

April 18, 2011

A-570-901
Administrative Review
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MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Certain Lined Paper Products from the People's Republic of China

SUBJECT: Issues and Decision Memorandum for the Final Results in the
Third Antidumping Duty Order Administrative Review of Certain
Lined Paper Products from the People's Republic of China

Summary

We have analyzed the case and rebuttal briefs of the Petitioner¹ and Respondent² for the final results in the third administrative review of certain lined paper products (CLPP) from the People's Republic of China (PRC). We recommend that you approve the positions we have developed in the "Department's Position" sections of this memorandum.

Background

On October 18, 2010, the Department of Commerce (the Department) published in the Federal Register the preliminary results of the antidumping duty administrative review for CLPP from PRC.³ In the Preliminary Results, the Department determined that there is credible evidence on the record that documents submitted by Watanabe at verification are either inaccurate, internally

¹ The petitioner in this administrative review is the Association of American School Paper Suppliers and its individual members ("AASPS" or "Petitioner" hereafter).

² The respondents in this review include the following companies: Shanghai Lian Li Paper Products Co. Ltd. ("Lian Li"); Hwa Fuh Plastics Co., Ltd./ Li Teng Plastics (Shenzhen) Co., Ltd. ("Hwa Fuh/Li Teng"); Leo's Quality Products Co., Ltd./ Denmax Plastic Stationery Factory ("Leo/Denmax"); and the Watanabe Group (consisting of Watanabe Paper Products (Shanghai) Co., Ltd. ("Watanabe Shanghai"); Watanabe Paper Products (Linqing) Co., Ltd. ("Watanabe Linqing"); and Hotrock Stationery (Shenzhen) Co., Ltd. ("Hotrock Shenzhen"))(hereafter referred to as "Watanabe" or "Watanabe Group" or "Respondent"). Of the above respondents, Lian Li and Leo/Denmax claimed no shipments of subject merchandise to the United States during the period of review (POR); Hwa Fuh/Li Teng could not be reached despite the Department's numerous attempts and we therefore preliminarily rescinded the review with respect to Hwa Fuh/Li Teng. See Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, 75 FR 63814 (October 18, 2010) (Preliminary Results).

³ See Preliminary Results.

inconsistent, or are otherwise unreliable and assigned Watanabe, as part of the PRC-wide entity, an adverse facts available (AFA) margin of 258.21 percent. The Department applied adverse inferences in the Preliminary Results, because Watanabe was unable to explain the discrepancies between the documents collected by the Department at verification and documents provided by Petitioner that implicate the veracity of Watanabe's financial information. Petitioner submitted certain documents (including invoices and payment documents) supplied by a member of its association that is also a customer of Watanabe, showing different invoice values charged to the customer than what is reflected in documents the Department obtained at verification with respect to Watanabe's sales to this customer.⁴ However, the Department indicated in the Preliminary Results that because this issue arose fairly late in the proceeding, it may need to collect additional information in order to more fully evaluate this issue for purposes of the final results.

On November 16, 2010, the Department sent a letter to Watanabe requesting that it explain the discrepancies associated with the information Petitioners placed on the record. This letter listed in detail the more than a dozen inconsistencies in Watanabe's own records, citing to the specific line item in each conflicting invoice, ledger and voucher obtained as part of the verification of Watanabe.

In its December 8, 2010 response, Watanabe provided Chinese Customs Declaration Forms corresponding to the invoices it provided at verification. Watanabe explained that the payment amounts in its ledgers differ from the invoiced amounts, because the invoices it provided the Department were actually prepared for export Customs declaration purposes rather than for payment collection from the customer. See Watanabe's 4th supplemental questionnaire response dated December 8, 2010, at pages 1, 2, and 6. Watanabe stated that the invoices it sent to the customers for payment, which it calls "commercial invoices," were never kept as formal company records in the normal course of business. See Id. at page 3. According to Watanabe, "{t}hey were purely for telling the customer how much to pay and have nothing to do with the accounting system or any other company records." See Id. at page 3. Watanabe admits that the invoice value prepared for export Customs declaration was not necessarily identical with the payment amount due, stating that "the value for Customs declaration might differ from the payment." See Id. at page 6. As discussed further below, rather than clarifying the situation with respect to their books and records, Watanabe's responses confirmed that their books and records were unreliable.

On December 22, 2010, the Department informed interested parties of the due dates for submission of case and rebuttal briefs. On January 6, 2011, Watanabe and Petitioner submitted their case briefs, and on January 13, 2011, Watanabe and Petitioner submitted their rebuttal briefs. Because in its January 6, 2011, case brief Petitioner failed to properly identify the person that originally submitted the BPI data, as required by 19 C.F.R. 31.306 (c), the Department rejected and returned Petitioner's case brief on January 21, 2011. The Department extended the time limit for Petitioner to resubmit its case brief to January 26, 2011. The Department also

⁴ See Memorandum to the File, through James Terpstra, Program Manager, AD/CVD Operations, Office 3, Import Administration, from Cindy Robinson, Financial Analyst, titled "Certain Lined Paper Products from People's Republic of China: Certain Business Proprietary Information ("BPI") in the Issues and Decision Memorandum with Respect to the Watanabe Group," dated April 18, 2011 ("Watanabe BPI Memo").

granted Watanabe an opportunity to resubmit its rebuttal brief. Petitioner submitted its revised case brief on January 26, 2011, and Watanabe submitted its revised rebuttal brief on February 2, 2011.

List of Comments

- Comment 1: Alleged Procedural Irregularities
- Comment 2: Timeliness of Petitioner's New Factual Information Submission
- Comment 3: Application of Adverse Inferences to Petitioner
- Comment 4: Watanabe's Inability to Respond Based on Bracketing of Information
- Comment 5: Petitioner's Case Brief Was Properly Rejected but Should Not Have Been Allowed To Be Resubmitted
- Comment 6: Application of Adverse Inferences With Respect to Watanabe
- Comment 7: Factors of Production and Surrogate Values

Comment 1: Alleged Procedural Irregularities

In its case brief, Watanabe alleges that there were a number of procedural irregularities with the Department's conduct of this review. Specifically, Watanabe objected to the Department's alleged failure to seek additional information from, or verify the accuracy of, the information submitted by Petitioner with respect to the allegations levied against Watanabe. Additionally, Watanabe claims that, at a minimum, the Department should have examined the nature of the information supplied by Petitioner and sought a detailed explanation as to how such information was gathered despite the fact that information about certain non-U.S. entities was only disclosed to counsel under an Administrative Protective Order (APO). Watanabe also alleged that the Petitioner should not have withheld other information such as entry documentation, which would have more likely properly reflected the export invoices prepared by Watanabe and supplied by Watanabe at verification. Finally, Watanabe objected to the Department's failure to provide Watanabe itself with full and complete details as to the allegations made by Petitioner, claiming that without access to this information, Watanabe's ability to address the allegations was greatly limited.

Petitioner notes that, in the Preliminary Results, 75 FR at 63820, the Department stated that the documents provided by Petitioner tie directly to Watanabe's payment records and, as such reflect the true amounts actually invoiced by Watanabe. Petitioner notes that while in its opinion, verification of its information was unnecessary since its documentation tied into Watanabe's own records, it nonetheless invited the Department to conduct verification. Further, Petitioner claims that Watanabe itself has conceded that it may have provided customers with commercial invoices that match the payments recorded in its books and records, but do not tie to the company's claimed sales values for the same transactions. Petitioner asserts, therefore, that in these circumstances, the information it provided is clearly reliable, and forms a sound basis for the application of adverse inferences. With respect to Watanabe's complaint that Petitioner did not explain how it was able to obtain the documents without violating the APO, Petitioner again sites to the Preliminary Results, 75 FR at 63819, where the Department noted that Petitioner has

explained, in three separate submissions,⁵ how it was able to obtain the information without violating the APO.⁶ Petitioner agreed with the Department's conclusion as expressed in the Preliminary Results, 75 FR at 63819, that there is no evidence of any improper treatment or handling of business proprietary data. Petitioner claims that Watanabe's assertion that Petitioner's bracketing was such that Watanabe could not understand the allegations made against it and was unable to adequately respond, is specious. Petitioner asserts that, at all times, counsel for Watanabe has had access to the information supplied and further, that it bracketed its information with an eye toward ensuring that Watanabe could understand the allegations against it. Petitioner notes that, in response to Watanabe's pre-preliminary complaints, petitioner voluntarily provided Watanabe with certain of the business documents it had submitted. In conclusion, Petitioner argues that Watanabe's arguments have already been rejected by the Department and provide no persuasive reason why the Department should not continue to apply adverse inferences in determining Watanabe's final margin.

Department's Position:

We agree with Petitioner that the alleged procedural irregularities claimed by Watanabe do not form a basis for rejecting the Petitioner-provided information, or for relying on the inaccurate, internally inconsistent, or otherwise unreliable documents submitted by Watanabe.

Specifically, given Watanabe's admission that in addition to the export invoices it provided at verification, it may also issue commercial invoices that match the payments recorded in its books and records, and the fact that the documents provided by Petitioner tie directly to Watanabe's records, we determined that further verification of the information supplied by Petitioner was not necessary. Further, we agree with Petitioner that it has, on more than one occasion, adequately explained how it was able to obtain the information submitted to the Department without improper treatment or handling of business proprietary data. We address Petitioner's provision of information in more detail in response to Comment 4 below; however, the fact that Petitioner may not have provided all information available does not support the conclusion that we should have rejected the information provided.

Finally, we agree with Petitioner that neither Watanabe nor its counsel was prevented from a cogent response to the allegations based on a lack of understanding of the allegations. As stated in the Preliminary Results, the issues raised by Petitioner relate directly to Watanabe's own proprietary information contained in the verification exhibits. Both in the public and Watanabe BPI version of Petitioner's August 27, 2010, letter, and in the Department's three letters dated September 3, 2010, September 21, 2010, and November 16, 2010, respectively, the factual bases of the Petitioner's allegation is clear. Additionally, as discussed further in Comment 4 below, per Watanabe's request to reveal confidential information so that it may substantively comment, in accordance with 19 CFR 351.306(a)(5), Petitioner authorized the Department to release

⁵ See Letters to the Department from Petitioner dated August 30, 2010, September 17, 2010, and September 20, 2010.

⁶ Petitioner specified that it had obtained invoices by a Watanabe customer that is also a member of Petitioner's membership association, without explaining or providing any data to its membership that is protected under administrative protective order.

directly to Watanabe, for comment, certain of the business documents that formed the basis of Petitioner's discrepancy claim.⁷

Comment 2: Timeliness of Petitioner's New Factual Information Submission

Watanabe argues that Petitioner's August 27, 2010, submission of new factual information was untimely filed. Watanabe argues that 19 CFR 351.301(b)(2) requires that factual information in a review be submitted within 140-days after the last day of the anniversary month, which is September in the instant case. Because the information was submitted in August 2010, well after the 140-day deadline, Watanabe argues Petitioner's new factual information should have been rejected by the Department. Further, Watanabe claims that Petitioner has not shown good cause to modify the Department's deadlines.

Watanabe argues that the Petitioner either knew, or had constructive knowledge, of any purported conflict in documents long before the expiration of the time to submit new factual information. By failing to submit its new factual information within the regulatory deadlines, Petitioner deprived the Department and Watanabe the opportunity to have such information examined at verification. Watanabe alleges that Petitioner intentionally withheld this information until after verification in order to play "gotcha." Accordingly, Watanabe urges the Department to reject Petitioner's submitted information as untimely.

Petitioner argues that Watanabe made very similar arguments prior to the Preliminary Results and that the Department previously determined that, in light of the significance of the issues raised by Petitioner's data, it would extend the deadline for submitting new factual information and would accept the new information filed by Petitioner. In addition, with respect to Watanabe's assertion that Petitioner intentionally withheld documentation in an attempt to play "gotcha," Petitioner explains that it was not until the release of the verification exhibits that AASPS' counsel became aware of, and acted to confirm certain transactions through independent sources.

Department's Position:

We disagree with Watanabe that the Department erred in accepting Petitioner's new factual information filed on August 27, 2010. Watanabe raised this argument previously, and as stated in the Preliminary Results the Department has the discretion under 19 CFR 351.203(b) to extend any deadline for good cause. We note that, at the time of submission, Petitioner asserted that good cause existed to extend the regulatory deadline and accept the information.

We find irrelevant Watanabe's argument that AASPS "either actually knew or had constructive knowledge, of any purported conflict in documents long before the January 17, 2010, deadline, but it failed to disclose to the Department." Nonetheless, we do not agree that Petitioner has reason to believe or suspect that Watanabe would submit invoices at verification that did not

⁷ See letter from Petitioner to the Department re: Certain Lined Paper Products from China: Reply to Watanabe's Responses to AASPS' August 27, 2010, Comments on Watanabe's Information (October 4, 2010).

reflect the true value of Watanabe's exports. However, having determined that documentation was available that would undermine the veracity of Watanabe's response, it was within Petitioner's discretion to provide such documentation to the Department, albeit after the regulatory deadline for submitting new factual information.

As we noted in the Preliminary Results, given the nature and significance of the issues raised by Petitioner, good cause was established, and thus the Department properly exercised its discretion in accepting Petitioner's new factual information. Additionally, we note that we provided Watanabe multiple opportunities to respond to, and comment on, Petitioner's new factual information and allegations. Finally, we note that our decision to accept the information in this case is consistent with the Department's practice in Certain Oil Country Tubular Goods⁸ in that the information Petitioner submitted has critical implications for the veracity of Watanabe's financial information such that the Department cannot use Watanabe's data for purposes of the final results.

Comment 3: Application of Adverse Inferences to Petitioner

In its case brief Watanabe claims that, in accordance with section 776(a) of the Tariff Act of 1930, as amended (the Act), the Department may take adverse inferences against a party which does not fully cooperate with the Department. Watanabe asserts that Petitioner supplied only limited and incomplete data about purportedly conflicting documents. Watanabe asserts that, in doing so, Petitioner prevented Watanabe from knowing and being able to effectively respond to "secret information." Specifically, Watanabe asserts that Petitioner did not submit copies of the entry papers and the like which would have contained copies of "export invoices" prepared by Watanabe. Therefore, according to Watanabe, Petitioner withheld information clearly in its control which would have supported Watanabe and undermined its claim.

In its rebuttal brief, Petitioner asserts that the fact that Watanabe appears to claim that it may have provided copies of inaccurate, as well as accurate, invoices to its export customers, this does not establish that Watanabe's customers did not cooperate with the agency's request for information. Petitioner points out that the Department did not request any information from Watanabe's customers. Rather, Petitioner asserts that the fact that Watanabe provided inaccurate invoices to the Department at verification, and had the Department verify a sales reconciliation and completeness on the basis of accounting records tainted by inaccurate invoices, serves to confirm that the Department should apply adverse inferences to Watanabe; not the domestic industry.

⁸ See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 9 (Certain Oil Country Tubular Goods).

Department's Position:

We agree with Petitioner that the Department did not request any information from Watanabe's customer(s). As such, Petitioner did not withhold any information that had been requested and, therefore, adverse inferences are not applicable in these circumstances. Further, we note that whether or not Petitioner was in possession of additional information such as the export invoices prepared by Watanabe and provided to the Department by Watanabe at verification is irrelevant to the question of whether the information provided by Watanabe was inaccurate, internally inconsistent, or otherwise unreliable.

Comment 4: Watanabe's Inability to Respond Based on Bracketing of Information

Watanabe argues that the recent Court of International Trade (CIT) decision in Carpenter Technology,⁹ affirming the Department's decision not to rely on substantive allegations and claims submitted within double brackets in reaching its results, is applicable in this case. Specifically, Watanabe claims that the information provided by Petitioner relating to business transactions between Watanabe and another entity was wholly unreleased and Petitioner did not provide a reasonable "summary" of the information. Watanabe claims, therefore, that it is not aware of any of this information. Watanabe further claims that a summary would have enabled it to determine the nature of the documents submitted and to reasonably locate and provide information which places the "contradictory" documents in context.

Watanabe claims that as the information at issue is factual information, its counsel would not have access to the facts or be able to determine the accuracy of any document provided. Accordingly, Watanabe maintains that confidential treatment of the information at issue "unlawfully deprived Watanabe of its statutory right to comment on the allegations against it."

Petitioner disputes that the bracketing of its allegations was such that Watanabe could not understand the allegations made against it. Petitioner argues that the facts in this case are readily distinguishable from those in Carpenter Technology, where the domestic industry participant attempted to impugn the accuracy and reliability of respondent's submissions through the use of "double bracketed" data that could not be revealed either to a respondent or its attorneys. Petitioner asserts that the instant case does not involve any double-bracketing and therefore counsel for Watanabe has access to the information provided by AASPS.

In addition, Petitioner claims that the bracketing of the AASPS' submissions has been handled with an eye toward ensuring that Watanabe could understand the nature of the allegations against

⁹ See Carpenter Technology Corp. v. United States, 34 CIT, Slip Op. 10-130 (November 23, 2010) (Carpenter Technology), where the CIT upheld the Department's decision for refusal to consider certain information submitted by petitioner with double brackets. The submission in Carpenter Technology contained wholesale allegations challenging the truthfulness of Venus's questionnaire response. The CIT stated that "...If Commerce had relied upon Plaintiffs' double bracketed submissions, it would have unlawfully deprived Venus of its statutory right to comment on the allegations against it."

it. Petitioner also highlights that in the Preliminary Results the Department indicated that, "...the factual bases of the Petitioner's allegation is clear."

Petitioner further notes that in response to Watanabe's pre-preliminary complaints, on October 4, 2010, AASPS voluntarily provided Watanabe with the specific invoices that it received from its membership that conflicted with the documents Watanabe provided at verification.¹⁰ In fact, according to Petitioner, a review of Watanabe's December 8, 2010, response to the Department's fourth supplemental questionnaire reveals that both Watanabe and its counsel are perfectly enlightened as to the factual and documentary bases of the allegations. Therefore, Petitioner urges the Department to continue to apply AFA to Watanabe in the final results.

Department's Position:

We disagree with Watanabe's claim that the submission of BPI information prevents Watanabe from responding fully to such information.

As detailed in the case history, prior to the Preliminary Results, we gave Watanabe two opportunities to provide information in response to Petitioner's allegations. Per Watanabe's request to reveal confidential information so that it may substantively comment, in accordance with 19 CFR 351.306(a)(5), Petitioner authorized the Department to release directly to Watanabe, for comment, certain of the business documents that formed the basis of Petitioner's discrepancy claim.¹¹ In response, on September 30, 2010, Watanabe alleged that the information provided by Petitioner was fabricated and unknown to it; because of this, Watanabe claimed it could not adequately respond.

The Department, however, made it clear that the burden was on Watanabe to provide an explanation of these factual discrepancies. Subsequent to the verification and issuance of the verification report and the issuance of the Preliminary Results, the Department gave Watanabe a third opportunity to respond to Petitioner's allegation. On November 16, 2010, the Department issued a letter to Watanabe listing in detail the more than a dozen inconsistencies in Watanabe's own financial records, citing to the specific line items in each conflicting invoice, ledger, and voucher obtained as part of its verification. Indeed, we identified each specific factual issue that we relied upon for our findings and asked Watanabe to explain. Watanabe requested an extension to respond which the Department granted. The Department has taken extraordinary measures to provide Watanabe with both a detailed explanation of the allegations of inconsistency as well as a thorough opportunity to respond.

In our view, Watanabe's reliance on Carpenter Technology is misplaced. As Petitioner points out, the facts in this case differ from that of Carpenter Technology. In Carpenter Technology, the CIT affirmed the Department's decision not to rely on wholesale allegations submitted within

¹⁰ See letter from Petitioner to the Department re: Certain Lined Paper Products from China: Reply to Watanabe's Responses to AASPS' August 27, 2010, Comments on Watanabe's Information (October 4, 2010).

¹¹ See letter from Petitioner to the Department re: Certain Lined Paper Products from China: Reply to Watanabe's Responses to AASPS' August 27, 2010, Comments on Watanabe's Information (October 4, 2010).

double brackets by domestic industry, because doing so would have unlawfully deprived respondent of its statutory right to comment. The court found that while double bracketing was permitted, the Petitioner did not narrowly tailor their submissions to conceal for example the identity of market researchers, information sources, or customer names – instead the double brackets contained substantive allegations. Because there is no double-bracketing issue involved in this case, the CIT’s decision in Carpenter Technology is not applicable to the facts in these final results.

Additionally, in its December 8, 2010, submission, Watanabe essentially disclosed that all of the information provided by Petitioners was actually Watanabe’s own factual information. Thus, the fundamental discrepancies between its official books and records and its unofficial practices is based on clear factual information on the record. Watanabe’s numerous arguments that it either cannot adequately address the factual issues because it has been denied access to certain proprietary information or that this data was somehow improperly treated are without merit given the full facts in this case.

Comment 5: Petitioner’s Case Brief Was Properly Rejected but Should Not Have Been Allowed to Be Resubmitted

In its February 2, 2011, resubmitted rebuttal brief, Watanabe objects to the fact that after rejecting and returning Petitioner’s January 6, 2011, case brief for failing to properly identify the person that submitted the BPI, as required by 19 CFR 351.306(c), the Department allowed Petitioner to resubmit its brief on January 13, 2011, with the corrected BPI identification. Watanabe alleges that rejecting the Petitioner’s initial brief was the correct decision, but allowing Petitioner to re-submit the corrected brief was an abuse of discretion. Watanabe finds this to be indicia of the fundamental unfairness of this review.

Watanabe claims that the failure to comply with 19 CFR 351.306(c) by the experienced counsel for Petitioner was not inadvertent, but was rather a volitional choice done for the purpose of obtaining a tactical advantage in the short and intense briefing period. In particular, Watanabe cited a recent case in which the same counsel representing different petitioner similarly submitted a case brief without properly attributing the BPI information in accordance with 19 CFR 351.306(c), which the Department rejected.¹² Watanabe argues that Petitioner’s counsel therefore cannot claim a lack of knowledge of the regulation. Accordingly, Watanabe alleges that this speaks to the credibility of any information submitted by Petitioner in this review, particularly in light of the lack of verification of such information.

Department’s Position:

We disagree with Watanabe’s arguments that allowing Petitioner to resubmit its case brief accurately attributing the BPI was an abuse of discretion.

¹² The case cited by Watanabe is the original investigation of Wire Decking from the People’s Republic of China (A-570-949). See Memorandum to File through Erin Begnal, Program Manager, AD/CVD Operations, Office, from Trisha Tran, Analyst; Subject: Wire Decking from the People’s Republic of China; Titled “Rejection of Case brief of Petitioner-Nucor; Opportunity to Correct and Resubmit Case Brief,” dated May 10, 2010.

Identifying the source of the BPI is somewhat ambiguous in this case. The invoices provided by Petitioner contained factual information relating to Watanabe's business records – including customer name, quantity sold, date of sale, and sale price. However, Petitioner was independently in possession of these documents because it had obtained them from a member of its association that is also a customer of Watanabe. Thus, the factually identical BPI was in the possession of both parties. Petitioner, not Watanabe, originally put this information on the record. Subsequently, as stated in our Preliminary Results, on September 20, 2010, per Watanabe's request that Petitioner reveal confidential information so that it may substantively comment, in accordance with 19 CFR 351.306(a)(5), Petitioner authorized the Department to release directly to Watanabe all the invoices that formed the basis of Petitioner's discrepancy claim.¹³

Accordingly, in its initial case brief submitted on January 6, 2011, Petitioner simply identified the information it submitted within brackets as BPI but did not properly identify the person that originally submitted the BPI cited.

On January 21, 2011, the Department rejected Petitioner's original (January 6, 2011) case brief and extended the time limit to allow Petitioner to correct its attribution of the BPI and re-submit its brief on January 26, 2011.

We disagree with Watanabe that Petitioner's case brief should be rejected. Petitioner has properly identified and marked the source of the BPI data in its revised case brief dated January 26, 2011. Petitioner did not provide new or otherwise altered arguments or make any changes to the brief beyond correctly identifying the source of the submitted BPI. The Department properly exercised its discretion in allowing Petitioner to correct its error. Watanabe was not prejudiced as the information was corrected, providing Watanabe with the opportunity to comment. The Department also set aside a seven-day time period for Watanabe to re-submit its rebuttal brief upon receiving Petitioner's revised case brief, which Watanabe did, and did not request any additional time to submit its rebuttal brief beyond the time provided by the Department.

We note that Petitioner did not make BPI public, or fail to bracket or identify BPI as such. Petitioner identified the information as BPI, but simply was deficient because it did not specify the source of the information, either as Watanabe's or AASPS'. Sections 782(c), (d) and (e) of the Act anticipate that the Department will exercise its discretion in providing a party with reasonable opportunities to correct deficiencies within the statutory time limits of the investigation.

Accordingly, the Department appropriately exercised reasonable discretion in allowing Petitioner an opportunity to correct its submission and provided Petitioner five days to re-submit its case brief. Further, the Department provided Watanabe seven days upon receiving Petitioner's revised case brief to file a revised rebuttal brief. For the reasons above, we do not find accepting Petitioner's revised case brief to be an abuse of discretion, nor was it prejudicial to any party.

¹³ See letter from Petitioner to the Department re: Certain Lined Paper Products from China: Reply to Watanabe's Responses to AASPS' August 27, 2010, Comments on Watanabe's Information (October 4, 2010).

Comment 6: Application of Adverse Inferences With Respect to Watanabe

In its case brief Watanabe argues that the Department has no grounds to find that Watanabe was uncooperative and, therefore, the Department should not have applied AFA to Watanabe for the Preliminary Results and should not do so for the final results. Further, Watanabe argues that, contrary to the unfounded claims by Petitioner, the documents Watanabe supplied at verification were accurate. Watanabe claims that the invoices Watanabe provided to the Department at verification are the invoices Watanabe maintains in the normal course of business and are reflected in its regular books and records. According to Watanabe, the purportedly conflicting documents provided by Petitioner consisted of payment documents that reflected the actual amount ultimately paid by the customer; not the value of sales. These export invoices, Watanabe argues, would have been available to Petitioner as they should have been used at the time of entry of the goods into the third country, but were intentionally withheld as they would have confirmed the documents submitted by Watanabe. Because the documents it provided were accurate and nothing in the purportedly conflicting information conflicts with the documents Watanabe supplied, Watanabe argues that the Department has no basis for finding that Watanabe failed to cooperate.

Further, Watanabe argues that even if the Department were to determine that the documents provided at verification were somehow in conflict, because they relate to third country sales, such conflict is, at best, a harmless error. Such documents relate only to third country sales and, as such, Watanabe argues, do not implicate either U.S. sales or the factors of production. Watanabe asserts that its U.S. sales were verified in their entirety and there is no evidence that any other Watanabe exports were imported into the United States.

Finally, Watanabe challenges the origin of the conflicting documents. Citing to Hand Trucks and Steel Gratings,¹⁴ Watanabe notes that in prior cases in which the Department has found a lack of cooperation due to the existence of purportedly conflicting documents, such documents have either been discovered by the Department during verification or were obtained from a trusted third party source, such as official U.S. Customs data. Watanabe argues that, to the contrary, the only conflicting “evidence” in this case is the documents supplied by a party with a commercial business interest in denying respondent even a fair access to the market. Watanabe claims that the documents provided by Petitioner are, at best, questionable and do not provide the type of reliable information necessary to overcome the verified and complete information submitted by Watanabe in its responses.

Petitioner argues that the Department correctly applied adverse inferences to Watanabe in the Preliminary Results, and should continue to base Watanabe’s dumping margin on adverse inferences. Petitioner argues that Watanabe provided the Department with inaccurate documentation and allowed the Department to conduct verification on the basis of inaccurate documentation. Further, Petitioner claims that only after the falsity of its documents had been exposed did Watanabe acknowledge the existence of documentation that did not accurately

¹⁴ See Hand Trucks and Certain Parts Thereof from the People’s Republic of China, 73 FR 43684 (July 28, 2009) and Certain Steel Grating from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 32366 (June 8, 2010).

reflect its selling prices. Finally, Petitioner asserts that Watanabe has yet to provide the Department accurate sales documentation, claiming that it does not maintain such records. Petitioner notes that as part of the Department's verification of Watanabe's questionnaire response, the Department reviewed documentation for third country sales, and traced such sales through Watanabe's accounting ledgers as part of the sales reconciliation. Petitioner asserts that Watanabe's response to the Department's post-preliminary request for an explanation of the discrepancies that formed the basis of the Department's preliminary determination to apply AFA confirms that Watanabe provided the Department with invoices that did not accurately record the prices or total values charged to or received from its customers. Additionally, Petitioner contends that Watanabe's response demonstrates that its "official" accounting records, including payment vouchers, the export sales ledger, and ultimately, the company's financial statements, did not accurately record the prices or total values charged to or received from its customers. Petitioner cites to Watanabe's December 8, 2010, response and asserts that by stating that it does not maintain copies of documents used to tell the customer how much to pay, and that such documents "have nothing to do with the accounting system or any other company records," Watanabe has clearly admitted that its accounting records are completely unreliable.

Petitioner notes that although Watanabe now attempts to claim the reason the documents identified inaccurate prices and sales values had nothing to do with an attempt to disguise unreported U.S. sales, Watanabe did not disclose or explain the discrepancies at verification, thereby depriving the Department of any opportunity to examine untainted records or otherwise understand how Watanabe's genuine accounting records function.¹⁵ Finally, Petitioner states that, having admitted that the invoices provided to the Department at verification are inaccurate, Watanabe now claims that it does not maintain, in the normal course of business, the documents containing the actual prices charged to customers. As such, Petitioner asserts that Watanabe's actions have severely undermined the Department's investigation.

Petitioner cites to the statute and numerous cases for its claim that the Department uniformly applies adverse facts available whenever a respondent (1) provides documents that contain inaccurate or falsified data,¹⁶ (2) provides other sorts of inaccurate documents,¹⁷ (3) fails to

¹⁵ Petitioner distinguishes Watanabe's behavior in this second administrative review to respondent Lian Li's actions in the first administrative review of CLPP from PRC where after the Department preliminarily applied partial adverse inferences due to discrepancies in Lian Li's suppliers' reporting and sales reconciliation, Lian Li voluntarily came forward to explain the discrepancies and inconsistencies. See Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, 73 FR 58540 (October 7, 2008). See also, Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review, 74 FR 17160 (April 14, 2009).

¹⁶ See Potassium Permanganate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 51765 (August 28, 2003), and accompanying Issues and Decision Memorandum at Comment 1; Large Newspaper Printing Presses and Components Thereof from Japan: Final Results of Changed Circumstances Review, 71 FR 11590 (March 8, 2006) and I&D Memo at comment 1.

¹⁷ See, e.g., Certain Steel Grating from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 32366 (June 8, 2010), and accompanying Issues and Decision Memorandum at Comment 3; see also Certain Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 GT 11085 (March 16, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

report complete or accurate data,¹⁸ or (4) fails to provide information in a timely manner.¹⁹ Petitioner contends that Watanabe has misled the Department as to the prices and values charged to and received from its customers as well as the nature and reliability of its accounting system. Further, Petitioner alleges that Watanabe has failed to provide accurate or complete copies of its commercial invoices or other accounting documentation, including financial statements. As such, Petitioner asserts that the Department's verification does not insulate Watanabe from the application of AFA.²⁰ Petitioner claims that although the discrepancies in Watanabe's reporting were not uncovered at verification, it is clear that Watanabe provided inaccurate data and documents to the Department and permitted the Department to conduct verification on this basis. Petitioner claims that because Watanabe is the owner and generator of its own accounting records, it knew that its sales reconciliation was based on records that did not faithfully reflect the amounts charged to or received from its customers. As such, Watanabe's behavior significantly impeded the proceeding.

In conclusion, Petitioner asserts that the record evidence clearly shows that Watanabe proffered unreliable and inaccurate documents and accounting records at verification, participated in verification based on such unreliable and inaccurate records and, only after the inaccuracies were independently exposed, did Watanabe claim that it does not maintain in its records accurate copies of documents that are fundamental to its business operations. Therefore, Petitioner claims that the Department should continue to apply adverse inferences for the final results.

In its rebuttal, Watanabe asserts that Petitioner has mistakenly equated payment with sales. Watanabe asserts that Petitioner's claims of inaccuracies are based on the fact that Watanabe did not receive full payment for all of the invoices. However, Watanabe claims that sales would tie to sales on the financial statement and payments would be reflected in the bank deposit ledger. Watanabe argues that the fact that payment and sales invoices do not necessarily agree is why the Department examines both payment and sales invoices when verifying U.S. sales.

Watanabe also asserts that Petitioner (and the Department's) usage of the term "commercial invoice" represents, at best, a misunderstanding of Watanabe's December 8, 2010, response. Watanabe claims that the payment documents were not "commercial invoices" and the only

¹⁸ See Certain Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 3201 (January 20, 2010), and accompanying Issues and Decision Memorandum at Comment 1; see also Certain Artists Canvas from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum at Comment 11.

¹⁹ Final Determination of Sales at Less Than Fair Value of Certain Kitchen Appliance Shelving Racks from the People's Republic of China, 74 FR 36656 (July 24, 2009), and accompanying Issues and Decision Memorandum at Comment 16.A.

²⁰ Petitioner cites to Pipe from Germany and Garlic from the PRC, to support the proposition that the Department need not rely on Watanabe's information simply because it has been verified. See Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Final Results of Antidumping Duty Administrative Review, 63 FR 13,217, 13,218-20 (March 18, 1998) (the Department determined not to rely on a respondent's verified billet costs, instead applying both the major input rule and adverse inferences to revalue billets purchased from an affiliate at a much higher rate.) See also, Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review of Fresh Garlic from the People's Republic of China (Fresh Garlic from PRC), 68 FR 68868 (December 10, 2003), unchanged in the final results; and Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 69 FR 33626 (June 16, 2004) (the Department applied adverse inferences after receiving, both at and after verification, information that contradicted the respondent's reported data.)

invoices issued by Watanabe, the export invoices, trace to the sales ledger. Watanabe explains that for certain sales, the amount of payment received did not agree with the amount of the export invoice for reasons, including the failure/refusal of the customer to pay. However, Watanabe argues that the amount of the payments was maintained and recorded in the payment ledger and, it is twisted logic to argue that a sale is not a sale if payment has not been received; particularly when payment is controlled by another entity.

Additionally, Watanabe argues that it had no reason to advise the Department of the difference between sales and payment for purposes of the Department's verification of the U.S. sale as the difference between the amount of final payment and the sales invoice only occurred with respect to non-U.S. export sales. Watanabe argues that under Petitioner's convoluted interpretation, respondents would be required to explain, in great detail, its sales practices to each and every third country market. Regardless, Watanabe argues that third party sales have no impact of any kind whatsoever on either normal value or U.S. value and, as such, are not related to the substance of the review.

Finally, Watanabe argues that the cases cited by Petitioner do not support the application of adverse inferences. Rather, they only support the application of adverse inferences where the information "withheld" directly related to either U.S. sales or the factors of production, whereas the information provided by Watanabe with respect to U.S. sales and factors of production was complete and verified as accurate. Further, according to Watanabe, neither the Federal Register notice nor I&D Memo setting forth the Department's rationale in Certain Tissue Paper,²¹ support the facts put forth in Petitioner's allegation that the Department applied AFA after discovering an undisclosed affiliate after verification and, therefore, this must be considered a new fact that must be rejected. Additionally, Watanabe claims that unlike the situations in the cases cited by Petitioner, this review does not involve information that was requested and not supplied. Finally, Watanabe argues that in many of the cases cited by Petitioner, the Department did not apply total AFA, but applied adverse inferences only with respect to the specific facts that the Department determined were inaccurate or not provided. Therefore, Watanabe argues that there is no reason for the Department to apply adverse inferences for the final results.

In rebuttal to Watanabe's argument that the documents it provided the Department at verification were accurate, Petitioner claims that despite the fact that the documents are those that Watanabe kept in its normal books and records, Watanabe admits that the invoices and other accounting documentation provided at verification do not reflect the company's true selling prices. See Watanabe's December 8, 2010, response at pgs 3-4. Petitioner claims that, not only does this demonstrate that Watanabe provided the Department with inaccurate data, it establishes that Watanabe withheld important information regarding the nature and reliability of its accounting system. Petitioner notes that the inaccurate documents were collected by the Department as part of its standard "quantity and value reconciliation" and "completeness test." These tests not only

²¹ A review of the preliminary and final results of Certain Tissue Paper reveals that the issue of applying AFA raised in the case and rebuttal briefs by parties in this investigation were addressed in the two AFA Memorandum to Barbara E. Tillman, dated Feb. 3, 2005 and adopted by the notice. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China, 70 FR 7475, 7477 (February 14, 2005).

probe the completeness of a respondent's sales reporting, but address the overall reliability of its accounting records. Finally, Petitioner asserts that Watanabe's claim of accuracy with respect to the remainder of its questionnaire response, in the absence of accurate accounting records and Watanabe's admission of creating two sets of inconsistent invoices, cannot be verified. Thus, Petitioner argues that Watanabe's provision of inaccurate accounting documents should result in the continued application of adverse inferences.

Department's Position:

We disagree with Watanabe's assertion that there is no basis for the Department to apply AFA to Watanabe for the final results of this review. Additionally, we disagree with Watanabe's arguments that Petitioner's allegations are unfounded and unsupported by the facts. To the contrary, we find that the factual record in this review shows that Watanabe's books and records presented to Commerce, and relied upon by Watanabe to support the reliability of its questionnaire response, support the conclusion that Watanabe's records do not accurately reflect its true commercial practices.

During our verification of Watanabe's questionnaire response, we relied on Watanabe provided invoices to conduct the "Completeness Test" and "Quantity and Value Reconciliation" – a procedure conducted to ensure not only that all sales were accurately reported, but also that sales to each market were accurately reported. Based on the documents provided by Watanabe during verification, the Department concluded that there were no discrepancies between Watanabe's questionnaire response and its books and records. However, after Petitioner provided documents contradicting the invoices that Watanabe provided the Department at verification, Watanabe admitted that the prices and values listed on its export invoices may not reflect the amount received from its customers; a fact that was not disclosed by Watanabe before or during verification nor is apparent in its books and records. Despite numerous detailed requests by the Department, Watanabe has not provided a reasonable explanation to account for the discrepancies in the sales amounts between invoices it provided the Department and the documents to customers concerning actual amounts for payment. Because Watanabe's books and records do not accurately reflect its commercial practice, we have concluded that the information Watanabe provided at verification is incomplete and therefore, not useable or reliable for purposes of these final results.

The documents provided by Petitioner following verification, which Watanabe admits it may have issued as "commercial invoices" to customers for payment, contradict the sales and payment records Watanabe provided to the Department, specifically found in Verification Exhibit 14 at page 1. As we explained in our Preliminary Results, the products listed, sales quantities and other details in the two sets of invoices are similar, with payment amounts being the only distinction. Petitioner provided documentation that consists of a payment amount which corresponds to a receipt of that amount recorded in Watanabe's supplied documentation as listed in Verification Exhibit 14 at page 1. For three of Watanabe's third-country sales, Petitioner provided documentation demonstrating payment in the amount listed on the invoices Petitioner provided and not those provided by Watanabe. This raises a fundamental question about the reliability of the documents reviewed at verification. Despite Watanabe's claim, the conflict between documents submitted at verification and documents submitted by Petitioner regarding

third country sales is not merely “harmless error.” While we verified Watanabe’s sales and factors of production records and the discrepancies purportedly relate only to sales to third countries, there is overwhelming evidence on the record that documents submitted by Watanabe at verification are inaccurate, internally inconsistent, or otherwise unreliable. Petitioner submitted invoices that are corroborated by Watanabe’s own records. These invoices evince that Watanabe’s claimed sales and payment values do not match nor tie to its own internal bookkeeping.

Our verification of Watanabe’s questionnaire and supplemental responses was based on tying the data it provided to its books and records. Despite Watanabe’s claim, the conflicting information related to third country sales has implications for the veracity of the Department’s verification of the single sale of subject merchandise to the United States and, therefore, the results of this administrative review. As noted in Preliminary Results, the invoices in question were reviewed as part of the verification procedure titled “Quantity and Value Reconciliation” and “Completeness Tests,” which is a procedure done to test whether the total quantity and value of sales reported by the Respondent tie to their books and records. This is one of the central elements of verification--to ensure that Respondent reported all the necessary sales. The total sales of a company include sales to the United States, the home market, and third countries. Without this step, we have no way of determining whether all the U.S. sales during the POR were properly reported. As detailed in the verification report, we selected sample transactions from Watanabe’s list of total sales and reviewed them to determine if they were properly reported, and that the list of total sales included all sales. This list identified the total quantity and value for each transaction. We compared selected invoices to the listing of total sales based on the total revenue and prices listed on the invoices. Having matched the amounts on the invoices to the amounts on the listing of total sales, we then tied the list of total sales, including the quantity and value, to Watanabe’s 2008 and 2009 Financial Statements. The fact that Watanabe now admits that its books and records do not accurately reflect the actual commercial practices of the company, with regards to exports, payments, and recordkeeping confirms that our verification of its questionnaire and supplemental responses based on linking it to these records renders the information Watanabe provided unreliable. When we resorted to AFA in the Preliminary Results, we explained that we could not rely on the information provided by Watanabe because when we attempted to verify its reliability and completeness, we reconciled everything to their official books and records. At no time during verification did Watanabe disclose the existence of these other invoices, or of the over- or under-declaration.

In light of the fact that Watanabe owns and generates its own sales and accounting records, it should have been aware that it issued multiple invoices with different values, and that its sales reconciliation was based on records that did not faithfully reflect the amounts charged to or received from its customers. Yet, Watanabe did not voluntarily disclose this information to the Department either prior to or at verification. Watanabe informed the Department that these invoices do not reflect payments, and are prepared for export customs declaration purposes, only after the Department asked about the inconsistent invoices three times and released information to Watanabe that Petitioner had provided in support of its allegations.

We would never have been aware of these inconsistencies had Petitioner not provided these documents. Nothing about the distinction between the “commercial invoices” issued for

payment versus the “export invoices” prepared for customs declaration only, was divulged at verification. The only reason Watanabe eventually explained the existence of a dual invoicing system, one for export customs and one for payment by customers, was because Petitioner provided evidence of invoices with price amounts matching Watanabe’s payment ledgers. Given the importance of verification to our acceptance of, and reliance on, data submitted by Respondents, the fundamental unreliability of Watanabe’s books and records, and the fact that we tied their questionnaire response to it, causes the information provided at verification upon which the Department normally relies for its results to be fundamentally unreliable.

Watanabe does not dispute the fact that it did issue a different set of invoices (Watanabe’s brief refers to these as “payment records” at pg 7), which has a different value than the original sales invoice at the time of export, and that the amounts of these invoices dictate the amount of payment. Yet, besides two possible hypothetical circumstances, Watanabe has not provided a reasonable legal or business basis to support its practice or illustrate why it might require different prices and payments by issuing a second invoice. In its December 8, 2010, response to the dozen detailed discrepancies the Department questioned, Watanabe did not provide an adequate explanation for the discrepancies, but revealed for the first time its unusual business practice of issuing replacement “commercial invoices,” which it did not keep in its books and records, subsequent to its issuance of “export invoices” and shipments of merchandise. Watanabe could not provide a copy of the “commercial invoices” it sent to its customers because it claimed not to have maintained such a document in its records. In fact, Watanabe has not denied that the documents provided by Petitioner are genuine, but rather that they are not official government documents and they are not verified.

Watanabe simply claims that customers have the option to overpay, underpay, or refuse to pay the amount reflected on “export invoices.” As a result of such an unusual business practice, there is a disconnection between Watanabe’s sales records and its payment records in its normal course of business. To the extent that Watanabe did not disclose such business practices prior to or at verification, the Department could not determine the accuracy and completeness of Watanabe’s sales and its accounting system, as discussed above. Accordingly, we have found that their accounting system reflects inaccurate sales value information.²²

While the “export invoices” at issue provided at verification corresponded to the Chinese Customs documentation Watanabe provided, this does not resolve the discrepancy with the multiple invoices it issued. The reliability of the documents reviewed by the Department is called into question by Watanabe’s own admission that these invoices are prepared only for export declaration purposes and thus do not represent the real value of the sales. Watanabe’s explanation that the amount they actually received for each of these invoices was either higher or lower based on under- or over-declaration has critical implications for the veracity of Watanabe’s financial information that the Department reviewed. Specifically, Watanabe admits that the prices actually charged to and agreed to be paid by customers were modified in a number of ways, often through email or phone communication, requiring Watanabe to sometimes issue additional “commercial invoices” to the customers. In light of this admission, Watanabe’s

²² See Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative countervailing duty Determination, 74 FR 16836 (April 13, 2009) (The Department applied AFA after finding that the financial reporting system is not credible or reliable, so therefore neither are the questionnaire responses).

explanation that the invoices the Department reviewed at verification were the sole invoices kept as part of its normal course of business makes it impossible for the Department to verify whether Watanabe accurately reported all of its sales. The fact that these “commercial invoices” were not recorded as part of its normal books and records means that, apart from reviewing the bank credit notes generated upon payment by the customer, neither Watanabe nor the Department can confirm that these were the total sales values Watanabe actually charged its customers. The documentation Watanabe provided showing that sometimes customers either did not pay at all, or paid less than the amount of the invoice, means the invoices we reviewed for sales reconciliation purposes were unreliable. Based on the forgoing, we find that Watanabe has undermined the Department’s verification efforts, significantly impeded the proceeding, and failed to act to the best of its ability to comply with the current proceeding. Accordingly, we continue to find the application of facts with an adverse inference is appropriate.

Comment 7: Factors of Production and Surrogate Values

Both Watanabe and Petitioner submitted comments addressing Watanabe’s factors of production and the appropriate surrogate values to use in the event the Department does not continue to base Watanabe’s margin on adverse inferences.

Department’s Position:

Because we have determined to continue to apply total AFA to Watanabe, these issues are moot. Therefore, we are not addressing these comments in the final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination in the Federal Register.

AGREE _____ DISAGREE _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date