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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2012-2013 Antidumping Duty Administrative Review of 1-
Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's
Republic of China

SUMMARY:

We analyzed the case brief submitted by Shandong Taihe Chemicals Co., Ltd. (“STCC”) in the antidumping duty administrative review of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (“HEDP”) from the People’s Republic of China (“PRC”). No other interested parties commented on the *Preliminary Results*,¹ and the Department of Commerce (“the Department”) did not receive any rebuttal briefs. As a result of our analysis, we made changes to the margin calculation for STCC.

We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is a discussion of the issues, followed by tables of shortened citations and litigation cases.

Background:

On March 25, 2014, the Department published its *Preliminary Results*. On April 11, 2014, the Department extended the deadline to submit case briefs and rebuttal briefs for all interested parties. On May 5, 2014, the Department received a case brief from STCC. No other parties commented on the *Preliminary Results*. The Department did not receive any rebuttal briefs. On April 24, 2014, the Department received a request for a hearing from STCC, which it withdrew on June 12, 2014. On July 11, 2014, we extended the deadline for issuing the final results of this review by 30 days, until August 22, 2014. On August 13, 2014, we extended the deadline for issuing the final results of this review an additional 21 days, until September 12, 2014.

¹ See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 16280 (March 25, 2014) (“*Preliminary Results*”).

Scope of the Order:

The merchandise subject to the order includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid,² also referred to as hydroxyethylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809-21-4. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of the order is dispositive.³

DISCUSSION OF THE ISSUES

Comment 1: Surrogate Value for HEDP

STCC’s Comments:

- The Department should adjust the cost allocation percentages of HEDP and the co-product, acetyl chloride, in the net realizable value calculation because the current surrogate value for HEDP results in an over-allocation of manufacturing costs to HEDP and an under-allocation to the co-product.
- Instead of relying on Global Trade Atlas (“GTA”) data for Harmonized Tariff Schedule (“HTS”) Code 2931.00.90 (Other Organic – Inorganic Compounds NES), the Department should value HEDP using the Rencal Chemicals (India) Limited (“Rencal Chemicals”) financial statement for FY2012, which the Department used to value another input, Phosphorus Trichloride.
- HTS Code 2931.00.90 is a basket category of many different chemicals and is inaccurate, but the Rencal Chemicals financial statement contains a more accurate figure with which to value HEDP.
- In the current calculation, the surrogate value for HTS Code 2931.00.90 is a few times greater than the calculated normal value for HEDP.

Department’s Position: The Department agrees with STCC in part. For these final results, the Department valued HEDP using the price listed in the Rencal financial statement for fiscal year 2010 – 2011.⁴

The Department reviews surrogate value information on a case-by-case basis, and, in accordance with section 773(c)(1) of the Tariff Act of 1930, as amended (the “Act”), selects the best available information from the surrogate country to value the factors of production.⁵ When selecting surrogate values for use in a non-market economy proceeding, the Department’s

² C₂H₈O₇P₂ or C(CH₃)(OH)(PO₃H₂)₂

³ See, *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India and the People’s Republic of China: Antidumping Duty Orders*, 74 FR 19197 (April 28, 2009) (“Order”).

⁴ See STCC’s submission regarding “1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China: Response to Surrogate Value Supplemental Questionnaire”, dated January 6, 2014, at Exhibit 1.

⁵ See *Lightweight Thermal Paper From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 9.

preference is to use, where possible, a range of publicly available, tax-exclusive, and product-specific prices for the period of review (“POR”), with each of these factors applied non-hierarchically to the case-specific facts and with preference for data from a single surrogate country.⁶

The Rencal 2010-2011 financial statement is publicly available and product-specific. The Rencal financial statement does not state whether it is tax exclusive. Additionally, the Rencal 2010-2011 financial statement is not contemporaneous. The Department also notes that STCC did not provide further information on what other different chemicals could possibly be contained in the HTS 2931.00.90 category. However, the Department has determined that because the Rencal financial statement is more product-specific than the HTS 2931.00.90 and is publicly available, the sale price for HEDP listed in the 2010-2011 Rencal financial statement is the best available information to value HEDP in this instance.

Further, the Department disagrees with STCC that HEDP should be valued using the 2011-2012 sale price listed in the Rencal financial statement. As demonstrated in that financial statement, Rencal suffered a loss during the fiscal year of 2011-2012. Furthermore, the Department notes that the same financial statement contains the data for Rencal for fiscal year 2010-2011, when Rencal recorded a profit. As it is the Department’s preference to use a financial statement with a profit whenever possible,⁷ for the final results, the Department has determined to value HEDP using the price listed for fiscal year 2010-2011 inflated to be contemporary with the POR.⁸

Comment 2: Surrogate Value for Phosphorus Trichloride

STCC’s Comments:

- The Department should use the value from the Rencal Chemicals FY2005-2006 financial statement, because the value used by the Department drawn from the Rencal Chemicals FY2011-2012 financial statement is too high in comparison to the value in the Rencal Chemicals FY2005-2006 financial statement.
- If the Department decides to continue to use the Rencal Chemicals FY 2011-2012 financial statement, then it should deduct the “Excise Duty Modvat Credit” and the “Discount on Purchase” from the surrogate value for phosphorus trichloride.
- The “Excise Duty Modvat Credit” is an input tax and can be credited.
- Although it is impossible to determine exactly which materials the discount applies to, it is small and therefore should be properly allocated and deducted.

⁶ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decision Memorandum at Comment 6.

⁷ See, e.g., *Aluminum Extrusions from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014) and accompanying Issues and Decision Memorandum at Comment 1; see also, e.g., *Magnesium Metal From the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 65450 (October 25, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

⁸ See Memorandum to the File from Jamie Blair-Walker through Robert Bolling regarding “1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China: Final Surrogate Value Memorandum” (“Final SV Memorandum”) issued concurrently with this memorandum.

Department's Position: For the final results, the Department used the Rencal financial statement for fiscal year 2010-2011 to value phosphorus trichloride.

As discussed above, it is the Department's practice to select surrogate values that are contemporaneous with the POR, product-specific, and tax-exclusive. In the *Preliminary Results*, we valued phosphorus trichloride using the Rencal Chemicals financial statement for fiscal year 2010-2011. Evidence on the record demonstrates that the GTA import data is not reflective of the trade for this chemical because it is controlled under the International Chemical Weapons Convention.⁹ Furthermore, data are unavailable for the POR.¹⁰ Although the 2010-2011 Rencal Chemicals financial statement is not contemporaneous, it is more contemporaneous than the 2005-2006 financial statement. Therefore, we find that the 2010-2011 financial statement is more reflective of market sales for the trade of phosphorus trichloride during the POR than an inflated value from six years prior to the POR, and, indeed, prior to the implementation of the *Order*. Furthermore, although the 2011-2012 Rencal Chemicals financial statement is the most contemporaneous of the financial statements on the record, as noted above, it shows that the company suffered a loss for that fiscal year. As it is the Department's practice to select a surrogate value from a financial statement that is both as contemporaneous as possible and demonstrates a profit, the Department has determined that the Rencal Chemicals financial data for fiscal year 2010-2011 is the best available data for valuing phosphorus trichloride.¹¹

Regarding STCC's comments regarding the "Excise Duty Modvat Credit" and "Discount on Purchase" that are listed in the Rencal Chemicals financial statements, the Department finds that none of the notes for any financial statement on the record offer an explanation or definition of these line items, nor is it defined anywhere else on the record. There is also no indication regarding its impact on the specific value of phosphorus trichloride. As STCC admits, it is impossible to determine what percentage, if any, of these credits is allocated specifically to phosphorus trichloride.¹² The same credits could just as easily be allocated to the other chemicals listed in the financial statement.

Furthermore, for the final determination in the investigation of this proceeding, we used the inflated data from the Rencal Chemicals financial statement for fiscal year 2005-2006 to value phosphorus trichloride and did not subtract either of these credits, although they were also listed in that financial statement.¹³ Thus, because the "Excise Duty Modvat Credit" and "Discount on Purchase" are neither defined in the financial statement nor explicitly allocated to phosphorus trichloride, for the final results, the Department continues to determine that these line items cannot be properly allocated or deducted from the surrogate value for phosphorus trichloride, and we have not made the requested adjustments.

⁹ See *Preliminary Results* and accompanying Preliminary Decision Memorandum at 13.

¹⁰ *Id.*

¹¹ See Final SV Memorandum.

¹² See STCC's submission regarding "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Case Brief", dated May 5, 2014, at 3.

¹³ See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 10545 (March 11, 2009) and accompanying Issues and Decision Memorandum at Comment 2. See also STCC's submission regarding "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China:", dated January 16, 2014.

Comment 3: Surrogate Value for Plastic Bulk Containers

STCC's Comments:

- The Department's value for intermediate bulk containers is unreasonably high, as it is 15.1 percent of the cost of manufacture, and is not supported by the record.

Department's Position: We agree with STCC that the surrogate value selected for the *Preliminary Results*, based on Indian GTA data for HTS 3923.2100 ("Sacks & Bags of Polyethylene (Incl Cones)"), is not the best available information for valuing this input. STCC's packing containers are described as "a large 1000 liter plastic drum with metal banding."¹⁴ The record contains an additional source submitted by STCC to value its packing containers: HTS 3923.90.90 "Plastic and Articles Thereof; Other Articles for Conveyance/Packing of Goods Nes".¹⁵ For the final results, the Department has determined that HTS 3923.90.90 is a more suitable category with which to value STCC's packing containers because this HTS number is more specific to the input used by STCC.¹⁶

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

AGREE DISAGREE



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

12 SEPTEMBER 2014
Date

¹⁴ See STCC's submission regarding "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Antidumping Duty Administrative Review: Surrogate Value Comments", dated August 9, 2013, at 5.

¹⁵ *Id.*

¹⁶ See Final SV Memorandum.