Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, if it issues an affirmative preliminary determination of sales at less than fair value in this investigation, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of NFAJC from the PRC from all exporters except Oriental and Zhonglu that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at less than fair value. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determination of sales at less than fair value published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

Final Critical Circumstances Determination

We will make a final determination of critical circumstances when we make our final determination regarding sales at less than fair value in this investigation, which is expected to be 75 days after the preliminary determination regarding sales at less than fair value.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

This notice is published pursuant to section 777(i) of the Act.

Dated: November 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29751 Filed 11–12–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

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

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

ACTION: Notice of final results of 1997–1998 antidumping duty administrative review and final results of new shipper review of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

SUMMARY: On July 8, 1999, the Department of Commerce published the preliminary results of its administrative review and partial rescission of review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, for the period of June 1, 1997, through May 31, 1998. On August 20, 1999, the Department of Commerce published the preliminary results of its new shipper review of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, for the period of June 1, 1998, through November 30, 1998.

We have combined in this notice the final results of both the administrative review and the new shipper review. The segments, however, continue to remain separate and distinct. Based on our analysis of comments received, we have made changes to the margin calculations. Therefore, the final results differ from the preliminary results.

We have determined that sales have been made below normal value during the period of review. Accordingly, we will instruct the Customs Service to assess antidumping duties based on the difference between export price and normal value. The final weighted-average dumping margins are listed below in the section entitled *Final Results of Review*.

EFFECTIVE DATE: November 15, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith, James Breeden or Melani Miller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–0189, (202) 482–1174 and (202) 482–0166, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, all references to the Department of Commerce's (''the Department's'') regulations are to 19 CFR Part 351 (April 1998).

Background

On July 8, 1999, we published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on tapered roller bearings (''TRBs'') from the People's Republic of China (''PRC''). *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1997–1998 Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 36853 (''*AR Preliminary Results*''). On August 20, 1999, we published the preliminary results of new shipper review of the antidumping duty order on TRBs from the PRC. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 45511 (''*NSR Preliminary Results*''). We gave interested parties an opportunity to comment on our *AR* and *NSR Preliminary Results* and held a combined public hearing on October 13, 1999. The following parties submitted comments and/or rebuttals with respect to the administrative review: The Timken Company (''referred to hereafter as ''the petitioner''); Luoyang Bearing Factory (''Luoyang''); and Premier Bearing and Equipment, Ltd. (''Premier'') submitted comments with respect to the administrative review. Petitioner, Zhejiang Changshan Changhe Bearing Company (''ZCCBC'') and Weihai Machinery Holding (Group) Corporation Limited (''Weihai'') submitted comments and/or rebuttals regarding the new shipper review.

We have conducted these reviews in accordance with section 751(a) of the Act.

Scope of Review

Merchandise covered by these reviews includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Changes Since the Preliminary Results

We have made certain changes to our margin calculations pursuant to comments we received from interested

parties and clerical errors we discovered since the *AR* and *NSR Preliminary Results.*

For All Companies

Many of the changes we have made affect all companies and the comments discussing these changes are listed below.

Valuation of Certain Steel Inputs—Comment 2
Valuation of Scrap—Comment 4
Valuation of Overhead, SG&A, and Profit—Comment 13

For Premier

We have recalculated Premier's margin to apply the revised scrap and labor information submitted by one of its suppliers. See our response to Comments 18 and 19.

Analysis of Comments Received

Unless otherwise indicated, all comments apply to both the administrative review and new shipper review.

1. Valuation of Factors of Production

1(a) Material Valuation

Comment 1: Use of Indian Producer Financial Statement Data

Petitioner argues that steel costs of Indian bearing producers reported in their audited financial statements are the most accurate, narrow, and reliable information regarding the cost of bearing quality steel in India and, therefore, should be used by the Department to value bearing quality steel used in the production of certain TRB components. Petitioner states that this information is industry-specific and avoids the ''inherent inaccuracy of trade statistics covering basket categories of products.'' Petitioner notes that the Indian bearing producers' prices are comparable to the market price for grade 52100 steel (bearing-quality steel) as reported by petitioner, as well as the prices indicated in U.S. import statistics for imports from Sweden which, according to petitioner, also consist of grade 52100 steel bars. (See discussion in Comment 2, below.) Moreover, petitioner states that the availability of data from several producers ensures that the data are truly representative and do not reflect peculiar circumstances of a particular company.

The respondents argue that the Department has repeatedly recognized that the Indian producers' steel prices are inherently flawed and, thus, has refused to use these values. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results and Partial Termination of Antidumping Duty Administrative Review,* 62 FR 6173 (February 11, 1997) (''*TRBs 8*''), *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 (November 17, 1997) (''*TRBs 9*''), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996-1997 Antidumping Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part,* 63 FR 63842 (November 17, 1998) (''*TRBs 10*'').

The respondents note that the raw materials listed in the vast majority of the financial statements of the Indian producers, including SKF and FAG, are not broken down by type of steel and instead could include many different types of steel. Thus, the respondents maintain, the Department cannot discern the types of steel (*e.g.* steel bar, steel sheet, steel strip) that might be included in this category. Further, the respondents state that while Asian Bearing Company (''Asian Bearing'') provides a meaningful breakdown of its steel types, the Department has not used Asian Bearing data because of its questionable accounting practices and its designation in India as a ''sick'' company. Furthermore, according to the respondents, this single company's figure represents a ''value'' for only one company and, thus, cannot be representative of Indian steel values. The respondents also contend that the data from Tata Timken is essentially the petitioner's data, which the Department has repeatedly refused to use.

Additionally, the respondents note that even petitioner acknowledges that the Indian steel market is protected by high tariffs and that domestic prices are higher than U.S. prices, a fact which further lessens the reliability of Indian producers steel costs. Furthermore, the data from the producers' financial statements would include domestic Indian taxes and Indian import duties, information the Department has attempted to avoid.

Finally, respondents state that the Indian producer data is not verified. The respondents note that the Department has a clear preference for verifiable, public information. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Sulfate From the People's Republic of China,* 60 FR 52155 (October 5, 1995) and *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China,* 57 FR 21058 (May 18, 1992) (''*Carbon Steel Butt-Weld Pipe Fittings from the PRC*''). Thus, the respondents argue that the Department should not use Indian producer's steel data in the final results.

Department's position: We disagree with petitioner that Indian bearing producers' financial statement data should be used to derive a surrogate price to value bearing quality steel. Section 773(c)(1) of the Act states that, for purposes of determining normal value in a nonmarket-economy country, ''the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.'' We have indicated in past reviews that our preference is to value factors using publicly-available information. *See, e.g., TRBs 8, TRBs 9,* and *TRBs 10.* In addition, our longstanding practice is to rely, to the extent possible, on public statistics on surrogate country information to value any factors for which such information is available over company-specific data. *See Carbon Steel Butt-Weld Pipe Fittings from the PRC.* We view public statistics to be the best available information because they reflect prices for an entire country and not one specific company. Therefore, we continue to rely on import statistics from India and Indonesia and not from a particular company.

Even if we were to look at the individual producer's financial statements of the seven companies for which petitioner submitted data concurrent with the POR, only two companies, Asian Bearing and Tata Timken, break out steel costs according to the type of steel (steel bar, steel sheet, steel strip) used to produce specific TRB parts. Because the other five companies did not break out the specific types of steel used in production, we cannot accurately value each of the individual steel types used in the production of the subject merchandise as we are able to do based on import statistics.

Of the two companies that do break out their steel costs by steel type, only Asian Bearing separately identifies ''steel bars,'' the steel input used by the Chinese respondents to produce cups, cones, and rollers. However, Asian Bearing provides a single cost for steel bar and does not provide specific costs according to the type of bar used (*e.g.*, hot-rolled versus cold-rolled). Therefore, we cannot accurately value the two types of steel bar used in the production of cups and cones versus that used in the production of rollers. Accordingly, Asian Bearing's average

cost of steel bars is not a sufficiently accurate value for the purpose of valuing steel used in the production of cups, cones, and rollers.

Because we have surrogate data derived from public statistics that allow us to value the hot-rolled and cold-rolled bars used to produce the components of tapered roller bearings, we continue to rely on such data instead of the data on material costs from the Indian bearing manufacturers' financial statements.

Comment 2: Reliability of Indian Import Statistics and the U.S. Benchmark

Petitioner argues that, if Indian producer data is not used by the Department to value bearing quality steel, Indian import statistics are the next best source. Petitioner states that Indian import statistics are preferable to any other trade statistics because they are data from the primary surrogate; the Indian bearing industry is large, with the result that imports into India are likely to include a substantial portion of bearing quality steel; and there is no evidence that the Indian statistics are unreliable.

Petitioner further argues that Indian import statistics for steel used in the production of cups and cones should not be deemed unreliable after comparison to an average of U.S. import statistics because the U.S. import category that is being used for comparison purposes includes imports of non-alloy steel that require case hardening. According to petitioner, case-hardened steel differs from the through-hardened grade 52100 steel used by Chinese manufacturers because of its carbon content, production process, and use. Petitioner further argues that there is a price difference between these two types of steel, with case-hardened steel being significantly lower in price. Therefore, the range of prices in this category can be only a rough gauge of the value of the grade 52100 steel used by Chinese producers.

Petitioner further argues that a modified U.S. benchmark consisting of one of the prices in the U.S. range, U.S. imports from Sweden (which, petitioner argues, consists of grade 52100 steel), as well as other world-market factor values on the record are similar in price to both the Indian producer and the Indian import data. Thus, petitioner argues that both sets of Indian data are reasonable and should be found to be a reliable source from which to obtain steel values for steel used to produce cups and cones.

The respondents argue that the Department was correct in rejecting Indian import data for use in valuing the hot-rolled alloy steel bars for the production for cups, cones, and rollers. Respondents note that, in the past seven reviews, the Department has declined to use Indian import statistics to determine surrogate values for certain types of steel because they were found to be unreliable. The respondents further note that, after a comprehensive analysis, the Department reaffirmed its stance in both the *AR* and *NSR Preliminary Results.*

The respondents state that the Department has exhaustively demonstrated in this and previous reviews that Indian import data for cups and cones under harmonized tariff schedule (''HTS'') category 7228.3019 is too general and does not correspond to bearing-quality steel. In addition, the respondents argue that the petitioner's contention that Indian import statistics are not unreliable when compared to a modified U.S. basket category that excludes lower-priced case-hardened steel is based purely on conjectural and anecdotal evidence. The respondents cite to *TRBs 10* in noting that this argument was rejected in prior segments of this proceeding. The respondents note that when the Indian statistics are compared to the proper U.S. benchmark, Indian import prices for steel used in the manufacture of cups and cones are almost double in price.

Moreover, the respondents disagree with petitioner's contention that the U.S. benchmark used by the Department for cups and cones, HTS category 7228.30.20, contains case-hardened steel. The respondents note that Additional U.S. Note 1(h) to Customs chapter 72 defines ball bearing steel as ''having not less than .95 percent nor more than 1.13 percent of carbon.'' The respondents note that the petitioner stated that case-hardened steel consists of a carbon content of 0.2 percent. Thus, according to the respondents, case-hardened steel cannot be included in this category.

The respondents also argue that, although petitioner is an international producer of bearings, it has not made any effort to supply its own invoices which could help to establish a surrogate price for bearing quality steel. Furthermore, the prices petitioner did supply are not supported with any documentation, and, in addition, buttress the respondents' contentions that the Indian data are unreliable.

Department's position: In accordance with our practice, we first looked at data from the primary surrogate, India, to determine the best available information for use in valuing TRB components. Consistent with past reviews, we used U.S. import data as a benchmark for determining proper values for hot-rolled alloy steel bars for the production of cups and cones, cold-rolled bearing quality steel bar used in the production of rollers, and cold-rolled steel sheet for the production of cages. We used U.S. import data as a benchmark because the U.S. HTS category is the only HTS customs category that provides a further break-down into a bearing-quality steel category. The use of such a benchmark has been upheld by the Court of International Trade (''CIT''). *See, e.g., Timken Company* v. *United States*, Slip Op. 99–73, at 13 (''*Timken* v. *U.S.*'').

Accordingly, consistent with prior reviews, we used U.S. import data under HTS category 7228.30.20 as a benchmark for hot-rolled bearing quality steel bar used to manufacture cups and cones. We disagree with petitioner that data in this U.S. category is skewed due to the inclusion of case-hardened steel, which, according to petitioner, is not used by Chinese producers and is significantly lower in price than through-hardened steel. There is no definitive evidence on the record indicating that U.S. imports are comprised of either case-hardened or through-hardened steel. There is also no definitive evidence on the record that the Indian import statistics do not also include case-hardened and through-hardened steel.

Although we disagree with petitioner that the data in the U.S. benchmark category is skewed because of the inclusion of different types of bearing quality steel, we agree that the range of prices contained in HTS category 7228.30.20 can be used to gauge the reliability of Indian import values. In examining the U.S. import data from this category, the range of prices from the countries with the most significant volumes of sales is approximately $642 to $834 during the period covered by the administrative review and $622 to $866 for the new shipper review period. The prices comprising this range represent sales made in significant quantities to the United States. Thus, to determine the reliability of surrogate values for hot-rolled alloy steel bars for the production of cups and cones, we compared them to the range of U.S. import values in this particular HTS category.

After comparing the range of U.S. prices to the Indian import data from Indian import category 7228.3019, we disagree with petitioner that Indian import data from this category should be used for valuing certain TRB components. (We note that, as we have repeatedly found in the past, we were unable to isolate bearing quality steel in Indian import category 7228.30 because none of the eight-digit sub-categories

within 7228.30 specifically include bearing quality steel bar. Only the ''Others'' category, 7228.3019, could contain the type of bearing quality steel used in the production of cups and cones. Thus, we used 7228.3019.) In comparing these data from 7228.3019 to the range of prices found within U.S. import category 7228.30.20 (the only import category on the record which explicitly contains only bearing quality steel), the Indian values continue to be unreliable because the values for these imports remain significantly higher than any price in the U.S. import range. Therefore, we continue to find that Indian import prices from category 7228.3019 are unreliable for use in valuing steel used in the manufacture of cups and cones.

Because we found the Indian import statistics and the company-specific data to be unreliable, we turned to the examination of the next best available information: Japanese exports to India. As we found in prior reviews (*e.g., TRBs 10*), the Japanese export statistics provide a breakdown of the broad six-digit 7228.30 category into several more narrowly defined sub-categories. Japanese category 7228.30.900, ''Bars and Rods, of Other Alloy Steel,'' is a category which would include the type of bearing quality steel bar that would be used to manufacture cups and cones. Thus, we consider these Japanese data on exports to India to be an appropriate and more accurate reflection of Indian import values.

In comparing this category to the range of values contained in the U.S. benchmark category, 7228.30.20, we found that these Japanese export prices to India fall within the range of the values in the U.S. category. Because this Japanese tariff category is the narrowest category which could contain bearing quality steel, and because it is consistent with values contained in our U.S. benchmark category, we believe that these data are the best alternative for valuing steel used in the production of cups and cones. It is the Department's stated preference to use information from its primary surrogate to the extent possible. (*See* section 351.408(c)(2) of the Department's regulations.) Because these data relate to our primary surrogate and are within the price range of the U.S. benchmark category, we have not analyzed data from our secondary surrogate, Indonesia, to find a value for steel used to produce cups and cones. Therefore, we are using data related to our primary surrogate, India, i.e., Japanese data on exports to India from category 7228.30.900, to value steel bar used in the manufacture of cups and cones.

Comment 3: Use of Indonesia as a Surrogate and Data on Indonesian Imports/Japanese Exports to Indonesia

Petitioner argues that Japanese exports to Indonesia and Indonesian imports do not provide appropriate surrogate values for the bearing industry. First, petitioner contends that Indonesia is not a proper surrogate because its bearing industry is small, does not produce TRBs, and is not a significant importer of bearing quality steel. Second, petitioner argues that both Indonesian imports and Japanese exports to Indonesia must consist of steel other than bearing quality steel since the Indonesian bearing industry is so small. Therefore, petitioner contends that Indonesian values are not representative of the cost of materials incurred by the Chinese bearing industry.

According to petitioner, there are only two Indonesian bearing producers, PT Logam Sari Bearindo and an NSK affiliate. Petitioner estimates that the total annual bearing production of the two companies combined would be only 1,142 metric tons, which would account for substantially less than the total volume of Japanese exports to Indonesia under HTS category 7228.30.900 of 1,647 metric tons. Petitioner further argues that steel imports into Indonesia are not even remotely comparable to the steel requirements of the Chinese bearings industry that had over $32 million in bearing exports to the United States alone during the POR. Petitioner contends that these data indicate that Indonesia is not a significant bearing producer for purposes of being used as a surrogate country for China. Furthermore, petitioner argues that because Indonesia was more deeply affected by the Asian financial crisis, China and India are much more comparable in terms of economies for the POR than are China and Indonesia.

The respondents disagree, arguing that Indonesia is a proper surrogate and its import data (including Japanese exports to Indonesia) is proper to use for valuing steel inputs. The respondents note that the Department has repeatedly determined that Indonesia is a significant producer of bearings citing to *TRBs 10* and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Romania, Final Results of Antidumping Duty Administrative Review*, 63 FR 11217 (March 6, 1998) (''*TRBs From Romania 98*''). Furthermore, the Department has confirmed through Indonesian export statistics that Indonesia is a significant producer of tapered roller bearings. Thus, the respondents argue that Indonesia is a proper surrogate country choice.

The respondents also disagree with the petitioner's assertion that, because the Indonesian industry is small, the majority of the Indonesian steel imports and exports from Japan must not be bearing quality steel. The respondents argue that even if there are only two Indonesian bearing manufacturers (an assertion that respondents note the petitioner has not provided evidence of), the record demonstrates that the two companies did produce a significant amount of bearings, which the respondents estimate to be 2,519 metric tons. Thus, according to the respondents, a significant amount of the hot-rolled steel exported to Indonesia from Japan and the cold-rolled steel imported by Indonesia likely consisted of bearing quality steel. Therefore, these prices are representative of the cost of steel used to make TRBs components.

Furthermore, the respondents argue that the Indonesian data are consistent with the U.S. benchmark and the prices paid by Chinese producers for market-economy inputs imported during these review periods. Thus, they are more reliable than Indian steel data. Lastly, the respondents note that the benchmark posited by petitioner is unsupported and uncorroborated.

Department's position: We disagree with petitioner that Indonesia is not a proper surrogate for use in valuing certain steel inputs for TRBs. Although India is the primary surrogate in this review, it is our practice to use data from a secondary surrogate when data from the primary surrogate is found to be unreliable. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Drawer Slides From the PRC*, 60 FR 54472, 54475–76 (October 24, 1995) and *Chrome-Plated Lug Nuts from the PRC; Final Results of the Antidumping Duty Administrative Review*, 61 FR 58514, 58517–18 (November 15, 1996). We have used Indonesia as a secondary surrogate in several cases involving the PRC where, as here, Indian data for certain TRB components was found to be unreliable, even though India was the primary surrogate. *See TRBs 10*. Moreover, just as we have determined in these reviews, we have repeatedly determined that Indonesia is a significant producer of bearings. *See TRBs From Romania 98*. Thus, we have continued to use Indonesia as a secondary surrogate for purposes of these reviews.

As discussed in Comment 2 above, in order to determine the proper surrogate to use in valuing steel inputs for certain TRB components, we first looked at

import data from India, our primary surrogate. For cups and cones, we looked at both Indian import prices and Japanese export prices to India. Because we found that Indian import values, as reflected in the export data, were within the range of prices in our U.S. benchmark category for cups and cones, we have not resorted to the use of Indonesian data.

With regard to steel used in the production of rollers, we continue to use Indonesian import data. In the *Preliminary Results* of both segments, we determined that Indian data were unreliable for purposes of valuing steel used in the production of rollers. None of the comments submitted by the parties has led us to change that conclusion. Thus, because Indonesian import statistics were found to be consistent with the U.S. benchmark for steel used in the manufacture of rollers, we are continuing to use Indonesian import statistics from HTS category 7228.50.000 to value steel used in the manufacture of rollers.

Comment 4: Valuation of Alloy Steel Scrap

Petitioner argues that the scrap value the Department assigned to steel scrap generated from the manufacture of cups, cones, and rollers in the new shipper review, which was derived from Japanese export data to Indonesia from HTS category 7204.29.000, was incorrect. Petitioner notes that the ratio of scrap to new steel prices for cups and cones was almost 42 percent, a percentage which, according to the petitioner, is implausible. Petitioner argues that this indicates that the category repeatedly used by the Department to value alloy steel scrap from the production of cups, cones, and rollers, HTS category 7204.29, is inappropriate.

Petitioner argues that it is unlikely that scrap generated from the production of cups, cones, and rollers consists of only pure alloy steel. Instead, petitioner contends that it is commingled with metal from the grinding wheels and tools and with sheet steel from the cage-making operations. According to petitioner, under General Rule of Interpretation 3 (''GRI 3''), all scrap from TRBs is properly classified under HTS category 7204.41, which covers turnings and shavings. Therefore, the Department should use HTS category 7204.41 to value cup, cone, and roller scrap.

The respondents disagree with petitioner, stating that the Department has previously rejected the petitioner's argument on this issue. The respondents argue that petitioner incorrectly relies on GRI 3 for the premise that all scrap from TRB production should be classified under HTS category 7204.41. The respondents note that GRI 3 directs that ''the heading which provides the most specific description shall be preferred to headings providing more general descriptions.'' Furthermore, GRI 3 requires Customs to classify the composite goods ''as if they consisted of the material or component which gives them their essential character'' which, in this case the respondents argue, would be alloy steel scrap. Finally, the respondents argue that because the Department confirmed its scrap classification with Customs, it should continue to use HTS category 7204.29.00 to value waste and scrap generated from the manufacture of cups, cones, and rollers.

With regard to the administrative review, the respondents agree with the petitioner's contention that consistency requires that the Department apply factor and scrap values from the same surrogate country. Thus, the respondents state that for the administrative review, the Department should use Japanese exports of alloy steel scrap to Indonesia under HTS category 7204.29.000 to value the scrap for the production of cups, cones and rollers.

Department's position: As noted in Comment 2 above, we have valued steel used to manufacture cups and cones based on data regarding Japanese exports to India for both the new shipper review and the administrative review. Therefore, in accordance with our practice, we have valued scrap generated from the manufacture of cups and cones from the same surrogate source, India, for both reviews. Because we are no longer using Japanese export data to Indonesia for this value, petitioner's argument regarding Japanese exports to Indonesia is no longer applicable.

We disagree with petitioner that the category repeatedly used by the Department to value alloy steel scrap from the production of cups, cones, and, in this particular case, rollers, is inappropriate. As discussed in our Steel Values Memorandum and as stated in the *AR* and *NSR Preliminary Results*, we confirmed with the Customs Service that HTS category 7204.29 is the proper category to use in valuing this type of scrap. As stated in prior reviews, although the PRC cup and cone production process may generate lower quality scrap, the by-product is still bearing-quality steel scrap. Scrap under HTS category 7204.41 is of a grade and value inferior to bearing quality steel scrap contained in HTS category 7204.29. Because steel used in the production of cups and cones is bearing quality steel, scrap generated through the production process must be of a corresponding grade. Therefore, we have continued to use HTS category 7204.29 to value scrap derived from the production of cups, cones and rollers.

Additionally, although the respondents' specific arguments with respect to the source of scrap valuation are not completely applicable because we are no longer using Japanese exports to Indonesia for our valuation, we are addressing the comment because we have used Japanese export data for our valuation of the steel used in the production of cups and cones. We disagree with the respondents that the Department should use Japanese exports of alloy steel scrap to the applicable country under HTS category 7204.29.000 to value the scrap for the production of cups, cones and rollers in order to be consistent in valuing the factors and scrap values from the same surrogate country. As noted above in Comment 2, the use of data for Japanese exports to India or Indonesia is effectively a refinement of Indian and Indonesian import data, respectively. As we regard Japanese exports to India as reflecting Indian import values, and Japanese exports to Indonesia as reflecting Indonesian import values, the use of an Indian or Indonesian import value to value scrap is, in fact, consistent.

Comment 5: Elimination of Small Quantities

Luoyang and ZCCBC argue that the Department should eliminate from its calculations of cup and cone values data on two monthly shipments, January 1998 and May 1998, that were of small import quantity and ''whose per-unit value is substantially different''—higher in this case—''from the per-unit values of the larger quantity imports of that product from other countries.'' According to the respondents, the CIT has recently noted that this is the Department's established administrative practice. *See Shakeproof Assembly Component Division of Illinois Tool Works Inc.* v. *United States*, Slip Op. 99–70, at 11 (''*Shakeproof*''), *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China, Final Results of Administrative Reviews*, 62 FR 11813 (March 13, 1997) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Romania, Final Results of Antidumping Duty Administrative Review*, 62 FR 37194 (July 11, 1997).

Petitioner agrees with the respondents that the Department's normal practice, which has been upheld by the CIT in *Shakeproof*, is to eliminate from the calculation imports from market-economy countries that were made in small quantities. However, petitioner notes that this practice is to exclude small quantity imports from certain countries as a whole when their prices appear aberrational in comparison with imports from other countries, not selected monthly entries from a certain country. *See Shakeproof.* Furthermore, if the Department excludes entries for these two months because they were too high, by the same reasoning the Department should also exclude export prices in two other months, August 1997 and March 1998, because they are lower than the average price.

Department's position: Because we are no longer using Japanese export data to Indonesia to value steel used in the production of cups and cones, it is no longer necessary to address these comments.

Comment 6: Elimination of May 1998 Data

Luoyang and ZCCBC argue that the May 1998 data used in cup and cone calculations that was derived from Japanese exports to Indonesia should be excluded from the calculations because some or all of these exports probably entered Indonesia after the end of the POR. Thus, these values would not represent values during the POR.

Petitioner disagrees with this argument, indicating that there is no prior practice on this issue. Petitioner states that the issue is not the precise timing of when the factor values occur, but whether the values represent reasonably contemporaneous factor values in the surrogate market. Thus, there would be no reason to exclude shipments made during the last month of the POR.

Department's position: Because we are no longer using Japanese export data to Indonesia to value steel used in the production of cups and cones, this argument is no longer applicable.

1(b) Labor Valuation

Comment 7: The Regression-Based Wage Rate Should Be Adjusted Upwards

Petitioner argues that the Department should adjust the regression-based wage rate upwards to reflect a fully-loaded labor cost. Petitioner contends that the use of wages as the basis for valuing labor substantially understates the cost of labor to the manufacturer because wage rates do not include all labor costs such as welfare fund payments, unemployment taxes and health care costs. In support of its argument, petitioner refers to the International Labor Organization's *1998 Yearbook of Labor Statistics* (''*YLS*''). Petitioner notes that, in addition to the data on ''manufacturing wages'' which the Department used for its regression analysis, the *YLS* also contains a separate section on ''labor costs'' that includes the cost of employee benefits not captured in the ''manufacturing wages'' section. According to petitioner, this information shows that labor costs were 67 percent higher than the wage rates used by the Department.

Petitioner further notes that these expenses are not captured in the Department's overhead and SG&A ratios because the Indian bearing companies report expenditures associated with labor separately from other expenses. Therefore, the Department should recalculate its regression analysis using the ''labor costs'' reported in the *YLS,* thereby computing a fully-loaded labor rate.

The respondents contend that the Department properly applied the regression-based wage rate as provided in section 351.408(c)(3) of its regulations. The respondents further argue that inclusion of other labor costs would distort the Department's valuation of labor because Chinese producers do not incur the same labor costs as market economy producers.

Department's Position: Our regulations at section 351.408(c)(3) state that ''the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries.'' Therefore, to value the labor inputs in both reviews, we applied the PRC regression-based wage rate published by the Import Administration on its website, which was last revised in May 1999.

With respect to petitioner's argument, we disagree. The *YLS* states that the wage rates, used to calculate the regression analysis are comprehensive wage rates which also includes overtime, bonuses, holiday pay, incentive pay, pay for piecework, and cost-of-living allowances. *See Magnesium from the People's Republic of China, Final Results of Antidumping Duty New Shipper Administrative Review,* 63 FR 3085, 3091 (January 21, 1998). Thus, for purposes of these final results, we have not adjusted the regression-based wage rate used in the preliminary results.

1(c) Overhead, SG&A and Profit

Comment 8: Excluding Asian Bearing Company and National Engineering Company

Premier and Weihai state that the Department properly excluded the companies Asian Bearing and National Engineering Company (''NEI'') from the list of Indian bearings producers utilized for calculating the overhead, SG&A and profit ratios because the reporting methodology used by these two companies is inconsistent with the Indian GAAP standards used by the remaining six companies.

Petitioner contends that there is no evidence that the accounting policies of Asian Bearing and NEI are inconsistent with the methodology used by the other six Indian producers. Therefore, the Department should include the financial information of Asian Bearing and NEI into its calculation of overhead, SG&A and profit. Petitioner further argues that incorporating the financial data of all eight Indian bearings producers more accurately represents the range of operating results that may be expected of bearings producers in China, which is consistent with the Department's surrogate methodology.

Department's Position: We disagree with petitioner and have excluded the data for Asian Bearing and NEI in calculating surrogate overhead, SG&A and profit ratios because, according to the Auditor's Reports, the methodology used in recording and reporting the financial condition of these two companies appears, in certain instances, to be inconsistent with the methodology (*i.e.,* Indian GAAP) used by the remaining six companies.

In this review, the Auditor's Report included with Asian Bearing's 1997–98 financial statements expresses a clear reservation about how certain interest expenses (with their corresponding effects on depreciation and other expenses) have been reported, noting that the methodology is not in accordance with accounting principles recommended by the Institute of Chartered Accountants of India. The Auditor's Report also notes that Asian Bearing continues to be a ''sick'' company as defined by India's Sick Industrial Companies Act. Likewise, the auditors' endorsement of NEI's 1997–98 Financial Statements, as contained in the Auditor's Report, includes qualifications regarding the company's treatment of various overhead and SG&A expenses. As in *TRBs 10,* the qualifications indicate that the treatment of these expenses is not consistent with Indian GAAP.

Given these significant differences, it would be incongruous to combine the reported data of all eight companies.

Comment 9: The Department Should Recalculate Surrogate Factory Overhead and SG&A

Luoyang and ZCCBC argue that in order to be consistent with the methodology applied in other NME proceedings, the Department should calculate overhead and SG&A expenses as a percentage of total cost of manufacturing (''COM''), citing to *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, From the People's Republic of China; Final Results and Partial Recession of Antidumping Administrative Reviews,* 64 FR 43659, 43671 (August 11, 1999) and *Certain Helical Spring Lock Washers from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 64 FR 37743, 37744 (July 13, 1999).

Petitioner contends that the issue to be addressed is whether the denominator used in the Department's calculation of the overhead and SG&A ratios represents the same expenses to which the ratios are applied. According to petitioner, the Department's calculation methodology is reasonable because the respondents are unable to demonstrate a flaw in our calculation methodology.

Department's Position: Although we agree with respondents that we will normally calculate overhead and SG&A expenses as a percentage of COM, we have modified our methodology with respect to this proceeding because we are unable to separately value the direct and indirect labor expenses reported by the Indian producers. Therefore, we used the average of the Indian producers' reported data with respect to the numerator (reported overhead and SG&A expenses) and the denominator (direct input costs excluding labor), thus yielding internally consistent ratios. These ratios, when multiplied by our calculated FOP values, constitute the best available information concerning overhead and SG&A expenses that would be incurred by a PRC bearings producers given such FOP data.

Comment 10: Excluding ''Net Loss (Gain) on Fixed Assets Sold''

Premier and Weihai contend that the Department improperly included the category ''Net Loss (Gain) on Fixed Assets Sold'' as an element of overhead. They argue that this category should be excluded from overhead expenses because these losses (gains) are incurred independent of manufacturing or selling activities.

Petitioner notes that the Department has specifically rejected the respondents' argument in previous reviews. *See, e.g., TRBs 10.* Further, petitioner argues that the respondents have failed to provide any new evidence or argument that should persuade the Department to change its position.

Department's Position: We agree with Petitioner that the ''Net Loss (Gain) on Fixed Assets Sold'' should be included in the calculation of the overhead ratio. As discussed in *TRBs 10,* the Department has addressed this issue previously in *TRBs 8.* In that review, we stated that losses '' * * * incurred in selling fixed assets used to manufacture merchandise clearly [are] related to manufacturing activities.'' *See TRBs 8* at 62 FR 6184. This is so because ''Net Loss (Gain) on Fixed Assets Sold'' identifies the relevant capital cost of the assets used in manufacturing, and therefore, as with depreciation, this line item should be included in overhead. Accordingly, we have continued to include this category in our overhead calculation for the final results.

Comment 11: Excluding ''Other Expenses'' from Factory Overhead and SG&A Calculations

Premier and Weihai argue that the category ''Other Expenses'' or ''Miscellaneous Expenses'' reported in several of the Indian producers' financial statements should not be included in the overhead and SG&A calculations because there is insufficient information to determine whether all of these expenses are related to the production of TRBs.

Department's Position: This issue has been raised in earlier reviews, and our position remains unchanged. As stated in *TRBs 10,* we cite to our position on this issue in *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Final Results and Rescission in Part of Antidumping Duty Administrative Review,* 61 FR 51427 (October 2, 1996) (''*TRBs from Romania 96*''). In that review, we stated, ''[t]he Department generally does not dissect the overhead rate on a surrogate country and apply only components relevant to the producer. It is generally not possible to break the surrogate overhead value into its individual components at a level of detail that would be necessary to value each individual component of the NME producer's overhead. * * * Rarely, if ever, will it be known that there is an exact correlation between overhead expense components of the NME producer and the components of the surrogate overhead expenses. Therefore, * * * the Department normally bases normal value completely on factor values from a surrogate country on the premise that the actual experience in the NME cannot meaningfully be considered. Accordingly, Department practice is to accept a valid surrogate overhead rate as wholly applicable to the NME producer in question.'' *See TRBs from Romania 96,* at 61 FR 51429. For these same reasons, we have continued to include these other expenses in our overhead and SG&A calculations for the final results.

Comment 12: Commission Expenses

Premier and Weihai argue that the Department incorrectly included ''Other Commissions'' in its SG&A calculation. They argue that this category should be excluded from SG&A expenses because these types of expenses are either valued directly (individually) elsewhere in the Department's FOP calculation and are, therefore, double-counted, or are otherwise not applicable to the Chinese respondents.

Department's Position: We disagree that commissions should be excluded. In *TRBs 10* we explained that commissions are standard selling costs and, as such, are properly categorized under SG&A. *See TRBs 10,* 63 FR 63852. Whether PRC producers have commissioned sales staff is irrelevant. As discussed in our position under the previous comment, we cannot tailor surrogate overhead or SG&A rates to match the circumstances in the NME country. Therefore, for our final results we have included all commission expenses as part of SG&A.

Comment 13: Excluding ''Consumption of Traded Goods'' from Overhead Rate Calculation

With respect to the administrative review, petitioner argues that the Department should exclude the category ''Consumption of Traded Goods'' from the denominator in calculating the factory overhead ratio because this category includes items which are only purchased and sold—but not produced—by the Indian bearings producers and, therefore, have nothing to do with the producers' manufacturing operations. Furthermore, the CIT recently instructed the Department to exclude the purchases of traded goods from the cost of manufacture with respect to the 1994–95 administrative review of TRBs because ''Commerce failed to demonstrate how these already manufactured goods constitute a material cost incurred in manufacturing the subject merchandise.'' *See Timken*

v. *U.S.* Petitioner notes that the Department followed this ruling in the preliminary results of the new shipper review.

Luoyang and ZCCBC argue that any adjustment to the ''Consumption of Traded Goods'' category should be accompanied by a downward adjustment to the profit ratio because the sale of ''traded goods'' is a source of revenue for Indian bearing producers.

Department's Position: We disagree that we should exclude ''Consumption of Traded Goods'' from the direct input costs calculated for the Indian bearings producers. Although the CIT did instruct the Department to exclude the purchases of traded goods from the cost of manufacture with respect to the 1994–95 administrative review of TRBs in *Timken* v. *U.S.*, that ruling is not yet final. Thus, we are not compelled to apply the court-directed methodology in these reviews.

We further note that we excluded ''Consumption of Traded Goods'' from our direct input costs calculation in the preliminary results of the new shipper review. Again, because *Timken* v. *U.S.* ruling is not yet final, we have revised our preliminary calculations to include the traded goods amount in direct input costs.

Comment 14: Power Should Not Be Classified As A Direct Cost

Premier and Weihai note that in *TRBs 8* the Department properly classified power and fuel as an element of overhead rather than as a direct material input. Accordingly, the Department should revise its preliminary overhead and SG&A calculations to comply with past precedent.

Petitioner counters that section 773(c)(3) of the Act requires that the Department separately identify, quantify and value all ''energy and utilities consumed'' in producing subject merchandise. Petitioner contends that, given the statutory language, there is no basis for allocating electricity usage between direct costs and other activities. Furthermore, petitioner notes that in *TRBs 8* the respondents had not reported their energy consumption and, therefore, this factor could not be properly valued as required by the statute.

Department's Position: As noted by petitioner, our treatment of electricity in this case can be distinguished from *TRBs 8*, where we incorporated the consumption of energy as part of overhead. The present case is distinct because we have been able to quantify and value energy as a factor input. Therefore, we have not altered our calculation methodology for these final results. *See TRBs 10*, 63 FR 63858.

Comment 15: Reliability of Market-Economy Input Prices

The petitioner argues that because the price structure of China's domestic market is distorted by pervasive government intervention, imports into China are unreliable indicators of market values. According to the petitioner, in order for many market-economy exporters to compete in China, they must lower their prices to levels below world-market price levels. In light of the above, the petitioner states that the Department should be ''extra cautious'' in accepting any value based on purchases by an NME producer. Thus, the petitioner argues that the Department should assume that imports from market-economy countries are not reliable market values unless there is evidence that such values are otherwise consistent with world-market prices.

The petitioner further argues that the Act does not compel the Department to use market-economy prices of direct imports when valuing the factors of production. Rather, the petitioner notes that, based on the distortive nature of the Chinese economy, import prices paid by Chinese producers are not necessarily the best available information concerning the valuation of factors. Citing to *Sigma Corp.* v. *United States* (117 F.3d 1401, 1408 (Fed. Cir. 1997)), the petitioner notes that the Federal Circuit held that the Department must use a methodology that produces ''reasonably accurate estimates of the true value of the factors of production.'' According to the petitioner, the Department should not assume that a price paid in market-economy currency to a market-economy producer is a reasonably accurate estimate of the true value of the factor of production. The petitioner contends that such values should be scrutinized to the same degree that the Department examines possible surrogate values.

Lastly, the petitioner notes that even if the Department uses market-economy prices of direct imports to value factors of production, the Department should not use such prices to value a larger volume of inventory than such purchases actually represent.

Premier, Weihai, and Luoyang argue that market-based prices actually paid by respondents for imported inputs constitute the most accurate representation of the respondents' cost and should be used to value the inputs. According to Premier and Weihai, the Department's policy to use such prices is consistent with the Act, which states that the ''valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority,'' and with *Lasko Metal Products* v. *U.S.* (43 F.3d 1442, 1446 (Fed. Cir. 1994)) (''*Lasko*''), in which the Federal Circuit held that ''where we can determine that an NME producer's input prices are market determined, accuracy, fairness, and predictability are enhanced by using those prices.'' Therefore, Premier and Weihai argue that the Department should continue to use the actual prices of direct imports to value such inputs because the best available information is market-driven prices and costs.

Premier and Weihai find the petitioner's argument concerning NME distortion of prices for direct imports to be without merit because, according to the respondents, the petitioner has not explained how the alleged distortions in the Chinese domestic economy can impact prices offered in third countries. Premier and Weihai also note that similar arguments were made to the Department in its recent rulemaking for the new regulations and the Department rejected such arguments in light of the increased accuracy achieved by using prices paid by NME producers to market-economy suppliers. See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27366 (May 19, 1997) (''*Final Rule*'').

Luoyang notes that the Department acted consistently with its regulations when it used the producer import price to value the entire factor input even though the imported input reflected less than 100 percent of the factor input used. In support of its argument, Luoyang cites *Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 61794, 61796 (November 19, 1997) and the *Draft Final Results of Redetermination On Remand Pursuant to Shakeproof Assembly Components Division of Illinois Tool Works, Inc.* v. *United States*, Court No. 97–12–02066 (September 9, 1999).

Department's Position: In accordance with our established practice and our regulations, we are continuing to use the actual prices of directly imported steel to value steel inputs because these prices represent the actual market-based prices incurred in producing the subject merchandise and, as such, are the most accurate and appropriate values for this particular factor for the purpose of calculating NV. As noted by the respondents, this practice has been affirmed in court decisions, such as

Lasko, and is codified in our regulations at section 351.408(c)(1).

As noted in our *Final Rule*, while we do not view the *Lasko* decision as permitting us to use distorted prices, we believe that the Court's emphasis on ''accuracy, fairness and predictability'' provides us with the ability to rely on prices paid by NME producers to market-economy suppliers in lieu of using surrogate values. *See Final Rule* at 62 FR 27366. We disagree with the petitioner that imports into China are unreliable indicators of market values because China's domestic market is distorted by government intervention. While China's NME status indicates that domestic prices in China are unreliable, there is no evidence that domestic distortions impact the price at which market-economy suppliers would offer products for sale to Chinese producers. We have no reason to assume that, when dealing with Chinese importers, market-economy suppliers ignore rules of supply, demand, and profit-seeking behavior within a competitive world market.

Even if we were to accept the petitioner's argument that excess steel supply in China leads foreign competitors to ''dump'' steel on the Chinese market, the petitioner has not presented evidence that there is an excess supply of the particular type of steel used in the production of TRBs nor evidence that such excess supply somehow renders the steel prices being offered to certain Chinese TRB producers by market-economy suppliers unreliable. There are a variety of reasons for setting a particular price higher or lower than a world benchmark in an arm's length transaction. In examining actual sales between private parties, the Department would have to be convinced by evidence on the record that the particular sale in question was in some way unrepresentative of market-economy forces. For example, we would be willing to disregard a price paid by an NME producer to a market-economy supplier if the quantity of the input purchased in a given transaction is, for example, less than the volume that would normally be traded. Where the transaction is not in commercial quantities, the price may not be truly representative of a market price.

Comment 16: Use of Market-Economy Input Prices Obtained by Trading Companies

Premier and Luoyang argue that, consistent with the Department's findings in *TRBs 10* at 63 FR 63854 and the *Final Results of Redetermination Pursuant to Court Remand* (August 31, 1998), *Olympia Indus., Inc.* v. *United States*, Slip Op. 98–49 (April 17, 1998) (''*Olympia II*''), the Department should use import prices paid by PRC trading companies as surrogate data. Premier and Luoyang argue that the Department's determination in *TRBs 10* supports the contention that market-based prices actually paid by Chinese producers for imported steel constitute the most accurate representation of the producer's cost of steel and, thus, should be used as surrogate data to value all steel inputs. Premier and Luoyang note that both the courts, in cases such as *Lasko*, and the Department have found that market-economy input prices of direct imports are the most appropriate and accurate basis for determining the values of the inputs used.

With respect to trading company import prices, Premier and Luoyang cite to the Department's statement in the tenth review in which it said that the question is ''whether trading company import prices, as alternate surrogate data, are preferable to surrogate data from a market-economy country that is a significant producer and at a level of comparable economic development'' and notes that in the tenth review the Department did use trading company prices as alternate surrogate data. Luoyang notes that in *Olympia II* and as followed in *TRBs 10*, the Department set forth criteria to be used in evaluating whether alternate surrogate values would be used. Luoyang specifically cites to the Department's statement in *TRBs 10* in which it said, ''To assess the reliability of the Chinese trading company's steel prices, we have examined the factors outlined in the *Olympia II* remand: (1) The value and volume of steel imports, (2) the type and quantity of the imported steel, and (3) consumption of imported steel by the NME producer.'' *See TRBs 10* at 63 FR 63854. In the current case, Luoyang argues that the Department must apply these same criteria to determine whether the trading company's steel imports meet the Department's standard. According to Luoyang, the fact that a trading company rather than the producer is the importer should make no difference in determining the best surrogate value because the price paid for the actual input has to be considered as the ''best available information.''

The petitioner argues that the record does not indicate that the prices of trading company imports were market determined. As discussed in Comment 15: Reliability of Market-Economy Input Prices, the petitioner notes that even market economy countries do not necessarily trade with China on a market-economy basis. According to the petitioner, the presence of a Chinese trading company as an intermediary adds further elements of distortion. As examples, the petitioner notes that in a market economy a trading company would add a markup and would get a different price than a producer because of its ability to purchase in volume for the needs of several producers. The petitioner argues that the Department would not be taking these differences into account if it used the price between the trading company and the market-economy supplier. Furthermore, the petitioner argues that in the absence of evidence that a sale to a trading company is a *bona fide* arm's length transaction, the Department should not regard the price of that sale as a reliable surrogate value and that, even if this requirement were met, a reasonable markup should be added to reflect the trading company's expenses and profit.

Department's Position: For inputs that were purchased through a trading company, we have not used the Chinese trading company values, as requested by respondents. Instead, we used surrogate values from the appropriate market economy country.

We recognize that in Olympia (Slip Op. 99–18), the Court, in dicta, stated that Commerce must test the reliability of the trading company value in order to determine whether it comprises the best available information for purposes of the FOP calculation. However, Commerce respectfully disagrees with the Court's interpretation of the statute. As we stated in our the Final Results of Redetermination Pursuant to Court Remand of Olympia Indus., Inc. v. United States, Slip. Op. 98–49 (April, 17, 1998), page 6, nothing in the *Lasko* decision alters the statutory mechanism for selection of surrogate values. In *Lasko*, the Court merely recognized that, where the *actual* cost to the producer was a market economy price (and paid in a market economy currency), the *actual* cost to the producer was better information than a surrogate value. *See Lasko*, 43 F.3d at 1446. The selection of surrogate values is governed by section 773(c)(4) of the Act, which, as discussed above, establishes a preference for values from a comparable market economy that is a significant producer of comparable merchandise. Had Congress intended a preference for using import prices into the NME as surrogate values, it could easily have stated this preference.

For these reasons, we continue to apply values from the selected surrogate countries instead of Chinese trading-company values in this review.

Comment 17: Premier Has Acted to the Best of Its Ability

Premier argues that the Department's use of adverse facts available in the *AR Preliminary Results,* because it was unable to supply information from its unaffiliated suppliers, was not appropriate; nor was it consistent with the Department's past treatment. Premier argues that, despite its incomplete questionnaire response, it has cooperated to the best of its ability. Premier notes that it has provided evidence of its attempts to contact its suppliers in order to acquire FOP data and has also documented its suppliers' refusal to provide the requested FOP data. Premier further explains that its suppliers directly compete with Premier for sales of TRBs and that their reluctance to provide a competitor with sensitive production data does not indicate that Premier has acted in a non-cooperative manner.

Premier suggests that because this concrete evidence is now on the record, Premier has proven that it acted to the best of its ability in cooperating with the Department in this review and, therefore, should not be adversely treated in the application of facts available. According to Premier, its actions in this review are identical to those in *TRBs 8* where Premier cooperated with the Department, yet was unable to provide FOP data for all of its sales. The Department should, therefore, not resort to an adverse rate for those sales not covered by the FOP data supplied by Premier. Premier suggests that the Department apply a weighted-average margin calculated from those U.S. sales for which acceptable data was reported by Premier. Alternatively, Premier urges the Department to use the methodology from *TRBs 8* in which the Department applied a simple average of the margins calculated for the other respondent companies.

Petitioner insists that the Department rely upon adverse facts available when substantial data are missing for a particular respondent, as in the case of Premier. Accordingly, petitioner contends that Premier should not be allowed to select and apply FOP data provided by other respondents to those sales which Premier was unable to obtain FOP data. Although it may be correct that there is little variation in factor utilization rates among TRB producers from which the Department has received FOP data, petitioner notes that the Department has never been able to obtain a complete list of TRB producers in China, much less FOP data from all of Premier's suppliers. Therefore, there is no basis for the Department to assume that the similarity it found among the relatively few respondents who submitted FOP data also apply to the entire and largely unknown universe of Chinese TRB producers.

Petitioner further argues that the method accepted by the Department at the preliminary determination allows Premier to select the data it will supply and exclude from the review any suppliers whose costs are higher than those reported by other respondents. Petitioner suggests that the Department should create an incentive for Premier's suppliers to come forward in the future by applying an adverse rate to those sales that are not represented by FOP data. If an adverse rate was applied to these producers, it would encourage them to come forward in the future and supply the factor values. Thus, for those sales in which Premier's supplier did not report FOP data, the Department should apply adverse facts available or, alternatively, use the highest normal value calculated from other respondents' FOP data for that specific model number.

Department's Position: We are continuing to apply a partial adverse facts available rate to Premier's U.S. sales that are lacking corresponding FOP data. Section 776(b) of the Act provides that an adverse inference may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Furthermore, section 351.308 of the Department's regulations states that the Secretary may make determinations on the basis of the facts available on the record if ''an interested party or any other person withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding'' (*Final Rule,* 62 FR 27408).

In this case, we determine that Premier has not acted to the best of its ability. Premier was unable to provide letters from all of its suppliers responding to Premier's request for information. Instead, it relies heavily on an affidavit from its marketing executive stating that he had contacted the companies listed in Premier's response. Moreover, Premier submitted contradictory information about its suppliers. Taking into account that this is the eleventh review of the antidumping order on TRBs from the PRC, and that Premier has participated in several reviews, we find that Premier has not acted to the best of its ability.

Furthermore, Premier's suppliers are interested parties, and those who failed to provide factors of production have not acted to the best of their ability. Their failure to provide factors information prevented the Department from calculating dumping margins accurately, thus undermining the antidumping duty law.

For these reasons, the Department finds that applying adverse facts available is appropriate. Therefore, as in the *AR Preliminary* Results, we are applying a rate of 25.56 percent ad valorem to Premier's U.S. sales for which factors data was not provided.

Comment 18: Premier's Marine Insurance and International Freight Expenses

Premier claims that the Department incorrectly deducted amounts for international freight and marine insurance for certain sales in the *AR Preliminary Results.* Upon the Department's request, Premier clarified that certain sales are shipped directly from the supplying factory and that the cost of the shipment is included in the purchase of the goods from the supplier. For these sales, Premier explains that it did not incur expenses for international freight or marine insurance. Accordingly, the Department should correct this error in its final results.

Petitioner argues that Premier's U.S. sales are based on the prices charged by Premier to its U.S. customers rather than on prices paid by Premier to its suppliers. Petitioner contends that the issue of whether Premier reimbursed its suppliers for insurance and freight costs is irrelevant. The fact that these expenses were incurred with respect to these transactions necessitates that these charges be deducted in calculating U.S. price.

Department's Position: We agree with petitioner. Pursuant to section 772(c)(2)(A) of the Act, expenses associated with bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States are deducted from EP. Because transportation expenses were incurred on these sales, regardless of where in the distribution channel, we deducted them in calculating EP.

Comment 19: Scrap Reported by Premier's Supplier

Upon the Department's request, Premier clarified the scrap generated by part type for one of its suppliers. Accordingly, the Department should make an adjustment to scrap in its final results of the administrative review with respect to this supplier.

Petitioner contends that the Department cannot rely on information which is submitted after it is clear that

no verification will take place and, therefore, the Department should not make the requested adjustment.

Department's Position: We agree with Premier and have made the necessary adjustments for purposes of our final results. With respect to the petitioner's comment, we note that, although we allowed Premier to submit information after issuing the *AR Preliminary Results,* we did not accept such information on the assumption that a verification would not be taking place. The Department routinely issues final results without verifying information submitted or even expressing that a verification will take place. The criteria in using information when making a determination is not whether the party in question knew that the information would or would not be verified. Where the Department elects not to verify, it will rely on timely submitted information, unless there is evidence that the information is unreliable. In this case, the information submitted by Premier was timely and there is no evidence to suggest the information is unreliable. Thus, it is appropriate to rely on this data in our calculation.

Comment 20: Labor Reported by Premier's Supplier

Premier claims that the Department incorrectly double-counted the unskilled labor reported for one of its suppliers during the administrative review period. Premier explains that it has corrected the data submitted on unskilled labor with respect to this supplier and, therefore, the Department should correct its error for the final results.

Petitioner contends that Premier's argument should be disregarded because it submitted the new labor data after the preliminary results and then waited to identify this error in its case brief. Petitioner argues that this demonstrates Premier's attempt to manipulate record evidence in an effort to reduce its antidumping liability.

Department's Position: We agree with Premier and have made the necessary adjustments for purposes of our final results. At its discretion, the Department may accept corrections of previously submitted data. In this situation, we requested Premier to correct the double-counting error after the *AR Preliminary Results.*

We also note that Premier submitted new information on October 4, 1999. This information has not been accepted because it was neither timely nor requested by the Department.

Comment 21: Luoyang's Market-Economy Steel Purchases

Petitioner argues that the price of steel imported directly by Luoyang is considerably lower than the other market-economy steel purchases Luoyang reported for the administrative review period. The discrepancy in prices suggests that the purchase of imported steel was an isolated transaction and, therefore, should not be regarded as representative of Luoyang's cost of production.

Luoyang contends that the difference in prices simply reflects the variation in the terms and prices offered by its suppliers. Regardless of the documented price variations, Luoyang notes that the Department correctly selected the price paid by Luoyang for steel that it imported directly for purposes of valuing steel used in the production of the subject merchandise.

Department's Position: We agree with Luoyang. Pursuant to section 351.408(c)(1) of the Department's regulations, the Secretary will normally use the actual price paid to value factors purchased directly from market-economy suppliers. Since Luoyang purchased the steel directly from a market-economy country and paid for it in hard currency, we used the actual price it reported for such steel.

Comment 22: Luoyang's Purchase of Market-Economy Steel Pre-dates the POR

Petitioner argues that the Department should not use Luoyang's market-economy purchases of steel that pre-date the administrative review period to value the steel inputs of NME producers. Petitioner contends that it is not clear from record evidence whether this steel was used to produce the subject merchandise during the POR.

Luoyang rebuts that record evidence establishes that it actually used the imported steel to produce the subject merchandise during the POR. Luoyang explains that petitioner has ignored the inherent lead time between the purchase of steel and the actual production of the subject merchandise.

Department's Position: We agree with Luoyang. Record evidence indicates that Luoyang used the steel purchased from the market-economy supplier to produce the subject merchandise during the POR. Accordingly, we have continued to use this transaction to value steel inputs with respect to Luoyang.

Final Results of the Reviews

As a result of our analysis of the comments we received, we determine the following weighted-average margins to exist:

Manufacturer/ exporter	Time period	Margin (percent)
Luoyang	6/1/97–5/31/98	3.68
Premier	6/1/97–5/31/98	24.52
ZCCBC	6/1/98–11/30/98	0.00
Weihai	6/1/98–11/30/98	0.00
PRC Rate	6/1/97–5/31/98	33.18

Parties to the proceeding may request disclosure within five days after the date of publication of this notice. *See* 19 CFR 351.224. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. With respect to export price sales for these final results, we divided the total dumping margins (calculated as the difference between NV and export price) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer/customer for the review period will be almost exactly equal to the total dumping margins.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of TRBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the PRC companies named above will be the rates shown above, except that for exporters with *de minimis* rates, *i.e.*, less than 0.50 percent, no deposit will be required; (2) for all remaining PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 33.18 percent (the proceeding's highest margin); (3) for the non-PRC exporter, Premier, the cash deposit rates will be the rates established above; (4) for non-PRC exporters of subject merchandise from the PRC, other than Premier, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties

prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and new shipper review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i)(1) of the Act.

Dated: November 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29752 Filed 11–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed Certificate and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (the ''Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 99–00007.''

Summary of the Application

Applicant: John L. Koenig, P.O. Box 383, Midlothian, VA 23113.

Contact: John L. Koenig.

Telephone: (804) 320–1254.

Application No.: 99–00007.

Date Deemed Submitted: November 4, 1999.

Members (in addition to applicant): None.

John L. Koenig seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operation.

Export Trade

1. Products

All goods and services.

2. Technology Rights

All intellectual property rights associated with Products, including, but not limited to: patents, trademarks, service marks, copyrights, trade secrets and know-how.

3. Export Trade Facilitation Services (as they relate to the export of Products and Technology Rights)

Export Trade Facilitation Services, including but not limited to: consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation, trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; taking title to goods; professional services in areas of government relations and assistance with state and federal programs and foreign trade and business protocol.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

The proposed Export Trade Certificate of Review would extend antitrust protection to John L. Koenig to conduct the following export trade activities:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotion and marketing activities as they relate to exporting Products to the Export Markets;
3. Enter into exclusive and non-exclusive export sales agreements with suppliers regarding sales of Products in the Export Markets; such agreements may prohibit suppliers from exporting independently of John L. Koenig;
4. Enter into exclusive and non-exclusive sales and/or territorial agreements with distributors in the Export Markets;
5. Establish the price of Products for sale in the Export Markets;
6. Allocate export orders among suppliers;
7. Exchange information on a one-on-one basis with individual suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors; and
8. Enter into exclusive or non-exclusive licensing agreements for Technology Rights with suppliers, export intermediaries, or other persons in Export Markets.