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January 21, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Chlorinated Isocyanurates from the People's Republic of China; 2012-2013

SUMMARY

We analyzed the comments from interested parties in the 2012-2013 administrative review of the antidumping duty order on chlorinated isocyanurates ("chloro isos") from the People's Republic of China ("PRC"). As a result of our analysis of these comments, we made changes to our margin calculations for Hebei Jiheng Chemical Co., Ltd. and Hebei Jiheng Baikang Chemical Industry Co., Ltd. (collectively, "Jiheng") and Juancheng Kangtai Chemical Co., Ltd. ("Kangtai") in these final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Background

On July 25, 2014, the Department published its *Preliminary Results* of the antidumping duty administrative review of chloro isos from the PRC for the period of review ("POR") of June 1, 2013, through May 31, 2013.[1] The Department extended the deadline for the filing of case and rebuttal briefs on July 30, 2014.[2]

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[1] *See Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 43391 (July 25, 2014) ("*Preliminary Results*").
[2] *See* Memorandum to the File, "2012-2013 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Phone Call with Counsel for Kangtai," (July 30, 2014), denying Kangtai's request for an additional questionnaire and directing interested parties to address this issue in their briefs.

On September 8 and 9, 2014, Petitioners, Jiheng, and Kangtai each submitted a case brief.[3] On September 18 and 19, 2014, Petitioners, Jiheng, and Kangtai each submitted a rebuttal brief.[4]

On August 25, 2014, Kangtai submitted a hearing request to address issues raised in their case and rebuttal briefs. On October 16, 2014, the Department extended the deadline for the final results in this administrative review until December 22, 2014.[5] On December 8, 2014, we fully extended the deadline for the final results until January 21, 2015.[6] We held a public hearing on December 4, 2014, to address issues raised in the case and rebuttal briefs.[7]

Scope of the Order

The products covered by the order are chloro isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3(2H_2O)$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chloro isos are available in powder, granular, and tableted forms. The order covers all chloro isos. Chloro isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.50.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chloro isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

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[3] *See* "Eighth Administrative Review of the Antidumping Order on Chlorinated Isocyanurates from the People's Republic of China: Case Brief of Clearon Corp. and Occidental Chemical Corporation," (September 8, 2014) ("Petitioners' Case Brief"); "Chlorinated Isocyanurates from the People's Republic of China (8th Administrative Review): Case Brief," (September 8, 2014) ("Jiheng's Case Brief"); and, "Certain Chlorinated Isocyanurates from the People's Republic of China Case Brief," (September 9, 2014) ("Kangtai's Case Brief").

[4] *See* "Rebuttal Brief in the Administrative Review on Chlorinated Isocyanurates from the People's Republic of China," (September 18, 2014) ("Petitioners' Rebuttal Brief"); "Chlorinated Isocyanurates from the People's Republic of China (8th Administrative Review): Rebuttal Brief," (September 17, 2014) ("Jiheng's Rebuttal Brief"); and, "Chlorinated Isocyanurates from the People's Republic of China Rebuttal Brief," (September 17, 2014) ("Kangtai's Rebuttal Brief").

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Chlorinated Isocyanurates from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," (October 16, 2014).

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Chlorinated Isocyanurates from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," (December 8, 2014).

[7] *See* Hearing Transcript, "Public Hearing in the Matter of: Administrative Review under the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China," (December 15, 2014).

Separate Rate

The Department applied the separate rate assigned in the *Seventh Review* of this proceeding as the separate rate in these final results to non-examined companies.[8] The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs the Department to avoid calculating an all-others rate using calculated rates that are zero, *de minimis*, or based entirely on facts available in investigations. Section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or based entirely on facts available, the Department may use "any reasonable method" for assigning a rate to the all-others companies. One such reasonable method would be to assign the non-examined companies the average of the rates calculated in the most recently completed segment of the proceeding. However, if any of non-selected companies had its own calculated rate that is contemporaneous or more recent than the average rate from the prior segment, it may also be reasonable to assign this company that prior rate.

In a recent *China Staple Fiber* administrative review, the two selected mandatory respondents received *de minimis* margins and, as a result, the Department articulated a standard to apply the most recently calculated rate from a completed prior segment for each current, non-examined, separate rate respondents.[9] Thus, we find the methodology used in *China Staple Fiber* to be instructive, based on the similar fact pattern.

For these final results, both mandatory respondents received zero margins. Also, none of the non-examined separate rate respondents has its own calculated rate from the segment immediately prior to the instant segment. As such, we determine that the application of the separate rate from the *Seventh Review* to all the non-examined separate rate respondents is consistent with our past practice and a reasonable method to determine the separate rate in the instant review. Pursuant to this method, we are assigning the rate of 53.15 percent to the non-examined separate rate respondents in the instant review.[10]

Discussion of the Issues

Comment 1: Selection of Surrogate Country

Kangtai's Argument

- The Department failed to weigh the relative strength of all three criteria: economic comparability, significant production of comparable merchandise, and data quality.

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[8] *See Chlorinated Isocyanurates from the People's Republic of China; 2011-2012; Final Results of Antidumping Duty Administrative Review*, 79 FR 4875, 4876 (January 30, 2014) ("*Seventh Review*"), and accompanying Issues and Decision Memorandum.
[9] *See Certain Polyester Staple Fiber From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, and Intent To Revoke Order in Part*, 76 FR 40329, 40332 (July 8, 2011), unchanged in *Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part*, 76 FR 69702 (November 9, 2011) ("*China Staple Fiber*").
[10] *See Seventh Review*, 79 FR at 4876.

- The Department did not equally weigh all criteria as set forth in *Ad Hoc Shrimp*[11] and *Amanda Foods*[12] by narrowly defining one (economic comparability) and broadly defining the other two criteria in the instant review.
- The Department engaged in no discussion or analysis of India as a potential surrogate country. Even though India may be less economically comparable based on *per capita* gross national income ("GNI"), it is still comparable and should have been analyzed alongside Thailand.
- The Department recently selected India as the primary surrogate country in *Hydroxyethylidene Diphosphonic*[13] even though the Department found it to be less economically comparable to the PRC because India was a significant producer and had superior data. Similarly, the Department relied on Indonesia in *Fish Fillets*[14] even though it was excluded from the surrogate country list because it provided the best data that was more broadly based and size-specific for the most significant material input.
- In the instant review, India is the most significant producer of comparable merchandise and has the highest quality of data including a domestic source for chlorine, even though it is less economically comparable.

Petitioners' Rebuttal

- The Department's surrogate country selection process is consistent with the law, with the Court of International Trade ("CIT") recently upholding the Department's reliance on GNI as the starting threshold for its surrogate country analysis.[15]
- The Department was not required to consider India as a primary surrogate country because it was not included on the list of potential surrogate countries and no party proposed it use as a surrogate country.
- The only reason the Department considered India as the primary surrogate country in *Hydroxyethylidene Diphosphonic*[16] was because no country on the list of potential surrogate countries was a significant producer of comparable merchandise.
- The only reason the Department selected Indonesia as the primary surrogate country in *Fish Fillets* was because of significant data concerns with a unique input.[17]

<u>Department's Position</u>: The Department determines that Thailand is the appropriate primary surrogate country after considering the facts and arguments on the record of this review. Based upon our examination, Kangtai has not demonstrated that the selection of Thailand is inappropriate, or that India represents a more suitable alternative primary surrogate. In the

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[11] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 882 F. Supp. 2d 1366, 1374 (CIT 2012)(*Ad Hoc Shrimp*).
[12] *See Amanda Foods (Vietnam) Ltd. v. United States*, 33 C.I.T. 1407 (CIT 2009)(*Amanda Foods*).
[13] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Preliminary Result of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 16280 (March 25, 2014) (*Hydroxyethylidene Diphosphonic Acid*), and accompanying Decision Memorandum at 6-7.
[14] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 (April 7, 2014)(*Fish Fillets*), and accompanying Issues and Decision Memorandum at Comment 1.
[15] *See Clearon Corp. v. United States*, Slip Op. 2014-88 (CIT 2014), July 24, 2014, at 37-46.
[16] *See Hydroxyethylidene Diphosphonic Acid*, and accompanying Decision Memorandum at "Economic Comparability" section.
[17] *See Fish Fillets*, and accompanying Issues and Decision Memorandum at Comment I.A.

Preliminary Results, the Department found that Thailand is the appropriate surrogate country based on the fact that: (1) Thailand is at a level of economic development comparable to that of the PRC; (2) Thailand is a significant producer of comparable merchandise; and, (3) Thailand has publicly available and reliable data for all but two inputs, chlorine and wooden rods.[18] The record continues to support the use of Thailand as the primary surrogate country.

In the *Preliminary Results*, the Department considered Colombia, Ecuador, Indonesia, South Africa, and Thailand to satisfy the economically comparable and significant-producer criteria for surrogate country selection purposes. As discussed below in Comment 2, the Department now determines for the final results that Bulgaria also meets these criteria. Policy Bulletin 04.1 states that, if more than one country satisfies these criteria for surrogate country selection purposes, "then the country with the best factors data is selected as the primary surrogate country." Importantly, Policy Bulletin 04.1 explains further that "data quality is a critical consideration affecting surrogate country selection" and that "a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable."[19]

Section 773(c)(l) of the Act instructs the Department to value the factors of production ("FOPs") based upon the best available information from an appropriate market-economy ("ME") country or a country that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the surrogate value ("SV") is: publicly available; contemporaneous with the POR; representative of a broad-market average; from an approved surrogate country; tax- and duty-exclusive; and specific to the input.[20] The Department's preference is to satisfy the breadth of the aforementioned selection criteria.[21]

Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.[22] As there is no hierarchy for applying the above-mentioned principles, the Department must weigh

[18] *See Preliminary Results*, and accompanying Preliminary Decision Memorandum at 9; *see also* Memorandum to the File, through Edward Yang, Senior Director, Office VII, Enforcement & Compliance, from Sean Carey, Senior International Trade Analyst, Office VII, Enforcement & Compliance, entitled "Preliminary Results Surrogate Value Memorandum," ("Preliminary SV Memorandum") dated July 17, 2014, at 2.

[19] *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1).

[20] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006) *("Lined Paper from the PRC")* and accompanying Issues and Decision Memorandum at Comment 3.

[21] *See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011) and accompanying Issues and Decision Memorandum at Comment 2.

[22] *See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1*("Mushrooms from the PRC"); see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[23]

The Department finds Kangtai's argument for selecting India as the primary surrogate country belated and disingenuous in light of its earlier comments placed on the record regarding surrogate country selection. The record evidence shows that Kangtai initially argued for the use of the Philippines as the primary surrogate country or alternatively, Thailand, not India.[24] Other than its comments that it was providing additional Indian data as "alternative sources" if some of the primary surrogate country's SVs were not usable, Kangtai did not make any arguments concerning the use of India as the primary surrogate country until its case brief.[25] Kangtai's failure to provide any arguments about the relative merits of India as a surrogate country before the issuance of the *Preliminary Results* and delay in making these concerns until the administrative briefing stage is exactly the type of scenario that the Department has previously found to create undue administrative difficulties and be potentially unfair to the parties.[26]

Notwithstanding, the Department has properly analyzed and weighed together all three criteria (economic comparability, significant production of comparable merchandise, and data quality) in selecting Thailand as the primary surrogate country, consistent with the findings made in *Ad Hoc Shrimp* and *Amanda Foods*. First, Kangtai itself concedes that India is less economically comparable to the PRC than Thailand.[27] Second, all parties recognize and do not dispute the fact that India and Thailand are both significant producers of comparable merchandise. For the third factor, data quality, we continue to find the Thai SV information to be superior to the Indian one because the Indian data only has 11 contemporaneous SVs for the 29 FOPs reported by Kangtai.[28] The remaining 18 Indian SVs rely on historical data that goes back at least two administrative review periods from 2009 through 2010, including some data before 2008. Although the Thai data does not include two SVs, all the remaining SVs with the exception of one (marine insurance) are contemporaneous with the POR. Therefore, we find the Thai data to be not only reliable and usable, but superior to the Indian SV information.

The circumstances noted by Kangtai in *Hydroxyethylidene Diphosphonic Acid* and *Fish Fillets* justifying the Department's departure from the surrogate country list, are not present in this case. In *Hydroxyethylidene Diphosphonic*, the Department did not find any of the countries on the list

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[23] *See Mushrooms from the PRC* and accompanying Issues and Decision Memorandum at Comment 1.
[24] *See* Letter from Kangtai, "Certain Chlorinated Isocyanurates from the People's Republic of China Surrogate Value Submission and Comments," June 17, 2014, at *See* Letter from Kangtai, "Certain Chlorinated Isocyanurates from the People's Republic of China Comments on Surrogate Country Selection, April 18, 2014, at 3.
[25] *See* Letter from Kangtai, "Certain Chlorinated Isocyanurates from the People's Republic of China Surrogate Value Submission and Comments," June 17, 2014 ("Kangtai's SV Comments"), at 9-10; Letter from Kangtai, "Certain Chlorinated Isocyanurates from the People's Republic of China Surrogate Value Rebuttal Comments," June 27, 2014 ("Kangtai's SV Rebuttal"), at 7-8 and Exhibit 2.
[26] *See Fresh Garlic from the People's Republic of China: Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012) and accompanying Issues and Decision Memorandum at Comment 1.
[27] *See* Kangtai's SV Comments, at 17, footnote 40, stating "{a}lthough Kangtai has submitted factor value data for India, India is not 'economically comparable' within the meaning of the statute."
[28] *See* Kangtai's SV Rebuttal, at Exhibit 2.

of potential surrogate countries to be a significant producer of comparable merchandise.[29] In *Fish Fillets*, the Department selected Indonesia as the primary surrogate country because of unique data concerns related to the primary input, *i.e.*, whole, live fish input.[30] In the instant case, none of these circumstances apply because Thailand is listed as one of the potential primary surrogate countries, is a significant producer of comparable merchandise, and the record contains contemporaneous Thai SV data for all but two inputs. Specifically, *Jiaxing Brother Fastener* upheld the Department's decision not to select India as the primary surrogate country because it was not economically comparable to the PRC and because there were available SV data from economically comparable countries.[31]

Finally, we find that chlorine, one of two SVs used in the *Preliminary Results* that did not rely on Thai data, is not such a significant input that it should be considered a determinative factor for purposes of selecting the primary surrogate country. Of Kangtai's 13 listed material inputs, we find two other inputs that account for over half of all of Kangtai's raw material costs.[32] Therefore, it would be unreasonable to single out the chlorine FOP when the record evidence demonstrates that two other key inputs represent the majority of the raw material costs of producing subject merchandise.

Comment 2: Surrogate Value Selection

A. Chlorine

Kangtai's Argument

- The export information relied upon in the *Preliminary Results* to determine significant producers of comparable merchandise is unreliable.
- Based on the Department's selection criteria, the SV for chlorine should be based on Bulgarian imports and not Indonesian imports since Bulgaria is the largest importer of chlorine among producers of comparable merchandise.
- Alternatively, the Department can obtain a more representative SV for chlorine by considering the imports from all significant producers of comparable merchandise from the listed economically comparable countries, with the exception of the aberrant imports values for South Africa and Thailand.
- Ultimately, the best source to value chlorine is the Indian domestic price and not an import price.

Petitioners' Rebuttal:

- The Department should continue to value chlorine based upon Indonesian GTA data because Indonesia is a significant producer of comparable merchandise that imports chlorine from a larger market; provides a value from a country that is most similar to the

[29] *See Hydroxyethylidene Diphosphonic Acid*, and accompanying Decision Memorandum at "Economic Comparability" section.
[30] *See Fish Fillets*, and accompanying Issues and Decision Memorandum at Comment I.A.
[31] *See Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323 (CIT 2014)("*Jiaxing Brother Fastener*").
[32] *See* Letter from Kangtai, "Certain Chlorinated Isocyanurates from the People's Republic of China Case Brief," September 9, 2014, at Exhibit 2.

primary surrogate country; and, is a better surrogate than Bulgaria, which only imported from its closest neighboring countries.

- The Department should not average the surrogate chlorine values from several countries because its practice is to either value FOPs in a single primary surrogate country, or if necessary, a secondary country.[33]
- There is no reason to use Indian chlorine values because there is usable data from Indonesia, a country on the list of potential primary surrogate countries, and the Department has previously found in several proceedings that chlorine is traded internationally.[34]

Department's Position: In the *Preliminary Results*, the Department relied on Petitioners' proposed surrogate export data only for calcium hypochlorite, a product that we have found to be comparable merchandise in prior segments of this proceeding, to identify five significant producers of comparable merchandise; Colombia, Ecuador, Indonesia, South Africa, and Thailand.[35] However, we inadvertently did not analyze other information on the record submitted by Petitioners for sodium hypochlorite, another product we have found comparable to subject merchandise in the prior two administrative reviews, and by Kangtai for both calcium and sodium hypochlorites.[36]

Although Kangtai has noted correctly that Petitioners' data shows some discrepancy when compared to Kangtai's data, both Kangtai's and Petitioners' data support adding Bulgaria among the list of significant producers of comparable merchandise that are at a comparable level of economic development. Specifically, both Kangtai and Petitioners have similar data from two different sources, UN Comtrade and GTA, showing that Bulgaria had significant exports of sodium hypochlorite in 2012.[37] Moreover, Petitioners GTA data also shows that Bulgaria made additional exports of sodium hypochlorite in 2013.[38] Based upon our review of this information, we now find Bulgaria, Colombia, Ecuador, and Indonesia to have reliable import data for chlorine during the POR, from the list of potential primary surrogate countries that are at the same level of economic development as the PRC and are significant producers of comparable merchandise. We continue to find imports of chlorine into South Africa and Thailand to be aberrational based on extreme quantity and average unit values ("AUV").

Pursuant to section 773(c)(1) of the Act, we continue to find that the value derived from the GTA import data represents the best information available for valuing liquid chlorine. These data represent information that is product-specific, is representative of a broad-market average, is

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[33] *See Pure Magnesium from the People's Republic of China*, 79 FR 94 (January 2, 2014), and accompanying Issues and Decision Memorandum at Comment 2.
[34] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 641000 (October 18, 2012) ("*Glycine*"), and accompanying Issues and Decision Memorandum at Comment 1.
[35] *See Preliminary Results*, and accompanying Decision Memorandum at 8-9.
[36] *See* Letter from Petitioners, "Chlorinated Isocyanurates from the People's Republic of China (2012-2013 Review): Petitioners' Comments on Primary Surrogate Country Selection," April 18, 2014 ("Petitioners' Surrogate Country Comments"), at Exhibit 2; *see also* Letter from Kangtai, ""Certain Chlorinated Isocyanurates from the People's Republic of China Comments on Surrogate Country Selection," April 18, 2014 ("Kangtai's Surrogate Country Comments"), at Exhibit 1.
[37] *Id.*, Petitioners' Surrogate Country Comments, at Exhibit 2 and Kangtai's Surrogate Country Comments, at Exhibit 1, showing 18,000 kg and 23,400 kg, respectively, of sodium hypochlorite exported from Bulgaria.
[38] *Id.*, Petitioners' Surrogate Country Comments, at Exhibit 2.

publicly available, is contemporaneous with the POR, and is free of taxes and duties. Furthermore, the GTA data for chlorine imports demonstrates that it is being traded in significant quantities. With respect to specificity, the Department continues to view imports of "Chlorine," under the HTS subheading 280110, as the most specific available data for this raw-material input. This is consistent with the findings in the previous two administrative review periods that also found chlorine to be traded internationally.[39]

The record evidence in the instant review includes contemporaneous GTA and UN Comtrade import data for liquid chlorine for the four remaining countries (Bulgaria, Colombia, Ecuador, and Indonesia) that do not have aberrational values; are at the same level of economic development as the PRC; and, are significant producers of comparable merchandise.[40] Therefore, we have given all four countries equal weight with respect to data quality since they originate from the same source and meet the same standards noted, above. In selecting the country to value the SV for chlorine, we relied on these data to identify which of these four countries had the largest imports of chlorine during the POR, following the same methodology we used in the *Preliminary Results*.[41] This is consistent with our practice of determining whether an SV is aberrational, and comparing the data for the input at issue with the other countries found by the Department to be economically comparable to the PRC.[42] In *Glycine,* the Department selected the Indonesian SV for chlorine because it had the highest import volume for the input during the POR that was not aberrational in comparison to the other economically-comparable countries.[43] In the instant case, Bulgaria satisfies this requirement as the largest importer of chlorine during the POR.[44] Moreover, like *Glycine*, we find that the record evidence does not support a finding that the AUV of any of the other remaining countries, when compared with that of Bulgaria, either is more specific to the input or a more reasonable value.[45] Therefore, consistent with our practice, we find the Bulgarian GTA value to be the best information available to value chlorine.

Finally, the Department does not find the Indian domestic price to be the best available information to value the chlorine input as suggested by Kangtai. As previously noted above, the Department has been upheld in not selecting India as the primary surrogate country when it was found to be less economically comparable to the PRC and in instances where there SV data were available from economically comparable countries.[46]

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[39] *See Seventh Review,* and accompanying Issues and Decision Memorandum at 21, *citing Glycine,* and accompanying Issues and Decision Memorandum at Comment 1.
[40] *See* Letter from Kangtai, "Certain Chlorinated Isocyanurates from the People's Republic of China Surrogate Value Submission and Comments," June 17, 2014 ("Kangtai's SV Comments"), at Exhibit 3, which also corroborates the GTA Bulgarian chlorine import values with UN Comtrade data.
[41] *See* Memorandum to the File, "2012-2013 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results Surrogate Value Memorandum," July 17, 2014, at 2, footnote 3.
[42] *See Trust Chem*, 791 F. Supp. 2d at 1264-65.
[43] *See Glycine*, and accompanying Issues and Decision Memorandum at Comment 1.
44 *See* Kangtai's SV Comments, at Exhibit 3; *see also* Memorandum to the File, "Analysis for the Final Results of the 2012-2013 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Juancheng Kangtai Chemical Co., Ltd.," January 21, 2015 (Kangtai Analysis Memo), and attached "Final Surrogate Value 12-13" excel spreadsheet at "Chlorine" tab.
[45] *Id.*
[46] *See Jiaxing Brother Fastener*.

B. Hydrogen

Petitioners' Argument

- Hydrogen should be valued using import data from Indonesia because it is the only country with imports of hydrogen in commercial quantities (over 1,000 metric tons)
- Imports of hydrogen into Thailand, which were selected as the SV in the *Preliminary Results*, amounted to only 1,341 kilograms ("kg.") and were below the quantities the Department found to be aberrational for chlorine imports from South Africa (1,530 kg.) and Thailand (1,810 kg.).
- Record evidence indicates that Thai import data for hydrogen is aberrational when compared to the amount of hydrogen produced and sold by Jiheng.

Jiheng's Rebuttal

- The Department used the correct SV for hydrogen because the Department has never established a bright-line test for whether or not shipments are at commercial quantities.
- The Department noted in the *Sixth Review* that the CIT has stated that even if import volumes are small, parties must submit information illustrating that the data are aberrational, such as import values from other economically comparable countries.[47]
- Thailand's AUV for hydrogen imports is the median value, and in terms of volume, within the range of two other countries.
- The information on the record that is used to compare hydrogen and chlorine import data from the GTA is different. Four of the six countries had similar and significantly more imports of chlorine than South Africa and Thailand, which we found aberrational. In contrast, three of the five countries on the Surrogate Country List with imports of hydrogen have tonnage imports in the single digits. The remaining two countries imported either well less than a metric ton (117 kg. for South Africa) or over a thousand metric tons (1,615 metric tons for Indonesia).

Department's Position: The Thai import data for hydrogen are not aberrational based on quantity and per-unit value when compared to the other countries found by the Department to be equally economically comparable to the PRC. The record evidence shows that there are five countries with imports of hydrogen that are equally economically comparable to the PRC. Of these five, three countries including Thailand have similar import volumes in the range of 1.34 metric tons to 3.37 metric tons, and AUVs ranging from $7.91 per kg. to $13.12 per kg., with Thailand's AUV representing the median value from all five countries. The remaining two countries either had an extremely low import volume and high AUV (South Africa's imports of 117 kg. at $208.30 per kg.), or an extremely high import volume and low AUV (Indonesia's imports of 1,615 metric tons at $0.44 per kg.).[48] Based on this comparison, the Thai import data are not

[47] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 4386 (January 22, 2013) (*Sixth Review*), and accompanying Issues and Decision Memorandum at Comment 8.

[48] *See* Petitioners' Case Brief, dated September 8, 2014, at 5, citing to Letter from Petitioners, "Chlorinated Isocyanurates from the People's Republic of China (2012-2013 Review): Petitioners' Prelim Comments," June 16, 2014 (Petitioners' Surrogate Country Comments), at Exhibit 6.

aberrational based on the quantity and the per-unit value when compared to the other countries found by the Department to be equally economically comparable to the PRC.
Moreover, as noted in the last two administrative reviews, the Department's policy is to not compare import volume to the purchases of respondent companies, but to compare the total import volumes of potential surrogate countries to one another.[49] Because the import volume for Thailand was not the lowest and was similar to two other countries that are among the other equally economically comparable countries' imports on the record of this review, we are satisfied that this volume represents significant commercial quantities during the POR.

C. Financial Ratios

Petitioners' Argument

- The Department should rely on both sets of Thai financial statements on the record because it has a preference for relying on multiple statements when available.
- The Department's reason for rejecting the Siam PVS Chemical Co., Ltd. (Siam PVS) financial statement is incorrect because this statement includes all the relevant line items needed for calculating the financial ratios, and have virtually the same information as the other Thai financial statements that the Department relied on in its preliminary results.

Jiheng's Rebuttal

- The Department correctly determined that Siam PVS statements lack sufficient detail.
- The Siam PVS statements provide little information on labor other than employee benefit expenses, whereas the Aditya Birla Chemicals (Thailand) Co., Ltd.'s (Aditya) statement provides information on "wages, salaries, and other employee benefits." These expenses account for 5.72 percent of Aditya's cost of sales, whereas the limited information available in Siam PVS statements result in unlikely direct labor costs that account for only 0.25 percent of its total cost of sales.
- The Siam PVS statements are missing key raw material costs related to information on work-in-progress or goods in transit to account for changes in inventories.

Kangtai's Rebuttal

- The Siam PVS statements are not detailed enough to reliably calculate financial ratios because raw material and energy costs have not been properly categorized, and by using these statements, the Department would its use overstate one of these line items.
- The Aditya statements are detailed enough to allocate expenditures to labor and energy because they include line items for "materials" and "works in progress," whereas Siam PVS' statements only includes one broad category for "parts and supplies."
- The Siam PVS statements only include a line item for "employee benefit expenses" which implies that they only include labor benefits and not all aspects of labor costs. Using this amount would results in an unrealistically small percentage to represent employee salaries and wages.
- It is unclear whether Siam PVS produces a comparable product since its stated primary business is manufacturing chlorine and caustic soda.

[49] *See 2011-2012 Final Results* at 21, *citing Glycine*, and accompanying Issues and Decision Memorandum at Comment 1.

- The Department's stated preference to use multiple financial statements presupposes that the statements are usable and of equal quality, which is not the case since the Aditya statements represent the best available information to value the financial ratios.
- The CIT clarified that the statutory standard is not whether surrogate data is merely usable, but whether it is the best available information.[50]

Department's Position: The Department continues to find Siam PVS' financial statements lack the necessary information to allow for an accurate calculation of financial ratios. We need to identify specific line items that contain costs for raw materials, packaging, direct labor, and energy. Contrary to Petitioners claim, Siam PVS' statements do not provide the same level of detail as the Aditya statements which include a specific line item for "Raw Materials and Consumables."[51] Rather, Siam PVS' statements include a general line item for "Cost of goods sold, net of the items below," without any specific detail needed to ensure that raw material and energy costs have been captured for purposes of calculating the financial ratios. In addition, the only labor cost noted in Siam PVS' statements is identified as "Employee benefit expenses," and there are no additional line items for other labor costs such as wages and salaries.[52] As a result, the Department cannot rely on Siam PVS' statements given these uncertainties and the potential for understating the denominator used in the calculation of the financial ratios due to the inaccurate identification of specific raw material, labor, and energy costs.

Comment 3: Whether the Department is Authorized by Law to Apply the Alternative Methodology under Section 777A(d)(1)(B) of the Act to Annual Reviews

Kangtai's Argument

- Kangtai submitted several comments regarding the inappropriateness of the Department's alternative comparison method in general and its application in this case.
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Petitioners' Rebuttal:

- Petitioners submitted comments in support of the Department's differential pricing analysis.

Department's Position: For the final results of this review for Kangtai, the Department has continued to use its standard methodology (the average-to-average method) to calculate Kangtai's weighted-average dumping margin. Therefore, the comments regarding the use of an alternative comparison method based on the average-to-transaction method are moot.

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[50] *See Jiaxing Brother Fastener,* 961 F. Supp. 2d at 1333.

[51] *See* Letter from Petitioners, "Chlorinated Isocyanurates from the People's Republic of China (2012-2013 Review): Surrogate Values," May 2, 2014, at Exhibit 14.

[52] *See* Letter from Jiheng, "Chlorinated Isocyanurates from China (Eighth Administrative Review) – Hebei Jiheng Chemical Co., Ltd., Initial Surrogate Value Information," May 2, 2014, at Attachment 9.

Comment 4: Methodological Issues

A. Value-Added Tax (VAT) Adjustment for Kangtai's and Jiheng's U.S. Sales

Jiheng's Argument

- The Department's VAT adjustment is inconsistent with section 772(c)(2)(B) of the Act because Chinese VAT is not imposed on exports but rather, exempts export sales from VAT tax.
- The same language of the statute cannot be interpreted one way for ME countries and a different way for NME countries.
- Even if an adjustment were to be made, the Department's calculation overstates the extent to which VAT tax is included in the U.S. price because it uses the same price basis for both input prices and export sales values.
- The Department's calculation of the eight percent of VAT paid and not refunded or reimbursed upon export for just U.S. sales is nearly double the VAT paid by Jiheng for all of its sales made during the POR.
- Kangtai agrees and supports Jiheng's arguments noted above, in its rebuttal comments.

Petitioners' Rebuttal

- The purpose for accounting for VAT in the dumping analysis is to calculate a tax- and duty-free U.S. price by accounting for the amount of VAT charged on inputs that is not subsequently refunded upon export.
- Record evidence establishes the VAT on inputs to be 17 percent and the refund amount of the VAT tax on inputs, upon exportation, to be nine percent. The residual eight percent is irrecoverable VAT that is a tax on exports.
- The Department's practice is to calculate a tax-neutral dumping comparison by reducing the U.S. price by the percentage of the EP that represents irrecoverable VAT.

Department's Position: In 2012, we announced a change of methodology with respect to the calculation of the EP or constructed export price ("CEP") to include an adjustment of any un-refunded (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[53] In this announcement, the Department stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.[54]

In a typical VAT system, companies do not incur any VAT expense; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports ("input VAT"), and, in the case of domestic sales, the company can credit the VAT they pay on input

[53] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (June 19, 2012)("*Methodological Change*").
[54] *Id*.; *see also 2011-2012 Final Results* and accompanying Issues and Decision Memorandum at Comment 5.

purchases for those sales against the VAT they collect from customers.[55] That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[56] This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[57]

Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Although Jiheng argues that it pays no VAT tax upon export, it misstates what is at issue. The issue is the irrecoverable VAT, not VAT *per se*. Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.[58] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States. The statute does not define the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales. It is set forth in PRC law and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax neutral.[59]

Our methodology, as applied in this review, consists of performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Information placed on the record of this review by Jiheng indicates that, according to the PRC VAT schedule, the standard VAT levy on the subject merchandise is 17 percent and the VAT rebate rate for the subject merchandise is nine percent.[60]

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[55] *See, e.g.*, explanations in *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 6; *Methodological Change*, 77 FR at 36483.

[56] *See, e.g.*, Jiheng Chemical Co., Ltd. Response to Supplemental Questionnaire," April 28, 2014 ("Jiheng Supplemental response"), at 16-19 and Exhibit 21.a, "Calculation of Non-refundable and non-deductible amount," of the "Notice of the Promotion of Tax Exemption, Deduction and Refund Policy for Export Products;" *see also Methodological Change*, 77 FR at 36483.

[57] *Id.*

[58] *See Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014) accompanying Issues and Decision Memorandum at Comment 7.

[59] *See Methodological Change*, 77 FR at 36483, and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997)(citing the SAA).

[60] *See, e.g.*, Jiheng Supplemental response, at 16-19 and Exhibit 21.a, "Calculation of Non-refundable and non-deductible amount," of the "Notice of the Promotion of Tax Exemption, Deduction and Refund Policy for Export Products."

For the final results, therefore, we removed from U.S. price an amount calculated based on the difference between these rates (*i.e.*, eight percent) applied to the export sales value, consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.[61]

Irrecoverable VAT is (1) the free-on-board value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.[62] The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulations.[63]

The Department's regulations at 19 CFR 351.401(c) require that we rely on price adjustments that are "reasonably attributable to the subject merchandise." The PRC's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. These are product-specific export taxes, duties, or other charges that are incurred on the exportation of subject merchandise. Thus, our analysis is consistent with our current VAT policy and our treatment of VAT in recently completed NME cases.[64]

For these final results, we continue to apply the VAT offset to account for the irrecoverable VAT. The Department has reduced Jiheng's and Kangtai's U.S. sales prices by eight percent which is the irrecoverable VAT.

B. <u>Downstream By-Product Offset for Ammonium Sulfate</u>

Kangtai's Argument

- A- direct by-product offset should be granted for ammonia gas and sulfuric acid because it provides the most consistent and accurate measure of the offset for the subject merchandise. These direct by-products have commercial value because they are reintroduced into the production and sale of a downstream by-product.
- The Department should reconsider its policy shift in this review to value the downstream by-product. The further downstream a by-product is valued, the higher the potential for different normal values for the subject merchandise due to the different offset values.
- In the *Sixth Review,*[65] the Department began to value the downstream by-product instead of the immediate by-products, and this new methodology is still being developed based on the Department's recent voluntary remand request.[66]
- The Department could follow the method used in the preliminary findings of the last (seventh) administrative review which valued ammonium sulfate directly based on the standard chemical formula for ammonium sulfate. In that review, Kangtai confirmed at

[61] *See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014) ("*Prestressed Wire*"), and accompanying Issues and Decision Memorandum at Comment 1.
[62] *See Prestressed Wire* and the accompanying Issues and Decision Memorandum at Comment 1, n. 35.
[63] *Id.*, at Comment 1, n.36.
[64] *Id.*, at Comment 1; *see also 2011-2012 Final Results* and accompanying Issues and Decision Memorandum, at Comment 5A.
[65] *See Sixth Review*, and accompanying Issues and Decision Memorandum at Comment 14.
[66] *See Clearon Corp. v. United States, Slip Op. 14-88* (July 24, 2014) at 16-20 (CIT 2014).

verification all consumption of inputs used in the production of cyanuric acid, indicating that there were no additional per unit FOPs for ammonium sulfate.

- Alternatively, the Department had sufficient time to issue an additional supplemental questionnaire. The single supplemental questionnaire was the first time that the Department specifically requested that Kangtai follow its new down-stream product methodology. The Department routinely requests information after the preliminary results of review.
- In the most extreme case, the Department should rely upon the data in the original questionnaire response along with the information related to the downstream by-product inputs from the supplemental response. The original database contains all appropriate costs (labor, electricity, and sulfuric acid purchased and consumed) that are allocated only to cyanuric acid which if used, is adverse to Kangtai. This can be used with the allocations for labor and electricity for both cyanuric acid and ammonium sulfate which are included in the supplemental response.
- The only difference between Kangtai's reporting of its downstream by-product and Jiheng's is that Kangtai did not report packing materials and could not accurately allocate its consumption of sulfuric acid between cyanuric acid production and ammonium sulfate production. Information on the record shows that Kangtai used recycled bags from its purchases of urea.

Jiheng's Argument

- Jiheng's by-products are not downstream by-products (hydrochloric acid, sodium hypochlorite, or ammonium sulfate) but are direct by-products (chlorine gas, ammonia gas, and sulfuric acid) that are entitled to by-product offsets because they have commercial value without any further processing based on their reintroduction into production.
- The Department did not adequately explain its change in practice in the allowing only for the downstream by-product offsets.
- Jiheng qualifies for these direct by-product offsets without having to provide FOPs for downstream by-products.

Petitioners' Rebuttal:

- The Department used the correct by-product offset methodology because the most accurate value to use when the immediate by-product is reintroduced into the production of the downstream by-product is the value of the downstream by-product that is sold.
- The Department previously used this methodology to value the downstream by-product, ammonium sulfate. The Department explained its reasoning for changing the methodology in the *Sixth Review* by stating that it "first starts with the value of the downstream product actually sold by the respondents, ammonium sulfate, produced during the POR."[67]
- With the exception of hydrogen, Jiheng does not sell and record revenue from its by-products.
- The Department was neither required to issue another supplemental questionnaire nor construct an offset methodology to accommodate Kangtai's deficient data, since the

[67] *See Sixth Review*, and accompanying Issues and Decision Memorandum at Comment 14.

> Department's practice, consistent with the statute, is to provide respondents two opportunities to respond to a question.[68]

Department's Position: For these final results, the Department is continuing to treat ammonium sulfate as the downstream by-product. As explained in the *Sixth Review*, the Department first started with the value of the downstream product actually sold by the respondents, ammonium sulfate, and from this amount, the Department deducted the costs associated with converting the by-products into the downstream product, such as labor and electricity.[69] The by-product must have commercial sales value and revenue must be realized from sales of either the by-product or downstream product that consumed the by-product.[70] Record evidence shows that the ammonia gas and sulfuric acid slurry that exits the joint production process was not sold without going through additional processing. Indeed, these products were used to make and sell ammonium sulfate.[71] In order to receive an offset, a respondent must demonstrate that there were actual sales of commercial product resulting from the by-product.[72] When dealing with a downstream by-product, a respondent must also provide the quantity and value data for the inputs to make the downstream product so that it can determine the actual value of the by-products from the subject merchandise production which are used to make the downstream by-product. Jiheng demonstrated that it sells ammonium sulfate, the downstream by-product, and provided the information necessary to make the adjustment. As a result, the Department is granting an offset for Jiheng in these final results.

Kangtai's arguments for receiving the appropriate by-product offsets centers on both a procedural issue of reporting, as well as Kangtai's understanding of what the Department has previously accepted in terms of awarding an offset. The standard questionnaire that the Department first sends to all respondent companies includes specific language on the type of information that is needed for claiming a by-product/co-product offset, including questions specific to downstream by-products. The burden is on respondent parties to identify, explain, and provide the relevant production information related to any claims for these types of offsets. It is not the responsibility of the Department to identify the type of offset that may be available to a respondent since it is contingent on the unique production experience of each respondent.

The original questionnaire issued to Kangtai includes specific instructions regarding the additional information that is required for claiming any downstream by-product offset:

> If the by-product for which you are claiming an offset is a downstream by-product, in addition to responding to the items above, please also:
>
> i. Provide the per-unit usage rate of each input used to produce the downstream by-product; and

[68] *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591, 9598 (March 5, 2009).
[69] *Sixth Review*, at Comment 14.
[70] *See, e.g., Lined Paper from the PRC,* and accompanying Issues and Decision Memorandum at Comment 11.
[71] *See* Letter from Jiheng, "Chlorinated Isocyanurates from China (Eighth Administrative Review) – Hebei Jiheng Chemical Co., Ltd. Response to Section C & D," November 25, 2013 (Jiheng Section C and D response), at D-32.
[72] *See, e.g., Multilayered Wood Flooring From the People's Republic of China*, 76 FR 64318 (October 18, 201l) and accompanying Issues and Decision Memorandum at 87-88.

ii. Provide a detailed narrative description of the production process used to generate the downstream by-product.[73]

Kangtai's response to the Department's original questionnaire shows that Kangtai still argued for the immediate by-product offsets for ammonia gas and sulfuric acid even though it recognized that the Department considered ammonium sulfate as the appropriate downstream by-product:

> Alternatively, if the Department does not treat ammonia gas and sulfuric acid as the immediate by-products, but rather recognizes ammonium sulfate as the downstream byproduct in this proceeding, although we do not agree, the ammonium sulfate involves further refinement for use. {…} The ammonium sulfate offset quantity should be the total of ammonia gas and sulfuric acid as reported in the database for this purpose.[74]

We do not agree with Kangtai's argument that the Department's valuing of ammonium sulfate as a downstream by-product is a policy shift that involves a new and developing methodology that Kangtai only became aware of when the supplemental questionnaire was issued. As Kangtai itself noted, the Department began to value the downstream by-product instead of the immediate by-products as early as the *Sixth Review*, stating that in future administrative reviews, respondents are required to report all costs associated with converting the by-products into the downstream product, ammonium sulfate, in order for the Department to grant this offset.[75] The fact that this finding is being litigated and the Department recently requested a voluntary remand to provide additional explanation, does not alter the decision made in the *Sixth Review* to adjust the manner in which we calculate the by-product offsets for both Jiheng and Kangtai to conform to the Department's methodology of starting with the value of the saleable downstream product that was actually sold by the respondents, ammonium sulfate.[76]

After Kangtai failed to provide the information in its first questionnaire response related to cost buildups associated with converting the immediate by-products into the saleable downstream product, ammonium sulfate, the Department requested this information a second time in the supplemental questionnaire response. As noted in the *Preliminary Results*, the Department found that "Kangtai had not reported all the FOPs used in the production of the downstream by-product (ammonium sulfate), specifically, the actual amount of the additional sulfuric acid and packing materials."[77] This was based on the explanation provided by Kangtai in its supplemental response:

> Kangtai must consume sulfuric acid to produce ammonia sulfate in normal production. However, Kangtai did not separately capture the sulfuric acid used to produce ammonia sulfate, as the "waste" gas (containing ammonia gas) and "waste" water (containing sulfuric acid) as generated in the CYA production were led directly into the reaction tank

[73] *See* the Department's Letter, "2012-2013 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China; Request for Information," dated September 11, 2013 (original questionnaire).
[74] *See* Letter from Kangtai, "Certain Chlorinated Isocyanurates from the People's Republic of China Section C and D Questionnaire Response," December 5, 2013, at D-17 to D-18.
[75] *See Sixth Review*, and accompanying Issues and Decision Memorandum at Comment 14.
[76] *Id.*, at Comment 14.
[77] *See Preliminary Results*, at 18.

> to produce ammonium sulfate, and Kangtai would put in additional fresh sulfuric acid as required in the production process of ammonia sulfate in its normal business operations.[78]

Kangtai's explanation that it could not accurately allocate its consumption of sulfuric acid between cyanuric acid production and ammonium sulfate production addresses the issue of "waste" water containing sulfuric acid and does not address the Department's concern of why it could not account for the additional "fresh" sulfuric acid introduced into the production process:

> Then ammonium sulfate is generated from the reaction tank, with additional fresh sulfuric acid put in to increase the concentration of sulfuric acid for the reaction into ammonium sulfate if required in normal course of production.[79]

We note that Jiheng can account for additional purchased inputs such as "fresh" sulfuric acid that is used in a production process. The record evidence shows that Jiheng also recovers sulfuric acid from the same cyanuric acid production process for use in the production of ammonium sulfate, but that it can account for the additional "purchased" sulfuric acid that is added to the recycled amount:

> When the concentration of recovered sulfuric acid was not high enough to mix with ammonia gas in the production stage, Jiheng would then add some purchased sulfuric acid to ensure that there was no ammonia gas remained. Once the acid and the gas have reacted in the reactor, ammonium sulfate is formed. Jiheng then dries it and packages the ammonium sulfate in woven bags for sale.[80]

The Department finds that the mere selling of a by-product does not entitle a company to an offset credit. The burden rests on respondent companies to provide the necessary information needed to accurately calculate the appropriate offset in calculating normal value.[81] If the accounting information collected and recorded by a respondent cannot capture the further productions costs that are specifically tied to that downstream by-product, the company has put the Department in the position of not being able to calculate the value of the by-products to the respondent because the respondent has failed to provide the necessary data. The information provided by Kangtai does not meet the Department's standard for awarding a downstream by-product offset because Kangtai cannot identify the amount of additional sulfuric acid it purchases and uses only for the production of ammonium sulfate. Without this information, the Department is unable to accurately determine the quantity of sulfuric acid by-product resulting from cyanuric acid production process.

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[78] *See* Letter from Kangtai, "Certain Chlorinated Isocyanurates from the People's Republic of China First Supplemental Questionnaire Response," June 17, 2014 (Kangtai Supplemental Response), at 14.
[79] *Id.* at 16-17.
[80] *See* Letter from Jiheng, "Chlorinated Isocyanurates from China (Eight Administrative Review) – Hebei Jiheng Chemical Co., Ltd. Response to Supplemental Questionnaire," April 28, 2014 (Jiheng Supplemental Response), at 28; *see also* Letter from Jiheng, "Chlorinated Isocyanurates from China (Eight Administrative Review) – Hebei Jiheng Chemical Co., Ltd. Response to Section C & D," November 25, 2013 (Jiheng Section C & D Response), at Exhibit D-17, showing the allocations made for both "purchased" and "recovered" sulfuric acid.
[81] *See* 19 CFR 351.401(b); *see also Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 65182 (November 3, 2014) and accompanying Issues and Decision Memorandum at Comment 7.

As noted above, the initial burden is on the respondent seeking the adjustment to provide the information necessary to make the adjustment. Although not required to under the circumstances, the Department gave Kangtai two opportunities to provide the necessary information, and Kangtai used its initial opportunity to argue for immediate by-product offsets for ammonia gas and sulfuric acid that the Department no longer awarded after the *Sixth Review*. The Department was very specific in its subsequent supplemental questionnaire to Kangtai regarding the type of information that was needed in our downstream by-product analysis. In its supplemental questionnaire response, Kangtai was unable to provide the necessary information needed to accurately calculate the offset for ammonium sulfate, stating that it allocates all of its sulfuric acid costs to cyanuric acid. Kangtai simply reduced the total amount of the sulfuric acid allocated to cyanuric acid for production of subject merchandise, by the amount of sulfuric acid needed to produce ammonia sulfate based on an accepted chemical formula.[82] This formula, however, only calculates the total amount of sulfuric acid needed to produce ammonium sulfate and does not separately account for additional sulfuric acid that is purchased by Kangtai. Because Kangtai is unable to report the amount of new sulfuric acid used to produce the ammonia sulfate, we cannot accurately calculate the offset specifically for ammonia sulfate and make the proper deduction to the offset for these additional purchases of sulfuric acid. Sulfuric acid is the most significant input in the production of ammonia sulfate Without accurate reporting of the quantity of new sulfuric acid consumed in the production of this downstream by-product, the offset would be an unsupported arbitrary figure.

For these final results, while we continue to find that Kangtai has not demonstrated its entitlement to a downstream by-product offset, we do deem it appropriate to exclude all raw material inputs and conversion costs specific to the production of ammonium sulfate. We calculated the raw materials and conversion costs specific to ammonia sulfate production using Kangtai's FOP allocation reported in its supplemental response which separates out all the input costs used in the production of ammonium sulfate.[83] We find this to be a reasonable approach because it avoids assigning unrelated costs to subject merchandise given the limitations imposed by the manner in which Kangtai records these costs. In future reviews, consideration for a downstream by-product offset will be dependent upon a more accurate reporting of all the inputs used in the production of ammonium sulfate. As such, Kangtai must separately track the quantity of sulfuric acid input into the ammonium sulfate production process.

Finally, Kangtai stated that it did not incur any additional costs for packing materials, the other missing FOP that the Department addressed in the *Preliminary Results*. Kangtai cited to information on the record of this review from the verification report[84] of the previous review showing that Kangtai uses recycled urea bags to package ammonium sulfate. We find that this

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[82] *See* Kangtai Supplemental response at 14, and the following statement: "Since Kangtai did not separately capture the sulfuric acid as consumed for the ammonia sulfate in its normal business operations, as an extreme conservative method, Kangtai reported the sulfuric acid consumption based on the chemical formula for the minimum required to produce ammonium sulfate."

[83] *See* Kangtai Analysis Memo at 1-2.

[84] *See* Letter from Petitioners, "Chlorinated lsocyanurates from the People's Republic of China (8th Antidumping Administrative Review): Comments on Kangtai Supplemental Questionnaire Response," June 27, 2014, at Exhibit 3.

supports Kangtai's claim that it had no material packaging costs with respect to ammonium sulfate.

C. Recalculating Jiheng's Hydrogen By-Product Offset

Petitioners' Argument

- The Department should distinguish between hydrogen that was sold directly and hydrogen that was used to produce hydrochloric acid.
- The offset for the hydrogen used to produce hydrochloric acid should follow the same methodology used for ammonium sulfate that deducts the build-up costs used to produce the downstream by-product, hydrochloric acid.

Jiheng's Rebuttal

- The Department's practice limits the by-product offset to the total production quantity of the by-product produced during the POR so long as the by-product has commercial value.[85]
- Jiheng demonstrated that it sells a significant portion of its hydrogen gas and argues that that the commercial value does not change depending on its use.

Department's Position: In order to receive an offset, a respondent must first demonstrate that the by-product has commercial value.[86] Once this is established, the Department's practice in calculating the offset is to limit the amount of the offset to the total production quantity of the by-product produced during the POR.[87] Record evidence shows that Jiheng sold some of its hydrogen gas by-product during the POR[88], thereby establishing that all of its hydrogen gas has commercial value. Therefore, for purposes of these final results, we will continue to grant Jiheng a direct by-product offset for hydrogen gas based on the total production of this by-product without differentiating between the hydrogen gas sold and the hydrogen gas used in the further processing of hydrochloric acid. Petitioners' argument noted above is misplaced since Jiheng is not claiming an offset for hydrochloric acid and we are appropriately capturing the full value of the offset in the direct by-product, hydrogen.

D. Calculation of Jiheng's Electricity Rates

Petitioners' Argument

- The Department should value Jiheng's electricity rate using its reported usage rates for producing subject merchandise rather than valuing an average of all the electricity used by Jiheng.

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[85] *See Frontseating Valves from the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Order*, 76 FR 70706 (November 15, 2011) ("*Frontseating Valves*"), and accompanying Issues and Decision Memorandum at Comment 18.
[86] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013) and accompanying Issues and Decision Memorandum at Issue 10.
[87] *See Frontseating Valves*, and accompanying Issues and Decision Memorandum at Comment 18.
[88] *See* Jiheng Supplemental response at 24.

- The Department should revise the surrogate value electricity rate and base it on the total electricity consumption figure for subject merchandise production, using POR average production per CONNUM.

Jiheng's Rebuttal

- The Department correctly calculated Jiheng's surrogate value for electricity and argues that there is no information on the record to indicate that Jiheng's electricity rates vary by product.
- In reporting its FOP for electricity, Jiheng began with the total electricity consumed at each stage of the production process and then allocated it to the specific CONNUM based on the tonnage produced at each stage.
- Jiheng's reported FOP for electricity, calculated on a kilowatt hours per metric ton basis for each CONNUM, will address any differences in the amounts of electricity consumed in the production and packaging of each individual product.

Department's Position: For the *Preliminary Results*, we followed the calculation methodology applied recently in *Prestressed Concrete Tie Wire*, citing to *Drawn Sinks* and *Sodium Hexametaphosphate*.[89] We multiplied the average kilowatt demand for electricity per month by the demand charge, which is expressed on a per-kilowatt basis, to derive a total monthly demand charge that would have been incurred by the respondent. This follows the manner in which Jiheng first incurs its electricity costs for all of its production facilities and then calculates the total electricity consumption at each stage of the production of subject merchandise by reviewing its electricity records.[90]

We agree with Jiheng that there is no record evidence that demonstrates that its electricity rates vary by product. Accordingly, we will continue to rely on Jiheng's reported monthly electrical consumption figures as the basis for calculating its demand charge because it accurately reflects the manner in which Jiheng incurs its electricity costs as an integrated chemical producer.

Comment 5: Ministerial Errors

A. Double-Counting of Chlorine Input

Kangtai's Argument

- The Department inappropriately double-counted Kangtai's chlorine input when calculating the sum of the direct material inputs.

[89] *See* Attachment 1 of Jiheng's "Rebuttal Surrogate Value Comments" submission, dated May 12, 2014, including the relevant pages from the Preliminary Surrogate Value Memorandum for *Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 75545 (December 12, 2013), unchanged in *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014) ("*Prestressed Concrete Tie Wire*"), citing to *Drawn Stainless Steel Sinks From the People's Republic of China: Antidumping Duty Investigation*, 77 FR 60673 (October 4, 2012) ("*Drawn Sinks*") and *Sodium Hexametaphosphate From the People 's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012) ("*Sodium Hexametaphoshphate*").
[90] *See* Jiheng Section C and D response at 24; *see also* Jiheng Supplemental response at Exhibit DV-17.1.

Petitioners did not rebut.

Department's Position: The Department agrees with Kangtai that we double-counted the chlorine input when calculating the sum of its direct material inputs. We will adjust this calculation to avoid double-counting.

B. Calculation of Jiheng's Market Economy Brokerage and Handling Charges

Jiheng's Argument

- The Department inadvertently multiplied the ME brokerage and handling charges (DMEBROKU) by one thousand when it was already reported on a metric ton basis.

Petitioners' Rebuttal

- The Department properly multiplied DMEBROKU by one thousand to calculate an aggregate movement expense on the same weight basis as the SV.

Department's Position: We reviewed the database and supporting documentation[91] included in Jiheng's supplemental response to confirm that DMEBROKU is reported on a per metric ton basis. Because we are using an ME value, we do not apply the SV which is based in U.S. dollars per kg. Accordingly, we will correct our calculation of DMEBROKU by not adjusting this value since it is already reported in the correct per unit basis.

C. Double-Counting of Jiheng's Market Economy Brokerage and Handling Charges in Both Domestic and International Movement Expenses

Jiheng's Argument

- The Department deducted DMEBROKU twice from those sales that also had international movement expenses. It should only be deducted once from either DCMMOVEU or INTLMOVEU in order to avoid double counting DMEBROKU, since it was also included in both of these movement expenses.

Petitioners' Rebuttal

- Jiheng is correct that the Department double-counted the brokerage and handling expenses incurred from an ME supplier.

Department's Position: We agree with both Jiheng and Petitioners and have corrected the calculation to avoid double counting DMEBROKU. For the final results, we will deduct DMEBROKU only once in the calculation of DCMMOVEU and make no deduction in the calculation of INTLMOVEU.

[91] *See* Jiheng Supplemental response at Exhibits 15.b and 31.d.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review and the final dumping margin in the *Federal Register*.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

21 JANUARY 2015
Date