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Administrative Review
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January 22, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Final Results of Antidumping Duty
Administrative Review: Chlorinated Isocyanurates from the
People's Republic of China; 2011-2012

SUMMARY

We have analyzed the comments from interested parties in the 2011-2012 administrative review of the antidumping duty order on chlorinated isocyanurates (chloro isos) from the People's Republic of China (PRC). As a result of our analysis of these comments, we have made changes to our margin calculations for Hebei Jiheng Chemical Co., Ltd. and Hebei Jiheng Baikang Chemical Industry Co., Ltd. (collectively, Jiheng) and Juancheng Kangtai Chemical Co., Ltd. (Kangtai) in these final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Background

On July 10, 2013, the Department published its *Preliminary Results* of the antidumping duty administrative review of chloro isos from the PRC.¹ On August 9, 2013, Jiheng and Kangtai each submitted a hearing request to address issues raised in their case and rebuttal case briefs. On August 15, 2013, the Department extended the deadline for the final results in this administrative review until January 6, 2014.² The Department conducted a verification of Kangtai between September 23 and September 27, 2013.³ On November 29, 2013, Clearon

¹ See *Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 41364 (July 10, 2013) (*Preliminary Results*).

² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Chlorinated Isocyanurates from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," (August 15, 2013).

³ See Memorandum to the File, "Verification of the Sales and Factors Response of Juancheng Kangtai Chemical Co., Ltd. in the Antidumping Review of Chlorinated Isocyanurates from the People's Republic of China," (November 29, 2013)(Kangtai Verification Report).

Corporation and Occidental Chemical Corporation (collectively, Petitioners), Jiheng, and Kangtai each submitted a case brief.⁴ On December 4 and 5, 2013, Jiheng, Petitioners, and Kangtai each submitted a rebuttal case brief.⁵ On January 7, 2014, we held a public hearing to address issues raised in the case and rebuttal briefs.⁶

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, 2013, through October 16, 2013.⁷ Therefore, all deadlines in this segment of the proceeding were extended by 16 days. As a result, the revised deadline for the final results of this review is January 22, 2014.

Scope of the Order

The products covered by the order are chloro isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) trichloroisocyanuric acid (Cl₃(NCO)₃), (2) sodium dichloroisocyanurate (dihydrate) (NaCl₂(NCO)₃(2H₂O)), and (3) sodium dichloroisocyanurate (anhydrous) (NaCl₂(NCO)₃). Chloro isos are available in powder, granular, and tableted forms. The order covers all chloro isos. Chloro isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chloro isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

⁴ See “Case Brief of Clearon Corp. and Occidental Chemical Corporation,” (November 29, 2013); “Chlorinated Isocyanurates from China (Seventh Administrative Review) – Hebei Jiheng Chemical Co., Ltd. Case Brief,” (November 29, 2013) (Jiheng’s Case Brief) and; “Chlorinated Isocyanurates from the People’s Republic of China Kangtai Case Brief,” (November 29, 2013).

⁵ See “Chlorinated Isocyanurates from China (Seventh Administrative Review) – Hebei Jiheng Chemical Co., Ltd. Rebuttal Brief,” (December 4, 2013); “Rebuttal Brief of Clearon Corp. And Occidental Chemical Corporation,” (December 5, 2013); and “Chlorinated Isocyanurates from the People’s Republic of China Kangtai Rebuttal Brief,” (December 5, 2013).

⁶ See “Public Hearing in the Matter of: Administrative Review under the Antidumping Duty Order on Chlorinated Isocyanurates from the People’s Republic of China,” (January 7, 2014).

⁷ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government,” (October 18, 2013).

Discussion of the Issues

Comment 1: Selection of Surrogate Country

Whether the Philippines Should Continue to Be the Primary Surrogate Country

Petitioners' Argument

- The Department's practice is not to pick a surrogate country based on which country is the most significant producer with respect to export volume but whether the country is at a comparable level of economic development, is a significant producer of comparable merchandise, and has the best available information.⁸
- No parties disputed that the Philippines belongs on the list of potential surrogate countries.
- There is no dispute that comparable merchandise (sodium hydroxide) is produced in significant quantities in the Philippines.
- The Philippine import statistics provide better coverage for more of the factors of production than any other proposed surrogate country. There is record data from the Philippines covering all factors of production which was used by the Department in the *Preliminary Results*.
- Although exports may be a reasonable indicator of significant production, “. . . a country does not have to be a net exporter to be a significant producer of comparable merchandise . . .”⁹ Rather, the Department's practice is to pick the surrogate country based on whether the country is a significant producer and has the best available information.
- Thailand offers fewer reliable sources for surrogate values (SVs). The Thai import statistics do not cover four inputs, and are not credible or reliable with respect to two major inputs, hydrogen and chlorine.
- The Department did not find the Thai financial statements usable in the *Preliminary Results* because Thai companies either received subsidies or the data was not sufficiently detailed to calculate the financial ratios.
- Kangtai does not acknowledge that Mabuhay Vinyl Corporation (MVC) has annual production capacity of 50,000 metric tons of sodium hypochlorite, whereas the Thai producer, Aditya Birla, has a capacity of 36,000 metric tons.
- Neither India nor South Africa is preferable to the Philippines in terms of the comparability criteria or availability of reliable surrogate data.
- The available factor values on the record for Thailand provide less coverage of the factor inputs and require the use of values from other countries.
- Jiheng does not dispute that the Philippines is the correct primary surrogate country.

⁸ See *Certain Steel Nails from the People's Republic of China*, 78 FR 16651 (March 18, 2013) and accompanying Issues and Decision Memorandum at Comment 1.

⁹ See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China*, 78 FR 36166 (June 17, 2013) and accompanying Issues and Decision Memorandum at Comment 6.

Thailand is the Most Appropriate Primary Surrogate Country

Kangtai's Argument

- Thailand is a more significant producer of comparable merchandise than the Philippines and has the best quality financial statements. The existence of six identified Thai companies producing comparable merchandise confirms that Thailand is a significant producer. Thailand is also a net exporter of comparable merchandise while the Philippines is not.
- The Department mistakenly did not also find Thailand to be a significant producer of comparable merchandise (sodium hypochlorite) even though the record evidence includes four Thai producers of sodium hypochlorite, one of which has production data showing a capacity of 36,000 metric tons.
- The sole Philippine company financial statements on the record shows that MVC benefits from subsidies that appear to closely match programs that the Department has previously found to be countervailable and otherwise are *per se* countervailable.
- Even though MVC's statements do not absolutely confirm that the programs it benefits from have been found countervailable, the Department is not required to conduct a "formal investigation" into such matters.¹⁰ Furthermore, the Department has stated that it will not look in depth but rather will presume that subsidies are present.¹¹
- The Department has a demonstrated practice of relying on Thai financial statements even when there is evidence of receipt of countervailable subsidies.¹² Furthermore, the Department's policy is to use multiple financial statements, even though subsidized, over a single set of financial statements in order to normalize any potential distortions from using a single producer.¹³ In this case, the Department should favor the four imperfect Thai financial statements over the financial statements of the subsidized Philippine producer, MVC.
- The Department has relied on Thailand in numerous administrative reviews and found it was able to calculate financial ratios from less detailed statements, even those lacking line-items for selling, general and administrative expense (SG&A) and cost of goods sold. The Department has in fact relied on one of the Thai financial statements on record, from Thai producer Aditya Birla, in a recently completed review, finding it sufficiently detailed for the purpose of calculating financial ratios.¹⁴

¹⁰ See *Omnibus Trade & Competitiveness Act*, H.R. Rep. No. 100-576 at 590-91 (1988); accord, *Jiaying Brother*, 751 F. Supp. 2d at 1357.

¹¹ See *Certain Activated Carbon from the People's Republic of China: Final Results of the Antidumping Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying Issues and Decision Memorandum at 31.

¹² See *Certain Steel Threaded Rod from the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013), and accompanying Issues and Decision Memorandum at Comment 1.

¹³ See *Steel Wire Garment Hangers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 28803 (May 16, 2013), and accompanying Issues and Decision Memorandum at Comment 1D.

¹⁴ See *Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Administrative Review, 77 FR 59375* (September 27, 2012) (*Sodium Hex*) and accompanying Issues and Decision Memorandum at Comment 1.

- SV information is on the record to value all inputs from Thailand with the exception of thread.

Petitioners' Rebuttal

- The fact that there are four Thai financial statements on the record is immaterial given that three of the Thai producers received countervailable subsidies.
- The one Thai producer that did not receive subsidies, Siam PVS Chemical, does not identify within its financial statement its production or sales of sodium hypochlorite, and contains no breakdown of the costs of goods sold.
- The MVC financial statements are the best information available because none of the Thai financial statements provide enough detail to accurately calculate financial ratios.
- *Sodium Hex*, the case cited by Kangtai in noting that the Department relied on Thai statements despite its lack of detail and evidence of subsidies, occurred in the context of Thailand being the primary surrogate country, not the Philippines. Therefore, this case stands for the proposition that imperfect financial statements may still be preferred where the company is a producer in the primary surrogate country.
- Thailand does not have reliable SV data. Kangtai admits that the Thai SVs for ammonium chloride and chlorine are “aberrant” and argues for the use of Indian values in their place. The Thai import quantities for hydrogen were only 161 kilograms and is therefore, not sufficient as a commercial quantity to be used as SVs. Finally, there is no Thai SV on the record for thread.

If the Department Finds the Record Surrogate Data for Thailand and the Philippines is Unsuitable, India is the Best Overall Choice as the Primary Surrogate Country

Kangtai's Argument

- Even though India is not formally listed as a potential SV choice by the Department, Kangtai maintains that other economic factors such as the size of the economy, purchasing power, gross domestic product (GDP), and workforce population make India a comparable country to the PRC.
- The Department has maintained that a country excluded from the surrogate country list and outside the gross national income (GNI) band can still be economically comparable and selected as the primary surrogate country.¹⁵
- India is the best overall choice as the primary surrogate country. Thailand and the Philippines have aberrant import values for certain critical chemical inputs, including chlorine and ammonium chloride, whereas India has reliable domestic sources. In addition, the financial statements on the record from Thailand and the Philippines show evidence of subsidization.
- The Department has relied on India in prior segments when it was unaware of reliable data elsewhere, even though India fell outside the Department's preferred GNI band.

¹⁵ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 78 FR 55676 (September 11, 2013), and accompanying Issues and Decision Memorandum at 13-14.

Petitioners' Rebuttal

- India is not economically comparable to the PRC and has not been listed in the Department's surrogate country selection memoranda for over two years.
- The Department will only depart from its list of potential surrogate countries only when none of those countries are significant producers of comparable merchandise.

If the Department Finds the Surrogate Data for Thailand, Philippines, and India to be Unsuitable, South African Data Supplemented by Indian Sources Can Be Used

Kangtai's Argument

- In this review, the Department determined that South Africa was comparable to the PRC in terms of economic development.
- Record evidence shows that South Africa exported the highest quantity of sodium hypochlorites and calcium hypochlorites during the POR.
- While the Department prefers to value all inputs from one primary country, it does depart from this preference when necessary for the best available information.
- In the preliminary results of the last review, the Department found South Africa as the primary surrogate country that had reliable data to value inputs.¹⁶
- Although the selection of South Africa would require the Department to value certain inputs from another country, the same situation arises in the Philippines.

Petitioners' Rebuttal

- The Department rejected South Africa in the last administrative review because it lacked viable SV sources for several important factors of production.

Department's Position: The Department determines that the Philippines is the appropriate primary surrogate country after considering the facts and arguments on the record of this review. Based upon our examination, Kangtai has not demonstrated that the selection of the Philippines is inappropriate, or that Thailand represents a more suitable alternative primary surrogate. In the *Preliminary Results*, the Department found that the Philippines is the appropriate surrogate country based on the fact that: (1) the Philippines is at a level of economic development comparable to that of the PRC; (2) the Philippines is a significant producer of comparable merchandise; (3) the Philippines has publicly available and reliable data, especially for important inputs; and (4) the Philippines is the sole country with contemporaneous SV data for all inputs and surrogate financial statements for producers of comparable merchandise.¹⁷ The record continues to support the use of the Philippines as the primary surrogate country.

In the *Preliminary Results*, the Department considered Colombia, Costa Rica, Indonesia, the Philippines, South Africa, and Thailand to satisfy the economically comparable and significant-producer criteria for surrogate country selection purposes. Policy Bulletin 04.1 states that, if

¹⁶ See *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 41746, 41748 (July 16, 2012) (*2010-2011 Preliminary Results*).

¹⁷ See *Preliminary Results*, and accompanying Decision Memorandum at 10; see also Memorandum to the File, through Mark Hoadley, Acting Director, Office 6, AD/CVD Operations, from Emily Halle, International Trade Analyst, Office 6, AD/CVD Operations, entitled "Preliminary Results Surrogate Value Memorandum," (Preliminary SV Memorandum) dated July 2, 2013, at 2.

more than one country satisfies these criteria for surrogate country selection purposes, “then the country with the best factors data is selected as the primary surrogate country.” Importantly, Policy Bulletin 04.1 explains further that “data quality is a critical consideration affecting surrogate country selection” and that “a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable.”

Section 773(c)(1) of the Tariff Act of 1930, as amended, (the Act) instructs the Department to value the factors of production (FOPs) based upon the best available information from an appropriate market-economy (ME) country or a country that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV is: publicly available; contemporaneous with the POR; representative of a broad-market average; from an approved surrogate country; tax- and duty-exclusive; and specific to the input.¹⁸ The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.¹⁹

Moreover, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.²⁰ As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available SV for each input.²¹

The Department finds that while both the Philippines and Thailand are significant producers of comparable merchandise, the Philippines provides complete information for valuing all FOPs, and is particularly desirable when compared to Kangtai’s proposed alternative of Thailand. Specifically, not all FOPs can be valued using only Thai values. Two key inputs, in particular, require either the use of less contemporaneous data (labor), or rely on data from a country outside the Department’s surrogate country list (chlorine from India).²²

The Department’s criteria for choosing financial statements for the calculation of surrogate financial ratios are based on the availability of contemporaneous financial statements,

¹⁸ See, e.g., *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) (*Lined Paper from the PRC*) and accompanying Issues and Decision Memorandum at Comment 3.

¹⁹ See, e.g., *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

²⁰ See *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms from the PRC*), and accompanying Issues and Decision Memorandum at Comment 1; see also *Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

²¹ See *Mushrooms from the PRC*, and accompanying Issues and Decision Memorandum at Comment 1.

²² See Comments 2. D. and 2.G below, for the Department’s explanation for the continued use of the Philippine’s 2008 International Labor Organization (ILO) Chapter 6A labor data and the Global Trade Atlas (GTA) import data for chlorine which is contemporaneous; see also Kangtai’s Surrogate Values submission dated September 12, 2013, at Exhibit SV-1.

comparability to the respondent's experience, and publicly available information.²³ Moreover, for valuing overhead, SG&A expenses, and profit, the Department uses non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.²⁴ Further, the courts have recognized the Department's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.²⁵

With respect to the issue of subsidies, the Department's practice is not to rely on financial statements where there is evidence that the company received countervailable subsidies and there is other, more reliable and representative data on the record for purposes of calculating the surrogate financial ratios.²⁶ Kangtai argues that MVC benefitted from countervailable subsidies, with the result that its financial statements are unsuitable to use. Our review of MVC's financial statements leads us to conclude that the alleged subsidies do not contain any reference to any of the specific programs that the Department has previously found to be countervailable.²⁷

In sum, the Department finds that we have single financial statements from both the Philippines and Thailand that reflect no evidence of receipt of countervailable subsidies, are both publicly available, contemporaneous with the POR, and reliable.²⁸ However, we note that only Philippine producer MVC's financial statements include specific line items for SG&A expenses that allow the Department to directly calculate the surrogate financial ratios. Therefore, the Department finds that the MVC's financial statements are the best available information for calculating the surrogate financial ratios for these final results.

With respect to Kangtai's argument that India is the best overall choice as the primary surrogate country even though it was not included on the surrogate country list because other economic factors such as the size of the economy, purchasing power, GDP, and workforce population make India a comparable country to the PRC, the Department disagrees. First of all, Kangtai has failed to submit any evidence to substantiate the claim that these factors are superior to *per capita* GNI in comparing levels of economic development. The record is devoid of any material describing the relationships between these factors and the level of economic development. In contrast, *per capita* GNI is a consistent indicator that is clearly and strongly correlated and is frequently used by the World Bank as the basis for specifying broad development levels, *e.g.*, low-, middle-, or high income. Second, the size of an economy has no relationship to its level of economic development. The same analysis applies to GDP and workforce population. For example, countries with large economies can still have a low level of economic development and

²³ See, *e.g.*, *Notice of 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 Decision Memorandum at Comment 3.

²⁴ See 19 CFR351.408(c)(4).

²⁵ See, *e.g.*, *FMC Corp. v. United States*, 27 CIT 240, 251 (CIT 2003) (stating that the Department "has wide discretion in choosing among various surrogate sources"), *aff'd FMC Corp. v. United States*, 87 Fed. Appx. 753 (CAFC 2004).

²⁶ See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2d Sess., at 590-91 (1988).

²⁷ See Petitioners' Surrogate Values for Factors of Production for Final Results submission, dated September 12, 2013, at Exhibit 1, page 12.

²⁸ See Preliminary SV Memorandum at 7, footnote 13, noting the Department's finding with respect to the three Thai financial statements placed on the record prior to the *Preliminary Results*.

the converse can also be true. Third, the Department relies on *per capita* GNI²⁹ since, in contrast to *per capita* GDP, *per capita* GNI is reported across almost all countries by an authoritative source, the World Bank.³⁰ For that reason, the Department has concluded that, despite the regulation's reference to *per capita* GDP, "*per capita* GNI represents the single best measure of a country's level of total income and thus level of economic development."³¹

Finally, while arguments can be made for relying on purchasing power parity (PPP) *per capita* income figures, Kangtai has not provided information which demonstrates why this measure would be preferable to the data normally relied on by the Department. Therefore, the Department continues to rely primarily on exchange-rate-based *per capita* income figures.³² Based on *per capita* GNI, the Department continues to find that India is a country at a less comparable level of economic development than the countries on the surrogate country list. Furthermore, the issue of using which macro variable to determine the list of surrogate country must be considered early in any non-market economy cases. The Department must provide parties ample time to collect and submit SV information based on the list of candidates for the primary surrogate country prior to the Preliminary Results. Kangtai's argument to use other macro variables than *per capita* GNI to create the list of surrogate country first appeared in Kangtai's case brief. Using an alternate method may lead to a list that is entirely different from the one that was issued by the Department on February 7, 2013.³³

Further supporting the Department's position is the fact that Kangtai failed to submit any information during the surrogate country comment period. Specifically, we found that:

The Department provided the parties to this proceeding with more than sufficient time to submit any information related to the potential {surrogate countries} for this administrative review. Yet, the Department notes that, at no time during the {surrogate country} comment period in this review, did any party, including {the respondent}, submit any new information or in any way contest the {Office of Policy's list of potential surrogate countries}. In accordance with its regulations and practice, the Department identified potential surrogate countries based on the information available to it at the time. Specifically, the {Office of Policy's list of potential surrogate countries} used the most up-to-date information available at the time to identify the six economically-comparable countries on the list... {I}t is important for the Department to determine the list of potential {surrogate countries} early in the case in order to provide sufficient time for party participation and the necessary analysis. This list represents the best

²⁹ GNI consists of GDP (the value of goods and services produced in the country) plus income earned from outside the country, and *per capita* GNI is calculated as GNI divided by a country's population.

³⁰ See, e.g., *Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates*, 72 FR 13,246, 13,247 at n. 2 (March 21, 2007).

³¹ See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 77 FR 27435 (May 10, 2012) and accompanying Issues and Decision Memorandum at Comment I.A.

³² See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China, 60 FR 56048 (November 6, 1995).

³³ See the Department's February 7, 2013 letter to All Interested Parties at Attachment 1, Memorandum to Emily Halle, International Trade Analyst, Office 6, AD/CVD Operations, from Carole Showers, Director, Office of Policy, entitled "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates ("CI") from the People's Republic of China ("China"), dated February 7, 2013.

information available to the Department at the time it was issued. Revising the list of { surrogate countries } at a later date would be potentially unfair to the parties and create undue administrative difficulties.³⁴

We reiterate the importance of determining the list of potential surrogate countries early in the case in order to provide sufficient time for party participation and necessary analysis. The Department provided parties ample time to comment on any shortcomings with respect to the list of potential surrogates and/or suggest additions to the list of economically comparable countries prior to the Preliminary Results. Kangtai provided no comments with respect to the Department's proposed surrogate countries during the comment period, and had never provided argument for the use of India as a viable alternative surrogate country until the briefing stage of this review. Kangtai's first reference regarding India as a potential surrogate country was in its initial SVs submission, which included a single sentence stating that "...the Department should look to India and/or the Philippines or Thailand for industries producing comparing products."³⁵ Kangtai further qualified this statement, noting that we should consider India only as "... alternative sources for the circumstances that the Department may not have viable information for the valuation of FOPs from its primary surrogate country."³⁶ Because the record remained open to the submission of alternate SV information subsequent to the *Preliminary Results*, the submission of Indian FOP data itself was not untimely or inappropriate. However, the consideration of India as a potential surrogate country for the first time at the briefing stage of the instant review is exactly the type of scenario that the Department has previously found to "create undue administrative difficulties" and be "potentially unfair to the parties." Therefore, we are not in a position to address the merits of Kangtai's argument that India represents the best overall choice as a primary surrogate country.

Finally, the data available from South Africa did not include values for a number of key factors, including labor, financial ratios, and several chemical inputs. Although Kangtai selected Indian sources to value these inputs where a South African source did not exist, as noted above, India did not qualify as one of the economically comparable countries identified in this review. Therefore, we would only resort to using Indian data sources when no other data from these economically comparable countries are available, a factual circumstance that did not occur in the instant review (or in the prior review).³⁷

³⁴ See *Fresh Garlic from the People's Republic of China: Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012) and accompanying Issues and Decision Memorandum at Comment 1; and *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011–2012*, 78 FR 39708 (July 2, 2013) and accompanying Issues and Decision Memorandum at Comment 1.

³⁵ See Kangtai's Surrogate Values for Preliminary Determination, dated March 15, 2013, at 1.

³⁶ See Kangtai's Surrogate Values for Final Results of Review submission, dated September 12, 2013, at 2.

³⁷ See *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 4386 (January 22, 2013) (*2010-2011 Final*), and accompanying Issues and Decision Memorandum at Comment 7.

Comment 2: Selection of Surrogate Values if the Department Continues to Use the Philippines as the Primary Surrogate Country:

A. Steam

Jiheng

- The Department should use one of the two contemporaneous steam SVs on the record instead of a six-year old value that was used in the *Preliminary Results*. Specifically, the Department should use either the Philippine price for steam reported in “Geothermal Energy Weekly” or the Thai price reported in Glow Energy’s 2011 Annual Report.³⁸

Petitioners

- The Department correctly calculated the value of steam based on the value of imports of natural gas into the Philippines, multiplied by a steam conversion factor that has been used in several past cases.
- The Philippine import statistics are reliable and indicate an average unit value within the range of values placed on the record from other potential surrogate countries.
- The price for steam reported in “Geothermal Energy Weekly” is unreliable because it is a contract price for a single utility and not a broad-based or widely available rate. In addition, a single contract is not a reliable or representative basis for the factor value.³⁹
- The price for steam reported in “Geothermal Energy Weekly” is based on a “coal-indexed” price, apparently unrelated to the cost of steam from natural gas. It also appears highly volatile and could have risen by 74 percent.
- The conversion factor used by Jiheng to convert from kilowatt hours to metric tons is a “theoretical” rate based assuming 100 percent efficiency, which is not based on reality. Jiheng failed to submit the web page supporting its conversion rates.
- If the Department were to rely on this rate, it should adjust the conversion and increase the factor by tenfold given the significantly lower efficiency standards in the case of geothermal production of steam noted by the OECD.
- The Department should not resort to data from another country since the Thai price reported in Glow Energy’s Annual Report reflects local prices in markets far from the primary surrogate country.
- Glow Energy’s sales are not representative of steam costs generally, but reflect prices charged to a few customers located nearby in two industrial parks.

Department's Position: To value steam in the *Preliminary Results*, the Department used the Global Trade Atlas (GTA) import value of natural gas into the Philippines, multiplied by a steam conversion factor that has been used in several past cases. The Department’s practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select SVs which are product-specific, representative of a broad-market average,

³⁸ See *Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013) (*Prelim Xanthan Gum*), and accompanying Issues and Decision Memorandum at Comment 15, *aff’d* 78 FR 33351 (June 4, 2013).

³⁹ See, e.g. *Lightweight Thermal Paper from the People’s Republic of China*, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 10(3).

publicly available, contemporaneous with the POR, and free of taxes and duties.⁴⁰ The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering available record evidence regarding the particular facts of each industry.⁴¹ Although there is no hierarchy for applying the SV selection criteria, “the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the ‘best’ surrogate value is for each input.”⁴²

We agree with Jiheng that the “Geothermal Energy Weekly” domestic price quote from the Philippines is product-specific, publicly available, and contemporaneous with the period of review. However, Jiheng did not place on the record of this review the actual information from the website that supports the proposed conversion factor used to calculate the value of steam on a per metric ton basis. Lacking this evidence to confirm the appropriateness of the use of this conversion factor, the Department cannot use this domestic price for steam.

Jiheng’s second proposed SV for steam is a Thai domestic price reported in Glow Energy’s 2011 Annual Report. Although this price is also product-specific, publicly available, and contemporaneous with the period of review, it is a price found outside the primary surrogate country. Pursuant to 19 CFR 351.408(c)(2), the Department normally will value all factors in a single surrogate country. The CIT has upheld this practice, stating “the court must treat seriously the Department’s preference for a single surrogate country.”⁴³ In its opinion, the CIT explained that the preference for using a single surrogate country is reasonable because it “limits the amount of distortion introduced into the calculation.”⁴⁴ Accordingly, we continue to find the value derived from the GTA data for Philippine imports of natural gas, to represent “the best information available” for valuing steam, because the Philippines is the primary surrogate country for this review. Moreover, the Department has found a reliable conversion factor that it has used in the past to convert natural gas to steam.⁴⁵

B. Water

Jiheng

- The Department should use The Philippine Local Water Utilities Administration (LWUA) rates to value the water input because these rates are contemporaneous and are more broadly based than the water rates from “Doing Business in Camarines Sur” (Camarines Sur) that was used in the *Preliminary Results*.

⁴⁰ See, e.g., *First Administrative Review of Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

⁴¹ See *Glycine from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

⁴² See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

⁴³ See, e.g., *Clearon Corp. v. United States*, 2013 CIT LEXIS 27, Slip Op. 13-22, Ct. No. 08-00364 (February 20, 2013), at 12.

⁴⁴ See *id.*, at *13, *20.

⁴⁵ See *Certain Steel Wheels from the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703 at 67714 (November 2, 2011).

Kangtai

- The LWUA provides contemporaneous rates covering the major municipalities around Manila as opposed to two small cities outside of major industrial areas.
- As noted below in the “Methodological Issues” comments section, Kangtai maintains that the Department should not value its water factor because it consumed well water free of charge and did not pay for municipal water.

Petitioners

- The Department should not use the information published by the Philippine LWUA because the rates appear to be domestic rates and not industrial rates. In addition, the actual rate tables were not placed on the record, although the website cited by Jiheng states at the bottom: “Charges apply only for a ½ inch domestic connection.”
- These rates are not representative of market rates for water because the LWUA is a government-owned and controlled corporation with a specialized lending function mandated by law.

Department’s Position: The Department agrees in principal that the LWUA rates are more contemporaneous and more broadly based than the Camarines Sur rates used in the *Preliminary Results*. However, our review of the information on the record regarding the LWUA rates leads us to conclude that Jiheng did not provide the Department the actual rate tables issued by the LWUA. The Department cannot rely solely on a reference to a website but rather, we need to be able to review the actual information published by the authority that sets these rates to confirm their accuracy and reliability as an appropriate SV.

The only remaining SV for water from the Philippines on the record of this review is the Camarines Sur data. The Department has relied on this report in the last administrative review of this order and in other recent cases.⁴⁶ Therefore, as this is the only available data on the record to value water in the Philippines, the Department continues to find that this publication is publicly available, and representative of the costs a company would pay for water over the POR.

The Department addresses Kangtai’s argument on whether it should value well water in Comment 5.E, below, in the “Methodological Issues” section.

C. Ammonium Sulfate

Jiheng

- If the Department continues to consider Jiheng’s by-products from its cyanuric acid production to be ammonium sulfate rather than ammonia gas and sulfuric acid (*see* Jiheng’s comment on “Methodological Issues,” below), the Department should use domestic pricing to value ammonium sulfate reported by the Philippine Government’s Fertilizer and Pest Authority.
- The Department prefers to use domestic prices instead of import prices. Jiheng argues that there is domestic production of ammonium sulfate in the Philippines and the record evidence includes domestic prices.

⁴⁶ See Preliminary SV Memorandum at 4.

Kangtai

- The Department has a preference for domestic sources over import prices, providing that the prices are for domestically produced materials.
- The Department should use the weekly pricing information for ammonium sulfate reported by the Philippine Government's Fertilizer and Pest Authority since it is contemporaneous, tax exclusive, publicly available, and broadly based.

Petitioners

- The Department should not use domestic retail prices to value ammonium sulfate because they are retail prices. There is no evidence that Jiheng packages its ammonium sulfate for retail sale.

Department's Position: As explained below in Comment 5.B., the Department continues to find ammonium sulfate as the downstream by-product entitled to an offset. In reviewing the arguments and evidence on the record, we agree with Jiheng that a domestic market for ammonium sulfate exists based on information which shows that imports make up just half of the market with the rest being produced domestically.⁴⁷ However, as noted in Jiheng's case brief, the Department's preference for using domestic prices is often contingent upon the behavior of the producer and whether it would be "unlikely to use an imported factor in the production process."⁴⁸ Neither Jiheng nor Kangtai have presented any evidence or argument to suggest that Philippine producers rely primarily on domestic sources of ammonium sulfate to produce comparable merchandise. Moreover, there is a significant amount of imports of ammonium sulfate into the Philippines that is a likely tied to commercial demand for this product by producers in the Philippines, including those that produce comparable merchandise.

The Department examined the domestic price quotes on the record for ammonium sulfate that are included in a report issued by the Philippine Fertilizer and Pesticide Authority entitled "Current Retail Prices of 6 Major Grades Fertilizer by Region," and are based on a price per 50 kilogram bag.⁴⁹ The Department does not have enough information on the record to conclude that Jiheng and Kangtai sell their ammonium sulfate in retail quantities to similar customers (as noted in Comment 5.B below, we could not confirm that Kangtai made sales of ammonium sulfate during the POR). In addition, we were unable to discern from the prices included in the Philippine Fertilizer and Pesticide Authority's report whether they are tax exclusive. For these reasons, and the significant amount of imports of ammonium sulfate into the Philippines as noted previously, we continue to find the GTA import data to represent the best information available for valuing ammonium sulfate in the Philippines.

⁴⁷ See Jiheng's Post-Preliminary Surrogate Value Information submission, dated September 13, 2013, at Tab 7.

⁴⁸ See Jiheng's Case Brief, dated November 29, 2013, at 17, footnote 28, citing *Hebei Metals & Minerals Import & Export Corporation v. United States*, F. Supp.2d 1264, 1274 (CIT 2005).

⁴⁹ See Petitioners' Submission of Rebuttal Information Regarding Surrogate Values for Factors of Production for Final Results (Petitioners Rebuttal SVs), dated September 30, 2013, at Exhibit 4.

D. Labor

Kangtai

- The Philippine International Labor Organization (ILO) labor statistics used in the *Preliminary Results* are not a viable source for valuing Kangtai's labor cost because they do not reflect all costs related to labor.
- The ILO labor statistics excludes, among other things, remuneration for normal time worked, allowances, bonuses, gratuities, and earnings in kind. The Philippines Bureau of Labor and Employment Statistics (BEAMS) information provides a precise breakdown of all of the costs included in its labor cost data.
- The BEAMS information has labor cost data for 2007 that is specific to the "manufacture of chemicals and chemical products" industry and linked to the International Standard Industrial classification of all economic activities (ISIC), which is utilized by the ILO.
- The surveys used by Petitioners to rebut the use of the BEAMS information contain no substantive data and cannot be used due to the lack of source information.

Petitioners

- The Department has a preference for using ILO Chapter 6A data because they include all costs related to labor. The Department has never used BEAMS data.
- Kangtai provided incomplete information regarding the source of the ILO data, which uses multiple sources of Philippine labor information.
- The ILO data on the record is more contemporaneous than the BEAMS data.

Department's Position: Kangtai argues that the "Employment, Hours and Earnings Survey (EHES) is the sole source document used for the four sets of Philippine labor statistics that compile the ILO Chapter 6A labor data. The results of our review of the EHES show that the information included in this survey is inconclusive at establishing that it is the sole source of the Philippine ILO labor data. Moreover, further information noted in the EHES suggests that other sources are being used to compile the ILO labor data. Finally, we found that the hourly rates included in the ILO "labour-related establishment survey" essentially matches the rate found in the BEAMS data which Kangtai advocates that we use in place of the ILO Chapter 6A labor data.

Kangtai selectively points to one section of the EHES survey to argue its exclusiveness as the sole source for Philippine ILO labor data based on the reference that the "{d}ata collection is limited to overtime and assimilated earnings. It excludes all other components of earnings, *i.e.*, remuneration for normal time worked or work done, allowances, bonuses and gratuities, and earnings in kind. Statistics of average earnings as such are not compiled in this survey."⁵⁰ However, in a later section of this survey entitled "Other information," there is a subsection identified as "{d}ata supplied to the ILO for publication," which notes that there is "{d}ata on average weekly hours actually worked by employees, in non-agricultural activities and specific industries . . . which are derived from the Annual Survey of Establishments and cover production workers only."⁵¹ From this, we reasonably interpret that other data, either within or outside the

⁵⁰ See Kangtai's Surrogate Values for Final Results of Review submission, dated September 12, 2013, at Exhibit SV-15, EHES Survey at p. 2/6 through 3/6.

⁵¹ *Id.* at Exhibit SV-15, EHES Survey at 6/6.

EHES Survey, is included in the compilation of the ILO Chapter 6A labor data for the Philippines. Furthermore, the 122 pesos per hour figure reflected in the ILO 6A labor cost data entitled “Labour-related establishment survey” for the most current period (2002),⁵² is essentially identical to the “Annual Labor Cost Per Employee” figure of 122.45 noted in the BEAMS data.⁵³ Based on this finding, it appears that ILO Chapter 6A labor data and the BEAMS labor cost data are capturing the same labor costs.

Further examination of the information on the record also casts doubt as to whether the EHES on the record is either current or still being used. The industrial classifications used in the EHES, the Philippine Standard Industrial Classification (PSIC), is linked to the ISIC-Revision 2 data and not the ISIC-Revision 3 data, the most current version available from the Philippines.⁵⁴ In addition, the Labor Turnover Survey 2012 notes that “{t}he survey is a spin off from the Employment, Hours, and Earnings Survey (EHES), a survey of non-agricultural establishments with at least 20 workers. The EHES was conduct quarterly from 1989 to 1997 and semestral from 1998 until First Semester 2002.”⁵⁵

Based on the totality of evidence and argument on the record of this review, we continue to find the ILO Chapter 6A labor data for the Philippines using the two-digit description under ISIC-Revision 3 for the “Manufacture of Chemicals and Chemical Products” to be the best available information on the record. Based on the analysis described above, Kangtai’s argument regarding the limited nature of the ILO Chapter 6A labor data is unpersuasive. Kangtai has incorrectly characterized the ILO Chapter 6A labor data as incomplete, when in fact, they correspond very closely with the BEAMS data that it advocates using. While the BEAMS data and ILO labor data seem closely correlated, the ILO labor data are more contemporaneous and at the same sub-classification level as the BEAMS data. In summary, the Department will continue to use the Philippines ILO data reported under Chapter 6A of the yearbook because Kangtai has not established that these data do not reflect “. . . all costs related to labor, including wages, benefits, housing, training, *etc.*”⁵⁶

E. Electricity

Jiheng

- The Department should use the electricity rates from either the National Power Corporation (NPC) or Manila Electric Company (MERALCO) that are on the record to value electricity instead of the Camarines Sur data that were used in the *Preliminary Results*. Both MERALCO and the NPC rates cover the largest population centers and the majority of the industry in the surrogate country. In the prior review, the Department rejected MERALCO rates because of “unknown variability.” Jiheng contends that this is not the case in the current review because MERALCO rates for every month of the

⁵² *Id.* at Exhibit SV-15, LABORSTA Internet: 6A (yearly data) at 1/5.

⁵³ *Id.* at Exhibit SV-14.5 “PSIC D24: Manufacture of Chemicals and Chemical Products,” BEAMS 1998 Labor Cost Survey and BLES Integrated Survey (after 1998).

⁵⁴ *Id.* at Exhibit SV-15, EHES Survey at 2/6; *see also* Preliminary SV Memorandum at 7.

⁵⁵ *Id.* at Exhibit SV-15, “Philippines - Labor Turnover Survey 2012 – Overview” at 1/3.

⁵⁶ *See Preliminary Results*, and accompanying Decision Memorandum at 17.

review period are on the record. Finally, both the MERALCO and the NPC data are contemporaneous, whereas the Camarines Sur data was published in 2009.

Kangtai

- Since the *Preliminary Results*, the record now contains an alternative Philippine source for electricity, MERALCO, which constitutes the best available information to value Kangtai's electricity.
- The Department's reliance on electricity sourced from two small cities in Camarines Sur is not the best available information on the record. National Power and MERALCO cover the major industrial areas of the Philippines.
- The Department has used MERALCO data in multiple reviews because they are more contemporaneous, broad-market average of tax-exclusive electricity rates charged to industrial users.⁵⁷
- MERALCO's electricity rates cover the most populous cities in the Philippines and change month to month. The Camarines Sur rate is inferior because it covers only two small cities and was effective as of 2009. The Department has assumed that this rate remained unchanged through the POR.
- The MERALCO electricity rate is more specific and delineates the variety of expenses that compose the rate, as opposed to a single rate calculated from unknown factors.
- The source link for the Camarines Sur data no longer appears to be working and therefore, is no longer publicly available. The Department previously found that it would consider data as not publicly available and unusable when they cannot be accessed publicly.⁵⁸
- In past reviews of this order, the Department had concerns about using MERALCO data because they had only one month of data and they were based in kilowatts. In this review, the record contains MERALCO data for each month of the POR. In addition, Petitioners have provided the calculation used in *Hardwood Plywood* on the record of this review that can be used to calculate the rate using MERALCO data.⁵⁹

Petitioners

- The NPC and MERALCO data do not provide full costs without additional information.
- The record does not explain the adjustments to the NPC rates, the basis for the calculation, or how to apply these rates.
- Jiheng and Kangtai failed to submit essential facts that would permit the identification of the applicable MERALCO rate. The data provided by Kangtai are not sufficient to determine its electricity usage class. Although Jiheng claimed that its General Power classification fell under the "GP 115 KV" category, it provided no support for this claim. Finally, the Department does not have specific enough information to make any of the rate adjustments included in the MERALCO data.

⁵⁷ See *Hardwood and Decorative Plywood from the People's Republic of China: Antidumping Duty Investigation*, 78 FR 25946 (May 3, 2013)(*Hardwood Plywood*) at 27.

⁵⁸ See *Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013), and accompanying Preliminary Surrogate Value Memorandum at 4.

⁵⁹ See Petitioners Rebuttal SVs at Exhibit 1.

- None of the cases cited by respondents addressed the deficiencies in the MERALCO data, or the inability to identify which “GP” rating to use.
- In the last administrative review, the Department had other concerns about using MERALCO data besides the one month of data, notably that Jiheng’s methodology “. . . makes certain assumptions, *e.g.*, with regard to transmission charges, which are not supported by the record. We simply do not have the information to make a conversion of kilowatts to kilowatt hour.”⁶⁰
- The Camarines Sur rates include all charges, are available on a regional basis, and were used in the last administrative review.
- The Camarines Sur data are provided in kilowatt hours and do not require additional factual information from Jiheng and Kangtai in order to be applied.

Department’s Position: As an initial matter, the Department has used both the MERALCO and the NPC rates as SVs in recent cases.⁶¹ We agree that both the MERALCO and NPC rates provide broader market averages inherent in the larger coverage area than the cities identified in the Camarines Sur data. With regard to product specificity, both the MERALCO and Camarines Sur data include rates for different users, whereas the NPC rates do not. Specifically, the NPC data do not include specific rates for industrial users, whereas the MERALCO and Camarines Sur data do. Rather, the NPC data calculate only a single effective rate based on “unbundled rates” for the Luzon power grid.⁶² Because the NPC data fail to offer the level of specificity that are available in either in the MERALCO and Camarines Sur data, we find them to be inferior to other information available on the record.

The Department does find that the MERALCO data break down the industrial rate categories further than the Camarines Sur data, and that there is a meaningful degree of variability in these rates based on the primary and secondary industry classifications assigned to that rate. As noted by Kangtai, there are “. . . 39 different types of consumers, so the precise industrial size and general power can be matched to the respondent . . .”⁶³ Neither respondent company, however, provided an explanation and information to support the industry power classification it should be assigned. While many of the charges included in all of the general power classifications and sub-classifications are the same, three charges in particular have meaningful differences within the sub-classifications that fall under each general industry category. Specifically, the flat monthly rates for the supply and the metering charges, as well as the per kilowatt hour “system loss charge,” can have meaningful differences between the general industry power classifications (comparing GP 34.5 KV to GP 115 KV).⁶⁴ Accordingly, the use of more precise and specific data such as MERALCO requires that the Department have sufficient information on the record to properly assign these rates to respondent companies due to the variability found in the rates themselves. In *Hardwood Plywood*, the Department was very specific in identifying the general and subcategory of the rate as “INDL IS Large 34.5 KV” because the 34.5 KV category

⁶⁰ See *2010-2011 Final*, and accompanying Issues and Decision Memorandum at 18.

⁶¹ See *Hardwood Plywood* at 27; see also *Certain Cased Pencils From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part; 2010-2011*, 78 FR 42932 (July 18, 2013); see also Jiheng’s Post-Preliminary Surrogate Value Information, dated September 13, 2013, at Tab 1.

⁶² See Jiheng’s Post-Preliminary Surrogate Value Information submission, dated September 13, 2013, at Tab 1.

⁶³ See Kangtai’s November 29, 2013 case brief at 52.

⁶⁴ See Jiheng’s Post-Preliminary Surrogate Value Information, dated September 13, 2013, at Tab 2.

consisted of seven sub-categories that reflected the variability found in the three rate charges noted above.⁶⁵

The Department continues to find the Camarines Sur data to be contemporaneous as explained in the previous review, noting that the Department has found that utility rates represent a current rate as indicated by the effective date listed for each of the rates provided.⁶⁶ Therefore, in the Department's estimation, the rates from the publication likely were, absent evidence to the contrary, effective beginning in 2009, and thus continued to represent the current rate during the POR. Furthermore, because the effective date of these rates was set prior to the POR, and these rates have remained unchanged in prior proceedings, we continue to find them to be reliable and conservatively valued as contemporaneous rates without any adjustment for inflation.

Based on the totality of argument and evidence on the record, we continue to find the Camarines Sur electricity rate to be the best available information to value electricity because respondents failed to establish the specific industrial rate category that we should use in the MERALCO data. The Camarines Sur data identify a single industrial user rate for each of the two cities in the Philippines and are not made-up of multiple industrial sub-classifications that have meaningful rate differences. The Camarines Sur data are publicly available from the primary surrogate country, represent electricity rates for industrial users in two cities in the Philippines, and do not appear to include taxes or duties.

F. Sulfuric Acid

Kangtai

- The Philippine Bureau of Import Services (BIS) provides the best available data to value sulfuric acid from the Philippines because they are more specific (*i.e.*, provide per shipment details as opposed to monthly data provided by the GTA, which include items other than sulfuric acid), and are publically available.

Petitioners

- Kangtai obtained the BIS data from an "operation research specialist" who personally appeared at the BIS to obtain the data. This calls into question whether the BIS data are publically available.
- Kangtai does not support its claim that the BIS data are tax and duty exclusive.
- The BIS data account for only a fraction of the import volumes in the GTA statistics and cannot be reconciled to those data.
- Kangtai made no effort to show that the entire universe of correctly and incorrectly classified imports in the BIS data account for even a significant portion of the total reported by the GTA.⁶⁷

⁶⁵ See Petitioners Rebuttal SVs at Exhibit 1.

⁶⁶ See *2010-2011 Final*, and accompanying Issues and Decision Memorandum at Comment 10.

⁶⁷ See *Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (where the Department rejected alternative data sources on similar grounds because the respondent failed to establish that such data accounted for 100 percent of imports reported by the WTA).

Department's Position: For these final results, the Department has valued sulfuric acid using Philippine GTA data (*i.e.*, import data). The record of this review contains the Philippine BIS data, which allegedly reflect publically available shipments of sulfuric acid into the Philippines, and the Philippine GTA data which contain imports of sulfuric acid into the Philippines. Both sources of data are from the Philippines and are contemporaneous with the POR. However, Petitioners have called into question whether the BIS data are publically available and free of taxes. To obtain the BIS data, Kangtai obtained the services of a market researcher, who attested to visiting the "BIS for this purpose {collect import data for sulfuric acid} on August 27, 2013 in Makati City, Philippines. I spoke with BIS staff responsible for the collection of the data...They assisted me by providing this BOC import data in electronic format."⁶⁸ This statement, along with the fact that the market researcher's name is confidential, seriously calls into question whether the BIS data are "publically available." The Department also agrees with Petitioners that whether the data are tax exclusive is not clear on the record. Lastly, Kangtai's proof that the GTA data are "incurably tainted and unreliable" is not supported by record evidence. As Petitioners point out, Kangtai's analysis, after "correcting" wrongly coded imports, provides no reconciliation between the "correct" BIS data and GTA data. Kangtai's analysis appears to indicate that the BIS data do not include the complete universe of imports into the Philippines of sulfuric acid. Therefore, we are selecting the Philippine GTA data as the best available information to value sulfuric acid.

G. Chlorine

Kangtai

- The Philippine GTA import data for chlorine are aberrant because of the hazardous nature of chlorine as a toxic and highly corrosive material. As such, the Department did not value chlorine using an import price but rather relied on its practice of valuing chlorine from domestic financial statements based on the Department's finding that chlorine is hazardous and is not shipped internationally in commercial quantities.⁶⁹
- The Philippine import quantities are commercially insignificant compared to all commercial usage and quantities reported on the record. Kangtai alone purchased over 15 million kilograms of chlorine during the POR.
- The GTA import data for chlorine are distorted and are not reflective of Kangtai's actual usage because the BIS data show that they include over 25 percent of non-liquid chlorine from Hong Kong.
- The Department should value chlorine with the price found in a set of Indian financial statements for Kanoria, as it has in the past when import prices are found to be unreliable.⁷⁰ Alternatively, the Department should use the Philippines BIS calculation as the best available and most reliable import value for chlorine, which excludes imports that are not liquid chlorine.

⁶⁸ See Kangtai's Surrogate Values for the Final Results of Review submission, dated March 15, 2013, at exhibit SV-8.

⁶⁹ See *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 40689 (July 11, 2011)(2009-2010 Prelim), and accompanying Surrogate Value Memorandum at 12.

⁷⁰ *Id.*

Petitioners

- The Department has rejected most of these arguments in the last review, also noting that chlorine is traded internationally.⁷¹
- Imports of chlorine into the Philippines are within the range of chlorine imports into the other countries on the surrogate country list, and are at prices largely below the import prices into other surrogate countries. Therefore, there is no reason to conclude that the Philippine import statistics are unreliable.
- As explained above with respect to sulfuric acid, the BIS data are unreliable because they do not represent a comprehensive listing of all chlorine imports.

Department's Position: The Department has previously addressed most of these arguments in the last administrative review, finding that the Philippines GTA import data, the only data available to value chlorine from the Philippines, are not aberrational.⁷² The same fact pattern holds true in the instant review. Like the last review, the Philippines is the primary surrogate country and we have reliable Philippine GTA data on the record. The Philippine import data are not aberrational based on the quantity and the per-unit value when compared to the other countries found by the Department to be equally economically comparable to the PRC.⁷³ Moreover, as noted in the last review, the Department's policy is to not compare import volume to the purchases of respondent companies, but to compare the total import volumes of potential surrogate countries to one another.⁷⁴ Because the import volume for the Philippines was the third highest among the other equally economically comparable countries' imports on the record of this review, we are satisfied that this volume represents significant commercial quantities during the POR.

Kangtai's next concern regarding the hazardous nature of chlorine and its argument that chlorine is being infrequently traded internationally was also addressed in the last review:

The Department reached this conclusion in the previous review of this case, where India was the primary surrogate country, and parties had provided Indian GTA data, GTA data from other potential surrogate countries, and data from individual Indian companies for the surrogate valuation of chlorine. The Department's decision to use the Indian company data to value chlorine was partly based on the wide range of import volumes reported in the Indian GTA data as compared to other potential surrogate countries, and partly attributed to the various means and costs associated with transporting chlorine over long distances. Because of these deficiencies, and because other viable source information from the primary surrogate country was on the record, the Department opted to disregard the Indian GTA data.⁷⁵

⁷¹ See *2010-2011 Final*, and accompanying Issues and Decision Memorandum, at Comment 7.

⁷² *Id.* at Comment 10.

⁷³ See Kangtai's Case Brief, dated November 29, 2013, at 37.

⁷⁴ See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100 (October 18, 2012) (*Glycine*), and accompanying Issues and Decision Memorandum at Comment 1.

⁷⁵ See *2010-2011 Final* at Comment 7, citing *2009-2010 Preliminary Results*, unchanged in *Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 76 FR 70957 (November 16, 2011).

Similar to the 2010-2011 administrative review analysis, we first reviewed the SV information from the primary surrogate country, which for these final results, is the Philippines. As stated above, the Department does not find the Philippines GTA import data to be aberrational. Additionally, the data on the record of this instant review led the Department to conclude that the Philippines does have imports of chlorine at commercial quantities. In the 2009-2010 administrative review, the Department was able to compare import prices and domestic prices in the primary surrogate country, and was able to conclude that, due to a discrepancy in the pricing between domestic prices and import prices, as well as the average unit prices ranges of the potential surrogate countries, chlorine was not frequently traded. In the instant review, we have no domestic prices from the Philippines for chlorine to make this comparison. Furthermore, the Department has recently found that chlorine is being traded internationally.⁷⁶

Finally, the Department does not find the Philippines BIS data to be a reliable alternative to the Philippine GTA import data. Although Kangtai argues that the BIS data provide more detail that allow the Department to exclude imports that it states are not liquid chlorine, Kangtai did not demonstrate how the BIS data tie to the total import data reported in the GTA data. The Department is unable to conclude that the BIS import data on the record of this review represent the universe of all imports reported in the GTA data and therefore, continues to find that the Philippine GTA import data represent the best available information to value chlorine.

H. Ammonium Chloride

Kangtai

- The GTA Philippines import statistics for ammonium chloride are aberrant according to the Department's practice to disregard imports with low quantity shipment and corresponding high average unit values.⁷⁷
- The Philippines import quantity of ammonium chloride is only 0.37 percent of all import values on the record, and the average unit value is eight-times higher than the average of the listed surrogate countries.
- The Philippines import quantity of ammonium chloride is 128 times smaller than Kangtai's purchases during the POR and is, therefore, not reflective of commercial reality.
- The Department should use "Chemical Weekly" as the best available information to value ammonium chloride since the Department has found it to be reliable in the past.⁷⁸

Petitioners

- The GTA Philippines import statistics are within the range of values of imports into other surrogate countries. Therefore, they reasonably reflect commercial values.
- The Department does not determine whether imports are made at commercial quantities by comparing them to the quantities purchased by respondent companies.⁷⁹

⁷⁶ See *Glycine*, and accompanying Issues and Decision Memorandum at Comment 1.

⁷⁷ See *Shakeproof Assembly Components Div. of Illinois Tool Works v. United States*, 59 F. Supp. 2d 1354, 1360 (CIT 1999)(*Shakeproof Assembly*).

⁷⁸ See *2010-2011 Preliminary Results* at 77 FR 41746, 41749.

⁷⁹ See *2010-2011 Final Results*, and accompanying Issues and Decision Memorandum at Comment 7.

Department’s Position: For purposes of these final results, we have continued to rely on GTA import data from the Philippines to value ammonium chloride. Specifically, we find no basis to consider the Philippines GTA data for ammonium chloride to be aberrant and find no reason to consider information from another data source. As such, we find that these data provide the best available information on the record for purposes of calculating an accurate SV.

Kangtai argues that the GTA Philippine data show that a small quantity of ammonium chloride entered into the Philippines at a substantially high per-unit value when compared to larger quantity imports from other countries. However, the Department’s review of these GTA data indicates that neither the quantity nor per-unit value is aberrant. As noted by Kangtai, import quantities from all countries during the POR ranged from 380 kilograms to 1,168,873 kilograms while the average unit value (AUV) ranged from \$0.54 to \$26.72.⁸⁰ During the POR, the Philippines quantity totaled 5,464 kilograms with an AUV of \$4.70 per kilogram.⁸¹ While the total quantity maybe smaller in comparison to the quantity of some other countries on the record, we find that neither of these figures indicate that the Philippines date to be aberrant.

Kangtai has also indicated that the import quantity of the GTA Philippine data of ammonium chloride is significantly smaller than Kangtai’s purchases during the POR and is, therefore, not reflective of commercial reality. However, we do not find this argument persuasive to demonstrate that the Philippine’s import volumes are not of commercial quantity. It is our policy to compare the total import volumes of potential surrogate countries to one another, not to compare import volume to the purchases of respondent companies nor other companies in a country which the Department has determined is less economically comparable.⁸² Just because import quantities and an input may be smaller than a company’s annual consumption does not mean that the import quantities are non-commercial or aberrational.

We note that Kangtai’s did not provide the Department with alternative data from the Philippines or one of the equally economically comparable countries to use as a comparison. Instead, Kangtai argued we should use price data from India (“Chemical Weekly”), a country not on the list of equally economically comparable countries to the PRC.

Comment 3: Selection of Surrogate Values if the Department Chooses Thailand as the Primary Surrogate Country:

A. Ammonium Chloride

Kangtai

- The GTA Thai import statistics for ammonium chloride are aberrant according to the Department’s practice to disregard imports with low quantity shipment and corresponding high average unit values.⁸³
- The ammonium chloride statistics are aberrant in comparison to historical import quantities and values when analyzing the monthly data over the previous three years.

⁸⁰ See Kangtai Case Brief at 58.

⁸¹ *Id.*

⁸² See *Glycine* and accompanying Issues and Decision Memorandum at Comment 1.

⁸³ See *Shakeproof Assembly*, 59 F. Supp. 2d 1354, 1360.

- The Department should use “Chemical Weekly” as the best available information to value ammonium chloride since the Department has found it to be reliable in the past.⁸⁴

Department's Position: As noted in Comment 1 above, the Department determines that the Philippines is the appropriate primary surrogate country after considering the facts and arguments on the record of this review. Therefore, the Department is not evaluating the merits of the use of proposed Thai SVs, including ammonium chloride.

B. Chlorine

Kangtai

- The GTA Thai import data for chlorine are aberrant because of the hazardous nature of chlorine as a toxic and highly corrosive material. As such, the Department did not value chlorine using an import price but rather had a practice of valuing it from domestic financial statements based on the Department’s finding that chlorine is hazardous and not shipped internationally in commercial quantities.⁸⁵
- The imports of these two chemicals from Thailand are not in quantities representative of commercial shipments or respondent’s actual usage. Kangtai alone purchased twelve times more ammonium chloride during the POR than Thailand imported on a countrywide basis.
- In the prior review, the Department determined that chlorine was shipped in commercially significant quantities into the Philippines because the imports exceeded one million kilograms.⁸⁶ In this review, Thailand imported only 3,002 kilograms during the POR. Kangtai argues that the sum quantity and associated costs of all imports of chlorine during the POR from all countries, including Thailand, are insignificant in light of Kangtai’s commercial reality.
- The Department should follow its practice and determine that the low quantity correlated with a high unit value renders the Thai import statistics for chlorine aberrant and unreliable when compared to the other listed surrogate countries in this review.
- The Department should value chlorine with the price found in an Indian domestic statement, Kanoria, as it has in the past when import prices are found to be unreliable.⁸⁷ Alternatively, it should use the BIS calculation as the best available and most reliable import value for chlorine since the import quantity was more significant than Thailand.

Department's Position: As noted in Comment 1 above, the Department determines that the Philippines is the appropriate primary surrogate country after considering the facts and arguments on the record of this review. Therefore, the Department is not evaluating the merits of the use of proposed Thai SVs, including chlorine.

⁸⁴ See 2010-2011 Prelim, 77 FR at 41749.

⁸⁵ See 2009-2010 Prelim, and accompanying Surrogate Value Memorandum at 12.

⁸⁶ See 2010-2011 Final, and accompanying Issues and Decision Memorandum at Comment 7.

⁸⁷ See 2009-2010 Prelim and accompanying Surrogate Value Memorandum at 12.

Comment 4: The Department is not Authorized by Law to Apply the Alternative Methodology under Section 777A(d)(1)(B) of the Act to Annual Reviews

A. Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Less-Than-Fair-Value Investigations

Kangtai's Argument

- The Department did not properly withdraw the targeted dumping regulations⁸⁸ in 2008⁸⁹ in accordance with the Administrative Procedure (APA).⁹⁰
- Accordingly, the Department must apply the targeted dumping regulations, which include the requirement that interested parties submit an allegation of targeted dumping within specified timeframes as well as only apply the alternative method to those U.S. sales which have been found to be targeted and dumped.

Petitioners Rebuttal

- There is no targeted dumping regulation in existence for this review because it was entirely replaced in April 2012 through a notice-and-comment rulemaking not before the court in *Gold East Paper*. The Department should continue to implement its current regulations and practice pending the appeal of *Gold East Paper*.
- The APA requirements do not require that the agency publish a notice that spells out every potential variation of its final rule for notice and comment.⁹¹ The new regulation fully conformed to the APA requirements and must be applied to this review because it became effective on April 16, 2012.⁹²
- It is reasonable for the Department to rely upon its experience in investigations and apply the same reasoning in administrative reviews when interpreting the statute.⁹³

Department's Position: In the *Preliminary Results* and for these final results, the Department has applied the standard methodology by comparing weighted-average normal values to weighted-average export prices (EPs) (the average-to-average method). Therefore, this argument is moot.

B. Consideration of an Alternative Comparison Method in an Administrative Review

Kangtai's Argument

- Though the Department declined to apply the alternative methodology to Kangtai in the *Preliminary Results*, it is not legally authorized to do so in this review.

⁸⁸ See 19 CFR 351.414(f), 351.414(g) and 351.301(d)(5) (2007).

⁸⁹ See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008).

⁹⁰ See *Gold E. Paper (Jiangsu) Co. v. United States*, 918 F. Supp. 2d 1317 (CIT 2013) (*Gold East Paper*).

⁹¹ See, e.g., *First Am. Discount Corp. v. CFTC*, 222 F.3d 1008, 1015 (D.C. Cir. 2000).

⁹² See *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Request for Comment*, 75 FR 81533 (December 28, 2010).

⁹³ See *United States Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir. 2010).

- The U.S. Supreme Court has held that “where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”⁹⁴
- The Department appeared to recognize that consideration of an alternative comparison method was intended only for investigations when it withdrew its targeted dumping.⁹⁵

Department’s Position: As noted above in Comment 4.A, the Department applied its standard methodology (the average-to-average method) in the *Preliminary Results* and in these final results. Therefore, this argument is moot.

C. The Average-to-Transaction Method and the Denial of Offsets for Non-Dumped Sales

Kangtai’s Argument

- The Department may not reasonably deny offsets for non-dumped sales when applying the alternative methodology because zeroing is not authorized or reasonable in non-market economy country proceedings. The Department employs a margin calculation methodology in non-market economy cases that is based on period-wide weighted-average normal values as being distinct from the monthly weighted-average normal values in ME proceedings.

Petitioners’ Rebuttal

- Negative margins of dumping need not always be offset by positive margins.
- Section 777A(d)(1)(B) of the Act does not limit the application of the average-to-transaction alternative price comparison methodology to certain transactions.

Department’s Position: As noted above in Comment 4.A, the Department applied its standard methodology (the average-to-average method) in the *Preliminary Results* and in these final results. Therefore, this argument is moot.

D. Differential Pricing Analysis

Kangtai’s Argument

- If the Department still decides to apply an alternative method, this method can only be applied to those sales that are targeted and dumped.
- Accordingly, the Department should not consider sales which are priced above the average price as passing the Cohen’s *d* test.

Petitioners’ Rebuttal

- The Department’s differential pricing analysis is in accordance with law because the statute is silent regarding the price comparison methodology to be used in administrative

⁹⁴ See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987); see also *Lindh v. Murphy*, 521 U.S. 23, 29 (1997).

⁹⁵ See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008); see also *Gold East Paper*.

reviews, and because the Department properly withdrew the targeted dumping regulation either in 2008 or with the promulgation of its new regulation in 2012.

Department's Position: As noted above in Comment 4.A, the Department applied its standard methodology (the average-to-average method) in the *Preliminary Results* and in these final results. Therefore, this argument is moot.

Comment 5: Methodological Issues

A. Value-Added Tax (VAT) Adjustment for Kangtai's and Jiheng's U.S. Sales

Petitioners' Argument

- Kangtai did not rebut the presumption in the Department's new methodology that, unless the amount of the VAT rebate on export was equal to the VAT paid on inputs in the production process, it would deduct this difference from the EP. Therefore, the Department presumes that the 17 percent VAT tax on inputs reported by both respondents, is collected unless the producer demonstrates that it is exempted from the requirement to pay the input VAT.⁹⁶
- Kangtai improperly amended its U.S. sales listing in the original questionnaire response and changed the VATTXU to zero, defeating the purpose of the new methodology. Given that a 17 percent VAT was imposed on Kangtai's purchases of inputs, and Kangtai failed to provide any evidence that the nine percent rebate was received, the full 17 percent VAT should be deducted from its EPs.
- At the least, the Department should apply its presumption and set VATTXU to eight percent which is the difference between the 17 percent VAT burden on inputs and the nine percent VAT rebate on exports reported in its original questionnaire response.
- Jiheng did not submit evidence that its purchases of inputs were exempt from VAT, either in part or in whole. Therefore, the Department should not use the VAT amounts reported by Jiheng but should instead recalculate the VATTAXU at eight percent because it failed to show that the 17 percent VAT burden on inputs was offset to a greater extent than the nine percent VAT rebate on exports.

Jiheng's Rebuttal

- Jiheng fully responded to the Department's questions concerning how the PRC VAT system worked, and provided a detailed explanation, with documentary support, of its calculation of its un-refunded VAT paid. Therefore, the Department acted consistently with its current policy by reducing Jiheng's EPs by the actual amount of VAT paid but not rebated.
- The Department should not use Petitioners theoretical eight percent VAT tax rate, but rather, the actual un-refunded VAT paid.

⁹⁶ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Antidumping Proceedings*, 77 FR 36481, 36483 (June 19, 2012).

Kangtai's Rebuttal

- In response to the Department's questionnaires, Kangtai correctly reported that the subject merchandise exported was not subject to the VAT obligation and reported zero in the "Value Added Tax" field of the questionnaire.
- If the wording "paying VAT taxes on the merchandise sold to the United States" included in the Section C questionnaire had any meaning other than the clear meaning understood by Kangtai, the Department would have issued a supplemental questionnaire.
- Kangtai disclosed all information requested by the Department that is sufficient to compare the VAT paid for materials purchased or rebated for export sales during the POR. The VAT rebated by the government was to offset VAT paid for raw material purchases.
- The VAT mechanism provides for a VAT payment of 17 percent of the material costs on the lower valued goods, but the nine percent rebate is based on the free on board (FOB) value of the finished goods which are higher valued. Therefore, whether or not a respondent incurred VAT cost is a company-specific issue.
- The record of this review, including the general ledger summaries verified by the Department and tied to financial statements, shows that Kangtai did not incur any VAT tax for its export sales to the United States during the POR.

Department's Position: For purposes of these final results, the Department has reduced Jiheng's and Kangtai's U.S. sales prices by eight percent. In 2012, the Department announced a change of methodology with respect to the calculation of EP and constructed export price (CEP) to include an adjustment of any un-refunded VAT in certain non-market economies in accordance with section 772(c)(2)(B) of the Act. In this announcement, the Department stated that when a non-market economy government has imposed an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated. Information placed on the record of this review indicates that the input VAT rate paid by both respondents was 17 percent and that there was a input VAT rebate rate of nine percent applicable to exports of the merchandise under consideration.

The Department will "consider evidence as to whether the particular respondent(s) was, in some manner, exempted from the requirement to pay the export tax, duty, or other charge." However, neither Jiheng nor Kangtai have provided any evidence that they were rebated input VAT at more than the standard nine percent on their export sales. For this reason, we have reduced U.S. price in percentage terms by the difference between the VAT rate of 17 percent and the refund rate of 9 percent.⁹⁷

⁹⁷ See Jiheng's Section C questionnaire response dated November 26, 2012, at Exhibit C-6.1; *see also* Kangtai's Section C questionnaire response dated November 21, 2012, at Exhibit C-2.

B. By-Product Offsets

Jiheng's Argument

- The Department incorrectly treated ammonium sulfate as the downstream by-product of Jiheng's cyanuric acid production. Jiheng has demonstrated that its actual direct by-products are ammonia gas and sulfuric acid, and that they have value without any further processing.
- Because the costs of these by-products are included in the production of subject merchandise and have commercial value, Jiheng is entitled to a regular by-product offset for the ammonia gas and sulfuric acid.
- Ammonium sulfate is not a downstream by-product but rather a commercial product that it deliberately produces.

Kangtai's Argument

- Kangtai made sales of ammonium sulfate as recorded in the company ledgers or warehouse journal. This documentation was verified by the Department to confirm their reliability.
- Kangtai did book the income realized from the sales of by-product and the Department fully verified that the payment was actually received.
- Kangtai does not separately capture or measure the consumption of inputs used to produce ammonium sulfate. These costs are included in the production of cyanuric acid. There were no actual transportation costs incurred as the customer would pick-up the material.
- If the Department determines to not grant the offset of ammonium sulfate, then the sulfuric acid and ammonia gas offset should be granted as an "immediate by-product," since they are physically reintroduced in the production of a downstream product and have commercial value.
- If the Department does not grant either the offset for downstream by-product or direct by-product, and appropriate adjustment to the FOB database is warranted to exclude those factors consumed for ammonium sulfate.

Petitioners' Rebuttal

- Kangtai is not entitled to a by-product offset for any alleged sales of ammonium sulfate.
- The Department's practice is that the mere production of by-products does not entitle the producer to a by-product offset. There also must be commercial sales and revenue realized by the company from the sales of that by-product.⁹⁸
- Kangtai is not entitled to a by-product offset because it failed to submit any factors used to produce and sell ammonium sulfate. As in the last review, the Department requires this information in order to grant a by-product offset.⁹⁹
- There is no evidence that Jiheng sells ammonia gas or sulfuric acid. Rather, these are used to make and sell ammonium sulfate, the correct by-product. The by-product methodology suggested by Jiheng produces unreasonable results (*i.e.*, the final by-product is valued at less than the value of the inputs used to make it).

⁹⁸ See, *e.g.*, *Lined Paper from the PRC*, and accompanying Issues and Decision Memorandum at Comment 11.

⁹⁹ See *2010-2011 Final*, and accompanying Issues and Decision Memorandum at Comment 14.

Department’s Position: For these final results, the Department is continuing to treat ammonium sulfate as the by-product. As explained in the previous review, “the Department first starts with the value of the downstream product actually sold by the respondents, ammonium sulfate, produced during the POR... {f}rom this amount, the Department would normally deduct the costs associated with converting the by-products into the downstream product, such as labor and electricity.”¹⁰⁰ As Petitioners accurately explain, it is the Department’s well-established practice that the mere production of by-products, such as ammonia gas and sulfuric acid, is not sufficient to grant an offset. Indeed, the by-product must have commercial sales and revenue must be realized from these sales in the corporate accounts.¹⁰¹ Record evidence does not show that Jiheng sells either ammonia gas or sulfuric acid. Indeed, these products are used to make and sell ammonium sulfate.¹⁰² In order to receive an offset, a respondent must demonstrate that there were actual sales of the by-product.¹⁰³ Jiheng has demonstrated that it sells ammonium sulfate, the downstream by-product. As a result, the Department is granting an offset for Jiheng in these final results.

The record evidence for these final results does not support granting a by-product offset to Kangtai. In order to grant an offset, income from the by-product must be realized by the company (*i.e.*, it must be recorded in that company’s accounting records).¹⁰⁴ Kangtai argues that the Department fully confirmed and verified that Kangtai sold ammonium sulfate and realized revenue from its sales.¹⁰⁵ Additionally, Kangtai noted that because it did book the income realized from the sales of by-product in the normal business of operation, and the Department fully verified that the payment was actually received by the company’s financial department, it is entitled to an offset. This claim is not supported by the record and the Department’s strict definition that in order to be “realized,” income must be recorded in the company’s accounting records. Furthermore, the Department found at verification that “{b}eyond the warehouse journal, Kangtai does not maintain an inventory account for ammonium sulfate in its accounting system, nor do they have an inventory control process established for this by-product.”¹⁰⁶ Therefore, the Department finds that Kangtai is not entitled to an offset.

Petitioners further argue that Kangtai did not provide the per-unit usage rate of each input used to produce that ammonium sulfate, and should not be granted an offset because the Department does not have the information necessary to make the proper adjustments. As the Department is not granting a by-product offset to Kangtai, this argument is moot.

However, the Department notes that while Petitioners are correct in stating that Kangtai did not provide any per-unit usage rates, an exhaustive review of the ammonium sulfate production process during verification supports Kangtai’s claim that these costs are included in the

¹⁰⁰ *Id.* at Comment 14.

¹⁰¹ *See, e.g., Lined Paper from the PRC*, and accompanying Issues and Decision Memorandum at Comment 11.

¹⁰² *See* Letter from Jiheng, “Chlorinated Isocyanurates from China (Seventh Administrative Review) - Hebei Jiheng Chemical Co., Ltd. Response to Section C & D,” November 26, 2012 (Jiheng Section C and D response), at D-32.

¹⁰³ *See, e.g., Multilayered Wood Flooring From the People’s Republic of China*, 76 FR 64318 (October 18, 2011) and accompanying Issues and Decision Memorandum at 87-88.

¹⁰⁴ *See Lined Paper*, and accompanying Issues and Decision Memorandum at Comment 11.

¹⁰⁵ *See* Kangtai Verification Report at 33.

¹⁰⁶ *Id.*, at 32.

production of cyanuric acid, and that there is no accurate way to separate the costs associated with the production of ammonium sulfate from the cyanuric acid production costs.¹⁰⁷

C. Adjusting the Value of By-Product Hydrogen to Eliminate the Cost of Ocean Shipping Containers

Petitioners' Argument

- The Department has previously determined that GTA data are not the best source for hydrogen gas because of “. . . problems with transporting hydrogen internationally.”¹⁰⁸
- Neither Jiheng nor Kangtai transport their hydrogen gas via cryogenic canisters. The Department should therefore adjust the SV for hydrogen to remove the cost of the cryogenic containers.
- Unlike the past review, this review includes SV information for cryogenic containers, including the cost of transporting hydrogen in such containers. The Department should deduct this amount from the GTA SV for hydrogen gas by taking Kangtai's reported consumption for hydrogen gas and divide by 4080 (the number of kilograms of hydrogen gas transported by either truck or ship).

Jiheng's Rebuttal

- Adjusting an SV for transportation costs is inconsistent with Department practice.¹⁰⁹ The Department also does not adjust by-product SVs for these types of costs.¹¹⁰
- Petitioners failed to provide the calculation to make this adjustment, or provide a usable cost of the containers. Specifically, the 1998 study provided by Petitioners is based on theoretical costs and Petitioners do not identify exactly which costs should be used to reduce the value of hydrogen.
- Although estimates of the capital costs for the truck containers are provided, the study notes that this would be an incorrect basis on which to calculate the per-truck delivered cost of the hydrogen. The same issue would hold true for calculating the cost of imported hydrogen.

Kangtai's Rebuttal

- Petitioners' argument on the shipping of hydrogen supports Kangtai's argument that chlorine is not internationally shipped in commercial quantities.
- If the Department reduces the value of by-product hydrogen for international packing costs, it must also adjust the value of chlorine for such costs.

¹⁰⁷ See Letter from Kangtai, “Certain Chlorinated Isocyanurates from the People's Republic of China Supplemental Questionnaire Response,” April 12, 2013, at 11; see also Kangtai Verification Report at 32.

¹⁰⁸ See *2010-2011 Final*, and accompanying Issues and Decision Memorandum at Comment 8.

¹⁰⁹ See *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 31.

¹¹⁰ See, e.g., *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) and accompanying Issues and Decision Memorandum at Comment 5.

Department’s Position: Similar to the argument raised in the previous review regarding the proposed adjustment to the GTA import values for sodium hydroxide to account for concentration levels (also discussed, below), we find that making an adjustment to GTA import values for hydrogen would also be arbitrary given the amount of variables involved. The information placed on the record from Kangtai includes a 1998 study on the costs of storing and transporting hydrogen, which indicates that hydrogen can be transported in multiple physical states (compressed gas, a cryogenic liquid, or as a solid metal hydride).¹¹¹ The transportation costs vary based on the physical state that the hydrogen is being transported, which is determined by “. . . the application, quantity, and distance from the production site to the customer.”¹¹² This 15 year old study also identified the future trends of delivery which included the use of airplanes to deliver hydrogen over great distances “. . . to reduce transport times and consequently reduce boil-off losses.”¹¹³

Regardless of what might be the typical containers that are used in the commercial trade of hydrogen, Kangtai has provided no evidence demonstrating that the Philippine GTA import data for hydrogen is only associated with hydrogen in one form; that it reflects hydrogen being stored in a uniform way; and, that only one mode of transportation was being used (*i.e.*, reflect delivery either solely by air or sea). Therefore, consistent with our practice, the Department does not adjust respondents’ FOPs when the variables in the data source are unknown. For these reasons, the Department is not adjusting the SV data for either hydrogen or chlorine.

D. Adjusting for the Concentration of Sodium Hydroxide

Kangtai’s Argument

- Record evidence establishes that the commercial concentration of sodium hydroxide is 50 percent. MVC, the only manufacturer of liquid caustic soda in the Philippines, imported sodium hydroxide at a 48-50 percent concentration, and also imported nearly 50 percent of all sodium hydroxide imported into the Philippines.
- The Department should adjust the concentration of the import value to Kangtai’s purchase concentration of 32 percent.

Petitioners’ Rebuttal

- The Department rejected this same argument in the last review because there is no evidence that the SV consists only of sodium chloride at a 50 percent concentration level.¹¹⁴
- Information on the record shows that there is no limitation or range on the concentration classified under HTS heading 2815, and that many chlor-alkali manufacturers offer caustic soda (*i.e.*, sodium hydroxide) in 32 percent, 45 percent or 50 percent solution.
- While MVC, a large importer of sodium hydroxide, imports at a 50 percent solution, it does not reflect at all on other consumers in the Philippines or in the import statistics.

¹¹¹ See Petitioners’ Surrogate Values for Factors of Production for Final Results submission, dated September 12, 2013, at Exhibit 5, “Costs of Storing and Transporting Hydrogen” (National Renewable Energy Laboratory, November 1998) at 33.

¹¹² *Id.*, at 36.

¹¹³ *Id.*, at 37.

¹¹⁴ See 2010-2011 Final, and accompanying Issues and Decision Memorandum at Comment 18.

Department’s Position: As explained in the previous review, “an adjustment to sodium hydroxide would be arbitrary,” and the Department is not making any adjustments for these final results.¹¹⁵ The information placed on the record from Kangtai indicates that sodium hydroxide is purchased in the Philippines at 50 percent concentration levels commercially, but there is also unambiguous evidence that it can be purchased at other concentration levels (*i.e.*, the product that Kangtai itself purchases is sold at a 32 percent concentration level). Furthermore, as provided by Kangtai, MVC indicated that the caustic soda imported into the Philippines is around 48-50 percent concentration.¹¹⁶ This indicates that the largest importer of sodium hydroxide into the Philippines also purchases sodium hydroxide in various ranges, however tight that range may be.

Regardless of what might be the typical concentration level for commercially traded sodium hydroxide, Kangtai provided no evidence demonstrating that the Philippine GTA data reflect that typical concentration level. Consistent with our practice, the Department does not adjust respondents’ FOPs when the concentration level in the data source is unknown, especially when evidence from Petitioners demonstrates that the GTA data for the sodium hydroxide HTS number does not include concentration ranges, and that sodium hydroxide is available commercially in three concentrations.¹¹⁷ For these reasons, the Department is not adjusting the SV data for sodium hydroxide.

E. Valuing Well Water as a Factor of Production

Kangtai’s Argument

- The Department should not value Kangtai’s water factor because it consumed well water free of charge and did not pay for municipal water.
- The Department’s practice is to not value this FOP in such circumstances.¹¹⁸

Petitioners’ Rebuttal

- Water consumed as a direct input in the manufacturing process should be valued whether or not Kangtai obtained the water free of charge.
- The Department has not assigned an SV to value only when the water is obtained from a non-public source and the overhead costs associated with obtaining it can be identified.¹¹⁹ When both of these conditions are not satisfied, the Department assigns an SV to water.¹²⁰ Kangtai has not demonstrated that its well is a non-public source and has not reported any costs associated with obtaining that water.

¹¹⁵ *Id.* and accompanying Issues and Decision Memorandum at 26-27.

¹¹⁶ See Letter from Kangtai, “Chlorinated Isocyanurates from the People’s Republic of China Surrogate Values for the Final Results of Review,” March 15, 2013, at exhibit SV-8.

¹¹⁷ See Letter from Petitioners, Chlorinated Isocyanurates from the People’s Republic of China (7th Antidumping Administrative Review): Petitioners’ Submission of Rebuttal Information Regarding Surrogate Values for Factors of Production for Final Results,” September 30, 2013, at exhibit 8 and exhibit 9.

¹¹⁸ See *Hardwood Plywood* at 25946 and accompanying Surrogate Value Memorandum at 5.

¹¹⁹ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 78 FR 39708 (July 2, 2013) (*Frozen Fish from Vietnam*), and accompanying Issues and Decision Memorandum at Comment VIII.

¹²⁰ See *Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China*, 75 FR 81564 (December 28, 2010) (*Apple Juice from the PRC*), and accompanying Issues and Decision Memorandum at Comment 1(A).

Department’s Position: We agree with Petitioners that the conditions outlined for not assigning an SV for water as explained in *Apple Juice from the PRC*, have not been met. In *Apple Juice from the PRC*, the respondent could not “. . . separate its electricity charges related to pumping and purifying the water because there is no meter that separately records this usage.”¹²¹ As a result, the Department made the following finding:

If LXFI cannot separate these charges, the Department certainly cannot derive a value for them without introducing inaccuracies into the calculation of normal value. In similar cases where the respondent is pumping water free of charge, it is the Department’s practice to apply a surrogate value (“SV”) for water consumption without adjusting electricity usage related to pumping.¹²²

The same fact pattern holds true in the instant review. Kangtai claims that it uses well water free of charge but is unable to track the actual electricity usages for several workshops. Specifically, Kangtai reported that during the POR, it could not break out the electricity used for the TCCA workshop, SDIC workshop, and the CYA and SDIC workshops for Ouya.¹²³ The fact that Kangtai does not even track general electricity usage for all of its workshops with the exception of one, demonstrates that Kangtai does not track its specific electricity usage for pumping the water. In *Frozen Fish from Vietnam*, the Department was able to capture the energy consumption for pumping water and valued the energy used to pump well water, instead of valuing well water as a separate FOP.¹²⁴ Accordingly, for the reasons noted above, we will continue to apply our practice of assigning an SV for water consumption without adjusting electricity usage related to pumping the water.

Comment 6: Ministerial Errors

A. Conversion Errors

Jiheng’s Argument

- The Department failed to convert the by-product SVs to Philippine pesos per metric ton. These were reported on a per metric ton basis.
- The Department failed to convert the wooden pallet SV to pieces. According to Jiheng, this should be done by multiplying both the SV and the distance by 15.3, following the methodology in the prior review.

¹²¹ *Id.* at Comment 1(A).

¹²² *Id.* at Comment 1(A), citing e.g., *Third Administrative Review of Frozen Warmwater Shrimp from the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 10026, 10028 (March 9, 2009).

¹²³ See Kangtai’s Section C and D Questionnaire response dated November 21, 2012, Section D at 14.

¹²⁴ See *Frozen Fish from Vietnam*, and accompanying Issues and Decision Memorandum at Comment VIII.

Petitioners' Rebuttal

- There is no dispute with respect to the conversion errors.

Department's Position: The Department agrees with Jiheng and will correct the conversion errors related to the by-product and wooden pallet SVs.

B. Double-Counting of VAT

Jiheng's Argument

- The Department double-counted the VAT adjustment.

Petitioners' Rebuttal

- Agrees that the VAT was double-counted but, as explained above, the VAT adjustment should be set equal to eight percent, the difference of the 17 percent VAT imposed on purchases of inputs, and the nine percent VAT rebate that is reflected on the record.

Department's Position: The Department agrees with Jiheng it double-counted the VAT adjustment. We will apply the appropriate VAT adjustment as discussed in Comment 5.A above, and adjust the calculation to avoid double-counting.

C. Calculation of Inter-Company Transportation Costs for Intermediate Chemicals

Jiheng's Argument

- The Department applied factory-specific internal transportation costs for three intermediate chemicals to a consolidated FOP database instead of using consolidated factor values.
- In the prior review, the Department made an adjustment to reflect the intra-company transfer of intermediate product from Wuyi to Baikang only for sales of product produced at Baikang.
- In the current review, the Department should apply these factory-specific factors to all transactions on a consolidated basis. The Department should correct this calculation using consolidated factor values to adjust for these intra-company transfers.

Petitioners' Rebuttal

- The Department correctly calculated Jiheng's inter-company transportation costs in the *Preliminary Results*.
- Jiheng's proposed methodology understates the total freight costs incurred on inter-company transfers. Instead of calculating the cyanuric acid, caustic soda and chlorine gas consumed at Baikang and dividing this amount by the TCCA produced at Baikang, Jiheng has allocated these three intermediate inputs over the total amount of TCCA produced by all three of its facilities.

Department's Position: We agree with Jiheng that we incorrectly calculated the combined transportation expenses for intermediate products in the *Preliminary Results*. Since we added those expenses to a consolidated cost database, the expenses for shipping intermediate products from Wuyi to Baikang and the Jiheng headquarters should have been calculated on the basis of

Jiheng's consolidated production of the downstream products. Therefore, in calculating intra-company transportation costs for these final results, the Department has applied consolidated factor values.

D. Calculation of Financial Ratios

Jiheng's Argument

- The Department should adjust the financial ratios to exclude retirement and employment benefits from SG&A, and avoid double-counting these expenses.

Kangtai's Argument

- If the Department uses the BEAMS data to value labor, then the financial ratios should be calculated to avoid any double counting.¹²⁵

Petitioners' Rebuttal

- Using the respondents proposed adjustments would understate the SG&A expense because MVC's "employee benefits" and "retirement benefits" are identified as "operating expenses" (*i.e.*, period costs not tied directly to the production of goods sold). Record evidence demonstrates that nearly half of these benefits are tied to senior management, not the employees included in direct labor.¹²⁶
- The Department's practice is to not make adjustments to the financial ratios for such indirect costs when there are not itemized details regarding the indirect labor costs as an amount of cost of goods sold.¹²⁷
- The ILO Chapter 6A data used to value labor does not include total SG&A labor costs so the Department is not double counting or otherwise using benefits that have been included in MVC's financial ratios.

Department's Position: The Department agrees with Petitioners in that the categorization of employee and retirement benefits were correctly attributed to SG&A in the *Preliminary Results*, and we have not made any adjustments to the financial ratios. As explained in the previous review, the financial statements used to calculate the financial ratios provide a separate classification for manufacturing costs and operating expenses (*i.e.*, period costs). Manufacturing costs are those costs that, when incurred, are initially allocated and capitalized as inventory and are subsequently expensed in the form of "cost of goods sold" when units in inventory are sold. These costs typically include direct materials, direct labor, and manufacturing or factory overhead costs. It is expected that the manufacturing costs allocated to each product include all factory related repairs and maintenance and labor costs including benefits, because in accordance with the matching principal of accounting, the product costs should be expensed only when the products are sold to ensure an accurate matching of costs to the sales revenue that occurs in any

¹²⁵ See, e.g., *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 4.

¹²⁶ See Letter from Petitioners, "Chlorinated Isocyanurates from the People's Republic of China (7th Antidumping Administrative Review): Petitioners' Submission of Information Regarding Surrogate Values for Factors of Production," March 15, 2013 (Petitioners Prelim SV), at exhibit 8, page 27.

¹²⁷ See *Small Diameter Graphite Electrodes from the People's Republic of China*, 77 FR 13284, 13292-93 (March 6, 2012).

given period. The manufacturing costs incurred to produce each product are tracked and assigned to the product as it enters into the inventory. It is only when specific products are sold that they become expenses in the current period, as part of cost of goods sold. On the other hand, period costs are expensed in full in the period in which these costs are incurred. Period costs do not relate to the production of any specific product and are not capitalized, nor do they go through inventory. As such, we note that, when financial statements identify and classify labor costs as either manufacturing related labor costs or administrative and selling related labor costs, we should rely on those classifications in the financial statements where these labor costs are identified, unless there is good reason to believe the classification is not accurate.

In the instant case, MVC's financial statements¹²⁸ provide a clear and separate classification for manufacturing costs and operating expenses (*i.e.*, period costs). The cost of goods sold section on the financial statements includes line items for both direct labor and supervision and indirect labor costs. It is not unreasonable to expect the cost of goods sold related to direct labor, supervision and indirect labor costs to include not only the wages paid to the factory workers, but also all benefits paid the same workers. Likewise, the operating expenses line item includes salaries and wages, retirement benefits, and employee benefits. Again, it is not unreasonable to expect the operating expense line items for salaries and wages, retirement benefits and employee benefits to include such costs related only to administrative staff.

MVC's financial statements include a note that states “{t}he Company has a funded, noncontributory defined benefit retirement plan providing for death and retirement benefits to all its regular employees.”¹²⁹ While we agree with Jiheng that the note to the financial statements states that retirement benefits are provided to all regular employees, we disagree that this statement means that retirement benefits for the entire company, including the factory workers whose salaries are included in the cost of goods sold section of the income statement, are included in the operating expenses section of the income statement and are being double counted. The statement in the notes to the financial statements is a general policy statement and the additional information in the detailed breakdown of the retirement costs are as stated a “component of retirement expenses which were charged in operations.” Consequently, we continue to believe that both the employee and retirement benefits classified as operating costs relate to the selling and administrative personnel only while the employee and retirement benefit costs related to the factory workers are included in the cost of goods sold labor amount. Accordingly, the note to the financial statements does not indicate that we are double counting retirement benefits. Therefore, the Department continues to find these employee and retirement benefits should be classified as SG&A expenses.

Since the Department is continuing to use ILO Chapter 6A to value labor (*see* Comment 2.D above), the adjustments suggested by Kangtai if BEAMS data are used, are moot.

¹²⁸ Since seven months of the POR are in 2011, we are continuing to use the 2011 MVC financial statements since this statement covers the majority of the POR.

¹²⁹ Petitioners are referring to Jiheng's cite to Petitioners Prelim SV at exhibit 8, page 13.

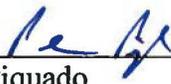
Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review and the final dumping margin in the *Federal Register*.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

22 JANUARY 2014

Date