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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results in the 2004/2005 Administrative Review and New Shipper Review of Brake Rotors from the People's Republic of China

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SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the 2004/2005 administrative review and new shipper review of brake rotors from the People's Republic of China ("PRC"). As a result of our analysis, we have made certain changes to the preliminary results. See Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent to Rescind the 2004/2005 New Shipper Review, 71 FR 26736 (May 8, 2006) ("Preliminary Results"). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below are the issues raised in these reviews:

General Issues
Comment 1: Sampling Methodology
A. The Department's Decision to Sample
B. Probability-Proportional-to-Size Methodology
C. Including Adverse Facts Available in the Sample Rate
D. Sampling's Effect on Revocation and Cash Deposit Rates
Comment 2: Surrogate Value for Labor Rate
Comment 3: Surrogate Value for Pig Iron
Comment 4: Surrogate Value for Steel Scrap
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Company-Specific Issues
Comment 8: Hongfa - Pallet Wood
Comment 9: Haimeng - Valuation of Components Supplied by U.S. Customers
Comment 10: SZAP - *Bona Fides* of New Shipper Sale
Comment 11: Hengtai, Rotec and Xianjiang - Denial of Separate Rates

Comment 12: Meita - Valuation of Ferro-Manganese
Comment 13: Cash Deposit Rate for Xianjiang

Background

We published the Preliminary Results in the 2004/2005 administrative and new shipper reviews in the Federal Register on May 8, 2006. See Preliminary Results, 71 FR 26736. The period of review ("POR") is April 1, 2004, through March 31, 2005. On June 19, 2006, we received a case brief on behalf of the petitioner, the Coalition for the Preservation of American Brake Drum and Rotor After Market Manufacturers. In addition, we received a case brief on behalf of respondents China National Industrial Machinery Import & Export Corporation ("CNIM"), Qingdao Gren ("Group") Co. ("Gren"), Shanxi Fengkun Metallurgical Limited Company and Shanxi Fengkun Foundry Limited Company ("Fengkun"), Shenyang Yinghao Machinery Co., Ltd. ("Yinghao"), (collectively, "CNIM/Gren/Fengkun/Yinghao"). We also received a case brief on June 19, 2006, on behalf of respondents Laizhou Auto Brake Equipment Company ("LABEC"), Yantai Winhere Auto-Part Manufacturing Co., Ltd. ("Winhere"), Longkou Haimeng Machinery Co., Ltd. ("Haimeng"), Laizhou Luqi Machinery Co., Ltd. ("Luqi"), Laizhou Hongda Auto Replacement Parts Co. ("Hongda"), Hongfa Machinery ("Dalian") Group Co., Ltd. ("Hongfa"), Qingdao Meita Automotive Industry Co., Ltd. ("Meita"), and Shandong Huanri ("Group") General Company, Shandong Huanri Group Co., Ltd., and Laizhou Huanri Automobile Parts Co., Ltd. ("Huanri"), (collectively the "Trade Pacific respondents"). Additionally, we received a case brief on behalf of Wecly International, an importer of subject merchandise, on June 19, 2006, and on June 27, 2006, we received a rebuttal brief from the petitioner.

On June 22, 2006, we issued a supplemental questionnaire to Haimeng, Hengtai, Hongfa, Meita, Winhere and Shanxi Zhongding Auto Parts Co., Ltd. ("SZAP"), the respondent in the concurrent new shipper review, requesting consumption data for bentonite and coal powder. On July 10, 2006, we issued a request for comments on the Department's proposed methodology to value bentonite and coal powder as direct materials as well as the consumption data obtained from respondents. On July 17, 2006, the Trade Pacific respondents and the petitioner each filed comments. On July 24, 2006, both the Trade Pacific respondents and the petitioner filed rebuttal comments.

Based on the comments summarized below, we have made revisions to the data used for the final results. For further details, please see the final calculation memoranda for the particular companies. These memoranda are dated October 20, 2006, and are on file in Import Administration's Central Records Unit, room B-099 of the Department of Commerce building.

General Issues

Comment 1: Sampling Methodology

A. The Department's Decision to Sample

CNIM/Gren/Fengkun/Yinghao argue that the Department has given no factual support for why it needed to limit the respondent sample size to only five respondents or why its resources were

constrained so much as to change what it had done in the prior seven administrative reviews of brake rotors from the PRC, where it individually reviewed all respondents. CNIM/Gren/Fengkun/Yinghao believe the Department should not have sampled because: 1) it has previously investigated all companies in this case who requested reviews or had reviews requested for them; 2) the Department can rely on information from prior segments; and 3) the Department's workload is decreasing while its resources have increased. CNIM/Gren/Fengkun/Yinghao request that the Department at least explain the correlation between the reduced number of respondents selected and its constrained resources.

CNIM/Gren/Fengkun/Yinghao also argue that the Department's decision to review only five respondents is arbitrary and not statistically valid to accurately represent the respondents not selected, pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended, ("the Act"). Specifically, CNIM/Gren/Fengkun/Yinghao state that the Department has not justified why its sample size of five is statistically valid.[1] They argue that if the Department is going to predetermine the number of exporters it will review based on its resource constraints, the Department must limit its review to the largest exporters, according to the statute.

The Trade Pacific respondents argue that the Department should abandon its sampling methodology and calculate company-specific rates for all respondents for several reasons. First, they argue that the sampling methodology was invalid because respondents were not given an opportunity to comment on the proposed methodology of choosing respondents pursuant to section 777A(b) of the Act. Thus, they contend that the Department should abandon its sampling methodology and calculate company-specific margins.

The Trade Pacific respondents also contend that because the Department did not make every effort to secure additional resources to individually review all respondents, the decision to sample is invalid, as the current proceeding is not more burdensome than previous proceedings, wherein sampling was not used.[2] The Trade Pacific respondents also question the validity of the "resource constraints" cited by the Department in these reviews, especially in light of the fact that a new Non-Market Economy Office was formed to improve efficiency and handle more China dumping cases. Moreover, the Trade Pacific respondents state that choosing five respondents was arbitrary and unsubstantiated by evidence, and that the Department's administrative burdens did not prevent it from examining between 12 and 14 respondents in prior reviews.

Next, the Trade Pacific respondents argue that the Department did not sufficiently consider the respondents' unique economic considerations in the sampling process, resulting in an invalid sampling exercise. They state that the Department relied upon only the degree of vertical integration in its November 10, 2005, Sampling Letter, but did not consider factors such as production process, production cost structure, quantity and value of all products produced, etc. The Trade Pacific respondents argue that in the Department's December 16, 2005, Sampling Memo, the Department stated that the statute "does not require the Department to obtain specific

[1] See 19 U.S.C. §1677f-1(c)(2).

[2] See Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Seventh Administrative Review and Preliminary Results of the Eleventh New Shipper Review, 70 FR 24382 (May 9, 2005) (cited in Trade Pacific's Case Brief, at 17-18).

production details for each company when developing its model,"[3] which is contradictory to the Department's earlier requests for "information regarding the economic characteristics of the company" in order to "determine a sampling method that is representative of the sales under review."[4] The Trade Pacific respondents question why the Department collected such detailed information without analyzing it or considering it in its sampling decision. They argue that as there is little economic homogeneity among the brake rotors respondents, and because the Department disregarded this information when it made its decision to sample, the Department's sampling exercise was invalid.

The Trade Pacific respondents also contend that the Department violated section 782(a) of the Act by not allowing for the review of voluntary respondents. They argue that the Department's administrative six-month delay in sampling is not a valid reason for not allowing the participation of voluntary respondents in these reviews.

The Trade Pacific respondents also argue that, because the decision to sample mandatory respondents came after the 90-day period had passed for parties to withdraw their requests for review, the Department denied both petitioner and respondents the opportunity to withdraw their requests for review. They assert that they should have been allowed the opportunity to withdraw their requests for review had they known they were not going to be individually examined. By delaying the sampling process and not allowing parties to withdraw their requests for review, the Trade Pacific respondents argue, the Department has forced them to be dependent on the participation of the mandatory respondents over which they have no control, when they might have otherwise chosen not to participate.

The Trade Pacific respondents also request that the Department assign individual rates to those respondents who were assigned the sample rate. The Trade Pacific respondents used the margin calculation program for Haimeng, and substituted the U.S. sales and factors of production data submitted by Hongda, LABEC, and Luqi on September 19, 2005, and argue that the result of this exercise establishes that the sample rate is not representative of the non-selected respondents' actual experience, and that the Department should use the U.S. sales and factor of production ("FOP") data submitted by each of the non-selected respondents as the best available information to calculate company-specific margins. The Trade Pacific respondents argue that dumping margins applied to non-selected respondents must be based on the best available information and must be as accurate as possible.[5]

The Trade Pacific respondents argue that in Flowers from Colombia, the Department assigned the sample rate to the companies that did not want to be reviewed.[6] The Trade Pacific respondents assert that they all submitted complete U.S. sales and FOP information, and request

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[3] See Sampling Memo, at 5 (cited in Trade Pacific's Case Brief, at 23).

[4] See Department's Letter of June 7, 2005 (cited in Trade Pacific's Case Brief, at 23).

[5] See Yantai Oriental Juice Co., et al. v. United States, 2003 WL 1475038 (CIT) Slip Op. 03-33, at 18 (cited in Trade Pacific's Case Brief, at 30-31).

[6] Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part), 59 FR 15159 (March 31, 1994) ("Flowers from Colombia") (cited in Trade Pacific's Case Brief, at 31).

that the Department calculate individual margins for them in the final results. If the Department is not able to examine the complete U.S. sales and FOP information submitted by the non-selected respondents, the Trade Pacific respondents recommend that the Department look at the non-selected respondents' quantity and value data to derive average values. By comparing the average values of the non-selected respondents, the Trade Pacific respondents argue, the Department can confirm that in most cases they are higher than the average prices of the selected respondents. Therefore, the Department should calculate individual rates for the non-selected respondents, or at least assign dumping margins that take into account the average prices of the non-selected respondents as compared to the selected respondents' average prices.

The petitioner states that section 777A(b) of the Act gives the Department discretion to select a sampling methodology. It asserts that the Department consulted with interested parties and gave them an opportunity to comment on its sampling methodology prior to selecting respondents.[7]

Department's Position:
Section 777A(c)(2) of the Act gives the Department full discretion to review a limited number of respondents in an administrative review, where it is not practicable to examine all known producers/exporters of subject merchandise, by either examining: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can reasonably be examined. As explained in the Statement of Administrative Action ("the SAA") accompanying the Uruguay Round Agreements Act ("URAA"), "new section 777A(b) recognizes that the authority to select samples rests exclusively with Commerce." See Statement of Administrative Action accompanying H.R. 5110 (H. Doc. No. 103-316) at 872 (1994). Thus, exercising its discretion in conformity with the Act, the Department determined to select respondents by sampling in this administrative review.

In determining to select respondents by sampling in this administrative review, the Department carefully evaluated its resource constraints. Specifically, the Department examined the number of cases, respondents, and analysts it had, and determined that it was not possible to carry out a comprehensive and accurate analysis of all 16 individual respondents in this administrative review. Although the Department had sufficient resources to examine all respondents for which a review was requested in prior administrative reviews, those resources did not exist at the time of this administrative review. The Department, therefore, carefully considered all options at its disposal for purposes of this administrative review and determined that the most efficient and accurate manner by which it could carry out this review was to select respondents by sampling. See Respondent Selection Memo, at 3-4.

The Act, as noted above, expressly provides the Department with discretion to examine its resources and determine whether to select respondents by sampling. The Act does not require the Department to secure additional resources before deciding whether it will sample in a proceeding. Rather, the Act only requires the Department to determine whether it is practicable to review all parties seeking to participate. Seeking additional resources would, by definition, mean it is not practicable to review every party. Only the Department is in a position to make this factual determination, not the respondents. The Department complied fully with the Act's

[7] See Letter from James C. Doyle, Office Director, AD/CVD Operations, to All Interested Parties, (October 14, 2005) (cited in Petitioner's Rebuttal Brief, at 7) (October 14, 2005 Letter).

directives in selecting respondents in this administrative review.

When carrying out its authority to select respondents by sampling, the SAA requires the Department to use a "statistically valid" sample. See also section 777A(c) of the Act. The Department disagrees with respondents' contention that the Department's selection of five respondents was arbitrary and not statistically valid. The phrase "statistically valid sample" was added to the statute in 1994 merely to conform the language of the statute with that of the World Trade Organization (WTO) Antidumping Agreement, and is not different in substance from the phrase "generally recognized sampling techniques" used in the Act prior to the URAA. See SAA, at 872. As such, "statistical validity" refers only to the manner in which respondents are selected, not to the size of the sample under review. As the Department explains below, it selected the five respondents to be individually examined in this administrative review by a generally recognized random sampling technique, the probability proportional to size (PPS) sampling method. See section 777A of the Act. With PPS sampling, each unit in the population has a probability of selection proportional to the size of some known relevant variable. In the present case, probability of selection was weighted by the proportion of total trade volume under review. See, e.g., Sampling Techniques, Cochran, et al., 1977, pp 249.

The Department determined that the population was sufficiently homogeneous to warrant PPS sampling without stratification. Stratification can be utilized, for example, in instances where distinct variations in the population exist. Thus, in order to capture such variations in the sample pool, the population is first stratified into subgroups based on characteristics relevant to the sampling exercise. Then a sample is selected from each subgroup in order to obtain an aggregate sample that represents the total population. See, e.g., Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661 (February 25, 1991) and the accompanying Issues and Decision Memorandum, at III. Exporter-Wide Comments, Comment 1.

The CIT has explained that the mere "desire for one or more types of stratified sampling is not a sufficient basis for objection to ITA's methodology." See Asociacion Colombiana de Flores v. United States, 704 F. Supp. 1114, 1121 (1989), aff'd 901 F.2d 1089 (Fed. Cir. 1990) (upholding Commerce's statistical sampling methodology) ("Asocolflores"). In fact, there "is no requirement that a stratified sample be used, particularly when it would require ITA to conduct a substantial pre-investigation." Id.

Although respondents argue that they are not homogeneous in terms of economic characteristics, information on the record of this review, at the time the Department determined to sample, indicates otherwise. In fact, the Department solicited comments twice from respondents to describe certain factors relating, but not limited, to their economic and production structures in order to determine whether respondents were heterogeneous in terms of economic characteristics, and hence should be stratified into subgroups from which the sample population would then be selected. See Letter to All Interested Parties from James C. Doyle, Office Director, AD/CVD Operations, Office 9, dated June 7, 2005; and Letter to All Interested Parties from Carrie Blozy, Acting Office Director, AD/CVD Operations, Office 9, dated June 24, 2005 (collectively, "Request for Economic Characteristics Letters"). See also Letters to All Prospective Respondents, from Christopher Riker, Program Manager, AD/CVD Operations, Office 9, Import Administration, Brake Rotors from the People's Republic of China: Eighth

Administrative Review of Antidumping Duty Order (September 15, 2005) ("September 15, 2005, Letters"). The Department explored whether sampling by stratification would be necessary once it received the economic and production information from respondents. However, the Department found no discernible variation in the respondents' economic characteristics that warranted stratification. See October 14, 2005 Letter, at 2.

We also disagree with the respondents' argument that the Department did not allow them an opportunity to comment on the Department's proposal to sample respondents. All respondents subject to this administrative review were notified numerous times about the Department's proposal to select respondents via sampling. See Request for Economic Characteristics Letters; the September 15, 2005, Letters; and Letter to All Interested Parties, from James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, regarding selection of sampling methodology (November 9, 2005).

Next, the Department finds that respondents' argument that the Department should have individually reviewed voluntary respondents is without merit. Section 782(a) of the Act states that the Department shall examine voluntary respondents: 1) if they submit information requested of them by the Department by the date specified, and 2) if the number of voluntary respondents is not so large as to be unduly burdensome and inhibit the Department's timely completion of the review. The Department determined that its resource constraints were such that it could only examine five respondents in this administrative review. In addition, the Department stated that, should a selected respondent withdraw from the review, the Department would be unable to select a new respondent due to the statutory time limits under which the Department operates. See Respondent Selection Memo, at 6. Therefore, because its resource constraints precluded it from doing so, the Department was not required to examine voluntary respondents.

Additionally, the respondents' contention that they did not have appropriate opportunity to withdraw their requests for review is baseless. The Department initiated the administrative review of this proceeding on May 27, 2005. Immediately after the initiation, the Department notified all interested parties on June 7, 2005, and June 24, 2005, that it was considering selecting respondents for individual review by exercising its discretion to sample. See Request for Economic Characteristics Letters. Although respondents had knowledge of the fact that the Department might consider selecting respondents by sampling in this review, at no time did the respondents request withdrawal of their administrative review or even an extension of the regulatory deadline to request withdrawal. We note further that the petitioner requested reviews of all respondents currently involved in this administrative review, and did not seek to withdraw its request at any time during the administrative review. Thus, any request for withdrawal by these respondents could not have been granted absent a corresponding timely withdrawal request from the petitioner.

Accordingly, the Department continues to find, for these final results, that its decision to select respondents for individual review by sampling and to assign the sample rate to non-selected respondents was in conformity with both the Act and the Department's regulations.

B. Probability-Proportional-to-Size ("PPS") Methodology

CNIM/Gren/Fengkun/Yinghao argue that using the selection frequency, or the number of times a respondent was selected in the sampling exercise, as a weighting factor to calculate the sample rate, leads to arbitrary and unrepresentative results that are not in accordance with law.[8] They assert that although the law only refers to calculating the "all-others rate" in investigations, the Department should follow the same principles in calculating assessment rates in administrative reviews. CNIM/Gren/Fengkun/Yinghao also argue that all dumping margins must be as accurate as possible,[9] and using a random weighting factor based on selection frequency to calculate the sample rate does not produce an accurate outcome. They believe that using the selection frequency as a weighting factor can lead to unrepresentative results, which they argue is inconsistent with the Act's requirement that the Department's sampling methodology be of "statistical validity" or produce "representative results."

The Trade Pacific respondents disagree with the use of the selection frequency methodology to calculate the sample rate and recommend that the Department use the respondent's share of exports as the weighting factor. They argue that the selection frequency weighting factor is arbitrary, and that the Department has not provided sufficient justification for doing so.[10] Although section 777A of the Act gives the Department discretion in how it calculates the sample rate, the Trade Pacific respondents question whether using the selection frequency as a weighting factor is consistent with the statute. They argue that "(i) the selection of the companies to be individually reviewed in this proceeding and (ii) the choice of the method for calculating a weighted-average margin for non-selected respondents are two separate issues that are not linked by statistical probabilities."[11]

The petitioner did not comment on this issue.

Department's Position:
In accordance with section 777A of Act, when conducting a limited examination, the Department calculates a "weighted average dumping margin" to be applied to the respondents that were not individually selected. The Department is, therefore, calculating the average margin associated with the total volume of the subject merchandise under review. The PPS methodology, as described in the October 14, 2005, letter to the respondents, is designed to provide the best possible representative sample of the total volume of trade under review. As described in the October 14, 2005, letter, the respondent selection memo, and further below, this is accomplished through sampling with replacement (i.e., returning selected units to the sample pool before the next drawing). Because this sample process is designed to be representative of the total volume of trade under review, the respondent selection process and the calculation of the sample rate based on this selection are interdependent and cannot be done via a separate sampling methodology.

The Department's sample pool, or "population," represents the entire volume of subject

[8] Section 735(c)(5) of the Act (cited in CNIM/Gren/Fengkun/Yinghao's Case Brief, at 13).

[9] See, e.g., Ad Hoc Committee of Fla. Producers of Gray Portland Cement v. United States, Court No. 93-02-00102, Slip. Op 98-131, 1998 WL 721122, at 10 (cited in CNIM/Gren/Fengkun/Yinghao's Case Brief, at 11).

[10] See Sampling Memo, at 6 (cited in Trade Pacific's Case Brief, at 34).

[11] See Trade Pacific's Case Brief, at 34.

merchandise under review, which is imperative because the Department is estimating the average dumping margin associated with the total volume of subject merchandise under review. This is accomplished by ensuring that each firm's probability of selection from the sample pool is equal to that firm's share of export volume of subject merchandise. In effect, each "sample unit," i.e., the unit that is selected from the sample pool, represents an equal percentage of export volume of subject merchandise associated with a particular respondent. For example, if a sample unit represents one percent of the trade under review, and respondent accounts for 15 percent of trade in export volume under review, there will be 15 "sample units" associated with that respondent in a sample pool of 100 "sample units."

Repeated selections from the sample pool provide the Department with information about the population. For example, if one firm represents 15 percent of the population, then sample units associated with that firm will be chosen through random sampling approximately 15 percent of the time over repeated sampling. If the Department did not "replace" a sampled unit associated with a respondent back into the sample pool (or worse, if the Department deleted all of the units associated with that respondent from the sample pool after selecting one unit associated with that respondent), the Department would be repressing the possibility for the natural characteristics of the population to be exhibited in the sample. Similarly, if the Department ignored multiple sampled units associated with the same respondent, the Department would be ignoring essential information about the population, i.e., that total units associated with this respondent represent 15 percent of the weighted average dumping margin associated with the total volume of subject merchandise under review. Accordingly, the Department does not ignore repeated selections of units associated with the same firm in the sample. Rather, the Department uses all information yielded by the sample to draw statistical inferences, i.e., to make estimates, regarding the probability of the firms' relative share of units in the total population. Therefore, the Department properly weights the margins associated with each respondent in the sample by its selection frequency in order to calculate a weighted average margin in accordance with section 777A of the Act. This is exactly the same as taking a straight average of the margins associated with the sampled units. For example, if the Department randomly chose two sample units associated with respondent one with a dumping margin of 10 percent and one sample unit associated with respondent two with a dumping margin of 20 percent, the sample rate could be calculated in two ways: 2(10)+20 / 3 or alternatively 10+10+20 / 3. While the Department has described its process in the past with the former calculation (see October 14, 2005 Letter and Respondent Selection Memo), which focuses on how many times a respondent is chosen into the sample, the results are the same as taking a straight average of the units randomly sampled from the total volume of trade.

Some parties have argued that using the selection frequency as the weighting factor to calculate the sample rate leads to arbitrary and unrepresentative results that are not in accordance with law. The Department strongly disagrees. In order for the Department to draw inferences from the sample, i.e., estimate the average margin associated with the total volume of trade, it is essential that each selection from the sample pool be random and that the Department accept into its sample all of the information regarding probabilities and relative frequencies yielded by the sampling process. As stated in Statistics for Research:

> (t)he basic process in inferential statistics is to assign probabilities so that we can reach conclusions. The inferences we make are either decisions or estimates about the

population. The tool for making inferences is probability.

See Statistics for Research, Dowdy and Wearden, at 1, (1983). PPS sampling with replacement, which relies on the relative frequency of selection, is a statistically valid method for estimating the average margin associated with the total volume of trade under review.

Other parties averred that the selection frequency weighting factor is arbitrary and the Department should, instead, use the selected respondents' share of exports as the weighting factor. The Department disagrees with this approach because to do so would not be statistically valid. A key feature of PPS sampling is that the respondents' shares of units in the population are weighted by export share prior to selection. Their selection into the sample through selection of units associated with them is thereafter entirely random. As further stated in Statistics for Research:

> (i)n order to make a decision based on probability, it is necessary that the selection be *random*. Random samples make it possible to determine the probabilities associated with the study. A sample is random if it is just as likely that it will be picked from the population of interest as any other sample of its size. Strictly speaking, statistical inference is not possible unless random samples are used.

Id. at 9. Accordingly, in the Department's sample, each respondent's probability of selection is equal to its share of units in the population. Two respondents with equal shares (or, of equal "size," e.g., 15 percent) have equal chances (15 percent) of being chosen one or more times. Similarly, each unit represents the exact same percentage or share of trade and therefore, each unit has the same probability of selection. The frequency of selection is the only random weighting factor available to the Department in order to estimate the margins associated with the total volume of trade. As noted above, this can also be viewed as taking a straight average of the margins associated with the sampled units. Utilizing each respondent's share of trade for weighting purposes after selection would be tantamount to negating the benefits arising out of the random sample, and potentially, to systematically over-representing firms with larger portions of exports because the result would be weighted twice (once before selection, and once afterwards).

C. Including Adverse Facts Available in the Sample Rate

CNIM/Gren/Fengkun/Yinghao argue that Article 9.4 of the WTO Antidumping Agreement prohibits a WTO member's investigating authority from using facts available ("FA") when determining a sample rate for non-selected respondents. In addition, they argue, the Uruguay Round Agreements Act ("URAA") led the Department to amend section 735(c) of the Act, which prohibits the Department from including facts available rates in the calculation of the "all-others rate."[12]

CNIM/Gren/Fengkun/Yinghao reject the Department's reliance on Flowers from Colombia as an example where the Department included adverse facts available ("AFA") rates in a sample rate,

[12] See 19 U.S.C. § 1673d(c)(5)(A), as amended by Pub.L. 103-465 § 219(b)(2) (cited in CNIM/Gren/Fengkun/Yinghao's Case Brief, at 13).

and state that Flowers from Colombia is distinguishable from the current review.[13] They assert that the sample size in Flowers from Colombia included 28 firms, only two of which were assigned "best information available" ("BIA") (the precursor to "AFA") margins. CNIM/Gren/Fengkun/Yinghao argue that the two BIA margins did not skew the sample rate in Flowers from Colombia, unlike in the instant case, where AFA is one of only five rates in the sample rate and has a significant effect on the overall margin. They also contend that in Flowers from Colombia, only second tier non-punitive BIA rates (assigned to partially cooperative respondents) were included in the sample rate,[14] whereas, in the Preliminary Results, total AFA was applied to Hengtai. CNIM/Gren/Fengkun/Yinghao argue that AFA cannot be applied to a respondent that has been found to be fully cooperative, i.e., the non-selected respondents.

CNIM/Gren/Fengkun/Yinghao assert that including AFA rates in the sample rate would also contradict the Department's practice in the original brake rotors investigation, where the Department did not assign a rate based on AFA to fully cooperative non-selected respondents. See Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9160 (February 28, 1997) (Brake Rotors Final Determination). CNIM/Gren/Fengkun/Yinghao argue that in the investigation, the Department noted that AFA rates are often artificially high and unrepresentative of the actual level of dumping for otherwise cooperative respondents.[15]

CNIM/Gren/Fengkun/Yinghao also maintain that as non-selected respondents, they have been fully cooperative in this review and prior proceedings.[16] CNIM/Gren/Fengkun/Yinghao argue that it would be inappropriate to apply a sample rate that includes an AFA rate because it would impute a degree of non-cooperation on the non-selected respondents. They claim that including AFA rates in the sample rate punishes fully cooperative respondents, who, purely by luck of the draw, were not selected as mandatory respondents. CNIM/Gren/Fengkun/Yinghao assert that the purpose of the antidumping statute is remedial, not punitive,[17] and that dumping margins must be as accurate as possible. Therefore, CNIM/Gren/Fengkun/Yinghao argue, the Department must exclude the rate assigned to Hengtai from the sample rate and use only the margins based on respondents' own data.

An importer and interested party, Wecly International ("Wecly"), disagrees with the Department's decision to apply a "sample rate," which includes a rate based on AFA assigned to one of the mandatory respondents, to separate rates respondents who cooperated fully with the Department's requests for information and had no control over the investigated companies. Wecly argues that applying this "sample rate" to cooperative respondents is in contravention of the statute, and cites section 776(b) of the Act, which limits the application of AFA to parties

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[13] See Flowers From Colombia (cited in CNIM/Gren/Fengkun/Yinghao's Case Brief, at 12).

[14] See Flowers from Colombia, 59 FR at 15174 (cited in CNIM/Gren/Fengkun/Yinghao's Case Brief, at 14).

[15] See Brake Rotors Final Determination, 62 FR at 9173-74 (cited in CNIM/Gren/Fengkun/Yinghao's Case Brief, at 16).

[16] See CNIM/Gren/Fengkun/Yinghao's Case Brief, at 17.

[17] See Tung Mung Dev. Co. v. United States, 219 F. Supp. 2d 1333 (CIT August 22, 2002) (cited in CNIM/Gren/Fengkun/Yinghao's Case Brief, at 18).

found to have failed to cooperate to the best of their ability.[18]

In addition, Wecly asserts that the Department, in its Preliminary Results, did not examine the cooperation of the separate rates respondents, other than listing their requisite responses to the Department's requests for information.[19] Wecly maintains that because the Department determined that the separate rate respondents cooperated with the Department to justify their separate rates, the Department cannot apply an adverse inference against them, according to the test articulated by the CAFC in Nippon Steel.

Wecly also argues that including AFA rates in a sample rate is a departure from the Department's past practice. Wecly argues that the circumstances surrounding Flowers from Colombia are different from the instant case because Flowers from Colombia was conducted prior to the Uruguay Round Agreements Act. Wecly asserts that the Department believed at that time that it had the legal authority to revise the "all others" rate to include margins based on "best information available," and it was the Department's practice to conduct administrative reviews for all companies who requested their own review. In addition, in Flowers from Colombia, Wecly states, the Department calculated an individual rate for all companies who requested their own review, and sampled only from the companies who did not participate in the administrative review as either mandatory or voluntary respondents. Wecly argues that it was only for this group that the Department calculated a sample rate including AFA and de minimis rates. For voluntary respondents in Flowers from Colombia, Wecly contends, the Department calculated a company-specific, non-adverse rate. Wecly likens the separate rates respondents in the instant case to the voluntary respondents in Flowers from Colombia, because the sample pool in this case is made up of firms determined willing to participate. Wecly maintains that because the separate rates respondents cooperated, the sample rate should be based only on the rates calculated for fully cooperative respondents, inclusive of de minimis margins, but exclusive of AFA rates.

Wecly also contends that including AFA in the sample rate is inconsistent with the Department's past practice in all previous NME antidumping proceedings where voluntary respondent separate rates were assigned.[20] Wecly states that even in the investigation of this case, the Department excluded from the rates assigned to voluntary respondents any rates based on AFA.[21] Wecly argues that there is no reason in these reviews for the Department to deviate from its current practice of assigning non-adverse rates to voluntary respondents. The only difference in these reviews and the Department's prior practice, according to Wecly, is the manner in which

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[18] See SAA, at 869-870 (cited in Wecly's Case Brief, at 6).

[19] Nippon Steel v. United States, 337 F. 3d. 1373, 1381 (Fed. Cir. Aug 8, 2003) (permitting application of FA when Commerce determines that the respondent "has failed to cooperate by not acting to the best of its ability to comply.") (cited in Wecly's Case Brief, at 7).

[20] See, Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China, 67 FR 20090 (April 24, 2002); and Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China, 68 FR 10685 (March 6, 2003) (cited in Wecly's Case Brief, at 14).

[21] See Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors From the People's Republic of China, 61 FR 53190 (October 10, 1996).

mandatory respondents were selected. The Department, Wecly maintains, is prohibited by statute from applying AFA to cooperative respondents, and therefore, should exclude AFA rates from the rate to be applied to the separate rates respondents. However, Wecly argues, the Department should include de minimis rates in the separate rate calculation, to ensure that the rate is representative of fully cooperative respondents.

In addition, Wecly asserts, including AFA rates in the sample rate is inconsistent with U.S. WTO obligations. According to Article 6.8 of the AD Agreement, Wecly states, in order for the Department to assign an adverse rate to a respondent, it is required to show that the respondent has "refused access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation." Wecly argues that the Department did not make such a determination with regard to the separate rates respondents.[22] Wecly also argues that the Department's sampling methodology is contrary to Article 6.10.2 of the AD Agreement, because this provision states that "{v}oluntary responses shall not be discouraged." Wecly contends that in the Department's Respondent Selection Memorandum at page 6, it stated that "in the event a selected respondent withdraws this far into the review, the Department will be unable to select a new respondent from the sample pool and properly analyze their company-specific information," which is not consistent with Article 6.10.2. Wecly also cites Article 9.4, which requires the Department to assign non-examined companies a weighted-average margin that excludes FA rates. Finally, Wecly argues that if the Department is going to change its established policy to include AFA rates in the rate assigned to a sample pool, it must give notice and allow a comment period, required by the Administrative Procedure Act (APA),[23] more than the time period provided to interested parties in the Preliminary Results Federal Register notice.

The Trade Pacific respondents state that the Department should exclude AFA rates from the sample rate applied to the non-selected respondents. They argue that because it is reasonable that some of the non-selected respondents would have received a de minimis or zero rate, it is appropriate to include these rates in the sample rate, which is meant to be representative of the experience of the non-selected companies. However, by including AFA rates in the sample rate, the Trade Pacific respondents argue, the Department is imputing some non-cooperation on the part of the selected firms to non-selected firms, inconsistent with section 776(b) of the Act. They also distinguish Flowers from Colombia from the instant case, because Flowers from Colombia occurred prior to the implementation of the Uruguay Round Agreements Act and the amendment of section 776 of the Act. In more recent reviews of Flowers from Colombia, the Trade Pacific respondents state, the Department excluded from the sample rate any margins based on AFA.[24] The Trade Pacific respondents argue that because LABEC, Luqi, and Hongda have been fully cooperative and complied with all requests for information from the Department, these companies should not be assigned an antidumping rate that is based in part on AFA.

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[22] See United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, Report of the Appellate Body, WT/DS184/AB/R (July 24, 2001), paras. 109-110 (cited in Wecly's Case Brief, at 16).

[23] See 5 U.S.C. §§ 551 et seq.

[24] See, e.g., Certain Fresh Cut Flowers from Colombia, 64 FR 8059, 8060 (February 18, 1999); see also Certain Fresh Cut Flowers from Colombia, 63 FR at 31724-25 (June 10, 1998). See also Certain Fresh Cut Flowers from Colombia, 62 FR 53287 (October 14, 1997).

The petitioner argues in rebuttal that the Department was correct to include an AFA margin in the sample rate. It asserts that the Department has full discretion to select a valid sampling methodology, citing section 777A(b) of the Act, and that the Department consulted with interested parties on its sampling methodology, giving all parties a chance to comment.[25] The petitioner argues that while the Department may not include AFA in the calculation of the "all-others rate," the Department is not prohibited from including an AFA rate in the sample rate. The petitioner asserts that the sample rate also differs from the "all others rate" in that the sample rate only applies to non-selected respondents in an administrative review, and can be recalculated in a subsequent review. The petitioner also argues that the rationale is the same for including AFA in the sample rate in these reviews as it was in Flowers from Colombia. The petitioner contends that the Department did not know at the outset that Hengtai would receive a rate based on AFA, or that two other firms would receive a de minimis rate. It argues that including all of these margins is a consequence of the sampling methodology chosen by the Department, citing Flowers from Colombia.[26]

Finally, the petitioner argues that if the Department were to exclude AFA from the sample rate, it should also exclude de minimis or zero rates as well, to be fair.

Department's Position:
We have continued to calculate the rate for non-selected respondents by including both AFA and zero/de minimis rates. Unlike in the original brake rotors investigation or in recent administrative reviews, the Department has, in this case, selected respondents through sampling. While there are situations when it is not appropriate to include AFA or zero/de minimis rates in the rate to be applied to companies whose entries are not individually examined, the Department's determination on whether to include or exclude these rates is based on the Department's method of respondent selection and the fact that this is an administrative review and not an investigation.

The Department's decision to include AFA rates for the sample rate has been affirmed by the CIT. In Asocolflores, the CIT explained that the:

> ITA properly included in its all other rate best information rates[27] for companies selected for the sample who did not respond to questionnaires. Respondents must answer; ITA must be in a position to judge who is properly covered by the investigation. Respondents may not make that choice. In a random sampling situation, to exclude such non-responding companies from the all other rate would undermine the overall methodology. This case is distinguishable from non-random sampling cases on this point.

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[25] See Department's Sample Rate Letter (cited in Petitioner's Rebuttal Brief, at 7).

[26] See also, Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan; Preliminary Results of Antidumping Duty Administrative Review, 58 FR 63913 (December 3, 1993) ("Sweaters from Taiwan"); and Fresh and Chilled Atlantic Salmon From Norway, Final Results of Antidumping Duty Administrative Review, 61 FR 65522 (December 13, 1996) ("Norwegian Salmon"), and the accompanying Issues and Decision Memorandum, at Comment 3 (cited in Petitioner's Rebuttal Brief, at 9-10).

[27] "Best information rates" is the predecessor (pre-URAA) to "AFA rates."

Asocolflores, 704 F. Supp. at 1121. The CIT recognized that excluding AFA rates from the sample rate would give respondents the ability to manipulate the all others rate. The CIT further acknowledged the importance of including AFA rates in the sample rate to maintain the validity of the sample – an issue that is not present when respondents are selected based on the largest volume.

When the Department does not have the resources to individually review each potential respondent, it has statutory authority to limit examination to either the largest exporters or to employ a sampling technique to select respondents. See section 777A(c)(2)(A) and (B) of the Act. In the former case, the examination of the level of dumping of the largest exporters does not necessarily inform the Department of the behavior of the remaining, non-selected firms. In other words, there is no expectation in non-random selection of the largest exporters of subject merchandise that the dumping behavior of the selected firms be representative of the population as a whole. Thus, in investigations involving an NME where the Department has limited its investigation by selecting the largest firms, in order to assign a rate to the firms that are not individually investigated, the Department calculates an average of the individual rates, except for zero, *de minimis*, and AFA.[28] This is an appropriate and reasonable method to assign a duty rate to firms whose individual behavior remains unknown. While Wecly is correct that this was the Department's practice in the original Brake Rotors investigation and in certain other cases where the Department limited its examination, this was due, again, to the fact that the Department limited its examination to the largest exporters.

The situation in the instant case is fundamentally different, as the Department has not simply chosen the largest exporters as mandatory respondents, but has employed a statistically valid sampling technique for respondent selection. Moreover, this is an administrative review and the Department is not calculating the "all others rate" pursuant to section 735(c)(5) of the Act.[29] Under the PPS methodology described above, each exporter has a chance of being chosen that is proportional to that exporter's share of export volume. Under this methodology, unlike cases when the Department chooses the largest respondents, the result is intended to be representative of the entire population, which is the pool of exporters included in the administrative review. Since the selected companies form a statistical sample of the entire population, the Department is correct to calculate a margin that is based on the results of all the selected companies, including the firms in the sample that received de minimis dumping margins as well as margins using AFA. Therefore, because a random sampling procedure was used, the Department reasonably estimates, in accordance with statistical sampling principles, that other exporters in the population might also have received these rates, had the non-selected firms been individually examined. Because the Department is constructing a sample that is intended to be representative of the population as a whole, it has included all the observations in the sample rate, including the zero/de minimis and AFA rates. Disregarding these actual observations would be contrary to the very principle of random sampling and would invalidate the sample since the sample is supposed

[28] See, e.g., Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decisions Memorandum at Comment 10.

[29] The Department has noted that the Act is silent with respect to the calculation of the average rate in NME investigations, but that the calculation of the all others rate in market economy cases under section 735(c)(5) of the Act is analogous. Brake Rotors Final Determination 62 FR at 9173.

to be indicative of the population as a whole.

The Department disagrees with CNIM/Gren/Fengkun/Yinghao's assertion that the instant case is materially distinguishable from the sampling technique employed in Flowers from Colombia in that a smaller percentage of the overall sample rate in that case was derived from the precursor to AFA. The relative share of AFA in the sample rate is not a relevant consideration in determining the statistical validity of the sample. Rather, the presence and degree of AFA rates in the total observations is an indication of the relative share of that margin in the overall population that the Department might have found had it had the resources to individually examine all firms named in the review. In addition, the AFA rate is intended to be a "reasonably accurate estimate of the respondents' actual rate, albeit with some built in increase intended as a deterrent to non-compliance." F.LII DeCecco v. United States, 216 F. 3d 1027, 1035 (Fed. Cir. 2000); see also Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F. 1330, 1339 (Fed. Cir. 2000) ("In cases in which the respondent fails to provide Commerce with the most recent pricing data, it is within Commerce's discretion to presume that the highest prior margin reflects the current margins.") Therefore, an AFA rate is not aberrational, but instead is an estimate of what a company's calculated rate would have been had it cooperated.

Moreover, consistent with section 776(c) of the Act, the AFA rate being applied to Hengtai was corroborated in the final results of the first administrative review. See Brake Rotors From the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 64 FR 61581, 61585 (November 12, 1999). The Department continues to find this rate to be both reliable and relevant, and, therefore, to have probative value in accordance with the SAA. See SAA, at 870; see also Preliminary Results 71 FR at 26740-26741 and the accompanying final results.

The Department also disagrees with the Trade Pacific respondents' characterization of the more recent administrative reviews of certain fresh cut flowers from Colombia as having excluded AFA from the sample rate because of statutory changes. While the Department did not include AFA in the average rate assigned to non-selected firms in these reviews, this was due to the fact that the Department selected the largest exporters in these cases, not because of implementation of the URAA. In fact, in one of the reviews cited by the Trade Pacific respondents, the Department specifically reserved the discretion to include AFA among the observations when it employs a statistically valid sampling technique:

> While there may be situations when it would be appropriate to include AFA or zero/de minimis rates in the rate to be applied to companies whose entries are not individually examined, there is no over-arching rule as to their inclusion or exclusion. With respect to the precedents cited by the FTC and Asocolflores, the situation here differs in that we have, for the first time, restricted a review to the largest exporters.
>
> Underlying the arguments of both the FTC and Asocolflores is the notion that the selected respondents are somehow representative of the whole group of potential producers/exporters. As in investigations, where only the largest producers/exporters are selected, those selected here cannot necessarily be said to be representative of the whole population. Therefore, we cannot treat the selected companies as a statistical sample and compute a margin that is based on the results for all of the selected companies.

Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 53287, 53290 (October 14, 1997) ("1995/1996 Administrative Review of Flowers from Colombia"). In the instant case, and unlike the 1995/1996 Administrative Review of Flowers from Colombia cited above, the Department *has* created a statistical sample through its PPS methodology, which is intended to be representative of the population as a whole. Accordingly, the Department has calculated a margin based on the results of all the exporters it selected in its sampling exercise.

The Department is governed by U.S. law, and our interpretation of the sampling provisions is fully consistent with both the statute and regulations. Further, U.S. law as implemented through the URAA, is consistent with the United States' obligations pursuant to the WTO's Uruguay Round Agreements. See SAA, at 656-657.

In addition, the Department disagrees with Wecly's assertion that the Department should be subject to the APA because including AFA in the sample rate is a change in practice and constitutes rulemaking. The Department notes that the practice which Wecly is citing refers to situations where the Department restricts its investigation to the largest exporters by volume -- and not statistically valid sampling. Moreover, the examples Wecly cites are investigations, where the "all others" provision is either applicable or analogous; this case, however, is an administrative review. See section 735(c)(5) of the Act. Finally, regardless of whether there is any such practice with respect to statistically valid sampling, the Department is not rulemaking in this proceeding -- it is making an administrative determination based on the unique facts of this case and is applying the statutory provisions that give it the authority to sample in this manner. Therefore, the APA does not apply, because the Department is not rulemaking and its antidumping proceedings are investigatory in nature.[30]

D. Sampling's Effect on Revocation and Cash Deposit Rates

The Trade Pacific respondents request that the Department confirm that non-selected companies will still be eligible for revocation regardless of any average dumping rate assigned to the non-selected respondents through sampling. They argue that these non-selected companies should still be able to request revocation by demonstrating that they have not sold subject merchandise at less than fair value during three consecutive review segments, including any segments in which a company was not selected as a mandatory respondent.

In addition, the Trade Pacific respondents request that the Department assign to the non-selected respondents a deposit rate based on the most recent individually-calculated rate for that specific company. They argue that it is the Department's practice to assign "a deposit rate that is identical to the rate assigned to the company in the most recent antidumping review segment in which the company received a calculated company-specific dumping margin." See Trade Pacific's Case Brief (citing Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937 (November 18, 2005) and Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 65 FR 78473 (December 15,

[30] See e.g., GSA v. United States, 77 F. Supp. 2d 1349, 1359 (CIT 1999) (citing SAA, at 892).

2000)).[31] They question how a company that has certified that it had no shipments during a period of review and was able to retain its previous cash deposit rate from the prior segment, is different from a non-reviewed who cannot retain its prior cash deposit rate.

Department's Position:
In the present case, all respondents, whether individually reviewed or part of the sample, will receive, as requested, a deposit rate that is equal to the rate assigned to the company in this administrative review. All of the companies to which this rate applies are subject to this review, i.e., they requested and/or had a review requested of them. Thus, the average rate determined for them in this review is the calculated rate applicable to their entries for this POR and the proper basis for their estimated cash deposit rates. Section 751(a)(2)(C) of the Act instructs the Department to use the margin determined in the administrative review as the "basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties." (Emphasis added). Accordingly, the Department is applying the cash deposit rates as determined in this review.

Additionally, although the Trade Pacific respondents have requested that the Department confirm that non-selected companies will still be eligible for revocation, the issue is not appropriate to address at this time because no respondent subject to this administrative review has requested revocation. Therefore, as a result of these final results, the Department will instruct U.S. Customs and Border Protection to assess merchandise entered during the POR and collect cash deposits equal to the rates published in the final results.

Comment 2: Surrogate Value for Labor Rate

Respondents CNIM/Gren/Fengkun/Yinghao argue that the Department's calculation of the surrogate labor rate is inaccurate and inconsistent with the statute, and that it must be corrected in the final results of review. Noting that the surrogate labor rate that the Department used in the Preliminary Results is currently subject to CIT litigation, and that the Department has acknowledged that it needs to reconsider the calculation, CNIM/Gren/Fengkun/Yinghao make four arguments for revising the rate in the final results of these reviews. These arguments are: 1) that the Department should use economically comparable economies for wage data; 2) that the wage rate calculation is inconsistent with the presumption that non-market economy ("NME") prices are invalid; 3) that the Department should more fully disclose its wage rate calculation methodology; and 4) that the Department should correct certain errors in the wage rate calculation.

To comply with the statutory directive in section 773(c)(4)(A) of the Act, to use surrogate values from comparable countries, CNIM/Gren/Fengjun/Yinghao argue, the Department should either use only the Indian wage rate, or use the average wage rates of market economy countries that are economically comparable to China. CNIM/Gren/Fengkun/Yinghao note that the Department used India for most factor values, though not wage rates, in the Preliminary Results, because that country is a significant producer of comparable merchandise. CNIM/Gren/Fengkun/Yinghao argue that there was ample evidence, on the record, of the country-wide wage rate for India of $0.23 per hour, as this fact is reflected in the same source from which the China wage rate was

[31] See Trade Pacific's Case Brief, at 38.

calculated. CNIM/Gren/Fengkun/Yinghao assert that the Department nevertheless chose to derive a regression-based wage rate for China, and that this rate, $0.97, is four times greater than the Indian rate. CNIM/Gren/Fengkun/Yinghao further argue that the rate that the Department used is unreasonably high because it includes data from countries not economically comparable to and with higher GDPs and GNIs than China.

CNIM/Gren/Fengkun/Yinghao argue that the China wage rate the Department used in the Preliminary Results is inherently flawed, because it is derived from nominal Chinese per-capita GNI, which reflects NME prices. CNIM/Gren/Fengkun/Yinghao note that the wage rate calculation in the Department's regression analysis contains the formula "China Wage Rate = (China GNI per-capita * X Coefficient) + Constant." Thus, CNIM/Gren/Fengkun/Yinghao argue, the Department's surrogate labor rate for China is dependant upon a formula that assumes that Chinese prices are valid, whereas the Department's entire NME dumping margin analysis is based on the premise that NME prices are not valid. The distortion caused by using NME prices in the analysis would not exist for wage rate data from India or other economically comparable countries that are currently included within the Department's regression analysis, CNIM/Gren/Fengkun/Yinghao argue.

CNIM/Gren/Fengkun/Yinghao further argue that the Department has not identified the source documentation underlying the data points used in the regression analysis. In support of this argument, CNIM/Gren/Fengkun/Yinghao note that in a 2004 final determination in an investigation under another NME order, the Department acknowledged that certain problems may exist with the surrogate labor calculation, and later requested a voluntary court remand, for which the Department reduced the labor rate. See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Redetermination Pursuant to Court Remand Orders, Court Nos. 05-00003 (June 1, 2005); 05-00083 (June 20, 2005) ("Furniture Remand"). Similarly, in another voluntary court remand, CNIM/Gren/Fengkun/Yinghao argue, the Department acknowledged that "Commerce's calculation of the labor wage rate may be erroneous and in need of recalculation." See Allied Pacific Food (Dalian) Co., Ltd, et al v. United States, Court of International Trade, No. 05-00056 (June 12, 2006) ("Shrimp Remand"), page 14.

CNIM/Gren/Fengkun/Yinghao argue that in light of the Department's acknowledgment in the above instances of the need to correct the labor rate, the Department should also correct the wage rate calculation in the final results of the present review. At a minimum, CNIM/Gren/Fengkun/ Yinghao argue, the Department should fully disclose the documents used to calculate the labor rate.

CNIM/Gren/Fengkun/Yinghao also argue that the Department failed to include 19 countries for which both the per-capita GNI and wage rate data was available from the International Labor Organization ("ILO") website, some of which the Department had identified as economically comparable potential surrogate countries. These data were available in the 2003 Yearbook of Labor Statistics, CNIM/Gren/Fengkun/Yinghao argue, yet the Department did not include them in its regression analysis.

CNIM/Gren/Fengkun/Yinghao argue that the "arbitrary exclusion of certain countries" contra-venes the Department's stated purpose for using regression analysis to calculate the labor wage

rate because it utilizes more data. [32] CNIM/Gren/Fengkun/Yinghao argue that the goal of predictability cannot be achieved where the Department arbitrarily includes or excludes certain countries' wage rates, as reported in the ILO database, from the calculation of the China wage rate.

The petitioner argues in rebuttal that both section 773(c)(4) of the Act and 19 C.F.R. § 351.408(c) allow the Department to use prices or costs in one or more market economy countries. The petitioner asserts that the Department's regression methodology minimizes the usual variations in wage rates of countries that are considered economically comparable, and that the methodology reflects the global relationship between wages and national income in market economy countries.

The petitioner asserts that respondents' argument, that the Department's wage rate calculation for China is inconsistent with the presumption that NME prices are invalid, is without merit. The petitioner states that the Department justified this practice in Honey From the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administraive Review, 71 FR 34893 (June 16, 2006) and the accompanying Issues and Decision Memorandum at Comment 5 ("Honey from China") by explaining that the wage calculation is based on wages and per-capita GNI, that the use of the latter statistic provides a seed of data to which the labor regression may be applied to derive a comparable market economy labor wage rate, and that the GNI figure is a widely used, broad-based indicator which constitutes the "best information available." See Honey from China, 71 FR 34893.

The petitioner concludes by arguing that the Department's calculation methodology for labor wage rates in NME proceedings is accurate and in accordance with law, and that Respondents' suggestion to use only Indian wage data, or an average wage rate from a few economically comparable countries, would not provide a sufficiently large data set or a reliable regression analysis.

Department's Position:
The Department's 1996 proposed and 1997 final regulations both state that the agency will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. See Antidumping Duties; Countervailing Duties Part II, 61 FR 7308, 7345 (February 27, 1996) ("Proposed Rule"); see also Final Rule, 62 FR at 27367. In substance and in practice, the Department's final regulation and regression methodology reflect the observed global relationship between wages and national income in market economy countries. Due to the variability of wage rates in countries with similar per capita GNI, were the agency to select a single surrogate country, or even a small group of surrogate countries, to value labor wage rates, the result would vary widely depending upon the economically comparable countries selected. See Proposed Rule, 61 FR at 7345. Thus, the regulations, as implemented, provide for a more accurate and more predictable result by utilizing data from multiple countries. See Proposed Rule, 61 FR at 7345; Final Rule, 62 FR at 27367.

When formulating its regulation, the Department determined not to rely on the sole wage rate from the selected surrogate country because while per capita GNI rates and wages are positively

[32] See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27356 (May 19, 1997) ("Final Rule").

correlated, there is great variation in the wage rates of the market economy countries the Department typically treats as being economically comparable. See Proposed Rule, 61 FR at 7345. For example, the Department considers both India and Egypt to be economically comparable to the PRC; however, India has a wage rate of $0.23 and Egypt has a wage rate of $0.98. To avoid such variability in results, the Department's regulation directs the Department to use what is essentially an average of the wage rates in a wide range of market economy countries, rather than have the result depend on which economically comparable country happens to be selected as the surrogate. Therefore, because labor data covering multiple countries are obtainable, the Department finds that its regression methodology, based on data from a wide range of market economy countries, enhances the accuracy, predictability, and stability of the wage rate.

Similarly, due to the variability in wage rates as correlated with GNI, relying on only a small subset of countries comparable to the PRC would not render a meaningful result for two reasons. First, relying on only wage rates from countries determined by the Department for surrogate country selection purposes to be comparable to the PRC (a data set consisting of five to six countries), would not provide the Department with a sufficiently large data set to conduct a reliable regression analysis. Second, conducting the regression analysis on a subset of comparable countries would return results limited only to those countries, and not the broader set of market economies contemplated by the Department's regulation.

Therefore, the Department's regulation is fully consistent with section 773(c)(4) of the Act, which allows for the Department to use prices or costs in one or more market economy countries. The Department's regression methodology is a permissible means of determining the observed relationship between income and wages using market economy country data that, in aggregate, when indexed to the NME's GNI, yield an estimated market economy wage rate at a comparable level of economic development.

When the Department issued its Proposed Rule, and then its final regulations, following notice and comment procedures, it did not contemplate that all countries collectively used in the Department's regression analysis to determine a wage rate would be required to be significant producers of comparable merchandise from comparable economies in every case. Such a requirement would obviate the purpose of the Department's regulation concerning wage rates. In this respect, in proposing and implementing 19 CFR 351.408(c)(3), the Department determined that in calculating wage rates, an analysis different in some aspects from valuing other FOPs was warranted in light of its concerns about wide variances in wage rates between comparable economies. The Department's final wage rate regulation was also informed by its use of labor in all antidumping duty calculations, and the existence of a labor market in every economy, which obviates the necessity that the included countries be significant producers of the product under investigation or review.

The Department's regression methodology permits the agency to determine wage rates upon a consistent basis across many countries that is predictable and reasonable. The arguments and proposed alternative approaches offered by CNIM/Gren/Fengkun/Yinghao would undermine the predictability of that analysis. The Department has, therefore, rejected their suggested alternatives.

The Department disagrees with CNIM/Gren/Fengkun/Yinghao's argument that the labor wage rate calculation is unreliable because it uses GNI data from China, which is not a market-driven economy. In accordance with section 773(c)(1)(B) of the Act, the Department determines that the GNI data from China provides the best available information to satisfy 19 CFR 351.408(c)(3), which stipulates that the Department will "calculate the wage rate to be applied in non-market economy proceedings each year." Because the equation to establish expected NME wages is based upon two variables (wages and per capita GNI), using the non-market economy country's GNI provides a seed of data tied to the non-market economy country at issue to which the labor regression may be applied to derive a comparable market economy labor wage rate. The GNI figure is a widely used, broad-based indicator of a country's macroeconomic performance, is obtained from the *World Development Indicators* of the World Bank, and constitutes the best available information to the Department.

Regarding CNIM/Gren/Fengkun/Yinghao's proposal that the Department use Indian data to calculate a wage rate, as explained above, the use of data from a single country would be inconsistent with the Department's regulations and practice. CNIM/Gren/Fengkun/Yinghao's claim that the Department must only choose wage rates derived from a country that is a significant producer of comparable merchandise also seems inconsistent with the broad collection of data that the Department prefers in its regulations and practice for measuring this particular FOP. Moreover, as discussed above, the importance placed on the significant producer criterion by CNIM/Gren/Fengkun/Yinghao is misplaced. The Department's valuation of labor according to 19 CFR 351.408(c)(3) obviates the need for this criterion for labor.

With regard to the assertion by CNIM/Gren/Fengkun/Yinghao that the Department has failed to adequately disclose its regression methodology, we note that the Import Administration website, http://www.trade.gov/ia/, contains a detailed explanation of the data used and has a link to the spreadsheet with the data points. See Memorandum to the File, through James C. Doyle, Director, AD/CVD Operations, Office 9, and Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Thomas Killiam, International Trade Analyst, AD/CVD Operations, Office 9, 2004-2005 Administrative Review of Brake Rotors from the People's Republic of China: Selection of Factor Values for the Preliminary Results ("Preliminary Factors Memo"), at 5 and Exhibit 5.

We disagree that we must modify our wage rate calculation in the context of this single proceeding. A single wage rate across proceedings is required by our regulation, and applying an altered methodology in this single proceeding would contravene the direction set forth in 19 C.F.R. § 351.408(c). We further disagree with respondents' suggestion to include data from approximately 19 additional countries, for which both the per-capita GNI and wage rate data was available from the ILO website, in the wage rate calculation for this review. A recalculation of the estimated NME wages using a wholly different basket of countries might amount to a significant change in the Department's regression analysis, which has been based on stable and predictable basket of countries for the past several years. The Department's 2005 calculation of expected NME wage rates relies on this basket of countries. This dataset is reliable, and is sufficiently robust to conduct a meaningful regression analysis. It would be contrary to our regulation for the Department to assess the suitability of each of these additional 19 data points, or other potentially suitable data points, within the context of a single proceeding. 19 CFR 351.408(c). Instead, the Department considered changes to its methodology in a broader context

and has announced its current methodology in the Federal Register notice, Antidumping Methodologies: Market Economy Inputs, Expected Non- Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, (October 19, 2006). As stated in that notice, pursuant to the comments received and the Department's analysis thereof, these revisions will take effect in the 2006 calculation of expected NME wage rates and will apply to all relevant proceedings thereafter. For this proceeding, however, the Department's current wage rate methodology is based on the best available information.

Thus, the Department has determined, for the final results of these reviews, that the appropriate surrogate value for the wage rate for the PRC respondents continues to be $0.97/hour.

Comment 3: Surrogate Value for Pig Iron

The Trade Pacific respondents argue that the Department should select a surrogate value for pig iron that is more representative of the cost of pig iron in India during the POR than the value the Department derived on the basis of published Indian import statistics for the Harmonized Tariff System ("HTS") subheading for this product (7201.10.00, non-alloy pig-iron containing less than 0.5 percent phosphorous). Noting that during the POR India imported only 6,860 metric tons of pig iron in this category, from five countries, the Trade Pacific respondents argue that this quantity is not commercially significant. Instead of using the value of Indian import statistics, the Trade Pacific respondents argue, the Department should use the values for pig iron as disclosed in the audited financial statements of four major Indian steel producers. The Trade Pacific respondents argue that together, this group purchased and consumed 681,675.70 metric tons of pig iron during the POR,[33] or approximately 100 times the import quantity cited above. The Trade Pacific respondents assert that the average POR price of pig iron in India, as reflected by the experience of this group, was 10.75 rupees (as opposed to 17.68 rupees per kilogram based on imports).

The Trade Pacific respondents argue that the disparity between the large quantity of iron purchased by these four companies and the small quantity reported as imports into India during the POR shows that pig iron consumers in India overwhelmingly relied on domestic, rather than foreign, sources. Therefore, the Trade Pacific respondents argue, Indian import prices cannot be relied on as representative of the price for pig iron in India. In light of the low volume of pig iron imported into India during the POR, the Trade Pacific respondents further argue, it is reasonable to assume that the imports represent either specialty metals or merchandise pertaining to unusual market scenarios that required the purchase of material at higher unit prices than the pig iron purchased by major Indian steel companies and the respondents in these reviews.

Moreover, the Trade Pacific respondents argue that the quantity of pig iron in the Indian import statistics used by the Department in the Preliminary Results is insignificant, not only relative to the consumption of pig iron in India, but also relative to the quantities typically consumed by brake rotor producers in India or China in the normal course of business. The small quantity of the Indian imports, the Trade Pacific respondents assert, makes the import data unreliable as a representation of Indian pig iron prices. Therefore, the Trade Pacific respondents argue, the

[33] The Trade Pacific respondents suggest incorporating the pig iron purchase data reported by TATA Iron and Steel Company Limited ("TATA"), Essar Steel Limited ("Essar"), the Indian Iron & Steel Company Ltd, a division of the Steel Authority of India ("SAIL"), and MMTC Limited ("MMTC").

Department should not use the Indian import values to value the respondents' pig iron consumption.

The Trade Pacific respondents further argue that the Department should only rely on Indian import statistics after concluding that the import statistics are based on commercially and statistically significant quantities. In support of this assertion, the Trade Pacific respondents cite Polyethylene Retail Carrier Bag Committee, et al., v. United States, Slip Op. 05-57, p. 43 (Dec. 13, 2005), 2005 WL 3555812 (CIT) ("Polyethylene"), (citing Shanghai Foreign Trade Enter. Co. v. United States, 318 F.Supp.2d 1339, 1352- 53 (2004) ("Shanghai Foreign Trade")). In these cases, the Trade Pacific respondents argue, the CIT rejected the Department's use of values based on Indian import statistics when these data reflected commercially insignificant quantities, because these prices did not fairly represent market value. The Trade Pacific respondents argue that for this reason the Court instructed the Department to instead use other sources for pig iron prices.[34]

In the present case, the Trade Pacific respondents argue, the pig iron prices that the four major Indian steel producers reported in their financial statements represent the best available information for valuing pig iron, because they are based on far greater quantities. The small quantities imported to India during the POR (from South Africa, Iran, Malaysia, Russia, and Switzerland) suggest that these imports were mere single shipments, the Trade Pacific respondents argue, so that the resulting average value would be based on only five individual transactions at single points of time in the POR, in contrast with the price data in the financial statements of the major user group, which are based on continuing purchases throughout the POR.

The petitioner contends that the Department was correct in using World Trade Atlas ("WTA") import statistics to value pig iron, because the value is contemporaneous with the POR and is specific to the type of pig iron that the respondents use to produce brake rotors. The petitioner cites Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China 70 FR 24502 (May 10, 2005) (Chlorinated Isocynaurates Investigation Final Results) and the accompanying Issues and Decision Memorandum at Comment 1.

The petitioner disagrees with the Trade Pacific respondents' proposal to use pig iron values reported by four Indian companies in their financial statements. The petitioner argues that these financial statements do not specify the type of pig iron associated with the values or where the material was purchased. The petitioner cites the Trade Pacific respondents' case brief, noting that the financial statement of TATA mentions "sponge/pig iron," and Essar describes its raw material "direct reduction/pig iron." The petitioner further notes that MMTC Limited reported two prices, one for purchases and one for sales, and the value of the materials purchased by the fourth company, the Steel Authority of India Limited, discloses a pig iron value based on adjustments related to inter-plant transfers. The petitioner asserts that there are large discrepancies in the four values proposed by the Trade Pacific respondents, that the values may include pig iron not specific to the production of brake rotors, and that the pig iron may have been purchased from NME suppliers or from domestic suppliers with domestic taxes. The

[34] The Trade Pacific respondents cite Shanghai Foreign Trade, 318 F. Supp. 2d, at 1353.

petitioner requests in the final results that the Department continue using the WTA value for pig iron as it is the most reliable, in accordance with established Department practice.

Department's Position:
We do not agree with the Trade Pacific respondents' proposed alternative data source (i.e., financial statements) for valuing pig iron. The Department relies on financial statements to value factors only when there is no other useable data because, while financial statements typically involve several purchases of any given input, they represent data from only one company. In contrast, WTA data are collected from imports into the whole of India, and therefore represent a broader, overall more representative data source. In this case, the Department finds the WTA data useable, and therefore the Department prefers not to use such data derived from financial statements.

Regarding the individual companies placed on the record, we note that TATA reported consuming "sponge iron/pig iron," and Essar reported consuming "direct reduction iron/pig iron." There is no evidence on the record to indicate that these types of pig iron (i.e., direct reduction iron or sponge iron) are consumed in the production of the subject merchandise, nor can we separate data attributable to these types of iron in the financial statements from the types respondents reported they used in the production of the subject merchandise. Moreover, there is no evidence on the record to substantiate respondents' speculation that the imports into India may have been single shipments or were of specialty metals.

In the present case, there is no basis on the record to distinguish what proportion of the far larger figures appearing in the TATA and Essar financial statements are pig iron compared with "direct reduction" or "sponge" iron. As such, the comparison the Trade Pacific respondents make is ill-drawn in that pig iron would be compared to an aggregated figure of which non-alloy pig iron, consumed in the production of brake rotors, is an unknown percentage. In addition, while the Trade Pacific respondents draw the Department's attention to the input of the raw material in absolute terms, the Department also observes that the output of TATA and Essar is correspondingly far higher than that of the subject brake rotors respondents as well. Therefore, one would expect to see TATA and Essar consuming high volumes of "sponge iron/pig iron" and "direct reduction iron/pig iron," respectively, but this does not in itself indicate that WTA data attributable to "non-alloy pig iron" is aberrational.

The Department notes that the volume of "non-alloy pig iron" imported into India significantly exceeds the volume of pig iron consumed by several of the respondents in the present segment. Accordingly, although an initial glance at the TATA and Essar data may suggest a tremendous disparity, as the Trade Pacific respondents' comparison is between "non-alloy pig iron" and an aggregated figure which includes non-alloy pig iron in an unknown percentage, the scale of the comparator companies (i.e., TATA and Essar) are far different in terms of both input and output, and the volume of pig iron imported into India is well within the range of the volumes consumed by individual PRC brake rotors producers.

Additionally, we agree with the petitioners that SAIL's values are suspect given that the raw material values are reported after adjustments related to inter plant transfers, and, therefore, that these prices may be transfer prices which are not at arm's length. Moreover, neither SAIL's nor MMTC's financial statements specify the type(s) of pig iron consumed in the production of their

merchandise so the Department cannot be confident that it is specific to the type of pig iron consumed in the production of the subject merchandise.

Additionally, the Department has reviewed whether data consists of "low-volume imports from certain countries with per-unit values substantially different from the per-unit values of the higher quantity imports of that product from other countries." See, e.g., Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 29266 (May 21, 2004), and accompanying Issues and Decision Memorandum, at comment 1. However, this practice is limited to situations where those values are obviously distinct from others in the same data set. Simply having import data with lower volumes than other alternative data is not sufficient, in itself, to conclude that the data is not significant. Therefore, the Department concludes that the volume of "non-alloy pig iron" imports is not commercially or statistically insignificant.[35]

In this instance, the WTA data is contemporaneous to the POR, specific to the raw material (as it is defined as "non alloy pig iron") consumed by the respondents in the production of subject merchandise and exclusive of data attributable to NME suppliers or from domestic suppliers with domestic taxes. The Indian import data include information from multiple countries of origin and remain the best available information for valuing pig iron. Accordingly, for these final results, we have continued to use this data source.

Comment 4: Surrogate Value for Steel Scrap

The Trade Pacific respondents argue that for the Final Results, the Department should value steel scrap using HTS subheadings 7204.49.00, "other steel scrap," and 7204.10.10, "cast iron scrap," rather than the subheading used in the Preliminary Results, 7204.50.00, "remelting scrap ingots," because it is more appropriate and was imported into India in commercially and statistically significant volumes.

The Trade Pacific respondents note that the Indian HTS defines remelting scrap ingots as "roughly cast in the form of ingots without feeder-heads or hot tops, or of pigs, having obvious surface faults and not complying with the chemical composition of pig iron, spiegeleisen or ferro-alloys."[36] However, the Trade Pacific respondents argue, they did not consume remelting scrap ingots. For example, even though there is no description in the verification report regarding the type of scrap Hongfa consumed, Hongfa asserts that the Department's verifiers physically viewed the scrap consumed in the production of brake rotors and witnessed that it was random consumer and industrial metal scrap, and not ingots. See Memorandum to the File, through Christopher D. Riker, Program Manager, Office 9, from Erin Begnal and Kristina Boughton, International Trade Compliance Analysts, Office 9, Verification of the Sales and Factors Response of Hongfa Machinery (Dalian) Co., Ltd. in the Antidumping Administrative Review of Brake Rotors from the People's Republic of China, (April 20, 2006) ("Hongfa

[35] In Shanghai Foreign Trade, the CIT found that the Department had inadequately explained its reliance on Indian import statistics and remanded the decision to the Department. See Shanghai Foreign Trade, 318 F. Supp. 2d at 1353 (case dismissed prior to Department remand). In this case, the Department has explained, based on record evidence, its determination that the import volume is not insignificant.

[36] The Trade Pacific respondents cite Exhibit 6 of their surrogate value submission of June 12, 2006.

Verification Report"). Moreover, the Trade Pacific respondents assert that the verification team collected VAT invoices showing that Hongfa purchased recycled steel scrap, and these invoices, as well as the physical inspection, show that the recycled scrap was merely "scrap metal," and not "remelting scrap ingots." See Hongfa Verification Report, at Exhibits 10 and 14. For these reasons, they assert that import values for subheading 7204.50.00 are not appropriate, and the Department should instead use the value corresponding to the subheading 7204.49.00, "other steel scrap." The Trade Pacific respondents argue, based on its markedly higher import volume, 7,406,159.05 metric tons, or over 90% of Indian imports of steel scrap, the "other ferrous scrap" subheading is the category under which most consumer and industrial metal scrap is imported into India.

Alternatively, in the event the Department declines to use this subheading in the final results, the Trade Pacific respondents argue, the Department should turn to subheading 7204.10.00, cast iron scrap, as the next most appropriate import value, because although it does not correspond as closely as "other ferrous scrap" to the raw materials that the respondents use, it is nevertheless more similar than scrap ingots.

The petitioner argues that the Department has consistently used HTS 7204.50.00 to value steel scrap. The petitioner further asserts that the Department cannot confirm that the scrap used in the respondents' production was not remelting scrap ingots, and should continue to use this HTS category in the final results to value steel scrap.

Department's Position:
Based on information on the record of the review, it appears that HTS 7204.50.00, "remelting scrap ingots," is not the most appropriate classification for valuing the scrap consumed in the production of brake rotors.

During the course of this segment, we requested each respondent to define the type of scrap they consumed. While the Trade Pacific respondents argue that the most appropriate subheading for valuing scrap usage is 7204.49.00, "other ferrous scrap," we find that this assertion is at variance with information on the record of the review. Specifically, Hongfa, Haimeng, Meita and Winhere all reported that they consumed "steel scrap, including scrapped and rejected rotors, as well as casting strands/handles (extrusions from the actual rotor that are removed) and filings from the lathing process" in the production process. See Haimeng's, Hongfa's, Meita's, and Winhere's January 6, 2006, Section C & D questionnaire responses, at Exhibit D-2, respectively. Additionally, information obtained at the verification of Hongfa, in the form of invoices, did not contradict these statements and only suggested the input was "steel scrap." See Hongfa Verification Report, at Exhibits 10 and 14.

Thus, the information on the record clearly shows that for each of the Trade Pacific respondents, the scrap in question was loose scrap, not in ingot form. Additionally, as the scrap was comprised of casting strands and handles, as well as scrapped and rejected rotors (which in this case are made from gray cast iron), we believe it is appropriate to value the scrap consumed in the production of subject merchandise using HTS subheading 7204.10.00, "cast iron scrap." Moreover, we agree with the Trade Pacific respondents' own assertion that "the cast iron scrap HTS category is more representative of the steel scrap consumed by {r}espondents than the

remelting scrap ingot HTS category used by the Department in the Preliminary Results." See Trade Pacific's Case Brief, at 7.

Despite respondents' argument that there were higher import volumes of "other ferrous scrap" into India during the POR, the Department does not select an HTS category to value a factor of production based on import volume, but, rather, on specificity and contemporaneity. However, in this instance the "cast iron scrap" imported into India is not only contemporaneous and specific, but is in significant quantities as well. Therefore, for these final results, we are using HTS 7204.10.00, "cast iron scrap," to value steel scrap consumed in the production of subject brake rotors.

Comment 5: Surrogate Value for Plywood

The Trade Pacific respondents argue that to value plywood, the Department used non-contemporaneous data corresponding to what they assert is an inappropriate HTS category (i.e., 2003 data for HTS 4412.99.09, described in the WTA as "plywood, others").

The Trade Pacific respondents assert that if the Department uses component values, rather than whole pallet values, in the final results, then it should use the HTS category 4412 (i.e., "plywood, veneered panel and similar laminated wood") rather than 4412.99.09 (i.e.,"others") to value plywood. The Trade Pacific respondents argue that to convert the value to a per-kilogram basis from the per-cubic meter basis in which the former classification is published, the Department should use the conversion factor for estimated kilograms of wood per cubic meter, which was applied in two previous different determinations.

The petitioner argues that the Department should continue to use the HTS category 4412.99.09 to value plywood, because it is specific to the input the respondents use to pack brake rotors. It reasons that if a contemporaneous value is not available, the Department should inflate the non-contemporaneous value used in the Preliminary Results to the POR. The petitioner argues that the Department, in previous cases, has chosen specific non-contemporaneous surrogate values over values that are contemporaneous but not specific to the subject merchandise, citing Honey from China, 71 FR 34893 and the accompanying Issues and Decision Memorandum, at Comment 4. Additionally, the petitioner asserts, the HTS category proposed by the Trade Pacific respondents to value plywood is much broader than the HTS category that the Department used in the Preliminary Results, and the latter category better reflects the type of plywood used by the respondents to pack brake rotors.

Department's Position:
The Trade Pacific respondents fail to provide a reason why the category they suggest would be more appropriate to value the plywood that the respondents used to assemble pallets than the narrower category we used in the Preliminary Results of these reviews, as well as in prior reviews. See, e.g., Memorandum to the File, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, Import Administration, from Thomas Killiam, International Trade Compliance Analyst, AD/CVD Operations, Office 9, Import Administration, 2003/2004 Antidumping Duty Administrative Review and New Shipper Review of Brake Rotors from the People's Republic of China ("PRC"), at 2 (April 5, 2005) ("2003/2004 Review Preliminary Factors Memo"); see also Memorandum to the File, through Christopher D. Riker, Program

Manager, AD/CVD Operations, Office 9, Import Administration, from Thomas Killiam, International Trade Compliance Analyst, AD/CVD Operations, Office 9, Import Administration, 2003/2004 Antidumping Duty Administrative Review and New Shipper Review of Brake Rotors from the People's Republic of China ("PRC"), Final Results Factor Valuation Memorandum, (November 7, 2005) ("2003/2004 Final Factors Memo"); Memorandum to the file, through: Christopher D. Riker, Program Manager, Import Administration, Office 9, from Thomas Killiam, International Trade Compliance Analyst, Import Administration, Office 9, Brake Rotors from the People's Republic of China: Final Results Calculation Memorandum: Analysis for the Final Results of Brake Rotors from the People's Republic of China: Longkou Haimeng Machinery Co., Ltd. ("Haimeng"), at 3-4 and Attachment 1 (Program Log), at lines 400, 442, 688, 719, and 726 (November 7, 2005) on file in Room B-099 of the main Department of Commerce building.

We note that the four-digit heading (i.e., HTS 4412, "plywood, veneered panels, and similar laminated wood") that the Trade Pacific respondents propose includes plywood with components inappropriate for inclusion in pallets, such as furniture-grade tropical hardwoods, cedar, and plastic. See HTSUS (2006), Supplement 1, Rev. 2, at pages 44-14 through 44-22; see also WTA heading 4412 (available at http://www.gtis.com/). Moreover, within the more specific, six-digit sub-heading 4412.99, the categories of Indian imports reported in the WTA also include inappropriate products, such as "plastic laminated plywood, "decorative plywood," and "marine and aircraft plywood." We have no evidence that the eight-digit "plywood, others" category we are using includes inappropriate products.

The alternative product classification proposed by the Trade Pacific respondents is inherently less accurate and less appropriate than the full eight-digit definition we employed in the Preliminary Results. Matching the product classification as closely as possible outweighs finding perfectly contemporaneous data for surrogate value purposes. See Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States, 366 F.Supp.2d 1264, 1275 (CIT 2005). Additionally, the Trade Pacific respondents' suggestion to use a conversion factor that estimates plywood consumption based on industry averages of kilograms per cubic meters of wood, in order to be able to use more contemporary data from a different HTS classification, is moot because, as noted above, there is no evidence on the record to support substituting another HTS classification to value the respondents' plywood consumption, and the category used in the Preliminary Results did not necessitate a conversion factor because it was already in kilograms.

Accordingly, for these final results, we have continued to use HTS category 4412.99.09 to value plywood.

Comment 6: Surrogate Value for Cartons

The Trade Pacific respondents argue that the Department calculated the value for cartons in the Preliminary Results using the average of two categories (HTS 4819.10.10 and 4819.10.90) when it should instead have used the average value for the subheading that encompasses these two categories, subheading 4819.10.

The petitioner believes the Department should use a simple average since the two HTS

categories include cartons of different qualities and values.

Department's Position:
We agree with the Trade Pacific respondents that the per-unit value derived from the single category encompassing the two classifications together is the appropriate reference. See 2003/2004 Review Preliminary Factors Memorandum, at Attachment 4. We used a weighted-average value for these same two types of cartons. (There was no change to this weight-averaging methodology in the final results of that review. See 2003/2004 Final Results Factor Valuation Memorandum, at 2.) Accordingly, for these final results, we have used the weighted average unit value for the HTS category 4819.10, consistent with the Department's past practice. See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (November 18, 2005) ("Final Results of Seventh Administrative Review") accompanying Issues and Decision Memorandum, at Comment 2.

Comment 7: Treating Bentonite and Coal/Carbon Powder as Raw Materials or Overhead Expense

The petitioner argues that if the Department determines that coal powder and bentonite are consumed during the production of rotors, both of these inputs should be treated as raw materials and valued for all respondents. The petitioner states that the Department valued these two inputs for Hongfa based on information discovered at verification because bentonite and coal powder are used every time sand is mixed to make molds. In addition, it asserts that Hongfa records both inputs on the company's raw material consumption sheets.

Hongfa argues that the Department erred by treating bentonite and coal powder (also called "carbon powder") as material inputs in the Preliminary Results, and asserts that the Department's well-established practice is to treat these materials as overhead expenses. Moreover, Hongfa argues, Indian brake rotor manufacturers are required to treat these items as overhead by Indian Generally Accepted Accounting Practices ("GAAP"), and the Department mentioned this fact as a reason to treat the items as overhead, in the preliminary and final determinations in the less-than-fair-value investigation.

Hongfa further argues that in the investigation and in every other segment of this proceeding heretofore, the Department correctly considered these inputs as part of factory overhead. Citing the section D response of Meita[37] as an example, Hongfa asserts that these items are not incorporated into the finished brake rotor, but merely serve to facilitate the molding process, and are recycled for repeated use.

The petitioner states in rebuttal that the Department sent an inquiry to the five mandatory respondents on June 22, 2006, requesting that the respondents submit their consumption of bentonite and coal powder during the POR. The petitioner believes that the Department should consider these factors as direct materials and apply AFA for any respondent that submits

[37] See Qingdao Meita Automotive Industry Co., Ltd., Section D Questionnaire Response, at Ex. D-2 (January 6, 2006).

consumption information for these materials this late in the preceding.[38] The petitioner argues that the respondents had the opportunity to submit this information with their Section D responses, and withholding this information until now demonstrates the incompleteness and unreliability of the respondents' questionnaire responses.

In their July 17, 2006, submission, the Trade Pacific respondents argue that the Department should treat bentonite and carbon powder as overhead items because the surrogate Indian brake rotor producers are required under Indian accounting principles to categorize mold-related inputs under an auxiliary category, "stores and spares consumed," citing Brake Rotors Final Determination.

Additionally, the Trade Pacific respondents argue that the Department confirmed at Hongfa's verification that bentonite and coal powder are only added to the molding mixture and do not become part of the finished brake rotors.[39] The respondents note that in their Section D responses, they reported these two items in the "sand cleaning" stage of production and not as direct materials.

The Trade Pacific respondents also argue that the Department should not value coal powder and bentonite as direct materials, because doing so would be a departure from the Department's previous methodology upon which the respondents relied to set their U.S. sales prices. They assert that the Department can only change its methodology subject to two restrictions: (1) the Department must clearly state why it is changing its methodology and (2) it must not alter its methodology when a respondent has detrimentally relied upon an old methodology used in prior reviews.[40] They argue that they have relied on and set their prices based on the Department's methodology in all previous reviews of valuing bentonite and coal powder as overhead materials.

Finally, the Trade Pacific respondents argue, if the Department in the final results continues to value coal powder and bentonite as direct materials, it should re-categorize the Indian surrogate producers' "stores and spares/consumable stores consumed" (where in the less than fair value investigation, the Department confirmed is where they record the costs of materials used for sand cores or molds) from overhead to material costs, in order to avoid double counting these inputs.

In its July 17, 2006, submission, the petitioner argues that the Department considers raw material inputs those materials that are physically incorporated into the subject merchandise and that are essential for producing the finished product. Petitioner's Rebuttal Brief, at 2 (citing Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026 (April 30, 1996) (Bicycles from China) and accompanying Issues and Decision Memorandum, at Comment 16; and Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 61794, 61800 (November 19, 1997) (Lock Washers from China)). It argues that bentonite and coal

[38] Petitioner's Case Brief, at 5 (citing 19 U.S.C. § 1677e(b)).

[39] See Trade Pacific's July 17, 2006 letter, at 3 (submitting comments related to bentonite and coal powder usage).

[40] See Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States, 178 F. Supp. 2d 1305, 1327, (CIT 2001) (cited in Trade Pacific's July 17, 2006 Submission, at 5).

powder are necessary inputs in the sand mixing stage, which is essential to producing brake rotors. The petitioner also asserts that in respondents' accounting books, coal powder and bentonite are categorized as raw material inputs and should be considered as such in the final results.

In their July 24, 2006, rebuttal, the Trade Pacific respondents disagree with the petitioner's assertion that bentonite and coal powder should be treated as direct materials and also kept in the Indian surrogate financial ratios as overhead expenses. They argue that the Department considers as direct materials those inputs physically incorporated into a final product. Trade Pacific Rebuttal Brief, at 2 (citing Brake Rotors Final Determination; and Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 61395 (October 28, 2003) and accompanying Issues and Decision Memorandum, at Comment 11). Because these inputs are not physically incorporated into the finished brake rotors, the Trade Pacific respondents contend, bentonite and coal powder should be treated as indirect materials.

The Trade Pacific respondents argue that in cases where the Department has considered, as a direct material, an input required in the production process but not incorporated into the finished product, the Department first clarifies whether or not that input is included in factory overhead costs in order to avoid double counting.[41] The Trade Pacific respondents assert that in both of the cases cited by the petitioner, Bicycles from China and Lock Washers from China, the Department treated these inputs as direct materials, only after acknowledging that these costs were not included in the surrogate financial ratios as overhead. The Trade Pacific respondents argue that in this case, the Department has already determined that bentonite and coal powder are categorized as overhead materials ("stores and spares") in the Indian surrogate financial ratios, and that the petitioner has offered no new information to support a change in the Department's methodology of valuing these two inputs.

The petitioner, in its July 24, 2006, rebuttal comments on this question, reiterates its position that although coal powder and bentonite are not incorporated into the finished rotor, they are essential to the production of brake rotors and should be considered direct materials. The petitioner also requests that the Department not recalculate the surrogate financial ratios. It argues that bentonite and coal powder are two of many items that make up "stores and spares,"[42] and suggests that the Department should not undercount a greater number of items, by reclassifying "stores and spares" as direct materials in order to risk double counting coal powder and bentonite. In addition, the petitioner argues, "{i}t is reasonable to assume in view of the figures presented by Respondents related to the consumption of these inputs that they are sufficiently significant not to be accounted for in factory overhead." Therefore, they request that the Department treat coal powder and bentonite as raw materials for all respondents for the final results.

[41] See Pacific Giant, Inc. v. United States, 223 F. Supp. 2d 1336, 1346 (CIT 2002) (cited in Trade Pacific's July 24, 2006, Submission, at 3.

[42] See Rico Auto Industries Limited Financial Statements at 38 (cited in Petitioner's July 24, 2006, Rebuttal Brief, at 4).

Department's Position:
It is the Department's practice, in general, to treat items that are consumed continuously with each unit of production as raw materials, provided the available information permits accurate adjustments of expense ratios when necessary. See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decisions Memorandum, at Comment 2, at 10-14 (Diamond Sawblades); see also Silicomanganese from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000), and accompanying Issues and Decision Memorandum, at Comment IV-1 (Silicomanganese). In Diamond Sawblades, for example, the Department stated that "{w}e have valued all materials that are required for a particular segment of the production process as factors except where the record indicates that the input is not replaced so regularly as to represent a direct factor rather than overhead."

In Silicomanganese, the Department opted to treat electrode paste, a material consumed in production but not incorporated into the product, as a raw material rather than as overhead.[43] In so doing, the Department explained that treating the item as overhead would have required unsupported assumptions in regards to the surrogate value data, whereas including the item in raw materials allowed for specific adjustments to surrogate expense ratios, given the available data on the record.

Based on Hongfa's and SZAP's verification reports, bentonite and coal powder are used continuously in brake rotor manufacturing, and are consumed in proportion to production, since they are replenished after each molding process, i.e., after the production of each individual rotor. See, e.g., Hongfa Verification Report, at p. 26. However, if the Department continues to treat bentonite and coal powder as raw materials and not overhead, then it must revise the surrogate ratios, in order to avoid double-counting of components, as stated in Silicomanganese:

> In order not to inadvertently overstate, or double-count these process materials, we recalculated the overhead rate by excluding the "stores and spares" expense category from the expenses used in our calculation.[44]

After analyzing the surrogate financial statements we have determined that there is no itemization in the surrogates' financials of mold-facilitation substances, either in raw materials or in overhead, that would permit an accurate adjustment of the financial ratios if we continued to value bentonite and coal powder as raw materials. See Preliminary Factors Memo, at Exhibit 10 (specifically, Kalyani's financial statement, at Schedule 14 and Rico's financial statement, at Schedule 6).

In the absence of itemizations of the surrogate companies' bentonite and coal powder expense, an adjustment like the one discussed above in Silicomanganese is not practicable here, because we do not know the amounts corresponding to these expenses within "Stores and Spares," or

[43] See Silicomanganese, Issues and Decision Memorandum, at Comment IV-1.

[44] Id.

even the approximate proportion of these materials within this expense category. Thus, there is insufficient information on the record to permit us to value these items as raw materials without double counting. Moreover, the Department does not believe it appropriate to value these items using AFA, even though respondents did not report these factors in their initial questionnaire responses, because we are not valuing these inputs using the consumption information obtained after the Preliminary Results already accounted for in the overhead expenses of the surrogate financial ratios. Therefore, for these final results, we have determined to treat bentonite and coal powder as overhead expenses, consistent with our prior practice in this case. See Final Results of Seventh Administrative Review, 70 FR 69937.

Company-Specific Issues

Comment 8: Pallet Wood (Hongfa)

The Trade Pacific respondents argue that in the Preliminary Results the Department valued the wood that Hongfa used to build pallets using a surrogate value for complete pallets, and thus, double-counted the value of the nails, plywood, and labor consumed in the finished pallets. The Trade Pacific respondents argue that for the final results the Department should either exclude from normal value the nails, plywood and labor that Hongfa reported as pallet components, or refrain from incorporating the value of whole pallets, and instead use a reasonable value for the (non-plywood) wood component of Hongfa's pallets.

The Trade Pacific respondents further argue that the Department has resolved the same issue in a another case by using the Department's institutional knowledge of lumber values and applying the value for HTS 4407.10 , "coniferous, other," to pallet wood. The Trade Pacific respondents note that Hongfa made its own pallets and reported the corresponding wood factors. The Trade Pacific respondents argue that the Department is obligated by section 773(c)(1)(B) of the Act and judicial precedent to use the best available information to value the factors of production.[45]

The petitioner did not comment on this issue.

Department's Position:
Certain pallet component costs were inadvertently double-counted as a result of the inclusion of pallet values in the Preliminary Results. The questionnaire response data include the model-specific usage rates for both types of wood that the respondents used for pallets (plywood and "wood"), as well as nails. Accordingly, for these final results, to value pallets, we have incorporated only the values of the individual factors reported as pallet components. Specifically, we have used HTS 4407.10 to value the pallet wood other than plywood consistent with what was done in another case. See Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006) and the accompanying Issues and Decision Memorandum, at comment 8.

[45] Hangzhou Spring Washer Co., Ltd. v. United States, 387 F. Supp. 2d 1236 (CIT 2005) (cited in Trade Pacific Respondents' Case Brief, at 11).

Comment 9: Valuation of Components Supplied by U.S. Customers (Haimeng/Winhere)

The Trade Pacific respondents argue that the manner in which Haimeng and Winhere's free items, ball bearing cups and lug bolts, were applied to the calculation of normal value and the net U.S. price was inconsistent in the Preliminary Results. The Trade Pacific respondents state that the Department included the values for these free items in direct material costs, to which the Department later applied the surrogate financial ratios of overhead, SG&A, and profit, while adding the same values to the U.S. price with no corresponding surrogate financial ratio increase. The Trade Pacific respondents argue that although the Department previously indicated that the respondents incurred overhead, SG&A, and profit while handling, storing, assembling, and delivering the final products, and normal value should reflect these costs, there is no evidence that the respondents earned profit by incorporating these free items. See Final Results of Seventh Administrative Review, 70 FR 69937, and the accompanying Issues and Decision Memorandum, at comment 5.

The Trade Pacific respondents suggest increasing the value of the free items by the surrogate profit ratio and adding this value to the U.S. price, which would offset the increase in normal value from the application of the surrogate profit ratio to the free items. The Trade Pacific respondents request that the Department revise the margin calculation in this manner for both Haimeng and Winhere.

The petitioner did not comment on this issue.

Department's Position:
There is no evidence on the record of these reviews, nor any relevant Department precedent that would justify changing the standard set of financial ratios we apply to all components in calculating normal value. The value of these items, as well as of the services provided by the respondents in connection with storing, assembling and attaching them to rotors, must be a part of the cost of the subject merchandise exported to the United States. Accordingly, the normal value of these items must be included in the normal value we calculate for the subject merchandise, and normal value, pursuant to the statute and regulations, includes the surrogate profit ratio. See section 773(c)(1)(B) of the Tariff Act, and 19 CFR 351.408(c).

Additionally, we note that to allow respondents to achieve a different outcome in their dumping calculations simply by arranging for U.S. customers to pay for certain ordinary component parts separately, with no other reason for distinguishing the components from the subject merchandise, would invite a manipulation of pricing. Therefore, for these final results, the Department has continued to determine the normal value of the subject merchandise on the basis of all the factors of production utilized in producing the merchandise, including the profit ratio.

Comment 10: Bona Fides of New Shipper Sale

The petitioner contends that the Department correctly determined that SZAP's new shipper sale was not bona fide. It argues that SZAP's new shipper sale to the United States was artificially created because the price and quantity of the new shipper sale were abnormal compared to its subsequent sales, sales documentation was re-created and altered by company officials at verification, and because the Department uncovered certain relevant facts at verification

including sales to another export market, unreported suppliers, and unreported production of non-subject merchandise. The petitioner claims that the Department has the discretion to disregard U.S. sales if the Department determines that these sales are not bona fide. Petitioner's Case Brief, at 4 (citing Glycine From The People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd., 69 FR 47405 (August 5, 2004)). In addition, the petitioner argues that the failed verification of SZAP due to the lack of cooperation by the respondent is sufficient grounds to rescind the new shipper review based on the use of FA.

SZAP did not comment on this issue.

Department's Position:
We rescinded the review because of the non-bona fide nature of the sale, and the failure to cooperate in the review. We note that the price and quantity of the new shipper sale were abnormal compared to subsequent sales, that sales documentation was re-created and altered by company officials at verification, and that the Department uncovered significant unreported sales, supplier and production arrangements. See Preliminary Results 71 FR 26736, 26739. Accordingly, we are rescinding the new shipper review of SZAP concurrent with the issuance of these final results.

Comment 11: The Department's Decision to Deny Separate Rates to Certain Respondents

Hengtai
The petitioner maintains that the Department correctly denied a separate rate to Xiangfen Hengtai Brake System Co., Ltd. (Hengtai) in the Preliminary Results, and should continue to deny Hengtai a separate rate in the final results. It states that the Department found indications that SZAP produced brake rotors for Hengtai, and that Hengtai also purchased brake rotors from SZAP, while in its questionnaire responses Hengtai affirmed that it produced all the rotors it sold to the United States. The petitioner also states that Hengtai did not report that SZAP was one of its suppliers of brake rotors during the POR. It also claims that Hengtai, in its questionnaire responses, did not provide information regarding its relationship with SZAP. Petitioner's Case Brief, at 5 (citing Hengtai's Section A response, A-2).

The petitioner claims that since Hengtai did not act to the best of its ability to cooperate with the Department, the Department in such a case is authorized to apply AFA. Petitioner's Case Brief, at 5 (citing Freshwater Crawfish Tail Meat from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 68 FR 19504 (April 21, 2003)), and accompanying Issues and Decision Memorandum, at Comment 3. Therefore, the petitioner argues, the Department should continue to deny a separate rate to Hengtai.

Hengtai did not comment on this issue.

Department's Position:
No change in the facts has emerged on the record of these reviews since the Preliminary Results. Accordingly, for these final results, we have continued to apply adverse facts available to Hengtai, pursuant to sections 776(a) and 776(b) of the Act, because it withheld information in its possession and failed to act to the best of its ability to respond to the Department's questions.

Rotec and Xianjiang

The petitioner argues that since Qingdao Rotec Auto Parts Co., Ltd. ("Rotec") and China National Machinery & Equipment Import & Export (Xianjiang) Corporation ("Xianjiang") did not respond to the Department's quantity and value questionnaire, that the Department should continue to deny Rotec and Xianjiang a separate rate. The petitioner cites 19 U.S.C. § 1677e(b), where the Department may apply AFA if it finds that a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. It also states that the Department may apply AFA to a respondent who fails to submit a questionnaire response. Petitioner's Case Brief, at 6 (citing Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review and Rescission in Part of Administrative Review, 71 FR 14501 (March 22, 2006)). Finally, the petitioner states that the Department should follow its prior practice in the 2003-2004 administrative review,[46] where the Department resorted to AFA because Rotec and Xianjiang failed to respond to their questionnaires.

Neither Rotec nor Xianjiang commented on this issue.

Department's Position:

No change in the facts has emerged on the record of these reviews since the Preliminary Results. Accordingly, for these final results, we have continued to deny Rotec and Xianjiang a separate rate, pursuant to sections 776(a) and 776(b) of the Act.

Huanri

The petitioner argues that the Department correctly denied Huanri a separate rate in the Preliminary Results and should continue to do so for the final results. It contends that since Huanri cancelled verification one day before it was to commence, Huanri demonstrated a lack of cooperation with the Department. The petitioner argues that the Department has applied AFA in prior circumstances where a respondent either did not allow the Department to verify its questionnaire response or prematurely terminated a verification visit.[47] It insists that the Department was correct in denying Huanri a separate rate in the Preliminary Results.

Huanri did not comment on this issue.

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[46] See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (November 18, 2005).

[47] See Petitioner's Brief, at 7 (citing Brake Rotors From the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 64 FR 61581 (November 12, 1999); see also Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order, Partial Preliminary Termination of Circumvention Inquiry, Preliminary Rescission of Scope Inquiry and Extension of Final Determination, 71 FR 9086 (February 22, 2006)).

Department's Position:
No change in the facts has emerged on the record of these reviews since the Preliminary Results. Accordingly, for these final results, we have continued to deny Huanri a separate rate, pursuant to sections 776(a) and 776(b) of the Act.

Comment 12: Ferro-manganese Consumed By Meita

The petitioner maintains that the Department correctly applied AFA to value ferro-manganese attributed to Qingdao Meita Automotive Industry Co., Ltd. (Meita), due to the fact that Meita was unable to substantiate the reported carbon content of its ferro-manganese at verification. The petitioner notes that it is the Department's practice to use partial AFA when a respondent does not provide sufficiently complete information to enable the Department to select the appropriate surrogate value. See Petitioner's Case Brief, at 8 (citing the Statement of Administrative Action (SAA), accompanying the Uruguay Round Agreement Act (URAA), H.R. Doc. No. 103-316 at 870; Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 54897 (September 19, 2005); and Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review, 71 FR 4112 (January 25, 2006).

Meita did not comment on this issue.

Department's Position:
Meita officials provided incorrect information in their certified questionnaire response. Meita officials were expected to answer the questionnaire correctly or at a minimum, report that they were unaware of the carbon content at issue. Accordingly, for these final results, we have continued to apply AFA in calculating the surrogate value of ferro-manganese consumed by Meita. See Preliminary Results, 71 FR 26736, 26744.

Comment 13: Cash Deposit Rate of Xianjiang

The petitioner argues that since Xianjiang did not cooperate with the Department in these reviews, the Department should cancel Xianjiang's benefit of being excluded from the order and cancel its assessment rate of zero for Xianjiang's rotors produced by Zibo Botai Manufacturing Co., Ltd. ("Zibo Botai"). The petitioner argues that all of Xianjiang's exports should be assessed the China-wide rate of 43.32 percent, even when it exports rotors produced by Zibo Botai. The petitioner contends that the Department was incorrect in the Preliminary Results when it stated that both Rotec and Xianjiang/Other than Zibo are not eligible to receive a separate rate and would be subject to the PRC-wide rate, because Xianjiang's rotors produced by companies other than Zibo are already assessed the China-wide rate. The petitioner argues that the draft customs instruction may be misleading because it might lead a U.S. Customs and Border Protection ("CBP") officer to assume that Xianjiang has a rate of zero. See Memorandum to the File from Erin C. Begnal regarding Draft Customs Instructions (May 1, 2006). Therefore, the petitioner argues, the Department should clarify the final cash deposit instructions to CBP by stating that all rotors exported by Xianjiang, regardless of producer, should be assessed the China-wide rate.

Xianjiang did not comment on this issue.

Department's Position:
We will not revoke Xianjiang's exclusion from the order with respect to its exports of rotors produced by Zibo Botai, as this combination is excluded from the order pursuant to section 351.204(e)(1) and thus, not subject to the present administrative review. Moreover, the Department's instructions to CBP follow a format specified by CBP. Unless otherwise instructed by CBP we have no basis for altering the format or for doubting that CBP officers will exercise due care in interpreting instructions pertaining to particular manufacturer/shipper combinations. We will, however, ensure the CBP instructions clearly indicate that Xianjiang/Other than Zibo receive the PRC-wide rate.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of the review and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date