

December 17, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for June 2008 through
November 2008 Semi-Annual New Shipper Review of Chlorinated
Isocyanurates from the People's Republic of China

SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the antidumping duty new shipper review of chlorinated isocyanurates from the People's Republic of China. The period of review is June 1, 2008, through November 30, 2008. As a result of our analysis, we have made changes in the margin calculation. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments and rebuttal comments by the parties:

- Comment 1: Surrogate Financial Statements
- Comment 2: Surrogate Value for Steam Coal
- Comment 3: Affiliation and Collapsing of Kangtai and Ouya

LIST OF ABBREVIATIONS AND ACRONYMS

The Act	Tariff Act of 1930, as amended
Aditya	Aditya Birla Chemicals Limited
CIL	Coal India Limited
CIT	US Court of International Trade
CYA	cyanuric acid
The Department	Department of Commerce
IBM	Indian Bureau of Mines
ITC	International Trade Commission
Kangtai	Juancheng Kangtai Chemical Co., Ltd.
Kanoria	Kanoria Chemicals and Industries Limited
NME	Non-market Economy

Ouya	Juancheng Ouya Chemical Co., Ltd.
Petitioners	Clearon Corporation and Occidental Chemical Corporation
POR	Period of Review
PRC	People's Republic of China
SBP	Stable Bleaching Powder
SDIC	dichloroisocyanurate
TCCA	trichloroisocyanuric acid
SG&A	Selling, general, and administrative costs
UHV	Useful Heat Value
WTA	World Trade Atlas® Online (Indian import statistics)

BACKGROUND

On July 27, 2009, the Department published its preliminary results of this new shipper review.¹ On August 17, 2009, Petitioners provided additional surrogate value information on the appropriate surrogate values to use as a means of valuing the factors of production. On October 8, 2009, the Department received case briefs from respondent Kangtai, and from Petitioners. On October 15, 2009, Kangtai and Petitioners filed rebuttal briefs.

DISCUSSION OF THE ISSUES:

Comment 1: Surrogate Financial Statements

Petitioners argue that in calculating Kangtai's factory overhead, SG&A, and profit, the Department should use Aditya's financial statements for the fiscal year ending March 31, 2009. Petitioners contend that because Aditya is a producer of SBP, which the Department has determined to be comparable to chlorinated isocyanurates, Aditya is a comparable surrogate company. Further, Petitioners contend that Aditya's financial statements for the fiscal year ending March 31, 2009, are the best available information for financial ratios because they provide the only source of data that is contemporaneous with the POR. Finally, Petitioners suggest that no other financial data sources on the record reflect Kangtai's operations during the POR.

Conversely, Kangtai argues that the Department should use Kanoria's financial statements for the fiscal year ending March 31, 2008, to calculate Kangtai's surrogate financial ratios. Kangtai contends that Aditya's experience and operations are not comparable to Kangtai's experience and operations. Primarily, Kangtai contends that Aditya's financial statements demonstrate that SBP was only manufactured in *de minimis* amounts and in a start-up context by Aditya during the POR. Thus, according to Kangtai, while Kanoria manufactures substantial amounts of comparable products, Aditya does not. Finally, Kangtai suggests that Aditya's financial statements illustrate that Aditya received a state subsidy during the 2008-2009 fiscal year. Consequently, Kangtai contends that because Aditya's and Kanoria's financial statements are the only financial statements on the record, Kanoria's financial statements alone provide the "best available information" for calculating surrogate financial ratios.

¹ See *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of June 2008 through November 2008 Semi-Annual New Shipper Review*, 74 FR 37007 (July 27, 2009) ("Preliminary Results").

Department's Position:

For the final results, the Department is calculating surrogate financial ratios using the financial statements of Aditya for the fiscal year ending March 31, 2009. Generally, when calculating “manufacturing overhead, general expenses, and profit” for an NME respondent, the Department will use surrogate financial ratios calculated from “non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.”² When choosing appropriate surrogate companies’ financial statements, the Department considers “the availability of contemporaneous financial statements, comparability of the respondent’s experience, and publicly available information.”³ In other words, potential surrogate companies’ financial statements will be analyzed to determine the “specificity, contemporaneity, and quality of the data” contained in those statements.⁴ Finally, when choosing appropriate surrogate companies’ financial statements to calculate financial ratios, the Court has recognized the Department’s discretion.⁵ With that in mind, we considered the appropriateness of the surrogate financial statements on the record of this review.

In the instant case, two potential surrogate companies’ financial statements are on the record for calculating financial ratios: Aditya’s financial statement for the fiscal year ending March 31, 2009, and Kanoria’s financial statement for the fiscal year ending March 31, 2008. Initially, based on the Department’s consistent decisions in prior segments of this proceeding,⁶ SBP is comparable to chlorinated isocyanurates, and neither Petitioners nor Kangtai contests this comparability. Thus, regarding product-line comparability, we find that either Aditya’s or Kanoria’s financial statement is suitable as a surrogate because both Aditya and Kanoria produce SBP and a similar mix of other products.⁷

However, Kanoria’s financial statements represent the 2007-2008 fiscal year ending March 31, 2008. Thus, Kanoria’s reporting ends two months before the POR begins. For this reason, we agree with Petitioners’ assertion that Kanoria’s financial statements are not contemporaneous

² 19 C.F.R. 351.408(c)(4).

³ See *Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

⁴ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079 (September 8, 2006), Issues and Decision Memorandum at Comment 1.

⁵ See, e.g., *FMC Corporation v. United States*, 27 CIT 240, 244 (CIT February 11, 2003) (“*FMC*”) (where the CIT held that the Department can exercise discretion in choosing between reasonable alternatives); affirmed *FMC Corporation v. United States*, 87 Fed. Appx. 753 (Fed. Cir. February 9, 2004).

⁶ See *Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decisions Memorandum at Comment 2.

⁷ See Memorandum regarding: New Shipper Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People’s Republic of China: 2007-2008 Financial Statements of Kanoria Chemicals & Industries Limited, dated September 1, 2009, at 61 (“Kanoria’s 2007-2008 Financial Statements”); see also *Petitioners’ Submission of Information Regarding Surrogate Values for Factors of Production*, dated August 17, 2009, Exhibit 2 at 4, 46 (“Petitioners’ Surrogate Value Submission”).

with the POR, which is June 1, 2008, through November 30, 2008. Normally, the Department excludes non-contemporaneous financial statements where suitable contemporaneous financial data are available.⁸

Moreover, we disagree with Kangtai's argument that Aditya's statements are not suitable because Aditya's experience and production of SBP are not comparable to Kangtai's experience and production of chlorinated isocyanurates. Instead, as we discuss below, we find that Aditya's financial statements are suitable for consideration as a producer of comparable merchandise.

First, Kangtai's comparison of Aditya's and Kanoria's levels of SBP production, by stating that Kanoria produces four times as much SBP as Aditya, is irrelevant, except to the extent the different levels of SBP production affect the two companies' similarity of operations to that of Kangtai. Consequently, in choosing surrogate financial statements, the Department independently considered Kangtai's similarity of operations to both Aditya and Kanoria. The mere fact that Aditya produces less overall SBP than Kanoria does not automatically suggest that Aditya's or Kanoria's financial statements are more appropriate. Additionally, in accordance with the Department's decision in *Certain Steel Nails from the PRC*, that SBP only accounts for a small percentage of Aditya's overall operations, alone does not mean Aditya's financial statements are not representative of a producer of SBP.⁹ Therefore, Aditya's low levels of SBP production do not necessarily indicate Aditya's financial statements are unsuitable for calculating surrogate financial ratios.

Kanoria's financial statements, which are the alternative choice, also demonstrate that SBP only accounts for a small percentage of Kanoria's overall operations: regarding capacity, production, and sales quantity and value, SBP accounts for less than 10 percent of either Aditya's or Kanoria's overall operations.¹⁰ Thus, because SBP accounts for only a small percentage of both Aditya's and Kanoria's overall production of similar merchandise, both Aditya and Kanoria are sufficiently similar in operations to Kangtai to serve as surrogate producers for purposes of calculating financial ratios.¹¹

Second, contrary to Kangtai's argument, Aditya's production and sales of SBP, as reported in Aditya's financial statements, do not include sales or costs associated with Aditya's startup trial period for SBP. In fact, Aditya's financial statements clearly report that production and sales of SBP exclude "trial run production" and "sale of product during trial period," respectively.¹² We also disagree with Kangtai's suggestion that solely because the Department has chosen Kanoria

⁸ *Certain Circular Welded Carbon-Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 14514 (March 31, 2009), Issues and Decisions Memorandum at Comment 13 ("Steel Line Pipe/PRC").

⁹ See *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008), and accompanying Issues and Decision Memorandum at Comment 11 ("We disagree with Petitioners' contention that, because Nasco's and Bandishar's respective production of nails accounts for relatively small percentages of their overall production, their financial ratios are not representative of a producer of nails.").

¹⁰ See *Kanoria's 2007-2008 Financial Statements* at 61; see also Petitioners' Surrogate Value Submission, Exhibit 2 at 4, 46.

¹¹ See *Kanoria's 2007-2008 Financial Statements* at 61; see also Petitioners' Surrogate Value Submission, Exhibit 2 at 4, 46.

¹² See Petitioners' Surrogate Value Submission, Exhibit 2 at 46-47.

as a surrogate for calculating financial ratios in prior segments of this proceeding, we should again rely on Kanoria for this review.

Third, while the Department rejects potential financial statements if the surrogate has zero or negative profit reported,¹³ it does not reject statements simply because high profits are reported.¹⁴ Aditya's high profit margin alone is not enough to reject Aditya's financial statements. Nothing in Aditya's financial statements indicate that this high profit is a result of certain unusual or extraordinary activity. In fact, Aditya's high profit margin is consistent with its profit for the fiscal year ending March 31, 2008.¹⁵ Additionally, "the Department does not consider the degree of profitability in determining whether a company's financial statements should be considered for surrogate financial ratios."¹⁶

Finally, we disagree with Kangtai's assertion that Aditya's financial statements are not suitable because Aditya received a government subsidy during the 2008-2009 reporting year. We find that there is no evidence on the record to exclude Aditya's financial statements on this basis. Kangtai suggests we exclude Aditya's financial statements because the word "subsidy" appears in Aditya's financial statements, but the Department has no additional information in this regard. "Absent further specific information, such as evidence that this statement refers to a program previously found by the Department to provide a countervailable subsidy,"¹⁷ we cannot conclude that Aditya's financial statements are unsuitable.

In this case, Aditya's financial statements best meet the relevant criteria, as they are publicly available, contemporaneous with the POR, and provide detailed and specific data from which to derive surrogate financial ratios. Even though Kanoria is also a producer of comparable merchandise, Kanoria's financial statements do not represent a period contemporaneous with the POR. The Department excludes non-contemporaneous financial statements where suitable contemporaneous financial data are available.¹⁸ Furthermore, the Department does not average surrogate financial statements covering different fiscal years when one statement is contemporaneous with the POR and the other is not.¹⁹ Thus, for the above stated reasons, the Department is using Aditya's 2008-2009 financial statements, which represent the best available information, to calculate surrogate financial ratios for the final results.

Comment 2: Surrogate Value for Steam Coal

Petitioners argue that the Department should value steam coal using Indian import statistics from the WTA rather than domestic Indian price data. Petitioners contend that the WTA data meet

¹³ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and First New Shipper Review*, 72 FR 52052 (September 5, 2007), and accompanying Issues and Decision Memorandum at Comment 2B.

¹⁴ See *Steel Line Pipe/PRC* (March 31, 2009) at Comment 13.

¹⁵ See Preliminary Surrogate Value Memorandum, dated July 20, 2009, at Attachment III.A.

¹⁶ *Steel Line Pipe/PRC* (March 31, 2009) at Comment 13.

¹⁷ *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the Third Antidumping Administrative Review*, 74 FR 47191 (September 15, 2009), and accompanying Issues and Decision Memorandum at Comment 8.

¹⁸ *Steel Line Pipe/PRC* (March 31, 2009) at Comment 13.

¹⁹ See, e.g., *id.* (stating that because certain potential surrogate financial statements are contemporaneous with the POI, other potential non-contemporaneous statements are not being averaged with the contemporaneous statements),

every required criterion established by the Department and, further, that because Kangtai supplied conflicting information regarding the useful heat value of steam coal used by Kangtai, the potential advantage of using domestic Indian price data, in terms of specificity, is negated.

Alternatively, Petitioners argue that if the Department does use domestic coal pricing data, the surrogate value for steam coal should be based on domestic prices reported in CIL's December 2007 price circular, which is contemporaneous with the POR. Petitioners contend that the IBM Yearbook data used in the Department's preliminary results were based on a June 15, 2004, price notification issued by CIL. As a result, if the Department relies on domestic Indian prices, the Department should rely on the more contemporaneous CIL data. Finally, Petitioners contend that in relying on CIL's December 2007 price data, the Department should use an average of Grade A and Grade B steam coal prices as reported in the circular, as opposed to an average of Grade B and Grade C steam coal prices, primarily because Kangtai submitted conflicting information about the UHV of Kangtai's steam coal inputs.

Conversely, Kangtai argues that in the preliminary results the Department correctly used IBM Yearbook data to value the steam coal used by Kangtai. Kangtai reiterates that the steam coal it used during the POR had a UHV corresponding to Grade B and Grade C steam coal. Therefore, according to Kangtai, the Department's preliminary results correctly averaged the IBM Yearbook's Grade B and Grade C steam coal prices to value Kangtai's steam coal inputs.

Department's Position:

For the final results, the Department is calculating the surrogate value for steam coal based on CIL's December 2007 Price Circular. In doing so, the Department is averaging Grade B and Grade C steam coal prices listed in the Circular. Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors." It is the Department's practice to choose a surrogate value that represents period-wide price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the period of review, and publicly available non-aberrational data from a single surrogate market economy country.²⁰ If a surrogate value meets these criteria, the Department finds that it represents a reliable and appropriate price for valuing an individual input. In this case, 2007 CIL price data are publicly available, they represent deregulated country-wide Indian coal price data, they are specific to Kangtai's reported coal inputs, and they are contemporaneous with the POR.

Foremost, we find that domestic Indian steam coal price data are appropriate for valuing Kangtai's steam coal inputs because they are specific to Kangtai's reported coal inputs. Generally, the Department uses domestic Indian price data when respondents provide accurate and reliable information concerning the UHV of the steam coal they consumed.²¹ In this case, Kangtai has provided the Department with information on the UHV of the steam coal it

²⁰ See *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum at Comment 2.

²¹ See *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 13.

consumed.²² Despite Petitioner's argument that Kangtai submitted conflicting and untimely UHV information, Kangtai did provide specific UHV ranges for its steam coal inputs, as further discussed below. This is true for the steam coal information provided by Kangtai in both its initial questionnaire response and its corrected steam coal submission.²³ Thus, Kangtai's steam coal inputs can be adequately categorized using domestic Indian price data, which assign prices for steam coal based on UHV. Alternatively, WTA steam coal price data, which Petitioners suggest we use, are listed under the heading "steam coal," without further specificity. Therefore, because domestic Indian coal data provide the most product-specific prices, we find this pricing method offers the best available information for valuing Kangtai's steam coal inputs.

We agree with Petitioners' suggestion that CIL's 2007 Price Circular offers the best available information for valuing Kangtai's steam coal. The 2007 Circular provides Indian coal price data effective "from midnight of 12th December, 2007."²⁴ It also provides that the price data listed in the 2007 Circular will replace CIL's price notification *CIL: S&M:GM(F): Pricing: 289 dated 15.06.04*, which offered effective coal prices from 15 June 2004.²⁵ Thus, CIL's price notification *CIL: S&M:GM(F): Pricing: 289 dated 15.06.04* was effective until 12 December 2007, on which date, it was then superseded by CIL's 2007 Circular from December 13, 2007. Consequently, the IBM Yearbook steam coal prices (which Kangtai argues the Department use for calculating surrogate coal values) are outdated because IBM relies on CIL's price notification *CIL: S&M:GM(F): Pricing: 289 dated 15.06.04*.²⁶ As a result, CIL's 2007 Circular provides surrogate Indian steam coal prices that are effective during the POR and, thus, contemporaneous.

Additionally, any concerns about the 2007 Circular's incompleteness were adequately addressed when the Department placed the 2007 Circular's Annexure I through Annexure X on the record of this review.²⁷ Particularly, Annexure X provides a detailed UHV breakdown regarding steam coal classifications. In relying on CIL's 2007 Circular, the Department can assign grades to Kangtai's steam coal based on the UHV of steam coal used by Kangtai. We can effectively determine which grades and corresponding prices should be used for calculating surrogate steam coal values. Therefore, we find that the CIL 2007 Circular provides the best available source for calculating surrogate steam coal values in this review.

Moreover, the Department is averaging Grade B and Grade C steam coal prices when calculating surrogate steam coal values based on CIL's 2007 Circular. The Department finds it is practical to accept the corrective coal test reports submitted by Kangtai (originating with Kangtai's coal supplier) because they adequately describe the UHV of Kangtai's steam coal inputs. We do

²² See Kangtai's April 14, 2009, Supplemental Questionnaire ("4/14/09 SQR") at 15 and Exhibit SQ1-9; see also Kangtai's September 15, 2009, Supplemental Questionnaire ("9/15/09 SQR") at Exhibit SQ5-9.

²³ *Id.*

²⁴ See Petitioners' Surrogate Value Submission, Exhibit 1 at 5 (providing *CIL's Coal Pricing Circular, CIL: S&M:GM(F): Pricing 1124*, dated 12 December 2007).

²⁵ See *id.*

²⁶ See Memorandum regarding: New Shipper Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Surrogate Value Memorandum, dated July 20, 2009, Attachment VIII at 24-18.

²⁷ See Memorandum regarding: New Shipper Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: 2007 CIL Pricing Circular Annexure I through Annexure X on the Record, dated October 30, 2009.

agree with Petitioners that two of Kangtai's coal test reports are not relevant because they are dated outside the POR and we have not relied upon these. However, we disagree regarding the third test report, which we determine to be relevant because it is dated within the POR. Thus, in relying solely on Kangtai's relevant test report, the Department finds that an average of Grade B and Grade C steam coal prices correspond to Kangtai's steam coal inputs for the POR.

Finally, in using CIL's 2007 price circular, the Department is including the additional fixed surcharge of 165 rupees ("Rs.)/metric ton ("MT") to our calculation, which the 2007 Circular's notes indicate "shall be charged on pithead price of Run of Mine Coal for the supply of Steam Coal."²⁸ Because Kangtai is using steam coal, this additional charge is appropriate when calculating surrogate steam coal values based on CIL's 2007 prices.

Comment 3: Affiliation and Collapsing of Kangtai and Ouya

Petitioners argue that the Department should not collapse Kangtai with Ouya for the final results and that the Departments should calculate Kangtai's normal value based on Kangtai's purchases of CYA. The reason for this claim, according to Petitioners, is that Kangtai and Ouya are not sufficiently integrated to be collapsed under 19 CFR 351.401(f)(2). First, Petitioners argue that the Department did not conclude that Kangtai and Ouya are affiliated, pursuant to 771(33)(F) of the Act.²⁹ Second, Petitioners claim that a certain statement in Ouya's audited financial statements³⁰ disavows an existence of intertwined operations between Kangtai and Ouya. Third, Petitioners point out that Kangtai acknowledged that there was no formal agreement between Kangtai and Ouya in order to coordinate the selling activities of the companies.³¹ Fourth, Petitioners argue that Kangtai's claim of significant potential of manipulation resulting from intertwined operations as referenced in 19 CFR 351.401(f)(2) is unsupported by the record of the new shipper review. Finally, Petitioners maintain that Kangtai's intentional expansion of its operations with the establishment of Ouya is unsupported by the record evidence.

Kangtai argues that the Department collapsed Kangtai and Ouya as a single entity based on fully developed record evidence. Kangtai argues that the Department's finding of affiliation under 771(33)(A) of the Act³² is not a rejection of affiliation under 771(33)(F) of the Act,³³ and that the decision in *Ferro Union*³⁴ supports finding Kangtai and Ouya affiliated under 771(33)(F) of the Act, as well. Kangtai further rejects Petitioners' claim that a certain statement in Ouya's financial statements disavows an affiliation between Kangtai and Ouya. According to Kangtai, Ouya is not a large publicly held company and, thus, is not required by Chinese law and accounting regulations to indicate its affiliations.³⁵ Kangtai maintains that formal agreements

²⁸ *Id.*

²⁹ See New Shipper Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Preliminary Determination Regarding Affiliation and Collapsing of Juancheng Kangtai Chemical Company, Ltd. and Its Supplier, dated July 20, 2009 ("Preliminary Affiliation Memo").

³⁰ See Exhibit SQ5-1 of 9/15/09 SQR.

³¹ See Pages 2-3 of Kangtai's September 30, 2009 supplemental questionnaire response ("9/30/09 SQR").

³² Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

³³ Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

³⁴ See *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310 (CIT 1999) ("*Ferro Union*").

³⁵ See Attachment 2 of Kangtai's September 22, 2009, rebuttal comments to Petitioners' September 21, 2009,

usually exist in arm's-length business transactions, and the lack of a formal agreement does not necessarily mean that Kangtai and Ouya do not coordinate their selling activities. Kangtai claims that, despite lack of formality, Kangtai sourced 100 percent of its wet CYA from Ouya, and 100 percent of Ouya's TTCA purchases were sourced from Kangtai. Kangtai contends that Kangtai and Ouya have a significant potential for manipulation of pricing and production under 19 CFR 351.401(f)(2). According to Kangtai, despite lack of common ownership between companies and lack of shared managerial employees or directors, they are owned by a brother and a sister and their respective spouses. This fact, Kangtai contends, allows for price and production manipulation. Kangtai also argues that not all criteria of 19 CFR 351.401(f)(2) must be met and that the Department may consider not only present, but potential, future cooperation in making a finding of intertwined operations.³⁶

Department's Position:

In the preliminary results, the Department found that Kangtai and Ouya are affiliated producers of merchandise under consideration. The Department also preliminarily determined that Kangtai's and Ouya's operations are intertwined under 19 CFR 351.401(f)(2)(iii), and thus the companies should be treated as a single entity.³⁷ Upon further consideration of the record evidence and the Department's recent practice, we continue to treat Kangtai and Ouya as a single entity for the final results of this new shipper review, but for reasons different than those used in the preliminary results. Specifically, we find that the facts of this review support treatment of Kangtai and Ouya as a single entity, under 19 CFR 351.401(f)(2)(i) and (ii).

Pursuant to 19 CFR 351.401(f), affiliated parties will be treated as a single entity where (1) "those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities" and (2) "the Secretary concludes that there is a significant potential for the manipulation of price or production." The regulations further provide a non-exhaustive list of three factors that the Department may consider in determining whether a significant potential for manipulation exists: 1) the level of common ownership; 2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and 3) whether operations are intertwined.

Pursuant to section 771(33)(A) of the Act, all owners of Kangtai and Ouya are affiliated and form a family grouping.³⁸ Additionally, based on the complete control by the family as owners and holders of managerial positions of both companies, the family grouping is in a position to exercise restraint or direction over Kangtai and Ouya. Thus, the family grouping has operational control of the two companies and, therefore, the two companies are affiliated under section

comments ("Kangtai's 9/22/09 rebuttal comments").

³⁶ See Exhibit SQ3-6 of Kangtai's June 22, 2009, supplemental questionnaire response ("Hangers Affiliation Memo"), where the Department collapsed exporters and producers of merchandise under consideration by finding common ownership, common board of directors, and intertwined operations.

³⁷ See page 6 of Preliminary Affiliation Memo.

³⁸ See pages 3-4 of New Shipper Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Final Determination Regarding Affiliation and Collapsing of Juancheng Kangtai Chemical Company, Ltd. and Juancheng Ouya Chemical Co., Ltd. ("Final Affiliation Memo"), dated December 17, 2009.

771(33)(F) of the Act.³⁹ In recent cases, the Department has determined that from a family group perspective, significant controlling ownership by the family members is substantial evidence in support of the collapsing decision, as it is a positive indicator of the significant potential for manipulation.⁴⁰ In the instant case, Kangtai and Ouya are wholly owned by members of a family group.⁴¹ Therefore, the family grouping, in its position of 100-percent ownership, is also in a position to manipulate price and production of both companies.

Kangtai suggests that a lack of formal signs of a family grouping is not an indication of a lack of existing control but, instead, is a sign of the informality typical of family relationships, and that given the absolute family ownership in the instant case, it is not unusual that the companies do not make joint decisions in a formal manner. Petitioners argue that because the Department made no finding of a family group controlling both Kangtai and Ouya, Kangtai's reliance on *Ferro Union* or *Steel Wire Garment Hangers* is misplaced. Petitioners are correct that we did not make a formal finding of a family group in our preliminary results of review. However, for these final results, we have re-evaluated the familial relationships of the owners of Kangtai and Ouya and find that the two companies are wholly owned by members of a family grouping. Further, we find the Court's discussion of "family grouping" as a control person to be applicable to the family grouping in the instant case. As a result, we have now considered Kangtai's and Ouya's affiliation not only under 771(33)(A) of the Act but also 771(33)(F) of the Act for the final results, and find the Court's discussion of "family grouping" as a control person to be applicable to the family grouping in the instant case.

We also find that a statement disavowing affiliation in Ouya's audited financial statement⁴² is irrelevant for the Department's analysis of affiliation. The statute and the Department's regulations define affiliation or affiliated person under section 771(33) of the Act and 19 CFR 351.102(b)(3), respectively. Regardless of Ouya's requirements under Chinese law and accounting principles, the Department found Kangtai and Ouya affiliated under sections 771(33)(A) and (F) of the Act because they met two of the affiliation criteria set for the purposes of calculating an antidumping duty margin.

Petitioners point out that the Department has found affiliation but has not collapsed due to lack of common ownership or common managerial employees.⁴³ First, the proprietary nature of ownership percentages makes it unclear what the ownership percentages were in the cases cited by Petitioners, whereas in the instant case, we have 100-percent ownership of both companies by the single family grouping. Because there are no owners outside the family grouping, the family grouping has the potential to exercise total control over Kangtai and Ouya. Second, it has been

³⁹ See page 4 of Final Affiliation Memo.

⁴⁰ See e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009), and accompanying Issues and Decision Memorandum at Comment 5D ("*FFF from Vietnam*"); *Stainless Steel bar from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 47198 (September 15, 2009), and accompanying Issues and Decision Memorandum, at Comment 1 ("*SSB from India*").

⁴¹ See page 4 of Final Affiliation Memo for a more detailed discussion of specific ownership percentages.

⁴² See Exhibit SQ5-1 of 9/15/09 SQR.

⁴³ See *Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy*, 68 FR 6882 (February 11, 2003), and accompanied Issues and Decision Memorandum at Comment 6 and *New World Pasta Company v. United States*, 316 F. Supp. 2d 1338 (CIT 2004), at 1347-8.

the Department's more recent practice to collapse affiliated producers of merchandise under consideration with a significant ownership by a family grouping.⁴⁴ For instance, in *FFF from Vietnam*, the Department explained that "the existence of the family group and the significant controlling ownership by the family members . . . is substantial evidence in support of the collapsing decision."⁴⁵ Similarly, in *SSB from India*, the Department explained "that based on the near complete control by the Bohra family as majority shareholders and directors of both companies, *inter alia*, that the Bohra family grouping is in a position to exercise restraint or direction over" the two companies that the Department collapsed in that case.⁴⁶ In both of these cases, the Department collapsed the companies where there was less than 100-percent ownership of both companies by the respective family grouping. In the instant case, the family grouping is the sole owner of both Kangtai and Ouya, allowing for even greater potential for manipulation by virtue of sole ownership.

With regard to the second factor under 19 CFR 351.401(f)(2), we find the family grouping has the ability and financial incentive to coordinate its actions to direct Kangtai and Ouya to act in concert with each other.⁴⁷ Therefore, we find that treating Kangtai and Ouya as single entity meets the requirement set forth by 19 CFR 351.401(f)(2)(ii).

The Department need not find all three criteria in 19 CFR 351.401(f)(2) to be present in order to treat affiliated producers as a single entity. Specifically, we note that the Department made its preliminary collapsing decision based on significant intertwined operations between the two companies in consideration of Kangtai's claim that Ouya "provided all CYA consumed in Kangtai production of subject merchandise" and a supplier worksheet, indicating Ouya as the sole supplier of CYA.⁴⁸ As explained below, we are no longer relying on that criterion as the basis for collapsing Kangtai and Ouya for the final results. Instead, for the final results, we have collapsed Kangtai and Ouya based on the level of common ownership and control by a family group. Indeed, in *SSB from India*, the Department also found that evidence of intertwined operations was not necessary for collapsing. In that case, the Department acknowledged "that there is no information on the record in the current review to indicate that the operations of the two companies are directly intertwined and that Sieves did not export stainless steel bar to the United States."⁴⁹ Regardless, the Department determined there was sufficient basis to collapse the two companies in that case. Likewise, despite the lack of record evidence to substantiate Kangtai's claim that Ouya is its sole supplier of CYA, as explained in detail below, and despite the fact that Ouya did not export chlorinated isos to the United States, we find that there is sufficient basis to collapse Kangtai and Ouya in accordance with the Department's recent decisions in *FFF from Vietnam* and *SSB from India*.

Our preliminary finding that Ouya was the sole supplier of Kangtai's CYA was based on a narrative claim by Kangtai. Therefore, the Department issued additional questionnaires to Kangtai to substantiate its finding with additional documentary evidence. Specifically, on

⁴⁴ See *FFF from Vietnam* and *SSB from India*.

⁴⁵ See *FFF from Vietnam* at Comment 5D.

⁴⁶ See *SSB from India* at Comment 1.

⁴⁷ Due to the proprietary nature of the evidence on the record, see pages 5-6 of Final Affiliation Memo.

⁴⁸ See page 6 of Preliminary Affiliation Memo, pages 2-3 and Exhibit SQ3-2 of Kangtai's June 22, 2009, supplemental questionnaire response ("6/22/09 SQR").

⁴⁹ See *SSB from India* at Comment 1.

September 25, 2009, the Department requested that Kangtai provide monthly purchase ledgers of its purchases of CYA in order to determine if all of Kangtai's CYA was sourced from Ouya during the POR.⁵⁰ In anticipation that purchase ledgers may not be sufficiently detailed to include supplier names, the Department requested that "...if the purchase ledgers do not list suppliers of cyanuric acid, then provide invoices for these purchases that would substantiate Kangtai's claim that Ouya supplied 100% {of} the cyanuric acid Kangtai purchased during the POR."⁵¹

In reviewing Kangtai's 9/30/09 SQR, we find that the source documents provided by Kangtai lack any reference to Ouya.⁵² Kangtai did not provide any invoices with suppliers' names, and the purchase ledgers and raw material inventory ledgers that were supplied by Kangtai contained no reference to any supplier of raw material. With the exception of a worksheet with a column labeled "Warehouse Journal 1 (wet form for production from Ouya)," no submitted documentation mentions the supplier name of its CYA.⁵³ Further, the column heading on the worksheet cannot be tied to any documents on the record of this review that are documents maintained by Kangtai in the normal course of business.

The Department's preliminary finding of intertwined operations was also based partly on Kangtai's claim that Kangtai and Ouya claimed that they sold each other merchandise in order to fill their respective customer orders.⁵⁴ However, Kangtai was unable to produce evidence that these mutual sales were in any way coordinated, such as an agreement indicating a commitment by either company to buy or sell the other's merchandise or to fill each other's customer orders. Anticipating that Kangtai may not have a formal agreement with Ouya regarding the filling of each other's orders, the Department requested that Kangtai provide its and Ouya's purchases of each other's merchandise and corresponding orders from their respective customers. Notwithstanding the Department's request, Kangtai did not provide any customer order to match these invoices. Kangtai stated that the merchandise that Kangtai and Ouya sold to each other were a standard product, and that they did not purchase these products from each other on a customer-specific basis.⁵⁵ Therefore, we find that the record contains insufficient evidence to support Kangtai's assertions that: (1) Ouya is the sole supplier of Kangtai's CYA; and (2) Kangtai coordinates its selling activities with Ouya; accordingly, we find have insufficient record evidence to support a finding of intertwined operations.

Kangtai argues that Petitioners point to the four examples of intertwined operations, set by 351.401(f)(2)(iii), as if they are all inclusive and that they all must be met. We agree with Kangtai that the four criteria are exclusive of one another, and if any one of the criteria is met, there are sufficient grounds for a finding of intertwined operations. Hence, we preliminarily collapsed Kangtai with Ouya based on a determination of "significant transactions of affiliated producers," one part of the intertwined operations standard.⁵⁶ However, as stated above, we find

⁵⁰ See page 1 of the Department's September 25, 2009, supplemental questionnaire.

⁵¹ See id.

⁵² See Exhibit SQ6-1 of 9/30/09 SQR.

⁵³ See id.

⁵⁴ See page 6 of Preliminary Affiliation Memo and page 6 of Kangtai's June 15, 2009, Rebuttal Response to Petitioners' June 5, 2009, Fact Submission.

⁵⁵ See pages 2-3 of 9/30/09 SQR.

⁵⁶ See page 6 of Preliminary Affiliation Memo.

that the record evidence is insufficient to support collapsing Kangtai and Ouya on the basis of “significant transactions of affiliated producers,” particularly in the absence of any evidence of sharing sales, production, or pricing decisions, or any claim of sharing facilities or employees between Kangtai and Ouya. Kangtai cites to the Hangers Affiliation Memo to claim that even a single order has been sufficient to contribute to the satisfaction of the criteria of intertwined operations. Nevertheless, in this case, the Department requested further evidence of the transactions at issue and Kangtai did not place such information on the record. We find that the invoices for Ouya’s purchases of TCCA from Kangtai and Kangtai’s purchases of SDIC do not tie to Kangtai’s or Ouya’s purchase ledgers because Kangtai did not submit any monthly purchase ledgers to substantiate its claim that the enclosed invoices reflect all purchases of TCCA and SDIC.⁵⁷

With respect to Petitioners’ analysis of Kangtai’s purchases of SDIC and CYA from Ouya and Ouya’s purchases of TCCA from Kangtai as a percentage of one company’s purchases of one product as a percentage of the production of the other company, we do not agree with the basis of this analysis, *i.e.*, comparing one company’s purchases to the other company’s production. We find that if a company purchased a significant percentage of the supply of an input, it would be sufficient to contribute to a finding of intertwined operations, regardless of how much it represented of the supplier’s production of the input in question. However, as we discussed above, due to a lack of record evidence to determine whether submitted invoices represent a significant percentage of Kangtai’s or Ouya’s transactions *vis a vis* SDIC and TCCA, and a lack of record evidence whether any, not to mention all, of Kangtai’s CYA was supplied by Ouya, in spite of the Department’s request for evidence to support Kangtai’s claims, we find that the record does not support a finding of significant transactions between Kangtai and Ouya and thus do not find intertwined operations, pursuant to 19 CFR 351.401(f)(2)(iii).

Petitioners cite to *Sinopec*, where mere vertical integration was not sufficient for a collapsing decision.⁵⁸ We agree that the mere existence of a supplier relationship is not sufficient to treat two affiliated companies as a single entity. However, as we stated in the preliminary results, the intermediate supplier in *Sinopec* was not a producer of identical or similar merchandise and could not produce such without significant retooling.⁵⁹ Therefore, *Sinopec* is not relevant for our analysis, because Ouya *is* a producer of similar merchandise.

Petitioners’ final argument is that the record does not support Kangtai’s claim that it expanded TCCA production to coincide with the establishment of Ouya as a producer of CYA. We disagree with Petitioners that facts do not support the timing of the establishment of Ouya in conjunction with the expansion of Kangtai. Kangtai’s capital verification report issued by an independent accounting firm is a more persuasive source of record evidence than website-based information, and this report supports Kangtai’s claims.⁶⁰ Similarly, Ouya’s expansion at a later date does not refute its actual establishment in 2004.⁶¹ However, the timing of Kangtai’s

⁵⁷ See Exhibits SQ6-2, SQ6-3, and SQ6-4 of 9/30/09 SQR.

⁵⁸ See *Sinopec Sichuan Vinylon Works v. United States*, Slip Op. 06-78 (CIT May 25, 2006) (“*Sinopec*”).

⁵⁹ See page 6 of the Preliminary Affiliation Memo.

⁶⁰ See Exhibits A-7 and A-11 of Kangtai’s February 20, 2009, section A response. Exhibit A-7 indicates Kangtai’s expansion in 2004, whereas Exhibit A-11 indicates an expansion in 2003.

⁶¹ See Exhibit SQ1-4 of 4/14/09 SQR, which indicates Ouya’s expansion in 2005.

expansion and Ouya's establishment may be nothing more than a coincidence. Absent further evidence of intertwined operations the timing of these events, in and of itself, is insufficient to support a finding of intertwined operations.

Based on the above analysis, the Department has determined that the record evidence does not support its preliminary decision to treat Kangtai and Ouya as a single entity based on intertwined operations, as defined by 19 CFR 351.402(f)(2)(iii); however, the record does support a decision to treat Kangtai and Ouya as a single entity pursuant to 19 CFR 351.401(f)(2)(i) and (ii). Therefore, for the final results we have determined to continue to treat Kangtai and Ouya as a single entity and thus rely on Kangtai's purchases of CYA from Ouya as self-produced inputs for purposes of calculating normal value.⁶²

RECOMMENDATION

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

Agree

Disagree

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date

⁶² See Analysis Memorandum for the Final Results: Juancheng Kangtai Chemical Co., Ltd. ("Kangtai"), dated December 18, 2009.