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Investigation
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March 20, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination of the Less-Than-Fair-Value Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China

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I. SUMMARY

The Department of Commerce (the Department) determines that imports of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from People's Republic of China (the PRC) are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). We analyzed the comments of the interested parties. As a result of our analysis and based on our findings at verification,[1] we made changes to the margin calculations for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

On November 4, 2016, the Department published its *Preliminary Determination* in the LTFV investigation of HEDP from the PRC.[2]

[1] *See* Verification of the Questionnaire Responses of Shandong Taihe Chemical Co., Ltd in the Antidumping Investigation of HEDP from the People's Republic of China (January 19, 2017) (Taihe's Verification Report); Verification of the Questionnaire Responses of the WW Group in the Antidumping Investigation 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China (January 19, 2017) (WW Group Verification Report).
[2] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 81 FR 76916 (November 4, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

We invited parties to comment on the *Preliminary Determination*. On January 26, 2017, Petitioner,[3] WW Group,[4] and Taihe[5] timely filed case briefs pursuant to our regulations.[6] On January 31, 2017, Petitioner, WW Group, and Taihe timely filed rebuttal briefs pursuant to our regulations.[7]

We did not receive any comments in the case and rebuttal briefs regarding the scope of this investigation in response to certain comments analyzed in the *Preliminary Determination* memorandum.[8] Thus, the scope of this investigation remains unchanged for the final determination.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2015, through December 31, 2015. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was January 2016.[9]

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation includes all grades of aqueous acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP), also referred to as hydroxyethylidenendiphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The Chemical Abstract Service (CAS) registry number for HEDP is 2809-21-4.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.90.9043. It may also enter under HTSUS subheadings 2811.19.6090 and 2931.90.9041. While HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

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3 Compass Chemical International LLC. (Petitioner).

4 During the preliminary determination, the Department collapsed Wujin Water and Nantong Uniphos Chemicals Co., Ltd. ("Uniphos") (collectively the "WW Group"). *See* "Collapsing and Affiliation" section below for additional details.

5 Shandong Taihe Water Treatment Technologies Co., Ltd. (Taihe).

6 *See* Letter from Petitioner to the Secretary of Commerce entitled, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China" (January 26, 2017) (Petitioner's Brief); Letter from Taihe to the Secretary of Commerce entitled "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Case Brief" (January 26, 2017) (Taihe's Case Brief); and Letter from WW Group to the Secretary of Commerce entitled "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Case Brief" (January 26, 2017) (WW Group's Case Brief).

7 *See* Letter from Petitioner to the Secretary of Commerce entitled, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Rebuttal Brief" (January 31, 2017)(Petitioner's Rebuttal Brief); Letter from Taihe to the Secretary of Commerce entitled "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Case Brief" (January 31, 2017) (Taihe's Rebuttal Brief); and Letter from WW Group to the Secretary of Commerce entitled "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Case Rebuttal Brief" (January 31, 2017) (WW Group Rebuttal Brief).

8 *See Preliminary Determination* at 3.

9 *See* 19 CFR 351.204(b)(1).

V. SCOPE COMMENTS

Although Changzhou Yao's Tongde Chemical Co., Ltd. and Enviro Tech Chemical Services, Inc. requested an exclusion for high purity HEDP from the scope of the antidumping duty and countervailingduty investigations,[10] we found in the *Preliminary Determination*[11] that the scope covers merchandise that "includes all grades of aqueous acidic (non-neutralized) concentrations of {HEDP}," and therefore, the plain language of the scope covers high purity HEDP.

VI. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on the Department's verifications of Taihe and WW Group, we made changes from the *Preliminary Determination*. For WW Group, the Department is classifying the company's joint-product as a co-product. Additionally, we made a change to the calculation of inventory carrying costs (INVCARU) and non-deductible value-added tax (VAT).

For Taihe, the Department is not using a net realizable value (NRV) calculation in Taihe's margin calculation. Additionally, for Taihe, we have included inventory carrying costs for all sales where warehousing expenses were reported. The Department is also including indirect selling expenses in Taihe's margin calculation. Moreover, the Department has applied the CREDITU expense to Taihe's sales where CREDITU was not reported.

The Department made the necessary calculation adjustment to international freight, domestic brokerage, and domestic inland freight where the expenses are calculated on a gross weight basis for both Taihe and WW Group. Lastly, the Department made the necessary calculation adjustment for marine insurance SV for Taihe and WW Group.

VII. LIST OF ISSUES

<u>General Issues:</u>
Comment 1: Selection of Surrogate Country
Comment 2: Selection of Surrogate Final Ratios and Use of CYDSA's Financial Statement
Comment 3: Treatment of Joint Product
Comment 4: Treatment of Water
Comment 5: Net Versus Gross Weight
Comment 6: Surrogate Value for Marine Insurance
Comment 7: Recalculating Marine Insurance by Using Gross Unit Price
Comment 8: Consideration of FOPs as Overhead
Comment 9: Partial Rejection of Petitioner's SV Submissions
Comment 10: Selection of Voluntary Respondent
Comment 11: Surrogate Value for Ocean Freight
Comment 12: Converting Expense for INVCARU
Comment 13: Surrogate Value for PCl_3
Comment 14: Adjustment of Import Statistics

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[10] *See* Changzhou/Enviro Tech's May 10, 2016 submission.
[11] *See Preliminary Determination*.

Company-Specific Issues: Taihe
Comment 15: Taihe's Movement Expenses

Company-Specific Issues: WW Group
Comment 16: Conversion Calculation for Water Surrogate Value
Comment 17: Adjustment of Irrecoverable VAT

VIII. DISCUSSION OF COMMENTS

General Issues

Comment 1: Selection of Surrogate Country

Taihe's Comments:

- The Department should select South Africa as the primary surrogate country. The Department has already found that South Africa is economically comparable to the PRC and is a significant producer of comparable merchandise. South Africa also has better data availability than Mexico, including multiple usable financial statements with which to calculate financial ratios.[12]

Petitioner's Comments:

- Petitioner argues that the Department should continue to use Mexico as the surrogate country, citing more reliable data and financial statements. Specifically, for Mexico's imports of phosphorus trichloride (PCl_3), which is a critical input, import data are contemporaneous, and South Africa had no imports of PCl_3 during the POI. Mexico has multiple financial statements that are contemporaneous with the POI, whereas South Africa has only one contemporaneous financial statement.[13]

Department's Position: Because the PRC is treated as a non-market economy (NME) country, when calculating normal value (NV), section 773(c)(4) of the Act, requires the Department to value the factors of production (FOPs), to the extent possible, in a surrogate country that is: (a) at a level of economic development comparable to the PRC; and (b) a significant producer of comparable merchandise.[14] The Department agrees with Petitioner that Mexico continues to represent the best selection for the surrogate country. We find both Mexico and South Africa to be economically comparable to the PRC, and both are producers of comparable merchandise.

As explained in the *Preliminary Determination*, data concerns related to the primary input of the subject merchandise – PCl_3 – support the Department's determination to select Mexico as the primary surrogate country. More specifically, the record contains no evidence of imports of PCl_3 into South Africa during the POI. There are imports of PCl_3 into Mexico during the POI. As such, we find the FOP data from Mexico to be superior to that of South Africa.

[12] *See* Taihe's Case Brief at 2-7.
[13] *See* Petitioner's Rebuttal Brief at 2.
[14] *See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004).

We also continue to find that the data derived from financial statements for Mexico are the best available information to value financial ratios. The Mexican data meet the Department's surrogate value (SV) selection criteria and selecting that source would align with the Department's preference in 19 CFR 351.408(c)(2) of valuing FOPs within a single surrogate country.[15] Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. CYDSA, S.A.B. de C.V. (CYDSA), is a manufacturer of chlor-alkalai products and chlorine–water treatment chemicals like HEDP. Moreover, as noted below in Comment 2, although Taihe claims that there are multiple financial statements from South Africa on the record, in fact, only one is contemporaneous with the POI, and, therefore, only one is usable with respect to that consideration.[16] There are, however, two contemporaneous financial statements for Mexico, CYDSA and Groupo Pochteca, S.A.B de C.V. (Pochteca) on the record.[17] The Department prefers multiple financial statements to value surrogate financial ratios.[18] Moreover, the Department's policy is to use data from market economy (ME) surrogate companies based on "specificity, contemporaneity, and quality of the data."[19] Accordingly, for the final determination, we will continue to use both Mexican financial statements to value surrogate financial values.

Comment 2: Selection of Surrogate Financial Ratios and Use of CYDSA's Financial Statement

WW Group Comments:

- CYDSA's financial statement the Department relied upon for purposes of the *Preliminary Determination* is flawed and the Department should reject it to calculate financial ratios. This financial statement is from a company whose production process and products are different than WW Group's[20] because CYDSA self-produces a significant portion of its raw materials. The financial statement does not indicate whether depreciation or labor are accounted for and without this information, the value of raw materials is understated and the items that go into overhead are overstated.
- The producer makes products in three business sectors, none of which are similar to HEDP.[21]

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15 *See Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390, at *6 (CIT, Feb. 20, 2013) ("deriving the surrogate data from one surrogate country limits the amount of distortion introduced into {Commerce's} calculations").

16 *See* WW Group's August 18, 2016 SV Comments at SV-4 and SV 5.

17 *See* Petitioner's August 18, 2016, submission at Exhibits 17 and 18.

18 *See Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China" Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) (*Truck Tires*) and accompanying Issues and Decision Memorandum at Comment 9.

19 *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 (*Ninth AR Fish*) (April 7, 2014) and accompanying Issues and Decision Memorandum at Comment 7.

20 *See* WW Group's Case Brief at 9-13.

21 *Id.* at 10.

- Pursuant to 19 CFR 351.408, financial ratios should be derived from "non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country."[22]
- The Department's evaluation standards require the Department to reject CYDSA's financial statements.[23] In *Garlic*, the Department indicated, "that it favors the financial statements of surrogates that produce the identical merchandise, consume the identical raw material, and have identical or comparable production experience."[24] Only a single division of CYDSA produces water treatment chemicals, none of which have phosphonates, the key inputs to HEDP.[25]
- The production process is different than from WW Group's production of HEDP. Specifically, CYDSA's process uses electrolysis, whereas WW Group uses steam and heat under pressure.[26]
- Moreover, integration of the production processes is different. CYDSA generates its own electricity and steam, whereas WW Group purchases these materials from independent suppliers. Also, CYDSA has expensive and extensive marketing programs, which accounts for 27 percent of cost of goods sold (COGS), while WW Group only markets to a smaller discrete subset of customers. [27]
- The WW Group does not have these extensive marketing expenses and markets to a small sub-set of customers.[28] Because CYDSA's production and sales processes and product range are very dissimilar to WW Group's, the Department should rely on only on the financial statements for Pochecta.
- CYDSA's financial statements are further flawed because the value for "wages and salaries" taken from "Other Payables" does not identify the cost of labor associated with COGS, with the result that selling general and administrative (SG&A) expenses appear higher. Moreover, if this line item actually accounts for the cost of labor, then labor would only account for 0.18 percent of COGS, demonstrating that the statements do not contain a useable labor value.[29]
- The CYDSA financial statement does not have a line item for energy, and it appears that the remaining COGS incorporates energy costs. Furthermore, much of CYDSA's energy is self-produced and CYDSA uses a substantial quantity of electricity and steam in the production process, but WW Group purchases its electricity or steam.[30]
- The Department is simply unable to calculate an accurate value for both labor and energy, because the values for these line items in CYDSA's statements are too low to be accurate.[31]
- The CYDSA statement also contains calculation errors. Specifically, ratios added to "Disaster Recovery by Insurance" and "Other Income" are income items that should act as

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[22] *Id*. at 13.
[23] *Id.*
[24] *See* WW Group's Case Brief citing *Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 37321 (June 27, 2011) (*Garlic*).
[25] *See* WW Group's Case Brief at 14.
[26] *Id.* at 15.
[27] *Id.* at 15-16.
[28] *Id.*
[29] *Id*. at 17-18.
[30] *Id*. at 15.
[31] *Id.* at 19.

offsets to expenses. If the Department continues to use CYDSA's financial statement, it should adjust the offsets to SG&A listed above, as well as the energy and labor ratios.[32]

Taihe Comments:

- The Department cannot use the financial statements of CYDSA, which are distorted. First, the financial statements of CYDSA do not reflect the production experience of the respondents. None of the product characteristics of the chemicals CYDSA produces had physical characteristics similar to HEDP. Second, the financial statements of CYDSA are unsuitable for use as a surrogate because they are not sufficiently detailed: they do not break out selling and administrative expenses and the Department has rejected financial statements for this reason in other cases.[33]

Petitioner's Comments:

- The Department used CYDSA's financial statements for the 2014-2015 administrative review of Chlorinated Isocyanurates from the PRC and the Department rejected the same arguments raised by Taihe and the WW Group.[34] Specifically, the Department preferred CYDSA's financial statements because they included line item by function, rather than transaction.[35] Moreover, CYDSA's statements included a line item for COGS, with which the Department can calculate cost of manufacturing (COM).[36] Furthermore, CYDSA is a chemical manufacturer that produces chlorine, which is used in water treatment, and it also produces hydrochloric acid (HCl).[37]
- Petitioner argues that using South Africa's single contemporaneous set of financial statements is not appropriate because the South African company produces fertilizers and mining-related accessories. Certain companies under the umbrella of a South African company, Omnia Holdings Limited (Omnia), are not manufacturers but providers of services. Finally, it is not clear if Omnia produces phosphonates.[38]

Department's Position: When selecting financial statements for purposes of calculating financial ratios, the Department's practice is to use data from ME surrogate companies based on the "specificity, contemporaneity, and quality of the data."[39] In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value

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32 *Id.* at 21.
33 *See* Taihe's Case Brief at 7-8.
34 *See* Petitioner's Rebuttal Brief at 3 (citing *Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Chlorinated Isocyanurates from the People's Republic of China; 2014-2015* 82 FR 4852 (January 7, 2017) (*Chlorinated Isocyanurates 14-15*) at Comment 2.
35 *Id.*
36 *Id.*
37 *Id.* at 5.
38 *Id.* at 5-6.
39 *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 80 FR 51779 (August 26, 2015) (*Boltless Shelving*) and accompanying Issues and Decision Memorandum at Comment 1.

manufacturing overhead, general expenses, and profit.[40] Although the regulations do not define what constitutes "comparable merchandise," it is the Department's practice to, where appropriate, apply a three-prong test that considers: (a) physical characteristics; (b) end uses; and (c) production process.[41] Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.[42] However, the Department is not required to "duplicate the exact production experience of an NME producer," nor must it undertake "an item-by-item analysis in calculating factory overhead."[43]

For this final determination, the Department finds that the publicly available financial statements of both CYDSA and Pochteca, which the Department used to value financial ratios in the *Preliminary Determination*, continue to represent the best available information with which to value surrogate financial ratios.[44]

As an initial matter, we find that both of the Mexican financial statements have sufficient detail for use in calculating surrogate value financial ratios. "The Department's preference is to use a financial statement that includes a line item for the cost of goods sold, because we know that the cost of goods sold include all the manufacturing costs and changes in the finished goods inventory. From the cost of goods sold amount, we can calculate the cost of manufacturing by accounting for the change in the finished goods inventory from the inventory amounts reported in the corresponding comparative balance sheets. From the cost of manufacturing, we deduct the depreciation costs reflected in the notes to the financial statements, with the residual classified as material, labor, and energy (MLE)."[45]

Regarding WW Group's objections to using CDYSA's financial statements, we disagree. The Department prefers to value ratios using multiple financial statements. WW Group, citing *Garlic,* argues that the Department "favors the financial statements of surrogates that produce the identical merchandise, consume the identical raw material, and have identical or comparable production experience."[46] However, the Department rebutted that argument, as it found that Garlico did not produce "identical" merchandise. In fact, the Department found that Garlico

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[40] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) (*Warmwater Shrimp 04-06*) and accompanying Issues and Decision Memorandum at Comment 2.

[41] *See, e.g.*, *Certain Woven Electric Blankets from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

[42] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 13.

[43] *See Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (CAFC 1999); *see also Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (CAFC 1999).

[44] *See e.g., Ninth AR Fish* at Comment VII.

[45] *See* Petitioner's Rebuttal Brief at 3 (citing *Chlorinated Isocyanurates 14-15* at Comment 2).

[46] *See Garlic* at Comment 6.

acted as a trading company on nearly one quarter of its sales.[47] Moreover, the Department's analysis of Garlico's financial statements indicated that the company's primary production was for downstream products.

WW Group raised objections to the value of labor and energy. However, regarding these items, WW Group only stated that these are flawed and require an adjustment, but did not identify how the Department should adjust the alleged flaws. Therefore, the Department is not making any adjustments to these values for the final determination.

Regarding offsets for SG&A, we agree with WW Group, in part. First, 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.[48] Accordingly, for the final determination, we treated "other income" as an offset to SG&A expenses. Second, regarding the line item "disaster recovery", we determine that this expense is properly considered part of SG&A. Specifically, this line item appears to be an insurance expense, which is related to SG&A. In *Lightweight Thermal Paper*, we found that it is appropriate to include insurance expenses in our SG&A ratio calculation because they are not included elsewhere in our margin calculation.[49] Accordingly, we did not apply this expense as an offset to SG&A for the final determination.

In *Chlorinated Isocyanurates*, the Department stated "we do not agree with the respondents that the MLE amounts have to be separate items in the income statement or in the notes to the financial statements. This is not required, because the sum of MLE is being used to calculate only the denominator of the financial ratios in order to determine the surrogate manufacturing overhead ratio and, subsequently, the SG&A and profit ratios."[50]

Respondent's claim that CYDSA self-produces a substantial amount of electricity and steam for use in CYDSA's production is not supported by record evidence. According to CYDSA's annual report, initial construction of its second co-generation plant did not conclude until December 2015.[51] Additionally, this second plant will supply the electricity to produce chlorine, caustic soda, and chemical specialties.[52] Therefore, the record does not support WW Group's assertion that CYDSA produced electricity for its chemical division production during the POI, or that CYDSA did not purchase electricity for production during the POI.

We also disagree with WW Group's assertion that using only Pochteca's financial statements is sufficient. As stated above, the Department prefers to use multiple financial statements to value

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47 *Id.*

48 *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order*, 76 FR 77772 (December 14, 2011) (*Citric Acid and Salts*) and accompanying Decision and Issues Memorandum at Comment 6.

49 *See Lightweight Thermal Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) (*Lightweight Thermal Paper*) and accompanying Issues and Decision Memorandum at Comment 3.

50 *See Chlorinated Isocyanurates 14-15* and accompanying Issues and Decision Memorandum at Comment 2.

51 *See* Petitioner's August 18, 2016 Submission at Exhibit 17, CYDSA's Annual Report at 120.

52 *Id.*

surrogate financial ratios. We further disagree that CDYSA's products are not comparable to the production of HEDP. CYDSA produces water treatment chemicals, *i.e.*, chlorine and HCl, the by-product produced by both WW Group and Taihe. Thus, we find that CDYSA is, indeed, a producer of comparable merchandise. Moreover, the data for South Africa were insufficient and not contemporaneous.[53]

Comment 3: Treatment of Joint Products

Petitioner's Comments:

- The Department should continue to consider acetyl chloride as a co-product for Taihe. In its supplemental response to Section D of the questionnaire (the section concerning production costs), Taihe stated that acetyl chloride was a "co-product which was generated in the production process of HEDP and was sold by Taihe."[54]
- The Department's five-factor analysis demonstrates that HEDP and acetyl chloride are co-products: 1) the revenue generated from Taihe's sales of acetyl chloride is a significant factor in the economics of the company's co-production process; 2) Taihe produces acetyl chloride intentionally because it has a market into which it can sell this product; 3) Taihe controls its production of acetyl chloride quite closely; and 4) Taihe's financial statements contain accounts for acetyl chloride production.[55]
- For the final determination, the Department should make the analysis more accurate by recalculating the FOPs reported in Taihe's most recent FOP database using a value-based system, as opposed to a weight-based system.[56]
- The Department should adjust WW Group's reported FOPs and use a NRV allocation to allocate accurately the consumption of WW Group's FOPs between HEDP and its joint product.[57]
- Wujin's internal co-product allocation was performed on a weight basis. However, the Department's preference is for a value-based co-product allocation. An allocation method that relies upon physical quantities, which is implicit in WW Group's allocations, is not appropriate and does not account for differences in the values in each finished product.[58]

Taihe's Comments:

- The Department should treat acetyl chloride as a by-product for the final determination. In the *Preliminary Determination*, the Department treated Taihe's production and sales of acetyl chloride as a co-product rather than a by-product.[59]
- Taihe submits that there are relevant factors identified by the Department to treat acetyl chloride as a by-product. They are: the ratio of acetyl chloride's NRV to that of HEDP is not so great as to lead to the conclusion that they are co-products; there is little doubt acetyl chloride is an unavoidable consequence of the input chemicals; there is minimal control in

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53 *See Preliminary Determination* at 5-10.
54 *See* Petitioner's Rebuttal Brief at 6-9.
55 *Id.* at 6 – 9.
56 *See* Petitioner's Case Brief at 2-5.
57 *Id.* at 6.
58 *Id.* at 6.
59 *See* Taihe's Case Brief at 10.

terms of volume of acetyl chloride that can be produced; there is no further processing after the split-off point; and the company historically accounted for acetyl chloride revenue under "Main Operation Revenue" and it records acetyl chloride under "Main Operation Cost" based on a comparison of volume of acetyl chloride produced to the total volume of HEDP produced for the fiscal year.[60]

- Petitioner's argument with respect to the calculation of the co-product methodology should be declared moot.[61]

WW Group's Comments:

- WW Group's weight-based FOP allocation methodology between HEPD production and WW Group's co-product[62] production is reasonable. It does not make sense to calculate the cost of production based on the sales value of acetyl chloride, as FOPs would vary and would result in artificial margins.[63]

Department's Position: The Department's practice is to require respondents to report FOPs on a weight basis, not a value basis.[64] The Department looks to several factors in order to determine which joint products are to be considered co-products and which are to be considered by-products.[65] Among these factors are the following: 1) how the company records and allocates costs in the ordinary course of business, in accordance with its home country generally accepted accounting principles; 2) the significance of each product relative to the other joint products; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls production of the product; and 5) whether the product requires significant further processing after the split-off point. No single factor is dispositive in our determination. Rather, we consider each factor in light of all of the facts and circumstances surrounding the case.

The Department agrees with Petitioner that acetyl chloride is a co-product of HEDP with respect to the production processes of both Taihe and WW Group. At the outset, we note that WW Group was a mandatory respondent in the first LTFV investigation of HEDP from the PRC[66] and Taihe was a mandatory responded in a prior administrative review of HEDP from the PRC.[67] In the administrative review, we found that acetyl chloride was a co-product for Taihe.[68] Below, we analyze the record evidence in this investigation to determine if acetyl chloride continues to be a co-product of HEDP production.

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60 *Id.* at 10-13.
61 *See* Taihe's Rebuttal Case Brief at 1.
62 We note that WW Group's co-product information is proprietary. For further information of WW Group's co-product *see* WW Group's Rebuttal Brief at 7.
63 *See* WW Group's rebuttal brief at 7-9.
64 *See* The Department's Non-Market Economy Antidumping Questionnaire Issued to Taihe and WW Group (June 3, 2016).
65 *See Elemental Sulphur from Canada; Final Results of Antidumping Finding Administrative Review*, 61 FR 8239 (March 4, 1996).
66 *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 10545 (March 11, 2009).
67 *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Results of Antidumping Administrative Review; 2012-2013*, 79 FR 56341 (September 19, 2014).
68 *Id.*

Regarding Taihe's production of acetyl chloride, the Department has determined that acetyl chloride is a co-product of HEDP because it meets four of the five above-listed factors. First, Taihe's financial statements show that acetyl chloride production is a significant factor in Taihe's financial planning. Taihe specifically recorded the production costs of acetyl chloride in its financial statements.[69] Taihe further states that "the company historically accounted for acetyl chloride revenue under 'Main Operating Revenue' and it records acetyl chloride under 'Main Operating Cost' based on a comparison of the volume of acetyl chloride produced to the total volume of HEDP produced for the fiscal year.[70] Here, Taihe shows that it has separated the revenue and cost of acetyl chloride from the revenue of HEDP, accounting for both products in its books and records. Second, based on the Department's NRV calculation performed in the *Preliminary Determination*,[71] acetyl chloride, as it pertains to Taihe's production process, constitutes over 10 percent of the volume of the HEDP produced, showing a significant comparative volume produced in conjunction with HEDP. Third, though Taihe has stated that its production process includes a certain ratio of inputs resulting in the production of acetyl chloride, acetyl chloride does not have to be produced when producing HEDP.[72] Acetyl chloride production through the production of HEDP is specific to Taihe's production process. Lastly, Taihe specifically controls the production of acetyl chloride through the production of HEDP. Taihe states that the "amount of inputs is determined by the quantity of HEDP the company wants to manufacture…."[73] Because Taihe's production process specifically produces acetyl chloride through HEDP production, Taihe maintains control of acetyl chloride production through controlling for how much HEDP it produces. As a result, Taihe's acetyl chloride meets four of the five factors that the Department uses to classify a joint product as a co-product. Therefore, the Department continues to classify Taihe's acetyl chloride as a co-product.

In addition, Taihe allocated its reported FOPs based on the weights of HEDP and acetyl chloride produced. Thus, Taihe reported its FOPs in a manner consistent with the treatment of acetyl chloride as a co-product. Moreover, these FOPs were verified without issue.

Regarding WW Group's joint product production, the joint product meets three of the five above listed factors, classifying the joint product as a co-product. First, WW Group specifically accounts for the production costs of the joint product during its ordinary course of business.[74] Second, the Department's NRV calculation, as it pertains to WW Group's production process, indicates that value of the joint product is above 10 percent.[75] Therefore, the production of the joint product is significant when compared to the production of HEDP. Third, although WW Group states that the production of the joint product is an unavoidable consequence of producing

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[69] *See* Taihe's July 5, 2016 Section A Questionnaire Response at Exhibit 10, Notes of Financial Statement.
[70] *Id.* at 10-13.
[71] *See* 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Preliminary Determination Analysis Memorandum for Shandong Taihe Chemical Co., Ltd. (October 27, 2016) (Taihe's Analysis Memo).
[72] *See* Petitioner's August 10, 2016 Submission at Exhibit 2.
[73] *See* Taihe's Case Brief at 12.
[74] *See* WW Group's October 18, 2016 Section D Supplemental Questionnaire Response at 8.
[75] *See* 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination Analysis Memorandum for WW Group, dated March 20, 2017.

HEDP,[76] as stated above, Petitioner points to the fact that HEDP can be produced without creating the joint product. As a result, the joint product is only an unavoidable consequence of HEDP production because of WW Group's specific production process. Lastly, although WW Group states that it does "not control the production" of the joint product,"[77] as shown above, through controlling the production of HEDP, WW Group can control the production of the joint product.

With respect to Petitioner's request that the Department adjust both Taihe's and WW Group's FOP calculation methodology, Petitioner made no mention of either respondent's FOP allocation methodology during the course of this investigation (*e.g.*, comments on questionnaire responses, pre-prelim comments, verification comments) until its case briefs. Assuming, *arguendo*, Petitioner has raised this issue earlier, we could have examined the accuracy of weight-based versus value-based FOPs allocations in questionnaire responses and during verification. The Department's practice is to require respondents to report FOPs on a weight basis, not a value basis. We verified Taihe's[78] and WW Group's[79] weight-based allocated FOPs without issue. As both Taihe's and WW Group's FOPs have been verified without issue, we intend to make no modifications to those FOPs for the final determination. Additionally, as Taihe's and WW Group's FOP's were verified without issue and because Taihe and WW Group allocated for their joint product production in their respective FOP databases,[80] the Department will not incorporate the values of the joint products generated by the NRV calculation in Taihe's or WW Group's margin calculation.

Comment 4: Treatment of Water

Petitioner's Comments:

- Neither Taihe nor WW Group reported a FOP for water as a direct material. For the final determination, the Department should include as facts available (FA), water as a FOP for direct materials for Taihe and WW Group.[81]
- In addition, when Taihe described its generation of steam to the Department during verification, it omitted the fact that water was used. The Department should use FA to apply the water consumed by WW Group as an energy source to Taihe.[82]

Taihe's Comments:

- The Department should reject Petitioner's argument to treat water as a direct material FOP or as an energy FOP in its final determination. The Department did not note any issues or discrepancies in the verification report with respect to Taihe's reporting of water that would justify the application of FA.[83]

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[76] *See* WW Group's October 18, 2016 Section D Supplemental Questionnaire Response at 8.
[77] *Id.* at 8.
[78] *See* Taihe's Verification Report.
[79] *See* WW Group's Verification Report at 17-19.
[80] *See* Taihe's October 3, 2016 Supplemental Section D Questionnaire Responses at 7; WW Group's Response to Supplemental Section C and D at 15.
[81] *See* Petitioner's Case Brief at 12.
[82] *Id.* at 12.
[83] *See* Taihe's Rebuttal Brief at 2-3.

WW Group Comments:

- The Department should not include an additional direct material FOP for water because it properly reported water in its FOP database and the Department confirmed that WW Group properly allocated water consumption.[84]

Department's Position: Regarding Petitioner's argument that the Department should apply FA to Taihe's and WW Group's water usage in the final determination, we disagree. Petitioner asserts that both companies consumed water to adjust the concentration levels of HEDP from 100 percent concentration to 60 percent concentration. However, the Department verified Taihe's and WW Group's FOPs and found no discrepancies from their questionnaire responses.[85] Therefore, for the final determination, the Department will continue to value water consistent with the *Preliminary Determination* and not factor in water as a direct FOP for Taihe and WW Group.

Additionally, the Department disagrees with Petitioner that the Department should apply a FA determination for Taihe's water usage as an energy source. As stated in the verification report, Taihe reported that "water is used as an input in the production process and is only used to create steam for the whole production facility."[86] Here, the Department cannot make a FA determination for Taihe's water usage because the Department did not make any findings that point to Taihe consuming water in any other way than the company reported to the Department, or that Taihe's water usage was similar to that of WW Group. As a result, the Department will not apply WW Group's water usage in Taihe's margin calculation because there is insufficient information on the record demonstrating that Taihe's water usage was similar to that of WW Group.

Comment 5: Net Versus Gross Weight

Petitioner's Comments:

- The Department should rely on gross weight, not net weight, when calculating surrogate expenses for domestic inland freight, domestic brokerage, and international freight. These expenses are incurred on a gross weight, not net weight basis. This can be accomplished by multiplying the current calculations by the ratio of gross weight to net weight, or gross weight divided by quantity in kilograms (GROWETU/QTYU2) for Taihe. For WW Group, this information was not provided for each sale. As neutral FA, the Department should multiply these expenses by the average gross/ net ratio found in the sales traces from verification.[87]

Taihe's Comments:

- Petitioner does not cite to any precedent and does not explain why its methodology is more appropriate. The truck and brokerage surrogates are derived from *Doing Business*, and are

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[84] *See* WW Group's rebuttal brief at 7.
[85] *See* Taihe's Verification Report at 16-21; *see also* WW Group's Verification Report at 17-19.
[86] *See* Taihe's Verification Report at 11.
[87] *See* Petitioner's Case Brief at 13-14.

reported on a per kilogram basis. *Doing Business* does not specify whether it is on a net or gross weight basis and it is unknown whether the application of Petitioner's ratio is required.[88]

WW Comments:

- The Department should not adjust inland freight, domestic brokerage, and international freight to a gross weight basis. The weight for the calculation was net weight of the cargo, not the weight of the cargo and container.[89]

Department's Position: The Department agrees with Petitioner that for international freight, domestic brokerage, and domestic inland freight, in cases where respondents calculated expenses on a gross weight basis, rather than on a net weight basis, the Department should recalculate them by applying the ratio between gross weight and net weight.[90] Therefore, for the final determination, the Department made the necessary calculation adjustment to these expenses for both Taihe and WW Group.

Comment 6: Surrogate Value for Marine Insurance

WW Group Arguments:

- The Department should adjust the marine insurance calculation. The Department added a factor identified as "War Risk Premium," which is listed under the price of air insurance, not marine insurance.[91]
- The Department should not calculate marine insurance by gross weight because this will result in an overstatement of the value of marine insurance. Additionally, many of WW Group's sales were constructed export price (CEP) sales and made at enhanced prices after entry to the United States. [92]

Department's Position: Regarding WW Group's argument that the Department should calculate marine insurance and remove the war risk line item, we disagree. In the *Preliminary Determination,* the Department used the marine insurance quote from RJC Consultants, which covers war risk expense. The Department's practice is to use the best available information on the record. Moreover, marine insurance necessarily includes war risk. In *Uncoated Paper*,[93] we stated that marine insurance included the war risk premium. In that investigation, we stated that because marine insurance was used as a plug for inland insurance, it was appropriate to remove that premium. However, that is not the case here. The Department is not using marine insurance as a plug to value inland insurance and, therefore, war risk is a necessary expense in the value for

[88] *See* Taihe's Rebuttal Brief at 3.
[89] *See* WW Group's Rebuttal Brief at 11.
[90] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 18.
[91] *Id.* at 21.
[92] *Id*. at 12.
[93] *See Certain Uncoated Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 8, 2016) (*Uncoated Paper*) and accompanying Issues and Decision Memorandum at Comment 16.

marine insurance. Therefore, for the final determination, we have not removed this expense from the marine insurance value.

Comment 7: Recalculating Marine Insurance by Gross Unit Price

Petitioner's Comments:

- The Department should recalculate marine insurance for both companies by multiplying the surrogate value, which is on a per dollar basis, by gross unit price.[94]

WW Group's Comments:

- Calculating marine insurance on gross unit price will overstate the value of marine insurance. Many of WW Group's sales were CEP sales and made at enhanced prices, which include the cost of CEP operations. Instead, the Department should calculate marine insurance using entered value, which approximates the value of goods at the time of entry and constitutes the basis for marine insurance.[95]

Department's Position: We agree, in part, with WW Group that it is appropriate to apply the SV marine insurance rate to the entered value, rather than gross unit price for CEP sales, in accordance with the Department's practice.[96] However, for EP sales, where marine insurance is incurred based on the terms of sale, the Department agrees with Petitioner that it is appropriate to multiply the marine insurance SV by the gross unit price. In doing so, pursuant to the terms of sale, and type of sale, we perform the calculation consistent with our practice for both companies.

Comment 8: Consideration of FOPs as Overhead

Petitioner's Comments:

- WW Group did not request treatment of any of its inputs as factory overhead, so the Department should include all overhead energy inputs in its margin calculations.

Department's Position: Regarding Petitioner's assertion that the Department should include all overhead energy inputs in our margin calculation, we disagree. Petitioner did not identify which specific energy FOPs WW Group should have requested be considered overhead. However, WW Group already reported energy FOPs in its FOP database (*i.e.*, electricity, water, and steam). The Department verified these FOPs and did not find any discrepancies, and we have included these FOPs in WW Group's NV. Therefore, we have not made any modifications for the final determination.

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94 *See* Petitioner's Case brief at 13.

95 *See* WW Group's rebuttal brief at 12.

96 *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Review and Final Determination of No Shipments; 2012-13*, 80 FR 40998 (July 14, 2015) and accompanying Issues and Decision Memorandum at Comment 21.

Comment 9: Partial Rejection of Petitioner's SV Submissions

WW Group Comments:

- WW Group objects to the timeliness of certain Petitioner filings related to surrogate values, surrogate country, and pre-prelim comments which also contain new factual information. For example, Petitioner's August 18, 2016, SV filing contains new factual information that was characterized as being relevant to economic comparability.[97] Petitioner's Pre-Prelim Comments do not properly identify the submitter of third party BPI.
- Petitioner's case brief references certain SVs for Taihe that also appear to be applied to WW Group and with no citation.[98] Petitioner's case brief provides information which purportedly provides the SV for HEDP and another WW Group product. This information is not on the record for WW Group.[99]
- In its January 31, 2017, submission, Petitioner submitted new factual information pertaining to the net realizable calculation for WW Group's reported FOPs and should be rejected.[100] The deadline for Petitioner's argument against respondent's financial statement had already passed. The rebuttal information in Petitioner's September 27, 2016, submission must be removed from the record and cannot be considered for the final determination.[101] The submission is in violation of 19 CFR 351.306(c) as it does not properly identify the submitter of the third party business proprietary information (BPI).[102]

Petitioner's Comments:

- Petitioner previously addressed WW Group's prior letters and the Department did not reject Petitioner's submissions.[103]
- Petitioner previously addressed WW Group's objection to Petitioner's August 18, 2016, filing. WW Group objects to Petitioner's rebuttal information on India and Turkey as possible surrogate countries. Petitioner acted in accordance with the Department's direction and the submission is timely, pursuant to 19 CFR 351.301(c)(3)(iv).[104]

Department's Position: With respect to WW Group's objection to portions of Petitioner's filings, we disagree. Pursuant to 19 CFR 351.301(c)(3)(i), parties have until 30 days before the preliminary determination to submit surrogate value and surrogate country information. The *Preliminary Determination* was signed on October 27, 2016, and Petitioner's submissions to which WW Group objects – surrogate country, surrogate value, and pre-prelim comments – were filed on or before September 27, 2016. As such, Petitioner's submissions are considered timely and we have not removed these filings from the record.

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97 *See* WW Group's Case Brief at 22.
98 *See* WW Group' Rebuttal Brief at 2-3.
99 *Id*. at 6.
100 *Id*.
101 *Id.* at 25.
102 *See* WW Group's Rebuttal Brief at 24.
103 *See* Petitioner's Rebuttal Brief at 15.
104 *See* Petitioner's August 22, 2016 submission at .2-3

With respect to WW Group's argument on improper identification of BPI, particularly with regard to page nine of Petitioner's September 27, 2016,[105] submission, we disagree. Petitioner properly cited to both respondents' HCl sales in their respective Section D responses.[106] With respect to WW Group's additional BPI arguments, we further disagree. Petitioner makes clear that the proprietary information WW Group has objected to is a NRV calculation performed for Taihe.

We also agree with Petitioner that its August 18, 2016, submission was timely. In its initial surrogate country comments, submitted on August 11, 2016, WW Group suggests that India and Turkey would be suitable primary surrogate countries. On August 18, 2016, Petitioner timely submitted surrogate country rebuttal comments.[107] In its comments, Petitioner provided argument rebutting the economic comparability of both India and Turkey to the PRC, using gross national income data released by the Department. As such, we do not find Petitioner's submission to be untimely or to contain untimely factual information. Moreover, we note that no interested party submitted any SV information for either India or Turkey and, thus, these countries were never even considered for selection as the primary surrogate.

WW Group argued that Petitioner's case brief at Exhibit 2 contains new information.[108] After reviewing the record, we found the information pertaining to WW Group in Exhibit 2 was already a part of the administrative record[109] and the SVs in question also exist on the record.[110] Certain bracketed information in the NRV calculation also in Exhibit 2 was placed on the record by the Department at the *Preliminary Determination*.[111] As such, we find that this is not new information as WW Group suggests, and have not rejected these submissions for the final determination.

Finally, Petitioner submitted a NRV calculation in its case brief, which was comprised of data already on the record of this investigation.[112] As such, this is not new information, and in fact is information placed on the record by the Department in the *Preliminary Determination*.[113]

Comment 10: Selection of a Voluntary Respondent

WW Group Arguments:

- The Department should accept Henan Qingshuiyuan Technology Co., Ltd.'s (QY) voluntary response and calculate a rate based on data on the record. Otherwise, QY is deprived of a substantial right to have its data reviewed. QY used a different method of production with

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[105] *See* Petitioner's September 27, 2016 submission at 9.
[106] *Id*. at 9, fn 27.
[107] *See* the Department's July 12, 2016 memorandum, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid People's Republic of China: Request for Extension of Time Surrogate Country and Surrogate Value Information," which set a surrogate country rebuttal deadline of August 18, 2016.
[108] *See* WW Group's Rebuttal Brief at 6.
[109] *See* WW Group's October 18, submission at Exhibits 7-8.
[110] *See* Petitioner's August 18, 2016 submission; *see also* Preliminary Results SV sheet.
[111] *See* Taihe's Analysis Memo for the Preliminary Results and net realizable value calculation at attachment 3.
[112] *See* Petitioner's Case Brief at 6.
[113] *See* Taihe's Analysis Memo for the Preliminary Results and net realizable value calculation at attachment 3.

different FOPs, which it believes would result in a lower margin. A company can only be excluded from an order in an LTFV investigation.[114]

Petitioner's Comments:

- The Department should reject WW Group's request to calculate a margin for QY. Pursuant to 19 CFR 351.204(d)(2), "{t}he Secretary will determine…whether to examine a voluntary respondent."[115] In *Longkou Haimeng,* the U.S. Court of International Trade (CIT) affirmed the Department's authority to determine whether or not to accept voluntary responses in antidumping investigations.[116]

Department's Position: We disagree with the WW Group. When the Department limits the number of exporters examined in an investigation, section 782(a) of the Act directs the Department to calculate individual weighted average dumping margins for companies not initially selected for examination who voluntarily provide information. Additionally, section 782(a) applies if the information is submitted by the due date specified for exporters initially selected for examination and the number of exporters or producers subject to the investigation or review is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the investigation or review.[117]

Under section 782(a) of the Act, as recently amended by the Trade Preferences Extension Act of 2015 (TPEA),[118] in determining whether it would be unduly burdensome to examine a voluntary respondent, the Department may consider: 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of these investigations.

QY did not timely submit responses to Sections A, C, and D of the original antidumping duty questionnaire. For example, the deadline to submit Section A responses for the mandatory

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[114] *See* WW Group's Case Brief at 1.
[115] *See* Petitioner's Rebuttal Brief at 14-15.
[116] *See* Petitioner's Rebuttal Brief at 14 (citing *Longkou Haimeng Machinery Co. v. United States*, 581 F. Supp. 2d 1344, 1351-52. (CIT 2008)).
[117] On June 29, 2015, the TPEA came into effect, which made numerous amendments to the AD and countervailing duty law, including amendments to section 782(a) of the Act. *See* Trade Preferences Extension Act of 2015. Pub.L. No. 1 14-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by The Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015). This notice states that Section 506 of the TPEA which amended Section 782{a) of the Act is applicable to determinations made on or after August 6, 2015. *Dates of Application*, 80 FR at 46795. Accordingly, we are applying section 506 of the TPEA in this investigation.
[118] *See* Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by The Trade Preferences Extension Act of 20 I 5, 80 FR 46793 (August 6, 2015).

respondents was July 5, 2016.[119] QY submitted its Section A questionnaire response on July 6, 2016.[120] Therefore, because the requirement to submit information by the due date specified for exporters initially selected for examination was not met by QY, section 782(a) of the Act is not applicable.

Comment 11: Surrogate Value for Ocean Freight

WW Group Comments:

- The Department used an excessively high SV for ocean freight.[121] The selected freight rate should not be for a refrigerated cargo container because WW Group did not ship goods in a refrigerated cargo container.
- Certain rates are for dissimilar hazardous goods categories of which none apply to HEDP. Specifically, two of the four rates relate to hazardous chemicals not otherwise specified (NOS) while the other two freight rates relate to flammable liquids and gases. HEDP falls under class 8 (Corrosive).[122]
- All the rates include freight charges, which are also included in the brokerage and handling (B&H) SV charges. The Department must remove these charges to avoid double counting. One of the freight rates used is for an intermodal rate that includes additional rates.[123]

Petitioner's Comments:

- The Department should not change the SV for ocean freight despite the WW Group's objection. Moreover, there is no other ocean freight SV on the record. Furthermore, adjusting the SV is also inappropriate because there is no evidence to suggest that the SV includes land freight, nor is there record evidence suggesting that a "Port Congestion Surcharge" is included in B&H.[124]

Department's Position: There is only one ocean freight SV on the record of this investigation. In the *Preliminary Determination*, the Department mistakenly stated that the selected freight rate was for a refrigerated cargo container from Maersk. The Department clarifies that the price quote for ocean freight SV[125] from Descartes is not for refrigerated freight. In fact, where indicated, the source data indicates that these are provided in the price quotes from Descartes, "OTHC-Non-Reefer."[126]

WW Group's argument that the freight charges are not detailed enough to determine which charges are separate B&H charges, thereby presenting a possibility of double counting, is without merit. WW Group provided no evidence that the freight rates in question contain B&H charges. As a result, we do not find that the ocean freight SV is inclusive of B&H charges.

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119 *See*, *e.g.*, Taihe's July 5, 2016, Section A questionnaire response.
120 *See* QY's July 6, 2016, Section A Questionnaire Response. QY's Section C & D responses were similarly untimely.
121 *Id.* at 5-8.
122 *See* WW Group's Case Brief at 6.
123 *Id*. at 5.
124 *See* Petitioner's Rebuttal Brief at 13.
125 *See* Petitioner's August 18, 2016, Submission at Exhibit 11.
126 *Id*.

Comment 12: Converting Expense for Inventory Carrying Costs

Petitioner's Comment:
- The Department should convert the inventory carrying cost to a kilogram basis, as it did for other movement expenses.[127]

Department's Position: We agree with WW Group that the Department made an inadvertent conversion error and corrected this for the final determination.

Comment 13: Surrogate Value for PCl_3

WW Group Argument:
- There are differences in the Global Trade Atlas (GTA) data between large shipments of PCl_3 and small shipments. The WW Group makes large quantity purchases. The Department should only include shipments with large quantities in the SV calculation, because the smaller quantity shipments will distort the SV.[128]

Petitioner's Comments:
- The Department should not change its valuation for PCl_3. Petitioner agrees with the premise that larger shipments would have a lower per unit cost, but WW Group's argument to draw a fictitious line in PCl_3 import data is disingenuous. During the POI, PCl_3 imports to Mexico were shipped via large containers. However, during the POI, Mexico imported very small quantities, *i.e.*, two kilograms or less from another country and two additional shipments of one kilogram or less from another country.[129] Petitioner agrees that the Department can remove these small quantities but it would not have any meaningful difference on the SV for PCl_3.[130]

Department's Position: The Department disagrees with WW Group. During the POI, Mexico imported 769,319kg of PCl_3. The container volumes ranged from 17,781kg to 213,201kg. Additionally, Mexico imported one shipment of 2kg and two shipments of 1kg each. When determining whether data are aberrational, the Department has found that evidence of a high or low average unit value ("AUV") does not necessarily establish that GTA data for the suspect countries are unreliable, distorted, or misrepresentative.[131] Rather, interested parties must

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[127] *See* Petitioner's Case Brief at 14.
[128] S*ee* WW Group's Case Brief at 20-21.
[129] *See* Petitioner's Rebuttal Brief at 11-12.
[130] *Id.* at 12.
[131] *See Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2012*, 80 FR 41007 (July 14, 2015) (*Multilayered Wood Flooring CVD 2015*) and IDM at Comment 7. *See also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2012-2013*, 80 FR 13332 (March 13 2015) and IDM at Comment 5; *see also*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results of Administrative Review; 2011-2012*, 78 FR 15696 (March 12, 2013), unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Administrative Review; 2011-2012*, 78 FR 56209 (September 12, 2013) (*PRC Shrimp AR7*).

provide specific evidence showing whether the value is aberrational.[132] We agree that, in analyzing whether a given value is aberrational or distortive, the Department typically compares the prices for an input from all countries found to be at a level of economic development comparable to the NME whose products are under review for the POI and prior years.[133]

In order to demonstrate that a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.[134] In *Xanthan Gum*, the Department stated that "having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value."[135] As a result, the burden is on WW Group to provide specific and objective evidence that the POI data are distortive. Specifically, WW Group's attempt to delineate between shipment quantities above and below 20,000kg is without merit. WW Group has not provided any evidence to show that three smaller shipments are distortive to price or total quantity shipped. We previously found that GTA data, such as the data in question, is contemporaneous, publicly available, representative of broad market averages, and free of duties and taxes.[136] Therefore, we have not made any modifications to the data concerning imports of PCl_3 to Mexico during the POI.

Comment 14: Adjustment of Import Statistics

Taihe's Comments:

- Over 52 percent of the imports used in the surrogate value calculations were from the United States. As such, these imports would have been over land and would not have incurred ocean freight or marine insurance. By adding cost of insurance and freight (CIF) and marine insurance, based on the costs of ocean shipments, the Department distorted the surrogate values in this investigation. The Department should revise this methodology in the final determination and decline to add CIF or marine insurance.[137]

Department's Position: Regarding Taihe's comment that the Department should revise the methodology and decline to add CIF or marine insurance to the surrogate value expenses in the final determination, the Department disagrees. Taihe fails to identify anywhere on the record CIF and marine insurance specific values that should be excluded from the Department's surrogate value calculation. Taihe only generally points to the Department's Surrogate Value Memo's "Exhibits" as record evidence to support its assertion.[138] The Surrogate Value Memo does not indicate whether imports from the United States into Mexico arrived via land or sea. As

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[132] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012-2013* 79 FR 5747 (September 24, 2014) (*12-13 AR Warmwater Shrimp)* and accompanying Issues and Decision Memorandum at Comment 5.

[133] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71743 (December 3, 2014) (*STR 2014*) and IDM at Comment 2, *see also Longkou Haimeng Machinery Co*, at 612-613, and *PET Film from the PRC 2015*, at 33241.

[134] *See*, *e.g.*, *Multilayered Wood Flooring* at Comment 14.

[135] *See Xanthan Gum at Comment 16.A.*

[136] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 17435 (March 29, 2016) (*13-14 AR Fish Fillets*).and accompanying Issues and Decision Memorandum at Comment 14.

[137] *See Taihe's* Case Brief at 9-10.

[138] *See* Petitioner's Case Brief at 10.

such, the Department cannot generally disregard marine insurance and CIF values when it is not clear as to which values this argument applies. Therefore, the Department has not made changes to SVs with respect to marine insurance and CIF charges.

Company Specific Issues

Comment 15: Taihe's U.S. Movement Expenses

Petitioner's Comments:

- The Department should include an amount for indirect selling expenses and inventory carrying costs for Taihe. With respect to inventory carrying costs, Taihe's U.S. affiliate, TAICO, relied on distribution warehouses. As facts available, the Department should include an amount for inventory carrying costs for the sales for which a warehousing expense was reported, using the number of days in the warehouse for a sample sale, along with Taihe's reported short-term interest rate of 3.27 percent to calculate this warehousing expense. [139]
- The Department should calculate a credit expense for sales where this information was not reported for Taihe.[140]
- The Department should include an expense for Taihe's inland freight delivery for certain sales. In the final determination, the Department should include U.S. inland freight expenses based on the distances that Taihe reported in the field USPORTTODESU.[141]

Taihe Comments:

- Petitioner argues that the Department should use facts available to calculate indirect selling expenses and inventory carrying costs for TAICO, despite the fact that TAICO did not report indirect selling expenses or inventory carrying costs. Petitioner's arguments should be rejected by the Department.[142]

Department's Position: Petitioner asserts that Taihe incurred inventory carrying cost that it failed to report to the Department, and that the Department should use partial facts available to include this expense. Taihe, through its affiliate TAICO, relied on distribution warehouses, where the subject merchandise was stored until sale.[143] For the final determination, we have included inventory carrying costs for all sales where warehousing expenses were reported, as Taihe incurred this selling expense for these sales. Additionally, the Department is including other selling expenses incurred by TAICO, as pointed out by Petitioner and contained on the record,[144] in the margin calculation.

Regarding Petitioner's argument that the Department should calculate a credit expense for sales where information was not reported for Taihe, the Department agrees. Taihe's reported sales

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[139] *Id.* at 10.
[140] *Id.* at 11.
[141] *Id.* at 12.
[142] *See Taihe's* Rebuttal Brief at 2.
[143] *See* Petitioner's Case Brief at 10.
[144] *See* Petitioner's Case Brief at 11.

database contains certain CEP sales that do not show a credit response reported under the CREDITU variable.[145] Thus, in keeping with its practice, the Department has calculated and applied the CREDITU expense to Taihe's sales where CREDITU was not reported.

Further, Petitioner argues that the Department should also include an expense for Taihe's inland freight delivery for certain sales. However, Petitioner does not cite specific instances where Taihe incurred this expense, but neglected to report a value for inland freight. Although Petitioner points to the fact that Taihe's statement in its supplemental Section C response that certain of its sales included U.S. inland freight in the international ocean freight expense,[146] Petitioner does not identify specific sales where Taihe failed to report this expense. Moreover, as this expense has already been captured by another variable, to include inland freight expenses would lead to double counting. The Department's practice is to avoid double counting.[147] Thus, the record lacks sufficient information to determine that Taihe misreported freight expenses and the Department will not include an expense for U.S. inland freight on any sale where U.S. inland freight was not reported by Taihe.

WW Group Specific Issues:

Comment 16: Conversion Calculation for Water Surrogate Value

WW Group Comments:

- The Department erred in calculating the SV for water. Specifically, the Department did not convert the water SV to a per kilogram basis.[148]

Department's Position: We disagree with WW Group and will not convert the water SV to a per kilogram basis for the final determination. Specifically, WW Group reported the water usage ratio on a MT basis and the GTA water SV unit of measure is reported in cubic meters (m^3). Therefore, no additional conversion is necessary. Accordingly, we are not making any modification to the water SV for the final determination.

Comment 17: Adjustment of Irrecoverable VAT

WW Group Comments:

- The Department should adjust the amount of non-reimbursed VAT.
- The Department verified the WW Group's VAT experience and established that the WW Group has a different experience with irrecoverable VAT.[149]

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[145] *See* Taihe's October 20, 2016 Submission at Exhibit 1.
[146] *See* Petitioner's Case Brief at 12.
[147] *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 74 FR 36656 (July 24, 2009) (*Kitchen Racks*) and accompanying Issues and Decision Memorandum at Comment 16-J.
[148] *See* WW Group's Case Brief at 4.
[149] *See* WW Group's Rebuttal Brief at 10.

Petitioner's Comments:

- The Department should calculate WW Group's VAT expense as it did for Taihe, by subtracting the refund rate of nine percent from the VAT tax levied on the purchase of the raw materials. The resulting eight percent should be applied to the FOB price of each sale. The VAT rate minus the recoverable percentage should be applied to the WW Group's FOB sales.[150]

Department's Position: Petitioner and WW Group argued that WW Group's irrecoverable VAT calculation should be recalculated for the final determination, and we agree with Petitioner. In its July 29, 2016, submission, WW Group reported that the VAT refund rate is nine percent.[151] For the final determination, the Department will subtract the standard refund rate of nine percent and apply the remaining eight percent to WW Group's FOB sales.

The Department's practice with respect to the calculation of the export price (EP) or CEP is to include an adjustment of any irrecoverable VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[152] When a 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.[153]

In a typical VAT system, companies do not incur any irrecoverable 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 companies can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.[154] 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.[155] This amounts to a tax, duty, or other charge imposed on exports that is not imposed on domestic sales and we, thus, disagree with the interested parties' assertions that irrecoverable VAT should not be deducted from U.S. prices. 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.[156]

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

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150 *See* Petitioner's Case Brief at 9.
151 *See* WW Group's July 29, 2016 submission at 35, (at Uniphos's Section C) and at Exhibit C-10.
152 *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) (*VAT Methodological Change*).
153 *Id*. at 36483; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) (*Chlorinated Isocyanurates11-12*) and accompanying Issues and Decision Memorandum at Comment 5.
154 *See*, *e.g.*, *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) (*Diamond Sawblades 11-12*) and accompanying IDM at Comment 6; *VAT Methodological Change*, 77 FR at 36483.
155 *See VAT Methodological Change* at 36483.
156 *Id.* at 36483.

goods.[157] The first variable, export value, is unique to each respondent and sale 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.[158]

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.[159] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[160] The statute does not define the terms "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 "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 tax neutral net price received by the seller. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[161]

We disagree with WW Group that its alternative calculation for the treatment of its VAT liability is more accurate because it reconciled its monthly input VAT and the monthly sales revenue.[162] Our practice is that we will not consider allocations across all company sales or across sales of products with different VAT schedules but, rather, will use the difference between the VAT rate and the refund rate, consistent with PRC regulations, unless the company can show otherwise for the subject merchandise.[163] WW Group has not done that. Our irrecoverable VAT calculation methodology, as applied in this investigation, 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 investigation by WW Group indicates that, according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is nine percent.[164] For the purposes of the

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[157] *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) (*Steel Rail Tie Wire*) and accompanying Issues and Decision Memorandum at Comment 1, n. 35.

[158] *Id*. at Comment 1, n. 36; *see also* WW Group's July 29, 2016 submission at 35.

[159] *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) (*Graphite Electrodes*) and accompanying Issues and Decision Memorandum at Comment 7.

[160] *See*, *e.g.*, *Diamond Sawblades 11-12* at Comment 6; *Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014) (*Frontseating Valves*) and accompanying Issues and Decision Memorandum at Comment 5.

[161] *See* Article 5(3) of Circular 39 that states, "(3) Where the Tax Refund Rate is lower than the applicable tax rate, the amount of tax calculated according to the difference in rates shall be included in the costs of the Exported Goods and Services."; *VAT Methodological Change* at 36483, and *Notice of Final Rule, Antidumping Duties, Countervailing Duties*, 62 FR 27296 (May 19, 1997) (citing the SAA).

[162] *See* WW Group's July 29, 2016 submission at 35 – 37.

[163] *See*, *e.g.*, *Diamond Sawblades 11-12* at Comment 6.

[164] *See* WW Group's July 29, 2016 submission at 35 – 37.

final determination, therefore, we removed from U.S. price the difference between the rates (*i.e.*, eight percent), which is the irrecoverable VAT as defined under PRC tax law and regulation.[165]

As discussed above, the PRC's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. Irrecoverable VAT is a product-specific export tax, duty, or other charge that is incurred on the exportation of subject timemerchandise. Contrary to the WW Group's claims, we did not verify its alternative calculation methodology for the treatment of its VAT liability, but verified the VAT invoice provided for each sale examined in the sales traces at verification.[166] Thus, our analysis is consistent with our current irrecoverable VAT policy and our treatment of irrecoverable VAT in recently completed NME cases.[167]

IX. Conclusion

We recommend applying the above methodology for this final determination.

☒ ☐

Agree Disagree

3/20/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

[165] *See, e.g.*, *Steel Rail Tie Wire* at Comment 1.
[166] *See* WW Group's Verification at 11-13.
[167] *See, e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015) (*OTR Tires 12-13*) and accompanying Issues and Decision Memorandum at Comment 4.