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DATE: November 8, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination of Carbazole Violet Pigment 23 from the People's Republic of China

Background

On June 24, 2004, the Department of Commerce (the Department) published the *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbazole Violet Pigment 23 from the People's Republic of China*, 69 FR 35287 (June 24, 2004) (*Preliminary Determination*). The period of investigation (POI) is April 1, 2003, through September 30, 2003. From August 2 through August 24, 2004, we conducted verification of the questionnaire responses of GoldLink Industries Co., Ltd. (GoldLink), Nantong Haidi Chemicals Co., Ltd. (Haidi), Trust Chemical Co., Ltd. (Trust Chem) and Tianjin Han Chem International Trading Co., Ltd. (Hanchem[1]), and of producers Jiangsu Multicolor Fine Chemical Co., Ltd. (Multicolor), and Nantong Longteng Chemical Co., Ltd. (Longteng).

The petitioners (Nation Ford Chemical Company and Sun Chemical Company) filed surrogate value information and data on August 10, 2004, and the respondents filed surrogate value information and data on August 17, 2004. We gave interested parties an opportunity to comment on the *Preliminary Determination*. On October 8, 2004, we received case briefs from the petitioners, the respondents,

[1] Hanchem was established subsequent to the POI out of the U.S. sales department of a company named Tianjin Heng An Trading Co., Ltd. (Heng An). During the POI, sales of subject merchandise to the United States were made by Heng An. We have determined that it is appropriate to treat Heng An and Hanchem as a single entity for the purposes of the margin calculations for this antidumping duty investigation and for the application of the antidumping law.

and Colors LLC (Colors), a domestic interested party.[2] We received the final proprietary version of Clariant Corporation's (Clariant's) (a domestic interested party's) brief on October 12, 2004. We received rebuttal briefs from the petitioners, respondents, and Clariant on October 13, 2004.

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[2] Colors filed its brief on October 8, 2004. Due to filing errors we allowed Colors to re-submit its brief on October 14, 2004. *See* Memorandum to the File re: Colors LLC's Case Brief, dated October 12, 2004.

Discussion of Issues

I. ISSUES RELATED TO MULTIPLE RESPONDENTS

Comment 1: Financial Ratios

The respondents argue that the Department should not use the financial ratios of Pidilite Industries Ltd. (Pidilite) as it did in the preliminary determination, because the Department found evidence of subsidies to Pidilite in the countervailing duty (CVD) preliminary determination of carbazole violet pigment 23 (CVP-23) from India.[3] The respondents request that the Department use Reserve Bank of India (RBI) data that they submitted that included two sets of financial ratios, one based upon 997 selected large public limited companies located in India, and the other based upon 2,204 public limited companies based in India.[4] The respondents contend that the Department has used RBI data in cases where company-specific financial ratio data were not available or reliable, citing *Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order, in Part*, 69 FR 12119 (March 15, 2004) as discussed in the accompanying Issues and Decision Memorandum at Comment 6. The respondents also cite *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 68030 (December 5, 2003) (*Persulfates from China 2001-2002)*, stating that it is the Department's normal practice to rely upon financial data from producers of identical or comparable merchandise in the surrogate country "as long as the resultant financial data is not distortive or otherwise unreliable."[5] The respondents also specify that if the Department wishes to use financial ratios from Indian producers of CVP-23 instead of the more general RBI data, it can use a simple average of the financial ratios derived from two companies whose financial statements the respondents submitted on August 17, 2004. The respondents state that it appears that these producers did not export to the United States and thus would not have received export subsidies.

The petitioners respond that there is no valid reason to reject Pidilite's financial data. They argue that the Department has a "strong preference" for using data from a producer of identical merchandise.[6]

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[3] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbazole Violet Pigment 23 From India,* 69 FR 35293, June 18, 2004, as cited in the Case Brief on Behalf of Chinese Respondents: Wuxi Xinguang Chemical Industry Co., Nantong Longteng Chemical Co., Ltd. Nantong Haidi Chemicals Co., Ltd., Trust Chemical Co., Ltd., GoldLink Industries Co., Ltd., Tianjin Han Chem International Trading Co., Ltd. (October 8, 2004) (Respondents' Case Brief) at 21.

[4] S*ee* Respondents' Case Brief at 21.

[5] *See id.* at 21.

[6] *See Persulfates from China 2001-2002* as discussed in the accompanying Issues and Decision Memorandum at Comment 1 and Comment 3, as cited in Rebuttal Brief on Behalf of Petitioners, Nation Ford Chemical Company and

The petitioners contend that Pidilite's financial statements are the best available information for surrogate values because the data are from a producer of identical merchandise and are very close to the POI. Also, the petitioners claim that the CVD determination, argued by the respondents as reason to reject Pidilite's financial statements, is only preliminary to date, and that the respondents exaggerated the extent by which Pidilite's financial statements are distorted.[7] The petitioners state that the Department preliminarily calculated a margin of 14.93 percent from Pidilite's use of the Duty Entitlement Passbook Scheme (DEPS), which is expressed as a percentage of the POI value of Pidilite's export sales of CVP-23 to the United States. They claim that this is not evidence of Pidilite receiving subsidies on total sales of CVP-23 or its overall operations, and does not mean that the subsidies in question had an impact on Pidilite's 2002-2003 financial statements.[8] Also, the petitioners argue, the respondents cited the *Persulfates from China 2001-2002* case in error because in that case, the Department noted that the receipt of subsidies has never been the primary reason for its decision to decline the use of financial statements of a possible surrogate and that the Department has always looked at all the circumstances surrounding the alternative choices of surrogate value data before deciding which surrogate data would be appropriate.[9]

In addition, the petitioners disagree with the alternative RBI data submitted by the respondents in their May 13, 2004, surrogate value submission because they believe that it is not the best available information on the record. The petitioners claim that this information is not industry-specific nor contemporaneous with the POI, and that using this information could create distorted ratios, unlike Pidilite's ratio with the preliminary evidence of subsidies.[10] They also argue that many of the 997 companies comprising the RBI data are likely to be receiving subsidies from the Section 80 HHC and DEPS programs, or may have been affected by other unique circumstances that could distort those individual financial statements as well.[11]

Finally, the petitioners assert that the financial statements submitted by the respondents are not publicly available, are not shown to be audited, and do not provide evidence of what these two companies produce. The petitioners claim that these financial statements are not necessarily publicly available for surrogate value purposes just because the respondents placed them on the public record with the

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Sun Chemical Corporation. (October 13, 2004) (Petitioners' Rebuttal Brief) at 8.

[7] *See* (Petitioners' Rebuttal Brief) at 9.

[8] *See id.* at 10.

[9] *See Persulfates 2001-2002* as cited in *id.* at 10.

[10] *See id.* at 10.

[11] *See id.* at 11.

Department.[12] The petitioners cite *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 68 FR 6712 (February 10, 2003) (*Persulfates from China 2000-2001*), as discussed in the accompanying Issues and Decision Memorandum at Comment 8, where the Department found the financial statements of two private Indian companies to be publicly available because they were in the public realm according to Indian law. In this case, the petitioners claim, there is no evidence to show from where the respondents obtained the financial statements, and no evidence that the financial statements were filed with the Indian Registrar of Companies and are within the public realm according to Indian law.[13] They also cite *Persulfates from China 2000-2001* to show that the Department has determined that financial statements can only be used for surrogate value information if they have been audited. The petitioners claim that there is no evidence that an accounting firm audited, or certified as audited, the financial statements submitted by the respondents.[14]

Clariant agrees with the petitioners and asserts that the preliminary determination in the CVD investigation of CVP-23 from India is not a sufficient basis to reject Pidilite's financial statements, citing *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the People's Republic of China*, 66 FR 33522 (June 22, 2001), where the Department determined that just because a company receives government subsidies does not necessarily mean that its financial ratios are unuseable.[15] It also agrees with the petitioners that the respondents did not show evidence that the subsidies Pidilite received had an impact on the company's financial statements and agrees with the petitioners that the RBI data submitted by the respondents are not the best available data.

Also in their case brief, the petitioners argue that the Department should revise the surrogate value financial ratios used in the preliminary determination. First, they maintain that it appears the Department made a small error in calculating the selling, general, and administrative expenses (SG&A) ratio. According to the petitioners, the SG&A ratio should be 22.75 percent, not the 20.93 percent used in the preliminary determination.[16] The petitioners assert that this is peripheral because all the financial ratios should be revised "to be consistent with the data and the Department's past practice."[17] They

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[12] *See id.* at 11.

[13] *See id.* at 12.

[14] *See id.* at 12.

[15] *See* Rebuttal Brief on Behalf of Clariant Corporation (October 14, 2004) (Clariant's Rebuttal Brief) at 5.

[16] *See* Case Brief on Behalf of Petitioners Nation Ford Chemical Company and Sun Chemical Company (Petitioner's Case Brief) at page 4 and Appendix 4 (October 8, 2004).

[17] *See id* at 4.

submitted a revised calculation of each financial ratio at Appendix 5 of the Petitioners' Case Brief.

According to the petitioners, the "cost of traded goods" must be included in the SG&A ratio denominator because both the Department and the U.S. Court of International Trade (CIT) determined that these costs are not manufacturing expenses. In support, the petitioners cite the case of *Fuyao Glass Industry Group Co., Ltd. v. United States,* No. 02-00282, Slip Op. 03-169 (CIT December 18, 2003) (*Fuyao Glass*) where, they maintain, the Department concluded that the cost of traded goods should be part of the SG&A denominator. The petitioners argue it is not correct to include the cost of traded goods in direct inputs or factory overhead.

SG&A should, the petitioners contend, also include expenses associated with high-level management and outside directors, in this case, "Remuneration to Directors" and "Commissions to Directors." The petitioners' reasoning behind this is that these expenses are not product nor division specific and are independent of the cost of manufacturing because they depend on the company's profitability. The petitioners assert that the omission of "Processing and Packing Charges" from the preliminary calculations goes against the Department's practice of including "packing when it is part of a larger expense category."[18] In support, the petitioners cite *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 17, 2000) (*Bulk Aspirin from China)*, as discussed in the accompanying Issues and Decision Memorandum at Comment 5, where the Department did not exclude packing where it was part of a larger category. Therefore, petitioners claim that the Department should include "Processing and Packing Charges" in SG&A.

The petitioners argue that the "(Increase)/Decrease in Stocks" line item should be included as part of direct inputs (the denominator of the factory overhead ratio). They maintain that this is a change in inventory and therefore "a standard part of the accounting definition of the cost of goods sold."[19] They also argue that "Contribution to Provident and Other Funds" and "Welfare Expenses" are not direct inputs or direct costs, but rather should be treated as factory overhead or SG&A.[20] In their recalculation of financial expenses, the petitioners included these expenses in factory overhead.[21] According to the petitioners, *Tapered Bearings* showed that the Department uses the

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[18] *See id.* at 6.

[19] *See* Petitioners' Case Brief at 5.

[20] For support the petitioners cite *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2002-2003 Administrative Review and Partial Rescission of Review*, (*Tapered Bearings*) 69 FR 10424, 10426 (March 5, 2004), as unchanged in the *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 2002-2003 Administrative Review and Partial Rescission of Review*, 69 FR 42041(July 13, 2004).

[21] *See* Petitioners' Case Brief at 6 and at Appendix 5.

Yearbook of Labour Statistics at chapter 5 to value labor in a manner that excludes social security and welfare expenses. *See Tapered Bearings* at Comment 2 on 10426. Building on this, the petitioners assert that the "Provision for Doubtful Debts" should be included in SG&A because, to be consistent with Department practice, when there is no evidence it was included elsewhere, broad category line items must be included in financial ratio calculations.

In their rebuttal brief, the respondents reiterate their arguments for rejecting the Pidilite financial statements due to distortions caused by the subsidies found in the preliminary CVD determination.[22]

Department's Position: When selecting surrogate producer financial reports for purposes of deriving surrogate value information, the Department's preference is to use, where possible, the financial data of surrogate producers of identical merchandise, provided that the surrogate value data are not distorted or otherwise unreliable. *See, e.g., Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004) as discussed in the accompanying Issues and Decision Memorandum at Comment 8. In the instant case, Pidilite is a producer of identical merchandise, and we find its financial statement data to be reliable. We agree with the petitioners and Clariant that there is insufficient reason to reject Pidilite's financial statement data on the basis of an affirmative CVD determination. As we stated in the accompanying June 22, 2001 Issues and Decision Memorandum for *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China*, 66 FR 33522, June 22, 2001, at Comment 8, with regard to the surrogate producer, "{t}he fact that it has been preliminarily determined to be receiving government subsidies does not necessarily mean that its financial ratios are skewed to the point of being unuseable."

In addition, in *Persulfates from China 2001-2002* at Comment 3, the Department said that, "in the case of a potential surrogate in receipt of government subsidies, the existence of a subsidy is not, in and of itself, sufficient evidence of such distortion." The Department went on to note that it "has rejected the use of financial statements of surrogate producers receiving government subsidies because of the totality of the circumstances rather than the sole fact that the surrogate producer was being subsidized."

In this case, there is no reason not to use Pidilite's financial statements, besides the affirmative CVD determination. Further, the petitioners have not demonstrated that the subsidies at issue systematically distort Pidilite's financial ratios. In every other respect, we find these financial statements to be the best available information we have on record.

As such, the RBI data submitted by the respondents are not the best available information on the record because we have the financial data from a producer of identical merchandise. Also, we are unable to

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[22] *See* Respondents' Rebuttal brief at 9-10.

use the financial statements of two other Indian producers of CVP-23 submitted by the respondents because, although they are from producers of identical merchandise, the statements themselves were incomplete, not being accompanied by an auditor's certification.

Regarding the petitioners' assertion that there was an error in the preliminary SG&A calculation, upon reviewing the spreadsheet in which we calculated SG&A, we discovered there was an error in one of the cell references. Once corrected, we found that the SG&A ratio for the preliminary results should have been 22.75 percent.

With respect to the proposed revisions of SG&A, first, we agree with the petitioners that "Cost of Traded Goods" should not be included in direct inputs or factory overhead as it is not part of the cost of manufacturing. In addition, we find it inappropriate to include "Cost of Traded Goods" in the denominator for calculating SG&A and profit, as SG&A and profit are expressed as a percentage of the cost of manufacturing. Therefore, we have not included the "Cost of Traded Goods" in the denominator to calculate SG&A and profit. Next, we have declined to add "(Increase)/Decrease in Stocks" to direct inputs. It is the Department's practice in non-market-economy cases to use the cost of manufacturing in the denominator for calculating financial ratios, not the cost of goods sold as the petitioners contend. In this case, we observe that only the direct inputs of "Personnel," "Raw Materials Consumed," and "Power & Fuel" make up the cost of manufacturing. Also, we find that "Welfare Expenses" and "Contribution to Provident and Other Funds" are part of overhead. For the final determination, we have removed these expenses from direct inputs and added them to factory overhead. We have determined that "Remuneration to Directors" and "Commissions to Directors" are SG&A expenses and have adjusted the SG&A ratio accordingly. Next, we agree with the petitioners that "Processing and Packing Charges" is part of a larger expense category and that we should not exclude it as we excluded "Packing Materials Consumed" which is a separate line item in Pidilite's financial statements. Therefore, we have added "Processing and Packing Charges" to SG&A expenses. Finally, we have not included "Provision for Doubtful Debts" in SG&A as the petitioners advocate. This is an ambiguous category and we have no indication that these costs have not been accounted for elsewhere.

While considering the changes petitioners advocated, we determined that additional adjustments to the financial ratios were warranted. We removed "Clearing, Forwarding, Octrol Duty" expenses from factory overhead, and we removed "Commissions & Brokerage" expenses from SG&A because we found that these expenses were accounted for in the respondents' factors of production (FOP) and sales database.

Comment 2: Critical Circumstances

The respondents request that the Department base its critical circumstances determination on a comparison of the seven-month period prior to the filing of the petition with the seven-month period subsequent to the filing of the petition, instead of the five-month comparison it made in the preliminary

determination.[23] The respondents want the Department to use the additional exporter-specific information for the months of May and June 2004, which they submitted in their July 23, 2004, submission. Based on the seven-month comparison period, the respondents contend that the Department should issue negative critical circumstances determinations.

The petitioners argue that since the date of the preliminary determination was June 24, 2004, June should not be included in the Department's critical circumstances analysis. They also claim that the preliminary critical circumstances determination should not be overturned just because the respondents reacted to the March 2004 critical circumstances allegation.[24] The petitioners also request that the Department issue an affirmative critical circumstances determination for the "PRC-wide" rate. They contend that it is the Department's practice, citing *Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China*, 68 FR 55589 (September 26, 2003) (*Refined Brown Aluminum Oxide from China)* as discussed in the accompanying Issues and Decision Memorandum at Comment 1, to use adverse facts available for the "PRC-wide" rate and extend the adverse inference that critical circumstances exist, when mandatory respondents refuse to provide requested data to the Department. They argue that relying on aggregate customs data would be inappropriate for all other producers/exporters because it would allow non-responding companies that may have had massive imports to escape a critical circumstances finding. Clariant agrees with the petitioners that the use of a seven-month comparison period would be inappropriate.

Department's Position: Section 351.206(i) of the Department's regulations provides that the comparison period for a critical circumstances determination be at least three months. It is the Department's normal practice to use import data for a period longer than three months, as data become available to the Department. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539, (April 2, 2002) as discussed in the accompanying Issues and Decision Memorandum at Comment 3. For this final determination, because import data for seven months are available to the Department, we have compared import and shipment data from the seven-month period prior to the filing of the petition with the seven-month period subsequent to the filing of the petition to determine whether there has been at least a 15-percent increase in imports of subject merchandise.

As the Department has done in prior cases, to determine whether critical circumstances exist for the "PRC entity" (*i.e.*, those companies subject to the PRC-wide rate), in this final determination, we continue to rely upon aggregate U.S. import data. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain*

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[23] *See* Respondents' Case Brief at 25-26.

[24] *See* Petitioners' Rebuttal Brief at 15.

Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) (*Color TV Receivers from China)* as discussed in the accompanying Issues and Decision Memorandum at Comment 3. For the "PRC entity," we compared the volume of aggregate imports, minus the imports by respondent companies, during the base period to the volume of aggregate imports, minus the imports by respondent companies, during the comparison period. We disagree with the petitioners' request to apply an adverse inference to the "PRC entity," based on *Refined Brown Aluminum Oxide from China*. In that case, the Department made an adverse inference in determining whether imports from the non-responding companies were massive due to the absence of reliable import data to consider. *See Refined Brown Aluminum Oxide from China*, Issues and Decision Memorandum at Comment 1. As we stated in the preliminary critical circumstances determination in the instant investigation, we found the U.S. import data to be reliable because the *Harmonized Tariff Schedule* (HTS) number cited in the scope of this investigation only refers to CVP-23. Therefore, we found it appropriate to use the aggregate import data in our analysis of whether there were massive imports from "all others." *See* Memorandum from Jeffrey A. May, Deputy Assistant Secretary for Import Administration to James J. Jochum, Assistant Secretary for Import Administration: Antidumping Duty Investigation of Carbazole Violet Pigment 23 from the People's Republic of China – Preliminary Determinations on Critical Circumstances, June 18, 2004. For the final determination regarding the finding of critical circumstances, *see* Memorandum to James J. Jochum from Jeffrey A. May: Antidumping Duty Investigation of Carbazole Violet Pigment 23 from the People's Republic of China – Final Determinations on Critical Circumstances.

Comment 3: Surrogate Value Sources

The petitioners assert that the Department should revise its surrogate values and calculate surrogate values based on the information they submitted.[25] To support this assertion, the petitioners argue that the information they have placed on the record meets the criteria the Department has laid out, *i.e.*, that the information is publicly available, contemporaneous with the POI, and represents a large number of prices.

In its brief, Clariant supports the petitioners' argument that the Department generally looks for the best available information and states that what is "best" varies from case to case.[26] However, it asserts that, in general, the information is publicly available, contemporaneous, product-specific, tax-exclusive averages of non-export value prices. Clariant advocates that in this case, the best information available is the surrogate value information submitted by the petitioners.

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[25] The petitioners state that some of the *Chemimpex* (the *Chemical Weekly* database) information previously provided by them was totaled incorrectly, and the revised average prices have been attached at Appendix 3 of their brief.

[26] To support this statement Clariant, on page 2 of its case brief, cites *Final Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate From the People's Republic of China* 62 FR 61964 (November 20, 1997).

The petitioners go on to claim that, where the Department's criteria are met by both Indian import statistics and *Chemical Weekly*, the Department's "stated preference" is to use an average of prices from these sources to assign surrogate values. To support this statement, the petitioners cite *Synthetic Indigo From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 53711 (September 12, 2003) (*Synthetic Indigo from China*) as discussed in the accompanying Issues and Decision Memorandum at Comments 3 and 4. The petitioners specifically advocate[27] averaging the Indian import statistic and *Chemical Weekly* prices for the following inputs: benzene, dimethylbenzene, nitric acid, o-dichlorobenzene, hydrochloric acid, sodium hydroxide, sodium hydroxide solution, ethylene glycol, diethylene glycol, citric acid, n,n-dimethylformamide, and methyl alcohol. The petitioners also contend that the Department should not have excluded excise and sales taxes from the n,n-dimethylformamide because *Chemical Weekly* prices are exclusive of these taxes. Additionally, the petitioners argue that the Department should average *Chemical Weekly* and *Chemimpex* import prices, which the petitioners submitted on August 10, 2004, to obtain a surrogate value for polyethylene glycol.

The petitioners argue the merits of using a single specific source for a variety of other inputs. They state that for carbazole,[28] the *Chemimpex* prices they provided are the best information available because they meet the Department's criteria laid out above. Additionally, the petitioners argue that Indian import statistics provide no usable information and the *Chemical Weekly* alone, which provides concentration-specific prices that can be matched to concentration-specific FOPs, should be used to value sodium sulfide.

The respondents agree that the Department is required to find the best possible surrogate value information and state further that this information should be corroborated by the Department. To this end, the respondents maintain that the Department should use primarily *Chemical Weekly* because these prices, which are for commercial quantities, are contemporaneous, representative of Indian market-prices, and can be adjusted easily to exclude tax. In the absence of usable *Chemical Weekly* information, the respondents advocate using Indian import statistics as long as the values are based on commercial quantities and not subject to other distortions.[29] In the absence of published and reliable pricing or import data, the respondents state the Department "can" use price quotes that are product-specific.

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[27] *See* Petitioners' Case Brief at Appendix 3.

[28] The petitioners also pointed out that the imports from the United States totaled 0.5 kg and not the 500 kg previously reported on their summary sheet. *See* Petitioners' Case Brief at Appendix 1 page 1.

[29] The respondents cite Shanghai Foreign Trade Enterprises Co., Ltd. V. United States 28 CIT__, 318 F. Supp. 2d 1339 (2004) in Carbazole Violet Pigment 23 from China, Submission of Rebuttal Brief (Respondents' Rebuttal Brief) at page 2 (October 13, 2004).

The respondents counter the petitioners' assertion that the Department should average Indian import data and *Chemical Weekly* by arguing it is unnecessary. They argue that averaging is not the normal practice of the Department but concede it was done in *Synthetic Indigo from China*. The only case, the respondents state, that averaging would be "permissible" is if both sets of information are equally reliable and have been corroborated. They go on to assert that when import data are aberrational and are averaged, then the average will also be aberrational and should not be used. The respondents go on to point out that in *Synthetic Indigo from China,* the Department specifically stated that the import data and *Chemical Weekly* prices were not aberrational.[30] Additionally, the respondents point out that the Department stated that averaging would only occur when the import data and the published data are equally important and nothing compels the Department to favor one source. In this investigation, the respondents argue, averaging is not possible, especially for the surrogate values of chemicals that are clearly aberrational (*i.e.*, ethyl alcohol, nitric acid and calcium chloride). The respondents cite their case brief at pages 6 to 18 to argue that the aforementioned chemicals' surrogate values from Indian import statistics are distorted because they are based on low quantities of imports.

In their case brief, the respondents contend that the Department should not rely upon Indian import statistics as surrogate values of certain raw material inputs. They state that the Department correctly used prices from *Chemical Weekly*, when the raw material input was contained within a basket Indian HTS category, but that the Department relied too heavily on Indian import statistics when published domestic prices were available. The respondents assert that some of the Indian import statistics that the Department used in the preliminary determination were "aberrational" due to small import quantities, and do not reflect commercial prices. They insist that the Department use the published prices contained in *Chemical Weekly* to the greatest extent possible.

Department's Position: Based on the information raised by all parties in the case briefs, we have considered the appropriateness of certain surrogate values used in the *Preliminary Determination*. We have found several instances where the Indian import statistics used in the *Preliminary Determination* were aberrational compared with U.S. and European Union benchmark data and have made changes to the surrogate values for ethyl alcohol, hydrochloric acid, nitric acid, and calcium chloride. *See* Comments 6, 7, and 8 for a discussion on these surrogate value changes. Also, although the Department has averaged surrogate values in prior cases, it is not the stated practice of the Department. The Department's criteria for selecting surrogate value information is to use publicly available information, representative of a range of prices within the POI or most contemporaneous with the POI that is product-specific and tax-exclusive. *See Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China,* 69 FR 35296 (June 24, 2004), as discussed in accompanying Issues and Decision Memorandum at Comment 5. The Department has only averaged surrogate values in cases where the surrogate value sources were equally relevant in terms of specificity, contemporaneity, and reliability. *See, e.g., Synthetic Indigo from China* Issues and Decision

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[30] *Synthetic Indigo from China* at Comment 3 as cited in *id.* at 3.

Memorandum at Comments 3 and 4. In the instant case, there is reason to believe for some material inputs that the Indian import statistics are not representative of a range of prices within the POI. For this reason, we will not average Indian import statistics with prices from *Chemical Weekly*.

Comment 4: HTS Classifications

According to the petitioners, the Department used the incorrect HTS category for certain chemicals. Specifically, they assert that for diethylene glyco,l the correct HTS number is 2909.41.00 "Diethylene Glycol," for triethylene glycol the correct HTS number is 2909.19.00 "Other Acyclic Ethers," and for benzene sulfonyl chloride the correct HTS number is 2904.10.90 "Benzene sulfonic acid, other derivatives, containing only sulfpho group, their slats, and ethyl esters."[31] They state, however, that this is a basket category and should not be used (*see* the paragraph below for the petitioners' arguments against basket categories). They state that the only public price available for benzene sulfonyl chloride is information from the *Aldrich Handbook (India)* which they previously submitted. The petitioners go on to argue, however, that p-toluene sulfonyl chloride (p-toluene) is a substitute for benzene sulfonyl chloride and that the price information for p-toluene from *Chemimpex* should be used. They contend that the Indian government "allows a duty credit for {benzene sulfonyl chloride} or {p-toluene} at the concentration of 0.46 kg per kg of {CVP}-23 produced."[32] According to the petitioners, since the two chemicals are used for the same purposes and have the same purity, the *Chemimpex* prices, which are public and contemporaneous with the POI, are the best information available.

The petitioners further claim that to value certain chemicals, discussed in the paragraph below, the Department used basket categories for the preliminary determination. According to the petitioners, a basket category does not provide an acceptable price for chemicals as it is not specific to the FOP and does not have either a direct or proportional relation to the real pricing of the chemicals. For the same reasons, in its brief, Clariant also argues against the use of Indian import statistics based on basket categories. It asserts that the Department has stated that it prefers product-specific tariff classification over basket categories, citing *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 20634 (April 24, 2001) and *Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan*, 62 FR 2648 (January 17, 1997). It further contends the Department has a said that in situations where there are no data to accurately represent

[31] *See* Petitioners' Case brief at Appendix 1.

[32] See *id.* at Appendix 1 page 6.

specific inputs, it will ignore its preference for publicly available data over price quotes.[33] According to Clariant, any source submitted by the petitioners is preferable to a basket category, and while price quotes do not provide a range of prices, they are product-specific actual Indian prices. It maintains that on page two of their June 1, 2004, submission, the respondents said that price quotes may sometimes serve as appropriate surrogate values. Clariant also defends the use of the *Aldrich Handbook (India)* arguing that, even if respondents' assertions that this source does not list commercial prices are true, it still provides product-specific POI prices. Therefore, Clariant contends, the *Aldrich Handbook (India)* is still a better source than a basket category, particularly when averaged with price quotes.

The petitioners argue that bromoethane, which is commonly referred to as ethyl bromide, does not have a specific Indian import category, and that the respondents mistakenly submitted import data for methyl bromide (bromoethane).[34] The petitioners point out that both they and the respondents provided bromoethane price quotes. They assert, in both their brief and rebuttal to the respondents' brief, that these provide the best information available and should be averaged for the final determination. They further assert that neither the Indian import statistics nor *Chemimpex* provides information for benzyltriammonium chloride, and the quotation from the *Aldrich Handbook (India)* is the best available information. For Nekal, the petitioners contend that the quotation they provided should be used in the final determination. Additionally, the petitioners argue that for the final determination, the Department should use the *Chemimpex* information for cylopentatone instead of the basket category used in the preliminary determination. They point out that the *Chemimpex* prices are specific to the product used by the Chinese respondents.

The basket category for chlorinal is also unacceptable, the petitioners argue. In addition to the basket-category problem, the petitioners also claim there is an additional problem with the *Chemimpex* prices. They maintain they used *Chemimpex* to search the *Chemical Weekly* import database and found only 1 kilogram (kg) of chlorinal imported from Germany during the POI, and because there are no other imports from market economies, *Chemimpex* prices should not be used. Chlorinal is, they argue, a small-quantity specialty chemical and only *Aldrich Handbook (India)* provides public pricing information for it. They contend that Clariant is the only chlorinal producer that meets the Environmental Protection Agency's toxic dioxins requirements, and this means all CVP-23 coming into the United States must use Clariant chlorinal. Therefore, the petitioners argue that the Department

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[33] To support this statement, at page 3 of its case brief Clariant cites *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), as discussed in accompanying Issues and Decision Memorandum at Comment 13.

[34] *See* the Respondents' Surrogate Value Submission of April 20, 2004, as referenced in Petitioners' Case Brief at Appendix 1 page 1.

should use the price quote from the petition to value chlorinal because it is in line with Sun Chemical Corporation's purchases of chlorinal from Clariant for conversion to crude CVP-23.[35]

The respondents argue that the *Aldrich Handbook* data submitted by the petitioners should not be used under any circumstance for the final determination. To this end, they cite their letter of June 1, 2004. While acknowledging that the *Aldrich Handbook* is both respected and often used for other purposes, the respondents assert that it should not serve as a surrogate value source for large-quantity purchases because the prices in it are for small quantity samples used in testing or research applications. This is clearly evident, the respondents claim, by the unit, grams, used in the handbook. They maintain that industrial users purchase in large quantities, normally a container which is approximately 17 metric tons (MT) or 17,000,000 grams.[36] Therefore, they argue, the *Aldrich Handbook* prices are aberrational, and their use would distort the surrogate values. To illustrate this distortion, the respondents give the example of carbazole, which Indian import statistics value at USD 3,440.75 per MT for the POI , while the *Aldrich Handbook* prices carbazole at USD 8,400,000.00 per MT for a one gram purchase, or at USD 144,000.00 per MT for a 500-gram purchase.[37]

Department's Position: In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market-economy country. The Department considers several factors when choosing the most appropriate surrogate values, including the quality, specificity, and contemporaneity of the data. *See, e.g. Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China (Polyethylene Bags)*, 69 FR 34125 (June 18, 2004) (*Polyethylene Bags from China)* as discussed in the accompanying Issues and Decision Memorandum at Comment 9. To value certain material inputs that are contained within Indian HTS basket categories, we determine that Indian import statistics are the best available surrogate value information, and we have continued to use them in the final determination. We have not used price quotes in the final determination because it is the Department's preference to use a publicly available price that reflects numerous transactions between many buyers and sellers. *See Polyethylene Bags from China* at Comment 9. We also disagree with using price quotes from the *Aldrich Handbook*, because we believe these prices are not based on commercial quantities nor do they represent numerous transactions between many buyers and sellers.

In addition, we disagree with substituting a surrogate value for p-toluene sulfonyl chloride for benzyl sulfonyl chloride as the petitioners suggested in their case brief, and valuing it with prices from *Chemical Weekly*. Although benzyl sulfonyl chloride is included in a basket category, the Indian import statistics for this basket category are preferable to valuing p-toluene sulfonyl chloride because p-toluene sulfonyl chloride was not used in the respondents' production of CVP-23.

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[35] *See* Petitioners' Case Brief at 5.

[36] *See* Respondents' Case Brief at 4.

[37] *See* Respondents' Case Brief at 4 and 5.

Comment 5: Adjusting Surrogate Values for Chemical Concentration Levels

Based on *Synthetic Indigo from China* as well as *Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 68 FR 27530 (May 20, 2000), the petitioners argue the Department has recognized that, usually, chemical price quotes are on an "as is" basis. The petitioners state "as is" means the weight of the chemical as the customer receives and inventories it. The petitioners further state that the FOPs are normally reported on an "as is" basis so multiplying an "as is" factor by an "as is" surrogate value is easy. The petitioners argue that most chemicals reported "as is" have a 90 percent or higher concentration but that some inorganic solids (such as sodium sulfide and calcium chloride) might have lower rages, *e.g.*, 50 to 60 percent. In the latter situation, the petitioners contend, the factors might have been reported based on 100-percent concentration and this would require a modification to calculate input value. Specifically, the petitioners argue that the "as is" prices of these factors would need to be adjusted to reflect the price of a 100-percent pure chemical. For sodium sulfide and calcium chloride, in particular, the petitioners assert that the chemical concentration of the surrogate value must be known, and the only source that provides this information is *Chemical Weekly*. According to the petitioners, there are some exceptions to the "as is" rule, such as solid sodium hydroxide, which is normally priced and sold based on 100-percent purity.

In response, the respondents state that they submitted all factors on a 100-percent purity basis. They contend that "as is" is an inaccurate term. They further state that purities can range and that this will have a large impact on price, which is why they agree that product purchases and surrogate values should be based on 100-percent purity to avoid discrepancies based on purity. The respondents go on, however, to say that *Chemical Weekly* reports prices on a 100-percent purity basis unless otherwise indicated. To support this statement, the respondents cite *Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 69503 (December 13, 1999) (*Sebacic Acid from China)*. Therefore, the respondents contend, the Department should use *Chemical Weekly* prices that are not adjusted for purity. The respondents also maintain that, as was found at verification, tests on chemical purity levels may vary, and as long as a chemical's concentration is with a range of one to four percent of the desired purity level, this is acceptable.[38]

Department's Position: The Department recognizes that *Chemical Weekly* prices are based on 100-percent purity unless indicated otherwise. In the instant case, the respondents have reported their factors of production at 100-percent concentration. Where both *Chemical Weekly* prices and the respondents' reported FOPs are based on 100-percent purity, there are no grounds to adjust prices for purity. Further, in the past, the Department has decided that it would not adjust surrogate values to

[38] *See* Respondents' Rebuttal Brief at 6.

reflect purity levels when the surrogate value sources do not indicate levels of purity which can be used for comparison purposes. *See Sebacic Acid from China* at Comment 1.

Comment 6: Ethyl Alcohol

The respondents claim that the Department chose the wrong type of ethyl alcohol as a surrogate value for an input used in the production of CVP-23. The Department used Indian import statistics to value undenatured ethyl alcohol, Indian HTS 2207.10, and the respondents argue that it should have used denatured ethyl alcohol. The respondents claim in their brief that undenatured ethyl alcohol is a type of alcohol fit for human consumption and subject to heavy taxation, while denatured ethyl alcohol is an industrial product unfit for human consumption and relatively inexpensive. The respondents also assert that during verification, the Department verified that the ethyl alcohol used by some of the respondents was denatured.[39]

In addition, the respondents took issue with the Department using Indian import statistics to value ethyl alcohol because the import statistics were based on a volume of 1,024 liters, or less than 1.3 metric tons of imports. The respondents contend that the surrogate value used for ethyl alcohol was many times greater than other commercial prices of the chemical on the administrative record and that, compared with U.S. import statistics, the value of ethyl alcohol used by the Department in the *Preliminary Determination* was many times greater. The respondents request that the Department use either the price quotes of ethyl alcohol provided in their August 17, 2004, and August 19, 2004, submissions, or published prices from *Chemical Weekly*, as these surrogate values are corroborated by U.S. import statistics and prices from the *Chemical Market Reporter*.[40]

The petitioners state that the respondents gave conflicting data regarding which type of ethyl alcohol was used in the production of CVP-23. They claimed that, for the preliminary determination, the respondents reported the use of ethyl alcohol as CAS No. 64-17-5, with the HTS classification of 2207.10,[41] which covered undenatured ethyl alcohol. The petitioners also argue that during verification, the Department was unable to definitively determine which type of ethyl alcohol the respondents used in the production of CVP-23, based on the Department's verification report of Haidi.[42] The petitioners contend that the Department should continue to value ethyl alcohol in the final determination as it did in the preliminary determination. The petitioners argue that there is no record evidence that undenatured

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[39] *See* Memorandum to the File from Marin Weaver and Christopher Welty: Antidumping Investigation of Carbazole Violet Pigment 23 from the PRC - Verification of Nantong Haidi Chemical Co., Ltd. (October 1, 2004) (Haidi Verification Report) at page 11 as cited in Respondents' Case Brief at page 7.

[40] *See* Respondents' Case Brief at 14.

[41] *See* April 21, 2004, Supplemental Questionnaire Response of Trust Chem Co., Ltd., at Appendix S1-D5.

[42] *See* Haidi Verification Report at 11 as cited in Petitioners' Rebuttal Brief at 3.

ethyl alcohol in the non-market economy of China is either taxed or subject to government regulation.[43] They also state that there is no evidence on the record that undenatured alcohol is not suitable for industrial purposes.[44]

Given the conflicting factual submissions and verified data, the petitioners propose as an alternative that the Department average the Indian import statistics for HTS 2207.10 and HTS 2207.20, and the *Chemimpex* prices from the *Chemical Weekly* database submitted to the Department by the respondents in their August 10, 2004, surrogate value submission. The petitioners contend that all three sources of data are publicly available, represent separate transactions, and are contemporaneous with the POI. They do not agree with the respondents' submission of price quotes and export prices for ethyl alcohol because they feel that these prices are not representative of prices for India or are outside the POI.[45] As a final alternative, despite their claim of conflicting evidence on the record, the petitioners agree to the use of publicly available data to value denatured ethyl alcohol, if the Department chooses to do so. They assert that both the Indian import statistics for HTS 2207.20 and the *Chemimpex* prices from the *Chemical Weekly* database are publicly available, represent separate transactions, and are contemporaneous with the POI. The petitioners maintain that these sources could be used to value ethyl alcohol in the final determination.[46]

Clariant concurs with the petitioners and argues that it was the respondents themselves who originally submitted the HTS category 2207.10 for undenatured ethyl alcohol, and only claimed that it was a mistake after determining that this HTS category would lead to a high surrogate value.[47] Clariant claims that there is nothing in the HTS and Explanatory Notes that implies that only denatured alcohol is used for industrial purposes. Clariant cites HTSUS 2207.10.60, which covers "undernatured {sic} ethyl alcohol of an alcoholic strength by volume of 80 percent volume or higher: for nonbeverage purposes," and states that U.S. Customs and Border Protection has previously classified undenatured ethyl alcohol for cosmetic use and undenatured alcohol for fuel use under this subheading.[48] Clariant also raised the issue that the verification reports indicate that the respondents could not provide any definitive evidence that the ethyl alcohol they use in the production of CVP-23 was denatured. It requests that the Department revise its surrogate values based on the petitioners' submissions, and cites *Synthetic*

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[43] *See id.* at 3.

[44] *See id.* at 4.

[45] *See id.* at 5.

[46] *See id.* at 6.

[47] *See* Clariant's Rebuttal Brief at 3.

[48] *See* HQ 956481 (July 20, 1994) and NY K83935 (March 18, 2004) as cited in Clariant's Rebuttal Brief at 3.

Indigo from China, at Comments 3 and 4, to request that the Department average Indian import statistics and prices from *Chemical Weekly*, in instances where both sources are available.[49]

Department's Position: As stated in Haidi's Verification Report at 11, company officials provided chemical-analysis tests for its ethyl alcohol that resulted in a chemical make-up of 90 percent ethanol and 5 percent methyl alcohol. Therefore, we agree that the surrogate value for this factor should be denatured ethyl alcohol, HTS 2207.20. To value this factor in the final determination, we have rejected the prices quotes for denatured ethyl alcohol because we prefer not to rely on price quotes, as they represent the experience of one or two transactions and are not necessarily representative of commercial prices in India. *See, e.g., Polyethylene Bags from China* at Comment 9.

Next, we sought to use Indian import statistics, as they typically comply with the Department's criteria that surrogate value information be publicly available, representative of a range of prices within the POI or most contemporaneous with the POI, product-specific, and tax-exclusive. We compared *World Trade Atlas (WTA)* Indian import value for denatured ethyl alcohol with U.S. and European Union import data from the *WTA* to determine whether the Indian import value for denatured ethyl alcohol was aberrational. Although the respondents submitted U.S. import data and prices from *Chemical Market Reporter* as benchmarks to test the reliability of the Indian import statistics, we have rejected the practice of comparing across data sources, for purposes of testing for aberrational values. In the recent *Final Results of Redetermination Pursuant to Remand* for *Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, Court No. 03-00442, Slip Op. 04-88 (Ct. Int'l Trade July 19, 2004), we stated as follows:

> The Department finds that a simple comparison between different surrogate factor values does not make one or the other wrong. In fact, this benchmark methodology for defining an aberrational value is not an "apples-to-apples" comparison when setting a benchmark for aberrational values. Indeed, the Department finds the methodology which creates a benchmark for aberrational values by comparing different sets of source documents and then translating this benchmark to a single value within a single source document to be flawed.

The Indian import value for denatured alcohol as reported by the respondents was USD 1,138.24 per MT, based on approximately 100 MT of product. We believe this value is aberrational compared with the benchmark *WTA* U.S. import value of USD 260.44 per MT, and the *WTA* European Union import value of USD 442.96 per MT. We have determined that the price for denatured ethyl alcohol from *Chemical Weekly* submitted by the respondents is not contemporaneous enough with the POI since it is from the year 2000. Because the Indian import statistics for the POI for denatured ethyl alcohol have been found to be aberrational, we have used Indian import statistics for the six-month period immediately prior to the POI, as they are more contemporaneous than the *Chemical Weekly* value.

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[49] *See id.* at 4.

Comment 7: Hydrochloric Acid and Nitric Acid

The respondents argue that the Department should not have used Indian import statistics to value hydrochloric acid because they are based on a small volume of imports and result in a price that is approximately 25 times greater than the commercial value of this input.[50] The respondents request that the Department use published prices from *Chemical Weekly* provided in their April 20, 2004, surrogate value submission. They contend that the price presented in their submission is corroborated by both U.S. import statistics and average international prices from the *Chemical Market Reporter*, which they included in their August 17, 2004, surrogate value submission.[51]

The respondents also argue that the Department should not use, in the final determination, Indian import statistics to value nitric acid as was done in the preliminary determination because the Indian import statistics were based on a volume of only 1.5 metric tons, less than one tenth of a container load of product.[52] For purposes of the final determination, the respondents request that the Department use prices from *Chemical Weekly*, which they had included in their April 20, 2004, surrogate value submission. In their August 17, 2004, Surrogate Value Submission, the respondents included U.S. import statistics and average international prices for nitric acid from the *Chemical Market Reporter*, which they say corroborate the accuracy of the price published in *Chemical Weekly*.

In their rebuttal case brief, the petitioners request that for both hydrochloric acid and nitric acid, the Department, as it has done in previous cases, use an average of *Chemical Weekly* and Indian import statistics in the final determination. The petitioners contend that these prices are equally contemporaneous, specific to the factor of production, and represent a number of prices, and that the respondents have failed to show in their case brief that the Indian import statistics are aberrational or unsuitable.[53]

Department's Position: We agree that the Indian import statistics used in the preliminary determination were aberrational, compared with *WTA* U.S. and European Union import data. Although the respondents submitted U.S. import data and prices from *Chemical Market Reporter* as benchmarks to test the reliability of the Indian import statistics, in the recent *Final Results of Redetermination Pursuant to Remand* for *Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, Court No. 03-00442, Slip Op. 04-88 (Ct. Int'l Trade July 19, 2004), we stated that, "the Department finds the

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[50] *See* Respondents' Case Brief at 14.

[51] *See id.* at 15.

[52] *See id.* at 16.

[53] *See* Petitioners' Rebuttal Brief at 6-7.

methodology which creates a benchmark for aberrational values by comparing different sets of source documents and then translating this benchmark to a single value within a single source document to be flawed."

We observed that the average value for hydrochloric acid derived from *WTA* Indian import statistics used in the preliminary determination was USD 2,150.49 per MT. Based on the benchmark *WTA* U.S. import value of USD 96.33 per MT, and the *WTA* European Union import value of USD 87.62 per MT for hydrochloric acid, we believe that the surrogate value for hydrochloric acid used in the preliminary determination was aberrational. We have determined that the price for hydrochloric acid of USD 79.73 per MT from *Chemical Weekly* submitted by the respondents is more representative of commercial prices in India.

For nitric acid, we agree that the Indian import statistics used to value this input (at USD 4,384.22 per MT) in the preliminary determination were aberrational, based on the benchmark *WTA* U.S. import value of USD 170.00 per MT for nitric acid, and the *WTA* European Union import value of USD 114.43 per MT for nitric acid. We have used the respondents' submitted price of USD 122.93 per MT from *Chemical Weekly* in the final determination to value nitric acid.

Comment 8: Calcium Chloride

The respondents claim that the Department should not have used Indian import statistics to value calcium chloride because the surrogate value was based on a volume of 126 MT, which represents approximately 8 container loads of product.[54] For purposes of the final determination, the respondents request that the Department use prices from *Chemical Weekly*, which they included in their April 20, 2004, surrogate value submission. In their August 17, 2004, surrogate value submission, the respondents included U.S. import statistics and average international prices from the *Chemical Market Reporter* for calcium chloride, which they say corroborate the accuracy of the price published in *Chemical Weekly*.

Department's Position: We agree that the Indian import statistics used to value calcium chloride in the *Preliminary Determination* were aberrational, compared with *WTA* U.S. and European Union import data. Although the respondents submitted U.S. import data and prices from *Chemical Market Reporter* as benchmarks to test the reliability of the Indian import statistics, in the recent *Final Results of Redetermination Pursuant to Remand* for *Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, Court No. 03-00442, Slip Op. 04-88 (Ct. Int'l Trade July 19, 2004), we stated that, "the Department finds the methodology which creates a benchmark for aberrational values by comparing different sets of source documents and then translating this benchmark to a single value within a single source document to be flawed."

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[54] *See* Respondents' Case Brief at 17.

We observed that the average value for calcium chloride derived from *WTA* Indian import statistics used in the preliminary determination was USD 556.96 per MT. Based on the benchmark *WTA* U.S. import value of USD 120.00 per MT for calcium chloride, and the *WTA* European Union import value of USD 226.87 per MT for calcium chloride, we believe that the surrogate value for calcium chloride used in the preliminary determination was aberrational. We have determined that the price for calcium chloride of USD 213.62 per MT from *Chemical Weekly* submitted by the respondents is more representative of commercial prices in India.

Comment 9: Ethyl Bromide

The respondents disagree with the Department using Indian import statistics to value ethyl bromide, as the HTS category for this input is a basket category for fluorinated derivatives of acyclic hydrocarbons.[55] The respondents assert that this basket category includes importations of products not used in the manufacture of CVP-23, and therefore, request that the Department use a price quote for Indian-manufactured ethyl bromide for sale in India included in their August 17, 2004, surrogate value submission.

The petitioners agree with the respondents that the basket HTS category is unsuitable to value ethyl bromide, and request that the Department use an average of the price quotes submitted by both themselves and the respondents.[56]

Department's Position: It is the Department's preference to use the best available surrogate value to value factors of production, and in this case the Indian import statistics are the best source, despite the fact that this input is part of a basket HTS category. Although both parties submitted price quotes for consideration, the Department typically prefers a larger sample of prices on which to base our surrogate value. *See Polyethylene Bags from China* at Comment 9. In the final determination, we have continued to value ethyl bromide with Indian import statistics, as was done in the *Preliminary Determination*, because we have concluded that the correct HTS category was used.

Comment 10: Ethanolamine Solvent

The respondents state that Haidi had reported, in its Section D and supplemental questionnaire responses, ethanolamine solvent as one of its factors of production, but that at verification, Haidi informed the Department that it incorrectly reported the chemical name of this factor of production, which should be diethylene glycol (DEG).[57] In the final results, the respondents request that the Department apply the surrogate value for DEG to Haidi's factor for ethanolamine solvent.

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[55] *See id.* at 19.

[56] *See* Petitioners' Rebuttal Brief at 7.

[57] *See* Haidi Verification Report at 9 as cited in Respondents' Case Brief at 20.

The petitioners state in their original case brief that the Department used the wrong HTS category for DEG in the preliminary determination. In response to the respondents' brief on this input, the petitioners request that the Department, as in previous practice, use an average of Indian import statistics and prices from *Chemical Weekly* to value diethylene glycol,[58] which they included in their August 10, 2004, and May 20, 2004, submissions, respectively.

Department's Position: In the final determination, we have applied the surrogate value for DEG to Haidi's factor for ethanolamine solvent based on our findings at verification. *See* Haidi Verification Report at 9. We agree that we used the wrong HTS category to value DEG in the *Preliminary Determination*. For the final determination, we have used Indian import statistics (HTS 2909.4100) to value DEG.

Comment 11: Steam

The petitioners argue that the steam value they provided in their August 24, 2004, surrogate value submission should be used to value steam as it is the best information available.

Department's Position: In the final determination, we have not valued steam, consistent with the *Preliminary Determination*, because of our inability to locate a reliable surrogate value. We are rejecting the price quote provided by the petitioners in their August 24, 2004, surrogate value submission because the quote is from a U.S. provider. As we stated in *Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate from the People's Republic of China*, 68 FR 46577 (August 6, 2003) Issues and Decision Memorandum at Comment 1-c, we do not consider the United States to be a potential surrogate country for the PRC and, therefore, cannot accept the price quote submitted by the petitioners.

Comment 12: Electricity

The petitioners argue that the Department should use the publicly available and contemporaneous Pidilite price of electricity to value electricity for the final determination. They claim that this information is "superior" to the generic public rate schedule used in the *Preliminary Determination*.

Department's Position: In the final determination, we have continued to use the value for electricity applied in the *Preliminary Determination*. The Department normally uses and prefers a country-wide electricity rate to reflect a broad-base cost for electricity, which ensures a fair representation of electricity costs country-wide, instead of the price for this input from a surrogate producer. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass*

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[58] *See* Petitioners' Rebuttal Brief at 7.

Windshields from the People's Republic of China, 67 FR 6482, (February 12, 2002) as discussed in the accompanying Issues and Decision Memorandum at Comment 7.

Comment 13: Import Brokerage and Terminal Charges

The petitioners argue that the Department used prices inclusive of the CIF (cargo, insurance and freight) price to value some of the material inputs for the *Preliminary Determination*. They assert that a CIF price does not capture all the movement costs that should be captured, such as Indian import brokerage and terminal charges. The Department should, according to the petitioners, add to all import surrogate values the import brokerage and handling charge surrogate value the petitioners provided.[59]

Department's Position: To value material inputs, the Department seeks to substitute the non-market-economy producer's costs with those of a producer in the surrogate country. We typically use import statistics to value a material input because they meet the criteria set out in section 773(c)(1) of the Act, which instructs the Department to use "the best available information" from the appropriate market-economy country. The Department considers several factors when choosing the most appropriate surrogate values including the quality, specificity, and contemporaneity of the data. However, because we find in many cases that import statistics are the best available information, we recognize that importing material inputs may not be the experience of the surrogate producer. Therefore, we will not add additional costs involved in importing a product into the surrogate country because the Department is only concerned with valuing the cost of an input used by a surrogate producer, whether it be purchased domestically or imported.

II. ISSUES SPECIFIC TO INDIVIDUAL RESPONDENTS

Comment 14: Multicolor Tolling

The petitioners argue that the Department should apply the financial ratios, revised per their argument discussed in Comment 1 above, to the nitroethylcarbazole (NNEC) that Multicolor tolled for further processing. They contend that, to be consistent with the Department's practice of applying financial ratios to outsourced operations, the crude CVP-23 received by Multicolor must account for factory overhead, SG&A, and profit related to the processing of the NNEC to crude CVP-23.[60] The profit ratio must be applied in addition to factory overhead and SG&A, the petitioners emphasize, because in market economies, the companies to which Multicolor tolled its merchandise would expect to make a profit from processing the NNEC into crude.

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[59] Petitioners reference their August 10, 2004, submission.

[60] For support, the petitioners cite the accompanying Issues and Decision Memorandum to the *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345 (September 27, 2001) at Comment 4 and the cases cited within.

In their rebuttal brief, the respondents argue that the financial ratios should not be applied to Multicolor's tolled products. They assert further that to do so would be a double application of financial ratios to subject merchandise when there should be only one application.

Department's Position: For a variety of reasons, we have not adjusted the financial ratios applicable to Multicolor as suggested by the petitioners. First, while arguing that we should adjust the financial ratios applicable to Multicolor, the petitioners state that the Department's practice is to apply the relevant financial ratios to operations outsourced by the NME producer, citing *Pure Magnesium in Granular Form Final Determination of Sales at Less Than Fair Value*, 66 FR 49345 (September 27, 2001). However, in that case, the Department declined to make any adjustment, stating, "in calculating overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category." Issues and Decision Memorandum at Comment 4.

Furthermore, we are not persuaded by the petitioners' suggestion that Multicolor's overhead and SG&A expenses have been understated because a portion of its production is tolled to another company. We have applied to Multicolor the financial ratios of Pidilite. Because Pidilite is a fully integrated CVP-23 producer, performing the full range of production operations in house, its financial ratios serve as an appropriate surrogate for Multicolor as well as Multicolor's subcontractor. Therefore, consistent with our practice, we have continued to rely on the financial ratios derived from Pidilite's financial statements, without adjustment.

Comment 15: Application of Adverse Facts Available to Multicolor

At verification, point out the petitioners, the Department found that Multicolor failed to report the following materials: benzene, liquid caustic soda, chlorobenzene, plastic film, and the chemicals associated with the NNEC work-in-progress. They argue that the Department should apply adverse facts available (AFA) to these materials. The petitioners suggest, for quantity, using the highest amount available for each product as reported in the petition or by the other responsive producers and for value, using the highest individual price available.

In addition to the arguments the petitioners make regarding benzene, liquid caustic soda, and chlorobenzene, which Clariant reiterates, they argue that AFA should be applied to certain chemical inputs and water. Water, they argue, was under-reported because Multicolor did not report water usages at certain stages of production.[61] Clariant also argues that the Department should apply AFA to these mistakes found at verification because the respondents had months to provide accurate information.

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[61] Due to the proprietary nature of Clariant's arguments regarding chemical inputs, no summary can be given here. *See* Clariant's Case Brief at 11 and 12 for further details.

The respondents maintain that the petitioners have overstated their case against Multicolor and that there was consumption reported for benzene, liquid caustic soda, and chlorobenzene.[62] They argue that the withdrawals of these chemicals were not in the warehouse book because the company did not keep track of inventory at the warehouse level for these chemicals. They assert, however, that the Department was still able to verify the consumption amounts based on actual withdrawals from inventory. Therefore, they assert, the application of partial AFA is not appropriate here.[63] While the respondents generally argue that no verification mistakes made by any respondent warrants the application of AFA, it makes no specific argument regarding the work-in-progress, the packing materials, chemical inputs, and water.

Department's Position: With regard to benzene, liquid caustic soda, and chlorobenzene, we must first clarify what was and was not reported by Multicolor. Multicolor did report consumption for these three chemicals based on each chemical's respective withdrawals from the warehouse during the POI. As stated in the Multicolor verification report, we tied these withdrawals to the Multicolor warehouse book.[64] These three chemicals are unique, however, in that they are all recovered during the production process and maintained in recovery tanks in the workshop. Therefore, in addition to what was withdrawn from the warehouse, there was additional benzene, liquid caustic soda, and chlorobenzene from the workshop inventory that was used in the production process. What Multicolor did not report was the consumption of the recovered benzene, liquid caustic soda, and chlorobenzene. That is, it did not report usage of recycled benzene, liquid caustic soda, and chlorobenzene because the company does not track workshop inventories of these inputs in the normal course of business.[65]

The petitioners and Clariant have requested that we apply AFA to benzene, liquid caustic soda, and chlorobenzene usages, as well as to plastic film, the chemicals associated with the NNEC work-in-progress, chemical inputs, and water. Before we can consider an adverse inference of facts available, we must first assess whether the use of facts available is justified.

Section 776(a) of the Act, provides that facts available may be used if

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[62] The respondents cite Multicolor's Section D response (March 2, 2004). *See* Respondents' Rebuttal Brief at 11.

[63] *See* both the Respondents' Case Brief at 2 and the Respondents' Rebuttal Brief at 11.

[64] *See* Memorandum to the File, Antidumping Investigation of Carbazole Violet Pigment 23 from the PRC - Verification of Jiangsu Multicolor Fine Chemical Co., Ltd. (Multicolor Verification Report) at pages 4 and 5 (October 1, 2004)

[65] *See* Multicolor Verification Report at page 6 which states "They stated that the workshops did not maintain inventories of raw material. Second, in response to our questions, company officials stated that they did not measure the usage of benzene, liquid caustic soda, and chlorobezene in the normal course of business and had not included the amounts in their reported consumption." The Department acknowledges that the verification report may be somewhat unclear on this point, however when we stated here that "they did not measure the usage of benzene, liquid caustic soda, and chlorobezene in the normal course of business" we are referring to usages in the workshop, not usage as withdrawn from the warehouse.

> (1) necessary information is not available on the record, or
> (2) if an interested party or any other person – (A) withholds information that has been requested by the administering authority. . . ; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested subject to subsections (C)(1) and (e) of section 782 . . .;
> (C) significantly impedes a proceeding under this subtitle; or (D) provides such information but the information cannot be verified as provided in section 782(I), the administering authority . . . shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this subtitle.

See also Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103-316 , Vol. 1, at 868-870 (1994). First, we must determine whether the conditions required by the statute have been met before the Department may resort to the facts available. In this instance, we find that there are no grounds for using facts available for any of the mistakes found at Multicolor's verification because the necessary information to correct the mistakes was collected at verification and is on the record. *See* Multicolor Verification Report and accompanying exhibits. Further, Multicolor did not withhold information requested by the Department, but either made mistakes in reporting its data or, in the case of benzene, liquid caustic soda, and chlorobenzene, reported as accurately as its books and records permitted it to do. Further, the existence of these mistakes has not significantly impeded this investigation and, as we have collected information to correct mistakes found at verification, we do not find that the response is so incomplete that it cannot be used. Therefore, we find no justification to apply facts available to the mistakes found at verification in Multicolor's response. As a result, the question of an application of adverse inference of facts available does not arise.

We will make no adjustment to Multicolor's reported benzene, liquid caustic soda, and chlorobenzene. First, we have no way of accurately quantifying a change to these chemical inputs. Moreover, we do not know what the net effect of accounting for the recovered chemicals would be because, while the amount of recovered chemicals consumed would be added to usage, we would need to subtract from usage the amount of chemical recovered. We will, however, adjust Multicolor's packing cost in the final determination so that plastic film is included. We will also adjust its water consumption to include that used during all stages of the production process as we verified the revised amount. Finally, we will adjust Multicolor's factors to reasonably reflect the amount of NNEC work-in-progress. *See* Analysis Memorandum for GoldLink for details of our calculations.

With regard to the issue of the chemical input mistakes identified, we agree with Clariant that some of the purity contents differed from what Multicolor reported in its response. However, we disagree that a change is necessary here. While ordinarily we would make a correction in instances where it is conservative to accept what was submitted to us, we have decided such a correction is unnecessary. *See Color TV Receivers from China,* as discussed in the accompanying Issues and Decision Memorandum at Comment 23. In this case, we find that Multicolor was conservative in its use of purity levels in the reporting of chemical inputs and therefore we will make no adjustments to chemical

inputs. Furthermore, the Department will accept responses it considers reasonable. The respondent used its standards book as the basis for chemical purity. We believe this is reasonable because a chemical's purity levels can vary and the standards book provides a fair benchmark.

Comment 16: Application of Adverse Facts Available to Haidi

The petitioners argue that the Department should correct all the discrepancies, including the 1.5 Diaminonaphthalene mistake and misreporting of diethylene glycol, it found at verification. Additionally, the petitioners assert that the Department should apply AFA to the under-reported direct and indirect labor resulting from the unreported Equipment Department labor and to the unreported packing materials (plastic ties and plastic film). They argue that as AFA, the Equipment Department labor should be applied to direct labor. For the unreported packing materials, they suggest using the highest individual price available.

Clariant also argues that the Department should apply adverse facts available to mistakes found at verification because the respondents had months to provide accurate information. Specifically for Haidi, Clariant contends that numerous errors such as those found in the chemical purity levels and the exclusion of the Equipment Department labor raises doubts about the accuracy of Haidi's response. Clariant also claims that Haidi incorrectly calculated its per-unit consumption of coal and electricity by allocating its total coal and electricity consumption during the POI based on production volumes. Clariant asserts that the Department should apply adverse facts available to Haidi's chemical inputs, direct labor, and energy.

The respondents concur that certain discrepancies were found at verification and they expect that these will be corrected for the final determination.[66] They argue that the Department should make use of the verified information and not AFA information for Haidi's labor and packing material corrections. The respondents assert that there is no basis for either partial or total AFA in this instance.

Department's Position: Regarding the petitioners' argument that total AFA should be applied to Haidi, the Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met. *See* Section 776(a) of the Act, as discussed in Comment 15. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103-316 , Vol. 1, at 868-870 (1994). First, we must establish that the conditions required by the statute have been met before the Department may resort to the facts available. In this instance, we find there are no grounds for using facts available for any of the mistakes found at Haidi's verification. First, the necessary information to correct the mistakes was collected at verification and is on the record. *See* Antidumping Investigation of Carbazole Violet Pigment 23 from the People's Republic of China - Nantong Haidi Chemical Co., Ltd. (Haidi Verification Report) (September 30,

[66] *See* both the Respondents' Case Brief at 2 and the Respondents' Rebuttal Brief at 11.

2004) and accompanying exhibits. Haidi did not withhold information requested by the Department, but rather, made minor mistakes in reporting its data. Further, the existence of these mistakes has not significantly impeded this investigation. Therefore, we find no justification to apply facts available to the mistakes found at verification in Haidi's response. As a result, the question of an application of adverse inference of facts available is void.

For the final determination, we changed Haidi's FOPs so that there is a surrogate value for diethylene glycol and not for ethanolamine solvent. *See* Haidi Verification Report at 8 and 9. At verification, company officials explained that the Equipment Department attendance sheet reflected factory maintenance. *See* Haidi's Verification Report at 13. As this is indirect labor, for the final determination, we revised the indirect labor calculation so that the labor hours from these attendance sheets are included. Regarding Haidi's calculation of per-unit consumption of electricity and coal, we find that Haidi's record keeping did not allow for it to report the exact amount of these energy inputs used purely for the subject merchandise and that its methodology based on allocation of consumption across production volumes was reasonable.

Comment 17: Haidi's Factors of Production

In their brief, the respondents claim that the Department should only consider the FOPs of Haidi's East Workshop, which produces CVP-23 sold to the United States, and not the FOPs of CVP-23 produced in the West Workshop that is exported to Japan. They assert that the production process of CVP-23 for Japan involves an additional chemical input to produce a brighter shade of CVP-23 than what is exported to the United States.[67] According to the respondents, valuing only the East Workshop's production of CVP-23 is consistent with the Department's normal practice, and cite 19 U.S.C. 1677b(c)(1)(B), which states that the Department "shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise."[68] The respondents also cite *Bulk Aspirin from China* as an example of when the Department only considered the FOPs used to produce export quality aspirin sold to the United States and did not consider the FOPs used to produce domestic quality aspirin.[69]

The petitioners cite the *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 117, 1123-1124 (January 7, 2000) (*Cold-Rolled from China)* to show that in order to construct normal value, the Department's practice is to use a weighted-average of the FOPs for all of the respondent's facilities that produced the product

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[67] *See* Respondents' Case Brief at 23.

[68] *See id.* at 23.

[69] *See id.* at 24.

during the POI, regardless of the market destination.[70] They call for the Department to include FOPs information from all facilities that produced the merchandise under investigation, meeting the description of the scope. Clariant also requests that the Department include the FOPs of Haidi's West Workshop because they claim there is no evidence on the record that shows that the CVP-23 produced in the West Workshop falls outside of the scope of the investigation, just because the West Workshop incorporates a separate chemical to make the CVP-23 produced for Japan brighter. It claims that the respondents mis-cited *Bulk Aspirin from China* because in that case, the Department found that the domestic-quality aspirin did not meet the characteristics of the subject merchandise and fell outside the scope.[71]

Department's Position: The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Because all costs associated with Haidi's production of crude CVP-23 have been captured in the normal value calculation, at issue is whether to include costs associated with production of presscake and dry color at the West Workshop, whose finished products are sold only to Japan. Page C-7 of the Department's questionnaire instructed Haidi to "{a}ssign a control number to each unique product reported in the section C sales data file. Identical products should be assigned the same control number in each record in every file in which the product is referenced. Each unique combination of product characteristics based only on fields 3.1 and 3.2 should be assigned a unique control number." In other words, according to these instructions, Haidi assigned a unique control number to each unique product sold to the United States, based on the physical characteristics of the product.

Section D of the questionnaire provides instructions on reporting factors of production for each unique product included in the section C reported sales list. Page D-4 of the questionnaire instructed Haidi to "{r}eport the unique control number assigned to the model in the U.S. sales file in Section C of this questionnaire. Unless otherwise instructed by the Department, you should ensure that your factors computer file contains a separate record for each unique product control number contained in your U.S. sales file."

The important distinction does not revolve around the market to which the finished product was sold but rather, around the fact that the finished presscake and dry powder produced in the West Workshop and sold only to Japan is physically different from the finished presscake and dry powder produced in the East Workshop and sold to the United States. Due to the differences in physical characteristics between these products, finished presscake and dry powder produced in the West Workshop would have been assigned different control numbers than those assigned to finished presscake and dry powder produced in the East Workshop. Pursuant to its non-market-economy methodology, the Department calculates the antidumping margin by comparing U.S. sales to normal value by control number. Thus,

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[70] *See* Petitioners' Rebuttal Brief at 13.

[71] *See* Clariant's Rebuttal Brief at 8.

factors specific to the finishing stage of production at the West Workshop are not relevant to the normal value of products sold to the United States.

We are not persuaded by the petitioners' reference to *Cold-Rolled from China*. In that case, the Department explained that respondent Baosteel "added an additional criterion for determining whether to report factors of production, *i.e.*, whether an affiliated producer exported subject merchandise to the United Stated during the POI. Therefore, Baosteel's responses have not answered the specific question whether any of the merged facilities manufacture the products described in the Scope of the Investigation section above." *See* 65 FR at 1124. Haidi's case for excluding FOPs from the West Workshop is built around the evidence that these products differ physically from the products sold to the United States and, as a result, FOPs associated with the West Workshop are not relevant to products sold to the United States.

The petitioners argue that the distinction over whether or not factors of production should be included is not based on where the production occurred (East Workshop versus West Workshop) nor on where the product was sold (United States versus Japan), but only on the unique control number, and that the calculation must take into account any overlap in FOPs between products. On this point, we agree with the petitioners, and in response to the Department's supplemental questionnaire, Haidi on July 12, 2004, reported factors of production for finished presscake and dry color produced in the West Workshop. The petitioners concede the possibility of there being no overlap in control numbers between the two finishing workshops, but stress the point that "there should be no ambiguity in how the Department accounts for all factors of production for Haidi's press cake and dry powder." *Id*.

Based on our findings at verification, we are satisfied that all appropriate FOPs for presscake and dry powder sold to the United States have been included in normal value. First, we emphasize the fact that all costs associated with the production of crude CVP-23 have been included because the differences in physical characteristics only occur at the finishing stage of production. In fact, there are numerous instances in the verification report where the verifiers clearly distinguish between the FOPs associated with reduced mass and crude CVP production, and the finishing stages of production in the East Workshop and the West Workshop, and note that only those factors associated with the West Workshop have been excluded.

Comment 18: Application of Adverse Facts Available to Trust Chem

The petitioners argue that freight from the plant to warehouse (DINLFTWU), brokerage and handling (DBROKU), and international freight (INTNFRU) expenses were incorrectly reported. Trust Chem warrants partial AFA, the petitioners maintain, for unreported brokerage and handling charges. They suggest that whichever is highest of the Indian import brokerage and terminal charges they reported in their August 10, 2004, submission, or the highest single brokerage and handling amount as reported by any respondent, should be used. Additionally they argue that the verified plant to warehouse distance should be used for DINLFTWU. The petitioners also claim that international freight was not properly

reported but make no suggestion as to how or whether to correct it.

In answer to the argument for AFA against Trust Chem, the respondents concur that certain discrepancies were found at verification, and they expect that these will be corrected in the final determination.[72] They argue that the Department should make use of the verified information and not AFA information for Trust Chem's distance mistake and movement expense corrections. The respondents assert that there is no basis for either partial or total AFA in this instance.

Department's Position: With regard to freight from plant to warehouse, first, we must clarify that, although the verification report stated this field was called DINLFTWU, in the database it was actually called DINLFTPU. For the plant to warehouse distance, we note that Trust Chem purchased its CVP-23 from Longteng and that Longteng provided the factors of production information. At Longteng, we verified the plant to warehouse distance and found that it had been accurately reported. *See* Memorandum to the File, Antidumping Investigation of Carbazole Violet Pigment 23 from the PRC - Verification of Nantong Longteng Chemical Co., Ltd. at 13 (September 29, 2004). At Trust Chem, we also verified the plant to warehouse distance but found that it had been misreported. *See* Memorandum to the File, Antidumping Investigation of Carbazole Violet Pigment 23 from the PRC - Verification of Trust Chem Co., Ltd. at 7 (September 28, 2004). Since the plant to warehouse distance was measured at both verifications and yielded a different distance each time, we have averaged the two verified distances for the final determination. *See* Memorandum to the File, Analysis Memorandum for Final Determination for Trust Chem Co., Ltd. (November 8, 2008).

With regard to DBROKU and INTNFRU, we do not find that these expenses were incorrectly reported. For the preliminary determination, we applied surrogate values for both DBROKU and INTNFRU in Trust Chem's margin calculation. At verification, Trust Chem stated that brokerage and handling charges were included in its international freight bill, and it reported "Yes" in the DBROKU field. *See* Antidumping Investigation of Carbazole Violet Pigment 23 from the People's Republic of China - Verification of Trust Chem Co., Ltd. (Trust Chem Verification Report) at 7 (September 28, 2004). At verification, we found that Trust Chem purchased international freight through a Chinese company who then contracted a market-economy company to ship the CVP-23. Because Trust Chem contracts with a PRC company for its international freight, it is, as Trust Chem reported, a non-market-economy purchase. *See* Trust Chem Verification Report at 7. As these verification findings supported what Trust Chem reported in its responses, there is no reason to consider the application of facts available.

Comment 19: Application of Adverse Facts Available to Hanchem

The petitioners argue that Hanchem failed verification, and that it should receive the preliminary determinations' "all others" rate as an AFA margin. According to the petitioners, it was difficult for the

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[72] *See* both the Respondents' Case Brief at 2 and the Respondents' Rebuttal Brief at 11.

Department to verify the payment on Hanchem's sales. The petitioners state it is ambiguous as to whether the Department is satisfied with the value portion of Hanchem's reconciliation. They argue, however, that the obvious difficulty verifying and inability to reconcile U.S. prices means there is no choice but to determine that Hanchem failed verification.

Clariant also argues that Hanchem's verification calls into question the accuracy of all the company's responses. It makes a specific suggestion for applying adverse facts available, which due to its proprietary nature cannot be discussed here. *See* Clariant's Case Brief at 10.

The respondents state that the Hanchem quantity and value reconciliation was difficult because multiple payments were made for U.S. sales that had to be matched to the invoices. This is, the respondents maintain, normal practice for Hanchem and its U.S. customer. The respondents argue that the Department was able to match all invoices to their respective payments, and therefore verified the receipt of all payments. This means, they contend, that there are no grounds to apply AFA to Hanchem.

Department's Position: Regarding the petitioners' assertion that total AFA should be applied to Hanchem, the Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met. *See* Section 776(a) of the Act,

as discussed in Comment 15. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103-316 , Vol. 1, at 868-870 (1994).

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information.

In this case, we were unable to verify the accuracy of what Hanchem submitted to the Department in its questionnaire responses. Specifically, we were unable to verify the reported value of Hanchem's sales to the United States during the POI. Furthermore, for a significant percentage of Hanchem's reported U.S. sales, we were unable to verify the reported U.S. prices. As a result, for the final determination we have applied adverse facts to Hanchem. Due to the proprietary nature of this issue, an expanded Department Position is included in the Analysis Memorandum for Tianjin Han Chem International Trading Co., Ltd., Memorandum to the File, Re: Antidumping Duty Investigation of Carbazole Violet Pigment from the People's Republic of China.

Comment 20: Application of Adverse Facts Available to Longteng

Clariant argues that Longteng also had mistakes which call into question the accuracy of its response

and warrants the application of AFA. These included issues with chemical inputs[73] arising from purity content as well as indirect labor. Clariant asserts that the interviews conducted at verification to ensure that all indirect labor had been included are insufficient to conclude that indirect labor was accurately reported.

The respondents make a general argument that all corrections found at verification were minor and should be corrected. They argue that there is no basis for either partial or total application of AFA.

Department's Position: Regarding Clariant's question about the accuracy of Longteng's response, we disagree that its response is so incomplete that it is necessary to apply either total facts available or AFA. Where we do not find that the response is so incomplete that it cannot be used, we will use it to calculate a final determination. *See Color TV Receivers from China* as discussed in the accompanying Issues and Decision Memorandum at Comment 23. As we have in past cases, we will therefore use the information on the record to make the corrections we deem necessary to mistakes found at verification. Because the necessary information is on the record to make these corrections, the criteria, as laid out in Section 776(a) of the Act, and quoted in Comments 15 and 16 above, to apply facts available have not been meet.

With regard to the issue of the chemical input mistakes identified, we agree with Clariant that some of the purity contents differed from what Longteng reported in its response. However, we disagree that a change is necessary here. While ordinarily we would make a correction, in instances where it is conservative to accept what was submitted to us, we have decided such a correction is unnecessary. *See Color TV Receivers from China* as discussed in the accompanying Issues and Decision Memorandum at Comment 23. In this case, we find that Longteng was conservative in its use of purity levels in the reporting of chemical inputs, and therefore we will make no adjustments to chemical inputs. Furthermore, the Department will accept responses it considers reasonable. The respondent used its standards book as the basis for chemical purity. We believe this is reasonable because a chemical's purity levels can vary and the standards book provides a fair benchmark. In verifying indirect labor, we used the Department's normal verification techniques and we are satisfied with Longteng's reporting of this expense.

Comment 21: Issues Raised by Colors LLC

Colors LLC (Colors), a domestic interested party, disagrees with the Department's preliminary determination on a number of levels. At the most basic level, Colors maintains that this investigation is contrary to the promotion of free trade. Colors quotes Adam Smith as saying: "If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it off them with some

[73] Due to the proprietary nature of Clariant's arguments regarding chemical inputs, no summary can be given here. *See* Clariant's Case Brief at 12 for further details.

part of the produce of our own industry, employed in a way in which we have some advantage." According to Colors, the United States should buy CVP-23 from the PRC – because the United States can purchase CVP-23 for less than it costs to produce – and sell wheat and aircraft to the PRC.

Colors states that, aside from the occasional deviation, the United States is usually a proponent of free trade. One problem from Colors' point of view is the so-called Byrd Amendment, which allows for the transfer of antidumping duties to "aggrieved parties" to a proceeding. Colors argues that the Byrd Amendment will encourage parties to pursue antidumping cases and lead to further deviations from United States' policy of free trade.

On another level, Colors disagrees with the Department's treatment of the PRC as a non-market-economy country for purposes of antidumping proceedings. According to Colors, the PRC is a communist country, but one that lives by capitalist rules. Colors maintains that the PRC government no longer tells factories from whom to buy raw materials, what or how much to produce, or what price to charge for their products. Instead, Colors argues, factories decide these things themselves. Moreover, Colors states that the PRC government takes no ownership in these factories, and that to the best of its knowledge, the factories are not subsidized in any way other than a very small export rebate. This, according to Colors, is no worse than special tax concessions available to U.S. exporters.

Expanding on its contention that PRC producers function under capitalist rules, Colors states that in the PRC, there are seven producers of CVP-23, among whom profit margins are low as competition forces down pricing. According to Colors, companies in many cases continue this business only to cover overhead expenses. Colors suggests that with CVP-23 offered at $23/kg in the first half of 2004, factories likely made little or no profit.

Colors argues that the PRC is classified as a non-market-economy country only because the United States forced the PRC to accept this designation as a condition of entrance into the World Trade Organization. Colors maintains that as a result of this situation, the PRC will retain its designation as a non-market-economy country for nine years, even if it performs as a market-economy country. Colors contends that regardless of the terminology used, the PRC operates as a market-economy country, pointing to 9.6 percent annual growth of its gross domestic product and year-to-year increases in industrial production measuring 16.2 percent.

While Colors disagrees with the Department's designation of the PRC as a non-market-economy country generally, at the next level of argument it objects to the use of India as a surrogate country for the purpose of valuing factors of production. Colors asserts that India is not at a comparable level of economic development with the PRC. In fact, Colors maintains that India is now far behind the PRC in terms of economic development, and that in India government interference does occur. Colors claims to be familiar with Indian Dyestuff Inc., an Indian producer of dyes and pigments which, according to Colors, had 3,000 employees, but needed only 300. The Indian government would not allow work force reduction because it would then become responsible for the redundant workers' welfare. Colors

claims that this company is no longer viable, and is essentially out of business.

Colors argues that India, hampered by the caste system, the subjugation of women, the high and uncontrollable birth rate, and government interference in business, is unable to progress, and that the use of India as a surrogate for PRC manufacturing costs is extremely misleading. Colors claims that whereas the PRC economy is vibrant, India's is stagnant. Colors contends that based on its familiarity with dyes and pigments from both countries since 1990, China operates as a market economy whereas India, "hog-tied by government interference," does not.[74]

Colors argues that the normal value of $41/kg from the petition is too high. Colors suggests that the Department consider Mexico as a surrogate country for the PRC because Mexico operates "more or less as a market economy" and that TOYO, a Japanese company, produces CVP-23 in Mexico. Colors claims that TOYO maintains inventory in New Jersey and will deliver to Charlotte, North Carolina for $39/kg in small quantities, presumably at a profit. Elaborating on this point, Colors states that "raw material costs will be much higher in Mexico than in China." Colors argues that in Mexico the specialty chemical business is not well developed. As a result, carbazole and chloranil, the key raw materials for CVP-23, "are probably imported at high cost from China, Japan, or Germany."[75] Further, Colors argues that labor costs are higher in Mexico than in China. Next, Colors estimates freight costs from Mexico to New Jersey and from New Jersey to Charlotte. Finally, Colors claims that SG&A expenses in New Jersey are expensive. Thus, Colors argues that if TOYO's added costs and profit are backed-out from the $39/kg selling price, the remaining cost of manufacture would likely approximate the PRC cost.

Finally, Colors finds the average unit value from the petition of $8.73/kg to be an obvious error. From its own experience, Colors maintains that a typical factory market price in the first half of 2004 was close to $23/kg. This price was based on Colors' visits to unrelated factories in the PRC. Moreover, according to Colors, all factories in the PRC expected price increases in the second half of this year caused by electricity shortages affecting production. In conclusion, Colors insists that the preliminary margins, based on erroneous U.S. prices and normal value that does not reflect reality, are extreme and unjustified.

Department's Position: Notwithstanding Colors' arguments that the United States is a proponent of free trade and that this investigation is contrary to that principle, we are conducting this investigation in accordance with United States law. At the outset, we initiated this investigation only after our examination of the petition found that it met the requirements of section 732 of the Tariff Act of 1930, as amended (the Act). See *Notice of Initiation of Antidumping Duty Investigations: Carbazole Violet Pigment 23 from India and the People's Republic of China*, 68 FR 70761 (December 19,

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[74] See Colors' Case Brief at 9.

[75] *See* Colors' Case Brief at 10.

2003).

With respect to Colors' argument that the PRC functions as a market economy, the Department has treated the PRC as a non-market-economy country in all its previous antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 68 FR 7765 (February 18, 2003); and *Barium Carbonate From China*. In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked. Any request that we revoke a country's status as an NME would have to address the statutory factors identified in section 771(18)(B) of the Act.[76] No party in this investigation has sought revocation of the NME status of the PRC. Therefore, pursuant to section 771(18)(C) of the Act, the Department will continue to treat the PRC as an NME country.

Colors also disputes the Department's use of India as a surrogate country with which to value the factors of production employed by the PRC producers of subject merchandise. When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV) on the NME producer's factors of production, valued in a market economy at a comparable level of development that is a significant producer of comparable merchandise. The Department's Office of Policy identified six countries (India, Indonesia, Sri Lanka, the Philippines, Morocco and Egypt) that are at a level of economic development comparable to the PRC in terms of per capita GNP and the national distribution of labor. See the memorandum from Ron Lorentzen, Acting Director, Office of Policy to Gary Taverman, Director, Office 5, regarding Request for a List of Surrogate Countries, dated March 9, 2004). Based on the companion antidumping duty investigation on CVP-23 from India, we know that India is a significant producer of the subject merchandise. In addition, for most factors of production, India has quantifiable, contemporaneous, and publicly available data. Therefore, for purposes of the preliminary determination, we have selected India as the surrogate country.

Finally, with respect to Colors' assertion that the Department calculated antidumping duty margins in this investigation on unrealistically low prices, we requested all exporters of CVP-23 from the PRC to report information on U.S. sales during the period of investigation. For the four companies that responded completely to the Department's requests for information, we are satisfied as to the accuracy of the margin calculations because we have relied on prices reported in the companies' respective

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[76] Section 771(18)(B) of the Act states that the Department will consider the following factors in making a determination on whether to treat a country as a non-market-economy: (i) the extent to which the currency of the foreign country is convertible into the currency of other countries; (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management, (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country, (iv) the extent of government ownership or control of the means of production, (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and (vi) such other factors as the administering authority considers appropriate.

questionnaire responses, and verified by the Department.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final dumping margins for Goldlink, Haidi, Trust Chem, and Hanchem in the *Federal Register*.

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Agree Disagree

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James J. Jochum
Assistant Secretary
for Import Administration

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Date