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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Fifth Antidumping Duty Administrative Review and Seventh New Shipper Review on Brake Rotors from the People's Republic of China – April 1, 2001, through March 31, 2002

Summary

We have analyzed the comments of the interested parties in the fifth administrative review and seventh new shipper review of the antidumping duty order covering brake rotors from the People's Republic of China ("PRC"). We have also considered the use of additional publicly available information since the preliminary results of these reviews. As a result, we have made several changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in these reviews for which we received comments by parties:

Issue 1: Whether to Reverse the Preliminary Results With Respect to the Exporter/Producer Combinations

Issue 2: Whether We Should Have Requested a Respondent to Submit Revised Databases Based on Our Verification Findings

Issue 3: Whether to Use Data Contained in the Financial Statements Submitted for Two Additional Indian Producers of Subject and/or Comparable Merchandise

Issue 4: Surrogate Value Selection for Pig Iron

Issue 5: Whether the Respondents' Case Brief Complies with the Department's Filing and

Service Requirements

Background

On January 8, 2003, the Department of Commerce ("the Department") published the preliminary results and partial rescission of the fifth administrative review and the preliminary results of the seventh new shipper review of the antidumping duty order on brake rotors from the PRC. See Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review, 68 FR 1031 (January 8, 2003) (Preliminary Results).

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The period of review ("POR") is April 1, 2001, through March 31, 2002. We invited parties to comment on our preliminary results of these reviews. On February 21, 2003, both the petitioner[1] and the respondents[2] submitted case briefs, and on February 28, 2003, they submitted rebuttal briefs. There was no request for a hearing in this segment of the proceeding.

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[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

[2] The names of the respondents in the fifth administrative review are as follows: (1) China National Industrial Machinery Import & Export Corporation ("CNIM"); (2) Laizhou Automobile Brake Equipment Company, Ltd. ("LABEC"); (3) Longkou Haimeng Machinery Co., Ltd. ("Haimeng"); (4) Laizhou Hongda Auto Replacement Parts Co., Ltd. ("Hongda"); (5) Hongfa Machinery (Dalian) Co., Ltd. ("Hongfa"); (6) Qingdao Gren (Group) Co. ("GREN"); (7) Qingdao Meita Automotive Industry Company, Ltd. ("Meita"); (8) Shandong Huanri (Group) General Company ("Huanri General"); (9) Yantai Winhere Auto-Part Manufacturing Co., Ltd. ("Winhere"); and (10) Zibo Luzhou Automobile Parts Co., Ltd. ("ZLAP"); (11) Beijing Concord Auto Technology Inc. ("Beijing Concord"); (12) China National Machinery and Equipment Import & Export (Xinjiang) Corporation ("Xinjiang"); (13) China National Automotive Industry Import & Export Corporation ("CAIEC"); (14) Laizhou CAPCO Machinery Co., Ltd. ("Laizhou CAPCO"); (15) Laizhou Luyuan Automobile Fittings Co. ("Laizhou Luyuan"); and (16) Shenyang Honbase Machinery Co., Ltd. ("Shenyang"). The names of the respondents in the seventh new shipper review are as follows: (17) Shanxi Fengkun Metallurgical Ltd. Co. ("Shanxi Fengkun"); and (18) Zibo Golden Harvest Machinery Limited Company ("Golden Harvest").

Margin Calculations

We calculated export price and normal value using the same methodology stated in the preliminary results, except as follows:

1. For the final results, we calculated average surrogate percentages for factory overhead, selling, general and administrative expenses ("SG&A"), and profit using the 2000-2001 financial data of Kalyani Brakes Limited ("Kalyani"), Mando Brake Systems India Limited ("Mando"), and Rico Auto Industries Limited ("Rico"). See Decision Memo at Comment 3.

2. To value direct, indirect, and packing labor, we used the updated value from the International Trade Administration website.

3. To value electricity, we used the 2000-2001 "revised estimate" average rate for industrial consumption as published in the Annual Report (2001-02) on the Working of State Electricity Boards & Electricity Departments by the Government of India's Planning Commission (Power & Energy Division).

4. To value pallet wood, we used the April 2000-March 2001 average import values from Monthly Statistics of the Foreign Trade of India ("Monthly Statistics").

5. For those respondents which reported in their responses that they used non-alloy pig iron to produce the subject merchandise, we used the April 2001-December 2001 average import values for the appropriate non-alloy pig iron HTS subcategory from Monthly Statistics to value this input. See Decision Memo at Comment 4.

6. To value foreign brokerage and handling expenses, we relied on public information reported in the 1998-1999 antidumping duty administrative and new shipper reviews of stainless steel bar from India.

7. We corrected a calculation error which affected the surrogate value used for marine insurance.

8. We deducted an amount for foreign brokerage and handling expenses from the U.S. starting prices reported by Golden Harvest which we inadvertently did not do in the preliminary results.

9. We corrected a programming error which affected the direct labor per-unit amounts for certain brake rotor models reported by Golden Harvest.

10. We corrected a programming error which affected the marine insurance calculation for U.S. sales with C.I.F. terms of sale reported by LABEC. In addition, based on data contained in LABEC response, we subtracted an amount for marine insurance for certain sales on which

LABEC had indicated it incurred this expense that we inadvertently did not do in the preliminary results.

11. We corrected a programming error by adding an amount for loading fees to Huanri General's coal freight cost instead of its carton freight cost.

12. We corrected a calculation error which affected the entered values derived for GREN.

Discussion of the Issues

Comment 1: Whether to Reverse the Preliminary Results With Respect to the Exporter/Producer Combinations[3]

Pursuant to 19 C.F.R 351.213(d)(3), we preliminarily rescinded this administrative review with respect to the five exporting companies in the three exporter/producer combinations noted above ("the respondents") because we had no evidence on the record which indicated that these respondents made shipments of subject merchandise to the United States during the POR. To reach that preliminary determination, we conducted a query of the U.S. Customs Service ("Customs Service") (now the U.S. Bureau of Customs and Border Protection) database and randomly selected 31 entries from the results of our query for further examination (which included entries from the five exporting companies and/or their affiliates). For the 31 entries selected, we then requested that the Customs Service either indicate in writing or provide us with the documentation which would enable us to determine who the manufacturer was for each of those entries. Prior to making our preliminary determination, we had only received from the Customs Service data for 19 of the 31 entries selected. Because the data for those 19 entries confirmed who the manufacturer was and did not indicate that any of the exporters at issue, or their affiliates, were shipping subject merchandise to the United States during the POR, we considered this data to be sufficient for reaching our preliminary decision. (See Preliminary Results, at 68 FR at 1033 and December 31, 2002, Memorandum from Davina Hashmi, Case Analyst to the File, entitled "Results of Request for Assistance from the U.S. Customs Service to Further Examine U.S. Entries Made By Exporter/Producer Combinations-Preliminary Results" ("December 31, 2002, Memorandum")). Since the preliminary results, the Department received data from the Customs Service for an additional six entries (see Memorandum from Terre Keaton, Case Analyst to the File, entitled "Results of Request for Assistance from the U.S. Customs Service to Further Examine U.S. Entries Made By Exporter/Producer Combinations-Preliminary Results" ("January 28, 2003, Memorandum")). This data showed no inconsistencies with the preliminary results.

[3] The exporter/producer combinations excluded from the antidumping duty order are: Xinjiang/Zibo Botai Manufacturing Co. Ltd ("Zibo"); CAIEC or Laizhou CAPCO/Laizhou CAPCO; and Laizhou Luyuan or Shenyang/Laizhou Luyuan or Shenyang.

The petitioner argues that the Department's preliminary decision to rescind the administrative review with respect to the exporter/producer combinations should be reversed because these respondents provided only certified statements rather than evidence to substantiate their claims that they did not export subject merchandise to the United States during the POR. Specifically, the petitioner maintains that the Department's sampling method used in the preliminary results is ineffective because it does not require the respondents to provide data to support their claims and unfairly shifts the burden of proof onto both the Department and the petitioner to disprove their "no shipment" claims.

Citing NTN Bearing Corporation of America v. United States, 997 F.2d 1453, 1458 (Fed. Cir. 1993) ("NTN Bearing Corp."), Zenith Electronics Corp. v. United States, 988 F.2d 1573, 1583 (Fed. Cir 1993) ("Zenith Electronics Corp."), and Tianjin Machinery Import & Export Corp. v. United States, 806 F. Supp. 1008, 1015 (CIT 1992) ("Tianjin Machinery I/E Corp."), the petitioner argues that it has been well established that the burden of proof rests with the party making a claim because it possesses the necessary information. Therefore, the petitioner contends that because these respondents possess the necessary information to substantiate their claims, the Department should require them to provide the evidence that they did not have sales of subject merchandise during the POR. Consequently, the petitioner contends that the Department should alter its current method for investigating these respondents' claims by requesting each respondent to provide a complete listing of all of its domestic and U.S. brake rotors sales during the POR along with supporting sales documentation.

The petitioner also argues that the Department's current sampling method for determining whether these respondents are complying with their antidumping duty order exclusion requirements is ineffective and not sufficiently representative because the Department selected for further examination only a limited number of U.S. entries for these respondents from the Customs Service database as the basis for its preliminary rescission decision. Moreover, the petitioner claims that some of the U.S. entries selected by the Department were sales of non-subject merchandise and therefore should have been subsequently replaced with additional selections of U.S. entries of brake rotors.

Furthermore, the petitioner argues that the Department's current sampling method yielded incomplete results because the Department did not receive information from the Customs Service for all of the U.S. entries it selected from its query. Specifically, the petitioner states that although the Department selected 30 U.S. entries from its query for purposes of determining whether each of these respondents was complying with its order exclusion requirements, the Department only received data for 25 of those entries from the Customs Service. Moreover, the petitioner asserts that the Customs Service provided information for two entries which the Department did not originally select in its request but which it also considered in its decision to preliminarily rescind the review with respect to these respondents. Therefore, the petitioner claims that the Department has abused its discretion in implementing its sampling methodology because it did not investigate all of the U.S. entries it selected as a result of its query, and that its preliminary decision is not supported by substantial evidence on the record of this proceeding. In support of its argument, the petitioner cites to Fabrique de Fer De Charleroi S.A. v. United States, 22 C.I.T. 6, 14, 994 F. Supp. 395, 400 (CIT 1998) ("Fabrique de Fer De Charleroi").

The respondents argue that the Department's preliminary decision should not be reversed because they have fully cooperated in this review by submitting to the Department certified statements (i.e., "no shipment" claims) that they did not make any shipments of subject merchandise during the POR, consistent with their actions in past segments of this proceeding, and because there is no evidence on the record of this segment which refutes their "no shipment" claims. The respondents also maintain that their "no shipment" claims have been sufficient in past segments of this proceeding for the Department to examine their claims by using a sampling method, and that they should not now be required to also provide their sales data because they are companies excluded from the antidumping duty order.

Because the petitioner is now requesting the Department to alter its current method for investigating their "no shipment" claims by requiring them to provide a POR listing of their brake rotor sales, the respondents object to the Department conducting a review of them at all because, in four previous reviews, the Department consistently determined that they did not ship merchandise subject to the antidumping duty order. Moreover, the respondents maintain that because their U.S. sales of brake rotors have never been considered sales of subject merchandise in the Department's or International Trade Commission's ("ITC's") final determinations issued in the less-than-fair-value investigation or in the ITC's subsequent sunset review, the respondents should not be subject to an administrative review unless they in fact exported PRC-produced brake rotors to the United States. Because they have not exported subject merchandise to the United States and are excluded from the antidumping duty order, the respondents contend that there is no basis under 19 C.F.R. 351.213(b)(1), (2) and (3) to conduct a review of them. Moreover, the respondents contend that there is no statutory provision which requires the Department to investigate companies which it has affirmatively excluded from the antidumping order.

Alternatively, with respect to the petitioner's claim that the Department's current sampling method is unrepresentative and incomplete for determining whether the respondents are complying with their order exclusion conditions, the respondents maintain that the Department is not required to investigate them unless it has some basis to believe or suspect that they have violated the conditions under which they are excluded from the antidumping duty order. If there is in fact evidence on the record provided by an interested party which calls into question their "no shipment" claims, then the respondents agree that they are obligated to produce additional evidence to support their claims. In support of their argument that the Department should accept their "no shipment" certification claims and need not further investigate their claims absent information to the contrary provided by the petitioner, the respondents cite to Oil Country Tubular Goods from Mexico: Rescission of Antidumping Duty Administrative Review, 66 FR 26830 (May 15, 2001) ("OCTG from Mexico") and Oil Country Tubular Goods from Argentina: Rescission of Antidumping Duty Administrative Review, 63 FR 49089 (September 14, 1998) ("OCTG from Argentina"). The respondents assert that in those reviews, unlike the instant one, two respondents that were subject to the antidumping duty order claimed that they made no shipments of subject merchandise during the POR. However, the respondents maintain that it was only after the petitioner provided the Department with evidence to the contrary that the Department initiated further inquiries into the respondents' "no shipment" claims by requesting additional information from the

respondents and the Customs Service.

Finally, the respondents claim that to the extent the petitioner believes that they are illegally exporting subject merchandise to the United States, there are more appropriate mechanisms to control such action such as civil/criminal penalties enforced by the Customs Service or an anti-circumvention inquiry conducted by the Department. In support of its position, the respondents cite to Initiation of Anti-Circumvention Inquiry on Antidumping Duty Order on Certain Pasta from Italy, 62 FR 65673 (December 15, 1997) ("Certain Pasta from Italy").

Department's Position:

We disagree with the petitioner that we should reverse our preliminary rescission decision because the respondents have only provided certified statements rather than evidence that they did not export subject merchandise to the United States during the POR. These respondents are excluded from the brake rotors antidumping duty order with respect to brake rotors exported and produced within their respective exporter/producer combination, but included in the order with respect to brake rotors exported and produced in any other combination. The Department's non-market economy antidumping duty questionnaire, issued on June 3, 2003, in this case, requires a respondent to provide its sales data only if it exported and/or sold subject merchandise to the United States during the POR. (See reporting instructions contained on page C-1 of the Department's June 3, 2003, antidumping duty questionnaire.) In response to this antidumping duty questionnaire, each of these respondents provided certified statements that it did not sell subject merchandise to the United States during the POR (i.e., it did not export brake rotors outside of its exporter/producer combination). Absent information to the contrary, the Department has no basis to assume that these respondents' "no shipment" claims are inaccurate or to require that the respondents to provide sales data.

Moreover, we find meritless the petitioner's reliance on NTN Bearing Corp., Tianjin Machinery I/E Corp., and Zenith Electronics Corp. to support its contention that the Department should require the respondents to provide evidence to substantiate their "no shipment" claims. Unlike the situation in NTN Bearing Corp., the Department is not conducting this review for purposes of examining whether the value added to the merchandise is sufficiently substantial and thus outside the scope of the antidumping duty order. Similarly, unlike the situation in Tianjin Machinery I/E Corp., the Department in this review is not examining whether the respondents are entitled to a separate rate or whether they have provided sufficient evidence in support of such a claim because this review is limited to whether they sold subject merchandise during the POR. Moreover, unlike the situation in Zenith Electronics Corp., the respondents have not claimed that a portion of their sales should not be used to calculate their dumping margins without providing sufficient evidence in support of such a claim. Unlike the above-mentioned cases, the respondents in this review have claimed they made no shipments of subject merchandise during
the POR. Therefore, these respondents are not required to provide a sales response or sales documentation to support their "no shipment" claims unless the Department has evidence that they in

fact exported merchandise during the POR which is subject to this antidumping duty order.

With respect to the respondents' claim that we should not be conducting an administrative review of them because they are excluded from the antidumping duty order, in this case we are simply determining whether the respondents in question made sales that are subject to the order. Therefore, in accordance with the Department's standard practice, because each of these companies has claimed that it did not make shipments of brake rotors outside its respective exporter/producer combination, we found it appropriate in this review (and in prior reviews) to conduct a Customs Service data query in order to confirm the accuracy of their "no shipment" claims. (See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 67 FR 65779 (October 28, 2002) ("Fourth Brake Rotors Administrative Review") and accompanying decision memorandum at Comment 1) and Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001) ("Third Brake Rotors Administrative Review") and accompanying decision memorandum at Comment 1.) As explained above, in order to further test the results of our data query, we employed a sampling method by randomly selecting certain U.S. entries associated with these respondents from our query results and requesting Customs Service documentation substantiating the exporter/producer involved in the transactions.

The Department considers these procedures essential for confirming the validity of the respondents' "no shipment" claims and consequently has consistently employed them in this and prior segments of this proceeding. We also find that the above-referenced sampling method provides the Department with a reasonable basis to determine whether these respondents' "no shipment claims" are accurate. Moreover, we consider this method to be the least burdensome on the parties and most objective in terms of providing us with a sufficient basis for determining whether or not these respondents have in fact exported subject merchandise during the POR.[4]
We also disagree with the petitioner that our current sampling method is unrepresentative based on the number of U.S. entries we selected for further examination from the results of our query of the Customs Service database. The number of U.S. entries we sampled for these respondents in this review is consistent with the number of entries we have selected using the same sampling method in prior segments of this proceeding. (See Fourth Brake Rotors Administrative Review and Third Brake Rotors Administrative Review.) Specifically, in Fourth Brake Rotors Administrative Review and Third Brake Rotors Administrative Review, we consistently selected 25 entries (i.e., five entries from each exporter in the three exporter/producer combinations) as our sample and found that this selection

[4] In prior reviews, we further examined the respondents' "no shipment" claims by conducting verification. However, in this review, we had no compelling reason to conduct verification of these companies again based on the preliminary results of our Customs Service data query and our verification findings in prior reviews which were consistent with the respondents' "no shipment" claims.

number provided us with a sufficient basis for determining whether these companies are acting in accordance with the order exclusion requirements of their respective exporter/producer combinations. Unlike these prior reviews, however, we attempted in this review to examine a greater number of U.S. entries from the Customs Service database. Specifically, we increased our sample from 25 to 31 U.S. entry selections.[5] However, due to its resource constraints, the Customs Service was only able to provide us with data for 23 U.S. entry selections contained in our October 2, 2002, request, as well as two additional entries which were not specifically requested. Because we had no reason not to consider the two additional entries for which the Customs Service provided us with data, we have based our final decision in this review on all 25 U.S. entries for which the Customs Service provided data. Unlike the situation in Fabrique de Fer De Charleroi, the Department has not excluded any sales data from its analysis in this review. Rather, the Department has solicited further information from the Customs Service for certain entries which it randomly selected based on the results of its data query. The fact that the Customs Service provided the Department with additional, unrequested information for two entries and the Department accepted it for use in its final analysis does not constitute an abuse of the Department's discretion because this data is nonetheless relevant to the Department's analysis. Moreover, unlike the situation in Fabrique de Fer De Charleroi, the Department in this review has used all the data obtained and placed on the record of this segment which pertains to this issue. Therefore, we find that the petitioner's reliance on Fabrique de Fer De Charleroi for purposes of claiming that the Department has abused its discretion in employing a sampling method in this review by also considering unrequested data furnished by the Customs Service in its analysis to be misplaced.

With respect to the petitioner's contention that some of the entries we selected were of non-subject merchandise and therefore should have been replaced with entries of subject merchandise, we again find that the petitioner's claim is without merit. We included these U.S. entries in our sample in order to establish whether the merchandise being exported by one respondent's affiliates[6] was subject or non-subject merchandise. The information we obtained from the Custom Service for these U.S. entries confirmed that the affiliate at issue did not export PRC-produced brake rotors to the United States during the POR.

With respect to the respondents' contention that there are more appropriate mechanisms such as an anti-circumvention inquiry instead of an administrative review which the Department could pursue for purposes of determining the validity of "no shipment" claims, we find that the Customs Service data

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[5] Contrary to the petitioner's claim that we selected 30 U.S. entries from the Customs Service database, we in fact selected 31 U.S. entries from the Customs Service database for purposes of determining the manufacturer of those entries (see attachment to December 31, 2002, Memorandum).

[6] One of the respondents, CAIEC, has an affiliate. This affiliate is not included in any of the exporter/producer combinations excluded from this antidumping duty order. Therefore, if this affiliate exports brake rotors to the United States, then its sales are considered subject to the antidumping order.

query/sampling method we have used in this review is the most effective for investigating the respondents' "no shipment" claims. As a practical matter, when a respondent makes a "no shipment" claim, the Department's current practice, in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended ("the Act"), is to consider such claims in the context of an administrative review. Absent evidence which indicates that these respondents are circumventing the antidumping duty order, we find no basis to consider an anti-circumvention inquiry in accordance with section 781 of the Act a more appropriate mechanism for establishing the validity of the respondents' no shipment claims.

In sum, based on the record of this review in general and the results of our Customs Service data query procedures in particular[7], we cannot conclude that any of these exporters sold merchandise subject to the order. Accordingly, pursuant to 19 C.F.R. 351.213(e)(3), we are rescinding this administrative review with respect to all five exporters in the excluded exporter/producer combinations.

Comment 2: Whether We Should Have Requested a Respondent to Submit Revised Databases Based on Our Verification Findings

As a result of our verification findings, we requested the respondent GREN to provide the Department with revised sales and factors of production ("FOP") databases which incorporated corrections examined at verification. Despite the petitioner's objection, we used GREN's revised databases for purposes of calculating its antidumping duty margin in the preliminary results because we considered GREN's corrections to its data to be minor in nature.

The petitioner argues that the Department should resort to the use of adverse facts available to calculate GREN's dumping margin in the final results. Specifically, the petitioner alleges that, despite the numerous opportunities given to GREN by the Department, GREN failed to submit accurate and complete information prior to verification and still had major revisions to its data as a result of verification. Therefore, the petitioner maintains that GREN failed to cooperate to the best of its ability in this proceeding.

In addition, the petitioner argues that in a December 20, 2002, letter to GREN, the Department inappropriately requested GREN to revise its sales and FOP databases a few days prior to the preliminary results due date. Citing Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Reviews; and Partial Revocation, 64 FR 34190 (June 25, 1999) ("Pipe and Tube from Mexico"), the petitioner argues that the Department's current practice is not to allow a respondent to reconstruct its questionnaire responses during verification. Furthermore, the petitioner contends that by having granted several extensions to GREN to submit its questionnaire responses and then providing GREN yet another opportunity after verification to revise them, the Department has violated its current practice. Moreover, the petitioner claims that despite its objection on December 27, 2002, the Department inappropriately requested as a

[7] See December 31, 2002, and January 28, 2003, Memoranda.

result of its verification findings and improperly used in its preliminary results, GREN's revised sales and FOP databases.

GREN disagrees, maintaining that the sole purpose of the Department's December 20, 2002, letter was to correct the information in its previously submitted questionnaire responses based on information verified by the Department. GREN argues that all of the corrections identified by the Department as a result of verification are minor in nature and none of them call into question the integrity of the data contained in its questionnaire responses. Citing to Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review, 66 FR 44331 (August 23, 2001) ("Brake Rotors from the PRC"), and accompanying decision memorandum at Comment 3; Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24349 (May 6, 1999) ("Carbon-Quality Steel Products from Japan"); and Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia, 60 FR 6980, 6999 at Comment 25 (February 6, 1995) ("Roses from Colombia"), GREN argues that in past cases the Department has accepted minor corrections at verification and has corrected questionnaire response data based on verification findings.

Department's Position:

We agree with GREN and have continued to use its revised data in the final results of the administrative review. At the start of verification, GREN promptly alerted the Department that it had made data entry and calculation errors in reporting its per-unit amounts for U.S. duty, inventory carrying, and indirect selling expenses in its U.S. sales database[8]. The Department thoroughly examined these errors and their corrections at verification and found that their nature and magnitude was insignificant based on GREN's detailed explanations and the Department's testing of GREN's sales data and expense calculations (see pages 4, 5, and 25 through 28 of the Verification of the Responses of Qingdao Gren (Group) Co. in the Fifth Administrative Review of the Antidumping Duty Order on Brake Rotors from the PRC ("GREN's verification report").

As noted in the verification report, GREN identified its data entry and calculation errors at the start of verification and the verifiers were able to determine that these errors were minor in nature. For example, in calculating its reported per-unit amounts for U.S. duty expenses, GREN used an incorrect duty ratio and incorrect price data. Through an examination of GREN's sales documentation, the Department established that the ratio error was due to rounding and that GREN had incorrectly used an internal price list instead of the actual transfer prices to calculate the per-unit amounts for this expense in its U.S. sales database. Similarly, in calculating its reported per-unit amounts for inventory carrying

[8] GREN also stated that it incorrectly reported the invoice number for one U.S. sale and incorrectly reported the shipment and payment dates for 39 out of 7910 sales transactions included in its U.S. sales listing. These inadvertent errors affected the per-unit credit calculation for those 39 sales transactions.

expenses, GREN used the transfer price instead of the gross unit price. For purposes of reporting its per-unit amounts for indirect selling expenses, GREN used an incorrect allocation ratio. Specifically, GREN mis-allocated the hours of its sales staff in determining the numerator of the ratio calculation, and incorrectly excluded the value of the merchandise that was returned to it from the denominator of the ratio calculation. In addition to the sales database corrections submitted by GREN, the Department discovered that GREN had incorrectly used the POR sales quantity instead of the POR production quantity to derive input-specific allocation ratios for materials (e.g., pig iron, ferrosilicon, limestone) that were in turn used to calculate the per-unit amounts reported in its FOP database (see pages 6 and 30 of GREN's verification report). Because the sales quantity was greater than the production quantity, as verified by the Department, GREN in fact slightly over-reported its per-unit consumption amounts in the FOP database (see pages 29 and 30 of GREN's verification report ). The Department also discovered that GREN incorrectly reported the distances for four of its material suppliers as a result of using estimates rather than data from a map. This error was also minor in nature.

Unlike the circumstances in Pipe and Tube from Mexico, GREN fully cooperated and provided the Department complete access to its records and staff for purposes of examining each of the above-noted errors and the data reported in its responses. Moreover, in Roses from Colombia, Carbon-Quality Steel Products from Japan, and Brake Rotors from the PRC, the Department, contrary to the petitioner's claim, allowed respondents to submit revised databases based on minor corrections presented by them and the Department's verification findings. Furthermore, in our standard verification outline and accompanying cover letter issued to GREN, we acknowledged the possibility that while preparing for verification a respondent may have minor corrections to information on the record. For example, our standard verification outline provides the respondent with the opportunity to present to the Department minor changes to its responses that were discovered as a result of preparation for verification. In addition, in the cover letter, we also state that the Department has the discretion to accept information that makes minor corrections to information already on the record, and to instruct the respondent to file such information.

With respect to GREN, all of the errors noted above were either brought to the Department's attention by GREN or were discovered as a result of GREN's disclosure of all requested information at verification. Moreover, after thoroughly examining GREN's responses at verification, we determined that the errors were minor and isolated in nature and had no impact on the overall integrity of its response data. Therefore, we have determined that GREN's data is reliable and that incorporating the corrections does not amount to reconstruction of GREN's responses. As a result, we find the application of facts available, as suggested by the petitioner, is unwarranted in this case and have continued to use GREN's revised sales and factors databases in the final results of this administrative review.

Comment 3: Whether to Use Data Contained in the Financial Statements Submitted for Two Additional Indian Producers of Subject and/or Comparable Merchandise

In the preliminary results, we used data from the 2000-2001 financial statement of Kalyani and Rico, two Indian brake rotor producers, to derive surrogate value ratios for factory overhead, SG&A and profit. Since the preliminary results, the respondents submitted the 2000-2001 financial report for Mando, another Indian brake rotor producer, for consideration in the final results of these reviews.

The petitioner objects to the Department's selection of the publicly available information ("PAI") used to derive these surrogate value ratios in the preliminary results of these reviews. First, the petitioner contends that the Department should have also used the 1998 financial statement of Jayaswals Neco Limited ("Jayaswals") (i.e., another Indian brake rotor producer) to value these ratios in the preliminary results. The petitioner argues that because the Department did not explain in the preliminary results why it disregarded Jayaswals' data, the Department should also use Jayaswals' financial data to derive these surrogate value ratios in the final results of these reviews.

Second, the petitioner argues that the Department should not use Mando's financial data to derive the surrogate value ratios in the final results because there is no information on the record of these reviews which indicates that Mando is a producer of either identical or even comparable merchandise subject to the scope of the order. Citing Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the PRC, 66 FR 49345 (September 27, 2001) ("Pure Magnesium from the PRC") and accompanying decision memorandum at Comment 3, and Persulfates from the PRC: Final Results of Antidumping Duty Administrative Review, 66 FR 42628 (August 14, 2001) ("Persulfates from the PRC"), and accompanying decision memorandum at Comment 5, the petitioner maintains that it is the Department's current practice to use data from producers of identical merchandise to derive surrogate value percentages. Furthermore, the petitioner contends that Mando produces brake systems for the original equipment manufacture ("OEM") market, while the scope of this order is limited to aftermarket brake rotors, and that Mando's products may include other components in its brake systems such as hydraulic or friction material. Therefore, the petitioner argues that Mando's financial data reflects the behavior of OEM producers rather than the behavior of Indian producers of the subject merchandise. Consequently, the petitioner contends that the Department should not use Mando's financial data because it appears to produce brake products that are not within the scope of these reviews.

The respondents argue that it is the Department's long-standing practice to select surrogate value ratios based on the quality, specificity, and contemporaneity of the data without any one criterion being dispositive. Therefore for the final results, the respondents argue that the Department should calculate surrogate value ratios using the best available information that it determines meets those above-mentioned criteria. Accordingly, the respondents request the Department to consider using Mando's data in the final results.

Department's Position:

We disagree with the petitioner with respect to using Jayaswals' data and not using Mando's data for

purposes of deriving surrogate factory overhead, SG&A and profit ratios in the final results of these reviews.

We have continued not to use Jayaswals' 1998 financial data in these reviews because this data is less contemporaneous with the POR relative to the other financial data on the record. In these reviews, we have 2000-2001 financial data from other Indian producers of identical merchandise (i.e., Kalyani, Rico, and Mando) which is more contemporaneous with the POR.

With respect to Mando, data contained in its 2000-2001 financial report indicates that it is an Indian brake rotor producer. Although the petitioner claims that data contained in Mando's financial report indicates that the brake rotors it produces are for the OEM market, we do not find this distinction a sufficient basis for not considering Mando a producer of identical merchandise in these reviews. Aside from the fact that Mando's brake rotors may contain OEM markings, there is no information on the record of this review or data contained in Mando's financial report which indicates that Mando's brake rotors are not otherwise identical to the brake rotors produced by the respondents in these reviews. Although the petitioner claims that Mando's brake rotors are not identical to the brake rotors produced by the respondents because Mando's brake rotors are not subject to the scope of this antidumping duty order if they have OEM markings, we do not consider this distinction to be relevant for purposes of determining whether the brake rotors produced by Mando have the same physical characteristics (i.e., physical characteristics identified in the Department's questionnaire) and therefore are identical to the brake rotors produced by the respondents in these reviews. As stated in Persulfates from the PRC and Pure Magnesium from the PRC, the Department's preference is to select surrogate producers of identical merchandise. However, in those cases, the Department did not define identical merchandise solely as merchandise covered by the scope of the order. Furthermore, we have no information on this record which indicates that the processes used to produce non-OEM brake rotors and OEM brake rotors are dissimilar. Therefore, consistent with the Department's decisions in Pure Magnesium from the PRC and Persulfates from the PRC, we have continued not to define identical merchandise as only merchandise covered by the antidumping duty order for purposes of considering whether to use an Indian producer's financial data to derive the surrogate value ratios at issue. As a result, we find no basis for excluding Mando's financial data from our analysis and have used it for purposes of deriving the surrogate value ratios in the final results because its data, along with Kalyani's and Rico's financial data, is equally contemporaneous with the POR.

Comment 4: Surrogate Value Selection for Pig Iron

To value pig iron in the preliminary results of the above-mentioned reviews, we used data from the April 2001 - December 2001 Monthly Statistics for both alloy and non-alloy pig iron to calculate an average surrogate value for pig iron.

The respondents argue that consistent with the Department's preference for using the most specific surrogate values when available, the Department should base the surrogate value for pig iron solely on

the non-alloy pig iron data in Monthly Statistics because all of the respondents reviewed in these proceedings stated in their supplemental questionnaire responses that they used only non-alloy pig iron to produce the subject merchandise. In response to the petitioner's point that the average of alloy and non-alloy pig iron values has been consistently used in past segments of this proceeding and should continue to be used unless respondents specify and substantiate the fact that they use a certain type of pig iron, the respondents contend that in those prior segments there was no evidence on the record regarding whether the pig iron they used in the production process was alloy or non-alloy. Unlike those prior segments, the respondents argue there is now a basis to use a more specific surrogate value to value pig iron based on the data submitted by each respondent. Furthermore, the respondents contend that the Department is aware through numerous verifications of PRC brake rotor producers conducted in prior brake rotor reviews that it is not necessary for those producers to use alloy pig iron to produce the subject merchandise.

The petitioner argues that for those respondents which indicated in their responses that they used non-alloy pig iron but which were not verified by the Department, the Department should continue to use the average of both alloy and non-alloy pig iron values from Monthly Statistics because these respondents have never distinguished in prior segments of this proceeding that they used non-alloy pig iron and the Department did not verify their data in this review. Moreover, the petitioner emphasizes that the Department has consistently applied this methodology in previous segments of this proceeding. Citing Sebacic Acid from the PRC: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part, 67 FR 69719 (November 19, 2002), and accompanying decision memorandum at Comment 2 ("Sebacic Acid from the PRC"), the petitioner therefore contends there is an established Department practice regarding the use of these values. However, for the respondents that reported using non-alloy pig iron which the Department verified, the petitioner agrees that the Department should consider using the non-alloy pig iron value to value this input. Moreover, in response to the respondents' claim that the Department's experience in prior segments of this proceeding confirms that alloy pig iron is not used in their brake rotor production, the petitioner argues that this information should not be considered evidence that the respondents subject to these reviews currently do not use alloy pig iron to produce the subject merchandise.

Department's Position:

We agree with the respondents that the Department preference is to use the most specific surrogate values when available to value the inputs used to produce the subject merchandise. In prior segments of this proceeding, the respondents did not specify whether the pig iron they used was alloy or non-alloy. However, in these current reviews, most of the respondents indicated that they used non-alloy pig iron to produce the subject merchandise during the POR. Therefore, we have used the specific non-alloy pig iron value obtained from Monthly Statistics to value this input for the respondents which specified in their supplemental questionnaire responses the type of non-alloy pig iron they used to produce the subject merchandise during the POR. With the exception of ZLAP, each respondent specified in its supplemental response that it used non-alloy pig iron to produce the subject merchandise

during the POR. For the three verified respondents, we confirmed that those respondents used only non-alloy pig iron to produce brake rotors. For the other eight respondents, which we did not select for verification, we have used their reported data concerning the type of non-alloy pig iron they used during the POR in these final results because we have no basis to disbelieve or reject the respondents' claims in this regard. For ZLAP, the sole respondent which did not indicate the type of pig iron it used during the POR, we have continued to use an average of non-alloy and alloy pig iron values to value this input in the final results because there is no information on the record which indicates that ZLAP used only non-alloy pig iron to produce the subject merchandise during the POR.

We also find that petitioner's reliance on Sebacic Acid from the PRC to support its arguments is without merit. In that case, the Department selected a surrogate value for an input (i.e., activated carbon) based on the product-specific data submitted by the respondent[9]. Similarly, we have more specific information in this segment of the proceeding, which warrants assigning a more specific value to the input at issue. Specifically, 11 of the 12 respondents in these reviews have indicated that they used a specific type of non-alloy pig iron to produce the subject merchandise during the POR. Therefore, consistent with Sebacic Acid from the PRC, we have used a more product-specific surrogate value to value the specific type of pig iron those respondents reported they used in their supplemental questionnaire responses.

Comment 5: Whether the Respondents' Case Brief Complies With the Department's Filing and Service Requirements

The petitioner argues that the respondents' case brief does not comply with the Department's filing and service regulations and that the Department should reject it by removing it from the record of these reviews. Specifically, the petitioner alleges that the respondents' certificate of service did not specify the method of service as required by 19 C.F.R 351.303(f)(2), and that the brief was not timely served in accordance with 19 C.F.R 351.303(f)(3). The petitioner claims that it first received the proprietary version of the respondents' case brief on February 24, 2003, and not on the day that it was filed or on the following day of filing, as required by the Department's regulations. The petitioner argues that this delay deprived it of several days for purposes of preparing its rebuttal brief. Citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992), at Comment 4 ("AFBs from France"), the petitioner maintains that the Department has stated that untimely service of briefs has placed the receiving party at a disadvantage in a proceeding. Furthermore, the petitioner points out that in AFBs from France, the Department stated that it will no

[9] The petitioner's suggestion that the Department's practice is to value an input in a current segment of a proceeding using the value it assigned to that input in a prior segment of the same proceeding is not correct. The Department's practice is to determine the best surrogate value information available for inputs based on a variety of sources, including publicly available information provided by interested parties as well as that obtained from its own research.

longer tolerate untimely deliveries of case briefs to parties and that it will strictly enforce the service requirements.

In addition, the petitioner alleges that in the cover letter of the proprietary version of the respondents' case brief, the respondents requested proprietary treatment pursuant to an old regulation (i.e., 19 C.F.R 353.32). In violation of 19 C.F.R 351.303(d)(2), the petitioner claims that the heading of the cover letter did not specify the period of review and that the cover letter was erroneously marked as an "investigation" rather than an "administrative review" and as a rebuttal brief rather than a case brief. The petitioner also claims that some of the required markings indicating business proprietary information were not included in the case brief or in the cover letter.

Furthermore, the petitioner claims that it received the public version of the case brief three days after it should have received it which was one day before the deadline for filing the rebuttal brief. The petitioner also claims that the respondents did not comply with 19 C.F.R 351.303(f)(3) because they mailed, rather than served by hand, a copy of their public version of the case brief, and that the certificate of service did not specify the method of service as required by the Department's regulations. The petitioner alleges that the delay in receiving the public version also deprived it of the opportunity to provide copies of the case brief to its client for review and to prepare its client's rebuttal comments.

In view of the respondents' multiple infractions in complying with Department's filing and service regulations and their disregard for the rights of the petitioner, the petitioner argues that the Department should reject the respondents' case brief in its entirety.

Department's Position:

The petitioner has argued that the respondents placed it at a disadvantage by not properly serving it with their case brief. As a practical matter, we disagree. First, we note that respondents only argued one issue (i.e., the proper surrogate value for pig iron) in their case brief, which we find to be a minor issue in this review. Moreover, the petitioner timely submitted its rebuttal brief for purposes of responding to the sole issue raised by the respondents without requesting additional time. Nonetheless, if the petitioner would have promptly notified the Department of its grievances, we could have rectified this situation by affording it additional time to file its rebuttal brief.

Because the petitioner demonstrated through its submission of a timely rebuttal brief that it in fact was able to overcome any time disadvantages that may have been a hindrance, we do not find it appropriate to reject the respondent's case brief in these reviews. Furthermore, although the Department has stated in AFBs from France that it intends to strictly enforce its filing and service regulations, we do not consider the circumstances in these reviews a sufficient basis to reject and remove the respondents' case brief from the record.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of these reviews and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree____ Disagree____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
(Date)