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Administrative Review
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February 14, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of Antidumping
Duty Administrative Review: Chlorinated Isocyanurates from the
People's Republic China; 2017-2018

I. SUMMARY

We analyzed the comments from interested parties in the 2017-2018 administrative review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from the People's Republic China (China). As a result of this analysis, we recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. A complete list of the issues in this administrative review on which we received comments is provided below:

Comment 1: Whether a Principal-Agent Relationship Exists Between Heze Huayi and Its U.S. Customer

Comment 2: Selection of the Primary Surrogate Country

Comment 3: Whether Malaysian Trade Data Monitor (TDM) Data is Superior to the Mexican Global Trade Atlas (GTA) Data

Comment 4: Whether Mexican GTA Import Data is Less Preferable Because It is Not on a CIF Basis

Comment 5: Whether the Malaysian Data for Water and Labor is Superior to the Mexican Data

II. BACKGROUND

The Department of Commerce (Commerce) published its *Preliminary Results*¹ on August 19, 2019.² On September 25, 2019, Bio-Lab, Inc., Clearon Corp. and Occidental Chemical Corp. (collectively, the

¹ See *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 42891 (August 19, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² *Id.*



petitioners), and the respondents Heze Huayi Chemical Co., Ltd. (Heze Huayi) and Juancheng Kangtai Chemical Co., Ltd. (Kangtai) (collectively, the respondents) submitted case briefs.³ The petitioners and Heze Huayi submitted rebuttal briefs on September 30, 2019.⁴

On November 22, 2019, Commerce fully extended the deadline for the final results until February 14, 2020.⁵ We held a public hearing on January 28, 2020, to address issues raised in the case and rebuttal briefs.⁶

III. SCOPE OF THE ORDER

The products covered by the order are chlorinated 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). Chlorinated isos are available in powder, granular, and tableted forms. The order covers all chlorinated isos. Chlorinated 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 chlorinated 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.

IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on a review of the record and comments received from interested parties, Commerce made one change to the *Preliminary Results*. Specifically, we converted the Mexican Global Trade Atlas (GTA) data from a “freight-on-board” (FOB) basis to a “cost of insurance and freight” (CIF) basis.⁷

³ See Petitioners’ Letter, “Case Brief of Bio-Lab, Inc., Clearon Corp. and Occidental Chemical Corporation,” dated September 25, 2019 (Petitioners’ Case Brief); see also Respondents’ Letter, “Certain Chlorinated Isocyanurates from the People’s Republic of China: Case Brief,” dated September 25, 2019 (Respondents’ Case Brief).

⁴ See Petitioners’ Letter, “Rebuttal Brief of Bio-Lab, Inc., Clearon Corp. and Occidental Chemical Corporation,” dated September 30, 2019 (Petitioners’ Rebuttal Brief); see also Heze Huayi’s Letter, “Certain Chlorinated Isocyanurates from the People’s Republic of China: Rebuttal Brief,” dated September 30, 2019 (Heze Huayi’s Rebuttal Brief).

⁵ See Memorandum “Chlorinated Isocyanurates from the People’s Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” (November 22, 2019).

⁶ See Hearing Transcript, “Public Hearing in the Matter of the Antidumping Administrative Review of Chlorinated Isocyanurates from the People’s Republic of China,” (January 28, 2020).

⁷ See Memorandum, “Analysis for the Final Results of the 2017-2018 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People’s Republic of China: Heze Huayi Chemical Co. Ltd.,” dated concurrently with this memorandum (Heze Huayi Final Analysis Memorandum); see also Memorandum, “Analysis for the Final Results of the 2017-2018 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People’s Republic of China: Juancheng Kangtai Chemical Co., Ltd.,” dated concurrently with this memorandum (Kangtai Final Analysis Memorandum).

V. DISCUSSION OF THE ISSUES

Comment 1: Whether a Principal-Agent Relationship Exists Between Heze Huayi and Its U.S. Customer

*Petitioners' Case Brief*⁸

- Commerce's *Preliminary Results* fails to consider the record as a whole because it only relies on two factors, the first being there was no indication that anyone other than the reseller, Heze Huayi's U.S. customer, conducted the actual sales with the downstream customers, and this U.S. customer took title to the merchandise before shipment by Heze Huayi.
- Heze Huayi's U.S. customer is merely a paper corporation agent of Heze Huayi for importing purposes, and as such, this U.S. customer can be used for the purpose of evading antidumping duties by simply dissolving when the duties become due.
- The timeline of this U.S. customer's incorporation and lack of proof of a valid U.S. email address suggests that this U.S. customer is actually a paper entity that will dissolve its corporation status at the time when duties are assessed.
- Evidence shows that a third company is co-located with Heze Huayi's U.S. customer and that the same individual incorporated both companies.
- Heze Huayi reported that it had no documents supporting its negotiations with this U.S. customer even though at verification Commerce found that the initial sales agreement was finalized in part, by email. Therefore, Heze Huayi withheld necessary emails between it and its U.S. customer and failed to cooperate to the best of its ability.
- Commerce should assign Heze Huayi a margin based on adverse facts available because the record evidence indicates that Heze Huayi and its U.S. customer are affiliated through a principal-agent relationship and necessary emails were withheld and not reported in its questionnaire responses. As such, this failure affects the entire U.S. sales database and Commerce should therefore assign the PRC-wide rate as total adverse facts available.

*Heze Huayi's Rebuttal Brief*⁹

- Commerce properly found no agency relationship and reasoned that less weight should be given to the fact that the reseller never takes physical custody of the product and does not process it, correctly noting this is not an unusual set of circumstances between a U.S. reseller and a foreign producer, which has frequently occurred before under this order.
- The fact that the reseller never takes physical custody of the product and does not process it, exists for almost all third-party resellers located in Hong Kong, Taiwan, or other countries where they instruct Chinese exporters to ship the goods directly to the ultimate customers in the United States.
- There is no evidence on the record that shows that Heze Huayi's U.S. customer was acting primarily for the benefit of Heze Huayi since this U.S. customer was reluctant to provide its downstream sales documents and not willing to disclose its pricing information to Heze Huayi, further supporting the fact that this U.S. customer acted as an arms-length reseller.

⁸ See *Petitioners' Case Brief*, at 3-11.

⁹ See *Heze Huayi's Rebuttal Brief*, at 1-5.

- Claims that a third company or third party are somehow related to Heze Huayi’s U.S. customer, fail to account for Commerce’s findings at verification that no agent fees or commissions were paid to an individual or company for the reported U.S. sales.
- Petitioners’ argument focuses on the relationship between a third company and Heze Huayi’s U.S. customer. Heze Huayi has no knowledge regarding this relationship, and whatever this relationship may be, it does not impact the legitimacy of Heze Huayi’s selling price to this U.S. customer.
- Heze Huayi did not report there were no communications with its U.S. customer but rather, very few email communications with its U.S. customer because this customer made periodic visits to the factory to check on the quality of the goods and discuss future orders.
- Alternatively, an affidavit signed by the U.S. customer was provided to demonstrate that the price negotiation is independent from the Chinese government.
- Heze Huayi did not withhold any information to impede the investigation and acted to the best of its ability to provide the requested email communications with the U.S. customer at verification regarding the downstream sales documents requested by Commerce.

Commerce’s Position: We disagree with the petitioners and continue to find that principal-agent relationship does not exist between Heze Huayi and its U.S. customer.

A finding of affiliation under section 771(33)(G) of the Act requires Commerce to find that any person “controls” any other person. One person, or party, controls the other if it “is legally or operationally in a position to exercise restraint or direction over the other” party.¹⁰ Commerce has found a party controls the other where a principal-agent relationship exists among the parties.¹¹ In the *Preliminary Results*, Commerce noted that the record established no principal-agent relationship existed between Heze Huayi and its U.S. customer.¹² As no agency contract or other explicit evidence demonstrating a principal-agent relationship existed, Commerce examined all the factors for determining a principal-agent relationship with regard to the allegations made by the petitioners that such a relationship existed between Heze Huayi and its U.S. customer.¹³ Specifically, we analyzed each of the following criteria: (1) the foreign producer’s role in negotiating price and other terms of sale; (2) the extent of the foreign producer’s interaction with the downstream customer; (3) whether the agent/reseller maintains inventory; (4) whether the agent/reseller takes title to the merchandise and bears the risk of loss; (5) whether the agent/reseller further processes or otherwise adds value to the merchandise; (6) the means of marketing a product by the producer to the downstream customer in the pre-sale period; and (7) whether the identity of the producer on sales documentation implies such an agency relationship.¹⁴ Of the seven factors analyzed, we found five factors that did not support finding an agency relationship exists

¹⁰ See *Bio-Lab, Inc. v. United States*, 392 F. Supp. 3d 1264 (Ct. Int’l Trade 2019) at 1268.

¹¹ See section 771(33) of the Act; and Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 838; see also *Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394, 24403 (May 5, 1997) (*Gas Turbo-Compressor Systems from Japan*) (discussing the relationship of the principal-agent relationship analysis to section 771(33) of the Act and concluding that “control of the principal over its agent is the hallmark of an agency relationship”).

¹² See *Preliminary Results PDM* at 17-20.

¹³ *Id.* at 17-20.

¹⁴ *Id.* at 18-20, citing *Stainless Steel Sheet and Strip from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002), and accompanying Issues and Decision Memorandum (IDM) at Comment 23.

between Heze Huayi and its U.S. customer.¹⁵ Additionally, we found that only two of the seven factors supported the petitioners' agency argument; specifically, that the reseller did not maintain inventory or take physical custody of the product and did not further process the product.¹⁶ Commerce has frequently seen this producer/reseller relationship before in this order and did not find that the evidence on the record contained an unusual set of circumstances between a U.S. reseller and a foreign producer.¹⁷ We further noted in the *Preliminary Results* that Commerce will consider the totality of the circumstances surrounding the parties, and as such, excessive weight should not be given to these two latter factors, stating that this is not an unusual set of circumstances between a U.S. reseller and a foreign producer, and it is in fact a relationship that Commerce has seen frequently before under this order.¹⁸

The purpose of the above-referenced analysis is to ultimately determine whether Heze Huayi and its U.S. customer are affiliated via an agent/principal relationship, and to evaluate whether one party controls the other, such that it is in a position to legally or operationally exercise restraint or direction over the other. In such an analysis, Commerce has stated an intent to "focus on relationships that have the potential to impact decisions concerning production, pricing or cost."¹⁹ The record demonstrates Heze Huayi's role in negotiating prices and other terms of sale is limited to its negotiations and other interactions with its U.S. customer, and does not extend to the downstream customers of this U.S. customer. This conclusion is based on the attestations and affidavits of Heze Huayi and its U.S. customer,²⁰ and the record evidence, which includes the verification report and verification exhibits collected by Commerce during the verification of Heze Huayi.²¹ During verification, Commerce examined Heze Huayi's books and accounting records, and reviewed extensive sales trace documents which demonstrate Heze Huayi's interactions were limited only to this U.S. customer in terms of negotiating and settling the terms of the reported U.S. sales, including the payment for these sales.²² Accordingly, the record evidence provides no indication that anyone other than the U.S. customer is conducting the actual sales with the downstream customers, and that this U.S. customer, acting as a reseller, is taking title to the merchandise before it is sold to its downstream customers. If Heze Huayi's U.S. customer had been acting as agent for Heze Huayi, Commerce would have expected to see some indication of a commission, some reference to the downstream customers in Heze Huayi's sales revenue or other accounts, *etc.*²³

¹⁵ *Id.* at 18-19.

¹⁶ *Id.* at 18-19.

¹⁷ *Id.* at 20.

¹⁸ See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (2017-2018 Review): Petitioners' Submission of Factual Information Concerning the Supplemental Questionnaire Responses of Huayi and Kangtai," dated May 31, 2019, at Exhibits 3-6.

¹⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27297 (May 19, 1997).

²⁰ See Heze Huayi's Letter, "Heze Huayi Supplemental Response," at Exhibit SQ1-8.

²¹ See Memorandum, "Verification of the Questionnaire Responses of Heze Huayi Chemical Co., Ltd. in the Antidumping Review of Chlorinated Isocyanurates from the People's Republic of China," dated August 1, 2019 (Heze Huayi Verification Report) at 5.

²² *Id.* at 14-15 and VE-11 (noting that our review of Heze Huayi's accounting records confirmed that no agent fees or commissions were paid to an individual or company for the reported U.S. sales during the POR. Heze Huayi's sales trace documentation in VE-11 also includes the U.S. customer's purchase order, commercial invoice to the downstream U.S. customer, and deposit slip reflecting payment by this downstream customer. Company officials explained at verification that the freight agent provides Heze Huayi with the information regarding the ultimate destination of the shipment which is noted on Heze Huayi's commercial invoice).

²³ See *Gas Turbo-Compressor Systems from Japan*, 62 FR 24394, 24400-24401 (Comment 2) (providing examples of evidence Commerce expects to find to support a principal-agent relationship).

A significant portion of the petitioners' arguments for finding a principal-agent relationship revolves around documentation surrounding a potential relationship between Heze Huayi's U.S. customer and another third party reseller/distributor in the United States. First, none of this documentation undermines the reliability and substance of the record evidence noted above, clearly demonstrating Heze Huayi's negotiations of the U.S. price and other terms of sale was limited to the reported U.S. customer and not the downstream customer. The information provided by the petitioners focuses on a relationship between a third-party entity/individual and Heze Huayi's U.S. customer, and not Heze Huayi, itself. As such, this information is not meaningful because it does not demonstrate how the U.S. customer's association with this third-part entity/individual affected decisions concerning "production, pricing or cost" between Heze Huayi and this U.S. customer, nor does it indicate any negotiations or interactions between Heze Huayi and the downstream customer or the potential for control to be exercised by one party over another. The petitioner does not appear even to attempt to argue how this information relates to any of the seven criteria applied in this analysis, instead claiming only that it provides proof that the U.S. customer "operates merely as a paper corporation agent for Huayi." As just noted, however, Commerce does not see how this information sheds any light on the question of whether the U.S. customer is an agent or otherwise under the control of Heze Huayi.

Second, the petitioners' concerns regarding the U.S. customer's incorporation and lack of proof of a valid U.S. email address, does not contravene Heze Huayi's reporting of its sales to this U.S. customer as "export price" sales. Section 772(a) of the Act defines "export price" as the price at which subject merchandise is first sold by the producer or exporter to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Assuming, *arguendo*, that Heze Huayi's U.S. customer was not located in the United States, such a situation in which the first sale to an unaffiliated customer is to a customer outside of the United States, for exportation to the United States, that customer is – within the context of the Act and Commerce's questionnaire – the U.S. customer. Therefore, it would have no bearing on our treatment of Heze Huayi's sales as "export price" sales.

In so far as the petitioners are suggesting that the information they have provided demonstrates a "close supplier" relationship,²⁴ Commerce disagrees with that suggestion also. Commerce's regulations at 19 CFR 351.102(b)(3) state that, in finding affiliation based on control, Commerce will consider, among other factors, close supplier relationships. With respect to close supplier relationships, Commerce has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other.²⁵ A "close supplier relationship" is established when a party demonstrates that the relationship is significant and could not be easily replaced.²⁶ Only if Commerce determines that there is reliance does it evaluate whether one of the parties is in a position to exercise restraint or direction over the other.²⁷ Commerce will not, however, find affiliation on the basis of this factor unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²⁸

24 See Petitioners' Case Brief at 7 (third bullet and n.18).

25 See SAA at 838.

26 See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18417 (April 15, 1997).

27 See *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying IDM at Comment 21; see also *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1298-1300 (CIT 2005).

28 See 19 CFR 351.102(b)(3).

It is important to distinguish “exclusivity” from “reliance.” A party might have an exclusive relationship with a supplier, customer, or reseller, but still be perfectly capable of acting independently if the exclusive relationship is no longer in its interests. What matters is whether the first party ultimately has other options and thus is not by necessity in the exclusive relationship with the second party. There is no evidence on the record of this review indicating such reliance. As discussed above and in the *Preliminary Results*, the record does not demonstrate that either party dictated sales terms to the other or exercised control over the other party. The record demonstrates nothing but an independent, arm’s length relationship between Heze Huayi and its U.S. customer.

Given the totality of the evidence and analysis of the factors described above, we continue to find that a principal-agent relationship does not exist between Heze Huayi and its U.S. customer. The only information on the record supporting petitioners’ agency argument is the fact that the reseller, the U.S. customer, does not maintain an inventory of Heze Huayi’s products; never takes physical custody of the product; and does not further process the product. On the other hand, the record demonstrates that Heze Huayi’s role in negotiating the U.S. price and other terms of sale was limited to the reported U.S. customer, and does not indicate that anyone other than this U.S. customer is conducting the actual sales with the downstream customers.

Comment 2: Selection of the Primary Surrogate Country

*Respondents’ Case Brief*²⁹

- Commerce found Malaysia to be at the same level of economic development as China and a significant producer of comparable merchandise.
- Although Commerce stated its preference to rely on a country that produces identical merchandise, it continued its analysis of the comparative Mexico and Malaysia surrogate value records before selecting the primary surrogate country because Malaysia has some production of identical merchandise. The record shows at least one Malaysian producer of chlorinated isos as well as an existing market for identical merchandise in Malaysia similar in size to Mexico.
- Malaysia is the second largest exporter of comparable merchandise whereas Mexico exported the second to smallest quantity of comparable merchandise among the listed surrogate countries.
- Section 773(c)(4) of the Act directs Commerce only to rely upon a significant producer of comparable merchandise, not identical merchandise. The comparable merchandise sodium hypochlorite and calcium hypochlorite are substitutable products offering the same functions and share the same fundamental factors of production and production processes, such as chlorination.
- The Malaysian surrogate values are superior to the Mexican ones because there are multiple Malaysian financial statements. Commerce has a strong preference to use multiple financial statements.³⁰
- Although Commerce only found the Malaysian financial statements for CCM to be representative of a manufacturer of comparable merchandise, this financial statement is preferable because CCM is only engaged in the chlor-alkali industry whereas the Mexican financial statement for CYDSA is representative of a conglomerate engaged in numerous noncomparable industries.

²⁹ See Respondents’ Case Brief, at 2-10.

³⁰ See, e.g., *Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 28803 (May 16, 2013), and accompanying IDM at Comment 1D.

- Nothing on the record supports Commerce’s preliminarily finding that the Malaysian financial statement for Mey Chern shows that it only trades in comparable merchandise (sodium hypochlorite) despite being listed as a manufacturer and trader. Likewise, using the financial statement of Mey Chern’s holding company Whiting, allows for the capture of the financial ratios of the manufacturing company and not merely the investment company.
- The Malaysian financial statement for Accot Technologies, should be used because petitioners did not establish that all of its water treatment chemicals, including comparable merchandise calcium and sodium hypochlorite, are sourced from Japan.
- Each of the Malaysian financial statements represent companies that are only chemical producers, whereas CYDSA has only one of five divisions that produce comparable chemical products, including sodium hypochlorite.
- Even though CYDSA’s chemicals division does make up a significant amount of its sales, that does not entail that the costs of the company are correspondingly similar percentages. A significant amount of money was spent developing its hydrocarbon and storage facilities, even though it did not show a large percentage of sales, resulting in very high selling, general and administrative (SG&A) costs.
- CYDSA is a conglomerate which advertises and promotes numerous global brand names, whereas respondents sell the subject merchandise in containers provided by the customer with the customer’s brand name on it, thereby not incurring any branding expenses.

*Petitioners’ Rebuttal Brief*³¹

- Commerce should continue to find Mexico as the best choice for the primary surrogate country as it has in the most recent administrative reviews,³² because Mexico is the only potential surrogate country on the list that produces identical merchandise, chlorinated isos, in significant quantities.³³
- Mexico has usable surrogate values for every factor of production.
- Commerce’s *Policy Bulletin* states that if the record contains a surrogate country that produces identical merchandise, Commerce does not need to consider whether another potential surrogate country produces comparable merchandise.³⁴

³¹ See Petitioners’ Rebuttal Brief, at 2-14.

³² See *Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 31953 (July 10, 2018) (*2016-2017 Prelim Results*), and accompanying PDM at 6 and 10-14, unchanged in *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 5053 (February 20, 2019) (*2016-2017 Final Results*), and accompanying IDM at Comment 1; see also *Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 35183 (July 28, 2017) (*2015-2016 Prelim Results*), and accompanying PDM at 6 and 13, unchanged in *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 5243 (February 6, 2018) (*2015-2016 Final Results*), and accompanying IDM; and, *Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 45128 (July 12, 2016) (*2014-2015 Prelim Results*), and accompanying PDM at 7 and 11, unchanged in *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 4852 (January 17, 2017) (*2014-2015 Final Results*), and accompanying IDM at Comment 1.

³³ See *Heze Huayi Chemical Co., Ltd. v. United States*, Slip Op. 18-57 (CIT 2018), at 11-12 (upholding the selection of Mexico as the primary surrogate country).

³⁴ See *Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) (*Policy Bulletin*), at note 6.

- The same evidence provided in the three previous administrative reviews is provided in the instant review, which demonstrates Mexico to be a significant producer of identical merchandise. This includes an affidavit and joint venture agreement with Aqua-Clor S.A. de C.V. (Aqua-Clor), and its U.S. chemical registrations; PIERS cross-border data that has been reconciled with Aqua-Clor exports of subject merchandise to the United States and to GTA data; and, International Trade Commission publication finding Mexico to be an exporter of subject merchandise.
- Commerce found that the website information for Setia Maju suggested that it was a producer of subject merchandise, however no production information was provided on the record to show whether this producer or Malaysia in general, had significant production of identical merchandise during the POR.
- Although Commerce found CCM to be a producer of comparable merchandise using the information in its financial statements and related website information, Commerce correctly found that no corroborating information was provided to show that CCM is even a significant producer of comparable merchandise.
- The existence of multiple statements in one country is not a determining factor for rejecting an otherwise acceptable surrogate country that only has one acceptable financial statement merchandise.
- Commerce’s preference for multiple financial statements is only relevant when there are several financial statements available from the primary surrogate country. The existence of multiple statements in one country is not a determining factor for rejecting an otherwise acceptable surrogate country that only has one acceptable financial statement.
- Commerce correctly found the four Malaysian financial statements to be unusable or less reliable than the Mexican financial statement and explained why each of the Malaysian financial statements are not the best information on the record.³⁵
 - The financial statements of May Chern Chemicals and its holding company, Whiting, are not contemporaneous with the POR, and neither company is a demonstrated producer of either identical or comparable merchandise.
 - The financial statements of Accot Technologies shows its principal activity as dealing with industrial chemicals, and although its website information on the record references the sale of a comparable product, the website also notes that it imports the bulk of its products. The only product data sheet on the record shows that the comparable product, calcium hypochlorite, originated from Japan.
 - Even though Commerce found CCM Chemicals as a producer of comparable merchandise, the record does not support that it is a significant producer of that merchandise.
- The Mexican financial statements for CYDSA is the best available data on the record because it produces and sells a significant amount of comparable merchandise, and its financial statements are not distortive.
 - CYDSA’s chemicals business accounts for 69.09 percent of total sales and CYDSA’s chlor-alkali business accounted for 42.78 percent of the company’s total net sales.³⁶

³⁵ See *Preliminary Results* PDM at 12.

³⁶ See Petitioners’ Letter, “Chlorinated Isocyanurates from the People’s Republic of China (2017-2018 Review): Initial Surrogate Value Data,” dated February 19, 2019 (Petitioners’ SV Submission), at Exhibit 10, CYDSA 2017 Annual Report, at 46 and 107.

- The integrated nature of CYDSA does not render it incomparable to the respondents’ production experience, as its electricity and steam co-generation operations did not prevent CYDSA from being susceptible to price risks for natural gas, which affected its electricity costs.³⁷
- CYDSA incurred normal market electricity and energy costs despite its internal co-generation of electricity, and respondents “cannot state with any certainty” that CYDSA’s energy costs distorted the Mexican financial statements.³⁸
- Commerce has previously ruled that it does not require an exact match between the production experience of the respondent and that of the surrogate producer, in order for a surrogate financial statement to be usable.³⁹
- In the three prior administrative reviews, Commerce found CYDSA’s financial statement to be useable and noted that CYDSA’s level of integration is not notably different from the respondents.⁴⁰
- Respondents have not cited to record evidence to support their statement that CYDSA has “extensive plans and initiatives to enhance brand image.”
- The Malaysian financial statements for CCM are not factually more appropriate than the financial statements of CYDSA, since CCM’s is also a consolidated financial statement, and any resulting financial ratios would also be reflective of the marketing and promotional activities of its subsidiaries.⁴¹

Commerce’s Position: Commerce continues to determine that Mexico is the appropriate primary surrogate country after considering the facts and arguments on the record. Based upon our examination, respondents have not demonstrated that the selection of Mexico is inappropriate. This selection supports Commerce’s policy, which indicates a preference to select a surrogate country that produces identical merchandise over one that only produces comparable merchandise.⁴² The record evidence shows that Mexico is the only surrogate country with significant production of identical merchandise, chlorinated isos.

Section 773(c)(4)(B) of the Act requires Commerce to value, to the extent possible, factors of production (FOPs) in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce’s regulations provide further guidance on what constitutes comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that “{i}n all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”⁴³ Moreover, footnote 6 of the bulletin states that “{i}f considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” (Emphasis

³⁷ *Id.* at 85 and Exhibit 10.

³⁸ See *GPX Int’l Tire Corp. v. United States*, 34 CIT 945, 961, 715 F. Supp. 2d 1337, 1353 (2010).

³⁹ See *Xanthan Gum from The People’s Republic of China, Final Results of 2013 Antidumping Duty New Shipper Review*, 80 FR 29615 (May 22, 2015), and accompanying IDM at 11-12.

⁴⁰ See, e.g., *2015-2016 Final Results IDM* at Comment 5.A, at 14.

⁴¹ See Respondents’ Letter, “Certain Chlorinated Isocyanurates from the People’s Republic of China: Final Surrogate Value Submission,” dated July 10, 2019, Exhibit SV2-4, at 25-26.

⁴² See *Policy Bulletin* at 2, note 6.

⁴³ *Id.* at 2.

added). Thus, it is only when Commerce has no useable data for an economically comparable country that produces identical merchandise does it consider economically comparable countries that produce comparable merchandise. Therefore, if the record contains a producer of identical merchandise, the requirement of comparable merchandise under Section 773(c)(4) of the Act is satisfied. There is no need to look further at countries with only comparable merchandise. Conversely, if identical merchandise is not produced then a country producing comparable merchandise is sufficient in selecting a surrogate country.⁴⁴

As noted in the *Preliminary Results*, Commerce continues to find that the record evidence in this review shows that Mexico is the only surrogate country producing identical merchandise in significant quantities. The petitioners provided sufficient evidence which includes an affidavit and attached joint venture agreement demonstrating Mexican production of chlorinated isos by Aqua-Clor; product registrations filed with the Environmental Protection Agency for specific brand names of subject merchandise; and, information that corroborates the extensive PIERS cross-border trade data for shipments of subject merchandise with the GTA export data for identical merchandise.⁴⁵ In the case of Malaysia, we preliminarily found only one Malaysian company, Setia Maju, to be a producer of identical merchandise; however, no Malaysian production information was provided by the respondents to corroborate whether this producer or Malaysia, in general, had significant production of identical merchandise during the POR.⁴⁶ Setia Maju is identified on the record as a producer of chloro isos but there is no evidence of what quantities of subject merchandise it may have produced or when it may have produced subject merchandise.

The petitioners have correctly noted that respondents base their argument upon a comparison between subject merchandise produced in Mexico and comparable merchandise produced in Malaysia. The *Policy Bulletin* takes into account a situation where a producer of identical merchandise may not provide sufficient factor valuations by providing: “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.”⁴⁷ Here, because the record evidence contains information and data on the production of identical merchandise in Mexico, and selecting Mexican data did not lead to factor valuation difficulties as discussed in further detail, below, we are not required to consider parties’ arguments for comparable merchandise.⁴⁸ We further note that no other surrogate country at the same level of economic development had any exports of chlorinated isos during the period of review. Accordingly, the record supports the selection of Mexico as the primary surrogate country based on Commerce’s preference to select a surrogate country that produces identical merchandise over one that

⁴⁴ *Id.* at note 6.,

⁴⁵ See Petitioners’ Letter, “Chlorinated Isocyanurates from the People’s Republic of China (2017-2018 Review): Petitioners’ Comments on Primary Surrogate Country Selection,” dated December 4, 2018 (Petitioners’ SC Comments), at 4-7 and Exhibits 1-4; see also *Preliminary Results* PDM at 12-13.

⁴⁶ See *Preliminary Results* PDM at 13.

⁴⁷ See *Policy Bulletin* at 5.

⁴⁸ See *Potassium Permanganate From the People’s Republic of China: Preliminary Results of the 2014 Antidumping Duty Administrative Review*, 81 FR 7751 (February 16, 2016), and accompanying PDM at 6, unchanged in *Potassium Permanganate From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2014*, 81 FR 58476 (August 25, 2016), and accompanying IDM at Comment I.

only produces comparable merchandise. As noted above, this is consistent with our selection of Mexico as the primary surrogate country in the three prior administrative reviews.⁴⁹

Finally, we have addressed in prior reviews the same arguments raised by the respondents concerning CYDSA and the potentially distortive production costs due to its level of integration and having its own energy division.⁵⁰ Our finding in this review is consistent with past reviews and relies on sales information from CYDSA's financial statements, where the sales figures in the instant review for CYDSA's chemical business and its chlor-alkali business⁵¹ are similar to those that Commerce relied on in past reviews.⁵² In addition, we continue to find that CYDSA is not energy independent but still relies on outside purchases of electricity to support its production processes, and that these costs can reasonably be considered substantial.⁵³ Moreover, the CIT has upheld our recent decision to use CYDSA's financial statements, stating that our "{...} conclusion that CYDSA's financial statement was suitable for calculating financial ratios {was} both supported by substantial evidence on the record and in accordance with the law."⁵⁴

Comment 3: Whether Malaysian TDM Data is Superior to the Mexican GTA Data

*Respondents' Case Brief*⁵⁵

- Commerce did not raise any issues with the reliability of the TDM data and has properly recognized that TDM provides official government import statistics.⁵⁶
- In some cases, Commerce declined to use the Malaysian TDM data because it is a private, subscription-based service. In those cases the fact it was subscription-based was not a factor in its surrogate country selection as in the instant case. In *Steel Propane Cylinders*,⁵⁷ Commerce still relied on Malaysia (where the record only contained Malaysian TDM import data) but downloaded Malaysian import statistics from GTA instead.
- Commerce's decision to not rely upon Malaysian TDM data and instead rely on the Mexican GTA data is completely arbitrary.⁵⁸ Both GTA and TDM are paid subscription sources that

⁴⁹ See 2016-2017 Prelim Results PDM at 10-12, unchanged in 2016-2017 Final Results IDM at Comment 1; see also 2015-2016 Prelim Results PDM at 12-15, unchanged in 2015-2016 Final Results; and 2014-2015 Final Results IDM at Comment 1.

⁵⁰ See 2014-2015 Final Results IDM at Comment 2A; see also 2016-2017 Final Results IDM at Comment 5.

⁵¹ See Petitioners' SV Submission, Exhibit 10, CYDSA 2017 Annual Report, at 46 and 107.

⁵² See, e.g., 2014-2015 Final Result IDM at Comment 2A.

⁵³ See Petitioner' SV Submission, Exhibit 10, CYDSA 2017 Annual Report, at 84, Section 6.d) "Price risk"; see also 2014-2015 Final Results IDM at Comment 2A; and 2015-2016 Final Results IDM at Comment 5.

⁵⁴ See *Heze Huayi Chemical Co., Ltd. and Juancheng Kangtai Chemical Co., Ltd. v. United States*, Slip Op. 18-57 (CIT 2018), at 20 (upholding the selection of CYDSA's financial statement).

⁵⁵ See Respondents' Case Brief, at 11-17.

⁵⁶ See *Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measure*, 83 FR 66675 (December 27, 2018) (*Steel Propane Cylinders*), and accompanying PDM at 11; unchanged in *Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019).

⁵⁷ *Id.*

⁵⁸ See, e.g., *Consol. Bearings Co. v. United States*, 348 F. 3d 997, 1007 (Fed. Cir. 2003), stating that "Commerce acts arbitrarily and capriciously when it "consistently follow[s] a contrary practice in similar circumstances and provide[s] no reasonable explanation for the change in practice."; and *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

gather data from the same official government statistics. Only EUROSTAT is from an actual free publicly available source that does not require any subscription.

- Commerce has determined that a paid subscription service available to the public is considered publicly available.⁵⁹ Similarly, Commerce has used information from Descartes and Metal Expert as benchmark and surrogate value sources for ocean freight and steel prices, respectively, which are paid information services.
- Commerce’s statement that it cannot corroborate the TDM data is likewise arbitrary. If Commerce is merely speaking to the concept that its public availability requirement is a “corroboration” of the data, in that it is available to the public to examine and impugn or correct, then both GTA and TDM fulfill this public availability requirement.
- If Commerce suggests that corroboration is to be used for double-checking all surrogate value data, then this is a radical new unreasonable requirement. Commerce can corroborate the TDM data with GTA data, if it so chooses, or it can access TDM data for a fee and corroborate the data. Commerce is not barred from accessing the TDM data.
- TDM data and GTA data both come from official government import and export statistics, and although there is a potential for differences in the quantity and value data between sources due to an error with a certain quantity or unit conversion, such differences are rare as in the case of UN Comtrade data and GTA data, where Commerce has found both to be reliable and publicly available.
- Commerce has relied upon TDM data in several recent cases.⁶⁰
- Other international trade law firms have submitted TDM data on the record of various Commerce proceedings, including multiple petitions in the last year where Commerce has relied upon this TDM import data in initiating the investigation, raising no concerns about the quality or public availability of the data, or issues concerning corroboration.
- The Office of the U.S. Trade Representative uses TDM data.

*Petitioners’ Rebuttal Brief*⁶¹

- Prior to Commerce’s analysis of data availability and quality, Commerce found Mexico to be the appropriate choice as the primary surrogate country because Mexico is the only country from the list of economically comparable countries with demonstrated, corroborated, significant production of the identical merchandise, chlorinated isos. Accordingly, Commerce would not have changed its decision to select Mexico as the primary surrogate country even if it had accepted the Malaysian TDM data.
- Commerce has the discretion to address any ambiguous application of data sources for surrogate valuation purposes, including TDM.
- It is reasonable for Commerce to rely upon data, such as GTA import data, for which it has a subscription because its use is financially significant.

⁵⁹ See *Laminated Woven Sacks Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008), and accompanying IDM at 75; see also *Jining Yongjia Trade Co. v. United States*, 34 CIT 1510, 1523 (December 16, 2010).

⁶⁰ See *Fresh Garlic Preliminary Results of the Antidumping Duty New Shipper Review*, 84 FR 27585 (June 13, 2019) (*Fresh Garlic*), and accompanying PDM at 20; see also *Steel Propane Cylinders Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 54086 (October 26, 2018) (*Steel Propane Cylinders*), and accompanying PDM at 14; and *Polyester Textured Yarn Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 19040 (May 3, 2019), and accompanying IDM at 32.

⁶¹ See Petitioners’ Rebuttal Brief, at 18-19.

- The responsibility of corroborating alternate data to GTA data should not fall to Commerce, rather, the party supplying the alternately sourced data is obliged to conduct that corroboration itself.
- As respondents noted, the potential exists for actual differences in the quantity and value data between different data services, and respondent has the responsibility to reconcile these differences to the GTA data.

Commerce’s Position: We preliminarily found the Malaysian surrogate values for raw materials, packing, and energy other than electricity, unusable because they are sourced from TDM, a subscription-based database.⁶² For the final determination, we find the issue of using TDM data as a source for Malaysian surrogate values to be moot for the reasons noted in Comment 2, above (*i.e.*, the record information shows Mexico as the only significant producer of identical merchandise and having usable surrogate value data for all FOPs). Notwithstanding, we address respondents’ arguments citing the use of TDM data as a surrogate value source in non-market economy antidumping proceedings.

Specifically, the respondents cite to *Steel Propane Cylinders* and *Fresh Garlic* where both records contained Malaysian TDM import data. In *Steel Propane Cylinders*, Commerce did not use the Malaysian TDM data because as “{...} a private, subscription-based, database, we are unable to corroborate the data submitted and preliminarily decline to use the TDM data as the source of SVs {surrogate values...}.”⁶³ This is consistent with our finding TDM data unusable in the *Preliminary Results* because we have previously declined to use this subscription-based database.⁶⁴ In addition, we disagree with respondents’ interpretation of the facts in *Steel Propane Cylinders* and their statement that the record only contained Malaysian TDM data, requiring Commerce to download the Malaysian import statistics from GTA. Commerce clearly stated the following:

Rather, for the preliminary determination, we have obtained Malaysian import statistics under the same HTS categories *submitted by the petitioners* from the Global Trade Atlas (GTA), which is a source that is regularly used by Commerce because the data therein meet Commerce’s SV criteria.⁶⁵

In the instant case, there is no Malaysian GTA data on the record of this review which can be used to collaborate the Malaysian TDM data, as was the case in *Steel Propane Cylinders*.

The respondents also note that Commerce relied upon TDM data in *Fresh Garlic*. As explained below, Commerce resorted to using the TDM data because it had no usable alternative import statistics on the record:

“Infang’s arguments concerning Commerce’s reliance on TDM data in this case, while declining to use it in other cases, lacks merit. In the cases cited by Infang, Commerce had other reliable data at its disposal from the Global Trade Atlas (GTA). In this review, there are no usable alternative import statistics on the record, because those provided by Infang were not translated.

⁶² See *Preliminary Results* PDM at 16.

⁶³ See *Steel Propane Cylinders* PDM at 11.

⁶⁴ See *Preliminary Results* PDM at 14-16.

⁶⁵ See *Steel Propane Cylinders* PDM at 11.

Section 351.303(e) of Commerce’s regulations states, in part, “a document submitted in a foreign language must be accompanied by an English translation of the entire document.” Infang failed to submit a translated version of its proposed SVs, and thus Commerce was left to consider whether the TDM data could be used.”⁶⁶

In the instant case, we have usable Mexican GTA data to value all FOPs. Therefore, it is not necessary for Commerce to either find or corroborate the Malaysian TDM data since we already have alternative import statistics on the record.

Comment 4: Whether Mexican GTA Import Data is Less Preferable Because It is Not on a CIF Basis

*Respondents’ Case Brief*⁶⁷

- Mexican import values are reported on an FOB basis, whereas the Malaysian import statistics are reported on a CIF basis.
- Commerce determined that when it relies upon an import value it must include the cost of all movement charges incurred in shipping the input (*i.e.*, CIF values) because that is the price most representative of an available domestic price for the input should no truly domestic source be available.⁶⁸
- If Commerce relies upon Mexican FOB data, it must add as facts available, international freight, marine insurance, and brokerage & handling expenses to each Mexican import value to arrive at an approximate of a CIF value for each of the respondents’ material and packing inputs, decreasing the accuracy of each value.
- The marine insurance price on record is seven years prior to the start of the POR and is prices for general merchandise from various places to and from the United States, and not costs incurred in Mexico. The brokerage and handling costs on the record are from the World Bank Doing Business in Mexico report based on the import costs of motor vehicle parts from the United States across the Nuevo Laredo border, which represent specific products and specific routes that are not specific to the respondents’ inputs. Finally, there is no international freight costs to Mexico to add to the FOB prices and thus Commerce cannot corroborate the missing data.
- Commerce has not ruled out countries as potential surrogate countries that report their import statistics on an FOB basis, but it has considered it when weighing the quality of data and preferred the country that reported on a CIF basis.⁶⁹

⁶⁶ See *Fresh Garlic* IDM Comment 4, at 15.

⁶⁷ See Respondents’ Case Brief, at 17-20.

⁶⁸ See, *e.g.*, *Wooden Bedroom Furniture from the People’s Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (Aug. 18, 2010), and accompanying IDM at Comment 16.

⁶⁹ See *Certain Steel Racks and Parts Thereof from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 35595 (July 24, 2019), and accompanying IDM at 8-9; see also *Activated Carbon from China* Remand Results, CIT 16-185 (June 17, 2019) at 11; see also *Activated Carbon from China* Remand Results, CIT 15-286 (June 17, 2019) at 10.

*Petitioners' Rebuttal Brief*⁷⁰

- There is no record evidence of the data source valuation for the import statistics of either Mexico or Malaysia.
- Consideration of the import valuation happens after the primary surrogate country has been selected. It is not Commerce's practice to analyze potential surrogate countries for non-market economy cases based on the valuation of the surrogate's import statistics.
- Commerce has previously found that attempting to limit the selection to countries that report data on a CIF basis, could unreasonably limit the potential pool of potential primary surrogate countries.⁷¹
- The record contains available Mexican surrogate value data for international freight,⁷² marine insurance,⁷³ and brokerage and handling⁷⁴ should Commerce need to adjust the Mexican import values to a CIF basis.

Commerce's Position: As discussed in Comments 2 and 3 above, the record evidence shows that Mexico is the only surrogate country with significant production of identical merchandise and usable Mexican GTA data to value all FOPs. Therefore, Commerce does not need to consider using the Malaysian TDM data since we already have alternative import statistics on the record from the primary surrogate country. However, respondents are correct that Commerce's practice is to adjust the import value in situations where the primary surrogate country's import statistics do not include international freight costs.⁷⁵ For the final determination, we will adjust the Mexican FOB import values to a CIF basis,⁷⁶ following the recent methodology used in *Hydrofluorocarbons*,⁷⁷ which added amounts for international freight and marine insurance to the Mexican GTA import data.⁷⁸ Regarding the respondents' argument that adjusting the FOB values to CIF values introduces unacceptable distortion into the margin calculations, Commerce has rejected this argument previously, noting that the addition of international freight and marine insurance to FOB values results in no double counting, and that

⁷⁰ See *Petitioners' Rebuttal Brief*, at 19-23.

⁷¹ See *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) (*Aluminum Foil*), and accompanying IDM at Comment 3.

⁷² See *Petitioners' SV Submission* at Exhibit 8.

⁷³ *Id.* at Exhibit 9.

⁷⁴ *Id.* at Exhibit 7.

⁷⁵ See *Policy Bulletin 10.2: Inclusion of International Freight Costs When Import Prices Constitute Normal Value* (November 1, 2010).

⁷⁶ See Heze Huayi Final Analysis Memorandum; see also Kangtai Final Analysis Memorandum.

⁷⁷ See *Hydrofluorocarbon Blends from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 17380 (April 25, 2019).

(*Hydrofluorocarbons*), and accompanying IDM at Comment 4 (where Commerce also found the information from Maersk to represent the best available information for valuing international freight).

⁷⁸ In previous investigations and administrative reviews, Commerce has recognized that GTA import values from certain Countries, including Mexico, are reported on an FOB basis. See *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018), and accompanying IDM at Comment 3; *Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24740 (May 30, 2018), and accompanying IDM at Comment 1; and *Certain Quartz Surface Products From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019) (*Surface Quartz*), and accompanying IDM at Comment 8 (addressing the Mexican GTA data).

limiting the selection of surrogate countries to countries that report import data on a CIF basis could have the effect of unreasonably limiting the potential pool of surrogate value source countries.⁷⁹

Additionally, the information Commerce has used to adjust the FOB values to CIF values (ocean freight and marine insurance) was placed on the record by the petitioners in their “initial” surrogate value submission.⁸⁰ The respondents were provided with the opportunity to provide alternative information, but did not do so, despite the fact that they are the party that has raised the concern with the FOB terms of the Mexican data.

Finally, we disagree with the petitioners’ assumption that the relevant freight route is to a destination port in Mexico. Under NME methodology, Commerce is tasked with determining what the respondents’ cost of producing subject merchandise would be if the NME country operated under market principles. To do this, Commerce determines a market-economy value for each input used to produce that merchandise, and then it computes the cost of transporting that input to the factory in the NME country. Thus, shipment costs over land from the United States to Mexico are not necessarily relevant to this exercise.⁸¹

Comment 5: Whether the Malaysian Data for Water and Labor is Superior to the Mexican Data

*Respondents’ Case Brief*⁸²

- The Malaysian labor source is a contemporaneous overall manufacturing labor rate, while Mexican source is specific to manufacturing of other chemical products, but is from 2008. Commerce has consistently preferred to rely upon a contemporaneous overall manufacturing labor rate over a less contemporaneous but specific labor rate.⁸³
- The Malaysian water source data provides contemporaneous water prices effective for industrial/commercial users by user type and by region, whereas the Mexican water surrogate value is from 2016.

*Petitioners’ Rebuttal Brief*⁸⁴

- Prior to any consideration of data quality and availability, Commerce properly determined that the record was more complete with regard to evidence that Mexico is a significant producer of identical merchandise, whereas Malaysia is not a significant producer.
- Respondents’ argument that Malaysia is more suitable as the primary surrogate country because the Malaysian water and labor rates on record are superior to that of Mexico, does not take into consideration Commerce’s above noted surrogate country selection, and its finding that the Mexican surrogate values for water and labor are useable, and can be appropriately adjusted for inflation.

⁷⁹ See, e.g., *Surface Quartz* IDM at Comment 8.

⁸⁰ Petitioners’ Initial SV Data (January 7, 2019) at Exhibits 8 and 9.

⁸¹ See *Hydrofluorocarbons* IDM at Comment 4.

⁸² See Respondents’ Case Brief, at 20-22.

⁸³ See Respondents’ Case Brief, at 21, citing e.g., *Diamond Sawblades and Parts Thereof Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26912 (June 12, 2017), and accompanying IDM at 48-49; see also *Certain Activated Carbon Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016), and accompanying IDM at Comment 7; and *Certain Steel Threaded Rod Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015), and accompanying IDM at Comment 8.

⁸⁴ See Petitioners’ Rebuttal Brief, at 15-17.

Commerce's Position: As previously noted and discussed above, the information and data on the record shows that Mexico is the only surrogate country at the same level of economic development that has production of identical merchandise, and the selection of the Mexican data has not led to factor valuation difficulties in the instant and past three administrative reviews. Notwithstanding these findings, we still do not find the Malaysian surrogate values for labor to be superior to the Mexican values. The respondents have not properly characterized Commerce's decision in *Diamond Sawblades* because they failed to acknowledge that our decision in that case was based on the fact no International Labor Organization (ILO) labor data was on the record of that review, and that the alternative labor data used was not just more contemporaneous, but also specific to the industry in question.⁸⁵ In this review, we have Mexican ILO labor data on the record and it is specific to the chemical industry, whereas the Malaysian labor data is not. Accordingly, we do not find the Malaysian labor data superior to the more specific Mexican ILO ILOSTAT labor data even though it is less contemporaneous. Although Commerce always attempts to value each FOP with contemporaneous surrogate values, in some prior cases, Commerce has selected a labor value from the selected surrogate country regardless of there being other values on the record that may have been more contemporaneous to the POI or period of review.⁸⁶

As we have already noted, we do not find any deficiencies in any of the Mexican surrogate values, including the less contemporaneous Mexican water rate. Commerce has previously found that there is no basis to conclude that its normal method of adjusting the surrogate values using the CPI rate for Mexico, as published by the International Monetary Fund, fails to properly account for inflation over this time period. For this reason, the record does not support respondents' argument that the Mexican water rate should not be used as a surrogate value.

⁸⁵ See *Diamond Sawblades* and accompanying Issues and Decision Memorandum at Comment 14.

⁸⁶ See, e.g., *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75032; see also *Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75032 (October 28, 2016).

VI. 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

2/14/2020

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance