

December 31, 2007

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results in the
Expedited Second Sunset Review of the Antidumping Duty Order on
Brake Rotors from the People's Republic of China

Summary

We have analyzed the substantive responses of the interested parties in this sunset review of the antidumping duty order covering brake rotors from the People's Republic of China ("PRC"). We recommend that you approve the positions we describe in the "Discussion of the Issues" section of this memorandum. Below is a list of issues in this sunset review for which the Department of Commerce ("the Department") received a substantive response:

1. Adequacy of CWD, LLC's (also known as Centric Parts) ("CWD") Response;
2. Whether to Disregard Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers' ("petitioner") Response;
3. Likelihood of Continuation or Recurrence of Dumping; and
4. Magnitude of the Dumping Margins Likely to Prevail.

History of the Order

On April 17, 1997, the Department published the antidumping duty order on brake rotors from the PRC, applying a country-wide rate of 43.32 percent.¹ Since the issuance of the order, the Department has completed nine administrative reviews, three changed circumstance reviews, fourteen new shipper reviews, and one sunset review.²

¹ See Notice of Antidumping Duty Order: Brake Rotors from the People's Republic of China, 62 FR 18740 (April 17, 1997) ("Brake Rotors Order").

² See Attachment I to this memorandum.

The Department is currently conducting the 2006-2007 administrative review in conjunction with the fifteenth and sixteenth new shipper reviews. The final results of the fifteenth new shipper review are scheduled to be completed by December 17, 2007, and the final results of the 2005-2006 administrative and sixteenth new shipper reviews are scheduled to be completed by May 5, 2008. The Department has not conducted any duty-absorption investigation in this proceeding.

The Department published its notice of initiation of the first sunset review on March 1, 2002, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).³ As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping by the PRC-wide entity at a rate of 43.32 percent, the same rate as found in the investigation.⁴

On August 2, 2002, the International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Act, that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁵ On August 14, 2002, the Department published the notice of continuation of this antidumping duty order.⁶ Excluded from the antidumping duty order are the following exporter and producer combinations:⁷

Exporter: China National Automotive Industry Import & Export Corporation
Producer: Shandong Laizhou CAPCO Industry;

Exporter: Shandong Laizhou CAPCO Industry
Producer: Shandong Laizhou CAPCO Industry;

Exporter: Shenyang Honbase Machinery Co., Ltd.
Producer: Shenyang Honbase Machinery Co., Ltd.;

³ See Antidumping and Countervailing Duties: Five Year Reviews, 67 FR 9439 (March 1, 2002).

⁴ See Final Results of Expedited Sunset Review: Brake Rotors from the People’s Republic of China, 67 FR 45458 (July 9, 2002) (“First Sunset Review”).

⁵ See Brake Rotors from China, 67 FR 50459 (August 2, 2002), and USITC Pub. 3528 (July 2002), Brake Rotors from China: Investigation No 731-TA-744 (Review).

⁶ See Continuation of Antidumping Duty Order: Brake Rotors from the People’s Republic of China, 67 FR 52933 (August 14, 2002).

⁷ 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, 9174 (February 28, 1997), unchanged in the amended final, see also, Notice of Amended Final Determination of Sales at Less Than Fair Value: Brake Rotors From the People’s Republic of China, 62 FR 15655 (April 2, 1997).

Exporter: Shenyang Honbase Machinery Co., Ltd.
Producer: Lai Zhou Luyan Automobile Fittings Co., Ltd.;

Exporter: Lai Zhou Luyuan Automobile Fittings Co., Ltd.
Producer: Lai Zhou Luyuan Automobile Fittings Co., Ltd.;

Exporter: Lai Zhou Luyan Automobile Fittings Co., Ltd.
Producer: Shenyang Honbase or Laizhou Luyuan; and

Exporter: China National Machinery and Equipment I&E (Xinjiang) Corporation, Ltd.
Producer: Zibo Botai Manufacturing Co., Ltd.

Background

On July 2, 2007, the Department published the notice of initiation of the second sunset review of the antidumping duty order on brake rotors from the PRC pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Reviews, 72 FR 35968 (July 2, 2007) (“Initiation Notice”). On July 17, 2007, the Department received a notice of intent to participate from a domestic interested party, the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers (“petitioner”), within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations and from a respondent interested party, CWD. Petitioner claimed “interested party” status under section 771(9)(C) of the Act as a domestic producer of brake rotors in the United States, and CWD claimed “interested party” status under section 771(9)(A) of the Act as a U.S. importer of brake rotors into the United States.

On August 1, 2007, the Department received substantive responses from petitioner and CWD within the deadline specified in section 351.218(d)(3)(i) of the Department’s regulations.⁸ On August 6, 2007, the Department received rebuttal submissions to those responses from petitioner and CWD.⁹ On August 21, 2007, petitioner submitted to the Department a correction to its August 6, 2007, rebuttal response.¹⁰ On August 21, 2007, the Department notified the ITC that

⁸ See Petitioner’s letter to the Department, dated August 1, 2007, regarding “Brake Rotors from the People’s Republic of China: Substantive Response to Notice of Initiation” (“Petitioner Substantive Response”) and CWD’s letter to the Department, dated August 1, 2007, regarding “Brake Rotors from the People’s Republic of China: Substantive Response to Notice of Initiation” (“CWD Substantive Response”).

⁹ See Petitioner’s letter to the Department regarding “Brake Rotors from the People’s Republic of China: Substantive Response to Notice of Initiation,” dated August 6, 2007 (“Petitioner Rebuttal Proprietary Substantive Response”), and CWD’s letter to the Department regarding “Brake Rotors from the People’s Republic of China: Rebuttal to the Coalition’s Substantive Response to Notice of Initiation,” dated August 16 2007.

¹⁰ See Petitioner’s letter to the Department regarding “Brake Rotors from the People’s Republic of China: Substantive Response to Notice of Initiation,” dated August 21, 2007 (“Petitioner Rebuttal Proprietary Substantive Response Correction”).

the respondent interested party did not provide an adequate substantive response in this sunset review pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(A) of the Department's regulations. Therefore, because we did not receive an adequate response from the respondent interested party, we made a determination to conduct an expedited review of the order pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations.¹¹

On November 5, 2007, the Department published a notice extending the time limit for the completion of the final results of this review until November 29, 2007. See Brake Rotors from the People's Republic of China: Extension of Final Results of Expedited Sunset Review of Antidumping Duty Order, 72 FR 62430 (November 5, 2007). On December 5, 2007, the Department published a notice extending the time limit for the completion of the final results of this review until December 31, 2007. See Brake Rotors from the People's Republic of China: Extension of Time Limit for Final Results of Expedited Sunset Review of Antidumping Duty Order, 72 FR 68562 (December 5, 2007).

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted a sunset review to determine whether revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping. Consistent with section 752(c)(1) of the Act, the Department considered the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of brake rotors from the PRC for the relevant period before, and the relevant period after, the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked.

Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company.¹² The Department may provide a more recently calculated margin for a particular company where declining (or zero or de minimis) dumping margins are accompanied by steady or increasing imports which would reflect that the exporter is likely to dump at a lower rate found in a more recent review. Below we address the comments made collectively by the interested parties participating in this proceeding.

1. Adequacy of CWD's Response

¹¹ See the August 21, 2007, letter to the ITC regarding "Expedited Sunset Review of the AD/CVD Order Initiated in July 2007" ("ITC 50-day letter").

¹² See Eveready Battery Co. v. United States, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

Petitioner's Arguments: Petitioner argues that CWD's substantive response is inadequate because CWD has indicated in its substantive response that it did not account for 50 percent of total exports of subject merchandise during the five preceding calendar years of this sunset review. Petitioner cites section 351.218(e)(1)(ii) of the Department's regulations, which provides guidance when determining the adequacy of a respondent interested party's substantive response. Petitioner also argues that because CWD has not participated in any segment of the brake rotors proceedings and CWD is a U.S. importer and not a PRC exporter, the Department should determine that CWD's response is inadequate and disregard it in accordance with section 315.218(e)(1)(ii) of the Department's regulations.

CWD's Substantive Response: CWD, a U.S. importer, timely filed a substantive response to this sunset review's notice of initiation. In its substantive response, CWD claimed interested party status within the meaning of section 771(9)(A) of the Act.¹³ CWD also indicated in its substantive response that it did not export any brake rotors during the five calendar years preceding the year of publication of the notice of initiation¹⁴ and that CWD had not participated in any antidumping segment of brake rotors from the PRC proceeding.¹⁵

Department's Position: The Department solicits substantive responses from interested parties after publication of the notice of initiation of the sunset review in the Federal Register, pursuant to section 751(c)(2) of the Act and section 351.218(d)(3) of the Department's regulations. The Department normally evaluates whether the respondent interested parties who filed substantive responses account for 50 percent of the total exports of subject merchandise to the United States over the five calendar years preceding the initiation of the sunset review ("50 percent threshold"). See section 351.218(e)(1)(ii) of the Department's regulations. If the substantive responses do not meet the 50 percent threshold, the Department will normally conduct an expedited sunset review to make a determination of the likelihood of continuing or recurring dumping. In cases where there is an adequate substantive response from respondent interested parties, the Department normally conducts a full sunset review. Once the Department makes a determination of adequacy in accordance with section 351.218(e)(1)(ii) of the Department's regulations and makes the decision to either conduct an expedited or full sunset review, the Department considers the substantive responses and comments of the interested parties. At that point, the Department does not revisit the question of adequacy for purposes of determining whether the review should be conducted on an expedited basis.

In this case, CWD indicated in its substantive response that it is a U.S. importer of subject merchandise. CWD did not establish that it accounted for more than 50 percent of the total

¹³ See CWD Substantive Response at page 3.

¹⁴ See id. at pages 13 and 14.

¹⁵ See id. at page 5.

exports of the subject merchandise needed to conduct a full sunset review in accordance with section 351.218(e)(1)(ii) of the Department's regulations. Therefore, we determined to conduct an expedited sunset review pursuant to section 351.218(e)(1)(ii)(C)(2) of the Department's regulations.¹⁶

Regarding petitioner's argument that CWD's response should be disregarded because: (1) CWD is a U.S. importer and not a PRC exporter; and (2) CWD has not participated in any segment of the brake rotors from the PRC proceeding, the Department disagrees. As stated above, the Department solicits substantive responses from interested parties in accordance with section 751(c)(2) of the Act and section 351.218(c) of the Department's regulations. First, in accordance with the Act and the Department's regulations, any interested party is permitted to submit a substantive response in a sunset proceeding.¹⁷ Second, parties who have not participated in a prior segment of the proceeding are not precluded from submitting comments in a sunset review.¹⁸ Therefore, because there is no statutory or regulatory requirement that excludes U.S. importers from participating as interested parties in sunset reviews, nor is there a requirement that an interested party have participated in a prior segment of an order to submit comments in a sunset review, information from CWD's substantive response may be considered in this sunset review when determining the likelihood of continuation or recurrence of dumping.

2. Whether to Disregard Petitioner's Response

CWD's Argument: CWD argues that petitioner should no longer be considered "domestic producers" because of its members' sizable imports of subject merchandise from the PRC and its members' various affiliations with Chinese brake rotor manufacturers/exporters. To support its contention, CWD cites section 351.218(e)(1)(i)(B) of the Department's regulations, which states that the Department may disregard a domestic interested party's substantive response if: (1) it is related to a foreign producer or a foreign exporter under section 771(4)(B) of the Act; or (2) it is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act.

CWD asserts that Affinia¹⁹ is related to foreign producers/exporters of subject merchandise and that Affinia has a joint venture agreement with MAT Holdings, Inc. ("MAT").²⁰ CWD also asserts that the owner of MAT also owns two Chinese companies that produce subject

¹⁶ See ITC 50-day letter.

¹⁷ See sections 751(c) and 771(9) of the Act and section 351.218 of the Department's regulations.

¹⁸ See *id.*

¹⁹ See Petitioner Substantive Response at page 2, where petitioner states that its current Coalition members are Affinia, Inc. ("Affinia") and Federal Mogul, Inc., Century Plant ("Federal-Mogul").

²⁰ See CWD Substantive Response at Exhibit 5, Affinia's joint venture press release states that Affinia "signed a joint venture agreement with MAT Holdings to produce **brake products** in China and India" (emphasis added).

merchandise (i.e., Lai Zhou Luyuan Automobile Fitting Co. (“Luyuan”) and Shenyang Honbase Machinery Co., Ltd. (“Honbase”)). CWD claims that Affinia imports large quantities of subject merchandise from Luyuan and Honbase. To support its argument, CWD provided information that it claims is Affinia’s brake rotor import statistics for the year 2006, and for January through May of 2007.²¹

CWD also claims that Federal-Mogul has a direct relationship with a Chinese producer/exporter of subject merchandise and that it has a joint venture with Xianghe Zichen in the PRC. CWD argues that Federal-Mogul imports large quantities of subject merchandise from its new manufacturing facility in the PRC (i.e., Federal-Mogul Qingdao Automotive Company Limited (“FM Qingdao”)). To support its argument, CWD provided information that it claims is Federal-Mogul’s brake rotor import statistics for the year 2006, and for January through May of 2007.²² CWD points out that the ITC excluded AlliedSignal Automotive (“Allied”) from being a member of the brake rotors “domestic industry” under the related party provision of the Act²³ during the original investigation. Thus CWD argues that, for the same reasons, the Department should exclude petitioner from the brake rotors “domestic industry” in this sunset review. In particular, CWD stresses that petitioner’s members have sizable imports of subject merchandise from the PRC and have affiliations with Chinese brake rotor manufacturers/exporters. CWD maintains that the ITC found that appropriate circumstances existed during the brake rotors investigation to exclude Allied from the domestic industry because Allied’s imports were significantly larger than its domestic production.

Based on these factors, CWD argues that the Department should disregard petitioner’s substantive response to the notice of initiation and determine that petitioner’s responses are inadequate. Therefore, CWD concludes, the Department should exercise its authority and revoke the antidumping duty order pursuant to sections 771(c)(3)(A) and (B) of the Act and section 351.218(e)(1)(i)(C)(3) of the Department’s regulations because there is no other domestic interested party showing an interest in the continuation of Brake Rotors Order in this proceeding.

Petitioner’s Rebuttal Response: Petitioner argues that any relationship that may exist between its members and U.S. importers or PRC exporters of subject merchandise does not meet the definition of related parties as provided in section 771(4)(B) of the Act. Petitioner argues that the Department’s determination of related parties in the context of a sunset review should follow the statute, which specifically requires that the relationship be between a producer of a domestic like product and an exporter of subject merchandise. Petitioner claims that this is not the case with either Affinia and MAT, or Federal-Mogul and FM Qingdao because, as described below, the relationships between the Coalition members and U.S. importers or PRC exporters of subject merchandise are limited to non-subject merchandise or merchandise excluded from the order

²¹ See id. at Exhibits 1 and 2.

²² See id. at Exhibits 3 and 4.

²³ CWD cites section 771(4)(B) of the Act.

(i.e., brake rotors produced for original equipment manufacturers (“OEMs”)). Further, while petitioner agrees that it has significant imports of subject merchandise, petitioner also argues that it has significant U.S. production of subject merchandise.²⁴

Petitioner rebuts CWD’s claims against Affinia as being unfounded. Petitioner agrees with CWD that Affinia signed a joint venture agreement with MAT to produce “brake products,” but asserts that these products are outside the scope of the order.²⁵ Petitioner argues that because of the proprietary nature of the agreement, the contents of which cannot be divulged in this memorandum, it cannot state the specific non-subject brake products that are covered by the agreement.²⁶ Petitioner also states that Affinia owns two manufacturing plants in South America (i.e., Argentina and Venezuela) that produce aftermarket brake rotors for their respective home and third country markets, including the U.S. market, but that the 2006 imports of subject merchandise from South America account for a very small percentage of its total 2006 imports and domestic production of subject merchandise.

Petitioner further argues that in the First Sunset Review, the Department determined that petitioner’s substantive response was adequate despite the fact that Dana Corporation (which was a member of petitioner’s Coalition at the time) acknowledged that it was related to three foreign producers and exporters of brake rotors.²⁷ Thus, petitioner argues that the Department has discretion to consider a response adequate even when it determines that certain domestic producers import subject merchandise and/or are related to exporters or foreign producers.

Petitioner also argues that CWD has provided no proof or evidence to support its allegations that Federal-Mogul has a direct relationship with a Chinese producer/exporter of subject merchandise and that it has a joint venture with Xianghe Zichen in the PRC. Petitioner provided, as support for its rebuttal, an affidavit from Mr. Lance M. Lis, associate general counsel for Federal-Mogul, which states, among other things, that “Federal Mogul Corporation is not a related company with Xianghe Zichen as defined in 771(4)(B) of the Act or in any other commonly understood meaning. Federal-Mogul has no control or ownership interest in Xianghe Zichen. . .”

Petitioner asserts that Federal-Mogul’s affidavit also counters CWD’s allegation that FM Qingdao supplies large quantities of subject merchandise to Federal-Mogul in the United States. The affidavit states, among other things, that “Federal-Mogul Corporation is the sole shareholder of Federal-Mogul Qingdao Automotive Company Limited (i.e., {FM} Qingdao). {FM} Qingdao is a manufacturing facility. . .{FM} Qingdao makes parts other than {brake} rotors for the

²⁴ See Petitioner Rebuttal Proprietary Substantive Response at page 10 and Petitioner Rebuttal Proprietary Substantive Response Correction at page 2.

²⁵ See Petitioner Rebuttal Proprietary Substantive Response in Exhibit B, where petitioner has provided a letter from Tim Seyler of Affinia responding to the claims made by CWD.

²⁶ See *id.*

²⁷ See First Sunset Review, 67 FR 45458 (July 9, 2002), and accompanying Issues and Decision Memorandum at footnote 4.

aftermarket.”²⁸ Moreover, petitioner maintains that the Department’s brake rotors scope determination in January 2007 made it clear that Federal-Mogul’s OEM brake rotors produced in the PRC met the necessary criteria for exclusion from the scope of the order.²⁹

Petitioner argues that neither the law, nor the regulations, establish a required volume of domestic production to qualify as a domestic producer. Moreover, petitioner maintains that the fact that a domestic producer also imports subject merchandise does not necessarily disqualify it from being a domestic producer.

Petitioner argues that the import statistics provided by CWD as a basis for its allegation that both members of the Coalition have imported “massive quantities” of subject merchandise from the PRC are not credible. Specifically, petitioner argues that CWD has provided no information on the source of the unspecified “public records” (e.g., Census Bureau or ITC Data Web, Customs AMS reports, etc.) used to compile the import statistics. Further, petitioner argues that the import statistics overestimate the amount of subject merchandise that may have been imported by Affinia and Federal-Mogul because the data include non-subject merchandise (e.g., brake discs, casting iron brake rotors, possibly OEM brake rotors, etc.).

With respect to import levels, petitioner asserts that Federal-Mogul and Affinia do not deny that they import aftermarket brake rotors from the PRC. Petitioner contends that, faced with the competition from the PRC, its members made business decisions to start importing from the PRC. However, petitioner argues that both members of the Coalition had significant domestic production in 2006, and both members continue to produce brake rotors in the United States.

Petitioner points out that both members of the Coalition imported aftermarket brake rotors during the time of the First Sunset Review, which it argues was not an impediment for the continuation of the order at that time.³⁰ Petitioner asserts that recently its members have imported more subject merchandise, but that the growth is consistent with the overall growth of Chinese imports into the U.S. market. Petitioner argues that such imports are an attempt by the domestic industry to survive and that imports are a sign of material injury, which will be investigated by the ITC in its sunset review.³¹

²⁸ See Petitioner Rebuttal Proprietary Substantive Response at Exhibit A.

²⁹ See Notice of Scope Rulings, 72 FR 23802, 23803 (May 1, 2007), which states “Requestor: Federal-Mogul Corporation; its brake rotors that include the Ford-Motorcraft logo in the casting and certified by the Ford Motor Company (an Original Equipment Manufacturer) are not within the scope of the antidumping duty order; January 17, 2007.”

³⁰ See First Sunset Review, 67 FR 45458 (July 9, 2002), and accompanying Issues and Decision Memorandum at page 2.

³¹ See Petitioner Rebuttal Proprietary Substantive Response citing Certain Lined Paper School Supplies from China, India, and Indonesia, Inv. No. 701-TA-442-443 and 731-TA-1095-1097, USITC Pub. 3884 (September 2006)(final) (“CLPSS ITC report”) at page 85, which states “Moreover, when domestic producers import subject

Thus, based on the above arguments, petitioner requests that the Department determine that its members are not related to U.S. importers or Chinese exporters of subject merchandise and that petitioner should not be excluded from the “domestic industry.” In this regard, petitioner argues that it would be improper to disregard its substantive response, as provided by section 351.218(e)(1)(i)(B) of the Department’s regulations.

Department’s Position: Pursuant to section 351.218(e)(1)(i)(B) of the Department’s regulations, the Department may disregard a domestic interested party’s response if it is: (1) related to a foreign producer or foreign exporter of subject merchandise under section 771(4)(B) of the Act; or (2) an importer of subject merchandise or is related to such an importer under section 771(4)(B) of the Act. See also, section 351.218(d)(1)(ii)(B). We note that the Department has broad discretion under this provision in determining whether it is appropriate to disregard a domestic party’s response.

In defining what constitutes related parties, section 771(4)(B)(ii)(IV) of the Act provides that a producer and an exporter or importer shall be considered to be related parties if the producer and the exporter or importer directly or indirectly control a third party, and there is reason to believe that the relationship may cause the producer to act differently than a nonrelated producer. Additionally, for purposes of this subparagraph, a party may be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.

In this case, CWD has not provided reliable evidence to support its allegations that petitioner’s members have various affiliations with Chinese manufacturers/exporters of subject merchandise, nor has it provided information on the source for the public information it used to support its allegation of petitioner’s members’ sizable imports of subject merchandise from the PRC. Although CWD provided a press release that referenced “brake products,” we cannot confirm based on the information provided that the joint venture between Affinia and MAT relates to the production of subject merchandise. Petitioner, however, provided evidence (i.e., an affidavit from Affinia) disputing CWD’s allegation that the agreement involved subject merchandise.³² Similarly, CWD has made allegations, but has not provided evidence supporting its claims that Federal-Mogul has a direct relationship with a Chinese producer/exporter of subject merchandise, that it has a joint venture with Xianghe Zichen in the PRC, or that it imports large quantities of subject merchandise from its new manufacturing facility in the PRC (i.e., FM Qingdao). Furthermore, as noted above, petitioner has provided evidence (i.e., an affidavit) from Federal-Mogul disputing the above allegations made by CWD regarding Federal-Mogul’s

merchandise to remain competitive and avoid losing customers, this action may itself be evidence of material injury the industry is sustaining.” The CLPSS ITC report cites S. Rep. No. 100-171, 100th Cong., 1st Sess. 117 (1988); see also, H. Rep. 100-40, 100th Cong., 1st Sess. 128-29 (1988).

³² See Petitioner Rebuttal Proprietary Substantive Response in Exhibit B.

affiliations.

Regarding the ITC's exclusion of Allied from the brake rotors domestic industry, we disagree with CWD that the same reasons exist here to exclude petitioner from the brake rotors industry as those applied to Allied by the ITC in its investigation. In the ITC's investigation, it deemed Allied related to an importer because Allied controlled large volumes of imports of subject merchandise and because Allied was responsible for a predominant proportion of the importer's substantial purchases. In this case, CWD has not demonstrated that petitioner's members control a U.S. importer that controls large volumes of imports of subject merchandise.

Based on the overall facts of this case, we find that petitioner is participating in the review as a "domestic interested party," and thus, we find it unnecessary to disregard petitioner's substantive response. First, we find that there is insufficient evidence on the record of this review to make a determination that petitioner is related to a foreign producer or foreign exporter of subject merchandise. Second, we note that although petitioner is an importer of subject merchandise, the record indicates that it also has comparable domestic production.³³ Further, CWD has not provided any evidence that petitioner is not participating as a domestic interested party. Based on the specific facts in this case, we find that petitioner is acting as a domestic interested party in this sunset review. Therefore, in this case, we have determined that the fact that petitioner is also an importer of subject merchandise does not provide a sufficient basis for disregarding petitioner's submission.

3. Likelihood of Continuation or Recurrence of Dumping

Petitioner's Argument: Petitioner argues that dumping is likely to continue if the antidumping duty order on brake rotors from the PRC is revoked. Petitioner asserts that dumping has continued at a level above de minimis after the issuance of the order, as seen in 2004-2005 Brake Rotors³⁴ where sixteen exporters received above de minimis margins that ranged from 8.9 percent to 43.32 percent. Petitioner also argues that all exporters that received above de minimis margins in administrative reviews of the antidumping duty order on brake rotors would continue dumping if the order were revoked. Petitioner cites Cut-to-Length Carbon Steel Plate From Canada,³⁵ where the Department concluded that revocation of the order would likely lead to continuation or recurrence of dumping when margins continue to exist at above de minimis

³³ We further note that the two remaining petitioners were the only domestic producers in this proceeding to respond to the notice of initiation, and represent the only remaining Coalition members.

³⁴ See, e.g., 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) ("2004-2005 Brake Rotors").

³⁵ See Cut-to-Length Carbon Steel Plate From Canada: Final Results of Full Sunset Review of Antidumping Duty Order, 65 FR 47383 (August 2, 2000) ("Cut-to-Length Carbon Steel Plate From Canada"), and accompanying Issues and Decision Memorandum at Comment 1.

levels for at least one manufacturer, producer, or exporter.

Petitioner argues that the Act requires the Department to determine whether revocation of an antidumping duty order “would lead to continuation or recurrence” of dumping.³⁶ In making such a determination, petitioner points out, the Department considers: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the periods before and after the issuance of the antidumping duty order.³⁷ Petitioner also cites the Department’s Sunset Policy Bulletin to argue that revocation of an antidumping order is likely to lead to continued or recurring dumping if one of the following criteria is met: (1) dumping continued at any level above de minimis after the issuance of the order; (2) imports of the subject merchandise ceased after the issuance of the order; or (3) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.³⁸ Petitioner further argues that because the Sunset Policy Bulletin’s first criterion has been met in this proceeding, that is, dumping has continued at above de minimis levels after the issuance of the order and numerous Chinese producers of brake rotors have been found to have above de minimis margins, revocation of the antidumping order on brake rotors is likely to lead to continued or recurring dumping. In addition, petitioner notes that: (1) in the original investigation of this order the Department established dumping margins above a level of de minimis for individual Chinese companies and a PRC-wide rate of 43.32 percent;³⁹ (2) six exporters that received margins in the original investigation never applied for a revision of their margins; and (3) several new shippers have received margins that are above zero or de minimis.⁴⁰ For these reasons, petitioner asserts that revocation of the antidumping order would result in continued dumping in the United States by Chinese producers and exporters of brake rotors.

CWD’s Argument: CWD argues that revocation of the antidumping duty order on brake rotors from the PRC is not likely to result in the continuation or recurrence of dumping. CWD asserts that since the issuance of the antidumping duty order on brake rotors from the PRC, the margins

³⁶ See section 752(c)(1) of the Act; see also, Procedures for Conducting Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998).

³⁷ See section 752(c)(1) of the Act; see also, Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18872 (April 16, 1998) (“Sunset Policy Bulletin”).

³⁸ See id.

³⁹ See Brake Rotors Order, 62 FR 18740.

⁴⁰ See, e.g., 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), where Yantai Chen Fu Machinery Co., Ltd. received the PRC-wide rate of 43.32 percent and Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review, 66 FR 44331 (August 23, 2001), where Concord Auto Technology, Inc. also received the PRC-wide rate of 43.32.

have declined and, in several cases, there have been either zero or de minimis margins accompanied by increased imports.⁴¹ CWD also argues that petitioner's members have moved a significant portion of its domestic brake rotor production capacity to the PRC. In addition, petitioner's members are also related to foreign producers/exporters of subject merchandise. Thus, CWD argues that petitioners have contributed significantly to the import levels. Therefore, CWD argues that given the above facts, dumping is not likely to continue or recur if the brake rotors antidumping duty order were revoked.

Department's Position: Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"),⁴² the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above de minimis after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.⁴³ In this case, in administrative reviews of the order, the Department found dumping to exist at above de minimis levels after the issuance of the order as explained below.

The Department has previously concluded in Cut-to-Length Carbon Steel Plate From Canada that when margins continue to exist at above de minimis levels for at least one manufacturer, producer, or exporter, revocation of the order would likely lead to continuation or recurrence of dumping.⁴⁴ Also, as noted above in the "History of the Order" section of this memorandum, despite the fact that several exporter/producer combinations are excluded from the antidumping duty order, and the Department has calculated margins of zero or de minimis for various exporters, the Department has calculated an above de minimis rate for many exporters since the

⁴¹ See, e.g., 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"), where the Department assigned a zero or de minimis margin to 13 respondents and assigned a 1.43 percent margin to Shanxi Fengkun Foundry Ltd. Co. The Department notes that in 2003-2004 Brake Rotors, the Department also assigned the PRC-wide rate of 43.32 percent to two exporters (i.e., Shandong Laizhou Huanri Group General Co and Qingdao Rotec Auto Parts Co., Ltd.).

⁴² See, e.g., Statement of Administrative Action accompanying the URAA, H. Doc. No. 103-316, vol. 1, 889 (1994) ("SAA"); House Report, H. Rep. No. 103-826, pt. 1 (1994); and Senate Report, S. Rep. No. 103-412 (1994).

⁴³ See, e.g., Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1; see also, Pure Magnesium in Granular Form from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 5417 (February 6, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁴ See Cut-to-Length Carbon Steel Plate From Canada, and accompanying Issues and Decision Memorandum at Comment 1.

issuance of the order.⁴⁵ Further, the PRC-wide rate of 43.32 percent remains in effect for all other exporters of brake rotors. Therefore, similar to the circumstances in Cut-to-Length Carbon Steel Plate From Canada, because margins above de minimis levels exist for at least one manufacturer, producer, or exporter, the Department finds that revocation of the order would likely lead to a continuation or recurrence of dumping.

In summary, given the fact that dumping margins continue to exist after the issuance of the order, and absent sufficient evidence to the contrary, we find that revocation of the antidumping order on brake rotors from the PRC would likely lead to the continuation or recurrence of dumping.

4. Magnitude of the Dumping Margins Likely to Prevail

Petitioner's Argument: Petitioner notes that section 752(c)(3) of the Act directs the Department to provide the ITC with the magnitude of dumping that is likely to prevail if the Department revokes the order. Petitioner also asserts that the SAA, at 890, states that the Department will normally select a margin "from the investigation, because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order." Petitioner asserts that in this case, the 43.32 percent margin calculated in the final determination of the original investigation is the only rate that reflects the behavior of exporters without the discipline of the order.⁴⁶ Petitioner further argues that, for companies not individually investigated or for companies that did not begin shipping until after the order was issued, the Department's policy is to report to the ITC a margin based on the PRC-wide rate from the investigation.⁴⁷ Therefore, petitioner contends that the Department should provide the 43.32 percent rate to the ITC as the rate likely to prevail in the absence of the order.

CWD's Argument: CWD argues that because of the Department's zeroing mechanism applied in the investigation and reviews, dumping margins have been found in these proceedings when they did not exist. CWD contends that the Department should implement the World Trade Organization ("WTO") rulings on zeroing in this sunset review and, in doing so, will conclude that no dumping margins are likely to prevail.

Department's Position: In the Department's Sunset Policy Bulletin, the Department stated that it will normally provide to the ITC the corresponding individual company-specific margins and the

⁴⁵ See, e.g., 2003-2004 Brake Rotors, Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review, 71 FR 4112 (January 25, 2006), 2004-2005 Brake Rotors, 71 FR 66304, and 2005-2006 Brake Rotors, 72 FR 42386.

⁴⁶ See Brake Rotors Order, 62 FR at 18741.

⁴⁷ See Sunset Policy Bulletin, 63 FR at 18873.

PRC-wide margin that were determined in the final determination of the original investigation.⁴⁸ In a non-market economy case, where companies that were not investigated individually or did not begin exporting to the United States until after the order was issued, the Department normally will provide a margin based on the “country-wide” rate from the investigation. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC.⁴⁹

We disagree with CWD that we should reconsider what the margins would have been in the brake rotors investigation and in subsequent administrative reviews had the Department not applied its zeroing methodology. In making its determination in a sunset review as to the likelihood of the continuation or recurrence of dumping, the Department considers, among other things, the weighted-average dumping margins determined in the investigation and subsequent reviews.⁵⁰ The zeroing methodology that CWD refers to has to do with the modification the Department has made to the calculation of the weighted-average dumping margin in an antidumping investigation in response to a ruling of the WTO Dispute Settlement Body, and is applicable to all of the Department’s investigations conducted after January 16, 2007.⁵¹ Considering the fact that the Department is conducting a sunset review and not an investigation, the Department’s margin calculation modification, noted above, does not apply to this sunset review. Thus, it is inappropriate for the Department to consider what the margins would have been in the brake rotors investigation and in subsequent administrative reviews had the Department not applied its zeroing methodology.

Section 752(c)(3) of the Act states that the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Normally, as pointed out by petitioner, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Although the Department has completed nine administrative reviews and multiple new shipper reviews since the issuance of the antidumping duty order, the Department does not find any indication that the margins calculated in the administrative reviews or new shipper reviews are more probative of the behavior of manufacturers, producers, and exporters without the discipline

⁴⁸ See section II.B.1 of the Sunset Policy Bulletin, 63 FR 18871.

⁴⁹ See Potassium Permanganate from the People’s Republic of China; Five-year (“Sunset”) Review of Antidumping Duty Order; Final Results, 70 FR 24520 (May 10, 2005).

⁵⁰ See section 752(c)(1) of the Act; see also, Sunset Policy Bulletin, 63 FR at 18872.

⁵¹ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006).

of the order, because the margins calculated in the original investigation are the only calculated rates without the discipline of an order in place. Therefore, consistent with section 752(c)(3) of the Act, the Department will report to the ITC the corresponding individual company rates and the PRC-wide rate from the original investigation as noted in the “Final Results of Review” section below.

Final Results of Review

Pursuant to section 752(c)(3) of the Act, we determine that revocation of the antidumping duty order on brake rotors from the PRC would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Hebei Metals and Minerals Import/export Corp.	8.51
Shandong Jiuyang Enterprise Corporation	8.51
Longjing Walking Tractor Works Foreign Trade I/E	8.51
Jilin Provincial Machinery & Equipment I/E Corp	8.51
Qingdao Metal, Minerals and Machinery Import & Export Corporation	8.51
Shanxi Machinery and Equipment Import & Export Corporation	8.51
Southwest Technical Import and Export Corporation	16.07
Xianghe Zichen Casting Corporation	8.51
Yantai Import and Export Corporation	3.56
Yenhere Corporation	8.51
PRC-wide	43.32

In a five-year sunset review, it is the Department’s policy to include companies that did not begin exporting until after imposition of the order was issued as part of the PRC-wide entity

from the investigation.⁵² Thus, for those companies that exported after the order was issued, we determine that revocation of the antidumping duty order on brake rotors from the PRC would be likely to lead to continuation or recurrence of dumping at the PRC-wide percentage margin.

Recommendation

Based on our analysis of the adequate substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the Federal Register.

David M. Spooner
Assistant Secretary
for Import Administration

(date)

⁵² See Sunset Policy Bulletin, 63 FR at 18873.

ATTACHMENT I

History of the Order

1.	<u>Notice of Antidumping Duty Order: Brake Rotors from the People's Republic of China, 62 FR 18740 (April 17, 1997);</u>
2.	<u>Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 64 FR 9972 (March 1, 1999);</u>
3.	<u>Brake Rotors From the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 64 FR 61581 (November 12, 1999);</u>
4.	<u>Brake Rotors From the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 65 FR 64664 (October 30, 2000);</u>
5.	<u>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);</u>
6.	<u>Brake Rotors From the People's Republic of China: Final Results of Changed-Circumstances Antidumping Duty Administrative Review, 66 FR 37211 (July 17, 2001);</u>
7.	<u>Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review, 66 FR 44331 (August 23, 2001);</u>
8.	<u>Final Results of Expedited Sunset Review: Brake Rotors from the People's Republic of China, 67 FR 45458 (July 9, 2002);</u>
9.	<u>Brake Rotors From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review, 67 FR 53913 (August 20, 2002);</u>
10.	<u>Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth Antidumping Duty Administrative Review, 67 FR 65779 (October 28, 2002);</u>
11.	<u>Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review, 68 FR 25861 (May 14, 2003);</u>

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History of the Order

12.	<u>Brake Rotors From the People's Republic of China: Final Results of the Eighth New Shipper Review</u> , 68 FR 50515 (August 21, 2003);
13.	<u>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</u> , 69 FR 42039 (July 13, 2004);
14.	<u>Brake Rotors From the People's Republic of China: Final Results of the Tenth New Shipper Review</u> , 69 FR 52228 (August 25, 2004);
15.	<u>Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review</u> , 70 FR 41204 (July 18, 2005);
16.	<u>Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review</u> , 70 FR 69941 (November 18, 2005);
17.	<u>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</u> , 70 FR 69937 (November 18, 2005);
18.	<u>Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review</u> , 71 FR 4112 (January 25, 2006);
19.	<u>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</u> , 71 FR 66304 (November 14, 2006); and
20.	<u>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</u> , 72 FR 42386 (August 2, 2007).

Attachment II

Brake Rotors Imports to the United States from the People's Republic of China

Source: United States International Trade Commission DataWeb