondents argue that the Department violated the reasonableness requirement of the statute and minimum due process requirements. The General Bearing Respondents also assert that the Department's mandatory respondent selection methodology was inconsistent with the statute and thus also erroneous.

Department's Position:

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies.

The data on the record indicate that a large number of producers/exporters from the PRC exported subject merchandise to the United States during the period of investigation, July 1, 2001, through December 31, 2001. After careful consideration of our resources, we found that it was not practicable in this investigation to examine all of the producers/exporters of the subject merchandise who expressed an interest in participating in this investigation. Therefore, the Department considered it practicable to conduct an investigation of the three largest producers (mandatory respondents) of certain ball bearings from the PRC, and to review the Section A response from an additional 45 exporters. See Memorandum to Melissa Skinner, Director, Office 6, from James Terpstra, Program Manager, dated May 6, 2002 (Respondent Selection Memo), which is publicly available in the central records unit (CRU), room B-099 of the main Commerce building.

In our Respondent Selection Memo, we stated that when it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either 1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or 2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. See also 19 C.F.R. 351.204 (c)(2). We chose the second method, explaining that the

respondents we selected were responsible for approximately 51 percent of all PRC exports of subject merchandise to the United States based on the mini-A questionnaire responses. Therefore, we disagree with the TSB Group and General Bearing Respondents that our selection of three respondents was not representative.

Comment 3: GAM Mast Guide Bearings and Chain Wheels

Petitioner argues that Guangdong Agricultural Machinery Import & Export Corp.'s (GAM) request to exclude mast guide bearings and chain wheels from the scope of this investigation was filed untimely because it was made after the Department's Preliminary Determination.

Petitioner further argues that GAM contorts the fact that some domestic producers of these products are multinational companies in order to draw the conclusion that there is virtually no domestic industry producing the products. Petitioner claims that GAM then purports to provide "evidence" that there is no domestic production by any ABMA member. However, petitioner argues that at least three ABMA members produce mast guide bearings at their U.S. facilities for sale in the United States, and NTN Bearing Corporation of America also produces chain wheel bearings at its U.S. facilities.

Petitioner contends that GAM's request to create a separate class or kind of subject merchandise is unfounded. Petitioner states that GAM further alleges "facts" that purportedly establish that mast guide bearings and chain wheels satisfy the Diversified Products test because they comprise a separate market from other ball bearings, are exclusively dedicated to use in fork lifts, and are advertised and displayed for sale through distinct channels of trade is without merit. First, the diversified products test only becomes relevant when the scope of an investigation is unclear; however, this is not the case in the instant investigation. According to petitioner, the Department previously concluded that mast guide bearings and chain wheels were included in the single class or kind of merchandise constituted by ball bearings, rejecting arguments very similar to those that GAM puts forward. Thus, petitioner contends that the Department should reject GAM's alternative argument and continue to include mast guide bearings and chain wheels in the single class or kind of merchandise that constitutes ball bearings. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany: Final Results of Antidumping Duty Administrative Review, 56 FR 31692 at 31696-98 (July 11, 1991).

Department's Position:

We agree with petitioner that the request to exclude mast guide bearings and chain wheels from the scope of this investigation was filed late in the investigatory process. The request was filed with the Department on November 15, 2002, which was 30 days after the publication of the Preliminary Determination. In the Preliminary Determination, the Department addressed scope

inquiries received from Caterpillar Inc., Nippon Pillow Block Sales Company Limited, Nippon Pillow Block Manufacturing Company Limited and FYH Bearing Units USA, Inc. (collectively, NPBS), and Wanxiang. Due to time constraints in conducting this investigation, the Department was unable to address the additional scope requests within the context of this investigation. As a result, we have not addressed the scope requests or additional arguments raised by the petitioner in our final determination. However, should an order be issued in the instant investigation, parties can resubmit scope requests in accordance with section 351.225 of the Department's regulations and the Department will examine such requests in that context.

Comment 4: Corporate Name Change Filing

Zhejiang Rolling Bearing Co., Ltd. (ZRB) states that the Department granted it an "all-others" rate by virtue of its submission of Section A response to the Department's antidumping duty questionnaire and its establishment of its eligibility for a separate rate. ZRB argues that this determination should be affirmed in the Department's final determination. However, based on ZRB's October 31, 2002, factual submission, ZRB argues that the Department should recognize its corporate names Zhejiang Tianma Bearing Co., Ltd., and ZRB. ZRB also states that this corporate name change was provisionally approved by the Zhejiang Industrial and Commercial Administration Bureau on September 16, 2002, and that under Chinese law, it is able to maintain its original name for a one-year period after the final approval of its corporate name change, which was still pending as of January 13, 2003. Finally, ZRB claims that, except for the name change, the company remains the same corporate entity in all other respects. Thus, ZRB seeks to have the Department identify both corporate names for purposes of the Department's final determination, any antidumping duty order that may be issued, and any subsequent proceeding as: "Zhejiang Rolling Bearing Co., Ltd. a/k/a²⁸ Zhejiang Tianma Bearing Co., Ltd."

Department's Position:

We disagree with ZRB that the Department should recognize this name change for purposes of the final determination or any antidumping duty order that may be issued. As stated by ZRB, its name change has only been provisionally approved under Chinese law. After the final approval process has been completed, and if an antidumping duty order is issued in this investigation, ZRB may raise this issue with the Department.

Comment 5: PRC-Wide Rate

Petitioner argues that the Department should revise the methodology to calculate the PRC-wide rate in order to incorporate associated processing costs. Specifically, petitioner states that the

²⁸ Also known as ("a/k/a").

Department's decision to use an unfinished steel surrogate value in the PRC-wide rate calculation, rather than using the petitioner's finished components surrogate value (e.g., balls, rings, cages), was erroneous. Petitioner claims that the Department's methodology is flawed in three respects. First, petitioner states that, contrary to the Department's assertions, the record demonstrates that Chinese ball bearing producers do purchase finished components from unaffiliated suppliers. Moreover, because many of the companies subject to the PRC-wide rate failed to respond to the Department's requests, there is no record evidence that sheds light on their operations. Second, in its petition, the petitioner did not report prefabrication weights for unfinished steel used in parts. Alternatively, the petitioner reported the prefabrication weight for finished components that required only minimal processing, thereby making the weights used by the Department too low. Third, for those Chinese producers that do manufacture their own parts, the Department's methodology does not take into account the processing costs required to produce the finished components. In short, the Department's methodology used in the Preliminary Determination mixes "apples and oranges."

In the alternative, petitioner argues that if the Department remains committed to the methodology it used in the Preliminary Determination, then the methodology must be revised to account for processing costs that the Department inadvertently omitted.

Respondents did not comment on this issue.

Department's Position:

We disagree with petitioner. For the Preliminary Determination the Department revised the PRC-wide rate calculation to reflect its decision to use the respondents' reporting of per-unit FOPs on an input specific basis. Effectively, we aligned the margin calculation methodology used for the PRC-wide rate with the margin calculation methodology used for the mandatory respondents. Given the data limitations in this case, as discussed elsewhere in this memorandum, we find that the methodology used was appropriate.

Additionally, because we are deriving the surrogate financial ratios (i.e., SG&A, overhead, and profit) from the financial statements of integrated Indian ball bearing producers, it is reasonable to conclude that these ratios take into account the processing costs required to produce the finished components for subject merchandise (see Comment 1.F above for further discussion). Thus, the Department has continued to use the PRC-wide rate calculation methodology it employed for the Preliminary Determination.

Comment 6: Valuation of Purchased Components

Both petitioner and Torrington submit that the Department should use surrogate values for finished components purchased from unaffiliated suppliers. Citing section 773(c)(1) of the Act

(19 U.S.C. § 1677b(c)(1)) and Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990), petitioner argues that the antidumping statute requires the Department to calculate “current margins as accurately as possible.” Citing Foundry Coke²⁹ and ARG Windshields, petitioner alleges that, when an NME foreign respondent purchases finished components from unaffiliated home market suppliers, the Department consistently uses surrogate values for the finished components rather than surrogate values for the individual inputs used to produce the components.

Torrington maintains that in Hot-Rolled Flat Products from China,³⁰ the Department rejected the respondents’ argument where self-produced inputs were an issue and the respondents merely wished for the Department to analyze their own raw-materials in determining the value of subject merchandise. In that case, Torrington adds, the Department recognized that valuing materials would effectively result in the agency investigating products not subject to the proceeding at hand.

In addition, Torrington points out that “the degree of vertical integration” is also a critical factor in the bearings industry because some producers are more integrated than others. Furthermore, Torrington alleges that a highly integrated producer relies very little on suppliers of components. Therefore, Torrington submits that the Department should make case-by-case distinctions and account for demonstrable material differences. Broadly analyzing upstream factors undermines particularity, Torrington argues. Finally, Torrington maintains that if the Department allows a given producer to submit upstream factors information furnished by unaffiliated component-suppliers who are not directly involved in the case and have never shown absence of governmental control, the required showings of absence of both *de facto* and *de jure* government control are seriously diluted.

In an alternative argument (*see* Comment 1.F above), Torrington alleges that the Department’s application of the SG&A and profit ratios to the upstream factors of production data introduces distortion in the margin calculation. Specifically, Torrington asserts that the suppliers’ and subcontractors’ overhead, SG&A, and profit are included in the denominator as purchased material costs for the purposes of calculations of the surrogate overhead, SG&A, and profit ratios. It suggests that by applying these surrogate ratios to the factors of production data, the Department distorted the margin in the preliminary determination. Therefore, Torrington proposes that the Department apply the financial ratios of a fully-integrated bearing producer to the factor values of the purchased or subcontracted inputs and add the amount to the normal value calculation.

²⁹ Foundry Coke Products from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 66 FR 39487 (July 21, 2000) (Foundry Coke) and the accompanying Decision Memorandum at Comment 3.

³⁰ Certain Hot-Rolled Carbon Steel Flat Products from China (Hot-Rolled from China), 66 FR 49632 (September 28, 2001).

Concurring with Torrington, petitioner argues that the methodology used by the Department in the Preliminary Determination will result in substantially understated margins. Furthermore, it claims that the failure to value purchased components at their surrogate country values also causes the Department's calculation of the PRC-wide rate to be seriously understated. Moreover, petitioner contends that this methodology conflicts with record evidence on Chinese manufacturing practices, where each of the mandatory respondents purchases several parts as finished components. According to petitioner, the Department treating purchased finished components as "raw materials" and using surrogate values for inputs for such purchased components implies that the standard practice for Chinese producers is to manufacture directly all parts from the raw materials themselves, but the record does not support this assumption.

Petitioner asserts that this error in methodology can be corrected using information readily available on the record, and, in almost all instances, by multiplying the appropriate net weight by the surrogate value for the finished components. Further, petitioner maintains that any concerns that the Department may have that relying on surrogate values for purchased components will lead to double-counting are misplaced because the Department has sufficient information on the record to make any necessary adjustments. For example, the Department could generate ratios based on the values for labor and electricity reported by the respondents for the finished components and use those ratios to net out that portion of the respondents' total labor and electricity usage represented by the finished components. For those parts where the respondents did not report labor and electricity usage, petitioner suggests that the Department could generate ratios using the facts available for parts for which such data were reported.

Petitioner submits that the Department should adopt the methodology proposed by Torrington for this adjustment in its FOP values submission. Specifically, for Peer, which reportedly purchased balls, anti-rotation pins, eccentric locking collars, snap rings, slingers, retainers, and housings, petitioner urges the Department to use \$15.41/kg for balls, \$11.1483/kg for locking collars, eccentric collars, snap rings, slingers, cages, and anti-rotation pins, and \$9.2159/kg for housings. For Cixing, which reported purchased finished balls, nylon cages and seals, petitioner requests the Department use a different value for balls, use the relevant market economy price paid by Cixing for nylon cages, and use \$6.639/kg for seals. For Wanxiang, petitioner also maintains that the Department should use proper surrogate values for purchased finished components. Finally, petitioner adds, to avoid any double-counting, the Department should use the amounts of aggregate labor and electricity that each respondent reported for each bearing model to net out the amount of labor and electricity used to produce the purchased finished components.

Finally, citing Allegheny Ludlum, petitioner maintains that because the Department has no rational basis for failing to follow its past practice, its departure from that practice is arbitrary.³¹ In order to ensure that the most accurate margins are calculated for the final determination, petitioner continues, the Department should correct its Preliminary Determination and use surrogate values for purchased finished components as the best available information rather than surrogate values for the inputs used to produce such components.

Respondents argue that for purposes of the final determination, the Department should reject petitioner's and Torrington's position. Respondents maintain that petitioner's and Torrington's argument that the Department should value balls and cages purchased from unaffiliated suppliers differently from the way they value balls and cages from affiliated suppliers is without precedent and is contrary to good policy. Further, respondents add, prior Department practice is the opposite of that claimed by petitioner and Torrington in their case briefs. According to respondents, the Department in those cases required the submission of subject merchandise FOPs from unaffiliated suppliers, and none of the cases cited by petitioner and Torrington in support of their position stand for the proposition that the subject merchandise, a part, or a component, should be valued differently depending on the affiliated status of the suppliers.³²

According to respondents, petitioner's and Torrington's lack of case support is not surprising as the Department's practice, especially in bearing cases, is the exact opposite of what petitioner and Torrington allege. Specifically, respondents maintain that in NME bearing cases the Department has always requested that respondents report the FOPs of the subject merchandise, and not its mere weight, regardless of whether the supplier is affiliated or unaffiliated to the respondent. Citing TRBs XIII, respondents respond that the Department specifically recognized that supplying FOPs from unaffiliated suppliers is appropriate. In that case, respondents note, Timken argued that the Department should use adverse facts available against China National Machinery Import & Export Corporation (CMC) because petitioner alleged that CMC had not adequately demonstrated how the FOPs were compiled for CMC's unaffiliated suppliers. The Department rejected Timken's argument. Respondents quote the Department's decision as follows:

³¹ See, e.g., Allegheny Ludlum Corp. v. United States (Allegheny Ludlum), 112 F.Supp.2d 1141, 1147 (CIT 2000) (“[The Department] must either conform itself to its prior decisions or explain the reasons for its departure.”).

³² That this is true is evident from petitioner's parenthetical descriptions of each of those cases. The one exception to this is Torrington's citation to Comment 2 of the Decision Memorandum in Hot-Rolled from China. However, the issue being addressed in Comment 2 of that decision was not whether to value FOPs differently based on the affiliated nature of a supplier. Instead, the issue was one of how to treat self-produced FOPs, specifically energy and gas. The Department in that case declined to value the inputs that the respondents used to produce its energy and gas factors. Thus, the case had nothing to do with valuing FOPs themselves differently depending on the affiliated status of the supplier of the FOP.

In this instance, as it has in past reviews of this case, CMC provided the Department with complete FOP information from its unaffiliated suppliers. CMC has indicated in its response that the reporting methodology used by CMC and its unaffiliated manufacturers is similar.

CMC has also provided complete factors data for each of its suppliers. Finally, this information was generated in the same manner as has information presented in past reviews by CMC for these same suppliers which has been utilized without contest. CMC has sufficiently described its suppliers' reporting methodology and has provided complete data with respect to each of the manufacturers. . . . Therefore, we are using FOP data provided by CMC for its suppliers for these final results.³³

Respondents continue that in TRBs XIV, CMC followed the same reporting methodology and obtained TRB components from other factories, which was accepted without comment. Furthermore, respondents argue that in the multiple TRB and ball bearing antidumping cases from Romania, the respondents were always required, whenever possible, to report FOP and not the weight of components. Indeed, respondents add, the FOP for many Romanian bearing producers included FOP for balls or rollers purchased from other factories.³⁴ Finally, citing the questionnaire responses in the crawfish tail meat from China antidumping case,³⁵ respondents maintain that the Department has always required that the unaffiliated suppliers supply FOPs for producing crawfish tail meat, and not simply the weight of the finished product as numerous respondents purchased the finished merchandise from unaffiliated suppliers and also produced the subject merchandise themselves.

Based on the above, respondents submit that when they provided FOP for purchased ball bearing parts, they were following years of Department policy and practice. According to respondents, there is no policy reason for the Department to change its current practice. If the Department were to change its practice and adopt petitioner's arguments in this regard, the Department must also consider how this change in practice would work with trading companies that source subject merchandise from both affiliated and unaffiliated suppliers, argue respondents. For instance, respondents ask whether the Department would require the respondent trading company to submit FOP from the affiliated suppliers, and simply the weight of the subject

³³ See TRBs XIII and the accompanying Decision Memorandum at Comment 12.

³⁴ See e.g., Antifriction Bearings Other than Tapered Roller Bearings and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden and the United Kingdom, 64 FR 35580 (July 1, 1999).

³⁵ See e.g., the questionnaire responses of Ningbo Nanlian Frozen Foods Company, Ltd. in the 1997-98, 1998-99 and 1999-00 Administrative Reviews of that order (case no. A-570-848). See also the December 8, 1998, section A response of Ningbo Nanlian Frozen Foods Company, Ltd. in the 1997-98 Administrative Review.

merchandise from unaffiliated suppliers. If so, respondents maintain that this would not advance the cause of calculating margins as accurately as possible.

With respect to Torrington's argument that accepting FOP from unaffiliated suppliers leads to inaccuracies because those suppliers are not directly involved in the case and have never shown absence of government control, respondents counter that this specific issue was addressed in TRBs XII, and the Department rejected this argument in its entirety, stating that it is not the Department's practice to analyze government control of producers that do not export directly to the United States. Also, respondents add, this is consistent with well over 15 years of Romanian bearing cases where the Department never analyzed the issue of government control of Romanian factories even though they were supplying FOP to the exporter (*i.e.*, respondent).

Peer further argues, as stated above, that there is ample reason for the Department to dismiss petitioner's and Torrington's arguments as a matter of Departmental precedent and policy. However, Peer adds, should the Department be hesitant to make a blanket pronouncement in this regard, the Department should not accept petitioner's and Torrington's arguments that the Department value balls and cages purchased from unaffiliated suppliers differently from the way they value balls and cages from affiliated suppliers, particularly with respect to Peer.

Specifically, Peer notes that what petitioner and Torrington refer to as "components" are actually subject merchandise. Therefore, in providing FOP for rings, balls, cages, etc., Peer states that it was providing FOP for the subject merchandise, and not just "mere components." To further support its argument, Peer cites the Department's questionnaire which identifies the various types of subject merchandise, including cages, shields, seals, and rolling elements (balls). In addition, Peer claims that the questionnaire issued to Peer makes no distinction on how to report FOPs depending on whether the supplier is affiliated or unaffiliated. As such, Peer maintains that petitioner's and Torrington's arguments making a distinction between "components" and the "subject merchandise" are without merit in this investigation.

Moreover, Peer counters that the surrogate values proposed to value balls and cages are aberrational and unreliable which will result in absurd results. It would be an abuse of due process, Peer contends, to use ball and cage weights in this investigation by applying aberrational surrogate values to the mere weight of those parts, instead of valuing the FOPs used to manufacture those parts of ball bearings. Specifically, Peer points out that during the entire questionnaire period of this investigation, not once did the Department affirmatively request Peer to utilize a different FOP methodology depending on whether the supplier was affiliated or unaffiliated. Peer, in providing FOPs for all, was following years of Department precedent. Therefore, Peer argues, petitioner's distinction between the factors treatment of affiliated versus unaffiliated suppliers is illogical.

In addition, Peer refers to the Department's questionnaire in this investigation which states, "if your company did not produce the subject merchandise, we request that this section be immediately forwarded to the company that produces the subject merchandise and supplies it to you or to your customers." Since balls and cages are subject merchandise, Peer was therefore required to send FOP questionnaires to its ball and cage suppliers; it was not until verification that the Department requested weight information from Peer. Further, Peer submits, if the Department is going to radically alter its policy in this regard, it must announce such a change and be very specific about the new methodology, as it would be unfair to change its methodology in the middle of an investigation.

With respect to Torrington's suggestion that NV can be recalculated for Peer by using the weights of balls and cages with a universal energy deduction based on the energy consumption for one of the models that Peer sold during the POI and for which XPZ provided FOP, Peer counters that this simplistic methodology to make adjustments to Peer's reported labor and electricity for each bearing model is erroneous. Peer adds, this type of "one-size-fits-all" adjustment approach inevitably results in distortion because it completely disregards the different characteristics and cost structures of each bearing model. According to Peer, each model has its own product characteristics and depending on the bearing's characteristics, the ratio of labor and energy costs to total bearing cost inherently varies significantly. Challenging petitioner's and Torrington's argument for "accuracy," Peer asks how applying a ratio based on one model to the other over 460 models advances the cause of accuracy. It does not, maintains Peer.

Based on the above, respondents submit that the Department's practice has been, and should continue to be, that FOPs be submitted to calculate NV for the subject merchandise, and not the weights of the product, because the methodology employed by respondents ensures greater accuracy.

Department's Position:

We agree with petitioner, Torrington, and respondents in part. To begin, we agree with petitioner and Torrington that in a NME proceeding it is the Department's normal practice to value the purchased components and not the input factors used to produce them if the firm is not integrated.³⁶ See Notice of Preliminary Determination of Sales at Less Than Fair Value,

³⁶ Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from a non-market economy country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise

See also: This policy has been applied to both agricultural and industrial products. See, e.g., Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of

Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam 68 FR 4986, 4993 (January 31, 2003) (Fish Fillets). We also agree with petitioner and Torrington that the paramount goal of our calculation is to be as accurate as possible.

If an NME respondent producer is an integrated producer, we normally take into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a fully integrated firm, the Department valued the factors used to grow the mushrooms, the factors used to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in-house). If, on the other hand, the firm was not integrated, but simply a processor that bought fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them.

There are, however, two limited exceptions to this general rule. First, in some cases a respondent may report factors used to produce an intermediate input that accounts for a small or insignificant share of total output. The Department recognizes that, in those cases, the increased accuracy in our overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so. Therefore, in those situations, the Department would value the intermediate input directly. Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, in a recent case, we addressed whether we should value the respondent's factors used in extracting iron ore—an input to its wire rod factory. The Department determined that, if it were to use those factors, it would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead.³⁷ In this investigation, we have determined at this time that the exceptions described above do not apply.

Partial Recision, 67 FR 50866 (August 6, 2002) (unchanged in final) and Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160 (February 28, 1997).

³⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine, 67 FR 55785 (August 30, 2002); Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001); Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964 (November 20, 1997); and Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544 (May 8, 1995).

While the use of component values, rather than values for the inputs to produce components, is our normal practice in most NME cases, the Department has in the past departed from this practice in certain unique situation, most notable of which are the previous ball bearings, antifriction roller bearings, and tapered roller bearings investigations and administrative reviews involving NMEs. We agree respondents that in previous NME bearings cases it has generally been the Department's practice to rely on the factor build-up information provided by the suppliers who manufactured the product in question (see, e.g., TRBs XIII). No party has questioned this approach in any of these cases.

The practice in bearings cases has been, to some extent, based on the unique nature of bearing production. Bearings are produced by assembling parts, essentially inner and outer rings, a rolling element, e.g., balls or rollers, and cages. Bearing producers typically make many but not all of these parts; some may produce and purchase the same part type (e.g., rings) or even the same unique part. In addition, some producers are more integrated than others, i.e., completely integrated producers would make all the primary components themselves. Completely unintegrated producers would purchase all the main components and assemble them into finished bearings. In addition, bearing parts are unique in several ways, as compared with other inputs that typically must be valued in NME cases.

In this case, as in other bearings cases, the purchased components are highly variegated whereas the available surrogate values generally are not specific to each type of component (e.g., rings or shields), much less the various characteristics of each type of component (e.g., size or materials). We faced this situation in its most extreme form in PRC Bikes, where PRC bike producers purchased frames that varied considerably from a simple children's bike frame to a molybdenum mountain bike frame and could vary considerably in value. The only surrogate value available was a single frame price in India. In that case using the one available surrogate value would have been significantly distortive. The same concern applies in this case, although to a lesser degree. In this case bearing parts can vary considerably in value, ranging from a comparatively inexpensive cage used for a low-end commodity bearing (which might have a value of 30 cents) to an inner ring used for an "Electric Motor Quality" bearing (which might have a value of \$1.50). There are only two average surrogate values available for all these parts—one for balls and one for all other components. If we were to use the one average value for all other components to value all components other than balls, we would fail to account for this significant variation in value among these various components. By using the FOPs used to produce these components we can better account for this variation in value. We acknowledge that in cases where the parts in question are a small portion of the value of the subject merchandise, any increased accuracy that might result from valuing the inputs used to produce such parts would not justify the burden of doing so. However, that is not the case here with respect to certain purchased components, and we have available information that allows us to calculate a more accurate value than simply applying the one broad surrogate value that is available to all the various components. With respect to balls, even though the record contains an average surrogate value for balls, we have

some concern that this value too may encompass a broad range of products and values. Given this concern and in light of our use of upstream FOPs for purchased components in previous bearings cases, we have decided to use the upstream FOPs for purchased balls for purposes of this final determination. We will reexamine this issue in any future review, if an order is issued in this case.

With respect to Torrington's argument that accepting FOP from "unaffiliated" suppliers leads to inaccuracies because those suppliers have never shown absence of government control, the Department rejected this argument in its entirety in TRBs XII, stating, "...it is not our practice to analyze government control of producers that do not export directly to the United States..."³⁸ This is also consistent with the Romanian bearing cases where the Department has not analyzed the issue of government control of Romanian factories that were supplying FOP information to the respondent exporter.³⁹

We also disagree with Torrington's proposed recalculation and application of the financial ratios. The surrogate companies used are substantially integrated bearings producers. Therefore, these surrogate financial ratios are appropriate. Moreover, there is no evidence on the record that any of the potential surrogates is primarily a "fully-integrated" bearing producer.

Comment 7: Calculating Margins on a Per-Unit Basis

Petitioner argues that the Department unjustifiedly ignored its past practice in using a per-kilogram rather than a per-unit margin calculation methodology. Petitioner offers three justifications in support of a per-unit methodology. First, ball bearings are typically sold by the piece, not by the kilogram. Second, weight-based margins are more appropriate when a product is made of a homogenous input, and, conversely inappropriate in the case of ball bearings, where the product is made up of many different types of materials that are not homogenous in kind or composition. Lastly, several parties to the investigation, including Peer, have objected to the use of a weight-based methodology. Consequently, petitioner encourages the Department to revise its margin calculations using a per-unit calculation methodology for the final determination.

Cixing argues that it is not necessary to revise the Department's Amended Preliminary Determination. It argues that while the petitioner's suggestion that the current conversion did not

³⁸ Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part, 66 FR 1953 (January 10, 2001) and the accompanying Decision Memorandum (TRBs XII) at Comment 16.

³⁹ See e.g., Antifriction Bearings, Other than Tapered Roller Bearings and Parts Thereof, from France, Germany, Italy, Japan, Romania, Sweden and the United Kingdom, 64 FR 35580 (July 1, 1999).

increase accuracy, no party has alleged that the conversion used by the Department continues to distort the Department's margin calculation. Cixing argues that a new calculation is more likely to lead to new errors without increasing accuracy.

Department's Position:

We disagree with the petitioner. First, the petitioner does not cite any specific case in which we reverted from a weight-based methodology to a per-unit methodology. Second, the petitioner's reliance on Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile, 63 FR 56613, 56619 (October 22, 1998) (Mushrooms), which discusses the Department's preference to rely on a weight-based methodology rather than use a per-unit calculation methodology, is not convincing. The Department's position in Mushrooms was based on the fact that a weight-based methodology was appropriate for a "homogenous" product; however, there was nothing in that determination to imply that a weight-based methodology is inappropriate for subject merchandise in the instant case. The Department will consider the specific facts in each instance on case-by-case basis. Finally, due to the Department's NME methodology and the fact that the surrogate values are reported on a weight basis, it is logical to perform our calculations on a weight basis.

Moreover, the Department will use alternative calculation methodologies if they more accurately capture the actual costs incurred to produce the merchandise. See, e.g., Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand, 60 FR 29553, 29559 (June 5, 1995), citing Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937, 21952 (May 26, 1992).

In the instant case, the Department's antidumping duty questionnaire requested that the respondents submit their FOP responses based on weight (i.e., input per kilogram). Nothing on the record suggests that the Department's reliance on the per-kg reporting of the FOP for the respondents' raw material inputs is distortive.

Finally, regarding the petitioner's assertion that respondents have objected to a "weight-based methodology," the respondent's objection has nothing to do with a weight vs. per-unit methodology. Rather, the respondent's argument has to do with how the Department should average the financial ratios of the multiple surrogate companies from which we calculate the surrogate value for SG&A, overhead, and profit as they are used in the Department's margin calculation. Thus, for purposes of the final determination, we have continued to rely on the respondents' weight-based FOP reporting methodology. Therefore, the Department did not revise this aspect of its margin calculations using a weight-based calculation methodology for the final determination.

Comment 8: Market Economy Steel Values–Korea/India⁴⁰

Peer and Wanxiang argue that the methodology employed by the Department in its Preliminary Determination is not in accordance with 19 C.F.R § 351.408. Specifically, Peer and Wanxiang dispute the Department’s use of surrogate values instead of the actual prices for its market economy purchase of steel inputs from their respective market economy suppliers because the Department had reason to believe or suspect that the inputs were subsidized. Pursuant to 19 C.F.R § 351.408, “where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Department will normally use the price paid to the market economy supplier.” Peer and Wanxiang claim that because a significant quantity of their imported steel bar (and plain carbon steel for Wanxiang) were purchased from a non-affiliated market economy supplier and paid for in a market economy currency, the Department should use the actual prices to value Peer and Wanxiang’s steel inputs. Peer also argues that in regard to Korea, the generally available export subsidies that the Department has ruled upon have been found to be *de minimis* or terminated. In addition, Peer and Wanxiang argue that the Department verified its imported steel transactions, including the purchase prices, quantities, and currency, and found no discrepancies. Thus, Peer and Wanxiang have met the standard set forth in the Department’s regulations for use of market economy inputs for purposes of valuing factors of production.

Peer and Wanxiang also argue that the Department’s decision to reject its market economy prices is contrary to the intent of the law for several reasons. First, the Uruguay Round Agreements Act of 1995 (URAA) superseded the legislative history relied upon by the Department. According to Peer and Wanxiang, the URAA changed the definition of subsidy. The term subsidy used in the legislative history of the 1988 Act thus refers to a similar, but not the same, concept as the term subsidy currently used in the statute. Therefore, that portion of the legislative history no longer applies since the term used by Congress in 1988 and the legal concept applied by the Department today are different. Second, although there is no record evidence that the third country steel producer received countervailable subsidies, the Department refused to use those market economy prices based on a “reason to believe or suspect” that they may be subsidized without conducting an investigation or applying any of the procedural safeguards provided for by the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Thus, the Department’s action constitutes a violation of the GATT and the SCM Agreement. Third, the legislative history relied upon by the Department authorizes the Department to avoid using subsidized prices only “in valuing such factors.” However, Peer and Wanxiang state that market economy prices paid by the NME producers are not considered factors of production. Therefore, there is no textual support for the Department’s application of

⁴⁰ Peer waived business proprietary information (BPI) treatment that it purchased market economy steel from Korea. In addition, Wanxiang waived BPI treatment that it purchased market economy steel from India. See Public hearing transcripts at 50 and 149, respectively.

the subsidy test in situations involving market economy purchases. Lastly, Peer and Wanxiang argues that even if the Department could lawfully disregard arm's length, market economy imported steel prices that may be affected by subsidization, the Department has not cited any evidence that the prices actually paid by Peer and Wanxiang are, in fact, affected by subsidies.

Petitioner and Torrington state that the Department previously considered Peer and Wanxiang's steel input prices from a foreign supplier and rejected those prices in the Preliminary Determination because it had reason to believe or suspect those inputs were subsidized. They also said that Peer and Wanxiang have not filed any submissions regarding market economy purchased steel since the Preliminary Determination. Accordingly, they urge the Department to continue to disregard Peer and Wanxiang's claim on market economy steel prices in the final determination. However, Peer and Wanxiang rebut petitioner and Torrington's suggestion and restate their argument that they purchased their steel inputs from a non-affiliated market economy supplier in significant quantities and paid for the steel in a market economy currency. Peer and Wanxiang also rebut that neither the producer of the steel purchased by Peer and Wanxiang or the particular steel products that Peer and Wanxiang purchases have ever been found to be subsidized. Thus, the Department should accept Peer and Wanxiang's market economy steel prices.

Petitioner counters Peer and Wanxiang's argument that the Department should ignore legislative history because it has been superseded by the URAA's new definition of "subsidy," which supersedes the definition in the legislative history. According to petitioner, Peer and Wanxiang's proposed overruling of an entire section of legislative history by a change in the definition of one word is unprecedented. Peer and Wanxiang fail to provide any evidence to connect the revised understanding of the term "subsidy" to an invalidation of the Department's position that unfair prices should be ignored when calculating normal value for NME goods.

Petitioner counters that contrary to Peer and Wanxiang's argument, the legislative history directs the Department to avoid using any prices which it has reason to believe or suspect may be dumped or subsidized. Petitioner points out that the Department has continually adhered to this practice in NME investigations. Furthermore, petitioner states that the "reason to believe or suspect" standard only requires the Department to base its findings on information generally available to it at the time.

Furthermore, petitioner points out that evidence establishing Peer and Wanxiang's benefit from various subsidies is readily available on the public record. In particular, the Department has issued numerous CVD orders that include findings of broadly-available export subsidies on steel and other products exported from the country in question. Accordingly, the Department should continue to apply its consistent practice under the antidumping regulations and ignore these unfair input prices when calculating normal value for Peer and Wanxiang's market economy steel purchases.

Department's Position:

We agree with petitioner. Recent Department determinations and the legislative history support our decision to disregard input prices that we have reason to believe or suspect are subsidized. In reaching this conclusion, Congress has instructed the Department to base its decision on information that is generally available to it at the time it is making its determination. See H.R. Conf. Rep. 100-576 at 514, 590-91 (1998), reprinted in 1988 U.S.C.C.A.N. 1547, 1623 (1988) (authorizing the Department to avoid using prices that the Department has reason to "believe or suspect" were unfair in calculating normal value in NME cases).

In the Department's recent determinations on Tapered Roller Bearings from the PRC, we found that, where the facts developed in U.S. or third-country CVD findings include subsidies that appear to be used generally (in particular, broadly available, non-industry specific export subsidies), it is reasonable to infer that all exports to all markets from the investigated country are subsidized. As the Department stated in the TRB proceedings, these prior CVD findings may provide the basis for the Department to also consider that it has particular and objective evidence to support a reason to believe or suspect that prices of the inputs from that country are subsidized. It was exactly on this basis that the Department, in TRBs XII (Comment 1) and TRBs XIII (Comment 1), excluded export prices from a particular input supplier.

In our Preliminary Determination, we did not use Peer's prices of market economy steel purchases from Korea or Wanxiang's steel input prices from India, based on the Department's finding that we have "reason to believe or suspect" that Peer and Wanxiang's market economy suppliers benefit from broadly-available, non-industry specific export subsidies. Petitioner concurs and has alleged that steel suppliers in both Korea and India may be receiving generally available export subsidies. In support of these allegations, petitioner has presented evidence on the record of this investigation that Korea and India maintain non-industry specific export subsidies. In fact, petitioner cites CVD determinations in which the Department investigated and countervailed such subsidies.

For Korea, these include: Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30637 (June 8, 1999); Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea, 64 FR 42923 (August 6, 1999); Notice of Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea, 64 FR 73176 (December 29, 1999); Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea, 65 FR 6587 (February 10, 2000).

For India, these include: Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001); Notice of Amended Final Determination and Notice of Countervailing Duty Orders: Certain Hot-Rolled Carbon Steel Flat Products From India and Indonesia, 66 FR 60198 (December 3, 2001); Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India, 64 FR 73131 (December 29, 1999); Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea, 65 FR 6587 (February 10, 2000); Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002); and Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India, 67 FR 44179 (July 1, 2002).

We have thoroughly examined this information and believe it is sufficient to provide us with a reason to believe or suspect that prices of inputs from Korea and India are subsidized. This particular and objective evidence shows that Korea and India maintain broadly-available export subsidies which may benefit all exporters to all export markets. Such subsidy programs in Korea include: Export Industry Facility Loans; Short-term Export Financing; Reserve for Export Losses, and Reserve for Overseas Market Development. Such subsidy programs in India include: the Duty Entitlement Passbook Scheme (DEPS), the Advance License Scheme, the Export Promotion Capital Goods Scheme (EPCGS), Pre-Shipment and Post-Shipment Export Financing, Exemption of Export Credit from Interest Taxes, and section 80HHC of India's Income Tax Act. On the basis of this information, we did not use these prices of market economy steel purchases from Korea and India.

Peer and Wanxiang made several arguments in this proceeding that can be grouped into two major areas: statutory issues and subsidy issues. First, Peer argues that the evidentiary standard in an NME case is consistent with the standard used in below cost investigations. Second, Peer and Wanxiang argue that there is no evidence that would lead the Department to conclude that Peer and Wanxiang's market economy steel suppliers received subsidies because their suppliers have never been investigated; moreover, Peer argues that if its steel supplier in Korea had been investigated, it would have received a *de minimis* subsidy rate.

In regard to Peer's statutory argument that the evidentiary standard in an NME case is consistent with the standard used in below cost investigations, the Department finds that the "particularized and objective basis for suspecting" standard that applies to sales below cost investigations is based on a vastly different set of circumstances, compared to those found in NME cases. Due to the Department's reliance on generally available information in making its determination to "believe or suspect" that subsidies apply in NME cases, the Department is granted discretion to reasonably decide the evidentiary standard as it applies in the instant case. Thus, in applying the

concept stated in the Policy Bulletin 94.1, referencing section 773(b) of the Act, comments from respondents will be considered in response to a post-initiation allegation, but only to the extent they deal with the adequacy of the allegation itself in establishing reasonable grounds to believe or suspect sales at less than cost.⁴¹ In the instant investigation, using our standard for post-initiation allegations of sales at less than cost provides the authority to believe or suspect that subsidies apply.

The Department also disagrees with Peer's assertion that the URAA supersedes the legislative history of the 1988 Act. Specifically, we find that Peer did not provide any compelling evidence that would lead the Department to believe that the URAA's revised "subsidy" terminology would materially alter the definition as interpreted in the legislative history. Accordingly, the Department has rejected this argument. With respect to Peer and Wanxiang's WTO-specific arguments, we note that U.S. law, as implemented through the URAA, is fully consistent with our WTO obligations.

In regard to Peer and Wanxiang's subsidy arguments, we disagree that the type of finding suggested by respondents is required here. The standard, as clearly stated in the legislative history, is that the Department must avoid export prices which it has a "reason to believe or suspect may be. . . subsidized." The standard prescribed here is about making a reasonable inference from the evidence on the record that export prices may be subsidized. It is not about making an actual finding of subsidization. Furthermore, regarding Peer's arguments that we should take into account the specific levels of subsidization findings in recent CVD determinations of other Korean steel producers from which Peer did not purchase, the Department does not find this to be a relevant issue in this particular case. A specific and substantial finding that an input supplier in fact benefitted from known, broadly available export subsidies in this context, as suggested by respondents, would require an actual investigation of these suppliers. See Issues and Decision Memorandum for ARG Windshields. Since the company that Peer purchases its market economy steel from has never been investigated for subsidies, the Department cannot accept unverified statements from Peer alleging that *de minimis* rates are applicable to its particular supplier. Accordingly, the Department must rely on the information generally available to it at the time of this determination and reasonably answer the underlying question of whether there is a reason to believe or suspect that Peer's supplier benefitted from subsidies.

In Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China, 67 FR 36570 (May 24, 2002) (Pipe from China), the Department accepted market economy prices from "Country X", despite an allegation from the petitioner that the level of subsidization was irrelevant, based on the decision made in ARG Windshields. In Pipe from China, the Department had company specific

⁴¹ See Policy Bulletin 94.1, "Cost of Production—Standards for Initiation of Inquiry" (March 25, 1994).

subsidy information regarding the companies which produced the hot-rolled coil that was purchased by some of the respondents. Based on this specific information, the subsidies received by the companies from which the respondents purchased the hot-rolled coil were found to be *de minimis*. See Pipe from China.

However, unlike Pipe from China, the Department must consider the fact that Peer's steel supplier has never been investigated and also that the Department has found positive subsidy margins for other steel suppliers in Korea. In making a determination, the Department looks to the language of the legislative history, which clearly states that Congress did not intend for the Department to conduct an actual investigation of these suppliers. Rather, the Department was instructed to base its decision on information generally available to it at the time. This is what we have done in this investigation. The information in this investigation shows that Korea and India maintain generally available subsidies that may benefit exports from these countries to all markets. We have concluded here that this is particular and objective evidence (that all exporters from these countries can benefit from these broadly available subsidies) which provides a reason to believe or suspect that prices of the inputs purchased from these countries are subsidized.

II. Company-Specific Issues

A. Peer

Comment 9: Correction of Errors Made in the Preliminary Margin

Petitioner urges the Department to incorporate in its final margin calculations the corrections to errors it made when calculating Peer's preliminary margin. Specifically, Petitioner alleges that in Peer's preliminary margin program, the Department made an error when it converted Peer's reported FOP and U.S. sales data to per kilogram values. Because the correction resulted in an increase of Peer's margin, but not enough to meet the threshold requirement of altering the margin,⁴² the Department did not include this correction in the Amended Preliminary Determination. Petitioner urges the Department to incorporate these corrections in its final margin calculations.

In addition, petitioner submits that the Department valued Peer's steel scrap for bar, tube, and rod (variable SCRBTRSV in Peer's margin program) using the wrong HTS subcategory, which does not include scrap from steel bar and tube. Concurring with Peer, petitioner requests that for the final determination, the Department should use HTS subheading 7204.29.09 ("waste and

⁴² Pursuant to 19 CFR § 351.224(g), the threshold requirement is "five absolute percentage points [and] 25 percent of ...the weighted average dumping margin...calculated in the original (erroneous) preliminary determination."

scrap of other alloy steel,” “others”) to value steel scrap. According to petitioner, this subheading generates a surrogate value of \$0.1249/kg.

Department’s Position:

We agree with petitioner and have incorporated the corrections to errors made in the Preliminary Determination in the final margin calculations. See February 27, 2003, Final Calculation Memo for Peer for further discussion.

With respect to the valuation of Peer’s steel scrap for bar, tube, and rod, we also agree with petitioner and have used HTS subheading 7204.29.09 (“waste and scrap of other alloy steel” and “others”) to value steel scrap.

Comment 10: Incorporation of Corrections Made Prior to Verification

Petitioner requests that the Department incorporate the pre-verification corrections submitted by Peer on October 24, 2002, and minor error corrections submitted during verifications on November 6, and on December 6, 2002, respectively. Petitioner points out that in these submissions, Peer submitted revised information regarding the ownership of Peer, its sales, its FOPs, its assembly hours, and its Harbor Maintenance Fee (HMF), etc. Therefore, petitioner urges the Department to incorporate this corrected information in the final determination calculations for Peer.

Department’s Position:

We agree with petitioner and have incorporated all of Peer’s pre-verification and minor error corrections in the final determination.

Comment 11: Incorporation of Corrections for Discrepancies Found at Verifications

Petitioner urges the Department to correct discrepancies it discovered in the verification of Peer, including the scrap recycle ratio for steel bar and steel tube.

Peer also urges the Department to make the following corrections based on the verifications of XPZ, its affiliated company, and Peer Bearing:

- A. XPZ Corrections
 - The weight of cardboard packing boxes should be corrected as noted in XPZ’s verification report
 - The weight of pallet should be reduced
- B. Peer’s Affiliated Company Corrections

- The raw material consumption factors for rubber and steel sheet should be reduced
 - The reject rate for shields should be revised
- C. Peer Corrections
- U.S. inbound freight should be reduced
 - Harbor Maintenance Fees should be included in the calculation used to derive USDUTYU.

Department's Position:

We agree with petitioner, and, for purposes of the final determination, we have corrected discrepancies that were discovered in the verifications of XPZ, its affiliated company, and Peer. We also agree with Peer on all requested corrections and have made them for the final determination. See Peer's Final Calculation Memo for details.

Comment 12: Require Peer to Provide Complete and Accurate Data for Certain CONNUMs or Use Facts Available

Petitioner claims that the Department should require Peer to provide complete and accurate data for certain CONNUMs or use facts available. According to petitioner, Peer's most recent factor input data submitted on October 24, 2002, is incomplete because: 1) there are no US sales data for one CONNUM, therefore, it is impossible to compare the normal

value with the net US sales price and calculate the margin for this CONNUM; and 2) there are 21 CONNUMs in the US sales data that do not have matching factor input data in Peer's data set. Petitioner claims that these omissions render margin calculations inconclusive. Petitioner, therefore, urges the Department to use facts available in place of the missing data by using the country-wide rate.

Peer counters that petitioner's claim is unfounded and incorrect. Peer asserts that its FOP data submission included full and complete FOP information. With respect to petitioner's claims that it is impossible to compare the normal value with the net U.S. sales price and calculate the margin for a particular CONNUM because there is no U.S. sales data, Peer responds that it did not have any sales of this CONNUM (6212-ZZ) during the POI. Peer further explains that it inadvertently included data in its FOP for this product although it made no sales during the POI. Therefore, because this data was not necessary for margin calculation purposes, Peer suggests that the Department can simply ignore it for the final determination.

Concerning petitioner's claim that there are 21 CONNUMs in the U.S. sales data that do not have matching factor input data in Peer's data set, Peer contends that this claim is blatantly unfounded and incorrect. Peer confirms that the FOP data for the CONNUMs that petitioner list out in its brief have been fully reported in Peer's FOP database.

Department's Position:

We agree with Peer and confirm that Peer's FOP and sales data show there were no sales of CONNUM 6212-ZZ. In addition, we confirm that Peer's FOP database includes matching factor input data for the 21 CONNUMs listed by petitioner. Accordingly, the Department has determined that it will not apply facts available.

Comment 13: Whether the Department Should Correct Peer's Scrap Recycle Ratio and Recalculate Peer's Material Costs

Torrington requests that the Department be certain in the final determination that the correct scrap recycle ratio, which was found at the verification of XPZ, be used.

Department's Position:

We agree with Torrington and have used the correct recycle ratio found at the verification of XPZ for the final determination.

Comment 14: Whether the Department Should Confirm That Peer Has Reported Any Estimated Rebates

Petitioner points out that, in Peer's Section C questionnaire response, Peer informed the Department that it reported a rebate "only when it was actually granted." According to petitioner, this language suggests that Peer did not report estimated rebates.

Citing Peer's original and supplemental Section C questionnaire responses which indicated that it paid lump-sum sales-target rebates to certain distributors, Torrington also argues that Peer did not make it clear whether it reported any estimated rebate amounts applicable to the POI sales.

For purposes of the final determination, both petitioner and Torrington maintain that any estimated rebates not yet paid should be deducted from U.S. prices. If Peer has failed to deduct such amounts (or failed to report actual payments after the Section C response), both petitioner and Torrington suggest that the Department should apply facts available by assuming that all customers participating in Peer's rebate program ultimately received appropriate amounts.

Peer counters that Torrington's allegation that Peer did not report rebates which were not paid is unfounded. Peer states that it could not report rebates that were not owed. Moreover, Peer submits that the Department reviewed several rebate reports and confirmed the accuracy of Peer's methodology in its verification report. Therefore, Peer claims that it correctly reported all rebates.

Department's Position:

We disagree with petitioner and Torrington that we need to resort to facts available with respect to Peer's reported rebate. We confirm that Peer's reported rebate was calculated based on the amounts that were actually granted to its customers. We also confirmed that estimated rebates not yet paid have been deducted from U.S. prices. See Peer Bearing Company–Zhejiang Xinchang CEP Verification Report (Peer CEP Report) dated January 6, 2003, at 8, and Verification Exhibits P-8A at 14, and P-13C at 3. Therefore, for purposes of the final determination, we have used Peer's reported rebate.

Comment 15: Whether the Department Should Examine or Restate Peer's Reported "Section E" Costs

Torrington alleges that it is unclear whether Peer has reported all appropriate Section E costs. Specifically, citing Peer's supplemental Section E response in which Peer stated "labor costs are only for assembly," Torrington points out that it is unclear whether indirect labor outside the immediate assembly operation is accounted for in Peer's reporting. For purposes of the final determination, Torrington requests that the Department ensure that all such amounts are included or that the Department re-state the amounts.

Department's Position:

We disagree with Torrington. At verification, we examined Peer's reported Section E "further manufacturing" costs and reconciled the reported costs to Peer's accounting records. Specifically, we examined the detailed cost buildup for the largest-selling model during the POI. Our examination covered material costs, labor and overhead costs, G&A, and cost of goods sold. We then tied total amounts incurred in Peer's Mounted Unit Division during the POI to Peer's internal product line analysis reports and proper financial statements and found no discrepancies (see Peer CEP Report at page 17). Based on our verification findings, we have used Peer's reported Section E costs for purposes of the final determination.

Comment 16: Whether the Department Should Restate Peer's U.S. Indirect Selling Expenses

Torrington contends that Peer may have understated its U.S. indirect selling expenses by not including expenses incurred outside the immediate context of the strictly selling operation or the particular product-line group. Torrington notes that Peer's reported indirect selling expenses seem to omit numerous expenses treated as selling expenses in the antidumping law (e.g., rent, executive salaries, electricity, and supplies). Torrington argues that Peer did not adequately address these concerns during the supplemental questionnaire and verification stages of the investigation. Torrington further notes that Peer engaged in a similar manner of misreporting G&A related to selling expenses in TRBs New Shipper Review.⁴³ Torrington further argues that the Department, during verification, unduly focused on "product line" accounts, thereby leaving substantial administrative expenses unaccounted for.

Accordingly, Torrington suggests that the Department re-verify Peer's reported indirect selling expenses, and make sure that Peer has included all product line expenses plus appropriate G&A. In the alternative, Torrington recommends restating the expenses by duly allocating the aggregate expenses traceable to the company's GAAP statements.

Peer maintains that, for purposes of the final determination, the Department should continue to use Peer's reported indirect selling expenses, given that Peer has placed on the record complete details concerning all selling and administrative expenses incurred. Peer asserts that indirect selling expenses were properly and reasonably allocated and reminds the Department that Peer was subjected to full verifications of its factors, sales, and further manufacturing data. Peer maintains that the verification procedures followed by the Department were thorough and all-encompassing, and the results of those procedures are well documented.

⁴³ Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of New Shipper Reviews, 67 FR 10665 (March 8, 2002) (TRBs New Shipper Review).

With respect to the administrative expenses that Torrington focuses on, Peer assures the Department that it has accounted for all such expenses in its reported G&A expense in its Section E questionnaire response. It is Peer's position that the inclusion of these expenses as part of its further manufacturing expense is wholly consistent with the Department's Section E questionnaire.

Additionally, Peer argues the Chinese TRBs case is distinguishable from the instant investigation because Peer did not further manufacture TRBs, whereas, in the present case, Peer does further manufacture ball bearings in the United States. Moreover, with respect to ball bearings, Peer is not a pure selling entity. For these reasons, Peer believes the facts in the instant investigation to be fundamentally different than the facts in China TRBs. As such, Peer encourages the Department to ignore petitioner's attempts to treat Peer's administrative expenses as selling expenses.

However, should the Department decide to treat part of Peer's administrative expenses as selling expenses, Peer urges the Department to do so in a way that recognizes the unique nature of Peer as a hybrid ball bearing manufacturing and sales company. In doing so, Peer suggests that the Department allocate administrative expenses between Peer's manufacturing and sales activities.

Department's Position:

We disagree with Torrington's claim that Peer's reported indirect selling expenses are understated because it omitted numerous expenses treated as selling expenses in antidumping law (e.g., rent, executive salaries, electricity, and supplies). Contrary to Torrington's claim, Peer's reported indirect selling expenses did include, among others, rent, electricity, and supplies. These expenses were listed under "other selling expenses," which is a part of Peer's reported indirect selling expenses. See Peer's CEP Verification Report at Exhibit P-20, pages 2 and 10.

Regarding Torrington's argument that the Department, during verification, unduly focused on "product line" accounts, thereby leaving substantial administrative expenses unaccounted for, we also disagree. As stated in Peer's CEP Verification Report, Peer's U.S. operations consist of various product lines, some of which (e.g., taper roller bearings or bushings) are not subject merchandise. It is Peer's normal practice to perform product-line specific analysis. Its accounting system routinely generates product-line specific statements for its management to review. Because several Peer's product lines involve non-subject merchandise, we find it necessary to rely on Peer's product-line analysis to distinguish revenues or expenses incurred for subject merchandise from those incurred for non-subject merchandise. Moreover, we have further reviewed Peer's reported indirect selling expenses and G&A and find that Peer has included all product line expenses plus appropriate the G&A expenses.

With respect to the case cited by Torrington, we agree with Peer that the instant case differs from TRBs New Shipper Review. In that case, Peer did not perform further manufacturing of tapered roller bearings; Peer was a pure selling entity. In contrast, in the present case, Peer further manufactures ball bearings in the United States. It has allocated a substantial amount of space for the further manufacturing related operations. As such, Peer is both a manufacturing and a selling entity of ball bearings. We determine that it is reasonable for Peer to claim the amount of G&A and indirect selling expenses as reported. Accordingly, we find no reason to reclassify Peer's reported G&A as indirect selling expenses. For purposes of this final determination, we continue to rely on Peer's reported indirect selling expenses and G&A expenses.

Comment 17: Whether the Department Should Restate Certain Factors (Labor and Certain Materials) Which Could Not be Obtained from Suppliers or Subcontractors

Citing Peer's Section D questionnaire response,⁴⁴ Torrington claims that Peer's reporting for labor and purchased components may be deficient as a result of the non-responsiveness of certain uncooperative suppliers and subcontractors. Specifically, Torrington argues that Peer merely provided labor quantities of subcontractors who "cooperated" by providing factors of production. As such, Torrington claims Peer's reporting is deficient, and suggests that the Department resort to facts available by using the highest labor usage reported by any other respondent per unit of weight of each component for which Peer's data is missing.

In addition, Torrington also disagrees with Peer's reporting of certain components (including slingers, strap rings, housing, collars, or anti-rotation pins) for which suppliers did not provide upstream factors information. In particular, Torrington disputes Peer's having physically weighed the components, rather than providing particular factors from suppliers. Torrington argues that physically weighing components fails to account for costs associated with scrap or reject units. Again, Torrington encourages the Department to apply facts available drawing on other information of record reflecting scrap ratios, rejects, etc.

Peer opposes the use of facts available on the grounds that its data were verified and the company was subjected to, and answered, multiple questionnaires and supplemental questionnaires. Peer claims that as a result of those verifications, the Department (as reflected in its verification reports), was satisfied with the sufficiency of Peer's data. Additionally, Peer argues that if the Department is going to radically alter its policy in this regard, it must announce such a change and be very specific about the new "way of doing business," as it would be unfair to change methodology in the middle of an investigation.

⁴⁴ See Torrington's case brief at page 40, which refers to Peer's supplemental Section D response at 14-15 (alluding to an exhibit detailing the total number of unskilled workers for XPZ (Peer), and each of its subcontractors who have cooperated by providing factors of production).

Department's Position:

We disagree with Torrington, and find that Peer responded to the best of its ability to our requests for information regarding FOP data. Throughout this investigation, Peer has demonstrated a high level of cooperation. Peer sent repetitive requests to uncooperative suppliers asking for FOP information; Peer informed the Department of these efforts; and Peer submitted timely responses to the Department's original and supplemental questionnaires. Moreover, Peer participated in a complete verification of its data, both in the PRC and in the United States, and provided the Department with a substantial amount of useable information.

Specifically, Peer was able to provide factors data from a substantial percentage of its subcontractors for critical services such as forging, cutting, first and second turning, and heat treatment. With respect to components, Peer was also able to obtain factors information from a substantial percentage of suppliers of key components, including balls, retainers, seals, and set screws. The component parts that Peer had trouble obtaining information from its suppliers on include slingers, snap rings, housings, collars or anti-rotation pins.⁴⁵ For those component parts, Peer reported the weight of the component, in lieu of factors for the component. Given Peer's efforts to provide the Department with information, the Department does not find that Peer's inability to provide certain FOP data warrants the use of facts available in calculating the margin in the instant case.

In our Preliminary Determination, we valued slingers, snap rings, and collars or anti-rotation pins based on a surrogate value of 11.1483, which is the surrogate value for "other ball/roller bearing parts" (HTS category 8482.99.00), rather than the component's factors value. To the extent we have already relied on the surrogate value for the named components to value components, Peer is correct to report the weight of these components. Accordingly, for this final determination, we are following our methodology from the Preliminary Determination.

With respect to housing, however, we agree with petitioner and have incorporated a reject rate, which is based on the highest reject rate that XPZ has reported, into Peer's reported cast iron consumption. See Peer's February 27, 2003, Calculation Memo for more details.

Comment 18: Whether the Department Should Use Facts Available for U.S. Inland Freight from the Warehouse to Unaffiliated Customers (INLFWCU)

Petitioner and Torrington argue that Peer has reported its U.S. freight on the basis of price as opposed to weight. They maintain that the Department has rejected value-based freight data in the past because of its potential to distort the cost of freight. For example, in Antifurction

⁴⁵ See pages 8-9 of Peer's July 11, 2002, Section D questionnaire response.

Bearings,⁴⁶ the Department applied facts available by assuming that all freight expenses during the POI were incurred for subject merchandise and allocating the total freight expenses to those sales. Accordingly, petitioner and Torrington urge the Department to continue this precedent by rejecting Peer's value-based data and apply facts available instead.

Peer submits that the inland freight calculation and supporting documentation for Peer's calculation was provided at verification. Further, Peer claims its calculation is not distorted because the relationship between price and weight, while not perfect, is very clear: heavier bearings are usually more expensive than light bearings. Peer argues that it properly allocated such expenses to only those sales where freight charges were incorrect.

Citing Antifriction Bearings,⁴⁷ Peer claims that the Department accepted respondent's (INA's) allocations based on sales value rather than a per-unit value, on the grounds that the firm's records do not permit the use of a preferred allocation method. In the instant investigation, Peer claims that it did not maintain weight records on outgoing shipments, nor did UPS or other freight companies provide Peer with records that would allow it to track weight. Based on the foregoing, Peer alleges that it used a methodology very similar to that of INA. Because its records did not permit the use of the Department's preferred allocation method, Peer asserts that its method of value-based allocation is acceptable under Department practices.

Department's Position:

We agree with Peer. At the verification of Peer, we discussed this issue at length with Peer's officials. Additionally, we examined Peer's accounting and sales records and its calculation of freight-out costs ratio to unaffiliated customers. We confirmed that Peer's value-based allocation methodology is reasonable under the circumstance and that its freight records did not allow it to use a weight-base allocation method. Therefore, consistent with the decision in Antifriction Bearings, we have used Peer's reported inland freight from warehouse to customers (INLFWCU) in the final determination.

Comment 19: Whether The Department Should Use Facts Available for Peer's U.S. Unaffiliated Commissions

Both petitioner and Torrington challenge Peer's reporting of U.S. unaffiliated commissions. Specifically, they allege Peer inappropriately derived commission rates when it divided total commissions for one agent and then divided that total by total sales for that agent in order to

⁴⁶ See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, 66 FR 36551 (July 12, 2001) (Antifriction Bearings).

⁴⁷ See Antifriction Bearings and the accompanying Decision Memorandum at Comment 79.

calculate a commission percentage. Petitioner and Torrington claim this method averages direct expenses and thereby dilutes deductions and eliminates dumping margins on specific sales. Torrington suggests that the best approach would be to apply each agent's contractual rate to all sales the agent made. However, if the record lacks sufficient information, petitioner and Torrington urge the Department to use facts available by applying the highest commission rate for any unaffiliated agent on all sales on which commissions were paid.

Peer denies petitioner's and Torrington's allegation and maintains that it reported commissions in a systematic fashion. Peer asserts that it provided the Department with a detailed worksheet showing the commission rate for each agent. Using its accounting records, Peer allocated commission expenses only for those sales where commissions were due.

Department's Position:

We disagree with petitioner and Torrington that we should use facts available by applying the highest commission rate for any unaffiliated agent on all sales on which commissions were paid. As Peer indicated in its supplemental questionnaire response, it cannot always track whether a specific model received a commission. Therefore, Peer divided the total commissions for one agent by the total sales for that agent in order to calculate a commission percentage.

Peer provided its calculated agent-specific commission rates in its Section C supplemental questionnaire response. We verified these agent-specific commission rates at Peer's verification. See Peer CEP Report at page 10 and Verification Exhibit P-11. We found that Peer's reported agent-specific commission rates are consistent with the rate contained in the sample commission agreement (see Peer's Section C supplemental questionnaire at Exhibit 10).

As Torrington points out, it is reasonable to assume that unaffiliated agents require commissions on all their sales, not just sales of specific models. We found that Peer's reporting methodology is reasonable because Peer applied the agent-specific commission rate to all models sold by that agent during the POI. Accordingly, we have used Peer's reported commission in the final determination.

Comment 20: Whether the Department Should Revise Its Margin Calculation Methodology

Peer urges the Department to revise its methodology in this investigation to allow negative model-specific margins to be included in the aggregate margin calculation. Peer acknowledges that setting negative margins to zero is the standard practice of the Department, but it argues that the statute does not require the Department to set negative margins to zero and that doing so conflicts with the WTO obligations of the United States because the WTO has invalidated this

practice. Therefore, in order to interpret the dumping law consistently with U.S. obligations under the WTO, Peer urges the Department to reverse its past practice.

Specifically, Peer cites the WTO Appellate Body's decision in Bed-Linen,⁴⁸ where the WTO Appellate Body found that the European Communities' (EC) practice of zeroing was inconsistent with Article 2 of the WTO Antidumping Agreement. Although Peer is aware that under the URAA, the Department does not consider adverse panel rulings involving other member states to be binding,⁴⁹ nonetheless, Peer argues that the Department does have the option in this investigation to bring its practice into conformity with the Appellate Body decision. Citing Murray v. Schooner Charming Betsy, 6 U.S. 64 (1804),⁵⁰ Peer alleges that in this case, the Department has the option of construing the statute in a way so that it is consistent with U.S. obligations under the WTO Antidumping Agreement. Thus, for purposes of the final determination, Peer requests that the Department revise its methodology to allow negative model specific margins to be included in the aggregate margin calculation.

Petitioner maintains that the Department's treatment of "zero" margins is consistent with its obligations under the antidumping statute. Citing Hot-rolled Flat Products from the Netherlands,⁵¹ petitioner notes that since the WTO Appellate Body issued its decision in Bed-Linen in 2001, the Department has consistently held the position that its methodology is both required by the antidumping statute and is consistent with the U.S. obligations under the WTO.

According to petitioner, 19 U.S.C. § 1677(35)(A) of the antidumping statute defines "dumping margin" to be "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Further, 19 U.S.C. § 1677(35)(B) defines the "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer."

⁴⁸ European Communities - Antidumping Duties On Imports of Cotton-Type Bed Linen From India, WT/DS141/AB/R (March 12, 2001) at www.wto.org., para. 46 et seq. (Bed-Linen).

⁴⁹ ARG Windshields. Moreover, the Bed Linen from India Panel and Appellate Body decisions concerned a dispute between the European Union and India. We have no obligation under U.S. law to act on this decision.

⁵⁰ Where the Supreme Court said: "An act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains. . . ."

⁵¹ See Certain Hot-rolled Carbon Steel Flat Products from the Netherlands: Notice of Final Determination of Sales at Less than Fair Value, 66 FR 50408 (October 3, 2001) (Hot-rolled Flat Products from the Netherlands) and the accompanying Decision Memorandum at Comment 1.

Under these definitions, quoting the Department's decision in Hot-rolled Flat Products from the Netherlands, petitioner submits that the Department must set at "zero" negative margins for individual transactions because "at no stage in {its investigation} is the amount by which export price or constructed export price exceeds normal value on non-dumped sales permitted to cancel out the dumping margins found on other sales." Furthermore, petitioner contends that Peer's argument that the term "exceed" should be interpreted to include a value that falls below the normal value is a nonsensical reading of the antidumping statute and should be rejected as conflicting with the statute's plain meaning. Moreover, petitioner adds, that Peer is not prejudiced by the Department's practice because its methodology treats "positive" margins reasonably, where the dumping rate's denominator includes the value of the "negative margin" sales and its numerator includes a zero value for "non-dumped" merchandise, so that a "greater amount of "non-dumped" merchandise results in a lower weighted-average margin."⁵²

As to the U.S. obligations under the WTO, petitioner counters, the Uruguay Round Agreements Act states clearly that in any "potential" conflict between U.S. law and WTO provisions, U.S. law prevails.⁵³ Moreover, petitioner adds that the United States does not consider decisions issued by a WTO panel to be legally binding under U.S. law. Additionally, petitioner continues, Bed-Linen cannot impose any new WTO obligations on the United States because it resolves a dispute between the European Union and India. Thus, contrary to Peer's assertion, petitioner argues that the Department has no "obligation" to revise its methodology as a result of the Bed-Linen decision.

Based on the foregoing, petitioner claims that Peer has provided the Department with no reason to change its "zeroing" methodology, and the Department should follow its past practice in this investigation.

Department's Position:

We disagree with Peer and have not changed our margin calculation methodology for the final determination. Contrary to Peer's claim, the methodology that we used to calculate the weighted-average dumping margin in the Preliminary Determination is mandated by U.S. law. Section 771(35)(A) of the Tariff Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) defines "weighted-average dumping margin" as "the percentage determined

⁵² The Department has also observed that this methodology is necessary for the administrative purposes of establishing duty deposits in investigations because "the Customs Service is not in a position to know which entries of merchandise entered after the imposition of a dumping order are dumped and which are not." Id.

⁵³ See 19 U.S.C. § 3501(a)(1) ("No provision of any of the Uruguay Round Agreements ... that is inconsistent with any law of the United States shall have effect.").

by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margins" in section 771(35)(B) makes clear that the singular "dumping margin" in section 771(35)(A) applies on a comparison-specific level, and does not itself apply on an aggregate basis. At no stage in this process is the amount by which export price or constructed export price exceeds normal value on non-dumped sales permitted to cancel out the dumping margins found on other sales.

These statutory requirements take precedence over any potentially conflicting obligations under the URAA. Section 102(a)(1) of the URAA ("no provision of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstances that is inconsistent with any law of the United States shall have effect") makes clear that if there is a conflict between U.S. law and any provision of the WTO Uruguay Round Agreements, U.S. law prevails. Moreover, the SAA specifically provides that "[r]eports issued by panels or the Appellate Body under the DSU (i.e., the WTO Dispute Settlement Understanding) have no binding effect under the law of the United States." SAA at 1032, reprinted in 1994 U.S.C.C.A.N. 4040, 4318. Finally, the Bed-Linen Panel and Appellate Body decisions concerned a dispute between the European Union and India. We have no WTO obligation to act based on these decisions. Therefore, we found no reason to change our margin calculation methodology and are following our past practice in this investigation. See Hot-rolled Flat Products from the Netherlands.

Comment 21: Whether the Department Should Exclude Certain Non-Operational Expenses and Reclassify Certain Operational Expenses in Calculating Financial Ratios

In its case brief at Exhibits 11 and 13, Peer derived two sets of financial ratios: "Scenario One" is based on the financial ratios for ABC, HMT, and AEC and "Scenario Two" is based on the financial ratios for ABC, HMT, AEC, SKF, FAG, and Timken. In deriving the two sets of financial ratios, Peer excluded certain non-operational expenses and reclassified certain operational expenses.

a. Exclusion of Certain Non-operational "Expenses"

Peer excluded the following non-operational expenses: discounts and rebates, movement expenses, and changes in investments. Peer argues that these items are reported as expenses on the financial statements of certain Indian producers (ABC, HMT, and Timken), yet they do not relate to the operating expenses of these producers. For example, Peer counters that price reductions granted to customers are clearly not a part of factory overhead or SG&A expenses

and should not be included in deriving the surrogate overhead and SG&A ratios. In addition, Peer also claims that movement expenses are not a part of SG&A expenses and should not be included. Peer adds, inclusion of such expenses would result in a distortion of the margin analysis, therefore, these items should not be included in the calculation of overhead and expense ratios.

b. Classification of Certain Operating Expenses

Peer reclassified the operating expenses of each Indian producer according to their nature into the following categories: manufacturing overhead, G&A expenses, interest expenses, indirect selling expenses, direct selling expenses, or commissions. In addition, Peer points out that in instances where an Indian producer likely relates a particular expense to more than a single expense category, Peer allocated the relevant expense between categories.

1) Manufacturing Overhead

Peer has included all expense items related to manufacturing overhead incurred in the production of bearings.⁵⁴ Such expenses, when added to the value of direct materials, electricity, and labor costs, result in the total cost of manufacturing (COM).

2) General and Administrative (G&A) and Indirect Selling Expenses

Peer splits certain expenses between G&A and indirect selling expenses. Peer claims that G&A expenses reflect G&A expenses incurred by the surrogate producers and indirect selling expenses reflect the portion of expenses related to the sales operations of the surrogate producers. Because the surrogate producers are both producers and sellers of bearings, certain expenses were split between G&A and indirect selling expenses.⁵⁵

3) Products Purchased for Resale

Peer claims that the financial statements of FAG, SKF, and Timken clearly indicate that each company purchased finished goods for resale. If the Department uses financial information from these companies, Peer urges the Department to allocate a portion of the operating expenses

⁵⁴ FAG India reports a “Loss on sale of fixed assets” as part of its schedule of “Manufacturing and Other Expenses.” This amount has been offset with “Profit on sale of fixed assets” from the schedule of “Other Income.”

⁵⁵ All labor expenses that are not reflected in the Department’s wage rate calculation have been included as G&A expenses. Timken India’s 2001-2002 financial statements does not provide detail as to “Leave Salaries” or “Contribution to Gratuity Fund” as does Timken India’s 2000-2001 financial statements. For Timken India’s 2001-2002 fiscal year, these items were broken out from “Company’s Contribution to Provident and Other Funds” based on the relative amounts of these items in Timken India’s 2000-2001 fiscal year.

incurred by these companies to the purchase and resale of finished goods. Peer adds, failure to make this adjustment will result in a disproportionate amount of expenses being allocated to the direct inputs incurred by these companies in the production of bearings, which would unfairly overstate the financial ratios for calculating normal value. Therefore, Peer has included purchased goods for resale in the denominator (along with materials and electricity) of indirect selling expenses, direct selling expenses, and commissions.

4) Direct Selling Expenses

Peer alleges that, consistent with long-standing Department practice, it has classified advertising and sales promotion, bank charges, royalties, and warranties as direct selling expenses. In addition, it also allocated direct selling expenses over both cost of production and purchases of finished goods for resale.

Furthermore, Peer claims that because all of its U.S. sales of subject merchandise were CEP sales, direct selling expenses incurred in the United States will be removed in deriving the net U.S. price. Therefore, Peer maintains that direct selling expenses should be removed from normal value to effect a fair comparison between normal value and the U.S. sales transactions.

5) Interest Income

Peer maintains that, in keeping with the Department's practice, the Department should utilize the interest expense factor reported by Peer in its Section E response for purposes of normal value. According to Peer, the Department has a long-standing practice of using the corporate-wide interest expense for multinational corporations because "money is fungible." Moreover, Peer points out that such interest expenses were fully verified by the Department during the U.S. sales verification and are an appropriate basis for calculating Peer's interest expense.

Peer further submits that in the event that the Department disagrees with Peer, it should offset the interest expense of Indian surrogate producers with interest income. Peer alleges that the financial statements show that each Indian producer has current interest-bearing assets, but there is no evidence of long-term interest-bearing assets on the balance sheets of these companies. Thus, Peer has offset interest expense with interest income.

6) Commissions

Peer indicates that it has segregated commissions in the submitted financial ratios. Peer argues that the Department should follow its long-standing practice with respect to commissions in this investigation, *i.e.*, commissions are treated as direct selling expenses and are removed from normal value subject to the commission offset.

7) CEP Offset

Peer requests that the Department grant Peer a CEP offset. Peer maintains, because all of its U.S. sales of subject merchandise during the POI were CEP sales, there are very few selling functions and activities⁵⁶ involved in this transaction between XPZ and Peer Bearing. In contrast, since the overwhelming majority of bearings sold by Indian producers were sold to unaffiliated parties, there are significant selling functions and activities involved in these transactions. Thus, Peer claims that the sales transactions upon which the Department calculates the SG&A component of constructed value are at a different, more advanced level of trade (LOT). Peer argues that the Department will not be able to compare U.S. prices to normal value at the same LOT because different levels of trade exist. Further, Peer argues that because there is no way for the Department to calculate an LOT adjustment, the Department should follow its market economy practice⁵⁷ and grant Peer a CEP offset.

Petitioner responds that Peer's proposed methodology contains inconsistency, serious methodological deficiencies, and numerous clerical errors, and, therefore, should be rejected. First, petitioner alleges that Peer's approach to classifying operating expenses is inconsistent with the Department's past practice, and that and Peer's proposed further allocations methodology reflects arbitrary judgments based on inadequate evidence. Citing the Department's FOP Memo,⁵⁸ petitioner argues when a particular line-item operating expense could potentially be included in either FOH or SG&A and there is insufficient information on how to allocate that item, the Department allocates the expense equally between FOH and SG&A. According to petitioner, Peer's methodology includes a similar first step of dividing a particular operating expense equally between FOH and SG&A, but Peer then divides the SG&A expenses into one of five separate categories, then it further arbitrarily allocates fourteen common expense items among these five categories. Petitioner counters that Peer proposed this change without providing any rationale for why it is necessary or demonstrating that the Department's current practice produces inaccurate results. Petitioner further argues that Peer has allocated the SG&A expenses in a manner in which reasonable minds could differ, *i.e.*, petitioner or the Department could have come up with very different allocations. Based on the foregoing, petitioner urges the

⁵⁶ As discussed above, Peer submits that in deriving the net U.S. price for margin comparisons, the Department should remove applicable indirect selling expenses (as well as certain direct expenses) incurred in the United States. The resulting net price will be the price for merchandise at the CEP level of trade, as sold from the producer (XPZ) to its affiliated U.S. importer/reseller (Peer Bearing).

⁵⁷ Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy, 63 FR 49080, 49083 (September 14, 1998) (Granular Resin).

⁵⁸ See Department of Commerce Memorandum from James Terpstra to Melissa Skinner, Antidumping Duty Investigation of Certain Ball Bearings and Parts Thereof from the People's Republic of China: Factor of Production Values Used for the Preliminary Determination, at 6 (October 1, 2002) (FOP Memo).

Department to reject the proposed approach and continue to follow its current practice for classifying operating expenses.

Second, petitioner claims that in addition to the methodological problems, Peer's proposed methodology contains several calculation errors which materially affect the resulting financial ratios. Petitioner made the following specific arguments regarding offsetting profits and losses from sales of fixed assets, interest expense, and profit ratio calculation:

1) Offset of Profits and Losses from Sales of Fixed Assets

Petitioner alleges that in calculating FAG's FOH costs, Peer incorrectly subtracted "profit on sale of fixed assets as per books" from "loss on sale of fixed assets as per books." Petitioner argues, while the loss on sales of fixed assets is clearly listed in FAG's annual report as an expense for manufacture, administration, and selling,⁵⁹ the profit on the sales of fixed assets is an income item that cannot be tied to FAG's manufacturing operations. Thus, petitioner maintains that offsetting the loss on the sale of fixed assets with this profit on these sales (an income item) is inappropriate.

2) Interest Expense

Petitioner argues, when calculating interest expense, Peer inappropriately offsets this amount with a company's entire interest income, claiming that all of the interest-bearing items of each company are short-term. Petitioner argues that this is inappropriate because it is highly unlikely that all of a company's interest earnings are generated by short-term instruments resulting in an actual financial outflow. Petitioner points out that interest earnings may accrue from, for example, advances to suppliers and overdue payments from customers. In such situations, the resulting interest income is not an appropriate offset to interest expenses, counters petitioner.

To prove that Peer's methodology is inappropriate, petitioner refers to ABC's 2001-2002 annual report.⁶⁰ Petitioner notes that on March 31, 2002, ABC's balance with "scheduled banks" is listed as 44.39 Laks, yet ABC's total interest income during the year was 32.36 Laks, which is clearly too high because it translates into an annual interest rate on savings of 73 percent.⁶¹ In this regard, petitioner claims that, based on ABC's reports which separates interest

⁵⁹ See Certain Ball Bearings and Parts Thereof from the People's Republic of China—Petitioner's Comments on Surrogate Country Selection and Submission of Updated Factors of Production, at Attach. 28A (FAG 2001 Annual Report at 33) (September 10, 2002) ("Petitioner's Sept. 10 Submission").

⁶⁰ See Submission of Surrogate Value Information by Zhejiang Xinchang Peer Bearing Company Ltd. and Peer Bearing Company, at Attach 22 (ABC 2001-2002 Annual Report) (December 13, 2002)

⁶¹ See *Id.* (ABC 2001-2002 Annual Report at 17-18).

from bank deposits and from other sources, only 0.03 Laks worth of its interest income was bank interest.⁶² However, petitioner continues, in Peer's calculation, the entire 32.36 Laks were subtracted from ABC's interest expenses, a step that is clearly inappropriate. Moreover, petitioner points out that some companies (e.g., FAG, SKF) do not separate interest from bank balances from other types of income. In these instances, petitioner claims that the Department has no basis for estimating the offset to interest income, therefore, it is clearly inappropriate to offset interest expenses using the entire amount of interest shown in the annual reports.

3) Profit Ratio

Petitioner counters that Peer's proposed surrogate profit calculations are inaccurate because Peer did not exclude the financial data for ABC and SKF which experienced a financial loss. In its case brief, petitioner asserts that it is the Department's consistent practice to exclude the financial data of all companies that registered negative profits. Petitioner urges the Department to adopt its proposed methodology to calculate surrogate values for FOH and SG&A using NRB's and SKF's financial data and to calculate the surrogate value for profit using only NRB's data because SKF's negative profits should be excluded. See Comments 1.A through 1.I above.

Department's Position:

We disagree with Peer's entire approach that it is possible to accurately parse out certain expense categories and recalculate the financial ratios. Each of the surrogate companies produce subject merchandise, and to some degree other products, as is true of the respondent companies. In addition, each company is structured somewhat differently, as is true of the respondent companies. Finally, each surrogate producer has different accounting practices. There is simply no way to accurately account for all the variation on these factors and calculate financial ratios that are somehow more accurate or representative than what we have already used.

As stated above in Comment 1.G, where Torrington suggests that the Department restate Indian surrogate producer's factory overhead and SG&A expenses, it is the Department's long-stated policy not to adjust a surrogate producer's overhead and SG&A figures. See Notice of Final Determinations of Sales at Less than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation (1995 Magnesium Investigation), 60 FR 16440 (March 30, 1995); Chrome-Plated Lug Nuts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 61 FR 58514 (November 15, 1996); Persulfates from the People's Republic of China: Final Results of Antidumping Administrative Review, 64 FR 69494,

⁶² See Id. (ABC 2001-2002 Annual Report at 18). ABC earned 0.07 percent interest on its cash bank deposits (0.03 Laks , 44.39 Laks = 0.0007, which equals 0.07 percent).

(December 13, 1999). Also see Pure Magnesium from the Russian Federation and the accompanying Decision Memorandum at Comment 2.

In this instance, Peer requests that the Department use the financial ratios which were included in its case briefs and were calculated using its proposed methodology as summarized in this Comment. Peer's methodology requires a line-by-line evaluation for surrogate producer's overhead and SG&A expenses. See Peer's case brief submission at Exhibit 13, dated January 13, 2003.

Pursuant to the Department's past practice of not adjusting a surrogate producer's overhead and SG&A figures unless we find a compelling reason, in the final determination of the instant investigation, we did not accept Peer's proposed methodology because we find no reason to deviate from past practice. Rather, we calculated the financial ratios based on four Indian surrogate producers financial data, using the same methodology as in the Preliminary Determination. See Comment 1.J above and the final determination FOP Memorandum for further details.

Regarding Peer's request for a CEP offset, we disagree with Peer because in the instant case there is simply insufficient information on the record to make a CEP adjustment. For discussion of this issue, see Comment 26, below.

Comment 22: Whether the Department Should Use More Contemporaneous Electricity Data

Peer suggests that for purposes of the final determination, the Department value electricity using more contemporaneous Indian government data, rather than relying on information from a 2000-2001 yearbook compiled by the Tata Energy Research Institute to value electricity (Tata data). Specifically, Peer indicates that on December 23, 2002, it put on the record electricity price statistics as published by the State Electricity Board (SEBs) and Electricity Department (EDs) of the Power & Energy Division, in the 2001-2002 Annual Report on the Working of State Electricity Boards & Electricity Departments (WSEBED). Peer argues that this data is better than the Tata data because it covers both 2000-01 and 2001-02 data, therefore, it covers the POI and is contemporaneous, and it is from a public source. Furthermore, Peer proposes that a simple average method should be used to derive the surrogate electricity price, first by calculating the simple annual average price for each year, then taking the simple average of the two annual averages.⁶³

⁶³ Which will result in Rs 3.20675/Kwh, comparing to the Rs 4.1862/Kwh used in the preliminary determination.

Petitioner urges the Department to reject Peer's proposal and value electricity based on revised 1999-2000 data from the most current WSEBED report or, alternatively, use a value generated by averaging the electricity rate of the six Indian states that account for at least half of India's bearing production.

In its case brief, petitioner submits that in the Amended Preliminary Determination, the Department based its calculation on outdated WPI data and calculated a surrogate value for electricity of \$0.08798/kwh. According to petitioner, India's WPI underwent a major revision in April 2000 and the old index (1981/1982 = 100) is not strictly comparable to the new index (1993/1994 = 100). Citing its December 13, 2002, submission, petitioner alleges that the new index average for 1999/2000 is 168.9, which generates an inflation factor of 1.3407. Applying this factor to the revised 1999/2000 electricity rate⁶⁴ generates a surrogate value for electricity of 4.444 Rs/kwh or \$0.093/kwh,⁶⁵ which should be used by the Department in the final determination, petitioner maintains.

In responding to Peer's argument using more contemporaneous India official data, petitioner counters that the 2001-2002 WSEBED electricity data cited by Peer are plan data rather than actual electricity prices, thus, they do not represent the actual experience of Indian ball bearing producers during the POI. In addition, Petitioner points out that there are numerous obvious errors in that 2001-2002 plan data. Therefore, it should not be used to calculate a surrogate value for electricity.⁶⁶

Petitioner maintains its position that a surrogate value for electricity of \$0.093/kwh is most appropriate because, it argues that this rate is based on actual, revised data for 1999-2000,

⁶⁴ Petitioner notes that the 1999/2000 data from the Energy Data Directory & Yearbook (2000/2001) were updated in 2001.

⁶⁶ For example, petitioner notes that the 2001-2002 WSEBED report lists an electricity price of 0 paise/kwh for Orissa, an obvious error. In addition, the price for electricity for the state of Maharashtra is only one-half of the previous year's price, and is identical to the price for the state of Meghalaya. Petitioner alleges that this too represents an obvious input error, as the rate in Maharashtra has been more than twice the rate in Meghalaya since 1996. Petitioner further counters that Peer did not even attempt to remedy the Maharashtra/Meghalaya input error or the other absurdly low ED rates. Such corrections are not even possible until actual data from the 2001-2002 time period is made available.

which were published in the 2000-2001 WSEBED report,⁶⁷ and is consistent with what bearing producers in India actually paid for electricity during the POI. According to petitioner, the average cost of electricity, adjusted to the POI, in the six states accounting for at least 48 percent of Indian bearing production was \$0.097/kwh. Furthermore, petitioner argues that \$0.093/kwh is reasonable comparing to the two Indian companies that reported electricity costs in their annual reports, where much higher prices were reported, \$0.099/kwh for TIL, and \$0.110/kwh for ABL.

Based on the above, petitioner argues that the Department should either use \$0.093/kwh to value electricity or consider using the surrogate value of \$0.097/kwh generated by the six-state average., which represents the actual experience of a significant proportion of Indian bearing producers during the POI.

Department's Position:

We disagree with respondent and agree with petitioner in part. In regard to respondent's argument to use TERI electricity data, in place of Tata Energy data which we used in the Preliminary Determination, we find that the TERI data are a less accurate source on which to base our surrogate value for the POI. Specifically, the TERI data includes electricity sales to all economic sectors (e.g., domestic, commercial, agriculture/irrigation, industrial, etc.), whereas the Tata Energy is specific to industrial users. Although the TERI data are more contemporaneous, the TERI data are less accurate than the Tata Energy data since it includes several additional economic sectors. In addition, the Tata Energy data are based on public information and are consistent with the Department's approach in TRBs XIII and Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 66 FR 15076 (March 15, 2001).

We agree with petitioner's request that the Department maintain its use of the Tata Energy data as its source to value electricity. However, we disagree with petitioner that the WPI used to adjust the electricity surrogate value should be updated based on the data source that they provided. See WPI section above, which outlines the Indian WPI issue. We also disagree with petitioner's request to use a simple average of electricity rates in the six states mentioned above. The Department normally prefers to use a country-wide electricity rate to reflect a broad-based cost for electricity to ensure a fair representation of country-wide electricity costs. Therefore, the Department does not find that an average of electricity limited to six states is more representative

⁶⁷ Petitioner alleges that the revised 1999-2000 data, as published in the 2000-2001 WSEBED report, generate a surrogate value of \$0.093/kwh. This value is identical to the value generated using the 1999-2000 data in the current report.

than the country-wide rates published by Tata. The Department does not see any reason to depart from its normal methodology in regard to this issue.

The Department calculated our surrogate value for electricity based on electricity rate data from the Energy Data Directory & Yearbook (2000/2001) published by Tata Energy Research Institute. This data is tax exclusive, but includes the fuel cost adjustment. We calculated a simple average of the rates for the "industrial" category listed for 19 Indian states or electricity boards. In order to make this data contemporaneous with the current POI, we adjusted this figure to the POI using the POI average Reserve Bank of India (RBI) electricity-specific price index of 226.45 and the April 1999 through March 2000 average RBI of 164.37. We multiplied the electricity rate by this inflator 1.38 (226.45/164.37) to calculate the surrogate values in Indian Rupees for the POI of 4.19 Rs per Kwh.

Therefore, we have continued to use the same surrogate value for electricity as in the Preliminary Determination. For further details, see Final Factors of Production Valuation Memorandum dated February 27, 2003, on file in the CRU.

Comment 23: Whether the Department Should Use More Contemporaneous Data Involving Full Shipments for Brokerage and Handling Charges

Peer claims that the Department made a repetitive mistake, as it did in TRBs XIV, by using an absurd brokerage rate of Rs 1.6327/kg (\$34.25/MT). According to Peer, numerous parties have pointed out in this and past cases, the Indian brokerage and handling charges were calculated on a partial "shipment" of 1,080 kg. Citing Cixing's submission of December 13, 2002, Peer argues that the brokerage value proposed by Cixing, Rs 1.6327/kg (\$34.25/MT), was based on total shipments rather than a partial shipment, and was used in a recent 2000-2001 Crawfish administrative review.⁶⁸ Therefore, Peer urges the Department to use Cixing's submitted value as a surrogate value for brokerage and handling because that data is better and more contemporaneous.

Petitioner claims that there are two problems with Peer's argument. First, shipments of 1.08 MT are not as unreliable as Peer suggests. Further, petitioner alleges that shipments of this size are common in the steel industry. Second, petitioner argues that Cixing's proposed value is unreliable. According to petitioner, Cixing's value is based on the U.S. sales listing of the public questionnaire response that Essar Steel submitted in Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 50406-01 (October 3, 2001). Citing a Bulk Aspirin preliminary results and TRBs XIV, petitioner argues

⁶⁸ Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review, 67 FR 63877 (October 16, 2002) (2000-2001 Crawfish). See the September 30, 2002 Factors Valuation Memo at 5-6.

that the Department has consistently used the questionnaire response submitted by Meltroll Engineering in Stainless Bar from India: Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review, 65 FR 48965 (August 10, 2000) to calculate a brokerage and handling rate.⁶⁹ Petitioner further claims that Meltroll's submission included a breakdown of brokerage and handling charges into four elements: port trust charges, a shipping bill handling charge, terminal handling charges, and a B/L handling charge. All but one of these elements is significantly more expensive than the total brokerage and handling cost that Essar reported. Petitioner alleges that Essar's data clearly do not include all of the brokerage and handling expenses incurred at port. Therefore, petitioner urges the Department to reject Peer's proposal and continue to use data from Meltroll.

In addition, petitioner alleges in its case brief that the Department did not use the most current data when it calculated a brokerage and handling rate in the preliminary determination. Citing TRB XIV, petitioner requests that, for purposes of the final determination, the Department should revise its brokerage and handling rate by an inflation factor of 1.147 to 1.6925 Rs/kg.

Department's Position:

We agree with Peer and Cixing, and have used the proposed brokerage and handling charges proposed by Cixing in the final determination. See Cixing's Comment 47 for further details.

B. Wanxiang

Comment 24: Surrogate Value for Wooden Packing Pallets, Boxes

Wanxiang claims that at verification, the Department established that the packing material reported as a wooden "pallet" is more accurately described as a wooden (pine) box and verified that they weigh more than 40 kilograms on average. Thus, Wanxiang argues that the appropriate Indian surrogate value is category HTS 4415.10.00 for packing cases and boxes. Wanxiang also argues that in the Preliminary Determination, the Department estimated that a wooden pallet weighed 10 kilograms. However, Wanxiang points out that a pine box has four sides, a lid, and a base or pallet, which weighs more than a wooden pallet. Therefore, it is more reasonable for the Department to use 40 kilograms than 10 kilograms in its calculation in the final determination.

Petitioner states that the Department valued wooden pallets in the Amended Preliminary Determination using Indian import data for HTS subheading 4415.20.00 and determined that these units (boxes) weigh 10 kilograms each. Therefore, petitioner urges the Department to use

⁶⁹ See Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Changed Circumstances Review, 67 FR 51167 (August 7, 2002).

this same methodology and value in the final. However, petitioner also states that the data from Indian HTS subcategory 4415.10.00 provided by Wanxiang, after the Preliminary Determination, to calculate the surrogate value of wooden crates are provided on a per-unit basis. Therefore, petitioner urges the Department to use the surrogate value for wooden crates of \$1.7132/kg per 10 kg for the pine boxes that Wanxiang uses to ship loads of bearings and wheel hubs.

Torrington states that the Department found at verification that Wanxiang reported wooden pallets as a packing material when in fact the company used pine boxes. Therefore, Torrington argues that the Department should restate Wanxiang's packing expenses to conform to the results of the verification.

Department's Position:

We agree with Wanxiang. We verified that Wanxiang uses pine boxes rather than wooden pallets for shipping loads of bearings and wheel hubs. Because the pine boxes that we are valuing are more like wooden boxes than pallets, we find that wooden boxes are a better surrogate.

In the Preliminary Determination, for purposes of converting the Indian HTS subheading 4415.20.00 for wooden pallets, from pieces to kilograms, we determined that a pallet weighed 10 kilograms. We weighed pine boxes at verification and calculated an average weight in excess of 10 kilograms. In order to determine the kg per box, we calculated the weighted-average of the boxes we weighed. Then, we calculated the surrogate value using this weighted-average. Therefore, the Department determines that it is more appropriate to use the Indian HTS subcategory 4415.10.00 to derive the surrogate value for wooden pine boxes.

Comment 25: Wanxiang's EMQ Bearings

Torrington claims that bearings passing the electric motor quality (EMQ) test are more desirable than non-EMQ bearings and the testing costs should be assigned exclusively to units passing the test for meeting the applicable vibration standard. However, Torrington argues that Wanxiang did not distinguish the EMQ bearings from the non-EMQ bearings for purposes of reporting its factors of production. Therefore, Torrington argues, Wanxiang understated the factors for EMQ type bearings and overstated the factors for the non-EMQ bearings. Torrington suggests that the Department should determine whether Wanxiang exports only EMQ bearings to the United States, and if so, the Department should adjust the normal values of the U.S. products to reflect the full testing costs.

Wanxiang states that the EMQ bearing separates from other products during the vibration test, and there are no additional processing activities associated with the production of EMQ bearings.

Furthermore, Wanxiang states that there is no cost difference in terms of labor and machine hours for EMQ bearings versus non-EMQ bearings, and thus there is no difference in terms of the factors of production between EMQ bearings and other bearings. Therefore, Wanxiang argues that there is no adjustment to be made to Wanxiang's reported costs related to EMQ bearings.

Department's Position:

We disagree with Torrington. There is no evidence on record of material and measurable differences between EMQ and other bearings. For further discussion on labor hours, electricity and overhead, see Wanxiang's Verification of Certain Ball Bearings and Parts Thereof from the People's Republic of China to James Terpstra from the Team, dated December 20, 2002 (Wanxiang Verification Report, PRC). The slightly additional labor hours, electricity, and overhead that might be attributable to EMQ testing are already incorporated into the factors for direct and indirect labor, electricity, and overhead. Therefore, there is no need to separately calculate the factors of production attributable to EMQ testing, as Torrington suggests.

Comment 26: Wanxiang's CEP and Commission Offset

Wanxiang argues that the Department failed in the Preliminary Determination to grant the company an offset for its CEP sales in the United States and commissions it incurred on some of those sales. Wanxiang claims that there are few selling functions and activities involved in the transactions between Wanxiang China and Wanxiang America. Wanxiang contends that virtually all bearings sold by Indian producers were sold by unaffiliated parties, and that these transactions were at a more advanced LOT, involving significant additional selling functions and activities, than the constructed U.S. transactions used as the basis for net U.S. price. However, because there is no way to calculate a level of trade adjustment in a non-market economy case, and because Wanxiang incurred commissions only in the U.S. market, Wanxiang asserts that the Department, in calculating normal value (NV), should be deducting from the SG&A surrogate value an amount equal to Wanxiang America's CEP selling expenses and commissions deducted in the calculation of the net U.S. price.

Petitioner counters that Wanxiang does not cite to any facts on the record that confirm its assertions that Indian producers' sales occur at a different LOT than its sales to the United States in a way that affects the comparability of their prices. Petitioner points out that the Department grants offsets in only limited circumstances that are not present in this case. Petitioner states that a LOT adjustment is appropriate only when normal value is calculated at a different LOT from that of the constructed export price, the record shows that these sales occur at different marketing stages, and that these differences have an effect on price comparability. Assuming the record shows different LOTs, a CEP offset is appropriate when a foreign producer makes CEP sales to the U.S. market and normal value is established at a LOT which constitutes a more advanced stage of distribution than the LOT of the constructed export price.

Petitioner argues that the data available do not provide an appropriate basis to make a LOT adjustment. The CEP offset is capped at the amount of indirect expenses deducted from the U.S. CEP transactions. Petitioner also argues therefore that Wanxiang failed to satisfy their burden of establishing that they are entitled to a CEP offset. Thus, the Department should reject their request for such an offset.

Petitioner states that although the existence of substantial differences in selling activities is a prerequisite to a determination that the sales are occurring at different levels of trade, the presence of these activities is not a sufficient condition for determining that these sales occur at a different LOT. Petitioner counters that Wanxiang does not point to any evidence in the record to show that it does not pay commissions on its sales in China or that Indian producers do not pay such commissions. Consequently, both petitioner and Torrington argue that the Department should reject Wanxiang's request for a commission offset.

Department's Position:

We disagree with Wanxiang. Section 351.412(f) of the Department's regulations provides that the Secretary will grant a CEP offset only where (i) NV is compared to CEP price; (ii) NV is determined at a more advanced LOT than the CEP; and (iii) the data available do not provide an appropriate basis to determine whether the difference in the LOT affects price comparability. In the instant case, there is simply insufficient information to make these adjustments. The selling expenses in NV that would be subject to these adjustments are represented in an aggregate level in the SG&A of surrogate producers' financial statements, and there is no way to accurately break out selling expenses detail to make an accurate adjustment.

Although Wanxiang argues that trade in India was at a more advanced level than trade in China, and involved significant additional selling functions and activities, than the constructed U.S. transactions used as the basis for net U.S. price, no evidence to support this argument was submitted on the record. The Department's determination to make a LOT adjustment, which in turn determines whether a CEP offset is warranted, is a fact-based examination of information placed on the record to determine whether such an adjustment is appropriate. Substantial differences in selling activities are a necessary, but not sufficient, conditions for determining that there is a difference in the LOT. See 19 CFR § 351.412(b)(2).

While the statute requires certain adjustments to U.S. price, corresponding adjustments to NV are only required upon a sufficient showing that differences exist justifying the adjustment. See section 773(a)(7). In this case, the only information we have about selling expenses is the financial statements of the Indian producers. These do not specify whether Indian home market sales are at any particular LOT or include any particular selling expenses. Therefore, we do not have any basis upon which to determine whether any adjustment to the surrogate expenses is

appropriate. See Notice of Final Determination of Sales at Less than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19031 (April 30, 1996) (China Bikes).

Regarding Wanxiang's argument for a commission offset, pursuant to 19 CFR § 351.410(e), the Department normally will make a reasonable allowance for other selling expenses if a reasonable allowance for commissions is being made in one of the markets under consideration. The amount of such allowance is limited to the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less. However, in this investigation, the Department is unable to determine the commission level in the surrogate country, and, therefore, is unable to apply the commission offset cap.

Comment 27: Wanxiang's Steel and Scrap Data

Petitioner asserts that Wanxiang has failed to supply accurate steel and steel scrap data. Therefore, petitioner urges the Department to reject these data and, in accordance with 19 C.F.R §351.308, to use adverse inferences where necessary.

Torrington claims that the Department's Wanxiang Verification Report, PRC at page 21 suggests that Wanxiang has under-reported its steel use. Torrington posits that the Department should add the appropriate quantities and assign values in the final margin calculations to correct the under-reported steel use.

Wanxiang counters that there is no basis in the record for the Department to use adverse inferences regarding its steel use and scrap as suggested by petitioner. Moreover, Wanxiang claims that the Department verified its reported data and found that it had over-reported steel usage by reporting a factor for an elastic circlip for CONNUM 71, when in fact that model does not contain an elastic circlip. Wanxiang states that the Department should use in the final determination the revised FOP and U.S. sales data files submitted on December 20, 2002. According to Wanxiang, these data files reflect all required corrections to its data, including those contained in verification exhibits. Thus, no further corrections need to be made by the Department.

Department's Position:

We disagree with petitioner. Wanxiang reported in its November 5, 2002 questionnaire response that for model 513016 it had used an elastic circlip. However, at verification, we noted that this model does not contain an elastic circlip as a component. See Wanxiang Verification Report, PRC at page 18. The Department did not find any other discrepancies with respect to this model. Therefore, we do not find that Wanxiang failed to supply accurate steel and steel scrap data. As such, there is no basis for the Department to apply an adverse inference. The

Department will use, in the Final Determination, Wanxiang's revised FOP and U.S. sales data files submitted on December 20, 2002.

Comment 28: Wanxiang's Brokerage & Handling

Petitioner states that in the Amended Preliminary Determination, the Department used the questionnaire response submitted by Meltroll Engineering in Stainless Bar from India: Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review, 65 FR 48965 (August 10, 2000) to calculate a surrogate value for brokerage and handling, plus an inflation factor. However, according to petitioner, the Department did not use the most current WPI data to calculate the inflation factor. Therefore, petitioner urges the Department to revise its inflation factor and surrogate brokerage factor using the most current WPI data.

Wanxiang counters that the Department correctly noted in the Preliminary Determination, and confirmed at verification, that Wanxiang's brokerage and handling was included in the ocean freight expense charged by its market economy shipper.

Department's Position:

We agree with Wanxiang. In the Preliminary Determination, the Department used the market economy prices paid during the POI by Wanxiang because a representative portion of Wanxiang's exports of the subject merchandise to the United States was shipped by market economy carriers and paid for in market economy currency. Therefore, it is inappropriate to apply a surrogate value to this factor for Wanxiang. Regarding the inflation factor, the Department has updated the Indian WPI data based on the IMF series and incorporated this WPI in its calculations for all factor values that required the application of the WPI in the preliminary determination. For further discussion on this issue, see the Final Determination Valuation Memorandum from the Team to the File (Valuation Memorandum), dated February 27, 2003.

Comment 29: U.S. Inland Freight

Petitioner argues that in the Amended Preliminary Determination, the Department provided values for inland freight, but did not create different values for inland freight within the United States and inland freight within China. Petitioner urges the Department to use information from the Maersk Sealand internet website, as best information available on U.S. inland freight, to generate specific inland freight values for freight within the United States.

Wanxiang rebuts that the petitioner's argument is inapplicable to Wanxiang because U.S. inland freight is paid to U.S. carriers in dollars and reported on a transaction-specific basis. Therefore, the Department correctly based Wanxiang's U.S. inland freight on Wanxiang's actual expenses.

Department's Position:

We agree with Wanxiang. In the Preliminary Determination, the Department used the market economy prices paid during the POI by Wanxiang in a market economy currency. Therefore, it is inappropriate to apply a surrogate value to this factor for Wanxiang in the final determination.

Comment 30: Ocean Freight

Petitioner states that in the Amended Preliminary Determination, the Department calculated a surrogate value for ocean freight and adjusted it by an outdated inflation factor of 1.0196. Petitioner urges the Department to use the more current and accurate inflation factor of 1.020359 based on Haver's updated Indian WPI series.

Wanxiang rebuts that the petitioner's argument is inapplicable to Wanxiang because, as the Department verified, Wanxiang's ocean freight expense was paid to market economy shippers in United States.

Department's Position:

We agree with Wanxiang. See Wanxiang's Brokerage & Handling comment, above.

Comment 31: Computer Programming Error (ELASCLP2)

Wanxiang claims that in the Amended Preliminary Determination, the Department failed to multiply the distance to the factory (ELASCDIS) by the factor value for ELASCLP in calculating the value for elastic circlips (ELASCLP2).

Petitioner did not comment.

Department's Position:

We agree with Wanxiang. This programming error has been corrected in the final determination.

Comment 32: Steel Type for Rings and Balls

Wanxiang argues that in the Preliminary Determination, the Department did not consistently identify the correct steel type used for rings and balls. For example, according to Wanxiang, the

Department identified all models as having been made from steel tube. However, some models used ball bearing steel bar, while others used steel tube. Wanxiang claims that the Department should use the information reported in the STELTYPE field to identify the correct steel type for each component.

Petitioner states that Wanxiang has submitted FOP and U.S. Sales data several times, and the first four submissions did not include the STELTYPE field. Therefore, petitioner urges the Department to pay particular attention to ensure that Wanxiang actually reported the correct steel type in the STELTYPE field. In addition, petitioner states that the manufacturing of inner and outer rings from steel bar, as opposed to steel tube, requires additional labor hours and greater steel usage, hence the Department should ensure that Wanxiang's steel and labor usage rates for rings made from steel bar reflect these extra production costs.

Department's Position:

We agree with petitioner, in part, that Wanxiang did not include the STELTYPE field in its first submissions. However, in its July 15, 2002 questionnaire response at page D-9 and its September 4, 2002 questionnaire response at page 1, Wanxiang provided, in chart form, information pertaining to the type of steel used to manufacture inner and outer rings and steel balls, from which the Department derived the surrogate values in the Preliminary Determination. In its October 28, 2002 submission, Wanxiang presented the steel type data in the STELTYPE field. Thus, Wanxiang did not submit new information, but rather presented the steel type data in a different format. However, we noted that the steel type data is incomplete. Therefore, in the final determination, the Department used the information reported in the STELTYPE field to identify the steel type, but where this information is incomplete, the Department used the data from the Preliminary Determination to identify the steel type.

Comment 33: Steel Wire Rod (for Balls)

Wanxiang states that in the Preliminary Determination, the Department used the Indian HTS 7228.30.19 for models that used ball bearing steel wire rod for balls. Wanxiang contends that the Department used a surrogate value based on Indian import data for HTS 7227.90.11 for other respondents. Therefore, the Department should apply this same surrogate value to Wanxiang.

Petitioner asserts that the Department's use of Indian import data for HTS subheading 7227.90.11 to calculate a surrogate value for steel rods used for balls is a departure from precedent. Petitioner claims that in past cases involving TRBs from China, the Department used the HTS subheading 7228.50.09 to calculate the surrogate value of steel rod for rollers (the TRB equivalent of balls). Petitioner states that it is unclear why the Department opted to depart from precedent in this investigation and use HTS subheading 7227.90.11, which includes hot-rolled

products that are not cold-finished. Petitioner urges the Department to continue its past precedent and to use the more reliable data from HTS subheading 7228.50.09 to value steel wire rod for balls.

Torrington contends that to be classifiable under heading 7227, the bars or rods must be both in coils and hot-rolled. If they are not hot-rolled, they would be classified under heading 7228, which does not distinguish between products in coils and not in coils. Therefore, Torrington rebuts that if the Department can not establish that Wanxiang uses hot-rolled steel coils for balls, then the Department should use the higher of the Indian import prices for HS 7227.90.11 and HS 7228.50.09.

Wanxiang counters that the Department should reject petitioner's request to value steel wire rod for balls based on Indian import prices for HTS subheading 7228.50.09. Wanxiang states that even if the Department has on occasion used HTS 7228.50.09 for rollers, as petitioner suggests, rollers are not balls. According to Wanxiang, the Department has consistently used HTS subheading 7227.90.11 for balls.

Department's Position:

We agree with Wanxiang, in part, that in the Preliminary Determination, the Department used Indian import data for HTS 7227.90.11 for models that used ball bearing steel wire rod for balls for other respondents, but not for Wanxiang. In the Preliminary Determination, the Department used Indian HTS 7228.30.19 (hot-rolled bar/rod for rings) to value balls for Wanxiang because Wanxiang's September 4, 2002 questionnaire response showed that SAE 52100 steel round bar was used to produce inner and outer rings, and balls with a diameter of 5-11mm. At verification, we noted that Wanxiang uses steel coils to produce small balls and that larger balls were made with straight steel bars. See Wanxiang Verification Report, PRC at page 11. In the final determination, for models that used ball bearing steel wire rods for balls, we derived the surrogate value by applying a simple average of Indian HTS subheadings 7227.90.11 and 7227.90.12; for models that used steel bars for balls, we used import data for Indian HTS 7228.30.19.

Comment 34: Surrogate Value for SAE 1045 Plain Carbon Steel for Hubs, Spindles and Circlips, Bolts

Wanxiang argues that the Department should value its SAE1045 plain carbon steel at the prices it paid to suppliers outside of China. Wanxiang contends that if the Department decides to calculate a surrogate value for SAE1045 plain carbon steel for hubs, spindles, circlips, as well as bolts, the most appropriate matching tariff category is Indian HTS number 7214.99.09, which covers non-alloy bars and rods of the type imported by Wanxiang. Wanxiang also contends that Indian import values data for HTS 7214.99.09 is deficient, as evidenced when compared to U.S.

import values for the equivalent category. Thus, Wanxiang contends that the Department should use the surrogate value for plain carbon steel for Japanese export values to Indonesia, or the data for Japanese exports to the world (HTS category 7214.99.150).

Petitioner counters that although SAE 1045 steel can be used to manufacture hubs and spindles for earlier generation wheel hub units, this grade of steel is rarely used in higher generation wheel hub units. Petitioner, therefore, urges the Department to confirm that Wanxiang's third generation wheel hub units are actually made of SAE 1045 steel and not of a higher carbon content steel. Petitioner also counters that the Japanese exports to Indonesia, for HTS subheading 7214.99.150 surrogate value, suggested by Wanxiang is aberrational because the value derived from Japanese exports to Indonesia is less than half the value of Japanese exports to the world for that same HTS subheading. Moreover, petitioner claims that 92 percent of Japanese exports to Indonesia in category 7214.99.150, by value, occurred in December 2001, indicating that these data are unreliable. Petitioner claims that Wanxiang's proposal for the Department to use Japanese exports to Indonesia would require the Department to deviate from its customary practice of using the scrap surrogate value from the same importing country as the surrogate value data. Thus, petitioner urges the Department to use the same methodology it used in the Amended Preliminary Determination.

Torrington states that the Department should use an appropriate alternative surrogate value for the Final Determination. Torrington argues that the Department should not use Japanese exports to Indonesia because they are inconsistent when compared with the majority of Japanese exports during the POI. Torrington also argues that if the Department decides to use Japanese exports to the world, the two highest and two lowest values should be excluded.

Department's Position:

We determine to use the import data on the record from Indian HTS 7214.99.09 for surrogate value purposes for Wanxiang's SAE 1045 plain carbon steel. We determine not to use the import data that we used in the Preliminary Determination (data from Indian HTS 7227.90.19) because Wanxiang reported in its November 5, 2002, supplemental questionnaire response that ST12 steel is consistent with the written description of HTSUS subcategory 7214.99.00.30, which pertains to non-alloy steel rather than alloy steel. See page 6. This HTSUS subcategory pertains to "other bars and rods of nonalloy steel, not further worked than forged, hot-rolled, hot drawn or hot-extruded but including those twisted after rolling." At verification, we did not attempt to corroborate the information reported in its November 5, 2002, supplemental questionnaire response or Wanxiang's claim that the SAE 1045 steel it used is non-alloy steel. Therefore, we determine that the use of Indian HTS 7214.99.09 is warranted because, whereas Indian HTS 7227.90.19 pertains to imports of alloy steel, Indian HTS 7214.99.09 covers non-alloy bars and rods. Using the Indian HTS 7214.99.09 data on the record is preferable to adopting Wanxiang's proposal of using Japanese export statistics or Petitioner's proposal of

using the same methodology that we used in the Preliminary Determination. For further analysis, see the Factor of Production Values Used for the Final Determination Memorandum, dated February 27, 2003, on file in the CRU.

Comment 35: Surrogate Value for SAE 1566 Structure Carbon Steel for Certain Outer Rings and Spindles

Wanxiang claims that in its FOP data, it reported HTSUS category 7214.99.00.45 in the field STSPEC for models of outer rings and/or spindles made from SAE 1566 structure carbon steel. However, the Department used Indian HTS 7227.90.19 for the surrogate value for these parts, which is inappropriate because this category is for “other alloy” while SAE 1566 steel is a non-alloy steel. Wanxiang contends that the Indian HTS does not contain a category that more accurately matches SAE1566 steel than Indian HTS 7214.99.09, which is unreliable as noted above. Therefore, Wanxiang suggests that the Department should base the surrogate value on Japanese export values to Indonesia for Japanese HTS 7214.99.190 because there were no Japanese exports to India for this HTS category. Alternatively, Wanxiang suggests that the Department could apply the surrogate value used for SAE1045 steel to the few models that are produced from SAE 1566 steel.

Petitioner rebuts that the problem with Wanxiang’s approach is that HTSUS subheading 7214.99.00.45 covers only hot-rolled steel. However, according to petitioner, SAE1566 can also be cold-finished. Petitioner argues that because the Department does not have a scrap value for Indonesia it should not use a steel value for Indonesia. Petitioner claims that it is the Department’s practice is to use the scrap surrogate value from the same importing country as the surrogate value data. Therefore, petitioner urges the Department to follow the process it used in the Preliminary Determination and calculate the surrogate value using Indian import data for HTS subheading 7227.90.19. However, petitioner states that if the Department decides to use a non-alloy steel bar to value this high-manganese carbon steel, it can use Japanese exports to the world of HTS subheading 7214.99.190.

Torrington states that the Japanese export values to Indonesia for Japanese HTS 7214.99.190 must be rejected as aberrational; it is also less than half of the value of the U.S. benchmark. Torrington also states that the value of Japanese exports to the Philippines, which is one of the potential surrogates considered by the Department, is close to the average value of all Japanese exports, and is also closer to the U.S. benchmark than the value of exports to Indonesia. Thus, Torrington suggests that the Department use Japanese exports of HTS 7214.99.190 steel to the Philippines as the surrogate value for SAE 1566 steel.

Department’s Position:

We determine to use the import data on the record from Indian HTS 7214.99.09 for surrogate value purposes for Wanxiang's SAE 1566 plain carbon steel. We determine not to use the import data that we used in the Preliminary Determination (data from Indian HTS 7227.90.19) because Wanxiang reported in its November 5, 2002, supplemental questionnaire response that SAE 1566 steel is consistent with the written description of USHTS subcategory 7214.99.00.45, which pertains to non-alloy steel rather than alloy steel. See page 6. This USHTS subcategory pertains "Other bars and rods of nonalloy steel, not further worked than forged, hot-rolled, hot drawn or hot-extruded but including those twisted after rolling." At verification, we did not attempt to corroborate the information reported in its November 5, 2002, supplemental questionnaire response or Wanxiang's claim that the SAE 1566 steel it used is hot-rolled non-alloy steel. Consequently, there is no information on the record which can be used to confirm petitioner's claim that Wanxiang may have used steel that was cold-rolled rather than hot-rolled SAE 1566. Therefore, we determine that using Indian HTS 7214.99.09 is warranted because, whereas Indian HTS 7227.90.19 pertains to imports of hot-rolled alloy steel, Indian HTS 7214.99.09 covers hot-rolled non-alloy bars and rods. Use of Indian HTS 7214.99.09 data on the record is preferable to adopting Wanxiang's proposal of using Japanese export statistics or petitioner's proposal of using the same methodology that we used in the Preliminary Determination. For further analysis, see the Factor of Production Values Used for the Final Determination Memorandum, dated February 27, 2003, on file in the CRU.

Comment 36: Surrogate Value for Steel Bar (for Rings)

Wanxiang argues that if the Department does not use market economy purchase prices that Wanxiang's paid to its market economy supplier, then as a surrogate value, the Department should use Japanese export values to Indonesia (Japanese HTS category 7228.30.900) rather than the Indian import prices (Indian HTS 7228.30.19) suggested by petitioner and used by the Department in the Preliminary Determination. Wanxiang contends that the surrogate values used by the Department in the Preliminary Determination are aberrational because the Indian values for these imports were significantly higher than the U.S. values, which specifically related to bearing quality steel. Wanxiang also contends that Japanese export prices to Indonesia provide a surrogate value that is very close to the U.S. benchmark range, and to the price it paid to its arm's length market economy supplier.

Petitioner rebuts that neither the Indian import value that the Department used in the Preliminary Determination nor the value of Japanese exports to India is aberrational. Therefore, petitioner urges the Department to continue to use Indian HTS subheading 7228.30.19 to value steel bars for rings in the final determination. However, if the Department decides not to use the Indian data, petitioner urges the Department to use Japanese exports to India.

Torrington disputes Wanxiang's arguments that the Indian import prices used by the Department in the Preliminary Determination are aberrational, the quantities involved are too small, or that the

prices of Japanese exports to Indonesia are closer to the U.S. benchmark range to the actual prices paid by Wanxiang to its market-economy supplier.

Department's Position:

We disagree with Wanxiang that the Department should use the prices that Wanxiang claims are market economy purchase prices. As we explained in the Department's position in comment 8, we determined not to use Wanxiang's market economy prices. In addition, as explained above, India is our surrogate country.

We also disagree with Wanxiang's argument that the Indian data are aberrational. Our analysis of the Indian HTS data indicates that although there is some variation in the average unit values from different countries, there is no indication of aberrational data, such that certain data should be disregarded. For further analysis, see Factor of Production Values Used for the Final Determination Memorandum, dated February 27, 2003, on file in the CRU.

The Indian subheading 7228.30.19 contains data from a variety of countries at a variety of prices. In addition, the Department rejects Wanxiang's argument that the data should be considered aberrational based on a determination made in TRB's. The facts of that case are different from the instant case. Thus, we have continued to value steel bar for rings based on HTS subheading 7228.30.19 for the final determination.

Comment 37: Surrogate Value for Steel Tube (for Rings)

Wanxiang argues that for ball bearing steel tube for rings, the Department should exclude from the Indian data under Indian HTS 7304.59.01 values that are aberrational or should use Indian export prices to the United States under U.S. HTS 7304.59.10. Wanxiang asserts that the Indian HTS value used by the Department exceeds the highest value in the U.S. benchmark range by 38 percent, which renders the data unreliable and unusable as a source for surrogate values.

Petitioner counters that data under Indian HTS 7304.59.01 are not aberrational and urges the Department to continue to use this data in the final determination. Petitioner agrees with Wanxiang that the surrogate value for hot-rolled tube should be used where Wanxiang used tube to manufacture the inner and outer rings. However, petitioner cautions that the Department should be aware that the amount of labor that Wanxiang reported for the manufacturing to these tubes is both low and irregular. Petitioner, therefore, urges the Department in the final determination to make certain that Wanxiang's labor rates for rings manufactured from hot-rolled tube are accurate.

Torrington counters that the Department should reject Wanxiang's argument.

Department's Position:

We disagree with Wanxiang that the Department should exclude certain data from the Indian import data or that we should use Indian export prices to the United States. Our analysis of the data indicates that although there is some variation in the average unit values from different countries, there is no indication of aberrational data, such that certain data should be disregarded. For further analysis, see Factor of Production Values Used for the Final Determination Memorandum, dated February 27, 2003, on file in the CRU.

The Indian HTS subheading 7304.59.01 identifies imports from multiple countries at a varying range of prices, which are based on various import volumes. As previously stated, the facts of TRB's are different from this case, therefore we have based our decision on the data in the instant case. Thus, we will use Indian import data for HTS subheading 7304.59.01 to value Wanxiang's steel tube for rings.

Comment 38: Surrogate Value for Cold-Rolled Steel for Shields, Cages, Rubber Seals, Rivets

Wanxiang argues that the Indian HTS 7209.16.00 the Department used for the surrogate values for steel for shields, cages, and rubber seals are applicable only to flat-rolled product in coils, and not the steel used by Wanxiang. Wanxiang asserts that based on the thickness of the steel it uses, the appropriate matching categories are Indian HTS 7209.27.00 for grade ST12 and 7209.28.00 for grade 08F steel. However, if the Department finds there is an insufficient quantity of imports in Indian HTS 7209.28.00 to yield a usable surrogate value, then the Department should use Indian HTS 7209.27.00 for both categories of steel since the two Chinese grades are similar.

Petitioner counters that Indian HTS subcategory 7209.28.00.00 proposed by Wanxiang to value 08F steel includes only 60.9 tons of imports and only one month of shipments in excess of one ton. Thus, according to petitioner, it provides insufficient data for the Department's calculation of a steel surrogate value. In addition, petitioner points out that the Department's verification report for Wanxiang does not address whether Wanxiang uses plain carbon steel grades for shields and cages. For these reasons, petitioner urges the Department to reject Wanxiang's arguments and to maintain its position in the Final Determination.

Torrington counters that both ST12 and 08F are low carbon steels and based on the carbon content, the applicable tariff classification should be 7211.23, which applies to steel with a carbon content less than 0.25. Thus, the Department should use Indian import statistics for HTS 7211.23 for the final determination.

Department's Position:

We agree with Wanxiang and determine to use the import data categorized under Indian HTS 7209.27.00 and Indian HTS 7209.28.00 for calculating surrogate values for Wanxiang's ST12 steel and 08F steel, which Wanxiang used for shields, cages, rub seals, and rivets. In the Preliminary Determination, we used import data from Indian HTS 7209.16.00, which pertains to items described as "Flat-rolled products in coils not further worked than cold-rolled (cold-reduced) of thickness greater than 1 mm but less than 3mm." We determine not to use the import data that we used in the Preliminary Determination because Wanxiang reported in its November 5, 2002, supplemental questionnaire response that ST12 steel is consistent with the written description of HTSUS category 7209.27.00.00 and 08F steel is consistent with the written description of HTSUS category 7209.28.00.00. See page 6. These categories pertain to cold-rolled steel between 0.5 mm and 1 mm in thickness and less than 0.5 mm in thickness respectively. At verification, we did not attempt to corroborate the accuracy of the information reported in its November 5, 2002, supplemental questionnaire with regard to the thickness of the ST12 steel and 08F steel Wanxiang used. Consequently, there is no information on the record which can be used to confirm petitioner's concern that Wanxiang may have not used plain carbon steel for the production of shields and cages. With regard to Torrington's contention that the Department should use import data from Indian HTS 7211.23 rather than data from the HTS reported by Wanxiang, we note that the Indian HTS 7209.27.00 and HTS 7209.28.00 pertain to steel of any carbon content.

We disagree with petitioner and Torrington that import data for Indian HTS 7209.28.00 are deficient and therefore unuseable. The quantity of imports listed for the POI under Indian HTS 7209.28.00 are sufficiently large for calculation of the surrogate value for Wanxiang use of 08F steel. For further analysis, see Factor of Production Values Used for the Final Determination Memorandum, dated February 27, 2003, on file in the CRU.

Comment 39: Empty Wheel Hub Units

Petitioner states that empty wheel hub units should be included in the scope of this investigation because the petition expressly states that wheel hub units incorporating balls as the rolling element are among the covered antifriction bearings and parts thereof, except those unfinished parts that require heat treatment after importation. Petitioner contends that excluding empty wheel hub units would allow exporters and importers to easily circumvent an antidumping duty order that covers finished wheel hub units that incorporate balls as the rolling element. Moreover, because the empty wheel hub units can be used interchangeably, petitioner claims that it is not possible for Wanxiang to demonstrate that a given shipment of empty wheel hub units is "dedicated for use" in finished wheel hub units incorporating tapered rolling bearings and will not ultimately be used in a ball bearings application. Thus, to avoid these risks and uncertainties, petitioner argues that the Department should include all empty wheel hub units within the scope of its final determination.

Wanxiang did not respond to this comment.

Department's Position:

In the Preliminary Determination, the Department included wheel hub units in the scope of the investigation and stated that it would address this issue further prior to making a final determination. At Wanxiang's verification, company officials used an empty wheel hub unit to demonstrate that the base of the unit can be used with either ball bearings or tapered bearings as the rolling element. See Wanxiang Verification Report at page 11. We did not notice any physical characteristic in the base unit that would limit the use of an empty wheel hub unit to balls. Because empty wheel hub units could potentially incorporate balls as the rolling element after importation, we determine that such merchandise is included within the scope of this investigation.

C. Cixing

Comment 40: The Department Made an Error in Calculating the Regression-Based Wage Rate for China

Cixing argues that the Department made an error in calculating the regression-based wage rate for China in its recent September 2002 revision of the hourly wage rate. Specifically, Cixing maintains that in its regression analysis, for 2 out of 12 countries for which wage earners' and employees' data were available (i.e., Belgium and Norway), the Department incorrectly used the employees' data instead of wage earners' data. Cixing argues that the use of the employees' data in these two instances is inappropriate because the bulk of the labor incurred in manufacturing bearings is by low-level factory workers performing manual tasks. Accordingly, the Department should use the wage earners' data because it represents income for manual or production workers, while the employees' data reports income for non-manual workers. Furthermore, argues Cixing, using the employees' salary data for Norway and Belgium is inconsistent with the Department's own methodology, which was to use wage earners' data when both wage earners' and employees' data were available.

In its case brief, Cixing provided a new regression analysis using the wage earners' data for Belgium and Norway. Cixing arrived at a wage rate of \$0.825 per hour for China, which Cixing argues should not be rounded, since it would lead to further inaccuracies when multiplying by the factors of production, some of which have more than six decimal places. Cixing stresses that the use of the current wage rate of \$0.84 per hour would incorrectly inflate any potential dumping margins.

Petitioner and Torrington rebut Cixing's assertion, stating that there are several reasons why the Department should continue to use the established wage rate of \$0.84 per hour in the final determination. First, petitioner argues that the wage earners' data for Belgium and Norway are

not reliable. Namely, petitioner points out that the wage earners' data for Belgium is more volatile than its employees' data, and, in the case of Norway, the wage earners' rates are consistently higher than the employees' rates, suggesting inaccuracies in the Norwegian wage earners' data. Therefore, petitioner argues, because of the possibility of inaccuracies in the Belgian and Norwegian wage earners' data, the Department was justified in using the countries' respective employees' data to calculate a regression-based wage rate for China.

Next, petitioner maintains that it is not appropriate for the Department to recalculate the established regression-based wage rate in the context of the instant investigation. Petitioner submits that the Department has established the China wage rate, has published this rate as the appropriate rate in investigations involving China, and has been using this rate since September 2002 in this and other investigations. In calculating this rate, the Department utilized employees' data from 36 countries in addition to Belgium and Norway, which, petitioner points out, Cixing did not claim contained any inherent problems. Moreover, petitioner contends that in order to determine whether to revise the China labor rate, the Department would need to consider all of this information on a country-by-country basis, and such a review must occur outside of the time constraints of the instant investigation.

Furthermore, petitioner asserts that Cixing's request that the wage rate be rounded to the third decimal point should also be rejected. Petitioner states that it is the Department's practice to round regression-based wage rates to two digits, and it should continue to do so in the instant investigation.

Department's Position:

We agree with Cixing that we inadvertently used employees' data for Belgium and Norway instead of the wage earners' data for those countries when calculating the NME wage rate. We have corrected this inadvertent error.

However, we disagree with Cixing that we should round the wage rate to the third decimal place. Since the reported numbers are themselves rounded, carrying the numbers further than two digits would not increase precision. We have rounded the numbers in a manner that is consistent with the underlying wage rates used to determine the PRC wage rate. Therefore, the corrected wage rate for China is \$0.83 per hour, and we have applied this new rate in our margin calculations for the final determination.

Comment 41: Cixing's Market Economy Purchases of Balls

Cixing states that in the Amended Preliminary Determination the Department did not use the company's actual market purchase prices for steel balls imported from Japan due to some clerical inconsistencies on its market purchases worksheet. However, Cixing has corrected its

market purchases worksheet for balls and provided copies of all invoices and payment records. Cixing notes that its market economy purchases of balls are significant. Additionally, Cixing urges the Department to use a diameter-specific weighted-average market price per kilogram when valuing each ball size. Where Cixing did not purchase the exact diameter ball from Japan, the company recommends that the Department apply Cixing's weighted-average ball cost for all diameters.

Petitioner and Torrington counter that the Department should continue to utilize the methodology it applied in the Amended Preliminary Determination. Petitioner argues that it has no indication that the concerns regarding Cixing's market economy purchases of balls have been addressed since the Amended Preliminary Determination. Moreover, Torrington maintains that a review of Cixing's FOP submissions indicates that the percentage of market economy purchases of balls may not be significant, and, therefore, the Department should apply the surrogate value for balls. However, if the Department does use the Japanese price for balls, petitioner and Torrington recommend that the Department apply the so-called "significant quantities" test for using market prices on a model-specific basis, while applying the surrogate value used in the Amended Preliminary Determination for ball sizes that Cixing did not purchase in significant quantities from Japan.

Department's Position:

We agree with Cixing in part. In the Amended Preliminary Determination, we did not use Cixing's market economy purchases of balls and instead applied a surrogate value because Cixing's market economy worksheets indicated that its purchases of balls from Japan were not significant. Since that time, however, Cixing has corrected its worksheets, submitting on October 28, 2002 a timely-filed revised worksheet demonstrating that its market economy purchases of balls were significant (see Exhibit 9). This worksheet and the data contained therein were verified (see Verification Report for Cixing Group Co., Ltd. in the Antidumping Duty Investigation of Ball Bearings and Parts Thereof from the PRC from Lyman Armstrong and Darla D. Brown to Jim Terpstra, dated December 20, 2002 (Cixing Verification Report) at Verification Exhibit 24). Therefore, for the purposes of the final determination, we are using Cixing's market economy purchases of balls instead of the surrogate value we applied in the Preliminary Determination. For further discussion, see the Final Calculation Analysis Memorandum for Cixing, to the file from Darla Brown, Lyman Armstrong, and Brian Ledgerwood, dated February 27, 2003 (Cixing's Final Calculation Memo), on file in the CRU.

However, we disagree with Cixing that we should use a diameter-specific weighted-average market price per kilogram when valuing each ball size. We attempt to make the most accurate comparison possible where data are available; in this instance, however, the data are not available to do what Cixing has suggested. Moreover, weight-averaging the balls based on the

diameter cannot fully account for variations in the diameters in other areas, such as our factors of production.

Moreover, we disagree with petitioner and Torrington that we should apply the so-called “significant quantities” test for using market prices on a model-specific basis, while applying the surrogate value used in the Amended Preliminary Determination for ball sizes that Cixing did not purchase in significant quantities from Japan. Having verified Cixing’s market economy purchases of balls and having found no discrepancies, we are satisfied that Cixing’s market economy purchases of balls are significant.

Comment 42: Cixing’s Scrap Offset

Cixing urges the Department to make an offset to its normal value for scrap, despite the fact that the Department did not do so at the Amended Preliminary Determination. Cixing states that although the Department stated in its November 13, 2002 Memorandum from Bernard Carreau to Faryar Shirzad re: The Preliminary Affirmative Antidumping Duty Determination: Certain Ball Bearings and Parts Thereof from the People’s Republic of China (Clerical Error Memo) that Cixing failed to break scrap out into more than two categories (i.e., scrap sold for cages and all other scrap), the Department confirmed at verification that Cixing’s scrap was calculated for each production stage (see Cixing Verification Report at 23). Therefore, Cixing contends that the Department should make an offset for Cixing’s scrap for the final determination.

Petitioner counters that the Department should not grant Cixing a scrap offset in the final determination because, it claims, Cixing has not responded to the Department’s request for information. Petitioner argues that in the Amended Preliminary Determination, the Department correctly refused to allow Cixing a scrap offset. Petitioner asserts that although Cixing characterized the Department’s decision as a clerical error, the Department appropriately rejected this argument, stating that Cixing had failed to report its data on scrap properly. Petitioner states that although Cixing is correct that the Department verified that the company calculated scrap for each production stage, Cixing still has not broken out scrap into more than two categories, and, thus, still has not answered that portion of the Department’s supplemental questionnaire. Therefore, petitioner maintains that the Department should apply adverse facts available and continue to deny Cixing a scrap offset.

Cixing counters that the Department misunderstood Cixing’s scrap reporting methodology. Cixing states that in its scrap worksheet, it reported scrap at each stage of production and then summed scrap together into the two fields reported to the Department, SSTEEL and SCSTEEL. Cixing asserts that this information was verified by the Department, and, therefore, for the final determination, the Department should grant Cixing a scrap offset.

Department’s Position:

We agree with Cixing in part, and we are applying a partial facts available decision. In the Amended Preliminary Determination, we did not grant Cixing a scrap offset because Cixing did not provide the requested information on scrap in the manner asked for by the Department. Specifically, the Department's original questionnaire asked for respondents to describe the method used to calculate the reported scrap amounts and provide supporting worksheets. Moreover, the Department specifically asked Cixing in the August 9, 2002 supplemental questionnaire to report its scrap by each type of input material at each production stage, for each bearing model sold, broken out by type of steel (e.g., steel bar, steel tube, steel coil) used to produce the model. Cixing did not answer these supplemental questions in the manner requested by the Department; instead, it broke out its scrap into two categories only: scrap sold from cage production and all other scrap. At the Preliminary Determination, we denied Cixing's scrap offset and did not use this information because it was not in the form requested by the Department and was incomplete.

We subsequently learned at verification that Cixing actually had provided on the record data that were at least partially responsive to the Department's questionnaires: Cixing had broken out the quantity of its scrap at each production stage and had summed it to get the total scrap generated at each production stage (see Cixing Verification Report at 23). In light of this information, which was not clear to us at the Preliminary Determination, we have granted Cixing a scrap offset in the final determination program.

However, our offset is based on partial facts available because the information provided by Cixing was not complete. The Department's regulations specifically provide that it may make determinations on the basis of the facts available whenever a party fails to provide information requested in the form required. See 19 CFR § 351.308(a). In the instant investigation, the information submitted by Cixing was not fully responsive to our request; specifically, it did not provide information on the scrap lost for each specific material used in the production process. As such, as partial facts available, we have allowed only a partial scrap offset in our final margin calculations. For further discussion, see Cixing's Final Calculation Memo.

Comment 43: Cixing's Surrogate Value for Inner and Outer Ring Steel

Cixing states that at the Amended Preliminary Determination, the Department valued Cixing's steel to make inner and outer rings using HTS 7304.59.01, hot-rolled tube, applying the higher surrogate value because Cixing had not previously specified whether the steel it used for inner and outer rings was hot- or cold-rolled. However, Cixing states that in its November 1, 2002, submission, it clarified that the grade of steel used to make rings was cold-rolled SAE 52100. Therefore, argues Cixing, the Department should use the surrogate value for cold-rolled steel in the final determination calculations.

Petitioner and Torrington submit that the Department should not change its position regarding the appropriate surrogate value for the steel used in Cixing's rings since the assertion made by Cixing in its November 1, 2002, submission was not, to their knowledge, confirmed at verification. Therefore, they maintain that the Department should use the cold-rolled surrogate value for the final determination only if the Department verified that Cixing actually uses this type of steel for inner and outer rings.

Department's Position:

We agree with Cixing that the proper surrogate value for its steel used to make inner and outer rings is cold-rolled steel bar and tube, respectively. In its November 1, 2002, post-preliminary determination supplemental questionnaire response, Cixing stated that steel bar and tube were used to produce inner and outer rings and that the grade of steel used was cold-rolled SAE 52100 (see page 1). This information was requested by the Department and submitted by Cixing in a timely fashion. We find that the use of this information most accurately reflects Cixing's production inputs for subject merchandise. However, we do not have a surrogate value for cold-rolled bar, and Cixing did not provide an appropriate HTS category for cold-rolled bar. Therefore, for the purposes of this final determination, we are continuing to apply the surrogate value for hot-rolled bar for Cixing's inner rings that we used in the Preliminary Determination, and we are using cold-rolled steel tube as the surrogate value for Cixing's outer rings.

Comment 44: Cixing's Market Economy Purchases of Coil

Cixing argues that in the Amended Preliminary Determination, the Department incorrectly used Cixing's market economy purchases of coil for shields to value coil to make cages. Cixing points out that the steel used to make shields is a composite electrolytic galvanized steel coil and is not produced in China, while the steel for cages is the generally available cold-rolled steel in sheet that is available worldwide. Cixing refers the Department to Exhibit 11 of its October 28, 2002, submission for product specifications for the two different types of coil. Cixing maintains that for the final determination, the Department should use Cixing's market economy purchases of coil to value shields and should apply the Indian surrogate value to value the cage steel.

Petitioner states that if the Department decides to make this change for purposes of the final determination, the Department should use the Indian HTS subheading 7209.16.00 (sheet steel for cages, shields, retainers, and seals). Moreover, petitioner urges the Department to correct its calculation of the surrogate value for steel coil, which petitioner argues the Department incorrectly calculated in the Amended Preliminary Determination. Petitioner states that, using the correct methodology and subheading, the surrogate value for steel coil for cages is \$0.9161/kg.

Torrington rebuts Cixing's arguments, stating that it is unclear from Cixing's supporting documentation whether Cixing's market economy purchases were one grade or the other.

Therefore, Torrington urges the Department to reject Cixing's values and apply the surrogate values instead.

Cixing concurs that petitioner is correct in its assertion that there was an error in Cixing's initial worksheet providing the market economy purchase of steel coil used to make shields, and it corrected this mistake in its November 1, 2002, submission.

Department's Position:

We agree with Cixing that the Department incorrectly applied Cixing's market economy purchases of coil for shields to value coil to make cages. Therefore, we are using Cixing's market economy purchases of coil to value shields and applying the Indian surrogate value to value the cage steel.

We also agree with Cixing and petitioner that there was an error in the Amended Preliminary Determination calculation of the value for steel coil. This error has therefore been corrected for the final determination calculations. For further discussion, see Cixing's Final Calculation Memo.

Comment 45: Cixing's Marine and Inland Insurance

Cixing argues that the surrogate value for marine insurance was calculated to be applied to the CIF value of the goods (see TRBs XIV Decision Memorandum at Comment 6), but the Department applied the surrogate values for inland insurance and marine insurance to Cixing's gross selling price. Cixing asserts that marine insurance should be applied to Cixing's cost of replacing the goods, represented by the entered value (ENTVAL) field on both EP and CEP sales. Cixing affirms that its insurance carrier charges the company based on the CIF invoice value or the letter of credit (L/C) amount. Therefore, Cixing urges the Department to properly apply the insurance surrogate value to the entered value.

Petitioner states that the Department should calculate accurate amounts in accordance with the facts, which can vary from case to case. Petitioner goes on to state that when a calculation involves a rate, the Department should apply the rate to the most appropriate base, which in this case must be the base that Cixing and its insurer agreed upon. If that base was entered value, then entered value is the appropriate base. Alternatively, petitioner argues, if the contemplated base was gross selling price, then that is the base that the Department should use.

Torrington asserts that the Department should not use the entered value unless the Department makes the appropriate adjustments to ensure that entered value is equivalent to CIF import value. Torrington states that entered value comes from customs entry documents and normally, international freight and insurance are excluded from this value because they are non-dutiable charges.

Department's Position:

We disagree with Cixing. While entered value is often subject to many inconsistencies, selling prices are more accurate and are verified by the Department. In the instant investigation, there are insufficient facts on the record to determine the entered value. We agree with petitioner that the facts vary from case to case, and conclusions drawn in one review may not be directly applicable to another case. Moreover, the underlying facts pertaining to the decision made in the TRBs review are not necessarily applicable in the instant investigation. Therefore, for purposes of this final determination, we are not applying the insurance surrogate value to entered value. Instead, we continue to apply the surrogate values that we applied in the Preliminary Determination for marine and inland insurance to Cixing's gross unit price.

Comment 46: Liquidation During the Provisional Period

Cixing argues that the Department should ensure that upon liquidation (whether "automatic" or after an administrative review), no importer is required to pay a final rate that exceeds the corrected rates from the Amended Preliminary Determination. Cixing points out that section 737(a) of the Tariff Act of 1930 provides importers with a cap on the antidumping duties at the amount deposited during the provisional period. However, argues Cixing, the statutory provision presumes that the amount collected under section 733(d)(1)(B) (*i.e.*, the preliminary determination provision) is accurate, and there is no exception to the provisional measures deposit cap for instances in which the Department collected an admittedly incorrect deposit amount. Cixing goes on to argue that if no administrative review is requested, the Department will automatically assess final dumping duties according to 19 CFR §351.212(c) and U.S. importers will forfeit all duties deposited, even where such duties were deposited at an admittedly incorrect rate, as in the instant investigation. Moreover, Cixing states that if a review is requested, because the Department collected deposits at erroneously high rates during the provisional period, *i.e.*, between October 15 and November 19, 2002, even importers who entered subject merchandise from producers subject to review would be denied the benefits under the deposit rate cap statute.

Cixing claims that the incorrect deposit rate will force importers to request a review in order to obtain refunds of duties that never should have been collected, potentially causing a flood of unnecessary and avoidable review requests. Therefore, Cixing submits that the Department can ward off this problem by instructing U.S. Customs (Customs), upon liquidation, to only collect dumping duties from Cixing's importers up to a maximum of 2.32 percent during the provisional period. Cixing states that this instruction should be included in the automatic liquidation instructions in the event that no review is requested, or in the importer-specific liquidation instructions issued upon completion of the first review.

Torrington counters that there is no statutory or regulatory provision authorizing the Department to instruct Customs to cap assessment of dumping duties during the provisional period, and, therefore, the Department should not send such instructions to Customs as recommended by Cixing. Torrington maintains that the provisional measures capping statute, 19 USC §1673f(a), provides that if the estimated antidumping duty determined under section 1673b(d)(1)(B) (i.e., the preliminary determination) is different from the amount of the antidumping duty determined under the antidumping duty order, then the difference for entries entered before the ITC's affirmative determination will be disregarded if lower than the duty under the order, and refunded if higher than the duty under the order. Torrington cites to a decision handed down by the Court of International Trade (CIT) in which the CIT stated that the capping provision provides for a use to which the duty rates computed with the preliminary determination are to be put, without in any way stating how they should be determined (see Yantai Oriental Juice Co. v. United States, Slip Op. 02-56 (CIT June 18, 2002) at 35).

Torrington further argues that there is nothing inconsistent under the statute in having two preliminary cap periods, and it is the Department's normal practice to determine two deposit cap periods—the first for the period between the preliminary and the final determination and the second for the period between the final determination and the ITC's final determination. Torrington argues that this practice was upheld by the CIT in Thai Pineapple Canning Industry Corp. v. United States, Slip Op. 00-17 (CIT February 10, 2000), rev'd on other grounds, 273 F.3d 1077 (Fed. Cir. 2001). In that case, the duties estimated under the final determination were higher than the duties estimated under the preliminary determination, and the CIT disagreed with the plaintiff who argued that the duty applicable to all entries between the preliminary determination and the ITC's final determination should be capped at the preliminary rate.

In sum, Torrington argues that, given the above-mentioned precedent, the Department should reject Cixing's request to instruct Customs, upon liquidation, to only collect dumping duties from Cixing's importers up to a maximum of 2.32 percent during the provisional period.

Department's Position:

We agree with petitioner and Torrington that there is nothing inconsistent under the statute in having more than one preliminary cap period from the time of the Preliminary Determination until the final determination. Unless explicitly provided for by statute (e.g., critical circumstances determinations), the Department's normally apply prospectively, effective on the date of publication in the Federal Register, not retroactively. Therefore, we disagree with Cixing's argument that we instruct Customs, upon liquidation, to only collect dumping duties from Cixing's importers up to a maximum of 2.32 percent during the provisional period. As stated in the Preamble to the Department's Regulations, assuming an order is imposed, a manufacturer or importer may request an administrative review under section 751(a) of the Act to determine the actual amount of antidumping duties due on the sales during the period.

Comment 47: Cixing's Brokerage and Handling

Petitioner and Torrington argue that the Department should add the appropriate surrogate values for brokerage and handling charges to Cixing's movement expenses. They maintain that although Cixing reported that it incurred no brokerage and handling (B&H) charges in China because the company assumed that the B&H costs are incorporated into the international freight charges that it pays, Cixing's argument is not persuasive. Petitioner and Torrington maintain that B&H activities are normally separate from and in addition to freight, and it is their contention that Cixing incurred B&H charges. Therefore, they urge the Department to reject Cixing assumption and apply the surrogate rate for B&H to all of Cixing's shipments, deducting B&H expenses from the U.S. price.

Cixing counters that there is no basis for an adverse inference here, as petitioner and Torrington have specified no evidence on the record that would support such an inference. Cixing asserts that it did not fail to cooperate to the best of its ability; rather, the Department asked an impossible question regarding who paid for the B&H services and forced Cixing to opine as to who paid for the charges when Cixing's only knowledge is that it does not pay for such charges. Cixing stated in a supplemental questionnaire that it assumed that such charges were included in the ocean freight expenses.

Moreover, Cixing points out that the Department examined several ocean freight invoices that indicated the shipping terms as either "CY to CY" (container yard to container yard) or "CFS to CFS" (container freight station to container freight station (see Cixing Verification Exhibit 11)). Under these terms, explains Cixing, the ocean freight payments covered everything from the point where the goods were received from Cixing's truck at either the CY or the CFS. Therefore, Cixing asserts, although the freight bills issued to Cixing do not separately break out the B&H charges associated with exporting the goods, these terms indicate that Cixing's responsibility ended upon delivery of the goods to the container yard or freight station and the shipper's responsibility began.

Furthermore, Cixing asserts that if the Department does apply a surrogate value for the B&H expenses to Cixing's exports, then the Department should use the surrogate value for B&H provided by Cixing in its surrogate value submission of December 13, 2002, at Exhibit 2, which they argue is more contemporaneous than the surrogate value used by the Department in the Preliminary Determination. Cixing argues that its data, taken from the public questionnaire response submitted in the antidumping investigation of Essar Steel Ltd. (Essar) in Indian Hot-rolled, should be used. Cixing argues that the Essar value is more contemporaneous because it covers B&H expenses incurred on shipments between October 1, 1999, and September 30, 2000, while the value used in the Preliminary Determination dates back to February 25, 1999. Moreover, Cixing asserts that the Essar value is more representative because it covers an entire year, whereas the Preliminary Determination value covers a single shipment. Finally, Cixing

points out that the Department has recently used the Essar value in a recent review of crawfish (see 2000-2001 Crawfish).

Department's Position:

We disagree with petitioner and Torrington regarding their assertion that the Department should add surrogate values for B&H charges to Cixing's movement expenses. Consistent with Department practice, we find that there is no evidence on the complete, verified record of the instant investigation demonstrating that Cixing incurred B&H expenses in China. Therefore, we find no basis to determine and assign to these transactions surrogate values.

Regarding Cixing's claim that the Department should use the surrogate value for B&H provided in its December 13, 2002 surrogate value submission, the Department agrees. This value is more contemporaneous, is for a steel product, and covers an entire year's worth of data, as opposed to the single shipment used in the Preliminary Determination. In addition, this value has been used in the past by the Department. Therefore, for the final determination, we are using the Essar B&H value for the B&H surrogate value (see Final Factors of Production Valuation Memorandum dated February 27, 2003, on file in the CRU).

Comment 48: Cixing's Air Freight

Petitioner and Torrington argue that Cixing reported that some shipments were sent to its U.S. affiliate, CW USA, by air freight, using NME carriers. Therefore, they argue, using the market-economy ocean freight expenses reported by Cixing for its air freight shipments would be inappropriate. Accordingly, petitioner and Torrington maintain that the Department should apply an appropriate surrogate air freight rate to all air shipments identified by Cixing; the surrogate rate should be applied to the fully packed gross weight of the shipments.

Cixing counters that if the Department chooses to apply a surrogate value for Cixing's shipments to the United States that were made by air freight it may only do so in situations where Cixing actually paid the freight and not on shipments where the customer was responsible for the air freight charges. Therefore, Cixing asserts, if the Department applies a surrogate value for air freight, it should apply it only where INTNFRU2 = "YES" and FRTMODU = "AIR" or "DHL."

Department's Position:

We agree with Cixing that we should apply a surrogate value for Cixing's shipments to the United States that were made by air freight in situations where Cixing actually paid the freight. However, because Cixing never provided an appropriate surrogate value for air freight, we are using ocean freight as best information available. For further information, see the Final Factors of Production

Valuation Memorandum dated February 27, 2003, on file in the CRU and Cixing's Final Calculation Memo.

Comment 49: Cixing's Electric Motor Quality (EMQ) Bearings

Cixing reported that all of the bearings it sold to the United States during the POI are EMQ bearings. Petitioner and Torrington argue that the Department should determine all factors of production attributable to EMQ testing and assign them to the normal values of all subject merchandise, or to the EMQ bearings. To the extent that Cixing allocated the costs involved in determining whether a bearing is EMQ uniformly to all of its production, petitioner urges the Department to reallocate these costs exclusively to the EMQ bearings.

Cixing states that EMQ is a standard identifying low-noise bearings, and all bearings produced by Cixing are subjected to noise testing. Cixing further argues that the Department observed during verification that all bearings are placed on a vibration testing machine. Therefore, Cixing argues, since all bearings undergo noise testing, it was correct for Cixing to allocate all costs associated with the vibration testing over all bearing production.

Department's Position:

We disagree with petitioner and Torrington. There is no evidence on the record of material and measurable differences between EMQ and other bearings. The additional labor hours, electricity, and overhead that might be attributable to EMQ testing are already incorporated into the factors of production for direct and indirect labor, electricity and overhead. (For further discussion on labor hours, electricity and overhead, see the Cixing verification report.) Therefore, there is no need to separately calculate the factors of production attributable to EMQ testing, as petitioner and Torrington suggested, and, for purposes of the final determination, we are making no adjustments to the calculation to account for EMQ testing.

Comment 50: Cixing's CONNUM Reporting Methodology and Ball Weights

Torrington urges the Department to ensure that the record contains the required information for each CONNUM in Cixing's listings. Torrington argues that including more than one product within the same CONNUM may create inaccuracies.

Furthermore, Torrington argues that the weight of balls reported by Cixing is also a problem. Torrington urges the Department to ensure that Cixing has accurately reported weights for all products and all relevant components before issuing the final determination. Torrington argues that, due to past discrepancies, the Department should place the burden on Cixing to demonstrate the accuracy of every weight it reported. Torrington proposes that Cixing place on the record a physical sample of each bearing model and have the Department weigh them all.

Alternatively, Torrington recommends that the Department conclude that Cixing has exhausted its opportunities to report the correct weight, and, therefore, the Department should resort to the facts available.

Cixing counters that because the Department did not define “unique” product in its questionnaire, Cixing relied upon the Department’s definition of unique that has been in place in all of the anti-friction bearings cases and reported its CONNUMs accordingly. Cixing states that, beyond a supplemental question, the Department did not ask any further questions indicating that it disagreed with Cixing’s reporting methodology. Moreover, Cixing asserts that Torrington does not point to any distortions caused by Cixing’s methodology.

In addition, Cixing rebuts Torrington’s argument that its ball weights may be incorrect. Cixing states that it took seriously petitioner’s earlier comments regarding the weight of its balls and revised the ball weights accordingly in its October 28, 2002 submission. Hence, the ball weights on the record have been corrected. Moreover, Cixing points out that, at verification, the Department carefully weighed Cixing’s balls using a highly accurate scale that measured weights to the thousandth of a gram and found no discrepancies (see Cixing Verification Report at 18). Cixing further declares that the balls weighed at verification account for 39 of Cixing’s 47 CONNUMs, or 83 percent. Cixing argues that Torrington points to no existing discrepancies in the ball weights in Cixing’s corrected database, other than its own mistaken allegation that line 30 of Cixing’s October 28 database has an incorrect ball weight. Therefore, Cixing asserts that the ball weights do not support Torrington’s contention that Cixing’s CONNUM reporting was flawed, and both of Torrington’s arguments should be rejected.

Department’s Position:

We disagree with Torrington. We completed a thorough and accurate verification and found no discrepancies with respect to Cixing’s CONNUMs and its reporting methodology. Moreover, while at verification, we physically weighed balls for the five pre-selected CONNUMs and the two on-site selected CONNUMs. No discrepancies were noted (see Cixing Verification Report at 18). Therefore, we find no reason to conclude that there is reason to reject the data reported by Cixing, and we are making no adjustments to Cixing’s CONNUMs or reported ball weights for the purposes of the final determination.

Comment 51: Clerical Errors in the Amended Preliminary Program

Petitioner claims that in calculating Cixing’s amended preliminary margin, the Department made several errors. For one, the Department erred in calculating the surrogate value for coil used by Cixing. Moreover, petitioner argues that one CONNUM had a negative U.S. price after all deductions. Petitioner urges the Department to correct these errors for the final determination.

Furthermore, petitioner urges the Department to incorporate into its final calculations corrections that Cixing made prior to verification, including corrected weighted-averages for 10 CONNUM weights, new shipment dates for two EP sales, and other minor corrections.

Finally, petitioner recommends that the Department correct certain discrepancies it discovered in the verification of Cixing, including certain freight allocations and one inner ring value.

Cixing agrees that the Department should make the minor corrections identified prior to Cixing's EP and CEP verifications. However, Cixing disagrees with petitioner regarding the allegedly negative U.S. price. Cixing states that petitioner was relying on the Preliminary Determination margin program, when, in fact, in the amended program, there was a positive net U.S. price on this particular CONNUM.

Department's Position:

We agree with petitioner and Torrington in part. We agree that the Department inadvertently made an error in its amended preliminary margin calculation with respect to the surrogate value for coil. We have corrected this error for the final determination (see Final Factors of Production Valuation Memorandum and Cixing's Final Calculation Memo.).

We agree with Cixing and petitioner and have accepted and incorporated the minor corrections submitted at the beginning of the CEP and EP verifications. It is standard Department practice to accept corrections of minor errors identified by respondents at the outset of verification. See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8929 (February 23, 1998); see also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey, 62 FR 9737 at 9746 (March 4, 1997). The errors identified by Cixing were minor in that they affect only a few variables (e.g., shipment dates, distances) with respect to a select, small percentage of factors of production; moreover, company officials presented the minor errors to the Department at the outset of verification. See Cixing Verification Report at 2, and Verification Exhibit 1; see also, Cixing Verification Report for the Cixing Group Co., Ltd. in the Antidumping Duty Investigation of Ball Bearings and Parts Thereof from the PRC from Darla D. Brown and Brian Ledgerwood to Jim Terpstra, dated January 6, 2003 (Cixing CEP Verification Report) at 2 and CEP Verification Exhibit 1. The minor errors accepted by the Department at the beginning of verification served only to corroborate and clarify information on the record, and information was corrected in the final margin program where applicable. For further details, see Cixing's Final Calculation Memo.

We disagree with petitioner and Torrington regarding the one CONNUM that petitioner argues has a negative net price. As stated in Comment 50 above, we found no discrepancies with

respect to Cixing's CONNUMs during verification. Therefore, we are not making any adjustments to Cixing's reported CONNUMs for the final determination.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination in this investigation and the final weighted-average dumping margins in the Federal Register.

Agree _____ Disagree _____

Faryar Shirzad
Assistant Secretary for
Import Administration

Date