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Remand
Administrative Review
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Juancheng Kangtai Chemical Co., Ltd., et al., v. United States
U.S. Court of International Trade Consol. Ct. No. 14-00056

FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND

I. SUMMARY

These final results of redetermination (Final Remand Results) were prepared by the Department of Commerce (the Department) pursuant to the decision and remand order issued by the U.S. Court of International Trade (the Court) on August 21, 2015,[1] in regard to the final results of the seventh administrative review of the antidumping duty (AD) order on chlorinated isocyanurates (chloro isos) from the People's Republic of China (PRC).[2] In accordance with these Final Remand Results, the Department continues to find that, during the period of review (POR), Juancheng Kangtai Chemical Co., Ltd. (Kangtai), as well as Hebei Jiheng Chemical Co., Ltd. and Hebei Jiheng Baikang Chemical Industry Co., Ltd. (collectively, Jiheng),[3] sold chloro isos for less than normal value (NV).

II. BACKGROUND

On January 22, 2014, the Department published its *Final Results* pertaining to Jiheng and Kangtai, along with other exporters, for the seventh administrative review.[4] The POR for the seventh review is June 1, 2011, through May 31, 2012. Following non-market economy (NME)

[1] *See Juancheng Kangtai Chemical Co., Ltd., et al., v. United States*, CIT Slip Op. 15-93, Consol. Ct. No. 14-00056 (August 21, 2015) (*Kangtai Remand*).
[2] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).
[3] For purposes of this redetermination pursuant to remand, Jiheng also includes Arch Chemicals (China) Co., Ltd. (Arch), which is a co-plaintiff before the Court.
[4] *See* IDM.

methodology, we selected the Philippines as the primary surrogate country.[5] The Philippines was also the primary surrogate country in the preceding sixth administrative review.[6]

In the *Preliminary Results*, as well as the *Final Results*, we relied on financial statements from Mabuhay Vinyl Corporation (MVC), a Philippine producer of comparable merchandise, to calculate financial ratios.[7] We adjusted the financial ratios to account for any overlap that exists between MVC's financial statements and the International Labor Organization (ILO) wage rate selected to value the labor factor of production (FOP).[8] In doing so, we followed the same methodology used in the sixth administrative review.[9]

Also in line with the *Sixth AR Final Results*, we treated ammonium sulfate as a by-product, as opposed to ammonia gas and sulfuric acid as separate by-products, and adjusted the applicable by-product offset to account for further processing costs. Furthermore, Philippine import data from Global Trade Atlas (GTA) was used as the surrogate value (SV) for hydrogen, chlorine, and ammonium sulfate, and the electricity FOP was valued using data from the fee schedule of Camarines Sur, a Philippine electricity company.

In regards to the calculated rate for the un-refunded (irrecoverable) value-added tax (VAT) discussed in the *Final Results*, the Department requested that the court remand discussion of the issues raised in the interested parties' case briefs for further discussion in this redetermination.

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[5] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 41364 (July 10, 2013) (*Preliminary Results*), and accompanying preliminary decision memorandum (PDM).
[6] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*; 78 FR 4386 (January 22, 2013) (*Sixth AR Final Results*), and accompanying Issues and Decision Memorandum.
[7] *See* PDM at 18; *see also Final Results*.
[8] *See* PDM at 17; *see also Final Results*.
[9] *See Sixth AR Final Results*.

In its August 21, 2015 opinion, the Court remanded the *Final Results* to the Department as follows: (1) either remove the labor items Jiheng has identified among the selling, general, and administrative (SG&A) expenses in MVC's financial statements or explain how the methodology used by the Department in the *Final Results* is supported by substantial evidence on the record, such that it is more accurate and reasonable than the methodology argued for by Jiheng and supported by Kangtai; (2) select the best SV for chlorine, based on a full consideration of the interested parties' comments, all SV information available on the record, and how this FOP was valued in prior administrative reviews; (3) select the best SV for ammonium chloride, based on a full consideration of all information available on the record; (4) select the best source of SV data for electricity, based on an analysis of public availability, broad market average, product specificity, contemporaneity, and freedom from taxes and duties; (5) reexamine the record evidence regarding the SV for ammonium sulfate; (6) explain and support the change in by-product methodology, providing a discussion of how the new methodology is an improvement to the old methodology, and address the respondents' arguments regarding Kangtai and Jiheng's individual offsets; and (7) consider all arguments from interested parties concerning the deduction of irrecoverable VAT from the U.S. price.

Pursuant to these instructions, in regard to the *Final Results*, we are providing further explanations and addressing the deficiencies identified by the Court. We are also responding to comments on the draft remand results,[10] which were submitted by Clearon Corporation and Occidental Chemical Corporation (collectively, Petitioners),[11] Jiheng,[12] and Kangtai.[13] Aside

[10] *See* Department Memorandum, "Draft Results of Redetermination Pursuant to Remand: Chlorinated Isocyanurates from the People's Republic of China," January 12, 2016 (Draft Remand Results).
[11] *See* Letter from Petitioners, "Draft Results of Redetermination Pursuant to Remand: Chlorinated Isocyanurates from the People's Republic of China: Comments of Clearon and OxyChem," February 5, 2016 (Petitioners Comments).

from minor grammatical and formatting changes, these Final Remand Results contain no additional revisions to the Draft Remand Results. In accordance with the modifications made in the Draft Remand Results and these Final Remand Results, however, we have recalculated the separate rate for qualifying non-selected respondent companies. Complete responses to all comments received are provided below, following the Final Remand Results. As a result of these modifications to the *Final Results*, we calculate weighted-average dumping margins of 27.99 percent for Jiheng, 48.72 percent for Kangtai, and 38.36 percent for Arch.[14]

III. ANALYSIS

A. Calculation of Financial Ratios

In the *Preliminary Results*, the Department selected the Philippines as the primary surrogate country in this administrative review.[15] After receiving and analyzing comments from interested parties, we determined that it was appropriate to continue to use the Philippines as the primary surrogate country and, furthermore, that MVC's financial statements were the best available information for calculating the surrogate financial ratios for the *Final Results*.[16] For reasons explained in the IDM,[17] as well as the Court's opinion,[18] we also continued to rely on

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[12] *See* Letter from Jiheng, "*Clearon Corp. and Occidental Chemical Corp. et al. v. United States*, Consol. Ct. No. 14-00056 – *Arch Chemicals, Inc., Arch Chemicals (China) Co., Ltd.*, and *Hebei Jiheng Chemical Co., Ltd., Comment on Draft 2nd Remand Results*," February 5, 2016 (Jiheng Comments).

[13] *See* Letter from Kangtai, "Certain Chlorinated Isocyanurates from the People's Republic of China – Comments on Draft Remand," February 5, 2016 (Kangtai Comments).

[14] *See* Department Memoranda, "Antidumping Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Final Analysis for Hebei Jiheng Chemical Company Ltd. in the Redetermination Pursuant to Remand" (Jiheng Final Remand Analysis Memorandum) and "Antidumping Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Final Analysis for Juancheng Kangtai Chemical Co., Ltd. in the Redetermination Pursuant to Remand" (Kangtai Final Remand Analysis Memorandum), April 15, 2016 (collectively, Final Remand Analysis Memoranda). The rate for companies which demonstrated eligibility for a separate rate in the underlying administrative review (*i.e.*, Arch, Sinoacarbon International Trading Co., Ltd., and Zhucheng Taisheng Chemical Co., Ltd.) was a simple average of the AD rates calculated for Jiheng and Kangtai. As Arch is the only separate rate company that is a party to the Kangtai remand, the revised margin for separate companies is only applicable to Arch.

[15] *See* PDM at 10.

[16] *See* IDM at 6-10.

[17] *Id.* at 15-16.

[18] *See Kangtai Remand* at 26-35.

Philippine International Labor Organization (ILO) Chapter 6A labor statistics to value labor in the *Final Results*.

In regards to the Department's financial ratio calculations, Jiheng argued that the financial ratios should be adjusted in order to avoid double-counting. Specifically, Jiheng asserted that the "employee benefits" and "retirement benefits" line items in MVC's financial statements should be excluded from the SG&A expenses in the surrogate financial ratio calculations because both expenses were already captured in the labor SV.[19]

In the *Final Results*, we determined that employee benefits and retirement benefits were classified by MVC as period costs, not as costs of sales (COS), and noted that period costs (*i.e.*, operating expenses), as opposed to manufacturing costs, "are expensed in full in the period in which these costs are incurred."[20] We further stated:

> Period costs do not related to the production of any specific product and are not capitalized, nor do they go through inventory. As such, we note that, when financial statements identify and classify labor costs as either manufacturing related labor costs or administrative and selling related labor costs, we should rely on those classifications in the financial statements where these labor costs are identified, unless there is good reason to believe the classification is not accurate. In the instant case, MVC's financial statements provide a clear and separate classification for manufacturing costs and operating expenses (*i.e.* period costs). The cost of goods sold section on the financial statements includes line items for both direct labor and supervision and indirect labor costs. It is not unreasonable to expect the cost of goods sold related to direct labor, supervision and indirect labor costs to include not only the wages paid to the factory workers, but also all benefits paid the same workers. Likewise, the operating expenses line item includes salaries and wages, retirement benefits, and employee benefits. Again, it is not unreasonable to expect the operating expenses line items for salaries and wages, retirement benefits and employee benefits to include such costs related only to administrative staff.[21]

Because employee benefits and retirement benefits were presented in MVC's financial statements as period costs, we classified the entire amount as SG&A expenses in the surrogate

[19] *See* IDM at 36-37.
[20] *Id.* at 37.
[21] *Id.* (citations omitted).

financial ratios in the *Final Results*. Parties continue to argue to the Court that the ILO rate used to value the labor SV already includes labor, retirement, and employee benefit expenses and that these expenses will be double-counted if we do not adjust the SG&A financial ratio to correctly reflect the financial statements (*i.e.*, exclude employee benefits and retirement benefits line items from the SG&A financial ratio).

In this remand, the Court states that "the {Department's} interpretation, that the retirement and employment benefits itemized as SG&A expenses in MVC's financial statement pertain *only* to administrative staff, simply lacks substantial evidence on the record—in particular those accounting standards that would demonstrate {the Department}'s interpretation to be a reasonable assumption."[22] Therefore, the Court asks us to provide a complete analysis and explanation of our treatment of the retirement benefits and employment benefits in MVC's financial statement, therein fully addressing the relevant arguments presented by Jiheng.[23]

As instructed by the Court, we have re-examined the issue and are adjusting the SG&A financial ratio as follows. We are treating MVC's retirement benefits as applicable to all labor (*i.e.*, applicable to both direct labor, which is part of COS, and non-production labor, which is part of SG&A). For employee benefits, however, we are continuing to find that the record supports treating these costs as non-production labor and including them, in their entirety, in the SG&A financial ratio.

As explained in regard to the *Sixth AR Final Results*, MVC classified the line items "employee benefits and retirement benefits" as period costs unrelated to the production of any

[22] *See Kangtai Remand* at 34.
[23] *Id.* at 35.

specific product.[24] Therefore, the costs of such benefits were not captured in the ILO labor rate statistics. The ILO states that the reported labor rate comprises "all payments by producers of wages and salaries to their employees, in kind as well as in cash, and of contributions in respect of their employees to social security and to private pension, casualty insurance, life insurance and similar schemes."[25] Consistent with this definition and our stated policy outlined in *Labor Methodology*,[26] we excluded MVC's line items for "direct" labor and "supervisor and indirect" labor classified as COS and associated with production personnel to avoid double counting the labor included in ILO's wage rate, but we did not exclude MVC's employee benefits and retirement benefits because such expenses were classified as "operating expenses." Because the Department believes such expenses are costs associated with non-production, administrative workers, we determined that they were accounted for by neither the direct labor FOP and corresponding SV nor the indirect labor FOP and corresponding SV.

The Court's analysis of Philippine accounting standards and record evidence (*i.e.*, note 21 of MVC's financial statement) indicates that "retirement benefits" apply to regular (*i.e.*, all) employees. Therefore, for this redetermination, we allocated the retirement benefits to all employees. Specifically, we allocated the retirement benefits between the direct labor employees, under "Cost of Sales," and the administrative employees (*i.e.*, "salaries and wages), under "Operating Expenses," based on the relative ratio of each labor cost (*i.e.*, direct labor cost and operating salaries and wages) to the total labor cost. The amount allocated to direct labor employees, under "Cost of Sales," was then excluded from the SG&A expenses and, in order to

[24] *See* Letter from Petitioners, "Chlorinated Isocyanurates from the People's Republic of China (7th Antidumping Administrative Review): Petitioners' Submission of Information Regarding Surrogate Values for Factors of Production for Final Results," September 12, 2013, at Exhibit 1.
[25] *See* Department Memorandum, "2011-2012 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results Surrogate Value Memorandum," July 2, 2013, at Appendix III.48 (citing http://laborsta.ilo.org/).
[26] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodology*).

avoid double counting of the labor cost included in the ILO wage rate, included as a direct labor cost, thereby increasing the denominator for surrogate financial ratio calculations.[27] Furthermore, we continued to include the portion allocated to administrative employees in the SG&A expense. As a result, the surrogate financial ratios for overhead and SG&A decreased from 21.01 percent and 9.87 percent to 20.86 percent and 9.27 percent, respectively.[28]

No note, however, indicates that the "employee benefits" line item under MVC's operating expenses applies to all or "regular" employees. As such, because the record provides no further details on these employee benefits and these benefits are presented on the face of the financial statements as "Operating Expenses," we continue to treat the "employee benefits" line item as part of SG&A expenses.

B. Surrogate Values

1. Chlorine

The Court remanded the Department's selection of a SV for chlorine because the Court believes the rationale for selecting Philippine GTA data in the underlying review does not reflect a full analysis of the parties' arguments and, in contrast, reflects inconsistent logic in consideration of the Department's treatment of the chlorine SV in prior reviews.[29] Furthermore, the Court believes that the Department's findings do not approximate a surrogate country with a production experience that is comparable to that of the respondents.[30]

[27] *See* Department Memoranda, "Antidumping Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Analysis for Hebei Jiheng Chemical Company Ltd. in the Redetermination Pursuant to Remand of the Final Results" (Jiheng Draft Remand Analysis Memorandum) and "Antidumping Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Analysis for Juancheng Kangtai Chemical Co., Ltd." (Kangtai Draft Remand Analysis Memorandum), January 12, 2016 (collectively, Draft Remand Analysis Memoranda).
[28] *See* Draft Remand Analysis Memoranda.
[29] *See* Kangtai Remand at 40.
[30] *Id.* at 46-51.

In the *Final Results*, as in the *Sixth AR Final Results*, we based the SV for chlorine on GTA import data from the Philippines. Prior to the *Sixth AR Final Results*, we had based the SV for chlorine on domestic production data from India.[31] Similar Indian data was also available on the record of this proceeding. In its remand, the Court notes that the Department is required to use the best available information in selecting SVs.[32]

In previous reviews of this order, in which both Jiheng and Kangtai participated, the Department made specific findings regarding the nature of chlorine. In particular, we found that the higher transportation and packaging costs associated with movement of this chemical are exacerbated over long distances, greatly adding to the cost of the input. Therefore, the Department found that GTA data, which reflects the cost of moving a product across borders, does not provide the best SV for chlorine.

In its review of the *Final Results*, as well as its remand of the *Sixth AR Final Results*, the Court states that the Department provided no record evidence overcoming this prior finding on the nature of the cost of shipping chlorine and remanded the issue for reconsideration.[33] In accordance with the Court's remand, we reviewed the underlying record and found no evidence indicating that the nature of transporting this input during the POR had changed from previous reviews which, based on the Court's analysis of this issue, indicates that the GTA data is not appropriate for the valuation of the chlorine FOP in this proceeding.

Pursuant to 19 CFR 351.408(c)(2), the Department will normally value all factors in a single surrogate country. On the record of this review, however, both Philippine domestic data and domestic data from another economically comparable country are unavailable. Accordingly,

[31] *See, e.g.*, *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 40689 (July 11, 2011), and accompanying Decision Memorandum.
[32] *See* Kangtai Remand at 37.
[33] *Id.* at 39-40.

the only remaining source for a chlorine value is Indian financial statements. As this is the only information available on the record, we are relying on this financial statement to value chlorine in this redetermination. As a result, it is not necessary to analyze the disparity or fluctuation of Philippine import prices as compared to Indian domestic prices, as requested by the court,[34] or to make a determination regarding whether or not the Philippine data is aberrational.

In light of certain arguments raised by Kangtai regarding the "reasonableness" of quantities represented by GTA import data, the Department now further clarifies that neither the statute nor the legislative history instructs the Department to match import or production volumes for inputs in potential surrogate countries with respondents' own consumption volumes. The Department respectfully disagrees with the Court's statements, which seem to indicate SVs must be chosen from countries with production volume of the *input or the subject merchandise* that is comparable to that of the respondents or the NME under investigation. For example, the Court notes that, because Kangtai consumes nearly nine times the Philippines' total chlorine imports during the POR, the GTA data does not approximate Kangtai's actual production experience.[35] As discussed below, whether a potential surrogate country is a significant producer of products comparable to subject merchandise is a "threshold" question. There are not degrees of significant production, and the statute does not require the Department to choose a surrogate country by looking for an industry of the same scale as that in the NME under examination. In fact, such a comparison could undermine the statutory directive to select a country at the same level of economic development. The scale of production in a country has nothing to do with its level of economic development; countries at different levels of economic development can have the same scale of production. For example, the United States, the PRC, and India each have

[34] *Id.*
[35] *Id.* at 43.

large, well-developed chemical industries. No one, however, would argue that all three countries are at the same level of economic development.[36] As such, in accordance with the statute and despite a similar scale of production, the more economically developed United States would not be an appropriate surrogate country for the PRC unless no data from another, more economically comparable country was available on the record. The same holds true for a country at a lesser level of economic comparability.

In prior reviews of this order, the Department considered the specific import volumes of inputs, including chlorine, solely for purposes of identifying "aberrational data" and corroborating claims that, for example, chlorine is not traded internationally. The statute prefers surrogate countries at a comparable level of economic development, wholly independent from import volume. Furthermore, the statute takes the actual production of each respondent into consideration through the company's FOPs, as opposed to scale of the production.

The Court's concerns pertaining to matching production are more appropriately applied to the statutory requirement for "significant production" of comparable merchandise in the prospective surrogate country. Significant producer status, however, is not evaluated based on scale of production, as the statute only requires that a surrogate country be a *significant* producer of comparable merchandise, as opposed to a comparable or equivalent producer. It is through this criterion that the statute ensures that an economically comparable surrogate country also has an economy which could produce the subject merchandise or comparable merchandise. Once a country is determined to be both at the same level of economic development and a significant producer of comparable merchandise, it has met the statutory requirement for a surrogate country appropriate for valuation of company-specific FOPs.

[36] For further discussion, *see* "Selection of Primary Surrogate Country," *infra* at 27.

The production or import volume of a particular input in the surrogate country is only relevant to the extent that the value selected should represent a commercial quantity and meet the other factors (*i.e.*, public availability, broad market representation, contemporaneity, specificity, and freedom from taxes and/or duties). Because, on remand, we are now using an Indian financial statement as the source of the surrogate value for this FOP, chlorine, the import volume represented by the Philippine GTA data is irrelevant.

2. Ammonium Chloride

In the *Preliminary Results* and *Final Results*, the Department determined that Philippine GTA data provided the best available information for purposes of valuing the ammonium chloride input in this proceeding.[37] In reaching this conclusion, and in accordance with the SV analysis described above in regard to chlorine, we found use of the Philippines GTA data to be appropriate because (1) the Philippines is on the list of economically comparable countries,[38] (2) the Philippines is a significant producer of the subject or comparable merchandise (*i.e.*, chloro isos),[39] and (3) the Philippines produces a commercial quantity of the relevant FOP (*i.e.*, ammonium chloride).[40] Prior to the *Final Results*, Kangtai argued for use of Indian domestic prices or, alternatively, South African GTA data in the valuation of ammonium chloride, and the Court has remanded this issue for further consideration of these alternative SV sources as the best available information on the record. Specifically, the Court rejected our finding that the Philippine import data "could possibly reflect the commercial reality of Kangtai" as an unreasonable assumption and, thus, concluded that "substantial evidence on the record does not

[37] *See* IDM at 23.
[38] *Id.* at 6-10.
[39] *Id.*
[40] *Id.* at 23.

support that the Philippine import data reflect the commercial reality of this FOP in this case."[41] As such, we have reexamined the record evidence, as discussed below, and continue to find that the Philippine GTA data is the best available information for valuation of the ammonium chloride input in this proceeding.

a. Indian SV Data

As noted by the Court, the Department has a clearly stated policy against using SV data from countries not included on the list of surrogate countries at the same level of economic development when reliable data from a country on the list is available. For purposes of this administrative review, India was not included on the list of countries at the same level of economic development. Therefore, so long as reliable data from a country on the list is available, it would be contrary to the Department's policy to rely on the Indian domestic price data placed on the record by Kangtai. Because reliable SV data from the Philippines and South Africa, which were both determined to be economically comparable to the PRC during the POR, is available in this proceeding, the Department rejects Kangtai's arguments in support of using the Indian data and will not rely on Indian domestic prices for the SV of ammonium chloride.[42]

b. The Respondents' Production

Regarding the use of South African GTA data for valuation of the ammonium chloride input, the Department acknowledges that Kangtai's comments were not fully addressed in the IDM. Kangtai has stated that, as a company, it consumes more than 700,000 kilograms (KG) of ammonium chloride in production of the subject merchandise during the POR. As a result, Kangtai contends that the Philippine GTA data, which amounts to a total of 5,464 KG of ammonium chloride during the POR, does not reflect Kangtai's commercial reality and proposes

[41] *See* Kangtai Remand at 54.

[42] *See also "E. Selection of Primary Surrogate Country", infra* (explaining in more detail why the Department is not employing India as the primary surrogate country).

use of the South African GTA data, which amounts to a total of 3,386,509 KG of ammonium chloride during the POR, as an alternative. In its remand order, the Court is concerned that the Philippine data will not adequately represent Kangtai's production due to a disparity in production/import volumes[43]

In response to the Court's remand, the Department acknowledges that there is no substantive evidence on the record of this proceeding that calls the reliability of the South African GTA data into question. As explained above, however, the statute does not require the Department to match importation or production volumes for inputs in potential surrogate countries with the respondents' own consumption volumes.[44] As further discussed in the *Final Results*, it is not our policy "to compare {a country's} import volume to the purchases of respondent companies nor other companies in a country which the Department has determined is less economically comparable."[45] Consistent with the language of the Act, along with established practice, the quantity of ammonium chloride consumed by Kangtai, as well as Kangtai's consumption as compared to the total imports of the Philippines and South Africa, is relevant to our SV analysis for this FOP only for purposes of identifying "aberrational" data (*e.g.*, excluding sales/shipments of samples)[46] and ensuring that the value represents a commercial quantity. As such, the Court's conclusions regarding the Department's "assumptions" of whether or not specific data reflects "commercial reality" are misplaced.

The Department reiterates that the procedure for selecting an appropriate SV requires that the surrogate country is (1) on the list of economically comparable countries, (2) is a significant producer of subject or comparable merchandise, and (3) that the surrogate values represent

[43] *Id.*
[44] *See* III.B.1, *supra*.
[45] *See* IDM at 23.
[46] *Id.*

commercial quantities of the relevant FOP. As such, our SV selection analysis, as it relates to a specific FOP, requires only that the selected, economically comparable country produce a *commercial quantity* of the relevant FOP. In this case, for the reasons discussed below, the Department continues to find that 5,464 KG constitutes a commercial quantity of ammonium chloride, as explained in the IDM and supported by our findings in prior proceedings.[47] Therefore, we find that the Philippine GTA data is a reliable source of information for valuation of the ammonium chloride input.

c. "Commercial Quantity"

In its discussion of this issue, the Court suggests that the amount of ammonium chloride imported into the Philippines may not constitute a commercial quantity.[48] Specifically, the Court stated that "an international shipping container used to transport a raw material typically will contain 20,000 {KG}," and, as such, found that the 5,464 KG imported by the Philippines cannot constitute a commercial quantity.[49] The Department, however, has reviewed the information available on the record and concludes that, in this proceeding, 5,464 KG does, in fact, constitute a commercial quantity. The GTA data on the record indicates that typical international shipments of ammonium chloride must be less than the volume of a 20,000 KG shipping container, such that the Philippines imported 2,553 KG and 2,882 KG from Singapore and the United States, respectively,[50] and South Africa imported only 6,330 KG from India.[51] Furthermore, none of South Africa's reported ammonium chloride import quantities from Germany, Hong Kong, Japan, Mexico, the United States, or the PRC suggest that the raw

[47] *See*, *e.g.*, IDM at 23.
[48] *See* Kangtai Remand at 53.
[49] *Id.*
[50] *See* Department Memorandum, "2011-2012 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results Surrogate Value Memorandum," July 2, 2013, at Appendix I.
[51] *See* Letter from Kangtai, "Chlorinated Isocyanurates from the People's Republic of China Surrogate Values for the Final Results of Review," September 12, 2013, at Exhibits SV-19 through SV-21.

material is shipped only in standard 20,000 KG increments,[52] as suggested by the Court. Based on this evidence, the Department finds that it would be unreasonable to conclude that any amount less than the capacity of a shipping container does not constitute a commercial quantity.

We further find that there is record evidence supporting our conclusion that 5,464 KG is a significant import volume which constitutes a "commercial quantity," especially in light of the GTA data, which suggests that ammonium chloride is often traded in much smaller quantities. As such, we conclude that the Philippines' 5,464 KG total ammonium chloride imports is not aberrational. Rather, the underlying import quantities (*i.e.*, 2,882 KG from the United States and 2,553 KG from Singapore) are themselves consistent, and the aggregated volume is comparable to the 6,330 KG imported from India to South Africa, which is the only other comparative evidence available on the record. Accordingly, the Department continues to find that the Philippines imported a commercial quantity of ammonium chloride during the POR.

Pursuant to 19 CFR 351.408(c)(2), the Department will normally value all FOPs in a single surrogate country. In its remand, the Court acknowledges that this "preference for valuing all FOPs from a single surrogate country" is reasonable, so long as the record does not compel "the sourcing of particular surrogate values from outside the primary surrogate country."[53] Because the Philippines is the primary surrogate country in this proceeding and, furthermore, the Philippine GTA data for ammonium chloride constitutes a commercial quantity, the Department is not compelled to source the SV for ammonium chloride from South Africa. As such, we determine that the Philippine GTA data is the best available information for valuation of ammonium chloride and, therefore, are not revising the SV used for ammonium chloride in the *Final Results*.

[52] *Id.*
[53] *See* Kangtai Remand at 46.

3. Electricity

In the *Final Results*, the Department analyzed electricity rate data from three Philippine sources, a "Doing Business in Camarines a Sur" report (the Camarines Sur data), National Power Corporation (NPC) rates, and Manila Electric Company (MERALCO) rates, and determined that the Camarines Sur data constituted the best available information in terms of the factors of public availability, broad market average, product specificity, contemporaneity, and freedom from taxes and duties. The Court has remanded the Department's finding with respect to our analysis of all five factors.

In the *Final Results*, the Department found that the Camarines Sur data was publicly available. In regard to this issue, we acknowledge that we overlooked concerns raised by Kangtai. Specifically, we did not fully address Kangtai's argument that, because "the source link for the Camarines Sur data no longer appears to be working," such data was no longer publicly available at the time of the administrative review. Kangtai further noted that the Department had previously determined, in the context of other proceedings, that we would consider data to be not publicly available and unusable when it cannot be accessed publicly.[54]

The Department has reexamined the record of this proceeding, as well as our prior determinations concerning public availability. In *Steel Threaded Rod*, we found that, when an internet search for allegedly public information cannot be duplicated using the link placed on the record, the information is non-public. Accordingly, we have determined that, for purposes of the seventh administrative review, the Camarines Sur data was not publicly available and, therefore,

[54] *See* IDM at 17 (citing *Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013) (*Steel Threaded Rod*), and accompanying Preliminary Surrogate Value Memorandum at 4).

cannot be used as an SV for electricity. As a result, the electricity SV for both Kangtai and Jiheng must be recalculated using publicly available rates from either NPC or MERALCO.[55]

It is undisputed that the NPC and MERALCO rates both "provide broader market averages inherent in the larger coverage area than the cities identified in the Camarines Sur data."[56] In the *Final Results*, however, we determined that this factor was outweighed by the other factors and selected the Camarines Sur data as the source for the electricity SV. Given our revised analysis of public availability, *supra*, NPC or MERALCO are the only remaining sources of electricity SV data. We note that both NPC and MERALCO cover large industrial regions and, thus, are representative of a broad market of electricity users in the Philippines.[57]

In our evaluation of the product specificity of potential electricity SVs in this proceeding, we sought to value kilowatt hours of electricity used to manufacture the subject merchandise. As such, rates quoted in terms of kilowatt hours and for industrial consumption can be considered specific to the relevant FOP. In the *Final Results*, we found that the NPC data did not contain industrial rates and, therefore, was inferior to other information available on the record, including the Camarines Sur data and the MERALCO data, which provided industrial rates at varying levels of specificity. In regard to the MERALCO data, we found that MERALCO's industrial rates were highly variable, with multiple levels of industry classification, and that neither respondent provided sufficient information and support for the Department to properly assign such rates to the companies. Therefore, the Camarines Sur data was determined to be the most specific.

[55] No interested party has disputed the public availability of the NPC data or the MERALCO data.
[56] *See* IDM at 18.
[57] *Id.*; *see also* Letter from Jiheng, "Chlorinated Isocyanurates from China (Seventh Administrative Review) – Hebei Jiheng Chemical Co., Ltd. Post-Preliminary Surrogate Value Information," September 12, 2013 (Jiheng Post-Preliminary Surrogate Value Information), at Tab 1 (pertaining to NPC data) and Tab 2 (pertaining to MERALCO data).

Because the Camarines Sur data is no longer considered to be publicly available, the Department finds that the MERALCO data is the best alternative information available on the record in terms of specificity because, while the NPC data calculates only a single effective rate based on "unbundled" rates, the MERALCO data differentiates rates based on 39 consumer categories, including several levels of industrial users.[58] It is also undisputed that the MERALCO data is contemporaneous to the POR and exclusive of taxes. Therefore, for purposes of this redetermination, we will recalculate the SV for electricity based on the MERALCO data on the record.

In the course of this proceeding, Jiheng provided enough information for the Department to classify the company's electrical usage within MERALCO's rate structure.[59] We maintain, however, that the information provided by Jiheng is not adequately supported by evidence on the record. Specifically, although Jiheng reported usage in a general industrial category, it did not explain or support why it should be assigned to that category, nor did it identify which of the three sub-classifications within that industrial category were applicable.[60] Furthermore, Kangtai failed to provide any information regarding its proper classification within the MERALCO rate structure. In light of these deficiencies, the Department finds that the respondents could have been more specifically classified within the Camarines Sur rate structure, had that data been publicly available. Based on our findings in this redetermination, however, the Camarines Sur data cannot be used to value electricity,[61] and, therefore, the Department must rely on Jiheng's unsupported MERALCO classification information as the best information available on the

[58] *See* IDM at 18; *see also* Jiheng Post-Preliminary Surrogate Value Information at Tab 1 (pertaining to NPC data) and Tab 2 (pertaining to MERALCO data)
[59] *See* Jiheng Post-Preliminary Surrogate Value Information.
[60] *See* IDM at 18; *see also* Jiheng Post-Preliminary Surrogate Value Information.
[61] *See supra.*

record. Kangtai's rate will be determined based on facts available (*i.e.*, Jiheng's rate classification).

4. Ammonium Sulfate

In the *Final Results*, the Department relied on Philippine GTA data, as opposed to available Philippine domestic price data, to value Jiheng's by-product offset for ammonium sulfate. As explained in the IDM, we determined that the Philippine GTA data was the best available information because there was no record evidence demonstrating that Jiheng sold ammonium sulfate in quantities similar to those for which the domestic price data applied (*i.e.*, 50 KG bags). As noted by the Court, however, the Department's finding regarding the SV for urea in the second administrative review of this order conflicts with our determination regarding the best available SV information for ammonium sulfate in this proceeding.[62] In the final results of the second administrative review, for purposes of valuing the urea input, we rejected domestic Philippine prices, which were published by the Philippine Fertilizer and Pesticide Authority, as the best available information because, among several other reasons, such prices were for urea sold in 50 KG bags and, as such, were not product-specific to the urea used by the respondents in the second administrative review. Pursuant to subsequent remand, we reconsidered the valuation of urea, including whether or not the fact that Philippine urea was sold in 50 KG bags presented an obstacle to the use of the domestic Philippine price as an SV. In the *Second AR Redetermination*, we found that "the record does not contain any evidence that there are any differences in the physical characteristics, packaging of, and channels of trade/selling functions for urea sold for different uses to support a finding that there are two distinct markets for urea used for agricultural versus industrial applications." Furthermore, because "one of the two

[62] *See* Kangtai Remand at 79 (citing *Clearon Corp. v. United States*, CIT Slip Op. 2013-22, Ct. No. 08-00364 (February 20, 2013) (sustaining, "Final Results of Redetermination Pursuant to Court Remand," March 19, 2012 (*Second AR Redetermination*).

respondents in {the second} administrative review purchased urea in similar quantities {to the 50 KG bags}," the fact that Philippine urea was sold in 50 KG bags did not diminish the quality of the domestic Philippine data.

In this proceeding, although, for reasons discussed below at C.2, the record evidence does not support an ammonium sulfate by-product offset for Kangtai, the Department verified that the ammonium sulfate produced by Kangtai is packaged in 50 KG bags.[63] Therefore, the record supports the conclusion that Chinese manufacturers of the subject merchandise may sell ammonium sulfate, as a by-product of the chloro isos production process, in quantities similar to 50 KG bags. As such, upon reexamination of all available information and in accordance with our determination in the *Second AR Redetermination*, the Department now finds that domestic ammonium sulfate prices published by the Philippine Fertilizer and Pesticide Authority, which apply to 50 KG bags of ammonium sulfate, are the best available information on the record. As a result, the Department has revised its calculations for Jiheng's ammonium sulfate by-product offset, using the price published by the Philippine Fertilizer and Pesticide Authority as the SV for ammonium sulfate.

C. By-Product Valuation Methodology

1. Adjustment to By-Product Valuation Methodology

In reviews of this order prior to the *Sixth AR Final Results*, the Department calculated by-product offsets for ammonia gas and sulfuric acid by first calculating the amount of the two by-products produced during the POR, based on the chemical input requirements for production of the quantity of the downstream product (*i.e.*, ammonium sulfate) produced during the POR, then applying SVs to the calculated quantity of ammonia gas and sulfuric acid.

[63] *See* Department Memorandum, "Verification of the Sales and Factors Response of Juancheng Kangtai Chemical Co., Ltd. in the Antidumping Review of Chlorinated Isocyanurates from the People's Republic of China," November 18, 2013 (Kangtai Verification Report), at 32-33.

In the *Sixth AR Final Results*, however, we adjusted "the manner in which we calculate the by-product offsets for both Jiheng and Kangtai to conform to the Department's recent practice."[64] Specifically, we adjusted the methodology used in the *Sixth AR Final Results* to avoid overstating the value of the by-product offsets. At the time, we stated that it was the Department's practice to start with the value of the downstream product (*i.e.*, ammonium sulfate) that was actually sold by the respondents and produced during the POR, then deduct the further processing costs incurred in the production of the downstream product. Therefore, in a departure from our methodology in prior reviews of this order, we attempted to calculate the by-product offset by deducting, from the SV of the downstream product (*i.e.*, ammonium sulfate), any costs associated with converting the by-products into the downstream product (*e.g.*, labor and electricity) based on the FOPs and SVs in calculating the further processing costs. This adjusted methodology was also used in the *Final Results* pertaining to this proceeding.

To clarify, the Department has not changed its practice regarding joint products and its associated by-product methodology. The Department's long-standing practice of valuing by-products is to value the products as close to the split-off point as possible (*i.e.*, in this case, ammonia gas and sulfuric acid).[65] As stated in the *Sixth AR Final Results*, however, this methodology was adjusted to conform to the Department's recent practice in other proceedings.[66] We did not explain why we made this adjustment or how this adjustment was consistent with our normal by-product methodology.

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[64] *See Sixth AR Final Results* and accompanying Issues and Decision Memorandum at Comment 14; s*ee also Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100 (October 18, 2012), and accompanying Issues and Decision Memorandum at Comment 5 (noting that a by-product offset should be granted because the company properly accounted for the costs for its by-product production, "given that it properly reported its by-product factors of production and the Department verified the period-of-review sales of the by-products, there is no factual basis upon which to deny their offsets").

[65] *See, e.g.*, *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 76 FR 56396 (September 13, 2011) (*Magnesium Metal from Russia*), and accompanying Issues and Decision Memorandum at Comment 1a.

[66] *See Sixth AR Final Results* and accompanying Issues and Decision Memorandum at Comment 14.

One of the Department's concerns regarding this issue is that, during the POR, neither respondent measured and kept records of the actual amount of waste ammonia gas and sulfuric acid being produced.[67] As a result, we were forced to go to the production records for the downstream product, ammonium sulfate, to derive the amounts of ammonia gas and sulfuric acid produced. Therefore, the companies' ammonium sulfate production records were the first point at which the Department could determine the volume of by-product (*i.e.*, ammonia gas and sulfuric acids) production.

Another concern raised by the parties to this proceeding and supported by the record is that, if we valued the by-products as close to the split-off point as possible, the amount of the by-product offset would result in an illogical outcome. In other words, the values of the immediate by-products, ammonia gas and sulfuric acid, are higher than the value of the by-product that is actually sold, ammonium sulfate.[68] In reality, as pointed out by the Court, no company would combine two inputs, thereby incurring additional processing costs, to make a lower-valued ammonium sulfate by-product. This was a clear indication that applying our methodology in the normal manner would be inappropriate.[69]

Because the Department's normal methodology (*i.e.*, valuing the by-products as close to the split-off point as possible) reached illogical results and, furthermore, could only be achieved using the respondents' books and records pertaining to the production of the downstream

[67] *See*, *e.g.*, Kangtai Verification Report at 32-33; *see also* Letter from Jiheng, "Chlorinated Isocyanurates from China (Seventh Administrative Review) – Hebei Jiheng Chemical Co., Ltd. Response to Section C & D," November 26, 2012, at D-32.
[68] *See*, *e.g.*, Draft Remand Analysis Memoranda.
[69] *See* Draft Remand Analysis Memoranda. There are other reasons why we cannot value the by-products at the split-off point. Specifically, respondents cannot always sell ammonia gas because they do not have facilities to liquefy and containerize ammonia gas, respondents do not always track or meter the amounts of ammonia gas and sulfuric acid produced, and the purity of those products is not always measured. While some of these problems could be overcome by reverting to the Department's previous, case-specific by-product methodology (starting with the amount of ammonium sulfate produced and calculating the amount of the two by-products chemically required to produce that amount of ammonium sulfate), that prior methodology does not solve the problem posed by the illogically high SVs for ammonia gas and sulfuric acid.

product, we calculated the by-product offset values of ammonia gas and sulfuric acid using the POR production quantity and SV for ammonium sulfate, the downstream by-product, and reduced that value by the further processing costs incurred to convert the ammonia gas and sulfuric acid by-products to ammonium sulfate. In the *Final Results* and the *Sixth AR Final Results*, we called this step an "adjustment." Therefore, following our normal methodology, for this redetermination, we are calculating the by-product offset for ammonia gas and sulfuric acid using the value of ammonium sulfate production, less the further manufacturing costs necessary to produce ammonium sulfate. The net value of the ammonium sulfate reflects the product closest to the split-off point that does not result in an illogical outcome, as when we value the ammonia gas and sulfuric acid generated at the split-off point.

2. By-Product Offset for Kangtai

As stated in the *Final Results*, it is against the Department's established practice to grant a by-product offset where income from the by-product is not realized by the company (*i.e.*, recorded as revenue in the company's accounting records).[70] During its verification of Kangtai's questionnaire responses, the Department observed that Kangtai does not maintain an ammonium sulfate inventory account in its accounting system, nor does Kangtai have an established inventory control process for the ammonium sulfate by-product.[71] According to Kangtai officials, there is no consistent invoice numbering system in place and all sales of ammonium sulfate are cash sales with no record in the company's accounting records.[72] In conjunction with certain additional business proprietary facts on the record of this proceeding, it is clear that Kangtai has not realized, for purposes of this proceeding, any income from the sale of the

[70] *See* IDM at 30 (citing *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 11).
[71] *Id.* (citing Kangtai Verification Report at 32-33).
[72] *See* Kangtai Verification Report at 32.

ammonium sulfate by-product.[73] Therefore, no by-product offset can be granted, and Kangtai's additional arguments, pertaining to our denial of such an offset and the distortions of created by its inventory methodology, are moot.

D. Irrecoverable VAT

In the *Final Results*, the Department reduced the U.S. sales prices calculated for Jiheng and Kangtai by eight percent to account for the un-refunded (irrecoverable) portion of a seventeen percent VAT imposed on certain input materials. Both respondents raised concerns regarding the irrecoverable VAT calculation methodology prior to the *Final Results*. Noting that we did not adequately address such concerns during the proceeding, we requested voluntary remand of this issue to respond to the parties' arguments and explain the adjustment methodology that was used.

In 2012, the Department announced a change of methodology with respect to the calculation of the export price (EP) or constructed export price (CEP) to include an adjustment of any un-refunded (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[74] In this announcement, the Department stated that, when an NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise from which the respondent was not exempted, the Department will reduce the respondent's EP or CEP, accordingly, by the amount of the tax, duty, or charge paid but not rebated.[75]

In a typical VAT system, companies do not incur any VAT expense for exports. Rather, upon export, they receive a full rebate of the VAT paid on inputs used in the production of the

[73] *See* Kangtai Final Remand Analysis Memorandum at 2 (citing Kangtai Verification Report at 32-33).
[74] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (June 19, 2012) (*Methodological Change*).
[75] *Id.*; *see also* IDM at Comment 5.

exports (input VAT), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT collected from customers.[76] That stands in contrast to the PRC's VAT regime, in which some portion of the input VAT that a company pays on inputs used in the production of exports is not refunded.[77] This amounts to a tax, duty, or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by the same percentage.[78]

Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Although Kangtai argues that it pays no VAT tax upon export,[79] it misstates what is at issue. The issue is the irrecoverable VAT, not VAT *per se*.[80] Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials used in

[76] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum at Comment 6; *see also Methodological Change*, 77 FR at 34683.
[77] *See, e.g.*, Letter from Jiheng, "Chlorinated Isocyanurates from China (Seventh Administrative Review) – Hebei Jiheng Chemical Co., Ltd. Response to Section C & D," November 26, 2012 (Jiheng Sections C and D Questionnaire Response), at 43-47; *see also Methodological Change*, 77 FR at 34683. Jiheng's incurrence of irrecoverable VAT is evident from its questionnaire responses. *See, e.g.*, Letter from Jiheng, "Chlorinated Isocyanurates from China (Seventh Administrative Review) – Hebei Jiheng Chemical Co., Ltd. Response to First Supplemental Questionnaire," April 12, 2013, at 15 (stating, "In this case, the VAT 'refund rate' for the sale of subject merchandise is 9%, as shown in Exhibit C-6.1. The 9% VAT 'refund' is subtracted from the standard 17% VAT liability that is normally generated on a domestic sale, thus leaving an Output VAT tax rate of 8%. That is, the export of subject merchandise produced an Output VAT liability for Jiheng of 8% of the sales value.").
[78] *Id.*
[79] *See* IDM at 27-28.
[80] Kangtai's incurrence of irrecoverable VAT is evident from the record. *See, e.g.*, Kangtai Verification Report at 23 (stating, "Next, Kangtai reconciled its 2011 COGS to its 2011 finished goods ledger (account 1243). The only reconciling item was for non-refundable VAT (account 21710107)."). Additional business proprietary information supporting the Department's VAT calculations is discussed in the Kangtai Draft Remand Analysis Memorandum.

the production of exports that is non-refundable and, therefore, a cost.[81] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exports of the subject merchandise to the United States. The statute does not define the terms "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as the result of export sales. It is set forth in PRC law and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise. Furthermore, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax neutral.[82]

Our methodology, as applied to this review, consists of performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise and (2) reducing U.S. price by the amount determined in step one. Information placed on the record of this review indicates that, according to the PRC VAT schedule, the standard VAT levy on the subject merchandise is seventeen percent and that the VAT rebate rate for the subject merchandise is nine percent.[83] Therefore, for the *Final Results*, we removed an amount calculated based on the difference between these rates (*i.e.*, eight percent) applied to the export sales value from the calculated U.S.

[81] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014), and accompanying Issues and Decision Memorandum at Comment 7.
[82] *See Methodological Change*, 77 FR at 36483; *see also Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997).
[83] *See* Jiheng Sections C and D Questionnaire Response at Exhibit C-6.1; *see also* Letter from Kangtai, "Certain Chlorinated Isocyanurates from the People's Republic of China: Section C and D Questionnaire Response," November 21, 2012.

price, consistent with the definition of irrecoverable VAT under the PRC's tax laws and regulations.[84]

Irrecoverable VAT is (1) the free-on-board value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.[85] The first variable, export value, is unique to each respondent, while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in the PRC's laws and regulations.[86]

The Department's regulations at 19 CFR 351.401(c) require that we rely on price adjustments that are "reasonably attributable to the subject merchandise." The PRC's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. These are product-specific export taxes, duties, or other charges that are incurred on the exportation of subject merchandise. Thus, our analysis is consistent with our current VAT policy and our treatment of irrecoverable VAT in recently-completed NME cases.[87]

For this redetermination pursuant to remand, the Department continues to reduce Jiheng's and Kangtai's U.S. sales prices by eight percent, which is the percentage of irrecoverable VAT.

E. Selection of Primary Surrogate Country

As discussed above, the Department has determined that, in order to comply with the Court's remand, it must use Indian data to value chlorine, a country not on the list of economically comparable countries. The Court leaves open the question of the proper surrogate country for the remaining FOPs, suggesting the Department may wish to reconsider India in light

[84] *See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 1.
[85] *Id.*
[86] *Id.*
[87] *Id.*; *see also* IDM at Comment 5A.

of the Court's instructions regarding chlorine. Upon remand, the Department continues to conclude that the Philippines is a source of quality data for all FOPs except chlorine, and, thus, we see no reason to choose an "off the list" primary surrogate country.

Commerce's selection of the Philippines as the primary surrogate country from the surrogate country list is supported by the record. While the Court suggests the choice of surrogate country turns largely on the source for valuing chlorine, the use of Indian data for one factor does not change the conclusion that the selection of the Philippines is supported by the record. Chloro isos requires more than 40 FOPs, depending on the producer's level of integration.[88] In addition to dozens of chemical inputs, we must value packing materials, electricity, labor, overhead, selling, general and administrative expenses, and profit. In fact, as explained in the Draft Remand Analysis Memoranda, chlorine is not so critical as to warrant switching to India as the primary surrogate country at the expense of quality data for all other factors chosen from a country at the same level of economic development.[89]

When we emphasized the importance of chlorine in considering the choice between the Philippines and Thailand, we were looking at two countries on the list of economically comparable countries. All else being equal, including economic comparability, it makes sense to choose the country with better data for chlorine, as it would make sense to choose the country with better data for any other FOP, all else being equal. By definition, all else is not equal when choosing between a country at the same level of economic development and one that is less comparable. Data from a less comparable country is automatically at a disadvantage to data from a country at the same level of economic development. Data from countries at the same level of economic development reflect an overall economic environment similar to the one of the

[88] *See*, *e.g.*, Draft Remand Analysis Memoranda.
[89] *Id.*

country under investigation, including, for example, general labor and professional wages, interest rates, the availability of financing, and the sophistication of infrastructure.

Importantly, "economic comparability" is not an industry-focused analysis. Section 773(c) of the Act refers to a comparison of "countries," not industries, in choosing the best surrogate. Such a focus, in the view of the Department, is necessary to take into consideration an overall economic environment. A focus on industry similarity, which Kangtai appears to propose in its emphasis on the scale of India's chemical industry, ignores the statutory "country"/macro considerations in favor of non-statutory "industry"/micro considerations. Undoubtedly, the PRC and India both have large-scale chemical industries, as does the United States, but this similarity does not mean all three countries enjoy similar economic environments (*e.g.*, financing expenses, overhead, labor rates, natural resources, legal and taxation regimes, government policies, etc.). The more economically developed United States could not be considered economically comparable to the PRC, and the use of U.S. SVs would not be appropriate, unless there was no other evidence on the record. The same is true for less comparable countries.

Considering industry similarity as a factor in choosing a surrogate country arguably results in reading Congress' focus on country economic similarity out of the statute. Since India, with its large population and high aggregate GNI, has many large-scale industries, an industry-specific focus may very well result in the Department routinely choosing India (*i.e.*, a less economically comparable country), in direct contradiction of the Act, and the SVs chosen would not reflect the higher demands of a comparable economy. For similar reasons, the Department has noted in prior reviews of this order that it does not take the aggregate size of an economy,

aggregate GDP, and workforce population into consideration in determining economic comparability.[90] Instead, the Department looks at per-capita GNI.

For all these reasons, the Department would not choose a less economically comparable country as the primary surrogate country because of one factor accounting for only a fraction of NV, when there is quality data available for the remaining factors. The only reason the Department is relying on India for that one factor is because, given the Court's findings regarding Philippine GTA data, there is no quality data available from countries at the same level of economic development on the record. As the Court notes, such a choice would be made only when no country on the surrogate country list provides the scope of "quality" data that it requires in order to make a primary surrogate country selection,[91] not simply because data from an off-list country might appear to be better at first glance (*i.e.*, because it is from a large-scale chemical producing country).

Furthermore, the Court notes that the relevant regulation, 19 C.F.R. 351.408(c)(2), expresses that Commerce "*normally* will value all factors in a single surrogate country."[92] As the Court's emphasis indicates, this regulation does not require that the Department value all factors in a single surrogate country. We must consider this regulation in the context of each proceeding and our surrogate country selection methodology, which places emphasis on the level of economic development of the surrogate country. If the underlying record contained a surrogate country at the same level of economic development as the PRC, as well as data to value all the FOPs in that country, the Department would select that country as the surrogate country. However, in this proceeding, there is no single country that meets both of these requirements. In this regard, the Department considers it preferable to value FOPs in an

[90] *See Sixth AR Final Results*.
[91] *See Kangtai Remand*.
[92] *See* 19 CFR 351.408(c)(2) (emphasis added).

economically comparable country, rather than relying on valuation data from a less economically comparable country because data from a less economically comparable country is, by definition, less comparable. In this way, we balance our regulations and statutory directives in selecting surrogate countries. None of the potential surrogate countries (*i.e.*, those at the same level of economic development as the PRC) contain data to value all of the FOPs. However, we keep our regulatory preference in mind and have been able to value nearly all of the FOPs in a single economically comparable surrogate country, the Philippines.

Finally, the Department wishes to clarify that it considers economic comparability and significant production of comparable merchandise to be independent statutory factors. Specifically, a finding regarding one does not imply a finding regarding the other. Moreover, both factors are threshold factors; they are either met or they are not. "Significant" is not measured in comparison to the respondent's own level of production or the scale of the industry in the NME country under investigation. As explained above, requiring a match between the scale of the industry in the NME country and the scale of the industry in the surrogate country would undermine the statute's focus on the country's overall economic environment. Thus the key factor is *support*. If a country is a significant producer of comparable merchandise, then the economy of the surrogate country is developed enough to *support* an industry in the comparable merchandise. In other words, a country is a suitable surrogate if it is able to produce comparable merchandise in a similar economic environment, a conclusion reached through examination of economic comparability and, separately, examination of evidence of actual production of comparable merchandise, even though it may be on a much smaller scale than that of the respondents or the NME under examination. As for matching a respondent's production, the statute requires the Department to use the FOPs of the respondent. It is through this method of

normal value calculation that the respondent's production is represented and again nothing about the scale of production is included in the FOPs provision.

IV. COMMENTS ON DRAFT REMAND RESULTS

Issue 1: Calculation of Financial Ratios

Petitioners' Comments:

- The Department properly assigned "employee benefits" to selling, general, and administrative (SG&A) expenses.[93]
- The MVC annual report indicates that approximately half of retirement and employee benefits were paid to "key management personnel." Therefore, the portion of "retirement benefits" applicable to key management personnel should also be assigned to SG&A expenses prior to any further allocation of costs.[94]

Kangtai's Comments:

- The Department has not reconciled its allocation of labor in the financial ratio calculations with its *Labor Methodology*.[95]
- The Department's procedure is to remove any labor items covered by ILO 6A from the SG&A numerator to avoid double counting, and the Department has previously found that ILO 6A data covers all types of employees and all costs related to labor. Therefore, all line items related to labor in the MVC annual report is covered by the ILO 6A data and must be moved to the labor column of the financial ratio calculations.[96]
- The Department cannot modify this established methodology without providing proper notice and comment.[97]

Department's Position: The Department is making no additional adjustments to the SG&A ratio for these Final Remand Results. As Kangtai states, the Department's policy is to remove labor items from the SG&A numerator to avoid double-counting labor costs. In accordance with the Department's methodology, only labor charges that conflict with what is already accounted for by ILO 6A, *as applied to the direct and indirect labor factors*, are removed from manufacturing overhead and SG&A. We do not automatically remove all labor charges from SG&A expenses.

[93] *See* Petitioners Comments at 2.
[94] *Id.*
[95] *See* Kangtai Comments at 8.
[96] *Id.* at 9.
[97] *Id.* at 9-10.

Therefore, Kangtai misconstrues the Department's "published findings" when it states that "ILO 6A data covers *all* types of employees—production and non-production."[98] Neither the *Labor Methodology Request for Comments*,[99] nor the *Labor Methodology*, itself, suggests that the methodology should be applied to non-production labor (*i.e.*, SG&A labor). Rather, the methodology, as well as the related SV, applies only to direct and indirect production labor. The *Labor Methodology Request for Comments* states:

> The ILO defines Chapter 6A data to include:
>
> > The cost incurred by the employer in the employment of labour. The statistical concept of labour cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labour cost.
>
> The ILO Chapter 6A data include all costs related to labor including wages, benefits, housing, training, etc. *To the extent that Chapter 6A data includes some of the expenses that may already captured in the surrogate financial ratios, there is a possibility that the use of Chapter 6A data may overstate the cost of labor in certain cases*. The Department's ability to identify and adjust for such individual labor costs is fact-specific in nature and subject to the available information on the record of the specific proceeding. There will be some cases where information is available to make such adjustments, but there will be other cases where the Department cannot make such an adjustment due to a lack of available data. However, if the Department does not use an all inclusive data source, such as the ILO Chapter 6A data, the NME producer's total labor cost will be understated in cases where the surrogate financial statements do not include certain indirect labor costs that are also excluded from ILO Chapter 5B data.[100]

The language emphasized in the above paragraph clearly indicates that the Department intended to exclude only labor expenses that *might* be double counted (*i.e.*, may already be

[98] *See* Kangtai Comments at 9 (emphasis added).
[99] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment*, 76 FR 9544 (February 18, 2011) (*Labor Methodology Request for Comments*).
[100] *Id.* (emphasis added).

captured in the surrogate financial ratios) and conflict with ILO 6A, as applied to direct and indirect labor factors, from overhead and SG&A, as opposed to all labor expenses.

In the *Labor Methodology*, the Department further states:

> The Department also adjusts, when possible, the calculated factory overhead ratio to reflect all indirect labor costs (*e.g.*, employee pension benefits, worker training) itemized in the company's financial statement. While the Department's ability to identify and adjust for indirect labor costs depends on the information available on the record of the specific proceeding, when the Department is able to make the necessary adjustments, both direct and indirect labor costs are accounted for…the Department has decided to change to the use of Chapter 6A data, on the rebuttable presumption that Chapter 6A data better accounts for all direct and indirect labor costs. In their comments, [the Ministry of Commerce of the PRC} and {Vietnam Association of Seafood Exporters and Producers} argue that use of ILO Chapter 6A would result in overstating labor costs. To address this concern, the Department will adjust the surrogate financial ratios *when the available record information—in the form of itemized indirect labor costs—demonstrates that labor costs are overstated.*[101]

Once again, the emphasized language indicates that, by issuing the new methodology, the Department only intended to adjust financial ratios as needed to avoid conflicts with ILO 6A and the labor FOPs. The Department did not intend to make such adjustments in every instance in which a labor item appears in a financial statement. The distinction between production factors (*i.e.*, FOPs) and non-production factors is not limited to labor. The entire NME methodology recognizes a distinction between FOPs, used to account for "inputs" (*e.g.*, raw materials, packaging, direct and indirect production labor, and certain energy expenses), and SG&A expenses and profit. The former are valued with SVs, and the latter are valued with financial ratios. It would be impossible for a respondent to calculate FOPs for *all* expenses. FOPs, by nature, are tied to marginal costs and vary according to production volumes. In contrast, SG&A expenses and profit do not necessarily very in direct correlation to production volumes and, furthermore, are accounted for on a company-wide basis. Direct and indirect labor FOPs do not

[101] *See Labor Methodology*, 76 FR at 36093-36094 (emphasis added).

attempt to account for *all* labor expenses, but only production labor expenses (*i.e.*, wages, benefits, housing, training, *etc.*, for factory workers and their supervisors). SG&A labor expenses (*i.e.*, wages, benefits, housing, training, *etc.*, of sales personnel, accountants, and executives) are not accounted for by FOPs and SVs. Rather, they are accounted for by overhead and SG&A expense surrogate financial ratios.

Thus, the Department's statement that ILO 6A includes all costs related to labor (*i.e.*, wages, benefits, housing, training, *etc.*) is correct. The SV calculated from ILO 6A, however, is only applied to FOPs that account for direct and indirect *production* labor. Multiplying the relevant SV by the hours indicated in the two production labor factors results in a per-unit value for production labor that is in no way related to overhead or SG&A labor. In other words, a fully-loaded ILO 6A SV does not account for *all* labor expenses. Because the SV is only being applied to an FOP that accounts for production labor, it only accounts for all *production* labor expenses. Therefore, the only time the Department would adjust the SG&A ratio would be when it unexpectedly includes expenses related to production labor that are already accounted for by the SV, as applied to the two labor FOPs.

We agree with the Court and with the parties that the retirement benefits previously categorized under the SG&A ratio include labor costs that should be captured under direct and indirect labor (*i.e.*, overhead). However, as stated in our *Labor Methodology*, we look at financial statements on a case-by-case basis. In this instance, as the Court notes, these retirement costs apply to all "regular employees," as opposed to only production labor. Because these line item details are available, we must carefully consider how to allocate the costs in the financial ratios. Alternatively, if the costs are only attributed to non-production labor in the financial ratios, labor costs would be overstated (*i.e.*, retirement expenses for production labor that are

already captured in the FOPs would be double-counted by being left in the financial ratios). If the costs are only attributed to production labor, however, the labor costs would be understated (*i.e.*, retirement expenses for non-production labor would not be captured in the FOPs). Therefore, for the portion of retirement costs that are associated with production labor, we agree with parties that this cost should be allocated to the "labor column" (*i.e.*, overhead), but we are left with the retirement costs that cover the remaining employees (*i.e.*, not the production labor). Based on the record evidence, the Court's reading of the Philippines Financial Reporting Standards, and the Department's *Labor Methodology*, we continue to find that the rest of the retirement costs can reasonably be allocated to the administrative employees (*i.e.*, "salaries and wages" under "Operating Expenses") and, as such, left as part of the expenses used to calculate the SG&A ratio numerator.

Contrary to Kangtai's assertion, we are acting consistently with our methodology in light of the evidence in this proceeding. Kangtai points to no record evidence indicating that "regular employees" encompasses only production labor. Therefore, we have allocated the retirement benefits between the direct labor employees and the administrative employees based on the relative percentage that each labor cost represents of the total labor costs. We then excluded the amount allocated to the direct labor employees from the SG&A expenses and included the amount as direct labor cost, thereby increasing the denominator of surrogate financial ratio calculations in order to avoid double counting the labor included in ILO's wage rate.

Petitioners argue that the MVC annual report indicates that "roughly one-half of retirement and employee benefits were paid to 'key management personnel.'"[102] Lacking specific support for this statement, however, the Department declines to make any additional adjustments to the amount of retirement benefits attributed to SG&A. Aside from the ambiguity

[102] *See* Petitioners Comments at 2.

of the word "management" (*i.e.*, it does not clearly delineate production and non-production labor), allocating retirement benefits according to the wages and salaries indicated in the MVC financial statements based on the relative percentage that each labor cost represents of the total cost of labor, rather than based on the more ambiguous language in the annual report, is a more accurate allocation method, in light of the information on the record.

Kangtai notes that, in consideration of the final results in an earlier administrative review of this AD order, the Court characterized the Department's consideration of this issue as a "tortured analysis" that is "all beside the point."[103] In the current case, however, the Court merely deferred ruling on which party presented "the more accurate and reasonable interpretation of the MVC's financial statement" within the context of the *Labor Methodology* and asked the Department for "further explanation…resulting in adjustment of impacted financial ratios, if that is the consequence therefore." In accordance with these instructions, the Department has reexamined the issue and explained why our analysis in this case follows the *Labor Methodology*. MCV's financial statements provide unique facts that the Department analyzed in the context of the *Labor Methodology*. We agree with Kangtai and the Court that any labor item identified among the SG&A (*i.e.*, "period") items must be excluded from the surrogate SG&A ratio in order to avoid overstatement. Regarding retirement benefits, as is consistent with our methodology, we have removed any costs associated with production labor. Any retirement costs that are not identified as part of production labor are retained as part of SG&A, so as not to understate that ratio by excluding non-production labor. Regarding the employee benefits, because they are not identified as being tied to production labor, as required by the *Labor Methodology* and discussed above, it is not appropriate to exclude these costs from the SG&A

[103] *See* Kangtai Comments at 9 (citing *Clearon Corp and Occidental Chemical Corp., et al., v. United States,* Consol. Ct. No. 13-00073 (CIT 2015) (*Clearon II*)).

financial ratio when they are clearly identified as "Operating Expenses." As stipulated by our *Labor Methodology*, we are continuing to treat this line item as part of SG&A expenses.

Issue 2: Surrogate Value for Chlorine

Petitioners' Comments:

- The Department did not address the Court's observation that individual Philippine import prices are "wide-ranging."[104]
- Contrary to the Department's statement that the record contained "no evidence indicating that the nature of transporting {chlorine} during the POR had changed from previous reviews," "BIS data submitted by Kangtai showed regular, monthly imports of chlorine by Jedaric Chemicals in substantial commercial quantities from Samuda Chemicals Complex, Ltd."[105]
- The BIS data indicates that the average net price of imported chlorine, $0.14 per KG, is comparable to the domestic price of Indian chlorine, $0.113 per KG.[106]
- Therefore, there is record evidence that chlorine can be exported in commercial quantities, and the Department should rely on Philippine import statistics to value chlorine.[107]

Department's Position: In these Final Remand Results, the Department is continuing to use Indian data to value chlorine for the reasons discussed, above, at III.B.1. Accordingly, concerns regarding the "wide-ranging" import prices of chlorine in the Philippines, which were raised by Kangtai in the underlying administrative review and later echoed by the Court and Petitioners,[108] have been fully addressed by the Department.

Petitioners also argue that data published by the Philippine Bureau of Import Statistics (BIS) and placed on the record of this proceeding by Kangtai indicates that chlorine can be traded internationally in commercial quantities without prohibitive transportation costs. As the Court notes in a companion proceeding, however, "all parties acknowledge that there is some

[104] *See* Petitioners Comments at 2.
[105] *Id.* at 3 (citing Letter from Kangtai, "Surrogate Values for the Final Results of Review," September 12, 2013, at Exhibit SV-10).
[106] *Id.*
[107] *Id.* at 5.
[108] *See Kangtai Remand* at 39 (cited by Petitioners Comments at 2).

degree of international trade in chlorine and hydrogen gas."[109] In past cases, it has not been the Department's contention that trade in either chlorine or hydrogen is impossible or non-existent. Rather, based on evidence examined in prior reviews of chloro isos and glycine from the PRC, we have concluded that the hazardous nature of chlorine and hydrogen and their special transportation and packaging requirements make shipment expensive and, in correlation, import data an unreliable SV for either chemical.[110] The small, individual shipment volumes and wide variation in average unit values across import data corroborate the conclusion that import data is not a reliable SV for chlorine.[111] Specifically, Petitioners cite to 16 shipments of chlorine totaling only 486.52 MT, net of packaging, which were placed on the record of the underlying review by Kangtai for potential use as an SV.[112] Although, as noted by Petitioners, the average net price of chlorine in these sixteen shipments to the Philippines is US$140.00/MT, the GTA import data indicates that the average price of *all* chlorine imported to the Philippines during the POR (*i.e.*, 1,611 MT) was US$210.00/MT. Significantly, the data provided by Kangtai and cited to by Petitioners suggest that nearly 50 percent of the total shipment weight was comprised by packaging materials.[113] As such, based on the information available in this proceeding, the Department cannot conclude that the value of internationally-traded chlorine is adequately reflective of the value of domestically-purchased chlorine. Accordingly, pursuant to the Court's rulings in *Kangtai Remand* and *Clearon II*,[114] the Department continues to rely on the Indian domestic price data as the only alternative in this administrative review.

[109] *See Clearon II* at 17.
[110] *Id.* at 12-13.
[111] *Id.*
[112] *See* Letter from Kangtai, "Surrogate Values for the Final Results of Review," September 12, 2013, at Exhibit SV-10.
[113] *Id.*
[114] *See Kangtai Remand* at 40; *see also Clearon II* at 26.

As discussed above, the Department prefers to use SVs from one primary surrogate country. If one SV cannot be sourced from that country, then the Department turns to SVs from other economically comparable countries. In the instant case, however, the only other price for chlorine on the record is from a country that is not on the surrogate country list. As this is the only available non-aberrant source for the Department's valuation of chlorine, we continue to rely on this price as the chlorine SV. We will reconsider the hazardous nature of and costs associated with the international transport of chlorine in future reviews, if relevant information is placed on the record indicating that the Department's prior findings regarding chlorine and import statistics are no longer valid.

Issue 3: Surrogate Value for Electricity

Petitioners' Comments:

- The Department should not reject the Camarines Sur electricity rates because they have been used to value electricity in several past cases.[115]
- If the Department continues to rely on MERALCO rate schedules to value electricity, it should use "facts otherwise available" to assign a rate class to Jiheng and Kangtai because neither respondent submitted sufficient evidence to support classification under the GP 115 KV category.[116]

Department's Position: For purposes of these Final Remand Results, the Department continues to rely on GP 115 KV MERALCO rate schedules to value electricity. Petitioners argue that the Department should not reject the Camarines Sur electricity data because it has been deemed "appropriate" and used to value electricity in several other proceedings.[117] The Department agrees that, when publicly available, the Camarines Sur electricity data is a suitable source for electricity surrogate values. As discussed above, however, the Camarines Sur data relied upon in the *Final Results* was not publicly available in this particular proceeding. As such, the

[115] *See* Petitioners Comments at 5-6.
[116] *Id.* at 7.
[117] *Id.* at 5-6.

Department is precluded from calculating an electricity SV using the Camarines Sur data for these Final Remand Results.

Petitioners further argue that, when valuing electricity using MERALCO rate schedules, the Department should rely on GP 34.5 KV rates rather than the GP 115 KV rate reported by Jiheng.[118] Calculating an SV based on the GP 34.5 KV rate would result in the highest possible SV using the MERALCO data, which Petitioners argue is warranted as "facts otherwise available."[119] Selecting the highest rate would be appropriate if, pursuant to section 776(b) of the Act, the Department were employing an adverse inference in selecting from among the facts available. The Department, however, finds that, as observed by the Court, we failed to provide Jiheng and Kangtai with an opportunity to remedy the deficiencies in their reported electrical usage information, so as to properly confirm or refute Jiheng's unsupported self-classification as a GP 115 KV industrial user,[120] which means that reliance on an adverse inference, under section 776(b) of the Act, would not be appropriate. As such, although Jiheng's unsupported statements do not meet the Department's evidentiary standards, the specific facts in this proceeding require us to continue to rely on the information provided by Jiheng to value electricity, as "facts otherwise available without an adverse inference."

Issue 4: By-Product Offset Methodology

Petitioners' Comments:

- The by-product offset methodology used in the Draft Remand Results is correct and fully consistent with the statute and established Department practice.[121]
- By-product offsets are granted only for products that are sold or reintroduced into production of the subject merchandise. Jiheng did not sell ammonia gas or sulfuric acid,

[118] *Id.* at 7.
[119] *Id.*
[120] *See Kangtai Remand* at 61.
[121] *Id.* at 8.

but it did sell ammonium sulfate. Therefore, any by-product offset must be based on ammonium sulfate.[122]

Jiheng's Comments:

- The Department does not explain the changes to its by-product methodology or how such changes are an improvement, as requested by the court.[123]
- The Department does not mention its "net realizable value" methodology.[124]
- The policy of valuing a by-product as close to the split-off point as possible contradicts the Department's new methodology and is a *post hoc* rationalization.[125]

Kangtai's Comments:

- The Department has not addressed Kangtai's right to rely on the pervious method of calculating a by-product offset.[126]
- The Department has not explained how its new methodology is an improvement.[127]
- The Department's rigid interpretation of "realized income," resulting in a complete denial of Kangtai's offset, is unreasonable. There is record evidence that Kangtai received payment for its disposition of ammonium sulfate, so the only discrepancy is an actual accounting entry.[128]

Department's Position: For these Final Remand Results, we are continuing to use the methodology from the underlying administrative review to value the by-product offset from Jiheng. The Department also continues to find no by-product offset for Kangtai.

Jiheng places great emphasis on the fact that the Department cited to just one case, *Magnesium Metal from Russia*, as support that the methodological change made during the prior review and consistently applied in this underlying proceeding was done in accordance with the Department's recent practice. The Department, however, did not cite to *Magnesium Metal from Russia* to support the by-product adjustments that were made, but rather to explain our normal by-product methodology. As stated above:

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[122] *Id.* at 11.
[123] *See* Jiheng Comments at 2.
[124] *Id.* at 2, 3-5.
[125] *Id.* at 2, 5-8.
[126] *See* Kangtai Comments at 14.
[127] *Id.*
[128] *Id.* at 15.

> The Department's long-standing practice of valuing by-products is to value the products as close to the split-off point as possible (*i.e.*, in this case, ammonia gas and sulfuric acid). As stated in the *Sixth AR Final Results*, however, this methodology was adjusted to conform to the Department's recent practice in other proceedings. We did not explain why we made this adjustment or how this adjustment was consistent with our normal by-product methodology.[129]

It is clear that *Magnesium Metal from Russia* was cited to explain that, as Jiheng and Kangtai are arguing, the Department normally values by-products as close to the split-off point as possible, which, in this case, leads us to value ammonia gas and sulfuric acid as by-products. In explaining our diversion from this practice, the Department sought to clarify the normal by-product methodology. As such, *Magnesium Metal from Russia* was referenced merely to establish the baseline normal by-product methodology. It appears Jiheng agrees that *Magnesium Metal from Russia* illustrates our normal practice (*i.e.*, treating ammonia gas and sulfuric acid as the by-products) and, therefore, agrees with the methodology explained in *Magnesium Metal from Russia*. From this starting point, the Department then explained why it was deviating from that normal practice in this case.

Jiheng argued that the Department failed to address the "net realized value" methodology. This alleged "methodology," however, is a misunderstanding of the adjusted methodology used in this proceeding, as characterized by the Court in *Clearon II*. In fact, even in the by-product adjustment made in these Final Remand Results, we used the amount of ammonium sulfate that was *produced* during the POR, as is evident in the calculations.[130] Therefore, we are not at odds with the generally-accepted accounting principles or with the by-product methodology.

In response to the respondents' criticisms, the Department contends that we have satisfactorily explained how the new method for calculating by-product offsets is more

[129] *See supra* (citations omitted).
[130] *See* Jiheng Draft Remand Analysis Memorandum at 5.

reasonable and accurate than the previous methodology. We note that no party has taken substantive issue with the methodology itself; the respondents have merely questioned *why* the Department made adjustments to its methodology. As discussed in the Draft Remand Results and reiterated below, we adjusted the methodology to address two specific concerns and, as a result, calculated a more accurate and more reasonable by-product offset.

First, "{N}either respondent measured and kept records of the actual amount of waste ammonia gas and sulfuric acid being produced…{so} we were forced to go to the production records for the downstream product, ammonium sulfate, to derive the amounts of ammonia gas and sulfuric acid produced."[131] Jiheng asserts that the Department's concern for Jiheng's books and records is *post hoc* rationalization. The Department's consideration of this matter on remand is just that, a consideration of the matter anew and, thus, it cannot constitute a *post hoc* rationalization. Jiheng also argues that this explanation must fail because, while the underlying facts have not changed since the investigation, the Draft Remand Results were the first time the Department raised these concerns. Jiheng, however, concedes that it does not maintain direct records of its ammonia gas production.[132] Furthermore, contrary to Jiheng's characterization of the Department's findings at verifications in earlier reviews of this order, the Department expressly noted its concerns regarding proper measurement of ammonia gas output in the sixth administrative review, immediately prior to this underlying proceeding.[133] As such, Jiheng's failure to maintain records for its ammonia gas output is a well-established fact which was properly taken into consideration in determining the appropriate by-product adjustment for the *Final Results* and in these Final Remand Results. The Court requested that the Department explain why it had adjusted its by-product methodology, and this fact was part of our reasoning.

[131] *See supra*.
[132] *See* Jiheng Comments at 5.
[133] *See* Jiheng Final Remand Analysis Memorandum, Attachment 3 at 12.

Second, as stated above:

> {I}f we valued the by-products as close to the split-off point as possible, the amount of the by-product offset would result in an illogical outcome. In other words, the values of the immediate by-products, ammonia gas and sulfuric acid, are higher than the value of the by-product that is actually sold, ammonium sulfate. In reality, as pointed out by the Court, no company would combine two inputs, thereby incurring additional processing costs, to make a lower-valued ammonium sulfate by-product. This was a clear indication that applying our methodology in the normal manner would be inappropriate.[134]

The adjusted methodology (*i.e.*, value the downstream products, minus processing costs, to determine the actual value that the respondent receives for the by-products) is a more accurate and reasonable calculation. Reverting to the previous practice leads to illogical conclusions that do not match Jiheng's real world experience (*i.e.*, in general, no company would combine inputs, thereby incurring additional processing costs, in order to make a lower-valued by-product).

Jiheng further claims that the Department did not address the Court's question of "why any concerns over the value to be applied to ammonia gas and sulfuric acid could not have been addressed through 'capping' the surrogate value used." In essence, however, the Department's adjustment in this case *is* capping. Specifically, we are capping the value of ammonia gas and sulfuric acid at the value of ammonium sulfate, less inputs needed to produce the downstream product. The Court did not request that the Department apply a particular cap.

Finally, Kangtai argues that the Department has not fully considered its two suggested "alternative" methods of calculating a by-product offset for the company, given Kangtai's "reliance on the Department's old understanding of realized income."[135] As noted above, however, the methodology employed by the Department to calculate by-product offsets in this review is the same methodology (*i.e.*, the methodology based on the same "understanding of

[134] *See supra*.
[135] *See* Kangtai Comments at 15.

realized income") employed by the Department in the preceding administrative review. At that point, Kangtai was made aware of our concern regarding how to value by-products in this context. Therefore, the Department maintains that its denial of Kangtai's by-product offset for ammonium sulfate is not unreasonable and declines consideration of Kangtai's alternative analysis methodologies because neither overcomes the overwhelming deficiencies in Kangtai's ammonium sulfate sales records. For business proprietary reasons discussed in the accompanying analysis memorandum, Kangtai failed to meet the established evidentiary standard regarding realized income for by-products. The record evidence, which Kangtai cites in support of its claimed by-product offset, is clearly unreliable and only serves to support the Department's decision to deny an offset for ammonium sulfate to Kangtai as the company allegedly receiving payment.[136]

Issue 5: Selection of Primary Surrogate Country

Petitioners' Comments:

- The Department's selection of the Philippines as the primary surrogate country in this review was correct because it is economically comparable to the PRC and has better quality data.[137]

Kangtai's Comments:

- The Department's analysis conflates data quality and economic comparability, but data quality and economic comparability are separate aspects of analysis. Otherwise data quality could never outweigh economic comparability.[138]
- Similarly, the statute does not emphasize economic comparability over significance of production. Neither criterion is pre-eminent; rather, both must be considered.[139]
- Economic comparability cannot be the exclusive test to define potential surrogate countries, thereby disregarding statutory consideration of data quality and significant production as factors that have equal weight in determining the "best available information" in a proceeding.[140]

[136] *See* Kangtai Final Remand Analysis Memorandum at 2.
[137] *See* Petitioners Comments at 11.
[138] *See* Kangtai Comments at 2.
[139] *Id.* at 3.
[140] *Id.* at 4.

- The Department must reconsider Thailand as the primary surrogate country. Thailand offers multiple financial statements and, therefore, it has greater quality and more available data than the Philippines. Based on *per capita* GNI, Thailand is also more economically comparable to the PRC.[141]

Department's Position: The Department is continuing to use the Philippines as the primary surrogate country for these Final Remand Results. We agree with Kangtai that we must consider three criteria when selecting a surrogate country. However, we disagree that the three factors must be "weighed" together in the evaluation of competing surrogate countries. Data quality, for example, would not outweigh or compensate for a potential surrogate country's lack of economic comparability, unless no "quality data" was available from an economically comparable country. Because the Philippines is economically comparable to the PRC and quality Philippine data was available for a vast majority of the FOPs, we relied on data from the Philippines to value those FOPs. Therefore, regardless of any subjective inference that data from India might be "better" than data from the Philippines, it is not necessary to consider using Indian data to value most FOPs (*i.e.*, the FOPs for which quality Philippine data was available) in this proceeding.[142] Nevertheless, we did not rely on data from the Philippines to value chlorine because there was no quality Philippine data pertaining to that FOP.[143] As such, the Department does consider all three factors in its selection of a primary surrogate country. All else equal, the Department will consider data quality as a "tiebreaker" when choosing between multiple countries on the list of economically comparable countries that are significant producers of subject merchandise. Such tiebreakers hinge on whether one country has data readily available for more inputs than the

[141] *Id.*

[142] As explained in detail above, *see supra* at 8-11, and further discussed below, *see infra* at 49, we do not believe that Kangtai's conclusions regarding the superiority of Indian data are applicable within the context of selecting SVs.

[143] "Quality data" refers to data that represents commercial value (*i.e.*, values determined through competitive market exchanges for the type of input used by the respondent, rather than values for samples, values that might be the result of a misclassification of customs data or transcription error, values for inputs that cannot reasonably be considered comparable to the type of input used by the respondent, or values that likely reflect special packaging or transportation costs that would not have been incurred by the respondent (*e.g.*, the import data for chlorine)).

other countries (*i.e.*, the tiebreaker is more a matter of data "quantity" than an attempt to compare data "quality" for specific inputs). For example, as discussed below, we chose the Philippines as the primary surrogate country over Thailand because the usable Philippine financial statements allowed for direct calculation of surrogate financial ratios, whereas the Thai financial statements did not. Therefore, we properly concluded that the Philippines had better data quality than Thailand.

As explained above, the Department is not statutorily required to judge the quality of data in terms of the "commercial reality" of the underlying quantities (*i.e.*, whether the surrogate country quantities match the quantities consumed by the respondents) or in terms of whether or not the data reflects industries that produce on the same scale as industries in the PRC. We reiterate that, although the Department is relying on Indian data to value chlorine in these Final Remand Results, we are *not* finding that the Indian chlorine values are "superior" to the Philippine data. Rather, consistent with the Court's evaluation of this issue, we find that, due to chlorine's volatile nature and high international transportation costs, import data, generally, cannot be used as a SV for chlorine in this proceeding. Therefore, we used the *only* other available information on the record to value the chlorine input, which was from India. We did not "weigh" various factors to compare the Philippine import data to the Indian domestic data. We chose the only useable data.

Kangtai also argues that the Department "has conflated quality of data with economic comparability" and must examine the quality of the Indian data irrespective of the country's economic comparability.[144] We disagree that such an analysis is necessary. As discussed above, such an analysis is only necessary if the Department concludes that no country on the list of economically comparable countries provides the scope of quality data that is necessary to make a

[144] *See* Kangtai Comments at 2-3.

primary surrogate country selection. We have explained, at length, that there is "quality data," as properly defined, from the Philippines for all FOPs (*i.e.*, more than 40 FOPs), except chlorine.

In regard to the third criteria for primary surrogate country selection, significant production, Kangtai argues that "{t}he Department has effectively eliminated any meaning to the statutory term...'significant.'"[145] The Department, however, maintains that there are not degrees of significant production. A potential surrogate country is either a significant producer or it is not a significant producer. While China and India, for example, may have larger chemical industries than the Philippines, that fact is irrelevant. The Department does not seek to weigh degrees of production in order to choose the most significant producer. Nor do we attempt to choose a surrogate country with an industry comparable in size to that of the country under investigation. Such a comparison is not required by the statute and would, in the Department's view, undermine the statutory requirement that we pick an economically comparable surrogate country. As discussed in the preliminary results of the underlying review, Policy Bulletin No. 04.1 states that "a country producing comparable merchandise is sufficient in selecting a surrogate country."[146] "Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry."[147]

Kangtai argues that significance is a "term of comparison," requiring comparison of a potential surrogate country's production to world production of the subject merchandise.[148] In

[145] *Id.* at 4.
[146] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 41364 (July 10, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 8 (citing Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin No. 04.1)).
[147] *See* PDM at 8 (citing *Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-65676 (December 15, 1997).
[148] *See* Kangtai Comments at 4 (citing *Fresh Garlic Producers Ass'n v. United States*, 2015 Ct. Int'l Trade LEXIS 133 (November 30, 2015), at *60).

this assertion, however, Kangtai has mischaracterized the Court's findings in *Fresh Garlic Producers Ass'n*. In that decision, the Court considers comparison of a single country's production to worldwide production as "but one lens" through which significance can be analyzed, and suggests the Department need not conduct such a comparison in all cases. The term "significant producer" "is not statutorily defined, and is inherently ambiguous."[149] As such, the Court has acknowledged that the Department is free to define a significant producer, as long as such a definition is permissible within the construct of the statute.[150] Therefore, in accordance with *Fresh Garlic Producers Ass'n*, comparison of country-specific production volumes with worldwide production volumes is not the only reasonable method of analyzing significance. Moreover, *Fresh Garlic Producers Ass'n* does not stand for the conclusion that the Department must choose the country with the highest production volume of the identical or comparable merchandise or that it must "weigh" production volumes against economic comparability. The decision does not fault the Department's fundamental statutory interpretation that a potential surrogate country either is or is not a significant producer; there are not degrees of significant production.

Moreover, the Court's decision in *Fresh Garlic Producers Ass'n* is not yet final, as the Department's redetermination pursuant to remand was submitted in February and is still under consideration.[151] The Garlic Redetermination includes the Department's response to the suggestion that the "interpretation of significant producer" must involve some form of comparative analysis.[152] Specifically, "the Department respectfully disagrees with the {*Garlic*}

[149] *See Shandong Rongxin Imp. & Exp. Co. v. United States*, 774 F. Supp. 2d 1307, 1316 (CIT 2011); *see also Fresh Garlic Producers Ass'n*, 2015 Ct. Int'l Trade LEXIS 133, at *60.
[150] *Id.* (citing *Shandong Rongxin Imp. & Exp. Co.*, 774 F. Supp. 2d at 1316).
[151] *See* Department Memorandum, "Final Results of Redetermination Pursuant to Remand: Fresh Garlic from the People's Republic of China," February 29, 2016, Attachment (Garlic Redetermination).
[152] *Id.* at *64.

Court that there is an inherent 'comparative aspect of the significant producer analysis.'"[153] We further explain:

> The statute does not specify that such an analysis is required. Moreover, the legislative history states only that the "term 'significant producer' *includes* any country that is a significant net exporter and, if appropriate, Commerce may use a significant net exporting country in valuing factors." Consistent with this language, a country not among the largest producers can be a producer significant enough to provide meaningful market-based values.[154]

In addition, the Department considers the dictionary definition of "significant" as "a noticeably or measurably large amount" and maintains that production data may be evaluated in these terms (*i.e.*, whether or not the data is sufficiently large in volume to provide reliable surrogate values reflecting the commercial market reality of producing the subject or comparable merchandise in the potential surrogate country).[155] In this underlying seventh administrative review of chloro isos from the PRC, we determined that the available data indicated significant production of comparable merchandise in the Philippines and Thailand because the relevant amounts were "noticeably or measurably large" enough to reasonably assume that the data reflected transactions among buyers and suppliers in normal market conditions. As discussed in the Garlic Redetermination, this interpretation follows from the underlying purpose of section 773(c)(4) of the Act, which is to identify reliable market-based prices and to use such prices to value NME producers' FOPs.[156]

Notwithstanding this analysis, we note that, in the underlying administrative review, no party disputed the conclusion that the Philippines is a significant producer of the subject merchandise. Furthermore, the Department conducted an appropriate comparative analysis of

[153] *See* Garlic Redetermination at 11.
[154] *Id.* at 11 (citations omitted).
[155] *Id.* at 9.
[156] *Id.*

the production data at issue.[157] Specifically, the Department considered sodium hypochlorite and calcium hypochlorite production and export data in the context of the statute, the regulations, and relevant legislative history and found that, based on a comparison of the information available on the record, both the Philippines and Thailand were significant producers of comparable merchandise during the POR.[158] For these reasons, the production data on the record is sufficient to demonstrate that the Philippines is a significant producer of comparable merchandise and, as such, satisfies the significant producer criterion.

Kangtai argues that the Department must reconsider Thailand as the primary surrogate country in this proceeding, based largely on the false assertions that "the Department selected the Philippines primarily because it had a usable chlorine figure" and that the availability of four Thai financial statements constitutes higher quality data.[159] As already considered and sustained by the Court, however, the Department reasonably selected the Philippines over Thailand because the Philippine data was of a greater quality for purposes of calculating financial ratios and surrogate values, in general.[160] In the Court's words, the Department "determined that the Philippine financial statement of MVC constituted the best available information to calculate financial ratios, because it was the only financial statement on the record that included specific line items for SG&A expenses, thereby allowing direct calculation of the surrogate financial ratios."[161] Therefore, although more Thai financial statements are available, only the single Philippine financial statement allows for the proper calculation of financial ratios. The remand decision in this case explicitly states that "substantial evidence" on the record supports the Department's conclusion that the available Philippine data was superior to the available Thai

[157] *Id.* at 8-9; *see also* IDM at 7.
[158] *See* PDM at 8-9.
[159] *See* Kangtai Comments at 5.
[160] *See Kangtai Remand* at 20-22.
[161] *Id.* at 21.

data, and, as such, the Court declined to remand the issue for further consideration. The use of Indian data to value chlorine in these Final Remand Results does not significantly change the underlying facts that lead to the Department's selection of the Philippines as the primary surrogate country. As such, the Department will not reconsider its use of the Philippines as the primary surrogate country in this administrative review.

Issue 6: Surrogate Value of Ammonium Chloride

Kangtai's Comments:

- The Department's finding that 5,464 KG constitutes a commercial quantity is unreasonable. Either Indian domestic or South African import data should be used to value ammonium chloride.[162]
- In order to determine the best available information, the Department must evaluate the commercial quantity of a surrogate value and, in doing so, cannot ignore a respondent's experience or the nature of the factor of production for which a surrogate value is sought.[163]
- The Court and the Department have previously concluded that a producer of a product in any surrogate country would require a commercial quantity of an input in order to produce the end product. The commercial reality of the respondent in a proceeding is a "logical and reliable litmus" for evaluating what constitutes a commercial quantity for an input.[164]
- The existence of imports of ammonium chloride is not dispositive of commercial or industrial use.[165]

Department's Position: For purposes of these Final Remand Results, the Department continues to rely on Philippine GTA data to value ammonium chloride because the Philippine GTA data reflects a "commercial quantity" of ammonium chloride imported during the POR. Kangtai's arguments regarding its own "commercial reality" are inconsistent with the Department's interpretation of its statutory obligations pertaining to SV selection, as discussed above.[166] In particular, contrary to Kangtai's assertions, the statute does not require the Department to

[162] *See* Kangtai Comments at 13.
[163] *Id.* at 10-11.
[164] *Id.* at 12.
[165] *Id.* at 13.
[166] *See supra* at "b. The Respondents' Production" and "c. 'Commercial Quantity'."

consider a respondent's specific experience. Once again, the record evidence indicates that the quantity of ammonium chloride imported by the Philippines is not aberrational as compared to world import statistics.[167] While South Africa and Kangtai may import and consume, respectively, more ammonium chloride than is imported into the Philippines, the Philippine GTA data appears to be reliable and consistent, in terms of quantity, with the available GTA data pertaining to shipments to other countries (*e.g.*, the volumes of ammonium chloride exported to the Philippines from the United States and Singapore, as compared to the volume of ammonium chloride exported to South Africa from India). As such, it fits the Department's definition of a "commercial quantity," which is simply part of the Department's analysis to ensure that the transactions reflected in the import data reflect market values (*i.e.*, competitive commercial transactions, either large or small).[168] While the Department agrees with Kangtai that the mere existence of imports is not dispositive of a "commercial quantity," we find that there is enough evidence in the underlying proceeding, as discussed at length above,[169] to support the conclusion that 5,464 KG constitutes a commercial quantity of ammonium chloride.

Issue 7: VAT Adjustment

Jiheng's Comments:

- The Department's deduction of "unrefunded" VAT is not supported by the statute, as held by *Globe Metallurgical* and *Magnesium Corporation of America*.[170]
- The Department has not explained its decision not to rely on the respondents' unrefunded VAT calculations.[171]

[167] *See supra* at "c. 'Commercial Quantity'."
[168] *See, e.g., Heavy Forged Hand Tools from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 66 FR 48026 (September 17, 2001), and accompanying IDM at Comment 11 (citing *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania: Final Results of Antidumping Duty Administrative Review*, 62 FR 37194, 37195 (July 11, 1997) in support of exclusion of small quantities as non-commercial quantities only when such data would be "distortive").
[169] *See supra* at 15 (explaining that the information available on the record indicates that ammonium chloride is often shipped in quantities less than 5,464 KG, rather than as a full 20,000 KG shipping container).
[170] *See* Jiheng Comments at 8.
[171] *Id.* at 11.

- The Department's simple calculation of eight percent unrefunded VAT is incorrect.[172]

Kangtai's Comments:

- The Department does not have the authority to reduce Kangtai's U.S. price by the amount of unrefunded VAT Kangtai paid on raw material purchases.[173]
- In order to reasonably implement this adjustment, the Department must issue questionnaires requesting the necessary information.[174]

Department's Position: For these Final Remand Results, the Department continues to reduce the respondents' U.S. sales prices by eight percent to account for irrecoverable VAT. Contrary to Jiheng's and Kangtai's assertions, section 772(c)(2)(B) of the Act authorizes the Department to deduct any "export tax, duty, or other charges imposed by the export country upon exportation of subject merchandise" from EP or CEP.[175] Jiheng specifically cites the Court's decision in *Globe Metallurgical* to support its claim that the statutory term "imposed" requires a positive action on behalf of the PRC government,[176] as well as the Federal Circuit's ruling in *Magnesium Corporation of America* to stand for the proposition that the Department cannot properly make an adjustment for irrecoverable VAT in a NME.[177] The Court, however, recently upheld the Department's current irrecoverable VAT adjustment methodology, as applied in this proceeding, explaining how that holding was consistent with the *Magnesium Corporation of America* opinion.[178] As stated by the Court:

> The plaintiffs argue that the holdings of *{Magnesium Corporation}* still control, *i.e.*, that the "plain meaning of the relevant statutory language was consistent with Commerce's previous interpretation of the statutory provision and "prohibited" Commerce from making any deduction from U.S. price to account

[172] *Id.* at 12.
[173] *See* Kangtai Comments at 18.
[174] *Id.*
[175] *See* section 772(c)(2)(B) of the Act.
[176] *See* Jiheng Comments at 9 (citing *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340 (CIT 2011) (*Globe Metallurgical*)).
[177] *Id.* at 10 (citing *Magnesium Corporation of America v. United States*, 166 F.3d 1364 (Fed. Cir. 1999) (*Magnesium Corporation*)).
[178] *See Fushun Jinly Petrochemical Carbon Co., Ltd. v. United States*, Slip Op. 16-25, Ct. No. 14-00287 (CIT 2016) (*Fushun Jinly*).

> for export taxes, duties, or charges imposed by {NME} countries as defined by {section 771(18) of the Act}…
>
> The plaintiffs misinterpret. The relevant appellate decision found "plain" that the language of the statute does not require all export taxes to be deducted from the U.S. price but requires only deduction of those amounts that are included in the price of the merchandise; hence, whether VAT and export taxes are included in, and should be deducted from, the U.S. price is within Commerce's discretion to determine.
>
> At any rate, the plaintiffs agree that change in administrative practice is permissible if a reasoned explanation is provided for the change. They argue, however, that Commerce cannot change practice or interpret the statute contrary to the plain language of the statute. Specifically, they contend that the plain terms of the statute require an "export tax, duty or other charge" that is "imposed by the exporting country," {section 772(c)(2)(B) of the Act}, and that the PRC's VAT is an internal tax only that by definition is not "imposed" upon export of the subject merchandise. They also argue that the statute only permits Commerce to deduct from U.S. price "the amount if included in such price."…Similar contentions, however, we addressed at length in *Methodological Change*…[179]

Ultimately, in *Fushun Jinly*, the Court disagrees that the primary purpose of the Act's NME methodology provisions is necessarily to disregard prices and costs incurred in the production and sale of the subject merchandise that were incurred in the NME country.[180] In addition, the Court observed that, although NMEs are specifically addressed in the Act's NV provisions,[181] NMEs are not named in the Act's U.S. price provisions.[182] Furthermore, "with regard to U.S. price, neither the governing statute nor its legislative history defines 'export tax, duty or other charge imposed' for the purpose of adjusting U.S. price."[183] The Court continues:

> Commerce reconsidered its interpretation and concluded that "export tax, duty or other charge imposed" includes VAT that is not fully refunded upon exportation…Such a methodological update, achieved through notice and comment, compels *Chevron* deference. On this issue, the plaintiffs do not persuade that deduction of the portion of the PRC's VAT that was unrefunded or irrecoverable upon export of their subject merchandise to the United States was contrary to law and not supported by substantial evidence.[184]

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[179] *Id.* at 22 & n. 10 (*citing* to *Globe Metallurgical, Inc.*).
[180] *Id.* at 24.
[181] *Id.* at 25 (citing section 773(c)(1)(B) of the Act).
[182] *Id.* (citations omitted).
[183] *Id.*
[184] *Id.*

Therefore, as explained above, to the extent that the amount of VAT paid on inputs used to produce chloro isos is not refunded upon exportation of the finished product, section 772(c)(2)(B) supports our adjustment for irrecoverable VAT. The term "imposed," as used in the Act, does not require a positive action, nor does the PRC's status as an NME preclude the Department from making irrecoverable VAT adjustments in this case.

The respondents further argue that the Department's calculations for this adjustment are incorrect and that, alternatively, we should rely on the respondents' own calculations.[185] In proposing its alternative irrecoverable VAT adjustment calculation methodology, however, Jiheng, in particular, misstates the formula applied by the Department and inaccurately suggests that the specific value of input material purchases is and should continue to be considered in our calculation of irrecoverable VAT.[186] As such, Jiheng's assertions that the Department's calculations are mathematically incorrect are based on the false claim that we are interchanging an input price variable with an EP variable.[187] The Department, however, is not basing any of its irrecoverable VAT adjustment calculations on the actual prices paid for input materials. Rather, only EP is considered in the irrecoverable VAT adjustment formula, and the Department's finding that (0.17*EP) – (0.9*EP) = (0.8*EP) is arithmetically accurate.

The purpose of the irrecoverable VAT adjustment is to arrive at a tax-neutral dumping comparison by reducing the U.S. EP or CEP downward by the amount of the irrecoverable VAT. So called "input VAT" is not relevant to the calculation described above, unless a respondent can substantiate that it was exempt from paying input VAT on the products it exports. As such,

[185] *See* Jiheng Comments at 11.
[186] *Id*. Jiheng defines the Department's formula as Y*0.17 – X*0.09 = X*0.08, in which X = EP and Y = input price. However, the formula applied by the Department is actually X*0.17 – X*0.09 = X*0.08. As an alternative, Jiheng suggests X*0.17 – X*0.09 – Y*0.17.
[187] *Id.*

contrary to Kangtai's assertions, no additional information is required to accurately and "properly administer this methodology."[188] All of the information that is necessary for calculating the amount of irrecoverable VAT (*i.e.*, the relevant PRC laws and regulations, which establish the basic calculation formula; the applicable VAT levy and rebate rates; and the EP data for sales of the subject merchandise) is on the record of the underlying administrative review.

In conclusion, in regard to the Department's irrecoverable VAT adjustment methodology, neither Kangtai nor Jiheng has established, based on record evidence, that the irrecoverable VAT adjustment is improper in this redetermination (*i.e.*, neither has demonstrated that the amount of the VAT rebate on exported products was equal to the VAT paid on input materials).[189] Alternatively, neither respondent company has claimed that it was exempt from paying VAT on purchased inputs or that something other than the standard nine percent rebate rate for the subject merchandise applied. To the contrary, in their original questionnaire responses, Jiheng and Kangtai reported a VAT refund rate of nine percent.[190] Therefore, the Department has correctly found that nine percent of the seventeen percent input VAT was rebated and, as such, applied the difference (*i.e.*, eight percent) as the irrecoverable VAT adjustment.

[188] *See* Kangtai Comments at 18 (stating that, if the Department is allowed to apply its stated VAT adjustment formula, "in all reasonableness it must accordingly issue questionnaires to the respondents that ask the questions to properly administer this methodology").
[189] *See Methodological Change*, 77 FR at 36481 (stating "{B}ecause these are taxes affirmatively imposed by the Chinese and Vietnamese governments, we presume that they are also collected…the Department's methodological change allows individual companies to demonstrate that the particular respondent(s) was, in some manner, exempted from the requirement to pay the export tax, duty, or other charge."
[190] *See* Jiheng Section C Questionnaire Response, November 26, 2012, at Exhibit C-6.1; *see also* Kangtai Section C Questionnaire Response, November 21, 2012, at Exhibit C-2.

Issue 8: Calculation of Separate Rate

Jiheng's Comments:

- The Department must revise the separate rate for qualifying non-selected respondents because, since the calculated antidumping margins for Jiheng and Kangtai have been modified, the current separate rate is not supported by substantial evidence.

Department's Position: As described above, the Department has revised its calculations of the dumping margins for both Jiheng and Kangtai, the two mandatory respondents in the underlying administrative review. Therefore, we agree with Kangtai and have recalculated the separate rate for Arch which is the only non-selected respondent company that is a party to the litigation on which this redetermination is based.

V. FINAL RESULTS

Per the Court's instructions, we provided further explanations supporting the Department's determinations in the *Final Results*. We have adjusted the financial ratios to avoid any overstatement of labor expenses. We have also adjusted our NV calculation by changing the SV sources for chlorine, ammonium chloride, electricity, and ammonium sulfate. As a result of these changes, we determine weighted-average dumping margins of 27.99 percent for Jiheng, 48.72 percent for Kangtai, and 38.36 for Arch.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 APRIL 2016
Date