

MEMORANDUM TO: Carole A. Showers
Acting Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the 2007 – 2008
Administrative Review of Chlorinated Isocyanurates from the
People's Republic of China

SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the antidumping duty administrative review of chlorinated isocyanurates from the People's Republic of China. The period of review is June 1, 2007, through May 31, 2008. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculation. 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 for which we received comments and rebuttal comments by the parties:

Surrogate Values

- Comment 1: Surrogate Value for Urea
- Comment 2: Surrogate Value for Steam Coal
- Comment 3: Financial Ratios
- Comment 4: Surrogate Value for Anhydrous Ammonia

Company Specific Issues

- Comment 5: Clerical Error – By Product Offset

LIST OF ABBREVIATIONS AND ACRONYMS

The Act	Tariff Act of 1930, as amended
AUV	Average Unit Value
Bihar	Bihar Caustic & Chemicals Limited
CAFC	Court of Appeals for the Federal Circuit
CIL	Coal India Limited
CIT	Court of International Trade
The Department	Department of Commerce

FOP	Factors of Production
IBM	Indian Bureau of Mines
ITC	International Trade Commission
Jiheng	Hebei Jiheng Chemical Corporation, Ltd.
Kanoria	Kanoria Chemicals and Industries Limited
MSFTI	Monthly Statistics of Foreign Trade of India
NME	Non-market Economy
Petitioners	Clearon Corporation and Occidental Chemical Corporation
POR	Period of Review
PRC	People's Republic of China
TERI Data	Tata Energy Research Institute's Energy Data Directory & Yearbook (2003/2004 edition)
UHV	Useful Heat Value
VAT	Value Added Tax
WTA	World Trade Atlas® Online (Indian import statistics)

CASES AND LITIGATION CITES

(Alphabetical by Short Cite)

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), and accompanying Issues and Decision Memorandum (“*Barium Carbonate from the PRC – 08/06/2003*”)

Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007), and accompanying Issues and Decision Memorandum (“*CFSP from the PRC – 10/25/2007*”)

Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum (“*Chlorinated Isos from the PRC – 05/10/2005*”)

Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 159 (January 2, 2008), and accompanying Issues and Decision Memorandum (“*Chlorinated Isos from the PRC – 01/02/2008*”)

Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 52645 (September 10, 2008), and accompanying Issues and Decision Memorandum (“*Chlorinated Isos from the PRC – 09/10/2008*”)

Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (March 31, 2009), and accompanying Issues and Decision Memorandum (“*CWCQSL Pipe from the PRC – 03/31/2009*”)

Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative

Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum (“*NPOTR Tires from the PRC – 05/15/2008*”)

Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003), and accompanying Issues and Decision Memorandum (“*Fish Fillets from Vietnam – 06/23/2003*”)

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007), and accompanying Issues and Decision Memorandum (“*Fish Fillets from Vietnam – 03/21/2007*”)

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission, 73 FR 15479 (March 24, 2008), and accompanying Issues and Decision Memorandum (“*Fish Fillets from Vietnam – 03/24/2008*”)

Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007), and accompanying Issues and Decision Memorandum (“*Garlic from the PRC – 06/22/2007*”)

Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Thirteenth Antidumping Duty Administrative and New Shipper Reviews, 74 FR 29174 (June 19, 2009), and accompanying Issues and Decision Memorandum (“*Garlic from the PRC – 06/19/2009*”)

Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum (“*Hot-Rolled Steel from Romania – 06/14/2005*”)

Synthetic Indigo from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 53711 (September 12, 2003), and accompanying Issues and Decision Memorandum (“*Indigo from the PRC – 09/12/2003*”)

Floor Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People’s Republic of China: Final Results of Antidumping Administrative Review, 74 FR 11085 (March 16, 2009), and accompanying Issues and Decision Memorandum (“*Ironing Tables from the PRC – 03/16/2009*”)

Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum (“*Lined Paper from the PRC – 09/08/2006*”)

Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Ukraine, 60 FR 16432 (March 30, 1995), and accompanying Issues and Decision Memorandum (“*Magnesium from Ukraine – 03/30/1995*”)

Magnesium Metal from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 40293 (July 14, 2008), and accompanying Issues and Decision Memorandum (“*Magnesium Metal from the PRC – 07/14/2008*”)

Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum (“*Persulfates from the PRC – 02/09/2005*”)

Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 27104 (June 8, 2009) (“*Preliminary Results*”)

Silicon Metal from the People’s Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews, 72 FR 58641 (October 16, 2007), and accompanying Issues and Decision Memorandum (“*Silicon Metal from the PRC – 10/16/2007*”)

Silicon Metal from the People’s Republic of China: Preliminary Results and Preliminary Rescission, In Part, of Antidumping Duty Administrative Review, 74 FR 32885 (July 9, 2009), unchanged in the Final Results (“*Silicon Metal from the PRC – 07/09/2009*”)

Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from the Russian Federation, 68 FR 9977 (March 3, 2003), and accompanying Issues and Decision Memorandum (“*UANS from the Russian Federation – 03/03/2003*”)

Court Cites

Al Tech Specialty Steel Corp. v. United States, 575 F. Supp. 1277 (CIT 1983)

Arch Chemicals, Inc. et al. v. United States, CIT, Slip. Op. 09-71 (“*Arch v. United States*”)

China Nat’l Mach. Imp. & Exp. Corp. v. United States, 264 F. Supp. 2d 1229 (2003)

Guangdong Chemicals Import & Export Corp. v. United States, 30 CIT 1412, 460 F. Supp. 2d 1365 (CIT 2006)

Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, 28 CIT 1185 (2004)

Magnesium Corp. of America v. United States, 20 CIT 1092, 938 F. Supp. 885 (1996) *aff’d* 166 F.3d 1364 (Fed. Cir. 1999)

Nation Ford Chem. Co. v. United States, 166 F.3d 1373 (Fed. Cir. 1999)

Olympia Indus., Inc. v. United States, 7 F. Supp. 2d 997 (CIT 1998)

Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343 (CIT 2001)

Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247 (CIT 2002)

Rhone-Poulenc, Inc. v. United States, 20 CIT 573, 927 F. Supp. 451 (CIT 1996)

Taiyuan Heavy Mach. Imp. & Exp. Corp. v. United States, 23 CIT 701 (1999)

Tian Ziyang Food Company, Ltd. et al. v. United States, CIT, Slip Op. 09-67 (June 29, 2009)

BACKGROUND

On June 8, 2009, the Department of Commerce published its preliminary results of review. See *Preliminary Results*. On June 29, 2009, Petitioners and Jiheng provided additional surrogate value information on the appropriate surrogate values to use as a means of valuing the factors of production. On July 8, 2009, Petitioners requested a hearing. On July 13, 2009, Petitioners filed a case brief.¹ On July 20, 2009, respondent Jiheng filed a rebuttal brief.² On July 27, 2009, Petitioners³ withdrew their request for a public hearing. On October 30, 2009, the Department placed additional surrogate value information on the record of this review for steam coal. On November 3, 2009, Jiheng submitted comments on the additional surrogate value information.

DISCUSSION OF THE ISSUES:

I. Surrogate Values

Comment 1: Surrogate Value for Urea

Petitioners argue that the Department should use domestic price data from the Philippines to value urea in the final results. Petitioners contend that the Indian MSFTI data used in the *Preliminary Results* are not the “best available information” to value urea because the Government of India has preempted the operation of “market forces” in India with respect to urea. Petitioners maintain that the Government of India controls all imports of urea into India, sets the price at which urea may be sold in India, and exercises control over the movement of urea within India. Petitioners state that the largest single source of urea imports into India is from a government-controlled joint venture producer in Oman that sells urea only to the Government of India pursuant to a long-term, declining fixed-price contract that is insulated from any changes in international prices for urea.

¹ See Chlorinated Isocyanurates from The People’s Republic of China (Third Administrative Review): Case Brief of Petitioners Clearon Corporation and Occidental Corporation, submitted on July 13, 2009 (“Petitioners’ Case Brief”).

² See Chlorinated Isocyanurates from the People’s Republic of China: Third Administrative Review (A-570-898): Rebuttal Brief of Hebei Jiheng Chemical Company, Ltd., submitted on July 20, 2009 (“Jiheng’s Rebuttal Brief”).

³ See Chlorinated Isocyanurates from The People’s Republic of China (Third Administrative Review): Withdrawal of Request for Public Hearing, submitted on July 27, 2009.

Petitioners argue that, by contrast, the Philippines has an open market for urea, and extensive and detailed domestic pricing data for urea are regularly collected and published by a specialist government agency. Petitioners contend that the Philippine price data are also specific to solid urea sold in 50-kilogram bags, whereas MSFTI data do not distinguish between solid urea and aqueous urea solutions, and also include substantial quantities of non-urea imports.

Petitioners suggest that, if the Department continues to use Indian MSFTI data to value urea, imports of urea from Oman should be excluded from the calculation. Petitioners allege the Government of India openly acknowledges that the imports from Oman are cheaper than, and not comparable to, international prices for urea.⁴ Petitioners conclude that these imports do not involve prices determined by market forces, but rather are the result of a long-term exclusive contract under which all of the urea produced in Oman is sold exclusively to the Government of India at declining fixed prices.

Jiheng contends that contrary to Petitioners' arguments, the Department should continue to value Jiheng's urea inputs using imports of urea into India. Jiheng asserts that the Department examined both the pricing of imports from Oman and the overall AUVs for imports into India comparing it with AUV information for imports into the other comparable economies and determined that the Indian import data were not distorted. Jiheng contends that the alternative value proposed by Petitioners, sales of 50-kg bags of urea fertilizer to farmers in the Philippines, is not the best available information. Jiheng argues that the market in which the sales occur is substantially different from the market in which a company such as Jiheng would purchase chemical feedstock. Therefore, Jiheng maintains that these prices are not the most product specific pricing available. Additionally, Jiheng notes that the CIT has upheld the Department's decision to use WTA Indian import data including imports from Oman in a past review.

Department's Position: It is the Department's stated practice to choose a surrogate value that represents period-wide price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the period of review, and publicly available non-aberrational data from a single surrogate market economy country.⁵ If a surrogate value meets these criteria, the Department finds that it represents a reliable and appropriate price for valuing an individual input. Further, we selected India as our primary surrogate country in this case. Thus, in the instant review, publicly available data from India is the Department's first preference in selecting surrogate value data. In line with the above-referenced criteria, we find that the WTA Indian import value, including imports from Oman, represents a reliable and appropriate surrogate value. The WTA Indian import value is publicly available, contemporaneous with the POR, product specific, tax exclusive, and is an average non-export value in line with prices available from the potential surrogate countries.

Petitioner's allege that the WTA Indian import value is distorted by the inclusion of imports from Oman; yet, the Department finds that the WTA Indian import value is not aberrational and, therefore, not distorted. In *Hot-Rolled Steel from Romania - 6/14/2005* at Comment 2, the Department addressed the issue of testing surrogate values alleged to be aberrational. In so doing, the Department acknowledged inconsistencies in its past practice, and articulated a

⁴ See Petitioners' Nov. 13 Surrogate Values Submission at Exhibits 5 and 7.

⁵ See *Hot-Rolled Steel from Romania - 06/14/2005* at Comment 2.

hierarchy for testing surrogate values alleged to be aberrational: “To test the reliability of the surrogate values alleged to be aberrational, we compared the selected surrogate value for each FOP to the AUVs calculated for the same period using data from the other surrogate countries the Department designated for this review, to the extent that such data are available.”⁶

Consistent with the practice articulated in *Hot-Rolled Steel from Romania - 6/14/2005* at Comment 2, and further emphasized in *Lined Paper from the PRC - 09/08/2006* at Comment 5,⁷ applying this same methodology in the *Preliminary Results* of the instant review, we compared the aggregate Indian import value of urea with that of other potential surrogate countries (Indonesia, Philippines, Columbia, and Thailand). This also comports with the Department’s stated practice that it is “preferable to benchmark selected surrogate values against AUVs derived from the same data source.”⁸ Recently, in a previous segment of this proceeding (*Arch v. United States*), this analysis was upheld by the CIT.

As shown in the *Preliminary Results* Surrogate Value Memorandum, dated June 1, 2009 (“Prelim Surrogate Value Memo”), the comparison of the Indian import value including imports from Oman with the import values of urea in the other potential surrogate countries, shows that Indian import prices for urea are comparable to, and in line with, these values. In the Prelim Surrogate Value Memo, the Department compared the aggregate Indian import AUV of urea (\$0.22 per kg) with WTA import values of other potential surrogate countries proposed by Petitioners (Indonesia (\$0.12 per kg), the Philippines (\$0.27 per kg), Columbia (\$0.34 per kg), Thailand (\$0.37 per kg), as well as the Philippine domestic data (\$0.47 per kg)). We found that the Indian import value is within the range of values for those countries. As India’s import values for urea fall squarely within the range of prices for urea on the record of this review, we find no evidence that such prices are aberrational or otherwise unsuitable for use as a surrogate value.

Because the Indian import prices for urea are from a market economy country and are not aberrational, there is no reason to find that a market-economy producer’s costs are not accurately represented in using this surrogate value. Petitioners cite *Indigo from the PRC – 09/12/2003* stating that the Department has rejected pricing data from producers that do not participate in the open market, finding that “because the seller does not normally offer the product for sale on the open market, we cannot consider the price to be a market price for surrogate value purposes.” The Petitioners’ citation of *Indigo from the PRC – 09/12/2003* at Comment 1 is inapposite because the indigo case involved a price quote for a product that had never been sold by the company providing the price quote. The price quote was from a company that always tolled out this product, an upstream product to indigo, to Indian producers of indigo for the final stages of production. The company providing the price quote in *Indigo from the PRC – 09/12/2003* had never actually sold that upstream product to a third party. Therefore, because the price quote was not for an actual sale that had been completed by this company, the Department found it to be an inappropriate surrogate value in that case. In contrast, the Omani sales of urea to India are completely different in that the prices in this case are for actual, completed transactions between

⁶ See *Hot-Rolled Steel from Romania – 06/14/2005* at Comment 2.

⁷ See *Lined Paper from the PRC - 9/8/2006* at Comment 5, explaining that the Department’s current practice is “to benchmark surrogate values against imports from the list of potential surrogate countries for a given case.”

⁸ *Id.*

two parties at arm's length. Therefore, Petitioners' reliance on *Indigo from the PRC -09/12/2003* is not relevant.

Further, Petitioners' citation to *Fresh Garlic from the PRC – 06/22/2007* at Comment 8 is also inapposite. In that case, the record indicated that farmers in India, the surrogate country, had cost-free access to water from wells on property owned by the farmer; however, the Department determined there was no evidence that the respondent in that case had access to cost-free water because it did not own the land, nor was there evidence that the value of the well water was included in the respondent's land rental expense. Similarly, in *UANS from the Russian Federation – 03/03/2003* at Comment 1, the Department had evidence that a portion of the gas value suggested by the respondent was obtained at a zero price and, consequently, found that a surrogate value inclusive of zero price transactions was inappropriate for selection as a surrogate value. In the instant case, there is no evidence that the Omani imports were priced at zero. Thus, these two decisions cited by Petitioners have no bearing on the instant case.

With respect to Petitioners' contention that we should exclude Indian imports of urea from Oman, we first compared the AUV for imports of urea into India from Oman with the imports of urea into India from other countries in the Indian import statistics. We found that the AUV for imports of urea into India from Oman was lower than any other country-specific AUV included in our overall AUV calculation of urea into India.⁹ However, we did not find that the AUV for imports of urea into India from Oman was so significantly different from the AUVs of the remaining countries that it would be considered aberrant. Furthermore, notwithstanding Petitioners' assertion that the price for imports of urea from Oman is substantially lower than all other sources of urea imports into India, there is no evidence that the price for Indian imports from Oman are not market-based prices, and we find the AUV for imports from Oman into India to be within the range of other market-based import prices available on the record when compared with the AUV of urea imports for other potential surrogate countries.¹⁰

In choosing a surrogate value, the Department seeks the best available information. The Department seeks first the best available information from the primary surrogate country, in this case, India, that (1) represents an average non-export value, (2) is representative of a range of prices within the POR if submitted by an interested party, or most contemporaneous with the POR, (3) is product specific, and (4) is tax exclusive.¹¹ The import value of urea in India is in line with prices available from the potential surrogate countries (as shown above), an average non-export value, contemporaneous with the POR, product specific, and tax exclusive. Therefore, it is the best available information on the record of this review. We find the domestic Philippine prices for urea not to be the best available information on the record of this review because these prices are for urea used as fertilizer and sold in 50-kg bags which are not product specific to the urea used by the respondents in this review. Therefore, for these final results, we

⁹ The Department found that the AUV for Indian imports of urea (\$0.22 per kg) are higher than the Indonesian import AUV (\$0.12 per kg). See Prelim Surrogate Value Memo. Petitioner points out a mistake with our Preliminary Surrogate Value Memo and rightly notes that the Omani import value is only higher than one other data point on the record. However, the AUV for Indian imports of urea remains within the range of values available from other potential surrogate countries.

¹⁰ See *id.*

¹¹ See *Hand Tools from the PRC – 04/06/1998* at 16759.

continue to find the WTA Indian import value for urea the best available information to value the urea used in the production of the subject merchandise.

Comment 2: Surrogate Value for Steam Coal

Petitioners argue that the record in this review established that chemical producers in India are not “core sector” purchasers entitled to buy steam coal at the list prices published by Coal India. Petitioners contend that in the *Preliminary Results*, the Department valued steam coal using an IBM Yearbook. Petitioners contend that those data are based on Coal India prices and are, therefore, not appropriate as a surrogate value for steam coal used by chemical producers. Petitioners contend that the IBM steam coal price data are incomplete and exclude certain charges that Coal India’s own website shows apply to purchases of steam coal. Petitioners argue that for the final results, the Department should use Indian WTA import data to value steam coal. Petitioners contend that the WTA import data meet every criterion established by the Department for use as a source of surrogate values, and the WTA data represent prices that are available to chemical producers in India.

Jiheng argues that the Department should continue to value Jiheng’s steam coal inputs with data from the IBM Yearbook. Jiheng contends that the data provided in the IBM Yearbook is product specific, publicly available, reflects pricing throughout India, and in general is in conformity with the Department’s standards for determining best available information for surrogate value purposes. Jiheng asserts that record evidence demonstrates that chemical companies are eligible for Coal India pricing. Jiheng contends that the import data that Petitioners advocate are not product specific. Jiheng notes that the CIT has approved the use of *TERI* data as well.

Since the case and rebuttal briefs were received, the Department placed 2007 CIL data on the record and requested comments from interested parties. In response to this request, the Department received comments from Jiheng. Jiheng contends that the 2007 CIL data alone are not sufficient for calculating surrogate steam coal values because the 2007 data do not apply to the entire POR. Thus, if the Department uses the 2007 CIL data, it should average the 2007 data with the IBM Yearbook data used in the preliminary results. Further, when averaging the data, Jiheng argues that the Department should not adjust the 2007 CIL prices by transportation or other charges that are listed in the notes of the 2007 CIL Price Circular.

Department’s Position: For the final results, the Department is averaging CIL’s December 12, 2007, coal prices with CIL’s June 15, 2004, coal prices to calculate the surrogate value for steam coal. Section 773(c)(1) of the Act states that “the valuation of the factors of production shall be based on the best available information regarding the values of such factors.” It is the Department’s stated practice to choose a surrogate value that represents period-wide price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the period of review, and publicly available non-aberrational data from a single surrogate market economy country.¹² If a surrogate value meets these criteria, the Department finds that it represents a reliable and appropriate price for valuing an individual input. In this case, CIL price data are publicly available, they represent deregulated country-

¹² See *Hot-Rolled Steel from Romania* – 06/14/2005 at Comment 2.

wide Indian coal price data, they are specific to Jiheng's reported coal inputs, and they are contemporaneous with the POR.

Foremost, we find that domestic Indian steam coal price data are the most appropriate for valuing Jiheng's steam coal inputs because they are specific to Jiheng's reported coal inputs. Generally, the Department uses domestic Indian price data when respondents provide accurate and reliable information concerning UHV of the steam coal they consumed.¹³ In this case, Jiheng has provided the Department with information on the UHV of the steam coal it consumed.¹⁴ Therefore, Jiheng's steam coal inputs are easily categorized using domestic Indian price data, which assigns prices for coal based on UHV. Alternatively, WTA steam coal price data, which Petitioners suggest we use, is listed under the heading "steam coal," without further specificity. Consequently, because domestic Indian coal data provide the most product-specific prices, we find that it offers the best available information for valuing Jiheng's steam coal inputs.

The Department disagrees with Petitioners' arguments that all chemical companies in India are non-core sector companies and that, as a result, they do not have access to CIL pricing. A review of core sector companies suggests that many chemical companies do have access to CIL pricing.¹⁵ Unfortunately, the Department does not have sufficient evidence to distinguish why certain chemical companies have access to CIL pricing and others might not. Thus, despite Petitioners' arguments, the Department cannot reasonably conclude that chemical companies, generally, do not have access to CIL pricing. Principally, nothing suggests that Jiheng is not comparable to an Indian core sector chemical company having access to CIL pricing.

The Department is averaging prices from CIL's 2007 price circular with prices from CIL's 2004 price circular because both offer contemporaneous information for valuing Jiheng's steam coal inputs. The 2007 Circular provides Indian coal price data effective "from midnight of 12th December, 2007."¹⁶ The 2007 Circular also provides that the price data listed in it will replace CIL's price notification *CIL: S&M:GM(F): Pricing: 289 dated 15.06.04*, which offered effective coal prices from 15 June 2004.¹⁷ Thus, CIL's price notification *CIL: S&M:GM(F): Pricing: 289 dated 15.06.04* was effective until 12 December 2007, but it was then superseded by CIL's 2007 Circular from 13 December 2007 onward. For that reason, CIL's 2007 Circular contains prices contemporaneous with the latter half of the POR, while CIL's 2004 Circular contains prices effective during the first half of the POR and, thus, is contemporaneous. Therefore, the Department has averaged these prices to provide a contemporaneous value for Jiheng's steam coal.

¹³ See *NPOTR Tires from the PRC – 05/15/2008* at Comment 13.

¹⁴ See Jiheng's October 13, 2008, Initial Questionnaire Response at Exhibit D-14.

¹⁵ See Petitioners' Dec. 1, 2008, Information Regarding Surrogate Values for Factors of Production Submission at Exhibits 27. For example, the list of core sector companies includes Jain Carbides & Chemicals, Ltd., Bihar Caustic & Chemicals, Ltd., Grasim Industries, Ltd, Caustic Soda Membrane Cell Division, and TR Chemicals Pvt. Ltd., among others. *Id.*

¹⁶ See Memorandum regarding: Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: 2007 Coal India Ltd. Pricing Data on the Record, dated October 30, 2009 ("2007 Coal India Ltd. Pricing Data").

¹⁷ *Id.*

But contrary to Jiheng's suggestion, the Department is not averaging the 2007 CIL data with the IBM Yearbook steam coal prices. Jiheng correctly notes that the IBM Yearbook relies on CIL's price notification *CIL: S&M:GM(F): Pricing: 289 dated 15.06.04*,¹⁸ which was effective through 12 December 2007 and is contemporaneous with the first half of the POR, but the IBM Yearbook data are incomplete. First, the IBM Yearbook data are only a subset of all CIL coal pricing data for the period before 13 December 2007. For example, the IBM pricing data only covers non-coking coal prices for select Indian coalfields.¹⁹ It does list CIL non-coking coal prices for South Eastern Coalfields Ltd., Northern Coalfields Ltd., Mahanadi Coalfields Ltd., and Western Coalfields Ltd.²⁰ However, the non-coking coal prices of other Coalfields established under CIL are excluded, *e.g.*, Eastern Coalfields Ltd. and Bharat Coking Coal Ltd.²¹ Second, the IBM Yearbook prices do not include a 165 Rs/MT surcharge that, according to CIL's 2004 Price Circular, upon which the IBM Yearbook prices rely, should be added to the price for all grades of steam coal.²² Thus, the IBM Yearbook prices are incomplete.

Finally, in using CIL's 2007 price circular, the Department agrees with Jiheng that we do not have sufficient information on the record to include additional charges for "top size," which is referred to in the Circular's notes.²³ We also agree with Jiheng's suggestion to exclude additional transportation distance costs from the listed pithead prices for steam coal, which is also referred to in the Circular's notes,²⁴ because the Department separately accounts for the transportation distance of Jiheng's own steam coal inputs. However, we are including the additional fixed surcharge of 165 rupees ("Rs.)/metric ton ("MT") to our calculation, which the 2007 Circular's notes indicate "shall be charged on pithead price of Run of Mine Coal for the supply of Steam Coal."²⁵ Because Jiheng is using steam coal, this additional charge is appropriate when calculating surrogate steam coal values based on both CIL's 2007 prices and CIL's 2004 prices.

For the foregoing reasons, to calculate the surrogate value for steam coal, the Department averaged prices from CIL's December 12, 2007, circular with prices from CIL's June 15, 2004, circular. We find that these data are the most appropriate data with which to value steam coal because they are specific to Jiheng's reported coal inputs, they are complete, and they are contemporaneous with the POR.

Comment 3: Financial Ratios

Petitioners contend that the Department should make two adjustments in the final results to the calculation of financial ratios based on Indian surrogate producers. First, the Department should use the contemporaneous financial statement of Kanoria (fiscal year ending March 31, 2008) to calculate ratios rather than the 2007 annual report relied on in the *Preliminary Results*. Second,

¹⁸ See Prelim Surrogate Value Memo, Attachment XXXV at 24-17, 24-18.

¹⁹ *Id.*; compare Petitioners' June 29, 2009, Additional Information Regarding Surrogate Values for Factors of Production Submission at Exhibits 2 ("Petitioners' Additional Surrogate Values").

²⁰ See Prelim Surrogate Value Memo, Attachment XXXV at 24-17, 24-18.

²¹ See Petitioners' Additional Surrogate Values at Exhibits 2.

²² *Id.*

²³ See 2007 Coal India Ltd. Pricing Data.

²⁴ *Id.*

²⁵ *Id.*

the Department should also calculate ratios based on the financial statements of Bihar. Like Kanoria, Bihar is also an Indian producer of caustic soda, chlorine, and stable bleaching powder, which the Department has identified as comparable merchandise to chlorinated isocyanurates. Using data from both producers would be consistent with the Department's preference for averaging data from multiple sources in calculating financial ratios.

Jiheng argues that the Department should continue to use Kanoria to determine the financial ratios, applied to Jiheng's production. Jiheng contends that Bihar did not produce a comparable product during the period covered by its financial statements or during the period of review. Jiheng contends that a thorough review of the financial statements, including the accompanying notes and schedules, demonstrates that there was no production or sales of stable bleaching powder during the relevant period.

Department's Position:

To determine the best available information for deriving surrogate financial ratios, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information.²⁶ Furthermore, pursuant to section 773(c)(1) of the Act and 19 CFR 351.408(c)(4), it is the Department's practice in NME proceedings to obtain surrogate financial ratios using, whenever possible, surrogate-country producers of identical or comparable merchandise, provided that the surrogate data are not distorted or otherwise unreliable. The Department also selects surrogate financial statements that are publicly available, comparable to the respondent's experience, and contemporaneous with the period being reviewed or investigated.²⁷

We agree with Petitioners' argument and citation to *Ironing Tables from the PRC – 03/16/2009* stating that we should revise the surrogate financial ratio calculation for the final results by using the updated Kanoria financial statements for the year ended March 31, 2008, which Petitioners placed on the record after the *Preliminary Results*, because the 2008 Kanoria financial statements are contemporaneous with the POR.

However, the Department disagrees with Petitioners' argument that it should use Bihar's financial statements for the year ended March 31, 2008, to calculate the surrogate financial ratios for the final results. The Department has an established practice of rejecting financial statements of surrogate producers whose production process is not sufficiently comparable to the respondent's production process, whose financial statements are incomplete, who are not profitable, or are designated as "sick" by the surrogate-country government.²⁸ Information in Bihar's financial report indicate that it did not produce or sell comparable merchandise during the entire fiscal year but, instead, did so for only the last month of that fiscal year (see Exhibit 37 at pages 46-47 of Petitioners' December 1, 2008, surrogate value submission). In this case, we find that Bihar's production experience does not closely approximate Jiheng's production experience because Bihar did not produce or sell comparable merchandise during the majority of the fiscal year.

²⁶ See, e.g., *Lined Paper from the PRC – 09/08/2006* at Comment 1.

²⁷ See *Chlorinated Isos from the PRC – 05/10/2005* at Comment 1.

²⁸ See *Magnesium Metal from the PRC – 07/14/2008* at Comment 3; and *Chlorinated Isos from the PRC – 05/10/2005* at Comment 3.

While Petitioners cite to *Persulfates from the PRC – 02/09/2005* and *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247 (CIT 2002) to claim that we should use Bihar's financial statements to calculate a surrogate financial ratio for the final results, these decisions support our finding that the Department only uses financial statements from companies whose production of identical or comparable merchandise closely approximates the nonmarket economy producer's experience.

Petitioners cite to the original investigation, *i.e.*, *Chlorinated Isos from the PRC – 05/10/2005*, stating that the Department recognized that there are no producers of identical merchandise in India, and that the Department has chosen in past reviews to use financial statements from Kanoria, a producer of comparable merchandise. However, while we agree that Kanoria is a producer of comparable merchandise, *i.e.*, stable bleaching powder, record evidence demonstrates that Bihar was not a producer of stable bleaching powder for the majority of the POR. Furthermore, while we agree in principle with Petitioners' citation to *CFSP from the PRC – 10/25/2007* and *Garlic from the PRC – 06/19/2009* indicating our preference for using multiple acceptable surrogate companies to obtain more representative financial ratios, we do not have multiple acceptable surrogate companies' financial statements on the record of this review. Because we have contemporaneous financial statements from a producer of comparable merchandise (Kanoria), we find that relying on this set of financial statements is more appropriate for calculating a surrogate financial ratio than including data for a producer (Bihar) whose production process does not sufficiently resemble the respondent's production process. Therefore, for the final results of review, we have used only Kanoria's 2008 financial statements to calculate the surrogate financial ratios for use in Jiheng's normal value calculation.

Comment 4: Surrogate Value for Anhydrous Ammonia

Petitioners argue that the Department should not use WTA import data for anhydrous ammonia to value Jiheng's waste ammonia gas by-product in the final results. Petitioners contend that the record is clear that Jiheng's ammonia gas is not anhydrous ammonia, and that anhydrous ammonia is a processed and highly-purified downstream product from raw ammonia gas. Petitioners maintain that using anhydrous ammonia as a surrogate value for Jiheng's waste gas grossly overstates the value of that by-product. Petitioners contend that if the Department determines that any value for the ammonia gas is appropriate, it should use the \$100 per metric ton price identified in the record for surplus "merchant-grade" ammonia gas paid by an Indian purchaser.

Jiheng contends that the Department should continue to value its ammonia gas by-product using India's imports of anhydrous ammonia. Jiheng argues that the record establishes that Jiheng produces ammonia gas (NH₃) that meets the definition of anhydrous ammonia, *i.e.*, ammonia without water. Jiheng asserts that it does not process the ammonia gas by-product before combining it with sulfuric acid to produce ammonium sulfate and the record established that ammonium sulfate is produced by combining anhydrous ammonia with sulfuric acid. Jiheng argues that even if its ammonia gas would require some processing prior to sale, nothing prevents the use of anhydrous ammonia to value it. Jiheng also contends that it would be

contrary to the Department's practice to adjust for either processing or transportation costs when it deducts the by-product offset from the normal value, as suggested by Petitioners.

Department's Position:

Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors. . . ." The Department considers several factors when choosing the most appropriate surrogate values, including the quality, specificity, and contemporaneity of the data. *See Lined Paper from the PRC - 09/08/2006* at Comment 3. The Department finds that the most appropriate valuation of Jiheng's ammonia gas by-product is the WTA Indian import data for anhydrous ammonia.

While Petitioners argue that Jiheng's ammonia gas by-product is not anhydrous ammonia and could not be sold as such, Jiheng has presented evidence that demonstrates its production of ammonia gas is anhydrous ammonia and that it can be used in the same manner as anhydrous ammonia. The admitted difference between the ammonia gas that Jiheng produces and the anhydrous ammonia that is shipped internationally for sale is processing and packing. However, the Department's practice, as upheld by both the CIT and the CAFC, is to not make adjustments for processing or packing when valuing by-products.²⁹

Moreover, in valuing Jiheng's ammonia gas by-product, the Department does not value the total quantity of ammonia gas that Jiheng produces during production of the subject merchandise. Instead, because Jiheng is unable to place a meter on the ammonia gas pipeline due to physical restrictions, verified during the course of this review, the Department limits the quantity of ammonia gas to the amount of the ammonia chemical contained in Jiheng's downstream production of ammonium sulfate. So, for example, if Jiheng produced 5 kg of ammonia gas from its production of subject merchandise and, from Jiheng's production of 5 kg of ammonia gas, we find 2 kg of ammonia in Jiheng's downstream production of ammonium sulfate, the Department only grants Jiheng an offset for the 2 kg of pure ammonia content within the downstream ammonium sulfate production. Therefore, while the total weight of the ammonia gas that comes off of Jiheng's production may include impurities so that the total weight of the ammonia gas is not solely attributable to the ammonia itself, or perhaps directly comparable to the typical purity level of internationally shipped anhydrous ammonia, the weight of those impurities are removed in that the weight of the impurities in the ammonia gas is not being valued. Therefore, the quantity that is being valued is a pure chemical weight, and we are only granting Jiheng a by-product offset for the pure ammonia content within the ammonium sulfate that it produces from its ammonia gas.

In choosing a surrogate value, the Department seeks the best available information. The Department seeks first the best available information from the primary surrogate country, India, that (1) represents an average non-export value, (2) is representative of a range of prices within the POR if submitted by an interested party, or most contemporaneous with the POR, (3) is product specific, and (4) is tax exclusive.³⁰ While the WTA Indian import data for anhydrous

²⁹ *Magnesium Corp. of America v. United States*, 20 CIT 1092, 1106-07, 938 F. Supp. 885, 899-900 (1996), *aff'd* 166 F.3d 1364 (Fed. Cir. 1999).

³⁰ *See Hand Tools from the PRC - 04/06/1998* at 16759.

ammonia may include varying levels of purity, we find that it is the best surrogate value for Jiheng's ammonia gas by-product.

We also evaluated Petitioners' suggested value for Jiheng's ammonia gas, and we find that it is not the best surrogate value on the record. Petitioners' suggestion is only one price for ammonia gas paid by one customer. The WTA Indian import data for anhydrous ammonia represent a broad-market average and is therefore a better surrogate value for Jiheng's ammonia gas by-product.

II. Company Specific Issues

Comment 5: Ministerial Error - By-Product Offset

Petitioners allege that the Department double-counted the quantities of Jiheng's claimed by-products in the *Preliminary Results* by combining alternative by-product data sets representing amounts calculated from sales quantities and production quantities. This error should be corrected for the *Final Results*. Petitioners argue that the Department should follow its standard policy of using the lower of sales quantities or production quantities for those by-products that are credited to Jiheng.

Jiheng argues that the Department should apply its new practice concerning by-product offsets in this review and base the offset on the production of by-product reported during the POR. Jiheng contends that this would be consistent with the Department's stated change in practice. Jiheng maintains that because the Department has announced a change in practice, the Department should reject Petitioners' request to calculate the by-product offset based on the lower of either production or sales.

Department's Position:

The Department agrees with Petitioners in that we erroneously double counted Jiheng's by-product offset for the *Preliminary Results* and that this should be corrected for the final results. Although Petitioners contend that the Department should limit the by-product offset to "the lower of the amount of by-product generated, sold, or reintroduced during the same period for which the costs are calculated," citing *Fish Fillets from Vietnam – 03/24/2008*, we disagree. The Department recently introduced a new practice relating to by-products in *Silicon Metal from the PRC – 07/09/2009* as cited by Jiheng. In that case we stated:

The practice of using the "lower of" the quantity of by-product produced or sold in each POR may lead to an inconsistent result over multiple review periods. The Department notes that granting the by-product offset based on total production volume during the POR is a change from past NME practice, *i.e.*, in which by-product offsets were based on its total POR sales of the by-product that were also produced during the POR... However, this change brings our NME practice into line with normal accounting principles which recognizes and records the economic value of a by-product when it is produced.

Therefore, for the final results, we will correct the double counting error made in the *Preliminary Results* and value the by-products Jiheng produced during the POR.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

Agree

Disagree

Carole A. Showers
Acting Deputy Assistant Secretary
for Import Administration

Date