FINAL REDETERMINATION
PURSUANT TO COURT REMAND
GUANGDONG CHEMICALS IMPORT & EXPORT CORPORATION V. UNITED STATES
Court No. 05-00023
Slip Op. 06-13

SUMMARY

The Department of Commerce ("Commerce" or "the Department") has prepared these results of redetermination pursuant to the remand order issued by the U.S. Court of International Trade in Guangdong Chemicals Import & Export Corporation v. United States, Ct. No. 05-00023 Slip Op. 06-13 (January 25, 2006) ("Sebacic Acid Decision"). This remand pertains to the surrogate value for sebacic acid and the application of the by-product offset. See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 69 FR 75303 (December 16, 2004) ("Final Results"), and accompanying Issues and Decision Memorandum.

As requested by the Court, the Department has reviewed the record evidence and reconsidered the surrogate value for sebacic acid that we used in the calculation of the Final Results. Although we continue to find that the surrogate value derived from Indian import statistics is a better value than the Chemical Weekly ChemImpEx trade database ("ChemImpEx") proposed by Guangdong Chemicals Import & Export Corporation ("Guangdong"), we have adjusted the Indian import statistics for aberrational amounts and have amended our calculations accordingly.

Additionally, we have further explained our treatment of the by-product offset used in the calculation of the Final Results. We appropriately changed our application of the by-product offset between Sebacic Acid from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recision, 69 FR 47409 (August 5, 2004) ("Preliminary Results"), and the Final Results, but failed to give interested parties in this proceeding ("interested parties") the opportunity to comment on this change. Therefore, we gave interested parties an opportunity to comment on the methodology we used to apply the by-product offset in the Final Results.

If the Court approves these results of redetermination on remand, the antidumping duty rate for Guangdong will be 19.82 percent. The PRC-wide rate will be unchanged from the Final Results.

BACKGROUND

In the underlying review, the Department developed a surrogate value for sebacic acid in order to determine the portion of the factors of production attributable to sebacic acid and its co-product, capryl alcohol. See section 773(c) of the Tariff Act of 1930, as amended ("the Act"). To obtain a surrogate value for sebacic acid, the Department used information from Indian import statistics rather than ChemImpEx information placed on the record by Guangdong.

The Court remanded this issue to the Department, stating that the Department did not justify its decision to abandon a more product-specific data source. The Court stated that a remand was

necessary because the Department did not address the data Guangdong used to corroborate its ChemImpEx data and the Department did not explain why its data was non-aberrational given that it was comprised of a basket category.[1] Also, the Court asked the Department to explain how its surrogate value, which represents 10.1 metric tons of sebacic acid is more representative than the value suggested by Guangdong, which represents 1.4 metric tons.

Additionally, the Court granted our request for a voluntary remand to give interested parties an opportunity to comment on the application of the by-product offset which was changed between the Preliminary Results and the Final Results without allowing parties the opportunity to comment on this change. See Sebacic Acid Decision at 22. In order to comply with the Court's remand order, the Department provided additional explanation of its by-product methodology and provided interested parties an opportunity to comment on its methodology for the redetermination on remand.

ANALYSIS

I. Sebacic Acid Valuation

In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. See section 773(c)(1) of the Act. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information.[2] Stated differently, the Department attempts to find the most representative and least distortive market-based value in the surrogate country.[3] The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. In general, the Department prefers to rely on publicly available data.[4]

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[1] As discussed further below, Guangdong alleged that the Indian import statistics basket category is aberrational because it contains values not only for sebacic acid, but also for azelaic acid, which Guangdong argues is a higher priced chemical.

[2] See, e.g., Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR at 47176 (August 12, 2005), and accompanying Issues and Decision Memorandum at Comment 1; see also Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6.

[3] See, e.g., Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

[4] See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001), and accompanying Issues and Decision Memorandum at Comment 2.

For the Final Results, to obtain a surrogate value for sebacic acid, the Department used information from Indian import statistics. After further review of the record, we continue to find for this redetermination on remand that Indian import statistics are a better source to value sebacic acid than ChemImpEx. We find that the ChemImpEx data is not the best available information on the record to value sebacic acid for several reasons, as discussed in more detail below. First, in some circumstances, the Department uses Chemical Weekly's Price Tracker which contains data from the Chemical Weekly subscription magazine because of its specificity with regard to chemical prices in India. However, the ChemImpEx trade data that Guangdong suggests is not based on the same subscription magazine information and does not have the same level of specificity as Chemical Weekly. Second, unlike Chemical Weekly, the ChemImpEx data does not tie back to the source data. Third, ChemImpEx only includes usable imports from one company in one country. Fourth, Guangdong has not demonstrated with record evidence that the reason the Indian import statistics values are higher than the ChemImpEx data is due to the price of azelaic acid.

Specificity of the ChemImpEx data

When calculating normal value, to obtain surrogate values for chemicals, we often use Chemical Weekly's Price Tracker which contains data from the Chemical Weekly subscription magazine. See e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 7725 (February 14, 2006), and Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7515 (February 13, 2006). We normally determine that Chemical Weekly's Price Tracker is an appropriate source for surrogate values because we find that it represents a 100 percent purity level for the chemical being valued.[5] Because the values represent 100 percent purity levels, the Department can accurately adjust the value according to the values from a company's specific reported concentration of a particular input. However, the ChemImpEx data does not have this level of specificity because the concentration levels of chemicals are unknown. For this reason, its incompleteness, and the lack of explanation on category classifications as described below, the Department has declined to use this source to determine surrogate values in past cases because better sources have been available.[6]

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[5]See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 18439 (April 9, 2001), unchanged in the final results, and Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69503 (December 13, 1999).

[6]See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum, Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order, 70 FR 16218 (March 30, 2005) ("CCR Final Results"), and accompanying Issues and Decision Memorandum at Comment 4, Final Results at Comment 1, and Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum.

Quality of the ChemImpEx data

While it may appear that the eight-digit category developed by ChemImpEx is more specific than the six-digit Harmonized Tariff Schedule ("HTS") category covering both sebacic acid and azelaic acid in the Indian import statistics, we find the quality of the data in ChemImpEx's eight-digit category questionnable. The eight-digit category is a category developed by ChemImpEx and is not a recognized category in India's HTS. See http://commerce.nic.in/eidb/icomq.asp; see also http://www.chemicalweekly.com/chemimpex/. Although the data in ChemImpEx was originally derived from the Daily Lists published by the customs authorities in India, using a classification system that has been developed by Chemical Weekly, ChemImpEx does not provide the methodology on how the data was selected or from where the data was derived. For example, because the Indian import statistics six-digit category covers sebacic acid and azelaic acid, we would expect that when we sum the two eight-digit categories developed by ChemImpEx for azelaic acid and sebacic acid, we would find a quantity roughly similar with that of the Indian import statistics six-digit category. However, when the two eight-digit categories developed by ChempImpEx are summed, the quantity from the two categories combined equals less than half of the quantity contained in the six-digit HTS category listed in the Indian import statistics for azelaic acid and sebacic acid for the same time period. Therefore, the further categorized ChemImpEx data appears substantially incomplete. Because of this, we can not determine whether it is truly representative of the full data set from which it was derived.

Quantity of ChemImpEx data

Even if we were to consider the eight-digit category data provided by Guangdong to value sebacic acid, after imports of sebacic acid from the People's Republic of China ("PRC") are removed, the data contains only two import values, from the same company in Germany.[7] Therefore, the ChemImpEx data is not the best available information, as alternative data with a fuller range of data points is available.[8]

We find that there is more reliable data on the record, which is the information from the official Indian government statistics. These statistics are the primary source from which the ChemImpEx data is derived, and are publicly available statistics provided by a government source deemed to be reliable.

[7]The Department's practice when calculating surrogate values for the factors of production reported by the respondents is to exclude import values from non-market economy countries. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China, 68 FR 23966, 23970 (May 6, 2003), and accompanying Preliminary Determination Valuation Memorandum ("Aluminum Oxide from China").

[8]See CCR Final Results at Comment 4.

Analysis of Indian Import Statistics

a. Benchmarking data to demonstrate world prices

Guangdong provided data from several market economy sources to demonstrate the world price of sebacic acid. Guangdong provided information from European Union import statistics for imports of sebacic acid, U.S. import statistics for imports of sebacic acid, and price quotes for sebacic acid from the Chemical Market Reporter, a publication that reports on prices of chemicals in the United States. See http://www.icis.com/StaticPages/AboutUs.htm. In our Final Results, we did not address these data points that Guangdong provided for benchmarking purposes. For these remand results, we have examined the U.S. import statistics, the European Union import statistics, and the Chemical Market Reporter data that Guangdong provided on the record for benchmarking purposes.

After further review of the values placed on the record for the purpose of benchmarking sebacic acid prices, we find that the period of review ("POR") average sebacic acid surrogate value from the Indian six-digit HTS category that we used in the Final Results is significantly higher than the average import value from the previous POR (i.e., July 2000 through June 2001) and higher than the data provided by Guangdong from the European Union import statistics, the U.S. import statistics, and the Chemical Market Reporter. See Guangdong's September 8, 2004, Submission of Publicly Available Data For Use As Surrogate Values at 2-3. The data on the record includes a value of $3,061.54 for the POR from U.S. import statistics (exclusive of imports from China, India, and Korea), $3,098.42 for the POR from European Union import statistics, and $4,187.60, developed from price quotes from the Chemical Market Reporter for the first weeks of July 2002, October 2002, January 2003, and April 2003. The other value on the record, $5,582.75, is the value which was used for sebacic acid in the 2000-2001 administrative review of sebacic acid. We determined from this record evidence that the value for sebacic acid that we used in the Final Results was much higher than the other values on the record. While the benchmarking data from the U.S. import statistics, the European Union import statistics, and the Chemical Market Reporter may cause us to examine the representativeness of the Indian import statistics for the POR, this information does not remedy the deficiencies in quality or the limited number of data points in the ChemImpEx data provided by Guangdong for sebacic acid.

b. Unusually high prices in the Indian import statistics

In our finding in the CCR Final Results (based on the same POR), we determined that the Indian import statistics HTS category contained certain aberrational values which we excluded from our calculation in that proceeding.[9] For example, the per-metric-ton prices of imports into India from the United States were over ten times the value of the other sebacic acid prices on the record. See Attachment 2. We found that removing the unusually high U.S. import value resulted in an

[9] See CCR Final Results at Comment 4.

Indian import price of $4,901.88 per metric ton.[10] We found that this value was consistent with other sebacic acid prices on the record. For example, the value from the Indian import statistics from the previous POR was $5,582.75 per metric ton. See Attachment 1.

c. Indian import statistics are not distorted by azelaic acid prices

Although Guangdong claims that the six-digit category from Indian import statistics is distorted because azelaic acid is a specialty product with a significantly higher price, Guangdong has not provided support for this argument. Nonetheless, we further evaluated Guangdong's claims that inclusion of azelaic acid may be distorting the six-digit Indian import statistics category. For our analysis, we used data from U.S. import statistics because it had statistical information available that were specific to each product separately in its HTS categories. Using this data, in order to determine whether there was an observable significant difference between the prices of sebacic acid and azelaic acid, we compared prices of azelaic acid to prices of sebacic acid into the U.S. market for the POR, i.e., July 2002 through June 2003. We found that the price of sebacic acid was not always lower than the price of azelaic acid and that, on average, the price of sebacic acid was 18.75 percent lower than the price of azelaic acid. See Attachment 1. This finding does not support the price differentials ranging from 300 to 500 percent between the basket category and the benchmark prices provided by Guangdong . Therefore, the argument that the cause of this difference results from the inclusion of azelaic acid is not supported by any evidence on the record or by our price analysis of the two products. See Attachment 1. This analysis demonstrates that, contrary to Guangdong's assertions, azelaic acid is not distorting the Indian import statistics HTS category that we used to value sebacic acid in the Final Results.

Furthermore, we find that the six-digit HTS category best approximates the cost of sebacic acid because it is based on data points from five countries rather than a single country, as noted above, and is more representative of a market-wide price than the narrower category proposed by Guangdong. Thus, as the best available information for the surrogate value of sebacic acid for the redetermination upon remand, we relied upon the six-digit Indian import category, after removing the aberrational import data from the United States, and the imports from the PRC.[11] See CCR Final Results at Comment 4. Based upon our analysis of Indian import statistics, we revised the surrogate value used for sebacic acid in the Final Results for purposes of the redetermination upon remand.

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[10] In our draft redetermination on remand, we removed imports from the United States and Germany consistent with the results of the changed circumstance review of the same period. After reconsideration and based upon the comments received from Guangdong on the draft redetermination, we have determined that we should include the German imports in this Indian HTS category in our calculation of the surrogate value for sebacic acid. See the Sebacic Acid Value section below at pages 8-11 for a full discussion of this issue.

[11] See Aluminum Oxide from China.

II. By-Product Offset

During the review, we found that Guangdong produced refined glycerine and fatty acid as by-products in its production of sebacic acid. Because Guangdong sold the refined glycerine and fatty acid to outside parties, we found that an offset was warranted. For the Preliminary Results, we inadvertently deducted the by-product offset from the cost of manufacture. This deduction from the cost of manufacture was inconsistent with our then current practice, which was to deduct the offset from normal value after making adjustments for financial ratios for overhead, selling, general, and administrative expenses ("SG&A"), and profit. We corrected this error consistent with our current practice for the Final Results, but in doing so, we did not provide interested parties an opportunity to comment on the change in application. Accordingly, in our draft determination, we explained our current practice for applying the by-product offset and providing interested parties an opportunity to comment on this practice.

Section 773(c) of the Act is silent concerning by-product credits. Typically, if a by-product or co-product is generated in the manufacturing process and either reintroduced into production or sold for revenue, the Department allows a credit in the respondent's margin calculations. This credit can be applied to either the cost of manufacture before the application of the financial ratios or to normal value after the application of the financial ratios. This Court has recognized that the Department can apply the by-product credit to the cost of manufacture prior to the application of overhead, SG&A, and profit. Asociacion Columbiana de Exportadores de Flores v. United States, 6 F Supp. 2d 865, 876 (CIT 1998) (Commerce determined that where the income bears a relationship to the production of the subject merchandise, it may be accounted for as part of the cost of manufacture of that merchandise). This Court has also recognized that the Department has the discretion to apply the by-product credit to normal value, after its application of overhead, SG&A, and profit. Sinopec Sichuan Vinylon Works v. United States, 366 F. Supp. 2d 1339, 1351 (CIT 2005) (the Department has sufficiently supported its decision to apply the by-product credit after applying Jubilant's financial ratios).

The Department has not been uniformly consistent in its application of the by-product offset in non-market economy cases. In older cases, we have stated that our practice is to deduct the by-product offset from the producer's cost of manufacture whether the by-product was reintroduced by the respondent into the production of subject merchandise or sold for revenue. See e.g., Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen Fish Filets from the Socialist Republic of Vietnam, 68 FR 10440 (March 5, 2003), Titanium Sponge from the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review, 61 FR 58525 (November 15, 1996), and accompanying Issues and Decision Memorandum at Comment 10, and Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China, 59 FR 66895 (December 28, 1994), and accompanying Issues and Decision Memorandum at Comment 8. In subsequent cases, we stated that we will first look to the surrogate financial statement's treatment of by-products and treat the by-product offset in a manner consistent with the surrogate financial statement. See Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp

From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004) ("Shrimp Final Results"), and accompanying Issues and Decision Memorandum at Comment 4B, and Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) ("Fillets Final Results"), and accompanying Issues and Decision Memorandum at Comment 12.[12] We have further stated that where the surrogate financial statement does not indicate how the surrogate company has treated its production (if any) of a by-product, then we will subtract the by-product offset from normal value. See Shrimp Final Results at Comment 4B, Lock Washers Final Results at Comment 5, and Glycine Final Results at Comment 3.

In this proceeding, we did not state in the Final Results why it was appropriate to subtract the by-product offset from normal value. Because the Reserve Bank of India Bulletin used to calculate the surrogate financial ratios applied in the Preliminary Results and the Final Results does not indicate how by-product sales are treated in deriving those ratios, consistent with our most recent practice under such circumstances in Shrimp Final Results, Lock Washers Final Results, and Glycine Final Results, we applied the by-product revenue offset to the normal value after application of overhead, SG&A, and profit. Application of the by-product offset in this manner is further appropriate in this proceeding because it is reflective of the respondent's practice to sell the by-product as opposed to reintroducing it into the production process. Therefore, where a by-product offset is warranted, and the surrogate financial statement does not indicate how the surrogate producer treated by-products in its financial statements, we find that it is appropriate to consider other information on the record, such as whether the by-product was re-introduced into the production process or sold for revenue purposes.

We issued our draft redetermination on remand on March 22, 2006, and requested comments on the draft redetermination by close-of-business on Friday March 31, 2006. On March 31, 2006, we received comments from Guangdong. We have summarized Guangdong's comments and addressed them below.

Summary of Comments

Sebacic Acid Value

In its comments on the draft redetermination, Guangdong argues that the Department's continued reliance on the six-digit HTS category from Indian import statistics to value sebacic acid does not

[12] See Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 28274 (May 17, 2005) ("Lock Washers Final Results"), and accompanying Issues and Decision Memorandum at Comment 5; Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 17; Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005) ("Glycine Final Results"), and the accompanying Issues and Decision Memorandum at Comment 3.

constitute the selection of the best information on the record. Guangdong argues that ChemImpEx is the better source to value sebacic acid because it distinguishes between sebacic acid and azelaic acid prices, unlike the Indian import statistics which combines the prices for both products. Guangdong argues that ChemImpEx is more product specific and that product specificity is important to the Department in its selection of surrogate values. Citing Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16,2004), and accompanying Issues and Decision Memorandum at Comment 9, and Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 3 (where the Department states that it relies upon surrogate values that are: 1) non-export average values; 2) contemporaneous; 3) product specific; and 4) tax exclusive), Guangdong argues that the Department includes product specificity as one of its four main criteria in the selection of surrogate values. Guangdong contends that Indian import statistics and ChemImpEx are equal with respect to three of the four that criteria the Department uses in the selection of surrogate values and, therefore, more consideration should be given to ChemImpEx because it also meets the fourth criteria, product specificity.

Guangdong alleges that the Department attempts to show that ChemImpEx is not-product specific because the concentration levels of the chemicals are unknown. Guangdong contends that the absence of concentration level information does not diminish either the specificity or the reliability of the ChemImpEx data. Guangdong alleges that the Department attacks the quality of the ChemImpEx data as incomplete because ChemImpEx has fewer data points than the Indian import statistics. Guangdong argues that although ChemImpEx has fewer data points, it segregates sebacic acid from azelaic acid and is, therefore, specific to sebacic acid and not contaminated by data relating to azelaic acid. Guangdong contends that the Department fails to consider the results of the segregation of sebacic acid and azelaic acid in the ChemImpEx data where sebacic acid is equal to $3,551.73 per ton and azelaic acid is equal to $32,045.58 per ton. Guangdong argues that an evaluation of the price differences between sebacic acid and azelaic acid in the U.S. import statistics is not relevant here because the ChemImpEx data shows that the Indian import statistics are skewed due to the extreme price difference between sebacic acid and azelaic acid into India. Guangdong also argues that the Department fails to recognize the level of U.S. sebacic acid and azelaic acid prices which Guangdong asserts is approximately $3,000 per metric ton.

Guangdong argues that even the Department's adjustment of the Indian import statistics is faulty. While the Department removed U.S. imports from the Indian import statistics because it found that the U.S. import value was ten times higher than the values from other countries in the Indian import statistics, the Department did not provide a reasonable explanation for also removing German imports from the Indian import statistics in the calculation. Guangdong argues that after the removal of the U.S. and German imports from the Indian import statistics, the Department's value is based on 3.45 metric tons and the ChemImpEx data is based on 1.4 metric tons.

Guangdong argues that since both quantities are admittedly small, the Department should use the value which is most specific to sebacic acid, which in Guangdong's opinion is the ChemImpEx data.

Department's Position:

We continue to find that the six-digit Indian import statistics HTS category is the best source with which to value sebacic acid. In making this determination, we first reviewed the sources of information on the record that are available to value sebacic acid. In this case, we have two possible sources representing three possible sebacic acid values: 1) the Indian import statistics from the six-digit HTS category which includes sebacic acid and azelaic acid for this POR, 2) Indian import statistics from the six-digit HTS category which includes sebacic acid and azelaic acid which was used to value sebacic acid for the 2000-2001 administrative review and was not contested by any interested party, and 3) the ChemImpEx data for sebacic acid for this POR. Before we can determine the applicability of the four criteria that we normally use to select surrogate values (non-export values, contemporaneity, product-specificity, and tax exclusivity), we first must evaluate the data sources. We evaluated these sources and found that the ChemImpEx data is unreliable in this case because, among other reasons, we could not determine the selection criteria that ChemImpEx used to further categorize the data from the Indian import statistics. The total quantity of data in the ChemImpEx categories for both sebacic acid and azelaic acid equals less than half the quantity in the six-digit HTS category from the Indian import statistics which includes only sebacic acid and azelaic acid and which is supposed to be the source of the derived ChemImpEx data. See above in the "Quality of ChemImpEx data" section for a more complete explanation. Thus, it is not possible to determine what the average value for sebacic acid would be if this data source accurately reflected all Indian imports of sebacic acid. Additionally, the ChemImpEx data includes data from Malaysia in its categorization of azelaic acid imports into India, which is not consistent with the Indian import statistics which indicate that Malaysia did not have any imports of either sebacic acid or azelaic acid into India during the POR.

With respect to Guangdong's argument that the ChemImpEx data reveals an extreme price differential between sebacic and azelaic acid, we do not agree. As discussed above, the ChemImpEx data is clearly incomplete as the combined statistics for azelaic and sebacic acid imports equal only half the import quantities identified by the Indian government import statistics. While ChemImpEx segregates data for the two products in question, it does not provide any insights regarding the missing data and the impact that data would have on the average values of these two products. Further, a review of the azelaic acid category in the ChemImpEx data indicates that the prices of the U.S. imports of azelaic acid into India are almost five times any of the other countries' import prices of azelaic acid. See December 29, 2004, submission from the changed circumstances review submitted by Garvey Schubert Barer entitled, "Submission of Publicly Available Data For Use As Surrogate Values at Attachment 1. After removing U.S. imports of azelaic acid from ChemImpEx, the ChemImpEx data shows a change from $32,045.88 per metric ton to $8,971.05 per metric ton. See Attachment 3.

Therefore, the price difference of azelaic acid and sebacic acid in ChemImpEx is not so much caused by inherent price differences between azelaic acid and sebacic acid in the six-digit HTS category, but instead is significantly influenced by the U.S. imports of azelaic acid into India. In calculating the surrogate value for sebacic acid, we have already removed all U.S. imports from the Indian import statistics from our calculation of sebacic acid value because the U.S. import prices into India are unusually high compared to the import values from other countries in the Indian import statistics. Thus these transactions are not reflected in the surrogate value applied to sebacic acid for this redetermination on remand. Furthermore, we do not agree with Guangdong's characterization regarding our concerns with the lack of concentration levels of the chemicals in the ChemImpEx data. One of the reasons the Department frequently relies on data sources such as Chemical Weekly is the specificity regarding concentration level provided in that source. No such specificity is provided by the data reported by ChemImpEx.

For all these reasons, for purposes of this final redetermination upon remand, we continue to find that the ChemImpEx data is unreliable, and an evaluation of data obtained from that source is irrelevant and inappropriate.

Finally, we agree with Guangdong that in our draft redetermination we did not provide adequate support and reasoning for the removal of the German import values in our calculation of the surrogate value for sebacic acid. Since the draft determination, we have reconsidered this issue and we agree with Guangdong. In reviewing this data, we do not see any reason for removing the German values in the calculation of the sebacic acid value. Therefore, we have included the imports from Germany in our calculation of the sebacic acid value for this final redetermination. Our recalculation of the value for sebacic acid results in a value of $4,901.88 per metric ton which is in line with the other values for sebacic acid on the record of this review which range from $3,061.54 per metric ton to $5,582.75 per metric ton.

By-Product Offset

Guangdong argues that the Department comes up with a different reason for applying the by-product offset to normal value rather than to the cost of manufacture in each proceeding. Guangdong contends that the Department is playing games rather than applying "reasoned" analysis or applying generally accepted accounting principles ("GAAP"). Guangdong asserts that the Department refuses to consider the respondent's treatment of the by-product in cases where the respondent reincorporates the by-product into its production process. Guangdong argues that the Department should adhere to its previous methodology of deducting the by-product offset from manufacturing costs, a methodology that Guangdong asserts is consistent with Court determinations, Department precedent, and GAAP.

Department Position:

We continue to find that in this case, it is appropriate to deduct the by-product offset from normal value rather than from the cost of manufacture. The Department's policy on this issue has

evolved over time. In this instance, we have considered the facts of this case and applied the by-product offset in a manner which is consistent with accounting principles and with the Department's current practice. Guangdong has not demonstrated that the Department's treatment of the by-product offset is inconsistent with GAAP or that GAAP indicates one specific methodology for the treatment of by-product offsets. Therefore, based on accounting principles, the Department has to make some assumptions as to how the surrogate financial statement treated by-product offsets. As discussed above in the "By-Product Offset" section, in non-market economy cases, we first look to the surrogate financial statements and treat the by-product offset in a manner consistent with those statements when a by-product offset is evidenced in those statements. See above in the "By-Product Offset" section at page 6-8 for a more complete discussion. This is in accordance with accounting principles and prevents the double-counting of expenses or revenues because the treatment of the by-product in the surrogate financial statement affects the surrogate financial ratios that are calculated and applied to the company under review. As we have stated, and more completely explained above, in cases such as this, where the surrogate financial statement does not indicate how to treat the by-product offset, the Department has often deducted the by-product offset from normal value. This is consistent with accounting principles based on a reasonable assumption that if a company sells a by-product, the by-product necessarily incurs expenses for overhead, SG&A, and profit. Moreover, this is also consistent with Guangdong's treatment of the by-product, i.e., Guangdong sells the by-product. Similarly, we can reasonably assume that if a company reintroduces the by-product into production, then this directly reduces the material costs of the subject merchandise and should, therefore, be deducted from the cost of manufacture.

Contrary to Guangdong's assertion, we did not state that where the surrogate financial statement did not indicate how to treat the by-product offset we would not consider the respondent's treatment of the by-product in cases where the respondent incorporates the by-product into its production process. However, that is not the situation in this case, so we did not address this scenario. If Guangdong had reintroduced its by-product into production, we would have considered this practice in determining how to apply the by-product offset. In conclusion, we have evaluated Guangdong's comments and continue to find the application of the by-product offset from normal value to be the most appropriate place to deduct the by-product offset based on the facts in this case and a reasonable assumption about expenses incurred on the sale of by-products in the absence of information on how the surrogate financial statement treated any by-product offsets.

FINAL RESULTS OF REDETERMINATION

Based on the analysis described above, the Department has determined to continue to apply the by-product credit to normal value after the application of the financial ratios. We have further determined that the surrogate value for sebacic acid should be based on Indian import statistics after removing U.S. import values. In applying the change to the sebacic acid value, we have revised Guangdong's antidumping duty margin to 19.82 percent. The redetermination analysis memo, margin program, log, and output are attached at Attachment 4. The PRC-wide rate is unaffected by the results of redetermination on remand because it was not based on the antidumping margin for this company and was not at issue in this litigation.

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David M. Spooner
Assistant Secretary
for Import Administration

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Date