

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 2006-2007  
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 March 2008, case and rebuttal briefs submitted by interested parties in the 2006-2007 administrative and new shipper reviews of the antidumping duty order on brake rotors from the People's Republic of China ("PRC"). On March 6, 2008, the Department of Commerce ("Department") received a case brief from Trade Pacific PLLC on behalf of Laizhou Auto Brake Equipment Company ("LABEC"), Yantai Winhere Auto-Part Manufacturing Co., Ltd. ("Winhere"), Longkou Haimeng Machinery Co., Ltd. ("Haimeng"), Laizhou Luqi Machinery Co., Ltd. ("Luqi"), Laizhou Hongda Auto Replacement Co., Ltd. ("Hongda"), Qindgdao Meita Automotive Industry Co., Ltd. ("Meita"), Dixion Brake System (Longkou) Ltd. ("Dixion"), and Laizhou Wally Automobile Co., Ltd. ("Wally") (collectively, "the Trade Pacific Respondents"). On March 11, 2008, we received a rebuttal brief from the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers ("petitioner"). The period of review ("POR") is April 1, 2006, through March 31, 2007. As a result of our analysis, for the final results, we made certain changes to the financial ratio calculations that affected the respondents' margin calculations in the administrative and new shipper reviews. Below is the list of the issues for which we received comments and rebuttal comments by parties in these reviews. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

- Comment 1 Calculation of Separate Rate for Non-Selected Respondents
- Comment 2 Voluntary Responses of Non-Selected Respondents
- Comment 3 Financial Ratios: Calculation of Factory Overhead, Selling, General, and Administrative Expenses, and Profit

## Discussion of the Issues

### Comment 1: Calculation of Separate Rate for Non-Selected Respondents

The Trade Pacific Respondents argue that in the final results, the Department should continue to calculate the antidumping margin for the non-selected separate rate respondents by including in the weighted-average margin calculation all company-specific margins from the mandatory respondents that are either zero or de minimis. First, the Trade Pacific Respondents argue that the volume of exports represented by the mandatory respondents is sufficiently high to support that the margins calculated for these companies are representative of the commercial behavior of all exporters during the POR. Second, the Trade Pacific Respondents contend that the Department found in the 8<sup>th</sup> Administrative Review<sup>1</sup> that the Chinese brake rotor industry is fairly homogeneous in terms of economic characteristics, and that there are no discernible variations among the companies. Thus, the Trade Pacific Respondents argue that there is nothing to suggest that including zero and de minimis margins in the weighted-average margin would not result in a margin that is reasonably reflective of the potential dumping margins for the non-selected respondents. Finally, the Trade Pacific Respondents maintain that evidence<sup>2</sup> submitted on the record by Dixon, Hongda, Luqi, Wally, Winhere, and LABEC, which establishes their actual levels of dumping during the POR, demonstrates that it is appropriate to include zero and de minimis margins in the antidumping rate assigned to these non-selected respondents.

To support their arguments, the Trade Pacific Respondents cite to section 735(c)(5)(B) of the Tariff Act of 1930, as amended (“the Act”), which states that in cases where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or de minimis, or are determined entirely on facts available under section 776 of the Act, “the administering authority may use any reasonable method to establish the estimated all-other rate for exporters and producers not individually investigated, including averaging the weighted-average dumping margins determined for the exporters and producers individually investigated.” The Trade Pacific Respondents also cite Yantai Oriental Juice Co., et al. v. United States, 27 C.I.T. 477 (March 21, 2003), where the Court of International Trade (“CIT”) ruled that, “when choosing a methodology for assigning AD margins, Commerce cannot simply rely on a methodology found to be acceptable in other investigations. Rather, Commerce must insure that any methodology it employs in any particular investigation is based on the best available information and establishes antidumping margins as accurately as possible.”

---

<sup>1</sup> 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”).

<sup>2</sup> Dixon, Hongda, Luqi, Wally, and Winhere, each submitted voluntary questionnaire responses by the deadline established for the mandatory respondents, as well as margin calculations using the sales and factors-of-production databases submitted in their respective voluntary responses. LABEC provided a section A separate rate certification response, which included its total sales quantity and value for the POR.

In its rebuttal brief, petitioner argues that it strongly opposes the Department's change in practice to include zero and de minimis margins in its weighted-average margin calculation for the non-selected separate rate respondents. Petitioner cites to the 9<sup>th</sup> Administrative Review<sup>3</sup> where the Department excluded zero and de minimis margins from the weighted-average margin assigned to the non-reviewed respondents in accordance with section 735(c)(5)(B) of the Act. Petitioner argues that the Department should follow the statutory mandate and exclude zero and de minimis margins calculated for the mandatory respondents in the separate rate margin and instead use the 4.22 percent applied in the 9<sup>th</sup> Administrative Review, or alternatively, use the PRC-wide Entity rate of 43.32 percent.

**Department's Position:** The Department will continue to assign the 12 non-reviewed respondents in this proceeding the weighted average of the two rates calculated for the two mandatory respondents (*i.e.*, zero and de minimis) in accordance with section 735(c)(5)(B) of the Act. The separate rate is normally calculated in a manner consistent with section 735(c)(5)(A) of the Act, based on the weighted-average dumping margins established for the exporters and producers individually investigated, excluding any zero and de minimis margins and any margins based on total facts available. In rare exceptions where all mandatory rates are zero, de minimis or based entirely on facts available, the statute provides that the Department will "use any reasonable method" to determine the appropriate rate to be assigned to non-investigated separate rate respondents. See section 735(c)(5)(B) of the Act. Under the Act, this may include weight averaging the estimated dumping margins of the respondents individually investigated. *Id.* The Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act states that "{t}he expected method in such cases will be to weight-average the zero and de minimis margins and margins determined pursuant to the facts available, provided that volume data is available." H.R. Rep. No. 103-316 at 873. The SAA further provides that "if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods." *Id.*

Accordingly, the selection of a "reasonable method" to use when, as here, the rates of the mandatory respondents are zero and de minimis, must be made on a case-by-case basis and would depend on the facts of the case. In the 8<sup>th</sup> Administrative Review, we determined that the brake rotor firms are fairly homogenous in terms of economic characteristics.<sup>4</sup> We believe these firms to be fairly homogenous and the history of this case shows that until the 8<sup>th</sup> Administrative Review (where we began limiting the selection of companies reviewed), the preponderance of margins calculated were zero or de minimis. For this reason, we believe that it is appropriate, based on the above rationale (homogeneity of the industry and history of margins), to assign these non-selected respondents that are eligible for a separate rate a margin based on the weighted average of the two rates calculated for the two mandatory respondents (*i.e.*, zero and de

---

<sup>3</sup> See Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005–2006 Administrative Review, 72 FR 42386, 42389 (August 2, 2007) ("9<sup>th</sup> Administrative Review").

<sup>4</sup> See *e.g.* 8<sup>th</sup> Administrative Review and the accompanying Issues and Decision Memorandum at Comment 1.

minimis). Thus, for the final results, we will assign the non-selected respondents the weighted-average of the two rates calculated for the two mandatory respondents (i.e., zero and de minimis) in accordance with section 735(c)(5)(B) of the Act.

### **Comment 2: Voluntary Responses of Non-Selected Respondents**

The Trade Pacific Respondents argue that if the Department does not use the margins calculated for the mandatory respondents in the weighted-average margin calculated for the non-selected respondents, the Department should calculate company-specific margins for the five non-selected respondents using the information timely submitted in their voluntary questionnaire responses. The Trade Pacific Respondents contend that section 782(a) of the Act requires the Department 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 the five voluntary respondents in the administrative review (i.e., Dixon, Hongda, Luqi, Wally, and Winhere) all submitted complete questionnaire responses by the deadline established for the mandatory respondents. The Trade Pacific Respondents argue that calculating margins for the voluntary respondents would not be burdensome for the Department because the voluntary respondents also provided margin calculations using the sales and factors-of-production databases submitted in their respective voluntary responses. They stated that these margin calculations were done using each respondent's own sales and factors-of-production databases run with the standard SAS margin calculation program used by the Department to calculate the mandatory respondents' preliminary margins, and using the surrogate value dataset used by the Department in the Preliminary Results.<sup>5</sup> The Trade Pacific Respondents further argue that because the Department can fully extend the deadline for issuing the final results until August 3, 2008, the Department has ample time to calculate individual margins for the voluntary respondents.

Petitioner argues that the Department should not review the voluntary respondents' margin calculations because it made a decision early in this review to individually review only two mandatory respondents. Furthermore, petitioner argues that the Department should disregard the voluntary respondents' margin calculations submitted on the record because the Department does not know whether the information submitted by the voluntary respondents is complete or accurate since it has not reviewed the data.

**Department's Position:** Since we used the margins calculated for the mandatory respondents in the weighted-average margin calculated for the non-selected respondents, the issue is moot.

The Department disagrees, however, with The Trade Pacific Respondents' argument that the Department should calculate company-specific margins for the five non-selected 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

---

<sup>5</sup> See Brake Rotors from the People's Republic of China: Preliminary Results of the 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of the 2006-2007 Administrative Review, 73 FR 6700 (February 5, 2008) ("Preliminary Results").

the methodology it will employ to select 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 examine only two respondents in this administrative review.<sup>6</sup> 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 3: Financial Ratios: Calculation of Factory Overhead, Selling, General, and Administrative Expenses ("SG&A") and Profit**

The Trade Pacific Respondents argue that the Department should make several adjustments to the calculation of the surrogate financial ratios. First, the Trade Pacific Respondents argue that for the final results, the Department should include both the "gain" and "loss" on the sale of fixed assets, as reported by Bosch Chassis Systems India Ltd. ("Bosch"),<sup>7</sup> in manufacturing overhead in the surrogate financial ratio calculations.<sup>8</sup> Second, the Trade Pacific Respondents argue that the Department should treat "freight," as reported by Bosch, as a raw material item rather than include it in the manufacturing overhead calculation. The Trade Pacific Respondents argue that it is the Department's practice to treat transportation expenses related to raw materials as a direct cost of manufacture. Moreover, the Trade Pacific Respondents argue that because the Department applies the surrogate overhead ratio to respondents' material costs that include freight-in expenses, the Department must calculate the overhead ratio similarly by including freight expenses in the overhead ratio denominator. To support their argument, the Trade Pacific Respondents cite to Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, ("SFTE") 318 F. Supp. 2d 1339, 1341 (CIT 2004), which states that the Department "typically divides total manufacturing overhead expenses by total direct manufacturing expenses." Finally, the Trade Pacific Respondents argue that the Department should exclude "cash discount," as reported by

---

<sup>6</sup> See the Department's memorandum entitled, "2006-2007 Antidumping Duty Administrative Review of Brake Rotors from the People's Republic of China: Selection of Respondents," dated July 13, 2007 ("Respondent Selection Memo").

<sup>7</sup> To calculate the surrogate financial ratios for the Preliminary Results, the Department used Bosch's nine-month (i.e., April through December) 2006 annual report, and Rico Auto Industries Limited's ("Rico") 2006-2007 annual report for the year ending March 31, 2006.

<sup>8</sup> The Trade Pacific Respondents cite to Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the PRC; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke in Part, 63 FR 63842, 63852 (Nov. 17, 1998), and the accompanying Issues and Decision Memorandum at Comment 16.

Bosch, from the financial ratio calculations rather than include it in the SG&A calculation. The Trade Pacific Respondents contend that discounts are deducted directly from the U.S. prices in the calculation of net U.S. price, and including discounts in the calculation of the surrogate SG&A ratio would double count these expenses. To support their argument, the Trade Pacific Respondents cite to 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 20595 (April 10, 2004) ("Color Television Receivers"), and the accompanying Issues and Decision Memorandum at Comment 15.

Petitioner did not comment with respect to the calculation of the financial ratios.

**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 excluded "profit on sale of fixed assets" from the financial ratio calculations.<sup>9</sup> We agree with the Trade Pacific Respondents that including "profit on sale of fixed assets" in the financial ratio calculations is appropriate because we have included "loss on sale of fixed assets" in the financial ratio calculations. Thus, for the final results we have included "profit on sale of fixed assets" in the financial ratio calculations.

While we agree with the Trade Pacific Respondents that Bosch's freight line item should not be treated as manufacturing overhead, we disagree that freight should be treated as raw material. See Schedule 13 of Bosch's 2006 financial statements. The SFTE case cited by the Trade Pacific Respondents explains generally what the Department's surrogate financial ratios represent, but does not specifically address how the Department treats freight in the ratios. Moreover, in SFTE, the issue was not the treatment of the line items used in the financial ratio calculations; rather, it was the choice of surrogate values used to value pig iron and the surrogate company selected to value manufacturing overhead, SG&A and profit. Because the Department has no information on the record to demonstrate otherwise, we find that it would be inappropriate to include Bosch's freight in the denominator of the surrogate financial ratios. Thus, consistent with the Department's practice,<sup>10</sup> we excluded freight (i.e., transportation expense) from the financial ratio calculations because this expense is already accounted for in the adjustments made to the U.S. price.

---

<sup>9</sup> See the Department's memorandum entitled, "2006-2007 Administrative and New Shipper Reviews of Brake Rotors from the People's Republic of China: Factor Valuations for the Preliminary Results," dated January 30, 2008 ("Preliminary FOP Memo") at Attachment 6.

<sup>10</sup> See e.g., Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008), and the accompanying Issues and Decision Memorandum at Comment 6, Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 13239 (March 21, 2007), and the accompanying Issues and Decision Memorandum at Comment 1, Color Television Receivers at Comment 15, and Notice of Final Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China, 66 FR 50608 (October 4, 2001), and the accompanying Issues and Decision Memorandum at Comment 3.

Regarding cash discounts, the Department treated cash discounts in the Preliminary Results as SG&A in the financial ratio calculations.<sup>11</sup> Consistent with the Department's practice,<sup>12</sup> we agree with the Trade Pacific Respondents that excluding cash discount from the financial ratio calculations is appropriate because it is a price adjustment that is separately valued elsewhere in the calculation of normal value. To include this item in the financial ratio calculations may result in double counting. Thus, for the final results, we have excluded cash discounts from the financial ratio calculations.

**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

---

<sup>11</sup> See Preliminary FOP Memo at Attachment 6.

<sup>12</sup> See e.g., Color Television Receivers, at Comment 15.