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April 6, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting 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 Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China

BACKGROUND

On November 20, 2008, the Department of Commerce ("the Department") published its *Preliminary Determination.*[1] On February 25, 2009, the Department received case briefs from Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Americas, Inc. (collectively, "Petitioners"), and TTCA Co., Ltd. (aka Shandong TTCA Biochemistry Co., Ltd.) ("TTCA") and Yixing Union Biochemical Co., Ltd. ("Yixing Union") ("respondents"). On March 2, 2009, the Department received rebuttal briefs from Petitioners, TTCA, and Yixing Union. On March 12, 2009, the Department held a public hearing.

We have analyzed the case and rebuttal briefs of interested parties in the investigation of citric acid and certain citrate salts ("citric acid") from the People's Republic of China ("PRC"). The period of investigation ("POI") covers October 1, 2007, through March 31, 2008. As a result of our analysis, we have made changes to the margin calculations in the preliminary determination. 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 parties:

GENERAL ISSUES

Comment 1: Selection of Surrogate Country
Comment 2: Treatment of Energy in the Surrogate Financial Statements
Comment 3: Treatment of Interest Expense and Income in Selling, General and Administrative Expenses
Comment 4: Correct Calculation for the Inflator of the Indian Trucking Value

[1] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 70328 (November 20, 2008) ("*Preliminary Determination*").

DISCUSSION OF THE ISSUES

GENERAL ISSUES

Comment 1: Selection of Surrogate Country

TTCA suggests that in the Department's determination to use Indonesia as the primary surrogate country, the Department relied on the availability of a single factor of production ("FOP"), factory overhead. TTCA argues that the Department should select Thailand as the primary surrogate country, because Thailand has the best data in terms of quality, reliability, and specificity in relation to the inputs used by respondents in Chinese citric acid production, and only where Thai data for certain factors are found to be missing or insufficient, should the Department rely on Indonesia and India as secondary surrogate countries. It contends that the Thai tariff schedule provides tariff categories more specific to the inputs used by TTCA in its citric acid production than those contained in the Indonesian tariff schedule. TTCA specifically highlights its energy inputs and argues that the Thai values for coal, water, and natural gas are superior to the Indonesian and Indian values used in the *Preliminary Determination*. According

to TTCA, the Thai producers' experience better reflects that of the Chinese producers in terms of major inputs (*i.e.*, corn for the Chinese producers and tapioca for the surrogate Indonesian citric acid producer, PT Budi Acid ("PT Budi"), product focus, production process and technology, and argues that the Department's NME Surrogate Selection Policy Bulletin 04.1 ("Policy Bulletin 04.1"), at 3, stipulates that such things should be considered in selecting the appropriate surrogate country.

Similarly, Yixing Union argues that the Department has a practice of discarding financial statements of a producer, where that producer's principal product is not the subject merchandise, citing *Mushrooms 03/05/05* and *Dorbest 2008*.[2] Yixing Union contends that the selection of Indonesia as the surrogate country is flawed for three reasons: 1) Thailand is a more "significant producer" of citric acid, 2) PT Budi's financial statements are incomplete, unclear and misleading, and 3) Thailand has more reliable and better information available, and embodies the standard of "best available information" that the statute mandates. Yixing Union also argues that in selecting Indonesia the Department virtually controlled the less than fair value ("LTFV") outcome of the *Preliminary Determination*, in part due to use of the financial statements of PT Budi, which served as the basis for calculation of the financial ratios.

Both TTCA and Yixing Union assert that PT Budi, is primarily focused on the tapioca industry, which does not employ technology similar to that of the Chinese citric acid producers. Thus, according to the respondents, PT Budi cannot be considered a "comparable" producer. TTCA further argues that PT Budi experienced a loss in its citric acid business segment during the POI and, thus, its consolidated financial statements do not reflect the experience of the citric acid industry. Yixing Union further argues that PT Budi's financial statements do not provide sufficient information to break out the costs associated with the production of citric acid, and do not have a separate breakout for energy costs, an important FOP for citric acid.

Yixing Union proposes that if the Department continues to use PT Budi's financial statements, it should apply Yixing Union's energy experience (as a percentage of its cost of manufacturing overhead expense) to adjust the overstated overhead expenses from PT Budi. TTCA asserts that if the Department continues to find the Thai financial statements lacking with respect to factory overhead, it should use Thai data for all factors except factory overhead, and apply the factory overhead ratio from the Indonesian surrogate producer.[3] Citing to *Wooden Bedroom Furniture 8/20/08*),[4] TTCA argues that Department cannot rely on Indonesia as the primary surrogate

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[2] *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10421 (March 5, 2004) ("*Mushrooms 03/05/05*") *and Dorbest Ltd. v. U.S.*, 547 F.Supp.2d 1232 (CIT 2008) ("*Dorbest 2008*").

[3] TTCA cites to *Certain Hot-Rolled Carbon Steel Flat Products from Romania*, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum at Comment 7, where the Department used financial statements of one surrogate producer, but applied the overhead ratio of a different surrogate producer.

[4] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Review and New Shipper Review*, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decision Memorandum at Comment 13 ("*Wooden Bedroom Furniture 8/20/08*").

country as its practice is to use financial statements from companies whose experience most closely reflects that of the companies under investigation, and in this case the Indonesian financial statements do not meet that criteria.

Finally, Yixing Union contends that the Department commonly uses surrogate values from a third country, when the values from the primary surrogate country are unavailable or not adequately representative, and suggests that the Department do so for specific factors in this case as addressed in Comments 5A and 5B, below.[5]

Petitioners argue that the Department should continue to use Indonesia as the primary surrogate country in this investigation because it is a significant producer of identical and comparable merchandise, and the surrogate factor valuation data available from Indonesian sources are generally better than those of the alternative surrogate countries, India and Thailand. In particular, Petitioners submit that Indonesia is the only potential surrogate country from which usable financial ratios can be calculated, regardless of whether those financial ratios may need to be adjusted. Petitioners further argue that neither respondent suggests that the Department should use Thai financials and no other relevant financial statements have been placed on the record; nor do they provide a reasonable alternative basis from which the Department should make its financial ratio calculations. Additionally, Petitioners contend that there are certain factors of production for which Thai data are either aberrational (*i.e.*, corn), or unavailable.

Department's Position: The process of selecting an appropriate surrogate country for valuing FOPs is a crucial element of an NME proceeding. Pursuant to section 773(c)(4) of the Tariff Act of 1930, as amended, (the "Act"), the Department will value the factors of production, utilizing "to the extent possible, the prices or costs of factors of production in one or more market economy countries. . . ." The Department's regulations further clarify that the Department will normally value all of the NME FOPs with data from the primary surrogate country. *See* 19 CFR 351.408(c)(2). Consistent with sections 773(c)(1)(B) and (c)(4) of the Act, we select an appropriate surrogate country from economically comparable countries listed in the Surrogate Country Memo based on the availability and reliability of data from the countries that are significant producers of comparable merchandise.[6] With respect to data considerations in selecting a surrogate country, the NME Surrogate Selection Policy Bulletin states that ". . . if more than one country has survived the selection process to this point, the country with the best

[5] *See Final Determinations of Sales at Less than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the PRC*, 57 FR 21058 (May 18, 1992); *Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the PRC*, 57 FR 29705 (July 6, 1992); *Anshan Iron & Steel Co. v. US*, 27 CIT 1234 (2003), quoting 19 USC. 1677b(c)(1); *Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the PRC*, 57 FR 29705 (July 6, 1992); *Final Determinations of Sales at Less than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the PRC*, 57 FR 21058 (May 18, 1992); *Globe Metallurgical, Inc. v. U.S.*, 350 F.Supp.2d 1148, 1160 (CIT 2004), *citing Silicomanganese from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 31514 (May 18, 2000); and *Olympia Industrial, Inc. v. U.S.*, 7 F.Supp.2d 997, 1001 (CIT 1998).

[6] *See* Memorandum to the File from Policy: List of Surrogate Countries, dated July 9, 2008, ("Surrogate Country Memo") and *Preliminary Determination*, at 70330.

factors data is selected as the primary surrogate country. . . ."[7]

We selected Indonesia as the primary surrogate country in the *Preliminary Determination* because we found that Indonesia: 1) is at a level of economic development comparable to that of the PRC; [8] 2) is a significant producer of the merchandise under investigation (*i.e.*, citric acid); and 3) has publicly available and reliable data.[9] Specifically, in our *Preliminary Determination*, we found that Indonesia and Thailand were significant producers of citric acid because both countries had exports of citric acid during the POI.[10] We further determined that Indonesia had comprehensive and reliable factor and surrogate financial ratio data. Taking this information as a whole, and not relying on one single factor, *i.e.*, the overhead ratio, as alleged by TTCA, we selected Indonesia as the primary surrogate country.

While Yixing Union argues that Thailand is a "more" significant producer of the like product, "{t}he statute does not require that the Department use a surrogate country . . . that is the *most* significant producer of comparable merchandise. The statute requires only that the Department use a surrogate market economy country that is . . . a significant producer of comparable merchandise."[11] In making the determination as to whether a surrogate country is a significant producer of comparable merchandise, "{t}he extent to which a country is a *significant* producer should not be judged against the NME country's production level or the comparative production of the five or six countries on OP's surrogate country list."[12]

As a result of the parties' arguments, we have re-examined the record evidence, and have concluded that no party has put sufficient information on the record since the *Preliminary Determination* to warrant a change in our selection of the primary surrogate country. Specifically, we examined the data submitted by interested parties with respect to their reported inputs and weighed the appropriateness of the Indonesian and Thai HTS classifications with respect to these inputs. In addition, we considered all of the potential surrogate financial statements on the record for their reliability, contemporaneity, completeness and level of detail for purposes of calculating surrogate financial ratios. With respect to TTCA's argument that the Thai data are preferable to Indonesian import data, because the Thai tariff schedule provides a more precise and detailed breakdown in its HTS categories than does the Indonesian tariff schedule, we do not agree. Specifically, we find that while certain Thai categories may be broken out into more narrow or detailed categories, the respondents have not provided the same

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[7] *See Lightweight Thermal Paper* at Comment 1; and Surrogate Country Selection Memo, at 10.

[8] Both Indonesia and Thailand were identified in the Surrogate Country Memo as being at a level of economic development comparable to that of the PRC.

[9] *See Preliminary Determination* at 70330; *see also* Memorandum to the File: Antidumping Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China: Selection of a Surrogate Country, dated November 12, 2008 ("Surrogate Country Selection Memo").

[10] *See* Surrogate Country Selection Memo at 9.

[11] *See* Policy Bulletin 04.1

[12] *See id.*

level of detail with respect to their inputs and, therefore, the further detail in the Thai schedule becomes irrelevant to the selection of surrogate values. TTCA focused on eight examples, we address each one in turn below. First, with regard to the input "corn," TTCA argues that the Thai tariff schedule has an 11 digit HTS category 1005.90.90.001 for "maize (excluding seed), fit for human consumption," while the Indonesian tariff schedule specifies only a nine digit HTS category 1005.90.000 for "maize (corn) other seed , . ,," *i.e.*, the Indonesian HTS does not specify whether the category covers only imports fit for human consumption. In reviewing the record data, we find that both respondents' reported factor is corn, and that neither TTCA nor Yixing Union specifies whether its corn input is fit for human consumption.[13] Thus, this additional data in the Thai HTS is not meaningful for the purposes of selecting a surrogate value for the respondents' corn FOPs.

Second and third, for sulfuric acid and sodium hydroxide solution, the Thai HTS categories are for "sulfuric acid more than 50% w/w," and "sodium hydroxide 20% w/w or more," respectively, while the Indonesian HTS categories are for "sulfuric acid; oleum," and "sodium hydroxide in aqueous solution," respectively. Neither TTCA nor Yixing Union specifies the water weight of its respective sulfuric acid and sodium hydroxide solution inputs,[14] rendering the specificity of the Thai HTS classification meaningless for our purposes. Fourth, respondents argue that the Thai HTS category for sodium carbonate, 2836.99.00.090, "other (carbonates)" is more specific than the Indonesian HTS category for sodium carbonate, 2836.20.000, "disodium carbonate" to the reported input; however, in the *Preliminary Determination* the Department's research and analysis indicated that, in fact, the Indonesian HTS category was the appropriate classification for sodium carbonate.[15] The Indonesian HTS category "disodium carbonate" is specific to respondents' input, unlike the Thai "other (carbonate)" category, which may include other carbonates.[16] No party has submitted additional data to warrant changing this determination. Fifth, with regard to the input calcium carbonate, TTCA compares the Thai HTS category 2530.90.00.007 for "calcite" to the Indonesian HTS category 2836.50.100 for "food & pharmaceutical grade of calcium carbonate." In the *Preliminary Determination* the Department found calcium carbonate to be properly classified as "food & pharmaceutical grade of calcium carbonate." For purposes of the final determination, we continue to find this to be the appropriate classification. *See* Comment 5B, below.

Sixth, TTCA also argues that its input of ammonium sulfate is more accurately classified under the Thai HTS category 2833.29.900.90 "other sulphates," than under the Indonesian HTS category 2833.29.000 "other sulphates compounds," because, it alleges, the Thai "other" category excludes many more specific sulfates than does the Indonesian category. However, TTCA has not provided any specifics regarding the chemical composition of its ammonium

[13] *See, e.g.*, TTCA's September 22, 2008, Section D response ("TTCA DQR"), at Exhibit S2-23.

[14] *See, e.g., id.*

[15] *See* Memorandum to the File: Preliminary Results of the Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Memorandum dated November 12, 2008, at 6 and Exhibit 15 (explaining that sodium carbonate and disodium carbonate are synonyms).

[16] *See id.*

sulphate[17] and, thus, based on record data, we are unable to determine the relevance of the items that are excluded from the "others" category in the Thai data to TTCA's factor input. Consequently, TTCA has not substantiated the merits of its argument that the Thai data are more representative of its input.

Seventh, TTCA argues that its input of sodium lignosulphonate is more accurately classified under the Thai HTS category 3804.00.90.000 "other residual lyes from the manufacture of wood pulp, (other than concentrated sulphite lyes), including lignin sulphonate, but excluding tall oil of heading no. 38.03" rather than the Indonesian HTS category 3804.00.000 which TTCA mistakenly defines as "residual lyes from the manufacture of wood." The Department independently reviewed all HTS descriptions and the Indonesian description for HTS category 3804.00.000 is "residual lyes from the manufacture of wood pulp, whether or not concentrated, desugared or chemically treated, including lignin sulphonates, but excluding tall oil of heading 38.03." TTCA only defines its input as "sodium lignosulphonate"[18] and does not provide any further description of its input, and fails to identify any of the specific characteristics mentioned in the Thai description. Thus, once again, it has not met the burden of substantiating its claim that the Thai data more accurately reflect its factor input.

Eighth, TTCA argues that the Thai HTS category for plastic bags 3923.21.90.090 "other (sacks and bags; of polymers of ethylene" is more specific to its packing input than the Indonesian HTS category 3923.21.000 "sacks and bags of polymers of ethylene." TTCA argues that the Thai HTS category is more specific because it excludes plastic bags coated by aluminum. We agree with TTCA that the Thai HTS category 3923.21.90.090 is narrower than the Indonesian category 3923.21.000 for the reason TTCA states. However, TTCA fails to acknowledge that the Indonesian Tariff schedule has the same breakout under its category 3923.21.90. Thus TTCA's general argument that the Thai tariff schedule is better because it provides narrower data categories is misplaced. In addition, because TTCA has not specified in any of its submissions to the Department whether or not its plastic bags are coated in aluminum (it has simply referred to its input as "plastic bags"[19]) it is not appropriate for the Department to use the narrower category, from either the Thai or Indonesian tariff schedules. Accordingly, record evidence supports the Department's valuation of plastic bags as "sacks and bags of polymers of ethylene," and we have continued to value TTCA's plastic bags using this category under the Indonesian tariff schedule.

Furthermore, with respect to the parties' arguments surrounding the surrogate financial statements, the Department continues to find that the only usable surrogate financial statements are from an Indonesian producer of multiple products, one of which is citric acid.[20] There are currently one Indonesian and four Thai financial statements on the record of this proceeding. Of

[17] *See e.g.,* TTCA DQR, at Exhibit S2-23.

[18] *See, e.g.,* TTCA DQR, at Exhibit S2-23.

[19] *See, e.g., id.*

[20] *See* Petitioners' Surrogate Country Factor Valuation Letter, dated October 6, 2008, at Exhibit 41, at 16 (PT Budi's Consolidated Financial Statements (2006 & 2007)) ("Petitioners SV Submission 10/06/08").

the four Thai financial statements on the record, two of the statements are from companies who did not realize a profit. The Department does not consider financial statements in the calculation of surrogate financial ratios when a company operated at a loss.[21] Accordingly, we are unable to use these two financial statements.

The remaining two Thai financial statements do not provide sufficient detail for the Department to calculate factory overhead. Without factory overhead it is impossible to calculate any of the financial ratios and it is the Department's practice to not use financial statements that do not contain sufficient detail to adequately calculate surrogate financial ratios.[22] The Department found at the *Preliminary Determination*, and continues to find, that deficiencies in data availability are "more significant than the differences between production technologies,"[23] or material inputs. Accordingly, notwithstanding TTCA's argument that the Thai producers' experience might be more reflective of the Chinese citric acid producers, because of data problems, we continue to find there are no usable Thai financial statements from Thailand on the record of this investigation.

The facts in this investigation are unlike the facts in *Wooden Bedroom Furniture 8/20/08*, *Mushrooms 03/05/05*, and *Dorbest 2008*, all of which Yixing Union cites to support its position that the Department should disregard PT Budi's financial statements because the production technology utilized by PT Budi is unlike that used by the Chinese respondents for citric acid production. In all three of those cases the Department had multiple usable financial statements from which to weigh the criteria for selection of financial statements. In the instant investigation, only one set of usable financial statements is on the record, that of the Indonesian surrogate producer, PT Budi. While we acknowledge that this set is not perfect, we do not agree with Yixing Union that it is incomplete, unclear and misleading. The financial statements do not contain the full level of detail that the Department ideally prefers; however, they provide sufficient detail for us to calculate the surrogate financial ratios. Accordingly, it is the only usable set on the record. In this investigation, we were unable to locate additional potential surrogate financial statements, and the parties to the proceeding did not provide additional record evidence for the final determination to calculate a factory overhead ("FOH") ratio from Thailand or an appropriate alternative method to calculate FOH using other SV information. While we agree with the respondents that the Indonesian financial statements do not provide sufficient detail to break out PT Budi's energy expenses from its factory overhead ratio, we do not agree with Yixing Union that we should apply its energy experience (as a percentage of its cost of manufacturing overhead expense) to adjust the overhead expenses from PT Budi. The Department has a clear and established practice of not utilizing costs based on RMB-

[21] *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2, *see also, Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation*, 68 FR 6885 (February 11, 2003) and accompanying Issues and Decision Memorandum at Comment 9.

[22] *See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 3836 (February 19, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

[23] *See* Surrogate Country Selection Memo, at 11.

denominated data from the NME producers themselves.[24] Accordingly, to avoid double-counting the energy costs, we have disregarded the respondents' energy costs in the normal value calculations. *See* Comment 2, below for a further discussion of this issue.

As a result of the above analysis, the Department finds that Indonesia continues to provide the best available information from which to value FOPs for purposes of this final determination.

Comment 2: Treatment of Energy in the Surrogate Financial Statements

TTCA argues that in the preliminary determination, the Department significantly overstated TTCA's factory overhead because it double-counted energy expenses. It argues that the Department often adjusts surrogate financial ratios to avoid double-counting in the margin calculation citing *Brake Rotors*, *HSLWs*, *Ironing Tables*, *Color Television Receivers*, *Honey* and *Silcomanganese*.[25] Additionally, according to TTCA, the Department will adjust surrogate financial ratios when not doing so would significantly distort the accuracy of the final determination. *See Tires* and *Hot-Rolled Steel*.[26]

TTCA argues that in the final determination, the Department should adjust the surrogate factory overhead ratio so that energy costs are not double-counted. TTCA proposes that the Department do this by calculating each respondent's ratio of verified energy expenses to factory overhead plus energy expenses. The Department should then calculate the average of these ratios and reduce the surrogate factory overhead ratio by this average to eliminate the double-counting of energy expenses in the surrogate overhead ratio.

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[24] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004–2005 Semi–Annual New Shipper Reviews*, 71 FR 70739 (December 6, 2006), and accompanying Issues and Decision Memorandum at Comment 5; *see also Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation*, 60 FR 16440, 16446-7 (March 30, 1995).

[25] *See Brake Rotors From the People's Republic of China: Final Results of 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review*, 73 FR 32678 (June 10, 2008), and accompanying Issues and Decision Memorandum at Comment 3; *see also Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 4175 (January 24, 2008), and accompanying Issues and Decision Memorandum at Comment 6 (HSLWs"); *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 13239 (March 21, 2007), and accompanying Issues and Decision Memorandum at Comment 1; *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), and accompanying Issues and Decision Memorandum at Comment 15; *Notice of Final Determination of Sales at Less Than Fair Value; Honey From the People's Republic of China*, 66 FR 50608 (October 4, 2001), and accompanying Issues and Decision Memorandum at Comment 3; and *Silicomanganese From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 31514 (May 18, 2000), and accompanying Issues and Decision Memorandum, at Comment 4.

[26] *See 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 *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 at Comment 7 ("*Hot-Rolled Steel*").

Yixing Union agrees with TTCA that PT Budi's financial statements did not have a separate breakout for energy costs, so those energy costs were contained in PT Budi's factory overhead. Therefore, according to Yixing Union, overhead is substantially overstated. According to Yixing Union, its energy expense is 60.37 percent of its manufacturing overhead expense. Therefore, to correct for the overstatement of factory overhead, Yixing Union suggests that the Department apply Yixing Union's 60.37 percent ratio to PT Budi's factory overhead expense, to determine a presumptive cost of energy, and apply it to the calculation of PT Budi's overhead ratio calculation, thereby reducing PT Budi's overhead expense to account for its energy costs. Yixing Union proposes dividing PT Budi's adjusted overhead expense by an adjusted cost of goods sold, which would include PT Budi's materials, labor, and the calculated energy costs, to derive a revised factory overhead ratio. Yixing Union contends that the resulting overhead ratio would properly take into consideration the cost of energy, and would create more accurate financial ratios.

Petitioners argue that the Department should not make any adjustment for energy in the overhead ratio calculation. They contend that respondents' argument is based on an unsupported assertion that the energy-related expenses of PT Budi are included in factory overhead. Petitioners contend that the Department's general policy is to not adjust the figures reported in a surrogate company's financial statements based on data from outside the financials themselves.

Additionally, Petitioners maintain that the Department does not modify the financial ratios from the surrogate company's financial statement based on RMB-denominated data from the NME producers themselves, as proposed by respondents. To do so would run contrary to the entire premise of the NME statute, which is that NME-currency denominated costs are inherently unreliable, and hence reference to the costs and valuations in a market economy is necessary.

Finally, Petitioners argue that PT Budi's financial statement contains no detail regarding the items included in factory overhead, and that PT Budi may incur very little outside energy costs. They contend that the record indicates that PT Budi is expanding its power generating capabilities (suggesting that it already operates power generation equipment).[27] Petitioners argue that the Department has a long-standing practice of not adjusting the individual line items of surrogate country financial statements, citing *Coated Free Sheet Paper*, *Magnesium*, and *Rhodia 2002*.[28]

If the Department concludes that PT Budi's FOH includes all energy-related costs and makes an adjustment for this issue, Petitioners argue that it should do so on the basis of information

[27] *See* Petitioners SV Submission 10/06/08, at Exhibit 41, at 16 (PT Budi's Consolidated Financial Statements (2006 & 2007)) (showing prepaid expenses for its Bio-gas power plant project).

[28] *See* Petitioners' Rebuttal Brief, at 20-21 (citing *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 at Comment 4 ("*Coated Free Sheet Paper*"); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 2 n.6; and *Rhodia, Inc., v. United States*, 240 F.Supp.2d 1247 (CIT 2002)) ("*Rhodia*").

contained within the financial statement of the surrogate producer and apply the existing FOH ratio to the value of respondents' raw materials plus labor.[29] Petitioners argue that this methodology would enable the Department to use the non-confidential FOH ratio from the surrogate company without resorting to confidential NME-based data provided by the respondents themselves.

Department's Position: The Department does not adjust surrogate financial statements with data outside of the financial statements themselves, nor does the Department modify the financial ratios from surrogate financial statements based on RMB-denominated data from the NME producers themselves.[30] However, PT Budi's financial statement does not include a separate line item for energy in the reported cost of manufacturing, thus the Department has concluded that energy is recorded as part of PT Budi's factory overhead.[31] Therefore, the calculated overhead ratio for the *Preliminary Determination* included the surrogate company's energy costs. Because we also calculated a separate energy cost for each of the respondents, we inadvertently double counted their energy costs. Accordingly, for the final determination, we have excluded respondents' energy expenses in the calculation of normal value to avoid double-counting energy expenses.

Respondents provided several examples to demonstrate that the Department has made adjustments to financial ratios calculated based on the financial statements of surrogate country producers. In all but one instance, the modifications consist of removing a line item, such as freight, carriage expenses, and cash discounts, for which existing line item data are available in the surrogate financial statements. In the case of PT Budi's financial statement, such a line item does not exist for energy.

In the one exception, respondents point to an investigation, *Hot-Rolled Steel from Romania*, in which the Department adjusted the factory overhead ratio by adding non-depreciation expenses.[32] In *Hot-Rolled Steel*, the Department was faced with a situation in which the only surrogate company from the primary surrogate country had only one overhead item, depreciation.[33] However, in *Hot-Rolled Steel*, the Department adjusted FOH with the data of a firm from another viable surrogate country rather than making an adjustment that relied on respondents' NME data, as respondents advocate here. NME countries are presumed to "not

[29] *See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 69494, 69498-99 (December 13, 1999), and accompanying Issues and Decision Memorandum at Comment 4; *Certain Lined Paper Products From India, Indonesia, and the People's Republic of China*, 70 FR 58374, 58376 (October 6, 2005).

[30] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004–2005 Semi–Annual New Shipper Reviews*, 71 FR 70739 (December 6, 2006), and accompanying Issues and Decision Memorandum at Comment 5; *see also Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation*, 60 FR 16440, 16446-7 (March 30, 1995).

[31] *See* Petitioners' SV Submission 10/06/08, at Exhibit 41.

[32] *See Hot-Rolled Steel*.

[33] *See id.*, at Comment 7.

operate on market principles of cost or pricing structures."[34] In the instant investigation, there are no other usable financial statements from market economy countries with which the Department could calculate financial ratios.

Furthermore, as noted by the Court in *Rhodia, Inc., v. U.S.*, "once Commerce establishes that the surrogate produces identical or comparable merchandise, closely approximating the nonmarket economy producer's experience, Commerce merely uses the surrogate producer's data."[35] Therefore, as discussed above, we continue to use the calculated overhead ratio from the *Preliminary Determination*; however, we have removed respondents' energy inputs from the normal value calculations to correct for double counting energy costs.[36]

Comment 3: Treatment of Interest Expense and Income in Selling, General and Administrative Expenses

Petitioners submit that the Department erred by deducting financial expenses from income by not including these expenses in the surrogate selling, general and administrative ("SG&A") expense ratio calculation. In calculating PT Budi's total SG&A, Petitioners contend the Department "excluded certain financial expenses and income items in SG&A, instead classifying them as "income" (or revenue)." Petitioners argue that the Department consistently includes net financial expenses in its SG&A ratio calculations in non-market economy cases,[37] and that by classifying financial expenses as "income" in its ratio calculations, the Department effectively removed these expenses completely from the calculation of normal value. According to Petitioners, the only adjustment that the Department normally makes to a surrogate producer's financial expenses and income is to disaggregate interest income between short-term and long-term income and offset total financial expenses with only short-term interest revenue earned on working capital.[38]

[34] *See* Sections 771(18) of the Act.

[35] *See Rhodia*, 240 F.Supp.2d 1247at 1250.

[36] *See* Memorandum to the File: Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Final Determination Margin Calculation for TTCA Co., Ltd., (a.k.a. Shandong TTCA Biochemistry Co., Ltd.) (April 6, 2008) and Memorandum to the File: Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Final Determination Margin Calculation for Yixing Union Biochemical Co., Ltd. (April 6, 2008).

[37] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China Final Determination of Sales at Less than Fair Value*, 73 FR 55039 (September 24, 2008), and accompanying Issues and Decision Memorandum at Comment at 7-8; *Purified Carboxymethylcellulose from Mexico: Final Results of the Antidumping Duty Administrative Review*, 72 FR 70300 (December 11, 2007).

[38] *See, e.g., Lightweight Thermal Paper*, at Comment 16-17; *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 73 FR 14216 (March 17, 2008), and accompanying Issues and Decision Memorandum at 4 ("*Bags*"); *Tires*, at 48-49.

TTCA argues that financing expenses and income in PT Budi's financial statement demonstrably relate not to citric acid production but to the wide range of other, unrelated business lines of the company, and were therefore properly excluded from the surrogate financial ratio calculations.

Department's Position: The Department agrees with Petitioners. In calculating PT Budi's total SG&A for the *Preliminary Determination*, the Department erroneously excluded certain financial expense items from SG&A, instead classifying them as income.

The Department's longstanding practice is to 1) include all interest expense from the financial statements in the financial ratio calculations; 2) disaggregate interest income between short-term and long-term income where it has the information to do so; and 3) offset interest expense with only the short-term interest revenue earned on working capital.[39] Accordingly, the Department will reduce interest and financial expenses by amounts for interest income only to the extent it can determine from those statements that the interest income was short-term in nature.[40]

Consistent with the Department's practice, for the final determination we have included PT Budi's financial expenses in SG&A. In addition, because there is nothing to indicate whether PT Budi's interest income is long-term or short-term in nature, no interest income offset can be made to interest expense.[41]

Comment 4: Correct Calculation for the Inflator of the Trucking Value

TTCA states that the Department made a clerical error in the preliminary determination by inflating the Indian trucking value to account for inflation.[42] TTCA argues that because the truck rates are from a period later than the POI, the Department should have deflated the Indian trucking rate.

No other party commented on this issue.

Department's position: We agree with TTCA. We have determined that because the trucking rates are sourced from August and September 2008, whereas the POI ends in March 2008, the Department should have deflated, rather than inflated, the trucking value. Therefore, for the final determination, we have deflated the trucking value by the average deflator rate for August and September 2008.[43]

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[39] *See Lightweight Thermal Paper*, at Comment 3.

[40] *See Bags*, at Comment 1 and *Honey*, at Comment 3 (stating that we did not offset interest expense because the financial statements did not provide sufficient data for us to identify short-term interest revenue.)

[41] *See, e.g., Tires* at Comment 18-D and *Bags* at Comment 1.

[42] *See* Preliminary Results of the Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Memorandum, dated November 12, 2008("Prelim SV Memo"), at Attachment 1.

[43] *See* Final Determination of the Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Memorandum, dated April 6, 2009, ("Final SV Memo"), at 2 and

Comment 5A: Surrogate Value for Hydrochloric Acid/Hydrogen Chloride

Respondents argue that in the preliminary determination, the Department used a surrogate value for hydrochloric acid ("HCl") based on Indonesian imports that overstates the cost of this material input for the respondents, because the Indonesian import value reflects prices for specialty HCl that are packaged in small containers, as opposed to prices for bulk HCl sold to industrial users such as TTCA and Yixing Union. TTCA and Yixing Union contend that in the final determination, the Department should base the SV for HCl on prices in the Indian market published by *Chemical Weekly*, consistent with its practice in NME cases involving HCl as a material input.[44] TTCA and Yixing Union maintain that, in *HSLWs*, the Department determined that the Indian import data for HCl are aberrational. TTCA states that the Indian and Indonesian HCl import values do not reflect prices for bulk HCl shipped in metric tons to industrial users.[45] Yixing Union states that the Department has a practice of disregarding small quantity import data when the per-unit value is substantially different from the per-unit values of larger quantity imports.[46] TTCA and Yixing Union argue that most of the Indian imports under tariff category 2806.1000 are for specialty HCl that is shipped by air in small containers not intended for industrial use and, thus, do not provide an appropriate basis for valuing HCl in this investigation. Finally, TTCA and Yixing Union argue that *Chemical Weekly* prices are a reliable source for a SV for HCl.

Petitioners argue that respondents inappropriately rely on past Department determinations regarding the aberrational nature of Indian HCl values to demonstrate the aberrational nature of the Indonesian value. Petitioners further argue Yixing Union provides no analysis to support its assertion that the SV for HCl appears to include HCl in gaseous form or higher quality lab-grade HCl, both of which are different from the hydrogen chloride that Yixing Union uses as an input. According to Petitioners, in the *Preliminary Determination*, the Department compared the Indonesian value to that for India, Thailand, Columbia, and the Philippines and concluded that it was non-aberrational and accurate.[47] Petitioners assert that, because there is no link between the

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Attachment II.

[44] TTCA Case Brief, at 22-23 (citing *HSLWs* and accompanying Issues and Decision Memorandum, at Comment 4; *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 *(*June 16,2008*),* and accompanying Issues and Decision Memorandum at Comment 18 ("*Nails*"); and Yixing Union Case Brief, at 19-20 (citing *Coated Free Sheet Paper*, at Comment 17; and *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 ("*PVA*") .

[45] *See* Verification of the Sales and Factors Response of TTCA Co., Ltd. (aka Shandong TTCA Biochemistry Co., Ltd.) in the Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China, dated February 13, 2009 ("TTCA Verification Report"), at Exhibit 16 and TTCA's October 21, 2008 Supplemental Questionnaire Response ("TTCA 10/21/08 SQR"), at Exhibit S2-10.

[46] Yixing Union Case Brief, at 18 (citing *Mittal Steel Galati S.A. v. U.S.*, 502 F.Supp2d 1295, 1305 (CIT 2007); *Globe Metallurgical, Inc. v. U.S., 350* F.Supp.2d 1148, 1160 (CIT 2004)).

[47] Petitioners Rebuttal Brief, at 38 (citing Prelim SV Memo, at 4-5).

Indian and Indonesian values, it is actually not reasonable to conclude that the Indonesian value consists of small shipments of specialty HCl. Petitioners conclude that the Indonesian SV for HCl remains a reliable, mid-range value, and that the respondents have failed to demonstrate that the Indonesian HCl value is aberrational.

Department's position: In the preliminary determination, the Department used an Indonesian import price obtained from the World Trade Atlas ("WTA") to value the respondents' HCl factor.[48] Yixing Union argues that Indonesian imports appear to include HCl in gaseous form and higher quality lab-grade HCl, which make the Indonesian import price for HCl disproportionately high compared to Yixing Union's HCl. However, there is no evidence on the record to support this claim regarding the Indonesian WTA data. Nor is there any record evidence to support Yixing Union's claim that Indonesian imports were made in small quantities.

Both respondents cite to numerous cases where the Department has rejected Indian WTA imports of HCl in favor of Indian prices from *Chemical Weekly*. Based on the Department's previous rejection of HCl from Indian WTA, respondents propose that Indonesian imports based on WTA must be skewed, as well. TTCA compares the Indonesian HCl price from WTA to both the Indian HCl price from WTA, and the Indian HCl price from *Chemical Weekly*. However, TTCA does not establish a link between the previously rejected Indian WTA price and the Indonesian WTA price. TTCA's Indian Infodrive[49] HCl data are insufficient to conclude that Indonesian imports must be specialty HCl shipped in small containers. Thus, we cannot conclude that the Indonesian price is aberrational merely based on the fact that the Department has previously declined to rely on the Indian WTA data for the same HTS category, and an unsubstantiated assumption that Indonesian imports are identical to the Indian imports the Department previously found inappropriate for use.

We agree that, in the past, with respect to Indian imports, the Department had a preference for the HCl price from *Chemical Weekly*.[50] However, the Department is not using Indian data in this investigation. The Department has selected Indonesia as the primary surrogate country for the current investigation and the Department prefers to value all factors in a single surrogate country to the extent possible.[51] In the preliminary determination, the Department specifically compared the Indonesian HCl value with values obtained from other potential surrogate countries and found that the SV obtained from Indonesian WTA is within the range of those other values and, therefore, is not aberrational. Therefore, for the final determination, we have not revised the SV with respect to HCl.

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[48] *See id*, at 4-5.

[49] *See* TTCA's January 16, 2009 Additional Surrogate Value Information, at Attachment 1 ("TTCA 1/16/09 submission").

[50] *See, e.g., Nails, HSLWs, PVA, Coated Free Sheet Paper.*

[51] *See* 19 CFR 351.408(c)(2); Policy Bulletin No. 04.1, at 4.

Comment 5B: Surrogate Value for Calcium Carbonate

Respondents argue that in the preliminary determination, the Department based the surrogate value for calcium carbonate on Indonesian imports under an incorrect tariff category (2836.50). According to respondents, tariff category 2836.50 covers synthetically-derived calcium carbonate, while tariff category 2530.90 covers the naturally-derived calcium carbonate used by respondents in their citric acid production. Thus, respondents argue, for the final determination the Department should base the surrogate value for calcium carbonate on imports under tariff category 2530.90.

Finally, Yixing Union suggests that the surrogate value used by the Department in the preliminary determination is aberrational. In making this argument, Yixing Union compares the Indonesian value used by the Department to Infodrive India data which reflects Indian import values, rather than Indonesian import values, for a specific type of calcium carbonate (*i.e.*, precipitated calcium carbonate ("PCC")).

Petitioners assert that respondents' arguments for using a different surrogate value for calcium carbonate than that used by the Department in the preliminary determination are wrong on all counts and should be rejected. According to Petitioners, there is nothing on the record to indicate that, for Indonesia, the HTS number for calcium carbonate proposed by respondents includes the material used in the production of the subject merchandise. Further, Petitioners maintain that, even if the Indonesian HTS number favored by respondents includes ground calcium carbonate ("GCC"), it also includes other minerals and grades, and is not representative of the market value of the type of calcium carbonate used by respondents to produce the subject merchandise.

Petitioners also argue that evidence indicates that TTCA uses food-grade GCC. Specifically, Petitioners state that TTCA never specifically identified the grade of GCC it used, and that information provided by TTCA indicates that ground calcium carbonate is produced to meet different grades – including industrial and food-grade standards.[52] According to Petitioners, GCC in its crudest form is simply crushed limestone, but that it must be screened and purified if it is used in compendial applications. Petitioners state that calcium carbonate producers recognize and advertise food-grade GCC as a product and/or standard different from industrial grade product used for building, paints, glass, and other related applications.[53] Petitioners argue that TTCA sold only compendial citric acid during the POI;[54] therefore, it must have used food-grade calcium carbonate. Moreover, Petitioners assert that information TTCA provided indicates that food-grade GCC and PCC would likely have similar market prices, and that GCC and PCC also have the same chemical composition.[55]

[52] (Citing TTCA's January 16, 2009 submission, at Exhibit 2, page 4).

[53] *See id*.

[54] Citing TTCA's Section C Questionnaire Response (September 22, 2008).

[55] Citing TTCA's January 16, 2009 submission, at Exhibit 2, page 4.

Petitioners state that in making the claim that the surrogate value used by the Department in the preliminary determination is aberrational, Yixing Union is comparing mismatched categories. According to Petitioners, the Indonesian HTS number 2836.50.10 is for food-grade calcium carbonate, the type that is required for the production of citric acid, whereas the Indian tariff schedule at 2836 does not have a separate food-grade sub-heading for calcium carbonate. Thus, Petitioners argue, Indian import values for 2836.50 will be distorted by the inclusion of a broad variety of different grades of the product. Petitioners state that the Indian Infodrive data submitted by Yixing Union show that the Indian HTS 2836.50 includes calcium carbonate imports with values as high as 385 and 397 USD/MT. Petitioners maintain that these high values most likely reflect food-grade calcium carbonate similar to that captured under the food-grade specific Indonesian HTS category 2836.50.10.

Finally, Petitioners submit that the evidence on the record suggests that at least one of the respondents - Yixing Union - uses PCC in the production of citric acid, while TTCA uses a pure form of calcium carbonate, the value of which is most appropriately represented by the comparable grade specifically listed in the Indonesian harmonized tariff schedule.

Department's Position: The HTS category 2836.10.50 relied upon by the Department in the preliminary determination is for calcium carbonate, the raw material input reportedly used by respondents in the production of subject merchandise. Respondents argue that this category is for a more refined form of calcium carbonate than that used in the production of subject merchandise. Respondents argue that the U.S. Customs and Border Protection ("CBP") was asked to determine the classification of a calcium carbonate imported in a slurry from Canada, and that in its classification ruling, CBP declined to apply the calcium carbonate provision to the imported merchandise and held it to be classified under HTS 2530.90.[56]

In making its ruling, CBP explained that it assumed

> that the calcium carbonate with the product is naturally derived, that no other chemicals or minerals are added and that no chemical reactions take place when the calcium carbonate is combined with water. When not used as a flux, the applicable subheading for the limestone slurry will be 2530.90.00, which provides for mineral substances not elsewhere specified.[57]

We find this customs ruling to be inapposite to the facts of this case. There is nothing on the record to suggest that respondents use a limestone slurry as an input in the production of subject merchandise. For TTCA, the Department found at verification that purchase "contracts" indicate that TTCA purchased "heavy" calcium carbonate.[58] Nothing in the CBP ruling equated "heavy" calcium carbonate with limestone slurry.

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[56] *See* TTCA's January 16, 2009, submission, at Attachment 2, page 29.

[57] *See id.*

[58] *See* TTCA Verification Report, at 22.

Yixing Union argues that the product it and other Chinese producers of citric acid use is calcite. According to Yixing Union, calcite is classified under chapter 25 of the HTS. TTCA states that the Department verified that the type of calcium carbonate used by TTCA in its production of citric acid is heavy calcium carbonate or "unprocessed crushed calcite." Respondents state that, according to the British Calcium Carbonates Federation ("BCCF"), calcium carbonate is normally found as a white mineral (calcite) which occurs naturally in chalks, limestone and marble, and that commercial calcium carbonate is produced in two ways: either through the extraction and processing of natural ores, or synthetically, through chemical precipitation. Ground calcium carbonate is commonly referred to as GCC. PCC is produced through a recarbonisation process or as a by-product of some bulk chemical processes.[59]

Respondents argue extensively that PCC is a more refined product that needs different, more extensive, processing in its creation than GCC, and is therefore more costly. Respondents claim that they do not use PCC in their production of citric acid. TTCA also states that the Thai HTS contains a specific category for calcite under chapter 2530.90.00.07. Petitioners state that calcite is simply another name for a common type of calcium carbonate, and not a specific grade or type of calcium carbonate and, furthermore, the record fails even to confirm what grade of calcium carbonate TTCA actually used, let alone whether TTCA's and Yixing Union's input is the same product as that covered by the Thai "calcite" subheading in the HTS.

We find respondents' arguments to be unconvincing because there is no record evidence demonstrating that the type of calcium carbonate used by either is calcite. As explained elsewhere, documents examined at verification merely indicate that TTCA purchased "heavy" calcium carbonate, and there is no evidence that Yixing Union used calcite. Respondents have failed to provide any information that defines heavy calcium carbonate as calcite.

As Petitioners correctly note, at the heart of this issue is how to characterize the specific type of calcium carbonate used in the production of citric acid. Petitioners also correctly point out that, in arguing for an alternative HTS number, respondents emphasize the method of production (of calcium carbonate) over grade or quality. Respondents submit that the method of production of calcium carbonate is key to defining calcium carbonate as either GCC or PCC, and that the HTS notes require that GCC is reported under schedule 25, whereas PCC is to be reported under schedule 28. However, respondents have failed to make the connection between GCC and the type of calcium carbonate that they use to produce subject merchandise. There is no evidence on the record that describes the calcium carbonate used by respondents as GCC and, more importantly, no evidence on the record describing the method of production of the calcium carbonate used by respondents, from which we might be able to deduce that the type of calcium carbonate used by respondents is GCC. Record evidence identifies the input as "heavy calcium carbonate." We agree with Petitioners that the Indonesian HTS code 2530.90 touted by respondents is a "catch-all" category that includes a variety of "other" minerals, whereas calcium carbonate – and particularly "food or pharmaceutical grade" – is found in Indonesian HTS code 2836.50.10. Petitioners argue that the specificity of the reference to food or pharmaceutical

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[59] *See* TTCA's January 16, 2009, submission, at Attachment 2, page 3.

grade calcium carbonate supports the use of HTS chapter 28 over the more generic "other" HTS code (*i.e.*, chapter 25). In light of the fact that respondents' input is described as "heavy calcium carbonate," we continue to find that HTS chapter 28, which is specific to calcium carbonate, is the most appropriate category with which to value this input.

Petitioners argue that throughout the proceeding Yixing Union identified the input in question simply as "calcium carbonate,"[60] but that in its case brief, Yixing Union stated that its calcium carbonate input was ground calcium carbonate. According to Petitioners, record evidence suggests otherwise. Specifically, Petitioners claim that at verification, the Department examined Yixing Union's calcium carbonate purchase records, and that Verification Exhibit 12 indicates that Yixing Union purchased something other than what it claimed; however, on this particular point, we do not agree with Petitioners.

The verification exhibit referenced by Petitioners contains a purchase invoice and, attached to the invoice is Yixing Union's specification sheet for calcium carbonate. Petitioners misinterpreted the specification sheet to indicate that Yixing Union purchased a particular product, where the product shown on the associated invoice is not the product claimed by Petitioners. Nor do we agree with Yixing Union, however, regarding the product Yixing Union would have us use as the appropriate surrogate value. There is no record evidence to support claims that Yixing Union uses ground calcite in the production of subject merchandise. We also do not agree with TTCA's assertion that we verified that it used unprocessed crushed calcite. We actually stated that the purchase contracts that we reviewed at verification "indicate that TTCA purchased "heavy" calcium carbonate."[61] We then noted that a company official described heavy calcium carbonate as unprocessed crushed calcite. This was merely a statement by a company official that is unsupported by any record evidence. "Calcite," however, is one form of calcium carbonate; it is not a specific grade or type. For example, aragonite is another form of calcium carbonate.[62] Moreover, the record is not definitive as to what grade of calcium carbonate TTCA actually used, let alone whether TTCA's and Yixing Union's respective inputs are the same product as that covered by the Thai and Indian "calcite" subheadings.

While Petitioners suggest that record evidence indicates that TTCA uses food-grade GCC, we cannot draw the same conclusion. For precisely the same reasons that we cannot agree with respondents' claims regarding their use of unprocessed crushed calcite, we also find that there is insufficient evidence to conclude that respondents use food-grade GCC. However, based on the evidence we have, including our verification findings, we believe that Indonesian HTS category 2836.50, used in the preliminary determination, is appropriate because it is specific to calcium carbonate and record evidence shows that respondents purchased and consumed calcium carbonate.[63] Absent evidence demonstrating the specific grade or type of calcium carbonate used

[60] Citing Yixing Union's Section D QR (September 20, 2008) at Exhibit D-1(a); and Yixing's First Supplemental C and D QR (October 27, 2009) at questions 11-12, Exhibits 7a, 7b.

[61] *See* TTCA Verification Report, at 22.

[62] *See* TTCA's January 16, 2009, submission, at Attachment II, page 3.

[63] *See* TTCA Verification Report, at Exhibit 12; Yixing Union's Verification Report, at Exhibit 12.

by the respondents, we continue to find that the record evidence supports the use of the category that is specific to calcium carbonate.

We note that Yixing Union's suggestion that the Indonesian data are aberrational is fundamentally flawed in that it compares only two data sources. Comparing one high value with a lower value, even significantly lower, is insufficient evidence that one or the other is aberrational. Without any additional reference points, a party can just as easily make the claim that either value is aberrational in comparison to the other, without sufficient evidence to draw a conclusion either way. Consequently, we do not agree that Yixing Union has provided evidence that the surrogate value used is aberrational or otherwise inappropriate.

Comment 5C: Surrogate Value for Coal

TTCA argues that the Indian SV for coal is aberrational. Therefore, according to TTCA, the Department should base the SV for coal on Thai imports as the secondary surrogate country.

Petitioners argue that Indian import data for coal are not aberrational, according to the Department's standard methodology. According to Petitioners, TTCA's proposed benchmarks, which include a comparison of Indian production process to domestic Thai prices, are inappropriate. Petitioners assert that if the Department finds Indian values aberrational, it should use another source for valuation of coal, rather than Thai import data.

Department's position: As we discussed in Comment 2, we have disregarded TTCA's energy inputs, which include coal, for the final determination.[64] Yixing Union does not use coal in the production of citric acid. Therefore, we do not need to address the issue of coal valuation for the final determination.

Comment 5D: Surrogate Value for Water

TTCA argues that the Department should use a water SV based on Thai Metropolitan Waterworks Authority's Annual ("TMWA") report,[65] regardless of the Department's surrogate country selection. TTCA contends that this source is contemporaneous with the POI, reliable, and specific to Chinese producers.

Petitioners argue that TTCA did not submit any evidence that the Indonesian source for water used by the Department in the preliminary determination is aberrational or inappropriate. Petitioners maintain that the Department has a policy of using a single surrogate country and has adjusted the Indonesian water source for contemporaneity. Petitioners maintain that the Department should continue using the Indonesian source for valuing water in the final determination.

[64] *See* TTCA Final Analysis Memorandum, at 2.

[65] *See* TTCA Case Brief, at 37 (citing TTCA's October 6, 2008 surrogate value submission ("TTCA SV submission"), at Exhibit 2, at 8).

Department's position: In the preliminary determination, the Department selected an SV for water based on the Indonesian price obtained from the *UN Report.*[66] We do not agree with TTCA's assertion that this source is inferior to the price obtained from TMWA.[67] The Department has selected Indonesia as the primary surrogate country for the current investigation and the Department has a preference to value all factors in a single surrogate country to the extent possible.[68] Only if reliable data from the primary surrogate country are unavailable, will the Department select alternative surrogate value data from a secondary surrogate country.[69] Since reliable, publicly available data were available from the primary surrogate country, the Department finds that there is no reason to resort to an SV from a secondary surrogate country such as Thailand. As Petitioners noted, we had adjusted the Indonesian SV for water to account for inflation and, thus, the non-contemporaneity of the Indonesian source has been addressed for the final determination.

Although TTCA raised the issue of reliability with respect to the *UN Report* as a secondary source, TTCA did not substantiate the inappropriateness of the data contained in this secondary source. We also note that many sources used by the Department are secondary, including WTA and *Chemical Weekly.*

Finally, TTCA argues that TMWA data are strictly based on industrial users and, thus, more specific to the experience of the PRC producers. As the *UN Report* lists, the Indonesian water rates are based on "hotels, building, banks, and factories,"[70] whereas TMWA data are based on rates for "business, state enterprise, government agency and others."[71] Based on this information we find that the TMWA rate is not any more specific than the Indonesian rate to the respondents' experience. Therefore, for the final determination, we have continued to use the Indonesian water SV from the *UN Report.*

Comment 5E: Surrogate Value for Brokerage and Handling

TTCA states that the Department should use a Thai brokerage and handling SV based on brokerage and handling invoice documentation.[72] TTCA maintains that this source is from a

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[66] *See United Nations Human Development Report 2006: Disconnected: Poverty, Water Supply, and Development in Jakarta Indonesia ("UN Report").*

[67] *See* TTCA SV submission, at Exhibit 2.

[68] *See* 19 CFR 351.408(c)(2); Policy Bulletin No. 04.1, at 4.

[69] *See 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 at Comment 2.

[70] TTCA Case Brief, at 38 (citing Prelim SV Memo, at Attachment 6).

[71] *See* TTCA SV submission, at Exhibit 2.

[72] *See* Petitioners' January 16, 2009, Additional Surrogate Value Information ("Petitioners 1/16/09 submission"), at Attachment 4.

potential surrogate country and is more contemporaneous with the POI than the value used by the Department in the *Preliminary Determination*.

No other party commented on this issue.

Department's position: TTCA argues that the Department should select the Thai brokerage and handling because it is more contemporaneous with the POI. However, we have determined that the three Indian sources for the surrogate value of the brokerage and handling that we used in the *Preliminary Determination* provide a broader base for selecting an average SV for brokerage and handling.[73] Having a broader average is especially preferable for an SV in this instance because neither the Indian nor the Thai sources cover brokerage and handling for citric acid.[74] We note that while the Thai brokerage and handling SV is closer to the POI, none of the sources on the record from either India or Thailand are contemporaneous with the POI. Additionally, all sources need to be adjusted for inflation; we made an appropriate inflation adjustment to the Indian data. Therefore, for the final determination, we have not revised our sources of brokerage and handling and continued using an average brokerage and handling SV based on three Indian sources.

Comment 6: Indonesian Inflator

Petitioners argue that the Department should update its wholesale price index ("WPI") figures for February and March 2008 for the Indonesian WPI.[75] Petitioners also state that the Department should revise Indian WPI for calculating the inflators for Indian source SVs.

TTCA states that it agrees with Petitioners that the Department should rely on full POI data for the SVs that need inflation adjustment. TTCA, however, argues that the Department should deflate the truck rate and marine insurance. Furthermore, according to TTCA, if the Department uses a Thai source for water, it will not need any inflation because it is contemporaneous with the POI. Finally, TTCA argues that the Department should not inflate surrogate financial ratios, as was proposed by Petitioners.

Department's position: Because February and March 2008 WPI data became available for the final determination,[76] we have revised both Indian and Indonesian WPI data for the POI and non-contemporaneous SVs. We have also deflated the trucking rate and marine insurance, rather than inflating them.[77] With respect to the water inflation, as we discussed in Comment 5D, we did not

[73] *See* Prelim SV Memo, at Attachment 1.

[74] Thai brokerage and handling is for retail carrier bags, while Indian brokerage and handling is for mushrooms, lined paper, and hot-rolled carbon steel flat products. *See id*.

[75] Petitioners Case Brief, at 36 (citing Prelim SV Memo, at Attachment 1).

[76] *See* Final SV Memo, at 2 and Attachment III.

[77] *See* Final SV Memo, at 2 and Attachments I and III.

change the source of SV for water and continued using the Indonesian inflator for the water SV. Finally, we agree with TTCA that the Department does not inflate surrogate financial ratios.

Comment 7: Valuation of High Protein Corn By-Product

Petitioners argue that if the Department permits the respondent-claimed offset for sales of corn feed produced by Yixing Union and TTCA, it should note that the respondents' by-product is most similar to distillers' dried grains ("DDG") and should be valued accordingly. Specifically, Petitioners maintain that neither respondent's corn feed by-product can be described as high protein corn feed, and application of an SV that reflects a high-protein product is inappropriate. Petitioners assert that the Department should use Indonesian HTS 2303.30.00, rather than 2303.10.90, to value the corn feed by-product. Petitioners argue that the data used by the Department to value the corn feed by-product in the preliminary determination are aberrational. Finally, Petitioners argue that data collected at verification further support the use of Indonesian HTS 2303.30.00 to value this by-product.

TTCA argues that the tariff categories are defined by production stage rather than protein levels and moisture content. According to TTCA, its production includes the production of starch residue, which supports the use of tariff category 2303.30. TTCA further argues that its high protein feedstuff is not DDG because it is produced as a result of the liquefaction stage of manufacturing, which takes place before the yeast fermentation process, the stage at which DDG would be produced as a by-product.[78] According to TTCA, therefore, high-protein feedstuff cannot be considered DDG. Finally, TTCA argues that Indonesian import values for 2303.10 are not aberrational.

Yixing Union argues that the corn feed by-product was properly valued in the preliminary determination. According to Yixing Union, the Department's selection of the SV for corn feed does not require the presence of high-protein in order for the *Preliminary Determination* value to be the appropriate category.

Department's position: In the preliminary determination, the Department used Indonesian HTS category 2303.10.90 to value both respondents' high-protein corn feed by-product.[79] This HTS category is described as "residues of starch manufacture and similar residues." TTCA placed on the record *World Customs Organization Harmonized System Explanatory Notes* further describing category 2303.10 as residues "(from maize (corn), rice, potatoes, etc.) consist{ing} largely of fibrous and protein substances usually presented in the form of pellets or meal.…"[80] Conversely, in the preliminary determination, the Department used Indonesian HTS category 2303.30.00 to value Yixing Union's low-protein corn feed or mycelium feed by-product.[81] This

[78] TTCA explains that DDG is a co-product of ethanol production after removing ethyl alcohol from the yeast fermentation.

[79] *See* Prelim SV Memo, at Attachment 1.

[80] *See* TTCA January 26, 2009, SV Rebuttal Submission ("TTCA 1/26/09 submission"), at Attachment 1.

[81] *See* Prelim SV Memo, at Attachment 1.

HTS category is described as "brewing or distilling dregs and waste… resulting from the distillation of spirits from grain, seed, potatoes, etc..."[82]

Petitioners attempt to characterize respondents' high-protein by-product as DDG in order to support their argument that the respondents' claimed high-protein by-product input is actually a low-protein by-product that should be valued by the HTS number 2303.30.00. However, there is no evidence on the record that demonstrates any link between the Indonesian HTS categories and either high- or low-protein by-products. Accordingly, for the *Preliminary Determination*, the Department assigned the "residues of starch manufacture" category to the high protein by-products because they were the best match to respondents' high-protein by-products generated during the liquefaction stage of production. Petitioners' described production processes, which would support the description of DDG in the dry milling process, do not to match respondents' experience. DDGs are described as "coproducts produced from the fermentation of grains for alcohol"[83] and, thus, do not correspond to the Respondents' production process at the liquefaction stage.

Petitioners further compare respondents' by-product protein percentage to that of "high protein corn gluten meal," as an attempt to illustrate that high-protein gluten meals are significantly higher than the protein levels of respondents' respective by-products. However, there is no industry benchmark for high-protein corn by-products on the record and Petitioners do not explain their rationale of selecting the "crude protein corn gluten meal" at 60.20 percent protein level from among a wide range of percentages of the high protein data column in *Archer Daniels Midland, Feed Ingredients Catalog* as a point of illustration.[84] Even if there were industry standards for high- and low-protein level products, we find it misleading to compare respondents' experience with protein levels to the industry's high-protein levels and then rely on that comparison to select the appropriate HTS category because Indonesian HTS categories do not contain any reference to protein levels. Moreover, Respondents' labeling of their by-products as high and low protein is a consequence of the fact that the corn feed generated at one stage of production has a higher protein level than the corn feed produced at a later stage,[85] *i.e.,* TTCA's by-product produced at the liquefaction stage is about 20 percent, and the by-product produced at the fermentation stage is about 12 percent.[86]

The description of the HTS categories is informative in determining the appropriate value for the by-products. We find that respondents' high protein corn by-product is similar to the HTS category 2303.10, which is defined as "residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.) consist largely of fibrous protein substances usually presented

[82] *See* TTCA January 26, 2009, submission, at Attachment 1. (The Department preliminarily denied TTCA an offset for low-protein corn feed.)

[83] *See id.*

[84] *See* Petitioners January 16, 2009, SV submission, at Attachment 2, ADM, Feed Ingredients Catalog (March 2008).

[85] *See* TTCA Verification Report, at 10.

[86] *See* TTCA Verification Report, at 10 and Yixing Union October 21, 2008 SQR, at Exhibit 15.

in the form of pellets or meal but occasionally as cake…"[87] Based on the Department's observations at verification and the description of the high protein corn by-product as "corn feed generated from smashing and liquefying,"[88] we find that HTS category 2303.10 is the most appropriate category with which to value this by-product. For the low-protein corn feed by-product, generated at the fermentation stage, we find that its description as "the residue after fermentation and filtering,"[89] best matches the product described by HTS category 2303.30, which is defined as "brewing or distilling dregs and waste comprise in particular . . . (4) dregs resulting from the distillation of spirits from grain, seeds, potatoes, etc…"[90]

Further, we disagree with Petitioners that the SV applied to the high-protein by-product is necessarily aberrational because it is higher than the SV of the corn that is used as the input. First, the high-protein corn by-product is generated as a result of the liquefaction process, which includes not only corn as an input, but corn enzyme, sodium carbonate, sodium hydroxide, and steam. Therefore, the SV for the by-product generated as a result of this process carries these inputs and the overhead costs associated with processing them. Second, we agree with TTCA that the high protein corn by-product has a higher level of protein than the corn input and, therefore, could result in a higher price for the former.[91] Third, Petitioners' reliance on *Nails* and *Garment Hangers*[92] is not relevant to the citric acid investigation because both cases deal with metal scrap generated in the production of nails and garment hangers, both of which are industries that are not comparable to the industry covered by the instant investigation.[93] Specifically, unlike these two steel-related cases where the record supported a conclusion that the scrap products generated should yield a lower value than the inputs used to generate that scrap, a high protein by-product in this industry yields a higher value than the corn input and, thus, is not comparable to the scrap generated in *Nails* and *Garment Hangers.* As we stated above, it is misleading to compare high protein corn by-product to corn input, rather than comparing it to, for example, enzyme input which far exceeds the value of the high protein corn by-product. As we stated above, the comparison should be made to all inputs involved in generating this by-product, which would yield a more "reasonable result" than the one concluded by Petitioners as they cite to *Nails* and *Garment Hangers.* Fourth, we do not agree with Petitioners' argument that the mere fact that imports are predominantly from one country provides a sufficient basis for

[87] *See Explanatory Notes of World Customs Organization Harmonized System* submitted in TTCA January 26, 2009, submission, at Attachment 1.

[88] *See* Yixing Union DQR, at Exhibit D-2.

[89] *See id.*

[90] *See id.*

[91] *See* TTCA Verification Report, at 10.

[92] *See Nails*, at Comment 12 and *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008), and accompanying Issues and Decision Memorandum at Comment 7 ("*Garment Hangers*").

[93] In *Nails*, the generated by-product is "shavings" that was appropriately valued at a lower price than the wire rods. In *Garment Hangers*, the by-product was steel scrap and the input was wire rod.

finding something to be aberrational.

Finally, Petitioners' comparison of the Indonesian SV to the non-market economy respondents' sales prices for the high-protein by-product is not an appropriate benchmark by which to measure the SV. Based on Section 773(c)(1) of the Act, the valuation of the factors of production "shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." Hence, for precisely the same reason that we do not accept factor values based on prices on a transaction between two non-market economy entities, we do not consider non-market economy prices as a reliable value against which to benchmark the SV.[94] Therefore, for the final determination, the Department has not revised the SV for the respondents' high protein corn by-products.

Comment 8: Additional Expenses for Sales of Corn Feed By-Product Offset

Petitioners contend that the Department's policy is that where a by-product requires further processing before it is commercially viable, the valuation of the by-product must be adjusted for the additional costs incurred.[95] They argue that in the case of the corn feed by-product, at least two additional steps are required. First, Petitioners contend that the Department should disallow the offset because respondents failed to provide the necessary information needed to correctly value the additional expenses – such as drying and bagging – that are required to make the corn feed by-product commercially viable. Next, Petitioners argue that if the Department grants the by-product offsets, it must reduce the amount of the offset to account for the cost of drying and bagging the product. They further argue that the burden of proof lies with respondents to: (i) demonstrate that the generated by-product is sold or re-used in the production of the subject merchandise; and (ii) provide all the information necessary for the Department to incorporate such offsets into the margin calculation.[96]

Additionally, Petitioners argue that if the Department grants Yixing Union an offset for the sale of corn feed by-product, it should adjust that offset to eliminate the double-counting that results from the Department granting Yixing Union an offset for steam, because a certain (unknown) percentage of Yixing Union's steam is produced using the corn feed by-product. Petitioners argue that Yixing Union has not placed any evidence on the record detailing how much of the by-product is diverted for the production of energy (*i.e.*, electricity and steam); therefore, as discussed with regard to the additional expenses incurred to sell the corn feed by-product, the Department should disallow this offset.

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[94] *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27366 (May 19, 1997) ("*Final Rule*"), ("Use of an NME price as a benchmark is inappropriate because it is the unreliability of NME prices that drives us to use the special NME methodology in the first place.")

[95] *See Magnesium Corp. of Amer. v. United States*, 166 F. 3d. 1364 (Fed. Cir. 1999) ("*Magcorp*"); *see also Guangdong Chemicals Import & Export Corporation v. United States*, 460 F.Supp.2d 1365 (CIT Sept. 18, 2006) ("*Guangdong Chem. 2006*).

[96] *See Tires* at Comment 34.

TTCA contends that it reported all of its FOPs for citric acid, including the energy to dry its corn feed by-product as well as the packaging used to sell it, and that this information was fully verified by the Department.[97] TTCA argues that it does not produce non-subject merchandise; therefore, factors of production for all of TTCA's production, company-wide, have been reported. Finally, TTCA explains that for its packing materials for corn feed by-product sales, TTCA specifically reported separate factors on its FOP database for the woven sacks and thread used in packing the corn feed for sale.[98] TTCA argues that there is no basis for the Department to adjust or otherwise limit the full amount of the offset for the revenue earned by TTCA on its corn feed by-product sales based on the Department's verification and the full reporting of all drying and packaging costs.

Yixing Union argues that Petitioners' allegations regarding the offset for the high-protein corn feed by-product reflect Petitioners' objections to the Department's determination that this issue was fully and successfully verified. Yixing Union argues that drying is an energy cost and that all energy costs incurred by Yixing Union during the POI to produce all products were completely reported and verified and that the cost of the bagging has already been taken into consideration in the valuation of this by-product.

Department's Position: Section 773(c) of the Act is silent as to the treatment of by-products. However, the Department has interpreted the Act to allow the granting of an offset to the costs of production for a by-product generated in the manufacturing process of the subject merchandise that is either sold for revenue or has commercial value and is reintroduced into production.[99] Further, we also agree with Petitioners that, as discussed in *Tires*[100] the respondents have the burden to: (i) demonstrate that the generated by-product is sold or re-used in the production of the subject merchandise; and (ii) provide all the information necessary for the Department to incorporate such offsets into the margin calculation. However, the offset referred to is the by-product offset itself, and not an adjustment to the offset, as urged by Petitioners. In this case, we find that both TTCA and Yixing Union have met the burdens necessary for demonstrating their eligibility for the corn feed by-product offsets.

We find that the cases cited by Petitioners actually support the Department's practice to apply a by-product offset – where otherwise warranted – without reducing the offset to account for costs associated with processing the by-product to make it commercially viable when the offset is applied, as we have done in the instant investigation, as an offset to normal value. The Courts have held that applying the offset to normal value "is a reasonable alternative means of accounting for additional overhead, SG&A and profit expenses associated with {respondent's} sale of by-products."[101] The Court of International Trade rejected the argument that by-product

[97] *See* TTCA Verification Report at 19, 24-25, and Exhibit 14.

[98] *See, e.g.*, TTCA SQR (October 21, 2008) at Exhibit S2-22.

[99] *See Guangdong Chem.2006,* 460 F. Supp, at 1373; *HFHTs September 6, 2005* IDM at Comment 8.E.; *Aspirin May 25, 2000,* IDM at Comment 13; and *Rebar-PRC June 22, 2001,* IDM at Comment 5.C.

[100] *See Tires,* at Comment 34, *see also Mushrooms* at 42037.

[101] *See Guangdong Chem. 2006*, 460 F. Supp 2d at 1376.

processing costs should be deducted from the by-product offset, stating that the Department's decision to apply the by-product offset to normal value is "a reasonable means of 'accounting{ing} for . . . costs related to by-product processing. . . ."[102] Accordingly, for the final margin calculation we have granted both respondents' by-product claimed offsets for their sales of the high-protein corn feed by-products without further adjustments.

With respect to Petitioners' argument that we should adjust any offset for the corn feed by-product to avoid double-counting as a result of granting an offset for steam, Yixing Union has not claimed an offset for steam, and we are not granting Yixing Union a by-product offset for steam; therefore, this issue is moot.

ISSUES SPECIFIC TO TTCA

Comment 9: Date of Sale: Contract Date Versus Invoice Date

According to TTCA, the written sales contracts that it enters into with its U.S. customers establish and fix the material terms of the sale, and are considered final and definitive between the parties. Therefore, TTCA argues, in accordance with longstanding Department precedent, the dates of these sales contracts, and not the dates of the individual commercial invoices issued on each shipment, should constitute date of sale for purposes of the Department's analysis.

TTCA argues that, at verification, it demonstrated that the prices of individual shipments made pursuant to a given sales contract were unchanged throughout the duration of the contract. TTCA points to several examples of invoices for individual shipments made pursuant to long-term sales contracts that, according to TTCA, demonstrate that the material terms of sale, including the price and quantity, were fixed between the parties in the written long-term contract. TTCA submits that TTCA and its customers considered the contractual terms of sale to be final and definitive, and that the price of all subsequent shipments under the long-term contract were fixed and remained unchanged throughout the life of the contract.[103] Further, where the contract date preceded the POI, TTCA argues that shipments pursuant to such contracts that were invoiced during the POI should not be considered as having sale dates within the POI.

TTCA also submits that, where the prices of certain individual shipments did change from the stated price of the related sales contract, it demonstrated that the price changes were strictly in accordance with the terms of the original contract, and were based on outside, objective factors beyond the control of the parties to the contract. According to TTCA, the TTCA Verification Report confirms (at 8-9) that in most instances the change in price in a later individual shipment occurred pursuant to the exchange rate provision that is included in the terms of the contract.

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[102] *See Guangdong Chem. 2006*, 460 F. Supp, at 1376 (quoting *Magnesium Corp. of America v. United States*, 20 CIT 1092, 1107-08, 938 F. Supp 885, 900 (1996), affirmed by *Magcorp,* 166 F. 3d. 1364).

[103] TTCA cites Memorandum to Wendy J. Frankel, Director, Office 8, Antidumping and Countervailing Duty Operations: Verification of the Sales and Factors Response of TTCA Co. Ltd. (aka Shandong TTCA Biochemistry Co. Ltd.) in the Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China (February 13, 2009) ("TTCA Verification Report") at Exhibit 13.

TTCA claims that, as agreed to between the parties at the time of the contract, each party was to bear the risk of fluctuations in the exchange rate, which are outside the parties' control, depending upon the degree of fluctuation, and based on a specific formula for adjustments to the price based on the changes in the Chinese yuan-U.S. dollar exchange rate.

TTCA submits that the Department has expressly held that price adjustments made pursuant to such specific formulas, based on outside factors beyond the parties' control and agreed to in a sales contract, do not change the date of sale to a later date, because the parties do not retain any discretion to set prices after the date of contract.[104]

Petitioners argue that the Department's regulations establish the presumptive rule that date of invoice will be used as the date of sale, and that the burden of proof for using an alternative date rests with the respondent. According to Petitioners, the record evidence does not support TTCA's assertion that sales terms between TTCA and its customers are set in the contract, and that using contract date as date of sale in the instant investigation would be contrary to the Department's longstanding practice and policy.

Department's Position: In determining the appropriate date of sale, pursuant to 19 CFR 351.401(i), the Department normally will use the date of invoice. However, the Department may use a different date if the Department determines "that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."[105] In the *Preliminary Determination* we found that there were often price variances between the prices in the contract and those contained in the invoice related to that contract.

> {The} price variances are unknown when the sales contract is signed, and while the adjustment for these aforementioned reasons may be laid out in the sales contract, the exact price a customer will be charged for merchandise is not known until the time of invoice. Furthermore, the quantity shipped with each invoice does not appear to be determined when the sales contract is signed. Quantity and value are both material terms of sale. We do not consider that TTCA finalized these sales terms with the signing of the sales contract.[106]

TTCA argues that for the final determination, the Department should use the database that includes sales with a contract date during the POI rather than the database used for the

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[104] TTCA cites *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada*, 64 FR 56738 (October 21, 1999) ("*Live Cattle from Canada*"); *Final Determination of Sales at Less Than Fair Value: Emulsion Stryrene-Butadiene Rubber from Mexico*, 64 FR 14972, 14879 (March 29, 1999) ("*Rubber from Mexico*"); *Final Determination of Sales at Less Than Fair Value: Offshore Platform Jackets and Piles from Japan*, 51 FR 11788, 11793 (April 7, 1986) ("*Jackets and Piles from Japan*").

[105] *See* 19 CFR 351.401(i).

[106] *See* Memorandum to the File: Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of Preliminary Determination Margin Calculation for TTCA Co., Ltd. (a.k.a. Shandong TTCA Biochemistry Co., Ltd.).

preliminary determination, which contained sales with an invoice date during the POI because, TTCA claims, for its U.S. sales, the material terms of sale are established in the contract.

In support of its argument, TTCA states that the Department has explained that where it determines that "the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale."[107] According to TTCA, the Department has consistently applied this regulation to determine that the contract date is the appropriate date of sale where the terms of the contract finally and definitively establish the material terms of sale between the parties.[108]

We find that the cases cited by TTCA, where the Department used a date different than the invoice date as date of sale, differ factually from the instant investigation. In those cases, use of contract date as date of sale was warranted by the facts of the case in that the contract date better reflected the date on which the parties definitively agreed to the material terms of sale. For example, in *Shrimp from Ecuador*, the Department explained that the "per-unit prices and shipment quantities of transactions shipped pursuant to" a long-term agreement "were consistent with the terms of the agreement, except for the shipments that included the reported billing adjustments."[109] Similarly, in *Sulfanilic Acid from Portugal*, the Department declared that while "there were ce rtain subsequent modifications to the original sales contract . . . the parties acted in a manner consistent with a 'meeting of the minds' to be bound by the terms of the original contract and only modified certain aspects of the agreement when anticipated production quantities could not be met."[110] As discussed in detail below, the facts of the instant investigation do not comport with those of the cited cases, in that we found TTCA's contracts to be subject to renegotiation for a variety of reasons.

In the preamble to the Department's regulations, as noted by TTCA, the Department explained that, where the Department is satisfied that the material terms of sale are established on a date other than the date of invoice, the Department will use the alternative date as the date of sale. The Department further explained that, while a respondent is "free to argue that the Department should use some date other than the date of invoice . . . the respondent must submit information that supports the use of a different date."[111] Even insofar as the Department will consider use of an alternative date, in such situations, the terms of sale must be firmly established and not merely

[107] TTCA cites *Final Rule*, 62 FR 27296, 27349.

[108] TTCA cites *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 53621 (September 9, 2005); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador*, 69 FR 76913 (December 23, 2004) ("*Shrimp from Ecuador*"); and *Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal*, 67 FR 60219 (September 25, 2002) ("*Sulfanilic Acid from Portugal*").

[109] *See Shrimp from Ecuador*, 69 FR 76913 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 24.

[110] *See Sulfanilic Acid from Portugal*, 67 FR 60219 (September 25, 2002) and accompanying Issues and Decision Memorandum at Comment 1.

[111] *See Final Rule*, 62 FR at 27349.

proposed, and that a "preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly 'established' in the minds of the buyer and seller."[112] Given the evidence of renegotiation and revisions in the instant investigation, we find that the invoice date is the date on which sales terms are established.

In the cases cited by TTCA, the Department found that the seller did not retain any discretion to set the price after the contract date or, in the case of *Live Cattle from Canada*, after the "lock-in date," where prices were "locked in" pursuant to a futures contract. In the instant investigation, that is not the case. Notwithstanding its claims that we should use contract date as the date of sale, TTCA has failed to submit information supporting the use of contract date as the date upon which TTCA and its customers establish the material terms of sale. On the contrary, the Department's verification and the evidence on the record confirm the Department's preliminary determination that invoice date is the appropriate date of sale for TTCA.[113] We also note that sales terms are subject to change for reasons other than exchange rate fluctuations.[114]

For instance, at verification, the Department examined a sales contract that was marked "Revised." The Department's verification report expressly stated that "company officials explained that there were revisions based on further negotiations, but that no further revisions occurred during the POI."[115] According to TTCA, this is evidence that the negotiations that led to the revised sales contract occurred before the POI, and the contract, as revised, was fixed and final between the parties prior to the POI, and was not later renegotiated or amended. Therefore, TTCA claims, this "pre-POI contract . . . finally and definitively determined the material terms of the sale."[116] We regard this as evidence that sales terms are subject to change based on renegotiation by the parties. The fact that in this particular instance the renegotiation leading to changes in the sales terms occurred prior to the POI is of no consequence. The relevant fact is that the contractual sales terms are subject to renegotiation and change. The Courts have held that "{t}he question is could the terms be changed, or were they fixed at the time of the initial order," and where there is evidence "that the terms could be changed and were changed in some instances," there is "no reason for Commerce to abandon its presumption" of the use of invoice date as the appropriate date of sale.[117] Because the evidence in *TPC v. United States* demonstrated that sales terms could be changed, the Court reversed the Department's use of contract date and directed the Department, on remand, "to use invoice date for date of sale

[112] *See id*.

[113] *See* TTCA Verification Report at 9 and Exhibit 13 (showing that sales terms frequently change after the original contract date for a variety of reasons).

[114] *See* TTCA Verification Report at Exhibit 13.

[115] *See* TTCA Verification Report at 9 and Exhibit 13.

[116] *See* TTCA Case Brief at 42, Note 11.

[117] *See Thai Pineapple Canning Industry Corp., Ltd., and Mitsubishi International Corp. v. United States*, Slip Op. 00-17 (February 10, 2000) ("*TPC v. United States*") at 6.

purposes."[118] Likewise, the record evidence in the instant investigation demonstrates that sales terms can, and indeed, did change, for a variety of reasons, the details of which cannot be discussed here due to their proprietary nature. For this and an expanded Department Position, s*ee* TTCA Final Analysis Memorandum.[119]

TTCA also maintains that "if the customer and TTCA decided to renegotiate any material terms of the contract, such as the price or the quantity, the results of those renegotiations were reflected in a new sales contract, signed by both parties."[120] According to TTCA, this supports the notion that "the sales contract was always considered the definitive agreement between TTCA and its customer on the material terms of sale," and that "the material terms of sale virtually never changed between the time of the final sales contract and the dates of the invoices issued on subsequent shipments pursuant to that contract."[121] However, in similar circumstances in prior cases, the Department has adhered to the principle that invoice date is the appropriate date upon which the material terms of sale are finally set. For instance, in a previous case, a company reported contract date as its date of sale, but also indicated that certain terms of sale can and do change up to the invoice date. "It also indicated that if the terms of sale are changed for a given transaction, the original sales contract is cancelled and a new contract is created."[122] In that case, the Department "determined that invoice date is the proper date of sale."[123] Similarly, at verification, we observed direct evidence that when TTCA changes the material terms of sale, it "revises" the contract.[124] Moreover, there are sometimes multiple revisions to the same original contract.[125] While TTCA claims that the material terms of sale are always finally determined by the contract, we find that the possibility of multiple revisions to a contract leads to the conclusion that the date of invoice is the only reliable date for determining the date on which sales terms are finally set.

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[118] *See Id*.

[119] *See* Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Final Determination Margin Calculation for TTCA Co., Ltd., (a.k.a. Shandong TTCA Biochemistry Co., Ltd.), dated April 6, 2009 ("TTCA Final Analysis Memorandum"),

[120] TTCA Case Brief at 43, citing TTCA Verification Report at Exhibit 11, pages 1 -26 (renegotiation of sales terms, quantity and price are subsequently reflected in revised sales contracts signed by both parties).

[121] TTCA Case Brief at 43.

[122] *See Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination to Revoke Order in Part: Canned Pineapple Fruit From Thailand*, 67 FR 51171, 51172 (August 7, 2002), (unchanged in final results).

[123] *See id.*

[124] *See* TTCA Verification Report at Exhibit 13.

[125] *See id.*

Comment 10: Adjustment of TTCA's Labor Factors

TTCA states that the Department verified that a significant amount of the labor, reported by TTCA, related to salaries for "administrative" or "manager" personnel, such as employees working in an administrative function in the headquarters finance department.[126] TTCA maintains that in order to reduce its over-reported indirect labor hours, the Department should derive the percentage of over-reported labor, based on the December 2007 hours evident from the verification, and apply that percentage to TTCA's total indirect labor hours.

No other party commented on this issue.

Department's position: We agree with TTCA that it over-reported its indirect labor hours.[127] Furthermore, we found at verification that TTCA also failed to report certain overtime hours. Specifically, in reviewing TTCA's daily attendance sheets, we noted that TTCA had not included the overtime on the worksheet on which it calculated its reported labor hours.[128] Company officials explained that overtime is listed on the daily attendance sheets by number of shifts, and that a shift represents eight hours.[129] We adjusted TTCA's labor for both the over-reported indirect labor and unreported overtime. We determined the net adjustment to TTCA's reported labor rate, projected for the POI based on TTCA's December 2007 labor hours.[130] For the final determination we have adjusted TTCA's labor to account for the over-reported "administrative" labor as well as unreported overtime.

Comment 11A: Correction of Clerical Error in Application of Billing Adjustment

TTCA argues that the Department erroneously deducted TTCA's billing adjustment from the U.S. price calculation. According to TTCA, billing adjustments represent additional charges to the customer and, thus, should be adjusted to increase the U.S. price.

No other party commented on this issue.

Department's position: We agree with TTCA that we inadvertently deducted TTCA's billing adjustments from our U.S. price calculation. The billing adjustments in question reflect TTCA's reimbursements by the U.S. customers for incurred losses as a result of delayed payments.[131]

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[126] TTCA Case Brief, at 45 (citing TTCA Verification Report, at 25 and Exhibit 18, and TTCA 10/21/08 SQR, at Exhibit S2-22.

[127] We also derived a rate for POI overtime hours based on TTCA's unreported overtime hours for December 2007.

[128] *See* TTCA Verification Report, at 25 and Exhibit 18.

[129] *See id.*

[130] *See* TTCA Final Analysis Memorandum, at 1-2 and Exhibit 1.

[131] *See* TTCA 10/21/08 SQR, at 2-3 and Exhibit S2-22.

Therefore, for the final determination, we have added TTCA's billing adjustments to the net U.S. price calculation.[132]

Comment 11B: Correction of Clerical Error in the Surrogate Value of Sodium Lignosulphonate

TTCA argues that the Department inadvertently excluded imports from certain countries that should have been included in the calculation of the Indonesian SV of sodium lignosulphonate.[133] TTCA further argues that the Department included imports from China, Indonesia, and South Korea in the SV of sodium lignosulphonate. TTCA states that the Department should correct this clerical error.

Petitioners agree that the Department inadvertently excluded imports from countries that should have been included. However, Petitioners point out that, with the exception of Hong Kong, all these countries contained zero values. Petitioners further argue that the Department entirely omitted the imports from the United States in its calculation of Indonesian SV for sodium lignosulphonate. Petitioners state that for the final determination, the Department should include the imports from the United States in its calculation of the SV for sodium lignosulphonate.

Department's position: We agree with Petitioners and TTCA that we inadvertently included countries that should have been excluded (*i.e.*, imports from non-market economy or unspecified countries) and excluded imports from market economy countries that should have been included in the calculation of the SV for sodium lignosulphonate.[134] Specifically, in the *Preliminary Determination* we excluded imports from French Polynesia, Hong Kong, Ireland, Spain, and the United States, among which French Polynesia, Ireland, and Spain had no imports to Indonesia. Further, we inadvertently included imports from Indonesia, South Korea, Thailand, and Vietnam, among which only South Korea had actual imports during the POI. In order to correct these inadvertent errors, we have revised our calculation of the SV for sodium lignosulphonate to include imports from the United States and Hong Kong and exclude imports from South Korea.[135]

Comment 12: Offset for Steam By-Product

Petitioners argue that the Department should not grant an offset for TTCA's steam by-product because the steam by-product is already part of the corn feed by-product offset granted by the Department. Petitioners further contend that steam and electricity are produced at the same

[132] *See* TTCA Final Analysis Memorandum, at 2.

[133] TTCA Case Brief, at 50 (citing Prelim SV Memo, at Attachment 2).

[134] *See id.*

[135] *See* Final SV Memo, at 3 and Attachments I and IV. We excluded South Korea because we have reason to believe or suspect that prices of inputs from South Korea have been subsidized.

department and, thus, are generated from the same input.[136] According to Petitioners, granting an offset for the steam by-product would result in double-counting the offset.

TTCA argues that it does not use corn feed by-product to generate either steam or electricity. According to TTCA, it generates some electricity by consuming waste water.[137] However, the waste water generated electricity is generated by different departments from the one used to produce electricity through other means. Moreover, TTCA states that it consumes coal and water to produce the steam used in the production of electricity.[138] Therefore, according to TTCA, there is no issue of double-counting TTCA's by-product offset.

Department's position: We agree with TTCA that the steam by-product is generated in TTCA's production of electricity.[139] As we discussed in Comment 2, we have disregarded TTCA's energy inputs, which include the steam by-product, for the final determination.[140] Therefore, we do not need to address the issue of the steam by-product offset for the final determination.

Comment 13: Use of TTCA's Market-Economy Freight Costs

TTCA argues that the Department should use TTCA's reported market-economy ("ME") freight costs because it uses ME shipping companies and pays in United States dollars ("USD").[141] TTCA maintains that its use of Chinese agents to process payments is immaterial.

Petitioners argue that TTCA has not provided any evidence demonstrating that it purchased its ocean freight from a ME supplier. Petitioners maintain that TTCA's Chinese agents did not provide invoices from their ME suppliers. Petitioners conclude that the Department should continue to use a SV for TTCA's ocean freight.

Department's position: In the preliminary determination, the Department used an SV to value TTCA's ocean freight because of insufficient evidence that TTCA purchased its ocean freight from an ME supplier and paid in ME currency.[142] At verification, TTCA's provided its Chinese agent's invoices for ocean freight paid in USD.[143] However, TTCA was unable to obtain the

[136] Citing TTCA's 10/21/08 SQR, at 17-18, and TTCA DQR, at 14.

[137] Citing TTCA's 10/21/08 SQR, at 17, and TTCA's October 27, 2008, Supplemental Questionnaire Response ("TTCA 10/27/08 SQR"), at 4.

[138] Citing TTCA Verification Report, dated February 13, 2009, at 24.

[139] *See id.*, at 24, 26-27.

[140] *See* TTCA Final Analysis Memorandum, at 2.

[141] Citing TTCA Verification Report, at 16, 18, and Exhibit 12.

[142] *See* TTCA Prelim Analysis Memorandum, at 4.

[143] *See* TTCA Verification Report, at Exhibit 12.

international shippers' invoices to its agents.[144] The Department's regulations require that the respondent demonstrate that it purchased the factor from an ME supplier and paid in an ME currency. TTCA demonstrated the latter, *i.e.*, that it paid for freight in a market economy currency, but we do not agree that it demonstrated the former, *i.e.*, that it purchased the freight from a market economy supplier.[145] Specifically, invoices between TTCA and its NME agent are not sufficient proof for purchase from an ME supplier, as they demonstrate that the purchase was in fact from an NME supplier who in turn purchased the freight from a market economy supplier. In the past, the Department used SVs for ocean freight charges instead of using the respondent-reported ME purchase prices because respondents did not provide documentation linking the prices charged by the ME carrier and the prices paid by respondents for international freight (*i.e.*, the record in all of those cases only reflected payment documentation between the PRC entities).[146] Consistent with this practice, because TTCA was unable to demonstrate a direct link between the USD values it paid and the charges from the ME supplier to the freight agent with whom TTCA contracted for its international freight, we have continued to apply a surrogate value to TTCA's ocean freight for purposes of this final determination.

Comment 14: Adjustment of the Surrogate Value for Hydrochloric Acid/Hydrogen Chloride

TTCA states that the Department should adjust the Indonesian SV of HCl to reflect the average concentration level of TTCA's HCl factor. Specifically, TTCA maintains that its HCl average purity level is 22.15 percent, while, according to TTCA, the surrogate value is based on a full 100 percent concentration level.[147] According to TTCA, it is the Department's long-standing practice to adjust SVs for chemical inputs to account for the discrepancy in the concentration levels between the factor used by the respondent and the level reflected for the SV.[148]

Petitioners argue that TTCA did not substantiate its claim regarding different purity levels in HCl, but rather requests that the Department make an adjustment for purity level based purely on unfounded assumptions. First, according to Petitioners, regardless of which country the

[144] *See id*, at 18.

[145] *See id*, at Exhibit 12.

[146] *See, e.g., Final Determination of Sales at Less Than Fair Value: Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873, 19874 (April 13, 2000); *Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000), and accompanying Issues and Decision Memorandum at Comment 8; *Pure Magnesium from the People's Republic of China: Final Results of 2004-2005 Antidumping Duty Administrative Review*, 71 FR 61019 (October 17, 2006), and accompanying Issues and Decision Memorandum at Comment 6*; and Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537 (August 14, 2000), and accompanying Issues and Decision Memorandum at Comment 8.

[147] Citing TTCA Verification Report, at 22-23.

[148] Citing *e.g., HSLWs*, at Comment 4; *Polyvinyl Alcohol from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 71 FR 27991 (May 15, 2006), and accompanying Issues and Decision Memorandum, at Comment 4 ("*PVA 2006*")).

Department relies on for the SV: 1) HCl concentration levels do not generally exceed 40 percent; 2) HCl with a 100 percent concentration level does not exist; and 3) there is no record evidence that the imports of either Indonesia or Thailand report hydrochloric acid at 100 percent concentration levels. Petitioners maintain that, in fact, there is no such thing as 100 percent hydrochloric acid because, by definition, hydrochloric acid is hydrogen chloride in an aqueous solution *i.e.*, a gas at room temperature.

Further, citing TTCA's Verification Exhibit 13, Petitioners, argue that the input TTCA is using is hydrochloric acid, not hydrogen chloride, and that the Indonesian HTS category used for valuation in the *Preliminary Determination* clearly states that it includes both those products.

Citing *HSLWs*,[149] Petitioners assert that while the Department may adjust factor values to account for the differences in concentration, it refuses to do so if the record does not support the existence of such difference, as it claims is the case here.

Department's position: In the preliminary determination, the Department valued TTCA's HCl factor with an SV obtained from the Indonesian WTA data.[150] We verified that TTCA's factor has an average 22.15 percent purity level.[151] In the past, the Department has adjusted the SV to reflect the concentration of the respondent's factor purity level if the record demonstrated that the two concentration levels were different and provided the necessary information to make the adjustment. For example, both in *HSLWs* and *PVA*, cited by Petitioners, the Department used Indian *Chemical Weekly* as a source. As we stated in Comment 5A above, we are valuing TTCA's HCl using Indonesian WTA data. TTCA has provided no record evidence to substantiate its claim that the Indonesian WTA data reflect imports of HCl with a 100-percent concentration level. In fact, the record does not indicate a specific concentration level for any of the Indonesian WTA import data and we are, therefore, unable to determine if the imports are at a different level of concentration than the HCl used by TTCA. Absent such evidence, we have no basis for making an adjustment to the SV for concentration levels, and, accordingly have made no such adjustment for this final determination.

Comment 15: Low-Protein Scrap Offset

TTCA states that the Department should grant a low-protein scrap offset for TTCA's sale of this by-product. According to TTCA, although it does not electronically track its sales of low-protein feedstuff, nevertheless, the Department verified that it produces and sells this scrap.[152] Therefore, according to TTCA, the Department should grant a low-protein scrap offset to TTCA for the final determination.

[149] *See* Comment 4.

[150] *See* Prelim SV Memo, at Attachment 1.

[151] *See* TTCA Verification Report, at 22-23.

[152] Citing TTCA Verification report, at 9, TTCA 10/21/08 SQR, at Exhibit S2-13.

Petitioners argue that the Department should continue to deny TTCA an offset for sales of mycelium feed (*i.e.*, low-protein scrap), because mycelium feed has no commercial value and TTCA did not demonstrate its sales of mycelium feed. Thus, TTCA failed to demonstrate that mycelium does have any commercial value. In addition, Petitioners argue the Department should deny this claimed offset consistent with past practice where it has denied by-product claims because the respondent could not demonstrate production of the by-product, as it argues is the case here. [153]

Department's position: As we stated in *Tires*, the Department has interpreted the Act to allow granting of an offset to costs of production for a by-product generated in the manufacturing process that is either sold for revenue, or has commercial value and is reintroduced into production during the POI.[154] The record evidence indicates that TTCA produced and sold low protein scrap during the POI. TTCA provided copies of its accounts/receivable sub-ledgers demonstrating income from its sales of low-protein scrap.[155] In addition, at verification, the Department observed TTCA's production of low-protein scrap and, contrary to Petitioners' assertions, was able to trace TTCA's production quantities from daily reports to the monthly production of relevant workshops.[156] Further, we observed TTCA's low protein scrap being dried in a small warehouse prior to sale.[157] The Department further confirmed that TTCA sells its low protein scrap to fish farmers.

Moreover, the Department does not have a bright-line test for the level of sales revenue earned from the sale of by-products for purposes of determining whether to grant a by-product offset. Accordingly, because the record demonstrates that there is a commercial value for this product and that the respondent generated revenue from its sale during the POI, we do not agree with Petitioners that we should deny the by-product offset because the low-protein scrap has only minimal commercial value.

Additionally, contrary to Petitioners' assertions, Yixing Union's experience with respect to tracking its sales and production of low protein scrap, or mycelium feed, is not necessarily relevant to TTCA's method of accounting for this scrap. For the final determination, we have granted a by-product offset for TTCA's low protein scrap based on this respondent's ability to demonstrate its generation during the production of subject merchandise and its sales of the by-

[153] Citing TTCA 10/21/08 SQR, at 16 and Exhibits S2-12, S2-13, and S2-15.

[154] *See 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) ("*Final Determination")*, and accompanying Issues and Decision Memorandum at Comment 34 ("*Tires*").

[155] *See* TTCA October 21, 2008, SQR, at 16 and Exhibits S2-13 and S2-15.

[156] *See* TTCA Verification Report, at Exhibit 19.

[157] *See* TTCA Verification Report, at 10-11, 27, and Exhibit 19.

product during the POI. We have applied a surrogate value based on the Indonesian HTS category 2303.30.00.[158]

ISSUES SPECIFIC TO YIXING UNION

Comment 16: Yixing Union Corn Usage Rate

Petitioners argue that Yixing Union significantly under-reported the amount of corn used to produce the subject merchandise. Petitioners suggest that Yixing Union's reported corn usage rate is highly questionable, especially when compared to TTCA's usage rate and the estimated theoretical minimum usage calculated by Petitioners and based on information in *Kent and Riegel's Handbook of Industrial Chemistry and Biotechnology* (2007), and in light of problems found in the verification documents. Because of these alleged issues, Petitioners argue that the Department should adjust Yixing Union's corn usage rate to a level in accordance with existing record evidence and industrial realities.

Petitioners further argue that, based on record evidence and news articles, TTCA should have the lower usage rate of corn, not Yixing Union, because TTCA is more technologically advanced and highly efficient. Additionally, Petitioners assert that the Department's verification did not test the corn usage rate and they suggest that the evidence presented at verification to support Yixing Union's claimed corn usage rate is not believable. Specifically, Petitioners take issue with Yixing Union's reported consistent usage rates, suggesting that the presented evidence was created by Yixing Union specifically for the Department's verification. Petitioners recommend the Department remedy this allegedly faulty usage rate by applying to Yixing Union the corn usage rate from: 1) the Petition; 2) TTCA's reported corn usage rate or 3) at a minimum, the Department should use no corn usage rate lower than Petitioners' estimated theoretical minimum.

Yixing Union argues that the scope of the verification reached every stage of corporate recordkeeping, from the handwritten ledger at the factory floor through, and including, the financial statements. Yixing Union also argues that the data submitted during the investigation tied directly to the data reviewed at verification.

Yixing Union rebuts Petitioners' argument that TTCA should have a lower corn usage rate based on TTCA's superior production facility and flowchart representing its production process. Yixing Union contends that the quotes cited by Petitioners regarding the TTCA facilities are from advertisement websites and that establishing a benchmark for comparative manufacturing advantage should rely on more than advertisements from another producer.

Finally, Yixing Union counters the views of Petitioners' industry expert by asserting that these views are not evidence that the data are incorrect, but mere assertions regarding the integrity of

[158] *See* TTCA's Final Analysis Memorandum, at 2-3 and Attachments 1 and 3.

the data. The respondent argues that speculation is not a basis for disregarding its verified corn usage rates, citing *Bomot* 1990.[159] Yixing Union also asserts that Petitioners' basis for calling the usage rate data questionable rests on the opinion of an American industry expert who it believes has a biased agenda,[160] and who based his opinions on production information from secondhand information and a third country. Because of this alleged bias and the reliance on secondhand information, Yixing Union argues that the opinion of Petitioners' American expert should be dismissed.

Yixing Union further states that the Department pursued Petitioners' questions at verification and found no record evidence that Yixing Union's reported corn usage rate was faulty. Citing *Gerber Foods* 2005, *Yantai Timken* 2007, and *U.S. Steel Group* 1998,[161] Yixing Union concludes that the Department should, therefore, use Yixing Union's reported and verified corn usage rate.

Department's Position: The Department agrees with Yixing Union. The Department considered Petitioners concerns regarding this issue during verification and verified Yixing Union's corn usage rate noting no discrepancies.[162] The Department did not find any inaccuracy, mischaracterization or discrepancy in the reported corn usage rate by Yixing Union during its verification as alleged by Petitioners.[163] The Department has considerable discretion in verification and unsubstantiated allegations and speculation do not trump Department verified factual information.[164]

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[159] *See* Yixing Union Rebuttal Brief at 8 (citing *Bomot Industries v. US*, 733 F.Supp. 1507(1990)(Petitioner's allegations of unreported transshipment sales were based solely on speculation, and did not support a failure at verification, where there was no evidence of evasion during verification), citing *Asociacion Colombiana de Exportadores de Flores v. US*, 704 F.Supp. 1114, 1117 (CIT 1989)(Petitioner's allegation that respondent could have hidden U.S. LTFV sales by labeling them as Caribbean sales, despite ITA's verification of U.S. sales, was mere speculation)).

[160] *See id.*, at 7.

[161] *See* Yixing Union Rebuttal Brief at 8-9 (citing *Gerber Foods (Yunnan) Co., Ltd. v. US*, 387 F.Supp. 2d 1270, 1280 (CIT 2005) (Department's refusal to use verified facts, without "identify{ing} any inaccuracy, mischaracterization, or discrepancy in the information," and instead relying on 'facts otherwise available' was not supported by substantial evidence); *Yantai Timken Co., Ltd. v. US*, 521 F.Supp.2d 1356, 1375 (CIT 2007) ("{T}he antidumping statute requires Commerce to resort to facts available if a respondent fails to provide requested information or provides information that cannot be verified."); *U.S. Steel Group v. US*, 998 F.Supp. 1151 (CIT 1998)("Commerce uncovered no facts to indicate that {respondent's} reporting was improper or evasive. Therefore… Commerce's acceptance of {its description}…was appropriate, and… supported by substantial evidence."); and *Maui Pineapple Co., Ltd. v. US*, 264 F.Supp. 2d 1244, 1259, quoting *FAG Kugelfischer Georg Schafer AG v. US*, 131 F.Supp. 2d 104, 133 (CIT 2001)).

[162] *See* Memorandum to Wendy J. Frankel, Director, Office 8, Antidumping and Countervailing Duty Operations: Verification of the Sales and Factors Response of Yixing Union Biochemical Co., Ltd., in the Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China (February 13, 2009), at 18-19 and Exhibit 9 ("Yixing Union Verification Report").

[163] *See id.*

[164] *See Maui Pineapple* 2001, at 1259, *Gerber Foods* 2005, *Yantai Timken* 2007, and *U.S. Steel Group* 1998.

Petitioners' allegation that TTCA should be a more efficient producer than Yixing Union is not based on record evidence, nor is this allegation helpful in weighing the facts as they relate to Yixing Union and its corn usage rate. In fact, Petitioners' presentation of TTCA's corn usage rate information is irrelevant when considering the experience of Yixing Union and its verified factual information. Additionally, we find the views of Petitioners' industry expert not to be based on evidence but, rather, to be based on speculation and information regarding production in a different country that does not reflect the experience of the Chinese citric acid industry as a whole, or the experience of the particular respondent at issue. Finally, the estimated theoretical minimum corn usage rate calculated by Petitioners is just that, a theoretical/speculative estimate, and therefore it cannot be considered a factual representation of the respondent's experience. Overall, Petitioners' theoretical arguments do not controvert the Department's findings at verification.[165]

Therefore, there is no evidence on the record that would lead the Department to adjust Yixing Union's reported and verified corn usage rate for this final determination and we have used the data as reported and verified.

Comment 17: Yixing Union Mycelium By-Product Offset

Petitioners argue that the Department should not grant Yixing Union a by-product offset for mycelium feed, a.k.a. low-protein corn feed. Petitioners contend that Yixing Union failed to demonstrate adequately that this by-product has commercial value, and that Yixing Union submitted only limited evidence that it sold any mycelium feed to commercial customers.

Petitioners argue further that "it is the Department's practice to require that respondents provide sufficient documentation of the actual scrap produced . . ."[166] Finally, Petitioners contend that the Department's verification report reveals that there is no commercial market for mycelium feed because at verification the Department "did see mycelium feed being produced during the plant tour,"[167] but that product was not being packaged and sold. Rather, "mycelium feed is swept into piles on the floor prior to being loaded onto the truck,"[168] which, Petitioners suggest means that the mycelium has little, if any, commercial value.

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[165] *See 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 at Comment 11.

[166] *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 at Comment 23 ("*Lined Paper*"); *see also Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 37051 (July 29, 2006), and accompanying Issues and Decision Memorandum at Comment 4 at 12; Issues and Decision Memorandum for the 2004-2006 Administrative Review of Chlorinated Isocyanurates from the People's Republic of China (December 14, 2007) at 33-34.

[167] *Id*.

[168] *Id*.

Department's Position: As we stated in *Tires*, the Department has interpreted the Act to allow granting of an offset to costs of production for a by-product generated in the manufacturing process that is either sold for revenue or has commercial value and is reintroduced into production.[169] Yixing Union stated that it produced and sold mycelium feed during the POI and supported these statements with record evidence.[170] The Department granted Yixing Union a by-product offset for mycelium feed in the *Preliminary Determination.* Since the preliminary determination the Department verified Yixing Union's reported production and sales of the mycelium feed by-product.[171] The Department agrees with Petitioners that it is our policy to require documentation on production and sales to receive a by-product offset, and, as in *Lined Paper* and *Tires*, here that documentation has been placed on the record and verified. At verification the Department observed the production and preparation for sale of this product. In addition, we reviewed sales documentation as well as the accounting system that tracks the sales of the mycelium by-product.[172] Therefore, we find that Yixing Union provided sufficient evidence of its production and sales of mycelium feed by-product.

Further, as discussed in our Position to Comment 15, above, we do not agree with Petitioners that this product lacks commercial value. Notwithstanding Petitioners arguments that Yixing Union does not track its inventory of this by-product, we are satisfied that we successfully verified its production and sale to unaffiliated parties, thus demonstrating that the product does have commercial value. *See also* our Position to Comment 15, above.

Comment 18: Inflation of the Surrogate Value for Steam

Petitioners argue that the Department should inflate the value of the steam input used by Yixing Union in the production of the subject merchandise by applying the appropriate WPI inflator, as it did with the value of steam produced by TTCA.

Department's Position: As we discussed in Comment 2, we have disregarded Yixing Union's energy inputs, which include steam, for the final determination.[173] Therefore, we do not need to address the issue of steam valuation for the final determination.

[169] *See Tires* at Comment 34.

[170] *See* Yixing Union DQR, at 12-13 and Exhibit 8-D, and Yixing Union 10/28/08 SQR at 11 and Exhibit 15.

[171] *See* Yixing Union Verification Report, at 22-23, and Exhibit 15.

[172] *See* Yixing Union Verification Report, at Exhibit 23.

[173] *See* Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Final Determination Margin Calculation for Yixing Union Biochemical Co., Ltd., dated April 6, 2009 ("Yixing Union Final Analysis Memorandum"), at 1-2.

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 determination of this investigation and the final weighted-average dumping margins in the *Federal Register*.

_____ _____

Agree Disagree

_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____

Date