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MEMORANDUM TO: David Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2004-2005 Administrative Review of Carbazole Violet Pigment 23 from the People's Republic of China

Summary

We have analyzed the case and rebuttal briefs of interested parties in the 2004-2005 administrative review of the antidumping duty order of carbazole violet pigment 23 (CVP 23) from the People's Republic of China (PRC). As a result of our analysis, we have made changes in the margin calculation for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from parties:

Comment 1: Surrogate Value for Chloranil

Comment 2: Surrogate Financial Ratios

Comment 3: Surrogate Value for Triethylamine

Comment 4: Brokerage Fees and Terminal Charges

Background

On November 7, 2006, the Department of Commerce (the Department) published in the Federal Register its preliminary results in the administrative review of the antidumping duty order on CVP 23 from the PRC for the period June 24, 2004, through November 30, 2005. See Carbazole Violet Pigment 23 from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part, 71 FR 65073 (November 7, 2006) (Preliminary Results).

We invited parties to comment on the Preliminary Results. We received case briefs from the petitioners, Nation Ford Chemical Company and Sun Chemical Company, and from Clariant, a domestic interested party. We received a rebuttal brief from the respondent, Tianjin Hanchem Trading Co., Ltd. (Hanchem). Although we have made changes to the margin calculation based on our analysis of the comments received, we have not changed the weighted-average margin from the Preliminary Results.

Margin Calculations

We calculated constructed export price and normal value using the same methodology described in the Preliminary Results, except as follows**:**

1. We made the following changes to our calculation of the surrogate financial ratios, based on comments we received from the petitioners: 1) we included an amount for rates and taxes, and excluded certain payments to directors in the calculation of the selling, general and administrative (SG&A) expense ratio; 2) we subtracted an amount for work in process (WIP) from raw materials in the calculation of the denominator of the factory overhead, SG&A and profit ratios. See Comment 2 below.

2. We recalculated the surrogate value for triethylamine, using a more appropriate HTS category, based on information provided by the petitioners in their November 27, 2006, surrogate value submission. See Comment 3 below.

Discussion of the Issues

Comment 1: *Surrogate Value for Chloranil*

To value chloranil, in the Preliminary Results we used the value that we used in the less-than-fair-value (LTFV) investigation (sourced from Indian import statistics for the basket category for chloranil published in the *World Trade Atlas* (WTA)), inflated to the current period of review (POR), because the WTA import data for the POR appeared to be unreliable. See Memorandum to James Maeder from Rebecca Trainor entitled "Factors of Production Valuation for Preliminary Results," dated November 1, 2006 ("Preliminary FOP Memo"). The petitioners contend that the Department should use the Indian import statistics that are contemporaneous with POR instead, because doing so would result in a surrogate value for chloranil notably higher than that in the LTFV investigation, which is consistent with their belief that chloranil was undervalued in the investigation.

The petitioners argue that the contemporaneous WTA value is actually more reliable than the LTFV value because their statistical analysis (submitted for the record on November 27, 2006) shows that the standard deviation of prices within the basket category is less for the POR than for the period of investigation (POI). Furthermore, the petitioners argue that the Department should presume that the import data for the relevant period most accurately estimates the price for a particular input because the Department has no way of knowing what might be considered the "real" price throughout India over that period. The petitioners claim that the Department

does not find prices to be aberrational unless a comparison to a series of other publicly available data of continuous prices over an extended period of time clearly demonstrates a distortion. Moreover, the petitioners argue, the burden of proving that import prices are aberrational always remains with the respondent. They cite Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 34125 (June 18, 2004) (Retail Carrier Bags from the PRC) in support of this argument, adding that neither the respondent nor the Department met this burden of proof.

With respect to an Internet price offer the Department used to benchmark the WTA import data in the Preliminary Results, the petitioners state that no precedent exists in which the Department relied on a single Internet posting to undermine the legitimacy of contemporaneous WTA data. The petitioners object that the Internet price is not an active offer, but a historical example of a one-time event. They speculate that, because Indian chemical companies appear to regularly use Internet chemical exchanges to sell surplus chemicals at prices below the regular market value, and the producer for the Internet posting appears to be a very small company, the posting at issue must have been an attempt to offload some excess product of perhaps questionable quality.

According to the petitioners, while reliance on multiple producer offers to sell at a given price reported consistently on the Internet throughout the POR may be viewed as sufficient evidence to question Indian import data for a basket category showing a distinct rise in prices from the original investigation to the first review, a lone Internet price offer is not indicative of chloranil pricing throughout India over the entire POR. The petitioners similarly discount the invoices that Hanchem placed on the record on July 21, 2006, from Pidilite Industries Ltd. (Pidilite), an Indian chloranil supplier to an Indian producer of CVP 23, as not being representative of the actual prices for chloranil throughout India over the review period. The petitioners argue that the many unanswered questions raised by the invoices (such as the type of chloranil sold and whether there is some type of affiliation between the buyer and seller) and the Department's inability to verify the invoice prices preclude the Department from relying on them to undermine the legitimacy of the POR import data for the basket category.

The petitioners conclude that without sufficient and reliable record evidence to support its finding that Indian import values for this basket category were aberrational or unrepresentative, there is no basis for the Department to have used a surrogate value based on anything other than the import data contemporaneous with the POR for chloranil.

Clariant Corporation, a domestic producer of CVP 23 and an interested party in this review, objects to the Department's use of an inflator for valuing chloranil rather than relying on the Indian import statistics contemporaneous with the POR. Rather than accurately reflecting the price of chloranil as set by market forces, Clariant argues, the use of an inflator merely reflects the added price caused by inflation, without regard to changes in supply and demand since the original investigation. Therefore, by using an inflator, the Department does not satisfy the requirements of section 773(c) of the Tariff Act of 1930, as amended (the Act), which, Clariant states, the courts have consistently interpreted as requiring the Department to determine a non-market-economy (NME) product's normal value as it would have been if the NME country were a market-economy country. In support, Clariant cites Anshan Iron & Steel Company, Ltd. v.

United States, 2003 Ct. Int. Trade LEXIS 109; Slip Op. 2003-83 (July 16, 2003) among other cases.

Clariant also argues that the Department must satisfy the overriding statutory objective to determine margins as accurately as possible, and cites to Lasko Metal Prods, Inc. v. United States 43 F.3d 1442, 1443 (Fed. Cir. 1994) in support. Stating that the Department offers no evidence to support the accuracy of the inflation-adjusted import data, Clariant adds that neither has it seen any evidence suggesting that the price reported in the contemporaneous import data is inaccurate. Clariant denies that the Department can simply assume that a substantial price increase automatically means that the contemporaneous import data is unrepresentative.

According to Clariant, it appears that the Department based its decision to inflate the LTFV price for chloranil solely on Hanchem's "unsubstantiated allegations" in its July 21, 2006, submission that: 1) the basket category contains "many" chemicals other than chloranil; 2) the HTS category at issue includes a different set of chemicals in the POR than was included in the POI; and 3) "industry sources'" claim that the price of choranil has risen only moderately in the past two years. Citing to the Issues and Decision Memo for Polyethylene Retail Carrier Bags at Comment 9, Clariant agrees with the petitioners that the respondent has not met the burden of demonstrating that the Indian import statistics are aberrational.

Regarding the Pidilite invoices and an alternative price quotation from R.S. Impax placed on the record by Hanchem, Clariant points out that the Department has previously taken the position that individual price quotations are not an appropriate source of surrogate value information, and may even be less representative of the cost of an input in the surrogate country. See Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006) and accompanying Issues and Decision Memorandum (Artist Canvas) at Comment 4, and Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 71 FR 34893 (June 16, 2006) and accompanying Issues and Decision Memorandum (Honey). Given the Department's options in this review, Clariant maintains that the best information available on the record for valuing chloranil are the Indian import statistics for the current period.

Hanchem argues that the petitioners' statistical analysis of the percent standard deviation in the Indian import data for the POR and the previous POI is irrelevant to the issue of determining the best surrogate value for chloranil because whether the price of an input fluctuated during a specified period does not imply that the surrogate value derived therefrom is unreliable. According to Hanchem, the problem with the POR Indian import statistics is not that the price of chloranil increased significantly between time periods, but rather that the price of the basket category (with an unknown product content) increased substantially in a pattern that is not reflected in actual sales prices of chloranil in India. Hanchem believes that the Department was correct to substantiate the Indian import statistics price with a price obtained on the Internet.

Hanchem contends that the Pidilite invoices on the record of this review further discredit the contemporaneous basket category Indian import price and also substantiate the Department's approach in the Preliminary Results. Countering the petitioners' assertion that the Pidilite

invoices do not represent chloranil prices for the entire POR, Hanchem argues that it submitted an invoice for the beginning, middle, and end of the POR, so that fluctuations in price throughout the period could be taken into account. Hanchem points out that the invoice prices remained constant throughout the POR. Hanchem argues that the cases relied upon by the petitioners stating that the Department should not derive surrogate values from individual producer invoices are not relevant, as the Department did not derive the surrogate value from the invoices, but rather used them to substantiate the surrogate value the Department ultimately used. As the Department has fulfilled its task of determining the best evidence on the record for valuing chloranil, Hanchem urges the Department to maintain its approach to this issue in the final results.

Department's Position:

The Department reviews surrogate value information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the factors of production (FOPs). When doing this, the Department's practice is to select, to the extent practicable, surrogate values which are publicly available, non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive. See, e.g., Artist Canvas at Comment 4. We agree with the petitioners and Clariant that the invoices placed on the record by Hanchem do not meet our preferred criteria for use as surrogate values; therefore, we have not used them, consistent with our normal practice. Id.

We reviewed Hanchem's allegations regarding the contemporaneous WTA data for chloranil, and determined that Hanchem had provided enough evidence to warrant further consideration of this issue. Hanchem raised questions about the reliability of the data by pointing out that the HTS category into which chloranil falls represents a broad and vaguely-defined basket category of all other products not specifically listed in the preceding subheadings of the HTS. Thus, it is not possible to know with certainty what chemicals the basket category includes. We also agree with Hanchem that this uncertainty is compounded by the five-fold increase in the weighted-average per-unit price from the LTFV investigation period to this review period. Therefore, we found it reasonable in this case to evaluate whether the contemporaneous WTA Indian import price is aberrational, using other public information.[1]

The fact that no party has submitted suitable alternate surrogate value data for chloranil, as well as our own attempts to find additional data sources attests to the scarcity of surrogate value information for this input. However, as a result of an Internet search we conducted for the Preliminary Results, we placed on the record a price at which the type of chloranil used in the pigment industry was offered for sale by an Indian company to the general public during the POR. This same information, produced by a company named R.S. Impax, was later put on the record by Hanchem in its October 12, 2006, submission. We compared this additional information to the WTA unit values for both time periods, and as a result, we determined that the Indian import value more likely to reflect market prices for chloranil in India during the POR was

[1]See Certain Cased Pencils from the PRC; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part, 70 FR 76755 (December 28, 2005) (Pencils from the PRC), unchanged in Final Results, and the December 30, 2004, Memorandum to Laurie Parkhill, Office Director AD/CVD Operations, Office 8, Re: Factors-of-Production Valuation for Preliminary Results (a significant increase in import prices for pencil cores between review periods led us to use an alternate surrogate value source.)

the value we used in the LTFV investigation rather than the contemporaneous WTA value. We find that the petitioners' comments about the nature of the price offer and the producer of the merchandise for sale are purely speculative, and do not discredit the value of the Internet price offer as a publicly-available, contemporaneous, and product-specific benchmark price, given the scarcity of surrogate value information for this input.

We agree with Clariant that the purpose of the surrogate valuation exercise is to approximate the price that would be paid for the subject merchandise in a market-economy country. To that end, we find the petitioners' standard deviation analysis of the WTA unit values within each time period does not prove that the contemporaneous WTA data are more appropriate, because it does not address the questions of unknown product content in the basket category coupled with a significant increase in the weighted-average unit value from one time period to the next. Indeed, we find that the variations of unit values within time periods contributes to the uncertainty surrounding the WTA data for both time periods, and further supports our benchmarking methodology in the Preliminary Results.

We disagree with Clariant that inflating a surrogate value from a prior time period results in a value that is inconsistent with the statutory requirements for calculating normal value as it would have been if the NME country were a market-economy country, and for determining margins as accurately as possible. Although we prefer to use contemporaneous data when possible, we often resort to using data from a different time period if we find that it is the best available information. In that case, our normal practice is to adjust the surrogate values, as appropriate, to account for inflation or deflation between the effective period of the surrogate data and the POR.[2] In this review, we found the most appropriate surrogate value for chloranil to be from a prior time period; therefore, we inflated that value using a ratio derived from the Indian wholesale price index, in accordance with our normal practice. See the Preliminary FOP Memo at page 2.

As in the LTFV investigation, we maintain that the Indian import statistics continue to be the best available surrogate value information for chloranil. See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004) and accompanying Issue and Decision Memorandum (CVP) at Comment 4. However, as we have acknowledged in other cases, it is reasonable to question the reliability of basket categories when the product content is uncertain.[3] In this case, this uncertainty is coupled with a significant increase in unit value from one time period to the next, and the fact that a public source shows a value contemporaneous with the POR to be more in line with the POI WTA price than the POR WTA price. As no alternative information has been placed on the record by the parties, and we have been unable to find any more suitable data, we believe the surrogate value we used for chloranil in the LTFV investigation inflated to the POR

[2] See Pencils from the PRC, 70 FR 76755, 76759 ("We valued black and color cores using inflated Indonesian import data from the WTA for January 2002 through December 2002 because contemporaneous data were not reliable.")

[3] See, e.g., Artist Canvas at Comment 4, and Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review, 64 FR at 27962 (May 24, 1999).

continues to be the best available information for use in the final results. Therefore, we have not changed the surrogate value for chloranil from the Preliminary Results.

Comment 2: *Surrogate Financial Ratios*

The petitioners argue that in the Preliminary Results, the Department used a methodology for calculating financial ratios that differed in several respects from that used in the LTFV investigation, resulting in net ratios that are less than they would be using the original methodology. The petitioners refer to their submission of November 27, 2006, in which they recalculate the ratios using what they believe is the appropriate methodology.

The petitioners note that in the investigation, the Department excluded the cost of traded goods from all surrogate values and ratio calculations, while in the Preliminary Results the Department included traded goods in the denominator of the SG&A percentage, causing this ratio to be much lower than it would have been had it been calculated in the same manner as in the investigation. The petitioners contend that the Department should revise the Preliminary Results to exclude the cost of traded goods from all surrogate values and ratio calculations.

Another difference cited by the petitioners is the treatment of "processing and packing charges," which the Department included in SG&A in the LTFV investigation, but excluded from SG&A in the Preliminary Results. The petitioners cite to CVP at Comment 1 where the Department stated its position that "processing and packing charges" are part of a larger expense category distinct from "packing materials consumed," which the Department properly had excluded. Thus, the petitioners argue, the Department should revise the Preliminary Results to include processing and packaging charges in SG&A.

Other unexplained inconsistencies between the investigation and the administrative review which the petitioners point out involve the treatment of rates and taxes, the increase and decrease in WIP, the subdivision of repairs and depreciation between SG&A and overhead, and the treatment of certain small payments to directors. The petitioners assert that, while "correction" of these calculations may not have an impact on the petitioners' position in this review, the Department should have justified each deviation from the methodology used in the investigation.

Clariant agrees with the petitioners that the financial ratios were not calculated in the same manner as in the original investigation, and asserts that the Department should recalculate the financial ratios in accordance with that methodology.

Hanchem argues that the Department properly excluded amounts for "packaging and processing" in calculating the surrogate financial ratios, as this line item appears to cover packing labor and material costs. Because the margin calculation separately takes into account packing expenses, Hanchem claims that the inclusion of these costs in the SG&A ratio would result in the impermissible double counting of packing expenses in the margin calculation.

Department's Position:

Although we did not do so in the LTFV investigation, for purposes of the Preliminary Results, we included the cost of traded goods in the denominators of the SG&A and profit ratios (excluding it from the overhead calculation), in keeping with Department practice, and we continue to do so for purposes of the final results. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 2004-2005 Administrative Review and Partial Rescission of Review, 71 FR 75936 (December 19, 2006) and the accompanying Issues and Decision Memorandum at Comment 2 (stating that the Department will normally include traded goods in the denominator to calculate the SG&A and profit ratios because companies incur SG&A expenses and realize profit on traded goods).

We have continued to exclude "processing and packing charges" from the financial ratio calculations. This expense category is likely to include packing labor costs, because the financial statement lists a separate expense category for packing materials. As Hanchem reported packing labor separately from manufacturing labor in this review, we believe that including "processing and packing charges" in the surrogate financial ratios could double-count packing labor costs. Therefore, we have continued to exclude this expense category from the calculation. We have reviewed our assignment of various categories of repair and depreciation expenses to either overhead or SG&A, and have concluded that our treatment of these expenses in the Preliminary Results was a reasonable assignment of these expenses, based on the detailed information provided in the notes to the financial statements on the record of this review. Therefore, we have not changed the financial ratios calculation with respect to these expenses.

We agree with the petitioners that we erroneously added the WIP adjustment to raw materials. Upon further review, we found that we miscalculated this adjustment by transposing the ending and the beginning WIP inventory figures in the calculation, which resulted in a positive rather than a negative adjustment to the raw materials consumed in production (i.e., WIP at the end of the year was actually higher than WIP at the beginning of the year, thus the net increase in WIP inventories should have been deducted from the total raw materials consumed during the period). We also agree that we should have included rates and taxes in the SG&A total, as this expense category likely represents miscellaneous business taxes, rather than VAT, income, or excise taxes, that we would normally exclude. Finally, we agree that we double-counted certain payments to directors by including them in the SG&A ratio, as these expenses had already been accounted for in personnel costs. As a result, we revised the financial ratios to deduct the net increase in WIP inventories from the raw materials consumed in production to calculate the total cost of raw materials used in the production of finished goods. In addition, we added rates and taxes, and deducted payments to directors from SG&A. See Memorandum to James Maeder from Rebecca Trainor Re: Factors of Production Valuation for the Final Determination, dated May 7, 2007 (Final FOP Memorandum).

Comment 3: *Surrogate Value for Triethylamine*

The petitioners contend that the Department incorrectly classified triethylamine under the HTS number 29211190 – Formamide in the Preliminary Results. They explain that formamide falls under the six-digit classification that includes a similarly-sounding chemical, trimethylamine; however, triethylamine and formamide are two completely different chemicals. The petitioners

refer to their November 27, 2006, surrogate value submission in which they provide support for their contention that triethylamine is correctly classified under the basket category HTS 29211990 – Other Acyclic Monoamines & Their Derivatives & Salts Thereof–Other. Clariant agrees with the petitioner. Hanchem did not comment on this issue.

Department's Position:

The tariff classification number we used for triethylamine in the Preliminary Results was the number provided by both the petitioners and the respondents in their initial surrogate value submissions, and was also used in the LTFV investigation. However, based upon our review of the information the petitioners submitted in their supplemental surrogate value submission, and further analysis of the Indian HTS categories in the WTA import database, we believe the HTS classification advocated by the petitioners is more appropriate than the HTS classification we used in the Preliminary Results. Therefore, for the final results, we have revised the per-unit calculation for triethylamine using values for HTS 29211990 – Other Acyclic Monoamines & Their Derivatives & Salts Thereof–Other.

Comment 4: *Brokerage Fees and Terminal Charges*

The petitioners argue that the Department should include terminal charges and brokerage fees in the surrogate values for material inputs based on Indian import prices. They claim that, contrary to the Department's assumption that the Indian import price accounts for all costs of transporting the merchandise to India, costs incurred in getting the merchandise off the ship in the port and into India are not accounted for in the cost, insurance, freight (CIF) price. The petitioners maintain that when a surrogate value is based on import data it should include the full costs incurred for the product to be "free and clear" for delivery from the port. The petitioners point out that they provided surrogate value information for these charges in their July 22, 2006, and November 27, 2006, submissions.

Clariant notes that the Department has continually refused to include terminal charges and brokerage fees throughout the LTFV investigation and in the remand redetermination of that segment of the proceeding, because the Chinese exporters sourced their inputs domestically and did not incur those charges. See Goldlink Industries Co., Ltd. v. United States, Slip Op. 06-65 (CIT May 4, 2006). Clariant argues that when valuing the material inputs, the Department already relies on CIF import prices based on Sigma Corporation v. United States, 117 F.3d 1401, 1407-1408 (Fed. Cir. 1997) (Sigma), whereby the Department treats an Indian import price, which includes insurance and freight, as if it were an Indian domestic price, which does not include insurance and freight; the market rendering the two prices essentially equivalent. Following the logic of Sigma, Clariant argues, the experience of the Chinese exporter is not the determinative factor in what costs should be included in the surrogate value. Clariant maintains that only a "fully loaded" price is equivalent to an undelivered domestic product price, which is what the Department is trying to replicate. Therefore, the Department should revise Hanchem's margin calculation to include Indian terminal and brokerage costs in the surrogate values based on Indian import statistics. Hanchem did not comment on this issue.

Department's Position:

We did not add surrogate values for terminal and brokerage costs to normal value in the Preliminary Results because Hanchem did not incur these expenses on either its domestically-sourced inputs, or its inputs purchased from market-economy countries during the POR. Our methodology is consistent with our reasoning in the Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order, Goldlink Industries Co., Ltd., Trust Chem Co., Ltd., Tianjin Hanchem International Trading Co., Ltd. v. United States, Slip Op. 06-65 (May 4, 2006), upheld by the Court of International Trade on December 8, 2006. In our remand redetermination, we explained that, when the PRC producer purchases inputs from domestic suppliers, using local transportation such as rail or truck freight, it is not appropriate to add additional amounts for port charges, such as terminal and brokerage costs, that the producer did not incur. As we stated in the remand redetermination, this approach is not inconsistent with Sigma, as suggested by Clariant. In Sigma, the Court stated that it is reasonable to treat an Indian CIF import price as if it were a domestic price. We further explained in the remand redetermination that once the Department has identified its surrogate for the Chinese domestic price, the Department will only add an amount for inland freight charges that reflect the actual experience of the Chinese producer; any other charges, such as brokerage fees and terminal charges would not be added unless they were actually incurred by the Chinese producer.

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 the reviewed firm in the Federal Register.

Agree ___ Disagree ____

_____

David M. Spooner
Assistant Secretary
for Import Administration

_____

(Date)