

MEMORANDUM TO: Jeffrey May
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the Final Determination of the
Antidumping Duty Investigation of Saccharin from the People's
Republic of China

Summary

We have analyzed the comments and rebuttal comments of interested parties in the investigation of saccharin from the People's Republic of China (PRC), covering the period January 1, 2002 through June 30, 2002. As a result of our analysis, we have changed the margins. We recommend that you approve the positions we have developed in the "Discussion of Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments by parties.

1. Surrogate Values: Most Appropriate Source for Surrogate Values
2. Surrogate Values: Adjustments to Surrogate Values for Concentration Strengths
3. Surrogate Values: Choice of Surrogate Values for Byproducts
4. Application of "Sigma" Rule
5. Market Economy Inputs: Valuation of Phthalic Anhydride
6. Byproduct Offset
7. Packing Expenses
8. Suzhou's Self-Produced Inputs
9. Normal Value Financial Ratios
10. Suzhou USA's Indirect Selling Expenses
11. Calculation of Suzhou USA's CEP Profit
12. Date of Sale
13. Calculation Issue: Freight
14. Calculation Issue: Conversion Error/Ice, Water, and Steam
15. Calculation Issue: Conversion Error/Labor
16. Calculation Issue: Discrepancy Between Prelim Factor Values Memo and Calculations

Background

Since the issuance of the preliminary determination (see Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 67 FR 79049 (December 27, 2002) (Preliminary Determination)), the following events have occurred. On January 8, 2003, petitioner, PMC Specialities Group Inc., requested a hearing. On January 8, 2003, the Department received a timely factor value submission from Shanghai Fortune Chemical Co. (Shanghai Fortune) and Suzhou Fine Chemicals Group Co., Ltd. (Suzhou) (collectively, "respondents") and Kaifeng Xinghua Fine Chemical Factory (Kaifeng). On February 11, 2003, the Department extended the due date for the final determination of this investigation (68 FR 6885). On February 21, 2003, the Department received timely factor value submissions from petitioner, respondents and Kaifeng, and Procter & Gamble Co. On March 3, 2003, the Department received a supplemental factor value submission from petitioner. On April 10, 2003, the Department received timely written case briefs from petitioner, respondents, Procter & Gamble Co., and Colgate Palmolive Co (Colgate). On April 15, 2003, the Department received timely rebuttal comments from petitioner and respondents. On April 22, 2003, a public hearing was held in this proceeding. We have now completed this investigation in accordance with section 735 of the Tariff Act of 1930, as amended (the Act).

Discussion of Issues

Comment 1: Surrogate Values: Most Appropriate Source for Surrogate Values

Petitioner argues that based on the criteria it claims the Department uses in selecting surrogate values, i.e., contemporaneity, quality and specificity, the Indian chemical journal, Chemical Weekly (CW), provides the most appropriate source for calculating surrogate values in this investigation. Petitioner notes that CW offers weekly pricing data that cover the entire period of investigation (POI) (January-June 2002), and has been used by the Department to value chemical inputs in numerous other proceedings. In addition, petitioner points out that CW prices clearly list the name of each chemical and can be easily adjusted to remove any domestic taxes that may be present in such cases. Finally, petitioner notes that the Department's Antidumping Manual specifically states the administrative preference for country-wide prices such as those published in CW or MSFTI (Monthly Statistics of the Foreign Trade of India), as opposed to specific price quotes. In particular, petitioner argues that the Department should use, as it did in the Preliminary Determination, the CW market data for Mumbai and Chennai.¹ Respondents argue that CW data should not be used when it produces aberrational results.

¹CW provides market information for four markets, Mumbai, Chennai, Kolkata, and Delhi. It also provides export information for specific export sales.

Petitioner argues that when CW data is not available, the Department should use MSFTI, from the period of April 2001 through January 2002. Petitioner argues that using MSFTI data from January 2002 only, as the respondents suggest, is methodologically unsound. Petitioner argues that using the April 2001 through January 2002 MSFTI data decreases the chance of incorporating any short-term fluctuations in raw material prices into the surrogate value calculation. Petitioner points out that, in the case of saccharin, some of the average values of the raw materials based on the data from a single month differ as much as 30 percent from values based on several months. However, respondents argue that, because the Department prefers data that is more contemporaneous to the POI to data that is less contemporaneous, if the Department chooses to use MSFTI data, it should use the MSFTI import data from January 2002. They cite Final Results of Antidumping Duty Administrative Review; Bulk Aspirin from the People's Republic of China, 68 FR 6710, Issues and Decision Memorandum, at Comment 1 (February 10, 2003) (Bulk Aspirin). While petitioner does not disagree that the January data should be used, it argues that it is reasonable to include import data that precedes the POI when calculating surrogate values, because the raw materials needed to produce saccharin at the beginning of the POI would necessarily have to be imported prior to the POI.

Respondents argue that the exclusion of “aberrational” or “outlier” observations from MSFTI data (based apparently on low import volumes) provides the Department with more reliable surrogate pricing data than simple average price calculations. As such, respondents argue that the Department should exclude certain low-volume, high-priced materials in deriving surrogate values from MSFTI data for the final. However, petitioner claims that respondents have provided no authority or precedent for the elimination of “outlier” observations from surrogate value calculations. Petitioner points out that the Department has determined that only imports from countries classified as non-market economies (NMEs) and those countries maintaining non-specific export subsidies should be excluded from the calculation of surrogate values. As such, petitioner argues that any surrogate values calculated from MSFTI data should employ data from all other countries.

Respondents argue that MSFTI data is inherently suspect in view of the broad range of products that may fall within even the smallest tariff classification that purports to be for a specific product. Instead, respondents argue that we should use price quotes they have placed on the record of this investigation. Respondents claim that the Department has stated that it will use price quotes as surrogate values when other data is aberrational and does not reflect the same concentration level or specific type of material as the input used in the production of subject merchandise. They cite Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part, 67 FR 69719, Issues and Decision Memorandum, at Comment 2 (November 19, 2002) (Sebacic Acid). Respondents argue that because of their specificity, their price quotes are more accurate than either CW or MSFTI data. Moreover, respondents argue that, often, the price quotes are corroborated by other information they have placed on the record, such as U.S. import data.

Respondents argue that the value of one input in particular, activated carbon, is not accurately captured by the MSFTI data. According to respondents, the Department has determined in the past that MSFTI data does not reflect prices for the type of activated carbon used by them, “low grade powder.” They cite Sebacic Acid and Sulfanilic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 48597, 48600-01 (September 16, 1997) (Sulfanilic Acid). In both those cases, claim respondents, we resorted to the use of price quotes, because MSFTI data was considered inappropriate.

Petitioner argues that price quotes are not an appropriate source for surrogate valuation. Unlike CW or MSFTI prices, petitioner argues, the Department cannot easily confirm that all available data have been included in its surrogate value calculations when using price quotes, as a party may select and submit only the lowest prices. Respondents counter by arguing that their February 21, 2003, submission contains multiple price quotes for several of the inputs. Petitioner also argues that price quotes can be affected by any number of factors such as the financial health of a particular company or a company’s desire to offer an artificially low introductory price for its product in order to attract a new customer. Petitioner also notes that the price quotes submitted by the respondents cover only small samples of the POI and some are outside the POI altogether.

Finally, petitioner argues that the Department should disregard respondents’ use of U.S. prices to corroborate the use of their price quotes for surrogate values. Petitioner argues that the United States is not the selected surrogate country in the investigation; therefore, respondents’ comparison of surrogate values to U.S. import prices is irrelevant.

Department’s Position: The Department considers many aspects of information in choosing a surrogate value, several of which are noted by the parties: whether it is publicly available, whether it is contemporaneous, whether it is representative of a large sample of prices, and how closely it matches the factor of production we are trying to value. Respondents argue that we should use the price quotes they have placed on the record, because they are for potential sales of products most closely matching the physical characteristics of the factors of production, and some of the quotes are contemporaneous with the POI. Most importantly, according to respondents, the price quotes are for chemical inputs in the same concentrations as the inputs used by the PRC producers under investigation. For example, respondents used a solution of sodium hypochlorite containing 10 percent sodium hypochlorite, and the price quote submitted by respondents is for a 10 percent sodium hypochlorite solution.

However, as respondents state in their case brief, the Department in the past has determined that CW data represents 100 percent solutions (see Comment 2, below). Therefore, we conclude that the CW data can be easily adjusted to reflect other solution strengths, which is what we did for the Preliminary Determination. Respondents have not argued that this adjustment methodology was flawed or produces inaccurate results. While the Department may have used price quotes in a very small number of cases in the past, we have done so only after concluding that the flaws inherent in using these quotes as surrogate values were overshadowed by the fact that there was no other source of usable, reliable

information. That is not the case here, where we have CW data that can easily be adjusted to match the characteristics of the factors of production.

Therefore, given that the CW data is contemporaneous and can be adjusted for solution strengths, we used CW data wherever available in order to value factors of production, as we did in the Preliminary Determination. Also, as we did in the Preliminary Determination, for all chemical inputs for which CW data is not available, we used MSFTI data (with a few exceptions discussed below). We have found MSFTI data (for both chemical and non-chemical inputs) for January through June 2002, which is contemporaneous with the POI. See Antidumping Duty Investigation of Saccharin from the People's Republic of China: Factor Valuation Memorandum from Sebastian Wright, Case Analyst, through Mark Hoadley, Senior Analyst, Office VII, to the File (May 12, 2003) (Final Factor Values Memo). Although in the Preliminary Determination we adjusted MSFTI data for solution strength (as we did CW prices), petitioner argued that such an adjustment is not warranted for purposes of the final. The issue of adjusting surrogate values for solution strength is fully discussed in Comment 2 below.

We find that, in this case, both the CW and MSFTI data are superior to the price quote data for the following reasons. As prices fluctuate throughout the POI, a price quote might represent one extreme or the other of the range of that fluctuation. Also, as petitioner notes, price quotes will vary depending on the firm involved. Price quotes do not represent actual completed transactions, and are not from public sources. Moreover, these are quotes gathered by the respondents themselves. Thus, the price quote data in this case has too many inherent flaws to serve as a surrogate value when the CW and MSFTI data are available, and when there is nothing on the record to indicate that this other data is aberrant or otherwise inappropriate.

As explained, price quotes will be used only when no other appropriate source is available. For this final determination, we determine that this is the case only with respect to activated carbon. As respondents note, the Department has determined in the past that the MSFTI data does not reflect prices for the type of activated carbon used by the respondents. See e.g., Sebacic Acid and Sulfanilic Acid. In both those cases, we resorted to the use of price quotes because of the unavailability of more appropriate data. Therefore, we have used respondents' submitted price quotes to value activated carbon for both respondents in this final determination.

Regarding respondents' arguments that we should eliminate what they consider to be aberrant data within sources (e.g., adjusting MSFTI data for imports from countries with small import volumes), the Department has considered this issue in the past and found that it is appropriate in some instances. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the People's Republic of China, 67 FR 71137, Issues and Decision Memorandum, at Comment 13 (November 29, 2002); and, Heavy Forged Hand Tools from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 66 FR 48026, Issues and Decision Memorandum, at Comment 11 (September 17, 2001). In this case, upon examining the import data, we have excluded a small number of

observations from the MSFTI data where import volumes from particular countries appeared extremely low in comparison to other import volumes for the same chemical, and the values associated with these low import volumes appeared to break significantly from the distribution of prices for that chemical. See Final Factor Values Memo. However, we have not excluded every observation suggested by respondents. Respondents did not provide any argument for deleting the specific observations they deleted in their surrogate value calculations.

With respect to respondents' argument that we should compare prices across sources and eliminate any sources that appear aberrant, we note that, in the Preliminary Determination, the Department decided not to use MSFTI data in its entirety for two chemicals, sulfur dioxide and chlorine, because the MSFTI numbers were so high in comparison to U.S. import data that we concluded that the data reflected two categorically different types of the product. Therefore, we used the lower U.S. import data instead, as suggested by the petitioner. For this final determination, no parties commented on the use of the U.S. import prices for these two chemicals; therefore, we are continuing to use the U.S. import data rather than MSFTI data for these two chemicals.

However, with regard to another chemical, hydrochloric acid, we find that, after weighing all of the evidence on the record, it would be inappropriate to disregard, as respondents suggest, the MSFTI data in its entirety. Respondents suggest that we should use either the price quotes they have placed on the record or data for the Kolkata market published in CW. Both respondents and petitioner present information and argument that lead us to conclude that both the CW prices and the MSFTI data may not be appropriate to use for valuing hydrochloric acid. Petitioner submitted proprietary information suggesting that this particular CW data may not be completely relevant in this case. See Final Factor Values Memo. However, respondents point out that there is a large disparity between the MSFTI data and the U.S. import data for hydrochloric acid, as well as their price quotes and the Kolkata data; thus calling into question whether the Indian import statistics are reliable.

We agree that there are concerns with both sources. Accordingly, we determine that it is appropriate for purposes of this final determination to average the MSFTI import value for hydrochloric acid with CW data for the Kolkata market (after adjusting the CW data for solution strength in keeping with our decision in the Comment 2, below). Because there is no clear cut choice among these two alternatives, the use of an average of these two values is reasonable for purposes of this final determination.

Comment 2: Surrogate Values: Adjustments to Surrogate Values for Concentration Strengths

In the Preliminary Determination, the Department made adjustments to both MSFTI data and CW data to reflect our conclusion that this data represented values for chemicals sold in pure forms, whereas several of the chemical inputs used by respondents were diluted to much lower than 100 percent concentrations. Petitioner argues that the Department should not adjust surrogate values obtained from MSFTI data. Respondents argue that the Department should assume that all periodicals that report import statistics increase all prices to the 100 percent concentration levels for the active chemical.

While petitioner agrees with respondents that this is possible for the CW data, it argues that it would be extremely unlikely, if not impossible, for the Indian government to do so for data issued by the MSFTI.

Petitioner argues that CW serves as a provider of information for parties interested in current prices for buying and selling chemicals within India; therefore, the respondents' argument that CW would report prices for 100 percent strength chemicals to allow potential customers to calculate prices for the various solution strengths has merit. Petitioner argues that MSFTI, in contrast to CW, serves the purpose of reporting actual Indian imports of all commodities, including chemicals; therefore, according to petitioner, it is unreasonable to believe that it is possible, or even desirable, for the Indian government to convert price data for every single shipment of every single chemical imported into India to a 100 percent concentration basis. Rather, petitioner believes, the reasonable conclusion is that the Indian government simply records the quantities and values of the imported chemicals as displayed on each invoice, which represent whatever solution strengths are commonly consumed in India.

Petitioner argues that the price quotes provided by respondents (discussed above in Comment 1) support the conclusion that each of the MSFTI figures is based on a commonly-traded solution strength. It argues that these price quotes are, for each input, for roughly equal solution strengths (when there is more than one quote for each input), and that these solution strengths are roughly equal to those of the inputs used by the respondents. Therefore, according to petitioner, this is indicative of a common solution strength. Thus, argues petitioner, not only do MSFTI data not reflect values for chemicals at 100 percent solution strengths of, but they most likely represent chemicals sold at these commonly-traded solution strengths, and do not need to be adjusted.

For example, the respondents argue that sodium hypochlorite can be sold at 100 percent solution strength, *i.e.*, in a solid form, and that this solid form would be reflected in the MSFTI data. However, petitioner argues that sodium hypochlorite cannot even exist in this form due to the instability of the compound, citing Jacqueline I. Kroschwitz, Ed., Kirk-Othmer Encyclopedia of Chemical Technology, at 276 (4th Ed. 1992). In addition, petitioner points out that respondents' price quotes establish that sodium hypochlorite is sold at solution strengths around 10 percent. Petitioner argues that the commonly-traded solution strength in India is between 6 and 15 percent.

However, respondents assert that while they did use a 10 percent sodium hypochlorite liquid, it is not imported in this liquid form because the freight would be too expensive. Thus, argue respondents, the MSFTI data, being import data, reflect a variety of sodium hypochlorite more concentrated to ease freight expenses. Respondents further argue that, as sodium hypochlorite is simply bleach, the MSFTI data would mean a price for the common household product in excess of \$7.00 a gallon. Thus, respondents reason, the MSFTI data must reflect an undiluted form. However, petitioner argues that respondents are wrong in this assertion, as the aqueous solutions for household bleach contain a much smaller amount of sodium hypochlorite than that which would be consumed by respondents to produce saccharin; *i.e.*, that sodium hypochlorite would have to be diluted beyond the 6 to 15 percent commonly-traded solution strength in order to produce household bleach.

Department's Position: In examining this issue, the Department contacted officials at both the U.S. Census Bureau (Census) and the U.S. Bureau of Customs and Border Protection (Customs). We also attempted to contact similar authorities within the Indian government, but were unsuccessful. The U.S. officials at both agencies explained to us that the U.S. equivalent of the MSFTI data reflect the unadjusted values and volumes submitted to Customs in manifest documents. While those submitting these documents may make their own adjustments to account for the portion of the solution surrounding the active chemical, they are not required to do so, and neither Customs nor Census would do it for them. These officials stated that the import figures published by Census (the equivalent of the MSFTI data) most likely reflect a variety of solution strengths. See Memorandum from Sebastian Wright, Case Analyst, through Mark Hoadley, Senior Analyst, to the File; Antidumping Duty Investigation of Saccharin from the People's Republic of China (PRC) (A-570-878): Research on U.S. and India Trade Statistics Adjustment for Diluted Chemicals (May 12, 2003). We also talked to an official with the Industry Sector Advisory Committee on Chemicals and Allied Products (ISAC3), who confirmed these statements and also told us that he believed Brazil was the only country that would make such adjustments. See id. While the policy of U.S. agencies is not necessarily going to be the same as that of comparable agencies in India, it is the only evidence on the record suggesting what the policies of those Indian agencies might be; and we find it reasonable to conclude that it would be unlikely for Customs authorities to review multiple entry documents in order to make adjustments so as to report the import data at a common solution strength.

Finally, we agree with petitioner that there are probably commonly-traded solution strengths for chemicals, or at least a narrow range within which products are commonly traded. The evidence on the record supports this conclusion. Besides respondents' price quotes, our conversations with the Census and Customs officials, noted above, confirm that chemicals are traded within a narrow range of solution strengths. For example, we were told that sodium hypochlorite is commonly traded at concentration levels between 5 and 15 percent, because of its volatility at higher concentrations. See id.

Against this evidence, we have only respondents' assertions that the price quotes on the record reflect only concentration levels for sales within India, and not concentration levels for imports, which they contend, as noted above, are higher in order to reduce freight expenses. Therefore, we did not adjust, as we did in the Preliminary Determination, the MSFTI data to reflect the concentration levels of the chemical inputs used by respondents for this final determination. However, we did continue to make this adjustment to the CW data.

Comment 3: Surrogate Values: Choice of Surrogate Chemicals for Byproducts

Respondents mentioned three byproducts in their questionnaire responses for which the Department was unable to find exact matches in either CW or the MSFTI data. We chose as surrogates for these

three chemicals what we concluded to be either the same chemicals, entered under synonyms in either the CW or MSFTI data, or the closest matches.

Petitioner argues that the Department should choose new surrogate values for two of respondents' byproducts: "mother liquid of benzyl aminate ester" (MLBAE) and "chloro methyl benzene residue" (CMBR). According to petitioner, instead of valuing these byproducts with cyclohexylamine, as the Department did in the Preliminary Determination, the Department should use benzoic acid and toluene, respectively.

Respondents argue that the Department should not use petitioner's suggested surrogates. To support this argument, respondents state in their brief that the "function groups," which are generally the "most reactive portion of a molecule and {determine} specific properties of that molecule," are different for the two byproducts and the surrogates proposed by petitioner. Respondents also argue that the Department erred in valuing "organic cupric salt" as copper sulfate.

Department's Position: After conducting our own research into this matter, we conclude that CMBR should be valued using benzyl chloride, also known as chloro toluene. We have found this chemical (benzyl chloride) in the MSFTI data under 2903.69.03. We have also determined to value cupric salt using acetic acid, also known as cupric acetate, copper acid, and copper acetate. We have found acetic acid in the MSFTI data. We have made these determinations after consulting independent experts, and, mainly, after consulting a list of chemical synonyms on the website of the Environmental Protection Agency. See Memorandum from Sebastian Wright, Case Analyst, through Mark Hoadley, Senior Analyst, to the File: Antidumping Duty Investigation of Saccharin from the People's Republic of China (PRC) (A-570-878): Identification of Byproduct Surrogates (May 12, 2003).

These choices do not appear to be in conflict with the comments of either petitioner or respondents. Petitioner argued that we should value CMBR with toluene because "methyl benzene" is another name for toluene. We do not question this statement. However, the byproduct in question is not methyl benzene, but chloro methyl benzene residue. Thus, the proper surrogate is not a value for toluene, but chloro toluene, otherwise known as benzyl chloride. Petitioner did not comment on cupric salt. Respondents only commented on why petitioner's proposals were incorrect, but did not offer any discussion of what the proper surrogates were.

The issue of valuing MLBAE does not need to be addressed because MLBAE was only claimed as a byproduct by Shanghai Fortune, and we are no longer allowing a byproduct offset for Shanghai Fortune. See Comment 6, below.

Comment 4: Application of the "Sigma Rule"

Petitioner argues the Department incorrectly applied the “Sigma rule,” a cap on the freight distances applied to factors, by capping freight distances for inputs valued with domestic prices. See Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997). Petitioner argues that the Sigma cap should only be applied to freight distances where the surrogate value is a cost, insurance and freight (c.i.f.) import value; e.g., MSFTI data.

Respondents did not comment on this issue.

Department’s Position: In the remand pursuant to the Sigma rulings (Sigma Corp. v. United States, 117 F. 3d 1401 (Fed. Cir. 1997), we stated that the ruling would be applied to import values. See Iron Construction Castings from the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Reviews in Accordance with Court Decision, 67 FR 57211, 57212 (September 9, 2002) and Certain Preserved Mushrooms from the People’s Republic of China: Preliminary Results and Partial Rescission of Fourth New Shipper Review and Preliminary Results of Third Antidumping Duty Administrative Review, 68 FR 10694, 10702 (March 6, 2003). Therefore, we revised our calculations for the final determination to apply the Sigma cap only to those surrogate values based on import data.

Comment 5: Market Economy Inputs: Valuation of Phthalic Anhydride

Respondents and Colgate argue that the Department erred in failing to use Suzhou’s market prices to value phthalic anhydride from Korea. Respondents and Colgate argue that there is no substantial, specific, or objective evidence showing that imports of phthalic anhydride from Korea were “distorted.” They cite China National Machinery Import & Export Corp. v. United States, Slip Op. 03-16, at 14, 15, 18-19 (CIT Feb. 13, 2003) (China National) for the need for such evidence. As evidence of what they claim must be an absence of any subsidies affecting this product, respondents and Colgate point out that the prices of phthalic anhydride purchased by Shanghai Fortune from Japan, which the Department does not claim are subsidized, are lower than the prices of the Korean phthalic anhydride. Therefore, respondents and Colgate argue, because there is no specific evidence that Korean phthalic anhydride prices are subsidized, the Department should use Suzhou’s average market price to value phthalic anhydride from Korea in the final determination.

Petitioner argues that the Department was correct in declining to rely on Suzhou’s prices for phthalic anhydride purchased from Korea. To begin with, petitioner notes that the Department possesses substantial evidence that at least seven non-specific export subsidies are available to Korean companies. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China, 67 FR 6482 (February 12, 2002). Petitioner also points out that, in China National, the record contained evidence that undermined the Department’s determination to suspect or believe that the exports at issue enjoyed the subsidies at issue. However, unlike in China National, petitioner argues that respondents have not presented any information supporting their claim that the phthalic anhydride industry in Korea does not

enjoy or avail itself of government subsidies. Therefore, the petitioner argues, consistent with its own practice and the recent China National decision, the Department should continue to apply surrogate valuation to Suzhou's consumption of phthalic anhydride.

Department's Position: The legislative history of the Omnibus Trade and Competitiveness Act of 1988 states that, "in valuing such {nonmarket economy} factors, {the Department} shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."² According to the Court in China National, ". . . the 'reason to believe or suspect' standard at issue here must be predicated on particular, specific, and objective evidence." See China National at 18.

We determined in three countervailing duty cases³ that during the 1990's the Government of Korea (GOK) maintained various export subsidy programs that were broadly available and not industry specific, such as short-term export financing, reserve for export losses, reserve for overseas market development, investment tax credits, etc. It is reasonable to infer that Suzhou's supplier may have taken advantage of the broadly available, non-industry specific, export subsidies maintained by the GOK during the 1990's. In fact, we believe it is reasonable to infer that it would have done so.

There is no evidence on the record to lead the Department to infer that Suzhou's supplier was not eligible to participate in any of these subsidy programs. Instead, there is specific, particular and objective evidence on the record to support a reason to believe or suspect that values from the country in question may be subsidized. We do not consider the fact that a small sample of Korean prices for phthalic anhydride are lower than a small sample of Japanese prices as conclusive evidence that the Korean phthalic anhydride industry does not avail itself of these export subsidies. Finally, we note that for China National, which was decided in February 2003, litigation is still pending, and, as such, this is not a final and conclusive decision. Therefore, we find that the information on the record supports the Department's decision to value Suzhou's phthalic anhydride using a surrogate value rather than the market price paid by Suzhou to a Korean supplier.

²See H.R. Rep. No. 576 100th Cong., 2. Sess. 590-91 (1988). Although this section of the Act has been revised since this 1988 legislative history was written, there were no changes made to section 773(c) of the Act in the URAA. See, e.g., S. Rep. 103-412, 2d Sess. at 73 (1994) (stating in the Senate Joint Committee Report accompanying the URAA that "the Committee. . . intends no substantive changes" to section 773(c) of the Act).

³Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 64 FR 73176 (Dec. 29, 1999), Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15530 (March 31, 1999), and Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30636 (June 8, 1999).

Comment 6: Byproduct Offset

Petitioner argues that, for the final determination, the Department should not give a cost offset to Shanghai Fortune for any of its claimed byproducts, including chloro methyl benzene, low grade activated carbon, sodium sulfite, o-amino benzoic acid, and acid water containing copper. More specifically, petitioner argues that Shanghai Fortune presented no information, either at verification or through its questionnaire responses, establishing the amount of the above-mentioned byproducts it actually sold during the POI. It cites Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China, 65 FR 33805, Issues and Decision Memorandum, at Comment 13 (May 25, 2000), for the necessity of providing this information. In fact, petitioner points out that Shanghai Fortune admitted that because of its method of “accumulating” receivables on its sales of byproducts, it is impossible to separate POI sales of byproducts from non-POI sales, thereby preventing the Department from verifying the byproduct quantities reported by Shanghai Fortune in its factors of production database. See Memorandum to the File from Javier Barrientos and Jessica Burdick, Case Analysts, through Sally Gannon, Program Manager: Antidumping Duty Investigation of Saccharin from the People's Republic of China (PRC) (A-570-878): Factors of Production Verification Report for Shanghai Fortune Chemical Co., Majestic International Trading Co., Ltd., and [Proprietary Exporter], at 11-12 (March 26, 2003) (Shanghai Fortune FOP Verification Report).

Shanghai Fortune replies that it should be given credit for the sale of its byproducts. It alleges that “accumulating” receivables for byproducts is common among chemical producers, since byproduct sales are normally a minor part of total sales. Moreover, Shanghai Fortune argues, it demonstrated at verification that some of its byproducts were sold, even if it could not demonstrate, to the Department's satisfaction, that these sales took place during the POI.

Department's Position: The amount of byproducts sold during the POI is an integral part of the factor calculation for byproducts. See Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from Belarus 68 FR 9055 (February 27, 2003) (“The Department allows such credits, but only for the amount of the byproduct/recovery actually sold or reused.”). Because Shanghai Fortune failed to demonstrate that any of its sales of byproducts took place during the POI, we cannot allow a byproduct offset, for the amount claimed in its responses or for any smaller amount.

Comment 7: Packing Expenses

Petitioner argues that, for both Suzhou and Shanghai Fortune, the Department should include packing expenses (packing materials and packing labor) as direct materials costs. Petitioner argues that the different types of packing used by respondents represent an additional step in the production process that is required to render the product merchantable, rather than merely preparing the product for shipment. Petitioner notes that judicial precedent demonstrates that containers considered to be

packing materials are properly treated as direct materials. See Washington Red Raspberry Comm'n v. United States, 859 F.2d 898 (Fed. Cir. 1988) (Red Raspberry). The petitioner argues that the super sacks, plastic bags, paper bags, and cardboard drums are necessary to protect and hold the saccharin during transport, otherwise the saccharin would be dissipated into the air and/or contaminated, and immediately rendered unusable. Petitioner draws particular attention to the fact that a particular type of plastic bag must be used by respondents in order to prevent contamination that would render the saccharin non-food grade. Therefore, petitioner maintains, the drums and bags consumed by respondents in their production operations, and the associated labor, are an integral part of the subject merchandise and, as such, should be treated as direct materials in the Department's final determination.

Respondents argue that, under the statute, packing, *i.e.*, containers and coverings, are considered separately and apart from direct materials. In contrast to the product in Red Raspberry, saccharin remains saccharin even without the bags, sacks, and drums. Therefore, respondents maintain that the Department should follow well-established precedent and continue to find that packing should not be treated as direct materials.

Department's Position: Red Raspberry was issued in 1988 and requires the Department to classify some elements of packing as direct materials. As respondents note, however, in accordance with section 773(c)(1) of the Act, the Department's normal policy is to consider packing as an item separate from direct materials to which financial ratios for overhead, selling, general, and administrative expenses, and profit do not apply.

The decision in Red Raspberry held that a particular type of packing was integral to the product, and, therefore, should be considered a part of direct materials, because without it, the product would cease being the product, and would be something else. Likewise, with dried salmon, without the vacuum sealed packing, the product would not have the long shelf life associated with the product. See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411, 31415 (June 9, 1998). Petitioner's arguments, in contrast, are focused on why saccharin would be "unusable" without packing: "Without such containers {sacks, bags, linen and drums} . . . it would be dissipated into the air and/or contaminated, and immediately rendered unusable." This would be true, however, of many, perhaps the majority, of products, as most goods could not be sold or used without some sort of packing. Without packing, many products could be damaged or contaminated in transport. To interpret Red Raspberry as petitioner suggests would render section 773(b)(3)C) of the Act almost meaningless. Therefore, we reject petitioner's argument that because saccharin cannot be sold without packing it should be included in direct materials.

Comment 8: Suzhou's Self-Produced Inputs

Suzhou argues that the Department erred in the Preliminary Determination by failing to follow its general practice and calculate the normal value (NV) for Suzhou using all of its actual factors of production,

including factors for self-produced inputs. Petitioner argues that the Department correctly valued Suzhou's self-produced inputs using surrogate values for the inputs themselves, and not their factors. It cites Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Structural Steel Beams from the People's Republic of China, 66 FR 67197, 67201 (December 28, 2001) and Notice of Final Determination at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, 66 FR 49632 (September 28, 2001) as precedent for the Department not valuing upstream factors.

Petitioner argues that the valuation of the upstream products would lead to erroneous results and would add unnecessary complication to the Department's analysis. However, respondents argue that this identical argument was rejected in the recent Polyvinyl Alcohol preliminary determination. See Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol from the People's Republic of China, 68 FR 13674, 13679, n.9 (March 20, 2003) (Polyvinyl Alcohol). Suzhou points out that, in Polyvinyl Alcohol, the Department stated that the Department's normal practice with respect to self-produced material inputs is to value each of the components of the input, rather than valuing the input itself, since this practice generally yields the most accurate NV. Furthermore, according to Suzhou, the Polyvinyl Alcohol decision stated only two exceptions to this general rule: (1) where the upstream product accounts for a small or insignificant share of total output; or, (2) where attempting to value the factors used in the upstream product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. In regard to exception 1, Suzhou argues that its four self-produced inputs, namely, sulfuric acid, liquid sulfur dioxide, electricity, and hydrochloric acid, are not small and insignificant inputs in terms of its production process. On the contrary, Suzhou argues, the surrogate values applied by the Department to the above-named inputs cause a substantial increase in its NV and dumping margin. In regard to exception 2, Suzhou argues that valuing the upstream input factors would not result in an element of cost being inadequately accounted for. Rather, Suzhou argues, by failing to use these upstream factors, the Department hyperinflates Suzhou's NV because the surrogate values for the inputs themselves include a profit markup that "should not be there."

Petitioner rebuts stating that the use of Suzhou's self-produced factors would lead to erroneous, and absurd results. For example, the value of a byproduct produced in the production of hydrochloric acid would be greater than the value of the chemical inputs involved in hydrochloric acid production. As a second, and final, example, petitioner notes that the values that the Department would presumably use for some electricity inputs would be too low for the type of inputs used. Furthermore, petitioner argues, in Polyvinyl Alcohol the Department declined to value a self-produced input using the cost build-up provided because the input was purchased from an affiliate, which is the case in the present investigation as well, it claims.

In addition, Suzhou argues, CW surrogate values for the downstream inputs are highly inflated over actual prices, because when Indian companies provide public prices, they do not provide actual prices,

but inflated ones. Petitioner claims that respondents can point to no authority or source for its claim that public Indian prices are highly inflated. In fact, petitioner argues, the opposite could easily be true—the Indian surrogate values might be understated because the products were sold at a loss.

Finally, Suzhou claims that the presumption by courts, federal agencies, and economists is that companies vertically integrate in order to lower production costs, thereby allowing the vertically integrated firm to offer products for sale at lower prices than non-vertically integrated competitors. Therefore, states Suzhou, by not valuing the upstream factors, the Department is denying it the benefits of its particular production efficiencies, the whole purpose of calculating a firm-specific NV. However, petitioner argues, such references to profit-maximizing firms may be relevant to market-economy situations, but Suzhou is operating in a NME, China.

Department's Position: We agree with petitioner in part and respondents in part. For the final determination, we have determined to value the factors used in the production of sulfuric acid and liquid sulfur dioxide, but not those used in electricity and hydrochloric acid production.

The Department recently clarified its position on this issue in Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 4986, 4993-4994 (January 31, 2003) (Fish Fillets) where we stated that we would, in general, value upstream inputs, but with two exceptions: 1) where the valuation of upstream inputs would lead to unnecessary complications; and, 2) where a significant portion of costs would not be captured by the valuation of upstream inputs. Regarding the latter, we explained that overhead for vertically integrated firms might be higher, as a percentage of direct materials, labor, and energy, than for non-vertically integrated firms. Presumably, overhead would be higher for a vertically integrated firm because with the production of the upstream inputs more machinery will be required, and, thus, capital costs will be higher. Thus, unless the Department can be assured that the overhead ratio being applied captures the overhead costs of the vertically-integrated production process, for the particular product being investigated, we will not value the upstream factors. In this case, because of the similarities between the production processes and equipment used to produce saccharin and the two upstream inputs whose factors we are valuing, sulfur dioxide and sulfuric acid, we conclude that the overhead rate for a non-vertically integrated saccharin firm would not vary significantly from a vertically integrated saccharin firm to the extent that the vertical integration involves only these two inputs.

However, regardless of the overhead rate used, we cannot value the upstream inputs for hydrochloric acid and electricity. While Suzhou claims hydrochloric acid as one of its four “self-produced” inputs, it is actually produced by another entity. Thus, we agree with petitioner that Polyvinyl Alcohol is applicable, where we stated:

In addition to its own factors of production, {respondent} reported the factors of production used by a joint venture to produce acetic acid. However, we did not value

those factors when calculating {normal value} in this investigation. Rather, we have valued the acetic acid purchased from the joint venture and consumed during the POI, {in} accordance with our practice.

68 FR at 13679.

Suzhou did not in fact produce its hydrochloric acid, but purchased it, from Suzhou Industrial Park Two Lions Chemical Co., Ltd., which produced it. See Memorandum to the File from Mark Hoadley and Brett Royce, Case Analysts, through Sally Gannon, Program Manager; Antidumping Duty Investigation of Saccharin from the People's Republic of China (PRC) (A-570-878): FOP Verification Report for Suzhou Fine Chemicals Group Co. Ltd., at 5 (April 4, 2003) (Suzhou's FOP Verification Report). Therefore, consistent with Polyvinyl Alcohol, we did not value the factors used to produce hydrochloric acid.

Regarding electricity, we note that Suzhou failed to report two significant factors used in the production of electricity, which the verification team discovered during the course of verification. See Suzhou's FOP Verification Report, at 5. This omission prevented the Department from being able to examine the upstream production of electricity. This omission is particularly significant in this case, as the factor buildup for electricity is more complicated than for the other inputs. Moreover, unlike the chemical inputs, electricity production is much different than saccharin production and most likely involves additional overhead costs that could not be accurately captured by our cost calculations. As we have stated in the past, valuing electricity factors often is extremely complicated and difficult. Because it poses particular challenges, and because it often has extremely high capital costs, it is inappropriate to value the inputs into electricity unless the record provides clear information that the surrogate selection reflects all of the costs associated with self-producing electricity. Therefore, we did not value the upstream factors used in the production of electricity. We valued electricity for Suzhou in the same manner as for Shanghai Fortune.

As noted above, petitioner's comments concerning the "absurd results" that would ensue from valuing upstream factors pertained to the production of electricity and hydrochloric acid. Because we have determined for other reasons not to value the upstream factors for these two inputs, we do not need to address these specific comments. With respect to the two other self-produced inputs, sulfuric acid and liquid sulfur dioxide, we cannot conclude that the valuation of the upstream factors would lead to either absurd results or pose any great difficulties in our calculations. These are chemical inputs that are produced in the same manner as the chemical subject merchandise. We have not encountered any difficulties in determining quantities consumed or yields of inputs from one production stage to another for these inputs and products. Thus, there are only a few more, minor difficulties involved in valuing the factors for these two upstream inputs than are involved in valuing the more immediate factors for the subject merchandise itself. The valuation of the upstream factors is therefore nearly identical to the valuation of the downstream factors, but simply one step removed.

Comment 9: Normal Value Financial Ratios

In the Preliminary Determination, the Department used the 2000 financial statements of an Indian producer of persulfates, Calibre Chemicals Pvt., Ltd. (Calibre), and the 2000-2001 financial statements of an Indian producer of hydrogen peroxide, National Peroxide, to calculate the surrogate values of 71.91 percent for factory overhead, 30.06 percent for selling, general and administrative (SG&A) expenses, and 16.91 percent for profit. Respondents and Procter & Gamble argue that these ratios are aberrationally high. They claim that it is well-settled Department practice that unreasonable and aberrational surrogate values will not be used in the calculation of NV. See Refined Antimony Trioxide from the People's Republic of China: Final Determination of Sales at Less than Fair Value, 57 FR 6801, 6803 (February 28, 1992). Petitioner notes that these ratios are applied against only direct materials, not against direct materials, energy, and labor (as financial ratios usually are), and thus only appear to be abnormally high.

Respondents and Procter & Gamble further argue that the overhead ratio is particularly aberrational given that the manufacturing of saccharin is not a new, nor a high-tech process, but rather, an old, low-tech production process with low overhead and low profits. Petitioner argues that the respondents have not provided any practical or economic justification for their assertion that the manufacture of saccharin is an old, low-tech process. In fact, petitioner continues, Suzhou's webpage explicitly states that it has won many awards for its facilities, which include state and world level equipment. Furthermore, petitioner claims, the two companies that the Department used in the Preliminary Determination are not new and do not employ a high-tech production process.

Finally, respondents argue, these two Indian companies are not good choices for surrogate financial ratios because neither persulfates nor hydrogen peroxide are used in food products, or are otherwise ingestible by humans, and there is no similarity in production processes between them and saccharin. Petitioner argues that the production processes used by National Peroxide and Calibre have similar production stages to those of the respondents, including numerous chemical reactions, crystallization, and drying. Moreover, petitioner argues, many of the raw material inputs and byproducts are the same, including sulfuric acid, sodium salts, and methanol.

Respondents argue that, since financial statements of Indian saccharin producers were not obtainable, the Department has an obligation to use the financials of companies that produce merchandise comparable to saccharin. In this regard, respondents submitted a number of financial statements from producers of sugar, liquid glucose, starch, dyes, aspirin, and aspirin factors, noting the sweetening aspects of some of these, and the ingestible nature of all these.

Respondents argue that the Department should also consider using the average ratios for the Indian Chemical industry as a whole from the Reserve Bank of India (RBI). Respondents point out that the RBI data is a very reliable source of broad chemical industry data to which the Department has looked

in the past to derive surrogate financial ratios for chemical companies. They cite Sebacic Acid, 67 FR at 69729, and Sulfanilic Acid from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 70404 (November 22, 2002). Petitioner argues that because the RBI data is not specific to or representative of the Indian fine chemical industry, and instead includes a broad range of industries in India that are not comparable to the saccharin industry, their use in this investigation would be improper. Petitioner argues that, because the Department prefers to use financial data that are more narrowly limited to a producer of comparable merchandise than data based on a wider range of products (it cites Final Results of New Shipper Administrative Review: Glycine from the People's Republic of China, 66 FR 8383, Issues and Decision Memorandum, at Comment 7 (January 31, 2001) (Glycine)), the use of RBI data in this investigation is inappropriate. It also claims the Department has stated a preference for using data from actual producers, instead of RBI data, citing Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From the People's Republic of China 67 FR 31235, 31240 (May 9, 2002) (PRC Cold-Rolled). Furthermore, petitioner notes, the RBI data is not contemporaneous with the POI in this investigation, because the RBI data to which respondents refer appears to be from 1997, according to petitioner. Respondents argue that the RBI data is preferable to the ratios used in the Preliminary Determination because it reflects the experience of the Indian chemical industry as a whole, rather than the experience of one or two producers of chemicals that have no similarity to saccharin.

Petitioner argues that respondents have not presented any solid evidence to refute the reasonableness of the Department's preliminary surrogate ratio methodology, and have failed to demonstrate that their suggested alternate methodologies are preferable or more reasonable; therefore, petitioner argues, there should be no change to the Department's preliminary methodology for the final.

Department's Position: For purposes of this final determination, we find that the RBI data is the most appropriate source of financial ratios. While the Department does prefer to use more narrowly tailored data, in this investigation, neither the Department nor participating parties were able to find financial statements for a saccharin producer in India. See Memorandum from Sebastian Wright, Case Analyst, through Mark Hoadley, Senior Analyst, to the File: Antidumping Duty Investigation of Saccharin from the People's Republic of China (PRC) (A-570-878): Efforts to Locate Surrogate Country Saccharin Producer (May 12, 2003).

None of the several financial statements submitted by respondents, Kaifeng, Proctor & Gamble, and petitioner, provided a satisfactory set of financial data. While we agree with all parties that the Department has in the past looked at both the comparability of merchandise and production process in choosing a surrogate company, the information on the record was not sufficient to identify producers whose financial statements are appropriate. Respondents did not provide us with information about the merchandise they urge the Department to use beyond the most superficial qualities of the product such as taste and ingestibility. Nor did the petitioner offer a sufficient argument for using the products it advocates.

Thus, we have not used the financial statements for producers of aspirin, salicylic acid, persulfates, hydrogen peroxide, sugar, glucose, starch, or dyes. Rather, we have used the RBI data for a broad range of chemical producers.

This situation is different than the situation in PRC Cold-Rolled where the Department rejected the use of RBI data. In that case, there were financial statements on the record for two Indian cold-rolled steel producers. In other words, there were statements on the record for two producers of the same merchandise.⁴ Regarding petitioner's citation to Glycine, obviously the Department would prefer to use data as close as possible to the subject merchandise, but, as just explained, in this case we believe the financial statements offered are not preferable to the RBI data.

As respondents have noted, we have recently used RBI data in two other chemical cases: Sebacic Acid and Sulfanilic Acid. We also recently used this data in Notice of Final Results of Antidumping Duty Administrative Review: Potassium Permanganate from the People's Republic of China, 66 FR 46775, Issues and Decision Memorandum, at Comment 20 (September 7, 2001).

Thus, we determine that the RBI data is the only suitable data on the record. Any other choice would require the Department to choose among several data sources some of which may not be appropriate for use in this case. Therefore, we have placed the most recent published RBI data for chemical companies on the record of this investigation, and used it to calculate financial ratios for the final determination. See Final Factor Values Memo.

Comment 10: Suzhou USA's Indirect Selling Expenses

Petitioner argues that Suzhou improperly excluded 100 percent of its bad debt expenses from reported indirect selling expenses. However, Suzhou maintains that the bad debt expenses were for sales made prior to the POI and for sales unrelated to saccharin; therefore, these expenses should be excluded from its selling expense calculation, according to Suzhou. Petitioner replies that Suzhou's claim is unfounded, as the Department found at verification that the customer in question did purchase saccharin from Suzhou. Furthermore, petitioner maintains that the Department has always treated bad debt expenses, whether they relate to subject or non-subject merchandise, as indirect selling expenses. See

⁴Petitioner also cites Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964, 61969-70 (November 20, 1997) for the same point. However, in that case, we also had financial statements on the record for two Indian producers of hot-rolled coil, and other steel products, which were produced by all respondents in the production of plate. We also stated in that case a preference for "actual producers of subject merchandise," not simply "actual producers."

Notice of Final Results and Rescission in Part of Antidumping Duty Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina, 68 FR 13262, Issues and Decision Memorandum, at Comment 3 (March 19, 2003).

Petitioner notes that the Department also discovered at verification that Suzhou excluded an amount for professional fees (for accounting services). Suzhou claims that these fees related to last year's bookkeeping and thus are not related to POI sales. However, petitioner argues, Suzhou incurs such professional fees every year; therefore, it is appropriate to include such expenses. As such, petitioner maintains, for the final determination, the Department should include these expenses in indirect selling expenses.

Department's Position: At verification, we determined that a portion of bad debt expenses were related to sales of subject merchandise. Moreover, expenses booked inside the POI, but incurred before the POI, are included in selling expenses if they are recurring expenses, as opposed to an extraordinary charge. In this case, Suzhou did not disclose the bad debt expenses. We discovered them at verification. Thus, we were not able to ask questions regarding the nature of this debt before hand, and Suzhou did not offer any arguments in its case and rebuttal briefs that these expenses are extraordinary. Thus, we added bad debt expenses to our indirect selling expense calculation by dividing the total amount of bad debt attributable to the POI by sales of both subject and non-subject merchandise.⁵

Regarding fees for professional services, as these are also a type of recurring expense, we included them in indirect selling expenses, regardless of whether they occurred inside or outside the POI.

Comment 11: Calculation of Suzhou USA's CEP Profit

Petitioner argues that the methodology used by the Department in the Preliminary Determination to calculate constructed export price (CEP) profit is consistent with its stated practice, as described in the Department's Antidumping Manual. More specifically, petitioner argues, as noted in the Antidumping Manual, in order to apportion profit according to a ratio based on U.S. expenses over total expenses, as Suzhou argued the Department do earlier in this investigation, "you must know the total revenues, costs, selling expenses and packing expenses for both the exporting and U.S. markets." However, because this investigation involves a NME country, the respondents argue that total revenues, costs, selling expenses, and packing expenses in the exporting market are not available, so the Department must use an alternative methodology to derive CEP profit. The alternative methodology, that petitioner argues the Department correctly applied in the Preliminary Determination, calculates CEP profit by

⁵Suzhou booked bad debt into its financial statements at the end of the fiscal year (outside the POI). However, this choice was made solely as a matter of completing the books for the year. We will divide these expenses by two and attribute half to the POI (the first half of the calendar year).

multiplying the per-unit CEP deduction by the surrogate profit rate used in the NV calculations. It cites Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19038-9 (April 30, 1996). Therefore, petitioner argues that no change should be made to Suzhou's CEP profit calculation for the final determination.

Although Suzhou argued in a ministerial error allegation, submitted to the Department on January 6, 2003, that the Department had incorrectly calculated CEP profit in the Preliminary Determination, it did not comment on this allegation further in its case or rebuttal briefs.

Department's Position: As we stated earlier in this investigation, we did not mistakenly allocate all profit to the U.S. sales. See Memorandum from Mark Hoadley to Barbara Tillman, Antidumping Duty Investigation of Saccharin from the People's Republic of China: Ministerial Error Allegations (January 31, 2003), stating that we would not change our CEP profit calculation from that used in the Preliminary Determination. We note that we agree with petitioner that in order to allocate profit using a ratio of U.S. expenses to total expenses, we would have to collect data that is not usually collected or considered appropriate for antidumping calculations for a NME producer, specifically information regarding costs in China. Therefore, we will not make any changes to our preliminary profit calculation.

Comment 12: Date of Sale

Shanghai Fortune argues that its date of sale should be purchase order/contract date because that is the date when all the essential terms of its sales (price and quantity) are definite and firm. In the Preliminary Determination, the Department used invoice date as the date of sale for Shanghai Fortune. Shanghai Fortune claims that at verification the Department verified that the purchase order/contract date is the date by which the quantity and price are fixed sales.

Petitioner argues that Shanghai Fortune's date of sale should remain invoice date. Petitioner points out that respondents have based their date of sale on both purchase order date and "order confirmation" date, two completely different documents. Petitioner also argues that Shanghai Fortune's assertion that no essential terms change after the purchase order/ "confirmation" date is not enough to nullify the Department's presumptive policy establishing invoice date as the uniform date of sale. Moreover, claims petitioner, contrary to Shanghai Fortune's assertion, at verification the Department noted changes to the amount of saccharin shipped (an essential sales term) after the original purchase order/confirmation date.

Department's Position: The Department has determined that purchase order date is the most appropriate date of sale for Shanghai Fortune. According to section 351.401(i) of our regulations, the Department selects as the date of sale the date that best represents when the material terms of the sale are established. While petitioner is correct that it is the Department's preference to base the date of sale on the date of invoice, if the facts of a case indicate a different date better reflects when the

material terms of sale were set, the Department will select that alternative date as the date of sale. See 19 CFR § 351.401(i) and Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27348, 27349 (May 19, 1997). Material terms include price and quantity. See id. at 27348, and Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From the Republic of Korea, 64 FR 14865, 14869 (March 29, 1999).

In the Preliminary Determination, the Department used invoice date as the date of sale for Shanghai Fortune; however, at verification the Department found that there were no material changes to the essential terms of sale (quantity and price) between the purchase order date and the invoice date. See Shanghai Fortune Sales Verification Report, at 5 (“{The team} found that there were no changes in material terms, i.e., price or quantity, between order and invoice date in any of these sales”). As discussed in our verification report, the Department did discover at verification that one of Shanghai Fortune’s sales incurred a very small quantity change, but only as a result of the clerical conversion between pounds and kilograms, not in the actual measured quantity sold. See Shanghai Fortune Sales Verification Report, at 5-6. The Department does not consider this to be an actual change, as it resulted only from a conversion from pounds to kilograms, representing only an insignificant difference in quantity, and did not result in a material change in the actual quantity of the shipment. Rather, it was a change in the unit in which that quantity was measured. See Shanghai Fortune Sales Verification Report, at 11-12.

Finally, the Department disagrees with petitioner's argument that a purchase order and a contract are two different documents in the context of Shanghai Fortune's sales. Rather, at verification, it was clear that Shanghai Fortune used purchase orders or short-term contracts, depending on customer preference, to set the terms of sale and considered these two documents as serving essentially the same purpose in its sales process. See Shanghai Fortune Sales Verification Report, at 5-6. Therefore, for the final determination, the Department has determined that purchase order/contract date is the most appropriate date of sale for Shanghai Fortune.

Comment 13: Calculation Issue: Freight

Petitioner argues the Department erred in its Preliminary Determination by using the wrong variable in the calculation of domestic inland freight (DINLFTPU) for Suzhou. According to petitioner, the Department inadvertently used DINLFTWU, representing freight from factory to warehouse in China, which was properly reported as “0” by Suzhou because it does not have a distribution warehouse in China. Instead, the petitioner argues, the Department should have used DINLFTPU, because Suzhou reported freight from its factory to the port of exportation (Shanghai).

Suzhou did not comment on this issue.

Department’s Position: We inadvertently used the wrong freight variable in our preliminary calculations. We used the factory-to-port variable in our final determination.

Comment 14: Calculation Issue: Conversion Error for Ice, Water, and Steam

Petitioner argues that the Department erred in the valuation of ice, water, and steam for Suzhou in its Preliminary Determination as a result of conversion errors.

In the preliminary calculations, the Department used factors for water, steam, and ice reported by Suzhou in metric tons. However, petitioner points out, the Department's Prelim Factor Values Memo states that the value for water, steam, and ice is an amount per liter. See Antidumping Duty Investigation of Saccharin from the People's Republic of China: Factor Valuation Memorandum from Mark Hoadley, Senior Analyst, Javier Barrientos, Analyst, and Brett Royce, Analyst, through Sally Gannon, Program Manager, Office VII, to the File (December 18, 2002) (Prelim Factor Values Memo). As a result of the Department's error, the per-liter surrogate value was improperly applied to consumption figures reported in metric tons.

Suzhou did not comment on this matter.

Department's Position: We agree with petitioner that the surrogate value for water and steam must be converted to a per metric ton basis before being applied to the factors for these three inputs. We did so for the final determination. However, all indications in Suzhou's response are that the factor for ice is in kilograms. Because one kilogram of water equals one liter of water (see Final Factor Values Memo), no conversion for ice is necessary.

Comment 15: Calculation Issue: Conversion Error for Labor

Petitioner argues the Department erred in applying the rupee-to-U.S. dollar exchange rate to Shanghai Fortune's total labor expenses, causing Shanghai Fortune's labor expenses to be significantly understated. In the preliminary calculations, the Department calculated Shanghai Fortune's labor costs by multiplying the reported usage rates for direct and indirect labor by a surrogate value of \$0.84 per hour. Then, according to petitioner, we incorporated that amount into the Department's NV calculations. The Department then applied the rupee-to-U.S. dollar exchange rate to the entire NV amount, even though the labor expense was still in dollars.

Shanghai Fortune did not comment on this issue.

Department's Position: We agree with petitioner; therefore, for the final determination, we converted labor expenses to rupees before incorporating the amount into NV.

Comment 16: Calculation Issue: Discrepancy Between Prelim Factor Values Memo and Calculations

Petitioner claims that, in the preliminary calculations, the Department valued pallets for Suzhou at Rs. 24.43, when the Prelim Factor Values Memo states that the value for pallets was determined to be Rs. 488.71.

Suzhou did not comment on this matter.

Department's Position: This matter does not need to be addressed, as we have recalculated the value for pallets using new, contemporaneous MSFTI data (we have recalculated all surrogate values based on this more contemporaneous MSFTI data; see Comment 1, above).

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final weighted-average dumping margin and the final determination of this investigation in the Federal Register.

Agree _____ Disagree

Jeffrey May
Acting Assistant Secretary
for Import Administration

Date

