

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 2005-2006
Administrative and New Shipper Reviews of the Antidumping
Duty Order on Brake Rotors From the People's Republic of China

Summary

We have analyzed the May 2007 case and rebuttal briefs submitted by interested parties in the 2005-2006 administrative and new shipper reviews of the antidumping duty order on brake rotors from the People's Republic of China ("PRC"). The period of review ("POR") is April 1, 2005, through March 31, 2006. As a result of our analysis, we have made certain changes in the margin calculations for the new shipper and the three selected respondents in the administrative review, as well as the weighted-average margin calculation for the non-selected respondents eligible for a separate rate. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the list of the issues for which we received comments and rebuttal comments by parties in these reviews, as well as additional ministerial errors that we have discovered in the course of our analysis of the calculations in Brake Rotors from the People's Republic of China: Preliminary Results of the 2005-2006 Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review, 72 FR 7405 (February 15, 2007) ("Preliminary Results").

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Discussion of the Issues

Comment 1: Valuation of Pig Iron

Laizhou Auto Brake Equipment Company (“LABEC”), Yantai Winhere Auto-Part Manufacturing Co., Ltd. (“Winhere”), Longkou Haimeng Machinery Co., Ltd., Laizhou Luqi Machinery Co., Ltd. (“Luqi”), Laizhou Hongda Auto Replacement Co., Ltd. (“Hongda”), and Qindgdao Meita Automotive Industry Co., Ltd. (collectively, “the Trade Pacific respondents”) argue that the Department of Commerce (“Department”) should select a surrogate value for pig iron that is more representative of the cost of pig iron in India during the POR, and more representative of the pig iron used by respondents to produce subject merchandise, than the World Trade Atlas (“WTA”) Indian import statistics value that the Department used in the Preliminary Results. The Trade Pacific respondents argue that the 4,381 metric tons (“MT”) of pig iron imported from seven countries¹ during the POR is not a commercially significant quantity. According to the Trade Pacific respondents, the Department has long preferred surrogate data that are (1) non-export average values; (2) contemporaneous with the period being examined; (3) product-specific; and (4) tax-exclusive.² Instead of using the Indian import statistics value, the Trade Pacific respondents argue that the Department should use the values for pig iron as disclosed in the year ending March 31, 2006, audited financial statement of the Steel Authority of India Limited (“SAIL”).³ The Trade Pacific respondents state that SAIL sold 404,418 MT of pig iron during the POR, or 283 times the quantity corresponding to the WTA Indian import value. The Trade Pacific respondents assert that the average POR price of pig iron in India, as reflected by the experience of SAIL, is 12.32 rupees per kilogram (“Rs/kg”) (as opposed to the average import value from WTA of 18.91 Rs/kg).

According to the Trade Pacific respondents, the pig iron imported into India under Harmonized Tariff System (“HTS”) classification 7201.10.00 used by the Department in the Preliminary Results is mostly specialty metal that would not have been used by respondents in the production of subject merchandise. To support this contention, the Trade Pacific respondents point to

¹ The seven countries are South Africa, Egypt, Malaysia, Iran, Russia, Germany, and the United States.

² The Trade Pacific respondents cite Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From China, 61 FR 19026, 19030 (April 30, 1996) (“Bicycles”).

³ See Letter from the Trade Pacific respondents regarding “Brake Rotors from the People’s Republic of China: Publicly Available Information for Surrogate Values,” dated September 14, 2007.

Infodrive India (“Infodrive”) information that they submitted to the record,⁴ which provides line-by-line data on the precise goods listed under HTS 7201.1000.⁵ The Trade Pacific respondents contend that, for the import data relating to pig iron, the Infodrive quantities for each country during the POR are nearly identical to the WTA quantities. The Trade Pacific respondents argue that Infodrive data for HTS 7201.10.00 for the POR show that imports from South Africa during the POR were of specialty metal (i.e., Sorelmetal) used to produce ductile iron casting. The Trade Pacific respondents claim that Sorelmetal is a high purity iron produced at only two metallurgical facilities in the world – one in Canada and one in South Africa. According to the Trade Pacific respondents, Infodrive information shows that all imports from South Africa imported into India during the POR are Sorelmetal, and they cite to information on the website of the producers of Sorelmetal to demonstrate that this material is used to produce ductile iron castings, a product they contend to be different from the gray iron castings used to produce brake rotors. Therefore, the Trade Pacific respondents argue that Indian imports of pig iron from South Africa must be disregarded in the surrogate value calculation for pig iron because they are not representative of the pig iron used by respondents to produce subject merchandise.

The Trade Pacific respondents argue that the Department should rely on Indian import statistics only 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, 2005 WL 3555812, Slip Op. 05-57 at 43 (C.I.T. Dec. 13, 2005) (“Polyethylene”) (citing Shanghai Foreign Trade Enter. Co. v. United States, 318 F. Supp. 2d 1339, 1352- 53 (C.I.T. 2004) (“Shanghai Foreign Trade”). In these cases, the Trade Pacific respondents argue that the CIT rejected the Department’s use of Indian import statistics surrogate values because these data reflected commercially insignificant quantities that were not representative of fair market value. The Trade Pacific respondents argue that, for this reason, the CIT instructed the Department to instead use other sources for pig iron prices.⁶ To support their assertion that WTA import statistics are commercially insignificant, the Trade Pacific respondents first argue that the two Indian companies that purchase, consume, and/or sell pig iron (i.e., Tata Iron and Steel Company Limited (“TATA”) and SAIL) together consumed 820,525 MT of pig iron, or approximately 575 times the amount of pig iron imported into India from Egypt, Malaysia, Iran, Russia, Germany, and the United States during the POR, according to WTA data. Second, the Trade Pacific respondents argue that the quantity of pig

⁴ See Letter from the Trade Pacific respondents regarding “Brake Rotors from the People’s Republic of China: Publicly Available Information for Surrogate Values,” dated March 28, 2007.

⁵ The Trade Pacific respondents cite Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 9) (“Televisions”), noting that the Department has characterized Infodrive data as Indian government import data that are received on a monthly basis from the Indian customs department and that the Court of International Trade (“CIT”) has stated in Dorbest Ltd. v. United States, 462 F. Supp. 2d 1252, Slip Op. 06-160 at 52 (October 31, 2006) (“Dorbest”), that Infodrive data are a more detailed subset of the WTA import data).

⁶ The Trade Pacific respondents cite Shanghai Foreign Trade, 318 F. Supp. 2d at 1353.

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, and therefore, should not be used to value the respondents' pig iron consumption for the final results.

The Trade Pacific respondents also argue that Indian import statistics cannot be relied on to be representative of the price of pig iron used in India. First, the Trade Pacific respondents argue that the disparity between the large quantity of pig iron consumed by TATA and SAIL, 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. Second, in light of the low volume of pig iron imported into India during the POR, the Trade Pacific respondents argue that it is reasonable to assume that the imports represent specialty metals that would not have been used in the production of brake rotors by the respondents. Citing Dorbest, the Trade Pacific respondents contend that the CIT has emphasized that, when using WTA data, "there must be reason to believe that the industry in question would use imported inputs."⁷ The Trade Pacific respondents assert that none of the respondents in the instant administrative review imported pig iron to use in the production of subject merchandise.

In the present case, the Trade Pacific respondents argue that the pig iron prices reported in the SAIL financial statement represent the best available information for valuing pig iron because they are based on a broad set of sales. After excluding South African imports, the Trade Pacific respondents argue that the small quantities imported into India during the POR (from Egypt, Malaysia, Iran, Russia, Germany, and the United States) only represent sales during a six-month period within the POR, in contrast with the price data in the SAIL financial statement, which are based on continuing purchases throughout the POR.

The Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers ("the petitioner") contends that the Department was correct in using WTA import statistics to value pig iron in the Preliminary Results 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. Citing the Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005), and the accompanying Issues and Decision Memorandum at Comment 1 ("Chlorinated Isocyanurates"), the petitioner asserts that the Department has found WTA price data to represent the best available information for valuation purposes. The petitioner further asserts that because the Department has clearly

⁷ The Trade Pacific respondents also cite Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, Slip Op. 04-88 at 11 (July 19, 2004) ("Hebei Metals"); Yantai Oriental Juice Co., v. United States, Slip Op. 02-56 at 24 (June 18, 2002) ("Yantai Orange Juice"); and Wuhan Bee Healthy Co. v. United States, 374 F. Supp. 2d 1299, 1310 (2005).

stated its preference to select WTA import values over values originating from Infodrive,⁸ the Department should continue to use WTA data to value pig iron for these final results.

In their rebuttal brief, the Trade Pacific respondents disagree with the petitioner's assertion that they suggested that the Department use Infodrive data to value pig iron for the final results, stating that they argued for the Department to use Infodrive data only to assess the reliability and specificity of WTA data for the purpose of valuing pig iron for the final results.

In its rebuttal brief, the petitioner reiterates that the Department has clearly stated its preference for WTA values over Infodrive values⁹ and that the Department has found that WTA price data represent the best available information for valuation purposes.¹⁰ The petitioner disagrees with the Trade Pacific respondents' assertion that the WTA surrogate value for pig iron used in the Preliminary Results is based on commercially insignificant quantities. The petitioner contends that the Trade Pacific respondents made the same argument in the previous review period where the Department responded that simply having import data with lower volumes than other alternative data is not sufficient to conclude that the import data are not significant.¹¹ The petitioner argues that WTA data are a broader and more representative source for valuing pig iron. The petitioner also contends that the Trade Pacific respondents' argument that South African imports of pig iron are a specialty metal is based on "unfounded assumptions" that the import data in WTA and Infodrive refer to the same imports of pig iron. In this regard, the petitioner claims that the total quantities of pig iron imports from South Africa reported by the two sources are not the same. With respect to the Trade Pacific respondents' argument to use SAIL data to value pig iron for the final results, the petitioner counters that the pig iron values do not originate from purchases, but rather represent opening/closing stock figures from SAIL's own production and that these figures are reported after adjustments related to inter-plant transfers. The petitioner further argues that the record does not reflect whether the SAIL figures are sourced from non-market economy suppliers, are tax-inclusive, or include subsidies. In addition, the petitioner argues that the Department declined using SAIL values in the 8th Administrative Review because they were suspect given that the raw material values were reported after adjustments related to inter-plant transfers.

⁸ The petitioner cites Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 71 FR 34893 (June 16, 2006), and accompanying Issues and Decision Memorandum at Comment 1 ("Honey Final Results"), as well as Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 38266 (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 1 ("Cased Pencils Final Results").

⁹ The petitioner cites Honey Final Results and Cased Pencils Final Results.

¹⁰ The petitioner cites Chlorinated Isocyanurates.

¹¹ See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review, 71 FR 66304 (November 14, 2006) ("8th Administrative Review"), and accompanying Issues and Decision Memorandum at Comment 3.

Department's Position: For the final results of these reviews, we have continued to use WTA Indian import statistics to value pig iron reported by respondents. With regard to the Trade Pacific respondents' citation to Bicycles, we agree that the Department prefers surrogate value data that are (1) non-export average values; (2) contemporaneous with the period being examined; (3) product-specific; and (4) tax exclusive. We do not agree with the Trade Pacific respondents' proposed use of pig iron sales values from SAIL's financial statement to value pig iron. The Department relies on financial statements to value factors only when there are no other useable data because, while financial statements may represent several sales of any given input, they represent data from only one company.¹² In contrast, WTA data are collected from imports into the whole of India, and therefore, reflect a broader, overall more representative data source. In this case, the Department finds the WTA data useable as discussed further below, and therefore the Department prefers not to use data derived from a financial statement.

We do not disagree with the Trade Pacific respondents' argument, based on their citation to Televisions and Dorbest, that, in the past, we have found that Infodrive data are a subset of WTA data. However, we do not agree with the Trade Pacific respondents' assertion that imports of pig iron from South Africa should be excluded from the WTA import data for purposes of the surrogate value calculation. In the Preliminary Results, the Department selected the HTS category 7201.1000 as the product most similar to the reported type of pig iron used by respondents based on respondents' questionnaire responses indicating that they used pig iron with a phosphorus content of less than or equal to 0.5 percent in the production of subject merchandise.¹³ The Trade Pacific respondents claim that South African imports of pig iron are a trademarked brand of metal, called Sorelmetal, based on product information and Infodrive data for the HTS category 7201.1000, that they placed on the record of the administrative review. However, no information on the record of these reviews indicates that Sorelmetal is a product different from "non-alloy pig iron containing less than or equal to 0.5 percent phosphorus," which is the heading of HTS category 7201.1000. The Trade Pacific respondents also argue that Sorelmetal is used to produce ductile iron fittings, which they claim are intermediate products with different applications from the gray cast iron used to produce brake rotors. When selecting surrogate values, the Department is guided by the description of the HTS category in comparison to the respondents' reported input rather than the end use of the products contained within the HTS category. In this case, we find HTS 7201.1000 to be the most specific category based on the respondents' reported description of pig iron (*i.e.*, pig iron containing less than or equal to 0.5 percent phosphorus).

The Trade Pacific respondents also argue that Sorelmetal represents a higher-quality metal than that used by respondents in these reviews. However, in our examination of the country-specific

¹² See, e.g., 8th Administrative Review, 71 FR 66304 at Comment 3.

¹³ See Qingdao Golrich Autoparts Co., Ltd.'s ("Golrich") October 24, 2006, supplemental response at p. 3, Longkou Haimeng Machinery Co., Ltd.'s ("Haimeng") October 30, 2006, supplemental response at p. 13, Yantai Winhere Auto-Part Manufacturing Co., Ltd.'s ("Winhere") January 7, 2007, supplemental response at Exhibit 15, and Qingdao Meita Automotive's ("Meita") December 14, 2006, supplement response at Exhibit 8.

import data for the HTS category 7201.1000, we find that the average unit value (“AUV”) for South African imports (19.85 Rs/kg) falls within the range of AUVs for imports from the other six countries (i.e., 11.96 Rs/kg to 45.00 Rs/kg).¹⁴ Based on the above analysis, we do not find that South African imports of pig iron vary materially in price from the pig iron imported from the other six countries, and we have continued to include those figures in our calculation of the surrogate value for pig iron for the final results.

We agree with the Trade Pacific respondents, that, as discussed in Polyethylene and Shanghai Foreign Trade, the Department uses import statistics only after concluding that the statistics are based on commercially significant quantities. However, we do not agree with the Trade Pacific respondents’ argument that Indian import statistics for pig iron represent commercially insignificant quantities. We examined import statistics for the same HTS category for the other proposed surrogate countries in these reviews (i.e., Sri Lanka, Indonesia, Egypt, and the Philippines¹⁵) to determine whether the Indian import values were commercially insignificant. Import data for Egypt were unavailable from the WTA. Import data for Sri Lanka from the WTA were unusable because the only imports for calendar years 2005 and 2006 were from India, and it is the Department’s practice to exclude data from countries that maintain broadly available, non-industry specific export subsidies (e.g., India).¹⁶ The Philippine import data for HTS category 7201.1000 for the calendar year 2005 consist of 185 MT of pig iron imported from four countries.¹⁷ Indonesian import data for HTS category 7201.1000 for calendar year 2005 consist of 30,783 MT of pig iron imported from eight countries.¹⁸ After excluding data from NMEs and countries that maintain broadly available, non-industry specific export subsidies, the quantity for Indian imports in this HTS category during the POR (i.e., 4,391 MT) falls within the range of the Philippine and Indonesian quantities (i.e., 185 and 3,513 MT, respectively). We do not agree with the Trade Pacific respondents that having import data with lower volumes than other alternative data (i.e., TATA & SAIL consumption figures or SAIL sales figures) is sufficient, in itself, to conclude that the import data are not significant, since the lower volume

¹⁴ The country-specific AUVs are as follows: United States (45.00 Rs/kg), Malaysia (20.21 Rs/kg), Russia (16.59 Rs/kg), Germany (16.00 Rs/kg), Egypt (14.57 Rs/kg), and Iran (11.96 Rs/kg).

¹⁵ See Memorandum to the File from Ryan Douglas, International Trade Compliance Analyst, through Blanche Ziv, Program Manager, Office 8, AD/CVD Operations, through Wendy Frankel, Director, Office 8, AD/CVD Operations, entitled, “Brake Rotors from the People’s Republic of China: Surrogate-Country Selection Memorandum for the 2005-2006 Administrative and New Shipper Reviews,” dated November 21, 2006.

¹⁶ See Hand Trucks and Certain Parts Thereof From the People’s Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review, 72 FR 27287 (May 15, 2007), and accompanying Issues and Decision Memorandum at Comment 23, 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), and accompanying Issues and Decision Memorandum at Comment 8.

¹⁷ This value is exclusive of imports from China, a non-market economy (“NME”).

¹⁸ This value is exclusive of imports from China and Vietnam, NMEs, and India, Indonesia, and South Korea, countries that maintain broadly available, non-industry specific export subsidies.

could also represent commercially significant quantities. Therefore, the Department concludes that the volume of non-alloy pig iron imports is not commercially or statistically insignificant.

In addition, we disagree with the Trade Pacific respondents' suggestion to use SAIL's sales figures to value pig iron. In valuing factors of production, section 773(c)(1) of the Tariff Act of 1930, as amended ("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.¹⁹ First, in regard to specificity, we note that the SAIL financial statement only provides information regarding sales of "pig iron." The phosphorus content of the pig iron is not identified. We, therefore, find that the information in the SAIL financial statement is not as product specific as the WTA data. Second, we agree with the petitioner that the record does not reflect whether SAIL receives subsidies or whether it sources raw material purchases from NME suppliers.

Contrary to the Trade Pacific respondents' assertions citing Dorbest, the Department is not required to use domestic prices when, as here, import statistics represent a more accurate value. See Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343, 1352 (CIT 2001) ("Rhodia") (citing Nation Ford Chem Co. v. United States, 985 F. Supp. 133,135 (1997), affirmed 166 F.3d 1373 (Fed. Cir. 1999)); see also Wuhan Bee Healthy Co., Ltd. v. United States, 274 F. Supp. 2d 1299, 1311 (CIT 2005) ("Commerce does not have an 'unconditional preference' for using domestic prices over import prices when valuing surrogates..."). The Department's overarching goal is to find the best information to accurately and reliably value the factors of production, and it is certainly within the Department's discretion to determine that import prices are the more accurate surrogate value for determining normal value in China under circumstances present in an individual case. See Rhodia, 185 F. Supp. 2d at 1352. Because the Department fully explained why, in this instance, Indian import statistics constitute the best available information given the information on the record, Hebei Metals and Yantai Orange Juice are inapposite. Furthermore, in this instance the Department did not summarily discard the alternative as flawed without evaluating the reliability of its own choice. See Shanghai Foreign Trade, 318 F. Supp. 2d at 1352 ("Commerce has an obligation to review all data and then determine what constitutes the best available information or, alternatively, to explain why a particular data source is not methodologically reliable."). Here, the Department found that WTA Indian import statistics for the POR for pig iron are product specific, contemporaneous, and exclusive of taxes. While no party has argued to value pig iron with Infodrive data, we agree with the petitioner, citing Honey Final Results and Cased Pencils Final Results, that the Department has declined in the past to use Infodrive data for surrogate valuation purposes. For the reasons set forth above, the Department is declining to rely upon the proposed data placed on the record by the Trade Pacific respondents

¹⁹ See, e.g., Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176, and accompanying Issues and Decision Memorandum at Comment 1; 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").

(i.e., the SAIL financial statement) only after a careful evaluation of all the record evidence, and concluding that these data did not adhere to Commerce’s preferred criteria, in that they were not completely representative of the factor being valued (i.e., not product specific), and were representative of only one company’s experience.

We, therefore, find that the WTA data for HTS 7201.1000 are the best available data to value pig iron used by the respondents for the final results because they are contemporaneous with the POR, specific to the raw material (defined as “pig iron containing less than or equal to 0.5 percent phosphorus”) 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.

Comment 2: Selection of Financial Statements

The Trade Pacific respondents argue that for the final results, the Department should value the surrogate financial ratios (i.e., factory overhead, selling, general, and administrative expenses (“SG&A”), and profit) using the 2005-2006 annual reports of Rico Auto Industries Limited (“Rico”) and Kirloskar Ferrous Industries Limited (“Kirloskar”). The Trade Pacific respondents argue that the Department should not continue to use the Bosch Chassis Systems India Ltd. (“Bosch”) annual report used in the Preliminary Results because unlike Rico and Kirloskar, Bosch production processes and materials consumed are not similar to those of respondents and other producers that cast gray iron brake rotors.²⁰ The Trade Pacific respondents assert that the Department’s established practice is to apply a three-part test that examines “physical characteristics, end uses, and production processes”²¹ when it determines if a product produced by a company in the surrogate country is comparable. Furthermore, the Trade Pacific respondents cite to 19 CFR 351.408(c)(4) and section 773(c)(4) of the Act, and note that the Department normally uses non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

In this case, the Trade Pacific respondents argue that the financial ratios calculated in the Preliminary Results using Bosch’s annual report are inaccurate and distortive because the company does not have production processes or consume materials similar to those used by the respondents or other producers of brake rotors. The Trade Pacific respondents assert that the detailed schedule of Bosch’s raw material consumption²² during the POR shows that it does not

²⁰ The Trade Pacific respondents cite their letter to the Department, dated March 28, 2007, regarding “Brake Rotors from the People’s Republic of China: Publicly Available Information for Surrogate Values” (“Trade Pacific’s PAI”) in Exhibit 5 at pages 45 through 47, and in Exhibit 7.

²¹ The Trade Pacific respondents cite to Shanghai Foreign Trade, 318 F. Supp. 2d at 1348, citing Certain Cased Pencils from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2004), and the accompanying Issues and Decisions Memorandum at Comment 5 (“Cased Pencils”).

²² The Trade Pacific respondents point out that during the POR, the total value of raw materials consumed by Bosch and detailed on its profit and loss account was 2,545,095,000 rupees (see Bosch’s annual report at 23) and that Note 21 of Bosch’s annual report breaks down the rupees of material consumption by product (see Bosch’s

cast its own brakes and that the raw materials it consumes (*i.e.*, ferrous castings, aluminum castings, components for air/hydraulic brake systems, brake fluid, and imported components for hydraulic brake systems) are not at all similar to the raw materials used by respondents to produce brake rotors (*e.g.*, pig iron, melting scrap, ferrosilicon, ferromanganese, and coke). The Trade Pacific respondents contend that the fact that Bosch consumes ferrous and aluminum castings in pieces demonstrates that it does not engage in the process of casting, but rather only assembles or further processes castings from ferrous and aluminum castings. Furthermore, the Trade Pacific respondents note that their reported factors of production or raw materials do not include the completed castings, air or hydraulic brake components, or brake fluid consumed by Bosch. Therefore, the Trade Pacific respondents argue that for the final results, the Department should not incorporate Bosch's information in the calculation of the surrogate financial ratios because Bosch cannot be considered comparable to brake rotor producers.

According to the Trade Pacific respondents, in addition to the Rico annual report, the Department should also use the 2005-2006 annual report of Kirloskar for the final results because it is a producer of comparable merchandise (*i.e.*, gray iron castings). The Trade Pacific respondents also assert that the production process and materials consumed by Kirloskar are similar to those used by respondents and therefore, should be used along with Rico to calculate the financial ratios for the final results.

The petitioner argues that for the final results, the Department should not consider the financial statement of Kirloskar in the calculation of factory overhead, SG&A, and profit because Kirloskar is not a producer of brake rotors. The petitioner contends that Kirloskar operates in the business of iron castings which are different products than brake rotors.²³ The petitioner contends that the Department has no reason to use Kirloskar's financial statement when the record of these reviews contain two usable and reliable financial statements of Indian producers of brake rotors (*i.e.*, Bosch and Rico). The petitioner maintains that the Department should follow its policy established in the original investigation of brake drums and rotors, where the Department refused to use annual reports of Indian casting producers like Ennore Foundries Limited, Electrosteel Castings Limited, and Bhagwati Autocast Limited because they were not producers of brake drums or rotors.²⁴

The Trade Pacific respondents disagree with the petitioner's assertion that the Department should continue to use the financial statements of Bosch and Rico to calculate the surrogate financial ratios,²⁵ rather than the financial statements of Kirloskar and Rico. Although the petitioner argues that Kirloskar does not produce merchandise comparable to brake rotors to

annual report at page 39).

²³ The petitioner cites Trade Pacific's PAI in Exhibit 5 at page 8.

²⁴ See Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160, 9164 (February 28, 1997) ("LTFV").

²⁵ The Trade Pacific respondents cite to petitioner's case brief at 5 through 6.

discount the use of its financial statement for the final results, the Trade Pacific respondents counter that the administrative record shows that Bosch did not produce any ferrous castings, including brake rotors or any other cast products. Furthermore, the Trade Pacific respondents contend that Bosch fails the “production process” aspect of the three-part test because Bosch is not a producer of cast brake rotors. The Trade Pacific respondents argue that Bosch does not melt iron and cast its own brake rotors.²⁶ Therefore, the Trade Pacific respondents argue that Bosch should not be considered comparable to respondents and other producers of cast brake rotors, and that for the final results, the Department should use the annual reports of Rico and Kirloskar because these companies produce merchandise that is comparable to that produced by respondents and other brake rotor producers.

The petitioner asserts that the Trade Pacific respondents erroneously assume that Bosch is not a manufacturer of brake rotors and instead only assembles or further processes brake rotors. According to the petitioner, Bosch’s financial statement makes no such references but does make note of its “manufacturing set up” and “manufacturing capacities.”²⁷ The petitioner also points out that Bosch’s financial statement states that the “{t}he company’s primary business is manufacture of ‘Automotive Brake Systems and Components’”²⁸ (emphasis added by petitioner) and therefore, unlike Kirloskar, Bosch is a producer of brake rotors. Additionally, the petitioner notes that the Department has relied on the financial statement of Kalyani Brakes, Bosch’s predecessor company, since the LTFV. Therefore, the Department should continue to use Bosch’s financial statement in its calculation of factory overhead, SG&A expenses, and profit for the final results.

Department’s Position: Consistent with the Preliminary Results, we continue to find that the Bosch and Rico financial statements are the most appropriate for the purposes of deriving factory overhead, SG&A, and profit for the final results. Guidance regarding surrogate values for manufacturing overhead, general expenses, and profit is provided by 19 CFR 351.408(c)(4), which states that these values will normally be based on public information from companies that are in the surrogate country and that produce merchandise that is identical or comparable to the subject merchandise.²⁹ While the statute does not define “comparable merchandise,” it is the Department’s practice to apply a three-prong test that considers physical characteristics, end

²⁶ The Trade Pacific respondents cite to their case brief at 12 through 13.

²⁷ Petitioner cites to the Department’s Memorandum to the File, “2005-2006 Administrative and New Shipper Reviews of Brake Rotors from the PRC: Factor Valuation for the Preliminary Results,” dated February 9, 2007 (“Preliminary Surrogate Value Memorandum”) at Exhibit 6.

²⁸ Id. at 17.

²⁹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

uses, and production processes.³⁰ We have evaluated the production of Kirloskar based on this three-prong test to determine if its production is of merchandise comparable to brake rotors. With regard to physical characteristics and end uses, we find that while the material inputs in the production of pig iron may be similar to those used by brake rotor producers, the majority of Kirloskar's production (*i.e.*, 89 percent)³¹ is devoted to producing pig iron which is not physically similar nor does it have the same end use as that of brake rotors. Specifically, Kirloskar's financial statement notes that: (1) the company's primary business is the manufacture of pig iron;³² (2) the company identifies coke and iron ore as important materials in the manufacture of pig iron;³³ (3) 89 percent of the company's stock turnover is pig iron, while castings comprises only a quarter of its total stock turnover;³⁴ and (4) the company produces liquid metal which is mainly used in the production of pig iron.³⁵ Therefore, we have determined that since Kirloskar's main production is of pig iron and pig iron does not have similar physical characteristics or end uses to that of brake rotors, Kirloskar's production is not of merchandise comparable to brake rotors.

With respect to the Trade Pacific respondents' argument that Kirloskar's castings are more comparable to brake rotors in terms of the third prong of the comparable merchandise test, production processes, there is no information in Kirloskar's financial statement describing the manufacturing processes employed to produce the castings. Additionally, the Trade Pacific respondents have not placed such information on the record of this review for us to be able to evaluate the similarity of the production processes. Therefore, there is no basis to conclude that the production processes of Kirloskar are similar to those employed by respondents in these reviews. For these reasons, we have determined that Kirloskar does not produce merchandise comparable to brake rotors, and therefore, we find that Kirloskar's financial information does not reflect the financial conditions experienced by a brake rotor manufacturer.

Contrary to the Trade Pacific respondents' argument, the Bosch financial statement indicates that Bosch is a producer of identical merchandise (*i.e.*, brake rotors) whose production processes and materials consumed are similar to those of the respondents. Specifically, Bosch's financial

³⁰ See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002) and accompanying Issues and Decision Memorandum at Comment 5.

³¹ See Kirloskar Ferrous Industries Limited 2005-2006 annual report at 46, which indicates that 89 percent of the 260,267 MT of liquid metal produced by Kirloskar was used to produce pig iron for sale, while only 11 percent was used in the production of castings.

³² See *id.* at 46 (explaining that 89 percent of liquid metal produced is consumed in the production of pig iron.).

³³ See *id.* at 13, "Concerns and Threats."

³⁴ See *id.* at 47.

³⁵ See *id.* at 46.

statement notes that: (1) the company’s primary business segment is the manufacture of automotive brake systems and components;³⁶ (2) the company produces its own castings;³⁷ (3) the company lists “molds” as a depreciable asset;³⁸ and (4) the company is a manufacturer of brake rotors.³⁹ Therefore, based on this information, we determine that Bosch is a producer of identical merchandise and appropriate for use in the valuation of the surrogate financial ratios. Where financial statements of producers of identical and comparable merchandise are available and not distorted or otherwise unreliable, it is the Department’s practice in NME proceedings to use, whenever possible, surrogate-country producers of identical merchandise for surrogate-value data.⁴⁰ Based on these criteria, we find the financial statements of Bosch and Rico to be the most appropriate to value the overhead, SG&A, and profit for the respondent companies in the final results of review because they are producers of identical merchandise, contemporaneous, publicly available, and comparable to the respondents’ experience.⁴¹

Comment 3: Financial Ratios: Calculation of Factory Overhead, Selling, General, and Administrative Expenses (“SG&A”) and Profit

The petitioner argues that the Department should make several adjustments to the calculation of the surrogate financial ratios. First, consistent with previous reviews of brake rotors, the petitioner argues that the Department should deduct Bosch’s “scrap sales” revenue from raw material costs rather than treat these sales as factory overhead.⁴² To support its argument, petitioner cites the 2002-2003 Brake Rotors at Comment 1 and 2003 NSR Brake Rotors, which it claims stated that “it is the Department’s practice to offset sales of scrap from the {cost of manufacture}” (“COM”).

The Trade Pacific respondents counter that the Department should have excluded scrap sales income from the financial ratio calculations because its inclusion is inconsistent with the

³⁶ See Bosch 2005-2006 auditor’s report at 17, which states that Bosch installed “{a}n automated line, incorporating robotic pouring of liquid aluminum for gravity die castings . . . producing high quality aluminum castings.”

³⁷ See id. at 16.

³⁸ See id. at 31, Schedule 17 “Significant Accounting Policies” item 5 “Method of Depreciation.”

³⁹ See id. at 38, note 20 itemizes information with regard to licensed capacity, installed capacity, and actual production which includes rotors being produced as a component for hydraulic brakes in the 2005-2006 period.

⁴⁰ See, e.g., 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 9F.

⁴¹ See, e.g., Garlic Decision Memo at Comment 5.

⁴² The petitioner cites Brake Rotors From the People’s Republic of China: Final Results of the Tenth New Shipper Review, 69 FR 52228, 52229 (August 25, 2004) (“2003 NSR Brake Rotors”), and Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Final Results of the Ninth New Shipper Review, 69 FR 42039 (July 13, 2004) (“2002-2003 Brake Rotors”), and the accompanying Issues and Decision Memorandum at Comment 1.

Department's current practice. Furthermore, the Trade Pacific respondents argue that the two cases cited by petitioner (i.e., 2003 NSR Brake Rotors and 2002-2003 Brake Rotors) are misplaced. The Department's offset of scrap sales from COM in the 2003 NSR Brake Rotors has been recently identified in PRCB⁴³ as being inconsistent with the Department's current practice which, the Trade Pacific respondents contend, is to exclude scrap revenue from the financial ratio calculation. The Trade Pacific respondents state that in the Department's more recent practice (see, e.g., 8th Administrative Review), the Department did not reduce the surrogate companies' material cost with scrap sales revenue, rather it excluded scrap sales revenue from the financial ratio calculations altogether.⁴⁴ Therefore, if the Department continues to use the Bosch financial statement in the final results, the Trade Pacific respondents argue that the Department should exclude Bosch's scrap sales revenue from the financial ratio calculations.

Secondly, the petitioner argues that consistent with previous brake rotor reviews, the Department should exclude "miscellaneous income," as reported by Rico and Bosch, from the financial ratio calculations rather than include it in the SG&A calculation.⁴⁵ The petitioner asserts that in 2002-2003 Brake Rotors⁴⁶ the Department established a policy whereby it stated that it could not determine the nature of miscellaneous income reported in the Kalyani Auto Brakes' ("Kalyani")⁴⁷ financial statement, and therefore, did not include miscellaneous income in the SG&A calculation. Furthermore, in the 8th Administrative Review, the petitioner contends that the Department also excluded miscellaneous income from the financial ratio calculations.⁴⁸ Thus, the petitioner argues that the Department should continue to follow its practice of excluding miscellaneous income from the Kalyani/Bosch financial statements for the final results.

⁴³ See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 12762 (March 19, 2007) ("PRCB"), and the accompanying Issues and Decision Memorandum at Comment 3d.

⁴⁴ The Trade Pacific respondents cite a memorandum, regarding, "2004-2005 Administrative Review of Brake Rotors from the People's Republic of China: Selection of Factor Values for the Preliminary Results," dated May 1, 2006 ("8th Administrative Review Factor Valuation Memorandum") at Exhibit 10, unchanged in the final results, wherein, the Trade Pacific respondents contend that the Department excluded the scrap revenue from the financial ratio calculations for Kalyani Brake Limited.

⁴⁵ The petitioner cites a memorandum regarding the "2004-2005 Administrative Review and New Shipper Reviews of Brake Rotors from the People's Republic of China: Selection of Factor Values for the Preliminary Results," dated May 1, 2006 ("2004-2005 Brake Rotors Factor Valuation Memorandum") at Exhibit 10.

⁴⁶ See 2002-2003 Brake Rotors and the accompanying Issues and Decision Memorandum at Comment 1.

⁴⁷ Bosch's 2005-2006 auditor's report, at page 5, states that in July 2005, "Kalyani Group" sold its 80 percent equity stake in Kalyani to foreign promoters (i.e., Robert Bosch Corporation and Robert Bosch Investment Nederland B.V.), and that the name of the company has been changed from Kalyani Brakes Limited to Bosch Chassis Systems India Limited.

⁴⁸ See 8th Administrative Review and 8th Administrative Review Factor Valuation Memorandum at Exhibit 10.

The Trade Pacific respondents counter that the Department was correct to include miscellaneous income as SG&A in the financial ratio calculations because they contend that it improves the accuracy of the surrogate financial ratios calculations since the SG&A expenses are partially attributable to the miscellaneous income items. The Trade Pacific respondents assert that the petitioner's argument to exclude miscellaneous income from the calculation of the financial ratios is without merit. The Trade Pacific respondents contend that it is appropriate to include miscellaneous income in the SG&A category (offsetting the numerator) because the SG&A expenses relating to miscellaneous income would also be included in the numerator of the SG&A ratio, and therefore, excluding miscellaneous income as an offset to the numerator would distort the ratio of SG&A expenses to material, labor, and energy expenses. Therefore, the Trade Pacific respondents argue that if the Department continues to use the Bosch financial statement in the final results, it should include miscellaneous income in SG&A in the financial ratios calculations.

Thirdly, the petitioner argues that consistent with previous reviews, the Department should include Bosch's "consumable stores" as factory overhead rather than categorize it as material because it is the Department's practice to treat "consumable stores" as overhead.⁴⁹ The petitioner contends that in the 8th Administrative Review the Department treated "consumable stores" as overhead expense to obviate the risk of double counting expenses. The petitioner points out that in the financial ratio calculations in the Preliminary Results, the Department treated "consumable stores" as material for Bosch but treated it as overhead for Rico.⁵⁰ Thus, the petitioner asserts that the Department should continue to treat consumable stores as overhead in these reviews in accordance with the Department's practice.⁵¹

The Trade Pacific respondents contend that the Department was correct when it included machinery spares as factory overhead and consumable stores as materials in the financial ratio calculations, or else the Department would be double-counting the respondents' raw materials. The Trade Pacific respondents point out that Bosch's financial statement lists two line-items for its miscellaneous material consumption, "consumable stores consumed" and "machinery spares consumed,"⁵² and contend that in most cases, the financial statements of potential surrogate companies do not break out material expenses between consumption for production and consumption for machinery. According to the Trade Pacific respondents, the fact that Bosch

⁴⁹ See 8th Administrative Review.

⁵⁰ See 2005-2006 Brake Rotors Factor Valuation Memorandum at Exhibit 6.

⁵¹ The petitioner cites Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303 (January 8, 2001), and 8th Administrative Review at Comment 7, which cites 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) ("2003-2004 Brake Rotors").

⁵² The Trade Pacific respondents cite to 2005-2006 Brake Rotors Factor Valuation Memorandum in Exhibit 6 at 29.

specified consumption for machinery indicates that the items included in the consumable stores must be directly related to production.⁵³ The Trade Pacific respondents contend that because Bosch's 2005-2006 financial statement listed consumable stores separate from machinery spares that the Department should treat consumable stores as raw materials. Therefore, the Trade Pacific respondents argue that if the Department continues to use the Bosch financial statement in the final results, it should treat consumable stores as raw materials in the financial ratio calculations.

Finally, the petitioner argues that because the nature of Bosch's reported tooling income is unknown, it should not be included as factory overhead. The petitioner argues that tooling income in the context of a brake rotor producer could be related to the markup on molds used in the production process, or it could be related to a non-subject product which by its nature, would be excluded from the financial ratio calculations. The petitioner also argues that if tooling income relates to the markup on molds then it is the same as by-product income and, therefore, should be deducted from the material cost. The petitioner argues that here, consistent with the Department's practice in 2002-2003 Brake Rotors, because the nature of "tooling income" is unknown, the Department should exclude it from the financial ratio calculations.⁵⁴

The Trade Pacific respondents argue in rebuttal that the Department was correct when it included Bosch's tooling income in factory overhead because some of the overhead expenses incurred by Bosch are partially attributable to its operations that generated tooling income. The Trade Pacific respondents also assert that the petitioner's arguments to exclude tooling income from the calculation of the financial ratios, or to deduct tooling income from material cost, is without merit. The Trade Pacific respondents argue that if tooling income is not included in overhead, then the ratio of overhead expenses incurred to generate the tooling income would be included in the numerator of the overhead ratio without a corresponding offset. Therefore, if the Department continues to use the Bosch financial statement in the final results, the Trade Pacific respondents argue that the Department should treat tooling income as factory overhead in the financial ratio calculations.

Department's Position: We have made several adjustments to the calculation of the surrogate financial ratios for the final results. In the Preliminary Results, the Department treated scrap sales revenue as overhead.⁵⁵ After considering parties' comments, we agree with the Trade Pacific respondents that we should exclude Bosch's "scrap sales" revenue, when calculating the surrogate financial ratios. Here, the respondents have not reported scrap sales nor have they requested a by-product offset. Therefore, the Department's treatment regarding a respondent's

⁵³ The Trade Pacific respondents note that in the recent discussion of this issue in PRCB, see Comment 3c, the Department treated consumable stores as an overhead item explaining, "absent any information to the contrary" the Department normally treats consumable stores as indirect materials, or overhead items.

⁵⁴ See 2002-2003 Brake Rotors at Comment 1 where the Department excluded miscellaneous income from the SG&A calculation because it could not determine the nature of the expense.

⁵⁵ See 2005-2006 Brake Rotors Factor Valuation Memorandum at Exhibit 6.

reported sale of scrap or by-product is not at issue here, but instead the issue is whether the Department should treat revenue from the sale of scrap as an offset to the cost of materials when calculating the surrogate financial ratios. An examination of Bosch's surrogate financial information indicates that it treats scrap sales as a revenue. See Schedule 12 of Bosch's 2005-2006 financial statements. Because the Department has no information on the record to demonstrate otherwise (e.g., that the revenue is directly attributable to the purchase of raw materials or has any relevance to the COM), we find that it would be inappropriate to include Bosch's scrap sales revenue in COM when calculating the surrogate financial ratios.⁵⁶ Furthermore, it would be inaccurate to offset COM for scrap since we apply the financial ratios to the PRC respondents' COM in the margin calculations which do not include a scrap offset.

We disagree with the petitioner's argument that an offset to COM for scrap sales (by deducting it from raw material costs) is consistent with the Department's recent practice. Notwithstanding the brake rotors segments cited by petitioner, which were decided based upon the specific facts on the record of each of those segments, the Department sees no reason in these reviews to depart from our longstanding practice of accepting surrogate financial statements in toto and not making adjustments to them that might not increase the accuracy of the result.⁵⁷ Therefore, for the final results, we excluded scrap sales revenue from the financial ratios calculated from Bosch's 2005-2006 financial statements consistent with the Department's treatment of this item in its surrogate financial ratio calculations in 8th Administrative Review.⁵⁸

Concerning the inclusion of miscellaneous income in SG&A and tooling income in factory overhead, we have determined that including these line items in our financial ratio calculations is inappropriate because, in the absence of itemization of Bosch's miscellaneous income and tooling income, we do not know the specific expense category (e.g., material, labor, factory overhead, SG&A) that corresponds to these items. The Department typically examines the financial statements and categorizes expenses as they relate to material, labor, energy, factory overhead, SG&A and profit, and then excludes certain other expenses (e.g., certain movement expenses and excise duty). 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, 26744 (May 8, 2006) (unchanged in the final results). In determining the appropriateness of these items' inclusion or exclusion from the SG&A and factory overhead calculation, we reviewed Bosch's surrogate financial information to determine the possible nature of the activity generating the miscellaneous income and tooling income to see if a relationship existed between the activity and the principal operations of the company. For these items, we found no information on the surrogate financial statements to correlate the miscellaneous income and/or tooling income to

⁵⁶ See e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews, 71 FR 70739 (December 6, 2006) ("2004-2005 WBF"), and accompanying Issues and Decision Memorandum at Comment 5.

⁵⁷ See e.g., 2004-2005 WBF, at Comment 5.

⁵⁸ See e.g., PRCB at Comment 3d.

any specific selling or production operations of the surrogate company.⁵⁹ Moreover, in this case, miscellaneous income and tooling income are immaterial in amount and, thus, any attempt to account for them in a more accurate fashion would provide little or no benefit to the accuracy of the surrogate company's calculation.

We also disagree with the Trade Pacific respondents' arguments that because corresponding expenses for miscellaneous income and tooling income are included in Bosch's financial statement, the Department should include these items in the final results financial ratio calculations. Upon examination of Bosch's financial information, we found no itemization of either income or expense that supports the Trade Pacific respondents' arguments that these income items have corresponding factory overhead and/or SG&A expenses.⁶⁰ Thus, for the final results, because we are not able to correspond the miscellaneous income and tooling income to any specific expense category in Bosch's financial statement and such an adjustment would otherwise be immaterial, we excluded Bosch's miscellaneous income and tooling income from the surrogate financial ratio calculations.

Concerning the treatment of Bosch's "consumable stores," we agree with the petitioner that consumable stores should be treated as an overhead expense and not included as material inputs. The Department has a long-standing history in NME cases of defining as direct material inputs such items as: process materials, materials required for a particular segment of the production process, items consumed continuously with each unit of production, and materials used regularly and in significant quantities as a necessary part of the production process.⁶¹ In 8th Administrative Review, we treated the surrogate companies' consumables as overhead (i.e., indirect expense) because we found that there was no itemization in the surrogate companies' financial statements that would permit an accurate adjustment of the financial ratios to account for certain respondents' unreported consumables found at verification. Several of the respondents in this administrative review have reported in their narrative the use of consumables in their production (e.g., oil in the sand molds). However, the Department has not included in the normal value calculation any consumables that the record indicates are not replaced so regularly as to represent a direct factor rather than overhead. Further, it is the Department's practice, absent any information to the contrary, to consider items such as "consumables" generally as indirect

⁵⁹ See Memorandum to the File from Frances Veith, International Trade Compliance Analyst, through Blanche Ziv, Program Manager, Office 8, AD/CVD Operations, entitled, "Brake Rotors from the People's Republic of China," dated December 6, 2006.

⁶⁰ See id.

⁶¹ See 8th Administrative Review at Comment 7; 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) ("Sawblades"), and accompanying Issues and Decision Memorandum at Comment 2; Silicomanganese From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000) ("Silicomanganese"), and accompanying Issues and Decision Memorandum at Comment IV-1; LTFV at 9162; and Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56045, 56051 (November 6, 1995) ("Manganese Metal").

materials.⁶² An analysis of the surrogate companies' (i.e., Bosch and Rico) financial information shows that we are not able to discern the specific types of expenses that make up consumable stores in either Bosch's or Rico's financial statements. Moreover, we have stated previously that indirect materials are defined as:

Items used in the production process but not traceable to a particular product. This category also includes items that are added directly to products but whose cost is so small that the effort of tracing that cost to individual products would be greater than the benefit of accuracy (e.g., the cost of glue used in furniture manufacturing).⁶³

In the instant review, there is no evidence that the "consumables stores" are traceable to a particular product. None of the parties have claimed that the Department calculated surrogate values for any materials that might be classified as "consumable stores" on the surrogate financial statements. Similarly, no interested party has argued or illustrated that any material that might be classified as "consumable stores" on the Indian financial statements has been physically incorporated into the subject merchandise, or should be included in the calculation of direct materials in the normal value calculations. Moreover, none of the respondents reported using any material inputs that might be classified as "consumable stores" on the Indian surrogate financial statements.⁶⁴ An examination of the surrogate financial statements of Bosch and Rico reveals that only Bosch recorded a separate line item for "consumable stores,"⁶⁵ whereas Rico did not.⁶⁶ Thus, we have no reason to believe or suspect that any of the materials included in "consumable stores" in the Indian surrogate financial statements represent direct materials, or are physically incorporated into brake rotors, or valued in the Department's normal value calculations. Because "consumable stores" are not otherwise valued in the Department's normal value calculations, classifying them as factory overhead will not double count any of the respondents' reported factors of production ("FOPs"). Therefore, we have treated "consumable stores" as an overhead expense for the purposes of determining the surrogate financial ratios for these final results.

Comment 4: Revocation Eligibility of Non-selected Respondents

⁶² See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 4.

⁶³ See Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 27991 (May 15, 2006) and accompanying Issues and Decision Memorandum at Comment 7.

⁶⁴ See, e.g., Haimeng's October 3, 2006, section D questionnaire response ("DQR") at Exhibits D-4 and D-5; Winhere's October 3, 2006, DQR Exhibits D-4 and D-5; and Meita's October 3, 2006 DQR at Exhibits D-4 and D-5.

⁶⁵ See 2005-2006 Brake Rotors Factor Valuation Memorandum at Exhibit 6.

⁶⁶ See id.

The Trade Pacific respondents argue that in the final results, the Department should confirm that those companies not selected for individual review in this segment of the brake rotors proceeding will not lose their revocation eligibility regardless of the average dumping rate assigned to the non-selected respondents. The Trade Pacific respondents argue that the Department should confirm whether companies that requested reviews in prior segments of the antidumping proceeding, but were not selected as mandatory respondents in this segment or future segments of this proceeding, may request revocation in a future review by certifying and demonstrating that they have sold subject merchandise at not less than normal value during three consecutive review segments, including any segments for which a company was not selected as a mandatory respondent.

The Trade Pacific respondents assert that the Department's decision to limit the number of respondents in this or any future reviews should not stand in the way of revocation eligibility, particularly given that the non-selected respondents have received calculated zero or de minimis margins in many consecutive segments of this proceeding. In this regard, the Trade Pacific respondents maintain that dumping margins for non-selected respondents that can be calculated based on complete sales and FOP data submitted on the record constitute sufficient evidence that non-selected respondents remain eligible for revocation.

Department's Position: 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.

Comment 5: Cash Deposit Rates of Non-selected Respondents

The Trade Pacific respondents argue that rather than assign a weighted-average rate based on the margin of the mandatory respondents, the Department should instead assign to the non-selected respondents a cash deposit rate based on the most recent period in which the company was individually reviewed by the Department and assigned a company-specific margin. The Trade Pacific respondents argue that, similar to the situation where a company that has certified that it had no shipments during a period of review is able to retain its previous cash deposit rate from the prior segment, so should a non-reviewed, non-selected respondent in an administrative review retain its prior cash deposit rate. The Trade Pacific respondents argue that a company's previously calculated cash deposit rate is more probative for cash deposit purposes than a rate based on the production efficiencies and pricing practices of other companies.

Department's Position: For the final results, the cash deposit rate for non-selected respondents eligible for a separate rate in the administrative review continues to be the weighted-average dumping margin assigned in this administrative review. As noted in Comment 8 below, pursuant to section 735(c)(5)(B) of the Act, we continued to assign the non-selected respondents eligible for a separate rate in the administrative review a weighted-average dumping margin based on the non-zero, non de minimis margin(s) of the mandatory respondents. Section 733(d)(1)(B) of the Act states that the cash deposit rate is equal to the weighted-average dumping margin or all-others rate, as applicable. Moreover, for non-selected respondents, it is Department practice for the cash deposit rate for non-selected respondents to be equal to the weighted-average dumping

margin assigned to those respondents selected as mandatory respondents in an administrative review. See 8th Administrative Review, 71 FR at 66307, and Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438, 34441 (June 22, 2007).

We do not agree with the Trade Pacific respondents' argument that this situation is analogous to that of companies with no shipments during the POR, since those companies are not under review in this segment. All of the companies to which the weighted-average margin cash deposit 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." Accordingly, the Department is applying the cash deposit rates as determined in this review.

Comment 6: Voluntary Responses of Non-selected Respondents

The Trade Pacific respondents contend that the Department is required by section 782(a) of the Act to calculate an individual dumping margin for an exporter or producer not initially selected for examination if such information is (1) submitted by the date specified, and (2) if the number of such respondents is not too large. The Trade Pacific respondents argue that there are only three voluntary respondents in the administrative review (*i.e.*, Hongda, Luqi, and LABEC) and that they all submitted complete questionnaire responses by the deadline established for the mandatory respondents. The Trade Pacific respondents argue that it would not be burdensome for the Department to calculate margins for the voluntary respondents because each of the voluntary respondents submitted margin calculations. They stated that these margin calculations were done using each respondent's own sales and FOP databases run with the standard SAS margin calculation program used to calculate Winhere's preliminary margin and using the surrogate value dataset used in the Preliminary Results. Furthermore, the Trade Pacific respondents argue that the Department has ample time to consider the margin calculations for the three voluntary respondents because the final results of the administrative review can be extended until November 2007.

According to the Trade Pacific respondents, the margin calculations submitted by the three voluntary respondents are estimated to yield a margin of zero percent for Hongda, 0.50 percent for Luqi, and 2.33 percent for LABEC. In view of the above-estimated margin calculations for the voluntary respondents, the Trade Pacific respondents argue that, by not calculating an individual dumping margin for the three voluntary respondents as accurately as possible, the Department might require the U.S. importers of these exporters to pay hundreds of thousands of dollars in antidumping duties on subject merchandise that they do not owe.

Department's Position: The Department disagrees with Trade Pacific respondents' argument that the Department should have individually reviewed voluntary respondents. Section 782(a) of the Act gives the Department discretion, in view of its resources, to determine whether it is practicable to review a limited number of respondents and to choose the methodology it will

employ to determine the mandatory respondents (*i.e.*, by statistical sampling or largest export volume). It further 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 three respondents in this administrative review.⁶⁷ In the Respondent Selection Memo, we noted that, in the event a mandatory respondent failed to participate, we might, at our discretion, select a voluntary respondent for review, provided that the voluntary respondent had met the two criteria outlined above. None of the mandatory respondents to the administrative review failed to participate. Furthermore, we do not know if the voluntary information submitted is complete or accurate since we have not reviewed the data. Therefore, in accordance with the statute, the Department has examined its resources and determined that it is not practicable to examine voluntary respondents since we do not have the resources to review the data.

Comment 7: Incorporation of Zeroing for Mandatory Respondents

The Trade Pacific respondents argue that the Department should recalculate the respondents' weighted-average margins to comply with the decision of the World Trade Organization ("WTO") regarding the policy of "zeroing" negative dumping margins.⁶⁸ The Trade Pacific respondents argue that the Department has interpreted the definition of "dumping margin" under section 771(35)(A) of the Act to mean the margin which exists when normal value is greater than the export or constructed export price. The Trade Pacific respondents argue that the Department considers transactions to lack a "dumping margin" if the normal value is less than or equal to the export or constructed export price. The Trade Pacific respondents contend that, based on this interpretation, the Department has ignored negative margins when weight-averaging the transaction-specific margins in the Department's calculations. According to the Trade Pacific respondents, if the Department offsets positive and negative margins in this proceeding, it will eliminate the weighted-average margin of dumping calculated for respondents in the Preliminary Results. The Trade Pacific respondents contend that this case, therefore, presents an example of how the overall rational selling practices of a respondent create dumping solely through the application of zeroing.

The Trade Pacific respondents argue that the Department's zeroing practice is inconsistent with Articles 2.4 and 9.3 of the Antidumping Agreement and Article VI:2 of the GATT 1994

⁶⁷ See Memorandum from Blanche Ziv, Program Manager, AD/CVD Operations Office 8, to Wendy J. Frankel, Office Director, AD/CVD Operations Office 8, entitled, "Antidumping Duty Administrative Review of Brake Rotors from the People's Republic of China: Selection of Respondents," dated August 18, 2006 ("Respondent Selection Memo").

⁶⁸ "Zeroing" is the practice of removing each negative transaction-specific margin when calculating the weighted-average dumping margin for the subject merchandise.

according to a recent WTO Appellate Panel.⁶⁹ The Trade Pacific respondents argue that U.S. law, whenever possible, should be construed in a manner consistent with the U.S. international obligations.⁷⁰ The Trade Pacific respondents also argue that the U.S. Court of Appeals for the Federal Circuit (“CAFC”) has repeatedly held that the Department’s current treatment of negative transaction-specific margins is not required by statute, but instead is a result of the Department’s interpretation of the statute.⁷¹

The Trade Pacific respondents contend that the CAFC has held that where the Department has the authority to interpret the statute, the Department may occasionally reassess its policies, and apply a new policy to a pending case.⁷² The Trade Pacific respondents argue that the Department has, on occasion, adopted a change in statutory interpretation that applied to all segments pending as of the date of the change.⁷³ The Trade Pacific respondents argue that the CAFC has repeatedly held that the Department may reasonably change its interpretation of the statute at any time, so long as it provides an explanation for that change.⁷⁴ Therefore, the Trade Pacific respondents state that the Department should include negative transaction-specific margins when weight averaging the mandatory respondents’ transaction-specific margins for the final results.

In its rebuttal brief, the petitioner argues that the Department may not modify its current practice for “zeroing” until it completes the notification and comment process required by the Uruguay Round Agreements Act (“URAA”). The petitioner contends that URAA § 3533(g)(1)(c) requires the Department to publish the proposed modification in the Federal Register and allow for public comment before any modification to regulation or practice can be made.⁷⁵ The

⁶⁹ See United States - Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (January 9, 2007) (“US-Zeroing (EC)”), at p. 190(c).

⁷⁰ See, e.g., Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch.) 64, 118 (1804); Luigi Bormioli Corp. v. United States, 304 F.3d 1362, 1368 (Fed. Cir. 2002) (statutes must be interpreted to be consistent with GATT obligations, absent contrary indications in the statutory language or its legislative history).

⁷¹ See Corus Staal BV v. Department of Commerce, 395 F.3d. 1343, 1347 (Fed. Cir 2005) (“Corus Staal BV”); Timkin Co. v. United States, 354 F.3d. 1334, 1341-42 (Fed Cir. 2004) (“Timken”).

⁷² See SKF USA, Inc. v. United States, 254 F.3d 1022, 1029-30 (Fed. Cir. 2001).

⁷³ See, e.g., See Import Administration Policy Bulletin 98.1, “Basis for Normal Value When Foreign Market Sales Are Below Cost,” dated February 23, 1998, available at <<http://ia.ita.doc.gov/policy>>; Import Administration Policy Bulletin 94.1, “Treatment of Inventory Carrying Cost in Constructed Value,” dated March 25, 1994, available at <<http://ia.ita.doc.gov/policy>>.

⁷⁴ See NTN Bearing Corp of America v. United States, 295 F.3d. 1263,1269 (Fed. Cir. 2002); British Steel, PLC v. United States, 127 F.3d. 1471, 1475 (Fed. Cir. 1997).

⁷⁵ The petitioner also cites Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review, 71 FR 47485 (August 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

petitioner argues that the Department has not yet invited public comment on its zeroing practice, and must therefore, continue its zeroing practice in these reviews.

Department's Position: Section 771(35)(A) of the Act defines “dumping margin” as the “amount by which the normal value exceeds the export price and constructed export price of the subject merchandise” (emphasis added). The Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute.⁷⁶

With respect to US - Zeroing (EC), the Department recently announced that it was modifying its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations.⁷⁷ In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.⁷⁸ In addition, the United States has not yet gone through the statutorily mandated process of determining how to implement the report with respect to the specific administrative reviews that were subject to the US - Zeroing (EC) dispute.⁷⁹ As such, the Appellate Body's reports in US - Softwood Lumber, US - Zeroing (EC) and US - Zeroing (Japan) have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law.⁸⁰ Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value.

Comment 8: Incorporation of Zero and De Minimis Margins in Non-selected Respondents' Rate

The Trade Pacific respondents contend that if the Department does not calculate individual company-specific margins for Hongda, LABEC, and Luqi, then it should calculate a more accurate margin for the non-selected companies by including all zero and de minimis weighted-average margins calculated for the reviewed companies in the average margin calculation assigned to the non-selected companies. The Trade Pacific respondents point out that the Department did not include the zero and de minimis weighted-average margins calculated for Meita and Winhere in the calculation of the average margin rate assigned to the non-selected

⁷⁶ See Timken, 354 F.3d at 1342, and Koyo Seiko Co. v. United States, 543 U.S. 976 (2004). See also, Corus Staal BV, 395 F.3d at 1347.

⁷⁷ See Antidumping Proceedings: Calculation of the Weighted-Averaged Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722, 77724 (December 27, 2006).

⁷⁸ See id.

⁷⁹ See 19 USCS § 3538.

⁸⁰ See Corus Staal BV, 395 F.3d at 1347-49; Timken, 354 F.3d at 1342.

companies in the Preliminary Results. The Trade Pacific respondents note that the Department assigned the separate-rate applicant exporters, including Hongda, LABEC, and Luqi, an antidumping margin that was based only on Haimeng's calculated margin. The Trade Pacific respondents argue that by including zero and de minimis weighted-average margins in the calculation of the margin rate assigned to the non-selected companies, the Department would be calculating a rate which is more representative of the pool of respondents. The Trade Pacific respondents also argue that in administrative reviews there is no rule over whether to include zero and de minimis weighted-average margins in the calculation of the margin rate assigned to non-selected companies. The Trade Pacific respondents contend that the Department has not demonstrated why it is more appropriate to exclude zero and de minimis weighted-average margins in the calculation of the margin rate applied to non-selected companies. Therefore, the Trade Pacific respondents conclude that the zero and de minimis weighted-average margins of the reviewed companies should be included in the calculation of the margin assigned to non-selected companies in order to obtain the most accurate results in the final results.

Department's Position: In these final results of the administrative review, we have continued to assign non-selected respondents that are eligible for a separate rate a dumping margin that is the weighted average of the non-zero, non-de minimis dumping margins of the mandatory respondents. We note that the Act is silent with respect to calculating a rate for non-selected companies in NME cases. Although the "all-others" rate is directly applicable to market economy antidumping cases, the Department has incorporated this methodology in the calculation of the "separate rate" margin applicable to NME cases. Section 735(c)(5)(B) of the Act, which deals with the analogous "all-others" rate, allows the Department to "use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average non-zero, non-de minimis dumping margins determined for the exporters and producers individually investigated." See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs From the People's Republic of China, 66 FR 60185, 60192 (December 3, 2001)(unchanged in the final determination); LTFV at 9173-74. See also, Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Review, 63 FR 31724 (June 10, 1998), and accompanying Issues and Decision Memorandum at Comment 1.

In the 8th Administrative Review at Comment 1C, we noted that when the Department samples by selecting the largest exporters:

...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.⁸¹

⁸¹ See, e.g., Sawblades at Comment 10.

In this administrative review, we conducted a non-random selection of the largest exporters of subject merchandise.⁸² Therefore, in accordance with the statute and our stated practice, we did not include the zero and de minimis margins of Meita and Winhere in the weighted-average margin assigned to non-selected respondents in the administrative review.

Comment 9: Valuation of Cartons

The Trade Pacific respondents argue that the Department calculated the value for cartons in the Preliminary Results using a six-digit HTS category (i.e., 4819.10) that includes two sub-categories, “boxes” and “others.” The Trade Pacific respondents contend that all respondents in these reviews have reported using “boxes” to pack subject merchandise and, therefore, the Department should use the more product-specific HTS category for boxes (i.e., 4819.10.10) to value respondents’ reported packing boxes.

Department’s Position: For the final results of these reviews, we have used WTA Indian import statistics in the eight-digit HTS category (i.e., 4819.1010) to value the “box” packing input reported by Haimeng, Winhere, and Meita instead of the six-digit category (i.e., HTS 4819.10) used in the Preliminary Results. The six-digit category is subdivided into two eight-digit categories, namely 4819.1010 (“boxes of corrugated paper and paperboard”) and 4819.1090 (“cartons and cases of corrugated paper and paperboard”). For those respondents reporting the packing input “boxes” (i.e., Haimeng, Meita, and Winhere) we find that the eight-digit category 4819.1010 “boxes of corrugated paper and paperboard” is more specific.

Comment 10: Rescission of Review: Shanxi Zhongding

The petitioner contends that the Department should rescind the review of Shanxi Zhongding Auto Parts Co., Ltd. (“SZAP”) because the Department found SZAP’s sale to be non-bona fide in a previous new shipper review⁸³ and, as a result, rescinded that review. Therefore, the petitioner asserts that SZAP was never a specified exporter covered by the antidumping order of brake rotors in accordance with 19 CFR 351.213(b)(1), and that the Department should not have given SZAP a separate rate in the Preliminary Results because it has not previously completed a new shipper review of the order.

The petitioner contends that section 751(a)(2)(B) of the Act mandates that an initial determination of an individual weighted-average dumping margin for new exporters or producers is accomplished only through a new shipper review, and not through an annual administrative review. The petitioner states that it had requested that SZAP be reviewed in the current administrative review in May 2006, pending the successful completion of the previous new shipper review of SZAP. The petitioner argues that, since the new shipper review of SZAP was rescinded, the Department should have also rescinded the current administrative review of SZAP, because by failing to receive a separate rate in the new shipper review, SZAP is ineligible for an administrative review. To do otherwise, according to the petitioner, would defeat the

⁸² See Respondent Selection Memo.

⁸³ See 8th Administrative Review.

purpose of a new shipper review as new shippers would skip the process of new shipper reviews and simply file requests to participate in administrative reviews. Additionally, the petitioner argues that, according to 19 CFR 351.214(f), it was unable to withdraw its request for the current administrative review of SZAP because the 60-day period⁸⁴ allowed for withdrawal of requests for the administrative review had already passed by the time the new shipper review of SZAP was rescinded in November 2006.⁸⁵

The petitioner requests, therefore, that the Department rescind the current administrative review with respect to SZAP and instruct U.S. Customs and Border Protection (“CBP”) to assess the China-wide rate of 43.39 percent on brake rotors from the People’s Republic of China exported by SZAP to the United States during the 2005-2006 POR.

Department’s Position: We disagree with the petitioner that the current administrative review with respect to SZAP should be rescinded because the Department found a different sale by SZAP to be non-bona fide in a previous new shipper review.⁸⁶ A new shipper review and an administrative review are two distinct proceedings. See sections 751(a)(1) and (2) of the Act. There is no authority for the proposition that the agency is precluded from conducting an administrative review for a company, and granting that company a separate rate, on the basis that a new shipper covering a prior POR previously was rescinded for that company. The new shipper review that was initiated and subsequently rescinded in the 8th Administrative Review was a wholly distinct proceeding covering merchandise entering the United States during a specific time period. Our determination to initiate and subsequently rescind the new shipper review was based on information specific to that proceeding. With regard to this administrative review of SZAP, we note that the regulations provide for rescission of an administrative review under limited conditions, none of which are applicable here.⁸⁷ The Department rescinded the new shipper review based on its finding that the sale at issue was not a bona fide commercial transaction because the Department discovered, among other things, that SZAP failed to disclose its business relationships with other companies involved in the production and export of brake rotors.⁸⁸ Rescission in the current review is not appropriate based on the new shipper sale from a previous review being found non-bona fide. Accordingly, the Department properly completed the administrative review for SZAP in accordance with the statute and regulations. As SZAP properly was a company under the coverage of this administrative review, the Department had

⁸⁴ Although petitioner states that the period to withdraw its request for administrative review of SZAP is 60 days, we note that 19 CFR 351.213(d)(1) states that a party that requested a review may withdraw its request within 90 days of the date of publication of notice of initiation of the request for administrative review.

⁸⁵ See 8th Administrative Review, 71 FR at 66305.

⁸⁶ See id.

⁸⁷ See 19 CFR 351.213.

⁸⁸ See id.

the authority to grant that company a separate rate provided that it satisfied the appropriate requirements.

Specifically, the Department exercised its authority to limit the number of respondents selected for individual examination due to the large number of requests for administrative review, and selected the three largest exporters by volume as mandatory respondents. For the remaining respondents not selected for individual examination that participated in the administrative review (e.g., SZAP), the Department issued separate-rate questionnaires (i.e., separate-rate applications and certifications) to determine the eligibility of those respondents for a separate rate⁸⁹ and assigned a margin based on the weighted-average of the margins calculated for the companies selected for individual review excluding any that were zero, de minimis, or based entirely on adverse facts available (“AFA”) (see Comment 8)).

To establish whether a firm is sufficiently independent from government control in its export activities to be eligible to be assigned a separate rate, the Department analyzes each exporting entity under a test arising from the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China, 59 FR 22585, 22586, 22587 (May 2, 1994) (“Silicon Carbide”), and Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China, 56 FR 20588, 20589 (May 6, 1991) (“Sparklers”). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both de jure and de facto governmental control over its export activities. It is the Department’s policy that separate rate questionnaire responses must be evaluated each time a respondent makes a separate rate claim, regardless of any separate rate the respondent received in the past.⁹⁰ In this review, SZAP provided complete responses to the Department’s separate-rate application. Based on the information provided by SZAP, we determined that it demonstrated the absence of both de jure and de facto governmental control over its export activities during the POR and thus, was eligible for a separate rate during this period. Therefore, consistent with Department practice, we are treating SZAP the same as the other eligible PRC companies that have adequately established that they are entitled to separate rates during the course of this proceeding.

We disagree with the petitioner’s argument that section 751(a)(2)(B) of the Act mandates that a determination of individual weighted-average dumping margins for new exporters or producers is accomplished only through a new shipper review and not through an annual administrative review. Section 751(a)(2)(B) of the Act authorizes the Department to conduct periodic administrative reviews “for new exporters and producers” for the purpose of establishing an individual weighted-average antidumping duty rate for exporters or producers that did not ship subject merchandise during the original period of investigation (“POI”). The statute and

⁸⁹ See Letters to All Interested Parties regarding Separate Rate Applications and Separate Rate Certifications from Wendy J. Frankel, Director, AD/CVD Operations, Office 8, dated August 4, 2006.

⁹⁰ See Manganese Metal from the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12441 (March 13, 1998).

Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, Vol. 1, at 875 (1994), make clear that the term “new exporters and producers” means exporters and producers who demonstrate in their review request that they 1) did not export subject merchandise to the United States during the “POI,” and 2) are not affiliated with any exporter or producer who exported subject merchandise to the United States during the POI.⁹¹ The new shipper review is a unique process which generally is conducted on an expedited basis⁹² and prior to August 2006,⁹³ provided a benefit (i.e., the importer had the option of posting a bond in lieu of a cash deposit) not available to respondents during the course of regular administrative reviews. However, 19 CFR 351.213(b) states that an administrative review can be requested for any exporter or producer of the subject merchandise covered by the order during the POR. Every exporter or producer of the subject merchandise is covered by the order unless it has been specifically excluded from the order as part of the investigation⁹⁴ or excluded due to the successful completion of a revocation proceeding.⁹⁵ Therefore, any exporter or producer of the subject merchandise, excluding those companies exempted from the order at the time of the investigation or those which have successfully completed a revocation proceeding, are eligible to be reviewed as part of an administrative review including any “new exporters or producers.” Although the regulations provide an opportunity for “new exporters and producers” to be reviewed under a separate provision, there is no statement in the statute or regulations which precludes a “new exporter or producer” from participating in an administrative review. Therefore, contrary to the petitioner’s claim, the new shipper review is not the only proceeding in which the determination of antidumping duties for new exporters or producers can be accomplished. Rather, it is the Department’s practice, as described in Policy Bulletin number 03.2,⁹⁶ to allow qualified respondents that meet certain requirements to participate in the new shipper review process. In addition, nowhere in the statute or regulations does it state that a respondent that fails to complete a new shipper review, thereby not receiving a separate rate, is ineligible for an administrative review.

Furthermore, the petitioner’s claim that it requested that SZAP be reviewed in the current administrative review, pending the successful completion of SZAP’s new shipper review is not substantiated by record evidence. There is nothing on the record of the administrative review

⁹¹ See section 751(a)(2)(B)(i) of the Act and SAA at 875.

⁹² See id.

⁹³ On August 17, 2006, the Pension Protection Act of 2006 (H.R.4) was signed into law. Section 1632 of H.R.4 (Suspension of New Shipper Review Provision) temporarily suspended the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit of estimated antidumping and countervailing duties for each entry of subject merchandise during the period April 1, 2006, through June, 30, 2009.

⁹⁴ See 19 CFR 351.204(e)(1).

⁹⁵ See 19 CFR 351.222(b).

⁹⁶ See Import Administration Policy Bulletin 03.2, “Combination Rates in New Shipper Reviews,” dated March 4, 2003, available at <<http://ia.ita.doc.gov/policy>>.

showing that the petitioner wished to withdraw its request for review of SZAP pending the outcome of the SZAP's new shipper review. Moreover, the petitioner only first made mention of this claim in its case brief. Furthermore, the petitioner could have requested that the Department extend the 90-day deadline to withdraw the request for review for SZAP pending the outcome of the concurrent new shipper proceeding but it chose not to do so. Additionally, nothing in the statute or regulations provides for conditional initiation of an administrative review pending the successful completion of a new shipper review. Therefore, we are not rescinding the review with respect to SZAP and have continued to assign it a separate rate for the final results.

Comment 11: Separate Rate: Huanri Group

The petitioner argues that Shandong Huanri Group Co., Ltd., Shandong Huanri Group General Co., and Laizhou Huanri Automobile Parts Co., Ltd. (collectively "Huanri") should not be granted a separate rate in the final results because the Department confirmed at verification that one of its shareholders maintained a relationship with the Panjia Village Committee ("Village Committee") during the POR as a village representative in the village self-governance committee.⁹⁷ According to the petitioner, although the Department did not investigate the extent of such involvement, the link between even one shareholder and the Village Committee, given the past history of the relationship between Huanri and the committee, should be sufficient to deny Huanri a separate rate in this review.⁹⁸

The petitioner also argues that the Department should apply facts available with an adverse inference, in accordance with section 776 of the Act, because Huanri failed to cooperate and disclose information at verification. Specifically, the petitioner states that the Village Committee chairman, Pan Guang Yai, did not meet with Department officials at verification and the company was unable to provide Village Committee documents for review that were maintained by the Village Committee chairman in a locked cabinet at the Village Committee offices.⁹⁹ As a result, the petitioner contends that the failure to disclose the documents concerning the Village Committee indicates that Huanri and the Chinese government (*i.e.*, Village Committee) may be concealing information that may have proven *de facto* or *de jure* control by the Chinese government over Huanri. The petitioner argues that the Department is authorized to use facts available, in accordance with section 776(a) of the Act, because the Village Committee withheld information requested by the Department to clarify the issue of government control over Huanri.

⁹⁷ Petitioner cites to "Memorandum from Eugene Degnan, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 8, and Paul Stolz, International Trade Compliance Analyst, AD/CVD Operations, Office 8, through Robert Bolling, Program Manager, AD/CVD Operations, Office 8 and Wendy J. Frankel, Director, AD/CVD Operations, Office 8, to the File entitled, "Antidumping Duty Administrative Review of Brake Rotors from the People's Republic of China: Verification of Section A and Quantity and Value Response of Shandong Huanri Group Co., Ltd., Laizhou Huanri Automobile Parts Co., Ltd., and Shandong Huanri Group General Co.," dated May 4, 2007 ("Huanri Verification Report") at p. 7.

⁹⁸ Petitioner cites 2003-2004 Brake Rotors, where Huanri was found to be controlled by the Village Committee.

⁹⁹ See Huanri Verification Report at p. 8.

As facts available, the petitioner asserts that the Department should maintain the presumption that Huanri is not entitled to a separate rate for the final results.

Department's Position: Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability.

The Department has determined that the application of total AFA is not warranted in this review because Huanri provided all information requested by the Department by the established deadlines, and has met the requirements necessary for a separate rate (e.g., the timely submission of its quantity and value questionnaire response, and separate-rate application¹⁰⁰).

In the Preliminary Results, we determined that Huanri was eligible for a separate rate based on our examination of the criteria indicative of an absence of de jure and de facto government control. For a full explanation of our decision regarding Huanri's separate rate in the Preliminary Results, see Memorandum from the Team through Blanche Ziv, Program Manager, AD/CVD Operations, Office 8, to Wendy J. Frankel, Director, AD/CVD Operations, Office 8, entitled, "Separate-Rate Analysis for Respondents (Including Exporters Not Being Individually Reviewed)," dated February 9, 2007 ("Separate-Rate Memo"). In the Preliminary Results, we stated that we intended to verify the information reported to the Department by Huanri in its separate-rate application.¹⁰¹ From March 20 through March 22, 2007, the Department conducted a verification of Huanri at Huanri's headquarters in Panjia Village, Laizhou, China. For further details on the verification, see Huanri Verification Report.

In the Huanri Verification Report we stated that, although we were unable to meet with the Village Committee chairman during the verification of Huanri and review any documents he maintained in his Village Committee offices,¹⁰² neither he nor any other current members of the Village Committee had notification of the Department's intention to visit, and the Village Committee is not a respondent under review in this case. At verification, Department officials asked if they could visit the Village Committee offices, and Huanri complied with the Department's request. While at the Village Committee offices, we were able to review information maintained by the Village Committee regarding the sale of Huanri by the Village

¹⁰⁰ See Letters from the Trade Pacific respondents to the Department, dated July 6, 2006, and August 4, 2006.

¹⁰¹ See Preliminary Results, 72 FR at 7408.

¹⁰² See Huanri Verification Report at p. 7.

Committee.¹⁰³ We found no discrepancies in this information.¹⁰⁴ Therefore, pursuant to section 782(e) of the Act, there is no basis to apply total AFA in determining a separate rate for Huanri in this review because Huanri provided all the information requested by the relevant deadlines.

We disagree with the petitioner's argument that the relationship between one of Huanri's minor shareholders (*i.e.*, 1.5 percent stake) and the Village Committee is sufficient to deny Huanri a separate rate in this review.¹⁰⁵ To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in Sparklers, 56 FR at 20588, and later expanded upon in Silicon Carbide, 59 FR at 22585. Under this analysis, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; or 3) any other formal measures by the government decentralizing control of companies.¹⁰⁶

Our analysis of absence of *de facto* government control over exports is based on the following four factors: 1) whether each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

In the Preliminary Results, we noted that in previous segments of this proceeding, the Department determined that Huanri was not entitled to a separate rate because it had not demonstrated an absence of *de facto* control by the PRC government.¹⁰⁷ In 2003-2004 Brake Rotors, the Department determined that the Panjiacun Village Committee was a form of local government in the PRC and that it was involved in export-related decisions at Huanri. Furthermore, in the 8th Administrative Review, consistent with Department practice, the Department determined that Huanri was not entitled to a separate rate because Huanri cancelled

¹⁰³ See id.

¹⁰⁴ See Huanri Verification Report at pp. 6-8.

¹⁰⁵ Petitioner cites 2003-2004 Brake Rotors, where Huanri was found to be controlled by the Village Committee.

¹⁰⁶ See Sparklers, 56 FR at 20588.

¹⁰⁷ See 2003-2004 Brake Rotors.

a scheduled verification, and therefore, the Department was unable to verify Huanri's response with respect to its separate-rate claim.¹⁰⁸

In the instant administrative review, Huanri reported that a group of shareholders purchased all of Huanri's assets from the Panjiacun Village Committee prior to the POR.¹⁰⁹ Huanri also reported that, during the POR, none of its shareholders had any relationship with any government entity, including the Panjiacun Village Committee and that none of its owners and/or managers holds any position in the Panjiacun Village Committee.¹¹⁰ It further reported that any current owner who previously held positions in the Panjiacun Village Committee have since resigned from those positions on March 31, 2005 (i.e., prior to the POR).¹¹¹ We verified the relevant sales documents and conducted interviews with Panjiacun Village Committee members regarding the sale of Huanri and noted no discrepancies in this regard. Based on Huanri's separate-rate application responses and the Department's verification, we find that Huanri has met the criteria for a separate rate.

At verification, we found that Huanri provided sufficient evidence concerning the Village Committee's sale of Huanri to ten individual shareholders and that these shareholders do not hold positions of authority within the Village Committee. Although Huanri reported at verification that a shareholder acted as a "village representative" involved in the village self-governance committee, we found that the individual in this position acts as nothing more than a representative for a subgroup of villagers who raises the villagers' issues to the decision-making body of the committee (i.e., the Village Committee).¹¹² This position does not permit the holder to partake in any official decisions made by the Village Committee.¹¹³

In the Preliminary Results, Huanri demonstrated an absence of government control, both in law and in fact, with respect to its export activities, in accordance with the criteria identified in Sparklers and Silicon Carbide and as explained in our Separate-Rate Memo. As detailed above, no information placed on the record after the Preliminary Results or developed during the verification of Huanri contradicts our preliminary finding that Huanri is eligible for a separate rate in this administrative review. Therefore, for these final results, we continue to find that Huanri is eligible for a separate rate in this administrative review.

Comment 12: Respondent Selection Methodology

¹⁰⁸ See 2004-2005 Brake Rotors.

¹⁰⁹ See Huanri's Separate-Rate Application ("Huanri's SRA") dated September 15, 2006, at pgs. 11 and 12.

¹¹⁰ See id.

¹¹¹ See id.

¹¹² See Huanri Verification Report at pgs. 7 and 8.

¹¹³ See id.

The petitioner argues that the change in the Department's sampling methodology in this review (*i.e.*, selecting producers and exporters accounting for the largest volume of subject merchandise) from that of the prior administrative review of brake rotors (*i.e.*, probability-proportional-to-size ("PPS") sampling method) violated its due process rights because it claims that the Department did not give any advance notice, nor did it provide the petitioner or interested parties an opportunity to comment on its respondent selection methodology pursuant to section 777A(b) of the Act. The petitioner claims that it did not receive notice of the decision to change the sampling methodology until after it was adopted, and that the Department should have provided the same opportunity for comments in the current review as it had in the 2004-2005 antidumping administrative review of brake rotors from the People's Republic of China.¹¹⁴

Department's Position: We disagree with the petitioner's argument that the Department's respondent selection methodology (*i.e.*, selecting the three largest exporters by volume) in this review violated its due process rights. All interested parties in this review were notified multiple times regarding the Department's intention to limit respondents selected for individual review during the course of this proceeding. The Department initiated the administrative review on May 31, 2006.¹¹⁵ Shortly after initiation, the Department issued a quantity and value questionnaire ("Q&V") to all respondents required for review on June 16, 2006.¹¹⁶ In its Q&V, the Department notified all interested parties on June 16, 2006, that it was considering exercising its authority to select respondents for individual review due to the large number of requests for administrative review, and the Department's experience regarding the resulting administrative burden to review each company for which a request has been made.¹¹⁷ On August 4, 2006, the Department issued separate-rate applications and certifications to all interested parties to be used to determine the eligibility of a separate rate for those respondents not selected for individual review.¹¹⁸ Based on the quantity and value information submitted by respondents in response to the Department's Q&V, the Department issued its respondent selection memorandum on August 18, 2006.¹¹⁹

The statute allows us to limit our examination to a reasonable number of producers or exporters based on one of two methodologies set forth in section 777A(c)(2) of the Act. The Department

¹¹⁴ See 8th Administrative Review at Comment 7.

¹¹⁵ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 71 FR 30864 (May 31, 2006).

¹¹⁶ See Letter from Wendy J. Frankel, Director, AD/CVD Operations Office 8, to all interested parties, dated June 16, 2006.

¹¹⁷ See Letters to All Interested Parties requesting Quantity and Value Information from Wendy J. Frankel, Director, AD/CVD Operations, Office 8, dated June 16, 2006.

¹¹⁸ See Letters to All Interested Parties regarding Separate Rate Applications and Separate Rate Certifications from Wendy J. Frankel, Director, AD/CVD Operations, Office 8, dated August 4, 2006.

¹¹⁹ See Respondent Selection Memo.

has the discretion to employ either methodology. Further, the statute does not require that the methodology employed in previous reviews must be adopted in subsequent reviews. Although the petitioner had knowledge of the Department's intention to limit the number of respondents selected for individual review, at no point prior to the filing of its case brief did the petitioner raise an objection to the Department's use of the respondent selection method. Moreover, nothing precluded the petitioner from doing so in this review in response to the documents issued above, or before the record of the administrative review had closed on September 17, 2006. Furthermore, the Respondent Selection Memo was issued to all interested parties by the Department nearly five months prior to the Preliminary Results, and all parties to the proceeding, including the petitioner, had an opportunity to comment on that memo at any time prior to the Preliminary Results.

The Department's discretion for limiting respondent selection in situations where the information to be checked is voluminous has been upheld in previous cases by the CIT.¹²⁰ In addition, the Court has consistently recognized that Commerce has been given broad discretion in its respondent selection methodology.¹²¹ Our determination that individual review of the largest exporters by volume rather than the PPS statistical sampling method employed in the previous 8th Administrative Review was a reasonable exercise of the Department's discretion.¹²² Accordingly, contrary to the petitioner's assertions, the Department finds that its decision to change its sampling methodology in this review from that employed in the prior administrative review of brake rotors was in conformity with both the Act and the Department's regulations.

Comment 13: Clerical Error–Freight Expenses for Golrich's Buckles and Cartons

In the Preliminary Results, we erred in the calculation of freight expenses associated with Golrich's reported use of cartons and steel buckles. For truck freight, we inadvertently added the distance from the domestic supplier to the factory instead of multiplying it. We have corrected this error for the final results. For further details, see Memorandum to the File, from Ann Fornaro, International Trade Analyst, NME Group/Office 8, through Blanche Ziv, Program Manager, NME Group/Office 8, entitled "Analysis for the Final Results of the 2005-2006 New Shipper Review of the Antidumping Duty Order on Brake Rotors from the People's Republic of China: Qingdao Golrich Autoparts Co., Ltd.," dated July 27, 2007.

Comment 14: Clerical Error–Valuation of Steel Strap

¹²⁰ See Federal-Mogul Corp. v. United States, 20 CIT 234, 918 F. Supp. 386, 403-04 (CIT 1996). See also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001), and accompanying Issues and Decision Memorandum at Comment 1.

¹²¹ See Nachi-Fujikoshi Corp. v. United States, 19 C.I.T., 890 F. Supp. 1106, 1109 (1995); see also GMN Georg Muller Nurnberg AG v. United States, 15 C.I.T. 174, 179, 763 F. Supp. 607, 612 (1991); Asociacion Colombiana de Exportadores de Flores v. United States, 13 C.I.T. 13, 20-22, 704 F. Supp. 1114, 1120-22 (1989), aff'd, 901 F.2d 1089 (Fed. Cir 1990.), cert. denied, 498 U.S. 848 (1990).

¹²² See id. at 32-33.

Ukraine’s status as an NME was revoked effective February 1, 2006. In the Preliminary Results, we inadvertently excluded Ukraine import data for February and March 2006 in the calculation of a surrogate value for steel strap. For the final results, we have recalculated the surrogate value for steel strap to include data for imports from Ukraine for February and March 2006. See Memorandum from Ann Fornaro, International Trade Compliance Analyst, to the File entitled, “2005-2006 Antidumping Duty Administrative and New Shipper Reviews of Brake Rotors from the People’s Republic of China – Surrogate Value Change for Final Results,” dated May 9, 2007. See also Memorandum from Ann Fornaro, Trade Compliance Analyst, through Blanche Ziv, Program Manager, AD/CVD Operations Office 8, to the File entitled, “2005-2006 Administration and New Shipper Reviews of the Antidumping Duty Order of Brake Rotors from the People’s Republic of China – Surrogate Values for the Final Results,” dated July 27, 2007.

Recommendation

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

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date