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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews

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

ACTION: Notice of preliminary results of Antidumping Duty Administrative Reviews and partial termination of administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews cover 21 manufacturers/exporters. The period of review (the POR) is May 1, 1995, through April 30, 1996.

We are terminating the reviews for five other manufacturers/exporters because the requests for reviews were withdrawn in a timely manner.

We have preliminarily determined that sales have been made below normal value (NV) by various companies subject to these reviews. If these preliminary results are adopted in our final results of these administrative reviews, we will instruct U.S. Customs to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: June 10, 1997.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Chip Hayes (SKF), Lyn Johnson (SNFA), Michael Panfeld (SNR), Kris Campbell, or Richard Rimlinger.

Germany

Thomas Barlow (Torrington Nadellager), J. David Dirstine (SKF), Suzanne Flood (INA), Michael Panfeld (NTN Kugellagerfabrik), Thomas Schauer (FAG), Kris Campbell, or Richard Rimlinger.

Italy

Chip Hayes (SKF), Mark Ross (FAG), or Richard Rimlinger.

Japan

J. David Dirstine (Koyo Seiko), Charles Riggle (NTN), Matthew Rosenbaum (NPBS), Thomas Schauer (NSK Ltd., Nachi-Fujikoshi Corp.), Kris Campbell, or Richard Rimlinger.

Romania

Thomas Barlow (Tehnoimportexport, S.A.) or Kris Campbell.

Singapore

Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

Sweden

Mark Ross (SKF) or Richard Rimlinger.

United Kingdom

Hermes Pinilla (FAG, Barden, NSK/RHP) or Kris Campbell.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On May 15, 1989, the Department published in the **Federal Register** (54 FR 20909) the antidumping duty orders on BBs, CRBs, and SPBs from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. Specifically, these orders cover BBs, CRBs, and SPBs from France, Germany, and Japan; BBs and CRBs from Italy, Sweden and the U.K.; and BBs from Romania, Thailand and Singapore. On June 20, 1996, in accordance with 19 C.F.R. 353.22(c), we published a notice of initiation of administrative reviews of certain of these orders for the period May 1, 1995, through April 30, 1996 (61 FR 31506). Subsequently, on July 30, 1996, we published an amendment to our initiation notice which, *inter alia*, terminated the review with respect to BBs from Thailand and conditionally initiated reviews for all other exporters of BBs from Romania in addition to Tehnoimportexport (61 FR 39629). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act.

Subsequent to the initiation of these reviews, we received timely withdrawals of review requests for Meter S.p.A. (Italy), Asahi Seiko (Japan), Izumoto Seiko Co., Ltd. (Japan), Kohwa Technos Corp. (Japan), and Sanwa Kizai Co., Ltd. (Japan). Because there were no other requests for review of these companies from any other interested parties, we are terminating the reviews with respect to these companies in accordance with 19 C.F.R. 353.22(a)(5).

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following classes or kinds of merchandise:

1. Ball Bearings and Parts Thereof:

These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75,

8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. Cylindrical Roller Bearings and Parts Thereof

These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. Spherical Plain Bearings and Parts Thereof

These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion of the scope of the orders being reviewed, including recent scope determinations, see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081 (January 15, 1997) (AFBs VI). The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
France	
SKF Compagnie d'Applications Mecaniques, S.A. (including all relevant affiliates) (SKF France)	All
SNFA	BBs, CRBs
Societe Nouvelle Roulements (SNR)	All
Germany	
FAG Kugelfischer Georg Schaefer KGaA (FAG Germany)	All
INA Walzlager Schaeffler KG (INA)	All
NTN Kugellagerfabrik (Deutschland) GmbH (NTN Germany)	All
SKF GmbH (including all relevant affiliates) (SKF Germany)	All
Torrington Nadellager (Torrington/Kuensebeck)	CRBs
Italy	
FAG Italia S.p.A. (including all relevant affiliates) (FAG Italy)	BBs, CRBs
SKF-Industrie S.p.A. (including all relevant affiliates) (SKF Italy)	BBs
Japan	
Koyo Seiko Co., Ltd.	All
Nachi-Fujikoshi Corp.	All
Nippon Pillow Block Sales Company, Ltd. (NPBS)	All
NSK Ltd. (formerly Nippon Seiko K.K.)	All
NTN Corp. (NTN Japan)	All
Romania	
Tehnoimportexport, S.A. (TIE)	BBs
Singapore	
NMB Singapore Ltd./Pelmec Ind. (Pte.) Ltd./(NMB Singapore/Pelmec)	BBs
Sweden	
SKF Sverige (including all relevant affiliates) (SKF Sweden)	BBs
United Kingdom	
Barden Corporation	BBs, CRBs
FAG (U.K.) Ltd.	BBs, CRBs
NSK Bearings Europe, Ltd./RHP Bearings Ltd. (NSK/RHP)	BBs, CRBs

Duty Absorption

On May 31, 1996, and July 9, 1996, the Torrington Co. requested that the Department determine with respect to all respondents, except Torrington Nadellager and SNFA, whether antidumping duties had been absorbed during the POR. This request was filed pursuant to section 751(a)(4) of the Tariff Act.

Section 751(a)(4) provides for the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Tariff Act by the URAA. The Department's interim regulations do not address this provision of the Tariff Act.

For transition orders as defined in section 751(c)(6)(C) of the Tariff Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's proposed antidumping regulations provides that the Department will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See* 61 FR 7308, 7366 (February 27, 1996). The preamble to the proposed antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. 61 FR at 7317. Although these proposed antidumping regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the Tariff Act. This approach ensures that interested parties will have the opportunity to request a duty-absorption determination prior to the time for sunset review of the order under section 751(c) on entries for which the second and fourth years following an order have already passed. Because these orders on AFBs have been in effect since 1989, these are transition orders in accordance with section 751(c)(6)(C) of the Tariff Act; therefore, based on the policy stated above, the Department will consider a request for an absorption determination during a review initiated in 1996. This being a review initiated in 1996 and a request having been made, we are making a duty-absorption determination as part of these administrative reviews.

The statute provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In these cases, all firms subject to the duty-absorption request filed by the Torrington Co., with the exception of TIE, sold through importers that are ''affiliated'' within the meaning of section 751(a)(4) of the Tariff Act. Furthermore, we have preliminarily determined that there are dumping margins for the following firms with respect to the percentages of their U.S. sales, by quantity, indicated below:

Name of firm	Class of kind	Percentage of U.S. affiliate's sales with dumping margins
France		
SKF	BBs	34.84
	CRBs	100.00
	SPBs	100.00
SNR	BBs	36.23
	CRBs	64.80
Germany		
FAG	BBs	54.58
	CRBs	64.05
	SPBs	18.70
INA	BBs	81.91
	CRBs	88.78
NTN	BBs	36.44
SKF	BBs	7.03
	CRBs	53.85
	SPBs	21.26
Italy		
FAG	BBs	20.43
SKF	BBs	7.99
Japan		
Koyo	BBs	44.43
	CRBs	53.22
Nachi	BBs	59.81
	CRBs	32.44
NPBS	BBs	61.41
NSK	BBs	31.30
	CRBs	36.82
NTN	BBs	21.24
	CRBs	12.86
SPBs	47.01	
Singapore		
NM Singapore/ Pelmec Ind.	BBs	17.74
Sweden		
SKF	BBs	45.29
United Kingdom		
NSK/RHP	BBs	1.46
	CRBs	18.77
Barden	BBs	0.34

In the case of SKF France, the firm did not respond to our questionnaire with respect to CRBs and SPBs and the dumping margins for all sales of these classes or kinds of merchandise were determined on the Basis of adverse facts available. Lacking other information, we find duty absorption on all sales.

With respect to those companies (with affiliated importers) whose margins were not determined based on adverse facts available, we rebuttably presume that the duties will be absorbed for those sales which were dumped. This presumption can be rebutted with evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. However, there is no such evidence on the record. Under these circumstances, we preliminarily find that antidumping duties have been absorbed by the above-listed firms on the percentages of U.S. sales indicated. If interested parties wish to submit evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty, they must do so no later than 15 days after publication of these preliminary results.

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by certain respondents, using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Use of Facts Available

We preliminarily determine, in accordance with section 776(a) of the Tariff Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for SNFA with respect to BBs and CRBs, for Torrington Nadellager with respect to CRBs, and for SKF France with respect to CRBs and SPBs because these firms did not respond to our antidumping questionnaire. We find that these firms have not provided ''information that has been requested by the administering authority.'' Furthermore, we determine that, pursuant to section 776(b) of the Tariff Act, it is appropriate to make an inference adverse to the interests of these companies because they failed to cooperate to the best of their ability by not responding to our questionnaire.

With respect to SNFA, an importer of subject merchandise, Agusta Aerospace Corporation (AAC) submitted information regarding its purchases of subject merchandise produced by SNFA. We have not used this information to calculate an antidumping duty rate for either SNFA or AAC. It is our practice to base our analysis on information provided by the respondent, in this case SNFA, and to calculate a single rate for each respondent. Further, AAC did not provide sufficient data to allow for a determination of the antidumping duty rate for SNFA's POR sales of subject

merchandise. The only information that AAC provided concerned its own imports of merchandise produced by SNFA and that information is in fact insufficient to allow for an analysis of the duty rate applicable to these imports. We are also denying a request made by AAC that, because it imported and sold a *de minimis* amount of subject merchandise from SNFA during the POR, such imports should be exempted from the antidumping duty order. The statute and our regulations do not provide for exceptions to the dumping law based on a small quantity of imports.

For the weighted-average dumping margins of these firms, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available. This is secondary information within the meaning of section 776(c) of the Tariff Act.

Section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that corroborate means simply that the Department will satisfy itself that the secondary information to be used has probative value (see H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (Fresh Cut Flowers) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

In this case, for SKF France, SNFA, and Torrington Nadellager, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available. This rate is the highest available rate and no evidence exists in the record that indicates that the selected margin is not appropriate as adverse facts available.

In certain situations, we found it necessary to use partial facts available. Partial facts available was applied in cases where we were unable to use some portion of a response in calculating the dumping margin. This occurred with respect to tooling revenues reported by NSK and related-party-input costs provided by Nachi. For partial facts available, we extrapolated information from the company's response and used that information in our calculations. For further information, please see the analysis memoranda on file for these firms.

We also found that Barden failed to report information concerning the channel(s) of distribution of its EP sales despite requests for such information in both the initial and supplemental questionnaires. Since we did not have this information, we were unable to determine which level of trade in the home market most closely corresponded to the level(s) of trade of Barden's EP sales. Because Barden repeatedly failed to report the requested information, we have used an inference that is adverse to Barden with respect to the missing information pursuant to section 776(b) of the Tariff Act. As partial adverse facts available, we matched Barden's EP sales to the level of trade in the home market with the highest average prices.

Export Price and Constructed Export Price—Market-Economy Countries

For the price to the United States, we used EP or CEP as defined in sections 772(a) and 772(b) of the Tariff Act, as appropriate. Due to the extremely large volume of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A of the Tariff Act. When a firm made more than 2,000 CEP sales transactions to the United States for a particular class or kind of merchandise, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks were June 4–10, 1995, August 20–26, 1995, October 15–21, 1995, December 17–23, 1995, February 11–17, 1996, and March 24–30, 1996. We reviewed all EP sales transactions during the POR.

We calculated EP and CEP based on the packed f.o.b., c.i.f., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act.

In accordance with section 772(d)(1) of the Tariff Act and the SAA (at 823–824), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses, indirect selling expenses, and repacking expenses in the United States. Where appropriate, in accordance with section 772(d)(2) of the Tariff Act, we also deducted the cost of any further manufacture or assembly, except where the special rule provided in section 772(e) of the Tariff Act was applied (see below). Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Tariff Act.

Some respondents claimed an offsetting adjustment to U.S. indirect selling expenses to account for the cost of financing cash deposits during the POR. In past reviews of these orders we have accepted such an adjustment, mainly to account for the opportunity cost associated with making a deposit (i.e., the cost of having money unavailable for a period of time). However, we have preliminarily determined to change our practice of accepting such an adjustment.

We are not convinced that there are opportunity costs associated with paying deposits. Moreover, while it may be true that importers sometimes incur an expense if they borrow money in order to pay antidumping duty deposits, it is a fundamental principle that money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost. We find that the calculation of the dumping margin should not vary depending on whether a party has funds available to pay cash deposits or requires additional funds in the form of loans.

Therefore, we find that an adjustment to indirect selling expenses where parties have claimed financing costs is inappropriate and we have denied such an adjustment for these preliminary results of reviews. We invite interested parties to comment on this issue.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *e.g.*, parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Tariff Act applied for all firms that added value in the United States except INA and NPBS.

Section 772(e) of the Tariff Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we estimated, for all firms that added value in the United States except INA and NPBS that the value added was at least 60 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. Also, for the companies in question, we determined that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of such sales is appropriate. Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons. No other adjustments to EP or CEP were claimed or allowed.

Normal Value—Market-Economy Countries

Based on a comparison of the aggregate quantity of home market and U.S. sales and absent any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of foreign like product each respondent sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a) of the Tariff Act because each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Tariff Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate NV in accordance with section 777A of the Tariff Act. When a firm had more than 2,000 home market sales transactions for a particular class or kind of merchandise, we used sales in sample months that corresponded to the sample weeks we selected for U.S. sales sampling plus one contemporaneous month prior to the POR and one following the POR. The sample months were April, June, August, October, and December of 1995, and February, March, and May of 1996.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Because the Department disregarded sales below the cost of production (COP) in the last completed review with respect to SNR, FAG Germany, FAG Italy, INA, SKF France, SKF Germany, SKF Italy, SKF Sweden, Koyo, Nachi, NPBS, NSK, NTN Japan, NMB Singapore/Pelmec Ind., FAG U.K., Barden U.K. and NSK/RHP and the classes or kinds of merchandise under review, we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Tariff Act. Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated COP investigations of sales by SNR, FAG Germany, FAG Italy, INA, SKF France, SKF Germany, SKF Italy, SKF Sweden, Koyo, Nachi, NPBS, NSK, NTN Japan, NMB Singapore/Pelmec, FAG U.K., and NSK/RHP in the home market. In addition, based on allegations submitted by the Torrington Co. subsequent to our initiation of these reviews, we determined that there was a reasonable basis to believe or suspect that NTN Germany may have made sales in the home market at prices below the COP and we initiated a COP investigation of NTN Germany as well.

In accordance with section 773(b)(3) of the Tariff Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition packed ready for shipment. In our COP analysis, we used the home market sales and COP information provided by each respondent in its questionnaire responses. We did not conduct a COP analysis for respondents which reported no sales or shipments nor did we conduct a COP analysis for respondents for which we relied on total facts available to determine weighted-average dumping margins for a class or kind of merchandise.

After calculating the COP, we tested whether home market sales of AFBs were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act. Based on comparisons of prices to weighted-average COPs for the POR, we also determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Tariff Act. Based on this test, we disregarded below-cost sales with respect to all of the above companies and classes or kinds of merchandise.

We compared U.S. sales with sales of the foreign like product in the home market. We considered all non-identical

products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home market prices were based on the packed, ex-factory or delivered prices to affiliated or unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 C.F.R. 353.56. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we based NV on sales at the same level of trade as the EP or CEP. If NV was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Tariff Act. (See *Level of Trade* below.)

In accordance with section 773(a)(4) of the Tariff Act, we used CV as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses. To the extent possible, we calculated CV by level of trade, using the selling expenses and profit determined for each level of trade in the comparison market.

Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act and 19 C.F.R. 353.56 for COS differences and level-of-trade differences. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons.

Where possible, we calculated CV at the same level of trade as the EP or CEP. If CV was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and 773(a)(8) of the Tariff Act. (See *Level of Trade* below.)

Level of Trade

To the extent practicable, we determine NV for sales at the same level of trade as the U.S. sales (either EP or CEP). When there are no sales at the same level of trade, we compare U.S. sales to home market (or, if appropriate, third-country) sales at a different level of trade. The NV level of trade is that of the starting-price sales in the home market. When NV is based on CV, the level of trade is that of the sales from which we derive selling, SG&A and profit.

For both EP and CEP, the relevant transaction for the level-of-trade analysis is the sale (or constructed sale) from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the CEP results in a price that would have been charged if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an independent U.S. customer the expenses under section 772(d) of the Tariff Act and the profit associated with these expenses. These expenses represent activities undertaken by the affiliated importer. As such, they occur after the transaction between the exporter and the importer for which we construct CEP. Because the expenses deducted under section 772(d) represent selling activities in the United States, the deduction of these expenses normally yields a different level of trade for the CEP than for the later resale (which we use for the starting price). Movement charges, duties and taxes deducted under section 772(c) do not represent activities of the affiliated importer, and we do not remove them to obtain the CEP level of trade.

To determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user, regardless of whether the final user is an individual consumer or an industrial user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are commonly used by respondents to describe levels of trade, but, without substantiation, they are insufficient to establish that a claimed level of trade is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed levels of trade. If the claimed levels are different, the selling functions performed in selling to each level should also be different. Conversely, if levels of trade are nominally the same, the selling functions performed should also be the same. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the levels of trade. A different level of trade is characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in levels of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference

in the average of the net prices of the same models sold at different levels of trade. We use the average difference in net prices to adjust NV when NV is based on a level of trade different from that of the export sale. If there is no pattern of consistent price differences, the difference in levels of trade does not have a price effect and, therefore, no adjustment is necessary.

The statute also provides for an adjustment to NV when NV is based on a level of trade different from that of the CEP if the NV level is more remote from the factory than the CEP and if we are unable to determine whether the difference in levels of trade between CEP and NV affects the comparability of their prices. This latter situation can occur where there is no home market level of trade equivalent to the U.S. sales level or where there is an equivalent home market level but the data are insufficient to support a conclusion on price effect. This adjustment, the CEP offset, is identified in section 773(a)(7)(B) and is the lower of the following:

- The indirect selling expenses on the home market sale, or
- The indirect selling expenses deducted from the starting price used to calculate CEP.

The CEP offset is not automatic each time we use CEP. The CEP offset is made only when the level of trade of the home market sale is more advanced than the level of trade of the U.S. (CEP) sale and there is not an appropriate basis for determining whether there is an effect on price comparability.

For a company-specific description of our level-of-trade analysis for these preliminary results, see Memorandum to Laurie Parkhill, Level of Trade, March 24, 1997, in Import Administration's Central Records Unit (Room B–099 of the main Commerce building (hereafter, B–099)).

Methodology for Romania

Separate Rates

It is the Department's standard policy to assign all exporters of subject merchandise subject to review in a non-market-economy (NME) country a single rate unless an exporter can demonstrate that it is sufficiently independent to be entitled to a separate rate. For purposes of this ''separate rates'' inquiry, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers), as amplified in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.

Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

De facto absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. See Silicon Carbide at 22587.

We have determined that the evidence of record demonstrates an absence of government control, both in law and in fact, with respect to exports by TIE according to the criteria identified in Sparklers and Silicon Carbide. For a discussion of the Department's preliminary determination that TIE is entitled to a separate rate, see Memorandum from Thomas O. Barlow to Laurie Parkhill, dated March 24, 1997, ''Assignment of Separate Rate for Tehnoimportexport: 1995–96 Administrative Review of the Antidumping Duty Order on Antifriction Bearings (other than tapered roller bearings) and parts thereof from Romania'' (Separate Rate Memo), which is a public document on file in B–099. Since TIE is preliminarily entitled to a separate rate and is the only Romanian firm for which an administrative review has been requested, it is not necessary for us to review any other Romanian exporters of subject merchandise.

Export Price—Romania

For sales made by TIE we based our margin calculation on EP as defined in section 772(a) of the Tariff Act because the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States (TIE) to unaffiliated purchasers in the United States.

We calculated EP based on the packed price to unaffiliated purchasers in the United States. We made deductions from the price used to establish EP, where appropriate, for foreign inland freight, bank charges and international freight (air and ocean). To value foreign inland freight we used the freight rates from the public version of the May 10, 1996 and July 15, 1996 submissions of P.T. Multi Raya Indah Abadi, respondent in the antidumping case concerning melamine institutional dinnerware from Indonesia which is on file in B–099. We used the actual reported expenses for international freight and bank charges because the expenses were incurred in market-economy currencies. No other adjustments were claimed or allowed.

Normal Value—Romania

For merchandise exported from a NME country, section 773(c)(1) of the Tariff Act provides that the Department shall determine NV using a factors-of-production methodology if available information does not permit the calculation of NV using home-market or third-country prices under section 773(a) of the Tariff Act. In every investigation or review conducted by the Department involving Romania, we have treated Romania as a NME country. None of the parties to this proceeding has contested such treatment in this review and, therefore, we have maintained our treatment of Romania as a NME for these preliminary results.

Accordingly, we calculated NV in accordance with section 773(c) of the Tariff Act and section 353.52 of the Department's regulations. In accordance with section 773(c)(3) of the Tariff Act, the factors of production used in producing AFBs include, but are not limited to, hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital cost, including depreciation.

In accordance with section 773(c)(4) of the Tariff Act, the Department valued the factors of production, to the extent possible, using the prices or costs of factors of production in market-economy countries which are at a level of economic development comparable to that of Romania and which are significant producers of comparable merchandise. We determined that Indonesia is at a level of economic development comparable to that of Romania. We also found that Indonesia is a producer of bearings. Therefore, we have selected Indonesia as the primary surrogate country. For a further

discussion of the Department's selection of surrogate countries, see Memorandum from Thomas O. Barlow to Laurie Parkhill, dated March 24, 1997, ''Surrogate-Country Selection: 1995–96 Administrative Review of the Antidumping Duty Order on Antifriction Bearings (other than tapered roller bearings) and parts thereof from Romania'' (Surrogate Memo), which is a public document on file in B–099.

For purposes of calculating NV, we valued the Romanian factors of production as follows:

- Where direct materials used to produce AFBs were imported into Romania from market-economy countries, we used the import price to value the material input. To value all other direct materials used in the production of AFBs, *i.e.*, those which were sourced from within Romania, we used the import value per metric ton of these materials into Indonesia as published in the Indonesian Foreign Trade Statistical Bulletin—Imports which include data on months during the POR. We made adjustments to include freight costs incurred between the domestic suppliers and the AFB factories, using freight rates obtained from the public version of the April 27, 1995 calculation memorandum for the antidumping case Disposable Lighters from the People's Republic of China (A–570–834) (Lighters from the PRC), which is on file in B–099. We also made a deduction to the steel input factors to account for the scrap steel which was sold by the producers of the relevant bearings.
- For direct labor, we used the Indonesian average daily wage and hours worked per week for the iron and steel basic industries reported in the 1994 Special Supplement to the Bulletin of Labour Statistics, published by the International Labour Office.
- For factory overhead, SG&A expenses, and profit, we could not find values for the bearings industry in Indonesia. Therefore, we used information which the U.S. Embassy in Jakarta, Indonesia, provided in the antidumping duty investigation of certain carbon-steel butt-weld pipe fittings from the People's Republic of China because the pipe-fittings industry is a similar metal manufacturing industry (see A–570–814, cable from American Embassy—Jakarta, Indonesia, September 9, 1991).
- To value packing materials, where materials used to package AFBs were imported into Romania from market-economy countries, we used the import price. To value all other packing materials, *i.e.*, those sourced from within Romania, we used the import value per metric ton of these materials (adjusted with the wholesale-price-index inflator to place these values on an equivalent basis) as published in the Indonesian Foreign Trade Statistical Bulletin—Imports. We adjusted these values to include freight costs incurred between the domestic suppliers and the AFB factories. To value freight costs, we used freight rates obtained from the public version of the calculation memorandum in Lighters from the PRC, cited above.

Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Tariff Act. We used the rates certified by the Federal Reserve Bank or, where not available, we used average monthly exchange rates published by the International Monetary Fund in International Financial Statistics.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins (in percent) for the period May 1, 1995, through April 30, 1996 to be as follows:

Company	BBs	CRBs	SPBs
France			
SKF	3.48	18.37	42.79
SNFA	66.42	18.37	[3]
SNR	8.68	23.77	[2]
Germany			
FAG	12.42	19.49	10.33
INA	49.41	19.77	28.62
NTN	9.44	[2]	[2]
SKF	4.25	17.83	4.78
Torrington Nadellager	[3]	76.27	[3]
Italy			
FAG	1.64	[2]	.....
SKF	4.66	[3]	.....
Japan			
Koyo Seiko	14.66	12.17	[3]
Nachi	14.02	3.51	[2]
NPBS	19.58	[2]	[2]
NSK Ltd.	9.49	6.26	[2]
NTN	5.82	3.84	8.31
Romania			
TIE	0.01	.....	.....
Singapore			
NMB Singapore/Pelmec Ind.	1.40	.....	.....

Company	BBs	CRBs	SPBs
Sweden			
SKF	13.13	.....	.....
United Kingdom			
NSK/RHP	2.90	13.74	.....
FAG (U.K.)	[1]	[1]	.....
Barden	0.30	[1]	.....

[1] No shipments or sales subject to this review. The firm has an individual rate from the last relevant segment of the proceeding in which the firm had shipments/sales.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
[3] No review requested.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce Department building:

	Date	Time	Room No.
General Issues	July 8, 1997	10:00 a.m.	4830
Sweden	July 9, 1997	9:00 a.m	4830
Romania	July 9, 1997	2:00 p.m	4830
Italy	July 10, 1997	9:00 a.m	4830
United Kingdom	July 11, 1997	9:00 a.m	4830
Singapore	July 11, 1997	2:00 p.m	4830
Germany	July 14, 1997	9:00 a.m	4830
France	July 14, 1997	2:00 p.m	4830
Japan	July 15, 1997	10:00 a.m	1412

Issues raised in hearings will be limited to those raised in the respective briefs and rebuttal briefs. Briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. Parties who submit briefs or rebuttal briefs in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

Case	Briefs	Rebuttals due
General Issues	June 24, 1997	July 1, 1997.
Sweden	June 25, 1997	July 2, 1997.
Romania	June 25, 1997	July 2, 1997.
Italy	June 26, 1997	July 3, 1997.
United Kingdom	June 27, 1997	July 7, 1997.
Singapore	June 27, 1997	July 7, 1997.
Germany	June 30, 1997	July 7, 1997.
France	June 30, 1997	July 7, 1997.
Japan	July 1, 1997	July 8, 1997.

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs or hearings. The Department will issue final results of these reviews within 120 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated importer-specific *ad valorem* duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP or CEP, by the total statutory EP or CEP value of the sales compared and adjusting the result by the average difference between EP or CEP and customs value for all merchandise examined during the POR.)

In some cases, such as EP situations, the respondent does not know the entered value of the merchandise. For these situations, we have either calculated an approximate entered value or an average unit-dollar amount of antidumping duty based on all sales examined during the POR. (See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31694 (July 11, 1991).) The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.,* margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate made effective by the final results of the 1991–92 administrative reviews of these orders (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993), and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, *et al.*; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 66472 (December 17, 1996)). As noted in those previous final results, these rates are the ''all others'' rates from the relevant LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 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.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: June 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–15118 Filed 6–9–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052397A]

Use of Acoustic Pingers to Deter Marine Mammals in Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: NMFS has prepared a draft programmatic environmental assessment (EA) detailing the circumstances under which acoustic pingers may be used as a management measure to reduce marine mammal interactions with commercial fisheries. In addition, the EA provides guidance on what constitutes adequate scientific validation of the efficacy of pingers for individual fisheries. Because the EA may be used in the preparation of Take Reduction Plans under § 118 of the Marine Mammal Protection, NMFS is requesting comments on the draft EA before it is finalized.

DATES: Written comments must be received on or before July 10, 1997.

ADDRESSES: Copies of the draft EA may be obtained from Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by calling (301) 713–2322.

Written comments should be submitted to Chief, Marine Mammal Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Office of Protected Resources, at (301) 713–2322.

SUPPLEMENTARY INFORMATION: The draft EA deals only with incorporation of acoustic pinger technology into management regimes in order to reduce marine mammal bycatch. It does not address use of explosives or high amplitude sound generators that are often used to deter pinnipeds. It also does not address the independent use of acoustic pingers by fishers outside the context of a prescribed management program.

Although generally applicable to any fishery in which the use of pingers may be proposed, the EA focuses on those fisheries in which use of pingers has been or is likely to be proposed: The New England multispecies sink gillnet fishery; the Atlantic swordfish component of the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics drift gillnet fishery; the U.S. mid-Atlantic coastal gillnet fishery; and the California/Oregon thresher shark/swordfish drift gillnet fishery.

The EA addresses two alternatives—a no-action alternative and the use of acoustic pingers as a management measure. The no- action alternative would entail no incorporation of pinger technology into management regimes. The preferred alternative—use of pingers as a management measure when appropriate—is divided into two sections—conditions under which pingers may be incorporated into a management regime, and guidelines for what will be considered a scientifically valid experiment to determine the efficacy of pingers in specific fisheries.

The conditions for incorporation of pingers as a management measure are:

1. Use of pingers will not substitute for other management measures until there is a statistically significant validation of the efficacy of pingers in the specific fishery and for the species of marine mammal taken.

2. There should be observer coverage of those fisheries in which pingers are used in order to determine whether pingers remain effective under conditions other than the original research setting and whether they continue to work over a period of time.

3. If pingers are found to be significantly less effective than original evidence indicated, other management measures will be used to reduce marine mammal-fishery interactions.

4. If significant questions as to the environmental impact of pingers arise that are not addressed by the EA, a subsequent EA will be prepared.

The guidelines for conducting experiments are:

1. Experiments should be structured with controls.

2. Data should be collected and reported by independent observers.

3. A double-blind protocol is preferred, but when not feasible, a single-blind experiment may be conducted.

4. In order to generate meaningful results, a power analysis should be done in advance to determine the sample size and observer coverage. To limit the chance of Type 2 error, power should be at least 0.7.