

Clearon Corporation and Occidental Chemical Corporation v. United States
Court No. 08-00364
Slip Op. 11-142 (CIT November 18, 2011)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. Summary

The Department of Commerce (“the Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or the “Court”) in *Clearon Corporation and Occidental Chemical Corporation v. United States*, Consol. Court No. 08-00364, Slip Op. 11-142 (November 18, 2011) (“*Clearon*”). 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 52645 (September 10, 2008), and accompanying 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 62249 (October 20, 2008) (collectively “*Final Results*”).

The Court remanded to the Department to re-examine the surrogate values for urea and steam coal, and the selection of anhydrous ammonia to value Hebei Jiheng Chemicals Co., Ltd’s (“Jiheng”) by-product offset for ammonia gas, as a result of the Department’s request for a voluntary remand with respect to the latter issue.

On February 17, 2012, the Department invited interested parties to comment on the Draft Results of Redetermination Pursuant to Court Remand and gave the parties until February 23, 2012 to submit comments. On February 23, 2012, Clearon Corporation and Occidental Chemical Corporation (“Petitioners”) filed comments.

As set forth in detail below, pursuant to the Court's Remand Opinion and Order, we have reconsidered our determination, taking into account all of the record evidence pertaining to the Department's selection of the surrogate values for urea, steam coal, as well as ammonia gas. We continue to find that: (1) the Indian import data are the best available information on the record for valuing urea; (2) the Tata Energy Research Institute ("TERI") data are the best available information on the record for valuing steam coal; and (3) the World Trade Atlas ("WTA") data for anhydrous ammonia are the best available information on the record for valuing Jiheng's ammonia gas by-product.

B. Remanded Issues

1) Valuation of Urea

Background

In *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 24943 (May 6, 2008) ("*Preliminary Results*"), the Department valued urea using the Indian WTA import data, including Omani-sourced imports of urea.¹ Petitioners argued that the Department should use domestic price data from the Philippines to value urea in the final results, maintaining that the Indian WTA import data used in the *Preliminary Results* are not the "best available information" to value urea because the Government of India has preempted the operation of "market forces" in India with respect to urea. Specifically, they maintained that the Government of India controls all imports of urea into India, set the price at which urea may be sold in India, and exercised control over the movement of urea within India. They further argued that the largest single source of urea

¹ See Surrogate Value Memorandum: Preliminary Results of the 2006-2007 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China, dated April 29, 2008, at 3-4 ("Surrogate Value Memorandum").

imports into India was from a government-controlled joint venture producer in the Sultanate of Oman (“Oman”) that sold urea only to the Government of India pursuant to a long-term, declining fixed-price contract that was insulated from any changes in international prices for urea.² Petitioners maintained that, by contrast, the Philippines had an open market for urea, and extensive and detailed domestic pricing data for urea that were regularly collected and published by a specialist government agency. In the *Final Results*, the Department continued to find the Indian WTA import value for urea, including the Oman data to be the best available information to value the urea used in the production of the subject merchandise because these import data represent an average non-export value, and was contemporaneous with the period of review (“POR”), product specific, and tax exclusive.³

In their motion to the Court, Petitioners claimed that: the Department failed to make the legally required comparison between the WTA data and the Philippine data they placed on the record of this administrative review; and the WTA data contained prices that were not set by market forces.

In this remand, the Court has instructed the Department to reexamine its determination with respect to (1) whether urea used for agricultural purposes can be differentiated from urea used for chemical production, and (2) any reason urea sold in 50-kilogram (“kg”) bags cannot be the source of a surrogate price in this case. The Court further instructed the Department to analyze the evidence presented by the interested parties in reviewing the Department’s decision to exclude the Philippine data; further examine the Philippine data using the same criteria the Department employed in selecting the Indian data; provide a complete comparison of the two

² *Id.*

³ See *Final Results* and accompanying Issues and Decision Memorandum at Comment 1.

data sets; and adequately explain how the Department came to its final determination. Moreover, the Court instructed the Department to revisit its determination with respect to the Omani prices, fully analyze the evidence regarding the Omani data, and fully explain and support with substantial evidence the Department's determination of whether or not to include the Omani data in the WTA data.

Remand Analysis

Pursuant to the Court's instructions, the Department has reexamined the record of this administrative review and, as explained below, found that the Indian import data for urea are the best information available for valuing the urea used by the respondents to produce the subject merchandise.

i. ***Whether urea used for agricultural purposes can be differentiated from urea used for industrial purposes***

As indicated above, the Court has instructed the Department to reexamine its determination with respect to (1) whether urea used for agricultural purposes can be differentiated from urea used for chemical production. The Department determined that the domestic Philippine prices for urea were not the best available information on the record of this review because these prices were for urea used as fertilizer and sold in 50-kg bags which were not product-specific to the urea used by the respondents in this review.⁴ This determination was based on information provided in Exhibit 14 of Petitioners' May 28, 2008, submission.

Pursuant to the Court's instructions, we have reexamined the record of this administrative review, and determined that the record evidence supports finding that urea used for agricultural purposes should not be differentiated from urea used for industrial purposes. The information

⁴ See *Final Results* and accompanying Issues and Decision Memorandum at Comment 1.

provided in Exhibit 14 of Petitioners' May 28, 2008, submission, which was obtained from a chemical industry website ("ICIS"),⁵ indicates that "{a}n estimated 10-15% of urea manufactured is used in industrial processes, mainly the production of melamine and resins and as an animal feed. The balance is used in agriculture." This information supports the proposition that urea has multiple uses but not that there are two separate and distinct markets. In addition, 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.

ii. *Whether urea sold in fifty-kilogram bags can be the source of a surrogate price*

As part of the administrative review determination that the Philippine urea data were not the best available information on the record for surrogate value purposes, the Department found that the Philippine data were not specific to the type of urea used by the respondents partly because it was sold in small quantities of 50-kg bags.⁶ In this remand redetermination, the Department has determined that this statement is not supported by record evidence. Upon reexamining the record of this administrative review, we noted that one of the two respondents in this administrative review purchased urea in similar quantities.⁷ Accordingly, the record supports a finding that at least one respondent purchased urea in similar quantities to those contained in the Philippine data. We discuss the import, if any, of this determination in the general discussion of Philippine and Indian data below.

⁵ The source of this information is Chemical industry news from ICIS news.

⁶ See *Final Results* and accompanying Issues and Decision Memorandum at Comment 1.

⁷ See Nanning Chemical Industry Co. Ltd.'s March 4, 2008, Supplemental Response, at Appendix S2.

iii. *Analysis of the Philippine and Indian data.*

The Court instructed the Department to also analyze the evidence presented by the interested parties in reviewing the Department's decision to exclude the Philippine data; further examine the Philippine data using the same criteria the Department employed in selecting the Indian data; provide a complete comparison of the two data sets; and explain how the Department came to its final determination. After reviewing the record, the Department continues to find that the Indian data constitute the best available information on the record for valuing *urca*.

In valuing the factors of production ("FOPs"), section 773(c)(1) of the Tariff Act of 1930, as amended ("the Act") instructs the Department to use "the best available information" from the appropriate market-economy country. The Department considers several factors when choosing the most appropriate surrogate value, including the quality, specificity, and contemporaneity of the data.⁸ As there is no hierarchy for applying the aforementioned factors, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.⁹ Specifically, it is the Department's stated practice to choose surrogate values that represent broad market-average prices, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly available non-aberrational data from a single

⁸ 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.

⁹ See *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 44827 (August 9, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

surrogate market-economy.¹⁰ If a surrogate value meets these criteria, the Department finds that it represents a reliable and relevant price for valuing an individual input. In addition, when using import data, such as those from WTA Indian import data, the Department excludes any imports from non-market economy (“NME”) countries, imports from unspecified countries, and imports from countries that the Department has determined maintain non-specific export subsidies (*i.e.*, Indonesia, India, South Korea, and Thailand) because to include such values not based on market forces would distort the results of the calculation.

a. Assessment of the Philippine Domestic Retail Pricing Data

Pursuant to the Court’s instructions, we have reexamined the Philippine data with respect to whether such data represent: (1) broad market-average prices; (2) prices specific to the input; (3) prices that are net of taxes; (4) prices that are contemporaneous with the POR; (5) publicly available and non-aberrational data. The Philippine data for urea are based on actual domestic retail prices in the Philippines during the POR, as published by the Philippines Bureau of Agricultural Statistics (“BAS”).¹¹ Specifically, the information provided by Petitioners in this administrative review shows a summary and monthly data for domestic retail prices of urea sold in 50-kg bags across all regions of the Philippines.¹²

Upon reexamining the information on the record of this administrative review, we determined the following with respect to the Philippine data: first, the data represent broad

¹⁰ See *Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005) (“*Hot-Rolled Steel from Romania*”), and accompanying Issues and Decision Memorandum at Comment 2; see also 19 CFR 351.408 (c)(2).

¹¹ See Petitioners’ May 27, 2008 submission at Exhibit 10.

¹² *Id.*

market-average retail prices, in that these prices are based on data obtained from a broad market segment of retailers across the Philippines.¹³

Second, they are specific to the urea input, in that record evidence demonstrates that urea used for agricultural purposes should not be differentiated from urea used for industrial purposes.¹⁴

Third, the data are exclusive of value added taxes (“VAT”), according to SEC. 109 (d) of the Philippines National Internal Revenue Code.¹⁵

Fourth, they are contemporaneous with the POR in that the retail pricing data are obtained from monthly/annual dealers’ prices of fertilizers, published by the BAS, for the period June 2006 through May 2007.¹⁶

Fifth, they are publicly available from BAS or the Fertilizer and Pesticide Authority of the Philippines.¹⁷ Moreover, while the Philippine retail average unit value (“AUV”) of urea of US\$0.37 per kg is the highest value on the record, it is not necessarily aberrational in and of itself when compared to the import AUV of urea for India and all the other potential surrogate countries (*i.e.*, India (\$0.23 per kg), Sri Lanka (\$0.29 per kg), the Philippines (\$0.22 per kg), and Indonesia (\$0.14 per kg)). Rather it constitutes the high end of a range of values from a low of \$0.14 per kg to a high of \$0.37 per kg.

¹³ See Petitioners’ November 13, 2007, submission at Exhibits 13 and 14, and Petitioners’ May 27, 2008, submission at Exhibit 10.

¹⁴ See “*Whether urea used for agricultural purposes can be differentiated from urea used for industrial purposes,*” under the **Remand Analysis** section above.

¹⁵ See Petitioners’ May 28, 2008, submission at Exhibit 12, for the National Internal Revenue Code (“NIRC”), Chapter I – Imposition of Tax, SEC. 109. Exempt Transactions, Subsection (d), which includes “. . . sales or importation of fertilizers;” *etc.*

¹⁶ See Petitioners’ May 27, 2008, submission at Exhibit 10, which includes summary and monthly data for domestic retail prices of urea sold in 50-kg bags across all regions of the Philippines.

¹⁷ See Petitioners’ May 27, 2008, submission, at Exhibit 10, and Petitioners’ November 13, 2007, submission at Exhibit 14.

b. Assessment of the Indian WTA Import Data

1. Indian WTA Import Data

As indicated in the Department's Surrogate Value Memorandum, we selected India as our primary surrogate country based on criteria set forth in 19 CFR 351.408(b). While the majority of the surrogate values were selected from India, the primary surrogate country, due to data availability, the Department also used the Philippines as the secondary surrogate country.¹⁸ We applied a surrogate value using Indian or Philippine import prices for the POR.¹⁹ As stated in the *Final Results*, the Department found that the Indian WTA import data for urea represent: (1) broad-market average non-export average price, in that the average value of urea is based on import prices compiled from a broad range of market-economy countries;²⁰ (2) prices specific to the input, in that the Indian import data obtained from the WTA for Harmonized Tariff Schedule ("HTS") category 3102.10.00 is for "urea whether or not in aqueous solution;"²¹ (3) prices that are net of taxes and import duties; (4) prices that are contemporaneous with the POR, in that the WTA data are obtained for the same months of the POR;²² (5) publicly available, in that the data are reported in the MSFTT, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and available from WTA;²³ Moreover, we found the Indian WTA import data for urea to be non-aberrational, in that such data are in line with the import data of urea for the other potential surrogate

¹⁸ See Surrogate Value Memorandum at 1.

¹⁹ The Indian import data are reported in the Monthly Statistics of the Foreign Trade of India ("MSFTT"), as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and available from WTA. The Philippine import data are reported by the Philippines National Statistics Office and are also available from the WTA.

²⁰ See Surrogate Value Memorandum at Attachment III.

²¹ *Id.*, and at 2.

²² *Id.*

²³ *Id.* at 3; see also <http://www.gtis.com/wta.htm>.

countries.²⁴ Finally, we excluded from our calculations of said values any imports from NME countries, imports from unspecified countries, and imports from countries that the Department has determined maintain non-specific export subsidies (*i.e.*, Indonesia, India, South Korea, and Thailand).²⁵

2. Assessment of the Omani Data included in the Indian WTA Data

Petitioners argue that the Department should not use the Indian WTA data because the Government of India controls the Indian imports and the domestic market of urea. They specifically contend that the Indian import prices of urea from Oman are not set by market forces because these prices are pre-determined and aberrational in that they are lower than the import prices of urea from other countries.

In the *Final Results*, in response to Petitioners' argument that the Government of India controls the Indian market and imports of urea, the Department stated that it:

. . . does not have the information necessary to evaluate each import into India to determine whether there is government control over the price. Further, even if such an analysis were possible, it is at odds with the Department's established practice for determining the reliability and appropriateness of surrogate value that represents period-wide price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the period of review, and publicly available non-aberrational data from a single surrogate market economy country.²⁶

We also note that in *Arch Chemicals*,²⁷ involving the first administrative review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China, Petitioners made the same argument with respect to the Government of India's control of the

²⁴ See *Final Results*, and accompanying Issues and Decision Memorandum at Comment 1; see also Surrogate Value Memorandum at 4 and Attachment III.

²⁵ *Id.*

²⁶ See *Final Results*, and accompanying Issues and Decision Memorandum, at Comment 1 (footnote omitted).

²⁷ See *Arch Chemicals v. United States*, Slip Op. 09-71 at 28-30 (CIT 2011) ("*Arch Chemicals*").

urea imports and market in India in an attempt to exclude Indian imports of urea from Oman.

However, the Court stated that it is:

{u}nconvinced that Commerce erred by not excluding the OMIFCO data as tainted by reason of government involvement. Oman and India are market economy countries and there is no evidence that, at the time the contract was entered into, the prices set were not market-driven. In addition, Commerce could reasonably find that, the mere fact that a product is sold to a single purchaser pursuant to a long-term contract, does not necessarily make the price anomalous. Further, there was no record evidence demonstrating that urea sales made subject to the contract were distorted.²⁸

The Court in the instant proceeding has instructed the Department to revisit its determination with respect to the Omani prices, analyze the evidence regarding the Omani data, and explain and support with substantial evidence the Department's determination of whether or not to include the Omani data in the WTA data. Pursuant to the Court's instructions, we have reexamined the information on the record of this administrative review and determined that the Omani data was properly included in the Indian WTA data in calculating a surrogate value for urea. The Department ensures that import data into a given surrogate country do not represent controlled prices by excluding from the calculation of the surrogate value of a given input any imports from NME countries, imports from unspecified countries, and imports from countries that the Department has determined maintain non-specific export subsidies. The Department will also take into account any record evidence that a value is distorted in selecting the best available information. Moreover, the Department's practice is to ensure that the import data obtained from a single surrogate country are non-aberrational.²⁹ Towards that end, the

²⁸ *Id.*

²⁹ See *Hot-Rolled Steel from Romania* and accompanying Issues and Decision Memorandum at Comment 2, in which the Department addressed the issue of testing surrogate values alleged to be aberrational. In so doing, the Department acknowledged inconsistencies in its past practice, and articulated a hierarchy for testing surrogate values alleged to be aberrational: "To test the reliability of the surrogate values alleged to be aberrational, we compared the selected surrogate value for each FOP to the AUVs calculated for the same period using data from the other

Department's practice is not to exclude import values from a given country on the sole ground that such values are higher or lower than the import values of other countries, but to compare the value of an input in the surrogate country with the value of said input in the other potential surrogate countries.

In the *Final Results*, the Department, consistent with its practice as articulated in *Hot-Rolled Steel from Romania* and with what it did in the prior segment of this proceeding, compared the aggregate Indian import AUV of urea (\$0.23 per kg) with that of other potential surrogate countries (Indonesia (\$0.14 per kg), Sri Lanka (\$0.29 per kg), and the Philippines (\$0.22 per kg)) and found that the Indian import value is within the range of values for those countries.³⁰ In addition, the Department applied an additional test comparing the value of Indian imports from Oman with other record information, whereby it found that the AUV for Indian imports of urea from Oman (\$0.18 per kg) are higher than the Indonesian import AUV (\$0.14 per kg) and the AUV for several countries in the Philippine import data (\$0.13 per kg to \$0.16 per kg).³¹ Accordingly, the Department found that the Indian import data for urea, including those from Oman, are in line with the import data for urea of the other potential surrogate countries.

For the reasons indicated above, we find that the record does not indicate that the Omani prices are distorted or aberrational, and that these prices are within the price range of other potential surrogate countries. Accordingly, the Department finds no record basis on which to exclude the import data for Oman from the Indian import data for urea.

We note that Petitioners made similar arguments in the prior administrative review, which was the first administrative review of the antidumping duty order. In *Arch Chemicals*, the

surrogate countries the Department designated for this review, to the extent that such data are available.”

³⁰ See Surrogate Value Memorandum at 4.

³¹ *Id.*

Court upheld the Department's inclusion of the Indian imports of urea from Oman in the urea surrogate value calculation. In *Arch Chemicals*, the Court found that the Department's decision to include the Omani prices was supported by substantial evidence. In that case, the Department analyzed the Indian WTA data to ensure that the value of imports from Oman to India was not aberrational, and was comparable to imports into India from other market-economy countries. In *Arch Chemicals*, the Court noted that the Department found that the import data of urea from Oman were within the range of values examined, though at the low end, and was close to the average value of the Indian import data for urea. The Court also found that the Department “. . . acted reasonably in concluding that economies of scale is one factor contributing to the OMIFCO's price being lower than that of other urea imports into India, given the quantity of imports from Oman into India.”³²

While the facts in *Arch Chemicals* and the instant administrative review may be different with respect to the Indian import data of urea from Oman, we find in this redetermination that this record also does not contain any information to indicate that the Oman value is distorted or aberrational. In *Arch Chemicals*, the Indian import pricing data from Oman clearly fell within the range of all Indian import values. In fact, imports of urea from the United Kingdom were priced lower than the Omani imports of urea. Moreover, while in *Arch Chemicals* the Department considered the volume of urea imports from Oman in terms of the economies of scale to explain why Omani import prices of urea were at the low end of other Indian import prices. In retrospect, we believe that making such a statement was not appropriate because the fact is that the Department does not have enough information about the import values to make conclusions regarding any correlation between quantity and value. In the instant review, the

³² See *Final Results* and accompanying Issues and Decision Memorandum at Comment 1.

Department made no attempt to analyze a correlation between quantity and value for precisely the reason that there is not enough information to go behind the data contained in the import statistics.

In the instant administrative review, however, the Indian import price of urea from Oman was lower than the Indian import prices from other countries. As explained above, the Department had already satisfied itself that the Indian import value, including the Omani data, was within the range of values from the other potential surrogate countries. However, responding to Petitioners' arguments that the Omani value is unreliable, the Department conducted an additional test in an effort to determine if the Omani value was distorted or aberrational. This additional test, in which the Department compared the Omani value to the values of urea imports into the other potential surrogate countries, is not the Department's normal practice. As indicated above, the Department had already established that the Indian AUV of urea, including the import value of urea from Oman, was within the range of the surrogate values involving the other potential surrogate countries. This being the Department's normal practice, as explained above, and the fact that the results of the same test were consistent with those of the prior review where the Court found that the Department's decision to include the Omani prices was supported by substantial evidence, the Department found no reason to reject the Indian import value as the appropriate surrogate value in this review. However, as indicated above, the Department took the additional steps to compare the Indian import value of urea from Oman to the AUV for several countries in the Philippine and Indonesian import data and found that the Omani value is, in fact, higher than the import values of urea for other potential surrogate countries. Accordingly, as a result of this additional test, the Department found based on record evidence that the Omani urea price fell within the range of urea prices

from other potential surrogate countries, and that this was additional support for finding that there was no record evidence that the Indian import value of urea from Oman is distorted or aberrational.

Regarding the fact that in the instant review the Omani price is the lowest unit value among Indian imports, we do not find the Omani value to be outside the range of unit values. As with any range of data, there is by necessity a low end and a high end of the range. While the Omani value is 30 percent lower than the average, the value of German imports of urea into India is approximately 50 percent higher than the average.³³ Accordingly, we do not find the Omani import value, as a low end of the range, or the German import value, as the high end of the range, to be an outlier. Rather, the Department finds that the Omani value and the German value constitute a low end and a high end of a range of values, respectively. In other words, because the low value (Oman) and the high value (Germany) are both somewhat removed from the average, we don't find either to be an anomaly, but merely the low and high ends of a broad spectrum of values of Indian imports of urea. Therefore, excluding the import data of urea from Oman from the Indian data, as suggested by Petitioners, would not be appropriate, and would only serve to distort the average.

Thus, for all of the reasons explained above, the Department continues to find that the Omani price is not distorted or aberrational because it is within a range of values of Indian imports, albeit at the low end of the range, and is within the range of import prices of urea of other potential surrogate countries.³⁴ This fact demonstrates that the Omani value was consistent

³³ See Surrogate Value Memorandum at Attachment 3.

³⁴ The Department found that the AUV for Indian imports of urea from Oman (\$0.18 per kg) are higher than the Indonesian import AUV (\$0.14 per kg) and the AUV for several countries in the Philippine import data (\$0.13 per kg to \$0.16 per kg). See Surrogate Value Memorandum.

with prevailing international market-economy prices for urea during the POR. This conclusion is also consistent with *Arch Chemicals* in which the Court stated that:

. . . Commerce could reasonably find that, the mere fact that a product is sold to a single purchaser pursuant to a long-term contract, does not necessarily make the price anomalous. Further, there was no record evidence demonstrating that urea sales made subject to the contract were distorted.³⁵

Further, we note that while Petitioners provided information indicating that the Government of India may be involved in the Indian domestic market for urea, there is no record evidence demonstrating that Indian imports of urea from other market-economy countries, including Oman, is controlled by the Indian government. This conclusion is also consistent with *Arch Chemicals* in which the Court stated that it is:

{u}nconvinced that Commerce erred by not excluding the OMIFCO data as tainted by reason of government involvement. Oman and India are market economy countries and there is no evidence that, at the time the contract was entered into, the prices set were not market-driven.³⁶

For the aforementioned reasons, the Department found no evidence to conclude that the Indian WTA import data of urea, including the Omani data, are distorted or aberrational.

c. The Department has determined that the Indian data constitutes the best information available

As indicated above, both the Indian import and Philippine domestic data for urea: (1) represent broad market-average prices; (2) are specific to the input; (3) are exclusive of VAT; (4) are contemporaneous with the POR;³⁷ (5) are publicly available and non-aberrational. Based on the aforementioned criteria alone, both sources of data could potentially be used in valuing the input for urea. However, pursuant to 19 CFR 351.408(c)(2), the Department normally values

³⁵ See *Arch Chemicals*, Slip Op. 09-71 at 28-30.

³⁶ *Id.*

³⁷ See Petitioners' May 28, 2008, submission at Exhibit 12, which includes the NIRC, Chapter I – Imposition of Tax, SEC. 109. Exempt Transactions, Subsection (d).

all factors from a single surrogate country, and will resort to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.³⁸ As indicated above, in this instant review, India is the primary surrogate country, where the surrogate values, contingent upon availability, were obtained for the FOPs. Accordingly, the Department's first preference in selecting surrogate value data for the instant review is publicly available Indian data for the POR, where there is no evidence to show that the data are aberrational or otherwise unreliable. Since we found no evidence to suggest that the Indian WTA data for urea, including imports from Oman, were aberrational or unreliable, and have already established that such data represent broad market-average prices, and are specific to the input, exclusive of taxes and import duties, contemporaneous with the POR and publicly available, we found that the Indian import data for urea meet the Department's criteria for best available information. Thus, despite the fact that the Department reversed its decision that the Philippine retail pricing data were not specific to the input of urea being used in the production of the subject merchandise, the record evidence, as noted above, still supports a determination that the Indian import data meet the Department's criteria for best available information.

For these reasons, the Department finds the Indian WTA import data for urea to be the best available information on the record of this administrative review.

³⁸ See *Final Results*, and accompanying Issues and Decision Memorandum, at Comment 1; see also, e.g., *Folding Metal Tables and Chairs From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part*, 76 FR 66036 (October 25, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

2) Valuation of Steam Coal

Background

In the *Final Results*, the Department valued steam coal using the prices listed in the TERI Data Directory and Yearbook which bases steam coal prices on the Indian market.³⁹ Petitioners argue that a producer of chlorinated isocyanurates in India could not purchase steam coal at prices stipulated by TERI data. According to Petitioners, only members of certain “core sectors” of the Indian industry are able to purchase steam coal at the prices listed in the TERI data. Members which do not belong to the core sectors of the Indian industry, Petitioners argue, could purchase domestic steam coal from the monopoly supplier, Coal India, Ltd. (“CIL”), at significantly higher prices or would be required to use imported coal.⁴⁰

Further, Petitioners claim that the record of the proceeding identifies which industries are core sector and that the chlorinated isocyanurates producers, which are a part of the chemical industry, are not listed as core sector industries. Additionally, Petitioners argue the Department’s reliance on the TERI data for valuing steam coal does not represent best information available because for a hypothetical free-market producer of chlorinated isocyanurates operating in the structure of the Indian market, TERI prices are not available. Instead of the TERI prices, Petitioners urge the Department to rely on the Indian WTA import prices.⁴¹ In the *Final Results*, in response to Petitioners’ arguments, the Department asserted that it used the TERI data, rather than WTA import data, as proposed by Petitioners, “because the TERI data are more product specific to [defendant-intervenor’s] reported coal input.”⁴² The Department found that TERI

³⁹ See *Final Results* and accompanying Issues and Decision Memorandum at Comment 4.

⁴⁰ See *Clearon* at 20.

⁴¹ See *Clearon* at 21.

⁴² *Id.*

data is categorized by the major types of coal products, while WTA import data simply list “steam coal” without further specificity or explanation.

With respect to Petitioners’ argument that a producer of chlorinated isocyanurates could not purchase coal at the prices listed in the TERI data, the Department reasoned in its brief to this Court that the record evidence regarding the definition of what constitutes a core sector was inconclusive with no clear evidence that professes to classify the Indian chemical industry as either a core or non-core industry. In addition, the Department reasoned that it repeatedly found the use of the TERI data to be the best available information for steam coal prices in India in other cases, and used that data in prior and subsequent segments of this proceeding, a conclusion that has been supported by this Court.⁴³

Remand Analysis

● On remand, the Court has instructed the Department to reexamine its determination with respect to the valuation of steam coal, and fully analyze the use of the TERI data, including 1) whether the chemical industry would be considered a core sector industry, and (2) whether the use of the TERI data is supported by substantial evidence on the record.

In response to the Court’s instructions, the Department reopened the record of this proceeding and requested that interested parties submit new information pertaining to the valuation of steam coal.⁴⁴ On January 9, 2012, both Petitioners and Jiheng submitted information on whether the chemical industry is a part of the core sector industry and, thus, receive TERI prices which are lower than prices offered by CIL to non-core industries.⁴⁵

⁴³ See Department’s Court Brief at 18.

⁴⁴ See Letter from the Department to Interested Parties Requesting New Information on the Valuation of Steam Coal, dated December 20, 2011.

⁴⁵ See Petitioners’ January 9, 2012, submission and Jiheng’s January 9, 2012, submission.

After careful examination of the evidence provided by both parties, we continue to find that TERI prices are the best available information for valuing Jiheng's steam coal. While the record does not list the chemical industry as a "core industry" *per se*, evidence collected after reopening the record indicates that numerous chemical companies are listed by CIL as part of the core sector.⁴⁶ Therefore, Petitioners' attempted classification of the chemical industry as a non-core industry is not supported by the record evidence.⁴⁷

Additionally, the CIL's list of core sector customers which was put on the record by both Petitioners and Jiheng, also refers to Kanoria Chemical & Industries, Ltd. ("Kanoria"), which produces fertilizer and chlorinated isocyanurates and is the Indian surrogate company in the underlying review, as a core consumer of CIL's steam coal.⁴⁸ Regardless of the official definition of which industries are classified as core industries, Kanoria's experience as a core consumer of steam coal supports the finding that producers of chlorinated isocyanurates and fertilizers are, *de facto*, treated as core industries in India. Petitioners agree that Kanoria is treated as a core customer, but qualify that statement by arguing that Kanoria is listed as a core customer by virtue of being a captive power producer, the power industry being designated a core industry.⁴⁹ However, it is not clear that the category under the heading "CPP (excl. CMT and Steel)," where Kanoria is listed, stands for "captive power producer (excluding cement and steel)," as implied by Petitioners. Even if "CPP" does mean "captive power producer," the record does not indicate that being a power producer was a prerequisite to being treated as a core

⁴⁶ See Jiheng's January 9, 2012, submission at Attachment 1, referring to the CIL's allocation of coal to the core industry customers.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See Petitioners' January 9, 2012, submission at 5.

customer. Furthermore, the same record evidence refers to additional chemical companies as core customers without referring to them as captive power producers.⁵⁰

As additional evidence that the chemical industry is a core industry, Jiheng submitted the *Indian Minerals Year Book 2008*, an annual government publication issued by the Indian Bureau of Mines, which discusses the chemical industry along with the cement and fertilizer industries as being dependent on coal for their process and energy requirements.⁵¹ The publication lists the chemical industry together with other core industries as coal dependent without discriminating between core and non-core sector industries.⁵² Page 24 of the same publication refers to dispatches of coal by industry priority. The chemical industry is identified as a “priority” industry on a par with the cement or steel industries.⁵³ Furthermore, the same publication discusses coal pricing over the relevant POR and never mentions any distinction in pricing between core and non-core sectors.⁵⁴ While the publication does not define industries in terms of core and non-core industries, the designation of the chemical industries as a priority industry (along with the coincidence of the coal prices discussed in the yearbook being similar to the TERI steam coal prices for core industries) supports a finding that the chemical industry is a core industry.

Finally, it is the Department’s stated practice to choose a surrogate value that represents broad market-average prices, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly available non-aberrational

⁵⁰ See Jiheng’s January 9, 2012, submission at Attachment 1, where CIL lists additional chemical companies under the core industry sector without any reference to CPP.

⁵¹ See Jiheng’s January 9, 2012, submission at Attachment 3, at 24-24.

⁵² *Id.*

⁵³ See Jiheng’s January 9, 2012, submission, at Attachment 3, at 24-1.

⁵⁴ See Jiheng’s January 9, 2012, submission, at Attachment 3, at 9-1 and 9-2.

data from a single surrogate market-economy country.⁵⁵ If a surrogate value meets these criteria, the Department finds that it represents a reliable and relevant price for valuing an individual input. In this case, the TERI data are publicly available, represent deregulated country-wide Indian coal price data, are specific to Jiheng's reported coal inputs, and are contemporaneous with the POR.

Foremost, we find that TERI data are the most appropriate for valuing Jiheng's steam coal inputs because, in addition to meeting all of the aforementioned factors, they are specific to Jiheng's reported coal inputs. Generally, the Department uses domestic Indian price data when respondents provide accurate and reliable information concerning useful heat value ("UHV") of the steam coal they consumed.⁵⁶ In this case, Jiheng has provided the Department with information on the UHV of the steam coal it consumed.⁵⁷ Therefore, Jiheng's steam coal inputs are easily categorized using domestic Indian price data, which assigns prices for coal based on UHV. Alternatively, the WTA steam coal price data, which Petitioners suggest we use, is listed under the heading "steam coal," without further specification of the UHV. Consequently, because domestic Indian coal data provide the most product-specific prices, we find that it offers the best available information for valuing Jiheng's steam coal inputs.

In conclusion and as described above, we find that, there is adequate record evidence to support a determination that that chemical companies could purchase steam coal at prices stipulated by TERI data for core sector industries. Additionally, we continue to find that the TERI data are the best available information with which to value steam coal because they are

⁵⁵ See *Hot-Rolled Steel from Romania* and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁶ See *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 13.

⁵⁷ See Jiheng's November 2, 2007, submission at 15.

specific to Jiheng's reported coal inputs, they comport with the core industry pricing, they are complete, and they are contemporaneous with the POR.⁵⁸

3) Jiheng's By-Product Offsets

Background

In the *Final Results*, the Department granted Jiheng a by-product offset for ammonia gas. Specifically, the Department valued Jiheng's ammonia gas by-product using Indian import data for anhydrous ammonia from the WTA.⁵⁹ Because the Department did not adequately explain why the value for anhydrous ammonia was appropriate for valuing Jiheng's ammonia gas by-product, the Department requested a voluntary remand to further explain its reasoning. The Court granted the Department's request.⁶⁰

Remand Analysis

Generally, the Department grants an offset to normal value for scrap generated during the production of subject merchandise if the respondent can demonstrate that the scrap by-product is either resold, or has commercial value and reenters the respondent's production process.⁶¹ Further, in valuing by-product offsets, in NME proceedings, the Department uses surrogate values based on the best available record information, as it does for other FOPs.⁶²

⁵⁸ See *Saccharin from the People's Republic of China: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 51800 (September 11, 2007) and accompanying Issues and Decision Memorandum at Comment 3, and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order Pursuant to Court Decision: Lawn and Garden Steel Fence Posts from the People's Republic of China*, 72 FR 32835 (June 14, 2007), where the Department explained that the CIT sustained the Department's final results of redetermination in which the Department determined that TERI data was the best source of a surrogate value for coal because the data were complete, comprehensive (in that it covered all sales of all types of coal made by CIL and its subsidiaries), and exclusive of duties and taxes.

⁵⁹ See *Final Results* and accompanying Issues and Decision Memorandum, at Comment 6A.

⁶⁰ See *Clearon*, at 28-30.

⁶¹ See *Arch Chemicals*.

⁶² See *QVD Food Co., Ltd. v. United States*, 721 F. Supp. 2d 1311, 1318 (CIT 2010).

In this case, the Department has concluded that the WTA Indian import data for anhydrous ammonia relied on in the *Final Results*, which is the only surrogate ammonia value on the record of this review, is appropriate for valuing Jiheng's ammonia gas by-product. While Petitioners argue that Jiheng's ammonia gas by-product is not anhydrous ammonia, and could not be sold as such, as we explain below, Jiheng has presented evidence that demonstrates that anhydrous ammonia is appropriate for valuing its ammonia gas by-product.⁶³

In suggesting that the Department should deny Jiheng an ammonia gas offset altogether, Petitioners present two arguments to show that import data for anhydrous ammonia is not appropriate for valuing Jiheng's ammonia gas: (1) the anhydrous ammonia represented by the WTA import data is ammonia with a minimum purity level of 99 percent rather than the waste gas produced by Jiheng during the POR; and (2) the anhydrous ammonia represented by the WTA import data has different processing and packaging requirements than Jiheng's ammonia gas by-product because the ammonia represented by the WTA data is shipped in refrigerated liquid form, whereas Jiheng's ammonia by-product is a gas.⁶⁴

In the administrative review, the Department found no distinction between the purity level of Jiheng's ammonia gas by-product, claimed as a by-product offset, and the purity level of anhydrous ammonia, represented by the WTA import data, which is pure ammonia. Specifically, in valuing Jiheng's ammonia gas by-product, the Department did not actually value the total quantity of ammonia gas that Jiheng produced during production of the subject merchandise because Jiheng was unable to place a measuring instrument to track the amount of pure ammonia gas produced or consumed. Upon the Department's request, however, Jiheng provided

⁶³ See *infra*; see also Jiheng's October 2, 2007, section D questionnaire response, at 25 and Exhibit 11.

⁶⁴ See Clearon's brief to the Court at 15-20.

information that limited the quantity of ammonia claimed as a by-product offset to the amount of 100-percent pure ammonia gas -- created from its production of subject merchandise -- that was consumed in producing the amount of ammonium sulfate that was actually sold during the POR.⁶⁵ Thus, while the total weight of the ammonia gas that was generated during Jiheng's production may include non-ammonia by-products so that the total weight of the gas by-product is not solely attributable to the ammonia, or perhaps directly comparable to the typical purity level of anhydrous (*i.e.*, pure) ammonia, the weight of those non-ammonia by-products, which are mixed with the ammonia gas, are not being valued. In other words, the quantity of ammonia gas that is being valued is a pure chemical weight, and we are only granting Jiheng a by-product offset for the pure ammonia content within the ammonium sulfate that it produces from its ammonia gas.⁶⁶ In this regard, we note that anhydrous ammonia is at least 99-percent pure ammonia.⁶⁷ Thus, the surrogate product, *i.e.*, anhydrous ammonia is very similar to the 100-percent ammonia gas for which the Department is granting the by-product offset.

Moreover, the Department found no sufficient basis on which it could justify denying Jiheng a by-product offset for ammonia merely because the WTA data represent ammonia in solid form, whereas, Jiheng's ammonia is in the form of gas. First, Jiheng presented sufficient evidence on the record of this administrative review that it sold or reintroduced into production pure ammonia gas during the POR. Second, as noted above, the Department was able to establish that the ammonia gas for which Jiheng claims an offset is pure ammonia that is comparable to the anhydrous ammonia represented by the WTA data. Third, as acknowledged

⁶⁵ See Jiheng's October 2, 2007, section D questionnaire response at Exhibit D-11.6 and Jiheng's Third Supplemental Questionnaire at Exhibit TSD-3.5.

⁶⁶ See Jiheng's October 2, 2007, section D questionnaire response at 25 and Exhibit 11.

⁶⁷ See Jiheng's October 2, 2007, section D questionnaire response at Exhibit D-11.6 and Jiheng's April 17, 2008, Third Supplemental Questionnaire Response at Exhibit TSD-3.5.

by Petitioners, the WTA data for anhydrous ammonia is the only surrogate value information for ammonia available on the record of this administrative review.

In sum, the Department found the WTA data for anhydrous ammonia to be the best available information on the record of this administrative review for valuing Jiheng's ammonia gas by-product because such data are the only product-specific information on the record of this administrative review, and they provide tax-exclusive import values from our primary surrogate country that are contemporaneous with the POR.

C. COMMENTS FROM INTERESTED PARTIES

Comment 1: Whether the Department Complied with the Court's Remand Order Involving the Surrogate Value for Urea

In their comments on the draft remand results, Petitioners acknowledge that the Department addressed the Court's instructions with respect to: (i) reconsidering its prior reasons for excluding the Philippine urea price data; and (ii) further examining the Philippine data using the same criteria employed in selecting the Indian data. However, as described in detail below, Petitioners argue that the Department has not made the required comparison between the Indian and Philippine data sets; nor has it adequately explained the basis for its decision that the Indian WTA data are the best available information for valuing urea.⁶⁸

Department's Position:

We disagree with Petitioners' argument that the Department has not made the proper comparison between the Indian and Philippine data sets. As Petitioners acknowledged, the Department has examined the Philippine data using the same criteria employed in selecting the Indian data. When comparing the Indian WTA data to the Philippine domestic price data, the

⁶⁸ See Petitioners' comments at 2-7.

Department found that both the Indian WTA data and the Philippine data meet the Department's requirements in that both data sets: (1) represent broad market-average prices; (2) are specific to the input; (3) are exclusive of VAT; (4) are contemporaneous with the POR; and (5) are publicly available and non-aberrational. The Department also stated that based on the aforementioned criteria alone, both sources of data could potentially be used in valuing the input for urea.

However, as indicated above, pursuant to 19 CFR 351.408(c)(2), the Department normally values all factors from a single surrogate country, and will resort to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable. In this instant review, India is the primary surrogate country, where the surrogate values, contingent upon availability, were obtained for the FOPs. Thus, the Department's first preference in selecting surrogate value data for the instant review is publicly available Indian data for the POR, where there is no evidence to show that the data are aberrational or otherwise unreliable. As indicated above, since the Department found no evidence to suggest that the Indian WTA data for urea, including imports from Oman, were aberrational or unreliable, and has already established that such data represent broad market-average prices, and are specific to the input, exclusive of taxes and import duties, contemporaneous with the POR, and publicly available, we found that the Indian import data for urea meet the Department's criteria for best available information. Accordingly, as noted above, despite the fact that the Department reversed its decision that the Philippine retail pricing data were not specific to the input of urea being used in the production of the subject merchandise, the record evidence still supports a determination that the Indian import data meet the Department's criteria for best available information.

In support of their argument that the Department should use the Philippine domestic price

data for urea over the Indian WTA data, Petitioners maintained that the Department did not evaluate the fact that the Philippine data are domestic price data compared to import data in the case of India, claiming that the Department has expressed a preference for the use of domestic pricing data over import data, which the Court has consistently recognized. *See, e.g., Tianjin Magnesium Int'l Co. v. United States*, 722 F. Supp. 2d 1322, 1333 (Ct. Int'l Trade 2010) (“*Tianjin Magnesium*”). First, we note that the facts present in *Tianjin Magnesium* are different from facts in this case. In *Tianjin Magnesium*, the Department concluded that the WTA was not the best available information to value dolomite, based on its finding that internationally traded dolomite was likely to be a high end high quality product, *i.e.*, a different quality than the dolomite used for magnesium production.⁶⁹ Accordingly, the Department based the surrogate value on the average purchase price of dolomite reflected in the financial statements of two domestic Indian companies. *Id.* In *Tianjin Magnesium*, the Court upheld the Department’s position, citing to, generally, *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 29 CIT 288, 299, 366 F. Supp. 2d 1264, 1273 (2005), in which the Court stated that “Commerce has a stated preference for the use of the domestic price over the import price, all else being equal”. Here, the circumstances in this review do not warrant the use of the Philippine domestic price data for urea over the Indian WTA data because India was selected as the primary surrogate country, and we found no evidence to suggest that the Indian WTA data for urea were aberrational or unreliable. Therefore, there was no need to resort to a secondary surrogate country. Moreover, despite Petitioners’ argument that the Department has a preference for the use of domestic prices over import prices, we do not find the facts in this instant review to be similar to those present in *Tianjin Magnesium*, where the Department weighed the merits of

⁶⁹ *See Tianjin Magnesium* at 11.

domestic prices versus import prices that were both obtained from the primary surrogate country. In the instant review, where we have reliable surrogate value data from the primary surrogate country, we determine that the use of reliable surrogate value information from the primary surrogate country is the best available information when the alternative is information obtained from a secondary surrogate country. Second, the Court has recognized the Department's discretion in selecting surrogate values. In *FMC*, the Court upheld its previous determinations that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly."⁷⁰ For the aforementioned reasons, the Department has determined that using the Indian WTA data for urea is appropriate and consistent with its long standing practice.

Petitioners further argued that since the Department established that urea sold in 50-kg bags is specific to the urea purchased by "at least one respondent" in this review, the Philippine price data are superior to the Indian price data in terms of specificity. We disagree with Petitioners' argument and find that it misrepresents the Department's position and is unsupported by record evidence. The issue of specificity involving the volume in which urea was purchased was not related to the Indian WTA data.⁷¹ In fact, based on record information, the Department initially established that the Philippine domestic price data were not product specific to the large-scale industrial usage of chemical feedstock urea reported by Chinese respondents in the present

⁷⁰ See *FMC Corporation v. United States*, No. 01-00807 Slip Op. 03-15 at 10 (CIT February 11, 2003) ("*FMC*"), at 10 (citing *Technoimportexport, UCF America Inc. v. United States*, 783 F. Supp. 1401, 1406 (CIT 1992)); affirming *FMC Corporation v. United States*, 89 Fed. Appx. 753 (Fed. Cir. February 9, 2004). See also *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 1.

⁷¹ See Surrogate Value Memorandum at 3, in which the Department stated that it used Indian import data obtained from the WTA for HTS category 3102.10.00 "urea whether or not in aqueous solution" to value respondents' reported urea consumption.

case.⁷² However, upon the Court's remand instructions, the Department has re-examined the record to determine whether urea sold in small quantities of 50-kg bags cannot be the source of a surrogate price in this case.

As noted above, the Department found that the sale of urea in 50-kg bags, in and of itself, is not a basis to reject consideration of the Philippine price as a surrogate value because at least one respondent purchased some urea in similar quantities. However, any attempt to say that the Department established that the 50-kg bags are specific to purchases made in this review is misleading. The fact is that, while the record shows one respondent purchased urea in quantities similar to 50-kg bags, the record also shows that the other respondent's urea purchases were measured in much larger unit of measure than kg.⁷³ Accordingly, the Department finds no merit in Petitioners' argument that the Philippine data are superior to the Indian WTA data in terms of specificity, pursuant to the volume in which urea was sold in the Philippines.

Petitioners further argued that the Department did not consider the extensive record evidence reflecting the control that the Indian government exercises over the import, movement and resale of urea in that country, compared to the absence of state involvement in urea import and trade in the Philippines. We disagree with Petitioners' argument and find it misleading. In spite of Petitioners' arguments to the contrary, the Department fully addressed these comments in the *Final Results*, where we concluded that there is no evidence that the Indian import value of urea is distorted by virtue of any government involvement in the import, movement or resale of urea in India. Furthermore, the Court agreed with this conclusion in its remand involving this administrative review, in which the Court stated that:

⁷² See *Final Results* and accompanying Issues and Decision Memorandum at Comment 1.

⁷³ See Exhibit SD-5 of Jiheng's December 20, 2007, submission, showing that Jiheng purchased urea in much larger quantities than 50-kg bags.

{o}ne factor in this Second Review, however, remains consistent with the First Review. In *Arch Chemicals*, the Court found that there was no evidence that the data was “tainted by reason of government involvement.” *Arch Chems.*, 33 CIT at __, Slip Op. 09-71 at 30. That is, the fact that “a product is sold to a single purchaser pursuant to a long-term contract . . . does not necessarily make the price anomalous.” *Id.* Similarly, here, there does not appear to be any evidence on the record that demonstrates how India’s long-term contract with Oman tainted the sale prices of urea.⁷⁴

For the aforementioned reasons, we disagree with Petitioners’ argument that the Indian WTA price data are distorted as a result of the Indian government’s control of the urea market within India, and Petitioner has pointed to no new evidence that would lead us to reconsider the issue.

Moreover, Petitioners contend that the Department erred in concluding that urea imports into India, including those from Oman, reflect a broad spectrum of values, and that such a conclusion is belied by the fact that the average value of virtually all of the non-Omani imports into India, except for German imports, are tightly clustered in a narrow range between 11.49 rupees per kg and 12.18 rupees per kilogram. We disagree with the premise upon which Petitioners relied in arguing that a range necessarily needs to reflect tightly-clustered values. As noted above, as with any range of data, there is by necessity a low end and a high end of the range. While the Omani value is 30 percent lower than the average, the value of German imports of urea into India is approximately 50 percent higher than the average. Accordingly, we do not find either the Omani import value, as a low end of the range, or the German import value, as the high end of the range, to be an outlier. On the contrary, the Department finds that the Omani value and the German value support the notion of a broad range of values. In other words,

⁷⁴ See *Clearon* at 19 (Emphasis added).

Petitioners' argument, raised for the first time in its February 23, 2012 comments, that both of these values are outliers that should be excluded defies logic. First of all, the mere fact that a data point is at either the high or low end of a range of data points does not define it as an outlier. Indeed, neither the Department nor Petitioners, when presented with a range of values within a particular HTS category, can have perfect knowledge of what may or may not constitute an aberrational value. Thus, absent specific evidence that certain import data may be aberrational for a particular case, the Department will opt to include all import data in its surrogate value calculations.⁷⁵ Further, we note that in litigation, the Department has only been ordered to exclude aberrational data in instances where only one country's data has varied to an extreme degree.⁷⁶

In any event, as described above, the Department has further tested the Indian AUV as well as the Omani specific price and has determined that it is not aberrational. In this regard, Petitioners argue that the rationale used by the Department for including the low price of urea from Oman in the Indian import data is unpersuasive, because the Department acknowledged that comparing the individual Omani price from the Indian data to individual urea prices contained within the import data of other potential surrogate countries is inconsistent with the Department's standard methodology. As indicated above, the Department, consistent with its practice as articulated in *Hot-Rolled Steel from Romania*, and with what it did in the prior segment of this proceeding, compared the aggregate Indian import AUV, which includes imports from Oman, with that of other potential surrogate countries, and found that the Indian import

⁷⁵ See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 4.

⁷⁶ See, e.g., *Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, Slip Op. 04-88 (CIT July 19, 2004) (the Department excluded import data from Sweden because it alone varied to a uniquely extreme degree).

value is within the range of values for those countries. Hence, the Department did follow its practice in determining whether the import data from the primary surrogate country were aberrational. Nevertheless, because Petitioners specifically contested the inclusion of the imports from Oman in the Indian import value of urea, alleging that the Omani price of urea was aberrational, the Department applied an additional test to address Petitioners' comments on this issue in this review (*i.e.*, we compared the value of urea imports from Oman in the Indian import data with the individual values of urea imports contained within the import data of other potential surrogate countries). As indicated above, we found that the import value of urea from Oman was within the range of urea import values in other potential surrogate countries. While this additional test may not be part of the Department's standard methodology, it was relevant to this case in that it clearly demonstrated that the Omani value was not aberrational. However, we note that this additional test, in and of itself, was not the determining factor for the Department's inclusion of the Omani data in the Indian WTA data for urea and, frankly, was not necessary, because the Department's normal methodology demonstrated that the Indian data were reliable and supported finding that the Indian value is the best information on the record with which to value urea.

Comment 2: Selection of Surrogate Value for Steam Coal

Petitioners argue that the Department has misread the vast majority of chemical companies listed in the CIL customer list as non-core sector, as opposed to core sector. According to Petitioners, only five chemical companies are listed in the core sector, and that they are listed in that section not because they are chemical companies but because they have captive power plants. Petitioners maintain that because neither respondent operates a power plant there is no reason to believe that a hypothetical producer of chlorinated isos in India would have

qualified to purchase coal at the preferential CIL prices. Finally, Petitioners argue that the Department did not explain its reliance on *Indian Minerals Year Book 2008* and did not discuss the description of core sector customers in the Indian Supreme Court decision.

Department's position:

After careful evaluation of the record evidence in general and the TERI prices in particular, the Department remains convinced that the TERI data are the best available surrogate information when valuing Jiheng's steam coal input. Petitioners' claim that all five companies with the word "chemical" in them are being listed as core sector customers only because they have captive power plants is misplaced.⁷⁷ A careful examination of the same information reveals that chemical companies which do not maintain captive power plants are also classified as core sector customers. See Petitioners' submission, dated January 9, 2012, at Attachment 3, where a company named Tr Chemicals Pvt., Ltd., is listed as a core sector customer, yet it does not contain a captive power plant. This example demonstrates that, while the definition of the core sector industries is unclear, chemical companies enjoy the access to TERI prices.

When record evidence is unclear, the Court has recognized the Department's discretion in selecting surrogate values. In *FMC*, the CIT upheld its previous determinations that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly."⁷⁸ Similarly, in *Polyethylene Retail Carrier Bag Committee*, the CIT stated "in determining the valuation of the factors of production, the critical question is whether the methodology used by Commerce is based on the best available information and establishes

⁷⁷ See Petitioners' comments on the Draft Redetermination, dated February 23, 2012, at 8-9.

⁷⁸ See *FMC*.

antidumping margins as accurately as possible.” *Polyethylene Retail Carrier Bag Committee, et al., v. United States*, No. 04-00319 Slip Op. 05-157 at 11 (CIT December 13, 2005) (“*Polyethylene Retail Bag Committee*”) (citing *Shakeproof Assembly Components v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001)). Also, in *Crawfish Processors Alliance*, the Court held that “[i]f Commerce’s determination of what constitutes the best available information is reasonable, then the Court must defer to Commerce.” *Crawfish Processors Alliance v. United States*, 343 F. Supp. 2d 1242, 1251 (CIT 2004) (“*Crawfish Processors Alliance*”).⁷⁹

Furthermore, in response to Petitioners’ argument that the Department’s reference to the *Indian Minerals Year Book 2008*, does not address the issue of core vs. non-core customer distinction, our intent was to point to another publication which, while not addressing directly the core sector definition, does refer to the chemical industry as a “priority” industry in the same breath as other core sector customers. Therefore, while the publication does not refer to chemical industry as core industry, it nevertheless assigns similar value to the chemical industry as the other core industry customers. Regarding the 2006 ruling cited by Petitioners, the Indian Supreme Court stated that “core sector consumers include the vital sections of national economy related to infrastructure development as for example, power, steel, cement, defence, fertilizer, railway, paper, aluminum, export, central public sector undertaking, etc.” The use of “for example” and “etc.” suggests that the list is not all inclusive, *i.e.*, it is not necessarily a comprehensive list of all core sector industries. Nevertheless, even though the list does not include the chemical industry, as explained elsewhere, other record evidence demonstrates that chemical companies are eligible for the TERI prices.

⁷⁹ 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 1.

Petitioners also claim that the Department did not address the pricing of coal presented by Petitioners in their January 9, 2012, comments. Specifically, Petitioners refer to Attachment 2 of the January 9, 2012, submission, which contains a statement from the Indian Minister of Coal that purportedly quantifies the difference in pricing between customers in the core and non-core sectors during the POR. Actually, the referenced document is a statement from the Minister of Coal regarding the price at which coal was supplied to small scale industries during the POR. While the statement explains that “Small Scale Industry units come in the non-core sector category,” no party has argued that the chemical industry is a small scale industry, nor is there any record evidence to that effect. Accordingly, we find this particular document to be of no consequence regarding the prices at which coal would have been supplied to chemical industry customers during the POR.

Finally, section 773(c)(1) of the Act states that “the valuation of the factors of production shall be based on the best available information regarding the values of such factors” It is the Department’s stated practice to choose a surrogate value that represents period-wide price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the period of review, and publicly available non-aberrational data from a single surrogate market-economy country.⁸⁰ If a surrogate value meets these criteria, the Department finds that it represents a reliable and appropriate price for valuing an individual input. We continue to find that the TERI data is the more appropriate source with which to value the steam coal input for the final results because they are more specific to Jiheng’s reported input. Using the TERI data comports with the fact that the Department attempts “to match the surrogate product used for valuation purposes closely with the input used

⁸⁰See *Hot-Rolled Steel from Romania* and accompanying Issues and Decision Memorandum at Comment 2.

by the NME producer.”⁸¹ Jiheng has provided the Department with information on the specific types of coal it uses and their UHV.⁸² Specifically, the Department has selected the TERI Data for categories B and C to value steam coal based on Jiheng’s reported UHV⁸³ of between 5300-5900 kcal/kg as provided by Jiheng. In addition, the Department has found consistently in recent cases that the TERI data are the most appropriate source for steam coal prices in India.⁸⁴ TERI data are categorized by major types of coal and UHV value whereas WTA import data are listed under “steam coal” without further specificity.

Accordingly, for the foregoing reasons, upon reexamining the information provided on the record, we continue to find that the TERI data to be the best available information on the record for valuing steam coal.

Comment 3: Whether the Department Adequately Established Whether Jiheng Qualified for Ammonia Gas By-Product Offset

In their comments on the draft remand results, Petitioners argue that the Department’s explanation that using anhydrous ammonia to value Jiheng’s waste ammonia gas by product is appropriate on the grounds that it made an adjustment to limit the by-product quantity to the pure ammonia content within the ammonium sulfate that Jiheng produces from ammonia gas fails to account for the fact that: (i) Jiheng never actually produces pure ammonia gas and (ii) processing the waste ammonia gas by-product into pure ammonia gas would be expensive and require facilities that Jiheng does not possess.

⁸¹ See *Antidumping Duties; Countervailing Duties: Final rule*, 62 FR 27295, 27366-7 (May 19, 1997).

⁸² See Jiheng’s November 2, 2007 submission at 15.

⁸³ *Id.*

⁸⁴ See also *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People’s Republic of China*, 72 FR 60632 (October 25, 2007) and accompanying Issues and Decision Memorandum at Comment 19; *Saccharin from the People’s Republic of China: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 51800 (September 11, 2007) and accompanying Issues and Decision Memorandum at Comment 3.

Department's Position:

As explained above, generally, the Department grants an offset to normal value for sales of by-products generated during the production of subject merchandise if the respondent can demonstrate that the by-product is either resold or has commercial value, and reenters the respondent's production process.⁸⁵ Further, in valuing by-product offsets, in NME proceedings, the Department uses surrogate values based on the best available record information, as it does for other FOPs.⁸⁶ The Department disagrees with Petitioners' speculative argument that Jiheng did not produce pure ammonia gas. Record evidence indicates that Jiheng indeed produced pure ammonia gas that was used in the production of the downstream product of ammonium sulfate. In response to the Department's requests for information in this review, Jiheng provided evidence regarding the amount of ammonia gas it produced in the process of creating the subject merchandise and sales documentation related to its sales of ammonium sulfate during the POR.⁸⁷ The records provided by Jiheng demonstrate that the amount of ammonia gas Jiheng claimed as a by-product was both produced in the process of creating the subject merchandise as well as sold in the form of ammonium sulfate during the POR.⁸⁸ Furthermore, the record contains no evidence that Jiheng purchased ammonia gas in addition to the ammonia gas that Jiheng produced that could have entered into its production of ammonium sulfate.

Jiheng also provided information to demonstrate that the quantity of ammonia for which the Department applied an offset was limited to the amount created from Jiheng's reported FOPs, and limited further by the amount that was used to produce ammonium sulfate that was actually

⁸⁵ See *Arch Chemicals v. United States (Arch Chemicals II)*, Slip Op. 11-41 (CIT 2011).

⁸⁶ See *QVD Food Co. v. United States*, F. Supp. 2d 1311, 1318 (CIT 2010).

⁸⁷ See Jiheng's October 2, 2007, section D questionnaire response at Exhibit D-11.6 and Jiheng's April 17, 2008, Third Supplemental Questionnaire Response at Exhibit TSD-3.5.

⁸⁸ *Id.*

sold during the POR.⁸⁹ Finally, there is no evidence on the record to demonstrate that the ammonia gas used by Jiheng to produce ammonium sulfate was not obtained from the ammonia gas produced as a result of the production of its subject merchandise. Therefore, we disagree with Petitioners' argument that Jiheng has failed to demonstrate its eligibility for the by-product offset for its ammonia gas production.

Finally, Petitioners argue that we should not use anhydrous ammonia to value Jiheng's gas by-product because Jiheng does not produce anhydrous ammonia. As noted above, however, the Department is only valuing Jiheng's gas that is 100-percent ammonia and anhydrous ammonia is 99-percent ammonia. Furthermore, while Petitioners argue that the surrogate value for anhydrous ammonia does not account for the processing that would be required to convert a waste gas into anhydrous ammonia, the Department's practice is to apply a by-product offset – where otherwise warranted – without reducing the offset to account for costs associated with processing the by-product to make it commercially viable when the offset is applied, as we did in this review, as an offset to normal value. The Courts have held that applying the offset to normal value “is a reasonable alternative means of accounting for additional overhead, SG&A and profit expenses associated with {respondent's} sale of by-products.”⁹⁰ The CIT rejected the argument that by-product processing costs should be deducted from the by-product offset, stating that the Department's decision to apply the by-product offset to normal value is “a reasonable means of ‘accounting {ing} for . . . costs related to by-product processing”⁹¹ For all these reasons, even though Jiheng's pure ammonia gas by-product and anhydrous ammonia are not identical,

⁸⁹ *Id.*

⁹⁰ See *Guangdong Chemicals Import & Export Corporation v. United States*, 460 F. Supp. 2d 1365, 1376 (CIT Sept. 18, 2006) (“*Guangdong Chem. 2006*”).

⁹¹ See *Guangdong Chem. 2006*, 460 F. Supp. 2d at 1376 (quoting *Magnesium Corp. of America v. United States*, 20 CIT 1092, 1107-08, 938 F. Supp. 885, 900 (1996), affirmed by *Magnesium Corp. of Amer. v. United States*, 166 F.3d 1364 (Fed. Cir. 1999)).

they are similar enough such that the use of anhydrous ammonia to value the offset is reasonable.

D. CONCLUSION

Pursuant to the Court's instructions, we have reexamined the records of this administrative review and reconsidered interested parties' arguments in this segment of the proceeding. Upon reexamining the information provided on the record, we have determined the Indian import data to be the best available information on the record for valuing urea. We have determined the TERI data to be the best available information on the record for valuing steam coal. Moreover, we have also determined the WTA data for anhydrous ammonia to be the best available information on the record of this administrative review for valuing Jiheng's ammonia gas by-product.


Paul Piquado
Assistant Secretary
for Import Administration

17 MARCH 2012
Date