than 90 percent of the HM sales of that model, and over an extended period of time, the Department may not resort to CV without first determining whether there are other similar models to serve as a price-based comparison. This position results from the fact that the statute expresses a preference for price-based comparisons over CV.

Department's Position: We disagree with Federal-Mogul. Although section 773(a) of the Tariff Act expresses a preference for using the price of such or similar merchandise as the FMV before resorting to CV, section 773(b) directs the Department to resort immediately to CV if, after disregarding sales below cost, the remaining sales of a particular model or family are inadequate as the basis of FMV. Contrary to Federal-Mogul's assertions, therefore, the statute does not require the exhaustion of all possible family matches (similar merchandise) before resorting to CV. See AFBs III (at 39765).

8. Further Manufacturing and Roller Chain

Comment 1: Torrington contends that the Department should reconsider and discontinue the practice, known as the "Roller Chain" rule, whereby antidumping duties are not assessed on U.S. imports of subject merchandise used by a related party as a minor component (less than one percent) in a further manufactured article which is then sold to an unrelated party. See Roller Chain, Other Than Bicycle, from Japan, 48 FR 51801 (November 14, 1983). Torrington argues that whether or not a significant percentage of the finished product is accounted for by the subject import, a USP can reasonably be determined from the transfer price or by other means (e.g., the ESP on sales to other customers, or the lowest export price to any U.S. customer). Additionally, Torrington contends that Congress did not intend to limit the antidumping law to imports accounting for a "significant percentage" of the value of the completed product.

Torrington argues that the Department has broad authority, under the antidumping statute, to ensure that imports of bearings incorporated into further processed articles in the United States do not escape the imposition of antidumping duties. According to Torrington, the "Roller Chain" rule has created a substantial vehicle for circumvention of the antidumping duty order and should be abandoned.

Torrington argues that, assuming the Department continues to apply the "Roller Chain" test, it should change the methodology used for applying the one-percent test to avoid illogical and

improper comparisons between the entered value of the bearings and related party transfer prices. Torrington contends that, instead, the value of imported bearings should be based upon the ESP or PP of such or similar bearings sold at arm's length. This value would then be compared to the resale price of the finished merchandise, which is not subject to manipulation by related parties. Where the importer does not resell bearings, or resells only a small quantity, the U.S. prices for the model in question should be based on sales by another manufacturer or the manufacturer who produced the model in question.

Koyo argues that the Department should reject Torrington's arguments. Koyo contends that Congress recognized that there would be situations in which the value added in the United States would be so great that it would be inappropriate to apply the further-processing provision of the antidumping law (19 USC 1677a(e)(3)). This exception is clearly authorized by the legislative history of the antidumping statute, and there is no evidence on the record to demonstrate that the Department's application of the "Roller Chain" rule in this review is improper.

Koyo also disagrees with Torrington's argument that the Department should not use the entered value of the subject merchandise in applying the "Roller Chain" test. The entered value (rather than the resale value of the bearings in the United States, as suggested by Torrington) provides the correct basis for the one-percent test because the purpose of that test is to determine the value of the subject merchandise as imported in relation to the value of the finished product as finally sold to an unrelated party in the United States.

FAG argues that, contrary to
Torrington's opinion, imports of subject
merchandise do not escape the
antidumping duty order. Full
antidumping duties are deposited on the
full value of the entered (subject)
merchandise. This differs significantly
from exempting a respondent from
reporting sales of such merchandise.
FAG contends that the only time a
respondent might not pay antidumping
duties on imported merchandise further
processed in the United States occurs
when certain operations are undertaken
in an FTZ, which does not apply to
FAG.

NSK argues that the Department cannot arbitrarily adopt a numerical standard for evaluating whether an imported component in a further manufactured product is significant. NSK claims the Department must analyze all relevant factors before

determining whether an imported part is significant for purposes of 19 USC 1677a(e)(3). NSK states that if the Department wishes to use a rigid quantitative test to determine whether the imported content is significant, then it must publish, for public comment, a proposed rule to that effect. Until such a rule is properly adopted, the Department must analyze, prior to performing a section 772 analysis, all relevant factors to determine whether the imported amount contained in nonscope and in-scope finished products is significant. NSK further argues that where the finished product is merchandise of the type covered by the order, the Department should use the weighted-average margin for the imported finished product as the margin for insignificant imported parts.

NMB/Pelmec argues that Torrington is missing the point of the Department's one-percent test and its use of the entered value and the resale price. NMB argues that the Department established the one-percent test as a "bright-line" standard for determining whether the further-manufactured product contains more than an "insignificant amount" of the imported in-scope merchandise. NMB contends that using a different value, other than entered value, would not increase the accuracy of the onepercent test. NMB further asserts that if the Department should change the threshold, it should increase it from one percent to a more realistic level.

Department's Position: Section 772 (e)(3) of the Tariff Act requires that, where subject merchandise is imported by a related party and further processed before being sold to an unrelated party in the United States, we reduce ESP by any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after importation but before its sale to an unrelated party. In ESP transactions, therefore, we typically back out any U.S. value added to arrive at a USP for the subject merchandise. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Korea, 54 FR 53141, 53143 (December 27, 1989).

The legislative history of this provision suggests that the practice of subtracting the value added by the further processing operations in the United States should be employed only where the manufactured or assembled product contains more than an insignificant amount by quantity or value of the imported product. See S. Rep. No. 1298, 93d Cong. 2d Sess. 172–73, 245, reprinted in 1974 U.S.C.C.A.N.