

Final Results of Voluntary Redetermination Pursuant to Remand
Nantong Uniphos Chemicals Co., Ltd., et al., v. United States, Consol. Court No. 17-00151
(July 2018)

I. SUMMARY

The U.S. Department of Commerce (Commerce) 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 *Nantong Uniphos Chemicals Co., Ltd., et al., v. United States*, Court No. 17-00151 (CIT 2018) (*Remand Order*). These final remand results address two issues from the *Final Determination* in the investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China (China).¹

On May 9, 2018, Commerce requested a voluntary remand, which the Court granted, to reconsider Commerce's use of the CYDSA S.A.B. de C.V. and Subsidiaries (CYDSA) financial statements for purposes of calculating surrogate financial ratios, and its calculation of the international freight surrogate value (SV).² After reconsidering these two issues, along with arguments made by WW Group,³ Commerce has made no changes to the dumping margin calculations for the mandatory respondents, the WW Group, and Taihe.⁴ Our findings are discussed below. On July 10, 2018, Commerce released the draft remand results to interested parties. On July 24, 2018, we received comments from the WW Group and Compass Chemicals

¹ See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 14876 (March 23, 2017) (*Final Determination*) and accompanying Issues and Decision Memorandum (IDM).

² See *Remand Order*.

³ Commerce collapsed Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory (Wujin Water) and Nantong Uniphos Chemicals Co., Ltd. (Uniphos) (collectively, the WW Group). See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 81 FR 76916 (November 4, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM); unchanged in *Final Determination*.

⁴ Shandong Taihe Water Treatment Technologies Co., Ltd. (Taihe).

International LLC (the petitioner) on the draft remand.⁵ We respond to interested parties' comments below. Additionally, in order to avoid double counting, we recalculated the international freight surrogate value (SV), and therefore, made changes to the WW Group's margin calculation.

II. ANALYSIS

A. Use of the CYDSA Financial Statements

In the underlying investigation, we selected Mexico as the primary surrogate country because it was at the same level of economic development as China, was a significant producer of comparable merchandise, and had the most reliable data and financial statements.⁶ To value surrogate financial ratios (overhead, selling, general and administrative expenses (SG&A), and profit), we used the financial statements of two Mexican producers—CYDSA and Grupo Pochteca, S.A.B. de C.V. (Pochteca).⁷ Below we have addressed the arguments made by the WW Group in its case brief to the Court.

Commerce's criteria for choosing financial statements for the calculation of surrogate financial ratios are based on the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.⁸ Moreover, for valuing overhead, SG&A, and profit, Commerce uses non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.⁹ In identifying the comparability of merchandise, Commerce examines, where appropriate, the physical

⁵ See the WW Group's July 24, 2018 submission; the petitioner's July 24, 2018 submission.

⁶ See PDM at 5-10; unchanged in *Final Determination*. No party disputes the selection of Mexico as the primary surrogate country.

⁷ *Id.* at 24-25; unchanged in *Final Determination* at Comment 2.

⁸ See, e.g., *Pure Magnesium from the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 76945 (December 9, 2011) (*Magnesium*) and the accompanying IDM at Comment 5; *Import Administration Policy Bulletin 04.1*, "Non-Market Economy Surrogate Country Selection Process," dated March 1, 2004 (*Policy Bulletin*) at "Data Considerations."

⁹ See 19 CFR 351.408(c)(4).

characteristics, end uses, and production process.¹⁰ Additionally, Commerce examines how similar a proposed surrogate producer's production experience is to the non-market economy (NME) producer's production experience;¹¹ however, this analysis is not dependent upon matching the exact production experience of the respondents.¹² Further, the courts have recognized Commerce's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.¹³ With respect to the financial statements of CYDSA, Commerce has used this company's financial statements in multiple cases to value surrogate financial ratios, and does so here, because the financial statements continue to satisfy the above criteria.¹⁴

Labor

The WW Group contends that the labor rate reported in the CYDSA statements is a “profound and significant understatement of actual wages and salaries paid by CYDSA”

¹⁰ See *Certain Woven Electric Blankets from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010) and accompanying IDM at Comment 2; *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002) and accompanying IDM at Comment 5.

¹¹ See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying IDM at Comment 13.

¹² See *Nation Ford Chem. v. United States*, 166 F.3d 1373, 1377 (CAFC 1999).

¹³ The Court of International Trade (CIT) has held 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.” See *FMC Corporation v. United States*, 27 CIT 240, 251 (February 11, 2003), aff'd *FMC Corp. v. United States*, 87 F. App'x 753 (Fed. Cir 2004) (citing *TechnoImportExport, UCF, America Inc. v. United States*, 16 CIT 13, 18 (January 23, 1992); see also *Juancheng Kangtai Chem. v. United States*, 2015 WL 4999476 at *13, Slip Op. 15-93 (CIT 2015) (“It is not for the Court to choose between arguably untainted but incomplete data and arguable complete but tainted data, as that is Commerce's province”).

¹⁴ See, e.g., *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) (HFCs) and accompanying IDM at Comment 30; *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 4852 (January 17, 2017) (*Isos 14-15*) and accompanying IDM at Comment 2.a; *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part*, 82 FR 12192 (March 1, 2017) (*Tetra*) and accompanying IDM at Comment 6; *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 5243 (February 6, 2018) (*Isos 15-16*) and accompanying IDM at Comment 5.a.

because: (1) a value of only six million pesos is reported; (2) it is recorded on the balance sheet account as a liability and not in the income statement account as a cost item; (3) the retirement savings paid by CYDSA and listed in the financial statements indicate the value of labor must be higher than six million pesos listed; and (4) because the labor value must be higher, labor must be reported somewhere else in the financial statements, but it is unclear where.¹⁵ We disagree.

As an initial matter, Commerce prefers to use financial statements that list costs by function rather than by type of transaction, because expenses such as labor can relate to manufacturing, administration, and selling.¹⁶ In this investigation, CYDSA's income statement lists costs by functions (*e.g.*, cost of goods sold, selling, administration, *etc.*).¹⁷ Commerce's preference is to use financial statements that include a line item for the cost of goods sold, because we know that the cost of goods sold include all the manufacturing costs and changes in the finished goods inventory.¹⁸ From the cost of goods sold amount, we can calculate the cost of manufacturing by accounting for the change in the finished goods inventory from the inventory amounts reported in the corresponding comparative balance sheets.¹⁹ From the cost of manufacturing, we deduct the depreciation costs reflected in the notes to the financial statements, with the residual classified as materials, labor and energy (MLE).²⁰ In this investigation, we made inventory adjustments consistent with our practice, but because CYDA reported no depreciation with respect to cost of goods sold, we made no adjustment for depreciation.²¹

¹⁵ See the WW Group's January 26, 2018 brief to the Court at 8-11.

¹⁶ See *Isos 14-15* at Comment 2.a.

¹⁷ See CYDSA Financial Statements at 55 (Income Statement).

¹⁸ See *Isos 14-15* at Comment 2.a.

¹⁹ *Id.*

²⁰ *Id.*; see also Memorandum to the File, "Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Surrogate Values for the Final Determination," dated March 20, 2016 (SV Memo) at Exhibit I (calculation of CYDSA's financial ratios).

²¹ See SV Memo at Exhibit I for the calculation of surrogate financial ratios.

The WW Group relies heavily on its assertion that the only labor cost reported by CYDSA, and used by Commerce in the calculation of MLE, is 6 million pesos. We agree with the WW Group that 6 million pesos is not the full amount of labor cost incurred by CYDSA. However, in addition to the 6 million pesos reported as wages and salaries, Commerce included an additional 178 million pesos in the calculation of MLE, reported as wages for managers.²² Moreover, after taking CYDSA's reported cost of goods sold,²³ and making the adjustments noted above (*i.e.*, changes in inventory and depreciation) an additional 2 billion pesos is included in MLE which accounts for labor and other costs.²⁴ In fact, CYDSA reports raw materials separately from the cost of goods sold, and indicates that it accounted for electricity as a raw material. Because CYDSA lists raw materials and electricity separately from the cost of goods sold, we believe a significant portion of the 2 billion pesos figure of the cost of goods sold is labor cost.²⁵ Although labor is not specifically listed as an individual line item in the costs of goods sold, we disagree with the WW Group that labor is undervalued in our calculation of MLE. Moreover, because CYDSA reported much more than 6 million pesos in labor costs, we find the WW Group's claims with respect to the retirement payments to be unpersuasive.

In addition, we disagree with the WW Group that labor (or energy, *see* below) must be separately reported line items in financial statements.²⁶ This is not required, because the sum of MLE is being used to calculate only the denominator of the financial ratios, in order to determine

²² *Id.*

²³ CYDSA uses the phrase "Cost of Sales," which is included in the Income Statement (Consolidated Statement of Income). *See* CYDSA Financial Statements at 55.

²⁴ *Id.*; *see also* SV Memo where we include the cost of goods sold in the MLE calculation.

²⁵ *See* CYDSA Financial Statements at 81 (where CYDSA stated that electricity is a raw material) and at 83 (where CYDSA lists is raw material costs).

²⁶ *See* the WW Group's brief to the Court at 13-15.

the surrogate manufacturing overhead ratio and, subsequently, the selling, general & administrative expenses (SG&A), and profit ratios.²⁷

Energy

We disagree with the WW Group that the value for energy, because the company produces some of its own electricity, would appear listed in either SG&A or overhead.²⁸ At the outset we note that the IDM contains a factual error, and we agree with the WW Group that one of CYDSA's co-generation power plants was operational during the POI.²⁹ The WW Group speculates that CYDSA's energy production may be reported under overhead or SG&A; however, it provided no evidence showing that energy expenses are included in these categories. For our calculation of the overhead ratio, we have included only depreciation, with an adjustment for spare parts inventory.³⁰ Our calculation of SG&A includes only amortization, selling expenses, administrative expenses and finance expenses, adjusted by certain types of income. As such, energy is not listed in any of the categories comprising overhead and SG&A.³¹ Moreover, just as the WW Group indicates that electricity may be considered a raw material,³² CYDSA indicates that it reported electricity as a raw material.³³ We specifically included CYDSA's reported raw materials in our calculation of MLE.³⁴ Thus, we find that electricity is included in MLE, and not in overhead or SG&A.

In its financial statements, CYDSA singled out gas and electricity as key inputs used in the production of chlorine and caustic soda, noting that they were subject to "price risk" because

²⁷ See *Isos 14-15* at Comment 2.a.

²⁸ See the WW Group's January 26, 2018 brief to the Court at 11-13.

²⁹ See IDM at Comment 2; CYDSA Financial Statements at 4.

³⁰ See SV Memo at Exhibit 1.

³¹ *Id.*

³² See the WW Group's August 25, 2016 submission at Exhibit 1; the WW Group's brief to the Court at 11.

³³ See CYDSA Financial Statements at 81.

³⁴ See SV Memo at Exhibit 1.

the public company in Mexico that produces and distributes electricity using natural gas is vulnerable to the volatility of the natural gas market.³⁵ In *Isos 14-15* and *Isos 15-16* we found that this demonstrates that CYDSA is not energy independent, but still relies on outside purchases of electricity to support its production processes, and that these costs can reasonably be considered substantial, given its reported vulnerability to “price risk,” and we have come to the same conclusion here.³⁶

Similarity of Operations

The WW Group also asserts that the CYDSA financial statements are unusable due to a dissimilarity of operations. More specifically, the WW Group argues that: (1) CYDSA self-produces a significant quantity of raw material used in its chemical products division (*i.e.*, it is an integrated producer), and there should be amounts included for depreciation and labor, which understates the value of raw materials and overstates the value of items that go into overhead, and SG&A; (2) CYDSA conducts business in three business sectors, none of which are similar to HEDP; and (3) the chemicals produced by CYDSA represent only a share of a single division of the company and are concentrated in the “Chlor-Alkali” sector, which are not phosphonate chemicals.³⁷

Regarding self-produced inputs, as noted above, CYDSA produces some of its own electricity.³⁸ The financial statements pages cited by the WW Group indicate that CYDSA increased its production capacity for some chemicals, notably salt, but makes no mention of self-produced inputs.³⁹ The WW Group also cites its surrogate value rebuttal comments, which

³⁵ See CYDSA Financial Statements at 81.

³⁶ See *Isos 14-15* at Comment 2.a; *Isos 15-16* at Comment 5.a.

³⁷ See the WW Group’s brief to the Court at 15-18.

³⁸ See CYDSA Financial Statements at 4.

³⁹ *Id.* at 22-23.

provide descriptions of the production process for some of the chemicals produced by CYDSA.⁴⁰ However, it is unclear as to what record evidence indicates that CYDSA produced significant quantities of raw material that would cause raw materials to be undervalued, and overhead and SG&A to be overvalued.

According to the CYDSA financial statements, the company has two operating segments, not three, as the WW Group asserts.⁴¹ An examination of CYDSA's sales segments indicates that chemical sales were over 100 times greater than its sales of yarn in 2015.⁴² Thus, CYDSA's main business operations center around the production of chemicals. Like CYDSA, Uniphos produces and sells many different chemicals (nine series of chemicals) and has locations around the world.⁴³ Wujin Water also sells several different types of chemicals.⁴⁴ Thus, the WW Group and CYDSA share several similarities, both are primarily producers of chemicals, which are used for water treatment purposes, and have multiple locations.

As noted above, when valuing surrogate financial ratios, Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.⁴⁵ The record contains no financial statements from producers of identical merchandise; therefore, we selected companies (CYDSA and Pochteca) from the primary surrogate country, which are producers of comparable products, *i.e.*, chemicals.⁴⁶ The WW Group argues that the chemicals produced by CYDSA are chlor-alkali chemicals that are dissimilar from the phosphonate chemicals it produces. However, even if a surrogate has certain

⁴⁰ See the WW Group's August 25, 2016, submission at Exhibit 1.

⁴¹ See CYDSA Financial Statements at 101 ("Net Sales by Segment").

⁴² *Id.*

⁴³ See the WW Group's July 5, 2016 submission at Exhibit 19 (Uniphos' Product Catalogue).

⁴⁴ See the WW Group's July 5, 2016 submission at Exhibit 20 (Wujin Water's internet advertisement).

⁴⁵ See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006) and accompanying IDM at Comment 2; see also section 773(c)(4) of the Act; 19 CFR 351.408(c)(4).

⁴⁶ See SV Memo.

expenses that the respondent does not have, this would not necessarily eliminate the surrogate from consideration, because there is no requirement for the surrogate company to match exactly to the NME producer's experience.⁴⁷ Moreover, the Federal Circuit has explained there is no provision in the statute requiring Commerce to match the respondent's exact production experience in the surrogate country.⁴⁸ Notably, Pochteca's financial statements indicate it sells inorganic chemicals, solvents, chemicals for the food industry, lubricants and grease and paper products, yet the WW Group has not challenged the inclusion of Pochteca's statements in the ratios calculation.⁴⁹

B. International Freight

In the investigation, we valued ocean freight using the only SV for ocean freight on the record, a value from *Descartes*.⁵⁰ In addition, we valued brokerage and handling (B&H) expenses using data from the World Bank's *Doing Business 2016 Economy Profile: Mexico (Doing Business)*.⁵¹ *Doing Business* only lists two charges in its B&H value, Border Compliance and Documentary Compliance,⁵² which were included in our calculation of this SV.⁵³ The WW Group argues that the *Descartes* data double count certain expenses.⁵⁴ More specifically, the WW Group claims that the following charges included in the *Descartes* data are also included within B&H: a port congestion surcharge, export terminal handling charges, a documentation

⁴⁷ See, e.g., *Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012) and accompanying IDM at Comment 12; *Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012) and accompanying IDM at Comment I.

⁴⁸ See *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999).

⁴⁹ See the petitioner's August 18, 2016 submission at Exhibit 18, Pochteca Financial Statements at 10.

⁵⁰ See *Final Determination* at Comment 11; the petitioner's August 18, 2016 submission at Exhibit 11.

⁵¹ See PDM at 24; unchanged in *Final Determination*.

⁵² See the petitioner's August 18, 2016 submission at Exhibit 16.

⁵³ See SV Memo at Exhibit 1.

⁵⁴ See the WW Group's brief to the Court at 23-25.

fee, and the advance manifest and custom importer security filing fees.⁵⁵ However, the expenses listed in *Doing Business* and *Descartes* do not overlap.⁵⁶ For example, port congestion surcharge is not listed as one of the expenses included in B&H. Therefore, we reaffirm our finding as described in the *Final Determination*, when discussing this very issue:

{The} WW Group's argument that the freight charges are not detailed enough to determine which charges are separate B&H charges, thereby presenting a possibility of double counting, is without merit. WW Group provided no evidence that the freight rates in question contain B&H charges. As a result, we do not find that the ocean freight SV is inclusive of B&H charges.⁵⁷

The WW Group also argues that one of the ocean freight values is for an intermodal rate.⁵⁸ The WW Group speculates that because the shipment is listed as *via* Long Beach, CA, and the final destination is New York, NY, this rate must include intermodal land transport expenses.⁵⁹ Land transport, however, is not listed on the invoice, only ocean freight.⁶⁰ Thus, a more likely scenario is that the vessel first docked at Long Beach, but continued on to dock in New York to unload this particular container. Assuming, *arguendo*, that the WW Group's speculations were true, one would expect the freight rate for this container to be higher than the others on the record, but it is not. Rather, it is within the middle range of ocean freight rates used to calculate the ocean freight SV.⁶¹ Therefore, because no record evidence suggests intermodal freight was used, we do not find there is any double counting of transport costs using this data point.

⁵⁵ *Id.*

⁵⁶ See the petitioner's August 18, 2016 submission at Exhibits 11 & 16.

⁵⁷ See *Final Determination* at Comment 11.

⁵⁸ See the WW Group's brief to the Court at 25. Intermodal freight transport involves the transportation of freight in an intermodal container or vehicle, using multiple modes of transportation (*e.g.*, rail, ship, and truck), without any handling of the freight itself when changing modes.

⁵⁹ *Id.*

⁶⁰ See the petitioner's August 18, 2016, submission at Exhibit 11.

⁶¹ See SV Memo at Exhibit 1.

III. COMMENTS ON DRAFT RESULTS OF REDETERMINATION

A. Use of the CYDSA Financial Statements

The WW Group's Comments

Dissimilarity of Operations

- The nature of the operations between the WW Group and CYDSA are very different. The WW Group has a single group of operations — it produces and sells phosphonate chemicals. Although it sells multiple phosphonate chemicals, this does not suggest a diversity of products, because these chemicals are closely related and use similar raw materials and production processes. In addition, phosphonate chemicals make up the majority of the production of the WW Group.
- In contrast, CYDSA has three business segments — chemical products,⁶² yarns for textiles, and cogeneration of electricity and steam — which do not share the physical characteristics of phosphonate chemicals. While CYDSA produces some chemicals used for the general area of water treatment, they represent only a share of a single division of the company, and those water treatment applications are dissimilar phosphonate chemicals. Furthermore, these water treatment products make up a small portion of the total product mix of CYDSA. CYDSA is a huge company incorporating more than 20 subsidiaries located in eight cities and serving customers in more than 20 countries with over 200 different products and numerous brand names.⁶³
- Moreover, the levels of integration are very different between CYDSA and the WW Group. CYDSA withdraws from the ground some of its basic raw materials (salts) and generates its

⁶² Moreover, chemical products are further divided into salts, chlorine-caustic soda and refrigerant gases.

⁶³ See CYDSA Financial Statements at 1.

own electricity and steam, using a substantial quantity of each in the production process.⁶⁴

CYDSA is also integrated on the sales side of the process, as noted below under

“Marketing.”

- In contrast, the WW Group sources its raw materials, and does not generate its own electricity or steam, but rather purchases this material from independent suppliers. The WW Group is also not integrated on the selling side of the process. These distinctions are relevant here because, while Commerce is correct that the exact production process does not have to match, the production processes and operations cannot be radically dissimilar.

Marketing

- A critical distinction between CYDSA and the WW Group, which was not addressed in the draft remand results, is that CYDSA produces and markets a commercial product sold at retail, and heavily promotes this product both through advertising and direct promotion.⁶⁵ This marketing is highly relevant, as the second largest breakdown after raw materials on the ratio calculation sheet was for selling expenses. The Court has held that vastly different marketing and branding expenses can result in different treatment.⁶⁶
- The WW Group’s sales process is modest, involving an established customer base and virtually zero marketing. It sells very few products (*i.e.*, phosphonate chemicals) and does not develop or market its own brands. The WW Group sells product to customers who incorporate the product into their own products, and these customers market their own brands

⁶⁴ See the WW Group’s SV submission; CYDSA Financial Statements.

⁶⁵ CYDSA’s salt business products include various salts under different brand names and are sold in the consumer market with significant efforts spent on improving the brand image including in store product demonstrators. See CYDSA Financial Statements at 27.

⁶⁶ See *Shenzhen Xinboda Indus. Co. v. United States*, 976 F. Supp. 2d 1333, 1383 (CIT 2014) (*Xinboda*) (finding the marketing and branding expenses of a large company were critically different for the respondent, which had a modest sales process).

to the ultimate customer. It is, thus, the WW Group's customers that incur the SG&A associated with — and reap the profits that flow from — developing, marketing, and selling branded products. While Commerce correctly notes that the WW Group has a U.S. affiliate, as set forth in its administrative responses, such costs for this affiliate were slight and the operations minimal.

Flaws in the CYDSA Statements

- The CYDSA financial statements are flawed and Commerce's analysis fails to take into account the degree of the flaws. Commerce is unable to calculate an accurate value for both labor and energy and requires strained guesswork as to the costs of goods sold. In the draft remand results, Commerce states that the MLE it calculated included all of the raw materials, labor and energy, and thus, the inability to provide a breakdown is not relevant. Without quantifying any of these expenses or being able to identify any of these expenses beyond the cost of raw materials removed from inventory, Commerce tries to claim that the overall MLE is sufficient. This is not credible.
- With regard to labor, there is no reliable way to identify CYDSA's labor cost. Commerce tries to explain away the absence of a break-out for labor by indicating that it included a figure for 6 million pesos⁶⁷ and a figure for another 178 million pesos for labor, and thus, a substantial amount of labor was reported. In doing this, Commerce ignores the fact that CYDSA must have had a labor cost of at least 566,000,000 pesos, based on the fact that CYDSA makes payments between 2 percent and 3 percent to the defined contribution plan for retirement savings.⁶⁸

⁶⁷ This is taken from the "wages and salaries" line within the "Other payables" section of the financial statements and is flawed because it does not refer to an annual cost and because this is a significant understatement of actual wages and salaries.

⁶⁸ See CYDSA Financial Statements at note 16.

- With regard to electricity, Commerce concludes that it would be included in the raw materials; however, the value of raw materials is the cost of consumption of raw materials removed from inventory.⁶⁹ Electricity would not be part of the raw materials removed from inventory.
- As much of CYDSA’s energy is self-produced, the energy value would need to include a portion of depreciation for those assets, the administrative charges to operate the facility and similar costs for the self-production of the energy.⁷⁰ Commerce is also unable to provide any break-down of what is described as “administrative” and “sales” expenses in the financial statements and whether these could include a portion of expenses that would properly be reported in MLE. To the extent that a ratio of CYDSA were to be used, this sales expense would need to be adjusted.

Preference for Multiple Financial Statements

- In its draft remand results, Commerce did not directly address its unstated preference for multiple financial statements. The use of multiple financial statements is only appropriate if all of the financial statements are appropriate. Commerce’s preference does not place the desire to use multiple financial statements over the requirement that margins be calculated accurately, and thus, inaccurate financial statements should not be used if accurate statements are available.⁷¹

⁶⁹ *Id.* at 83.

⁷⁰ In the draft remand, Commerce states that the WW Group is speculating as to whether such expenses might be included in overhead. However, the CYDSA financial statements state that selling and administrative expenses increased by 12.7%, primarily because of additional costs related to the start-up of the first co-generation plant, and the capacity expansion for salt manufacturing. See CYDSA Financial Statements at 48.

⁷¹ See *Dorbest Ltd. et al. v. United States*, 604 F.3d 1363, 1374 (Fed. Cir. 2010) (“... Commerce explained that its preference is ‘to use multiple financial statements in order to eliminate potential distortions that may arise from using those of a single producer,’ as long as those financial statements are not distortive or otherwise unreliable.”).

Use of CYDSA's Statements in Other Cases

- The use of the CYDSA financial statements in other chemical cases is irrelevant, because Commerce has a long-standing policy that each case stands on its own and should be independently evaluated. This policy makes sense and reflects the fact that an appropriate surrogate in one case may be inappropriate in another case. The cases cited by Commerce involve products that are dissimilar to HEDP and phosphonate chemicals, and there is no evidence that any of these chemicals are produced using production processes similar to that of HEDP, nor is there any evidence of record in this case as to the nature of the operations and the level of integration. Moreover, there is no evidence of record as to the arguments presented in those cases.

The Petitioner's Comments

- In the underlying investigation, the WW Group objected to the use of the contemporaneous CYDSA financial statements in the calculation of surrogate financial ratios on the following grounds: (1) lack of sufficient detail; (2) multiple business segments; and (3) the existence of a division devoted to electricity and steam cogeneration. Commerce considered and rejected these arguments in the investigation.⁷²
- The fact that CYDSA is not a perfect match for the respondents' operations does not constitute sufficient grounds to reject the use of this company's financial statements; indeed, none of the financial statements on the record of the underlying investigation are a perfect match for the respondents' operations, as correctly noted above.
- CYDSA is in the chemical manufacturing business, as are HEDP producers, and the company manufactures chlorine, as well as other related chemical products. Chlorine is used

⁷² See *Final Determination* at Comment 2.

in water treatment with applications which include municipal water treatment and swimming pool treatment; HEDP is used also in municipal water treatment and in swimming pool treatment. CYDSA produces hydrochloric acid; HEDP producers also make hydrochloric acid. Also, there are many similarities in the processes used by companies producing chlor-alkali products and those making HEDP (*e.g.*, HEDP is produced from PCL_3 using chlorine chemistry).⁷³

- As well noted in the draft results, Commerce has wide discretion in choosing among various surrogate sources.⁷⁴ The draft results should be adopted without modification.

Commerce's Position:

Dissimilarity of Operations

The WW Group argues the CYDSA financial statements cannot be used, because there is a dissimilarity in operations between the two companies. Specifically, the WW Group argues it is engaged in one line of business and is not integrated, whereas CYDSA is engaged in three lines of business and is integrated. We disagree with this reasoning. Regarding lines of business, according to the CYDSA financial statements, it has two operating segments, chemicals and yarns.⁷⁵ While the WW Group continues to espouse the theory that there are three operating groups, adding electricity and steam generation as the third, CYDSA only lists two operating segments.⁷⁶ Of these two operating segments, yarns make up less than one percent of all of CYDSA's sales, indicating that CYDSA is a significant producer of chemicals, *i.e.*, a significant producer of comparable merchandise.⁷⁷ Although the WW Group states that

⁷³ See, *e.g.*, the petitioner's Rebuttal Brief at 4-5.

⁷⁴ See *FMC Corp. v. United States*, 27 CIT 240, 251 (2003), *aff'd FMC Corp. v. United States*, 87 Fed. Appx. 753 (Fed. Cir. 2004).

⁷⁵ See, *e.g.*, CYDSA Financial Statements at 102.

⁷⁶ *Id.*

⁷⁷ *Id.*

CYDSA's water treatment chemicals represent only a share of a single division of the company, we note that water treatment chemicals are the largest portion of the chemicals segment.⁷⁸

Assuming, *arguendo*, we were to follow the WW Group's reasoning, and use only financial statements which more closely match the number of operating segments and production techniques of the respondent, in this case we would not use the Pochteca statements, and only use the CYDSA statements. While the CYDSA financial statements lists two operating segments, Pochteca lists at least five main segments, including inorganic chemicals, solvents, chemicals for the food industry, lubricants, and paper products.⁷⁹ In fact, Pochteca points out the diversification of its products many times in its financial statements, and notes that its five main products account for only 6.5 percent of its sales.⁸⁰ Moreover, like CYDSA, which has subsidiaries located in various cities serving customers in many countries with many products, Pochteca has the same number of subsidiaries (20) located in various cities, lists 5,500 products in its catalogue (compared to CYDSA's 200), has over 40 distribution centers, and has quality control and research laboratories.⁸¹ Nevertheless, in its brief to the Court, with respect to the Pochteca financial statements, the WW Group states that it "did not object to its use nor raised any objections as to its completeness and accuracy. Its inclusion within the financial ratios has not been contested or questioned" and it can be used to calculate financial ratios.⁸² It is not clear to us why the WW Group would find the CYDSA statements objectionable on these grounds, while advocating for the Pochteca statements, given the two companies' similarities in operations.

⁷⁸ *Id.*

⁷⁹ See the petitioner's August 18, 2016 submission at Exhibit 18, Pochteca Financial Statements at 11.

⁸⁰ *Id.* at 15.

⁸¹ *Id.* at 13.

⁸² See the WW Group's January 26, 2018 brief to the Court at 7.

Regarding integration, we disagree that CYDSA is integrated to the point that its financial experience is so dissimilar from the WW Group's that it cannot be used for surrogate ratio valuation purposes. Again, CYDSA lists two operation segments, and the production of electricity (and steam) is not listed among them. The CYDSA financial statements do not quantify the amount of electricity the company produced; however, it cannot be that CYDSA produced all of the electricity it consumed, because it continues to build electricity-producing plants, nor is electricity listed as one of its operating segments. In addition, the WW Group implies that CYDSA mines salt and is, therefore, vertically integrated; however, the CYDSA statements indicate that the salt produced is from evaporation, not mines.⁸³ While we examine how similar a proposed surrogate producer's production experience is to the NME producer's production experience,⁸⁴ our analysis is not dependent upon matching the exact production experience of the respondents.⁸⁵ The statute directs, and the *Policy Bulletin* guides, that Commerce shall utilize prices in one or more market economy countries that are "a significant producer of comparable merchandise," which in this case is chemicals.⁸⁶ It does not provide that significant producers engage in business of only comparable merchandise.⁸⁷ That CYDSA also produces some electricity is irrelevant as to whether it is also a significant producer of comparable merchandise, *i.e.*, chemicals.

⁸³ See CYDSA Financial Statements at 9

⁸⁴ See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying IDM at Comment 13.

⁸⁵ See *Nation Ford Chem. v. United States*, 166 F.3d 1373, 1377 (CAFC 1999).

⁸⁶ See *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 82 FR 17634 (April 12, 2017) and accompanying IDM at Comment 1.

⁸⁷ *Id.*

Marketing

The WW Group contends that the CYDSA statements cannot be used, because the WW Group does not engage in marketing activities such as advertising and branding, while CYDSA does engage in these activities. We agree with the WW Group that CYDSA's financial ratios do not exactly duplicate its production experience, but it is not our practice to exactly match production experiences, nor does the law require it.

With respect to marketing, we do not find sufficient record information exists that would result in a finding that this expense distorts the surrogate ratios.⁸⁸ We did not examine the WW Group's marketing and branding activities during the course of the investigation. Because the WW Group is located in an NME, and Commerce does not rely on prices in NME countries, any marketing in which the WW Group engages in its home market would be irrelevant for our dumping analysis, and we do not request this information from NME respondents in the standard questionnaire.⁸⁹ As such, the record contains no information with respect to the WW Group's marketing and branding, making a comparison to CYDSA futile. Although the WW Group states it engages in no marketing, has no brands and that its customers receive profits from the SG&A they invest, there is no record information to support these assertions.

Moreover, the record evidence conflicts with the WW Group's claim that CYDSA's marketing expenses are large. While the CYDSA statements discuss its salt business, its marketing and branding expenses are not broken out, and thus, we do not know what portion of CYDSA's selling expenses can be attributed to marketing and branding. As such, it is not clear

⁸⁸ See *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999) citing *NFC I*, 985 F. Supp. 133, 137 (CIT 1997) (holding that "while a surrogate value must be as representative of the situation in the NME country as is feasible, {Commerce} need not duplicate the exact production experience of the respondent at the expense of choosing a surrogate value that most accurately represents the fair market value of an input.").

⁸⁹ See the original antidumping duty questionnaire. Section C requested information from the WW Group's U.S. affiliate on this matter, but as the WW Group notes, this company had limited selling functions.

that CYDSA's marketing and branding are necessarily the major contributors to its selling expenses. While the WW Group speculates that it and CYDSA have vastly different marketing and branding expenses, we find the record does not support such a finding.

Flaws in the CYDSA Statements

The WW Group reiterates the comments made in its brief to the court that, because labor and electricity are not specifically listed in the CYDSA financial statements, they are fatally flawed. We addressed many of these arguments in the draft remand redetermination and reiterate them here. Again, we agree with the WW Group that 6 million and 178 million pesos figures are not the full amount of labor costs incurred by CYDSA, but we disagree with the WW Group that labor is undervalued in our calculation of MLE. Particularly, after taking CYDSA's reported cost of goods sold,⁹⁰ and making adjustments for changes in inventory and depreciation, an additional 2 billion pesos is included in MLE, which accounts for labor and other costs.⁹¹ Because CYDSA reported raw materials and energy (M and E) separately from the cost of goods sold, we find that a significant portion of the 2 billion pesos figure for cost of goods sold would therefore represent labor costs.⁹² Therefore, because we included much more than 6 million and 178 million pesos of labor costs in MLE, we find the WW Group's claims with respect to the retirement payments to be unpersuasive.

With regard to electricity, the WW Group argues that electricity is not a raw material that is kept in inventory. We note, however, it is our practice to use the information available in the surrogate financial statements as allocated and accounted for by the company.⁹³ In this case, if

⁹⁰ CYDSA uses the phrase "Cost of Sales," which is included in the Income Statement (Consolidated Statements of Income). See CYDSA Financial Statements at 55.

⁹¹ *Id.*; see also SV Memo where we include the cost of goods sold in the MLE calculation.

⁹² See CYDSA Financial Statements at 81 (where CYDSA stated that electricity is a raw material) and at 83 (where CYDSA lists its raw material costs).

⁹³ See, e.g., *Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 13833 (March 17, 2015) and accompanying IDM at Comment 6 ("In

CYDSA's statement indicates that it considers electricity a raw material and lists a raw material cost in its financial statements, we believe that is how CYDSA accounts for electricity, *i.e.*, as a raw material.⁹⁴ In other cases, for example, we have found that the MLE amounts are not required to be separate items in the income statement, or in the notes to the financial statements, but may be found in other line items.⁹⁵ In one example, the Pochteca statements do not list electricity as a specific line item to be included in MLE; however, it may be that electricity is accounted for in Pochteca's inventory as well.⁹⁶ While the WW Group argues that the energy value would need to be adjusted because much of CYDSA's energy is self-produced, it is unclear how those adjustments should be made. Moreover, as we noted above, we do not find that the record supports a finding that most of CYDSA's energy is self-produced, as the WW Group asserts, nor would it be a reason not to rely on CYDSA's financial statements.

Preference for Multiple Financial Statements

The WW Group is correct that Commerce prefers to use multiple financial statements to determine surrogate financial ratios.⁹⁷ For the reasons articulated above, however, we disagree with the WW Group that CYDSA's financial statements are flawed and, instead, continue to find that CYDSA's financial statements are appropriate, and do not impede the requirement that

addition, we will treat Siam Anchor's "Security Guard," and "Rental" expenses as overhead expenses because we have no reason to "look behind" Siam Anchor's financial statements."); *see also Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) and accompanying IDM at Comment 2 ("There is no record evidence as to what a typical overhead rate should be other than to look to the financial statements that pass the criteria used by {Commerce} in selecting surrogate financial statements. As stated above, because {Commerce} cannot go behind line items in the surrogate financial statements, {Commerce} bases its determinations on the information contained within the financial statements themselves."); *see also CS Wind Vietnam Co., Ltd., et al. v. United States*, 219 F. Supp. 3d 1273, 1284 (CIT 2017) ("Commerce has not abused its discretion in maintaining a practice of generally not seeking clarifying information from surrogate value companies . . .").

⁹⁴ See SV Memo at Exhibit 1.

⁹⁵ See, e.g., *Isos 14-15* at Comment 2.

⁹⁶ See generally, the petitioner's August 18, 2016 submission at Exhibit 18, Pochteca Financial Statements.

⁹⁷ See, e.g., *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) and accompanying IDM at Comment 30.

margins be calculated accurately. Accordingly, there is no reason to deviate from our regulatory preference to use multiple financial statements.

Use of CYDSA's Statements in Other Cases

The WW Group takes exception to our citations which indicate that the CYDSA financial statements have been used in other cases.⁹⁸ The WW Group correctly notes that each case stands on its own.⁹⁹ However, we did not cite to these cases to make any comparison as to the level of integration/production process between CYDSA and the respondents in those cases, or to the WW Group here, nor did we cite these cases to discuss whether those respondents produce identical merchandise to CYDSA. Those cases were cited because the WW Group argued that the CYDSA statements were fatally flawed, and therefore, unusable. However, in none of those cases did we find the CYDSA statements to be fatally flawed with respect to our ability to calculate accurate financial ratios.¹⁰⁰ In *Isos 14-15*, we considered the argument put forth by the WW Group that labor and electricity must be specific line items in a financial statement in order to find it usable, and rejected it.¹⁰¹ Although the WW Group asserts that it would take “seriously strained guesswork” to determine the costs of goods sold, in *Tetra* we found that “CYDSA’s financial statements demonstrate that {the cost of goods sold} includes raw materials, finished goods, works in progress, depreciation, and wages and salaries, in addition to other costs.”¹⁰² Moreover, the cases cited are cases involving chemical products, just as HEDP is a chemical

⁹⁸ See, e.g., *HFCs* at Comment 30; *Isos 14-15* at Comment 2.a; *Tetra* at Comment 6; *Isos 15-16* at Comment 5.a.

⁹⁹ See *Peer-Bearing Co.-Changshan v. United States*, 587 F. Supp. 2d 1319, 1325 (CIT 2008) (“Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews” (quoting *Shandong Huarong Mach. Co. v. United States*, 29 C.I.T. 484, 491 (CIT 2005))).

¹⁰⁰ See, e.g., *HFCs* at Comment 30; *Isos 14-15* at Comment 2.a; *Tetra* at Comment 6; *Isos 15-16* at Comment 5.a.

¹⁰¹ See *Isos 14-15* at Comment 2 (“We do not agree with respondents that the MLE amounts have to be separate items in the income statement or in the notes to the financial statements.”). It is also worth noting that in that case we found that CYDSA’s energy division is not a separate operating unit and that its one electricity cogeneration plant did not provide all of CYDSA’s electrical needs. *Id.* We made these same findings in *Isos 15-16*. See *Isos 15-16* at Comment 5.a.

¹⁰² See *Tetra* at Comment 6. We also found CYDSA’s SG&A to be sufficiently specific. *Id.*

product, thus demonstrating that we found CYDSA to be at least a producer of comparable merchandise (*i.e.*, chemicals).¹⁰³

B. International Freight

The WW Group's Comments

- Commerce did not address the argument presented by the WW Group, and misstates the contents of the *Doing Business* report. The *Doing Business* report defines the two charges “Border Compliance” and “Documentary Compliance,” acknowledged by Commerce to be included in the *Doing Business* report.¹⁰⁴ Under “Documentary Compliance,” it states that it covers “all documents by law and in practice” and “required by origin, destination and transit economies” and covers the cost of obtaining, preparing and submitting such documents.¹⁰⁵ The documentation fee, the advance manifest fee, and the customs importer security fees are clearly covered by the plain language of *Doing Business* report.¹⁰⁶ These are documents required by law or practice by an origin, destination or transit economy.
- In a similar fashion, the “Border Compliance” expense covers “port and border handling.”¹⁰⁷ This, again, is clear and unequivocal and this definition unquestionably covers certain of the charges listed in *Descartes*. Commerce has continued to improperly and incorrectly refuse to adjust the international freight SV for these charges to avoid double counting.

The Petitioner's Comments

- As with the case of the surrogate financial ratios, Commerce reexamined this aspect of its margin calculation, taking in account the arguments raised by the WW Group in its brief

¹⁰³ *Id.*

¹⁰⁴ *See* the petitioner's August 18, 2016 submission at Exhibit 16, page 99.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

before the Court. Upon reexamination, Commerce found that the arguments raised by the WW Group were without merit or basis and, therefore, reaffirmed this surrogate value without modification. This is clearly correct, as detailed by Commerce, and supported by substantial evidence on the record.

Commerce's Position: We agree with the WW Group. International freight was valued using four price quotes, and this is the only international freight SV on the record.¹⁰⁸ Two of the four price quotes contain a list of small fees associated with the shipment, fees which were included in the SV calculation (*i.e.*, Suez Canal transit fee, Panama Canal transit fee, carrier security charge, high security seal charge, Gulf of Aden charge, equipment interchange receipt fee, OTHC – non-reefer, bunker charge, documentation fee, advance manifest security charge, Customs importer security filing).¹⁰⁹ The WW Group has argued that certain of these fees should be excluded from the calculation, because they claim these are already included in the brokerage and handling surrogate value. We note that these fees are not defined on the record. In addition, whereas these fees are very specific, the *Doing Business* charges are for general categories of fees. It is Commerce's practice to avoid double counting.¹¹⁰ As such, we have excluded two of the four international freight price quotes from the calculation of the international freight SV in order to avoid any possibility of double counting.

¹⁰⁸ *Id.* at Exhibit 11.

¹⁰⁹ *Id.*

¹¹⁰ See, e.g., *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) (it is Commerce's practice to avoid double counting costs where the data are available to do so).

Because we have made a change to the international freight SV, we recalculated the WW Group's margin, and continue to find that it made sales of subject merchandise at less than fair value during the POI.¹¹¹

8/8/2018

X 

Signed by: JAMES MAEDER

James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

¹¹¹ See Memorandum to the File, "Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Final Remand Results Analysis Memorandum for the WW Group," dated concurrently with this remand determination.