Dated: January 26, 1995.

#### Susan G. Esserman,

Assistant Secretary for Import Administration.

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#### [A-588-604]

# Final Affirmative Determination in Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof From Japan

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

**ACTION:** Notice of final determination of scope inquiry.

**SUMMARY:** We determine that tower forgings, hot forgings, and cold forgings are within the scope of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, from Japan. **EFFECTIVE DATE:** February 2, 1995.

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### SUPPLEMENTARY INFORMATION:

#### **Background**

On September 17, 1993, Koyo Seiko Company Ltd. and Koyo Corporation of U.S.A. (Koyo) requested that the Department of Commerce (the Department) issue a ruling that rough forgings, including tower forgings, hot forgings, and cold forgings, be found outside the scope of the antidumping duty order on tapered roller bearings and parts thereof from Japan (52 FR 37352, October 6, 1987). The forgings at issue are formed from bearing grade steel bar, which is sheared, pierced and, through either a hot or a cold process, extruded into the approximate shape of a TRB cup or cone, or, in the case of tower forgings, both a cup and a cone or an inner and an outer raceway. The forgings are not machined in any way prior to exportation. The Department initiated its scope inquiry on September 28, 1993, and granted interested parties an opportunity to comment on whether these forgings fall within the scope of the order. We received comments from the petitioner, the Timken Company, and rebuttal comments from Koyo.

Due to the significant difficulty presented by this scope inquiry, we

published a preliminary determination (59 FR 9471, February 28, 1994) in accordance with the Department's regulations (19 CFR 353.29(d)(3) (1993)). We preliminarily determined that Koyo's forgings constitute unfinished parts that are within the scope of the order. We received comments and rebuttal comments on the preliminary determination from Timken and from Koyo, and we held a public hearing on March 24, 1994. In order to ensure a more thorough understanding of the materials and processes used in the production of TRBs, the Department accepted invitations to tour the U.S. manufacturing facilities of American Koyo Bearing Manufacturing Company (AKBMC) and the Timken Company (Timken). We toured AKBMC's plant in Orangeburg, South Carolina, on April 21, 1994, and two Timken plants in Canton, Ohio, on April 22, 1994.

In accordance with 19 CFR 353.29(i)(1), in analyzing the scope request in this proceeding, the Department considered the descriptions of the merchandise contained in the petition, the initial less-than-fair-value (LTFV) investigation, and the determinations of the Department and the International Trade Commission (ITC). The regulations provide that if the Department determines that these descriptions are not dispositive, it will further consider the factors provided for under 19 CFR 353.29(i)(2), known commonly as Diversified Products criteria (see Diversified Products Corp. v. United States, 572 F. Supp. 883 (CIT

Timken contends that the petition and the record of the investigation unambiguously include Koyo's forgings in the definition of unfinished parts, and that the Department's analysis of the *Diversified Products* criteria in the preliminary determination was therefore unnecessary. However, Timken claims that an analysis of these criteria further supports its position that Koyo's forgings are within the scope of the order.

Koyo claims that the Department's preliminary affirmative determination contradicts previous scope determinations as well as the Department's acceptance in prior administrative reviews of Koyo's statements that the forgings in question are outside the scope of the order. Koyo has stated during administrative reviews that it imports forgings but has not reported them, since it considers them outside the scope of the order. The Department never challenged these statements.

In this final determination we find that the forgings at issue are "unfinished

parts," and are thus within the scope of the order. Because the descriptions in the petition, the LTFV investigation, and the determinations of the Department and the ITC are not dispositive, analysis of the Diversified *Products* criteria is necessary. In determining if forgings are within the order, the Department considered the factors set forth at 19 CFR 353.29(i)(2): (1) the physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; and (4) the channels of trade. These criteria indicate that the forgings in question are within the scope of the order because of their size and advanced shape, because they travel through the same channels of trade as other unfinished parts, and because it is highly unlikely that they will be used in anything other than a TRB. We have addressed comments from the parties on each of these issues in our analysis below.

## **Analysis**

# 1. The Language of the Petition

The original petition describes the subject merchandise as follows:

The merchandise covered by this petition is all tapered roller bearings, tapered rollers and other parts thereof (both finished and unfinished) including, but not limited to, single-row, multiple-row (e.g., two-, four-), and thrust bearings and self-contained bearing packages (generally pre-set, presealed, and pre-greased), but only to the extent that such merchandise is not presently covered by an outstanding antidumping duty order or finding in the United States. Timken notes that the language of the petition is inclusory rather than exclusionary, requesting protection for *all* unfinished parts not covered by an existing order.

Timken argues that the behavior of the parties during the LTFV investigation reflects a belief that forgings were included in the petition. Referring to a statement by one of the respondents that the inclusion of "forgings and other unfinished components" would cause it competitive harm, Timken claims that this argument would be made only if the parties believed that forgings were included in the petition. While Koyo agrees that the petition is clearly intended to include all unfinished parts, it notes that the petition makes no attempt to define an unfinished part.

#### The Department's Position

While the petition clearly asks for coverage of all unfinished parts, it is unclear what articles should be considered unfinished parts. Although Timken may have intended the term unfinished parts to include the kind of imports Koyo describes as rough