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Changed Circumstances Review
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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

DATE: March 23, 2005

SUBJECT: Issues and Decision Memorandum for the Changed Circumstances Review and Reinstatement of the Antidumping Duty Order on Sebacic Acid from the People's Republic of China

Summary

We have analyzed the comments of interested parties in the changed circumstances review of Tianjin Chemicals Import and Export Corporation and the antidumping duty order of sebacic acid from the People's Republic of China (PRC) for the period July 1, 2002, through June 30, 2003. As a result of our analysis, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues in this changed circumstances review for which we received comments from interested parties:

Comment 1: Authority to Reinstate the Antidumping Duty Order

Comment 2: Lack of Domestic Interested Party

Comment 3: Appearance of Cognis Corporation

Comment 4: Valuation of Sebacic Acid

Comment 5: Valuation of Activated Carbon

Comment 6: Valuation of Capryl Alcohol

Comment 7: Selection of Surrogate Financial Ratios

Background

On November 26, 2004, the Department of Commerce (the Department) published the preliminary results in this changed circumstances review. See Sebacic Acid From the People's Republic of China: Preliminary Results of Changed Circumstances Review and Intent to Reinstate the Antidumping Duty Order, 69 FR 68879 (November 26, 2004) (Preliminary Results). On October 8, 2004, Tianjin Chemicals Import and Export Corporation (Tianjin) submitted additional surrogate data. We invited interested parties to comment on the preliminary results of review. We received comments from Tianjin on January 3, 2005. On March 11, 2005, we put excerpts from the International Trade Commission's Staff Report on the record and invited parties to comment. The hearing was held on March 15, 2005.

Based on our analysis of the comments received, we have changed the results from those we presented in the Preliminary Results. The period of review (POR) is July 1, 2002, through July 31, 2003.

Margin Calculations

We calculated export price and normal value using the same methodology stated in the Preliminary Results, except we (1) revalued sebacic acid used in the factor allocation of a co-product and (2) revalued capryl alcohol using the data provided by Tianjin on October 8, 2004, for octanol. See Comment 4 and Comment 6, below.

Discussion of the Issues

Comment 1: *Authority to Reinstate the Antidumping Duty Order*

Tianjin argues that the Department's regulation 19 CFR 351.222(b)(2)(i)(B)(2004), previously 19 CFR 353.54(e)(1988), which contemplates the reinstatement under an order of a company that had been revoked on the basis of the Department finding that the company had resumed sales at less than normal value, was found contrary to law by the U.S. Court of International Trade (CIT). Consequently, Tianjin asserts that the Department lacks the statutory authority to reinstate Tianjin in the antidumping duty order, and this changed circumstances review, which is based upon the Department's reinstatement regulation, should be rescinded. Tianjin asserts that, in Asahi Chemical Industry Co., Ltd. v. United States, 727 F. Supp. 625 (CIT 1989) (Asahi), the CIT determined that the Department's regulation authorizing the reinstatement of a partially revoked antidumping duty order, thereby making the partial revocation conditional in nature, was contrary to law. Tianjin claims that, while section 751(d)(1) of Tariff Act of 1930, as amended (the Act), specifically authorizes the Department to revoke an antidumping duty order in whole or in part, no statutory provision authorizes either reinstating a partially revoked antidumping duty order or making the statutory-based revocation conditional in nature.

Tianjin claims that not only does the Department's reinstatement regulation have no statutory basis, the reinstatement regulation is also contrary to the statutory scheme. Tianjin argues that the statute requires an injury determination by the U.S. International Trade Commission (USITC) prior to the imposition of an order. See Section 735(b) of the Act. Tianjin contends that, in this case, because the order has been revoked as to Tianjin, a new petition must be filed with respect to Tianjin's exports and affirmative injury and dumping determination must

be made by the USITC and the Department, respectively, with respect to Tianjin's exports prior to the re-imposition of antidumping duties on merchandise exported by Tianjin. Tianjin also asserts that the Department's reinstatement regulation is contrary to other portions of the Department's own regulations, which define the term "proceeding" as beginning with the filing of a petition and ending with "the revocation of the order." See 19 CFR 351.102(b).

Tianjin argues that, given that the CIT has determined that the Department's regulation authorizing the reinstatement of a partially revoked antidumping duty order is contrary to law, the Department lacks the statutory authority to reinstate Tianjin in this antidumping duty order. Tianjin asserts that it has reviewed the entirety of the Department's administrative practice and has not found one instance of the Department reinstating a revoked company in an antidumping duty order on the basis of a resumption of sales at less than normal value. Tianjin contends that, given that the CIT has determined that the Department's reinstatement regulation is contrary to law and in the absence of a Departmental practice of using this regulation, the Department should rescind this changed circumstances review.

Department's Position: 19 CFR 351.222(b)(2)(iii) of the Department's regulations allow for the reinstatement of a company in an antidumping duty order if there is evidence that there is resumption of dumping. As the Department stated in its decision to revoke in part the antidumping duty order on sebacic acid from the PRC:

> The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751(d)(1) of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the

> Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation....submit the following:
>
> (3) an agreement to reinstatement of the order if the Department concludes that the company subsequent to the revocation, sold subject merchandise at less than normal value.

See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part, 67 FR 69719 (November 19, 2002) (Sebacic Acid 2002), and accompanying Issues and Decision Memorandum at Comment 3.

We find that Tianjin's reliance on Asahi to support its assertion that the Department lacks legal authority to reinstate Tianjin in the order on sebacic acid from the PRC is misplaced for several reasons. First, the underlying administrative determination challenged in Asahi was a case administered under the law as it existed before the passage of the Uruguay Round Agreements Act. Thus, the Court in Asahi was commenting on an earlier regulation (19 CFR 353.54(e)(1988)). Specifically, 19 CFR 353.54(e) provided:

> Before the Secretary may tentatively revoke a Finding or an Order or terminate a suspended investigation pursuant to paragraph (a) of this section, the parties who are subject to the revocation or the termination must agree in writing to an immediate suspension of liquidation and reinstatement of the Finding or Order or continuation of the investigation, as appropriate, if circumstances which indicate that the merchandise thereafter imported into the United States is being sold at less than fair value.

Opportunity for interested parties to present views with respect to the tentative revocation will be provided.

See 19 CFR 353.54(e)(1988).

The Court in Asahi acknowledged that the purpose of the 1988 regulation was to discourage the resumption of dumping immediately after revocation, and that there were policy concerns about having to undertake an entirely new investigation. See Asahi, 727 F. Supp. at 628. The Court found that the old regulation was so ambiguous as to make the standard of reinstatement conjectural. Id. However, the Court did not address whether reinstatement could be accomplished through an amendment to 19 CFR 353.54, or through a new provision. Id.

We find that our current regulation that governs reinstatement addresses the concerns enumerated by the Court in Asahi. The current regulation was promulgated pursuant to the Uruguay Round Agreements Act. The present regulation places exporters and producers, which the Department has previously found to be dumping, on notice that once those companies are revoked from an order, the companies must agree in writing to the immediate reinstatement in the order, if the Secretary later concludes that these companies have resumed dumping. The present regulation makes clear that reinstatement can only occur as long as any exporter or producer is subject to the order.

Moreover, any guidance provided by Asahi must be read in light of general principles of administrative law. One such basic principle of administrative law is that an administering agency must abide by its own rules to safeguard expectations. Thus, section 351.222(b)(2)(iii) of the Department's regulations suggests that a partial revocation determination is not a dispositive administrative pronouncement. Such a conclusion logically follows from the terms of the

regulation, which directs the Department to rescind its partial revocation determination and to reinstate the revoked company under the continuing antidumping duty order. Contrary to Tianjin's claim, the Department's reinstatement regulation is consistent with the definition of a "proceeding" as contemplated by 19 CFR 351.102(b). A "proceeding" is defined as the beginning with the filing of a petition and ends on the date of the revocation of an order. See 19 CFR 351.102(b). However, in the instant case the order on sebacic acid from the PRC has not been fully revoked. It is well settled that the administrative regulations must be read together as a harmonious whole, except when regulations expand the remedies prescribed by statute. The Department's regulation is reasonable because there are no prescribed statutory remedies that are at risk of impermissible expansion. Thus, the Department's regulation concerning reinstatement must be given effect because it is a permissible remedial measure.

Tianjin's claim that the Department's reinstatement regulation has no statutory authority is without merit. Specifically, Tianjin claims that the statute requires an injury determination by the USITC prior to the imposition of an order, and that because the order on sebacic acid has been partially revoked as to Tianjin, a new petition must be filed with respect to Tianjin, and separate affirmative determinations must be made by the USITC and the Department concerning injury and dumping. We find that this argument is unavailing. In the instant case, the Department made its final determination of dumping and the USITC made its final injury determination. See Antidumping Duty Order: Sebacic Acid from the People's Republic of China, 59 FR 35909 (July 14, 1994). Additionally, an antidumping duty order on sebacic acid remains in place. Therefore, the USITC has found that dumping of sebacic acid causes material injury to the domestic industry and that finding was undisturbed by the partial revocation.

Although the decision in Asahi declined to accept a similar argument, it did so based on the incorrect premise that "an order consists of an affirmative less than fair value (LTFV) determination as well as an affirmative *material injury* determination." See Asahi, 727 F. Supp. at 629 (emphasis added). An order results from, rather than "consists of," affirmative dumping and injury determinations. Thus, a revocation does not nullify the validity of those underlying determinations, especially when it is the result of subsequent behavior. The USITC injury determination, furthermore, does not examine the injury caused by discrete companies, but rather the injury caused by all dumped exports originating in a particular exporting country. Even if one or more exporters in that country may have been revoked from the order, dumping by other exporters may continue to cause or threaten material injury. Thus, unless all exporters are revoked from the order, the order continues to exist, and thus the potential for reinstatement. Tianjin itself agreed to such a reinstatement, as a condition of its partial revocation, if the Department were to conclude that it has sold the merchandise at below normal value. Thus, a new injury finding specific to Tianjin is neither necessary nor appropriate for reinstatement.

In requesting revocation, Tianjin filed a certification from a company official pursuant to the Department's regulations that it "agree to the immediate reinstatement of the order, so long as the {sic} any exporter or producer is subject to the order, if the Secretary concludes that {Tianjin}, subsequent to the revocation, sold sebacic acid at less than normal value." See July 1, 2001, submission to the Department from Tianjin, at Exhibit 1. Record evidence demonstrates that the conditions in the Department's regulations have been met for the Department to reinstate Tianjin in the antidumping duty order. First, several other companies are still subject to the antidumping duty order on sebacic acid from the PRC. Second, the Department has concluded

that Tianjin has sold sebacic acid at 26.33 percent below normal value during the July 1, 2002, through June 30, 2003 period. Accordingly, the Department has properly determined to reinstate Tianjin in the order.

Comment 2: *Lack of Domestic Interested Party*

Tianjin argues that the Department should rescind the changed circumstances review based upon the fact that SST Materials, Inc. d/b/a Genesis Chemicals, Inc. (Genesis), which Tianjin alleges is the sole U.S. producer of sebacic acid, has admitted that it has exited the domestic industry and is no longer a domestic producer of sebacic acid. Tianjin asserts that, because Genesis, the party that requested the changed circumstances review, has exited the domestic industry and is no longer a domestic manufacturer, producer, or wholesaler of a domestic like product, it is no longer an interested party within the meaning of section 771(9)(C) of the Act. Tianjin asserts that the statute requires that a changed circumstances review be conducted at the request of an interested party. See Section 751(b)(1) of the Act. Tianjin states that, "given Genesis's exit from the U.S. industry no later than November 30, 2004, Genesis no longer retains the present standing to continue this changed circumstances review until its conclusion."

Tianjin further argues that, unlike administrative reviews initiated pursuant to section 751(a) of the Act, which retroactively determine the antidumping duty assessment rates for merchandise entered during the previous 12-month periods, this changed circumstances review is entirely prospective in nature. Tianjin states that Genesis is seeking the reinstatement of Tianjin in the antidumping duty order - an act that will not take effect, if at all, until completion of the

changed circumstances review. Tianjin asserts that, in an annual administrative review, where a domestic party's standing to request the review of any importer is based on the presence of entries of subject merchandise during the previous review period, the fact that the party had standing at the time the merchandise entered the United States or had standing at the time the request for the review was made is sufficient to sustain standing until the Department's review is completed. Tianjin argues that, in contrast, the Department's jurisdiction over a prospective changed circumstances review is not based upon entries made during a previous period. Tianjin contends, therefore, that "Genesis's standing at the time it requested the changed circumstances review or even at the time the Department initiated the review is not sufficient to maintain its standing throughout the entire proceeding." Tianjin contends that in a prospective changed circumstances review such as this, the domestic party must maintain its standing as an interested party throughout the entire proceeding. Because Genesis has not done so, Tianjin argues, the Department should immediately terminate this changed circumstances review.

Department's Position: As discussed further below, section 771(9)(C) of the Act provides that an interested party is a "manufacturer, producer, or wholesaler in the United States of a domestic like product." The Department initiated this changed circumstances review under 19 CFR 351.222(b)(2)(iii) in response to Genesis' allegations of resumed dumping by Tianjin. At the time of the Department's initiation of this changed circumstances review and through eight months after initiation, Genesis was a producer of sebacic acid and, therefore, is an interested party within the meaning of section 771(9)(C) of the Act. After the Preliminary Results, in the December 7, 2004, letter from Tianjin, we received notification that Genesis had ceased

production of the subject merchandise. This development, however, does not affect the Department's ability to complete this changed circumstances review because it was properly initiated at a time when Genesis was qualified to request such a review and nothing in the statute or regulation requires termination of an ongoing proceeding when production ceases. Genesis properly requested this changed circumstances review and the fact that it is not currently producing sebacic acid does not invalidate this changed circumstances review. Additionally, Genesis has not withdrawn its request for a review, and record evidence indicates that Genesis ceased production of sebacic acid because of dumping by Tianjin, and that Genesis is prepared to resume production of sebacic acid should we reinstate Tianjin in the order. See Memorandum to the File regarding "Excerpts from International Trade Commission Staff Report," dated March 11, 2005. Because this review was properly requested and because there is nothing in the statute or regulations that requires termination of this review, we will not terminate this changed circumstances review.

Comment 3: *Appearance of Cognis Corporation*

Tianjin opposes the entry of appearance on behalf of Cognis Corporation (Cognis) and the Department's decision to grant Cognis administrative protective order (APO) access to Tianjin's business proprietary information. It asserts that Cognis is not an interested party within the meaning of section 771(9)(C) of the Act and thus is not entitled to participate as a party in this changed circumstances review. Tianjin states that the merchandise subject to this antidumping duty order is sebacic acid from the PRC and the merchandise subject to this changed circumstances review is limited to sebacic acid. Tianjin claims that Cognis stated that it

"is a producer of azelaic acid." Tianjin states that, despite the fact that Cognis does not produce, manufacture, or sell sebacic acid, Cognis claimed that it was entitled to participate as a party in this proceeding in accordance with section 771(9)(C) of the Act. Tianjin argues that the statute, however, defines an interested party as "a manufacturer, producer, or wholesaler in the United States of a domestic like product." Id. Tianjin further states that the statute defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to investigation under this subtitle." See Section 771(10) of the Act.

Tianjin claims that the domestic like product, as previously determined by the Department and the USITC, and the scope of the antidumping duty order, as previously determined by the Department, is strictly limited to sebacic acid. Tianjin argues that, absent interested party status within the meaning of section 771(9) of the Act, Cognis cannot participate as an interested party in this changed circumstances review. Tianjin argues that, under the statute, Cognis cannot be permitted to participate in this changed circumstances review as an interested party. Tianjin contends that, if it is the purpose of Cognis to seek to change the definition of the domestic like product so as to include azelaic acid, then it should request the Department to initiate another changed circumstances review. Tianjin argues that the scope of this changed circumstances review is limited to the consideration of "whether the Department should reinstate the order with respect to the subject merchandise produced by Hengshui and exported to the United State by Tianjin." See Sebacic Acid from the People's Republic of China: Notice of Initiation of Changed Circumstances Review, 69 FR 39906 (July 1, 2004).

Department's Position: As discussed in the March 18, 2005, Memorandum from Jennifer Moats to Ed Yang, we have determined that Cognis is not a domestic interested party within the meaning of section 771(9)(C) of the Act and, therefore, does not have standing as an interested party in this proceeding. See 19 CFR 351.102(b). As discussed in the March 21, 2005, Letter from Ann Sebastian, we have notified Cognis that its application for administrative protective order has been rescinded and it must destroy all business proprietary materials.

Comment 4: *Valuation of Sebacic Acid*

In order to calculate a co-product ratio to determine the percentage of material inputs attributable to sebacic acid relative to the co-product capryl alcohol, the Department must find a surrogate value for sebacic acid. Tianjin states that, in the Preliminary Results, the Department used a surrogate value for sebacic acid equal to $15,826.30 per metric ton (MT), and argues that this value is aberrational because it is over six times the commercial value of the subject merchandise and approximately five times the Department's calculated normal value for the subject merchandise. Tianjin contends that the import statistics upon which the Department relied in the Preliminary Results were based upon the six-digit Indian Harmonized Tariff Schedule (HTS) item 291713, which is a basket tariff category that includes both sebacic acid and azelaic acid, which had a higher per-unit import value under Indian import statistics than sebacic acid. Tianjin claims that, because they combine imports of both sebacic acid and azelaic acid, the import statistics are necessarily distorted for use as a surrogate value for sebacic acid. Tianjin argues that the Department has recognized that import statistics based on a basket tariff category are not appropriate surrogates if a more representative alternate surrogate is available.

See Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from China, 69 FR 3887 (January 27, 2004); see also Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the PRC, 69 FR 34130 (June 18, 2004) (Tetrahydrofurfuryl Alcohol). Tianjin contends that the Department has stated specifically that, when alternate surrogate-value information is available, "{i}mport data from basket categories can be too broad to be reliable," citing Freshwater Crawfish Tailmeat from China: Final Results of New Shipper Review, 64 FR 27961 (May 24, 1999) (Crawfish), at Comment 1. Tianjin also contends that, in the past, the Department has determined certain price quotes to be superior choices as surrogate values rather than average unit value data derived from basket-category import statistics because the price quotes "better approximated the cost of the actual inputs used by the respondent." See Industrial Nitrocellulose from China: Final Results of Antidumping Administrative Review, 62 FR 65667 (December 15, 1997) (Nitrocellulose), at Comment 4.

Tianjin contends that, in Attachment 3 to its October 8, 2004, surrogate-value submission, it provided period-wide Indian import statistics specific to the eight-digit category, which corresponds specifically to sebacic acid as obtained from the Chemimpex import/export data base maintained on the website of the Indian periodical Chemical Weekly. Tianjin states that the average unit value of imports from Germany, the only country with imports into India once imports from China were removed, is $3,551.73 per metric ton when using the POR exchange rate of 47.94 rupees to one U.S. dollar as calculated by the Department. Tianjin claims that the import statistics from the eight-digit category obtained from Chemical Weekly would serve as the most accurate surrogate value for sebacic acid. Tianjin contends that, in the final results, the Department should use a surrogate value based upon the average unit value of the

eight-digit category specific to sebacic acid rather than the average unit value of the six-digit basket tariff provision that is inclusive of both sebacic and azelaic acids.

Department's Position: The antidumping statute requires that the Department use the best available information when selecting surrogate values for factors of production from a market economy in the normal-value calculation for products exported from a non-market-economy (NME) country. See Section 773(c)(1) of the Act. In choosing the appropriate surrogate values, the Department considers the quality, specificity, and contemporaneity of the data on the record. See, e.g., Honey from the People's Republic of China: Notice of Final Results and Final Rescission, In Part, of Antidumping Duty New Shipper Review, 69 FR 64029 (November 3, 2004) (Honey from PRC), and accompanying Issues and Decision Memorandum at Comment 4. We have considered these factors and determined that the six-digit HTS Indian import category is the most appropriate category for the valuation of sebacic acid based upon the quality and contemporaneity of the data.

Both the Indian import statistics used by the Department in the Preliminary Results and the data from Chemical Weekly provided by Tianjin are contemporaneous with the POR. While it may appear that the eight-digit category developed by Chemical Weekly is more specific than the six-digit HTS category covering both sebacic acid and azelaic acid in the Indian import statistics, we find reason to question the quality of the data in Chemical Weekly's eight-digit category. First, the eight-digit category is a category developed by Chemical Weekly and is not a recognized category in India's Harmonized Tariff Schedule. See http://commerce.nic.in/eidb/icomq.asp; See also http://www.chemicalweekly.com/chemimpex/.

Although they were originally derived from official Indian government statistics, there is no explanation of the details as to how the data were selected. For example, when the two eight-digit categories developed by Chemical Weekly (one for sebacic acid and another for azelaic acid) are summed, the two categories combined equal less than half of the quantity contained in the six-digit HTS category in the Indian import statistics. Therefore, we are unable to determine the accuracy of the further-categorized Chemical Weekly data. Furthermore, even if we were to consider the eight-digit category data provided by Tianjin for sebacic acid, after removal of imports of sebacic acid from the PRC, the eight-digit category data contains only two import values. Thus, the eight-digit Chemical Weekly data provided by Tianjin would not represent a sufficiently broad range of import values on which to base the surrogate value for sebacic acid where alternative data are available.

Therefore, we find that it is more reliable to use the information from the official Indian government statistics, because these statistics are the primary source from which the Chemical Weekly statistics are derived. The Indian import statistics are publicly available statistics provided by a government source. Furthermore, we find that the six-digit HTS number best approximates the cost of sebacic acid because the narrower category proposed by Tianjin contains only two usable data points, whereas the official Indian government statistics are more representative because they are based on more data points. Therefore, we have valued sebacic acid using the official Indian government statistics basket category for sebacic acid and azelaic acid.

Regarding Tianjin's comment that azelaic acid is a higher value product and is skewing the six-digit category data, the Department's review of the U.S. import prices for azelaic acid and

sebacic acid shows that both values are virtually the same. See Memorandum to the File from Jennifer Moats entitled "Comparison of Sebacic Acid and Azelaic Acid Import Values to the United States," dated March 23, 2005 (Azelaic Acid Memo). Additionally, our review of the U.S. import statistics over the period January 2002 through November 2003 show that the prices for sebacic acid and azelaic acid varied by only $0.30 per kilogram on average. See Azelaic Acid Memo. While the prices for azelaic acid and sebacic acid fluctuate, with sebacic acid sometimes having the higher price, we do not see a clear pattern demonstrating that higher priced azelaic acid is skewing the Indian six-digit HTS category.

We find, however, that information on the record of this changed circumstances review indicates that the POR average sebacic acid surrogate value in the Indian six-digit category that we used in the preliminary results of this changed circumstances review is significantly higher than the import value from the previous period. Accordingly, we examined the monthly data in the six-digit HTS category and found certain anomalies in the data. For example, the U.S. dollar per metric ton prices were over ten times the other sebacic acid prices on the record. We found that removing the imports into India from the United States, the country with the highest average per-unit values, from the six-digit category, as well as imports from Germany, the country with the lowest average per-unit value, resulted in an Indian import price of $5,459.72 per MT, which was in line with other sebacic acid prices on the record. We also note this price is also comparable to the $5,388.66 per MT price used in Sebacic Acid 2002, after adjusting the price in that review to account for inflation. Thus, as best available information for the surrogate value of sebacic acid, we have relied upon the six-digit Indian import category, after removing import data from the United States, Germany, and China. See Memorandum to the File titled "Factors

Valuations for the Final Results of the Changed Circumstances Review," dated March 23, 2005. After adjusting the six-digit import data, the surrogate value for sebacic acid is $5,459.72 per MT.

Comment 5: *Valuation of Activated Carbon*

Tianjin claims that, in the Preliminary Results, the Department used a surrogate value for activated carbon based upon the average unit value of Indian HTS number 380210.00. Tianjin contends that this surrogate value should not be used in the final results, because these Indian import statistics data cover all grades of activated carbon and do not reflect the price in India of the low-grade activated carbon (grade NDC-80GX) which the Chinese producers use to produce the subject merchandise. Tianjin states that, in its October 8, 2004, surrogate-value submission, it provided an August 2002 price quote for grade NDC-80GX activated carbon, a low grade of activated carbon and the type of activated carbon that was actually used in the production of the subject merchandise. Tianjin claims the price quote is specific to this POR. Tianjin also argues that the Department used this same price quote as the surrogate value for activated carbon in the final results of the last two administrative reviews under this order, citing Sebacic Acid 2002 and accompanying Issues and Decision Memorandum at Comment 2, and Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Review, 69 FR 75303 (December 16, 2004) (Sebacic Acid 2004), and accompanying Issues and Decision Memorandum at Comment 2. Tianjin contends that, when assessing which particular surrogate represents the best available information, the Department prefers a surrogate value that is comparable in terms of design or materials to the actual input consumed by the respondents in the production of the

subject merchandise, particularly where those characteristics have a significant impact on price, citing Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19030 (April 30, 1996) (Bicycles from China), at Comment 6. Tianjin claims that it is the Department's longstanding practice to use prices of surrogates that are most comparable to the raw material inputs actually used to produce the subject merchandise, in terms of the substantive physical characteristics, citing Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 66 FR 15076 (March 15, 2001) (Manganese Metal), and accompanying Issues and Decision Memorandum at Comment 2. Tianjin claims further that it has been the Department's longstanding practice to seek prices of surrogates that reflect most closely the specific grade and physical characteristics of the input used by the NME producer. See Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Administrative Review, 61 FR 41994, 41996-7 (August 13, 1996) (Helical Spring Lock Washers), at Comment 2.

Additionally, Tianjin argues that, with respect to activated carbon in particular, it is the Department's longstanding practice not to use overly broad import statistics as surrogate values, i.e., import statistics that include types of activated carbon not used in the production of the subject merchandise. Rather, Tianjin contends, it is the Department's practice to use a surrogate value based upon a price quote of activated carbon that is closest to the type of activated carbon that is used in the production of the subject merchandise. See Sebacic Acid 2002; see also Sebacic Acid 2004.

Tianjin states that, in previous reviews, the Department has declined to use Indian import statistics in valuing activated carbon, finding that public price quotes obtained from Indian companies were more appropriate to value the low-grade, black powder-activated carbon that was actually used to produce sebacic acid by the respondent manufacturers. See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69503 (December 13, 1999) (Sebacic Acid 1999), at Comment 6. Tianjin argues that, in the two most recently completed reviews of this order, the Department determined again that a price quote from India was the most reliable source of a surrogate value for the low-grade, black powder-activated carbon used by the respondent Chinese sebacic acid producers, because the Department found the price quote specifies the same type of activated carbon used in the production of subject merchandise during the POR. See Sebacic Acid 2002 at Comment 2; see also Sebacic Acid 2004 at Comment 2.

Tianjin argues that, in more recent cases, the Department has followed its longstanding practice and rejected the use of Indian import statistics to value activated carbon and instead relied upon product-specific price quotes as surrogates to value reported activated carbon inputs, citing 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) (Television Receivers), and accompanying Issues and Decision Memorandum at Comment 2, and Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003) (Polyvinyl Alcohol), and accompanying Issues and Decision Memorandum at Comment 5. Tianjin contends that, for the final results, the Department should use the price

quote Tianjin submitted for the specific grade of activated carbon used in the production of the subject merchandise.

Department's Position:

In selecting surrogate values, the Department selects the "best available information" and does so based on the quality, specificity, and contemporaneity of the data. See Section 773(c)(1) of the Act and Honey from PRC at Comment 4. In addition, normally the Department will use publicly available information to value factors. See 19 CFR 351.408(c)(1). Although both the Indian import statistics and the price quote at issue are contemporaneous with the POR, we have determined that it is preferable to use the Indian import statistics because they are information that is publicly available.

Although we used this same price quote as the surrogate value for activated carbon in the final results of the last administrative review and determined there that price quotes from India were the most reliable source of surrogate valuation of the activated carbon which the respondent Chinese producers of sebacic acid used, we also stated that for any subsequent reviews of this order, we would attempt to value this factor using publicly available information. See Sebacic Acid 2004 at Comment 2.

We find the Indian import data to be contemporaneous with the POR, and to be better quality data because they represent a larger number of transactions than an individual price quote and are publicly available. Although Tianjin argues that the NDC-80GX price quote it has submitted is more narrowly restricted to the type of activated carbon that it uses than are the data at the six-digit HTS level from Indian import statistics, it has not demonstrated that this value is representative even of sales of NDC-80GX activated carbon in India. Thus, given the choice

between the reliability of the price quote or the Indian import statistics, the Department has chosen the latter. Therefore, based on the record of this review, we find that the publicly available pricing data represent the best information available to value the activated carbon which Tianjin's supplier used in the production of sebacic acid and have valued activated carbon using the Indian import statistics for the final results of this administrative review.

Comment 6: *Valuation of Capryl Alcohol*

Tianjin claims that, in the original antidumping investigation, the Department determined that Indian prices for octanol, a product with a similar molecular structure to that of capryl alcohol, may be used as a surrogate value for capryl alcohol. See Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China, 59 FR 28053 (May 31, 1994) (Sebacic Acid Investigation), at Comment 8. Tianjin contends that the Department has relied upon published prices of octanol in Chemical Weekly to value capryl alcohol produced in the production process of sebacic acid in all reviews since the investigation. Tianjin contends that, although the Department relied on prices from official Indian import statistics to value capryl alcohol in the preliminary results of this review, the Department should use the period-specific Chemical Weekly pricing data for octanol provided in its October 8, 2004, surrogate-value submission.

Department's Position: Although we used Indian import statistics to value capryl alcohol in the preliminary results of review, consistent with our prior decisions in this proceeding, we have determined that it is appropriate to value capryl alcohol using price quotes for octanol in

Chemical Weekly.[1] As the Department has found in previous reviews of this order, capryl alcohol and octanol are the same substance. See Sebacic Acid 2002. Therefore, we continue to find the octanol value to be an appropriate surrogate for the co-product produced with sebacic acid, capryl alcohol. Consistent with previous administrative reviews and absent any record evidence to the contrary, we have determined that the value for octanol is the most appropriate value on the record with which to value capryl alcohol. See Sebacic Acid Investigation. It is appropriate to use the price quotes for octanol in Chemical Weekly, because these price quotes are domestic prices. These domestic prices for octanol, unlike the eight-digit category for sebacic acid imports developed by Chemical Weekly to which we objected, are not subject to manipulation through the categorization methodologies developed by Chemical Weekly. See Comment 4 above. These price quotes for octanol are publicly available and represent a broad range of domestic Indian prices unlike the price quote for activated carbon provided by Tianjin. Thus, for these final results of review, we have used the domestic prices for octanol as published in Chemical Weekly because they are the most contemporaneous with the POR and are publicly available.

Comment 7: *Selection of Surrogate Financial Ratios*

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[1]See Sebacic Acid From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review, 65 FR 1849 (January 12, 2000); Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69506 (December 13, 1999), at Comment 8; Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 63 FR 43373, 43375 (August 13, 1998); Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 65674 (December 15, 1997), at Comment 2; Sebacic Acid Investigation at Comment 8.

Tianjin states that, in its October 8, 2004, surrogate-value submission at Attachment 8, it provided the financial data of Punjab Chemicals & Pharmaceuticals, Ltd. (Punjab) to permit the calculation of surrogate overhead, selling, general, and administrative (SG&A) expenses, and profit ratios specific to a company that produced a product comparable to the subject merchandise. Tianjin asserts that it also provided information from the company's website and from a Dunn and Bradstreet report which establishes that Punjab was a significant producer of ozalic acid, a product the Department has determined to be similar to sebacic acid. Tianjin argues that the Punjab financial data reported separate figures for raw material costs, labor costs, interest, depreciation, and profit before taxes, but the available financial data combined energy, overhead, and SG&A expenses into the category "other expenditure." To calculate the necessary financial ratios, Tianjin asserts, it conservatively allocated the amounts contained in "other expenditure" to energy, overhead ratio, and SG&A expenses.

Citing 19 CFR 351.408(c)(4), Tianjin states that the Department should use the surrogate financial ratios calculated from the Punjab data. Tianjin argues that continued reliance on the generalized Reserve Bank of India (RBI) data is no longer justified. See Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, 318 F. Supp. 2d 1339, 1346 (2004) (Shanghai Foreign Trade) (where it was determined that it is most appropriate to use financials from a producer of a product similar to the subject merchandise when calculating the financial ratios for overhead, SG&A, and profit).

Department's Position: We have determined that the financial statements Tianjin provided do not contain the necessary detail we require to calculate accurate financial ratios. The cost data in

the financials Tianjin submitted provide line items only for raw materials, staff costs, interest, depreciation, and other expenditures and the methodology used by Tianjin does not accurately allocate these "other expenditures." Because of the lack of line-item detail in the financials, we are not certain we are capturing all the necessary costs or, on the other hand, that we are not double-counting certain costs we have captured elsewhere in the margin calculation. For example, "managerial remuneration," a component of SG&A, may be a component of Staff Costs in the income statement for Punjab data. Additionally, other line items on the financial statements have general headings which Tianjin did not explain and for which the Department cannot otherwise determine the costs which were captured in specific line items. For example, we cannot determine what expenses are included in "Other."

Although Punjab may produce a product comparable to sebacic acid, the non-specificity of the Punjab cost elements and the absence of a methodology to reasonably allocate them to factory overhead, SG&A expenses and profit make these financials unusable for purposes of calculating reliable financial ratios. Although, as stated in Shanghai Foreign Trade, the Department prefers to use financials from a producer of a product similar to the subject merchandise when calculating the financial ratios for overhead, SG&A, and profit, because the Punjab financials do not contain the necessary line-item detail to be useable for an accurate financial ratio calculation, this case is inapposite. The RBI data provide the line-item detail necessary for the calculation of accurate financial ratios without the Department having to make assumptions as to what may or may not be included in certain line items. Therefore, we have rejected the Punjab-based financial ratios and have relied on the RBI data in the final results of review.

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 results of review and the final weighted-average dumping margin for Tianjin in the Federal Register.

Agree _____ Disagree _____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
(Date)