between the price of comparable goods in the U.S. and the foreign markets would result in double-counting.

FAG argues that, if the Department agrees with Torrington's position, it should, to preserve comparability, add to USP the amount of any antidumping duties, plus interest, that are refunded to respondents.

Department's Position: We disagree with Torrington and Federal-Mogul that the Department should deduct from ESP antidumping duties allegedly reimbursed by foreign producers to their U.S. affiliates. In this administrative review neither party has identified record evidence that there was reimbursement of antidumping duties. Evidence of reimbursement is necessary before we can make an adjustment to USP. This has been our consistent interpretation of 19 CFR 353.26, the reimbursement regulation, and was upheld by the Court in Otokumpu Copper Rolled Products AB v. United States, 829 F.Supp. 1371 (CIT 1993).

As stated in *AFBs II* (at 28371) and *AFBs III* (at 39736), the antidumping statute and regulations make no distinction in the calculation of USP between costs incurred by a foreign parent company and those incurred by its U.S. subsidiary. Therefore, the Department does not make adjustments to USP based upon intracompany transfers of any kind.

We also disagree with Torrington and Federal-Mogul that the amount of antidumping duties assessed on imports of subject merchandise constitutes a selling expense and, therefore, should be deducted from ESP. Our position was upheld in *Federal-Mogul* v. *United States*, Slip Op. 93–17 at 40 (CIT 1993).

We agree with respondents that making an additional deduction from USP for the same antidumping duties that correct for price discrimination between comparable goods in the U.S. and foreign markets would result in double-counting. Thus, we have not deducted antidumping duties or antidumping duty-related expenses from ESP in this case.

## 3. Best Information Available

Section 776(c) of the Tariff Act requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." In deciding what to use as BIA, the Department regulations provide that the Department may take into account whether a party refuses to provide requested information. See 19 CFR 353.37(b). Thus, the Department

may determine, on a case-by-case basis, what is the BIA.

For the purposes of these final results of review, in cases where we have determined to use total BIA we applied two tiers of BIA depending on whether the companies attempted to or refused to cooperate in these reviews. When a company refused to provide the information requested in the form required, or otherwise significantly impeded the Department's proceedings, we assigned that company first-tier BIA, which is the higher of: (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or a prior administrative review; or (2) the highest calculated rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

When a company has substantially cooperated with our requests for information including, in some cases, verification, but failed to provide complete or accurate information, we assigned that company second-tier BIA, which is the higher of: (1) The highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin. See Allied-Signal Aerospace Co. v. United States, Slip Op. 93–1049 (June 22, 1993 CAFC). We applied this methodology to the companies discussed below for certain classes or

## **Results Based on Total BIA**

kinds of merchandise.

(1) Franke & Heydrich (Ball Bearings from France and Germany): We used first-tier BIA because Franke & Heydrich failed to respond to the Department's questionnaire. In this case, the rate used was the highest rate in the LTFV investigation, which was the highest rate ever found for each relevant class or kind of merchandise in the country of origin.

(2) SNFA: We used first-tier BIA because SNFA failed to respond to the Department's questionnaire. The rate used was the highest rate in the LTFV investigation which was the highest rate ever found for each relevant class or kind or merchandise in the country of origin

(3) GMN: Because GMN had substantially cooperated with our requests for information, but was unable

to complete verification, we used second-tier BIA. The rate used was GMN's highest previous rate, which in this case was the rate from the LTFV investigation.

## **Partial BIA**

In certain situations, we found it necessary to use partial BIA. Partial BIA was applied in cases where we were unable to use some portion of a response in calculating a dumping margin. The following is a general description of the Department's methodology for certain situations.

In cases where the overall integrity of the questionnaire response warrants a calculated rate, but a firm failed to provide certain FMV information (i.e., corresponding HM sales within the contemporaneous window or CV data for a few U.S. sales), we applied the second-tier BIA rate (see above) and limited its application to the particular transactions involved. See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al., 58 FR 39729, 39739 (July 26, 1993).

Where any deductions to HM prices or CV, such as freight or differences in merchandise, were not reported or were reported incorrectly, we have assigned a value of zero. For comparisons of similar merchandise, if adjustment information for differences in merchandise was missing from the U.S. sales listing, we used the second-tier BIA rate to determine the margins for these particular transactions. If other U.S. adjustment information such as freight charges was missing, we used other transactional information in the response for these expenses (i.e., freight charges for other sales transactions). Where respondents did not establish that expenses were either indirect in the U.S. market or direct in the HM, we generally treated them as direct in the U.S. market and indirect in the HM. See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al., 58 FR 39729, 39739 (July 26, 1993).

We received the following comments concerning BIA issues:

Comment 1: GMN asserts that use of "second-tier" BIA for GMN is not supported by substantial evidence and is contrary to law.

GMN states that it promptly filed its questionnaire responses, thoroughly answered all supplemental questions,