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January 18, 2006

MEMORANDUM TO: David Spooner
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the 12th New Shipper Review of Brake Rotors from the People's Republic of China

SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the new shipper review of brake rotors from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes to Brake Rotors From the People's Republic of China: Preliminary Results of the Twelfth New Shipper Review, 70 FR 56634 (September 28, 2005) ("Preliminary Results").

The specific calculation changes for Laizhou Wally Automobile Co., Ltd. ("Wally") can be found in Analysis for the Final Results of Brake Rotors from the People's Republic of China: Laizhou Wally Automobile Co., Ltd., dated January 18, 2006 ("Wally Final Analysis Memo"). The specific calculation changes for Dixion Brake System (Longkou) Ltd. ("Dixion") can be found in Analysis for the Final Results of Brake Rotors from the People's Republic of China: Dixion Brake System (Longkou) Ltd., dated January 18, 2006 ("Dixion Final Analysis Memo").

We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty new shipper review for which we received comments and rebuttal comments from interested parties:

GENERAL ISSUES:

Comment 1: Valuation of Material Factors of Production
Comment 2: Valuation of Brokerage and Handling
Comment 3: Scrap Offset in Surrogate Financial Ratios

WALLY-SPECIFIC ISSUES:

Comment 4: Wally's Bona Fide Sales

BACKGROUND:

The merchandise covered by the order is brake rotors as described in the "Scope of the Order" section of the Federal Register notice. The period of review ("POR") is April 1, 2004, through September 30, 2004. Prior to the Preliminary Results, the Department conducted sales and factors verifications for Wally and Dixion. See Memorandum to the File, through Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from Kit L. Rudd, Case Analyst, AD/CVD Operations, Office 9, re: Verification of Sales and Factors of Production for Laizhou Wally Automobile Co. Ltd. ("Wally") (September 26, 2005) ("Wally Verification Report"); see also Memorandum to the File, through Alex Villanueva, Program Manager, from Nicole Bankhead, Case Analyst, re: Verification of Sales and Factors of Production for Dixion Brake System (Longkou) Ltd. ("Dixion") (September 26, 2005) ("Dixion Verification Report"). In accordance with section 351.309(c)(ii) and 351.309(d) of the Department of Commerce's (the "Department") regulations, we invited parties to comment on our Preliminary Results. On November 8, 2005, Respondents[1] and Petitioner[2] filed case briefs. On November 14, 2005, Respondents and Petitioner filed rebuttal briefs.

DISCUSSION OF THE ISSUES:

I. Changes from the Preliminary Results

Brokerage and Handling

Based on comments received from parties regarding our Preliminary Results, we have made revisions to the data used for the final results. Specifically, in the Preliminary Results we inadvertently did not inflate the brokerage and handling value for Pidilite Industries Ltd. ("Pidilite"). See Memorandum from Nicole Bankhead, Case Analyst, through Alex Villanueva, Program Manager, Office 9, and James C. Doyle, Office Director, Office 9, to the File, 12th New Shipper Review of Brake Rotors from the People's Republic of China ("PRC"): Surrogate Values for the Preliminary Results, dated September 20, 2005 ("Prelim Factors Memo") at 7 and Exhibit 6. Therefore, for the final results, because Pidilite's U.S. sales listing is from the period October 1, 2002, through September 30, 2003, and the POR in the instant review is April 1, 2004, through September 30, 2004, the Department is inflating Pidilite's brokerage and handling value before averaging it with the Essar Steel ("Essar") brokerage and handling value. See Comment 3 below for further information regarding brokerage and handling; see also

[1] Wally and Dixion are collectively referred to as the "Respondents."

[2] The Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers ("the Coalition") is referred to as the "Petitioner."

Memorandum from Nicole Bankhead, Case Analyst, through Alex Villanueva, Program Manager, Office 9, and James C. Doyle, Office Director, Office 9, to the File, 12th New Shipper Review of Brake Rotors from the People's Republic of China ("PRC"): Surrogate Values for the Final Results, dated January 18, 2006 ("Final Factors Memo") at 2.

Labor

For the Preliminary Results, the Department inadvertently used a surrogate value of $0.93 for labor. See Prelim Factors Memo at 5. Although no parties submitted comments regarding the valuation of labor, for the final results the Department is valuing labor using the current labor wage rate of $0.97 which can be found on the Department's website at: http://ia.ita.doc.gov.

II. General Issues

Comment 1: Valuation of Material Factors of Production

Petitioner argues that for the final results the Department should, as adverse facts available, use the highest values on the record to value the following material inputs: pig iron, ferrosilicon, ferromanganese and limestone. Petitioner states that in response to the Department's initial request for specifications of material inputs, Respondents provided specifications regarding the phosphorous content of the pig iron, carbon and manganese contents of the ferromanganese, and the silicon content of the ferrosilicon inputs. See Wally's April 8, 2005, Supplemental Questionnaire Response at 21 - 23 ("Wally SQR"); see also Dixion's April 8, 2005, Supplemental Questionnaire Response at 22 - 23 ("Dixion SQR"). However, Petitioner contends, despite multiple opportunities via supplemental questionnaire responses and at verification, Respondents never provided any substantiation for these specifications. Petitioner also contends that the Department was unable to verify Wally's statement in its supplemental questionnaire response that the limestone it used in its production process was not limestone flux through additional questionnaire response or at verification. See Wally SQR at 22.

Petitioner notes that pursuant to section 776(a)(2) of the Tariff Act of 1930, as amended (``the Act''), for the Preliminary Results the Department used partial facts available to value pig iron, ferrosilicon, ferromanganese and limestone. Specifically, Petitioner points out that the Department decided to use the highest surrogate values on the record, which were based on import data from the World Trade Atlas and which were provided jointly by Wally and Dixion to value factors of production for both Respondents. See Preliminary Results 70 FR at 56637. However, Petitioner argues that in accordance with section 776(b) of the Act, the Department should apply an adverse inference due to Respondents' failure to cooperate to the best of their ability in substantiating the specifications of the material inputs. Petitioner argues that the Department's long-standing practice in applying adverse facts available is "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action ("SAA"), accompanying the Uruguay Round Agreement Act ("URAA"), H.R. Doc. No. 103-316 at 870; see also 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 accompanying Issues and Decision Memorandum at Comment 8(B) ("HFHT Final"). Petitioner argues that although Respondents may not necessarily have acted in bad faith in their failure to substantiate the specificity of the material inputs, at the same time they did not act to the best of their abilities, which is sufficient justification to utilize adverse facts available, consistent with the HFHT Final. In addition to the HFHT Final, Petitioner argues that the Department has relied on adverse facts available in several other cases in which a respondent failed to substantiate its responses during verification. See Stainless Steel Wire Rods From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 29923 (May 26, 2004), and accompanying Issues and Decision Memorandum at Comment 6 ("SSWR Final"); Porcelain-on-Steel Cooking Ware from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 32757 (June 17, 1997), and accompanying Issues and Decision Memorandum at Comment 6; and Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate From Canada, 66 FR 3543 (January 16, 2001), and accompanying Issues and Decision Memorandum at Comment 4 (where the Department was unable to verify hourly production rates).

As previously stated, Petitioner notes that pursuant to section 776(a)(2) of the Act, for the Preliminary Results, as partial facts available for Respondents, the Department used the highest surrogate values on the record at that time, which were based on import data from the World Trade Atlas and provided jointly by Wally and Dixion, to value pig iron, ferrosilicon, ferromanganese and limestone. See Preliminary Results at 56637. However, Petitioner argues that since the values used for pig iron, ferrosilicon and ferromanganese in the Preliminary Results are no longer the highest on the record, their use for the final results does not constitute adverse facts available.

Petitioner therefore concludes that, for pig iron, the Department should use the Philippine pig iron value from the 2003 United Nations Statistics Division Commodity Trade Statistics Database, as provided by Petitioner, in its October 28, 2005, submission of publicly available information.

In support of its position on pig iron, Petitioner argues that the Department indicated that the Philippines is a legitimate secondary surrogate country in this review, pointing out that the country was the second largest exporter of brake rotors in 2004. See Prelim Factors Memo at 2-3. Petitioner notes that the Department calculated a surrogate value for lubricating oil in this review using import statistics from the Philippines. See Prelim Factors Memo at 3. With regard to the source of the Philippine pig iron value, Petitioner further argues that the United Nations Statistics Division Commodity Trade Statistics Database for 2003 has been used to value factors of production in several other proceedings. See, e.g., Notice of Final Determination of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Romania, 66 FR 49625 (September 28, 2001); Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5; and Initiation of Antidumping Duty Investigation: Silicon Metal From the Russian Federation, 67 FR 15791 (April 3, 2002).

Petitioner contends that pig iron's importance as a major input in the production of brake rotors makes it essential to identify the actual type of pig iron used by Respondents in the production of brake rotors. Petitioner argues that since Respondents failed to provide verifiable information to the Department regarding the type of pig iron used in the production of brake rotors, as adverse facts available, the Department should use Petitioner's Philippine value for alloy pig iron, which is the highest value on the record of this review. If, however, Petitioner argues, the Department declines to use the Philippines value, the Department may alternatively use an average of alloy and non-alloy pig iron as it did in previous brake rotor reviews. See e.g., Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review Factors Memorandum, dated May 8, 2003 at 2. Finally, if the Department declines to use either the Philippine value or the alloy/non-alloy pig iron average value as used in the fifth administrative review, Petitioner suggests that the Department use data consisting of an average of Indian values of pig iron obtained from publicly available sources as provided in Petitioner's October 28, 2005, submission, which is both contemporaneous with the POR and collected from multiple public sources.

With regard to the valuation of ferrosilicon, ferromanganese, and limestone, Petitioner contends that the antidumping statute provides that, when selecting from among the facts available, the Department may rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 of the Act, or any other information on the record. See section 776(b) of the Act. Therefore, for the final results, Petitioner argues that the Department should use the highest value it finds appropriate from any of these sources listed in the statute, provided that the values are higher than the values submitted by Respondents in the preliminary phase of the review.

Respondents argue that the Department should disregard Petitioner's assertions that certain material factor inputs that Wally and Dixion consumed during the POR were unverified, that the Department should use the highest values on the record to calculate all unverified material factors, and that Respondents' lack of cooperation with the Department justifies the application of adverse facts available. Respondents argue that, contrary to Petitioner's assertions, the Department verified the accuracy of all of the factor inputs that Wally and Dixion reported to the Department, including detailed per-unit consumption information used in the calculation of normal value for Wally and Dixion. In addition, Respondents contend that the Department reviewed and collected copies of Wally's most recent laboratory test reports detailing the chemical composition of pig iron, ferromanganese, and ferrosilicon, and confirmed through interviews with Dixion management and staff that the company does not retain laboratory test reports in the ordinary course of business.

Respondents argue that although the Department's verification outlines issued to Wally and Dixion requested that the companies demonstrate how they derived the per-unit raw material consumption figures reported to the Department, the outlines made no mention of the need for the companies to prepare additional support for their reported chemical composition of pig iron, ferromanganese, and ferrosilicon. Respondents state that they recognize the Department's authority to verify additional information not included in the outlines; however, they contend that

Petitioner's claim that Wally and Dixion did not cooperate because they failed to inform the Department of verification difficulties in advance is baseless, given that the verification outlines made no mention of the need to further document the reported chemical composition information.

Respondents argue that the Department determined in the Preliminary Results that only the application of partial facts available was warranted because, as the Department stated, "Respondents acted to the best of their ability, and we have not used an adverse inference, as provided under Section 776(b) of the Act, to value their factors of production." See Preliminary Results, at 56637. Respondents contend that contrary to Petitioner's assertion in its case brief that Wally and Dixion reported to the Department "unverified material factors," the Department completed successful on-site verifications at both companies, and the Department verified all reported factor inputs, including, where documentation was available, the chemical composition of pig iron, ferromanganese, and ferrosilicon.

With regard to the valuation of pig iron for the final results, Respondents argue that the Department should continue to value pig iron using the same source material as it did in the Preliminary Results. Respondents disagree with Petitioner's suggestion that for purposes of the final results, the Department should value the pig iron that Wally and Dixion consumed during the POR using either a Philippine value for alloy pig iron or an average of Indian values of pig iron obtained from publicly available sources provided by Petitioner in its October 28, 2005, submission, since both of these values are comprised whole or in part of alloy pig iron values.

In addition to their argument against the application of AFA above, Respondents contend that the subject merchandise, by definition, cannot be produced using alloy pig iron and Wally and Dixion therefore could not have consumed alloy pig iron to produce gray iron brake rotors. Respondents refer to the Department's antidumping duty order on Brake Rotors from the People's Republic of China, which defines the subject merchandise specifically as "brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms)." 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) ("Brake Rotors Seventh Admin Review"). Respondents contend that Petitioner filed an antidumping action specifically against gray iron castings, not alloy castings, and gray iron castings, by definition, cannot be produced with alloy pig iron. Respondents support their argument by referring to their November 1, 2005, publicly available information submission. In their November 1, 2005, submission, Respondents provided the Department with excerpts from The Making, Shaping and Treating of Steel, Tenth Edition (1985), edited by William T. Lankford, Jr., Norman L. Samways, Robert F. Craven, and Harold E. McGannon ("The Making of Steel"), a textbook on steelmaking technology and processes. Respondents state that this reference specifically differentiates between alloyed castings and gray iron castings, noting that gray iron castings are "grouped according to uses," and include "(1) pipe-foundry castings, (2) sanitary ware, (3) automotive castings, (4) locomotive castings, (5) light machinery, (6) heavy machinery, (7) miscellaneous shapes." See Respondents' November 1, 2005, submission at Exhibit 1. Respondents point out that the textbook identifies

the alloying elements used in the production of alloyed castings as "silicon, nickel, chromium, molybdenum, copper and titanium, in amounts varying from a few tenths to 20 per cent or more." See Id. at Exhibit 1. Respondents therefore conclude that production of subject merchandise by definition cannot be accomplished using alloy pig iron and thus the Department should not use either of the Petitioner's suggested alloy pig iron values for the final results and should continue to value the companies' consumption of pig iron on the same basis as it did in the Preliminary Results.

Respondents argue that for the final results the Department should continue to value ferromanganese and ferrosilicon on the same basis as it did in the Preliminary Results. Respondents state that Wally and Dixion reported in their questionnaire responses the specific chemical composition of the ferromanganese and ferrosilicon consumed in the ordinary course of business. In addition, during the Department's on-site verification at Wally, Wally provided to the Department the company's latest available laboratory reports detailing the chemical composition of various raw material inputs, including ferromanganese and ferrosilicon. Respondents point out that during the Dixion verification, Dixion laboratory personnel described their chemical composition testing procedures for the Department and allowed the Department's verifiers to examine the company's testing laboratory, but confirmed that the company does not maintain laboratory testing reports in the ordinary course of business. Respondents conclude that since both companies acted to the best of their ability in providing the Department with all available documentation and information regarding the chemical composition of ferromanganese and ferrosilicon, for the final results, the Department should continue to value these inputs on the same basis as it did in the Preliminary Results.

Finally, Respondents argue that the Department should continue to value Wally's consumption of limestone on the same basis as it did in the Preliminary Results. Respondents state that in its questionnaire responses submitted to the Department, Wally correctly reported that "the limestone used in the production process was not limestone flux." See Wally SQR at 22. Respondents point out that during the Department's on-site verification, Wally's technical personnel explained that limestone is "introduced into the cupola to act as a 'flux' to draw out impurities." See Wally Verification Report at 24. In addition, Respondents refer to The Making of Steel, which states that "the chief natural basic fluxes are limestone, composed principally of calcium carbonate, and dolomite, composed principally of calcium-magnesium carbonate." See The Making of Steel. Respondents argue that the fact that Wally uses clump limestone as a basic flux in its cupola should not have been misconstrued in the Department's verification report to mean that Wally consumes a raw material called "limestone flux." Wally contends that it reported to the Department in its supplemental questionnaire response that the company does not consume limestone flux but, instead, uses clump limestone as a flux in its manufacturing process and reiterated this statement during the Department's on-site verification. Respondents contend that it appears from the Department's verification report that the Department's verifiers misunderstood the company's explanation that Wally uses clump limestone as a basic flux and that the actual limestone material input is clump limestone, and not a product called "limestone flux." Therefore, Respondents conclude, for the final results, the Department should value Wally's consumption of limestone on the same basis as it did in the Preliminary Results.

Department's Position:

We agree with Petitioner, in part and Respondents, in part. We agree with Respondents that we misunderstood their description of limestone at verification. Therefore, the Department will not apply an adverse inference to Wally's usage of limestone and will continue to value limestone on the same basis as we did in the Preliminary Results.

Second, we agree with the Petitioner and in accordance with section 776(a)(2)(D) of the Act, for the final results, the Department is applying partial adverse facts available to Respondents with regard to the valuation of material inputs pig iron, ferrosilicon, and ferromanganese because both Respondents failed to provide POR contemporaneous documentation supporting the specificity of material inputs that the Department requested at verification.

Section 776(a)(2) of the Act provides that when an interested party (A) withholds information that has been requested by the Department, (B) failed to provide such information in a timely manner or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference to the interests of a party that has failed to cooperate by not acting to the best of its ability in allowing its submitted information to be verified. See e.g., Notice of Final Results of Administrative Review: Ball Bearings and Parts Thereof from France, Germany, Italy, Japan and Singapore, and the United Kingdom ("Ball Bearings") 70 FR 54711, 54711-54712 (September 16, 2005). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep No. 103-316, at 870 (1994)("SAA").

In the Preliminary Results, the Department fully explained its reasons for applying partial facts available with regard to the valuation of Wally and Dixion's material inputs for pig iron, ferromanganese and ferrosilicon and Wally's material input limestone pursuant to section 776(a)(2)(D) of the Act. See Preliminary Results at 56637. The Department asked for, and Wally and Dixion provided, material specifications for material inputs as follows: phosphorous content of pig iron, carbon and manganese content of ferromanganese, and the silicon content of ferrosilicon. See Wally SQR at 21-23; see also Dixion SQR at 22-23. The Department conducted verification of the questionnaire responses of Wally during the period August 15 through 17, 2005, and Dixion from August 18 through August 20, 2005. While at verification, the Department was unable to verify the particular specifications for pig iron, ferromanganese and ferrosilicon, as requested by the Department and provided by Respondents in their questionnaire responses. Specifically, neither Respondent was able to provide POR contemporaneous documentation supporting the particular reported material specifications for pig iron, ferromanganese and ferrosilicon. See Dixion Verification Report at 21-23; see also Wally Verification Report at 19-23.

Section 776(a)(2)(D) of the Act allows the Department to resort to facts otherwise available if requested information is provided but the information cannot be verified. Since the Department

received no comments disputing either Wally or Dixion's failure to provide POR contemporaneous supporting documentation for the specifications for these material inputs,[3] for the final results we will continue to apply partial facts available for the valuation of Wally and Dixion's material inputs pig iron, ferrosilicon and ferromanganese, using the same values from the Preliminary Results as discussed in the Valuation of Inputs section below.

We agree with Petitioner that the application of an adverse inference pursuant to section 776(b) of the Act is appropriate for Wally and Dixion's valuation of pig iron, ferrosilicon and ferromanganese. In applying facts otherwise available, Section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a Respondent if it determines that a party has failed to cooperate to the best of its ability to comply with the Department's request for information. In the instant review, the Department finds that in selecting from among the facts available, an adverse inference is appropriate, as Wally and Dixion failed to cooperate to the best of their ability by failing to provide POR contemporaneous documentation supporting the material specificity of the inputs pig iron, ferrosilicon, and ferromanganese.

We disagree with Respondents' argument that Wally and Dixion cooperated to the best of their ability as a result of Wally and Dixion's questionnaire responses concerning the chemical composition of ferromanganese and ferrosilicon consumed in the normal course of business, Wally's provison at verification of non-POR contemporaneous laboratory reports, and Dixion's description at verification of their laboratory testing procedures. When making an assessment as to a respondent's compliance with the "best of its ability" statutory requirement, Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003) ("Nippon Steel") states:

Before making an adverse inference, Commerce must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information. Compliance with the "best of its ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.

[3]We note that Respondents argue only that both Wally and Dixion provided the Department at verification with all the information they maintain in the companies' normal course of business. Respondents do not assert that they maintain POR contemporaneous documentation; on the contrary, they state only that they provided the Department with all available information pertaining to the specifications of material inputs pig iron, ferromanganese, and ferrosilicon.

By their own admission, both Wally and Dixion had the ability to maintain complete records documenting the material specificity of the inputs through their laboratory facilities, yet they chose not to do so. Specifically, Wally company officials stated that they conduct chemical analyses on material inputs as they are received, but they discard these reports upon consumption of the respective input. See Wally Verification Report at 19-22. Dixion company officials stated that although they conduct material testing of inputs at their company laboratory, they do not maintain records of these tests. See Dixion Verification Report at 21. Therefore, in accordance with the "best of its ability" standard as developed in Nippon Steel, the Department finds that both Wally and Dixion failed to take reasonable steps to keep and maintain records documenting the specificity of material inputs and therefore an adverse inference is appropriate for valuation of Respondents' material inputs pig iron, ferromanganese and ferrosilicon.

With regard to the use of an adverse inference, Departmental practice is to use partial adverse facts available, as opposed to total adverse facts available, where the Respondent has only failed to comply in one respect. In Ferro Union, Inc. v. United States, 74 F. Supp. 22d 1289, 1297 (CIT 1999), the Department applied partial adverse facts available by using Saha Thai's own information and retained two companies' sales information in the home market sales database and assigned the companies the highest net price by product control number. The court recognized that such practice "furthers the purpose by achieving a reliable and accurate margin, because it recognizes that Saha Thai only failed to provide information in one report... {and that} Commerce also preserve an adverse consequence for Saha Thai's failure to provide information on these home market resellers." In the instant review, we find that the use of partial adverse facts available is appropriate as its application not only achieves a reliable and accurate margin but it also preserves an adverse consequence for Wally and Dixion for their failure to provide requested information in this particular instance.

Valuation of Ferromanganese and Ferrosilicon

As noted above, because Wally and Dixion both failed to provide POR contemporaneous documentation supporting the material specificity of certain inputs, the Department is applying an adverse inference to the valuation of these inputs. This issue presents the Department with unusual circumstances requiring an initial brief review of adverse inferences with respect to unverified input quality claims. Typically, when a respondent is unable to support a claimed quality, the respondent has claimed their input is of the lowest possible quality, and therefore must be assigned the lowest possible surrogate value. In such instances, the Department makes an adverse inference with respect to the quality of the input. After having made the quality inference, the Department proceeds with its normal valuation. See Shandong Huarong Machinery Co. V. U.S., Not Reported in F.Supp. 2d, 2005 WL 1105110 (CIT) at 6 ("Shandong v. U.S.") (Respondent submitted no evidence concerning the quality of a material input during the POR and the Department was therefore entitled to rely upon the best available information).

In this case, Respondents were unable to support record statements regarding their input qualities, and, upon consideration of the comments, the Department accordingly considers that, consistent with past practice, it must make an adverse inference as to the quality of the inputs at issue. Having done so, however, the Department will continue to apply past practice and select

the best value for the adversely selected quality level. The best value, as discussed below, is the value used at the Preliminary Results. The Department is aware that as this result is the same as the Preliminary Results, it may not appear, therefore, that an adverse inference was used. However, we are applying an adverse inference by assigning the higher quality to the inputs at issue.

We disagree with Petitioner's argument that the Department should select the highest value from the petition, the underlying investigation, final determination, any previous administrative review conducted under section 751 of the Act, or any other information on the record to value material inputs ferromanganese and ferrosilicon as adverse facts available pursuant to section 776(b) of the Act. Although the statutory option to select values from the petition, investigation, previous administrative reviews or other information on the record is applicable, we note that neither Petitioner nor Respondents placed any values from previous segments of the underlying proceeding on the record of the instant review. Thus, as stated above, we are relying on the information available on the record as this information is adverse in this case. See, e.g., NSK LTD. and NSK Corporation, et al., Plaintiffs, v. United States, 346 F. Supp. 2d 1312 (CIT 2004) ("NSK") (it was within the Department's discretion to use any information to support its adverse inference, and the Department chose information that NTN itself had reported); see also Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China, 69 FR 34130 (June 18, 2004) ("THFA") (In estimating ZHC's monthly consumption of the self-produced hydrogen, steam, electricity, and catalyst during the POI, the Department selected other information placed on the record in accordance with section 776(b)(4), which we found to be the most relevant data available from the POI).

Valuation of Pig Iron

As noted above, because Wally and Dixion both failed to provide POR contemporaneous documentation supporting the material specificity of input pig iron, the Department is applying an adverse inference to the valuation of this input. Because Respondents were unable to support record statements regarding their pig iron input quality, in accordance with the discussion above regarding Departmental practice in instances where a Respondent makes an unsupportable input quality claim, the Department accordingly considers that, consistent with past practice and based on the comments received, it must make an adverse inference as to the quality of the pig iron input. Having done so, however, the Department will continue to apply past practice and select the best value for the adversely selected quality level. See Shandong v. U.S. at 6. The best value, as discussed below, is the value used at the Preliminary Results. The Department is aware that as this result is the same as the Preliminary Results, it may not appear, as a result, that an adverse inference was used. However, the Department is applying an adverse inference being applied in that the Department is assigning the higher quality to the inputs at issue.
With regard to Petitioner's argument that for the final results, pursuant to section 776(b) of the Act, the Department should, as adverse facts available, select the highest value from the petition, the underlying investigation, final determination, any previous administrative review conducted under section 751 of the Act, or any other information on the record to value material input pig iron, we disagree. Although the statutory option to select values from the petition, investigation, previous administrative reviews or other information on the record is applicable, we note that

neither Petitioner nor Respondents placed any applicable values from previous segments of the underlying proceeding on the record of the instant review. Thus, as stated above, we are relying on the information available on the record as this information is sufficiently adverse in this case. See, e.g., NSK; see also THFA.

Petitioner's Suggested Pig Iron Values

With regard to Petitioner's suggested surrogate values for pig iron, we disagree with Petitioner's argument that the Department should use the Philippine alloy pig iron surrogate value contained in Petitioner's October 28, 2005, submission. Departmental practice in NME cases is to rely, to the extent possible, on public, published statistics from the first choice surrogate country to value any factors for which such information is available. See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992) at Comment 4 ("Fittings From China Final"). Pursuant to Departmental practice as set forth in Fittings From China Final, in the Prelim Factors Memo, the Department stated that it used data from India, our primary surrogate country, to value inputs. However, in instances where no Indian import statistics were available, we used Philippine import statistics to value inputs. See Prelim Factors Memo at 2. For the Preliminary Results, the Department used input values from the Philippines for lubricating oil only because data from India included imports solely from "unspecified" countries. See Prelim Factors Memo at 4. In the case of pig iron input valuation, POR contemporaneous publicly available Indian values were available and were used. Therefore, in accordance with Departmental practice set forth in Fittings From China Final and the Prelim Factors Memo, we find that the use of Petitioner's Philippine pig iron value is not appropriate in this case given that representative Indian values submitted by Respondents are on the record, and we have not used this value for the final results.

We also disagree with Petitioner's suggestion that the Department consider using an average of Indian pig iron values from publicly available sources provided by Petitioner in its October 28, 2005, submission. Section 351.408(c)(1) of the Department's regulations states, "the Secretary normally will use publicly available information to value factors." Beyond the regulatory requirement to utilize publicly available information sources, the Department has further defined its practice and preference for publicly available information. In Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004), and accompanying Issues and Decision Memorandum at Comment 1 ("China Shrimp I&D Memo") the Department referenced its March 1, 2004, policy bulletin[4] regarding the NME surrogate country selection process which states "in assessing data and data sources, it is the Department's stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data." With regard to the average pig iron value

[4] See Import Administration Policy Bulletin, No. 04.1, "Non-Market Economy Surrogate Country Selection Process," dated March 1, 2004 (available at http://ia.ita.doc.gov).

provided by Petitioner, we note that although three of the four individual source articles used to collect values were published during the POR, these values represent single "snapshot" prices during a given week or month and are not period-wide price averages, which is the Department's preference as stated in the policy bulletin. Further, the Department notes that none of the sources provide any information regarding the specificity of the input. Specifically, we note that the input is identified only as "pig iron" with no further information regarding its chemical composition. Finally, none of the sources for the pig iron values confirm whether the values are net of taxes and/or import duties. Therefore, for the reasons stated above, for the final results, the Department is not using the average of Indian pig iron values from publicly available sources provided by Petitioner in its October 28, 2005, submission to value pig iron.

We also disagree with Petitioner's suggestion that the Department use an average of alloy and non-alloy pig iron values as utilized in Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review, 68 FR 25861 (May 14, 2003), and accompanying Issues and Decision Memorandum at Comment 4 ("Fifth Admin Review I&D Memo"). We note that the scope of the antidumping duty order specifically defines the subject merchandise as "brake rotors made of gray cast iron." See Brake Rotors Seventh Admin Review." Further, we note that Respondents' November 1, 2005, submission excerpts from The Making of Steel specifically identify automotive castings as gray iron castings rather than alloy castings. See Respondent's November 1, 2005, submission at Exhibit 1. Therefore, we agree with Respondents' conclusion that, pursuant to the antidumping duty order scope and record evidence in their November 1, 2005, submission, brake rotors by definition cannot be produced using alloy pig iron. Thus, for the final results, the Department will not use an average of alloy and non-alloy surrogate values for pig iron as utilized in the fifth administrative review.

For the reasons discussed above, the Department is not considering Petitioner's suggested alternative surrogate values for pig iron. Therefore, consistent with past practice, the Department is making an adverse inference as to the quality of the pig iron input and selecting the best value for the adversely selected quality level. Thus, for the final results, as partial adverse facts available, the Department is valuing Respondents' pig iron input using the value from the Preliminary Results.

Comment 2: Valuation of Brokerage and Handling

Respondents argue that the Department should value brokerage and handling using only data that is contemporaneous with the POR. According to Respondents, it is the Department's practice to consider the contemporaneity of the available values when selecting surrogate values. See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Administrative Review 70 FR 54007, 54011 (September 13, 2005). Respondents note that in the Preliminary Results the Department used a simple average of the publicly summarized versions of the average values for brokerage and handling expenses reported in Essar's U.S. sales listing for the period December 1, 2003, through November 30, 2004, and Pidilite's U.S. sales listing for the period October 1, 2002, through September 30, 2003. Respondents contend that because the data available from Essar overlaps with the POR in this

new shipper review, while the data from Pidilite is from a period up to a year and a half before the POR, the Department should only use Essar's contemporaneous data to value brokerage and handling.

Respondents further argue that, should the Department continue to use Pidilite's pre-POR data, it should calculate a weighted-average surrogate value, not a simple average. According to Respondents, the Department calculated weight-averaged surrogate values to value material inputs such as pig iron, steel scrap, ferrosilicon, etc. See Prelim Factors Memo at 2. Respondents argue that the Department should value brokerage and handling using the same methodology, i.e., weight averaging, used to value other surrogate values.

Respondents also state that, should the Department use brokerage and handling data from Pidilite, it should exclude the brokerage cost incurred on Pidilite's one sale of 23 kilograms. See Respondents' November 8, 2005, Brief at Exhibit 1, Obs 15. According to Respondents, the expense is aberrational because the per-kilogram cost incurred on this one sale is almost 1000% higher than any of Pidilite's other sales and over 19,000% higher than the Exhibit 1 calculated weight-average brokerage and handling surrogate value of 0.1961 rupees per kilogram.

In its rebuttal brief, Petitioner argues that the Department correctly valued brokerage and handling in the Preliminary Results. Petitioner contends that the Department's preference in selecting surrogate values is to use a range of prices. See Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 28274 (May 17, 2005) ("Helical Washers"), and accompanying Issues and Decision Memorandum at Comment 2 (the Department stated that the use of a range of prices is a goal in the selection of surrogate values); see also Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 53347 (September 10, 2003) and accompanying Issues and Decision Memorandum at Comment 5.

Petitioner notes that the value Respondents proposed to disregard is fairly recent, less than two years before the POR, and thus not significantly outdated. According to Petitioner, the Department ruled in Helical Washers that surrogate values that were a decade old were considered significantly outdated, while values that were approximately two years outside the POR were contemporaneous enough to be used. Therefore, Petitioner contends that the Pidilite brokerage and handling value is sufficiently contemporaneous with the POR and that inflating the value made it representative of the POR.

Petitioner argues that there is insufficient information on the record to support Respondents' claim that the cost of one of Pidilite's sales is abberational. Petitioner cites to a recent decision from Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005) ("Glycine"), and accompanying Issues and Decision Memorandum at Comment 1 (the Department ruled that a value was not conclusively aberrational even when it found extreme differences in quantity and value arising from the same source of data). Petitioners note that the Department indicated that it did not have sufficient information to conclude that the value was indeed aberrational. Id.

Petitioner further notes that in the recent preliminary results of the administrative review of freshwater crawfish tail meat from China, the Department used the exact same methodology and source values to calculate brokerage and handling. See Freshwater Crawfish from the People's Republic of China: Preliminary Results of Antidumping Duty Administration Review, 70 FR 58672, 58678 (October 7, 2005) ("Crawfish"). Specifically, Petitioner argues that in Crawfish the Department calculated brokerage and handling using a simple average of the Essar and Pidilite data.

Department's Position:

We agree with Petitioners, and for the final results the Department will continue to value brokerage and handling using a simple average of the Essar and Pidilite data. In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. See, e.g., Glycine, 70 FR 47176; see also Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6 ("Garlic Decision Memo"). Stated differently, the Department attempts to find the most representative and least distortive market-based value in the surrogate country. See Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. The Department prefers to rely on publicly available data. See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001) and accompanying Issues and Decision Memorandum at Comment 2.

The Department agrees with Respondents' statement that Essar's brokerage and handling value is the most contemporaneous value on the record in the instant review because it overlaps with the POR. However, as noted in the Garlic Decision Memo, the Department must also consider the quality and specificity of the source information when selecting surrogate values. The Department finds that when considering the quality and specificity of the data on the record, e.g., Essar and Pidilite's brokerage and handling values, calculating an average of the two values results in the most appropriate value on the record in this case. The Department's preference would be to use an Indian brokerage and handling value specific to brake rotors. However, since there are no brake rotor specific brokerage and handling values on the record, the Department finds that using a simple average of Essar and Pidilite's values achieves the most representative value. Respondents provided no basis to select Essar's brokerage and handling value over Pidilite's value besides contemporaneity. However, the Department notes that, as recently articulated by the U.S. Court of International Trade, data that is one and a half years prior to the period, as is the case with the Pidilite value from the period October 1, 2002, through September 30, 2003, is not distant enough for it to be disqualified for use. 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) ("Hebei Metals") ("[t]hree months of contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI"). Therefore, in accordance with Hebei Metals, the Department finds that Pidilite's data is sufficiently contemporaneous and should not be excluded from consideration on that basis.

The Department disagrees with Respondents' argument that it should weight average its calculation of brokerage and handling since it used weight averaging to value other inputs as identified in the Prelim Factors Memo. As an initial matter, the Department finds that applying a simple average to the brokerage and handling values results in the most appropriate average value. See Rhodia, Inc. v. United States, 185 F.Supp.2d 1343, 1350 (CIT 2001) ("Rhodia") ("The general practice of Commerce [in calculating surrogate values] is to apply a simple average. In order to depart from this practice, Commerce needs to 'explain the reasons for its departure.'"); see also Zhejiang Native Produce & Animal By-Products Import & Export Corp.et al., v. United States, 2004 Ct. Intl. Trade LEXIS 108; Slip Op. 2004-109 (August 26, 2004). Weight averaging the Essar and Pidilite values would imply that the experience of larger Indian producers is more representative of Chinese producers than smaller Indian producers. See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026, 19039 (Apr. 30, 1996) ("Bicycles"). Contrary to Respondent's argument, the Department calculated surrogate values using weight averaging only for material input steel scrap and packing material steel strap. See Prelim Factors Memo at 4-7. Further, we note that in calculating weighted average surrogate values for steel scrap and steel strap, we used publicly available import prices reported in the Monthly Statistics of Foreign Trade of India for the POR, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India. See Prelim Factors Memo at 2. Unlike the case with the Essar and Pidilite surrogate values, where weight averaging two company-specific values implies that the experience of larger Indian producers are more representative of Chinese producers than smaller Indian producers, weight averaging the valuation of steel scrap and steel strap using Indian Import Statistics yields a more representative value due to the broad-based, industry wide nature of the Indian Import Statistics data and the lack of a single, definitive value that fully describes these inputs.

The Department further disagrees with Respondents' argument that it should exclude a certain brokerage and handling cost incurred by Pidilite. Respondents provided no supporting documentation to support their claim that one of Pidilite's brokerage and handling charges was abberational and the Department has stated previously that it cannot conclusively determine that a value is aberrational even when there are extreme differences in quantity and value. See Glycine, 70 FR 47176. Additionally, the Department notes that the values reported by Essar and Pidilite are the actual prices paid by market economy companies and are representative of their normal business practices.

Therefore, in accordance with Department practice and section 773(c)(1) of the Act, the Department will value brokerage handling charges based on a simple average of the Essar and Pidilite values it used in the Preliminary Results.

Comment 3: Scrap Offset in Surrogate Financial Ratios

Respondents made two arguments regarding the Department's treatment of scrap offset in the Preliminary Results. First, Respondents contend that the Department typically accounts for revenue from by-products only after surrogate ratios and packing have been added to the total COM. Second, Respondents argue that in the Preliminary Results, the Department incorrectly applied a scrap offset to the costs of manufacture ("COM") of two of the surrogate financial ratio companies, Kalyani Brakes Limited ("Kalyani") and Mando Brake Systems India Limited ("Mando"). Furthermore, Respondents argue, since they reported no such offsets in their data, the surrogate financial ratios should not be subject to an offset for scrap revenue. See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative; Final Results of the Eleventh New Shipper Review, ("Brake Rotors 7th AR/ 11th NSR Final") 70 FR 69937 (November 18, 2005), and accompanying Issues and Decision Memorandum at Comment 4.

Petitioner did not comment on this issue.

Department's Position:

At the outset, we note that in the Preliminary Results, the Department set the by-product value to zero and therefore, Respondents' argument that the Department typically accounts for revenue from by-products only after surrogate ratios and packing have been added to the total COM is moot. See Brake Rotors from the People's Republic of China: Dixion Brake System (Longkou) Ltd. Analysis for the Preliminary Results of the New Shipper Review ("Dixion Prelim Analysis Memo"), dated September 20, 2005, at 6; see also Brake Rotors from the People's Republic of China: Laizhou Wally Automobile Co., Ltd. Analysis for the Preliminary Results of the New Shipper Review, dated September 20, 2005, ("Wally Prelim Analysis Memo") at 6.

When the Department calculated the financial ratios for the Preliminary Results, we deducted scrap sales from the total value of raw materials. See Prelim Factors Memo at 8 and Exhibits 7, 8, and 9. The Department notes that neither Respondent reported selling their scrap by-product during the POR, however, both Respondents did reuse the scrap they generated during the production of subject merchandise. See Dixion Verification Report at 15, 18; see also Dixion Questionnaire Response dated January 21, 2005, at 47 and 51; Wally Verification Report at 17; Wally Questionnaire Response dated January 21, 2005, at 47, 48 and 52.

The Department first notes that the process of constructing foreign market value for a producer in a nonmarket economy country is difficult and necessarily imprecise. See Sigma Corp. v. United States, 117 F.3d 1401, 1407 (Fed. Cir. 1997). While Section 773(c) of the Act provides guidelines to assist the Department in this process, this section also accords the Department wide discretion in the valuation of factors of production in the application of those guidelines. See Lasko Metal Prods., Inc. v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994) (citing Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1983), and Suramerica de Aleaciones Laminadas, C.A. v. United States, 966 F.2d 660, 665 (Fed. Cir. 1992)). The statute does not require the Department to value each

individual element in a non-market economy case. As the Court of International Trade noted, the Department is not required to do an item-by-item analysis in calculating factory overhead. See Magnesium Corp. of Am. v. United States, 938 F. Supp. 885, 897 (CIT 1996) (where the court held that the Department followed the requirements of the statute by relying on publicly available information of factory overhead costs of a Brazilian silicomanganese producer. As factory overhead is composed of many different elements, the cost for individual items may depend largely on the accounting method used by the particular factory.) Given these uncertainties, the broad statutory mandate directing the Department to use, "to the extent possible," the prices or costs of factors of production in a comparable market economy country does not require item-by-item accounting for factory overhead. Id.; see also Nation Ford Chemical Company v. United States, 166 F. Supp. 3d 1373 (CIT 1999). In addition, because the scrap offsets are an aspect of each surrogate company's home market standard sales expense their inclusion is consistent with the Department's past practice. See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 70 FR 38873 (July 6, 2005) and accompanying Decision Memorandum at Comment 3. Therefore, the Department finds that adjusting the financial ratios to adjust for scrap offsets in the surrogate financial ratios in the instant review is unwarranted.

Moreover, the Department notes that in accordance with section 351.413 of the Department's Regulations, adjusting the financial ratios as requested by Respondents is an insignificant adjustment because the ad valorem effect on normal value is less than .33 percent. Accordingly, for the final results, we are using the same financial ratios that were used in the Preliminary Results.

Comment 4: Wally's Bona Fide Sales

Petitioner argues that Wally's sales of two identical brake rotor models to the same customer but to two different export markets (Canada and the United States) at significantly different prices and quantities indicates that Wally's sales were not bona fide, and the Department should therefore rescind the new shipper review for Wally. See Wally's Questionnaire Response dated January 21, 2005, at Exhibit 1. Petitioner points out that these sales are for the same product to the same purchaser. Petitioner argues that the United States and Canadian automotive markets are almost identical and have been treated as one integrated market under the U.S./Canadian Automotive Agreement, which has been succeeded by NAFTA. Petitioner also contends that Respondents provided no information to the Department on significant differences in the products or their uses in the two markets which might explain the price disparity. Finally, Petitioner argues that the proximity of the average value of brake rotors imported from China into the United during the POR to the price of brake rotors sold by Wally to Canada, coupled with the average value of Canadian brake rotors imported into the United States during 2004 as reported by the Bureau of the Census also indicate that brake rotors in the Canadian market are much more expensive than in the U.S. market, thus casting further doubt on the bona fide nature of Wally's U.S. sales.

Petitioner notes that Wally stated in its questionnaire response that its sales to the United States were shipped directly from the factory to the seaport and that it did not incur any international

freight costs for such sales. See Wally's January 21, 2005, questionnaire response at 30-34. Petitioner then argues that the plausibility of Wally's contention that sales quantities do not affect unit prices for low container shipments is not supported when Wally's invoices of sales to Canada are compared to its U.S. sales invoices. Based on the above arguments, Petitioner concludes that there are no reasonable commercial explanations for the U.S. and Canadian price difference and the disparity is a strong indication that Wally's sales to the United States were artificially priced to obtain a zero antidumping margin.

Petitioner argues that the Bona Fide Nature of the Sale in the New Shipper Review of Laizhou Wally Automobile Co., Ltd. dated September 20, 2005 ("Wally Bona Fide Memo") does not address the issue of U.S. and Canadian sales of brake rotors to the same U.S. customer; on the contrary, Petitioner argues, it only compares Wally's sales to the United States to other U.S. imports from China during the POR. Petitioner notes that the Wally Bona Fide Memo conclusion that Wally's sales to the United States were within the normal range when compared to all U.S. imports from China during the POR and are thus bona fide in nature is not a complete or most appropriate analysis to utilize when deciding the bona fide nature of Wally's sales.

Petitioner contends that a more appropriate analysis is a comparison of Wally's own sales to the same customer of the same brake rotor model in the U.S. and Canada. Petitioner argues that in evaluating whether or not a sale in a new shipper review is commercially reasonable, and therefore bona fide, the Department has previously considered factors such as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and, (5) whether the transaction was at an arms-length basis. See Notice of Rescission of Antidumping Duty New Shipper Review: Honey from the People's Republic of China , 70 FR 59031 (October 11, 2005) ("Honey from China"). Petitioner notes that in Honey from China, the Department stated it analyzed the bona fide nature of sales on a number of other factors in other proceedings relating to the commercial realities surrounding the sale of subject merchandise, including price and quantity. See Id. Based on an analysis of factors as cited in Honey from China, Petitioner requests that the Department follow its prior practice as established in Notice of Preliminary Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy, 70 FR 9921 (March 1, 2005), and accompanying Issues and Decision Memorandum ("Pasta from Italy Prelim"), citing Chang Tieh Industry Co., Ltd. v. United States, 840 F. Supp. 141,146 (CIT 1993) and Windmill International PTE., Ltd. v. United States, 193 F. Supp. 2d 1303, 1307 (CIT 2002). Petitioner therefore requests that the Department disregard Wally's U.S. sales because the sales prices possess components of distorted sales when compared with prices of the same product to the same purchaser at lower quantities. Thus, Petitioner states that the Department, for the final results, should rescind the new shipper review for Wally.

Respondents disagree that Wally's POR rotor shipments to the United States were not bona fide sales simply because Wally sold some of the same rotor models to Canada at prices different than to the U.S. market, and they argue that for the final results that the Department should reaffirm its preliminary determination that Wally's sales were bona fide. Respondents contend that antidumping proceedings have an effect on price levels, and in response, companies adjust pricing in order not to sell at dumped prices. Respondents argue this is the case with the U.S.

brake rotor market, where there is an antidumping duty order, and the Canadian brake rotor market, where there is not. Respondents argue that although a U.S. importer of Chinese brake rotors may have to pay more for a particular brake rotor model, it also can resell that model at a higher price in the United States. In the case of Canada, Respondents argue that an importer might pay less for the same rotor model, but it cannot resell the rotor at the higher U.S. market price and further, Chinese producers that export brake rotors to the United States have to compete in Canada not only with Canadian, U.S., and third-country suppliers, but also with the other Chinese producers that choose not to export to the United States. Therefore, Respondents conclude that the lack of an antidumping duty order on brake rotors in Canada, along with increased competition in the brake rotors market, result in a lower price for the same brake rotor model.

Respondents rebut Petitioner's claim that for Wally's U.S. brake rotors sales to be considered bona fide they must be made at the same level as their Canadian sales by comparing Wally's brake rotor sales price to Canada and the normal value calculated by the Department for the same model in the Preliminary Results. Respondents argue that if the Department were to accept Petitioner's argument that Wally's U.S. sales could not be considered bona fide unless they were made at the same level as Wally's Canadian sales, Wally's U.S. sales would have to be made at less than normal value. Respondents conclude that since Petitioner has provided the Department with no reason to adopt an approach that runs counter to Departmental practice, the Department should reject this argument.

Respondents also reject Petitioner's argument concerning the correlation of brake rotor quantities sold by Wally to the United States to their sales price. Respondents contend that an examination of its POR sales of all brake rotor models indicates that price is related to weight, e.g., the heavier a rotor is, the higher its unit price. Therefore, Respondents conclude there is no correlation to the rotor price per kilogram and the quantity sold and a sales comparison of individual rotor models is not indicative of the commercial reasonableness of a sale.

Respondents reiterate that the comparison of quantity and average unit value of Wally's shipments to the United States to those of other imports from China as contained in the Wally Bona Fide Memo indicates these sales are commercially reasonable. In addition, Respondents note that Wally was paid in a timely manner by its Unites States customer for the sales in question. Therefore, based on the standard analysis contained in the Wally Bona Fide Memo and the totality of the facts, Respondents conclude that Wally's sales are bona fide.

Department's Position:

We disagree with Petitioner that Wally's sales are not bona fide and therefore we are not rescinding the new shipper review for Wally. First, the Department notes that Wally's sales were purchased by the same U.S. customer, although delivered directly to two separate countries (United States and Canada). As noted by Petitioner, in Honey from China, the Department stated that, in evaluating whether or not a single sale in a new shipper review is commercially reasonable, and therefore bona fide, we consider, inter alia, such factors as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the

goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis. See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246, 1250 (CIT 2005) ("Tianjin Tiancheng"), citing Am. Silicon Techs. v. United States, 110 F. Supp. 2d 992, 995 (CIT 2000). However, the analysis is not limited to these factors alone. The Department examines a number of factors, all of which may speak to the commercial realities surrounding the sale of subject merchandise. While some bona fide issues may share commonalities across various Department cases, each one is company-specific and may vary with the facts surrounding each sale. See Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 2. The weight given to each factor investigated will depend on the circumstances surrounding the sale. See Tianjin Tiancheng, 366 F. Supp. 2d at 1246.

Based on the record evidence in this proceeding, we have concluded that the U.S. sales at issue are bona fide. Specifically, when examining the factors enumerated in Honey From China in the context of this proceeding, we find that (1) Wally was paid for its U.S. sales in a timely manner; (2) the net price of Wally's U.S. sales were similar to the average unit value ("AUV") of U.S. imports of comparable brake rotors from the PRC during the POR; and (3) the sales transactions were made at arms length with Wally's unaffiliated U.S. customer. See Wally Bona Fide Memo at 2. Further, as noted in Pasta from Italy Prelim, the Department will typically look at the totality of circumstances surrounding a sale rather than a single circumstance, barring a clearly aberrational fact pattern, which we do not see in this case. Even if we were to consider petitioners' arguments regarding Wally's sales to Canada, a thorough examination of the circumstances surrounding Wally's U.S. sales indicates that Wally's U.S. sales are bona fide. While pricing differences between Wally's U.S. and Canadian sales can be observed, the primary focus of the bona fide analysis is the relationship between the new shipper's sales and other sales of the same merchandise in the U.S. market by others. Therefore, for the final results, we find Wally's sales to be bona fide and we will not rescind the new shipper review with regard to Wally. See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review, 67 FR 11283 (March 13, 2002), and accompanying Clipper Decision Memo; see also Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran, 68 FR 353 (January 3, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

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 review and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____
David Spooner
Assistant Secretary
for Import Administration

_____
Date