

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT ORDER
Arch Chemicals, Inc., and Hebei Jiheng Chemicals, Co., Ltd.
v. United States
Court No. 08-00040
Slip Op. 09-71 (CIT July 13, 2009)

I. Summary

The Department of Commerce (“the Department”) has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or the “Court”) in *Arch Chemicals, Inc. and Hebei Jiheng Chemicals, Co., Ltd. v. United States*, Consol. Court No. 08-00040, Slip. Op. 09-71 (July 13, 2009) (“*Arch Chemicals*”). The Court’s opinion and remand order have been issued with regard to *Chlorinated Isocyanurates From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 159 (January 2, 2008) (“*Final Results*”), and accompanying Issues and Decision Memorandum (“Issues and Decision Memorandum”) as amended in *Amended Final Results of Antidumping Duty Administrative Review: Chlorinated Isocyanurates From the People’s Republic of China*, 73 FR 9091 (February 19, 2008) (“*Amended Final Results*”).

On remand, the Court ordered the Department to reconsider Hebei Jiheng Chemicals Co., Ltd.’s (“Jiheng’s”) by-product offsets. The Court instructed the Department to reopen the record and provide Jiheng with sufficient opportunity to provide documentation relevant to the methodology that the Department employs in its by-product analysis.

Based upon the parties’ submissions, the Department has concluded that Jiheng is eligible for by-product offsets for its production of chlorine, ammonia gas, hydrogen, and recovered

sulfuric acid for the December 16, 2004, through May 31, 2006, period of review (“POR”).

Accordingly, the Department has determined that Jiheng’s revised dumping margin for the POR is 9.93 percent.

II. Background

In *Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 39053 (July 17, 2007) (“*Preliminary Results*”), the Department granted Jiheng by-product offsets for chlorine, ammonia gas, hydrogen, and recovered sulfuric acid. However, in the *Final Results*, the Department denied Jiheng these by-product offsets, stating that Jiheng had not provided the Department with the information necessary to grant the by-product offsets. See *Final Results*, 73 FR at 160; see also Issues and Decision Memo at comment 15. Specifically, the Department found that Jiheng had failed to provide documentation supporting the claimed production quantities of by-products. *Id.* In this remand, the Court has instructed the Department to reopen the record of the underlying review and provide Jiheng with sufficient opportunity to submit documentation relevant to the methodology the Department employs in its by-product analysis. The Court indicated that the Department shall notify Jiheng as to precisely what information it expects Jiheng to produce, and that the Department shall then complete its by-product offset analysis accordingly.

Pursuant to the Court’s instructions, on July 29, 2009, the Department reopened the record of the underlying review by issuing Jiheng a supplemental questionnaire regarding Jiheng’s claimed by-product offsets. On August 19, 2009, Jiheng submitted to the Department its supplemental questionnaire response. On August 26, 2009, the Department granted Clearon Corporation and Occidental Chemical Corporation (collectively “Petitioners”) an opportunity to comment on Jiheng’s August 19, 2009, supplemental questionnaire response. On September 3,

2009, Petitioners submitted their comments on Jiheng's August 19, 2009 ("August 2009 SQR"), supplemental questionnaire response. On December 3, 2009, the Department provided interested parties a copy of the Draft Remand Redetermination for comments. On December 7, 2009, the Department received joint comments from Clearon Corporation and Occidental Chemical Corporation ("Petitioners' Comments"), and joint comments from Arch Chemicals, Inc., and Hebei Jiheng Chemicals, Co., Ltd. ("Arch/Jiheng's Comments"). We have now evaluated Jiheng's supplemental questionnaire response, Petitioners' comments regarding that response, as well as the interested parties' comments to the December 3, 2009, Draft Remand Redetermination.

III. Analysis and Redetermination

The Department has concluded that Jiheng is eligible for by-product offsets for its production of chlorine (also referred to as chlorine gas), ammonia gas, hydrogen, and recovered sulfuric acid during the POR. Jiheng's August 19, 2009, supplemental questionnaire response sufficiently addresses our concerns regarding the appropriateness of Jiheng's reported by-products. For example, in its response to our July 29, 2009, questionnaire, Jiheng provided the Department with both a record of the by-products it produced during the POR, as well as the by-products it sold during the POR. Jiheng also provided supporting documentation to substantiate its claims. Therefore, we are granting Jiheng by-product offsets for its production of chlorine, ammonia gas, hydrogen, and recovered sulfuric acid.

During the underlying administrative review and during the immediately subsequent administrative review of the antidumping duty order of chlorinated isocyanurates from the People's Republic of China, the Department's practice was to grant a by-product offset for the quantity of by-product that was both produced and either sold or re-introduced into production

during the POR. *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003), and accompanying Issues and Decisions Memorandum at Comment 12. However, in *Silicon Metal from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review*, 74 FR 32885, 32889 (July 9, 2009) ("*Silicon Metal*"), the Department acknowledged that, in cases where a by-product is produced during the POR, but was entered into inventory rather than having been sold or re-introduced into production during the POR, a methodology of granting a by-product offset based on the quantity of by-product that was both produced and sold (or re-introduced into production) during the POR could lead to an inconsistent result over multiple review periods. Therefore, the Department changed its practice to be in accord with normal accounting principles, which recognize and record the economic value of a by-product when it is produced. Thus, for this final redetermination, the Department has granted a by-product offset based on production during the POR.

As Jiheng has placed evidence on the record that demonstrates it retains inventory for certain by-products produced during the POR, which can be sold at a later date, we find that it is most appropriate to use the current by-product offset methodology and grant Jiheng a by-product offset based on the quantities of by-products that it produced during the POR. Based on our current methodology of granting the respondent a by-product offset based on the quantity of the by-product that the respondent produced during the POR, as set forth in *Silicon Metal*, we have adjusted Jiheng's reported by-product offset quantities to comport with this practice. See Jiheng's Final Remand Redetermination Analysis Memorandum dated concurrently with this final redetermination for our calculation of the appropriate by-product offsets.

Also, in analyzing Jiheng's supplemental response, we took into account Petitioners' September 3, 2009, comments regarding errors in Jiheng's discharged chlorine gas and recovered sulfuric acid by-product offset claims. In Petitioners' September 3, 2009, comments, they claim that Jiheng's reported FOP for recovered sulfuric acid by-product did not correlate with the calculated figure in its fourth supplemental response from the underlying administrative review, dated June 8, 2007 ("June 2007 SQR"). *See* Petitioners' September 3, 2009, comments at page 7. We agree with Petitioners regarding Jiheng's claimed recovered sulfuric acid by-product offset. It is clear on the record that Jiheng's claimed recovered sulfuric acid by-product quantity does not match the reported per-unit quantity of recovered sulfuric acid in Jiheng's Factors of Production ("FOP") database. *See* August 2009 SQR at Exhibit RD-3.5 and June 2007 SQR, at Exhibit FSD-10.4. In further evaluating Jiheng's June 2007 SQR, we find that the amount of recovered sulfuric acid listed in that submission reflects the amount of sulfuric acid contained in the ammonium sulfate sold during the POR, but it does not reflect the amount of sulfuric acid produced during the POR. *See* Jiheng's June 2007 SQR, at Exhibit FSD-10.4. Thus, in granting Jiheng's by-product offset for sulfuric acid, we have relied on both the information in the worksheet contained in the June 2007 SQR and the information regarding the amount of sulfuric acid produced listed in Jiheng's August 2009 SQR. For further details regarding this calculation, *see* Jiheng's Final Redetermination Analysis Memorandum.

Petitioners also contend in their September 3, 2009, submission, that some of Jiheng's reported chlorine gas by-product is a result of liquefaction, which Petitioners claim is related to production of non-subject merchandise. While we agree with Petitioners' description of chlorine gas being discharged at the liquefaction stage, we disagree that this serves as an adequate basis for denying a by-product offset for the portion of chlorine gas discharged at this stage because

the chlorine gas by-product had already been produced during the production of subject merchandise. As a result, it is irrelevant that some chlorine gas was not actually discharged until liquefaction took place. Accordingly, based on the Department's current practice of granting a by-product offset for the by-product produced during the POR, we are granting an offset for the amount of chlorine gas by-product that was produced, and then subsequently discharged, during the POR. Further, because the discharged chlorine reported by Jiheng results from the chlor-alkali stage of production, where the input FOPs are allocated between subject and non-subject merchandise, the by-products resulting from the input FOPs should also be allocated in a similar manner between subject and non-subject merchandise. Therefore, following the same methodology Jiheng reported for allocating its hydrogen production in the chlor-alkali stage of production, we have adjusted Jiheng's reported discharged chlorine gas to account for the production of non-subject merchandise. *See* Jiheng's Final Redetermination Analysis Memorandum.

IV. Draft Remand Redetermination Comments from Interested Parties

Comment 1: Whether the Department made a clerical error in the programming language used to calculate by-product offsets.

Petitioners contend that in Part 7 of the margin program, lines 878 to 916, the Department added the by-product offsets granted by the Department to control numbers associated with U.S. sales by Jiheng during the POR. According to Petitioners, the Department used the variable name "CONNUM," rather than the correct variable name "CONNUMU," to assign the by-product values. *Id.* Thus, the program calculates a margin based on Jiheng's originally-reported by-product information rather than by-product quantities as determined in the Department's remand findings.

Department's Position:

The Department agrees with Petitioners' assertion that the correct variable name for Part 7, lines 878 to 916, of the margin program is "CONNUMU," and not "CONNUM." Petitioners' correctly suggest that "CONNUM" corresponds with Jiheng's originally-reported by-product information. Therefore, for the final results of the remand redetermination, the Department has corrected this ministerial error by replacing "CONNUM" with "CONNUMU" in Part 7, lines 878 to 916, of the margin program. *See* Jiheng's Final Remand Redetermination Analysis Memorandum dated concurrently with these results. As a result, the program correctly calculates a margin based on Jiheng's by-product quantities as determined in the Department's remand findings.

Comment 2: Whether the Department incorrectly granted Jiheng a by-product offset for discharged chlorine gas generated from liquefying purified chlorine gas in the Chlor-Alkali Plant.

Petitioners contend that the Department should not grant a by-product offset for the captured portion of discharged chlorine gas resulting from the liquefaction of purified chlorine (a production process Petitioners argue has no connection with the production of subject merchandise) because Jiheng never uses liquefied chlorine to produce subject merchandise. Petitioners suggest that the Department should only grant a by-product offset for the captured portion of chlorine gas discharged in the purification step, which is part of the production process for subject merchandise.

Additionally, Petitioners contend that the Department incorrectly suggested that discharged chlorine should be allocated in the same manner as hydrogen produced in the Chlor-Alkali Plant. In particular, Petitioners suggest the chlorine gas by-product should be allocated over purified chlorine, not total production of chlorine and caustic soda. They argue that while

hydrogen gas is generated as an inevitable result of producing chlorine and caustic soda, discharged chlorine gas is generated in purifying chlorine, which occurs after the split-off point between chlorine gas and caustic soda; thus, the amount of generated chlorine gas is in no way dependant on the quantity of caustic soda produced. They conclude that it is, therefore, incorrect to allocate a portion of that discharged chlorine gas to caustic soda production.

Conversely, Arch and Jiheng contend that the Department correctly allocated the chlorine gas “by-product over all merchandise produced at the chlor-alkali stage (whether or not consumed as an input into the subject merchandise).” Additionally, despite Petitioners’ argument that chlorine gas gathered at the liquefaction stage was not an input into subject merchandise, Arch and Jiheng assert that the Department correctly determined that the chlorine gas gathered at this stage is a permissible by-product offset because this particular chlorine gas is produced at the chlor-alkali stage, not during liquefaction. Arch and Jiheng claim that because chlorine gas and hydrogen gas are produced at the same production stage, it is appropriate to apply the same allocation methodology to both by-products.

Department’s Position:

We disagree with Petitioners’ argument that the Department should not grant a by-product offset for the captured portion of discharged chlorine gas resulting from the liquefaction of purified chlorine. We also disagree with Petitioners’ contention that the Department incorrectly allocated discharged chlorine gas in the same manner as hydrogen produced in the Chlor-Alkali Plant. In *Silicon Metal*, the Department adopted the practice of granting by-product offsets based on total quantity of by-product produced during the POR. *See Silicon Metal*. In the instant case, Jiheng produces chlorine during one stage of its production process (the chlor-alkali stage) and discharges chlorine gas (Jiheng’s claimed by-product) in two stages of its

production process (purification and liquefaction of chlorine). *See* Jiheng's Supplemental Questionnaire Response, dated August 19, 2009, at Exhibit RD-1.

Based on the record evidence, the Department finds the Petitioners' explanation that a portion of the chlorine gas by-product is generated in the production of non-subject merchandise to be incorrect. While we agree with Petitioners' description of chlorine gas being discharged at the liquefaction stage, we disagree that this serves as an adequate basis for denying a by-product offset for the portion of chlorine gas discharged at this stage. The chlorine gas by-product had already been produced during the production of subject merchandise. As a result, it is irrelevant that some chlorine gas was not actually discharged until liquefaction took place. Accordingly, based on the Department's current practice of granting a by-product offset for the by-product produced during the POR, we are granting an offset for the amount of chlorine gas by-product that was produced, and then subsequently discharged, during the POR.

Further, the Department correctly allocated Jiheng's production of chlorine produced in the Chlor-Alkali Plant using the same method that Jiheng used in allocating its by-product offset for hydrogen produced in the Chlor-Alkali Plant. Both chlorine gas and hydrogen gas by-products are produced in the chlor-alkali stage of production. Thus, both should be allocated across subject and non-subject merchandise. Despite Petitioners' claim that the chlorine gas by-product should be allocated using a different method because chlorine gas is not discharged until the purification and liquefaction processes, the record suggests that chlorine gas is produced as a direct result of the same inputs as hydrogen gas. Thus, because the chlorine gas is produced at the same phase as hydrogen gas in the chlor-alkali stage, and then must be purified for the chlorine gas to go into production of subject merchandise, the Department is allocating chlorine

gas generated in this stage of production in the same manner as hydrogen gas. *See* Jiheng’s Final Remand Redetermination Analysis Memorandum dated concurrently with these results.

Comment 3: Whether the Department should adjust the quantity of the by-product offset to reflect the actual concentration of discharged chlorine gas captured in the spell out trichloroisocyanuric acid (“TCCA”) and sodium dichloroisocyanurate (“SDIC”) production stages.

Petitioners assert that the Department did not properly adjust for the concentration of chlorine gas Jiheng captured at its Disinfectant Plant. According to Petitioners, Jiheng’s August 19, 2009, questionnaire response states that the chlorine gas by-product is measured by meter readings at the Disinfectant Plant and that the evidence regarding the concentration of chlorine gas read at those meters suggests a concentration level between [], for an average of []. Thus, Petitioners suggest that the Department should reduce the quantity of chlorine gas by-product to account for the actual concentration of the discharged chlorine gas (*e.g.* multiplying the total quantity of discharged chlorine gas by []).

Department’s Position:

We disagree with Petitioners’ argument that the Department should adjust the quantity of Jiheng’s chlorine gas by-product offset to account for Jiheng’s reported purity of its discharged chlorine gas captured in the TCCA and SDIC production stages. As an initial matter, it is the Department’s practice, where it has information on the record that the purity levels of the respondent’s input and that of the surrogate value differ, to adjust the surrogate value to reflect the difference in purity levels, not the quantity of the respondent’s reported consumption of the input. *See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Certain Helical Spring Lock Washers from the People’s Republic of China*, 74 FR 57653 (November 9, 2009). For this review, the Department is using World Trade Atlas (“WTA”) import data from

the Philippines to value Jiheng's chlorine gas. Because there is no information on the record suggesting the actual concentration level of chlorine gas reflected in the WTA data, the Department cannot conclude that WTA purity level is different from Jiheng's chlorine gas. For this same reason, we do not have sufficient information to make an adjustment to the surrogate value and it is unclear whether adjusting the WTA data based on Jiheng's reported chlorine gas purity level would actually result in a surrogate value that is specific to Jiheng's chlorine gas by-product. Consequently, because we are calculating the surrogate value for Jiheng's chlorine gas by-product using WTA data, and because there is a lack of evidence to confirm WTA purity level, the Department disagrees with Petitioners' argument and is not making an adjustment for Jiheng's reported purity level of its chlorine gas by-product.

Comment 4: Whether the Draft Redetermination overstates the amount of recovered sulfuric acid by-product.

Petitioners assert that the Department is incorrectly including, as a sulfuric acid by-product, a portion of the recovered sulfuric acid that is recycled into the cyanuric acid production process. Petitioners argue the Department should reduce the amount of sulfuric acid by-product to reflect only the sulfuric acid by-product used to produce ammonium sulfate.

Arch and Jiheng suggest that the Department granted the correct amount of sulfuric acid by-product offset based on the Department's by-product methodology. However, Jiheng points out that, contrary to the Department's finding in the Draft Remand Redetermination, "the quantity of recovered sulfuric acid reported in Jiheng's {August 2009 SQR} is consistent with the quantity reported in its {June 2007 SQR}." Jiheng contends that the amount stated in the June 2007 SQR reflects the amount of sulfuric acid contained in the ammonium sulfate sold

during the POR, rather than the amount produced. In any case, Jiheng states that this clarification is irrelevant because the Department correctly calculated Jiheng's by-product offset.

Department's Position:

We disagree with Petitioners' argument that the amount of sulfuric acid by-product granted by the Department is overstated. In *Silicon Metal*, the Department acknowledged that, in cases where a by-product is produced during the POR, but is entered into inventory rather than having been sold during the POR, a methodology of granting a by-product offset based on the quantity of by-product that was both produced and sold during the POR could lead to an inconsistent result. Thus, the Department adopted the practice of granting by-product offsets based on total production of the by-product during the POR. *See Silicon Metal*.

In the instant case, the Department is only concerned with the amount of sulfuric acid by-product produced by Jiheng during the POR in the production of subject merchandise, or during the production of inputs that are subsequently consumed in the production of subject merchandise. Whether the sulfuric acid by-product produced was sold, placed into inventory, or reintroduced into production during the POR is irrelevant. As recovered sulfuric acid is used in the production of cyanuric acid, which is an input consumed in the production of subject merchandise, the Department finds that Jiheng should receive a by-product offset for the amount of sulfuric acid recovered during the POR and subsequently recycled into cyanuric acid production. Thus, Petitioners' argument that the Department should only grant a by-product offset for the amount of recovered sulfuric acid that was used to produce ammonium sulfate during the POR is incorrect. According to Jiheng's August 2009 SQR, Jiheng clearly produced [] metric tons of sulfuric acid by-product in the course of producing subject merchandise. *See Jiheng's August 2009 SQR*, at Exhibit RD-3.1. As a result, by only looking at the quantity

of sulfuric acid produced during the POR, the Department did not overstate the amount of Jiheng's sulfuric acid by-product in the Draft Remand Redetermination.

Further, we agree with Jiheng's assertion that the amount of sulfuric acid by-product claimed in the June 2007 SQR only reflects the amount of sulfuric acid contained in the ammonium sulfate that was sold during the POR. However, we are only concerned with the amount of sulfuric acid by-product produced, which is not listed in Jiheng's June 2007 SQR, but is listed in Jiheng's August 2009 SQR, at Exhibit RD-3.1. Thus, as Jiheng correctly notes, the number differences between Jiheng's June 2007 SQR and its August 2009 SQR are irrelevant because of the Department's current by-product methodology.

Comment 5: Whether the Department should adjust for the concentration level of recovered sulfuric acid by-product.

Petitioners suggest that in the *Preliminary Results* of the underlying administrative review, the Department used a *Chemical Weekly* sulfuric acid value that was adjusted to a value of 0.96 Rs/kg, which was 20 percent of the listed *Chemical Weekly* sulfuric acid value of 4.82 Rs/kg, thus reflecting the [

] and the purity level of the surrogate value taken from *Chemical Weekly* to value that input. But, Petitioners contend, the Draft Redetermination used an unadjusted *Chemical Weekly* sulfuric acid value for calculating Jiheng's by-product offset, and the Department did not explain the reason for the change. Thus, Petitioners argue that because the concentration of Jiheng's sulfuric acid by-product is [], the Department should adjust the *Chemical Weekly* surrogate value to reflect this concentration level.

Department's Position:

We agree with Petitioners' argument that the Department should account for Jiheng's reported purity level of recovered sulfuric acid by-product by adjusting the *Chemical Weekly* value. In the *Final Results* of this review, in accordance with Jiheng's reported purity level of its sulfuric acid input, the Department calculated Jiheng's sulfuric acid input using a *Chemical Weekly* value that was adjusted to a [] purity level. See Memorandum Regarding: Antidumping Administrative Review of Chlorinated Isocyanurates from PRC: Surrogate Value Memorandum, dated December 14, 2007, at Attachment 1. Similarly, in Jiheng's August 19, 2009, questionnaire response, Jiheng reported, and provided documentary support suggesting, that the purity level of Jiheng's generated sulfuric acid by-product is []. Because the Department adjusted Jiheng's sulfuric acid input in the *Final Results* to account for the input's reported purity level, it is appropriate to employ the same methodology when calculating the surrogate value of the sulfuric acid by-product in this proceeding. To employ a different methodology for valuing the same product (sulfuric acid as an input versus sulfuric acid as a by-product) would distort Jiheng's margin calculations. Thus, the Department agrees with Petitioners contention that Jiheng's sulfuric acid by-product should be valued using Jiheng's reported [] purity level to appropriately adjust the listed *Chemical Weekly* prices for sulfuric acid.

Comment 6: Whether the Draft Redetermination overstates the amount of hydrogen gas by-product Jiheng produced during the POR.

Petitioners suggest that Jiheng has already been credited for [] metric tons of hydrogen gas by-product because this amount was re-introduced into the production of subject

merchandise. Petitioners state that insofar as Jiheng has not reported hydrogen as a factor of production, Jiheng cannot claim the same re-introduced hydrogen as a by-product offset.

Department's Position:

For the reasons discussed below, we agree with Petitioners that Jiheng should not be granted a by-product offset for the [] metric tons of hydrogen gas that Jiheng used to produce the hydrochloric acid that is consumed in the production of subject merchandise. Because Jiheng does not claim hydrogen gas as a factor of production for the hydrochloric acid it produces and then consumes in the production of subject merchandise, it cannot claim a by-product offset for the hydrogen gas that is used to produce the hydrochloric acid, which is then used to produce more hydrogen gas. If the Department were to grant a by-product offset for the re-introduced hydrogen gas, we would be granting Jiheng a by-product offset for continually recycled hydrogen gas. In other words, Jiheng could claim a by-product offset for the same hydrogen gas each time it passes from hydrochloric acid into hydrogen gas and back into hydrochloric acid to produce more hydrogen gas. Thus, despite the Department's current practice of relying on the quantity of by-products produced during the POR, Jiheng cannot claim a dual benefit from the hydrogen gas as a by-product while not reporting it as a factor.

Comment 7: Appropriate surrogate values for two by-products: Ammonia gas and hydrogen gas.

Petitioners assert that the Department did not address arguments regarding the valuation of ammonia gas and hydrogen gas in the *Final Results* because the Department did not grant by-product offsets for these items in the *Final Results*.¹ However, Petitioners argue, because the Department is now granting Jiheng's claimed by-product offsets, the Department should address

¹ Petitioners cite to the arguments raised in their case brief submitted prior to the *Final Results*, Petitioners' Case Brief, dated September 7, 2007, at 58-67 ("Petitioners' Case Brief.")

the arguments concerning the appropriate surrogate values for these two by-products. Specifically, Petitioners assert that Indian import data for anhydrous ammonia should not be used to value the ammonia gas by-product produced by Jiheng because the purity levels of the two products are not comparable. *See* Petitioners' Case Brief at 58-62. Petitioners further assert that the record does not support using Indian import data to value the hydrogen gas by-product. *See* Petitioners' Case Brief at 63-67; *see also* BioLab, Inc., Case Brief, dated September 7, 2007, at 22-25.

Department's Position:

We agree with Petitioners' assertion that the Department should address the parties' arguments regarding these surrogate values raised before the *Final Results*. For the reasons stated below, we disagree with Petitioners' contention that the WTA anhydrous ammonia value should not be used as the surrogate value for Jiheng's ammonia gas, but we agree in part with Petitioners' hydrogen gas surrogate value argument.

According to section 773(c)(1) of the Tariff Act of 1930, as amended ("the Act"), "the valuation of the factors of production shall be based on the best available information regarding the values of such factors." In choosing an appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the data. *See 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 3 ("*Lined Paper*"). The Department seeks first the best available information from the primary surrogate country (in this case India) that is publicly available, represents contemporaneous country-wide price averages net of taxes and import duties, and is specific to

the input. See *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum at Comment 2.

Regarding Petitioners' surrogate value for ammonia gas arguments, the Department finds that the WTA Indian import data for anhydrous ammonia are suitable for valuing Jiheng's ammonia gas by-product for the reasons discussed below. We find that it is the best, and only, surrogate value, on the record of this review, for valuing Jiheng's ammonia gas by-product. The import data are publicly available, they represent a broad-market average, and they are contemporaneous with the instant POR. The difference between the ammonia gas that Jiheng produces and the anhydrous ammonia that is shipped internationally for sale is processing and packing. However, the Department's practice, as upheld by both this Court and the U.S. Court of Appeals for the Federal Circuit, is to not make adjustments for processing or packing when valuing by-products. *Magnesium Corp. of America v. United States*, 20 CIT 1092, 1106-07, 938 F. Supp. 885, 899-900 (1996), *aff'd* 166 F.3d 1364 (Fed. Cir. 1999).

Moreover, in valuing Jiheng's ammonia gas by-product, the Department notes that Jiheng conservatively determines the amount of ammonia gas by-product it claims. Jiheng only claims a by-product offset for the 100 percent pure ammonia gas used to produce ammonium sulfate. So, for example, if Jiheng produced 5 kg of ammonia gas from its production of subject merchandise and, from Jiheng's production of 5 kg of ammonia gas, Jiheng's downstream production of ammonium sulfate contains 2 kg of ammonia, the claimed and granted offset is for the 2 kg of pure ammonia content within the downstream ammonium sulfate production. Therefore, while the total weight of the ammonia gas that comes off of Jiheng's production may include impurities so that the total weight of the ammonia gas is not solely attributable to the

ammonia itself, as argued by Petitioners, the weight of those impurities are removed insofar as the weight of the impurities in the ammonia gas is not being valued. Thus, the quantity that is being valued as an offset is a pure chemical weight. Thus, for the foregoing reasons, WTA Indian import data for anhydrous ammonia are suitable for valuing Jiheng's ammonia gas by-product.

With regard to Petitioners' contention concerning the surrogate value for hydrogen gas, the Department finds that the record supports using WTA Indian import data to value hydrogen gas. For this review, the only potential surrogate value data on the record for valuing hydrogen gas are WTA data from India and Indonesia. Thus, in their Case Brief, Petitioners' put forth two separate arguments: (1) Indonesian import statistics are a better source of surrogate values for hydrogen gas than Indian import data because the imports into Indonesia were of greater quantity than those into India, and (2) if the Department uses Indian import data to value hydrogen gas, then it should exclude the high-price/low-volume Indian imports from Belgium, Germany, the United Kingdom, and Singapore as aberrational. *See* Petitioners' Case Brief at 63-67.

As for Petitioners' first argument, the Department disagrees with the assertion that Indonesian import statistics are a better source of surrogate hydrogen gas values for this review. Where the evidence on the record is inconclusive regarding low import volumes of a product into the surrogate country, the Department does not automatically conclude that those imports are not in commercial quantities. *See Final Results of the 2005-2006 Antidumping Duty Administrative Review: Saccharin from the People's Republic of China*, 72 FR 51800 (September 11, 2007), and accompanying Issues and Decisions Memorandum at Comment 1 ("Saccharin"). Despite Petitioners' assertion that Indian import data are unreliable because there was a lower volume of hydrogen gas imports into India (32 metric tons) than into Indonesia (274 metric tons) during the

POR, there is no evidence to suggest that the Indian imports of hydrogen gas were not in commercial quantities. *See, e.g., id.* Additionally, the Indian and Indonesian import data both reflect low-volume imports from all but a few countries; thus, there is no discernable evidence that would lead to a conclusion that the Indian data are unreliable. *See* Petitioners' Additional Information Regarding Surrogate Values for Factors of Production, dated August 7, 2007, at Exhibit 14 ("Petitioners' Surrogate Values").

Consequently, we disagree with Petitioners' assertion that Indonesian import data are a better source of surrogate hydrogen gas values. India is the primary surrogate country in this review, and the Indian import data are publicly available, are contemporaneous with the POR, and there is no evidence on the record to suggest Indian import data for hydrogen gas are inappropriate. Therefore, we continue to find the Indian data are the best available information with which to value hydrogen for the final results of the redetermination.

As for Petitioners' second argument, the Department agrees with Petitioners' contention that the Department should exclude the Indian imports from Belgium, Germany, the United Kingdom, and Singapore because the import data from those countries are aberrational. Generally, the Department excludes aberrational data that distorts the import value for a particular import. *See Saccharin* at Comment 1. While the Department's aberrational analysis is not limited to low-volume imports, the Department has disregarded "small-quantity import data when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other countries," provided the Department determines that the low-volume high-value imports have a distorting effect. *Id.* This practice has been upheld by the CIT. *See Shakeproof Assembly Components Division of Illinois Tool Works, Inc. v. United States*, 59 F. Supp. 2d 1354, 1358-60 (CIT 1999).

In the instant case, the hydrogen gas import quantities from Germany, the United Kingdom, and Singapore into India each represented less than one percent of total hydrogen gas imports into India during the POR and had values ranging from 350 Rs/kg to 963.33 Rs/kg. In the case of Belgium, imports into India represented 2.3 percent of total hydrogen gas imports and had an average value of 900 Rs/kg during the POR. On the other hand, hydrogen gas imports into India from the remaining countries represented at least 15.52 percent of total hydrogen gas imports each (and more than 96 percent collectively), and the imports from these remaining countries had values ranging from 20.5 Rs/kg to 77.26 Rs/kg during the POR. Thus, the values of the imports from the low volume countries appear to be significantly different from those of the higher volume countries. Further, when the values of the low-volume Indian imports are compared to the average value of imports into Indonesia, they are significantly higher than that value as well (7.92 USD/kg to 21.81 USD/kg as compared to 0.56 USD/kg.² Thus, the Department is excluding, from the hydrogen gas by-product surrogate value calculation, the low-volume high-value Indian imports from Belgium, Germany, the United Kingdom, and Singapore, which occurred during the POR, because they appear to be aberrational.

Comment 8: Whether Jiheng properly documented its production of each claimed by-product.

Jiheng asserts that the Department correctly recognized that it provided adequate and verifiable information necessary to grant each of Jiheng's claimed by-product offsets. Jiheng states that it accounted for every metric ton of each input and output and that Jiheng supported its response information with ledger entries and other source documents.

² We converted the rupee values into U.S. Dollars ("USD") using an average POR exchange rate of .02264 Rs to 1.00 USD. The Indonesian import values were already in USD.

Department's Position:

The Department agrees with the Jiheng's assertion that it provided adequate information that would allow the Department to grant Jiheng's claimed by-product offsets. Thus, pursuant to this final remand redetermination, the Department is granting Jiheng by-product offsets for its production of chlorine gas, ammonia gas, hydrogen gas, and recovered sulfuric acid for the December 16, 2004, through May 31, 2006, POR.

V. Final Remand Redetermination

Pursuant to the Court's opinion, we have reconsidered and recalculated Jiheng's weighted-average dumping margin from the *Amended Final Results*. In recalculating Jiheng's margin, we granted Jiheng by-product offsets for those by-products it produced in the course of producing the subject merchandise. Based on these changes, Jiheng's margin from the *Amended Final Results* has changed. Jiheng's revised dumping margin is 9.93 percent. *See* Jiheng's Final Remand Redetermination Analysis Memorandum dated concurrently with these results.

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

Date