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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Administrative Review
of the Antidumping Duty Order on Saccharin from the People's
Republic of China

Summary

We have analyzed the August and September 2005 surrogate value submissions and the December 2005 case and rebuttal briefs of interested parties in the 2002-2004 administrative review of the antidumping duty order on saccharin from the People's Republic of China ("PRC"). The period of review ("POR") is December 27, 2002, through June 30, 2004. As a result of our analysis, we have made changes in the margin calculation for the respondent. We recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum. Below is the list of the issues for which we received comments and rebuttal comments by parties in this review:

- Comment 1: Bona Fides
- Comment 2: By-Product Offset
- Comment 3: Valuation of Phthalic Anhydride
- Comment 4: Valuation of Brokerage and Handling
- Comment 5: Valuation of Ammonia Water
- Comment 6: Valuation of Liquid Chlorine
- Comment 7: Valuation of Sulfur Dioxide
- Comment 8: Valuation of Ocean Freight
- Comment 9: Valuation of Steam Coal
- Comment 10: Valuation of Activated Carbon

Background

On August 8, 2005, the Department of Commerce (“the Department”) published the preliminary results of the administrative review of the antidumping duty order on saccharin from the PRC. See Saccharin from the People’s Republic of China: Preliminary Results and Partial Recession of Antidumping Duty Administrative Review, 70 FR 45657 (August 8, 2005) (“Preliminary Results”). We invited parties to comment on our Preliminary Results. We received comments from one respondent, Shanghai Fortune Chemical Co., Ltd. (“Shanghai Fortune”), and from the petitioner, PMC Specialties Group (“Petitioner”), and rebuttal comments from Shanghai Fortune and Petitioner.

Discussion of the Issues

Bona Fides

Comment 1

Petitioner argues that the single sale made by Shanghai Fortune during the POR was not a bona fide sale and that the Department’s analysis regarding this issue is flawed for several reasons.¹ Petitioner urges the Department to reconsider its analysis based on the following arguments.

First, Petitioner claims that the Department’s quantitative analysis against which it benchmarked Shanghai Fortune’s sale is incorrect because it included for comparison sales that the Department acknowledged were aberrant (e.g., transactions made in non-commercial quantities). Petitioner contends that including aberrant transactions skews the Department’s analysis by understating the average quantity that was used as a comparative tool to further benchmark the U.S. sale at issue. Petitioner contends that when the aberrant entries are excluded, the comparison benchmark reveals the entry at issue to be a commercially insignificant non-bona fide transaction.

Second, Petitioner objects to the limited number of transactions used by the Department in its analysis and argues that the analysis should have included additional broader benchmarks. According to Petitioner, these broader benchmarks should include quantities and values of entries prior to the POR, Shanghai Fortune’s third-country sales of like merchandise, or its Hong Kong affiliated trading company’s third-country sales of like merchandise. Petitioner asserts that these broader benchmarks indicate that Shanghai Fortune’s sale price to its affiliated importer was significantly higher than both the prevailing price in the United States of saccharin from the PRC and the world market price during this period, thus calling into question the validity of that price. In addition, Petitioner questions why U.S. Customs and Border Protection (“CBP”) data

¹ See “Memorandum on Saccharin from the People’s Republic of China: Bona Fide Nature of the Sale in the 2002-2004 Antidumping Duty Administrative Review of Shanghai Fortune Chemical Co., Ltd.,” dated August 1, 2005, (“Bona Fides Memorandum”).

values used by the Department in its analysis differ from the public aggregate IM-145 import data values and argues that, given the United States Court of International Trade's (CIT) explicit endorsement of the use of IM-145 data,² the Department should use IM-145 data for this analysis. Further, in accordance with the Court's finding in Tianjin, Petitioner argues that the fact that the price of the transaction significantly exceeds the annual average unit value ("AUV") from the IM-145 data³ supports a determination that the transaction is not bona fide.

Third, Petitioner argues that the subsequent sale from Shanghai Fortune's affiliate to the first unaffiliated U.S. customer is predicated on an aberrant entry (i.e., a self-proclaimed test sale), that is not representative of either the normal volume or value of entries of subject merchandise and is made through unusual channels of distribution by parties attempting to manipulate the antidumping review process. Specifically, Petitioner alleges that Shanghai Fortune and its first unaffiliated customer in the United States acted in concert to artificially create a new channel for both parties to import subject merchandise and, as such, the final resale value of the trial shipment is almost entirely moot. Petitioner argues that the ability of Shanghai Fortune to bring subject merchandise into the United States rests on the entry value, not the resale value, and when that entry value is lacking in bona fides, the entire transaction becomes suspect. Finally, on this point, Petitioner argues that a comparison of the price of this sale to the unaffiliated customer to Petitioner's U.S. price list is not valid as the public price list is a starting point for price negotiations and product differences such as quality level may account for certain price differentials across products.

Citing Pure Magnesium from Canada; Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Review, 69 FR 20597 (April 16, 2004), unchanged in the final results ("Pure Magnesium from Canada"), Petitioner contends that, in accordance with section 771(15) of the Tariff Act of 1930, as amended ("the Act"), the Department does not include test, sample, or trial sales in its analysis because such sales are usually made on unique sales terms, outside the ordinary course of trade.⁴ Petitioner contends that although there is no similar statutory provision for U.S. sales, when they are not made in commercial quantities and are aberrant, the Department will exclude such sales from its analysis, even absent a statutory provision. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 68 FR 66800 (November 28, 2003), unchanged in the final determination ("Color Television Receivers

² See Tianjin Tianchen Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246 (Ct. Int'l Trade Mar. 9, 2005) ("Tianjin").

³ While Petitioner implies that its comparisons to Shanghai Fortune's sale price are to AUVs taken from the U.S. Census Bureau's IM-145 public statistics, the data Petitioner used are actually taken from Piers. See Petitioner's March 21, 2005 Deficiency Comments on Shanghai Fortune's First Supplemental Response at page 8-9 and Attachment 2.

⁴ See Pure Magnesium from Canada, at page 10599.

from the PRC”), and Pure Magnesium from Canada. According to Petitioner, if the Department excludes test sales because they may contaminate the analysis of entries during a period of investigation or review, it is illogical for the Department to base an entire review on one such test sale.

Asserting that the Department has the authority to address the bona fides of sales in both new shipper and annual administrative reviews, Petitioner argues that recent judicial precedent supports a finding that the single sale at issue in this case was not bona fide. Citing Tianjin, where the CIT upheld the Department’s repudiation of the bona fides of the transaction at issue, Petitioner contends that the same result should apply in this administrative review as the facts are almost identical. Petitioner argues that in Certain Cut-to-Length Carbon Steel Plate from Romania: Rescission of Antidumping Duty Administrative Review, 63 FR 47232 (September 4, 1998) (“Carbon Steel Plate”),⁵ the Department considered factors such as the method of shipment, the timing of the sale, and the quantity sold, and excluded that sale based on its determination that the single U.S. sale at issue was artificially structured and commercially unreasonable. Petitioner concludes that using these criteria, the test sale at issue in the current review is not representative of normal commercial considerations. Petitioner argues, therefore, that this sale should be determined to be non-bona fide and the Department should rescind the administrative review.

Shanghai Fortune contends that the Department’s Preliminary Results correctly determined that the single sale subject to review was bona fide and asserts that Petitioner’s arguments that the sale was not bona fide are not supported by substantial evidence in the administrative record. Respondent contends that the administrative record establishes that the sale reported by Shanghai Fortune was not fraudulent. Specifically, respondent argues the information obtained from CBP confirms the accuracy of the information it provided to the Department surrounding the sale in question.

Shanghai Fortune also refutes Petitioner’s argument that its single sale should be considered non-bona fide based on the quantity of merchandise sold in the transaction. Citing Carbon Steel Plate, 63 FR at 47234, respondent argues the Department has determined that “single sales, even those involving small quantities, are not inherently commercially unreasonable and do not necessarily involve selling practices a typical {sic} of the party’s normal selling practices.” See also American Silicon Techs. v. United States, 110 F. Supp. 2d 992, 996 (Ct. Int’l Trade 2000). Respondent further argues that following the Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios From Iran, 70 FR 7470 (February 14, 2005), and accompanying Issues and Decision Memorandum at Comment 3 (“Pistachios”), in this review, the Department should determine that its customer’s “decision to order a small quantity shipment

⁵ Upheld on appeal See Windmill Int’l Pte., Ltd. v. United States, 193 F. Supp. 2d 1303 (Ct. Int’l Trade 2002).

in order to limit high antidumping liabilities is not a commercially unreasonable business decision for a company participating in an antidumping proceeding.”

Shanghai Fortune alleges that Petitioner attempts to cloud the issue by designating the test sale it made to Richwell Group Inc. as a “sample” sale. Shanghai Fortune takes issue with this designation, asserting that although this was a test sale to determine if a commercially reasonable antidumping duty margin could be established, due consideration was paid for the sale under review, contrary to the scenario of a sample transaction where no consideration is provided in exchange for the merchandise.

Respondent further contends that Petitioner’s argument that the reported sales price was unreasonably high when compared to Petitioner’s proposed benchmarks does not have merit because it would compare the price to prices of merchandise not subject to the discipline of an antidumping duty order, and seems to require that a respondent sell at dumped prices in the U.S. in order for the transactions to be considered bona fide. Finally, Shanghai Fortune contends that its entry and resale prices for saccharin cannot be deemed to be too high when compared to Petitioner’s price quotes as found on its website. Respondent concludes that the administrative record in this case establishes that the subject sale was a bona fide transaction, and therefore, for the purposes of the final results, the Department should continue to rely upon the reported sales transaction to determine U.S. price.

Department’s Position

Based on our analysis of the information submitted to the record of this proceeding, we continue to determine that Shanghai Fortune’s sale during the POR constitutes a bona fide commercial transaction, and therefore, we are not rescinding this administrative review.

Moreover, we do not agree with Petitioner that our bona fide analysis is flawed. As noted in Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review, 68 FR 1439 (January 10, 2003) and accompanying Issues and Decision Memorandum at Comment 1, the Department will typically look at the totality of circumstances surrounding a sale rather than a single circumstance. First, we do not agree that the inclusion of the two transactions with small import quantities of the five total imports from the PRC into the United States significantly undermines our analysis because it is a weighted average. While the average transaction quantity increases when these two transactions are removed from the averaging equation, this comparison, on its own, does not negate the validity of the sale under administrative review. In addition, while the sales quantity at issue for this transaction is smaller than the quantity of the other imports from the PRC during the POR (except for the two transactions discussed above), there is no information on the record to indicate that it is an aberrantly small quantity. As we stated in the Bona Fides Memorandum, established Department practice provides that the size of a transaction is not sufficient, in and of itself, to warrant a

finding that the transaction is not bona fide.⁶ Further, Shanghai Fortune points out, correctly, that in Pistachios, the Department determined that the purchaser’s “decision to order small quantities in order to limit its exposure to high dumping liabilities, {is a} commercially reasonable business decision{ } for” a company participating in an antidumping proceeding. See Pistachios, 70 FR 7470, and accompanying Issues and Decisions Memorandum at Comment 3. That rationale is equally applicable here.

With respect to Petitioner’s comments about the differences in values between the CBP and IM-145 data, we note that the IM-145 data is publicly available information that has been scrubbed to ensure that it does not divulge any proprietary information of the parties involved in the transactions, especially in cases where there are only a small number of transactions being aggregated within that data. Petitioner is correct that in this instance the Department’s benchmark is based on a small number of transactions. For that reason, we used the CBP data, which is the underlying source data for the public information released in the IM-145 statistics. In using that data, we do not agree with Petitioner that inclusion of the transactions with very small quantities skewed the AUV that served as the basis of comparison for the price of the U.S. sale. In fact, these sales were of such insignificance to this analysis, that when removed from the averaging equation, they have no impact on the calculation of the AUV of imports from China. Therefore, we have not changed our finding from the preliminary results.

With regard to Petitioner’s argument that the sale by Shanghai Fortune was made at an unreasonably high price, and is significantly higher than the AUV and individual U.S. sales of Chinese merchandise against which it was benchmarked, we also do not agree. In this instance, while the U.S. price in question was higher than the AUV, it is not significantly so, or significantly higher than the next highest transaction price included within the benchmark values⁷. This is addressed in detail, including a discussion of the proprietary information, in the Department’s preliminary Bona Fides Memorandum. For that reason, we conclude that the Court’s finding in Tianjin is not relevant here. In Tianjin, the Court upheld the Department’s determination that the price of the sale in question was not in conformity with the benchmark of other {subject merchandise} producers’ sales into the market and upheld the Department’s decision to explore an additional benchmark.⁸ The Court did not determine that, because the price in question did not match exactly the experience of other Chinese sellers into the U.S. market, an alternative or additional benchmark is required. Because we have sufficient information within our current benchmark values and have reached a finding that the single U.S. sale subject to this review is in conformity with other Chinese producers’ sales to the U.S. market, we need not look for a broader benchmark in this proceeding. Nevertheless, in light of Petitioner’s arguments, we have examined the information on the record and we continue to disagree with Petitioner’s contention that Shanghai Fortune’s U.S. sales price is significantly

⁶ See also Carbon Steel Plate, 65 FR at 47234.

⁷ Due to the proprietary nature of this issue, a more detailed discussion of the differences in these values can be found in the Bona Fides Memorandum.

⁸ See, Tianjin, 366 F. Supp. at 1251

higher than the world market price, a premise based on Petitioner's comparison of Shanghai Fortune's U.S. sale to Shanghai Fortune and its affiliate's sales to third countries. In examining the information on the record, we reviewed the PIERs data provided by Petitioner to support its argument that Shanghai Fortune's U.S. sale was sold at an aberrational value. In so doing, we identified several U.S. imports of saccharin from third countries with prices significantly higher than the value of Shanghai Fortune's sale to the United States, thus belying Petitioner's assertion that the Shanghai Fortune sales price was significantly higher than the prices of third-country sales of subject merchandise to the United States during the same period. For example, the average unit entry price of saccharin from the United Kingdom was more than double the entry price of Shanghai Fortune's sale. We further disagree with Petitioner's contention that the price disparity between Shanghai Fortune's sale to the United States and Shanghai Fortune and its affiliate's sales to third countries renders Shanghai Fortune's U.S. sale non-bona fide. As discussed above, we examine the totality of the circumstances surrounding the transaction. In this review, the totality of circumstances surrounding Shanghai Fortune's U.S. sale indicate that its U.S. sale is bona fide.

Finally on this point, we continue to find the comparison between the sale price to the first unaffiliated customer in the United States and Petitioner's price list to be reasonable. We agree there could be product-specific differences that affect the prices; however, the purpose of the comparison is to identify a general benchmark, not to find an identical price quote.

Third, we do not agree with Petitioner that this sale is artificially structured and not commercially reasonable. We find that Petitioner's arguments that the Department has disregarded sales outside the ordinary course of trade in other cases are not relevant to this proceeding. Petitioner cites three cases: Pure Magnesium from the Russian Federation, Color Television Receivers from the PRC, and Pure Magnesium from Canada to support its contention that we should disregard the sale in question. In Pure Magnesium from the Russian Federation, and Color Television Receivers from the PRC, the Department addressed disregarding a certain percentage of overall U.S. sales, not disregarding a single sale that amounted to the universe of sales in question for the affected party. In Pure Magnesium from the Russian Federation,⁹ the Department stated that it "is not required to examine all sales transactions in the United States. For this reason, our practice has been to disregard unusual transactions when they represent a small percentage (*i.e.*, typically less than five percent) of a respondent's total sales." In Color Television Receivers from the PRC, the Department also excluded the referenced sales because they represented less than five percent of the respondent's total sales. See Color Television Receivers from the PRC, 68 FR at 66806, and accompanying Issues and Decision Memorandum at 100. In this case, the sale at issue represents Shanghai Fortune's total sales during the POR; therefore, the reference to these two cases is inapposite. With respect to the third case cited by Petitioner, Pure Magnesium from Canada, the Department disregarded two home market sales that were made outside the

⁹ See Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 21, 2001) ("Pure Magnesium from the Russian Federation"), and accompanying Issues and Decision Memorandum at Comment 10.

ordinary course of trade, consistent with section 771(15) of the Act and 19 CFR 351.102, because either the sale was made for non-commercial purposes or the sale was a sample sale that was not made in substantial quantities. See Pure Magnesium from Canada at 69 FR 20599. As pointed out by Petitioner, the statutory provision only applies to home market sales and there is no equivalent statutory provision for U.S. sales. In this case, the sale at issue is a U.S. sale not a home market sale. Thus, Petitioner's application of Pure Magnesium from Canada here is irrelevant to the facts in this review.

In Carbon Steel Plate, we set out three considerations for a sale to be bona fide: (1) the sale must be at arm's length, and have a price that is negotiated, not artificially set; (2) the sale must be consistent with good business practice; and (3) the sale must be sold pursuant to procedures typical of the parties' normal business practices. In that case the Department determined that the single sale in question was not a bona fide sale based on the following: 1) the cost of the movement expenses greatly exceeded the value of the sale; 2) the decision to send the shipment by air, rather than by ocean (contrary to normal business practice); 3) the quantity was atypical of that which the party normally sold to the United States; 4) the U.S. customer's purchase of the merchandise prior to receiving an order from its customer is atypical of its business practice; 5) the same legal counsel guided the sales process and helped negotiate the price, and 6) the U.S. customer resold the merchandise at a substantial loss. Thus, in Carbon Steel Plate, we concluded:

The evidence in the present case leads us to conclude that Windmill's "test" sales was made solely for the purpose of obtaining a separate rate for Windmill. Such a purpose does not render a sale non-bona fide as long as the sale itself is at least arguably commercially reasonable. Here, although the price charged by Windmill does not appear to be unreasonable, the reasonableness of the transaction must be judged by the total costs borne by the U.S. importer. The extraordinarily high transportation costs incurred by the importer, combined with other expenses borne by the importer in connection with this sale and the fact that the merchandise was subsequently resold at a significant loss (excluding transportation and other costs) lead us to conclude that there is no basis upon which it could be found that the sale was commercially reasonable. Therefore, we find the sale is not bona fide.

See Carbon Steel Plate, 63 FR at 47234.

In the present case, we have not found evidence of atypical business practices which resemble the details found in Carbon Steel Plate. In reviewing the record of this administrative review, the general terms of sale do not indicate that this was an artificially structured transaction.¹⁰ As Shanghai Fortune argues, this was not a sample transaction where no consideration was provided in exchange for the merchandise. Further, both the entry price and the sales price to the unaffiliated customer are in line with current market prices in the United States and the price to

¹⁰ See Bona Fides Memorandum.

the unaffiliated customer resulted from a price negotiation with that customer. Finally, there is no evidence on the record, as Petitioner suggests, that the exporter and its U.S. customer are attempting to manipulate the antidumping law. For all of the reasons discussed above, we agree with Shanghai Fortune that the totality of circumstances surrounding its sale to the United States during the POR does not lead to a conclusion that this was a commercially unreasonable sale. Therefore, we are continuing this administrative review with respect to Shanghai Fortune's sale to the United States during the POR.

By-Product Offset

Comment 2

Shanghai Fortune argues that for the final results of review the Department should grant a by-product offset for the five by-products that Shanghai Fortune generated during the production of sodium saccharin, as follows: (1) mother of benzyol aminate ester, (2) black methyl anthranilate, (3) acid water containing copper, (4) sodium sulfite, and (5) low grade activated carbon powder.¹¹

Shanghai Fortune argues that the Department did not grant a by-product offset in its calculation of the Preliminary Results because it had not provided supporting documentation to demonstrate that the by-products were sold during the POR. See Preliminary Results, 70 FR at 45554. Shanghai Fortune contends that because the Department stated in its Preliminary Results that such information would be considered for purposes of the final results of this administrative review and the Department issued supplemental questionnaires with respect to this issue, to which Shanghai Fortune fully and timely responded, the Department's determination to not allow the by-product offsets should be reconsidered for the final results of review.

Shanghai Fortune argues that it provided the sales documentation requested by the Department in its August 22, 2005, submission; specifically, it provided the monthly sales quantity of each of the five by-products covering the January 2003, through June 2004 POR;¹² sample value-added tax (VAT) invoices for the sales of sodium sulfite,¹³ acid water containing copper, and mother benzyol aminate ester produced during the POR; and finally, sample sales receipts for acid water containing copper, activated carbon, and black methyl anthranilate.¹⁴

In instances where it sold more by-product than was produced during the period, respondent argues that this was the result of an inventory lag of that product. Shanghai Fortune argues that this timely submitted documentation demonstrates that it sold the vast majority of the by-products produced during the POR, and therefore, the Department should grant Shanghai Fortune's claimed by-product offset in full.

¹¹ See Shanghai Fortune's October 21, 2004 Section D Response at page D-3.

¹² See Shanghai Fortune's August 22, 2005, submission at Attachment 1.

¹³ See id. at Attachment 2.

¹⁴ See id. at Attachment 3.

Petitioner asserts that the acid water containing copper, sodium sulfite, and mother liquid of aminate ester reported by the respondent as by-products were not supported by the documentation it provided to the Department. Petitioner also contends that the activated carbon reported by the respondent as a by-product is not a “by-product” but a spent filtration element which has no resale use or value. Petitioner argues that the spent activated carbon is neither a co-product nor a by-product. As such, petitioner argues that it does not qualify as an offset to factors of production. Petitioners contend that should the Department value the reported spent activated carbon as a by-product for the final results, it should consider using Indian Import Statistics HTS 2714.10, “bituminous or oil shale & tar sands” valued at 9.47 rupees per kilogram for the POR. See Attachment 1 of Petitioner’s January 31, 2006, submission.

Finally, Shanghai Fortune submitted extensive comments to support its argument that the Department should treat any by-product offset granted as a reduction to its cost of manufacture rather than as a deduction from normal value. Petitioner submitted comments arguing that the Department should treat any by-product offset granted as a deduction from normal value.

Department’s Position

Shanghai Fortune has not met its burden in demonstrating the reported sales of the five by-products listed above and we have, therefore, not granted Shanghai Fortune’s requested by-product offset for these final results of review. Shanghai Fortune did not provide the necessary documentation to demonstrate that it sold the reported quantities during the POR.

In a supplemental questionnaire issued to Shanghai Fortune on July 22, 2005, we asked Shanghai Fortune to: (1) provide the quantity of each by-product sold or reused during the POR, (2) provide supporting documentation for the by-products it had identified in its October 21, 2004, questionnaire response, and (3) identify for which products, if any, it was claiming a by-product offset.¹⁵

In Shanghai Fortune’s August 22, 2005, supplemental questionnaire response, the company requested an offset for its sales of the following by-products resulting from its production of saccharin: (1) acid water containing copper, (2) sodium sulfite, (3) black methyl anthranilate, (4) activated carbon, and (5) mother liquid of benzyol aminate ester. In addition, Shanghai Fortune provided a spreadsheet listing a monthly sales quantity of each of the five by-products during the POR (at Attachment 1), sample VAT invoices for acid water containing copper, sodium sulfite, and mother liquid of benzyol aminate ester (at Attachment 2), and sample sales receipts for sales of acid water containing copper, activated carbon, and black methyl anthranilate. Finally, Shanghai Fortune also pointed to a report it had provided at Attachment S3-10 of its April 28, 2005, supplemental response, detailing the monthly production of each of these five by-products during the POR.

¹⁵ See Department’s supplemental questionnaire to Shanghai Fortune, dated July 22, 2005.

Upon examination, however, none of these sample documents provided by Shanghai Fortune demonstrates the actual quantity of the identified by-products sold or reused during the POR. First, Shanghai Fortune provided only random invoices or sales receipts, none of which could be tied directly to the spreadsheet of monthly sales by by-product provided in Attachment 1 of its August 22, 2005, supplemental response. Second, Shanghai Fortune did not provide any additional information that would connect the sales invoices or VAT receipts to the monthly spreadsheet. Third, Shanghai Fortune did not provide any information to connect the spreadsheet, invoices or sales receipts to its internal books and records.

Further, in reviewing the information placed on the record by Shanghai Fortune with respect to its requested by-product offset, the Department found that Shanghai Fortune did not report product-specific concentration levels for the by-products it generated during the POR even though we specifically requested this information in the 8th and 9th supplemental questionnaires, dated January 19, 2006, and January 20, 2006. Finally, the Department found that Shanghai Fortune did not include enough information for the Department to determine an appropriate surrogate value for mother liquid of benzyol aminate ester.)n January 19 and 20, 2006, the Department issued additional supplemental questionnaires in an effort to provide Shanghai Fortune with an additional opportunity to substantiate its reported by-product sales quantities, to provide documentation identifying the relevant concentration levels of each by-product in question, and to submit additional information regarding the mother liquid of benzyol aminate ester that would allow the Department to value it properly for the final results of review. Because of the lack of time remaining in the review, the Department selected one month (i.e., September 2003) for one by-product, as a sample, and asked that Shanghai Fortune provide invoices and payment information to substantiate the reported sales quantity for that month (as indicated in the monthly spreadsheet of by-product sales).

In its response on January 24, 2006, Shanghai Fortune provided an invoice and receipts for sales of waste copper water. However, the information contained in the documents was deficient in several respects. First, the documents were not translated into English as requested and as required by our regulations at 19 CFR 351.303(e). Second, the invoice quantity did not tie to the quantity for the requested month. Additionally, the receipts did not contain quantity information, which would allow the Department to reconcile these documents. Because Shanghai Fortune did not provide the requested sample reconciliation for the September 2003 sales of acid water containing copper, the Department determined that Shanghai Fortune did not adequately substantiate its reported sales of the by-products.

In addition, Shanghai Fortune did not adequately respond to our requests for information regarding the concentration levels of the by-products at issue. Specifically, with respect to acid water containing copper, Shanghai Fortune provided one VAT invoice from outside the POR and random sales receipts that, although dated within the POR, did not correspond to the VAT invoice. Moreover, the documentation that identified the concentration level of the acid water containing copper was not fully translated and appeared to be from outside the POR. Therefore, we cannot determine how this document relates to the acid water containing copper that was

produced and sold during the POR and consequently cannot conclude that this document substantiates the reported concentration level of this product.

With respect to sodium sulfite, the document that Shanghai Fortune provided at Attachment 2 of its January 24, 2006, supplemental response to demonstrate its claimed concentration level for sodium sulfite is not fully translated into English as required by our regulations at 19 CFR 351.303(e) and appears to be from outside the POR. Therefore, we cannot determine how this document relates to the sodium sulfite that was produced and sold during the POR and consequently cannot conclude that this document substantiates the reported concentration level of this product.

With respect to black methyl anthranilate, for the first time, in its January 24, 2006, supplemental response, Shanghai Fortune stated that methyl anthranilate is not a by-product but an intermediary product generated in the production of saccharin; however, a very small amount of black methyl ester is recycled and sold as a by-product during the second stage of esterification. Shanghai Fortune went on to name what it identified as the two major components of methyl ester: chloromethyl benzoate and chlorotoluene and to provide an Indian HTS category for the latter product.¹⁶ As this is the first time in this proceeding that Shanghai Fortune has indicated that the actual by-product is not black methyl anthranilate, but instead chloromethyl benzoate and chlorotoluene, this information is untimely new factual information and will not be considered for purposes of these final results of review.¹⁷ Furthermore, the document¹⁸ that Shanghai Fortune claims indicates the appropriate levels of concentration of the by-products sold is not translated into English as required by our regulations at 19 CFR 351.303(e). In addition, Shanghai Fortune does not indicate what this document is or how it relates to the products sold during the POR; therefore, we cannot determine how this document substantiates any part of Shanghai Fortune's claimed by-product offset.

With respect to the fourth claimed by-product, activated carbon, in addition to asking Shanghai Fortune to support its reported concentration level, we asked it why the quantity of the activated carbon by-product it claimed was greater than the amount of activated carbon that it used in the production of saccharin. In response, Shanghai Fortune stated "The activated carbon applied in production is dry product and measured accordingly, whereas the activated carbon discharged in the process of production is a kind of byproduct that has absorbed large amounts of water and impurities."¹⁹ In addition to this narrative, Shanghai Fortune provided (at Attachment 2 of its

¹⁶ See Shanghai Fortune's January 24, 2006, supplemental response at page S8-3.

¹⁷ Normally the Department will return the submission pursuant to 19 CFR 351.302(d); however, given that the Department solicited information on black methyl anthranilate, sodium sulfite, waste copper water, activated carbon, and mother liquid of benzyol animat ester, and there was insufficient time for Shanghai Fortune to redact its new factual information and resubmit its questionnaire response before the February 6, 2006, statutory deadline, the Department has disregarded any new factual information made in Shanghai Fortune's January 24, 2006, supplemental response.

¹⁸ See Shanghai Fortune's January 24, 2006, supplemental response at Attachment 5.

¹⁹ See *id.* at page S8-1.

January 24, 2006, response) a document that is not translated into English as required by our regulations at 19 CFR 351.303(e) but does not contain the concentration level reported by Shanghai Fortune in its narrative response.²⁰ Thus, we are unable to determine how this document relates to the activated carbon sold during the POR and how it substantiates the concentration level reported in its January 24, 2006, response.

With respect to the last claimed by-product, mother liquid of benzyol aminate ester, we asked Shanghai Fortune to provide the chemical composition of this product and an appropriate HTS with which to value this product. Also, we asked Shanghai Fortune to provide the level of concentration of the mother liquid of benzyol aminate ester generated as a by-product of its saccharin production. In its January 24, 2006, response, Shanghai Fortune claimed that the major compound in mother liquid of benzyol aminate ester is anthranilic acid and that the corresponding HTS number is 29224300. However, Shanghai Fortune did not provide any documentation to support this statement. Additionally, the document that Shanghai Fortune provided (at Attachment 3) to demonstrate the concentration level of the mother liquid of benzyol aminate ester produced is not translated into English as required by our regulations at 19 CFR 351.303(e) and it does not contain the concentration level provided in Shanghai Fortune's narrative response²¹ at page S8-2 of its January 24, 2006, submission. Thus, we are unable to determine how this document relates to the mother liquid of benzyol aminate ester sold during the POR and how it substantiates the concentration level reported by Shanghai Fortune.

As a result, Shanghai Fortune has not provided documentation to substantiate the sale quantities it reported for its by-products, has not provided the proper documentation for us to determine the concentration levels of the by-products produced and sold during the POR, and in one instance has changed the product for which it is requesting a by-product offset. Because Shanghai Fortune has failed to substantiate its reported sales quantities and has failed to provide the necessary information for us to value these by-products, we are not granting Shanghai Fortune the by-product offset that it has requested for these final results of review.

Because we have determined that Shanghai Fortune has not provided the Department with sufficient documentation to demonstrate that it sold the by-products it reported or to substantiate the concentration levels of the claimed by-products, and we are not granting the by-product offset requested by Shanghai Fortune, we are not addressing the parties' comments related to the manner in which to apply any such offset.

Valuation of Phthalic Anhydride

Comment 3

Shanghai Fortune explains that while it correctly reported that all phthalic anhydride inputs were imported from Japan in its initial and first supplemental responses,²² it mistakenly stated in its

²⁰ See *id.* at page S8-2.

²¹ See *id.* at page S8-2.

²² See Shanghai Fortune's initial questionnaire response dated October 21, 2004, at Attachment D-3, and Shanghai Fortune's first supplemental response dated February 22, 2005, at Attachment S1-6.

May 27, 2005, supplemental response that all raw material inputs were purchased from the PRC. The Department, therefore, used a surrogate value for this input in its Preliminary Results. Shanghai Fortune asserts that the Department should value this input with its reported average market economy purchase price during the POR in accordance with 19 CFR 351.408(c)(1) and consistent with Lasko Metal Products v. United States, 43 F.3d 1442, 1445-46 (Fed Cir. 1994).

Petitioner did not comment on this issue.

Department's Position

Pursuant to 19 CFR 351.408(c)(1), when a non-market economy producer purchases an input from market economy suppliers and pays for that input in a market economy currency, the Department uses the actual price paid for these inputs, where possible. See Folding Metal Tables and Chair from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision Memorandum at Comment 2; see also Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271 (October 25, 1991); see also Lasko Metal Products v. United States, 43 F.3d 1442, 1445-46 (Fed. Cir. 1994). In its April 28, 2005, supplemental response, Shanghai Fortune provided purchase invoices, proof of payment for the purchase invoices, and inventory withdrawal slips to demonstrate that its reported usage of phthalic anhydride was purchased and used during the POR. However, in its May 27, 2005, supplemental response, Shanghai Fortune indicated that all raw material inputs were purchased from non-market economy suppliers. Therefore, as noted by the Department in the Preliminary Results, the administrative record was unclear on Shanghai Fortune's reporting of whether phthalic anhydride was supplied from a market economy supplier or from a non-market economy supplier. See Preliminary Results 70 FR at 45664.

In its August 31, 2005, submission of publicly available data for use as surrogate values, Shanghai Fortune clarified that its May 27, 2005, submission erroneously stated that all of its raw material inputs were purchased in the PRC.²³ Because Shanghai Fortune provided sufficient documentation on the record of this review demonstrating that the reported phthalic anhydride used in the production of subject merchandise was sourced from a market economy and paid for in a market economy currency, we are using the actual average price paid by Shanghai Fortune for this input during the POR. Because Shanghai Fortune reported that it purchased the phthalic anhydride from its Hong Kong affiliate, we are using the average purchase price paid by Shanghai Fortune's affiliate to its unaffiliated supplier in Japan to value its market economy purchases of phthalic anhydride for the final results. For further details, see "Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Saccharin from the People's Republic of China: Shanghai Fortune Chemical Co., Ltd.," dated February 6, 2006 ("Shanghai Fortune Analysis Memo").

²³ See Shanghai Fortune's "Saccharin from the People's Republic of China: Submission of Publicly Available Data for Use As Surrogate Values," dated August 31, 2005, at Attachment 1 ("Shanghai Fortune's Surrogate Value Submission").

Valuation of Brokerage and Handling

Comment 4

Shanghai Fortune argues that the brokerage and handling value used in the Preliminary Results²⁴ is aberrational and not representative of commercial reality. Shanghai Fortune cites several cases in which the Department has relied upon brokerage and handling data from the administrative reviews of Essar Steel in Hot-Rolled CSFP from India, and CVP from India.²⁵ While Shanghai Fortune does not object to the use of Essar Steel data, it objects to the use of Pidilite data for brokerage and handling charges. Shanghai Fortune claims that the Pidilite charges are not commercially viable rates for brokerage and handling, which are normally a nominal percentage of the value of a good. Shanghai Fortune specifies one underlying value in the Pidilite sales data²⁶ as being so aberrational that it increases the average brokerage and handling rate by almost 50 percent. According to Shanghai Fortune, the average of Pidilite and Essar data yield a rate that is 22 times greater than the surrogate value in the Saccharin LTFV Investigation²⁷ and 18 times greater than the Essar rate used in other investigations in 2005.

Petitioner argues that the Pidilite data are more representative because they reflect a variety of smaller shipments, whereas Essar data is predicated on very large volumes of steel shipments. Petitioner argues that the Pidilite data are valid notwithstanding the one value of 37.38 rupees per kilogram, because there are other values ranging from 2.22 to 7.28 rupees per kilogram. Therefore, Petitioner argues that the Department should use Pidilite data for the final results because they are more representative of Shanghai Fortune's "trial" shipment.

²⁴ The brokerage and handling value used in the Preliminary Results is an average of the per-unit amounts in the December 2003 through November 2004 data contained in Essar Steel's February 28, 2005, public version response submitted in the antidumping administrative review of Hot-Rolled Carbon Steel Flat Products from India and November 2002 through September 2003 data contained in Pidilite Industries' March 9, 2004, public version response submitted in the antidumping investigation of Carbazole Violet Pigment 23 from India. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 50406 (October 3, 2001) ("Hot-Rolled CSFP from India"), and Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from India, 69 FR 67306 (November 17, 2004) ("CVP from India"). See "Preliminary Results Factor Valuation Memorandum" at Attachment 25.

²⁵ Shanghai Fortune cites the following cases: Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 70 FR 54361 (September 14, 2005); Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review, 70 FR 54335 (September 14, 2005); 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 ("Glycine from the PRC"); and 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).

²⁶ Shanghai Fortune points to Observation 15 of the Pidilite Sales data which shows a price of 37.38 rupees per kilogram. See "Preliminary Results Factor Valuation Memorandum" at Attachment 25.

²⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003) ("Saccharin LTFV Investigation").

Department's Position

The Department will continue to use as surrogate values an average of the Essar Steel data and the Pidilite data to value brokerage and handling for the final results. In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information.²⁸ Stated differently, the Department attempts to find the most representative and least distortive market-based value in the surrogate country.²⁹ The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. In general, the Department prefers to rely on publicly available data.³⁰

The Department agrees with Petitioner and Shanghai Fortune regarding the merits of Pidilite and Essar data, respectively. The Department disagrees, however, with Shanghai Fortune’s argument that it should exclude Pidilite data on the basis that one underlying value in the Pidilite sales data is aberrational. Shanghai Fortune provided no documentation to support its claim that one of Pidilite’s brokerage and handling charges was aberrational and the Department has stated previously that it cannot conclusively determine that a value is aberrational even when there are extreme differences in quantity and value. See Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review, 71 FR 4112 (January 25, 2006), and accompanying Issues and Decision Memorandum at Comment 2, citing Glycine from the PRC, 70 FR 47176, and accompanying Issues and Decision Memorandum at Comment 1.

Additionally, the Department notes that the values reported by Essar and Pidilite are the actual prices paid by market economy companies and are representative of their normal business practices. Therefore, the Department finds that when considering the quality and specificity of the data on the record, e.g., Essar and Pidilite’s brokerage and handling values, calculating an average of the two values results in the most appropriate value on the record in this case. The Department’s preference would be to use an Indian brokerage and handling value specific to saccharin. However, since there are no saccharin-specific brokerage and handling values on the record, the Department finds that using a simple average of Essar and Pidilite’s values achieves the most representative value. We also believe that using an average of these two values represents the broad spectrum of values that are available for a wide range of products and

²⁸ See, e.g., Glycine from the PRC, 70 FR at 47176; see also Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6 (“Garlic Decision Memo”).

²⁹ See Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People’s Republic of China, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5 (“Mushrooms from the PRC”).

³⁰ See, e.g., Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001) (“Crawfish from the PRC”), and accompanying Issues and Decision Memorandum at Comment 2.

minimizes the potential distortions that might arise from a single price source. One value, taken in isolation, could differ significantly when compared across a wide range of products, values, and special circumstances of a single transaction. Most recently, the Department used the same sources in Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review, 71 FR 4112 (January 25, 2006), and accompanying Issues and Decision Memorandum at Comment 2. Therefore, in accordance with Department practice and section 773(c)(1) of the Act, the Department will use the simple average of the Essar and Pidilite values it used in the Preliminary Results to value brokerage and handling charges. For further details, see Memorandum to the File titled “Factors Valuations for the Final Results of the Administrative Review,” dated February 6, 2006 (“FOP Memorandum”).

Valuation of Ammonia Water

Comment 5

Shanghai Fortune argues that the surrogate value for ammonia water used in the Preliminary Results, which was calculated from Indian import data during the POR, is aberrational when compared to the commercial value of ammonia in India or in the United States for the same period. According to Shanghai Fortune, this value is also higher than the value of phthalic anhydride, a specialty product that should be many times more expensive. A review of the Indian import data used shows that only 107.5 metric tons of ammonia water were imported into India during the POR. Shanghai Fortune argues that such a small quantity is not representative of Indian pricing and is susceptible to distortion. Shanghai Fortune asserts that the CIT has ruled that the Department can use Indian import data for surrogate values only after concluding that they are based on commercially and statistically significant quantities. See Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, 318 F. Supp. 2d 1339 (CIT 2004) (“Shanghai Foreign Trade Enterprises”). Shanghai Fortune further asserts that in Glycine from the PRC, the Department declined to use Indian import statistics for the March 2003 through February 2004 period (*i.e.*, the POR in that review) to value ammonia water because the AUV was substantially higher than in the previous four years. Rather, the Department weight-averaged the Indian import statistics for a period prior to, during, and after the POR. For this review, Shanghai Fortune urges the Department to use Indian import statistics from 2002, a period in which the import volume was a commercially viable quantity (*i.e.*, 43,709 metric tons).

Petitioner counters that the respondent has not demonstrated that ammonia water prices remain unchanged in India between those in the Saccharin LTFV Investigation and the POR of the instant review. Moreover, the volume represented by the import data for the POR in the current proceeding is many times higher than the volume of subject merchandise under review. Petitioner also contends that anhydrous ammonia, a completely different product, should not be used for the surrogate value.

Department’s Position

In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. See, *e.g.*, Garlic Issues and Decision Memorandum at Comment 6. The Department attempts to find the most representative and least distortive market-based value in the surrogate country (*see, e.g.*,

Mushrooms from the PRC at Comment 5). The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. The Department prefers to rely on publicly available data (see Crawfish from the PRC at Comment 2). In the Preliminary Results, the Department relied on Indian import data for aqueous ammonia (HTS subheading 28142000) for the period January 1, 2003, through June 30, 2004, because it was more contemporaneous with the POR than Indian import data from the previous year. Following the Preliminary Results, Shanghai Fortune placed on the record of this review Indian import data for aqueous ammonia for the period January 1, 1999, through December 31, 2002 (see Shanghai Fortune's Surrogate Value Submission at Appendix 4). We have taken note of the differences in the POR Indian import data and this historical Indian import data placed on the record by Shanghai Fortune. In its analysis of the Indian import data for aqueous ammonia on the record of this review, the Department has found that: (1) the total quantity and value of aqueous ammonia imported between January 1, 2003, and June 30, 2004 are much lower than in the 18-month period prior to the POR; and (2) the AUV of imports for the period January 1, 2003, through June 30, 2004, is substantially higher than in the 18-month period prior to the POR. While the 18-month POR data is not conclusively aberrational, it may not be completely reliable, given the extreme difference in quantity and value (as compared to the previous 18-month period), arising from the same source of data.

The Department finds Petitioner's comparison of Shanghai Fortune's sales volume of subject merchandise to the quantities at issue in the Indian import data to be irrelevant to the issue of surrogate value selection for factors of production. The Department uses different criteria when examining the reliability of a surrogate value than when it examines the reliability of a reported U.S. sale made by a respondent. When selecting surrogate values, it is the Department's practice to use data that represent a market price not distorted by unusual or inexplicable circumstances. To this end, the Department disregards small-quantity import data when the per-unit value is substantially different from the per-unit values of the larger-quantity imports of that product from other countries. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997); Saccharin LTFV Investigation, and Issues and Decision Memorandum at Comment 1; Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) (CTV Final Determination) and accompanying Issues and Decision Memorandum at Comment 5. As noted above, our practice has been to exclude unreliable surrogate data for use in our normal value calculations in order to ensure that our calculations are not skewed by unusual circumstances.

In an administrative review, however, the Department uses different criteria to determine whether a U.S. sale should be excluded from its analysis because the sale is not commercially viable. In order to exclude such sales, the Department must determine that the sale at issue is not bona fide or is fraudulent. See, e.g., Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 65 FR at 7497, 7502 (February 15, 2000) ("Silicon Metal From Brazil"). In this review, the Department conducted a full analysis of the sale at issue to determine whether it is a bona fide sale and eligible for review under the Department's regulations. One of the aspects examined was the small quantity of the sale. As noted in the Bona Fides Memorandum, the size

of a transaction is not sufficient, in and of itself, to warrant a finding that the transaction is not bona fide. The Department has stated that, “single sales, even those involving small quantities, are not inherently commercially unreasonable.” See, e.g., Certain Cut-to-Length Carbon Steel from Romania: Rescission of Antidumping Duty Administrative Review, 63 FR 47232, 47234 (September 4, 1998) (“Romanian CTL Steel”). Thus, the Department found that the totality of circumstances, including the relatively small quantity of the single sale made by Shanghai Fortune is not reason enough to find it not bona fide. In other words, the Department found the sale to be reliable for the purposes of this review. See the Department’s position to Comment 1 above for a further discussion of this issue.

While these differences may, in fact, be reflective of a shift in market conditions (i.e., continued higher prices), the information on the record is not sufficient for the Department to fully evaluate this potential trend. In light of these highly unusual circumstances, the Department finds it necessary to continue to consider the historical data in this case in addition to the POR data, given the extreme difference in quantity and value. These findings and subsequent methodology are consistent with the Department’s practice in Glycine from the PRC and accompanying Issues and Decision Memorandum at Comment 1.

In order to account for this potential trend and the sudden and dramatic change in the data as compared to the previous 18-month period, the Department, in this instance, calculated a weighted average of the unit values of Indian imports of aqueous ammonia for the periods July 1, 2001, through December 31, 2002, and January 1, 2003, through June 30, 2004. These periods cover the POR and the 18-month period prior to the POR. Because data for the 18-month period after the POR are not yet available, we were unable to examine this period.

In accordance with our normal practice, we adjusted the July 1, 2003, through December 31, 2002, values for inflation to calculate values contemporaneous with the POR prior to calculating the weighted-average value. See, e.g., Glycine from the PRC; and Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002-2003 Administrative Review, 69 FR 65148 (November 10, 2004), and accompanying Issues and Decision Memorandum at Comment 3. The resulting weighted-average value for aqueous ammonia is 6.87 Indian rupees per kilogram. For further details on this value and adjustments for aberrational values, see FOP Memorandum.

Valuation of Liquid Chlorine

Comment 6

Shanghai Fortune argues that the surrogate value for liquid chlorine used in the Preliminary Results is aberrational due to the “minuscule” quantity (i.e., 58.1 metric tons) imported into India during the POR. According to Shanghai Fortune, the small quantity distorts the AUV calculation, and it cites to the court’s decision in Shanghai Foreign Trade Enterprises to support its contention. Shanghai Fortune maintains that the value for chlorine is nine times that of the AUV of liquid chlorine imports into the United States during the POR and 20 times greater than

the surrogate value used in the Saccharin LTFV Investigation. Shanghai Fortune cites Glycine from the PRC and argues that the Department declined to use Indian import statistics in that case because it found the AUV to be aberrational when compared to import prices in the United States and European Union for the same period. Instead, the Department took the average of data obtained from the 2002-2003 financial statements of two Indian companies' liquid chlorine sales. Shanghai Fortune urges the Department to use Indian surrogate values for liquid chlorine from the initial investigation³¹ or from the recently completed Glycine administrative review where the Department used the average value of the two Indian companies.³²

Petitioner rebuts that if the Department finds 58 metric tons not to be representative of commercial activity for surrogate valuation, it should also find that Shanghai Fortune's shipment, which is less than that amount, is also a non-commercial quantity.

Department's Position

We agree with Shanghai Fortune that the surrogate value for chlorine used in the Preliminary Results is aberrational. After conducting independent research, the Department could not find appropriate data to value liquid chlorine for this review from Indian import data or Indian Chemical Weekly ("ICW"). In selecting surrogate values, the Department selects the "best available information" and does so based on the quality, specificity, and contemporaneity of the data. See Section 773(c)(1) of the Act, and Honey from the People's Republic of China: Notice of Final Results and Final Rescission, In Part, of Antidumping Duty New Shipper Review, 69 FR 64029 (November 3, 2004) ("Honey from the PRC"), and accompanying Issues and Decision Memorandum at Comment 4. In addition, the Department will normally use publicly available information to value factors. See 19 CFR 351.408 (c)(1) and Crawfish from the PRC at Comment 2. In this review, we found that the best available information on the record is the average value from the financial statements of two Indian companies, Kanoria Chemicals & Industries Limited and Bihar Caustic & Chemicals Limited. We find these data to be most appropriate in valuing liquid chlorine because they are publicly available, contemporaneous with the POR, and is consistent with Department's use of the data in Glycine from the PRC.³³ The value of liquid chlorine for the final results is 8.66 Indian rupees per kilogram. For further details, see FOP Memorandum.

The Department finds Petitioner's comparison of Shanghai Fortune's sales volume of subject merchandise to the quantities at issue in the Indian import data to be irrelevant to the issue of surrogate value selection for factors of production. The Department uses different criteria when examining the reliability of a surrogate value than when it examines the reliability of a reported

³¹ We note that in the Saccharin LTFV Investigation, the Department used U.S. import statistics to value liquid chlorine and not Indian import statistics as stated by Shanghai Fortune and Petitioner. We presume that Shanghai Fortune intended the Department to use the U.S. import data value from the Saccharin LTFV Investigation.

³² See Glycine from the PRC.

³³ See Surrogate Values Used for the Preliminary Results of the 3/1/03-2/29/04 Administrative Review of Glycine from the People's Republic of China, dated March 31, 2005, which is Attachment 9 of Shanghai Fortune's August 31, 2005 Surrogate Value Submission.

U.S. sale made by a respondent. When selecting surrogate values, it is the Department's practice to use data that represent a market price not distorted by unusual or inexplicable circumstances. To this end, the Department disregards small-quantity import data when the per-unit value is substantially different from the per-unit values of the larger-quantity imports of that product from other countries. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997); Saccharin LTFV Investigation, and Issues and Decision Memorandum at Comment 1; CTV Final Determination, and Issues and Decision Memorandum at Comment 5. As noted above, our practice has been to exclude unreliable surrogate data for use in our normal value calculations in order to ensure that our calculations are not skewed by unusual circumstances.

In an administrative review, however, the Department uses different criteria to determine whether a U.S. sale should be excluded from its analysis because the sale is not commercially viable. In order to exclude such sales, the Department must determine that the sale at issue is not bona fide or is fraudulent. See, e.g., Silicon Metal from Brazil, 65 FR at 7502. In this review, the Department conducted a full analysis of the sale at issue to determine whether it is a bona fide sale and eligible for review under the Department's regulations. One of the aspects examined was the small quantity of the sale. As noted in the Bona Fides Memorandum, the size of a transaction is not sufficient, in and of itself, to warrant a finding that the transaction is not bona fide. The Department has stated that, "single sales, even those involving small quantities, are not inherently commercially unreasonable." See, e.g., Romanian CTL Steel, 63 FR at 47234. Thus, the Department found that the totality of circumstances, including the relatively small quantity of the single sale made by Shanghai Fortune is not reason enough to find it not bona fide. In other words, the Department found the sale to be reliable for the purposes of this review. See the Department's position to Comment 1 above for a further discussion of this issue.

Valuation of Sulfur Dioxide

Comment 7

Shanghai Fortune argues that the surrogate value for sulfur dioxide used in the Preliminary Results is aberrational due to the "minuscule" quantity (i.e., 2 metric tons) imported into India during the POR, which distorts the AUV calculation. To support its conclusion, Shanghai Fortune cites the court's decision in Shanghai Foreign Trade Enterprises, in which it states that the CIT rejected the Department's use of Indian import data based on an import volume of 1,132 MT of the product. According to Shanghai Fortune, this value is aberrational when compared to U.S. import statistics covering the same period, which yield a value of approximately 7.26 Indian rupees per kilogram. Shanghai Fortune argues that the value is also aberrational compared to global pricing reported in the Chemical Marketing Reporter which yields a value of \$230 per ton.³⁴ Shanghai Fortune urges the Department to use the surrogate value from the Saccharin LTFV Investigation, which was based on Indian import statistics from April through December 2001 and which yields a value of 7.27 Indian rupees per kilogram.

³⁴ Shanghai Fortune sampled spot prices reported in the Chemical Marketing Reporter for the first week of each month of the POR to obtain this value.

Petitioner agrees with respondent that the quantity at issue for sulfur dioxide in the POR Indian import data is a non-commercial quantity. Similarly, Petitioner contends that Shanghai Fortune's sale of subject merchandise under consideration is also a small quantity and should also be considered a non-commercial quantity as well. Petitioner maintains that the Department cannot find this Indian import volume aberrational for surrogate valuation purposes while finding the smaller shipment volume of subject merchandise under review commercially viable.

Department's Position

The Department finds Petitioner's comparison of Shanghai Fortune's sales volume of subject merchandise to the quantities at issue in the Indian import data to be irrelevant to the issue of surrogate value selection for factors of production. The Department uses different criteria when examining the reliability of a surrogate value than when it examines the reliability of a reported U.S. sale made by a respondent. When selecting surrogate values, it is the Department's practice to use data that represent a market price not distorted by unusual or inexplicable circumstances. To this end, the Department disregards small quantity import data when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other countries. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997); Saccharin LTFV Investigation, and Issues and Decision Memorandum at Comment 1; CTV Final Determination, and Issues and Decision Memorandum at Comment 5. As noted above our practice has been to exclude unreliable surrogate data for use in our normal value calculations in order to ensure that our calculations are not skewed by unusual circumstances.

In an administrative review, however, the Department uses different criteria to determine whether a U.S. sale should be excluded from its analysis because the sale is not commercially viable. In order to exclude such sales, the Department must determine that the sale at issue is not bona fide or is fraudulent. See, e.g., Silicon Metal from Brazil, 65 FR at 7502. In this review, the Department conducted a full analysis of the sale at issue to determine whether it is a bona fide sale and eligible for review under the Department's regulations. One of the aspects examined was the small quantity of the sale. As noted in the Bona Fides Memorandum, the size of a transaction is not sufficient, in and of itself, to warrant a finding that the transaction is not bona fide. The Department has stated that, "single sales, even those involving small quantities, are not inherently commercially unreasonable." See, e.g., Romanian CTL Steel, 63 FR at 47234. Thus, the Department found that the totality of circumstances, including the relatively small quantity of the single sale made by Shanghai Fortune is not reason enough to find it not bona fide. In other words, the Department found the sale to be reliable for the purposes of this review. See the Department's position to Comment 1 above for a further discussion of this issue.

It is the Department's practice to use surrogate values that represent market prices not distorted by unusual or inexplicable circumstances. We agree with Shanghai Fortune that the surrogate value for sulfur dioxide used in the Preliminary Results is aberrational. In selecting surrogate values, the Department selects the "best available information" and does so based on the quality, specificity, and contemporaneity of the data. See section 773(c)(1) of the Act, and Honey from the PRC at Comment 4. In addition, normally the Department will use publicly available

information to value factors. See 19 CFR 351.408 (c)(1). The Department conducted its own research and reviewed the Indian import data for sulfur dioxide for the period prior to and following the POR. We could not use the Indian values for the sulfur dioxide derived from the adjacent periods because the data in these periods revealed values that are also aberrational due to non-commercial quantities. We also researched the Indian trade publication, ICW; however, we could not find a value for sulfur dioxide listed in this source. Therefore, we had to go outside India to research sulfur dioxide values in other countries listed on the surrogate country list.³⁵ The Department compiled data from the import statistics of Indonesia, the second surrogate country on the Surrogate Country Selection Memo. As noted in the Surrogate Country Selection Memo, Indonesia is comparable to the PRC in terms of economic development and, as outlined below, we find that Indonesia is a significant producer of comparable merchandise. The use of a secondary source country when data from the primary surrogate country is unreliable is consistent with the Department's past practice. See Final Determination of Sales at Less than Fair Value: Certain Partial-Extension Drawer Slides from the PRC, 60 FR 54472, 54475-76 (October 24, 1995), and Chrome-Plated Lug Nuts from the PRC; Final Results of the Antidumping Duty Administrative Review, 61 FR 58514, 58517-18 (November 15, 1996). While we acknowledge that there are no official country-wide data regarding sulfur dioxide production in Indonesia, neither the Petitioner nor the respondent has provided any information that leads us to reject Indonesia. Accordingly, the Department finds that the best available information for sulfur dioxide in this review are Indonesian import statistics from the period January 1, 2003, to December 31, 2003. These data are publicly available and contemporaneous with the POR, which is consistent with Department practice. Since the data are contemporaneous with the POR, we did not adjust for inflation. As the 2003 Indonesian data is reported in U.S. dollars, we calculated a value of \$0.68 per kilogram to value sulfur dioxide. For further details, see FOP Memorandum.

Valuation of Ocean Freight

Comment 8

Shanghai Fortune notes that the Department derived its value for ocean freight in the Preliminary Results based on 20-foot container-load price quotes from the Maersk Sealand shipping line website. Shanghai Fortune argues that the Department incorrectly assumed that a 20-foot container holds 9.5 metric tons of saccharin. According to Shanghai Fortune, a 20-foot container can hold 20 metric tons of saccharin, and Shanghai Fortune claims that it placed on the record a recent bill of lading to support this contention.³⁶ Shanghai Fortune asserts that, when the average of the 19 monthly price quotes for a 20 foot container is divided by the correct weight of at least 20 metric tons, the value for ocean freight drops to \$0.3125 per kilogram.

³⁵ For a list of the surrogate countries deemed economically comparable to the PRC, see Memorandum to the File from Blanche Ziv Through Brian Ledgerwood "2002-2004 Administrative Review of the Antidumping Duty Order of Saccharin from the People's Republic of China: Selection of a Surrogate Country," dated April 26, 2005 ("Surrogate Country Selection Memo").

³⁶ See Shanghai Fortune's Surrogate Value Submission, dated August 31, 2005, at Attachment 13.

Shanghai Fortune further argues that since the shipment in question was a partial container load, the Department should value the shipment using the Narita price quote used in Glycine from the PRC. According to Shanghai Fortune, the Narita price quote represents more relevant data for the instant review, since only a partial container load is being reviewed. Alternatively, Shanghai Fortune asserts that the Department could apply as a surrogate value an average of the Narita price quote and the Maersk Sealand quotes.

Petitioner argues that the Department should continue to use the Maersk Sealand quotes used in the Preliminary Results. Petitioner counters that, contrary to Shanghai Fortune's claim, the sample bill of lading provided by Shanghai Fortune is not probative because it does not state what size container is used. Petitioner points out that it has put on record that a 20-foot shipping container has a maximum capacity of 17,237 kilograms, inclusive of cartons and pallets.³⁷ According to Petitioner, a net weight for the subject merchandise in the container would be closer to the 9.5 metric ton weight used by the Department.

Department's Position

We continue to find that the Maersk publicly available price quotes are the most appropriate source for valuing ocean freight in this review. Contrary to Shanghai Fortune's assertion, the bill of lading it submitted to support its contention does not conclusively show that a 20-foot container can hold 20 metric tons of saccharin. As Petitioner notes, the bill of lading shows a shipment of 20.8 metric tons of sodium saccharin, but does not indicate the size or type of container used for the shipment. We also find the Maersk data preferable to the Narita price quote submitted by Shanghai Fortune for several reasons. First, the Maersk data is contemporaneous with the POR while the Narita price quote is dated nearly a year following the end of the POR. Second, the Department has a policy of using values that reflect a period-wide average in selecting a surrogate value wherever possible. See NME Surrogate Country Policy Bulletin 04.1. Maersk data represent a more representative range of rates available than the single Narita price quote. Finally, 19 CFR 351.408(c)(1) states, "the Secretary normally will use publicly available information to value factors." The Department has reiterated its preference for publicly available information in recent cases.³⁸ Maersk data are obtained from a public source that has often been used by the Department in non-market-economy cases to value ocean freight. Additionally, the Department has consistently found rate quotes from Maersk to be reliable. Most recently, the Department used this source in Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 1, 2006) and accompanying Issues and Decision Memorandum at Comment 6; see also Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty

³⁷ See Petitioner's submission dated September 12, 2005.

³⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 34125 (June 18, 2004) ("Retail Carrier Bags"), and accompanying Issues and Decision Memorandum at Comment 9; Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China, 69 FR 34130 (June 18, 2004) ("Tetrahydrofurfuryl Alcohol"), and accompanying Issues and Decision Memorandum at Comment 6; and Notice of Final Results of First Administrative Review: Honey from the People's Republic of China, 69 FR 25060 (May 5, 2004) ("First Administrative Review of Honey"), and accompanying Issues and Decision Memorandum at Comment 3.

Administrative Review, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum at Comment 11. Further, Shanghai Fortune has not provided any information to indicate that the Maersk rate quotes are not reliable data. Therefore, given the fact that it has been a practice by the Department to use rate quotes from Maersk to value ocean freight,³⁹ because these quotes represent period-wide average, publicly available, contemporaneous information, the Department continues to find that the Maersk data are the best available information to value ocean freight for the final results. See “Preliminary Results Factor Valuation Memorandum” at Attachment 24.

Valuation of Steam Coal

Comment 9

While Shanghai Fortune does not object to the use of the Tata Energy Research Institute’s Energy Data Directory and Yearbook (2003/2004) (“TERI data”) to value steam coal, it argues that the Department incorrectly included the prices for steel- and washery-grade coking coals in the surrogate value, even though Shanghai Fortune used only non-coking coal in the production of subject merchandise during the POR. Shanghai Fortune contends that, in the recent Polyvinyl Alcohol from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, 70 FR 67434 (November 7, 2005), the Department properly excluded coking coal data in calculating the surrogate value for steam coal when using the same TERI data. Moreover, Shanghai Fortune notes that it placed information on the record specifying the grade of steam coal used.⁴⁰ According to Shanghai Fortune, the submitted contract specifies steam coal equivalent to Grade C; however, its monthly analysis of the steam coal shipments shows that the coal it used was actually equivalent to Grade D steam coal. Therefore, Shanghai Fortune urges the Department to recalculate the surrogate value for steam coal by calculating a simple average of the reported prices for grade D non-coking steam coal.

Petitioner does not dispute that steam coal and coking coal are separate general categories of coal. However, Petitioner states that the source data themselves are problematic for the POR, citing the Department’s concerns about the monopolistic structure of the coal industry in India as stated in Wuhan Bee Healthy Co., Ltd. v. United States, Slip Op. 05-142 at 5 (November 2, 2005). Petitioner, therefore, urges the Department to value coal using Indian import data from the POR for the final results.

Department’s Position

We agree with Petitioner and Shanghai Fortune that non-coking steam coal is the most appropriate category of coal to value the steam coal used by Shanghai Fortune in this review. However, we do not find that Shanghai Fortune has substantiated its claim that it contracted for Grade C steam coal but used Grade D steam coal during the POR. In the Department’s original questionnaire, dated September 1, 2004, at page 22, the Department requested that Shanghai

³⁹ See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the Peoples Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review, 17 FR 2517 (January 16, 2006).

⁴⁰ See Shanghai Fortune’s Surrogate Value Submission, dated August 31, 2005 at Attachment 15.

Fortune “report the energy used to produce one unit of the subject merchandise.” In its October 21, 2004, response, Shanghai Fortune reported that it used coal in the production of subject merchandise but did not provide a usage rate for coal in its factors-of-production database submitted with its response. The Department sent a supplemental questionnaire to Shanghai Fortune on January 24, 2005, requesting that it report its consumption of coal or explain why it used coal in the Saccharin LTFV Investigation but did not report usage in the current review. In its February 22, 2005, response Shanghai Fortune reported its usage of coal but did not provide any specifications as to the type of coal using during the POR. Further, Shanghai Fortune did not submit to the Department a surrogate value for coal prior to the Preliminary Results. Because Shanghai Fortune did not submit information regarding the grade of coal it uses or the useful heat value (“UHV”), the Department averaged the prices of the highest quality grade coal from all published price sources in the TERI source. The Department stated at that time that should Shanghai Fortune provide additional information on the quality of coal it uses within the 20-day comment period subsequent to publication of the Preliminary Results, the Department will review this information and determine whether any revisions are applicable to this surrogate in the final results. In its August 31, 2005, submission, Shanghai Fortune submitted a contract and monthly analysis as documentation of the quality of coal it used during the POR. The sample contract and the monthly analysis provided by Shanghai Fortune, however, are not fully translated into English as required by our regulations at 19 CFR 351.303(e). The two documents do not corroborate each other in terms of grade of coal. The monthly analysis does not clearly present the time period or the analysis results for the grade of coal, nor does it have any identifying information to tie into the production of subject merchandise for the instant review. Therefore we have determined not to value Shanghai Fortune’s coal usage using Grade D non-coking steam coal alone.

In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. See, e.g., Garlic Issues and Decision Memorandum at Comment 6. The Department continued to use data from Table 1.21 of the TERI data. The use of TERI data over import statistics on a case-by-case basis has been upheld by the CIT. See Wuhan Bee Healthy Co., Ltd. v. United States, Slip Op. 05-142 at 5-6 (November 2, 2005). These data are publicly available, contemporaneous with the POR, and consistent with Department practice. See Notice of Final Results of Antidumping Duty New Shipper Review: Honey from the People’s Republic of China, 68 FR 62053 (October 31, 2003), and accompanying Issues and Decision Memorandum at Comment 4. Although, in the past, the Department has noted some concerns about the monopolistic structure of the coal industry in India,⁴¹ for this review, the Department determines that the TERI steam coal pricing data are the best quality data because not only are they published, publicly available data, but also because they are representative of the coal industry throughout India. Thus, the TERI data, as they are currently presented, are credible as a country-wide source of data.

⁴¹ See Final Results of Redetermination Pursuant to Remand; Wuhan Bee Healthy Co., Ltd. v United States, Consol. Court No. 03-00806, Slip Op. 05-65 (June 10, 2005), available at <http://ia.ita.doc.gov/remands/05-65.pdf>.

Because there is not adequate information on the record of this review as to the exact grade of coal used during the POR to produce the subject merchandise, the Department took a simple average of Grade A, B, C and D non-coking steam coal to value Shanghai Fortune's coal usage for the final results. As these data are contemporaneous with the POR, we did not adjust for inflation. The value for steam coal is 1232 Indian rupees per metric ton. For further details, see FOP Memorandum.

Valuation of Activated Carbon

Comment 10

Shanghai Fortune notes that the Department used Indian import statistics to value activated carbon in the Preliminary Results. According to Shanghai Fortune, the Indian HTS number (3902.1000) used to derive this value does not distinguish among the various grades of activated carbon. Shanghai Fortune claims that the price quote it placed on the record of this review is more specific to the type of activated carbon used in the production of subject merchandise. Shanghai Fortune states that the statute directs the Department to use the "best available information" when valuing factors of production and cites section 773(c)(1) of the Act. Moreover, Shanghai Fortune points out that the Department relies on surrogate values that are: 1) non-export average values; 2) most contemporaneous with the period of investigation; 3) product-specific; and 4) tax exclusive.⁴² According to Shanghai Fortune, the Department further considers several factors, including quality, specificity and contemporaneity of the data.⁴³ Shanghai Fortune states that the Department also prefers to use surrogates that are most comparable in terms of design or materials to the actual input consumed in the production of the subject merchandise.⁴⁴ According to Shanghai Fortune, in Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 66 FR 15076 (March 15, 2001) ("Manganese Metal"), the Department changed a surrogate value selection to one more closely corresponding to the type used by PRC respondents. Shanghai Fortune also cites several cases where the Department has declined to use Indian import statistics to value activated carbon because they broadly covered all grades and types of activated carbon.⁴⁵

⁴² See, e.g., CTV Final Determination, and Issues and Decision Memorandum at Comment 9; Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China, 69 FR 35296 (June 24, 2004), and accompanying Issues and Decision Memorandum at Comment 5; and Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67034 (November 17, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

⁴³ See, e.g., Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 68 FR 62053 (October 31, 2003).

⁴⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026 (April 30, 1996); and Certain Helical Spring Lock Washers From The People's Republic of China; Final Results of Antidumping Administrative Review, 61 FR 41994 (August 13, 1996).

⁴⁵ See Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 48597 (September 16, 1997) ("Sulfanilic Acid"); Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part, 67 FR 69719 (November 19, 2002) ("Sebacic Acid 2002"); Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 64 FR 69503 (December 13, 1999) ("Sebacic Acid 1999"); and Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty

Shanghai Fortune, therefore, urges the Department to use either the value of 30.50 rupees per kilogram obtained from the price quotes submitted in the Saccharin LTFV Investigation or the price quote value of 38.00 rupees per kilogram on the record of the instant review to value activated carbon for the final results.

Petitioner notes that the price quote included in Shanghai Fortune's Surrogate Value Submission is for granular activated carbon. However, according to information put on the record by Petitioner,⁴⁶ powder activated carbon is used in liquid phase purification in a batch process while granular activated carbon is used for liquid phase and gas phase purification in a continuous or semi-continuous process. Petitioner states that it is not known whether the value of granular activated carbon placed on the record by Shanghai Fortune is representative of the manufacturing process of subject merchandise. Moreover, this price quote represents a value from only one source in the surrogate market, as opposed to the Indian import statistics which provide a value for all of India for the entire POR. Finally, Petitioner asserts that Shanghai Fortune's price quote is dated December 4, 2005, which is not contemporaneous with the POR in this proceeding.

Department's Position

We agree with Petitioner that the Indian import statistics value for activated carbon is a more appropriate value for activated carbon than the price quote provided on the record of this review by Shanghai Fortune. The Indian import statistics are contemporaneous and are publicly available, whereas the price quote provided by Shanghai Fortune is not. Section 351.408(c)(1) of the Department's regulations states, "the Secretary normally will use publicly available information to value factors." The Department has reiterated its practice and preference for publicly available information in recent cases.⁴⁷ Shanghai Fortune did not provide the Department with any information on how the submitted price quote was obtained. The price quote that the respondent submitted to the Department appears to have been provided in response to a specific request for the price. However, no detail on the party that requested the price, or whether or not an affiliation existed between the requester and the Indian company was ever placed on the record. Without access to all the information on how the data were obtained (including the sources and any adjustments that may have been made), it is impossible to confirm that the data are complete and accurate, and whether they represent a market-based price. Therefore, without further information, we cannot determine that the price quote submitted by the respondent is reliable. The uncertainty associated with such information is avoided through the use of independently generated public information. Thus, we find that the price quote provided by Shanghai Fortune does not meet the standards that the Department uses for the selection of surrogate values because it does not meet the criteria of public availability that the

Administrative Review, 69 FR 75303 (December 16, 2004) ("Sebacic Acid 2004"); CTV Final Determination; and Saccharin LTFV Investigation at 27530.

⁴⁶ See September 12, 2005, rebuttal comments on surrogate value, attachment citing information about Norit activated carbon.

⁴⁷ See Retail Carrier Bags at Comment 9; Tetrahydrofurfuryl Alcohol and accompanying Issues and Decision Memorandum at Comment 6; First Administrative Review of Honey at Comment 3.

Department has historically relied upon when choosing appropriate surrogate values in order to lessen the likelihood of possible manipulation of documents prepared specifically for use in trade remedy cases. In addition, as noted by Petitioner, the price quote is not contemporaneous with the POR.

Respondent's reference to Sulfanilic Acid, Sebacic Acid 2002, Sebacic Acid 1999, and Sebacic Acid 2004 is misplaced. We specifically stated in Sebacic Acid 2004 that, "Although we used this same price quote as the surrogate value for activated carbon in the final results of the last administrative review and determined there that price quotes from India were the most reliable source of surrogate valuation of the activated carbon which the respondent Chinese producers of sebacic acid used, we also stated that for any subsequent reviews of this order, we would attempt to value this factor using publicly available information." See Sebacic Acid 2004 at Comment 2.

Because the price quote for activated carbon provided by the Respondent was for granular activated carbon and not powder activated carbon, the Respondent reference to Manganese Metal stating that the Department changed a surrogate selection to one more closely corresponding to the type used by PRC respondents is inapposite. For that matter, the price quote is not more specific as alleged by Shanghai Fortune since the price quote is for granular activated carbon rather than powder activated carbon and, in this instance, we do not know which form of activated carbon the respondent used. Thus, the price quote provided by Shanghai Fortune is not contemporaneous, is not more specific to the type of activated carbon used by Shanghai Fortune, and is not publicly available.

Additionally, in Saccharin LTFV Investigation, we did not use multiple price quotes contemporaneous with the POI because the flaws inherent in those price quotes were overshadowed by the fact that there was another source of usable, reliable information. In this case, we have another source of usable information, the Indian Import Statistics which are contemporaneous with the POR. In the CTV Final Determination, we used the price quotes submitted in that case because they were publicly available, contemporaneous with the POR, and reflective of actual completed transactions, which is not the case with the price quote submitted by Shanghai Fortune in this case. For the reasons outlined above, we find the cases cited by Shanghai Fortune to be inapposite and we have continued to value activated carbon using Indian import statistics for the final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margins for all of the reviewed firms in the Federal Register.

Agree _____

Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date