foreign materials. The HTSUS categories and duty rates for the finished products are as follows:

Product	HTSUS No.	Duty rate
DBD	2930.90.2600	duty-free.
6PPD	2921.59.8090	15.1% + $0.017/kg.
CBS	2934.20.8000	13.3% + $0.026/kg.
DCBS ...	2934.20.2500	duty-free.

The HTSUS categories and duty rates for the primary foreign-sourced inputs are as follows:

Input	HTSUS No.	Duty rate
Benzoyl chloride.	2916.32.2000	7.1%.
4ADPA	2921.51.5000	15.1% + $0.017/kg.
Sodium MBT.	2934.20.2000	10.7% + $0.006/kg.
Dicyclohexylamine.	2921.30.3000	13.7% + $0.026/kg.

Foreign materials account for some 20 to 40 percent of the value of the final products. The application indicates that the savings from zone procedures will help improve the international competitiveness of the Bayer plant and will help increase exports.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 29, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 14, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 81 Mary St., Charleston, South Carolina 29403

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: February 21, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

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International Trade Administration

[A–570–845, A–570–846]

Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Michelle A. Frederick, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 and (202) 482–0186, respectively.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA).

FINAL DETERMINATIONS: We determine that brake drums and brake rotors from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

Since the amended preliminary determination in the brake drum investigation (Amended Preliminary Determination of Sales at Less Than Fair Value: Brake Drums from the People's Republic of China, 61 FR 60682 (November 29, 1996)), the following events have occurred:

The petitioner, the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers, and all of the respondents [1] requested a hearing.

From October 1996 through January 1997, we verified the questionnaire responses of the selected respondents. In January 1997, we issued our verification reports.

Interested parties submitted additional information on surrogate values on January 9 and 10, 1997, for consideration in the final determinations. Also in January 1997, at the Department's request, we received revised computer tapes incorporating data corrections identified at the verifications from the following respondents: CAIEC, Dalian, Qingdao, Shenyang/Laizhou, Southwest, Xinchangyuan and Xinjiang.

The petitioner and all of the respondents submitted case briefs on January 21, 1997, and rebuttal briefs on January 27, 1997. The Department held a public hearing for these investigations on January 29, 1997.

Scope of the Investigations

The products covered by these two investigations are (1) certain brake drums and (2) certain brake rotors.

Brake Drums

Brake drums are made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake drums limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake drums are those that are ready for sale and installation without any further operations. Semi-finished drums are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished drums are those which have undergone some grinding or turning.

These brake drums are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake drums covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake drums that are made of gray cast iron, which contain a steel

[1] The respondents in the brake drums case are: (1) China North Industries Guangzhou Corporation (CNIGC); (2) Qingdao Metal, Minerals & Machinery Import & Export Corporation (Qingdao); (3) China National Machinery Import & Export Corporation (CMC); (4) Beijing Xinchangyuan Automobile Fittings Corporation, Ltd. (Xinchangyuan); and (5) Yantai Import/Export Corporation (Yantai).

The respondents in the brake rotors case are: China National Automotive Industry Import & Export Corporation (CAIEC), Shandong Laizhou CAPCO Industry (Laizhou CAPCO) and their U.S. affiliate CAPCO International USA (CAPCO USA)(collectively CAIEC/Laizhou CAPCO); CNIGC; China North Industries Dalian Corporation (Dalian); Shenyang Honbase Machinery Co., Ltd., Lai Zhou Luyuan Automobile Fitting Co., Ltd. (collectively Shenyang/Laizhou) and their U.S. affiliates MAT Automotive, Inc., and Midwest Air Technologies, Inc. (MAT); Southwest Technical Import & Export Corporation, Yangtze Machinery Corporation (collectively Southwest), and its U.S. affiliate MMB International, Inc. (MMB); China National Machinery and Equipment Import & Export (Xinjiang) Corporation, Ltd. (Xinjiang); and Yantai.

plate, but otherwise meet the above criteria.

Brake drums are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Brake Rotors:

Brake rotors are made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria.

Brake rotors are classifiable under subheading 8708.39.5010 of the HTSUS. Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigations

The period of these investigations (POI) comprises each exporter's two most recent fiscal quarters prior to the filing of the petition. For Southwest, the POI is June 1995–December 1995. For all other respondents, the POI is July 1995–December 1995.

Separate Rates

Each of the participating respondents in these investigations claim to be eligible for individual dumping margins. Of those, CAIEC/Laizhou CAPCO, CMC, CNIGC, Dalian, Qingdao, Southwest, Xinjiang and Yantai claim to be owned by ''all the people.''

The ownership structure of the remaining respondents is as follows:

(1) Shenyang/Laizhou are affiliated parties. Shenyang is owned entirely by GRI Honbase, a Hong Kong company which is U.S. owned. Laizhou is a joint venture between GRI Honbase and ''all the people.'' The share in Laizhou owned by ''all the people'' is a minority share.

(2) Xinchangyuan is a joint venture between a U.S. company and a PRC company, Beijing Changyuan Automotive Parts Factory. The PRC company is the majority shareholder and is owned by ''all the people.''

As stated in the Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585, 22586 (May 2, 1994) (Silicon Carbide) and in the Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China, 60 FR 22544 (May 8, 1995) (Furfuryl Alcohol), ownership of a company by ''all the people'' does not require the application of a single rate. Accordingly, each of these respondents is eligible for separate rate consideration.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers) and amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

Each of the respondents has placed on the administrative record a number of documents to demonstrate absence of *de jure* control, including laws, regulations and provisions enacted by the State Council of the central government of the PRC. Each has also submitted documents which establish that brake drums and brake rotors are not included on the list of products that may be subject to central government export constraints. In addition, the respondents Xinchangyuan and Laizhou each submitted the ''Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures'' (April 13, 1988). The articles of this law authorize joint venture companies to make their own operational and managerial decisions.

In prior cases, the Department has analyzed the laws which the respondents have submitted in this record and found that they establish an absence of *de jure* control. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China, 60 FR 54472 (October 24, 1995) (Drawer Slides); see also Furfuryl Alcohol. We have no new information in these proceedings which would cause us to reconsider this determination.

However, as in previous cases, there is some evidence that the PRC central government enactments have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (See Silicon Carbide and Furfuryl Alcohol.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see Silicon Carbide and Furfuryl Alcohol). These factors are not necessarily exhaustive and other relevant indicia of government control may be considered.

CAIEC/Laizhou CAPCO, CMC, Qingdao, Shenyang/Laizhou, Southwest, Xinchangyuan, Xinjiang, and Yantai asserted, and we verified, the following: (1) They establish their own export prices; (2) they negotiate contracts, without guidance from any governmental entities or organizations; (3) they make their own personnel decisions; and (4) they retain the proceeds of their export sales, use profits according to their business needs and have the authority to sell their assets and to obtain loans. In addition, the questionnaire responses submitted by the above-referenced respondents

indicate company-specific pricing during the POI which does not suggest coordination among exporters. During the verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that there is a *de facto* absence of government control of the export functions of these companies. Consequently, we have determined that these exporters have met the criteria for the application of separate rates.

CNIGC and Dalian also claimed separate rates and provided additional documentation at verification in support of their claims that there is a *de facto* absence of government control of the export functions of their companies. However, for the final determinations, we have denied these respondents separate rates. Since the preliminary determinations, we have collected additional information which indicates that CNIGC and Dalian are still branches of the national corporation, China North Industries Corporation (NORINCO), which is controlled by the PRC government (see Comment 1 for further discussion).

China-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of brake drums and brake rotors from the PRC is substantially greater than the total quantity and value of brake drums and brake rotors reported by all PRC companies that submitted responses in both the brake drums and brake rotors cases. Given these significant discrepancies, we have no choice but to conclude that not all exporters of PRC brake drums and brake rotors responded to our questionnaire. Accordingly, we are applying in each investigation a single antidumping deposit rate—the China-wide rate—to all exporters in the PRC (other than those named above and those exporters which cooperated with our investigations but which were not selected as respondents and received separate rates), based on our presumption that those respondents who failed to show that they are entitled to separate rates are under common control by the PRC government. See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026 (April 30, 1996) (Bicycles).

Facts Available

The China-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

When multiple companies are treated as a single enterprise, the enterprise must submit a complete, consolidated response. If it fails to do so, the Department may base the margin calculation for the enterprise on the facts available. Additionally, as discussed above, those PRC exporters that have not qualified for a separate rate have been treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to have failed to cooperate to the best of its ability. Accordingly, consistent with section 776(b)(1) of the Act, we have applied in each investigation the higher of the applicable margin from the petition or the highest rate calculated for a respondent in each proceeding as total adverse facts available. In both cases, based on our comparison of the calculated margins for the other respondents in these proceedings to the estimated margins in the petitions, we have concluded that the petition is the most appropriate record information on which to form the basis for the China-wide rate in the brake drums and brake rotors investigations.

Section 776(c) of the Act provides that where the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA clarifies that the petition is ''secondary information.'' See SAA at 870. The SAA also clarifies that ''corroborate'' means to determine that the information used has probative value. *Id.* However, where corroboration is not practicable, the Department may use uncorroborated information.

In accordance with section 776(c) of the Act, we corroborate the margins in the petition to the extent practicable. The petitioner based export prices on prices charged by U.S. distributors of brake drums and brake rotors and deducted from these prices a distributor mark-up. We compared the starting prices used by the petitioner to prices derived from U.S. import statistics and found that the similarity to the import statistics corroborated the starting prices in the petition. See Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa, 61 FR 24271 (May 14, 1996). We found that the deduction for the distributor mark-up was sufficiently documented for purposes of corroboration by examining affidavits submitted by industry experts.

The normal value (NV) was based on factors of production employed by the petitioner to produce brake drums and brake rotors, and to the extent possible, surrogate factor values which were obtained from Indian publicly available information. When analyzing the petition, the Department examined and confirmed the accuracy of the NV data as provided in the petition by comparing the values used in the petition with values obtained from publicly available information collected in these and previous non-market economy (NME) investigations. However, in examining the factors which served as the basis for NVs calculated in the petition, the Department found that petitioner treated certain factory overhead items as direct materials. Therefore, we have recalculated NV in the petition by treating these items as part of factory overhead. In addition, we assigned an Indian surrogate value to one material for which a value based on a U.S. price was assigned previously in our NV calculations (See Margin Corroboration Memorandum from the team to Gary Taverman, dated February 12, 1997). Thus, the highest revised petition rate for brake drums is 86.02 percent. The highest revised petition rate for brake rotors is 43.32 percent.

Fair Value Comparisons

To determine if the brake drums and brake rotors from the PRC sold to the United States by the PRC exporters receiving separate rates were sold at less

than fair value, we compared the ''United States Price'' (USP) to NV, as specified in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

We based USP on export price (EP) in accordance with section 772(a) of the Act, when the brake drums or brake rotors were sold directly to the first unaffiliated purchaser in the United States prior to importation and when constructed export price (CEP) methodology was not otherwise appropriate. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the factors of production.

Shenyang/Laizhou/MAT and Southwest/MMB both claimed that their sales are EP, not CEP, transactions and that the Department should treat their sales accordingly. However, the Department has determined that the sales of these two companies are CEP transactions (*see* Comment 14 for Shenyang/Laizhou/MAT and Comment 16 for Southwest/MMB).

We corrected the respondents' data for errors and minor omissions found at verification. For CMC, Xinjiang and Yantai, we calculated EP in accordance with our preliminary determinations. In addition, we made company-specific adjustments as follows:

1. CAIEC/Laizhou CAPCO

We calculated EP and CEP in accordance with our preliminary calculations, except that we (a) corrected credit expenses, inland freight, repacking, indirect selling expenses, and inventory carrying expenses; (b) removed credit returns from CAPCO's U.S. sales database; (c) recalculated commissions based on the verified commission rates; (d) revised brokerage and handling expenses; and (e) deducted from the U.S. price of certain sales an inspection charge based on information obtained at verification.

2. Qingdao

We calculated EP in accordance with our preliminary calculations except that we excluded U.S. sales of one product that was found to be outside the scope of the investigation.

3. Shenyang/Laizhou/MAT

We calculated EP and CEP in accordance with our preliminary calculations except that we have recalculated credit and indirect selling expenses based on information obtained at verification.

4. Southwest/MMB

We calculated EP and CEP in accordance with our preliminary calculations except that we have adjusted the gross unit price for certain U.S. sales where the price was incorrectly reported. We then recalculated the credit and indirect selling expenses to take into account revised prices.

5. Xinchangyuan

We calculated EP in accordance with our preliminary calculations except that we did not deduct foreign brokerage and handling expenses based on information derived at verification (see Comment 21 below). In addition, we excluded U.S. sales of three products that were found to be outside the scope of the investigation.

Normal Value

A. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the factories in the PRC which produced brake drums and/or brake rotors for the exporters. Where an input was sourced from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the factors-based NV in accordance with our practice. See *Lasko Metal Products* v. *United States*, 437 F. 3d 1442, 1443 (Fed. Cir. 1994). We valued the remaining factors using publicly available information from India where possible. Where appropriate Indian values were not available, we used publicly available information from Indonesia.

B. Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. Where we were not able to rely on domestic prices, we used import prices to value factors. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices or, in the case of labor rates, consumer price indices, published in the International Monetary Fund's International Financial Statistics. For a complete analysis of surrogate values, see the Preliminary Determinations Factors Memorandum, dated October 3, 1996, and the Final Determinations Factors Memorandum, (Final Factors Memorandum) dated February 24, 1997. We have noted changes to surrogate valuation since the preliminary determinations as follows:

To value unfinished castings used in producing rotors, we used a purchase price for unfinished castings contained in the 1995–96 financial report of the Indian producer, Jayaswals Neco Limited (Jayaswals), because only this producer's financial report contained a POI purchase value for unfinished castings used to produce brake rotors that are within the scope of our investigation (see Comment 15).

To value copper, copper powder, ferromanganese, ferrosilicon, other ferrosilicon, ferrochromium, manganese, limestone, lubrication oil, adhesive tape, corrugated cartons, nails, polyethylene, fiberboard, steel angles, steel stamp, steel straps, printed and unprinted labels, instruction sheets, wood brackets, wood pallets and wood crates, we used import prices for months contemporaneous with the POI for which such data were available from Monthly Statistics of the Foreign Trade of India (Monthly Statistics). Where submitted data encompassed part of the POI but also encompassed months outside the POI, we limited our use of such data to the portion contemporaneous with the POI.

To value pig iron, steel scrap and iron scrap, we used the input-specific prices contained in the 1995–96 financial report of the Indian producer, Shivaji Works Limited (Shivaji) because Shivaji produces goods which are in the same general category as the subject merchandise (*e.g.*, products similar to what the respondents produce) and because we find that the separate line-item values for pig iron, steel scrap and iron scrap contained in Shivaji's report are more specific than the prices for these same inputs contained in the Indian publication Steel Authority of India Limited (SAIL) or in Monthly Statistics (see Comment 7).

To value steel sheet, steel strip and steel wire rod, we used POI prices from SAIL and not from Monthly Statistics (see Comment 7).

To value scrap wood, we have used a price from a 1990 U.S. government publication, Marketing Opportunities for Social Forestry Produce in Uttar Pradesh, because the price is more specific to the input than the value previously obtained from Monthly Statistics.

We could not obtain a product-specific price from India to value lug nuts for PRC companies which purchased this input from non-market economies (NME). Therefore, we used Indonesian import data covering July through November 1995 from

Indonesian Foreign Trade Statistical Bulletin (see Bicycles).

To value barge rates, we relied on information from an August 1993 cable from the U.S. consulate in India. Since the preliminary determinations, the respondents submitted new prices for coke, ball bearings and LPG gas for consideration in the final determinations. However, we have continued to rely on the values assigned to these inputs in the preliminary determinations for our final determinations (see Comment 7 and Final Factors Memorandum for further discussion).

To value factory overhead, SG&A, and profit in the brake drums and brake rotors cases, we calculated a simple average using the financial reports of Jayaswals, Kalyani Brakes Limited (Kalyani), Krishna Engineering Works (Krishna), Nagpur Alloy Castings Limited (Nagpur), and Rico Auto Industries Limited (Rico) because these companies produced both brake drums and brake rotors within the scope of these investigations during the POI. We did not use the financial reports of Ennore Foundaries Limited (Ennore), Electrosteel Castings Limited (Electrosteel), Bhagwati Autocast Limited (Bhagwati), or Shivaji in the surrogate factory overhead, SG&A, and profit percentage calculations because there was no indication in the reports or any corroborating publicly available information showing that these companies produced brake drums or brake rotors within the scope of these investigations during the POI (see Comment 5).

Where appropriate, we have removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports (see Bicycles, 61 FR 19039). We also made certain adjustments to the percentages calculated as a result of reclassifying expenses contained in the financial reports.

For the Indian companies, we treated the line item labeled ''stores and spares consumed'' as part of factory overhead where possible and not part of materials consumed because stores and spares are not direct materials consumed in the production process. Publicly available information examined in the preliminary determination indicates that Indian accounting practices require Indian companies to record molding inputs (*i.e.*, all types of sand, bentonite, lead powder, steel pellets (if used for sand cores or molding), coal powder and waste oil) under ''stores and spares consumed.'' Therefore, we are considering these molding inputs as indirect materials (*i.e.*, a part of factory overhead), and are not valuing them as materials. In addition to the molding materials mentioned above, based on our verification findings, we find that additional materials previously valued as direct inputs such as dextrin, parting spray, rust inhibitor, antirust, steel shot, cutting oil, cleaning agent, and dehydration oil, are in fact indirect materials not incorporated into the final product. Therefore, we have also considered these additional materials part of factory overhead (see Comment 8). We have continued to treat rustproofing oil, limestone and firewood as direct materials and valued them accordingly (see Comment 8).

We have considered the line item labeled ''raw materials consumed'' to include direct materials such as pig iron, steel scrap, and steel inputs, and non-steel direct inputs and not included them in factory overhead. The designation of these items is consistent with standard accounting procedures and recent determinations (see Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 61 FR 14062 (March 29, 1996) (PVA) and Bicycles). We based our factory overhead calculation on the cost of goods manufactured rather than on the cost of goods sold. We also included interest and/or financial expenses in the SG&A calculation. In addition, we only reduced interest and financial expenses by amounts for interest income if the Indian financial report noted that the income was short-term in nature (see Comment 6). Where a company did not distinguish interest income as a line item within total ''other income'' we used the relative ratio of interest income to total other income as reported for the Indian metals industry in the Reserve Bank of India Bulletin. (For a further discussion of other adjustments made, see Final Factors Memorandum).

Verification

As provided in section 782(i) of the Act, we verified the information submitted by all selected respondents for use in our final determinations. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by the respondents.

Critical Circumstances

Section 735(a)(3) of the Act provides that, in a final determination, the Department will determine whether:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Because there is no history of dumping and material injury by reason of dumped imports for either brake drums or brake rotors, we conducted our analysis under section 735(a)(3)(A)(ii) of the Act (importer knowledge of dumping and material injury).

1. Importer Knowledge of Material Injury

Pursuant to the URAA, and in conformance with the WTO Antidumping Agreement, the statute now includes a provision requiring the Department to determine, when relying upon section 735(a)(3)(A)(ii) to determine whether critical circumstances exist, whether the importer knew or should have known that there would be material injury by reason of the less than fair value sales. In this respect, the preliminary finding of the International Trade Commission (ITC) is instructive, especially because the general public, including importers, is deemed to have notice of that finding as published in the Federal Register. Thus, the Department has determined that a preliminary ITC finding of a reasonable indication of present material injury to the U.S. industry, when coupled with massive imports and a high rate of dumping by a given exporter (see Importer Knowledge of Dumping section, below) permits the conclusion that importers of the subject merchandise from such exporters knew or should have known that such imports would cause injury to the domestic industry. When the ITC has preliminarily found no reasonable indication that a U.S. industry is experiencing present material injury by reason of the dumped subject merchandise, but only a threat of such injury, the Department has determined that it is not reasonable to conclude that an importer knew or should have known that its imports would cause material injury. (See Decision Memorandum Regarding Imputed Knowledge of Material Injury.)

Because the ITC preliminarily determined that there is no reasonable indication that the U.S. brake drums industry is experiencing present material injury, but only a reasonable indication of threat of material injury,

we find that the ''importer knowledge of material injury'' prong is not met with respect to brake drums. Therefore, we find that critical circumstances do not exist with respect to brake drums, and it is not necessary to examine the other critical circumstances criteria for this product. Because the ITC preliminarily determined that there is a reasonable indication that the U.S. brake rotors industry is, in contrast, experiencing present material injury, we determine that critical circumstances exist with respect to those exporters of brake rotors which we have determined are responsible for massive imports and high dumping margins, as described below.

2. Importer Knowledge of Dumping

In determining whether an importer knew or should have known that the exporter was selling the subject merchandise at less than fair value, the Department normally consider margins of 15 percent and 25 percent or more sufficient to impute knowledge of dumping for CEP sales and EP sales respectively.

Since the company-specific margins in the final determinations for brake drums and brake rotors are below 15 percent for CEP sales (with the exception of brake rotors sales made by Southwest) and below 25 percent for EP sales, we have not imputed importer knowledge of dumping and injury with respect to any firms except Southwest in the brake rotors investigation. Therefore, we have only analyzed the brake rotor shipment data of Southwest.

3. Massive Imports

When examining the volume and value of trade flow data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Pursuant to 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been ''massive.'' In order to determine whether there have been massive imports of brake rotors for the companies for which we have determined that there is knowledge of dumping and material injury, we compared sales from August 1995 to February 1996 (the comparison period) to sales from March 1996 to September 1996 (the base period).

In determining whether imports have been ''massive,'' pursuant to 19 CFR 353.16(f), we will normally consider, in addition to the volume and value of imports, any seasonal trends affecting the merchandise and the share of domestic consumption accounted for by the imports. There is no indication on the record that brake rotors are a seasonal product. Also, we were unable to consider the share of U.S. consumption represented by the selected respondents, because we have insufficient information with regard to the selected respondents'' market share of domestic consumption. Based on our analysis of Southwest, we determine that the increase in imports was less than 15 percent with respect to that firm. Because imports from Southwest have not been massive, we determine that critical circumstances do not exist with respect to imports of subject merchandise from this company.

4. Unexamined Respondents/China-Wide Entity

As indicated in Preliminary Critical Circumstances Determinations, 61 FR 55269 (October 25, 1996), and in the Preliminary Determinations, 61 FR 53190 (October 10, 1996), the Department does not believe it is appropriate to find critical circumstances with respect to respondents whose individual data have not been analyzed due to the Department's own administrative constraints. Therefore, we do not consider critical circumstances to exist with regard to the non-analyzed cooperative respondents in the brake rotors case.

With respect to the China-wide entity, we are imputing knowledge of dumping, based on the China-wide dumping rate. As noted above, we have determined that importers knew or should have known that there would be material injury to the U.S. brake rotors industry based on the ITC's preliminary determination of a reasonable indication of present material injury for brake rotors. In the absence of shipment data for the China-wide entity, we have determined based on the facts available, and making the adverse inference permitted under section 776(b) of the Act because this entity did not provide an adequate response to our questionnaire, that there were massive imports of brake rotors. See Preliminary Critical Circumstances Determinations, 61 FR at 55269. Furthermore, we note that the record indicates a post filing surge in U.S. brake rotor imports from the PRC which is not accounted for by the cooperating respondents. Therefore, for the China-wide entity, we determine that critical circumstances exist with respect to imports of brake rotors.

5. Conclusion

With regard to brake rotors, we find that critical circumstances exist only for companies subject to the China-wide rate.

With regard to brake drums, we find that critical circumstances do not exist.

Interested Party Comments

General Comments

Comment 1: Separate Rates—CNIGC and Dalian

The petitioner maintains that there is sufficient evidence on the record to deny CNIGC and Dalian separate rates in these cases. It points out that these respondents failed to demonstrate at verification that they were (1) not part of NORINCO, a trading company which is monitored, if not controlled, by the PRC government; (2) not part of the NORINCO Group, an organization controlled by the People's Liberation Army (PLA); and (3) independent from the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), because they withheld all information concerning their relationship with MOFTEC. The petitioner further contends that the PRC government deliberately withheld information which might have revealed that CNIGC and Dalian were part of the NORINCO Group.

CNIGC and Dalian maintain that they demonstrated at verification the absence of both *de jure* and *de facto* government control over their export activities and that they have established through documentation that they are separate from NORINCO and are entitled to a separate rate. In addition, they argue that there is no information on the record that supports the claim that they are affiliated with the PRC government. Moreover, the two respondents contend that the PRC government did not fail to cooperate with the Department because they answered the Department's questions to the extent possible. However, if the Department decides that the PRC government was uncooperative, then they maintain that the Department cannot impute this lack of cooperation to CNIGC or Dalian. They cite to Notice of Court Decision; Exclusion From the Application of the Antidumping Duty Order, in Part; Termination of Administrative Review in Part; and Amended Final Determination: Certain Compact Ductile Iron Waterworks Fittings and Glands from the People's Republic of China, 60 FR 2078 (January 6, 1995) and Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic or China, 58 FR 48833 (September 20, 1993) in support of their arguments.

DOC Position

The Department's NME separate rates policy is based upon a rebuttable presumption that NME entities operate under government control and do not merit separate rates. This presumption can only be overcome by a respondent's affirmative showing that it operates without *de jure* or *de facto* government control.

CNIGC and Dalian have met their affirmative evidentiary burden with respect to the Department's criteria of *de jure* control, insofar as they have provided copies of business licenses and applicable government statute granting them the right to operate as independent trading companies.

These two respondents have also provided evidence that purportedly demonstrates absence of *de facto* control. However, other evidence supports a conclusion that Dalian and CNIGC remain under the control of the national corporation, NORINCO. Dalian and CNIGC were, until 1988 and 1991, respectively, legal and operational subsidiaries of NORINCO. Although PRC law and regulations mandated the legal and operational separation of these branches from their parent, evidence on the record suggests that the two respondents have only partially severed their ties to NORINCO, and are still recognized in the PRC and overseas as branches of NORINCO.

At the Department's visit to NORINCO's Beijing office, we obtained a NORINCO brochure which identifies CNIGC and Dalian as branches of NORINCO. The brochure continued to be distributed to the public as of the time of verification in late 1996. See exhibit 3 of the NORINCO verification report, dated January 8, 1997. This is consistent with the verification finding that NORINCO still maintains an office within the headquarters of CNIGC. See CNIGC verification report dated January 8, 1997, at 6. It is also consistent with 1995 information obtained from the U.S. Department of Defense which states that ''Norinco Guangzhou [CNIGC] is a leading branch of NORINCO,'' and with a 1996 Company Intelligence International article indicating that CNIGC is a branch of NORINCO. Thus, it appears that the *de facto* relationship between government-controlled NORINCO and its branches, including Guangzhou and Dalian, has not been entirely severed.

We note that in the instant investigation, NORINCO has not made a claim of independence from government control. Furthermore, there is evidence on the record that NORINCO is controlled by the PRC government. See, *e.g.,* organizational chart submitted to the file on October 3, 1996, describing NORINCO as under the control of the PRC's State Council, and Foreign Broadcast Information Service reports.

In view of CNIGC's and Dalian's continuing ties to NORINCO, and in the absence of a showing that NORINCO is independent from government control, the two respondents fail to overcome the presumption of *de facto* government control. Thus, we have not assigned separate rates to these companies.

Comment 2: Treatment of Non-Selected Respondents

The petitioner maintains that the Department had sufficient resources to investigate all of the responding PRC companies in these investigations. The petitioner further states that the Department should, at a minimum, request shipment data from non-selected respondents in order to determine whether critical circumstances exist for those companies, especially since U.S. import statistics indicate that massive imports of one product type (*i.e.,* brake rotors) has occurred. The petitioner cites to Bicycles in support of its argument.

Eight respondents (*i.e.,* the ten respondents except for Shenyang/Laizhou and Southwest) (hereafter referred to as ''the eight respondents'') state that the Department's sampling methodology is not contrary to law. However, the eight respondents claim that the Department should not impute knowledge of likelihood of material injury to U.S. importers merely because of the existence of dumping, maintaining that there is no inherent causal relationship between dumping and injury. Therefore, the eight respondents argue that the Department should find critical circumstances exist only if it determines that importers knew or should have known that there was likely to be material injury because of sales of brake drums and brake rotors at less than fair value.

DOC Position

We disagree in part with the petitioner and the respondents. In accordance with section 777A(c)(2) of the Act, given our limited resources, we had to limit the number of respondents examined in these cases in order to lessen the administrative burden on the Department, and we did so by choosing the largest exporters to the United States (see Honey and Bicycles). As for requesting shipment data from the non-selected respondents which have cooperated in these investigations, we did not do so due to the Department's own administrative constraints, which limited our ability to examine questionnaire responses or request shipment data for analysis. With respect to importer knowledge of material injury by reason of sales at less than fair value, the Department's position has changed since the preliminary determination. This decision is now based on the ITC's preliminary determination, in conjunction with massive imports and a high level of dumping. (See ''Importer Knowledge of Material Injury'' section of this notice and Decision Memorandum from the team to Richard W. Moreland, dated February 24, 1997).

Comment 3: Facts Available

The petitioner argues that the Department should resort to facts available and deny all of the respondents separate rates. According to the petitioner, throughout these proceedings the respondents have submitted to the Department ''boiler plate'' answers in response to the antidumping questionnaire, significantly revised their responses during the course of the proceedings, and requested numerous extensions of time to submit their incorrect data. In addition, the petitioner claims that the Department found a large number of errors at verification for the respondents and lists both general and respondent-specific instances upon which the Department should base an adverse facts available determination (see the petitioner's January 21, 1997, case brief, at 13–20.)

The petitioner also contends that the Department should deny separate rates to the companies under investigation because they withheld information regarding their relationship with MOFTEC, and because it could not be determined from a meeting at the Ministry of Machinery Industry and letters sent to MOFTEC whether the respondents have any relationship with any level of the PRC government. The petitioner further urges the Department to assign the China-wide rate to all of the respondents, claiming that not doing so may cause a massive diversion of shipments of the subject merchandise between PRC companies, with exports being shifted to companies assigned lower rates.

The eight respondents first contend that the petitioner erroneously equates ''facts available'' with ''adverse assumptions.'' They argue that the Act has been amended so that the Department cannot automatically make an adverse inference when applying facts available, but rather must consider all evidence on the record in

determining whether adverse inferences are warranted.

The eight respondents and Southwest argue that there is no instance in these proceedings that would justify the Department resorting to adverse inferences or resorting to facts available. They state that (1) there were no instances in any of the verifications in which the Department was unable to verify particular information; (2) the errors described by petitioner often were adverse to the respondents; and (3) when the Department did find errors, the Department was able to obtain and verify the correct information. Moreover, they maintain that there is no evidence that they failed to cooperate by not acting to the best of their ability to comply with Departmental requests for information or that the errors discovered during verification undermined the validity of any responses.

With respect to separate rates, all of the respondents stated that they had made adequate showings of independence.

Respondent Shenyang/Laizhou states that the Department may use facts available in making its determination if necessary information is not on the record or if a respondent: (1) Withholds requested information, (2) fails to provide requested information by the deadlines for the submission of the information, or in the form and manner requested, (3) significantly impedes an investigation, or (4) provides unverifiable information. (See Section 776 of the Act). Information that is adverse to a respondent may be used by the Department when the respondent ''has failed to cooperate by not acting to the best of its ability to comply with a request for information.'' (See Section 776(b) of the Act). Shenyang/Laizhou notes that none of these conditions are present in its case and that although a few discrepancies were noted at verification, they were resolved during verification.

Furthermore, all respondents urge the Department to make those corrections to the corresponding databases which were brought to the attention of the Department prior to and during verification.

Lastly, all respondents address the list of verification errors noted by the petitioner as reason for facts available, arguing that while the Department verified every factor input, for those that were in error, the corrections were clerical and minor in nature. They further assert that with respect to the areas affected by these errors, there are alternative verified data on the record that allow for recalculation of the relevant factors.

DOC Position

We agree with all respondents that neither an across-the-board denial of separate rates nor an across-the-board recourse to ''total'' facts available is warranted in these investigations. First, regarding the petitioner's concern over the massive diversion of shipments of brake drums and rotors between exporters if the Department does not assign the China-wide rate to all exporters, the Department has established that the companies receiving separate rates in these investigations operate independently of each other and of government entities with respect to their exports of the subject merchandise. Thus, these respondents have been assigned rates based on their different cost and pricing structures. It would be a normal phenomenon that respondents with lower dumping margins would experience an increase in sales of the subject merchandise as a result of an increase in customers' demand for products with lower duty margins.

Second, we disagree with the petitioner that the other companies (*i.e.*, not including CNIGC and Dalian) in these investigations should be denied separate rates based on the facts available. The information submitted on the record by each of these companies, as well as the Department's verification findings, show that these respondents under investigation have met the qualifying criteria for separate rates (see ''Separate Rates'' section for further discussion). The records in these investigations affirmatively indicate the absence of *de jure* and *de facto* control by government entities over those responding companies' operations with respect to the products under investigation. In its verification, the Department found no evidence that these respondents are controlled by MOFTEC or the Ministry of Machinery Industry, or any level of the PRC government.

Third, we disagree with the petitioners depiction of the respondents'' ''numerous'' extension requests and errors. In this instance, the number of extensions granted was not extraordinary, nor did these extensions prevent the petitioner from commenting on the responses or the Department from making its preliminary determinations.

Lastly, with respect to the errors listed by the petitioner, a review of the respondents' response revisions indicates that such revisions were not unduly extensive. We do not believe that failure to initially submit an error-free response, or the correction of these errors, should result in the use of facts available because we found no basis to conclude that these errors affect the overall integrity of the response. Moreover, in an antidumping investigation, it is not unusual to encounter errors throughout the proceeding up to the commencement of verification.

As described in Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Review, 61 FR 59407 (November 22, 1996), errors that are not substantial do not affect the integrity of the response. In addition, the errors in question do not warrant wholesale rejection of the reported data since all such deficiencies can be corrected using verified data on the record.

Comment 4: CEP Deductions and Circumstance-of-Sale (COS) Adjustments

Southwest argues that the Department should not make adjustments to CEP transactions for indirect selling expenses, credit and profit because making an adjustment to one side of the equation without making a comparable adjustment to the other results in an unfair calculation. Alternatively, Southwest suggests that if the Department makes these adjustments to the U.S. price then the Department should make similar adjustments to NV.

The petitioner states that section 772(c)(2)(D) of the Act requires the Department to reduce CEP by the selling expenses associated with economic activity in the United States, and that the Act provides no exception for cases involving NMEs. As for making COS adjustments, the petitioner states that section 773(a)(6)(C) of the Act does not require the Department to make COS adjustments to NV unless it has been established to the satisfaction of the administering authority that such adjustments are warranted.

DOC Position

We agree with the petitioner. Section 772(d)(1) of the Act requires the Department to reduce CEP by the selling expenses associated with economic activity in the United States (see SAA at 153, Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326 (June 14, 1996), and Bicycles at 19031. Moreover, section 772(d)(3) of the Act requires us to make a deduction for profit associated with CEP selling expenses (see SAA at 154, and Bicycles, at 19032). As for COS adjustments to NV, given the imprecise nature of the information about direct and indirect selling expenses in the record in these cases (*e.g.*, the financial reports of

Indian producers), we have no basis to conclude that such adjustments are warranted in these cases (see Bicycles at 19031).

Comment 5: Indian Producer Financial Statements

The respondents, except for Southwest, argue that the Department should only use data from financial statements of Indian producers of brake drums and brake rotors to calculate factory overhead, SG&A and profit percentages in respective investigations. In addition, the respondents maintain that the Department should only consider using data from the financial statements of Ennore, Jayaswals, Kalyani, Krishna, Nagpur, and Rico because these Indian companies produce the subject merchandise. The respondents claim that the financial reports of Electrosteel and Shivaji should not be used to derive the percentages because neither company produces the subject merchandise. Alternatively, if the Department uses financial data from Shivaji's report, then the eight respondents claim that the Department must also use Electrosteel's financial data because both companies produce grey iron castings which are similar to the subject merchandise. The respondents cite to the Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From the People's Republic of China, 62 FR 1708 (January 13, 1997) (Melamine), Notice of Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Hungarian People's Republic, 52 FR 17428 (May 8, 1987), and Bicycles in support of their arguments.

The respondent Southwest maintains that all but Ennore's financial report should be used to calculate the percentages because there is no publicly available information indicating that Ennore produced the subject merchandise during the POI. It argues that a letter from Ennore (submitted on the record by other respondents) that stated that this company produces brake drum castings should be rejected as ''private information.''

The petitioner states that the Department should use the financial reports of Ennore, Jayaswals, Kalyani, Krishna, Nagpur, Rico and Shivaji to calculate percentages for both investigations and that the Department should calculate the percentages based on the petitioner's calculations of the data as shown in its case brief.

DOC Position

The Department disagrees with certain of the respondent's specific statements, while agreeing in general, that the companies selected for calculation of factory overhead, SG&A, and profit should reflect the Department's preference for ''the most product-specific information possible from the surrogate market'' as noted in Melamine. Based on publicly available information, we find that Jayaswals, Kalyani, Krishna, Nagpur and Rico produced both brake drums and brake rotors within the scope of these investigations and sold during the POI. Therefore, we are using these Indian producers' financial reports to calculate surrogate percentages for use in both investigations. We are not using the financial data of Electrosteel or Ennore because we have no publicly available information which indicates that these companies produced subject merchandise during the POI. Although the eight respondents submitted a letter from Ennore which stated that it produces brake drums, we have relied on publicly available information instead of the private correspondence as the basis for our decision because we normally prefer to rely on publicly available information and consider the contents of the correspondence files of a company, by nature, not to be publicly available information. We are not using Shivaji's financial report for these calculations because publicly available information, along with information from the U.S. consulate in India, establishes that Shivaji did not produce subject merchandise during the POI.

Comment 6: Adjustments to Indian Financial Reports' Data

The eight respondents argue that, when calculating SG&A, the Department should offset the interest and financial expenses by the amount of financial gains (*i.e.*, items such as ''operating income, miscellaneous receipts, miscellaneous income, and other interest income'') when calculating SG&A. They contend that adding the financial expenses to SG&A without reducing those amounts by any corresponding operating income results in imprecise and overstated selling expenses. They cite to the Notice of Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil (Orange Juice), 55 FR 26721 (June 29, 1990) (Comment 8) in which the Department offset financial expenses with short-term operating income.

The petitioner argues that the Department should not offset financial expenses against financial gains, citing *Bicycles*, and claims that section 773(a)(7) of the Act states that an offset to NV is only required upon sufficient showing that differences exist justifying the adjustment.

DOC Position

We agree with the respondents that we should offset interest expense by the amount of short-term interest income when calculating G&A, as in Orange Juice and in accordance with Departmental practice. However, we disagree that operating income or all of miscellaneous receipts should be in the offset. We do not include in our offset long-term interest income nor short-term income from activities such as rental. Thus, we reduced interest expenses by amounts for interest income for those items identified in the financial reports as being related to short-term interest, and utilized the April 1995 Indian Reserve Bank Bulletin to allocate a portion of ''other income'' or ''miscellaneous receipts'' as short-term interest income for those companies which did not specify a breakdown of their non-operating income.

The petitioner's reliance on section 773(a)(7) of the Act and Bicycles is misplaced. Section 773(a)(7) deals with level of trade adjustments. The comment in Bicycles to which the petitioner refers deals with a circumstance-of-sale (COS) adjustment. 61 FR at 19031 (Comment 1). This adjustment is not a COS adjustment but simply a reduction in the total amount of SG&A expenses based on short-term income received by the Indian producer.

Comment 7: Surrogate Values for Certain Material Inputs

The petitioner asserts that the Department should value pig iron, steel sheet, steel wire rod and steel scrap using POI import prices from the Indian publication Monthly Statistics rather than the POI domestic prices from the Indian publication SAIL or from the financial reports of certain Indian producers because the prices in Monthly Statistics are exclusive of taxes and duties whereas the prices in SAIL and in the financial reports are not. If the Department elects not to use pig iron prices from Monthly Statistics, then the petitioner urges the Department to use Indian Iron & Steel Company Limited (IISCO) prices rather than SAIL prices for the same reason noted above. The petitioner claims that the Department should not value ball bearing cups by using prices from Indian Customs Daily Lists provided by International Data Services (IDS) because IDS data is of

inferior quality and is therefore unreliable. For coke, the petitioner maintains that the article containing domestic prices submitted by all of the respondents on January 10, 1997, indicates that the prices are controlled by the Indian government and therefore should not be considered.

The eight respondents maintain that in past NME cases the Department has expressed a clear preference for using tax-exclusive domestic prices rather than import prices when valuing factors of production. In addition, they state that in previous NME cases, the Department has used SAIL data when the specificity of the steel product has been most important in valuing the factor. They cite to Drawer Slides and to the Notice of Final Results of Administrative Review: Certain Helical Spring Lock Washers from the People's Republic of China, 61 FR 41994, 41997 (August 13, 1996) in support of their argument. For ball bearing cups, the respondents maintain that the *IDS* data is publicly available information and is more specific to imports of ball bearing cups than the category of ''other ball/roller bearing parts'' listed in Monthly Statistics. For coke, they state that the data from Economic Times of Mumbai provide prices for coke which are contemporaneous with the POI and specific to Indian foundry industries.

DOC Position

We disagree in part with both the petitioner and the respondents. The fact that domestic prices may include taxes is not determinative when deciding which prices are preferable for use in valuing the factors of production. For pig iron, steel scrap and iron scrap, we find that the separated line item prices for each of these inputs in Shivaji's 1995–96 report are more specific than the prices contained in SAIL, Monthly Statistics or IISCO. Therefore, the prices in Shivaji's report are more reflective of prices paid for inputs used by domestic producers of castings (*i.e.*, products of the same general category as the subject merchandise). We have also removed, where possible, any taxes included in the prices obtained from Shivaji's report.

The Department normally prefers to use prices that are representative of prices in effect during the POI. For ball bearing cups, we find that the IDS data is less representative of prices in effect during the POI than the prices contained in Monthly Statistics because the IDS data, selected by the respondents, consist of a single transaction at a single port for a single customer and do not appear to be more product-specific than the Monthly Statistics data. Therefore, we have valued this input using prices from Monthly Statistics.

For coke, though the prices from Economic Times of Mumbai are POI prices, we find that these prices are clearly government administered. Since we have a POI coke value from Monthly Statistics in these investigations which is not government administered, we have used these prices to value this input.

Comment 8: Treatment of Indirect Materials

All of the respondents urge that, in calculating NV, the Department should continue to consider molding inputs as indirect materials and part of factory overhead, rather than as materials consumed. In addition, Southwest maintains that the Department should also treat dextrin, steel shot, antirust, cutting oil, cleaning agent, dehydrating oil, and rustproofing oil as indirect materials and part of factory overhead. In order for a material to be considered a direct material, Southwest argues that the material must be physically incorporated into the finished product, citing the Compendium of Statements and Standards published by the Institute of Chartered Accountants of India. Finally, Shenyang/Laizhou claims that limestone and firewood should be treated as indirect materials because they are not physically incorporated into the final product.

The petitioner did not comment on this issue.

DOC Position

We have continued to treat molding materials listed in the ''Factors of Production'' section of this notice as indirect materials because although these inputs are used to produce the subject merchandise, these inputs are not incorporated into the final product and are also categorized as ''stores and spares consumed'' based on Indian accounting standards. According to the Compendium of Statements and Standards, in order for a material to be considered as part of factory overhead, it must ''assist the manufacturing process, but * * * not enter physically into the composition of the finished product.'' We agree that dextrin, steel shot, antirust, cutting oil, cleaning agent and dehydrating oil are indirect materials and should be treated as part of factory overhead, because the function of these materials is to ''assist'' in the manufacturing process and do not enter physically into the composition of the finished product. With respect to rustproofing oil, we find that this input is a direct material because it is used as a packaging material. As for limestone and firewood, we find that limestone is a direct material which is consumed during the smelting process as flux (*i.e.*, a material resulting from the production process which removes undesirable substances, like sand, from the metal bath) and that firewood is an energy input used in the production process.

Comment 9: Surrogate Value for Rustproofing Oil

Southwest claims that if the Department treats rustproofing oil as a direct material, then the Department should value it using the value of lubrication oil because other respondents, such as CAIEC/Laizhou CAPCO, use rustproofing oil for the same process. Thus, the Department should use the same surrogate value for all respondents (*i.e.*, lubrication oil).

The petitioner did not comment on this issue.

DOC Position

We disagree with Southwest. We found at the verification of Southwest's factory that it used a rustproofing oil, not lubrication oil, to coat its finished brake rotors for packaging. In contrast, although we found that CAIEC/Laizhou CAPCO used an oil to protect its brake rotors before packaging, it is clear that CAIEC/Laizhou CAPCO uses lubrication oil and not rustproofing oil. However, given that we could not obtain a surrogate value for rustproofing oil, we have used the value of lubrication oil to value this input for all respondents.

Comment 10: Foreign Inland Freight

The eight respondents maintain that the Department should not deduct an amount for foreign inland freight from EP or CEP because that expense was incurred by the factories and not by the trading companies. According to these respondents, the original places of shipment were the seaports where the suppliers delivered the merchandise for shipment to the United States. Citing Notice of Final Results of Antidumping Duty Administrative Review: Titanium Sponge from the Russian Federation, 61 FR 58525 (November 15, 1996), (Titanium Sponge from Russia), they claim that the Department should consider the seaports from which the subject merchandise was shipped to be the original places of shipment and to deduct only the movement charges incurred in transporting the merchandise from the PRC to the U.S. customers from EP and CEP. Alternatively, they maintain that if the Department does deduct the foreign inland freight from the factories to the seaports from EP and CEP, then the

Department should, at a minimum, ensure that a similar amount is excluded from the overhead and selling expense ratios calculated for building normal value. They contend that if the overhead and selling expense ratios are derived from Indian producer financial statements wherein overhead and/or SG&A contain delivery expenses, the inclusion of such expenses in normal value with the simultaneous exclusion of such expenses from EP and CEP would constitute double-counting.

The petitioner did not comment on this issue.

DOC Position

The Department disagrees with the respondents'' implied conclusion that in these investigations, the cost of transporting the subject merchandise from the factory to the PRC port of exportation should be treated as a component of the factories'' total costs (*i.e.*, as a factor in the construction of normal value) instead of as a deduction from the price to the U.S. customer. While it is true that, in Titanium Sponge from Russia, the Department did not deduct factory-to-port movement charges from the U.S. starting price, and instead included ''in normal value an amount for the inland freight,'' the circumstances in that particular case were very different from those of the instant investigations. Our normal methodology is to strip all movement charges, including all foreign inland freight, from the U.S. price being compared to NME normal value based on factors of production. The facts in these instant investigations differ from those in Titanium from the Russian Federation, wherein (1) the subject merchandise produced in an NME country was sold to an exporter located in a market economy without knowledge on the part of the producer of the United States as the ultimate destination and (2) the exporter took physical possession of the subject merchandise. Since neither of these conditions apply to these instant investigations, the comparison to Titanium from the Russian Federation is misplaced, and the Department has followed its normal methodology.

The respondents in these investigations are either (1) PRC self-exporting producers, such as Xinchangyuan or (2) PRC trading companies, such as CMC, which purchased subject merchandise from PRC producers. We are therefore deducting the surrogate value for the cost of transporting the subject merchandise from the factories to the port of exportation from the U.S. price, whether EP or CEP, in keeping with our past practice. See Bicycles. As to the respondents'' claim that the overhead and/or SG&A rates applied in calculating normal value may already contain the cost of transporting the merchandise to the port as a selling expense, and that the deduction of foreign inland freight charges from the U.S. price constitutes a double-counting of expenses, we have ensured that any expense line-item which refers to ''freight,'' ''movement,'' ''carriage,'' or ''transportation'' of goods, as well as the portion of ''vehicle maintenance'' and ''vehicle depreciation'' expenses applicable to product delivery, have been removed from the total SG&A costs and total overhead costs contained in the financial statements of Indian companies used in calculating NV.

Comment 11: Use of Exchange Rates

The eight respondents maintain that when calculating the exchange rate used in converting Indian surrogate values into U.S. dollars, the Department should use the buying exchange rates for U.S. dollars contained in Federal Exchange Bulletin, because the issue here is not how many dollars it takes to purchase one Indian rupee, but rather how many rupees are required to purchase one U.S. dollar.

The petitioner argues that the Department should not reject its use of daily Indian rupee-U.S. dollar exchange rates from the Federal Reserve Bank of Chicago and argues that there is no merit in respondents' request for the Department to abandon the use of these exchange rates in favor of simple average rates in the Federal Exchange Bulletin.

DOC Position

We agree with the petitioner. Based on Policy Bulletin 96–1: Import Administration Exchange Rate Methodology, we have used daily noon buying rates to establish the Indian rupee exchange rates used in these investigations. The daily noon buying rates are based on the rates in New York for cable transfers, which are certified by the New York Federal Reserve Bank for customs purposes, as required by section 522 of the Act. This information has been downloaded from an electronic bulletin board maintained by the Chicago Federal Reserve Bank. (See ''Currency Conversion'' section of this notice for further discussion).

Comment 12: Currency Conversion

The eight respondents urge the Department to round to the nearest one-thousandth of a dollar when converting Indian rupee values to U.S. dollars, because rounding to the nearest one-hundredth of a dollar often can cause significant distortions.

The petitioner did not comment on this issue.

DOC Position

We disagree with the respondents. In converting values from Indian rupees to U.S. dollars, we have derived U.S. values and rounded those values to the nearest one-hundredth, not one-thousandth, of a dollar because we do not find their use to have a significant effect on the margins.

Company-Specific Issues

Qingdao

Comment 13: Calculation of Total Material Cost

The petitioner claims that the Department did not include the cost of wire rod scrap when it calculated the total material cost for each model in the factors of production database for Changzhi Automobile Parts Factory (Changzhi), Qingdao's supplier. The petitioner urges the Department to include this factor in its calculation of total material cost.

Changzhi states that the Department correctly did not separately value wire rod scrap.

DOC Position

We agree with the petitioner. We verified that Changzhi reported a separate factor amount for wire rod scrap in the factors of production database. Therefore, for the final determination, we have valued this factor accordingly.

Shenyang/Laizhou/MAT

Comment 14: EP vs. CEP Sales Classification

Shenyang/Laizhou maintains that the Department incorrectly classified U.S. sales made prior to importation through its U.S. affiliate, MAT, as CEP transactions, and requests that the sales be reclassified as EP transactions.

The petitioner maintains that the Department should continue to treat these sales as CEP transactions.

DOC Position

We agree with the petitioner that these sales are properly treated as CEP sales. With respect to EP sales, section 772 (a) of the Act states that:

> The term ''export price'' means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States . . .

Based on Department practice, we examine several criteria for determining whether sales made prior to importation through an affiliated sales agent to an unaffiliated customer in the United States are EP sales, including: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether the sales follow customary commercial channels between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unrelated U.S. buyer. Where all criteria are met, the Department has regarded the routine selling functions of the exporter as ''merely having been relocated geographically from the country of exportation to the United States,'' and has determined the sales to be EP sales. Where all conditions are not met, the Department has classified the sales in question as CEP sales. See, e.g., Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany (LNPP from Germany), 61 FR 38166, 38174 (July 23, 1996).

In this case, the sales through MAT meet the first two criteria described above. However, with respect to the third criterion, the record evidence in this case indicates that MAT is not merely a processor of sales-related documentation nor a ministerial communication link between the factories and their unaffiliated customers. On the contrary, MAT is instrumental in determining the terms of sale. In the questionnaire responses and at verification, company officials repeatedly stated that the U.S.-based president of MAT and owner of the Shenyang and Laizhou factories is solely responsible for all production, distribution, and sales decisions. Indeed, the case brief submitted by Shenyang/Laizhou concedes that instructions regarding pricing are sent from MAT's office in the United States. See case brief at 20. We are not persuaded by the argument that the U.S.-based president of MAT directs sales activities in his role as owner of the factories rather than as president of MAT, nor by the argument that his U.S. sales activities are ''simply the consequence of (the U.S.-based president of MAT) being a U.S. citizen and resident.'' *Id.* The fact is that the U.S.-based president of MAT operationally controls both the factories and MAT from his U.S. office, with the result that MAT directs the factories, not the opposite. Therefore, the sales through MAT are properly classified as CEP sales.

Comment 15: Surrogate Value for Purchased Unfinished Castings

Shenyang/Laizhou argues that the Department should use Laizhou's casting-related factors of production to calculate a surrogate value for castings purchased by Shenyang from unaffiliated PRC suppliers because Laizhou's valued factors for castings are more reflective of Shenyang's costs for castings if it had produced the castings itself. Alternatively, the respondent argues that the Department should derive a casting value based on the financial statements of Indian casting producers Nagpur and Jayaswals. According to the respondent, these financial statements are the only sources on the record that provide data for purchases or consumption of unfinished gray cast iron castings by producers of brake rotors.

The petitioner maintains that the Department should not value castings using the Laizhou factors of production given that there is reliable public information on the record regarding the price of input castings in India. The petitioner requests that the Department continue to use the inventory value for castings in Shivaji's financial statements as it did in the preliminary determination.

DOC Position

We disagree with the respondent that the unfinished castings purchased by Shenyang should be valued using the casting-related factors of production reported by Laizhou because, in NME cases, we value a respondent's factors based on its actual production experience during the POI. In this case, Shenyang purchased its unfinished castings during the POI and did not produce them, and thus we have valued these factors accordingly (see Notice of Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (PRC), 59 FR 66895, (Comments 4 and 5) (December 28, 1994). The Department values inputs purchased in an NME using surrogate values derived from publicly available information in a market economy of a similar stage of development. The record of this investigation includes financial statements of Indian producers of brake rotors which provide reliable surrogate values for the purchase price of input castings, and there is therefore no need to build up a casting purchase value using the factors of production reported by Laizhou.

In identifying appropriate Indian financial statements for valuation of castings, we have excluded the statements of producers which did not manufacture rotors during the POI, since castings for rotors may have significantly different prices from castings for other products. Also, we have sought data on purchases of castings from casting suppliers, since it is reasonable to assume that such castings are unfinished or at most semi-finished. We believe that purchased casting data are more reliable than casting inventoried values, which may reflect large quantities of finished castings, and also more reliable than casting consumption values, which may include large quantities of castings produced internally rather than purchased from outside suppliers. Given these criteria, the Jayaswals financial statements provide the only appropriate Indian surrogate value for unfinished castings on the record, and we have relied on that value. For a more extensive discussion of our valuation of unfinished castings, please refer to the final factors valuation memorandum.

Southwest/MMB

Comment 16: EP vs. CEP Sales Classification

The respondent maintains that sales made by its U.S. affiliate (MMB) should be considered EP and not CEP transactions because (1) the price of the merchandise is set by Southwest, not by MMB, prior to importation; (2) the customary commercial channel is to ship the merchandise directly to the customer; and (3) MMB maintains no inventory in the United States. Southwest cites to The Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Rod from France, 58 FR 68865 (December 29, 1993) (*Stainless Steel Rod*) in support of its argument.

The petitioner asserts that the Department should continue to treat these sales as CEP.

DOC Position

We disagree with Southwest. Our verification findings indicate that Southwest's sales through MMB were properly classified as CEP sales. When we requested at verification evidence that Southwest sets U.S. prices, rather than MMB, Southwest was only able to provide negotiation and sales correspondence for one customer purchase order (which covered an insufficient number of the total POI invoices of subject merchandise). Further, the only documentation Southwest provided at verification to

support its claim was documentation that it had been requested to prepare prior to verification. We find this failure to be significant, especially given that the respondent originally stated in its response that MMB is ''not a mere conduit of sales by Southwest'' and that MMB's salesman ''negotiates the final prices with MMB's customers.'' (see Southwest's supplementary sales response, dated August 27, 1996, at A–2). With regard to Southwest's reference to Stainless Steel Rod, we note that unlike the U.S. affiliate in that case, MMB's sales of brake rotors do not involve a situation in which the U.S. affiliate had no flexibility to set the price (*i.e.*, price is set by the parent company). Therefore, we find no compelling evidence in Southwest's responses or in our verification findings to treat these sales as EP sales.

Comment 17: Treatment of Bartered Scrap

The petitioner argues that no adjustment for bartered steel scrap should be made because the respondent did not provide a surrogate value to the Department.

Yangtze, Southwest's supplier, claims that the Department should grant it a credit for the scrap (*i.e.*, turnings and shavings) sold or bartered by it and that a surrogate value for steel scrap is already on the record.

DOC Position

We agree with Yangtze. It is Department practice to subtract the sales revenue of by-products such as steel scrap from the production costs of the subject merchandise (see Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China, 59 FR 28053 (May 31, 1994). Moreover, we have a surrogate value for steel scrap on the record. Therefore, we have granted Yangtze a credit for the turnings and shavings it sold or bartered during the POI.

Comment 18: Credit Expense

Southwest maintains that if credit expenses are deducted from CEP, then the Department should use the date of the U.S. affiliate's invoice and not the date when Southwest shipped the subject merchandise from the PRC.

The petitioner maintains that the Department should use the PRC date of shipment to calculate this expense.

DOC Position

We disagree with Southwest that the Department should use the date of the U.S. affiliate's invoice to calculate credit expenses. When merchandise produced by the foreign-based exporter's affiliated factory (Yangtze) is shipped from the factory through the foreign-based exporter (Southwest) and then directly to an unaffiliated U.S. customer without entering the inventory of a U.S. affiliate (MMB), then it is the Department's standard practice to calculate credit expenses based on the date of shipment from the factory to the U.S. customer. Therefore, we have based credit expenses for this respondent on the number of days between the date of shipment to the U.S. customer and the date of payment. See Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon Steel Flat Products from Italy, 58 FR 37152 (July 9, 1993).

Comment 19: Misreported Weights for Unfinished Castings

The petitioner maintains that Yangtze incorrectly reported the weights for all of its unfinished casting models listed in the sales and factors of production databases, and the factors for those unfinished castings.

The respondent maintains that it did not misreport the weights of its unfinished castings in the factors of production database. The respondent argues that the Department should use the reported standard weights for unfinished castings rather than the actual weights because the reported weights are reflected in its accounting records and those weights were used to allocate raw materials used in making all castings (*i.e.*, unfinished castings and finished castings). Respondent further maintains that using the actual weights rather than the standard weights would be distortive because they overstate the constructed value for each unfinished casting. Respondent cites To Notice of Final Determination of Sales at Less Than Fair Value: Minivans from Japan, 57 FR 21937 (1992) in support of its argument.

DOC Position

We disagree with the respondent. At verification, we found that the difference in weight of an unfinished casting compared to a finished casting for the same model is large in magnitude. We know that using the standard weights for allocating inputs for unfinished castings from Yangtze's accounting records distorts the actual production costs of the subject merchandise. Using the standard weights will also undervalue the factors used to produce unfinished castings and distort the actual production cost of the brake rotors, because the standard weights are lower than the actual weights. Therefore, the reasons for using standard weights in the Minivans case do not apply in this case.

If we do not take into account the actual weight of the unfinished brake rotor, then we would not be considering that there is a yield loss between a finished and unfinished product. However, in actuality, the yield loss is not as high for an unfinished product as a finished product, and therefore, the cost allocations are inaccurate as reported. Yangtze has not offered any alternative allocation methodology to account for these distortions. Furthermore, Yangtze did not even realize that its reported weights for unfinished brake rotors were based on its standard accounting system until Department officials found that the weights for unfinished brake rotors were incorrectly reported at verification.

In sum, in light of the distortive effects which would result from using Yangtze's theoretical standard weights, which bear no resemblance to the actual weights of unfinished castings, we are using the actual weights as the basis for allocation for those castings.

Comment 20: Welfare Fund

The petitioner alleges that Southwest failed to establish an absence of *de facto* or *de jure* government control because verification demonstrated that Southwest places a portion of its profits in a fund called ''the public welfare fund'' and claims that this fund is set up for payment of profits to the PRC government. For these reasons, the petitioner urges the Department to resort to facts available and deny Southwest a separate rate.

Southwest maintains that the Department found at verification that ''the public welfare fund'' is an employee welfare fund retained by the respondent.

DOC Position

We disagree with the petitioner. Southwest, like all the other respondents, is required to maintain an accounting system based on current PRC accounting standards. Included in the standard chart of accounts is an account entitled ''public welfare fund.'' We examined the activity in this account during the POI and found that no payments were made to the PRC government. In addition, Southwest has demonstrated both a *de jure* and *de facto* absence of government control. (See ''Separate Rates'' section, above). Therefore, the Department sees no reason to deny Southwest a separate rate.

Yantai

Comment 21: Misreported Factors

The petitioner maintains that Laizhou Magnetic Iron Powder (MIP) Factory incorrectly reported its usage of five packing material factors for all models in the factors of production database. As a result of these errors, the petitioner urges the Department to resort to facts available for these materials.

Respondent maintains that the petitioner's request for use of facts available for Laizhou MIP's packing costs is misplaced. According to the respondent, of the six types of packing materials used by Laizhou MIP, the factory consistently and conservatively over-reported usage for five of the materials. For the sixth material, plastic bags, Laizhou MIP maintains that the magnitude of its under-reporting was less than one gram per bag.

DOC Position

We disagree for the most part with the petitioner's request that the Department utilize facts available in determining Laizhou MIP's usage of packing materials. For five of the six materials in question—cartons, nails, steel strap, pallet wood, and tape—the usages reported were found to be significantly overstated by the respondent. With respect to one packing material, plastic bags, the samples examined at verification indicate that Laizhou MIP did underreport usage by a relatively minor amount. We have corrected all of these usages using the verification findings as non-adverse facts available.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, unless it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Indian rupee did not undergo a sustained movement.

Continuation, and Termination in Part, of Suspension of Liquidation

Brake Drums

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of brake drums from the PRC, except for the exporter/producer combinations listed below, that are entered, or withdrawn from warehouse, for consumption on or after October 10, 1996, which is the date of publication of our notice of preliminary determination in the Federal Register:

Exporter(s)	Producer(s)
CMC	Xinchangyuan
Qingdao	Changzhi
Xinchangyuan	Xinchangyuan
Yantai	Longkou Bohai; Laizhou MIP.

With respect to the above companies, the suspension of liquidation ordered on or after October 10, 1996, will be terminated and any cash deposit or bonds will be released.

Under the Department's NME methodology, the zero rate for each exporter is based on a comparison of the exporter's U.S. price and NV based on the factors of production of a specific producer (which may be a different party). Therefore, the exclusion of the above-mentioned companies from an antidumping duty order (should one be issued) applies only to subject merchandise sold through the exporter/producer combinations noted above. Merchandise that is sold by an above-mentioned exporter but manufactured by producers not noted above for that exporter will be subject to the order, if one is issued (see Notice of Final Determination of Sales At Less Than Fair Value: Cased Pencils from the People's Republic of China, 59 FR 55625 (November 8, 1994) and Drawer Slides). Entries of such merchandise will be subject to the ''China-wide'' rate.

For imports of brake drums that are sold by CAIEC/Laizhou CAPCO, Hebei Metals and Machinery Import & Export Corporation, Jiuyang Enterprise Corporation, Longjing Walking Tractor Works Foreign Trade Import & Export Corporation and Shanxi Machinery and Equipment Import & Export Corporation, we are directing the Customs Service to suspend liquidation at a rate indicated below.

As stated in the preliminary determination, it would be inappropriate to assign these fully cooperative respondents a rate based on ''facts available'' that would also apply to PRC exporters who refused to cooperate. However, for this final determination, all of the rates determined for the selected brake drum respondents were either zero or entirely based on facts available.

We note that the Act is silent with respect to a situation in an NME investigation in which all of the rates determined for the selected respondents are either zero, *de minimis* or based on facts available. However, section 735(c)(5)(B) of the Act, which deals with the analogous ''all others'' determination, allows us 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 dumping margins determined for the exporters and producers individually investigated.'' The SAA at 873 explicitly recognizes that if the latter approach ''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.'' CNIGC, the only one of the five examined companies which did not receive a *de minimis* or zero rate, became subject to a rate based on facts available because it was found not to be entitled to a separate rate, rather than due to a failure to provide data on its sales practices. Furthermore, this company's volume of sales of brake drums to the U.S. market is one of the largest in the investigation. Given the unique circumstances of this case, we do not consider that a weighted-average which includes that company's adverse facts available rate is reasonably reflective of potential

dumping margins for cooperative non-investigated exporters or producers who submitted full questionnaire responses. Therefore, in order not to give undue weight to CNIGC in determining a rate for non-examined companies which is reasonably reflective of potential dumping margins, we have assigned to these companies a rate which is the *simple* average of the dumping margins determined for the exporters and producers individually investigated.

We are also directing the Customs Service to continue to suspend liquidation of entries sold by the PRC brake drum companies subject to the China-wide rate, that are entered, or withdrawn from warehouse, for consumption on or after October 10, 1996.

The Customs Service will require a cash deposit or posting of a bond equal to the estimated duty margins by which the normal value exceeds the USP, as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

BRAKE DRUMS

Manufacturer/Producer/Exporter	Weighted-average margin percentage
CMC/Xinchangyuan ..	0.00 (Excluded).
Qingdao/Changzhi	0.00 (Excluded).
Xinchangyuan/ Xinchangyuan.	0.00 (Excluded).
Yantai/Longkou Botai Machinery Company or Laizhou MIP.	0.00 (Excluded).
CAIEC/Laizhou CAPCO.	17.20.*
Hebei Metals and Machinery Import & Export Corporation.	17.20.*
Jiuyang Enterprise Corporation.	17.20.*
Longjing Walking Tractor Works Foreign Trade.	17.20.*
Import & Export Corporation Shanxi Machinery and Equipment Import & Export Corporation.	17.20.*
China-Wide Rate	86.02.

*Rate is based on the simple average of rates determined for the selected respondents.

Brake Rotors

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of brake rotors from the PRC except for the exporter/producer combinations listed below, that are entered, or withdrawn from warehouse, for consumption on or after October 10, 1996:

Exporter(s)	Producer(s)
CAIEC or Laizhou CAPCO.	Laizhou CAPCO.
Shenyang or Laizhou	Shenyang or Laizhou.
Xinjiang	Zibo Botai Manufacturing Co., Ltd.

With respect to the above companies, the suspension of liquidation ordered on or after October 10, 1996, is to be terminated and any cash deposit or bonds are to be released. However, if any of the above-referenced companies sell subject merchandise which is not manufactured by the producers noted above for those companies, then those entries will be subject to the ''China-wide'' rate (for a full explanation, see the ''Brake Drums'' section above).

For imports of brake rotors that are sold by Hebei Metals and Machinery Import & Export Corporation, Jilin Provincial Machinery & Equipment Import & Export Corporation, Jiuyang Enterprise Corporation, Longjing Walking Tractor Works Foreign Trade Import & Export Corporation, Qingdao Metals, Minerals & Machinery Import & Export Corporation, Shanxi Machinery and Equipment Import & Export Corporation, Xianghe Zichen Casting Corporation and Yenhere Corporation, we have assigned these companies a weighted-average dumping margin based on the calculated margins of the selected brake rotors respondents, excluding margins which were zero, *de minimis* or based on facts available (*see* Preliminary Determinations).

Because we have determined that critical circumstances exist with respect to the PRC brake rotor companies which have received the China-wide rate, we are directing the Customs Service to continue to suspend liquidation of entries sold by these companies, that are entered, or withdrawn from warehouse, for consumption on or after July 12, 1996, which is 90 days prior to the date of publication of our notice of preliminary determination in the Federal Register.

The Customs Service will require a cash deposit or posting of a bond equal to the estimated duty margins by which the normal value exceeds the USP, as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

BRAKE ROTORS

Manufacturer/producer/exporter	Weighted-average margin percentage
CAIEC and Laizhou CAPCO/Laizhou CAPCO.	0.00 (Excluded).
Shenyang and Laizhou/Shenyang or Laizhou.	0.00 (Excluded).
Xinjiang/Zibo Botai Manufacturing Co. Ltd.	0.00 (Excluded).
Yantai Import & Export Corporation.	3.56.
Southwest Technical Import & Export Corporation, Yangtze Machinery Corporation, and MMB International, Inc.	16.35.
.....	
Hebei Metals and Machinery Import & Export Corporation.	8.63.*
Jilin Provincial Machinery & Equipment Import & Export Corp.	8.63.*
Jiuyang Enterprise Corporation.	8.63.*
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation.	8.63.*
Qingdao Metals, Minerals & Machinery Import & Export Corp..	8.63.*
Shanxi Machinery and Equipment Import & Export Corporation.	8.63.*
Xianghe Zichen Casting Corporation.	8.63.*
Yenhere Corporation	8.63.*
China-Wide Rate	43.32.

*Rate is based on the weighted-average of calculated rates that are not zero or based on facts available.

China-Wide Rate

China-Wide Rates have been assigned to brake drums and brake rotors exporters based on the revised highest petition rates. The China-Wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above under each product type.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. As our final determinations are affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an

industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, for one or both proceedings, that proceeding or both proceedings will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist in both proceedings, the Department will issue antidumping duty orders directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

These determinations are published pursuant to section 735(d) of the Act.

Dated: February 24, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5029 Filed 2–27–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Notice of Final Court Decision and Amended Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative review.

SUMMARY: On September 28, 1995, the U.S. Court of Appeals for the Federal Circuit upheld the Department of Commerce's (the Department's) use of constructed value (CV) instead of third-country prices, for the purpose of determining foreign market value, and the Department's use of monthly average U.S. prices (USPs), instead of annual average USPs for the purpose of determining dumping margins. See *Floral Trade Council* v. *United States*, Slip Op., Ct. Nos. 94–1019, 94–1020 (Fed. Cir. Sept. 28, 1995). As there is now a final and conclusive court decision in this action, we are amending our final results of review in this matter and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to this review.

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 1990, the Department published its final results of administrative review of certain fresh cut flowers from Colombia for the period March 1, 1988 through February 28, 1989. See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, 55 FR 20491 (May 17, 1990). Subsequently, a domestic association and a number of reviewed companies filed lawsuits with the United States Court of International Trade (CIT) challenging the final results. Thereafter, the CIT issued an order and opinion, remanding several issues to the Department. See *Floral Trade Council* v. *United States*, 775 F. Supp. 1492 (CIT 1991). The CIT instructed the Department to: (1) Collect actual cost data from eleven companies for which the Department had not previously requested cost data for purpose of calculating CV; (2) make a credit adjustment to CV for five companies; (3) include street vendor sales in the inland freight calculation for Floral Ltda. Exportaciones Bochica; (4) adjust USP for Dianticola Colombiana to include revenues deposited by the firm's consignment agent into a United States bank on Dianticola Colombiana's behalf; (5) correct a clerical error concerning calculation of CV for Flores el Trentino, and (6) normalize costs to account for low yields suffered by Florandia/Herrera-Camacho. The Department filed its remand results on May 5, 1992.

On April 22, 1993, the CIT issued a second remand to the Department to allow preproduction expenses incurred by Flores Condor de Colombia to be amortized. See *Floral Trade Council* v. *United States*, Slip Op. 93–57 (CIT Apr. 23, 1993). The Department filed the results of this second remand on June 14, 1993. On July 22, 1993, the CIT rendered its final judgment. See *Floral Trade Council* v. *United States*, Slip Op. 93–135 (CIT July 23, 1993). Subsequently, appeals were filed by both domestic and foreign parties.

On September 28, 1995, the U.S. Court of Appeals for the Federal Circuit upheld the Department's use of CV, instead of third-country prices, for purpose of determining foreign market value, and the Department's use of monthly average USPs, instead of annual average USPs, for purpose of determining antidumping margins. See *Floral Trade Council* v. *United States*, Slip Op., Ct. Nos. 94–1019, 94–1020 (Fed. Cir. Sept. 28, 1995).

As there is now a final and conclusive court decision in this action, we are amending our final results of review in this matter and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to this review.

Amendment to Final Result of Review

Pursuant to 19 U.S.C. 1516a(e), we are now amending the final results of administrative review for certain fresh cut flowers from Colombia for the period March 1, 1988 through February 28, 1989. The revised weighted-average margins are as follows:

Company	Margin (percent)
Agricola Los Arboles	0.38
Claveles Colombianos	0.20
Combiflor	0.19
Dianticola Colombiana	2.47
Floral Ltda./Exportaciones Bochica	0.13
Florania/Herrera-Camacho	12.51
Flores Bachue	7.97
Flores Colombianas	0.13
Flores Condor de Colombia	0.00
Flores dos Hectareas	3.90
Flores el Puente	0.70
Flores de Serrezuela	0.48
Flores el Trentino	6.53
Flores la Valvanera	8.71
Jardines del Muna	16.85
Pompones Limitada	0.11
Universal Flowers	0.53

The above rates affected the weighted-average sample group margin, which will be applied to the one hundred twenty-nine firms requested only by the domestic interested party and not selected in the random sample. The new sample group rate is 3.50 percent.

Accordingly, the Department will determine and the Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by this review of the period March 1, 1988 through February 28, 1989. Individual differences between USP and foreign market value may vary from the percentages listed above. The Department will issue appraisement instructions directly to the Customs Service.

Dated: February 20, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5033 Filed 2–27–97; 8:45 am]

BILLING CODE 3510–DS–M