

March 5, 2009

MEMORANDUM TO: Ronald K. Lorentzen  
Acting 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 the Final Determination in  
the Less-Than-Fair-Value Investigation of 1-Hydroxyethylidene-1,  
1-Diphosphonic Acid from the People's Republic of China

### **Summary**

We have analyzed the case and rebuttal briefs submitted by the petitioner<sup>1</sup> and the respondents<sup>2</sup> in this investigation. As a result of our analysis, we propose making changes to our preliminary determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

### **Background**

On October 21, 2008, the Department of Commerce (the "Department") published the preliminary determination of the antidumping duty investigation of 1-hydroxyethylidene-1, 1-diphosphonic acid ("HEDP") from the People's Republic of China ("PRC"). See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 62470 (October 21, 2008) ("Preliminary Determination"). The period of investigation ("POI") is July 1, 2007, through December 31, 2007.

We invited parties to comment on the Preliminary Determination. We received timely filed case briefs<sup>3</sup> and rebuttal briefs<sup>4</sup> from Petitioner and certain respondents. The respondents requested a

---

<sup>1</sup> The petitioner in this investigation is Compass Chemical International LLC ("Petitioner").

<sup>2</sup> The respondents submitted comments jointly. The respondents are: Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory ("Wujin Water"), Changzhou Wujin Fine Chemical Factory Co., Ltd. ("Wujin Fine Chemical"), and Jiangsu Jianghai Chemical Group Co., Ltd. ("Jiangsu Jianghai") (collectively, the "respondents"). We note that Changzhou Kewei Fine Chemical Factory ("Kewei") is also a mandatory respondent in this investigation. However, Kewei, who is part of the PRC-wide entity, submitted neither a case brief nor a rebuttal brief.

<sup>3</sup> See Letter from Petitioner to Secretary of Commerce, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Case Brief Submitted on Behalf of Petitioner" (December 22, 2008) ("Petitioner's

hearing, which was held by the Department at its main building on January 14, 2009.

### **List of the Issues**

Below is a list of the issues in this investigation for which we received comments from interested parties:

**Comment 1: Financial Ratios**

**Comment 2: Surrogate Value for Phosphorus Trichloride**

**Comment 3: Surrogate Value for Chemical Drums**

**Comment 4: Surrogate Value for Steam**

**Comment 5: Treatment of Acetyl Chloride**

**Comment 6: Separate Rates for Wujin Fine Chemical and Jiangsu Jianghai**

**Comment 7: Combination Rate for Hong Kong Exporter**

### **Discussion of the Issues**

#### **Comment 1: Financial Ratios**

The respondents argue that the Department should recalculate financial ratios based on the financial statement of Rencal Chemicals (India) Limited (“Rencal Chemicals”), which was presented by Wujin Water in its December 3, 2008, surrogate values submission. See Respondents’ Brief at 8-14. The respondents state that the two Indian HEDP producers whose financial statements formed the basis of the financial ratios in the Preliminary Determination, Excel Industries Limited (“Excel”) and United Phosphorus Limited (“UPL”), were both the recipients of significant export subsidies. Id. at 8-9. The respondents claim that these export subsidies include the Duty Entitlement Pass Book Scheme (“DEPS”) and Advanced License Scheme – both of which, according to the respondents, the Department has found to be countervailable. Id. at 9. In contrast to Excel and UPL, the respondents claim Rencal Chemicals did not receive any countervailable export subsidies in India. Id. at 11-12. Additionally, the respondents claim that Rencal Chemicals is the most similar producer to Wujin Water because 1) Rencal Chemicals’ primary products are HEDP, acetyl chloride, and similar products, 2) Rencal Chemicals is not an integrated producer, and 3) Wujin Water is closer in size to Rencal Chemicals than it is to UPL or Excel. Id. Furthermore, the respondents argue that if the Department decides that it must use one of the financial statements employed in the Preliminary Determination, it should use the financial statement of Excel, and not the financial statement of UPL, because Wujin Water’s corporate structure is more similar to that of Excel. Id. at 12-13. Lastly, the respondents argue that if the Department decides to use either Excel’s or UPL’s

---

Brief”); Letter from respondents to Secretary of Commerce, “1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the Republic of India and the People’s Republic of China; A-570-934; Case Brief of Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory” (December 22, 2008) (“Respondents’ Brief”).

<sup>4</sup> See Letter from respondents to Secretary of Commerce, “1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the Republic of India and the People’s Republic of China; A-570-934; Reply Brief of Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory, Changzhou Wujin Fine Chemical Factory Co., Ltd., and Jiangsu Jianghai Chemical Group Co., Ltd.” (December 31, 2008) (“Respondents’ Rebuttal”); Letter from Petitioner to Secretary of Commerce, “1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China: Rebuttal Brief Submitted on Behalf of Petitioner” (December 31, 2008) (“Petitioner’s Rebuttal”).

financial statement for the purpose of financial ratios, 1) the values in the selected financial statement(s) should be adjusted to reflect the various export subsidies and 2) investment income should be deducted from the profit because investment income is unrelated to the production and sale of HEDP. Id. at 13-14.

Petitioner claims that the financial statement of Rencal Chemicals should not be used to calculate financial ratios because it predates the POI by more than a year. See Petitioner's Brief at 2-3. See also Petitioner's Rebuttal at 6-7. Because of this, Petitioner argues, it is unknown if Rencal Chemicals received subsidies during the POI. See Petitioner's Rebuttal at 6-7. Furthermore, Petitioner argues that an indication of receipt of subsidies in a company's financial statement is not a per se bar to the use of that financial statement. Id. at 9-10. Petitioner further urges the Department not to use the data provided by Wujin Water because 1) there is no way to determine whether there is, in fact, evidence of countervailable subsidies in the financial statements of Excel and UPL, 2) there is no evidence provided by the respondents that the financial statements of Excel and UPL are unusable, 3) there are no other sufficiently reliable and representative data on the record for purposes of calculating the surrogate financial ratios aside from the financial statements of Excel and UPL, and 4) the financial statement of Rencal Chemicals is not publicly available. Id. See also Petitioner's Brief at 2-3. Additionally, Petitioner believes that the Department should reject the respondents' arguments supporting the use of only one financial statement. See Petitioner's Rebuttal at 10-11. Petitioner claims that there are no compelling reasons to omit the financial statements of Excel and UPL and that it is the Department's practice to use multiple financial statements to determine the surrogate financial ratios in NME cases. Id. Also, Petitioner argues that no adjustments for export subsidies should be made to the financial statements of Excel and UPL because the respondents provide no support or precedent for making such adjustments. Id. at 11. Finally, Petitioner notes that the Department has, in the past, rejected claims for adjustments for investment income as counter to the Department's practice of maintaining the integrity of the surrogate company's audited financial statements. Id.

### **Department's Position:**

On September 19, 2008, the Department noted that it had found the following three complete, publicly available financial statements of Indian producers of HEDP: 1) the April 2007 through March 2008 annual report of UPL; 2) the April 2007 through March 2008 annual report of Excel; and 3) the April 2006 through March 2007 annual report of Excel. See Letter to Interested Parties, from Mark Manning, Program Manager, Regarding "Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China" (September 19, 2008) ("Letter to Interested Parties"). The Department also provided a link to a website where Rencal Chemicals' April 2005 through March 2006 financial statement was available for purchase. Id. The Department observed, at that time, that the financial statements of Excel and UPL reported export benefits from two Indian export subsidy programs that the Department has found to be countervailable: the Advance License Scheme and DEPS. Id.; See Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 40293 (July 14, 2008), and accompanying Issues and Decision Memorandum at Comment 3.

In the Preliminary Determination, the Department calculated factory overhead, selling, general, and administrative (“SG&A”) expenses, and profit percentages by taking a simple average of the financial ratios calculated from the audited financial statements for the fiscal year 2007 through 2008 of Excel and UPL. See Memorandum to The File, through Zev Primor, Acting Program Manager, from Maisha Cryor, Senior International Trade Compliance Analyst, Regarding “Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China: Surrogate Values Selected” (October 15, 2008) (“HEDP Surrogate Value Memo”) at 8-9. The Department noted evidence of subsidies in the financial statements used. Id. at 8. However, since there were no financial statements on the record at the time that did not contain evidence of subsidization, the Department used these financial statements to value factory overhead, SG&A expenses, and profits. Id. Because the 2007-2008 financial statements of Excel and UPL are contemporaneous with the POI, the Department used a simple average of the financial ratios calculated from these two financial statements for the Preliminary Determination.

On December 3, 2008, the respondents submitted Rencal Chemicals’ April 2005 through March 2006 financial statement. See Letter from respondents to Secretary of Commerce, Respondents’ Final Submission of Surrogate Values (December 3, 2008) (“Respondents’ Surrogate Value Submission”) at Exhibit FSV-1(A). This financial statement, while not contemporaneous with the POI, does not contain evidence of subsidization.

Section 773(c)(1) of the Tariff Act of 1930, as amended (“the Act”), directs the Department to base the valuation of the factors of production (“FOP”) on “the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate. . .” Moreover, in valuing such factors, Congress indicated that Commerce should “avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.” See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess. at 590 (1988). In addition, we note that the legislative history explains that the Department is not required to conduct a formal investigation to ensure that such prices are not subsidized. Id. 19 CFR 351.408(c)(4) further stipulates that the Department will normally value manufacturing overhead, SG&A expenses, and profit using “non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.” Furthermore, it is the Department’s preference to not use non-contemporaneous data where reliable, publicly available contemporaneous data from producers of comparable merchandise are available. See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 73 FR 21904 (April 23, 2008), and accompanying Issues and Decision Memorandum at Comment 1. Thus, in complying with the statute and the regulations, the Department prefers to base its financial ratio calculations on contemporaneous, publicly available, and subsidy-free financial statements of companies producing comparable merchandise from the surrogate country.

As an initial matter, the Department has determined that Excel, UPL, and Rencal Chemicals, as Indian producers of HEDP, are companies from the surrogate country that produce merchandise comparable to that produced by Wujin Water.

Furthermore, the Department has concluded that the financial statement of Rencal Chemicals is publicly available. As noted above, in September 2008, the Department sent a letter to the

interested parties that included a link to a website where Rencal Chemicals' April 2005 through March 2006 financial statement was available. See "Letter to Interested Parties" (September 19, 2008). Moreover, the Department has frequently accepted various sources of information obtained through fee-based internet services as publicly available. See, e.g., Electrolytic Manganese Dioxide from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 15988, 15992 (March 26, 2008) ("Electrolytic Manganese Preliminary Determination"), unchanged in Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008) ("Electrolytic Manganese Final Determination"); see also Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Rescission, 67 FR 50866, 50868 (August 6, 2002) ("Persulfates Preliminary Results"), unchanged in Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 6712 (February 10, 2003) ("Persulfates Final Results").

Because the evidence regarding the existence of subsidization in this case relates to subsidies programs that the Department has previously found countervailable, the Department accords more weight to the existence of subsidies than the difference in contemporaneity of the otherwise acceptable financial statement. See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1 ("Crawfish from the PRC Decision Memo"). While the contemporaneity of data is one factor to be considered by the Department, see Union Camp Corp. v. United States, 941 F. Supp. 108, 116 (Ct. Int'l Trade 1996) ("Union Camp"), the court has found that "contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI." See Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States, 366 F. Supp. 2d 1264, 1275 (Ct. Int'l Trade 2005) ("Hebei v. United States"). In addition, the courts have previously found contemporaneity to be insufficient to explain why a particular surrogate value is the best available information for establishing the actual costs incurred by a producer. See Yantai Oriental Juice Co. v. United States, 26 C.I.T. 605, 617 (Ct. Int'l Trade, June 18, 2002) ("Yantai Oriental Juice"); see also Hebei v. United States, 366 F. Supp. 2d at 1275. Furthermore, where the Department has reason to believe or suspect that a company producing comparable merchandise may be subsidized, it considers the financial ratios derived from that company's financial statements to be less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. See Crawfish from the PRC Decision Memo at Comment 1. Consequently, the Department does not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficiently reliable and representative data on the record for purposes of calculating the surrogate financial ratios. See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2; see also Crawfish from the PRC Decision Memo at Comment 1.

Accordingly, because the financial statements of Excel and UPL report export benefits from the Advance License Scheme and DEPS, the Department will not rely upon their financial statements for the final determination. As noted above, these export subsidies have been found by the Department to each provide a countervailable subsidy. Because the evidence regarding the existence of subsidization in this case relates to subsidy programs that the Department has previously found countervailable, the financial ratios derived from Excel and UPL's financial statements do not constitute the best available information with which to calculate surrogate financial ratios. See *Crawfish from the PRC Decision Memo* at Comment 1. The Department does not consider these financial statements representative of the financial experience of the relevant industry in India and, therefore, are not appropriate for use in valuing the surrogate financial ratios in this proceeding. Consequently, we have used Rencal Chemicals', and not Excel or UPL's, financial statements to calculate surrogate financial ratios for the final determination.

### **Comment 2: Surrogate Value for Phosphorus Trichloride**

The respondents argue that the Department should calculate a new value for phosphorus trichloride based on the price shown in the financial statement of Rencal Chemicals because the value used for phosphorus trichloride in the Preliminary Determination is based on data which expressly does not include phosphorus trichloride within the data set. See Respondents' Brief at 5-6. The respondents state that in the Preliminary Determination, the Department used a six-digit Indian tariff item (281210) which includes an eight-digit Indian tariff item (28121020) that expressly covers phosphorus trichloride. Id. The respondents claim that the Indian Import Statistics show no imports of products falling under this eight-digit Indian tariff item for phosphorus trichloride. Id. Furthermore, the respondents claim that the only usable value on the record for phosphorus trichloride is contained in the financial statement of Rencal Chemicals. Id. at 6-7. The respondents claim that the Rencal Chemicals financial statement should be used because 1) like Wujin Water, Rencal Chemicals produces both HEDP and acetyl chloride in its production process using phosphorus trichloride as a key raw material, 2) Rencal Chemicals had substantial purchases of phosphorus trichloride in the two periods reported in the financial statement, and 3) Rencal Chemicals uses a similar production process to Wujin Water and uses phosphorus trichloride as a raw material. Id.

Petitioner argues that the surrogate value data for phosphorus trichloride in the Rencal Chemicals financial statement should not be used in the Department's final determination because the data submitted by Wujin Water reflects consumption of the input by a single manufacturer in India. See Petitioner's Rebuttal at 4. Petitioner claims that there is no indication whether Rencal Chemicals purchased the input or produced the input internally using its constituent elements. Id. Petitioner believes that the data used to value phosphorus trichloride for purposes of the Preliminary Determination serve as a valid and substantiated basis for calculation of the normal value of the subject merchandise because the basket category used in the Preliminary Determination does include phosphorus trichloride. Id. at 4-5. Finally, Petitioners claim that the data provided by Wujin Water should not be used in the final determination because it is not broadly and publicly available. Id. at 4, n.12.

## Department's Position:

We agree with the respondents. In valuing FOPs, section 773(c)(1) of the Act instructs the Department to use the “best available information” from the appropriate market-economy country. The Department considers several factors when choosing the most appropriate surrogate values, including the specificity, contemporaneity, and quality of the data. See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 9 (“Polyethylene from the PRC Decision Memo”). In the Preliminary Determination, the Department used the six-digit Indian tariff item (281210) for “chlorides and chloride oxides” to value phosphorus trichloride. See HEDP Surrogate Value Memo at 3. The six-digit Indian tariff item (281210) includes an eight-digit Indian tariff item (28121020) for phosphorus trichloride. The respondents are correct in noting that this eight-digit Indian tariff item showed no imports of phosphorus trichloride during the POI. However, we used the six-digit Indian tariff item for the Preliminary Determination because there was no other information on the record to value phosphorus trichloride. See Wujin Water's Preliminary Determination Calculation Memorandum, dated October 15, 2007 (“Prelim Calc Memo”), at 7.

As noted above, the Department evaluates certain factors when selecting the appropriate surrogate values for FOPs. In this case, regarding specificity, there is record evidence that the Indian tariff item 281210 contains no imports of phosphorus trichloride, *i.e.*, the Indian tariff item is not specific to phosphorus trichloride. In contrast, Rencal Chemicals' financial statement does contain price data specific to phosphorus trichloride, *i.e.*, Rencal Chemicals' financial statement is specific to phosphorus trichloride. See Respondents' Surrogate Value Submission at Exhibit FSV-1(A).

Regarding quality, we first note that Rencal Chemicals' financial statement indicates that it is a producer of subject merchandise. See Respondents' Surrogate Value Submission at Exhibit FSV-1(A). In addition, Rencal Chemicals produces merchandise, in addition to subject merchandise, identical to that produced by Wujin Water. *Id.* Second, we note that both the Indian tariff item 281210 and Rencal Chemicals' financial statement contain publicly available data. While Rencal Chemicals' financial statement may not be as broad as the Indian tariff data, it does contain publicly available price information specific to phosphorus trichloride for two fiscal years. See Respondents' Surrogate Value Submission at Exhibit FSV-1(A). We consider Rencal Chemicals' financial statement to be publicly available because it is available on a fee-based website. See “Letter to Interested Parties” (September 19, 2008). As noted above, the Department has frequently accepted various sources of information obtained through fee-based internet services as publicly available. See, e.g., Electrolytic Manganese Preliminary Determination, 73 FR at 15992, unchanged in Electrolytic Manganese Final Determination; see also Persulfates Preliminary Results, 67 FR at 50868, unchanged in Persulfates Final Results. Regarding Petitioner's allegation that Rencal Chemicals may have self-produced phosphorus trichloride, there is evidence on the record of this investigation to the contrary. Specifically, listed in note 15(A)(3) of Rencal Chemicals' financial statement is a list of merchandise produced by Rencal Chemicals. See Respondents' Surrogate Value Submission at Exhibit FSV-1(A). It is important to note that phosphorus trichloride is not included among this list of products. *Id.* Moreover, there is evidence on the record of this investigation that the value for

phosphorus trichloride recorded on Rencal Chemicals' financial statement relates to the purchase value of phosphorus trichloride. Specifically, note 7 of Rencal Chemicals' financial statement reconciles the consumption value of phosphorus trichloride to Rencal Chemicals' purchases of raw materials in Schedule 15 of the financial statement. Id.

Regarding contemporaneity, we note that the Indian tariff data is contemporaneous with the POI, while Rencal Chemicals' financial statement provides phosphorus trichloride price data for FY 2004-2005 and FY 2005-2006. However, as noted above, while the contemporaneity of data is one factor to be considered by the Department (see Union Camp), the court has found that contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI. In addition, the courts have previously found contemporaneity to be insufficient to explain why a particular surrogate value is the best available information for establishing the actual costs incurred by a producer. See Yantai Oriental Juice; see also Hebei v. United States. Therefore, given the specificity and quality of the Rencal Chemicals financial statement, we will use it to value phosphorus trichloride for the final determination. Moreover, we note that the Department has previously used financial statements to value material inputs. See e.g., Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 76336, 76337 (December 16, 2008) and accompanying Issues and Decision Memorandum at Comment 1; see also Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review, 73 FR 30054, 30057 (May 23, 2008), unchanged in Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review, 73 FR 45402 (August 5, 2008).

### **Comment 3: Surrogate Value for Chemical Drums**

The respondents argue that the Department should recalculate the value for packing material using the value for chemical drums in the United States supplied by Greif, Inc. ("Greif"). See Respondents' Brief at 15-16. The respondents claim that the value used in the Preliminary Determination was aberrational and excessive. Id. To support these claims, the respondents point to data placed on the record by Wujin Water in its December 3, 2008, submission indicating that the purchase price of these drums in the United States from Greif, a United States supplier, is approximately half of the price of the drums based on the Indian basket provision used in the Preliminary Determination. Id. The respondents urge the Department to recognize that the U.S. price provided is a delivered price and, thus, no additions for transportation should be included. Id. at 16. Additionally, Wujin Water argues that if the Department continues to use a surrogate value for chemical drums that needs to be adjusted for transportation, it should use the actual average distance to the suppliers of the drums rather than the distance to the port. Id. at 16.

Petitioner argues that the surrogate value data for chemical drums submitted by Wujin Water in its December 3, 2008, submission should not be used in the Department's final determination because 1) the data relates to prices in the United States, not the surrogate country, India, 2) the data is a price quotation that is not publicly available, and 3) the data is not contemporaneous with the POI. See Petitioner's Brief at 4; see also Petitioner's Rebuttal at 12-13. Furthermore, Petitioner claims that the respondents offer no alternative surrogate values for the product in

India and, therefore, the Indian import statistics used in the Preliminary Determination should not be displaced. See Petitioner's Rebuttal at 13.

### **Department's Position:**

We agree with Petitioner and with the respondent, in part. As stated above, section 773(c)(1) of the Act instructs the Department to use the "best available information" from the appropriate market-economy country. The Department considers several factors when choosing the most appropriate surrogate values, including the quality, specificity, and contemporaneity of the data. See Polyethylene from the PRC Decision Memo at Comment 9. In the Preliminary Determination, the Department valued the chemical drums, used by Wujin Water in packaging HEDP, under Indian tariff item 3923.90.90, "other articles for conveyance/packing of goods." We continue to find this surrogate value to be the "best available information" to value chemical drums for several reasons. First, the Department prefers to use publicly available price information that reflects numerous transactions. Id. The Indian tariff item, which is comprised of Indian import statistics, represents numerous transactions from a market economy country. Second, the price of the chemical drums provided by Wujin Water is based upon a price quote from Greif, a U.S. company. See Respondents' Surrogate Value Submission at Exhibit FSV-3. The Department typically does not use price quotes as the basis of surrogate values because price quotes are not publicly available and do not reflect numerous transactions. See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 4. Moreover, the only argument offered by Wujin Water against the Indian tariff item used in the Preliminary Determination is that the price is too high. While the Indian import data may exceed the U.S. price quote provided by the respondents, it is impossible to determine which value is aberrant when comparing only two data points. See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 35652 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 2. In addition, we note that the Department has previously used this Indian tariff item for valuing plastic containers used for packaging chemicals. See Memorandum to The File, Through Charles Riggle, Program Manager, From Jennifer Moats, Senior International Trade Analyst, Regarding, "Preliminary Results of 2006-2007 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Surrogate Value Memorandum," dated April 29, 2008, at 11, unchanged in Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 52645 (September 10, 2008). Finally, the respondents admit that they were unable to locate an alternate public value for chemical drums in India, the surrogate country in this investigation. See Respondents' Brief at 15. Therefore, for the final determination, we will continue to use Indian tariff item 3923.90.90 as the surrogate value for chemical drums.

Also, we agree with the respondents regarding distance and will correct the transportation distance to account for the average distance from Wujin Water to the suppliers of the drums, rather than to the port.

#### **Comment 4: Surrogate Value for Steam**

The respondents argue that the Department should calculate a value for steam based on the financial statement of Hindalco Industries Limited (“Hindalco”), which Wujin Water included in its December 3, 2008, submission. See Respondents’ Brief at 14-15. The respondents state that natural gas should not be used to value steam when there is a value for steam on the record. Id.

Petitioner did not comment on this matter.

#### **Department’s Position:**

We agree with the respondents. In valuing FOPs, section 773(c)(1) of the Act instructs the Department to use the “best available information” from the appropriate market-economy country. The Department considers several factors when choosing the most appropriate surrogate values, including the specificity, contemporaneity, and quality of the data. See Polyethylene from the PRC Decision Memo at Comment 9. In the Preliminary Determination, the Department valued steam using a surrogate value for natural gas obtained from the website of the Gas Authority of India Ltd. (“GAIL”), a supplier of natural gas in India. See Preliminary Determination, 73 FR at 62475. The Department used this surrogate value because it was consistent with our past practice and because there was no other information on the record related to the valuation of steam. See HEDP Surrogate Value Memo at 5. After the Preliminary Determination, the respondents submitted the financial statement of Hindalco and proposed it as a source to value steam. See Respondents’ Surrogate Value Submission at Exhibit FSV-2. Therefore, in determining the best information available to value steam for the final determination, the Department must now evaluate the specificity, contemporaneity, and quality of both natural gas and Hindalco’s financial statement.

As noted above, the Department evaluates certain factors when selecting the appropriate surrogate values for FOPs. In this case, regarding specificity, the only record evidence specific to steam is the financial statement of Hindalco, where the purchase value of steam is recorded. See Respondent’s Brief at Exhibit 6. Regarding quality, we note that both GAIL and Hindalco’s financial statement contain publicly available data. While Hindalco’s financial statement may not be as broad as the GAIL data, it does contain publicly available price information specific to steam for two fiscal years. See Respondents’ Surrogate Value Submission at Exhibit FSV-2. Regarding contemporaneity, we note that the GAIL data are from February 2005, while Hindalco’s data are from FY 2005-2006 and FY 2006-2007 (neither contemporaneous with the POI). However, as noted above, while the contemporaneity of data is one factor to be considered by the Department (see Union Camp, 941 F. Supp. at 116), the court has found that contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI. In addition, the courts have previously found contemporaneity to be insufficient to explain why a particular surrogate value is the best available information for establishing the actual costs incurred by a producer. See Yantai Oriental Juice; see also Hebei v. United States, 366 F. Supp. at 1275. Therefore, given the specificity and quality of Hindalco’s financial statement, we will use it to value steam for the final determination.

### **Comment 5: Treatment of Acetyl Chloride**

Petitioner states that the Department should continue to treat acetyl chloride in the same manner as in the Preliminary Determination. See Petitioner's Brief at 5.

Wujin Water agrees that the Department should continue to treat acetyl chloride in the same manner as in the Preliminary Determination because the quantity of acetyl chloride produced was taken into account in calculating the FOPs for the various inputs which went into the production of HEDP and acetyl chloride. See Respondents' Rebuttal at 10-12.

#### **Department's Position:**

We agree with both parties and will continue to treat acetyl chloride in the same manner for the final determination.

### **Comment 6: Separate Rates for Wujin Fine Chemical and Jiangsu Jianghai**

The respondents argue that Wujin Fine Chemical and Jiangsu Jianghai are entitled to a separate rate because the facts establish that they are not state controlled and the law and regulations do not require that they be verified. See Respondents' Rebuttal at 5-10; see also Respondents' Brief at 17-18. The respondents urge the Department to continue to use the calculated rate for Wujin Water as the basis for the rate assigned to the separate rate applicants. See Respondents' Brief at 17. If the Department decides it cannot use Wujin Water to calculate the rate given to Wujin Fine Chemical and Jiangsu Jianghai and, instead, assigns a rate based solely on the PRC-wide rate (*i.e.*, the petition rate), the respondents state that the Department should apply the adjusted surrogate values to the data supplied in the petition to calculate the rate assigned to the separate rate applicants. Id. The respondents believe that the Department should continue to use the U.S. price contained in the petition in calculating the separate rate for the separate rate applicants. Id. at 18. However, the respondents urge the Department to recalculate normal value using the values for financial ratios, phosphorus trichloride, steam and packing materials used in the final determination. Id.

Petitioner argues that Wujin Fine Chemical and Jiangsu Jianghai should be included within the PRC-wide entity rate for purposes of the final determination because the information provided by these companies was not verified. See Petitioner's Brief at 6. Petitioner claims that in the absence of such verification, there can be no certainty that the separate rate applicants operate with the absence of de jure and de facto government control over their export activities. Id. However, if the Department affirms the separate rate status of Wujin Fine Chemical and Jiangsu Jianghai, Petitioner requests that the Department clarify that the separate rate applies only to imports of HEDP from those companies which are both produced and exported by the respective company. Id. Petitioner asserts that such a clarification is necessary to prevent the avoidance of antidumping duty deposits. Id. Moreover, if the Department determines that Wujin Fine Chemical and Jiangsu Jianghai should not be included within the PRC-wide entity and Wujin Water is assigned a zero or de minimis dumping margin, Petitioner argues that the rates assigned to the separate rate respondents should be calculated by weight-averaging the zero or de minimis rate of Wujin Water and the rate based on facts available assigned to Changzhou Kewei Fine

Chemical Factory (“Kewei”). See Petitioner’s Rebuttal at 14-16.

### **Department’s Position:**

Normally the dumping margin for separate rate companies is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding de minimis margins or margins based entirely on AFA. See section 735(c)(5)(A) of the Act. In the Preliminary Determination we assigned Wujin Fine Chemical and Jiangsu Jianghai the dumping margin established for Wujin Water, i.e., 24.30 percent. See Preliminary Determination, 73 FR at 62476. However, since Wujin Water is now receiving a de minimis margin, this methodology is not appropriate. In cases where the estimated weighted-average dumping margins for all individually investigated respondents are zero, de minimis, or based entirely on AFA, the Department may use any reasonable method to assign a rate to the separate rate companies. See section 735(c)(5)(B) of the Act. In this case, Wujin Water is the only respondent in this investigation for which the Department has calculated a company-specific rate. This rate, however, is de minimis. The sole remaining mandatory respondent, Kewei, as a part of the PRC-wide entity, received a margin based entirely on AFA under section 776 of the Act. Two companies, Wujin Fine Chemical and Jiangsu Jianghai, will receive a separate rate but were not individually investigated. Therefore, for purposes of determining the separate rate margins, because there are no rates other than de minimis or those based on AFA, we have determined to take a simple average of the AFA rate and the de minimis rate calculated for Wujin Water as a reasonable method pursuant to section 735(c)(5)(B) of the Act.<sup>5</sup> We note that this methodology is consistent with our past practice in antidumping investigations. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Light-Walled Rectangular Pipe and Tube From the Republic of Korea, 73 FR 5794, 5800 (January 31, 2008), unchanged in Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from the Republic of Korea, 73 FR 35655 (June 24, 2008).

Further, we disagree with Petitioner that we should assign AFA to Wujin Fine Chemical and Jiangsu Jianghai because the Department did not verify their submitted data. 19 CFR 351.307(a) states that the Department **may** verify relevant factual information prior to making a final determination in an investigation. 19 CFR 351.307(a) (emphasis added). In addition, 19 CFR 351.307(b)(3) states that the Department “may select and verify a sample” of respondents if it is impractical to verify factual information for each person. The Department chose to verify only the factual information of Wujin Water. Therefore, we find that Wujin Fine Chemical and Jiangsu Jianghai should not be assigned AFA solely because of the Department’s decision not to verify their data.

---

<sup>5</sup> The respondents argue that, if the Department either does not utilize Wujin Water’s margin in the calculation of the separate rate margin or bases the separate rate margin solely on the PRC-wide rate, the Department should modify the petition data for the phosphorus trichloride, steam and financial ratio data used in the final determination. However, given that the Department is not basing the separate rate margin solely on the PRC-wide rate and is accounting for Wujin Water’s margin in the calculation of the separate rate margin, the condition upon which the respondents’ argument is based has not been satisfied, and it is therefore not necessary for the Department to address it.

In addition, we disagree with Petitioner that further clarification is required regarding the application of combination rates in the Preliminary Determination. Specifically, in the Preliminary Determination, the Department clearly states that it is calculating combination rates for the respondents eligible for a separate rate in this investigation. See Preliminary Determination, 73 FR at 62476. Citing Policy Bulletin 05.1, we note that the term “combination rates” refers to the practice of applying dumping margins to “specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.” Id. Moreover, in the Preliminary Determination, we stated that Wujin Fine Chemical both produced and exported the subject merchandise and that the separate rate margin applied to the combination of Wujin Fine Chemical as both the manufacturer and the exporter. Id. We also made the same clarification for Jiangsu Jianghai. Id. Therefore, given the Department’s description of this fact pattern in the Preliminary Determination, it is not necessary for the Department to further address this matter for the final determination.

#### **Comment 7: Combination Rate for Hong Kong Exporter**

The respondents believe that the Department should assign a combination rate to a Hong Kong (“HK”) based non-producing exporter because the sales made by Wujin Water through the HK exporter are made in very different channels and very different ways than its other sales. See Respondents’ Brief at 19-20. Furthermore, the respondents believe that it would be appropriate to assign a combination rate to the HK exporter when it purchases from Wujin Water because the HK exporter may have purchased HEDP from other producers in the PRC. Id. at 20.

Petitioner argues that the Department should not assign a combination rate to the HK exporter because the respondents have failed to provide sufficient factual evidence necessary to meet the requisite standard for assigning combination rates. See Petitioner’s Rebuttal at 16.

#### **Department’s Position:**

Wujin Water is the mandatory respondent in this investigation. Wujin Water reported that it made several sales to the United States, during the POI, through a HK exporter. We treated these sales through the HK exporter as Wujin Water’s U.S. sales because we determined that Wujin Water had knowledge of the destination of these sales at the time of the sale. See Prelim Calc Memo at 2-3. Therefore, given that we did not investigate the HK exporter, and the sales in question were included with the Department’s antidumping investigation, we find that a combination rate should not be assigned to the HK exporter.

**Recommendation**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final weighted-average dumping margin for the investigated firms in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date