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Administrative Review  
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April 26, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of  
Antidumping Duty Administrative Review: Chlorinated  
Isocyanurates from the People's Republic China; 2018-2019

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## I. SUMMARY

We analyzed the comments from interested parties in the 2018-2019 administrative review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (China). As a result of this analysis, we recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. A complete list of the issues in this administrative review on which we received comments is provided below:

- Comment 1: Selection of Mexico as the Primary Surrogate Country Instead of Malaysia
- Comment 2: Adjusting the Mexican Freight-On-Board (FOB) GTA Import Data to a Cost of Insurance and Freight (CIF) Value
- Comment 3: Use of the Mexican Orbia Financial Statements in the Calculation of Surrogate Value Financial Ratios
- Comment 4: Use of Alternative Mexican Labor Data
- Comment 5: Mexican Surrogate Value for Natural Gas
- Comment 6: Clerical Errors in the Calculation of Preliminary Dumping Margin

## II. BACKGROUND

The Department of Commerce (Commerce) published its *Preliminary Results*<sup>1</sup> on October 26, 2020. On November 25, 2020, Bio-Lab, Inc., Clearon Corp. and Occidental Chemical Corps.

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<sup>1</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019*, 85 FR 67709 (October 26, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



(collectively, the petitioners), and the respondent Heze Huayi Chemical Co., Ltd. (Heze Huayi) submitted case briefs.<sup>2</sup> The petitioners submitted a rebuttal brief on December 3, 2020.<sup>3</sup> On February 18, 2021, Commerce fully extended the deadline for the final results until April 26, 2021.<sup>4</sup>

### III. SCOPE OF THE ORDER

The products covered by the order are chlorinated 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 ( $\text{Cl}_3(\text{NCO})_3$ ), (2) sodium dichloroisocyanurate (dihydrate) ( $\text{NaCl}_2(\text{NCO})_3(2\text{H}_2\text{O})$ ), and (3) sodium dichloroisocyanurate (anhydrous) ( $\text{NaCl}_2(\text{NCO})_3$ ). Chlorinated isos are available in powder, granular, and tableted forms. The order covers all chlorinated isos. Chlorinated 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 chlorinated 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.

### IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on a review of the record and comments received from interested parties, Commerce made two changes to the *Preliminary Results* related to clerical errors that are discussed in Comment 6, below. Specifically, we applied the correct ocean freight rate in order to convert the Mexican freight onboard (FOB) Global Trade Atlas (GTA) data for certain inputs to a cost of insurance and freight (CIF) basis.<sup>5</sup> In addition, we have revised the Mexican GTA import data with respect to HTS 282720 for calcium chloride to exclude certain imports into Mexico for this reported by-product.

### V. DISCUSSION OF THE ISSUES

#### Comment 1: Selection of Mexico as the Primary Surrogate Country Instead of Malaysia

##### *Heze Huayi's Case Brief*<sup>6</sup>

- Although Commerce has previously found that the production of identical merchandise in Mexico makes it superior to other surrogate value (SV) choices, the statute only directs

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<sup>2</sup> See Petitioners' Letter, "Case Brief of Bio-Lab, Inc., Clearon Corp. and Occidental Chemical Corporation," dated November 25, 2020 (Petitioners' Case Brief); see also Heze Huayi's Letter, "Case Brief of Heze Huayi Chemical Co., Ltd. (Heze Huayi)," dated November 25, 2020 (Heze Huayi's Case Brief).

<sup>3</sup> See Petitioners' Letter, "Rebuttal Brief of Bio-Lab, Inc., Clearon Corp. and Occidental Chemical Corporation," dated December 3, 2020 (Petitioners' Rebuttal Brief).

<sup>4</sup> See Memorandum "Chlorinated Isocyanurates from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated February 18, 2021.

<sup>5</sup> See Petitioners' Case Brief at 5.

<sup>6</sup> See Heze Huayi's Case Brief at 12-18.

Commerce to rely upon a significant producer of comparable merchandise under section 773(c)(4)(1) of the Act.

- The purpose of this inquiry is to find available and representative pricing for SVs (*i.e.*, production costs). The comparable products sodium hypochlorite and calcium hypochlorite are produced in Malaysia, have the same raw materials inputs as chlorinated isos, and are used in the same water treatment market.
- Commerce has a very significant producer of highly comparable merchandise, Malaysia, that sources multiple very comparable financial statements and reports its import statistics on a CIF basis. In addition, Commerce has often made surrogate country determinations based on the comparability and quantity of financial statements.<sup>7</sup>
- The record contains four Malaysian financial statements from companies that produce comparable merchandise. Each of these Malaysian companies is more comparable than the sole Mexican company, CYDSA, because they are only chemical producers. Further, two of the Malaysian companies are solely in the chlor-alkali chemical business and the other two are solely in the water treatment chemical business.
- Mexico only sources a financial statement from large conglomerate chemical companies, which while producing a comparable product, are not primarily focused on a chemical industry. Specifically, the CYDSA financial statements has only one of its five divisions that produces the comparable product sodium hypochlorite.
- Although CYDSA's chemicals division does make up a significant amount of its sales, as noted in past reviews, that does not entail that the costs of the company as a whole are correspondingly similar percentages. In addition, CYDSA also incurred significant costs running its electricity and steam cogeneration division which supplies all electricity needs for the company. This puts this company at a different level of integration than Heze Huayi which must purchase its energy.
- In addition, Mexico import statistics are reported on an FOB basis and must be adjusted to a CIF basis making assumptions and estimations about the costs incurred in place of actual movement expenses imbedded in the Malaysian SV data which is reported on a CIF basis.
- Commerce has in several instances considered its preference for CIF data in selecting the primary surrogate country when another potential surrogate country has reported data only an FOB basis.<sup>8</sup>
- In two recent remands, Commerce considered its preference for CIF data in selecting Indonesia and Malaysia as primary surrogate countries instead of the Philippines, which reported data on an FOB basis.<sup>9</sup>

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<sup>7</sup> See *Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012), and accompanying IDM at Comment 1F; see also *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 28803 (May 16, 2013), and accompanying IDM at Comment 1D.

<sup>8</sup> See *Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 355 (July 24, 2019) (*Steel Racks from China*), and accompanying IDM at 8-9.

<sup>9</sup> See *Final Results of Third Remand Redetermination Pursuant to the Remand Order of the CIT in Jacobi Carbons AB et al. v. United States et al.*, 365 F.Supp.3d 1344 (CIT 2018), unchanged in *Fourth Remand Redetermination Pursuant to the Remand Order of the CIT in Jacobi Carbons AB et al. v. United States et al.*, Consol. Court No. 16-00185, Slip Op. 19-160 (CIT December 17, 2019) (*Activated Carbon Remand Redetermination*); see also *Certain*

- Commerce’s unlawful and unreasonable emphasis on identical production over comparable production has resulted in relying on a surrogate country, Mexico, that does not source the best available information.
- If Commerce does not rely upon Malaysia because of its preference to rely on a surrogate country with a quantifiable amount of identical production, the Malaysian surrogate financial statements, as explained above, are the best available information for calculating the surrogate financial ratios. Commerce has relied upon surrogate financial statements in a secondary surrogate country when it was the best available information.<sup>10</sup>

*Petitioners’ Rebuttal Brief*<sup>11</sup>

- Commerce should continue to rely on Mexico as the primary surrogate country as it has in prior segments of this proceeding because it produces identical merchandise, chlorinated isos.<sup>12</sup>
- Commerce’s *Policy Bulletin 04.1* clearly indicates that Commerce prefers to select a surrogate country that produces identical merchandise, all else being equal, versus another country producing “only comparable” merchandise.<sup>13</sup>
- Mexico offers the best available information to value factors of production because it provides greater specificity than Malaysia with respect to water, labor costs, and financial ratios. Mexico also provides tax-free electricity rates that more closely correspond with the period of review.
- Commerce should continue to find Mexico as the primary surrogate country as it has in the past four administrative reviews.<sup>14</sup>

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*Activated Carbon from the People’s Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results*, 84 FR 71369 (December 27, 2019) at 71370.

<sup>10</sup> 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), and accompanying IDM at Comment 16; see also *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 68881 (December 17, 2019), and accompanying IDM at Comment 4.

<sup>11</sup> See *Petitioners’ Rebuttal Brief* at 17-32.

<sup>12</sup> See *Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 35183 (July 28, 2017) (*2015-2016 Prelim Results*), and accompanying PDM at 6 and 13, unchanged in *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 5243 (February 6, 2018) (*2015-2016 Chlorinated Isos Review*), and accompanying IDM; see also *Heze Huayi Chemical Co., Ltd. v. United States* (upholding the selection of Mexico as the primary surrogate).

<sup>13</sup> See *Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) (*Policy Bulletin 04.1*), at note 6.

<sup>14</sup> See *Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 42891 (August 19, 2019) (*2017-2018 Prelim Results*), and accompanying PDM at 11-14, unchanged in *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 10411 (February 24, 2020) (*2017-2018 Chlorinated Isos Review*), and accompanying IDM at Comment 2; see also *Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 31953 (July 10, 2018) (*2016-2017 Prelim Results*), and accompanying PDM at 10-12, unchanged in *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 5053 (February 20, 2019) (*2016-2017 Chlorinated Isos Review*), and accompanying IDM at Comment 1; *2015-2016 Prelim Results* PDM at 12-15, unchanged in *2015-2016 Chlorinated Isos Review*; and

- Specificity and reliability of the factor values is more important than whether the CIF charges need to be added after the selection of the primary surrogate. Commerce has previously found that the selection of SV source countries to only countries that report HTS data on a CIF basis could have the effect of unreasonably limiting the potential pool of SV source countries.<sup>15</sup>
- The record does not support Heze Huayi’s claim that the four Malaysian companies’ financial statements are superior to the sole Mexican company, CYDSA.
  - There is no evidence on the record that Accot Technologies Sdn. Bhd. (Accot) and Mey Chern Chemicals Sdn. Bhd. (Mey Chern) produce comparable merchandise in Malaysia.<sup>16</sup>
  - The Malaysian financial statements of CCM Chemicals Sdn. Bhd. (CCM) are unclear as to whether it manufactured any comparable merchandise or simply traded in these products, since there is no evidence or corroborating information to indicate the extent to which CCM is a significant producer of the comparable products sodium or calcium hypochlorite.
  - The Malaysian financial statements of Malay-Sino Chemical Industries Sdn. Bhd. (Malay-Sino Group) indicates it is a conglomerate producing chlor-alkali and other chemicals, of which sodium hypochlorite accounts for only ten percent of its chlor-alkali output.<sup>17</sup>
  - In addition, Malay-Sino Group is involved in both manufacturing and trading, which makes it necessary to deduct the sales revenues from trading and matching costs of traded goods from the income statement, in order to calculate accurate financial ratios, which is not possible using the information from the financial statements on the record.<sup>18</sup>
  - When Commerce cannot adequately adjust the financial ratios to remove the impact of traded goods, Commerce has rejected the financial statement altogether as a basis for calculating financial ratios.<sup>19</sup>
  - Given the unknown impact of operations beyond the production of chlor-alkali chemicals, and the inability to remove “traded goods” from the financial ratios, Commerce should reject CCM and Malay-Sino Group financial statements.

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*Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 45128 (July 12, 2016), and accompanying PDM at 7 and 11, unchanged in *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 4852 (January 17, 2017) (*2014-2015 Chlorinated Isos Review*), and accompanying IDM at Comment 1.

<sup>15</sup> See *Certain Aluminum Foil from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) (*Aluminum Foil from China*), and accompanying IDM at Comment 1.

<sup>16</sup> See Petitioners’ Letter, “Chlorinated Isocyanurates from the People’s Republic of China (2018-2019 Review): Petitioners’ Rebuttal Comments on Final Surrogate Value Submission,” dated July 27, 2020 (Petitioners’ Final SV Rebuttal Comments) at Exhibit 1; see also Heze Huayi’s Letter, “Certain Chlorinated Isocyanurates from the People’s Republic of China: Final Surrogate Value Submission,” dated July 20, 2020 (Heze Huayi’s Final SV Comments) at Exhibit SV2-11.

<sup>17</sup> See Heze Huayi’s Final SV Comments at Exhibit SV2-9.

<sup>18</sup> See, e.g., *Rhodia, Inc. v. United States*, 185 F. Supp. 2d 1343, 1357 (CIT 2001); and *Luoyang Bearing Factory v. United States*, 240 F. Supp. 2d 1268, 1305 (CIT 2002).

<sup>19</sup> See, e.g., *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 37,321 (June 27, 2011), and accompanying IDM at 22; and *Shenzhen Xinboda Indus. Co. v. United States*, 976 F. Supp. 2d 1333, 1370 (CIT 2014).

- CYDSA's business is fully comparable to Heze Huayi's business. CYDSA's chemicals business accounts for 69.09 percent of total sales<sup>20</sup> and its chlor-alkali business (excluding salts) accounted for 42.78 percent of the company's total net sales.<sup>21</sup> CYDSA's net revenues and costs reflect the operation of a chemical business producing merchandise that is comparable to chlorinated isos.
- In previous reviews, Commerce has not found CYDSA's co-generation of electricity business as being distortive in the calculation of the financial ratios. The record demonstrates that CYDSA experiences typical, market-based energy costs despite its internal co-generation of electricity.<sup>22</sup>

**Commerce's Position:** Commerce continues to determine that Mexico is the appropriate primary surrogate country after considering the facts and arguments on the record. Based upon our examination, Heze Huayi has not demonstrated that the selection of Mexico is inappropriate. Our selection supports Commerce's policy, which indicates a preference to select a surrogate country that produces identical merchandise over one that only produces comparable merchandise.<sup>23</sup> The record evidence shows that Mexico is the only surrogate country with significant production of identical merchandise, chlorinated isos.

Section 773(c)(4)(B) of the Act requires Commerce to value, to the extent possible, factor of productions (FOPs) in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what constitutes comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as the *Policy Bulletin 04.1* for guidance on defining comparable merchandise. The *Policy Bulletin 04.1* states that "{i}n all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."<sup>24</sup> Moreover, footnote 6 of the bulletin states that "{i}f considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." (Emphasis added). Thus, it is only when Commerce has no useable data for an economically comparable country that produces identical merchandise does it consider economically comparable countries that produce comparable merchandise. Therefore, if the record contains a producer of identical merchandise, the requirement of comparable merchandise under section 773(c)(4) of the Act is satisfied. There is no need to look further at countries with only comparable merchandise. Conversely, if identical merchandise is not produced then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>25</sup>

As noted in the *Preliminary Results*, Commerce continues to find that the record evidence in this review shows that Mexico is the only surrogate country producing identical merchandise in

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<sup>20</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (2018-2019 Review): Initial Surrogate Value Data," dated December 16, 2019 (Petitioners' SV Comments) at Exhibit 10 at 46 and 107.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at Exhibit 10 at 8.

<sup>23</sup> See *Policy Bulletin 04.1* at 2, note 6.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at note 6.

significant quantities. The petitioners provided sufficient evidence demonstrating Mexican production of chlorinated isos by AquaClor S.A. de C.V. (Aqua Chlor) based on its company registration with the National Association of the Chemical Industry in Mexico; product registrations filed with the EPA for specific brand names of subject merchandise; and, information that corroborates the extensive PIERS cross-border trade data for shipments of subject merchandise with the GTA export data, showing that 97.9 percent of these exports were of subject merchandise manufactured by AquaClor and shipped to Haviland Pool and Spa Products in the United States.<sup>26</sup> In the case of Malaysia, we preliminarily found only one Malaysian company, Setia Maju, to be a producer of identical merchandise; however, no Malaysian production information was provided by Heze Huayi to corroborate whether this producer or Malaysia, in general, had significant production of identical merchandise during the POR.<sup>27</sup> Setia Maju is identified on the record as a producer of chlorinated isos but there is no evidence of what quantities of subject merchandise it may have produced or when it may have produced subject merchandise.

We also disagree with Heze Huayi's argument that Commerce prefers CIF data in selecting the primary surrogate country when another potential surrogate country has reported data only on an FOB basis. Rather, Commerce has previously found that CIF import data are not necessarily superior to FOB import data and that limiting potential surrogate countries to those with CIF import data unreasonably limits the pool of potential surrogate countries.<sup>28</sup> Furthermore, Heze Huayi's reliance on *Steel Racks from China* to support its argument that FOB import data is inferior to CIF import data is misguided. The *Steel Racks from China* determination found Romanian SVs for labor, energy, and water be of a better quality than the Brazilian SVs for those inputs; the financial statements for a Romanian company on the record were preferable to the Brazilian company financial statement on the record for purposes of calculating the surrogate financial ratios; and, the record did not include an SV for marine insurance to add to the Brazilian FOB values in order to calculate a CIF value.<sup>29</sup> Similarly, data quality also played a significant role in the remand redeterminations noted by Heze Huayi where Malaysia was selected as the primary surrogate country over the Philippines because the Malaysia SV data, unlike the Philippine SV data, contained SV data for anthracite coal, a major input used by the respondent company, Jacobi, in the production of the subject merchandise.<sup>30</sup>

In the instant case, record evidence demonstrates that Mexico is the only surrogate country with significant production of identical merchandise. In addition, the record contains Mexican SVs for all FOPs, as well as publicly available SVs for valuing ocean freight and insurance. Heze Huayi provided no argument or comment regarding our preliminary finding that no production

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<sup>26</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (2018-2019 Review): Petitioners' Comments on Primary Surrogate Country Selection," dated December 2, 2019 at 8 and Exhibits 1-4.

<sup>27</sup> See *Preliminary Results* PDM at 13-14.

<sup>28</sup> See, e.g., *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010) (*Wooden Bedroom Furniture*), and accompanying IDM at Comment 16; see also *Aluminum Foil from China* IDM at Comment 1; and *Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value*, 83 FR 57421 (November 15, 2018), and accompanying IDM at Comment 3.

<sup>29</sup> See *Steel Racks from China* IDM at 7-8.

<sup>30</sup> See *Activated Carbon Remand Redetermination* at 2-3.

information was submitted regarding the one potential Malaysian producer of identical merchandise, Setia Maju, that would demonstrate significant production in Malaysia.<sup>31</sup>

Lastly, Heze Huayi's characterization of Commerce's preference to select a surrogate country that produces identical merchandise over one that only produces comparable merchandise as being unlawful and unreasonable, is disingenuous. Commerce has been consistent in its findings in the four prior administrative reviews with the selection of Mexico as the primary surrogate country because the record evidence in each review contained information and data on the production of identical merchandise in Mexico, and selecting Mexican data did not lead to factor valuation difficulties.<sup>32</sup> In Heze Huayi's recent legal challenge to Commerce's use of Mexico, the CIT upheld Commerce's choice of Mexico as the primary surrogate country and the use of CYDSA's financial statements for calculating surrogate financial ratios.<sup>33</sup> The Mexican surrogate country and surrogate value information on the record of this review has no meaningful differences or deficiencies than the Mexican information submitted in the four prior administrative reviews where we have selected Mexico as the primary surrogate country. Moreover, Heze Huayi has not provided any record evidence in this administrative review to question the reliability of the Mexican surrogate country and surrogate value information. Therefore, we find no need to consider the use of any of the Malaysian financial statements on the record since CYDSA's financial statements are reliable and representative of a producer of comparable merchandise in the primary surrogate country, Mexico.<sup>34</sup>

## **Comment 2: Adjusting the Mexican Freight-On-Board (FOB) GTA Import Data to a Cost of Insurance and Freight (CIF) Value**

### *Heze Huayi's Case Brief*<sup>35</sup>

- Commerce should rely on the U.S. International Trade Commission's (USITC) DataWeb data for the CIF adjustment to the Mexican FOB because the record contains these POR costs for each applicable Mexican SV input imported into the United States from Mexico, or for certain inputs, these costs from all countries.<sup>36</sup>
- The USITC DataWeb data provides aggregate freight, insurance, and other costs associated with importing from Mexico to the United States, where the United States was the primary source of the Mexican SV import data. Where the United States was not the primary source, USITC DataWeb data covering imports to the United States from all countries should be used as the source of these costs for converting FOB values to CIF values.

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<sup>31</sup> See *Preliminary Results* PDM at 13-14.

<sup>32</sup> See *2017-2018 Prelim Results* PDM at 10-12, unchanged in *2017-2018 Chlorinated Isos Review*; see also *2016-2017 Prelim Results* PDM at 10-12, unchanged in *2016-2017 Chlorinated Isos Review* IDM at Comment 1; *2015-2016 Prelim Results* PDM at 12-15, unchanged in *2015-2016 Chlorinated Isos Review*; and *2014-2015 Chlorinated Isos Review* IDM at Comment 1.

<sup>33</sup> See *Heze Huayi Chemical Co., Ltd. v. United States*, Slip Op. 18- 57 (CIT 2018).

<sup>34</sup> See *Preliminary Results* PDM at 13.

<sup>35</sup> See Heze Huayi's Case Brief at 1-5.

<sup>36</sup> See Heze Huayi's Final SV Comments at Exhibit SV2-3.



- The importation costs from the USITC DataWeb is specific to the harmonized tariff number of each Mexican SV input, contemporaneous with the POR, and is regionally specific to the source of Mexico's imports.
- Commerce should not use the adjustment made in the preliminary results which relied on more generalized freight rates only from China and insurance costs that are not contemporaneous or specific to the input. The RJG insurance SV used in the preliminary results is eight years prior to the start of the POR and is only for general merchandise.
- If Commerce chooses not to use the more specific USITC data, Commerce should use all Descartes and Maersk data on the record and not rely only on the Maersk data used in the preliminary results that only covers the cost of shipping inorganic chemicals between China and the United States.
- The CIF adjustment is being applied to Mexican SV inputs and not to subject merchandise from China. Therefore, it is more appropriate to use worldwide prices because Mexico sources its inputs from a variety of countries.
- Commerce is incorrect in its claim that the Descartes data represent only "price quotes" for base rates that exclude other associated charges. The logical assumption is that all costs are included in the rate. Moreover, Commerce has relied on Descartes data in other proceedings.<sup>37</sup>
- Commerce's preliminary finding that the Maersk data for shipping organic chemicals is not applicable, fails to consider that some of the raw material inputs for subject merchandise also include organic chemicals.
- The Maersk data submitted by the petitioners and used in the preliminary results, only covers some months of the POR whereas respondent's Descartes and Maersk data covers each month of the POR.

*Petitioners' Rebuttal Brief*<sup>38</sup>

- The USITC DataWeb data reports only outbound freight rates on shipments from Mexico into the United States. Heze Huayi provides no evidence that these rates are representative of the freight costs for inbound imports into Mexico.
- The USITC has observed that "directional imbalance" between the volume of inbound and outboard trade, and the resulting demand to fill containers going in opposite directions, usually results in different freight rates.<sup>39</sup>
- The value of the USTIC DataWeb data shows substantial differences in the freight rates. However, the underlying quantity and value of this data for each input was not submitted

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<sup>37</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 36886 (July 30, 2019), and accompanying IDM at Comment 16 (finding Descartes ocean freight was preferable to Maersk ocean freight data); see also *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017), and accompanying IDM at Comment 5 (relying on both Descartes and Maersk data).

<sup>38</sup> See Petitioners' Rebuttal Brief at 6-10.

<sup>39</sup> See *Logistics Services: An Overview of the Global Market and Potential Effects of Removing Trade Impediments*, Inv. No. 332-463, USITC Pub. 3770 at 5-5 (May 2005) (*Logistics Services Report*) (the Commission notes that "directional imbalance in trade between countries implies that many carriers are forced to haul empty containers back, which will make the costs of shipping in one direction higher").

and therefore, does not allow Commerce to analyze whether the rates are based on commercial quantities or have any aberrational values.

- The Descartes ocean freight rates, in contrast to the Maersk rates, do not include all of the charges identified by the Maersk data. Specifically, the Descartes data identifies only the base rate and provides no indication of the additional charges typically associated with ocean shipments such as terminal handling charges, documentation fees, surcharge rate, and bunker adjustment factor that is identified in the Maersk data.
- The Maersk data reflect inbound ocean freight rates from China to Long Beach and Houston, which bracket Mexico and provide a reasonable proxy for inbound ocean freight rates. This is the methodology used in the prior administrative review.
- That Maersk and even Descartes quote ocean freight rates by container, is sharply at odds with the results of Heze Huayi's methodology which uses only U.S. imports from Mexico, except when world imports were offered.
- For the reasons noted above, Commerce should continue to rely on Maersk ocean freight rates, quoted for container loads of inorganic chemicals, to adjust Mexican SVs from an FOB- to a CIF-basis.

**Commerce's Position:** As noted in the *Preliminary Determination*, in accordance with section 773(c)(1) of the Act, Commerce relies on the "best available information" to derive surrogate valuations for the Chinese entity's FOPs, which includes transportation costs. Furthermore, Commerce's *Policy Bulletin 10.2* acknowledges that transportation data from certain countries "commonly relied on for surrogate values, such as India and Indonesia, are inclusive of international freight costs."<sup>40</sup> Commerce's *Policy Bulletin 10.2*, clarifies that "in situations where the surrogate country import statistics do not include international freight costs, the Department will add international freight and foreign brokerage and handling charges to the import value."<sup>41</sup>

Here, Commerce continues to find the Maersk rates for "inorganic chemicals" to be the best information on the record to adjust the Mexican SVs for transportation costs from an FOB- to a CIF-basis. As an initial matter, we agree with Heze Huayi's argument that the CIF adjustment is meant to be applied to the cost of importing to Mexico and that it is more appropriate to use worldwide prices because Mexico sources its inputs from a variety of countries. However, the alternative data on the record submitted by Heze Huayi to make this adjustment suffers from various deficiencies or provides less accuracy than the Maersk freight rates for "inorganic chemicals" used in the *Preliminary Results*.<sup>42</sup>

The USITC DataWeb data submitted by Heze Huayi represents aggregate freight, insurance, and other import costs to the United States and not to Mexico.<sup>43</sup> Absent any evidence on the record, Heze Huayi assumes that the cost of importing to the United States would be representative of the freight costs for inbound imports into Mexico. The petitioners have cited to the USITC's *Logistics Services Report* where it found different costs associated with "directional imbalance in trade" between countries which increases the costs of shipping in one direction when carriers are

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<sup>40</sup> See *Policy Bulletin 10.2* at 1-2.

<sup>41</sup> *Id.*

<sup>42</sup> See *Preliminary Results PDM* at 23.

<sup>43</sup> See Heze Huayi's Final SV Comments at Exhibit SV2-3.

forced to haul empty containers.<sup>44</sup> Based on this information, we cannot assume that the outbound rates from Mexico to import to the United States are equivalent to the inbound rates of exporting from the United States to Mexico.

Heze Huayi also submitted Descartes price quotes which Commerce has used in other proceedings. However, as noted in the *Preliminary Results*, the Descartes price quotes on the record of this review are based on a single base rate that includes no additional reference to or itemization of other associated charges related to freight costs (*e.g.*, terminal handling charges, documentation fees, surcharge rate, and bunker adjustment factor).<sup>45</sup> In addition, we find a large discrepancy between the Descartes and the Maersk price quotes on the record of this review which are evident in the table included in Heze Huayi's case brief. Heze Huayi's table shows that the Maersk freight rates from Shanghai to Long Beach are more than four times more expensive than the Descartes rates to a similar destination in California, Los Angeles, for the same standard 40-foot dry container.<sup>46</sup> This information provides further evidence that the Descartes quotes are not fully inclusive of all freight costs given this large disparity between these same competing freight rates in the same month and year.

Finally, we continue to find that the Maersk rates provided by Heze Huayi for "organic chemicals" are not as accurate as the Maersk rates provided by the petitioners for "inorganic chemicals."<sup>47</sup> Heze Huayi submitted freight rates sourced from Descartes and Maersk, but the rates covered different product categories. Specifically, the Descartes rates are for "inorganic chemicals" and the Maersk rates are for "organic chemicals." In providing this information, Heze Huayi provides no explanation or clarification as to why it provided a different product category for "organic chemicals"<sup>48</sup> when the all the other freight rates submitted on the record by Heze Huayi and the petitioners are for "inorganic chemicals." Moreover, no evidence was submitted on the record to identify the relevant "organic chemical" inputs used to produce the "inorganic chemical" subject merchandise, as noted in the *Preliminary Results*.<sup>49</sup>

For the reasons noted above, we continue to find the Maersk freight rates for "inorganic chemicals" to be the best available SV information on the record as these rates identify all freight and associated import costs, and accurately reflect the correct product category. Further, adjusting the Mexican GTA import values from an FOB to CIF basis using the Maersk freight rates for "inorganic chemicals" was also done in the prior review, and, therefore, our selection here is consistent with our practice.<sup>50</sup>

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<sup>44</sup> See *Logistics Services Report*.

<sup>45</sup> See *Preliminary Results* PDM at 22-23.

<sup>46</sup> See Heze Huayi's Case Brief at Attachment 3.

<sup>47</sup> See *Preliminary Results* PDM at 23.

<sup>48</sup> See Heze Huayi's Final SV Comments at Exhibit SV2-4.

<sup>49</sup> See *Preliminary Results* PDM at 23.

<sup>50</sup> See *Policy Bulletin 10.2: Inclusion of International Freight Costs When Import Prices Constitute Normal Value* (November 1, 2010) (*Policy Bulletin 10.2*) at 1-2; see also *2017-2018 Chlorinated Isos Review* IDM at Comment 4.

### Comment 3: Use of the Mexican Orbia Financial Statements in the Calculation of Financial Ratios

#### *Heze Huayi's Case Brief*<sup>51</sup>

- Commerce should use the Mexican financial statements from Orbia Advance Corporation, S.A.B de C.V.'s (Orbia), formerly Mexichem, S.A.B. de C.V. (Mexichem) because Orbia has three divisions (Fluent, Fluor, and Vinyl) that produce comparable chlorine products.
- Orbia produces several water treatment chemicals, sodium hypochlorite, chlorine, hydrochloric acid, and sodium hydroxide, which are comparable merchandise.
- Commerce has used Orbia's financial statements in another antidumping proceeding.<sup>52</sup>
- Commerce's preference is to rely on multiple financial statements<sup>53</sup> and therefore, should use both CYDSA's and Orbia's financial statements. This would normalize the evident distortions in CYDSA's due to its energy division and construction costs.

#### *Petitioners' Rebuttal Brief*<sup>54</sup>

- Orbia's financial statements should not be relied upon to calculate surrogate financial ratios. Orbia is a multinational conglomerate far larger than CYDSA or Heze Huayi, operating in many more countries, and producing a far greater range of chemical products. Orbia's financial statements lists 64 subsidiaries, the majority of which are wholly owned and operate in 41 countries.<sup>55</sup> The operations include 137 production plants<sup>56</sup> but only 18.9 percent of its net revenues are derived from sales of products in Mexico.<sup>57</sup>
- Orbia has chemical manufacturing operations in the United States, Japan, and the European Union, none of which are comparable in economic terms to China.<sup>58</sup> Therefore, Orbia is not representative of a producer in the primary surrogate country, Mexico.
- Orbia's "Vinyls" business produces the comparable product, sodium hypochlorite. However, the primary product produced by this business segment is polyvinyl chloride (PVC) which is used to make PVC resins for pipes, connectors and plastic irrigation drippers.<sup>59</sup> This segment's business results are reported as "PVC paste and resins, compounds, chloride and caustic soda."<sup>60</sup>

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<sup>51</sup> See Heze Huayi's Case Brief at 5-8.

<sup>52</sup> See *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part*, 82 FR 12192 (March 1, 2017) IDM at Comment 6.

<sup>53</sup> See *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 28803 (May 16, 2013), and accompanying IDM at Comment 1D. (citing *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 IDM at Comment 13).

<sup>54</sup> See Petitioners' Rebuttal Brief at 10-12.

<sup>55</sup> See Heze Huayi's Final SV Comments at Exhibit SV2-5 at 25-26.

<sup>56</sup> *Id.* at Exhibit SV2-5 at 14.

<sup>57</sup> *Id.* at Exhibit SV2-5 at 86.

<sup>58</sup> *Id.* at Exhibit SV2-5 at 83-86.

<sup>59</sup> *Id.* at Exhibit SV2-5 at 46.

<sup>60</sup> *Id.* at Exhibit SV2-5 at 48.

- In contrast, CYDSA, like Heze Huayi, operates in a single country that is economically comparable to China and primarily manufactures a small number of related chlor-alkali products.

**Commerce’s Position:** Section 773(c) of the Act grants Commerce broad discretion to determine the best available information in a reasonable manner on a case-by-case basis.<sup>61</sup> As stated in the *Preliminary Results*, in selecting surrogate financial ratios Commerce considers, among other criteria, the comparability to the respondent’s experience.<sup>62</sup> In addition, the CIT has held that in the selection of surrogate producers, Commerce may consider how closely the surrogate producers approximate the NME producer’s experience.<sup>63</sup> In its analysis, Commerce seeks to identify and rely on the record data that “most accurately represents the fair market value” of the relevant factor of production.<sup>64</sup> Based on the record evidence of this review, we continue to find the use of CYDSA’s financial statements as the best available information to value SV financial ratios.

As discussed in the *Preliminary Results*, Orbia is a large holding company composed of 64 subsidiaries operating in multiple industries with numerous product lines in multiple countries, including some that are hyperinflationary economies.<sup>65</sup> Moreover, as noted by the petitioners, many of the countries that Orbia operates in are not economically comparable to China.<sup>66</sup> Commerce listed Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey as countries that are comparable to China in terms of economic development.<sup>67</sup> Orbia’s financial statements shows that it has subsidiaries operating in 48 countries.<sup>68</sup> Although five of the six economically comparable countries are included in this list of 48 countries, they represent only ten percent of the countries in which Orbia has an operational presence. Thus, the overwhelming majority of Orbia’s operations occur outside of economically comparable countries.

Additionally, unlike Orbia, CYDSA has production facilities located only in the primary surrogate country, Mexico, and generate over 91 percent of its total sales revenues from Mexico.<sup>69</sup> Furthermore, CYDSA reports only two business groups, identified as the “Salt, Chlorine-Caustic Soda and Others” group and the “Refrigerant Gases and LPG Storage” group. The former business group, whose products include the comparable merchandise, accounts for over 65 percent of CYDSA’s total sales revenue.<sup>70</sup> In totality, this information shows that CYDSA is more representative of a producer of comparable merchandise in an economically comparable country than Orbia, and that CYDA’s operations and production experience is more similar to Heze Huayi’s than Orbia’s, whose operations span over numerous countries and

<sup>61</sup> See *Peer Bearing Co. v. United States*, 182 F. Supp. 2d 1285, 1298 (CIT 2001).

<sup>62</sup> See *Preliminary Results* PDM at 26.

<sup>63</sup> See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002).

<sup>64</sup> See *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377.

<sup>65</sup> See Heze Huayi’s Final SV Comments SV2-5 at 24-29, Note 4 c.-e. of Orbia’s financial statements.

<sup>66</sup> *Id.* at Exhibit SV2-5 at 86.

<sup>67</sup> See Request for Surrogate Country and Value Comments at Attachment I, Surrogate Country List.

<sup>68</sup> See Heze Huayi’s Final SV Comments, Exhibit SV2-6 at 27-28, Note 4 c.-e., and at 81 of Orbia’s financial statements, and 79-80.

<sup>69</sup> See Petitioners’ Letter, “Chlorinated Isocyanurates from the People’s Republic of China (2018-2019 Review): Initial Surrogate Value Data,” dated December 16, 2019 (Petitioners’ SV Comments) at Exhibit 10 at 2; see also Note 24 of CYDSA’s Annual Report 2018.

<sup>70</sup> *Id.* at Note 3 of CYDSA’s Annual Report 2018, “Sales by Business Group” section.

several continents,<sup>71</sup> involving a large number of business segments that are unrelated to the production of comparable merchandise.<sup>72</sup>

Therefore, we find that Orbia's financial statements do not represent the best available information on the record. Accordingly, as in previous reviews, we continue to find CYDSA's financial statements to be the best information on the record to calculate surrogate financial ratios.<sup>73</sup>

#### **Comment 4: Use of Alternative Mexican Labor Data**

##### *Heze Huayi's Case Brief*<sup>74</sup>

- Both the Mexican Institute for Statistics 2018 remuneration for the manufacture of other chemical products from the Encuesta Mensual de la Industria Manufacturera (Monthly Survey of the Manufacturing Industry) (EMIM) and the Mexican International Labor Organization (ILO) labor data, ILOSTAT 2018 earning for employees in manufacturing (2018 ILOSTAT), are preferable to the 2008 wages for the manufacture of other chemicals (2008 ILOSTAT) used in the preliminary results.
- The EMIM rate is more specific and contemporaneous, and the 2018 ILOSTAT, while less specific, is more contemporaneous than the 2008 ILOSTAT, which was during a time when China was not economically comparable to Mexico.
- The EMIM data provides the remuneration and actual hours worked, as well as a broad range of benefits and contributions such that Commerce would not be undervaluing labor.
- While the 2018 ILOSTAT is less specific, Commerce has frequently determined that contemporaneity in the labor rate is preferable to specificity.<sup>75</sup> In addition, Commerce has recently used this rate in an antidumping duty investigation.<sup>76</sup>

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<sup>71</sup> See Heze Huayi's Final SV Comments at Exhibit SV2-5 at 86.

<sup>72</sup> *Id.* at Exhibit SV2-5 at Note 26, identifying Orbia's following business segments: "piping and connections of PVC, polyethylene (PE) and polypropylene (PP), high-density polyethylene (HDPE) and geosynthetic, as well as fluorite, flour compounds, hydrofluoric acid, cooling gases and medical propellants, and finally resins and polyvinyl chloride compounds (PVC), among others."

<sup>73</sup> See, e.g., 2017-2018 Prelim Results PDM at 26-27, unchanged in 2017-2018 Chlorinated Isos Review; see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016, 83 FR 5243 (February 6, 2018) (2015-2016 Chlorinated Isos Review), and accompanying IDM at Comment 5.A.

<sup>74</sup> See Heze Huayi's Case Brief at 8-11.

<sup>75</sup> See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015, 82 FR 26912 (June 12, 2017) (Diamond Sawblades), and accompanying IDM at 48-49; Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015, 81 FR 62088 (September 8, 2016), and accompanying IDM at Comment 7; and Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 69938 (November 12, 2015), and accompanying IDM at Comment 8.

<sup>76</sup> See Ceramic Tile from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination, and Postponement of Final Determination, 84 FR 61877 (November 14, 2019) (Ceramic Tile Prelim), and accompanying PDM at 31, unchanged in Ceramic Tile from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Partial Affirmative Critical Circumstances Determination, 85 FR 19425 (April 7, 2020) (Ceramic Tile from China); see also Heze Huayi's Letter, "Final Surrogate Value Submission," dated July 20, 2020, at Exhibit SV2-1.

*Petitioners' Rebuttal Brief*<sup>77</sup>

- The EMIM data published by Instituto Nacional de Estadística y Geografía (INEGI) should not be used because the INEGI statistics do not reflect the full cost of labor which Commerce has previously found as being not broad enough to capture all labor costs.<sup>78</sup>
- No new or additional supporting evidence is submitted in this review to show that the INEGI data include full labor costs.
- The link to the EMIM data provided by Heze Huayi is a dead link and therefore, Commerce cannot retrieve the same labor data for its own verification. Inputting the link provided by Heze Huayi results in a page that notes the link as no longer existing.<sup>79</sup>
- No evidence is provided to support Heze Huayi's claim that the 2008 ILOSTAT hourly rates are based on assumptions on the hours worked.
- Heze Huayi concedes that the 2018 ILOSTAT data only applies to general manufacturing. In addition, the courts have given Commerce discretion when selecting factor values, where Commerce has recently relied on non-contemporaneous labor data where the statistics are more industry specific.<sup>80</sup>
- In prior segments of this proceeding, Commerce has used the 2008 ILOSTAT labor data because it includes full labor costs that are specific to chemicals manufacturing which can be inflated to the period of investigation.

**Commerce's Position:** As noted above and in the *Preliminary Determination*, in accordance with section 773(c)(1) of the Act, Commerce's practice when selecting the best available information for valuing factors of production is to select, to the extent practicable, surrogate values that are product-specific, representative of a broad market average, publicly available, tax exclusive, and contemporaneous with the period of review.<sup>81</sup> Moreover, while there is no hierarchy for applying the SV criteria, Commerce "must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' surrogate value is for each input."<sup>82</sup>

<sup>77</sup> See Petitioners' Rebuttal Brief at 12-15.

<sup>78</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 42891 (August 19, 2019) (*2017-2018 Prelim Results*), and accompanying PDM at 26, unchanged in *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 10411 (February 24, 2020) (*2017-2018 Chlorinated Isos Review*), and accompanying IDM; see also *2015-2016 Chlorinated Isos Review* and accompanying IDM at Comment 5.C.

<sup>79</sup> See Heze Huayi's Final SV Comments at Exhibit SV2-1 and EMIM referenced website address at <http://www.inegi.org.mx/est/contenidos/proyectos/encuestas/establecimientos/secundario/emim/tabulados.aspx>; see also Petitioners' Final SV Rebuttal Comments at Exhibit 2.

<sup>80</sup> See, e.g., *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32634 (July 13, 2018), and accompanying PDM at 11-12, unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 53449 (October 23, 2018); see also *Forged Steel Fittings from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 83 FR 22948 (May 17, 2018), and accompanying IDM at 28, unchanged in *Forged Steel Fittings from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 50339 (October 5, 2018).

<sup>81</sup> See *Preliminary Results* PDM at 19.

<sup>82</sup> See, e.g., *Jiangsu Jiasheng Photovoltaic Tech. Co., Ltd. v. United States*, 28 F. Supp. 3d 1317, 1336 (Ct. Int'l Trade 2014).

As an initial matter, Commerce previously addressed the deficiencies in using the INEGI's EMIM labor data in this proceeding. In the *2015-2016 Chlorinated Isos Review*, Commerce found that the EMIM data only represents wage rates that are not broad enough to capture all labor costs.<sup>83</sup> Specifically, Commerce stated,

“{T}he INEGI publishes different datasets that report the cost of labor, not the wage rate, and the difference between the two data sets demonstrates that the average U.S. dollar per hour labor cost in the Mexican chemical industry is US\$7.70/hour, whereas the INEGI wage rate submitted by the respondents is only US\$4.10/hour. In this regard . . . the data submitted by respondents do not represent full labor costs as both sources of data are published by the INEGI. Absent any explanation to account for this difference, this shows that the EMIM labor rate data is not broad enough to capture all labor costs.”<sup>84</sup>

No new information or argument has been raised to challenge this previous finding. For this reason, we continue to find that EMIM data fails to capture all labor costs.

In *Labor Methodologies*, Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country.<sup>85</sup> In this review, we have industry-specific data on the record in the Mexican 2008 ILOSTAT hourly rates that are specific to the chemical industry. We also have Mexican 2018 ILOSTAT data on the record that is, while more contemporaneous, less specific and pertains to all of manufacturing.<sup>86</sup> Accordingly, we do not find the Mexican 2018 ILOSTAT data superior to the more specific Mexican 2008 ILOSTAT labor data even though it is less contemporaneous. Although Commerce prefers to value each FOP with contemporaneous SVs, in prior cases, Commerce has selected a labor value from the selected surrogate country regardless of there being other values on the record that may have been more contemporaneous to the POI or period of review, but less specific to the subject merchandise.<sup>87</sup> Thus, considering Commerce's practice and the information placed on the record, we find the 2008 ILOSTAT hourly rates to be the best SV available to value labor.

Heze Huayi contends that Commerce has frequently determined that contemporaneity in the labor rate is preferable to specificity, and points to Commerce's finding in *Diamond Sawblades* as support.<sup>88</sup> However, in *Diamond Sawblades* there was no ILO labor data on the record of the review, and the alternative labor data used was not just more contemporaneous, but also specific

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<sup>83</sup> See *2015-2016 Chlorinated Isos Review* IDM at Comment 5.C.

<sup>84</sup> *Id.*

<sup>85</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

<sup>86</sup> See Heze Huayi's Final SV Comments at Exhibit SV2-1.

<sup>87</sup> See, e.g., *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 Sales at Less Than Fair Value*, 81 FR 75032; and *Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75032 (October 28, 2016).

<sup>88</sup> See Heze Huayi Case Brief at 10.



to the industry in question.<sup>89</sup> Therefore, we find Heze Huayi's reference to *Diamond Sawblades* unavailing.

Finally, Commerce has previously found that there is no basis to conclude that its normal method of adjusting the SVs using the CPI rate for Mexico, as published by the International Monetary Fund, fails to properly account for inflation over this time period.<sup>90</sup> Moreover, the CIT has upheld our use of the 2008 ILOSTAT data and our practice of inflating this data to the period of review in a prior administrative review involving the same respondent.<sup>91</sup> Specifically, the CIT ruled against Heze Huayi's argument that the older Mexican data was less reliable because Commerce found there was no record evidence of "any significant changes or events in Mexico to affect its labor rate during the time period at issue."<sup>92</sup> Similarly, Heze Huayi has not provided any record evidence in this administrative review to question the reliability of Mexican 2008 ILOSTAT data, adjusted for inflation. Accordingly, we continue to find the Mexican 2008 ILOSTAT labor data is the best available information on the record to use as the SV for industry-specific labor rates.

### **Comment 5: Mexican Surrogate Value for Natural Gas**

#### *Heze Huayi's Case Brief*<sup>93</sup>

- Commerce should rely on the Mexican domestic natural gas prices from the National Reference Index of Wholesale Natural Gas Prices (IPGN) instead of Mexican Global Trade Atlas (GTA) import data.
- Commerce's preference is to use domestic data over the import price all else being equal, when such data is available based on the common understanding that a company would most likely purchase domestically.<sup>94</sup>
- Commerce has previously found this Mexican domestic natural gas price to be a reliable SV in a recent antidumping investigation of *Ceramic Tile from China*.<sup>95</sup>

#### *Petitioners' Rebuttal Brief*<sup>96</sup>

- In *Ceramic Tile Prelim*, there is no indication that GTA data was submitted or that Commerce made a judgement between the domestic and GTA data. Rather, the finding

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<sup>89</sup> See *Diamond Sawblades* IDM at Comment 14.

<sup>90</sup> See *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 41 CIT, 255 F. Supp. 3d 1312, 1323 (CIT 2017).

<sup>91</sup> See *Heze Huayi Chemical Co., Ltd. v. United States*, Slip Op. 18- 57 (CIT 2018) (*Heze Huayi Chemical Co., Ltd. v. United States*).

<sup>92</sup> *Id.*

<sup>93</sup> See Heze Huayi's Case Brief at 11-12.

<sup>94</sup> See *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264, 1273-74 (CIT 2005) (*Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*); see also *Rhodia, Inc. v. United States*, 185 F. Supp. 2d 1343, 1352 (CIT 2001).

<sup>95</sup> See *Ceramic Tile Prelim* PDM at 31, unchanged in *Ceramic Tile from China*.

<sup>96</sup> See Petitioners' Rebuttal Brief at 15-16.

was made using adverse facts available since both respondents did not cooperate and only petitioners submitted SVs for Mexico.<sup>97</sup>

- Commerce should continue to use the GTA import value for natural gas since no evidence was submitted that resolves the issue of whether the IPGN domestic price for natural gas is tax- and duty-free.

**Commerce's Position:** We agree with Heze Huayi that Commerce's preference is to use domestic data over the import price when such data is available.<sup>98</sup> However, we disagree with Heze Huayi that *Ceramic Tile from China* supports finding the IPGN domestic price for natural gas to be a reliable SV. In *Ceramic Tile from China*, Commerce assigned the respondents the China-wide rate in our final determination, and the non-individually examined companies that qualified for a separate rate were assigned the average of the rates found in the petition.<sup>99</sup> Therefore, the IPGN domestic price for natural gas was never used in calculating normal value in a final determination and, therefore, Commerce did not address arguments on the SVs used in *Ceramic Tile Prelim*. In addition, the SV discussion in *Ceramic Tile Prelim* provides no insight into whether any alternative Mexican SV information was placed on the record for natural gas, and provides no discussion regarding the quality of the IPGN domestic price.<sup>100</sup> The information on the record of this review provides no detail regarding the tax- and duty-free nature of the IPGN domestic price for natural gas. Thus, we will continue to rely on the Mexican GTA import value for natural gas for the final determination as this data are broad market averages, product-specific, tax-exclusive, and contemporaneous with the POR.

#### **Comment 6: Clerical Errors in the Calculation of Preliminary Dumping Margin**

##### *Petitioners' Case Brief*<sup>101</sup>

- Commerce adjusted the Mexican import values from an FOB to CIF basis by using an incorrect surrogate ocean freight rate for several inputs in the preliminary margin calculation.
- Commerce should revise the margin program and use the surrogate ocean freight sourced from Maersk of \$0.1796 per kilogram for the relevant inputs. This rate was correctly identified in the SV worksheet but not properly applied to the margin program.

No rebuttal comments were submitted by Heze Huayi regarding this specific comment on correcting this clerical error. In Comment 2 above, Heze Huayi argues for the use of alternative ocean freight data which Commerce denied.

##### *Heze Huayi's Case Brief*<sup>102</sup>

- Commerce made a ministerial calculation error in calculating the SV for calcium chloride under HTS 282720. This Mexican import data included imports identified as "Mexican GTA" as the listed exporter. It is uncertain the source of this data, but "Mexican GTA" is

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<sup>97</sup> See *Ceramic Tile from China* IDM at Comments 1-4.

<sup>98</sup> See *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*.

<sup>99</sup> See *Ceramic Tile from China* at 85 FR 19425-19426.

<sup>100</sup> See *Ceramic Tile Prelim* PDM at 31.

<sup>101</sup> See *Petitioners' Case Brief* at 2-5.

<sup>102</sup> See *Heze Huayi's Case Brief* at 19.

not an exporting country, and including Mexico import data into Mexico would not be a typical commercial importation.

- The Mexican GTA data placed on the record by the petitioners does not include any import into Mexico under HTS 282720 from “Mexican GTA” or Mexico.<sup>103</sup> Therefore, the inclusion of the data with “Mexican GTA” as an exporter appears to be clerical or calculation error. Removing this data results in a more accurate unit value of 23.41 pesos/KG.<sup>104</sup>

No rebuttal comments were submitted by the petitioners regarding the above issue.

**Commerce’s Position:** We agree and have corrected the above clerical errors. The margin program has been revised and the correct ocean freight rate sourced from Maersk of \$0.1796 per kilogram has been applied to the relevant inputs identified by the petitioners.<sup>105</sup> In addition, we have updated the Mexican GTA import data with respect to HTS 282720 to exclude the listed exporter noted by Heze Huayi, resulting in a unit value of 23.41 pesos/KG for calcium chloride, a reported by-product.

## VI. 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

4/26/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>103</sup> See Petitioners’ Letter, “Chlorinated Isocyanurates from the People’s Republic of China (2018-2019 Review): Initial Surrogate Value Data,” dated December 16, 2019 at Exhibit 2.

<sup>104</sup> See *Grobtest & I-Mei Industrial (Vietnam) Co., Ltd. v. United States*, 815 F. Supp.2d 1342, 1365 (CIT 2012).

<sup>105</sup> See Petitioners’ Case Brief at 5.