

June 21, 2010

MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2007-2008 Administrative Review of the Antidumping Duty Order
on Carbazole Violet Pigment 23 from the People's Republic of
China

Summary

We have analyzed the case and rebuttal briefs of the interested parties in the 2007-2008 administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from the People's Republic of China (PRC). As a result of our analysis and as discussed below, we have made one change from the preliminary results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues for which we received comments from parties:

- Comment 1. Basis of the Surrogate Financial Ratios
- Comment 2. Inclusion of Directors' Salaries and Benefits in SG&A
- Comment 3. Surrogate Values for Raw Material Inputs
- Comment 4. Surrogate Value for Nitric Acid
- Comment 5. Surrogate Value for Chloranil
- Comment 6. Surrogate Value for Benzene Sulfonyl Chloride

Background

On December 29, 2009, the Department of Commerce (the Department) published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on CVP 23 from the PRC for the period December 1, 2007 through November 30, 2008. See Carbazole Violet Pigment 23 From the People's Republic of China: Preliminary Results of

Antidumping Duty Administrative Review, 74 FR 68780 (December 29, 2009) (Preliminary Results).

We invited parties to comment on the preliminary results. On January 28, 2010, we received case briefs from Nation Ford Chemical Company and Sun Chemical Corporation (collectively, petitioners) and Trust Chem Co., Ltd. (Trust Chem), the respondent. On February 1, 2010, we returned Trust Chem's case brief because it contained new, unsolicited information submitted after the deadline for such information. Trust Chem submitted its revised case brief on February 2, 2010. On February 3, 2010, petitioners filed a rebuttal brief. On May 4, 2010, we placed new information on the record and invited parties to submit comments on this new information. On May 10, 2010, we published in the Federal Register a notice extending the deadline for the final results of this administrative review until June 21, 2010. See Carbazole Violet Pigment 23 from the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review, 75 FR 25840 (May 10, 2010). On May 17, 2010, both petitioners and Trust Chem submitted comments on the new information placed on the record on May 4, 2010; petitioners filed rebuttal comments on May 19, 2010.

Discussion of the Issues

Comment 1. Basis of the Surrogate Financial Ratios

Petitioners note the Department used the 2008-2009 financial statements for Pidilite Industries Limited (Pidilite), an Indian manufacturer of CVP 23, to calculate the surrogate financial ratios for factory overhead, selling, general and administrative expenses (SG&A), and profit for the preliminary results. Petitioners' Case Brief at 2, citing Preliminary Results, 74 FR at 68784. However, petitioners state, the Department noted in the Preliminary Results that Pidilite's financial statements reference "export incentives" and there is currently a countervailing duty cash deposit rate in effect for Pidilite. Id. While the Department affirmed it prefers to calculate the surrogate financial ratios using the financial statements of subsidy-free companies, inter alia, petitioners state the Department nonetheless used Pidilite's financial statements for the preliminary results because they were the only financial statements on the record. Id.

Despite the Department's invitation to interested parties in the preliminary results to submit alternate financial statements, petitioners state no party did so within the regulatory deadline. Therefore, petitioners contend the Department does not need to reconsider whether Pidilite's financial statements serve as the appropriate basis for calculating the surrogate financial ratios.

At any rate, petitioners assert the Department and the U.S. Court of International Trade (CIT) already have determined Pidilite's financial statements are suitable for calculating the surrogate financial ratios regardless of the references to subsidies and export incentives, citing Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order (Remand on Final Determination), Goldlink Industries Co., Ltd. v. United States, 431 F. Supp. 2d 1323 (CIT 2006), affirmed by the CIT on December 8, 2006. Petitioners claim that in the Remand on Final Determination, the Department found the countervailable subsidies reported by Pidilite under "other income" had no effect on the factory overhead or SG&A ratios

since income is not included in the computation of those two ratios. Petitioners' Case Brief at 3-4, citing Remand on Final Determination at 7. Petitioners contend the Department also determined in the Remand on Final Determination that although the calculation of the profit ratio incorporated income, including export incentives, the effect of export incentives on the profit ratio was insignificant. *Id.* In the instant review, petitioners argue the export incentives have a similarly negligible impact on the profit ratio, comparing the ratio calculated in the preliminary results with the export incentives (12.76 percent) to the ratio computed without the subsidies (12.40 percent). For the same reasons set forth in the Remand on Final Determination, petitioners maintain the Department can safely determine in the current review that the subsidies referenced in Pidilite's financial statements do not significantly distort the surrogate financial ratios. Therefore, petitioners assert the Department should continue to utilize Pidilite's 2008-2009 financial statements, and only these statements, to compute the surrogate financial ratios for the final results.

Trust Chem did not provide any rebuttal comments on this issue.

Department's Position: Section 773(c)(1) of the Tariff Act of 1930, as amended (the Act) directs the Department to base the valuation of the factors of production (FOPs) on the best available information. Pursuant to 19 CFR 351.408(c)(4), the Department normally values manufacturing overhead, SG&A expenses and profit using "non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country."

In complying with the statute and the regulations, the Department calculates the surrogate financial ratios based on contemporaneous financial statements of companies producing comparable merchandise from the surrogate country, some of which may contain evidence of subsidization. However, where the Department has a reason to believe or suspect that the company producing comparable merchandise may have received actionable subsidies, it may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. Consequently, the Department does not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios. See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 13 (OCTG from the PRC).

Despite the fact that Pidilite's financial statements reference export incentives and the fact that there is a countervailing duty cash deposit rate in effect for Pidilite, the Department has continued to rely on Pidilite's 2008-2009 financial statements to calculate the surrogate financial ratios for the final results. In the instant review, Pidilite's financial statements are the only available financial statements on the record, and, therefore, there are no other sufficient reliable and representative financial statements on the record for us to consider. In addition, no interested party has contested the use of Pidilite's financial statements. We note the Department has used financial statements with some evidence of subsidies when the circumstances of the

particular case warranted. For example, in OCTG from the PRC, the Department used three Indian producers' financial statements to calculate the surrogate financial ratios even though two of those producers benefited from actionable subsidies. In that case, the Department found that none of the three producers were fully representative of the production experience of the Chinese respondent, and relying on any single one of those producers' financial statements would have significantly overstated or understated the Chinese respondent's financial ratios. Therefore, in line with its preference for using multiple financial statements to calculate the surrogate financial ratios, the Department used all three financial statements. See OCTG from the PRC. Also, in Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 9A, the Department determined that it was appropriate to use a financial statement where there was insufficient information on the record regarding the subsidy program to warrant disregarding the financial statement. Moreover, in the investigation of CVP 23 from the PRC, the Department used Pidilite's financial statements to calculate the surrogate financial ratios despite the presence of subsidies and an affirmative countervailing duty determination, because the Department found Pidilite's financial statements were the best available information on the record. See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004) (CVP 23 from the PRC Final Determination) and accompanying Issues and Decision Memorandum at Comment 1 and Remand on Final Determination.

Comment 2. Inclusion of Directors' Salaries and Benefits in SG&A

Petitioners state Pidilite's 2008-2009 financial statements detail its directors' salaries and benefits. Petitioners' Case Brief at 5, citing Pidilite's 2008-2009 Annual Report at 57-58.¹ Petitioners claim directors' salaries and benefits are regarded as part of SG&A, citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel But-Weld Pipe Fittings From India, 60 FR 10545, 10547-48 (February 27, 1995), Notice of Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom, 61 FR 51411, 51419 (October 2, 1996), and Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany, 64 FR 30710, 30744-45 (June 8, 1999). However, petitioners argue, the Department included directors' salaries and benefits in direct labor costs in the preliminary results. For the final results, petitioners contend the Department should remove directors' salaries and benefits from direct labor costs and include them in SG&A.

Trust Chem did not provide rebuttal comments on this issue.

Department's Position: We agree with petitioners that Pidilite's directors' salaries and benefits should be deducted from direct labor costs and added to SG&A because executive salaries are considered part of SG&A. Therefore, we have made this change for the final results. Consequently, the surrogate financial ratios for factory overhead and SG&A differ from the

¹ Petitioners submitted Pidilite's 2008-2009 Annual Report in their September 8, 2009 Surrogate Values Submission at Exhibit 1.

preliminary results. For more information, see Memorandum to the File through Robert James, Program Manager, AD/CVD Operations, Office 7, from Deborah Scott, International Trade Compliance Analyst, AD/CVD Operations, Office 7, “2007-2008 Administrative Review of Carbazole Violet Pigment 23 from the People’s Republic of China: Surrogate Values for the Final Results,” dated June 21, 2010.

Comment 3. Surrogate Values for Raw Material Inputs

In its case brief, Trust Chem expresses general disagreement with the methodology used by the Department in selecting surrogate values for chemical inputs. In particular, Trust Chem asserts the Department improperly selected surrogate values for nitric acid, chloranil, and benzene sulfonyl chloride; the arguments and Department’s positions with respect to these specific chemicals are addressed below in Comments 4, 5, and 6, respectively.

Trust Chem contends the Department has a great degree of leeway in selecting surrogate prices to value FOPs, but the Department must do so with the fundamental objective of section 773(c) of the Act, which is to calculate dumping margins as accurately as possible. See Trust Chem’s Case Brief at 5, citing Shandong Huarong General Corp. v. United States, 159 F. Supp. 2d 714, 719 (CIT 2001). Trust Chem argues section 773(c)(1)(B) of the Act specifically requires the Department to value FOPs using the “best available information.” Trust Chem asserts the Court of Appeals for the Federal Circuit (the Federal Circuit) and the CIT have held that the Department’s FOP valuation must be based on the best available information and must establish dumping margins as accurately as possible. Trust Chem’s Case Brief at 5, citing Lasko Metal Products, Inc. v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994), Shakeproof Assembly Components Division of Illinois Tool Works, Inc. v. United States, 268 F.3d 1376, 1382 (Fed. Cir. 2001), and Yantai Oriental Juice Co. v. United States, 26 C.I.T. 605, 608-09 (CIT 2002) (Yantai).

In selecting the surrogate values which constitute the best available information, Trust Chem maintains the Department prefers surrogate values which are product-specific, non-export average values, contemporaneous with the period of review (POR), and tax-exclusive. With respect to product specificity, Trust Chem claims the Department’s longstanding practice is to search for surrogate values with the specific grade and physical characteristics that are most comparable to the raw material inputs the non-market economy (NME) producer uses to manufacture subject merchandise. In support of this claim, Trust Chem cites Manganese Metal from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 66 FR 15076 (March 15, 2001) and accompanying Issues and Decision Memorandum at Comment 2; Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part, 67 FR 69719 (November 19, 2002) and accompanying Issues and Decision Memorandum at Comment 2; and Certain Helical Spring Lock Washers From The People’s Republic of China; Final Results of Antidumping Administrative Review, 61 FR 41994, 41996-7 (August 13, 1996).

Trust Chem argues the Department correctly relied upon Chemical Weekly, rather than Indian Harmonized Tariff Schedule basket categories, to value certain raw material inputs, namely,

polyethylene glycol and dimethylformamide. Trust Chem claims this is consistent with the Department's practice that recognizes import data based on a basket category do not serve as an appropriate surrogate if a more representative surrogate is available, citing Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China, 69 FR 3887, 3892 (January 27, 2004); Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review, 64 FR 27961, 27962 (May 24, 1999) (Crawfish from the PRC); and Industrial Nitrocellulose From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65667, 65671 (December 15, 1997) (Industrial Nitrocellulose from the PRC). However, in contrast to the Department's normal practice, Trust Chem contends the Department only relied upon data from Chemical Weekly to a very limited degree and mainly relied upon Indian import data to value raw material inputs in the preliminary results.

Trust Chem acknowledges the Department properly relied on Indian import statistics for inputs for which there were no other surrogate data sources such as published prices or individual price quotes on the record. However, Trust Chem contends it was not appropriate for the Department to rely upon Indian import statistics as the primary source for surrogate values for chemicals that are widely produced in India and for which alternate surrogate data are readily available in Indian publications such as Chemical Weekly. Trust Chem claims the Department's dependence on import data over published domestic prices, especially where the import data are based on small quantities compared to domestic purchase volumes and therefore aberrational, contradicts judicial and administrative precedent and must be amended for the final results. Trust Chem's Case Brief at 8, citing Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, 318 F. Supp. 2d 1339 (CIT 2004) (Shanghai Foreign Trade Enterprises), Hebei Metals & Minerals Import & Export Corporation v. United States, 28 C.I.T. 1185, 1191-92 (CIT 2004) and Yantai, 26 C.I.T. at 617.

Trust Chem claims the Federal Circuit directed the Department to avoid using distorted surrogate prices in Nation Ford Chemical Company v. United States, 166 F.3d 1373, 1378 (Fed. Cir. 1999). As a result, Trust Chem argues, where the Indian import statistics are distorted and not reflective of commercial prices because the volume is too small or the HTS number is a basket category, the Department should rely on published prices in Chemical Weekly or other sources. Trust Chem asserts that in most other Chinese cases involving chemicals, the Department uses Chemical Weekly as much as possible and only relies on Indian import statistics where published prices are not available or reliable. Trust Chem's Case Brief at 8, citing Sebacic Acid From The People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Rescission, 69 FR 47409 (August 5, 2004).

Petitioners respond by stating that Trust Chem has made many unsupported allegations and has not established that the Department's selected surrogate values for certain chemicals are distorted and must be altered. Petitioners claim that Trust Chem's chief criticism is that the surrogate values for certain chemicals are higher than those utilized in the investigation and first administrative review of CVP 23 from the PRC. Petitioners aver "Trust Chem's feigned 'sticker shock'" simply does not account for the amount of time that has passed since those segments of the proceeding. Petitioners' Rebuttal Brief at 2. Since the investigation involved the period April 1, 2003 through September 30, 2003 and the first administrative review covered the period

June 24, 2004 through November 30, 2005, petitioners note several years separate those segments from the current POR. Petitioners argue energy and petroleum prices rose dramatically during the intervening years and thus they believe the corresponding prices for certain chemicals also would have increased substantially. With inflation as well as supply and demand pressures, petitioners assert it is not improbable that during the intervening years the prices of certain chemicals could have risen as reflected by the Indian import data.

Department's Position: With respect to factor valuation, we agree with Trust Chem that the Department is obligated to calculate an accurate dumping margin by using the best available information.² See section 773(c)(1) of the Act. Pursuant to 19 CFR 351.408(c)(1), the Department normally will use publicly-available information to value FOPs. Further, when selecting possible surrogate values for use in an NME proceeding, the Department's practice is to use, to the extent practicable, prices that are non-export averages, product-specific, net of taxes and import duties, and contemporaneous with the POR. There is no hierarchy for applying these criteria. With that in mind, the Department first attempts to find publicly-available surrogate values from the primary surrogate country that are contemporaneous and representative of the factors being valued. Thus, the Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what the best surrogate value is for each input.

In applying the Department's surrogate value selection criteria, the Department has found in numerous NME cases that import data from World Trade Atlas (WTA)³ have represented the best information available for valuation purposes because the WTA data are publicly-available, contemporaneous with the POR, tax-exclusive, product-specific, and broad market averages. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 844 (January 6, 2010) and accompanying Issues and Decision Memorandum at Comment 2 (TRBs from the PRC); Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 66087 (December 14, 2009) (Chlorinated Isocyanurates from the PRC) and accompanying Issues and Decision Memorandum at Comments 1 and 4; and First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) (Activated Carbon from the PRC) and accompanying Issues and Decision Memorandum at Comments 3c and 3f.

Likewise, the Department has determined that price data from the Indian publication Chemical Weekly constituted the best available information to value certain inputs in various NME cases. See, e.g., Activated Carbon from the PRC and accompanying Issues and Decision Memorandum at Comment 3d; Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009) and accompanying Issues and Decision Memorandum at Comment 3 (Glycine from the PRC); and Chlorinated Isocyanurates

² Here we address general issues regarding the Department's methodology with respect to the selection of surrogate values. The Department addresses Trust Chem's arguments with respect to specific inputs in Comments 4, 5, and 6 below.

³ The WTA compiles Indian import statistics from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India. The data are available at <http://www.gtis.com/wta.htm>.

from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 27104, 27107 (June 8, 2009), unchanged in Chlorinated Isocyanurates from the PRC. As stated in Activated Carbon from the PRC and accompanying Issues and Decision Memorandum at Comment 3d, the Department has found Chemical Weekly data to be reliable for valuation purposes because these data represent multiple prices over time, are representative of prices during the POR in India, are product-specific, and can be made tax-exclusive.

Thus, the Department considers both WTA and Chemical Weekly to be acceptable sources of surrogate value data. See Activated Carbon from the PRC and accompanying Issues and Decision Memorandum at Comment 3d. As explained below, however, the Department has recently clarified its practice with respect to using Chemical Weekly.

In past cases, the Department treated prices of chemicals in liquid form in Chemical Weekly as reflecting a 100 percent concentration level unless Chemical Weekly specified otherwise. See, e.g., Synthetic Indigo From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 53711 (September 12, 2003) and accompanying Issues and Decision Memorandum at Comment 5. Hence, when a respondent reported the concentration level of a chemical in liquid form, the Department could adjust the Chemical Weekly prices by the concentration level reported by the respondent to derive a surrogate value specific to the concentration level of the chemical consumed by the respondent. See, e.g., Glycine from the PRC. However, the Department recently learned that the prices reported in Chemical Weekly may not reflect chemicals at a 100 percent purity level. See Certain Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 57653, 57656 (November 9, 2009) (Lock Washers from the PRC Preliminary Results), unchanged in Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 29720 (May 27, 2010) (Lock Washers from the PRC Final Results). Therefore, as stated in the recent lock washers determination, except for price quotes in Chemical Weekly which indicate a chemical's purity level,⁴ the Department will treat the purity level of chemicals sold in either liquid or solid form as unknown. Consequently, the Department will no longer adjust these unknown concentration levels to the concentration level of the chemical FOP used by the respondent. See Lock Washers from the PRC Preliminary Results, 74 FR at 57656, unchanged in Lock Washers from the PRC Final Results.

⁴ This includes hydrochloric acid, because representatives of Chemical Weekly have informed the Department that the purity level of this chemical in liquid form is 30-33 percent. See Lock Washers from the PRC Preliminary Results, 74 FR at 57656, unchanged in Lock Washers from the PRC Final Results. This also includes barium carbonate, nitric acid, and zinc chloride, for which the Department has learned that the prices reported in Chemical Weekly are for these chemicals at concentration levels of 98-99 percent, commercial grade 60 percent, and technical grade 82 percent, respectively. See Lock Washers from the PRC Final Results and accompanying Issues and Decision Memorandum at Comment 5; see also Memorandum to the File through Brandon Farlander, Program Manager, AD/CVD Operations, Office 1, from Austin Redington and David Layton, International Trade Compliance Analysts, AD/CVD Operations, Office 1, "Final Results of the 2007-2008 Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China," dated May 17, 2010 and Memorandum to the File through Robert James, Program Manager, AD/CVD Operations, Office 7, from Deborah Scott, International Trade Compliance Analyst, AD/CVD Operations, Office 7, "2007-2008 Administrative Review of Carbazole Violet Pigment 23 from the People's Republic of China: Placement of New Information on the Record," dated May 4, 2010.

The Department further clarified its position regarding the use of Chemical Weekly data in Activated Carbon from the PRC, stating that when a respondent has identified the concentration level of a chemical input and when the WTA HTS category is not a direct match to the chemical input, the Department normally will rely upon Chemical Weekly prices. See Activated Carbon from the PRC and accompanying Issues and Decision Memorandum at Comment 3d. In that case, the concentration level of the chemical input as reported in Chemical Weekly was known, making the Chemical Weekly value more specific to the input in question.

Thus, when (1) a respondent reports the concentration level of its chemical input, (2) the WTA HTS category does not directly match that input (i.e., the HTS category is not specific to the product itself), and (3) the concentration level is known for the prices reported for that chemical in Chemical Weekly, the Department generally will rely upon the Chemical Weekly prices to value the input. See Lock Washers from the PRC Final Results and accompanying Issues and Decision Memorandum at Comment 5. Moreover, because the concentration levels are known, the Department is able, when necessary, to adjust the Chemical Weekly value using a ratio of the respondent's concentration level to the concentration level in Chemical Weekly to achieve a surrogate value that is specific to the chemical input in question. For example, if the Chemical Weekly concentration level is 90 percent and the respondent's concentration level is 70 percent, we will multiply the Chemical Weekly value by 0.778 (i.e., 70 divided by 90) to compute the surrogate value. Where both the respondent and Chemical Weekly report the same concentration level or where the concentration levels are within the same range, the Department will not adjust the Chemical Weekly prices as the Chemical Weekly prices are already input-specific. See Lock Washers from the PRC Final Results and accompanying Issues and Decision Memorandum at Comment 5.

In determining whether to use WTA data or prices from Chemical Weekly as surrogate values, the Department will follow its general practice and consider the case-specific facts for each input, and, based upon those facts, select the best available information so that surrogate values are specific to the input and are contemporaneous with the POR. While the Department generally will prefer to use Chemical Weekly when the three criteria articulated above are satisfied, there may be other circumstances where prices in Chemical Weekly serve as the best available information to value a particular input although all three criteria are not satisfied. For example, in the instant review, while the respondent provided the purity level of the polyethylene glycol (PEG) used to produce CVP 23, Chemical Weekly did not; nevertheless, we used Chemical Weekly to value this input. See Preliminary Results, 74 FR at 68783. We decided to rely upon Chemical Weekly rather than WTA to value PEG because Chemical Weekly contained price data for the specific type of PEG used by the respondent to manufacture CVP 23, PEG 200, whereas the WTA data lacked this level of specificity. Also, parties to this proceeding provided different HTS numbers for PEG, and both numbers appear to be basket categories for various types of PEG. See Memorandum to the File through Robert James, Program Manager, AD/CVD Operations, Office 7, from Deborah Scott, International Trade Compliance Analyst, AD/CVD Operations, Office 7, "2007-2008 Administrative Review of Carbazole Violet Pigment 23 from the People's Republic of China: Surrogate Values for the Preliminary Results," dated December 22, 2009 (Preliminary Results Surrogate Values Memorandum) at 6-7. Since we found that Chemical Weekly provided more product-specific price data, we determined it was more

appropriate to use Chemical Weekly than WTA to value PEG, and we continue to do so for these final results.

Based on the foregoing, the Department disagrees with Trust Chem that it was inappropriate to rely on Indian import statistics as the primary source for surrogate values for certain chemicals, even though alternate data were available in Chemical Weekly. Although Chemical Weekly contained data for certain chemical inputs, we used WTA to value those chemicals because the WTA HTS category was a direct match to the chemical input, or because the use of Chemical Weekly data was not warranted based on the record. See Preliminary Results Surrogate Values Memorandum at 4-10. Further, we disagree with Trust Chem that we should only rely on Indian import statistics where published prices are not available or reliable. In fact, in instances where the Department finds both WTA data and Chemical Weekly data are equally specific to an input, all other factors being equal, the Department's preference is to utilize the WTA data over the Chemical Weekly data, because the WTA data represent broader market averages.

With respect to the use of import data based on basket categories, we agree with Trust Chem that the Department has found in past cases that such data were unsuitable for valuation purposes where a more representative surrogate existed. However, we emphasize that it is not the Department's practice to disregard import data merely because they are based on a basket category. Rather, a more appropriate surrogate must be available on the record. For example, in the Industrial Nitrocellulose from the PRC case cited by Trust Chem, the Department used price data from the investigation to value steel drums because the Department found these price data better approximated the respondent's cost of the input than did the Indian import statistics. We note that where the Department finds import data based on a basket category to be the most appropriate information available on the record for a particular input, the Department uses these data for valuation purposes. See, e.g., TRBs from the PRC.

Finally, we agree with Trust Chem in principle that aberrational data should not be utilized to value FOPs. In some cases, the Department has disregarded import data where record evidence demonstrated the per-unit values were aberrational with respect to the product at issue or the time period in question. However, the Department determines whether data are aberrational on a case-by-case basis after considering the totality of the circumstances. In making a determination as to whether data are aberrational, the Department has found the existence of higher prices alone does not necessarily indicate the price data are distorted or misrepresentative, and thus is not sufficient to exclude a particular surrogate value. See TRBs from the PRC. Rather, the burden is on interested parties to provide specific evidence showing the value is aberrational. When sufficient evidence is presented to demonstrate a particular surrogate value is not viable, the Department will assess all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question. See, e.g., TRBs from the PRC and Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 10 (Lightweight Thermal Paper from the PRC).

Comment 4. Surrogate Value for Nitric Acid

To value nitric acid for the preliminary results, Trust Chem states the Department used a surrogate value of 10,474 USD per metric ton (MT) based on WTA data for Indian HTS number 2808.00.10. Trust Chem's Case Brief at 9, citing Preliminary Results Surrogate Values Memorandum at 5-6. Trust Chem claims the surrogate value used in the instant review is clearly aberrational when compared to the surrogate values of 123 USD per MT and 190 USD per MT from Chemical Weekly used in the investigation and first administrative review of CVP 23 from the PRC, respectively. Trust Chem's Case Brief at 9, citing its January 19, 2010 Surrogate Values Submission at Attachments 2 and 3.

In addition, Trust Chem asserts the surrogate price from the WTA is based on a very small volume of imports amounting to slightly more than one container load of nitric acid, and thus cannot be deemed representative of commercial prices in India. Trust Chem argues the CIT has determined the Department can base a surrogate value on Indian import data only after concluding the import data are based upon commercially and statistically significant amounts. Trust Chem's Case Brief at 9, citing Shanghai Foreign Trade Enterprises, 318 F. Supp. 2d at 1352-53. Trust Chem contends the volume of imports on which the surrogate value for nitric acid is based is less than two percent of the import volume rejected by the CIT in Shanghai Foreign Trade Enterprises. Thus, Trust Chem maintains the Department should not use the WTA data to value nitric acid for the final results.

Trust Chem cites the investigation of CVP 23 from the PRC, in which the Department found the Indian import statistics used in the preliminary determination for certain surrogate values, including the surrogate value for nitric acid, were aberrational compared to U.S. and European Union benchmark data and, thus, made changes to those surrogate values for the final determination. Trust Chem's Case Brief at 9, citing CVP 23 from the PRC Final Determination and accompanying Issues and Decision Memorandum at Comments 3 and 7. Trust Chem also cites CVP 23 from the PRC Final Determination and accompanying Issues and Decision Memorandum at Comment 7, in which the Department stated it would value nitric acid using the respondents' submitted price from Chemical Weekly since the Department found the Indian import statistics for nitric acid were aberrational.

Trust Chem contends U.S. official import statistics for nitric acid show a price of 349.95 USD per MT. Trust Chem's Case Brief at 10, citing its January 19, 2010 Surrogate Values Submission at Attachment 1. Trust Chem contends this price, along with the surrogate values from the investigation and first administrative review, establish the surrogate value of 10,474 USD per MT from the WTA is clearly aberrational. Therefore, Trust Chem asserts the Department should use the 215.31 USD per MT price (based on 9 Indian rupees (Rs.) per kg) from Chemical Weekly⁵ to value nitric acid for these final results.

In rebuttal, petitioners assert the Department properly reasoned in the preliminary results that the WTA data were appropriate for valuing nitric acid because HTS number 2808.00.10 is a direct match to this input. Petitioners contend Trust Chem does not dispute the Department's reasoning but instead argues against using this exact matching category merely because the price is aberrational. Petitioners aver Trust Chem has claimed the price is aberrational based on a

⁵ Trust Chem submitted this price in its September 8, 2009 Surrogate Values Submission at Attachment 2.

comparison of the WTA value used in the instant review to the values used in the investigation and first administrative review. Petitioners argue Trust Chem has not placed information on the record regarding factors such as inflation or supply and demand during the intervening three or four years to show the price of nitric acid could not possibly have risen to this level. Other than the outdated prices from the investigation and first administrative review, petitioners maintain the only evidence Trust Chem relies upon in making its argument is the U.S. import price of 349.95 USD per MT. Petitioners argue that even after referring to that U.S. import price, Trust Chem asserts the Department should use the much lower value of roughly 9 Rs. per kg, or 215.31 USD per MT, from Chemical Weekly.

Petitioners maintain the Department should continue to use WTA data to value nitric acid for the final results. However, if the Department finds the WTA price for nitric acid to be aberrational, petitioners argue the Department should use their proposed value from the Indian Department of Commerce's Export Import Data Bank of 35.08 Rs. per kg, or 839.44 USD per MT, which is more in line with U.S. import prices. Petitioners' Rebuttal Brief at 3-4, citing their September 8, 2009 Surrogate Values Submission at Exhibit 21.

In comments submitted May, 2010 after the conclusion of the briefing period, the parties commented on information the Department placed on the record indicating the concentration level of nitric acid for which prices are published in Chemical Weekly is 60 percent. In comments submitted May 17, 2010, Trust Chem reiterates arguments made in its case brief and continues to assert the Department should value nitric acid using Chemical Weekly, adjusted for the difference in concentration levels. Trust Chem contends that the Chemical Weekly price adjusted for purity is clearly "the most accurate surrogate value and best represents the price of nitric acid in China if China was a market economy country." Trust Chem's May 17, 2010 Letter at 3.

In their comments filed May 17, 2010, petitioners state that Nantong Longding Chemical Co. Ltd. (Nantong Longding), the manufacturer which supplied the CVP 23 sold by Trust Chem, used nitric acid with a concentration level of 96 percent to produce CVP 23. Petitioners' May 17, 2010 Letter at 1, citing Trust Chem's March 17, 2009 questionnaire response at Appendices D-4 and D-9.⁶ Petitioners cite a United States Environmental Protection Agency report which describes in detail two methods for the production of nitric acid. Petitioners' May 17, 2010 Letter at 1 and Exhibit 1. Petitioners state that the first method results in "weak" nitric acid with concentrations of 30 to 70 percent, and the second method utilizes "weak" nitric acid to make "high strength" nitric acid, also referred to as 98 percent or concentrated nitric acid. Petitioners claim that while many plants produce "weak" nitric acid, there are only two "high strength" nitric acid producers in North America, Dyno Nobel and El Dorado Chemical, both of which also produce the "weak" nitric acid used in making "high strength" nitric acid. Citing technical specifications for Dyno Nobel and El Dorado Chemical, petitioners argue the salient point is that

⁶ While Trust Chem initially reported in its March 31, 2009 questionnaire response at Appendices D-4 and D-9 that Nantong Longding used 96 percent nitric acid, Trust Chem later reported in its July 31, 2009 supplemental questionnaire response at 17 and Appendix S1-29 that Nantong Longding used nitric acid with a concentration level of 98 percent.

both manufacturers produce “high strength” acid from “weak” acid “using sophisticated chemical process technology and high fixed cost equipment, thus adding great cost and value when converting dilute acid to high strength nitric acid.” *Id.* at 1-2 and Exhibit 2. In addition, petitioners maintain the processes used to make “high strength” nitric acid remove or significantly diminish the impurities present in “weak” nitric acid, therefore making the “high strength” nitric acid suitable for manufacturing nitrated organic chemicals like nitro-ethyl-carbazole used in the production of CVP 23. Further, petitioners contend, because “high strength” nitric acid is highly corrosive, it must be shipped and stored in high purity aluminum or glass containers, which contributes greatly to its cost.

Petitioners claim that it is uncertain if any Indian companies manufacture “high strength” nitric acid. Petitioners state an Internet search showed there were several suppliers of 68 percent nitric acid, but no suppliers of strong nitric acid. Petitioners argue that Indian domestic weak nitric acid in concentrations less than 90 percent is wholly unsuitable as a surrogate value for “high strength” nitric acid. Petitioners explain that the acid contained in the weak solution consists of a much lower value than the acid contained in the “high strength” solution, “far beyond the simply proportional relations between 60% acid reported in Chemical Weekly and the 96% strong acid actually used by Nantong Longding.” *Id.* at 2.

While the nitric acid reflected in the WTA data is not described as either “weak” or “high strength,” petitioners assert, the fact that the imported nitric acid is much greater in price than the domestic product provides compelling evidence that the nitric acid represented by the WTA data is “high strength.” As a result, petitioners claim, the WTA data are the best information available to value the “high strength” nitric acid used by Trust Chem’s supplier. In addition, petitioners argue, the WTA import data are not aberrational. Petitioners provide import data from Global Trade Atlas for 2004 through 2008 which show the price in 2008 was 10.05 USD per kg and averaged 10.70 USD per kg over that five-year period. *Id.* at Exhibit 3. Petitioners argue that 11 unsubsidized market economies exported nitric acid to India during 2008, “proving that there was an active competitive import market for this form of nitric acid in India.” *Id.* at 2.

Trust Chem did not rebut petitioners’ May 17, 2010 Letter. In rebuttal to Trust Chem’s May 17, 2010 Letter, petitioners argue that Trust Chem did not submit any new factual information to back its claim that the Indian import statistics for nitric acid are aberrational, but rather, simply duplicated the arguments made in its case brief. Petitioners reiterate arguments made in their Rebuttal Brief and May 17, 2010 Letter and urge the Department to continue to use WTA data to value nitric acid or, alternatively, to utilize the value previously proposed by petitioners.

Department’s Position: As we stated in Comment 3, supra, section 773(c)(1) of the Act directs the Department to use the “best available information” on the record when selecting surrogate values with which to value FOPs. In this regard, the Department’s practice is to choose surrogate values that represent non-export price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly-available non-aberrational data from a single surrogate market economy country. In making a determination as to whether data are aberrational, the Department has found the existence of higher prices alone does not necessarily indicate that the price data are distorted or misrepresentative, and thus is not sufficient to exclude a particular surrogate value. See TRBs

from the PRC. Under the Department's current practice, interested parties must provide specific evidence showing the value is aberrational. If a party presents sufficient evidence to demonstrate a particular surrogate value is not viable, the Department will assess all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.

Trust Chem has argued the surrogate value used for nitric acid, 10,474 USD per MT based on WTA data, is aberrational. Thus, we must determine whether Trust Chem has provided sufficient evidence to establish the per-unit value for nitric acid from WTA is aberrational. Trust Chem has claimed the WTA value is aberrational based on three factors: U.S. official import statistics for nitric acid; the surrogate values used in the investigation and first administrative review; and the volume of imports represented by the WTA data. We address each of these factors below.

In testing the reliability of surrogate values alleged to be aberrational, the Department applies certain criteria in making its decision. First, the Department's current practice is to compare the surrogate values in question to the WTA average unit values (AUVs) calculated for the same period using data from the other potential surrogate countries the Department identified for the review, to the extent that such data are available. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 5 (Lined Paper Products from the PRC) and Lightweight Thermal Paper from the PRC; see also Chlorinated Isocyanurates from the PRC and accompanying Issues and Decision Memorandum at Comment 1. As stated previously, a party claiming a surrogate value is aberrational must present data establishing the surrogate value is aberrational. Trust Chem has not placed any information on the record with respect to the AUVs of nitric acid imports for the other potential surrogate countries identified for this review.⁷ Since that information is not on the record, we are unable to compare the surrogate value for nitric acid based on WTA Indian import data to the WTA AUVs for nitric acid imports into the other potential surrogate countries to determine whether the Indian import statistics are aberrational. While Trust Chem did provide U.S. import statistics for nitric acid, the Department no longer relies upon U.S. prices as an appropriate benchmark to determine whether surrogate values are aberrational. See, e.g., Lined Paper Products from the PRC ("...while in the past the Department has used U.S. prices to benchmark surrogate values, the Department's current practice has been to benchmark surrogate values against imports from the list of potential surrogate countries for a given case.")

In a similar vein, we note the Department has also examined data from the same HTS category for the surrogate country over multiple years to determine if the current data appear aberrational with respect to historical values. See Lightweight Thermal Paper from the PRC and Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7515 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 5. In this review, petitioners placed historical Indian import data

⁷ The other potential surrogate countries are the Philippines, Indonesia, Colombia, Thailand, and Peru. See Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Richard Weible, Director, Office 7, AD/CVD Operations, Import Administration, dated July 29, 2009.

from Global Trade Atlas for calendar years 2004 through 2008 on the record.^{8,9} These data show the AUV for that five-year period was 10.70 USD per kg, and that the AUVs for each calendar year during that period ranged from a low of 8.69 USD per kg to a high of 17.78 USD per kg. Compared to these data, we find the surrogate value of 10.474 USD per kg used in the preliminary results does not appear to be aberrational, but rather falls in line with the historical data.

Second, when conducting an analysis of alleged aberrational values, the Department has a strong preference for comparing statistics from the same source. See Lined Paper Products from the PRC and Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005) and accompanying Issues and Decision Memorandum at Comment 2 (Hot-Rolled Steel from Romania). In making its argument that the surrogate value for nitric acid is aberrational, Trust Chem has compared the surrogate value based on POR WTA data to the surrogate values from the investigation and first administrative review of CVP 23 from the PRC, both of which were derived from Chemical Weekly. We find that we are unable to determine the value used in the instant review is aberrational when compared to the values used in the investigation and first administrative review because the sources are not the same.

Third, while small quantities of imports may be distortive, they are not inherently so. See Lined Paper Products from the PRC. Trust Chem has not placed any information on the record to demonstrate the volume of nitric acid imports reflected by the WTA data is not representative of commercial activity. In fact, the historical Indian import data petitioners placed on the record demonstrate that the import quantity for the POR (or, for calendar year 2008) is larger than the quantities for each calendar year during the period 2004 through 2007. Therefore, we find Trust Chem's argument with respect to import volumes is not persuasive.

In summary, we find that Trust Chem has not provided sufficient evidence to show the per-unit value for nitric acid from WTA is aberrational. Nonetheless, we address the issue of whether Chemical Weekly data would serve as a more appropriate surrogate value in this instance. We note that Trust Chem has reported the concentration level of the nitric acid its producer uses and that the concentration level is known for the nitric acid prices reported in Chemical Weekly, thereby satisfying the first and third criteria under which the Department generally will use Chemical Weekly data over WTA data. See Lock Washers from the PRC Final Results and accompanying Issues and Decision Memorandum at Comment 5; see also Comment 3, *supra*. In addition, since we do not know whether the WTA data are for "weak" or "high strength" nitric acid, we cannot say with certainty that the WTA HTS number is a direct match to the input, and therefore potentially satisfy the second criterion under which the Department generally will use Chemical Weekly data over WTA data. *Id.* Nevertheless, we do know the Chemical Weekly prices are for 60 percent or "weak" nitric acid, not the 98 percent or "high strength" nitric acid used by the respondent. Further, based on the information petitioners placed on the record in their May 17, 2010 Letter, the Department finds that there is not a simple correlation between

⁸ Global Trade Atlas data are published by Global Trade Information Services, Inc., the same company which publishes WTA data.

⁹ We note petitioners provided data for calendar years, not for 12-month periods coinciding with the months of the POR, but there is only a one-month difference between the two.

“weak” and “high strength” nitric acid such that a simple conversion based on the relative concentrations would not provide an accurate valuation of 98 percent concentrated nitric acid. The Department finds that Trust Chem did not dispute this information showing that a simple conversion based on relative concentrations would not be accurate. Thus, we find the prices for 60 percent nitric acid in Chemical Weekly are not the best information for valuing the 98 percent nitric acid used by the respondent. As such, we conclude the WTA data are the best information available to value Trust Chem’s “high strength” nitric acid, and have continued to base the surrogate value for nitric acid on the WTA data used in the preliminary results.

Comment 5. Surrogate Value for Chloranil

Citing the Preliminary Results Surrogate Values Memorandum at 7-8, Trust Chem states the Department utilized a surrogate value of 8,529 USD per MT (359 Rs. per kg) for Indian HTS number 2914.70.90 from WTA to value chloranil. Contrasting this price with the prices used in the investigation and first administrative review of CVP 23 from the PRC (194.04 Rs. per kg and 213 Rs. per kg, respectively), Trust Chem argues the surrogate value for chloranil has nearly doubled although there is no proof the market price increased this much during the POR. Trust Chem’s Case Brief at 12, citing its January 19 Surrogate Values Submission at Attachment 3.

Trust Chem also asserts the Indian HTS number 2914.70.90 is a broad basket category for assorted products. Although the Preliminary Results Surrogate Values Memorandum states there is no evidence this HTS number is a basket category, Trust Chem avers the products in this category are “carboxylic acids and their anhydrides, halides, peroxides and peroxyacids and their halogenate.” Trust Chem claims the Department cannot refute this HTS number is a basket category since the written description includes products other than chloranil, and contends the Department apparently focused on an abbreviated description of the tariff category and not the whole description in looking at the WTA data. Citing Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 26589 (May 10, 2007) (CVP 23 from the PRC POR1 Final Results) and accompanying Issues and Decision Memorandum at Comment 1 at length, Trust Chem asserts the Department determined in the first administrative review that Indian HTS number 2914.70.90 was a basket category.

Trust Chem argues the Department has found in various cases that import data based on a basket category do not serve as an appropriate surrogate if a more representative surrogate is available, citing Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People’s Republic of China, 69 FR 3887, 3892 (January 27, 2004), Crawfish from the PRC, and Industrial Nitrocellulose from the PRC. Trust Chem claims the Department determined in Crawfish from the PRC that when alternate surrogate value data existed, import statistics from basket categories can be too broad to be reliable. Trust Chem asserts the Department found in Industrial Nitrocellulose from the PRC that certain price quotes on the record were more suitable than import data from basket categories because the price data better approximated the cost of the input used by the respondent.

Trust Chem states the Department used WTA data for the basket HTS number 2914.70.90 to value chloranil in the investigation of CVP 23 from the PRC. Trust Chem argues the Department properly found in the first administrative review that the nearly fivefold increase in price for this HTS number implied the WTA data were unreliable. Trust Chem's Case Brief at 15, citing its January 19 Surrogate Values Submission at Attachment 3. Trust Chem avers the Department also stated in the first administrative review that it was reasonable to question the reliability of basket category import data when there was uncertainty about the product content and, therefore, the Department used WTA data from the investigation, inflated to the POR, to value chloranil. Trust Chem's Case Brief at 15, citing CVP 23 from the PRC POR1 Final Results and accompanying Issues and Decision Memorandum at Comment 1.

Trust Chem claims the average value of the WTA data for HTS number 2914.70.90 for the instant review is nearly double the average value of the WTA data from the investigation but less than half the average value of the WTA data since the first and second¹⁰ PORs. Based on these fluctuations, Trust Chem contends the WTA data for basket HTS number 2914.70.90 remain an undependable source as a surrogate value for chloranil. Trust Chem maintains the record does not show conclusively whether imports of chloranil actually entered India under this HTS number during the POR. Thus, Trust Chem avers the Department should not use the WTA data based on their demonstrated unreliability.

Since the record does not contain an accurate value for chloranil, Trust Chem contends the Department should utilize the surrogate value information provided in Trust Chem's September 8, 2009 Surrogate Values Submission at Attachment 3, adjusted for inflation. Trust Chem states this information includes invoices acquired from Pidilite, an Indian producer of CVP 23, showing that Pidilite paid between 260 and 275 Rs. per kg for chloranil; an Internet price quote offering chloranil for sale in India for 6.90 USD per kg; and a schedule from the Government of India showing a "value cap" for DEPB payments on chloranil of 275 Rs. per kg. Trust Chem argues this alternate, publicly-available information demonstrates the WTA data are not reflective of the commercial prices of chloranil in India. Alternatively, Trust Chem contends the Department should rely on the same methodology used in the first administrative review of CVP 23 from the PRC, where it used the WTA data from the investigation adjusted for inflation.

In response, petitioners assert Trust Chem has not provided any reliable evidence to show the WTA data for chloranil are aberrational. Petitioners claim Trust Chem's argument that the surrogate value for chloranil has nearly doubled while there is no proof the market price increased 100 percent during the POR is unfounded. Petitioners maintain the burden of presenting evidence to demonstrate fluctuations in chloranil market prices rests squarely on Trust Chem, yet Trust Chem has not shown the surrogate value for chloranil could not have doubled from what it was three years ago. Moreover, petitioners contend it is illogical for Trust Chem to argue the market price doubled during the POR when the period of time at issue is about three years. Given inflation, supply and demand issues, and economic conditions in the past few years, petitioners argue it is not implausible that chloranil prices might have increased by two-thirds (from 213 Rs. per kg used in the first administrative review to the WTA value of 359 Rs.

¹⁰ Trust Chem provided WTA data for Indian imports of chloranil for the second POR in its September 8, 2009 Surrogate Value Submission.

per kg in the current POR) over three years. Petitioners assert Trust Chem's reliance upon the Department's determination in the first administrative review is not helpful to Trust Chem's claim, since in that review the average value from the WTA had increased fivefold during a period of less than one year. Thus, petitioners claim it was reasonable for the Department not to use the WTA data for the first administrative review.

Second, petitioners aver it is wrong to suggest the Department cannot utilize WTA HTS basket categories to value inputs. Petitioners claim even Trust Chem recognizes the Department will use basket categories if a more representative surrogate does not exist. Petitioners state the WTA data for chloranil are contemporaneous with the POR and argue the Department has already found the alternate information provided by Trust Chem (*i.e.*, the invoices, Internet price quote, and an Indian government schedule) have dates outside the POR and thus are not reliable for establishing the normal range of prices for chloranil during the instant review. Petitioner's Rebuttal Brief at 5, citing the Preliminary Results Surrogate Values Memorandum at 8. Because the Department has already determined a more representative surrogate does not exist, petitioners contend the Department acted within its discretion in selecting WTA HTS number 2914.70.90 to value chloranil. Therefore, petitioners urge the Department not to make any changes for the final results.

Department's Position: In accordance with section 773(c)(1) of the Act, when selecting the best available information on the record to value FOPs, the Department's preference is to use, where possible, publicly-available values which are non-export averages, product-specific, net of taxes and import duties, and contemporaneous with the POR. The Department seeks values that are based on non-aberrational data from a single surrogate market economy country.

In challenging the Department's use of WTA data to value chloranil, Trust Chem first argues the surrogate value from WTA has nearly doubled since the investigation and first administrative review of CVP 23 from the PRC, even though there is no evidence the market price has doubled. While Trust Chem does not specifically claim the price increase renders the POR WTA value aberrational, the Department finds it is appropriate to analyze whether the WTA data for chloranil are aberrational.

As noted in Comments 3 and 4, *supra*, the Department has found the existence of higher prices alone does not necessarily indicate the price data are distorted or misrepresentative, and thus is not sufficient to exclude a particular surrogate value. *See TRBs from the PRC.* Under the Department's current practice, an interested party must provide specific evidence showing the value is aberrational, and, if this evidence demonstrates the value is not viable, the Department will assess all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.

As discussed more fully in Comment 4 of this memorandum, the Department's current practice is to benchmark surrogate values against imports from the list of potential surrogate countries for a given case, to the extent such import data are available. *See, e.g., Lightweight Thermal Paper from the PRC.* The Department also examines data from the same HTS category for the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values. *See id.* While Trust Chem has not placed any information on the

record regarding chloranil imports for the other potential surrogate countries, Trust Chem has provided historical Indian import data on the record. Specifically, Trust Chem has placed information on the record regarding the surrogate values used in the investigation and first administrative review of CVP 23 from the PRC, both of which were based on Indian import data. In addition, Trust Chem provided Indian import data for the second administrative review period in its September 8, 2009 Surrogate Value Submission at Attachment 3.

As Trust Chem pointed out, the Department valued chloranil in the investigation at 194.04 Rs. per kg. As Trust Chem also pointed out, in the first administrative review the Department valued chloranil using the WTA data from the investigation inflated to the first POR (i.e., at 213 Rs. per kg) because the fivefold increase in price for chloranil based on the Indian import data led the Department to question the reliability of those data. Similarly, the WTA data Trust Chem provided for the second administrative review period show the average price (969 Rs. per kg) was nearly five times higher than the price used in the investigation. However, the WTA data for the current POR, which show an average price of 359 Rs. per kg, reflect prices that are not even double the prices used in the investigation and first administrative review. As petitioners have argued, Trust Chem has not provided any information to establish that market prices could not have increased by this amount over the past few years, and, consequently, we find the increase in price since the investigation and first administrative review is not substantial enough to be considered aberrational.

Trust Chem also argues the HTS number for chloranil is a basket category, thereby rendering the WTA data unreliable, and urges the Department to base the surrogate value for chloranil on alternate information which includes invoice prices, an Internet price quote, and an Indian government schedule. We disagree with Trust Chem's contention that we focused on an abbreviated description of the tariff category in looking at the WTA data. As indicated in the Preliminary Results Surrogate Values Memorandum at 8, we used data for HTS number 2914.70.90, which includes "Other Halogenated Sulphonated Nitrated/Nitrosated Derivatives." This is the same HTS number which we used to calculate the surrogate value for chloranil in the investigation and first administrative review of CVP 23 from the PRC. However, we do agree with Trust Chem that the Department has determined in past cases that import data based on basket categories were unsuitable for valuation purposes where a more representative surrogate existed. We also agree with Trust Chem that the HTS number for chloranil, 2914.70.90, is a basket category, as we acknowledged in CVP 23 from the PRC POR1 Final Results and accompanying Issues and Decision Memorandum at Comment 1.

As we stated in Comment 3 of this memorandum, it is not the Department's practice to disregard import data simply because they are based on a basket category. Where the Department finds import data based on a basket category to be the most specific information available on the record for a particular input, the Department utilizes these data for valuation purposes. For example, in TRBs from the PRC, the Department used import data for an eight-digit basket category to value steel bar because it found these data represented the best available information on the record to value that input. However, in cases where a more appropriate surrogate is available on the record, as was the situation in the Industrial Nitrocellulose from the PRC case cited by Trust Chem, the Department has used such information in lieu of WTA data to value an input.

Since we find the HTS number for chloranil is a vaguely-defined basket category, we therefore address whether the alternate information suggested by Trust Chem is more appropriate to use as a surrogate for chloranil. First, as noted in the Preliminary Results Surrogate Values Memorandum at 7-8 and referenced by petitioners, all of the alternate information provided by Trust Chem is dated outside the POR; thus, none of this information is contemporaneous with the POR. With respect to the Internet price quote, which is a catalog listing for chloranil sold by a company named R.S. Impax, we note the Department's strong preference is not to rely on price quotes for factor valuation purposes as they do not represent actual prices, nor do they encompass broad ranges of data. Further, the Department does not normally know the conditions under which such prices were solicited and whether or not they were self-selected from a broader range of quotes. See, e.g., Lightweight Thermal Paper from the PRC; see also CVP 23 from the PRC Final Determination and accompanying Issues and Decision Memorandum at Comment 6, in which the Department stated, "we prefer not to rely on price quotes, as they represent the experience of one or two transactions and are not necessarily representative of commercial prices in India." Consequently, since the Internet price quote provided by Trust Chem is not contemporaneous with the POR, may not represent the actual price paid, is a single price quote rather than a broad range of data, and may have been self-selected from a broader range of quotes, we find it is not suitable information for valuing chloranil, and hence is not more appropriate than the WTA data.

As for the invoice prices, Trust Chem stated it acquired the invoices from Pidilite, an Indian producer of CVP 23. Specifically, Trust Chem provided on the record three invoices from a company called Megpie Chemicals to Pidilite. However, we find these invoices are not suitable information for valuing chloranil for several of the same reasons given for the Internet price quote: none of the invoices is contemporaneous with the POR; the three invoices represent just three transactions between two entities and, since they do not constitute a broad range of data, are not necessarily representative of commercial prices in India; and these three invoices may have been self-selected from a broader universe of invoices. As a result, we determine these invoices are not more appropriate surrogates than the WTA data.

Finally, we turn to the schedule from the Government of India showing a "value cap" for DEPB payments on chloranil of 275 Rs. per kg. This schedule is dated March 15, 2001 and while it may still be in use, its issue date is certainly not contemporaneous with the POR. Also, the price listed in this schedule is a single price set by the Government of India, and is not necessarily representative of commercial prices in India. Moreover, we note the acronym "DEPB" refers to the Duty Entitlement Passbook Scheme, which is a program that enables Indian exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. The Department has found the DEPB program to be countervailable. See, e.g., Commodity Matchbooks From India: Final Affirmative Countervailing Duty Determination, 74 FR 54547 (October 22, 2009) and accompanying Issues and Decision Memorandum at "Duty Entitlement Passbook Scheme (DEPS/DEPB)." Since the "value cap" for DEPB payments is merely a reference price and not reflective of market prices, the Department finds it is not a suitable source for a surrogate value and, thus, is not more appropriate than the WTA data.

As we have determined the price quote, invoices to Pidilite, and government schedule provided by Trust Chem are not suitable for valuing chloranil, we find the WTA data for the basket category HTS number covering chloranil represent the best available information for valuing chloranil. The WTA data for chloranil are publicly-available, broad market averages, tax-exclusive, and contemporaneous with the POR, and thus satisfy critical elements of the Department's surrogate value selection criteria.

Finally, we disagree with Trust Chem that we should use the WTA data for chloranil from the investigation, inflated to the current POR, to value chloranil. We find it is not necessary to follow this approach, because the increase in the WTA value for the current POR since the investigation and first administrative review is not substantial enough to be considered aberrational, and because we find the WTA data for the current POR to be both contemporaneous and the best available information on the record.

Based on the foregoing, we will continue to use the WTA data for the current POR to value chloranil for these final results.

Comment 6. Surrogate Value for Benzene Sulfonyl Chloride

Trust Chem states the Department valued benzene sulfonyl chloride in the preliminary results at a price of 7,220 USD per MT based on WTA data. Trust Chem's Case Brief at 17, citing Preliminary Results Surrogate Values Memorandum at 8. Trust Chem contends the Indian HTS number 2904.10.90, from which this value was derived, is a basket category for a variety of products. Trust Chem claims this price is more than double the price from the first administrative review of CVP 23 from the PRC, about 2,200 USD per MT.¹¹ However, Trust Chem asserts there is nothing to indicate the price actually doubled since the first administrative review or that there were actually imports of benzene sulfonyl chloride into India during the POR. Therefore, Trust Chem urges the Department to use values from the investigation and the first administrative review adjusted for inflation, as those values better represent the real price of benzene sulfonyl chloride in India.

Petitioners respond Trust Chem reiterates the same aberrational claims it made regarding chloranil in arguing the Department should not utilize WTA data to value benzene sulfonyl chloride. Petitioners claim the increase in the surrogate value for benzene sulfonyl chloride is not so great as to automatically render the value aberrational, nor has Trust Chem presented any evidence to demonstrate the value is aberrational. Specifically, petitioners contend Trust Chem has not met its burden of proof to establish the rise in price since the investigation and first administrative review could not have been possible. Given inflation, supply and demand issues, and economic conditions during the past few years, petitioners aver it is plausible benzene sulfonyl chloride prices might have increased substantially over a three year period. Petitioners

¹¹ The price used in the first administrative review was 96.935 Rs. per kg. See Trust Chem's January 19 Surrogate Values Submission at Attachment 3.

argue the increase in the surrogate value for benzene sulfonyl chloride does not approach the fivefold increase in price in chloranil in less than a year that led the Department to reject the WTA data for the first administrative review. Petitioners assert the WTA data for benzene sulfonyl chloride are contemporaneous with the POR and the record contains no better evidence that is also contemporaneous. As a result, petitioners conclude the Department acted within its discretion in finding a more suitable surrogate was not available and thus selecting WTA HTS number 2904.10.90 to value this chemical. Thus, petitioners urge the Department not to make any changes for the final results.

Department's Position: We disagree with Trust Chem that we should value benzene sulfonyl chloride using a different surrogate value than that used in the preliminary results. As discussed elsewhere in this memorandum, the Department has found the existence of higher prices alone does not necessarily signify the price data are distorted or misrepresentative, and thus is not sufficient to exclude a particular surrogate value. See, e.g., TRBs from the PRC. Under the Department's current practice, an interested party must provide specific evidence showing a value is aberrational, and, if this evidence demonstrates the value is not viable, the Department will assess all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question. With respect to benchmarking, the Department's current practice is to examine import data for potential surrogate countries for a given case, to the extent such import data are available, and/or examine data from the same HTS category for the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values. See, e.g., Lightweight Thermal Paper from the PRC. The only other information Trust Chem has placed on the record is the surrogate value used in the first administrative review for benzene sulfonyl chloride, which was based on WTA data. We find this information is insufficient to determine whether the current price is distorted, as it represents a single data point for just one period. Further, since there is a two-year lapse between the end of that period and the beginning of the current POR, we find we cannot determine in this instance whether the increase in the WTA value for the current POR compared to the first administrative review is enough to consider the WTA value for the current POR aberrational. Finally, as petitioners point out, the WTA data used in the preliminary results are contemporaneous with the POR and the record does not contain any better evidence that is also contemporaneous. Therefore, since the WTA data are the best available information on the record, we will continue to use the WTA data for the current POR to value benzene sulfonyl chloride for these final results.

RECOMMENDATION:

Based on our analyses of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this administrative review and the final weighted-average dumping margin for Trust Chem in the Federal Register.

AGREE _____ DISAGREE _____

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

Date