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December 7, 2011

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2008-2010 Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China

SUMMARY:

We have analyzed the case and rebuttal briefs submitted by interested parties in the AD AR of citric acid from the PRC.[1] As a result of our analysis, we have made changes to the Preliminary Results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this IDM. Below is the complete list of the issues in this AD AR for which we received comments.

General Issues

[1] For this Issues and Decision Memorandum, we are using certain acronyms, abbreviations, and short citations, a list of which is appended to this memorandum.

Background:

The Department published the Preliminary Results of the first AR of the AD order on citric acid from the PRC on June 10, 2011. No party submitted ministerial errors.

Between August 29, 2011 and September 9, 2011, the Department conducted on-site verifications of Yixing Union and RZBC. During these verifications, Yixing Union and RZBC each presented the Department with two minor corrections.

On October 12, 2011, Petitioners, RZBC, Yixing Union, and the GOC submitted case briefs. Petitioners, RZBC, and Yixing Union submitted rebuttal briefs on October 18, 2011. On October 31, November 1, and November 3, 2011, the Department held meetings with RZBC, Yixing Union, and Petitioners, respectively.

DISCUSSION OF THE ISSUES

General Issues

Comment 1: Whether the Department Should Exclude Water from the Margin Calculation

- RZBC argues that the Department excluded its energy inputs (water, electricity, and steam) in order to avoid double counting energy inputs included in the surrogate company's factory overhead. However, the Department also treated, as facts available,

water as a raw material because RZBC did not allocate water between energy and material consumption.

- RZBC claims that regardless of how water was used, including it in the NV calculation is double counting. Whether RZBC considers its water usage as a raw material or energy is not the issue; the issue is how PT Budi classifies its water expenses and the financial statement indicates that PT Budi includes water in its factory overhead. RZBC asserts that treating water as factory overhead when using Indonesian financial statements is consistent with the Department's past practice.[2]

- Petitioners submit that the Department should continue to value water separately in its dumping margin calculation because it is a fundamental aspect of the citric acid production process and because RZBC has provided no support that water is not included in the cost of raw materials in the surrogate producer's financial statement.

Department's Position: We agree with Petitioners and have continued to value water separately as a material input for the final results. The Department asked RZBC to revise its FOP database to report two types of water usage, i.e., water used as an energy input and water used as a direct material input.[3] RZBC failed to comply with the Department's request by reiterating its belief that water is not a direct material input and by continuing to report its total consumption of water as a single number.[4] While RZBC may argue that water is not a direct material input, RZBC reported that water is used in "most production stages" of citric acid.[5] Given RZBC's failure to comply with the Department's allocation request, and its admission that water is used throughout "most" of its production process, the Department, as facts available for the Preliminary Results, valued RZBC's total reported water consumption as a direct material input.[6]

Although the Department classified RZBC's total consumption of water as a direct material input for facts available purposes in this instant review, we note that such a classification is consistent with the Department's practice and experience in this case. Specifically, in the underlying investigation of this proceeding, the Department treated Yixing Union's total consumption of water as a direct material input even though Yixing Union reported water as solely an energy input.[7] The Department performed such an action because we found that Yixing Union used "some" water directly in the production of citric acid.[8] Therefore, the Department's treatment of RZBC's total water consumption as a direct material is consistent with Department practice because, in this instance, RZBC admitted to using water throughout "most" of its production process.

[2] See Wood Flooring Initiation and accompanying IDM at 2.
[3] See the Department's March 17, 2011, Supplemental Questionnaire at 6.
[4] See RZBC's April 6, 2011, Questionnaire Response at 6.
[5] Id.; see also RZBC's January 14, 2011, Supplemental Questionnaire Response at 16-25, and RZBC Verification Report.
[6] See RZBC Prelim Analysis Memo at 5.
[7] See Yixing Union's Preliminary Determination Calculation Memorandum at 6, dated November 12, 2008.
[8] See id.

In addition, the Department's treatment of RZBC's total consumption of water as a direct material input is consistent with the Department's practice generally to treat an FOP as a direct material input when, as in this instant case, significant amounts of the FOP are continuously used in the production process of subject merchandise.[9] Moreover, the Department has previously found water to be properly classified as a direct material input, rather than overhead, when it was shown not to be incidental or occasionally consumed in the production of subject merchandise.[10] As noted above, RZBC stated that water is consumed throughout "most" of the production process and RZBC's detailed description of citric acid's different production stages supports this statement.[11]

Furthermore, we find that we have not double counted water by valuing it separately. Specifically, there is no evidence in the surrogate producer's financial statement that total water consumption is captured in overhead, especially given the facts of this case which demonstrate that water is a significant material input in the production of subject merchandise. In addition, RZBC has not demonstrated that water is not treated as a direct material input in the surrogate producer's financial statement. Therefore, for the final results, given the continuous and significant role of water in the production process of citric acid, we will continue to value water separately in accordance with our practice.[12]

Comment 2: Whether the Department Failed to Inflate the Water Value

- Petitioners argue the Department applied an inflation index to the SV for water; however, in the calculation program the Department used the un-inflated value for water. Petitioners contend for the final results, the Department should correct this apparent clerical error and use the inflated value for water in the calculation program.

- RZBC did not comment on this issue.

Department's Position: We agree with Petitioners and have corrected our calculation for the final results.

Comment 3: Certifications in Petitioners' Previous Submissions

- RZBC claims that Petitioners failed to provide a certification for any of its submissions as required by 19 CFR 351.303(g).

- Petitioners contend that certifications have been filed in accordance with 19 CFR 351.303(g) for all submissions that included new factual information generated by Petitioners.

[9] See Copper Pipe and Tube and accompanying IDM at Comment 15.
[10] See Malleable Pipe and accompanying IDM at Comment 18.
[11] See RZBC's January 14, 2011, Supplemental Questionnaire Response at 16-25.
[12] See RZBC Final Analysis Memo.

- Petitioners claim that the time to raise such concerns was much earlier in the administrative review.

- Petitioners request that if the Department finds that Petitioners have misapprehended the requirements of 19 CFR 351.303(g), the appropriate response would be to provide clear guidance on the requirements of this regulation.

Department's Position: 19 CFR 351.303(g) states "a person must file with each submission containing factual information the certification in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph (g)(2) of this section." The regulation explicitly states that the certification contained in paragraph (g)(1) "must" be filed with each submission of factual information.

At this late stage in this review, we are not rejecting Petitioners' numerous submissions and are not requiring them to re-file those submissions with the proper certifications. We note that for all of these submissions of factual information, Petitioners provided the certification required by paragraph (g)(2) of the regulation. However, Petitioners did not provide the certification required by paragraph (g)(1) of the regulation.

The certification regulation requires that a person must file with each submission containing factual information the certification required by paragraph (g)(1) and, if the person has legal counsel or another representative, also the certification required by paragraph (g)(2).[13] The certification requirement in (g)(1) applies to submissions containing factual information, regardless of whether that factual information is new or not, regardless of whether that factual information previously was placed on the record by another interested party, and regardless of whether the submitter's counsel was the one who procured the information. If the submitter has legal counsel or another representative, then the (g)(2) requirement also applies. Petitioners' arguments that they need not certify if the factual information was not new or was generated by another party, and that counsel's certification is sufficient if counsel was the one who obtained the information, are not correct readings of the regulation.

Comment 4: Double Remedy

- The GOC and RZBC contend that the Department must make adjustments to avoid double-counting of duties when both CVD and AD duties are applied simultaneously in ARs for the same product. Both parties refer to the GPX I ruling made by the CIT and the Appellate Body Report (WTO 2011) which, according to the parties found that double-counting exists in the concurrent application of the NME AD methodologies and CVD mandating that the resulting double-counting be eliminated.

- The GOC claims that the statute implicitly proscribes double-counting in general in the application of both CVD and AD to the same product from a single country and, thus, the Department is required to adjust for double-counting.

[13] We note that all subsequent reviews under this order are subject to the requirements in the Interim Final Rule published on February 10, 2011. See Interim Final Rule.

- The GOC alleges that the evidence of double-counting exists in the instant review because, in the concurrent CVD review, the Department has found subsidized purchases of sulfuric acid, a major input in the citric acid production process. According to the GOC, in the ongoing AD review, the price for the same input has been replaced with an unsubsidized domestic price (i.e., NV) and yet, the Department still compared the unsubsidized NV with a subsidized EP in order to calculate the dumping margin. Such methodology, according to the GOC, constitutes the imposition of double-remedy.

- Citing to Tires/PRC (July 15, 2008), the GOC notes that the Department has stated that the connection between export subsidies and EPs is direct but the connection between domestic subsidies and export subsidies is indirect.[14] The GOC states that it is wrong to conclude that export subsidies always affect EPs whereas domestic subsidies rarely do. Also, citing to Uranium/France, the GOC states, among other things, that it is wrong to conclude that export subsidies always affect EPs whereas domestic subsidies rarely do.[15] As a matter of law, according to the GOC, the statute requires the Department to assess a CVD equal to the full amount of both domestic and export subsidies, citing section 702 of the Act. Therefore, the statutory framework envisions that in cases involving both CVD and AD, any unfairness will be fully addressed by the CVD. In addition, according to the GOC, the GAO concluded that there is substantial potential for double-counting of domestic subsidies by applying AD NME methodology in concurrent CVD cases.

- Although the Department has stated that there may be subsidies that are not captured by its NME AD methodology, such as when an NME producer receives a subsidy that affects the quantity of factors consumed in production and the benefit of the subsidy is increased output instead of lower costs,[16] the GOC contends that this argument is theoretical and inaccurate. The GOC contends that because of the Department's NME methodology, any new equipment purchases would result in higher SG&A expenses. Consequently, the GOC urges the Department to ensure that the remedy represented by the NME AD methodology does not counter the same subsidies that the importing country offsets through the remedy of CVDs.

- Petitioners rebut the arguments by noting that GPX I is on appeal at the CAFC and the WTO decisions are non-binding decisions. Therefore, the Department's current position on the application of CVD law to the PRC and the Department's conduct of parallel AD and CVD reviews remains controlling. Petitioners disagree with arguments by the GOC and RZBC that the Department's preliminary calculations in the concurrent AD and CVD reviews provide a concrete example of double-counting.

Department's Position: The Department disagrees that concurrent application of CVD law and the AD NME methodology results in a double remedy. While the Act does not expressly address the issue of concurrent application of CVD law and the AD NME methodology, section

[14] See Tires/PRC (July 15, 2008) and corresponding IDM at Comment 2.
[15] See Uranium/France.
[16] See Tires/PRC (April 25, 2011) and accompanying IDM at Comment 13.

772(c)(1)(C) of the Act is instructive. Section 772(c)(1)(C) of the Act provides for an adjustment to the AD calculation to offset CVDs based on export subsidies. Section 772(c)(1)(C) of the Act, combined with the absence of any such corresponding adjustment to offset domestic subsidies, strongly suggests that Congress did not intend for any adjustment to offset domestic subsidies.[17]

AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices. The CVD law provides for the imposition of duties to offset foreign government subsidies. Such subsidies may be countervailable regardless of whether they have any effect on the price of either the merchandise sold in the home market or the merchandise exported to the United States. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value. With the exception of section 772(c)(1)(C) of the Act, AD duties are calculated the same way regardless of whether there is a parallel CVD proceeding.

With respect to section 772(c)(1)(C) of the Act, the legislative history of the export subsidy adjustment establishes only that Congress considered it to satisfy the obligations of the United States under Article VI, Section 5 of the GATT. The legislative history does not suggest specific assumptions about whether foreign government subsidies lower prices in the United States, i.e., contribute to dumping and, in fact, is not solely concerned with the effects of subsidies in the United States.[18] Thus, although the Act requires a full adjustment of AD duties for CVDs based on export subsidies in all AD proceedings, it provides no basis for concluding that Congress's action was based on any specific assumptions about the effect of subsidies upon EPs. It may be simply that Congress recognized the complexity of the issues that would have to be resolved to provide anything less than a complete offset for export subsidies, and simply opted for a full offset to avoid those potential problems. Whether Congress considered the economic assumptions that might have been behind the failure of the GATT contracting parties to address domestic subsidies in Article VI, Section 5 of the GATT is not clear. In any event, all that the contracting parties may have assumed was that domestic subsidies had a symmetrical effect upon export and domestic prices. This presumed symmetrical impact may have been a pro rata or de minimis reduction in these prices. Thus, it is not correct to conclude that Congress assumed that

[17] See Central Bank of Denver, 511 U.S. at 176-177 ("Congress knew how to impose aiding and abetting liability when it chose to do so. If, as respondents seem to say, Congress intended to impose aiding and abetting liability, we presume it would have used the words 'aid' and 'abet' in the statutory text. But it did not."). See also Blue Chip Stamps, 421 U.S. at 723-734 ("When Congress wished to provide a remedy . . . it had little trouble in doing so expressly."); Franklin National Bank, 347 U.S. at 378 (finding "no indication that Congress intended to make this phrase of national banking subject to local restrictions, as it has done by express language in several other instances"); Meghrig 516 U.S. at 485 ("Congress . . . demonstrated in CERCLA that it knew how to provide for the recovery of clean up costs, and . . . the language used to define the remedies under RCRA does not provide that remedy."); FCC, 537 U.S. at 302 (when Congress has intended to create exceptions to bankruptcy law requirements, "it has done so clearly and expressly"); Dole Food, 538 U.S. at 468, 476 (Congress knows how to refer to an "owner" "in other than the formal sense," and did not do so in the Foreign Sovereign Immunities Act's definition of foreign state "instrumentality"); Whitfield, 543 U.S. at 216 (noting that "Congress has included an explicit overt-act requirement in at least 22 other current conspiracy statutes" but has not done so in the provision governing conspiracy to commit money laundering).

[18] See SAA at 412.

the GATT contracting parties assumed that domestic subsidies lower EPs, pro rata, still less that Congress built any assumptions about the price effects of domestic subsidies into the AD law.

RZBC and the GOC argue that under the NME methodology, the Department compares the EP, presumably reduced by the domestic subsidies, to a NV that has been calculated using non-subsidized SVs. Also, the GOC contends that there is a safeguard against double counting inherent in the ME methodology that is missing in the NME methodology, i.e., section 772 of the Act.

The argument that domestic subsidies inflate dumping margins by lowering EPs assumes that domestic subsidies in NME countries do not affect NV. However, while NME subsidies may not affect the factor values used to calculate NV in an NME proceeding, such subsidies may easily affect the quantity of factors consumed by the NME producer in manufacturing the subject merchandise. For example, a domestic subsidy in an NME country may enable a respondent to purchase more efficient equipment in turn lowering its consumption of labor, raw materials, or energy. When the SVs are multiplied by the NME producer's lower factor quantities, they result in lower NVs and, hence, lower dumping margins.[19] Any reduction in factor usage by NME producers would reduce NV in a second manner, because the final factor values are also used to calculate the amounts for SG&A, and profit[20] that are additional components of NV. The GOC has argued that this position is theoretical and inaccurate because any new equipment purchases would result in a higher SG&A ratio. The Department disagrees, because applying the NME methodology is a complex calculation that takes into consideration many factors, such as the cost of capital and administrative expenses. Hence, additional equipment purchases do not necessarily result in a higher SG&A ratio as there are other factors which could impact the calculations.

Moreover, in determining NV in NME cases, the Department does not exclusively use factor quantities in the NMEs valued in the surrogate, ME country. Some factors' values are based on the prices of imported inputs (priced in the currency of the country from which the inputs were obtained or in U.S. dollars).[21] Given that the input suppliers in these countries are often competing with PRC suppliers of those same inputs, it is fair to conclude that those prices are influenced by subsidies in the PRC.

Finally, in some cases, the NME exports of the subject merchandise will account for a significant share of the world market, enough to influence world market prices. In such cases, particularly where the industry is export oriented or has excess capacity (as is often observed in the PRC), subsidies could increase output and exports from the PRC which, in turn, would reduce the prices of the good in question in world markets. These lower prices would reduce profits for producers selling in these markets which, in turn, would reduce the profit the Department derives from their financial statements (used as surrogates for the PRC producers) and, thus, reduce NV.

[19] See Section 773(c)(3) of the Act.
[20] See, e.g., Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, 366 F. Supp. 2d 1264, 1277 (CIT 2005); see also Dorbest Limited, et al. v. United States, 462 F. Supp. 2d 1262, 1300-01 (CIT 2006).
[21] See Preliminary Results, 76 FR at 34051.

RZBC and the GOC also argue that the AD NME methodology provides a remedy for any and all countervailable subsidies such that concurrent application of CVDs is necessarily duplicative. The general premise of the RZBC and the GOC's argument is that concurrent application of AD ME methodology and CVD law does not create automatic double remedies in ME proceedings because domestic subsidies automatically lower NV, and hence the dumping margins, pro rata. The AD NME methodology, on the other hand, produces a NV that is not affected by subsidies in any way, so that it necessarily exceeds what would have been the ME dumping margin by the full amount of the subsidy, thus creating a double remedy, which the statute requires the Department to offset. The Department disagrees.

There are several reasons why subsidies in ME cases would not necessarily lower the NV calculated by the Department, pro rata, below what it would have been absent any subsidies. Subsidies can be accompanied with conditions attached that reduce the cost savings to the recipient below the nominal amount of the benefit received. For example, subsidy recipients may be required to retain redundant workers, maintain higher levels of production than would be optimal, remain in economically disadvantageous locations, reduce pollution, obtain supplies from favored sources, and so forth. Even if subsidies are unaccompanied by such requirements, it is not necessarily the case that they will contribute to a lower cost of production. For example, subsidies could be paid out as dividends, used to increase executive pay, or could also be wasted in any number of ways.

Further, the Act provides that NV in ME cases is to be based on home market prices, where possible. Where NV is based on home market prices, the relationship of subsidies to NV becomes yet more tenuous. Not only is the extent to which the subsidies will affect costs uncertain but, even to the extent that subsidies may lower costs, the extent to which the producer will pass these cost savings through to home market or third-country prices is uncertain. Basic economic principles indicate that the prices are a function of the supply and demand for the product in the relevant market, so that any cost savings will be reflected in prices only indirectly.

Finally, to the extent that domestic subsidies lower NV in ME cases, they may lower EPs commensurately, so that the dumping margins may not change. Thus, it is not safe to conclude that subsidies in MEs automatically reduce dumping margins, still less that they automatically reduce dumping margins, pro rata.

In Kitchen Racks/PRC and accompanying IDM at Comment 1 and Tires/PRC (July 15, 2008) and accompanying IDM at Comment 2, the Department did not deduct domestic CVDs from U.S. prices because this would have resulted in the collection of total AD duties and CVDs that would have exceeded both independent remedies in full. The CAFC has upheld this position.[22] Similarly, the Department's refusal to treat AD duties and safeguard duties as a cost in AD calculations reflects the Department's effort to collect these distinct remedies in full, but no more.

[22] See Wheatland Tube Co. v. United States, 495 F.3d 1357, 1358 (CAFC 2007) (reversing Wheatland Tube v. United States, 414 F. Supp. 2d 1271 (CIT 2006)).

The Department has explained that the effect of domestic subsidies upon EPs depends on many factors (e.g., the supply and demand for the product on the world market, and the exporting countries' share of the world market), and is therefore speculative.[23] Thus, the Department has determined that domestic subsidies do not inevitably reduce EPs, pro rata.[24]

In considering the impact of domestic subsidies upon EPs, the form of the subsidy is important because, like export subsidies, some domestic subsidies give domestic producers a greater incentive to increase production than others. A production subsidy (e.g., raw materials at reduced prices) reduces the unit cost of producing that merchandise and, therefore, increases the producer's profit on sales of that merchandise. This may give the producer a commercial incentive to increase production of that merchandise. In an NME, however, it is not necessarily the case that economic decisions are made on the basis of such market forces. In any event, more general subsidies (e.g., general grants or debt forgiveness) would not provide that direct incentive. A foreign producer might use a general subsidy to modernize its plant, pay higher dividends, fund research and development, clean up the environment, make severance payments, increase the production of some other product, or waste the money. Consequently, this type of domestic subsidy will not necessarily result in any increase in production and, therefore, will not necessarily result in any reduction in EPs, still less an automatic pro rata reduction.

Even if a producer attempted to respond to a domestic subsidy exclusively by increasing production, it might not be able to do so, at least in the short or medium term. Various constraints (e.g., limits on the supply of raw materials, energy, or transportation) might limit its ability to do so. Moreover, capacity expansion is time-consuming. Thus, it would be incorrect to claim that domestic subsidies automatically result in increased production.

Additionally, even if all producers in an NME country do respond to domestic subsidies by increasing production, it is an uncertainty that this increase would result in lower EPs. For example, if world market prices are increasing, it is an unrealistic assumption that an NME producer that receives a domestic subsidy will reduce its EPs by the full amount of the subsidy, as allocated under the Department's CVD methodology. Increased production and exports will tend to lower EPs *over time*, but this reduction will be neither automatic nor necessarily pro rata.

For example, in previous cases, the ITC has determined that some PRC producers raised their prices in line with world market prices, despite having received substantial subsidies.[25] Increased export sales will reduce the price of the subject merchandise on world markets only to the extent that the producer or producers in question supply a substantial share of the world market, so that the additional production will drive down prices in that market. Even this will take time and will not occur if other producers in the market reduce production to avoid a price war.

[23] See Tires/PRC (February 20, 2008); unchanged in Tires/PCR (July 15, 2008).
[24] See World Trade Report 2006 and Agricultural Policies and World Markets, MacMillan Pub. Co., 1985.
[25] See Tires/PRC ITC Final Report (08/2008) at IV-5 (Table IV-2), E-3 (Table E-1) and E-6 (Table E-4); see also Circular Welded Carbon-Quality Steel Pipes/PRC ITC Preliminary Report (07/2007) at V-12 ((Table V-3) V-14 (Table V-5), and V-19, showing rising average unit values on imports from the PRC for the years 2005-2007.

Congress established two separate remedies for what it evidently regards as two separate unfair trade practices. The only point at which the Act requires the Department to reconcile these separate remedies is in the adjustment of AD duties to offset export subsidies. Because neither AD nor CVD duties are concerned with economic distortion, as such, but are simply remedial duties calculated according to the detailed specifications of the Act, it follows that no overall economic distortion cap for concurrent proceedings can be distilled from the Act.

The GOC's reference to Uranium/France is misplaced.[26] The Department's statement that, "domestic subsidies presumably lower the price of the subject merchandise in the home and the U.S. markets" does not stand for the firm proposition that domestic subsidies are always passed through into EPs, pro rata. This is no more than a presumption, and a very limited one. In Uranium/France, the Department noted that not all domestic subsidies are presumed to be fully passed through into domestic and EPs, but that the effect of domestic subsidies on the price in each market presumably was the same. For example, the reductions in price could be one percent of the subsidy in each market.

The Department also disagrees with RZBC's characterization of the Department's previous practice with respect to NME countries and, by implication, Georgetown Steel, F.2d at 1310. Specifically, it is not the case that the Department determined, in Georgetown Steel, not to apply CVD law concurrently with the AD NME methodology because of distortions. In fact, the Department declined to apply the CVD law to the Soviet Bloc countries in the mid-1980s because of the difficulties involved in identifying and measuring subsidies in the context of those command-and-control economies, at that time. In the underlying Georgetown Steel proceedings, the Department determined that the concept of a subsidy had no meaning in an economy that had no markets and in which activity was controlled according to central plans.[27]

The CAFC noted the broad discretion due the Department in determining what constituted a subsidy, then called a "bounty" or "grant" by the statute, and held that:

> We cannot say that the administrations' conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law, or an abuse of discretion.[28]

As the CAFC stated, even if one were to label these incentives as a subsidy, in the most liberal sense of the term, the governments of these NMEs would in effect be subsidizing themselves.[29] Thus, Georgetown Steel did not hold that the CVD law could never be applied to exports from an NME country. It simply upheld the Department's determination that it could not identify a "bounty or grant" in the conditions of the Soviet Bloc that were before it. Because the Department's prior practice of not applying the CVD law to NME countries was not based on the theory that the NME AD methodology already remedied any domestic subsidies in NME

[26] See Uranium/France, 69 FR at 46501, 46505-06.
[27] See id.
[28] See id. at 1318.
[29] See id. at 1316.

countries, the Department's current practice of applying the CVD law to exports from the PRC remains consistent with our earlier practice.

Also, the GOC's and RZBC's reliance on GPX I and on GPX II, is misplaced. The GPX II decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted. Even if reliance on GPX I and GPX II were not misplaced, GPX I does not support the positions attributed to it by the parties above. GPX I did not find a double remedy necessarily occurs through concurrent application of the CVD law and AD NME methodology. Rather, GPX I held that the "potential" for such double counting may exist. The finding of a "potential" for double-counting in the GPX I decision does not mean that the Department must make an adjustment to its dumping calculations in this AD investigation. The SAA places the burden on the respondent to demonstrate the appropriateness of any adjustment that benefits the respondent.[30] In this case, the GOC makes a failed attempt to demonstrate that there is actual double-counting for sulfuric acid when the Department preliminarily determined that sulfuric acid was provided on a less-than-adequate-remuneration basis in the companion CVD investigation. The GOC's argument does not provide any actual costs or prices but instead makes general theoretical arguments about the impact of this subsidy. While the GOC provided an example, it did not use actual costs or prices but, rather, asserted that the SV for sulfuric acid used by the Department was likely higher than the respondents' actual sulfuric acid costs. Therefore, the GOC has not provided any evidence demonstrating how the CVD the Department found on sulfuric acid in the companion CVD case lowered NV in this AD administrative review.

The GOC and RZBC cite to the Appellate Body Report (WTO 2011) as support that the WTO has determined that the application of CVD to the PRC while using the NME methodology is contrary to the United States' WTO obligations. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA, Pub L. No. 103-465, 108 Stat. at 4809 (1994).[31] Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[32] . As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.[33] Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports.[34] For this reason, the Appellate Body Report (WTO 2011)

[30] See SAA at 829; 19 CFR § 351.401(b)(1) ("The interested party that is in possession of relevant information has the burden of establishing to the satisfaction of the Secretary the *amount* and nature *of a particular adjustment*." (emphasis added)); see also Fujitsu, 88 F.3d at 1034 (explaining that a party seeking an adjustment bears the burden of proving the entitlement to the adjustment).

[31] See Corus Staal BV v. U.S. Dep't of Commerce, 395 F.3d 1343, 1347-49 (CAFC 2005), cert. denied 126 S. Ct. at 1023, 163 L. Ed. 2d at 853 (Jan. 9, 2006); accord Corus Staal BV v. U.S., 502 F.3d 1370, 1375 (CAFC 2007); see also NSK; see also Tires/PRC (April 25, 2011) and accompanying IDM at Comment 14.

[32] See 19 U.S.C. § 3538

[33] See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

[34] See 19 U.S.C. § 3533(g); see, e.g., Final Modification for Antidumping Investigations. With respect to the respondents' argument that the Department's actions are inconsistent with Section 19.3 of the WTO Subsidies Agreements, the Department disagrees for the reasons discussed above and further notes that a purported

does not establish whether the Department's application of the AD NME methodology and CVD law in concurrent investigations results in double remedies or is consistent with U.S. law.

Lastly, contrary to its assertion, the GAO Report study cited by the GOC does not create any legitimate doubts about the Department's interpretation of the Act. While, the GAO Report indicates that the Department has decided to not apply CVD law to NME firms and that this decision has been affirmed in Georgetown Steel as an initial matter, [35] we emphasize that the GAO does not administer AD and CVD laws and has no expertise in AD and/or CVD calculations. As explained supra, the Department has not determined to abstain from applying CVD law concurrently with the AD NME methodology. More importantly, the GAO did not decisively conclude that double counting occurs when CVD and AD NME methodology is applied. Instead, the GAO Report only states that double-counting *may* occur.[36]

Comment 5: Zeroing

- RZBC argues that the Department's use of zeroing in the instant AR is counter to its international obligations, judicial precedent, and the Department's own proposed revised rule. RZBC requests that the Department abandon its zeroing methodology for the final results.

- Petitioners rebut that the Department has not changed its policy with respect to zeroing in ARs and, therefore, the Department correctly applied its zeroing policy. Furthermore, Petitioners maintain, even if the Department changed its zeroing policy with respect to reviews prior to these final results, it would have no impact on this review because such a change would not be applied retroactively.

Department's Position: We have not changed our calculation of the weighted-average dumping margin, as suggested by RZBC, in these final results.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than EP or CEP. Because no dumping margin exists with respect to sales where normal value is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of section 771(35) of the Act.[37]

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or

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inconsistency with Section 19.3 of the WTO Subsidies Agreements is not a permitted basis on which to challenge the Department's actions under US law. See 19 USC 3512(c)(1).

[35] See GAO Report at 8.

[36] Id. at 17.

[37] See Timken; see also Corus I and SKF III.

producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies this section by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term "aggregate dumping margins" in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel the dumping margins found on other sales.

This does not mean that non-dumped transactions are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped transactions examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped transactions is included in the numerator. Thus, a greater amount of non-dumped transactions results in a lower weighted-average margin.

The CAFC explained in Timken that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value."[38] As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner chosen by the Department. No U.S. court has required the Department to demonstrate "masked dumping" before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.[39]

In 2007, the Department implemented a modification of its calculation of weighted-average dumping margins when using average-to-average comparisons in AD investigations.[40] With this modification, the Department's interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in section 123(g) of the URAA was specifically limited to address adverse WTO findings made in the context of antidumping investigations using average-to-average comparisons. The Department's interpretation of the statute was unchanged in other contexts.

It is reasonable for the Department to interpret the same ambiguous language differently when using different comparison methodologies in different contexts. In particular, the use of the word "exceeds" in section 771(35)(A) of the Act can reasonably be interpreted in the context of an AD investigation to permit negative average-to-average comparison results to offset or reduce the amount of the aggregate dumping margins used in the numerator of the weighted- average dumping margin as defined in section 771(35)(B) of the Act. The average-to-average comparison methodology typically applied in AD investigations averages together high and low prices for directly comparable merchandise prior to making the comparison. This means that the determination of dumping necessarily is not made for individual sales, but rather at an "on

[38] See Timken, 354 F.3d at 1342.
[39] See, e.g., Timken, 354 F.3d at 1343; see also NSK, 510 F.3d at 1379-80.
[40] See Final Modification for Antidumping Investigations.

average" level for the comparison. The Department then aggregates the results from each of the averaging groups to determine the aggregate dumping margins for a specific producer or exporter. At this aggregation stage, negative averaging group comparison results offset positive averaging group comparison results. This approach maintains consistency with the Department's average-to-average comparison methodology, which permits EPs above NV to offset EPs below NV within each individual averaging group. Thus, by permitting offsets in the aggregation stage, the Department determines an "on average" aggregate amount of dumping for the numerator of the weighted-average dumping margin ratio consistent with the manner in which the Department determined the comparison results being aggregated. For this reason, the offsetting methodology adopted in the limited context of investigations using average-to-average comparisons is a reasonable manner of aggregating the comparison results produced by this comparison method. Thus, with respect to how negative comparison results are to be regarded under section 771(35)(A) of the Act, and treated in the calculation of the weighted average dumping margin under section 771(35)(B) of the Act, it is reasonable for the Department to consider whether the comparison result in question is a product of an average-to-average comparison or an average-to-transaction comparison.

In U.S. Steel, the CAFC considered the reasonableness of the Department's interpretation not to apply zeroing in the context of investigations using average-to-average comparisons, while continuing to apply zeroing in the context of investigations using average-to-average transaction comparisons pursuant to the provision at section 777A(d)(1)(B) of the Act. Specifically, in U.S. Steel, the CAFC was faced with the argument that, if zeroing was never applied in investigations, then the average-to-transaction comparison methodology would be redundant because it would yield the same result as the average-to-average comparison methodology. The CAFC acknowledged that the Department intended to continue to use zeroing in connection with the average-to-transaction comparison method in the context of those investigations where the facts suggest that masked dumping may be occurring.[41] The CAFC then affirmed as reasonable the Department's application of its modified average-to-average comparison methodology in investigations in light of our stated intent to continue zeroing in other contexts.[42]

In addition, the CAFC recently upheld, as a reasonable interpretation of ambiguous statutory language, the Department's continued application of "zeroing" in the context of an AR completed after the implementation of the Final Modification for Antidumping Investigations.[43] In that case, the Department had explained that the changed interpretation of the ambiguous statutory language was limited to the context of investigations using average-to-average comparisons and was made pursuant to statutory authority for implementing an adverse WTO report. We find that our determination in this AR is consistent with the CAFC's recent decision in SKF III.

Furthermore, in Corus I, the CAFC acknowledged the difference between AD investigations and ARs, and held that section 771(35) of the Act was just as ambiguous with respect to both proceedings, such that the Department was permitted, but not required, to use zeroing in AD

[41] See U.S. Steel, 621 F.3d at 1363.
[42] Id.
[43] See SKF III, 630 F.3d at 1375.

investigations.[44] That is, the CAFC explained that the holding in Timken – that zeroing is neither required nor precluded in ARs – applies to AD investigations as well. Thus, Corus I does not preclude the use of zeroing in one context and not the other.

We disagree with RZBC's argument that the CAFC's recent decision in Dongbu requires the Department to change its methodology in this AR.[45] The holdings of Dongbu and the recent decision in JTEKT were limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of investigations versus ARs, but the CAFC did not hold that these differing interpretations were contrary to law.[46] Importantly, the panels in neither Dongbu nor JTEKT overturned prior CAFC decisions affirming zeroing in ARs, including SKF III, which we discuss above, in which the CAFC affirmed zeroing in ARs notwithstanding the Department's determination to no longer use zeroing in certain investigations. Unlike the determinations examined in Dongbu and JTEKT, the Department here is providing additional explanation for its changed interpretation of the statute subsequent to the Final Modification for Antidumping Investigations – whereby we interpret section 771(35) of the Act differently for certain investigations (when using average-to-average comparisons) and ARs. For all these reasons, we find that our determination is consistent with the holdings in Dongbu, JTEKT, U.S. Steel, and SKF III.

Furthermore, the Department has explicitly stated that, with the exception of certain cases that are the subject of WTO disputes, changes to the Department's current practice of zeroing in ARs will not affect ARs for which the final results have been issued.[47] We note that the Department's zeroing practice remains unchanged as of the date of the issuance of these final results and that any future change in the Department's zeroing methodology would have no retroactive effect on the instant AR.

Accordingly, and consistent with the Department's interpretation of the Act described above, in the event that any of the export transactions examined in this review are found to exceed NV, the amount by which the price exceeds NV will not offset the dumping found in respect of other transactions.

Comment 6: Whether the Department Should Disallow RZBC's and Yixing Union's By-product Offsets

- Petitioners maintain that the Department's practice is to adjust respondents' claimed by-product offsets by the cost of further processing the by-product into saleable form. They

[44] See Corus I, 395 F.3d at 1347.
[45] See Dongbu.
[46] See JTEKT.
[47] See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 75 FR 81533, 81535 (December 28, 2010) (Any changes in methodology will be applicable in any determinations made pursuant to section 129 of the URAA (19 U.S.C. § 3538) in connection with the above-referenced WTO disputes, and in all reviews pending before the Department for which a preliminary results is issued more than 60 business days after the date of publication of the Department's Final Rule and Final Modification).

maintain that RZBC and Yixing Union failed to provide complete information regarding their cost of further processing the corn feed and mycelium by-products (e.g., energy and labor) for which they claimed an offset. Therefore, Petitioners request that the Department disallow both companies' claimed by-product offsets.

- Petitioners further argue that RZBC and Yixing Union failed to provide clear and accurate information involving their reported packing material for bags.

- RZBC maintains that, in the less-than-fair-value investigation, the Department considered and rejected Petitioners' same argument that the respondents should report the cost of further processing of their by-products.

- RZBC and Yixing Union maintain that the cost of further processing their by-products for which they claimed an offset is already accounted for in the FOP databases reported to the Department.

- RZBC and Yixing Union further argue that the cost of energy is inconsequential because the Department is not using the FOPs for the energy reported by both companies, given the fact that the surrogate financial ratio of overhead already includes the cost of energy.

- Moreover, RZBC and Yixing Union argue that the information they reported for bags was accepted by the Department, and was subject to the Department's verification.

Department's Position: Section 773(c) of the Act is silent as to the treatment of by-products. However, the Department has interpreted the Act to allow the granting of an offset to the costs of production for a by-product generated in the manufacturing process of the subject merchandise that is either sold for revenue or has commercial value and is reintroduced into production.[48] Further, we agree with Petitioners that the respondents have the burden of: (i) demonstrating that the generated by-product is sold or re-used in the production of the subject merchandise; and (ii) providing all the information necessary for the Department to incorporate such offsets into the margin calculation. In the instant review, however, the Department requested information involving the packing and processing of all by-products reported by RZBC and Yixing Union. Upon the Department's request for such information, after the Preliminary Results, both mandatory respondents reported the FOPs for the bags used in packaging the by-products. The respondents confirmed that all other processing costs associated with the corn feed and the mycelium by-products (e.g., labor and energy) had already been reflected in the overall factors of production,[49] which were subject to the Department's verifications of RZBC's and Yixing Union's questionnaire responses. Additionally, we note that in the Preliminary Results, since we were unable to segregate and, therefore, were unable to exclude energy costs from the calculation of the surrogate financial ratio of overhead, we have disregarded the respondents' energy inputs (e.g., electricity and steam for both RZBC and Yixing Union) in the calculation of the NVs in

[48] See Guangdong Chem., 460 F. Supp. 2d at 1365; see also HFHTs and accompanying IDM at Comment 8.E.; see also Aspirin and accompanying IDM at Comment 13; Rebar-PRC and accompanying IDM at Comment 5.C.
[49] See Yixing Union's August 25, 2011 submission at 3 and 4; see also RZBC's August 25, 2011 submission at 3 and 4.

order to avoid double-counting energy costs that have necessarily been captured in the surrogate financial ratio of overhead.[50] Therefore, for the final results, consistent with the Preliminary Results, and to avoid double-counting the cost of energy, the Department did not use the respondents' reported FOPs for energy. Accordingly, contrary to Petitioners' contention, any cost of energy associated with processing the by-products is immaterial since the respondents' reported FOPs for energy were not used in the NV calculation. For the these reasons, we find no merit in Petitioners' argument that RZBC and Yixing Union failed to properly report their by-product offsets, or that these companies' claimed by-products should be adjusted by the cost of further processing such by-products.

We note that since RZBC's and Yixing Union's FOPs for the bags associated with packaging the corn feed and mycelium by-products were not accounted for in the NV calculations, we have added the value of this packaging material to the NV calculated for both companies for purposes of these final results.[51] In this regard, we also disagree with Petitioners' contention that RZBC and Yixing Union failed to accurately report their FOPs for the bags used to package these companies' by-products. The FOPs reported by both companies for bags were subject to the Department's verification, as is the case for all other FOPs. There is no evidence on the record of this AR to suggest that RZBC or Yixing Union under-reported their FOPs for bags.

Comment 7: Whether to Use an Alternate Source to Calculate the Surrogate Wage Rate and Financial Ratios

- Petitioners argue that the Department should not rely on Indonesian ILO wage data for its calculations because the time period of the data cover only 2 of the 18 months of the POR and do not accurately reflect the increase in Indonesian wages during the POR for the chemistry industry.[52]

- Petitioners argue that the Department should use Indonesian wage data from Statistics Indonesia because they cover 11 of the 18 months of the POR and can be more easily aligned to the extended POR of the instant review.[53]

- Petitioners argue that contemporaneity is particularly important because of the significant increase in the industry-specific Indonesian wages during the first and third quarters of 2009, which was a much greater increase than captured by the Indonesian consumer price index.[54]

- RZBC rebuts that the Department should continue to use the ILO's industry-specific Indonesian wage data.

[50] See Prelim SV Memo.
[51] See RZBC Final Analysis Memo; see also Yixing Union Final Analysis Memo.
[52] See Petitioners' Case Brief at 8 and 10.
[53] See Petitioners' Case Brief at 9.
[54] See Petitioners' Case Brief at 9-10.

- RZBC rebuts that the wage data from Statistics Indonesia placed on the record by Petitioners does not state how the wage data was collected, whether information is complete, or whether the information covers all of Indonesia.[55]

- RZBC rebuts that the wage data from Statistics Indonesia provided by Petitioners that are contemporaneous with the POR are primarily "Preliminary Figures" or "Very Preliminary Figures," which should not be used to calculate labor costs.[56]

- RZBC rebuts that, although Petitioners claim that contemporaneous wage data is important, the wage data provided by Petitioners is not contemporaneous with the POR and will need to be inflated.

- RZBC rebuts that if the Department uses Statistics Indonesia, it should inflate the data from the second quarter of 2008, which is the most recent data composed of final figures.

Department Position: We agree with RZBC that the industry-specific Indonesia wage data from Chapter 5B of the ILO Yearbook represents the best information on the record for valuing wages.

On June 10, 2011, the Department determined that it would rely on a single surrogate country to value labor, and would use labor data from ILO Yearbook Chapter 6A as its primary data source.[57] In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the ILO Yearbook. The Department further indicated that the change in methodology would be applicable to ongoing proceedings where statutory deadlines permit. Following this announcement, the Department placed Chapter 6A labor cost data on the record.[58] As noted in the Surrogate Wage Memorandum, the most recent data for Indonesia in the ILO Yearbook Chapter 6A was last reported more than fifteen years prior to the start of the POR. The Department also placed additional data from ILO Yearbook Chapter 5B for Indonesia and a new wage rate on the record in the Surrogate Wage Memorandum. The Department finds the ILO to be a reliable source and represents the best available data from which to derive a surrogate labor rate. Additionally, the Department has a specific preference for earnings over wage data.[59] The Department notes that the ILO defines "earnings" under Chapter 5B of its Yearbook of Labour Statistics as being inclusive of "wages," and as including both bonuses and gratuities. Therefore, in order to ensure that its calculation of expected NME wage rates accurately reflects the remuneration received by workers, the Department relies on "earnings," and uses "wages" only when earnings are unavailable.

[55] See RZBC's Rebuttal Case Brief at 1.
[56] See id.
[57] See Labor Methodologies.
[58] See Surrogate Wage Memorandum.
[59] See, e.g., Polyester Staple Fiber and accompanying IDM at Comment 1; see also Shrimp from Vietnam II and accompanying IDM at Comment 8.

There is no information on the record, nor did Petitioners place any information on the record about the costs, e.g., bonuses, employee housing, and welfare services, that are included in the Statistics Indonesia data. In contrast, the ILO Yearbook defines what costs are included in the reported Chapter 5B wage rate data.[60] Additionally, the data in Statistics Indonesia are "monthly average nominal wage" data and, as noted above, the Department's preference is for earnings over wages. For these reasons, the Department does not find the Statistics Indonesia data to be the best information to value labor.

Petitioners also argue that using the most contemporaneous data is particularly important in this case due to the significant increase in the industry-specific Indonesian wages during the first and third quarters of 2009, which the Indonesian CPI does not capture. While the Statistics Indonesia data are contemporaneous with the POR, as RZBC has noted, they are labeled as either "preliminary" or "very preliminary" figures; and as such are subject to change.[61] The data from Statistics Indonesia that are comprised of final figures are not contemporaneous with the POR.[62] However, the Chapter 5B data covers calendar year 2008 and overlaps with the first two months of the POR. As such, the Statistics Indonesia data that represent final figures are less contemporaneous than the Chapter 5B data from the ILO Yearbook. Therefore, the Department does not find Petitioners' argument to use Statistics Indonesia data compelling.

Thus, for the final results in this review, the Department finds that the data reported by Indonesia to the ILO in Chapter 5B of the Yearbook is the best information to value labor and has relied on this data to calculate the surrogate labor value. In addition, consistent with Department practice,[63] we inflated the labor rate to be contemporaneous with the POR.[64] Lastly, because the Department is not using data from Statistics Indonesia, and there is no evidence on the record from interested parties demonstrating that the NME respondent's cost of labor is overstated, the Department is not making adjustments to the labor expenses in the surrogate financial ratios.

Comment 8: Whether the Department Should Use Multiple Financial Statements from a Single Company

- RZBC submitted the 2010 PT Budi Acid Jaya TBK and Subsidiaries Annual Report after the Preliminary Results. RZBC argues that because four months of the POR are in 2010, the most accurate approach would be for the Department to include both the 2009 and 2010 financial statements in its ratio calculation. As the POR covers a total of 18 months from November 2008 to April 2010, including both the 2009 and 2010 financial statements ensures that 16 of the 18 months of the POR are covered.

[60] See ILO Main statistics (annual) – Wages, available at http://laborsta.ilo.org/applv8/data/c5e.html.
[61] See Letter from Petitioners to the Secretary of Commerce regarding, "Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Petitioners' Comments on Surrogate Labor Methodology," dated August 3, 2011 at Exhibit 1.
[62] The most recent figure is from March 2008 whereas the POR is from November 20, 2008 through April 30, 2010.
[63] See, e.g., Chlorinated Isocyanurates and accompanying IDM at Comment 2; and Cased Pencils, and accompanying IDM at Comment 1.
[64] See Surrogate Wage Memorandum at Attachment V.

- RZBC states that it is the Department's preference to use multiple financial statements when more than one company is present and if the 2010 PT Budi Annual Report was from any other company, the Department would include it in its ratio calculations regardless of whether it is less contemporaneous.

- RZBC asserts that if the Department finds that a single financial statement should be used, then the Department should use the more contemporaneous 2010 PT Budi Annual Report because the majority of RZBC's sales occurred in 2010. Relying solely on the 2009 PT Budi Annual Report would distort NV and would be equivalent to the Department using a different exchange rate than the date the merchandise was sold on or failing to inflate/deflate a SV from a different period. Although the 2009 PT Budi Annual Report may cover more months of the POR than the 2010 PT Budi Annual Report, it covers fewer sales because the majority of RZBC's sales were in 2010.

- RZBC argues that the Department should include the 2010 PT Budi Annual Report by either applying a simple average of the two statements, applying the financial ratios to the sales for the period on the date they were sold or only use the 2010 report.

- Petitioners contend that the Department should not use the 2010 financial statements to calculate the financial ratios because doing so would be contrary to the Department's standard practice. Additionally, the use of the 2010 financial statements would skew the normal value calculation by applying artificially low financial ratios reflecting a significant increase in material costs that largely occurred outside the POR.

Department's Position: We agree with Petitioners. As in the Preliminary Results, the Department will continue to use the 2009 financial statement of PT Budi in calculating the surrogate financial ratios for the final results. The Department's practice is to use one set of financial statements from a company that overlaps with the most months of the POR when the record contains multiple financial statements from a single company.[65] The 2010 PT Budi financial statement covers only four months of the POR, whereas the 2009 financial statement covers twelve months of the POR.

Because the 2009 statement covers a much greater period of the POR than the 2010 statement, it is more contemporaneous and thus preferable. Similarly, using multiple financial statements from the same company in this case would make the SV less contemporaneous, because it would still be based on data that reflects a significant period of time outside the POR, creating a temporally less representative method for deriving financial ratios than simply using the single most contemporaneous financial statement.[66] Therefore, for the final results, the Department will continue to use PT Budi's 2009 financial statement in the calculation of surrogate financial ratios for the final results rather than use PT Budi's 2010 financial statement.

[65] See Certain Activated Carbon and accompanying IDM at Comment 2c.
[66] See Shrimp from Vietnam and accompanying IDM at Comment 3.

Comment 9: Adjustment of Financial Ratio Calculation to Account for Interest Income and Other Income

- RZBC argues that in the Preliminary Results, the Department included interest expenses in the SG&A ratio calculation but did not include interest income and other income as offsets to the SG&A expenses.

- Based on descriptions in the surrogate producer's financial statement, for the final results, RZBC contends that the Department should include interest income and other income as offsets in the calculation of the SG&A expense ratio.

- RZBC argues that interest income is short-term and should offset SG&A expenses since the surrogate producer's financial statement includes long-term interest expenses and interest income line items. It is reasonable to assume that any long-term interest income would have offset the long-term interest expenses and that the surrogate financial statement identifies long-term items indicates that all other line-items are not long term (i.e., they are short-term).

- However, RZBC states that if the Department determines that the interest income and other income line-items should not offset SG&A expenses, then the Department should exclude these income line-items from the profit ratio. It is inconsistent to include these income line-items in the profit ratio calculation but fail to offset SG&A expenses if the Department determines that the interest income and other income was not part of the company's general operations.

- Petitioners contend that the Department should not adjust its financial ratio calculations to account for other income because Department practice is to allow offsets for miscellaneous income items only if it can be demonstrated that such items relate to the subject merchandise.

- In addition, Petitioners argue that the SG&A expense calculation should not be adjusted by deducting interest income and other income because each of these items would increase the overall profit of the surrogate producer. Because the Department deducts total expenses from total income to calculate profit, these non-operating income items are captured in the Department's ratio calculations as income in excess of expenses, or profit. Also, any offset of SG&A would distort the overall constructed value of the surrogate producer. If the Department offsets SG&A for interest income or other income, then the profit ratio should be adjusted upward by the same amount as the offset or the surrogate producer's costs and profits would be substantially less than those actually incurred.

- In the alternative, if the Department chooses to offset SG&A, Petitioners contend that the Department should limit the offset for interest income and foreign exchange gains to the amount of financial expenses only.

Department's Position:

Interest Income

The Department disagrees with RZBC that the interest income should be offset against the SG&A and interest expenses of the surrogate financial statement rather than be excluded from the SG&A and interest expense calculation. The Department's well-established practice is to allow an offset to interest expenses with short-term interest income generated from a surrogate company's current assets and working-capital accounts and which reflect the general operations of the company.[67] It is the Department's practice to exclude interest income generated from long-term financial assets because such income is generally related to investing activities (e.g., long-term interest income, capital gains, dividend income) and is not associated with the general operations of the company.[68] Accordingly, the Department will reduce interest expenses by amounts for interest income only to the extent it can determine from those statements that the interest income was short-term in nature.[69] After reviewing the surrogate financial statement, we find that there is no record evidence that the interest income is short-term interest revenue earned on working capital. The interest income line item in the surrogate financial statement lists interest income without any supporting notes which would give additional information. The Department cannot assume that this interest income is short-term because there is no additional description in the surrogate financial statements on interest income and it is the Department's practice to not look behind surrogate financial statements.[70] Since the Department does not have access to the supporting records for this surrogate financial statement, we cannot determine that this interest income is short-term. With regard to RZBC's argument that it is reasonable to assume that interest income generated from long-term assets would have offset long-term interest expense, we disagree. Here the surrogate financial statements separately classify interest expenses and interest income, thus, record evidence does support an assumption that the long-term interest expense line item is net of interest income generated from long-term assets. Therefore, for the final results, the Department will continue to exclude interest income from the SG&A and interest expense calculation.[71]

In addition, because we are disallowing the interest income offset to the SG&A and interest expenses, likewise we are adjusting the profit amount from the surrogate financial statements to exclude the interest income. In instances where we can identify, from the face of the financial statement, line items that should be excluded as offsets to S&GA and interest expenses, we will also remove those line items from profit. Here we disallowed the interest income because it is not considered to be generated from current assets and current working capital accounts; therefore, it is reasonable to also exclude the interest income from the calculation of profit.

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[67] See Tires/PRC (July 15, 2008) and accompanying IDM at Comment 18; see also PET Film and accompanying IDM at Comment 3; see also Seamless Copper Pipe and accompanying IDM at Comment 2.
[68] Id.
[69] Id.
[70] See Wooden Bedroom Furniture and accompanying IDM at Comment 30.
[71] See Final SV Memo.

Other Income

The Department agrees with RZBC that the other income should be offset against the SG&A expenses of the surrogate financial statement rather than be excluded from the SG&A expense calculation. The Department's practice is to treat other income as related to the general operations of the company and, therefore, include other income as an offset to SG&A expenses. The exception is when the reported information and the information in the surrogate financial statement indicates otherwise, for example, the income has been reported as a FOP, the income relates to a separate line of business, or the income relates to the disposal of non-routine assets.[72] After reviewing the surrogate financial statement, we have not found any information in this financial statement or other record information to indicate that the other income line item is not related to the general operations of the company. Therefore, for the final results, the Department will treat other income as an offset to SG&A expenses.

In regard to Petitioners' argument, that if the income offset is allowed the profit ratio should be adjusted upward by the same amount, we disagree. The other income is already reflected in the unadjusted profit amount from the surrogate financial statements. Consequently, if we made Petitioners' suggested adjustment the other income would be double counted in the profit calculation. Therefore, there is no need to adjust the profit ratio upward by the same amount as the other income offset to SG&A expenses.

Comment 10: Adjustment of Financial Ratio Calculation to Account for Foreign Exchange Gains and Losses

- RZBC argues that in the Preliminary Results, the Department did not include foreign exchange gains and losses (the net figure) as an offset to SG&A.

- RZBC contends that based on the description in the surrogate producer's financial statement, for the final results, the Department should include, as an offset to SG&A, the net figure from foreign exchange gains and losses.

- Petitioners argue that the SG&A expense calculation should not be adjusted by deducting the foreign exchange gains and losses (net figure) because this adjustment, if this net figure is a gain, would increase the overall profit of the surrogate producer. Because the Department deducts total expenses from total income to calculate profit, this non-operating income item is captured in the Department's ratio calculations as income in excess of expenses, or profit. If the Department offsets SG&A for foreign exchange gains and losses, then the profit ratio should be adjusted upward by the same amount as the offset or the surrogate producer's costs and profits would be substantially less than those actually incurred.

[72] See Tires/PRC (July 15, 2008) and accompanying IDM at Comment 18 and Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 76 FR 49729 (August 11, 2011) and accompanying IDM at Comment 19.

- In the alternative, if the Department chooses to offset SG&A, Petitioners contend that the Department should limit the offset for interest income and foreign exchange gains to the amount of financial expenses only.

Department's Position:

The Department agrees with RZBC that the net foreign exchange gains and losses should be included in the financial surrogate ratio calculations for the final results. It is the Department's well-established practice to include in the financial ratio calculations the total net foreign exchange gain or loss included in the surrogate financial statement.[73] Including all of the foreign exchange gains and losses reflects the results of the surrogate company's foreign exchange management associated with the cost of doing business. In the instant case, however, the net foreign exchange gain exceeds the interest expenses (long-term loans and provision and bank charges). In cases where the financial income from the surrogate financial statements exceeds financial expenses, we recognize that the surrogate company's cost of borrowing is zero and an amount for financial costs should not be included in the NV. In other words, if the surrogate financial statement has enough financial income to cover the financial expenses, then the resulting cost for financing and the financing cost used for NV will be zero. We note, however, that it would be inappropriate for the Department to reduce SG&A expenses by the net financing income. Moreover, while certain types of income can legitimately be used to offset an expense, they can be used to do so only to the extent that there are costs to offset.

The CIT upheld this position in Cinsa, S.A. de C.V. v. United States, 966 F. Supp. 1230, 1239-1240 (CIT 1997). The CIT stated, "The Court finds that expenses by their nature cannot produce a negative effect on the cost of production. Expenses, as a component of costs, cannot become a profit by the nature of their designation . . . Based on sound accounting and economic principles, the Court declines to accept a finding of negative costs when calculating COP." The financial expenses, as a component of NV, are discrete expense accounts and, as such, cannot be applied to offsets to any other expense accounts. We note that while this CIT decision was associated with a ME case the principle behind the decision is the same for NME cases. For these reasons, for the final results, we have capped the interest expense portion of the SG&A and interest expenses at zero. Specifically, the Department has capped the net foreign exchange gains to not more than total financial expenses (i.e., financial expenses, which include interest expenses and provision and bank charges, cannot be less than zero). For a detailed discussion of these calculations, see Final SV Memo.

Furthermore, for the final results, we adjusted the profit amount by the portion of the net foreign exchange gain that exceeded the interest expenses. Analogous with the interest income adjustment above, because the Department is capping the offset from the foreign exchange gains to no more than the total interest expenses, the Department is adjusting the profit amount from the surrogate financial statement to exclude the portion of the foreign exchange gain that exceeds

[73] See, e.g., Silicomanganese from Brazil and accompanying IDM at Comment 14; see also Stainless Steel Bar and accompanying IDM at Comment 6, and Mushrooms from Indonesia.

the interest expenses. This is consistent with Department's practice where the Department adjusts the profit amount for offsets excluded from the SG&A and interest expense calculation.[74]

Comment 11: Adjustment of Financial Ratio Calculation to Account for Finished Goods

- RZBC contends that it is the Department's practice to include the change in inventory of the surrogate company's finished goods in the denominator of the SG&A and profit calculations. The Department, therefore, should include the change in the finished goods inventory in the denominator of the SG&A and profit calculations.

- Petitioners argue that the Department should not adjust the denominator used in the calculation of the SG&A and profit ratios for changes in the value of finished goods inventories because such an adjustment would create a denominator that violates the principle of "parallel construction" in financial ratio calculations.

- Petitioners contend that, in the alternative, if the Department chooses to adjust the denominator used in the calculation of the SG&A and profit ratios for changes in the value of finished goods inventories, then the Department should limit the adjustment to the denominator based only on selling expenses. Only the selling expense portion (not the general and administrative expenses) of the total expenses, Petitioners state, is even arguably related to products sold during the POR.

Department's Position:

The Department agrees with RZBC that the change in finished goods (i.e., the beginning and ending finished goods inventory balances) should be included in the denominators of the SG&A and profit ratio calculations[75] for the final results.[76] We note that including the change in finished goods inventory results in the use of the COGS, versus the COM as the denominators for the SG&A, interest and profit calculations. The change in finished goods inventory (i.e., the difference between the COGS and COM) represents an issue of timing, not one where certain cost elements, like direct materials or labor, are in one and not the other. The statute does not prescribe a specific method for calculating surrogate financial ratios. Therefore, the Department over time, has developed a consistent and predictable practice of using COGS as the denominator to calculate the SG&A and interest and profit ratios. It is important to note that, unlike direct production, such as direct materials and labor, SG&A and interest expenses are not

[74] See Globe Metallurgical Inc. v. United States, Consol. Court No. 10-00032 (CIT June 21, 2011), final results of redetermination pursuant to the remand order for Globe Metallurgical Inc. v. United States, Slip Op. 11-72, Court No. 10-00032 (June 21, 2011) for the Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 1592 (January 12, 2010) (review covering the period June 1, 2007, through May 31, 2008).

[75] Essentially, the inclusion of the change in finished goods inventory (the difference in beginning and ending finished goods inventory) alters the SG&A and profit ratios in that the denominators to these calculations reflect the COGS, rather than the COM. Specifically, adding the value of finished goods in inventory at the beginning of the period and deducting the value of finished goods in inventory at the end of the period to the COM during the period results in the COGS that were sold during the period.

[76] See Wood Flooring Determination and accompanying IDM at Comment 2.

allocated to products in the surrogate financial statements. Rather, SG&A and financial expenses are normally reflected as period costs and are expensed in the year incurred because they generally relate to a fiscal period. They are expensed in full in the year incurred along with the COGS. Because these costs are period expenses, we calculate them from surrogate financial statements for the period most closely corresponding to the POR. The denominator of the SG&A and interest expense ratios should also be calculated based on expenses that are reflected in the surrogate income statement for the same period (i.e., COGS).

According to Petitioners, using a denominator for SG&A and profit based on COGS (instead of COM) violates the parallel construction principle.[77] The parallel construction principle as discussed in the Thai Pipe revolved around certain duties that were excluded from the COGS denominator used in the G&A rate calculation, but included in the reported COM to which the G&A rate is normally applied. In that case, the duties represented an element of cost that was excluded from the COGS but included in the COM. In this case, the COGS includes all of the same cost elements included in the COM. That is, the COGS includes all direct materials, labor, energy of other factory overhead cost elements included in the COM to which the rate is applied. As noted above, the statute is silent with respect to how the general expenses should be allocated in calculating NV. When a statute is silent or ambiguous, the determination of a reasonable and appropriate method is left to the discretion of the agency. Because there is no bright line definition in the Act of what SG&A and interest expenses are or how the surrogate expense ratios should be calculated, the Department has, over time, developed a consistent and predictable practice for calculating and allocating the expenses.[78] This practice is to calculate the ratios based on the SG&A and interest costs incurred by the surrogate producers allocated over the surrogate producers cost of goods sold.

As with many allocation issues that arise during the course of an AD proceeding there may be more than one way to reasonably allocate the costs at issue. This is precisely why we have developed a consistent and predictable approach to allocating SG&A, interest and profit. The only difference between the COM and COGS is the change in finished goods inventory. The change in finished goods inventory could have either a favorable or unfavorable effect on the expense ratios depending on whether the inventory balance increases or decreases at the year-end. The Department's normal practice of calculating SG&A based on the COGS rather than COM affords consistency across cases and is not results driven. Because the Department considers these expenses as period expenses and extracts them from the surrogate financial statements for the period most closely corresponding to the POR, the SG&A and interest expense and profit ratios should be calculated based on expenses (i.e., COGS) that are also reflected in the financial statements for the same period. Thus, the Department's normal methodology for calculating a respondent's G&A expense ratio, which we applied here, is reasonable, predictable, and not results-oriented.

[77] See Thai Pipe and accompanying IDM at Comment 6 (Department determined that if a respondent's cost of sales as reported on its financial statements does not include certain duties, the respondent's G&A and interest expense ratios should be applied to the respondent's COM exclusive of these duties).
[78] See Shrimp from Thailand and accompanying IDM at Comment 12.

Finally, we disagree with Petitioners that the Department should choose either COGS or COM as the denominator used in the SG&A and interest calculation, on as case by case basis, that is dependent on the higher of the selling or general and administrative expenses in the surrogate financial statements. As noted above we believe the COGS should be used as the denominator in calculating the ratios.

General Surrogate Value Issues

Comment 12: Surrogate Value for Sulfuric Acid

- Yixing Union asserts that the Indonesian SV used in the Preliminary Results is aberrational and not based on record evidence. Yixing Union notes that the Department claims that it used GTA data to generate and examine SVs from Peru, India, Thailand and the Philippines (economically comparable market-economy countries that import comparable merchandise). However, Yixing Union asserts that no data concerning SVs from the aforementioned countries were placed on the record by the Department. Therefore, Yixing Union argues that the Department failed to meet the basic obligation of basing its determinations on record evidence.

- After the Preliminary Results, Yixing Union notes that it placed sulfuric acid data on the record from Peru, Thailand, and the Philippines. Yixing Union argues that this data illustrates that the Indonesian SV used in the Preliminary Results is aberrational.

- Yixing Union disagrees with the Department's claim that after removing NME and subsidized countries, the remaining countries' data provide enough variation and quantities to produce a reliable SV.[79] Yixing Union maintains that the remaining countries' data and the resulting low quantities yield an aberrational SV because these sulfuric acid imports into Indonesia are not representative of the type or large industrial quantities that Yixing Union purchases.

- Yixing Union asserts that in the Preliminary Results, the Department used India and Thailand for SV purposes when data from Indonesia were not available. Therefore, to value sulfuric acid for these final results, the Department should utilize either the Indian or Thai SVs, or inflate the POI Indonesian SV for sulfuric acid.

- RZBC argues that the Indonesian SV used in the Preliminary Results is aberrational and does not represent typical commercial quantities similar to the type utilized by RZBC. The SV data provided by RZBC and Yixing Union demonstrate that the Indonesian SV is aberrational when compared to Peru, India, Thailand, and the Philippines.

- RZBC submits that, during the POR, an insignificant quantity of sulfuric acid was imported into Indonesia when compared to Peru, India, Thailand, and the Philippines. Also, RZBC argues that the POR Indonesian quantity when compared to other periods

[79] See Prelim SV Memo at 3-4.

illustrates that the quantity of sulfuric acid imported into Indonesia during the current POR is aberrational. Additionally, RZBC claims that the Indonesian SV used by the Department in the Preliminary Results is based on a quantity that represents much less than RZBC's sulfuric acid consumption for the production of its citric acid anhydrous.

- RZBC recommends that the Department use a different economically comparable country or another Indonesian time period (inflated or deflated) to compute the SV for sulfuric acid.

- Petitioners rebut that no record evidence exists to demonstrate that the Indonesian SV used in the Preliminary Results was not specific to the type of sulfuric acid used by the respondents. The likelihood that sulfuric acid may be used for different applications does not mean that sulfuric acid imported into Indonesia is being utilized for non-industrial applications or that the data should be disqualified for SV purposes. Therefore, Petitioners contend that the Indonesian SV used in the Preliminary Results to value sulfuric acid is not aberrational because it is specific to subject merchandise, contemporaneous, and reliable.

- Petitioners assert that the Indonesian AUV, after removing NME countries and countries known to provide export subsidies, still yields a significant quantity, and thus is a reasonable and sufficient basis for SV purposes. Import data from economically comparable countries, specifically India, Peru, and the Philippines, also provide a wide range of AUVs. Therefore, contrary to the respondents' claims, there is no evidence to suggest a correlation between a high AUV and an aberrational AUV.

- Petitioners counter Yixing Union's argument that the Department must find the Indonesian SV for sulfuric acid to be aberrational because the Department found the Indonesian SV for wooden pallets to be aberrational in the Preliminary Results. Petitioners state that the Department found the Indonesian wooden pallets to be aberrational primarily due to detailed information submitted by respondents regarding the different types of pallets imported into Indonesia and the PRC. Petitioners claim that the respondents have failed to provide similar detailed information regarding different types of sulfuric acid.

Department's Position:

We note that the Department placed the data used to calculate the SV for sulfuric acid on the record of this proceeding shortly after the publication of the Preliminary Results.[80] This data contained all GTA sulfuric acid SV data from Indonesia, Peru, the Philippines, Thailand, and India, on which we based our Preliminary Results. Furthermore, the Department placed this data on the record prior to the June 30, 2011, SV comments deadline. Accordingly, the Department disagrees with Yixing Union that it failed to meet its obligation to base its determinations on record evidence.

[80] See SV Data.

For the final results, the Department finds that the Indonesian GTA import data for sulfuric acid for the current POR is aberrational when compared to historical data. Therefore, to value the sulfuric acid input, we will use the SV for sulfuric acid from the POI inflated to the current POR.

Section 773(c)(1)(B) of the Act directs the Department to use "the best information available" from the appropriate ME country to value FOPs. In selecting the most appropriate SVs, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad market average, chosen from a single approved surrogate country, is tax and duty-exclusive, and is specific to the input.[81] The Department's preference is to satisfy the breadth of the aforementioned selection criteria. However, where all of the criteria cannot be satisfied, the Department will choose a SV based on the best information available on the record.[82]

The record currently contains several sources for sulfuric acid SVs. Both respondents placed GTA-generated data on the record after the Preliminary Results for Peru, Thailand, Philippines, and Indonesia. However, this data only consisted of SVs with less specific six-digit HTS categories. Other relevant data on the record for this administrative review include the Department's GTA-generated values, the POI Indonesian value, and the Indian value with a more specific HTS category. Additionally, RZBC provided pre/post POR-Indonesian data based on the six-digit HTS category. As stated above, the Department selected Indonesia as the primary surrogate country and, thus, the Department's preference is to remain within the primary surrogate country when data is available. It is also the Department's preference to utilize a more specific HTS category when available. Since the Indonesian sulfuric acid SV remains within primary surrogate country and offers data from a more specific HTS category, we have determined not to consider data from the other countries on the surrogate country list.

When determining whether data are aberrational, the Department has found that the existence of higher prices alone does not necessarily indicate that the price data are distorted or misrepresentative, and thus is not a sufficient basis upon which to exclude a particular SV.[83] 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 SV is aberrational, and therefore unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.[84] In this particular instance, both Yixing Union and RZBC provided sufficient evidence that the Indonesian value used in the Preliminary Results is aberrational and not the best information available on the record.

The Department analyzed RZBC's submission of pre/post-POR Indonesian sulfuric acid SV data (18 month period ending April 2008, 18 month period ending April 2009, and 17 month period ending March 2011). We note that the quantity for the current POR (741,577 kg) is significantly lower than the quantities from the other three periods (ranging from 24,880,740 kg to 46,053,227

[81] See Frozen Fish Fillets and accompanying IDM at 9.
[82] See id.
[83] See Shrimp from Vietnam III and accompanying IDM at 12.
[84] See id.

kg). Comparing the Indonesian quantity for the current POR with quantities from other surrogate countries on the record (ranging from 52,060,056 kg to 823,189,626 kg), we find that the Indonesian quantity is very low. Additionally, our analysis suggests that the Indonesian AUV for the current POR ($0.751/kg) can be considered aberrational when compared with AUVs from other surrogate countries (ranging from $0.032/kg to $0.272/kg). Similarly, comparing the Indonesian AUV for the current POR with the pre/post-POR Indonesian AUVs (ranging from $0.05/kg to $.0.14/kg) suggests that the Indonesian value for the current POR can be considered aberrational. Accordingly, after reviewing historical data and comparing it with current data, we find that the current POR AUV is not representative of the range of prices for the pre/post POR AUVs. After examining both the quantity variations and range of AUV data, we have concluded that the POR Indonesian value is aberrational.

Yixing Union argues that the sulfuric acid imported into Indonesia is sold in different solutions, for different applications, and in different quantities. We agree with Petitioners that the respondents have failed to provide any specific evidence concerning the different types of sulfuric acid imported into Indonesia. Additionally, we disagree with Yixing Union's claim that the remaining countries' data, once imports from NME's and countries that maintain broadly available export subsidies are removed, as referenced in the Prelim SV Memo, do not provide enough variation or quantities on which to base a SV. We do not believe that the number of countries from which a surrogate country imports a product used to value an input is in and of itself dispositive of the reliability of the data. Further, taking into account that the Indonesian SV for corn is based on data from eight countries, the Indonesian POR sulfuric acid SV provides sufficient variation with import data from nine countries.

However, the Department agrees with Yixing Union and RZBC that the POR-specific Indonesian GTA data is not the best information available on the record to use for the sulfuric acid SV. Specifically, the AUV of the POR-specific GTA Indonesian import data is unusually high when compared with the historical data on the record and data recorded for recent periods. In addition, the quantity of the POR-specific GTA Indonesian import data is low when compared with the historical data on the record. Thus, based on record evidence, the Department finds that the respondents have sufficiently demonstrated, through historical comparisons, that the values and quantities reported in the POR time span for GTA Indonesian imports of sulfuric acid are an aberration.[85]

Consequently, for the final results, we have determined not to use the POR-specific Indonesian GTA import data to value sulfuric acid, but rather to inflate the value of sulfuric acid from the POI.[86] By inflating the POI value of sulfuric acid we are keeping with the Department's preference to use data from the primary surrogate country. Additionally, as this POI value was used by the Department in the investigation in the calculation of respondents' NVs, we consider it to be reliable. It is also specific to subject merchandise, unlike other options for a SV that were before the Department.

[85] See RZBC's Case Brief; see also Yixing Union's Case Brief.
[86] See Final SV Memo at 3.

Mandatory Respondent Specific Issues

RZBC

Comment 13: Whether the Department Verified RZBC's Corn Usage Rate

- Petitioners argue that the Department should reject RZBC's reported corn usage rate because RZBC failed to provide production records that could be tied to RZBC's reported corn usage rate and failed to provide other records relevant to corn consumption that a typical citric acid manufacturer would maintain.

- Petitioners claim that inconsistencies in the inventory records and the physical properties of by-products further call into question RZBC's reported corn usage rate and thereby render the rate unverifiable.

- Petitioners argue that the Department should use as neutral facts available the corn consumption rate of Petitioners' factories rather than RZBC's reported corn consumption rate.

- RZBC rebuts that Petitioners claims ignore the Department's verification report which reconciled all RZBC production, inventory, and accounting records to the usage rates reported by RZBC in its FOP database.

Department Position: We disagree with Petitioners. Petitioners' argument that we were unable to tie RZBC's production records to its reported corn usage rate is incorrect. At verification, we tied RZBC's reported corn consumption rates to the accounting and inventory records and these records tied to the production records. As stated in the RZBC Verification Report, we began by reconciling the overall reported corn consumption in the FOP database to each factory's (RZBC maintains two factories – RZBC Co. and RZBC Juxian) per unit corn consumption.[87] We then tied each factory's per unit corn consumption to the raw material allocation worksheets for both factories that show for each month of the POR the total quantity of corn consumption, and the allocation of corn consumption to each specific product.[88] We further traced the POR total reported corn consumption from the raw materials allocation worksheet to the corresponding raw materials inventory ledgers and to each factory's cost of production tables.[89] For February 2009, we tied daily corn powder withdrawal records to inventory records.[90] Further, we reconciled the December 2008 inventory ledger for corn to purchase amounts.[91] We also tied the inventory records and production records used to calculate the corn consumption FOPs cited above to the cost of manufacturing and then the cost of goods sold reported by each factory.[92]

[87] See RZBC Verification Report at 34-35, and Exhibits 21, 22, 23, and 24.
[88] See RZBC Verification Report at 34 and Exhibit 21.
[89] See RZBC Verification Report at 35.
[90] See RZBC Verification Report at 36.
[91] See RZBC Verification Report at 36.
[92] See RZBC Verification Report at 26-29.

Thus, we were able to confirm that all RZBC inventory, production, and accounting records reconciled with its reported corn usage rate.

While Petitioners doubted the accuracy of RZBC's standard reported loss associated with the corn loss from the warehouse through grinding, we were able to verify that the standard loss was reasonably accurate and that any inaccuracy resulted in RZBC reporting excess corn consumption for 2008 and 2009. As stated in the verification report, we determined this by comparing RZBC's physical inventory count performed yearly to the standard loss relied on by the accounting records and in reporting corn consumption to the Department.[93]

Petitioners also claim that RZBC failed to provide reports that other citric acid manufacturers normally maintain, such as the liquid corn output or sugar content in the input into the fermentation stage or the amount of input used in the fermentation stage, and also any citric extraction yield records. As an initial matter, Petitioners' claims ignore that our verification report identifies, examines, and places on the record production records maintained in the normal course of business from nearly every stage of production, including records tracking starch and sugar content, and citric acid extraction levels at certain stages of production following fermentation.[94] Further, Petitioners have made no attempt to establish exactly what records a typical citric acid manufacturer maintains in the ordinary course of business and no such standard exists on the record. Therefore, the Department is unable to compare the records that RZBC maintains relative to those maintained by typical citric acid manufacturers.

Much of Petitioners' allegations regarding RZBC's production records appear to stem from the fact that RZBC's records normally only identify inputs and outputs based on a daily, monthly, or annual basis rather than the inputs and outputs of individual production runs or batches. However, most of RZBC's production process is continuous and therefore it is impossible in many stages to know where one batch ends and another begins. Consequently, it is impossible to calculate precise input and output ratios of individual batches. This fact was continually noted by RZBC throughout this review and by the Department in its verification report where it noted that RZBC maintained a continuous manufacturing process prior to and after the fermentation stage.[95] With regard to overall records, as stated above, we were able to reconcile production, inventory, and accounting records with RZBC's reported corn consumption rate.

Petitioners further claim that because RZBC did not maintain records identifying inputs at the fermentation stage, the Department is unable to determine whether all types of corn or starch equivalents were reported. The Department does not find that RZBC failed to report such inputs. At verification, the production manager stated that at the fermentation stage it only introduces a germ to begin the fermentation process and that neither factory introduces "vitamins or other additives to the fermentation stage."[96] We noted no other additives or starch substitutes being

[93] See RZBC Verification Report at 36.
[94] See RZBC Verification Report at 33-34 and Exhibit 27.
[95] See RZBC Verification Report at 8 and 33; see also RZBC's August 24, 2011 Response at 2.
[96] See RZBC Verification Report at 33.

added in our verification report and none of the numerous production reports and final chemical analysis reports we placed on the record identified any unreported inputs.[97]

Petitioners' claims that other records and findings at verification render RZBC's reported consumption rate inaccurate is unsupported by the record:

Petitioners claim that because RZBC performs no-cash transactions between RZBC I&E, RZBC Co., and RZBC Juxian, there is doubt as to the ability of the Department to verify RZBC's responses. However, as stated in great detail in our verification report we did verify these no-cash transactions and noted no unreported transactions.[98] In fact, we traced selected no-cash "transactions to the accounts receivable and prepayments to customer sub-ledger where the beginning and ending balance of the sub-ledger tied to the audited financial statements."[99] We note that Petitioners have mentioned no deficiencies in our method of verifying these no-cash transactions.

Petitioners also noted that a form maintained at the fermentation stage containing a dash in the field for residual sugar amounts to a claim by RZBC that all sugar was consumed during the fermentation stage. Petitioners argue that such a claim is impossible and thus calls into question the veracity of the documentation examined by Department verifiers. The Department disagrees that the dash means that all sugar was consumed. Rather, the dash likely reflects that the level of residual sugar is unimportant to RZBC because its stated goal "through the fermentation stage {is} to create sufficient quantities of fermented citric acid to continue production."[100] In fact, the same form identified the amount of sugar converted into citric acid and this amount demonstrates that not all sugar was converted into acid.[101]

Petitioners' claim that a high starch content in two RZBC sales of high-protein feed by-product renders RZBC's reported citric acid levels less likely is unpersuasive because, as noted by Petitioners themselves, the starch content pertains to only two sales. Petitioners' argument is premised on the starch to total weight ratio of the high-protein feed by-product stated in the two sales being consistent among all sales during the POR. However, the ratio varies significantly for the two sales cited in Petitioners' case brief. Further, even if the starch content were the same for all sales of high-protein feed by-product as cited in the two sales, this loss, and the loss of the starch prior to entry into the liquidation, would still result in the weight of starch in the corn input into the fermentation stage significantly exceeding the weight of the citric acid output.[102]

Prior to and during verification, RZBC provided accounting, inventory, and production records that all reconcile and also tie to its reported corn usage rate. Further, these records fully and completely support RZBC's reported corn usage rate. There is no other information that the Department examined at verification or other record evidence to call into question RZBC's

[97] See RZBC Verification Report at Exhibit 27.
[98] See RZBC Verification Report at 11-17.
[99] See RZBC Verification Report at 11.
[100] See RZBC Verification Report at 33.
[101] See RZBC Verification Report at Exhibit 27, page F.
[102] See December 7, 2011 Memorandum to the File from Jeff Pedersen, regarding "Proprietary Information Relating to the Issues and Decision Memorandum" at Note 1.

reported corn usage rate. Therefore, considering all the evidence, for the final results, we find no grounds for not continuing to use RZBC's reported corn usage rate.

Comment 14: Calcium Carbonate and Sulfuric Acid Usage Rates

- Petitioners assert that the Department must apply neutral facts available to RZBC's reported calcium carbonate and sulfuric acid usage rates because the information RZBC provided could not necessarily be verified. According to Petitioners, RZBC provided information at the verification related to its production process that was previously not on the record. This information needed to be properly evaluated prior to verification to ensure the Department could verify RZBC's reported calcium carbonate and sulfuric acid usage rates in a fully informed manner.

- Petitioners claim that the amount of calcium carbonate and sulfuric acid used in the production of citric acid is dictated by the specific extraction method used by the producer. Accordingly, the Department requested information about RZBC's production methods and throughout this administrative review RZBC provided information and extraction formulas that reflected one specific method of citric acid production. However, the information RZBC provided at verification was contrary to the detailed formulas that RZBC previously provided in its questionnaire responses.

- Petitioners contend that although comments they submitted clearly showed the theoretical minimum usage rates of calcium carbonate and sulfuric acid for one particular type of production process, RZBC never refuted these comments until verification.

- Petitioners argue that given RZBC's failure to identify its production process in timely manner to allow for proper evaluation of the information, and the purported lack of production records maintained by RZBC, the Department must resort to facts available with respect to the calcium carbonate and sulfuric acid usage rates.

- RZBC contends that Petitioners provide no record evidence that refutes RZBC's reported limestone flux and sulfuric acid usage rates.

- According to RZBC, the basis of Petitioners' argument is that RZBC never explained its formulas, never rebutted Petitioners' arguments, and provided a different production method for the first time at verification. RZBC argues that in both the first and second supplemental questionnaire responses they provided information and formulas that should have put Petitioners on notice that RZBC did not rely on one method in producing citric acid.

- RZBC points out that Petitioners acknowledged that the series of formulas submitted in the supplemental questionnaires by RZBC contained an additional line item (i.e., an indication that RZBC did not rely on just one production method in producing citric acid). However, Petitioners claim the formula was incorrect, instead of requesting the

Department ask additional information about the formula, as they did on numerous occasions related to other data submitted by RZBC.

- RZBC asserts that it cooperated fully with the Department in all respects. Moreover, the record evidence that was verified by the Department supports that the limestone flux and sulfuric acid usage rates were accurately reported. Therefore, for the final results, there is no basis for the Department to adjust RZBC's reported usage rates for limestone flux and sulfuric acid.

Department's Position: We disagree with Petitioners that the Department should apply facts available to RZBC's limestone flux and sulfuric acid reported usage rates. Record evidence does not call into question or support a claim that these factors were inaccurately reported. While we agree with Petitioners that the formulas submitted by RZBC in its supplemental questionnaire response regarding its production methods appear to contain an error, and that RZBC could have been more transparent in providing the formulas and narrative descriptions associated with its production methods, the usage rates submitted by RZBC were based on accounting and production records not production method formulas. Hence this error alone would not render the reported usage rates to be unusable or inaccurate. In fact, the information provided by RZBC does point to the fact that RZBC may not have solely relied on one production method.[103] Further, although it appears that the formulas submitted by RZBC in its supplemental questionnaire responses may contain an error, this error did not preclude Petitioners from analyzing the formula and requesting additional information regarding this issue prior to verification. Moreover, contrary to Petitioners' assertion, the formula provided at verification does not appear to be in direct conflict with what was provided in RZBC's supplemental questionnaire responses.

Notwithstanding Petitioners' claims surrounding the formulas and production methods used by RZBC, the fact remains that, at verification, the Department fully examined supporting documentation related to RZBC's reported limestone flux and sulfuric acid usage rates and found no discrepancies. Specifically, at verification RZBC provided support for its reported usage rates using both inventory ledgers and production records that ultimately tied to the audited financial statements.[104] Therefore, for the final results, the Department finds that record evidence does not support the use of facts available, and consistent with the Preliminary Results, we will continue to use RZBC's reported limestone flux and sulfuric acid usage rates.

Comment 15: Adjustment of Financial Ratios for Corn and Sulfuric Acid

- RZBC argues that the Department incorrectly added PT Budi's financial ratios to the sulfuric acid and corn surrogate values in the NV calculation. Because PT Budi self-produced both sulfuric acid and corn, RZBC believes that the inclusion of the financial ratios in these SVs resulted in double counting for corn and sulfuric acid's SVs.

[103] See RZBC's First Supplemental Sections C&D Questionnaire Responses, dated January 14, 2011 at 17, 18, 21, 24 and Exhibits 3 and 4.

[104] See RZBC Verification Report at 28-37 and Exhibits 20, 23 and 24.

- Additionally, RZBC claims that the PT Budi's raw materials, used to produce sulfuric acid, represent a lesser value than the purchase price of finished sulfuric acid faced by RZBC. Consequently, the lower-priced sulfuric acid underestimates PT Budi's MLE denominator, resulting in a higher overhead, which distorts the margin calculation. Since corn and sulfuric acid are self-produced, the profit is highly distortive because there is no indication of the prices concerning inter-company transfers of the self-produced raw materials. Because the inputs are entered into production at a reduced value, when compared to RZBC, the result is a lower denominator for PT Budi and a higher overall profit ratio, which distorts the margin calculation. Furthermore, RZBC argues that PT Budi's overhead is also overestimated because it includes a total of 26 factories in its financial statement.

- Finally, RZBC argues that because PT Budi is at a much higher level of integration than RZBC, the Department should adjust its NV calculation and exclude any potential double counting that resulted from applying the financial ratios to the sulfuric acid and corn SVs. To avoid double counting, RZBC suggests adjusting the SAS program language by either backing out PT Budi's financial ratios from the SVs or excluding the SVs from the build-up of TOTCOM and including the SVs in the final NV calculations.

- Petitioners argue that the Department should continue to apply the surrogate financial ratios to the SVs for corn and sulfuric acid because RZBC has not demonstrated that the surrogate producer has substantially different production equipment or inputs that would generate meaningful cost savings over the subject producers. Moreover, Petitioners claim that RZBC's argument is based on an unsupported assumption that the SVs for corn and sulfuric acid already include an amount of overhead, SG&A and profit at least equal to the amount included in the surrogate producer's financial ratios, specifically with respect to those two inputs.

Department's Position: We agree with Petitioners and have continued to apply PT Budi's financial ratios to the SVs of corn and sulfuric acid for the final results. The statute directs the Department to base the valuation of the FOP on "the best available information regarding the values of such factors in a ME country or countries considered to be appropriate. . . ."[105] Section 351.408(c)(4) of the Department's regulations further stipulates that the Department normally will value 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 financial ratios based on contemporaneous financial statements of companies producing comparable merchandise from the surrogate country.

Guidance regarding SVs for manufacturing overhead, general expenses, and profit is provided by section 351.408(c)(4) of the Department's regulations, which states that these values will normally be based on public information from companies that are in the surrogate country and that produce merchandise that is identical or comparable to the subject merchandise.[106] In the

[105] See Section 773(c)(1) of the Act.
[106] See OCTG and accompanying IDM at Comment 13.

selection of surrogate producers, the Department may consider how closely the surrogate producer's experience reflects the NME producer's experience.[107] The courts have held that the Department is neither required to "duplicate the exact production experience of the PRC manufacturers," nor undergo "an item-by-item analysis in calculating factory overhead."[108]

RZBC's main argument, while not citing to a precedent, rests on the assumption that because PT Budi's corporate structure contains certain additional production steps, attributed by RZBC to vertical integration, the Department is "double counting" the overhead, SG&A and profit when valuing corn and sulfuric acid. The Department disagrees with RZBC. The information contained in most public financial statements, including PT Budi's, does not provide the Department with the level of detail required to analyze the multiple factors that drive financial ratio calculations (for example, production technologies, age of equipment). The record does not contain evidence indicating what differences, if any, there would be in the cost of production between the respondent and the surrogate producer. For example, while RZBC alleges that a higher level of corporate integration implies higher production cost, RZBC does not provide any evidence to support its allegation. Further, PT Budi's financial statements do not provide the level of specificity necessary to confirm or refute RZBC's allegations of double counting of overhead, SG&A and profit. The Department's practice has been to apply financial ratios based on producers with approximate but not necessary identical production experience.[109]

As mentioned above, the statute governing SVs requires the Department to base its surrogate valuation on the best information available. In this case, PT Budi's financial statements represent the best information available. Furthermore, in numerous antidumping duty cases, the surrogate producers, selected by the Department, produce different products and incur different types of costs than the respondents. In these situations, our practice has been not to attempt to adjust the surrogate producer's cost of production to account for potential cost differences.[110] Consequently, for the final results, the Department determines that the PT Budi's financial statements closely approximate the production experience of RZBC's and no adjustments were made to PT Budi's financial ratios.

Yixing Union

Comment 16: Whether the Department Verified Yixing Union's Corn Usage Rate

- Petitioners argue that the Department should reject Yixing Union's reported corn usage rate because Yixing Union failed to provide production records that could be tied to Yixing Union's reported corn usage rate and failed to provide other records relevant to corn consumption that a typical citric acid manufacturer would maintain.

[107] See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247 (CIT 2002).
[108] See Nation Ford Chem. Co. v. United States, 985 F. Supp. 133 (CIT 1997); Magnesium Corp. of Am. v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).
[109] See OCTG and accompanying IDM at Comment 13.
[110] See Seamless Carbon and accompanying IDM at Comment 6.

- Petitioners also claim that inconsistencies in the inventory records and the physical properties of by-products call into question Yixing Union's reported corn usage rate and thereby render the rate unverifiable.

- Petitioners argue that the Department should use as neutral facts available the corn consumption rate of Petitioners' factories rather than Yixing Union's reported corn consumption rate.

- Yixing Union rebuts that Petitioners claims ignore the Department's verification report which reconciled all Yixing Union production, inventory, and accounting records to the usage rates reported by Yixing Union in its FOP database.

- Yixing Union also notes that Petitioners claims regarding Yixing Union's inventory records or physical properties of by-products fail to hold up to scrutiny.

Department Position: We disagree with Petitioners. Petitioners' argument that we were unable to tie Yixing Union's production records to its reported corn usage rate is incorrect. At verification, we tied Yixing Union's reported corn consumption rates to the accounting and inventory records and these records tied to the production records. As stated in the verification report, we began by reconciling the overall reported corn consumption in the FOP database to the factory's summary consumption worksheets.[111] We then tied the summary consumption worksheets to the corresponding consumption quantities of corn recorded in the finished goods and work-in-process material allocation sheets.[112]

Further, for selected months, we traced the quantities consumed from the finished goods and work-in-process material allocation worksheet to the corresponding quantities recorded in the citric acid monthly production inspection sheet, which Yixing maintains in the normal course of business and shows the production quantity, work-in-process quantities, consumption quantity for each input, including corn, and the product specific allocation of each material input.[113] For February 2009 and December 2008, we traced the production and consumption quantities from the citric acid monthly production inspection sheet to the handwritten monthly inventory list for citric acid production. From the citric acid monthly production inspection sheets, we traced the quantity of corn withdrawn for each month to the handwritten monthly raw material stock-in and stock-out record. We also tied the inventory records and production records used to calculate the corn consumption FOPs cited above to the COM and then the COGs reported by each factory.[114] Thus, we were able to confirm that all Yixing Union inventory, production, and accounting records reconciled with its reported corn usage rate.

Petitioners also claim that Yixing Union failed to provide reports that other citric acid manufacturers normally maintain, such as the liquid corn output or sugar content in the input into the fermentation stage or the amount of input used in the fermentation stage and also any citric

[111] See Yixing Union Verification Report at 34, and Exhibit 14.
[112] See Yixing Union Verification Report at 35 and Exhibit 18.
[113] See Yixing Union Verification Report at 34-35.
[114] See Yixing Union Verification Report at 26-27.

extraction yield records. As an initial matter, Petitioners' claims ignore that our verification report identifies, examines, and places on the record production records maintained at nearly every stage of production, including records tracking the conversion of sugar into citric acid during the fermentation stage, and also reports measuring the citric acid output of each fermentation tank.[115] Petitioners' allegations also ignore the fact that Yixing Union tracks the daily, monthly, and annual totals of all reported inputs, and the ratio of the monthly inputs to citric acid output.[116] Further, Petitioners have made no attempt to establish exactly what records a typical citric acid manufacturer maintains in the ordinary course of business and no such standard exists on the record. Therefore, the Department is unable to compare the records that Yixing Union maintains to those maintained by typical citric acid manufacturers.

Much of Petitioners' claim that Yixing Union's production records do not tie to its reported corn usage rate appears to stem from the fact that Yixing Union's records normally only provide yield ratios based on daily, monthly, or annual totals of inputs and outputs rather than on the inputs and outputs of individual production runs or batches. The Department did attempt to determine whether production records, which Yixing Union readily provided, could be linked to individual batches.[117] Consistent with Yixing Union's claims, at verification, Departmental officials were informed by production personnel that "most production processes outside of the fermentation stage are continuous and thus impossible to know exactly when a batch from a certain fermentation tank is being processed."[118] This finding is consistent with Yixing Union's continued assertion, summarized by the production manager at verification "that Yixing Union staff does not know the exact upstream or downstream inputs or the exact citric acid output of the contents of one fertilization tank, as the majority of the processing stages both preceding and following the fertilization stage are continuous."[119] We noted no discrepancies with Yixing Union's descriptions of its production process and the reasons it gave for why it was unable to track the inputs and outputs of individual batches.[120]

At verification, we examined Yixing Union's calculation of its usage rate. We saw that while Yixing Union does not know the exact inputs and outputs of individual batches, it is able to track inputs and outputs of batches based on standard inputs. At verification, we divided the weight of the standard inputs maintained in the normal course of business by Yixing Union by the weight of the actual outputs to the reported FOPs, both in the grinding to fermentation production stage and then the extraction production stage. We then multiplied these two ratios to obtain an overall corn input to citric acid output for three months of the POR and obtained corn consumption rates within less than one percent of the reported FOPs.[121] Thus, not only do Yixing Union's accounting, production, and inventory records support and tie to its corn usage rate identified in the FOP database, but its records based on standard consumption rates provide

[115] See Yixing Union Verification Report at 30 and Exhibit 11.
[116] See Yixing Union Verification Report at 31.
[117] see Yixing Union Verification Report at Exhibit 11.
[118] See Yixing Union Verification Report at 34.
[119] See Yixing Union Verification Report at 32.
[120] See Yixing Union Verification Report at 34.
[121] See Yixing Union Verification Report at 31.

nearly the identical consumption rate as the actual corn usage rate identified in Yixing Union's FOP database.[122]

Petitioners claim that because Yixing Union did not maintain records identifying inputs at the fermentation stage, the Department is unable to determine whether all types of corn or starch equivalents were reported. Contrary to Petitioners' claim, the Department was able to identify the inputs used by Yixing Union at the fermentation stage. The Department indicated in its verification report that at "the liquefying stage, Yixing Union records corn inputs, amylase inputs, and corn feed by-product outputs in a handwritten daily run record."[123] We further noted that "{t}hroughout our tour of the facilities, we noted no unreported inputs."[124] None of the numerous production reports and final chemical analysis reports we placed on the record identified any unreported inputs.[125]

Petitioners' further claims that other records and findings at verification render Yixing Union's reported consumption rate inaccurate likewise does not hold up to record evidence.

Petitioners claim that because Yixing Union performs no-cash transactions between Yixing Union and Yixing Co-Generation, the Department's ability to verify Yixing Union's responses may be compromised. However, as stated in significant detail in our verification report, we confirmed that Yixing Union had no-cash transactions and noted no unreported transactions.[126] We note that Petitioners have mentioned no deficiencies in our verification methods (i.e., confirming no-cash transactions).

With regard to Petitioners' claim that the sum of the dry weights of Yixing Union's corn and cassava inputs are less than the sum of the dry weights of Yixing Union's output of citric acid and by products, we note that Petitioners' claim is based on the moisture content of an inspection report completed prior to the POR. [127] As noted by Yixing Union, even if the inspection reports concerning mycelium and corn feed sales made during the POR are used, the total weight of the inputs exceeds the total weight of the outputs.[128]

Petitioners' claim that a high starch content in Yixing Union sales of by-products renders Yixing Union's reported citric acid levels less likely is unpersuasive because, as noted by Petitioners themselves, the starch content in the sales of by-products pertains only to two sales of mycelium and two sales of corn feed. Petitioners' argument is premised on the fact that the starch to total weight ratio of the corn feed by-product is consistent among all sales during the POR and there is nothing on the record to support such a premise. Further, the Department calculated the corn input needed to produce citric acid and determined that even if Petitioners' arguments

[122] See Yixing Union Verification Report at 31.
[123] See Yixing Union Verification Report at 30.
[124] See Yixing Union Verification Report at 34.
[125] See Yixing Union Verification Report at Exhibit 27.
[126] See Yixing Union Verification Report at 11-16.
[127] See Petitioners' Case Brief at Exhibit 3.
[128] See Yixing Union's April 6, 2011 Response at Exhibit 7; see also Petitioners' Case Brief at Exhibit 3.

concerning the starch content in the by-products were true, Yixing Union's reported corn input is sufficient to produce the citric acid it reported.[129]

We have determined that Yixing Union has provided accounting, inventory, and production records that all tie to its reported corn usage rate. Further, Yixing Union's production records are based on standard consumption rather than on the accounting and inventory records, and the production records support Yixing Union's reported corn usage rate. Further, these records fully and completely support Yixing Union's reported consumption rate. There is no other information that the Department examined at verification or other record evidence to call into question Yixing Union's reported corn usage rate. Therefore, lacking any such evidence, for the final results, we find no basis for not continuing to use Yixing Union's reported corn usage rate.

Comment 17: Whether the Department Should Deny Yixing Union's Claimed By-Product Offset for Mycelium or, At a Minimum, Reduce the Valuation of this Offset

- Petitioners argue that the Department should reject Yixing Union's claimed by-product offset for mycelium because: (A) it is much higher than that reported by RZBC, even after adjusting such a by-product offset for different moisture content levels; and (B) Yixing Union's reported corn usage rate is less than that reported for RZBC.

- Petitioners argue that if the Department decides to accept Yixing Union's reported by-product offset for mycelium, it should reduce the SV to be applied to this by-product offset to account for the low commercial value of Yixing Union's mycelium, which is sold in an extremely wet state.

- Petitioners explain that Yixing Union's high moisture mycelium bears little resemblance to the DDGS (i.e., mycelium with low moisture content) reflected in the SV of the Indonesian import statistics. Thus, it would be inappropriate to use, without any adjustment, the Indonesian import value for DDGS as the SV for Yixing Union's mycelium. Accordingly, Petitioners propose a formula to adjust the Indonesian SV for mycelium.

- Yixing Union argues that Petitioners' assertions regarding its mycelium are contrary to record evidence, and that the Department should continue to use the SV relied upon for the valuation of mycelium in the Preliminary Results and make no adjustments to the calculation of the by-product offset for mycelium.

- Yixing Union argues that the Department thoroughly verified its reported sales and production quantity of mycelium and found no discrepancies. It also maintains that the main reason for the increase of mycelium is that it made certain adjustments to the production process, including the adjustment of the moisture content of mycelium at a higher level during the POR, as compared to the POI, due to market requirements.

[129] See December 7, 2011 Memorandum to the File from Jeff Pedersen, regarding "Proprietary Information Relating to the Issues and Decision Memorandum" at Note 2.

Department's Position: While Petitioners note a difference between the values reported by each of the respondents for mycelium, at the verifications of both mandatory respondents, the Department examined the calculation of the by-product FOP for the reported CONNUMs. We examined certain documentation (e.g., monthly inspection sheets, by-product inventory sub-ledgers, inspection report, etc.) and traced the quantity of the mycelium to the respondents' accounting records. We found no discrepancies with either of the respondents' reporting methodologies for the mycelium by-product. In our examination, both respondents demonstrated their mycelium moisture content.[130] Thus, we have no basis in the record to reject Yixing Union's claimed mycelium by-product.

Additionally, in the Preliminary Results, the Department used Indonesian HTS category 2303300000, "Brewing or Distilling Dregs and Waste" to value the mycelium by-product.[131] Petitioners attempt to characterize Yixing Union's mycelium as being of low value because of its high moisture content in order to support their argument that the Indonesian HTS category represents mycelium with low moisture content, which is of a higher value than the mycelium of high moisture content. However, we agree with Yixing Union that there is no evidence on the record to suggest that the market value of mycelium rises or falls in direct relationship to the moisture content. Further, there is no evidence on the record that demonstrates any link between the above-referenced Indonesian HTS category and either high or low-moisture content of mycelium. Even if there is indication to suggest a link between the HTS category and either high or low-moisture content of mycelium, absent other more specific SVs for mycelium with high moisture content on the record, we would have concerns about inaccuracies resulting from adjusting the Indonesian SV for mycelium, as Petitioners proposed. In general, it is not the Department's practice to adjust SVs. In this case, no adjustment is warranted based on Petitioners' comments because there is no means by which the Department could measure the effect of the moisture content level on the value of mycelium. Accordingly, we find no merit in Petitioners' proposed method of adjusting the SV under HTS category 2303300000 to account for the moisture content of the mycelium sold by Yixing Union. Therefore, for the final results, the Department will continue using the "Brewing or Distilling Dregs and Waste" Indonesian HTS category 2303300000 to value the mycelium by-product because it is the best Indonesian HTS match to respondents' mycelium by-products.

Comment 18: Possible Unreported Inputs in the Chromatographic Process

- Petitioners submit that, pursuant to sections 776(a)(2)(A)-(D) and (b) of the Act, the Department should apply partial AFA with respect to Yixing Union's chromatographic extraction process because Yixing Union disclosed the use of additional materials (i.e., resins) for the first time during verification. Petitioners state that in response to the Department's request to identify the "types of chemicals or catalysts or new compounds utilized in Yixing Union's new chromatographic extraction method," Yixing Union simply stated that "there are no new chemicals or catalysts that are utilized." Petitioners

[130] See Yixing Union Verification Report; see also RZBC Verification Report.
[131] See Prelim SV Memo, at Attachment 1.

claim that this statement is false because at verification Yixing Union admitted that it used at least one additional input - resins that perform the chromatographic separations.

- Petitioners argue that by withholding information concerning resins, Yixing Union prevented the Department from determining whether the resins represented a significant input cost that should have been captured as a separate material input, or whether resins should be included in overhead in the financial statements of the surrogate producer. According to Petitioners, the Department has no reason to believe that the cost of resins is included in the overhead of the surrogate financial statements because there is no evidence that the Indonesian surrogate producer uses the chromatographic extraction process.

- Petitioners contend that Yixing Union has not provided the Department with any information about the chemicals used to clean resins, which are required if the resins have a life of over one year. However, according to Petitioners, the official record of this administrative review includes a statement from a production expert explaining that in addition to resins, the chromatographic extraction process also requires the use of chemicals to clean the resins.[132]

- Petitioners claim that because Yixing Union has impeded the Department's examination of Yixing Union's chromatographic extraction process at every turn, the Department should apply partial AFA with respect to the resins and chemicals used by Yixing Union in the chromatographic process. Petitioners further claim that since one-sixth of Yixing Union's production of citric acid uses the chromatographic process for extraction, the Department should add to its NV calculation an amount that represents one-sixth of the largest material input used by Yixing Union in its production process.

- Yixing Union claims that according to the Department's verification report, "{t}he resins have a useful life of more than one year and the cost of the resins are capitalized and amortized," and the Department noted no purchases of resins during the entire POR.[133] Contrary to Petitioners' assertion, Yixing Union states the resin is unquestionably related to the chromatography equipment and is amortized along with the entire chromatography equipment.

- Yixing Union also argues that the cost of the resins should not be treated as a direct material cost because the resins are not incorporated into the product.

- Yixing Union disagrees with Petitioners' claim that Yixing Union "has impeded the Department's examination of Yixing Union's chromatographic extraction process at every turn."[134] First, Yixing Union states that it identified the new production process in its initial Section D response. Second, Yixing Union claims that it accurately responded to the Department's supplemental question to identify "types of chemicals or catalysts or

[132] See Petitioners' April 18, 2011 Comments at Exhibit 4, 9-10.
[133] See Yixing Union Verification Report at 39.
[134] See Petitioners' Case Brief at 32.

new compounds" utilized in the new chromatographic extraction method by stating that there are "no new chemicals or catalysts that are utilized," since a resin is neither a chemical, a catalyst, nor a compound.[135] Therefore, Yixing Union claims, because it did not fail to respond to any of the Department's questions, an application of facts available is not warranted.

- Yixing Union contends that because an application of facts available is not warranted, the Department should disregard Petitioners' request to add to the NV calculation "an amount that represents one-sixth of the largest material input used by Yixing Union in its production process." Yixing Union argues that the resin is a part of the chromatography process and it is not a material input that can be equated to the usage of the largest material input used by Yixing Union in the production of citric acid. [136]

Department's Position: We disagree with Petitioners that the Department should apply partial AFA with respect to Yixing Union's chromatographic extraction process because it did not identify the use of the resin as an additional input in its response to the Department's supplemental questions. Moreover, we agree with Yixing Union that the company completely answered the Department's questions regarding additional usage of chemicals, catalysts, or compounds in the new chromatography process. In fact, at verification the Department confirmed Yixing Union's reported usage of all inputs without any discrepancy.[137] We also agree with Yixing Union that a resin is neither a chemical, a catalyst, nor a compound, but rather is a part of the equipment. Therefore, contrary to Petitioners' assertion, the Department finds that Yixing Union did not withhold information that has been requested and did not fail to provide such information by deadlines for submission of information or in the form and manner requested. Further, Yixing Union did not impede a proceeding and did not provide information that cannot be verified. Yixing Union did not fail to cooperate by not acting to the best of its ability to comply. For these reasons the use of AFA with respect to resins used by Yixing Union as part of its chromatography equipment is not warranted.

With respect to Petitioners' claim that Yixing Union did not report cleaning materials for maintaining the resin, the Department confirmed at verification that Yixing Union had accurately report all materials used in the chromatography process without any discrepancy. Specifically, the Department obtained a complete listing of all materials used in this process during the POR from Yixing Union's production reports and traced them to the reported inputs without any exception.[138] Thus, the Department finds that Yixing Union accurately reported its cleaning materials.

Additionally, we disagree with Petitioners that the Department should consider the resins used by Yixing Union as part of its chromatography equipment to be a direct material input. In determining whether an item is a part of overhead or is a raw material FOP, the Department normally takes into consideration: (1) whether the material is physically incorporated into the

[135] See Yixing Union's January 31, 2011 Supplemental Section D Questionnaire Response at Question 1.
[136] See Yixing Union's Rebuttal Brief at 11-13.
[137] See Yixing Union Verification Report at 34 and Exhibit 11.
[138] See Yixing Union's Verification Report at 34 and Exhibit 11.

final product; (2) the material's contribution to the production process and finished product; (3) the relative cost of the input, and; (4) the way the cost of the input is typically treated in the industry.[139]

At verification, the Department confirmed that the resin: (1) is not incorporated into the final product; (2) is a part of equipment, (3) has a useful life of more than one year; and (4) is typically treated by the industry in the PRC as part of factory overhead. In Yixing Union's Verification Report the Department states: "However, the resin is not a material input that is entered into the production process as a raw material input on a daily or regular basis. The resins have a useful life of more than one year and the cost of the resins are capitalized and amortized. Through our detailed review of the production records, see step XII.D above, the inventory and other accounting records, and our tour of the production process we noted no discrepancies in the company official's statements."[140] As the Department stated in Diamond Sawblades Prelim, "we have valued all materials that are required for a particular segment of the production process as factors except where the record indicates that the input is not replaced so regularly as to represent a direct factor rather than overhead."[141] Considering the above facts, and because the resin is not replaced on a regular basis, the Department finds that the resin used by Yixing Union is not a direct material input but rather is an overhead item.

We agree with Petitioners that in order to determine the proper treatment of the resins, the Department needs to analyze the nature of the resins and their usage rates and whether they would be included in overhead in the financial statements of the surrogate producer. With respect to the first factor, at verification the Department analyzed and confirmed the nature and the usage rate of the resins as being consistent with an overhead item.[142] Regarding the second factor, we note that there is no evidence on the record that the Indonesian surrogate producer of various types of chemicals, including citric acid, is not using the chromatographic extraction process. In fact, the Indonesian financial statements do not contain any description of equipment or processes used during the production of chemicals. Therefore, the Department does not have a reason to believe that the cost of the resins used in the chromatography equipment is not included in the surrogate producer's overhead expenses. Accordingly, for these reasons, for the final results, the Department will continue to treat the resins as part of overhead expenses.

[139] See Tires/PRC (July 15, 2008) and accompanying IDM at Comment 27.
[140] See Yixing Union Verification Report at 39.
[141] See Diamond Sawblades Prelim, unchanged in Diamond Sawblades Final and accompanying IDM at Comment 2.
[142] See Yixing Union Verification Report at 39.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____
Paul Piquado
Assistant Secretary
for Import Administration

_____
Date

List of Abbreviations

Act or Statute	Tariff Act of 1930, as amended
AD	Antidumping
AFA	Facts Available with Adverse inference, or Adverse Facts Available
AR	Administrative Review
AUV	Average Unit Value
BPI	Business Proprietary Information
CAFC	U.S. Court of Appeals for the Federal Circuit
CEP	Constructed Export Price
CFR	Code of Federal Regulations
CIT	Court of International Trade
COGS	Cost of Goods Sold
COM	Cost of Goods Manufactured
CRU	Central Records Unit
CVD	Countervailing Duty
Department	Department of Commerce
DDGS	Dried Distillers Grains with Solubles
EP	Export Price
FOP(s)	Factor (s) of Production
FR	Federal Register
G&A	General and Administrative Expenses
GAO	United States General Accounting Office
GATT	General Agreement on Tariffs and Trade
GOC	The Government of the People's Republic of China
GTA	Global Trade Atlas® Online
HTS	Harmonized Tariff Schedule
HTSUS	Harmonized Tariff Schedule of the United States
IDM	Issues and Decision Memorandum
ILO	International Labor Organization
ISIC	International Standard Industrial Classification of All Economic Activities
ITC	United States International Trade Commission
kg	kilogram
ME	Market Economy
MLE	Materials, Labor and Energy
NME	Non-Market Economy
NV	Normal Value
Petitioners	Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Americas LLC
POI	Period of Investigation
POR	Period of Review
PRC	People's Republic of China
PT Budi	PT Budi Acid Jaya Tbk and Subsidiaries
RZBC	RZBC Co., Ltd., RZCB Imp. & Exp. Co., Ltd., and

	RZBC (Juxian) Co., Ltd.
RZBC Co.	RZBC Co., Ltd.
RZBC Group	RZBC Co., Ltd., RZCB Imp. & Exp. Co., Ltd., and RZBC (Juxian) Co., Ltd.
RZBC I&E	RZBC Import and Export Co., Ltd.
RZBC Juxian	RZBC (Juxian) Co., Ltd.
SAS	Statistical Analysis System
SG&A	Selling, General, and Administrative Expenses
SV(s)	Surrogate Value(s)
TOTCOM	Total Cost of Manufacturing
URAA	Uruguay Round Agreements Act
WTO	World Trade Organization
Yearbook	Yearbook of Labor Statistics
Yixing Union	Yixing Union Biochemical Co., Ltd.

Table of Shortened Citations

Short Citation	Full Citation
Appellate Body Report (WTO 2011)	WTO Appellate Body (United States-Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, AB-2010-3 (March 11, 2011))
Aspirin	Final Determination in the Antidumping Duty Investigation of Bulk Aspirin from the People's Republic of China, 63 FR 33805 (May 25, 2000)
Blue Chip Stamps	Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975)
Cased Pencils	Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 38980 (July 7, 2010)
Central Bank of Denver	Central Bank of Denver v. First Interstate Bank, 511 U.S. 164 (1994)
Certain Activated Carbon	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)
Chlorinated Isocyanurates	Chlorinated Isocyanurates From the People's Republic of China: Final Results of 2008-2009 Antidumping Duty Administrative Review, 75 FR 70212 (November 17, 2010)
Circular Welded Carbon-Quality Steel Pipes/PRC ITC Preliminary Report (07/2007)	Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, ITC Preliminary Report, (Publ. 3938 July 2007)
Copper Pipe and Tube	Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 60725 (October 1, 2010)
Corus I	Corus Staal BV v. Department of Commerce, 395 F.3d 1343 (Fed. Cir. 2005)
Diamond Sawblades Final	Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006)
Diamond Sawblades Prelim	Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 70 FR 77121

	(December 29, 2005)
Dole Food	Dole Food Co. v. Patrickson, 538 U.S. 468 (2003)
Dongbu	Dongbu Steel Co., Ltd. v. United States, 635 F.3d 1363 (Fed. Cir. 2011)
FCC	FCC v. NextWave Personal Communications, Inc., 537 U.S. 293 (2003)
Final Modification for Antidumping Investigations	Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation, 71 FR 77722 (December 27, 2006)
Final SV Memo	Memorandum to the File regarding, "Final Results of the Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Memorandum," dated December 7, 2011
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GPX II	See GPX Int'l Tire Corp. v. United States, 715 F. Supp. 2d 1337 (CIT 2010)
Guangdong Chem.	Guangdong Chemicals Import & Export v. U.S., 30 C.I.T. 1412, 460 F. Supp. 2d 1365, 1373, September 18, 2006, SLIP OP. 06-142, 05-00023
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RZBC Final Analysis Memo	Memorandum to the File regarding, "Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Final Results Margin Calculation for RZBC Co., Ltd., RZBC Import & Export Co., Ltd., and RZBC (Juxian) Co., Ltd.," dated December 7, 2011
RZBC Prelim Analysis Memo	Memorandum to the File regarding, "Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Prelim Results Margin Calculation for RZBC Co., Ltd., RZBC Import & Export Co., Ltd., and RZBC (Juxian) Co., Ltd.," dated May 31, 2011
RZBC Verification Report	Memorandum to the File from Taija Slaughter and Jeff Pedersen, regarding, "Verification Report of the Sales and Factors Response of RZBC Co., Ltd., RZBC Import & Export Co., Ltd., & RZBC (Juxian) Co., Ltd. in the Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China," dated September 29, 2011
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Shrimp from Vietnam	Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 52273 (September 9, 2008)
Shrimp from Vietnam II	Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010)

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SV Data	Memorandum to the File regarding, "Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Data," dated June 9, 2011
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WTO Subsidies Agreements	Agreement on Subsidies and Countervailing Measures, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994)
Yixing Union Final Analysis Memo	Memorandum to the File regarding, "Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Final Margin Calculation for Yixing Union Biochemical Co., Ltd.," dated December 7, 2011
Yixing Union Verification Report	Memorandum to the File from Taija Slaughter and Jeff Pedersen, regarding, "Verification Report of the Sales and Factors Response of Yixing Union Biochemical Co., Ltd. in the Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China," dated September 30, 2011