Administrative Review, 58 FR 11216 (February 24, 1993). Based on this standard, we concluded that Honda's suppliers did not have reason to know that their sales to Honda would be exported to the United States. Therefore, we continue to classify Honda as a reseller.

15. Accuracy of the Home Market Database

Comment 1: Torrington argues that all reported HM sales destined for export should be purged from respondents' HM sales listings. Citing 19 U.S.C. 1677a(b), (section 772(b) of the Tariff Act), Torrington claims that sales by foreign manufacturers or producers that result in exports to the United States are by definition PP transactions and that there is no requirement in the statute that the foreign manufacturer knew, or should have known, that the sale was an export sale. The statute only refers to the knowledge of a manufacturer or producer in the context of sales to a "reseller" for exportation to an intermediate country. In addition to identifying reported HM sales which were destined for the United States, Torrington holds that it is equally important to ensure that FMV is based only on sales for consumption in the HM. Therefore, where there is evidence that particular sales were not for HM consumption, such sales should be purged from the HM sales listing even if there is insufficient evidence to suggest that the sales were for export to the United States. Torrington further argues that, at the least, the Department should adopt presumptions that shift the burden of establishing whether sales are for exportation from the Department to respondents.

Torrington argues in particular that all reported HM sales which were made to known German wholesalers/exporters, also referred to as "indirect exporters," should be disregarded in calculating FMV. Torrington claims it has made a substantial effort to demonstrate to the Department a pattern whereby German producers sell bearings at lower prices to German resellers who are exporters. The inclusion of such sales in the HM database tends to lower FMV. Furthermore, the Department should assume the questionable sales were actually sales to the United States.

Torrington claims that FAG was uncooperative in this proceeding or may have even impeded the Department's search for truth in this matter, and urges the Department to apply BIA to FAG's entire response. Torrington contends that FAG continued to claim a complete lack of knowledge of sales to exporters until just several days before the

preliminary results were issued. Torrington cites evidence discovered by the Department at verification, such as the fact that FAG sold to one exporter from its export, rather than domestic, price list, and other information provided for the record by the petitioner that implies that the inclusion of these sales in the HM database would be improper. Torrington further argues, however, that if the Department declines to reject FAG's response and use punitive BIA, the Department should at least reclassify as U.S. sales all FAG HM sales to customers fairly known to export AFBs.

Torrington also argues that the Department acted properly in excluding certain FAG sales to such HM customers. Torrington contends that the Department has a statutory basis for this action and that the Department established the validity of its factual findings at verification. See FAG Verification Report, February 23, 1994. Torrington maintains that the preliminary results call into question all sales to German wholesalers/exporters and contends that the Department should presume all sales to such customers are destined for export, adding that the Department has the discretion to exclude all questionable sales.

FAG maintains that the Department unlawfully removed sales to two HM customers from FAG's HM database, and that FAG properly reported all HM sales. FAG argues that the Department's test for determining whether FAG should have known that such sales were for export, and not for HM consumption, was arbitrary and capricious. This test involved telephone interviews with customers to determine whether FAG had knowledge that the merchandise sold to those customers would be exported. FAG contends that HM sales can be excluded only under section 772(b) of the Tariff Act (19 USC 1677 a(b)). Under that provision, the Department must first establish that the respondent had knowledge at the time of the sale that the merchandise was intended for export, then must determine that the United States was the destination of the export sale. FAG further argues that the Department has consistently maintained that the standard for imputed knowledge is high. FAG cites Fuel Ethanol From Brazil: Final Determination of Sales at Less Than Fair Value, 51 FR 5572 (February 14, 1986) (Fuel Ethanol), in which the Department imputed knowledge to the supplier that exports were destined for the United States because the reseller did not sell in the HM and the United

States accounted for 100 percent of the export market for the in-scope product.

FAG notes that, where the Department cannot say with objective certainty that 100 percent of a reseller's goods go to a known destination, the Department has not determined that the supplier "should have known" the disposition of the goods. FAG argues that even beyond having a high standard for imputing knowledge, the Department requires objective information that can be corroborated by the administrative record, citing Television Receivers, Monochrome and Color, From Japan: Final Results of Antidumping Administrative Review, 58 FR 11211 (February 24, 1993) (Television Receivers) and Oil Country Tubular Goods From Canada: Final Results of Antidumping Duty Administrative Review, 55 FR 50739 (December 10, 1990) (OCTG). FAG claims that the Department cannot satisfy the high burden of proof for imputing knowledge by means of telephone calls to customers. FAG maintains that the information gathered from these phone calls amounts to hearsay, and that the information cannot be corroborated by the administrative record.

FAG contends that its test for determining whether a sale should be classified as a HM sale, which involves checking whether VAT was charged and paid on the sale, is the most objective method for making such a determination, and is the best indication of what FAG knew at the point of sale regarding the destination of the merchandise. FAG argues that the Department verified that all HM sales reported by FAG included VAT.

FAG also argues that the term "exporter" has been so loosely used as to have no meaning, and further argues that, even if sales to these alleged exporters can be isolated, it is unclear whether all such sales were actually exported. FAG maintains that the method proposed by Torrington, as well as the one utilized by the Department, is subjective and unverifiable.

SKF argues that its data have been thoroughly verified and that there is no compelling evidence on the record to indicate that any of its HM sales were made at low prices to German resellers known to export.

INA noted that HM sales which it claimed as export sales were made to companies that were known by INA to be exporters and were classified as such in INA's records. INA states that the Department verified that such sales were not included among INA's reported HM sales. INA noted, however, that two customers classified as exporters also resell within Germany.