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FINAL RESULTS OF DETERMINATION PURSUANT TO COURT REMAND
Sinopec Sichuan Vinylon Works v. United States
Court No. 03-00791, Slip Op. 06-78 (CIT May 25, 2006)

SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order from the U.S. Court of International Trade (the Court) in Sinopec Sichuan Vinylon Works v. United States, Court No. 03-00791, Slip Op. 06-78 (CIT May 25, 2006) (Sinopec II). The Court affirmed the Department's revised surrogate value calculation for natural gas and remanded the two remaining issues to the Department. Specifically, the Court instructed the Department to reanalyze its treatment of Sinopec Sichuan Vinylon Works' (SVW) acetic acid inputs and its calculation of SVW's overhead costs.

The Department issued its draft remand results to all interested parties on September 8, 2006. On September 21, 2006, we received comments on the draft remand results from the respondent, SVW, and Celanese Chemicals, Ltd. and E.I. Dupont de Nemours & Co. (collectively "the petitioners"). These comments are addressed below.

In accordance with the Court's instructions, the Department has reanalyzed and explained its treatment of SVW's acetic acid inputs. In addition, the Department has performed the requisite overhead cost revisions pursuant to the Court's directions. Specifically, the Department has revised SVW's overhead costs, utilizing its customary practice of using the surrogate producer's data without adjustment. However, the Department did not apply the surrogate producer's financial ratios to the surrogate value for purchased acetic acid, thereby avoiding double-counting. As discussed further below, the recalculated margin for these final remand results is 0.00 percent ad valorem.

A. Background

On August 11, 2003, the Department published its final determination in the less- than-fair-value investigation of polyvinyl alcohol (PVA) from the People's Republic of China (PRC). See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (Aug. 11, 2003) (PVA Final), as amended by Notice of Amended Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 52183 (Sept. 2, 2003). The antidumping duty order subject to this determination was issued on October 1, 2003. See Antidumping Duty Order: Polyvinyl Alcohol from the People's Republic of China, 68 FR 56620 (Oct. 1, 2003). The period of investigation (POI) covers January 1, 2002, to June 30, 2002.

Subsequently, SVW brought suit to contest the following four findings made by the Department in its PVA Final: (1) the Department's decision not to apply the "self-produced" rule to SVW's joint-venture (JV) produced inputs; (2) the Department's use of a value-based methodology to allocate costs between acetylene and acetylene tail gas, instead of a heat-of-combustion based methodology; (3) the use of only the ceiling price of published Indian natural gas prices as the surrogate value for natural gas; and (4) the Department's decision regarding when and how to apply a by-product credit in the calculations of SVW's normal value (NV).

On April 4, 2005, the Court issued its order in Sinopec Sichuan Vinylon Works v. United States, 366 F. Supp. 2d 1339 (CIT Apr. 4, 2005) (Sinopec I). The Court affirmed the Department's findings with respect to issue (2), and granted the Department's request for a voluntary remand on issue (3). The two remaining issues, (1) and (4), were also remanded to the Department for further explanation and/or recalculation. Specifically, the Court directed the Department to: reconsider the applicability of the self-produced input rule with respect to the

purchase of acetic acid by SVW from its JV, as well as the rationale for applying the financial ratios of Jubilant Organosys Ltd. (Jubilant), an Indian producer of polyvinyl acetate (PVAc), to SVW's costs without accounting for either "the greater costs incurred by Jubilant during its production of acetic acid" or the fact that Jubilant produces more products and by-products than SVW. See Sinopec I, at 1344, 1351.

On September 26, 2005, the Department, in accordance with the Court's instructions in Sinopec I, provided additional explanation on the issues of the applicability of the self-produced input rule with respect to SVW's purchases of acetic acid and the rationale for applying Jubilant's financial ratios to SVW's costs. In addition, the Department recalculated the selected surrogate value for natural gas. See Final Results of Redetermination Pursuant to Court Remand, Sinopec I, (Sept. 26, 2005) at 2. (Final Results of Redetermination Pursuant to Court Remand, Sinopec I). Specifically, the Department explained the relevance of corporate organization in its determination that SVW did not "self-produce" its acetic acid during the POI. Id. at 3. The Department also addressed the Court's request regarding the applicability of organizational control in the Department's self-produced input analysis and its relation to determining an accurate cost of production for SVW. Id. at 4. The Department explained that while organizational control is a factor in determining whether parties are affiliated, recognizing that SVW and its JV are affiliated, such control is not a factor typically used to determine whether the upstream inputs of an affiliated supplier should be valued as a producer's own. This, the Department asserted, is because 19 C.F.R. § 351.401 is the only legal provision that permits valuing a nonmarket economy (NME) supplier's inputs as a producer's factors of production (FOPs). See id. After determining that SVW does not produce acetic acid; that SVW is not integrated with respect to acetic acid production despite its affiliation with its supplier; that SVW

and its supplier are separate corporate entities; and that SVW and its JV are not legally eligible for collapsing under 19 C.F.R. § 351.401, the Department concluded that valuing the inputs used to produce acetic acid as SVW's own FOPs was inappropriate. See id. at 7. In addition, the Department addressed its application of Jubilant's financial ratios to SVW's costs. The Department's continued finding that similar levels of integration existed between Jubilant and SVW, coupled with its general practice of accepting a surrogate producer's data in toto, without adjusting it for known differences in production, resulted in the Department's recurrent position that Jubilant's financial ratios, without adjustment, should be relied upon in its PVA Final. See id. at 54-56.

On May 26, 2006, the Court issued its second remand order, in Sinopec II, affirming the Department's remand results with respect to the surrogate value of natural gas. As a result, SVW's margin changed from 6.91 percent to 5.51 percent. The Court determined, however, that the same two issues remanded previously in Sinopec I, issues (1) and (4), involving the Department's evaluation of SVW's acetic acid inputs and its calculation of SVW's overhead costs, necessitated additional analysis and/or recalculation.

On September 8, 2006, we issued draft final results to SVW and the petitioners. We received comments from these parties on September 21, 2006. Pursuant to the Court's remand instructions, the Department has further analyzed the information on the record of this investigation concerning its treatment of SVW's acetic acid and its calculation of SVW's overhead costs. As discussed in detail below, after conducting a more comprehensive analysis[1] of SVW's relationship with its affiliated[2] JV supplier, the Department continues to find that

[1] As directed by the Court, the Department expanded its self-produced input analysis to account for the potential presence of de jure and/or de facto elements of control between the entities. See Sinopec II, at 8.

[2] The Court explains that, "Affiliated parties often have the potential to manipulate the prices and costs of their transactions with each other-a potential not coextensive with the de jure unity or independence of the parties." See

SVW's acetic acid purchases do not qualify as self-produced. Furthermore, the Department has reanalyzed its calculation of SVW's overhead costs. The Department has revised SVW's overhead cost by adhering to its customary practice of using the surrogate producer's data without adjustment; however, as provided for by the Court in Sinopec II, the Department did not apply the overhead cost ratio to the surrogate value for purchased acetic acid.

B. Analysis

Issue 1: The Department's Evaluation of SVW's Acetic Acid Input

In the current remand, the Court orders the Department to further analyze and explain its treatment of SVW's acetic acid. Specifically, the Court directs the Department, in determining whether to treat the affiliated JV supplier's acetic acid as SVW's self-produced input, to first discern whether SVW exercises control over its JV to the extent that the acetic acid transactions between the firms no longer occur at arm's length. See Sinopec II, at 8 (citing 19 C.F.R. § 351.102(b)). Manifestations of control, the Court notes, often occur within a firm's organizational and financial structure; therefore, the Department should closely scrutinize both systems in evaluating the relationship between SVW and its JV. Id. If the Department concludes that SVW does, in fact, exercise control over its affiliated JV supplier, then the acetic acid purchases should be treated as SVW's self-produced input. If, however, the Department finds that the firms do not operate in such an integrated manner, it may not treat the acetic acid as self-produced by SVW. Id. Finally, the Court directs the Department to ascertain whether a surrogate for the FOPs used in producing the acetic acid should be applied in calculating the NV of acetic acid. See id. (citing 19 C.F.R. § 351.408(a)). Pursuant to the Court's remand instructions, the Department has reanalyzed SVW's relationship with its JV and finds that SVW

Sinopec II, at 9. The Court continues that "aside from examining the legal connections between SVW and its JV, Commerce must examine the possibility of SVW exerting de facto control over the JV." See id. at 10 (citing Shandong Huarong Gen. Group Corp. v. United States, 2003 WL 22757937 at 17).

exercises neither de jure nor de facto control over its affiliated JV. Accordingly, the Department continues to find that, because SVW does not exert control over its JV affiliate, the two entities are not vertically integrated and, therefore, SVW's acetic acid purchases do not qualify as self-produced inputs. Therefore, as directed by the Court, the Department has determined that a surrogate value for acetic acid, rather than the FOPs for acetic acid, should be employed in calculating the NV of the acetic acid inputs SVW purchased from its JV, pursuant to 19 C.F.R. § 351.408(a).

I. Whether SVW Exercises Control Over its JV Supplier

The Court found that the presence of both legal and operational control among affiliated entities is, more often than not, indicative of integration between such entities, which is a key factor in determining whether an input qualifies as self-produced. See Sinopec II, at 10. Additionally, the Court's remand order lays out the means by which the Department should evaluate whether a producer's inputs, purchased from an affiliated supplier, qualify as self-produced by that producer. Id. at 8. Upon further consideration on remand, and in light of the factors and applicable legal provisions articulated by the Court as relevant to this affiliated supplier self-produced input analysis, the Department has reanalyzed its treatment of SVW's acetic acid inputs.

The Department's analysis, as provided below, will examine the following i) the applicable statutory and regulatory provisions; ii) whether SVW exerts de jure control over its JV affiliate; iii) whether SVW exerts de facto control over its JV affiliate; iv) the relevance of Wooden Bedroom Furniture from the PRC regarding the Department's self-produced inputs practice; and v) whether the Department should employ surrogate values to calculate the NV of SVW's purchased acetic acid inputs. As discussed in more detail below, the Department

continues to find that SVW's acetic acid purchases do not qualify as self-produced inputs. Accordingly, the Department has applied a surrogate value, rather than the FOPs, for acetic acid in its calculation of NV for the acetic acid inputs SVW purchased from its JV.

i. Applicable Statutory and Regulatory Provisions

Neither the Tariff Act of 1930, as amended (the Act), nor the Department's regulations expressly identify the appropriate circumstances by which inputs produced by an affiliated third-party supplier can be considered "self-produced." The statute directs the Department to value the FOPs utilized by the producer of subject merchandise. Section 773(c)(1) of the Act directs the Department to calculate NV based on the NME producer's FOPs. The Department's regulations further provide that in calculating NV in an NME country antidumping duty determination, the Department will normally value the "nonmarket economy producers' factors of production in a market economy country." See 19 C.F.R. 351.408(a) (emphasis added). Consistent with its regulations and administrative practice in NME determinations, the Department considers a producer's FOPs as those factors purchased by the corporate entity under investigation, or otherwise obtained from other entities. In other words, the Department values only the FOPs that the producer of subject merchandise uses to manufacture the merchandise because it reflects the producer's own experience. See Final Results of Redetermination Pursuant to Court Remand, Sinopec I, at 6 (citing Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003), and accompanying Issues and Decision Memorandum at Comment 6 (Fish Fillets from Vietnam)).

As noted above, the Department values only the FOPs that the producer of subject merchandise uses to manufacture the merchandise. However, if an NME producer of subject

merchandise is integrated,[3] such that it self-produces a material input used in the manufacture of subject merchandise, the Department will take into account the factors utilized in each stage of the production process. See Notice of Final Determination at Sales at Less Than Fair Value: Tetrahydofurfuryl Alcohol from the PRC, 69 FR 34130 (June 18, 2004), and accompanying Issues and Decision Memorandum at Comment 6. However, where a producer of subject merchandise obtains its factor(s) from a separate supplier entity, the Department's longstanding practice has been to value the actual FOPs consumed by the producer of subject merchandise, without looking to the supplier's upstream inputs. See, e.g., Fish Fillets from Vietnam, at Comment 3; see also Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 7725, 7727 (Feb. 14, 2006), and accompanying Issues and Decision Memorandum at Comments 1 and 2.

A self-produced input analysis involving an affiliated, yet separate legal entity situation raises a number of unique relationship issues that must be considered in addressing whether or not the subject merchandise producer is integrated with respect to the particular factor's production. As noted in the Department's Final Results of Redetermination Pursuant to Court Remand, Sinopec I, affiliation, by itself, does not necessarily imply that a producer's factors, obtained from an affiliated supplier, are self-produced, nor does such a finding permit the upstream inputs of the supplier to be valued instead of the producer's actual inputs when both the producer and supplier are separate legal entities. Id. at 10-11. Section 771(33) of the Act states, with regard to "affiliated persons" that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint over the other person." (emphasis added).

[3] As the Department articulated in Fish Fillets From Vietnam, "A fully integrated company which owned all the productive assets and self-produced inputs would incur all the risk inherent in establishing such a productive system, other things being equal." See Fish Fillets from Vietnam, at Comment 3.

In the current remand, however, while acknowledging that a de jure analysis may be helpful in ascertaining whether an input is self-produced, the Court found that such an analysis, on its own, fails to adequately address the fact that affiliated parties are often in a position to directly or indirectly manipulate the prices and costs of their transactions with each other. See Sinopec II, at 9. Therefore, the Court instructs the Department, in determining whether the self-produced input rule applies to SVW, to examine SVW's relationship with its affiliated JV from both a legal and operational standpoint, rather than conduct a legal or operational control inquiry, as provided for in the Act. Id. Accordingly, the Department has examined SVW's relationship with its affiliated JV from both a de jure and de facto standpoint in assessing whether SVW self-produced acetic acid.

ii. Whether SVW Exerts De Jure Control Over its JV Affiliate

Upon reevaluating the facts on the record, the Department continues to find that SVW and its JV supplier are legally separate corporate entities and that SVW does not produce, but rather consumes, the acetic acid it purchases from a separate legal entity supplier that produces the acetic acid input. See Final Results of Redetermination Pursuant to Court Remand: Sinopec I, at 13. In addition, the Department finds that SVW's [ ] ownership interest in its supplier merely establishes that the two entities are affiliated, not that SVW exerts legal control over its JV. Id. at 35. No further information was placed on the record during the investigation demonstrating that SVW, in any way, exerts legal control over its JV. Therefore, based on our reevaluation of the facts on the record of this investigation, the Department continues to find that SVW does not exert de jure (i.e., legal) control over its JV.

iii. Whether SVW Exerts De Facto Control Over its JV Affiliate

In Sinopec II, the Court found that the Department's self-produced input inquiry, in its PVA Final, focused too narrowly on whether SVW and its JV were separate legal entities. The Department acknowledges that it paid particular heed to the legal connections between SVW and its affiliated supplier; however, the Department also addressed, to a lesser extent, SVW's ability or inability to operationally control its JV affiliate. In our Final Results of Redetermination Pursuant to Court Remand, Sinopec I, we found that operational control, per se, may be a factor in determining whether two entities are affiliated and whether there exists a significant potential for the manipulation of price or production such that they may be properly considered to be a single entity. Id. at 37. However, because there was record evidence indicating that SVW and its supplier may be affiliated, the Department focused its self-produced input analysis less on control and more on the circumstances under which two affiliated producers can be treated as a single entity (i.e., 19 C.F.R. § 351.401(f)). See also 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 (Sept. 14, 2005), and accompanying Issues and Decision Memorandum at Comment 9 (Mushrooms from the PRC).[4] This regulation, also known as the collapsing regulation, is typically used to treat two or more affiliated companies as a single entity

[4] "According to section 771(33)(E) of the Act, the Department considers parties to be "affiliated" if any person directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting stock of shares of any organization and such organization… Although both statutory and regulatory provisions exist for classifying affiliated producers as a single entity, there are no statutory or regulatory provisions for considering related non-producers as a single entity with respect to antidumping analyses…Thus, in a number of past cases the Department has treated non-producing companies as a single entity based on the factors listed below. In determining whether to treat affiliated companies as a single entity, the Department considers the case-specific relationships between the companies under examination. The Department also considers whether the companies in question: (1) are affiliated, (2) have similar production facilities such that retooling would not be required to shift production from one company to another, and (3) have a significant potential for manipulation of price or production. See 19 CFR 351.401(f). The Department also relies on other factors such as: (4) whether the companies are closely intertwined, (5) the transactions that take place between the companies, and (6) the level of common ownership. However, all of these factors need not be present as long as the parties are sufficiently related to present the possibility of price manipulation." See Mushrooms from the PRC, at Comment 9.

for purposes of calculating a single weighted-average dumping margin. See Hontex Enterprises, Inc. v. United States, 248 F. Supp. 2d 1323. 1338, 1339 (CIT 2003), remanded on other grounds by Hontex Enterprises, Inc. v. United States, 342 F. Supp. 2d 1225 (CIT 2004).

As previously discussed, neither the Act nor the Department's regulations expressly identify the appropriate circumstances by which inputs produced by a third-party supplier may be considered "self-produced." The Court, however, directs the Department to assess not only the legal connections between SVW and its JV affiliate in its self-produced input analysis, but to also consider the possibility that SVW exerts de facto (i.e., operational) control over its JV. See Sinopec II, at 10. This de facto analysis, the Court asserts, provides a means of addressing the fact that affiliated parties often have the potential to manipulate the prices and costs of their transactions with each other – a potential not coextensive with the de jure unity or interdependence of the parties. Id. at 9.

In our PVA Final and subsequent remand redetermination, we utilized the Department's collapsing regulation, 19 C.F.R. § 351.401(f), in examining SVW's relationship with its JV. In evaluating whether SVW exerts de facto control over its JV, which may reflect a high degree of vertical integration, the Department continues to employ its collapsing regulation; however, as directed by the Court, we have sought guidance from those factors listed in (f)(2), rather than those laid out in (f)(1) of 19 C.F.R. § 351.401. See Sinopec II, at 9. The Court, in Sinopec II, does not question the Department's use of its collapsing regulation,[5] but rather its focus on the general elements laid out in 19 C.F.R. § 351.401(f)(1), which the Court finds, reveal little regarding vertical integration between affiliated entities. Id. Section 351.401(f)(2) of the

[5] "While Commerce does not traditionally look to the collapsing regulation 19 C.F.R. § 351.401(f) to determine whether an input of subject merchandise is self-produced, select aspects of the regulation nevertheless provide acceptable tools to examine the depth of integration and business control that a firm shares with another, and remains consistent with Commerce's underlying practice." See Sinopec II, at 8 (citing Hangzhou Spring Washer Co. v. United States, 387 F. Supp. 2d at 1248-49 (CIT July 6, 2005)).

Department's regulations, on the other hand, the Court asserts, presents a series of tests which may be helpful in ascertaining whether there exists a significant potential for price manipulation, which could attest to a high degree of vertical integration. Id. In accordance with the Court's direction, the Department, in continuing to utilize its collapsing regulation, has expanded its self-produced input analysis to include a more comprehensive assessment of SVW's ability/inability to control its JV affiliate. In assessing SVW's level of vertical integration, the Department has analyzed the facts on the record in light of the specific elements laid out in 19 C.F.R. § 351.401(f)(2) which include: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether the firms' operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See, e.g., Kaiyuan Group Corp. v. United States, 391 F. Supp. 2d 1317, 1323 (CIT June 2005) (affirming the use of the collapsing regulation in NME cases).

The Department, in its Section A Questionnaire, requested SVW to provide an organizational chart and description of SVW's legal structure. In addition, we asked SVW to provide a list of all companies affiliated with SVW through stock ownership. We also requested that SVW describe the activities of its affiliated company, as well as specify the percentage of ownership and cross ownership among SVW and its affiliates. See SVW's November 21, 2002, Section A Questionnaire Response, at 8, A-4 and A-5. The facts on the record establish that SVW entered into a joint venture with BP, a multinational petroleum company, to produce acetic acid. BP owns a majority share [ ] of the JV, SVW owns a minority share [ ], and a third independent company owns the remaining [ ]. See Final Results of Redetermination Pursuant to

Court Remand, Sinopec I, at 38. Thus, it is BP, rather than SVW, that owns a majority stake in the JV. Regardless, SVW's minority ownership only establishes that the two parties are affiliated, not that SVW exercises control over its JV. While common ownership exists between SVW and its JV, the facts on the record merely demonstrate that the two are affiliated via SVW's minority ownership interest in its JV, not that SVW exerts de facto control over its affiliate. Id. at 35.

The Department also requested information pertaining to SVW's managerial employees or board members. Specifically, we asked that SVW confirm that its president, vice presidents and managers have all worked for SVW for more than ten years, rather than for any party affiliated with SVW. SVW, in its response, confirmed that all such employees have worked for SVW itself and not for any affiliated company in the last ten years. See SVW's January 14, 2003, Second Supplemental Questionnaire Response, at 2. Thus, there is no evidence on the record of this investigation indicating that managerial employees or board members of SVW sit on the board of directors of its JV or vice versa. Thus, SVW has not established that it exerts any type of operational control over its JV through the placement of its managerial employees or board members on the board of directors of its affiliated JV.

In addition, the Department specifically addressed the self-produced input issue with SVW, asking the respondent to explain, in light of Department practice, why it is appropriate to value the FOPs to produce acetic acid rather than the acetic acid itself. SVW's response, however, provided little more than citations to cases, articles and the statute. Nowhere in its response does SVW present specific information demonstrating that its operations are intertwined with its affiliate, such that it exerts operational control over its JV affiliate. See SVW's January 14, 2003, Second Supplemental Questionnaire Response, at 8-12. Thus, despite

having a minority ownership interest in its JV supplier, SVW proffered no additional evidence indicating that it makes any investment, employment, production, or distribution decisions with respect to its supplier's acetic acid operations or overall corporate operation. Final Results of Redetermination Pursuant to Court Remand, Sinopec I, at 39. The investigation record contains no evidence demonstrating that SVW incurs the operational, maintenance and depreciation-related expenses of its supplier's acetic acid plant or that SVW shares costs and expenses related to its JV's acetic acid production. There are no facts on the record indicating that SVW monitors or directs the raw materials consumed by its supplier, that it establishes the production methods employed by its supplier, or that SVW requires that its supplier meet particular specifications unique to SVW. Id. at 39-40. While SVW and its JV share a pipeline and are physically located near each other, they do not share facilities. Id. at 40. Furthermore, the record contains no evidence suggesting that SVW's relationship with its JV provided it with any significant economic benefits that it would not have otherwise experienced if SVW had produced the acetic acid input itself. See id. at 15. Therefore, SVW has not demonstrated that its operations are intertwined with its affiliate, such that it exerts operational control over its JV affiliate.

We have expanded our self-produced input analysis, pursuant to the Court's direction, and reevaluated SVW's relationship with its JV based on the facts on the record. In light of the factors presented in 19 C.F.R. § 351.401(f)(2), the Department finds that SVW has failed to demonstrate that it exerts de facto (i.e., operational) control over its affiliated JV. In conclusion, the facts on the record of this investigation clearly indicate that SVW does not exercise de jure and/or de facto control over its JV affiliate and, thus, is not fully integrated with respect to acetic acid production. Therefore, the Department continues to find that SVW did not self-produce acetic acid.

iv. The Relevance of Wooden Bedroom Furniture from the PRC Regarding the Department's Self-Produced Input Practice

In its remand opinion, the Court, in directing the Department to assess SVW's relationship with its affiliated JV from both a legal and operational control standpoint, highlights the Department's decision in Wooden Bedroom Furniture from the PRC. The Court's concern appears to be with what it deems to be a paradox in the Department's practice: in Wooden Bedroom Furniture from the PRC the Department counted an NME firm's purchases from a completely unaffiliated, separate legal entity source, as self-produced inputs, while in its PVA Final and subsequent remand redeterminations, the Department maintains that the NME producer's purchased inputs from an affiliated supplier do not qualify as self-produced by the NME purchaser. See Sinopec II, at 10. The Department notes, however, that the Department's decision regarding self-produced inputs in Wooden Bedroom Furniture from the PRC was based on a number of distinguishing and unique factors that do not exist in the present case. Therefore, while the Court's concern is valid, particularly because legal and/or operational control is more likely to be present in a situation where the parties are affiliated, the Department's findings and ultimate decision in Wooden Bedroom Furniture from the PRC are entirely distinguishable from its continued holding that SVW's purchased acetic acid inputs do not qualify as self-produced.

Wooden Bedroom Furniture from the PRC involved a number of unique circumstances, as well as uncommon inputs, that are not present in the current case. Most notably, the inputs in Wooden Bedroom Furniture from the PRC involved uniquely designed and manufactured subcontracted parts, specifically produced for and to the specification of the subject merchandise producer. See Final Results of Redetermination Pursuant to Court Remand, Sinopec I, at 44. As such, it was virtually impossible to find an appropriate surrogate value for such specialized

intermediate subcontracted inputs (e.g., bed post, carved phinial). Id. at 44-45. In addition, interested parties to the investigation did not place surrogate value information related to these inputs on the record for the Department's consideration. Thus, despite the Department's best attempts, reasonable surrogate values for the producer-specific inputs at issue in Wooden Bedroom Furniture from the PRC could not be ascertained. However, because the producer in Wooden Bedroom Furniture from the PRC supplied service-related materials to a subcontractor, such materials were accounted for in the producer's FOPs. Therefore, the Department found that the self-produced subcontracted furniture part inputs purchased by an NME manufacturer of wooden bedroom furniture from a completely unaffiliated supplier constituted the best available information by which to calculate the most accurate NV.

Unusual circumstances and unique inputs like those present in Wooden Bedroom Furniture from the PRC are not present in the current case. For example, acetic acid, the input at issue in this case, is a commodity, rather than a service-related product, which lacks unique characteristics that would make it exclusive to a specific producer of PVA. Therefore, the Department continues to find that its decision to treat the distinctive and specifically designed inputs in Wooden Bedroom Furniture from the PRC as self-produced, regardless of the specific relationship between the producer and its supplier, is in no way analogous to the production of a commodity input such as acetic acid. See Final Results of Redetermination Pursuant to Court Remand, Sinopec I, at 45.

v. Whether the Department Should Employ Surrogate Values of Acetic Acid or Acetic Acid FOPs to Calculate the NV of Acetic Acid

Pursuant to the Court's remand instructions, the Department has further analyzed the information on the record of this investigation concerning its treatment of SVW's acetic acid. As

discussed at length above, the Department continues to find that SVW's acetic acid purchases from its affiliated JV supplier do not qualify as self-produced because the facts on the record demonstrate that SVW does not exert de jure and/or de facto control over its JV supplier. The Court next instructs the Department to ascertain whether it should employ surrogate values to calculate the NV of acetic acid, be it the acetic acid or the acetic acid's FOPs. See Sinopec II (citing 19 C.F.R. § 351.408(a)). Because the Department continues to find that SVW does not self-produce acetic acid, employing a surrogate value for acetic acid used by SVW results in the most appropriate and accurate NV calculation of acetic acid.

Issue 2: Commerce's Calculation of SVW's Overhead Costs

Pursuant to the Court's opinion and direction, the Department has reanalyzed its calculation of SVW's overhead costs. In doing so, we have reviewed our past position regarding the levels of vertical integration between SVW and Jubilant, as well as our practice relating to the use of a surrogate producer's data in calculating NV. As a result of our findings, which are discussed below, we have adhered to our customary practice of using the surrogate producer's data without adjustment in determining the requisite overhead cost ratio.[6] See Sinopec II, at 17. See also Appendix I. In addition, the Department has adopted a calculation method that "avoids double-counting insofar as it is reasonably avoidable."[7] Id.

[6] The Court in Sinopec II provided the Department with two alternatives for performing overhead cost revisions: I. adhering to the Department's customary practice of using the surrogate producer's data without adjustment; or II. reopening the record to obtain data reasonably necessary to adjust Jubilant's overhead so that it accounts for differences between its manufacturing processes and those of SVW. See id. at 17. After reanalyzing the information on the record, the Department has performed the requisite overhead cost revisions via alternative I, as permitted by the Court.

[7] In Sinopec II, the Court asserted "In addition, by refusing to adjust SVW's NV to strip out costs that Jubilant incurs by producing acetic acid…while using the surrogate acetic acid input price, Commerce seems to have double counted the overhead, SG&A, and profit stemming from Jubilant's acetic acid production…On remand, Commerce should adopt a calculation method that avoids double-counting insofar as it is reasonably avoidable." See id., at 17.

i. Vertical Integration Levels

In calculating the final dumping margin for SVW, the Department based ratios for factory overhead, SG&A, and profit on the financial statements of Jubilant, an Indian company that produced polyvinyl acetate (PVAc)[8] during the POI. See Final Results of Redetermination Pursuant to Court Remand, Sinopec I, at 17. The Department selected Jubilant as the appropriate surrogate because: 1) it was a producer of comparable merchandise during the POI; 2) it produced in the chosen surrogate country (i.e., India); 3) its financial statements were contemporaneous with the POI; and 4) its production process for PVAc was comparable to that of SVW for PVA, given that the two companies produced at "equivalent levels of vertical integration." Id. In selecting Jubilant as a surrogate, the Department carefully considered Jubilant's degree of vertical integration vis-à-vis SVW's. Id. at 19. The Department further noted that the balance created by the fact that Jubilant is likely more integrated in some aspects of production of PVAc and less vertically integrated in others only amplifies the Department's finding that SVW and Jubilant are at similarly equivalent stages of integration. See id. at 54.

Additionally, the Department explained that the unique nature of its NME antidumping practice, more often than not, results in the selection of a surrogate that produces different products and/or incurs different types of costs than the respondents in a particular case. Nevertheless, the Department's practice has been to employ the surrogate's data without adjustment. See id. at 20 (citing Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (Sept. 27, 2001), and accompanying Issues and Decisions Memorandum at Comment 2 (Magnesium from Russia); Chrome-Plated Lug Nuts From the People's Republic of China; Final Results of Antidumping

[8] PVAc is a constituent of partially hydrolyzed PVA and the precursor polymer of fully hydrolyzed PVA. See PVA Decision Memo, at Comment 9.

Duty Administrative Review, 61 FR 58514, 58518 (Nov. 15, 1996); Persulfates from the People's Republic of China; Final Results of Administrative Review, 64 FR 69494, 69497 (Dec. 13, 1999) (Persulfates from the PRC); and Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation, 60 FR 16440, 16446-16447 (Mar. 30, 1995)).

Therefore, the Department has determined to adhere to its customary practice of using the surrogate's data without adjustment, as permitted by the Court in Sinopec II.[9]

ii. The Department's General Practice Regarding the Use of a Surrogate's Data

The Court, in directing the Department to perform the requisite overhead cost revisions, recognizes the Department's longstanding approach of using a surrogate producer's data without adjustment. See Sinopec II, at 17. The Court also acknowledges that the Department may re-open its record to obtain the necessary information for adjusting Jubilant's overhead. Id. In reanalyzing its treatment of SVW's acetic acid inputs and its calculation of SVW's overhead costs, the Department equally considered both alternatives provided for by the Court. For the numerous reasons discussed above and below, the Department finds that adhering to its customary practice of using the surrogate's data without adjustment yields the most accurate calculation of NV.

As the Department has previously noted, Jubilant produces identical or comparable merchandise, closely approximating SVW's experience.[10] While the Department acknowledges that Jubilant may be more integrated in some aspects of production of PVAc, and less vertically integrated in others, the Department's view has been that such differences serve to balance out

[9] For the record, the Department respectfully notes that any minor differences between SVW and Jubilant merely act to equalize their respective integration levels, thereby placing the two entities at similar levels of vertical integration. Nevertheless, the Department has followed the Court's direction and revised its application of the surrogate overhead ratio to eliminate any possible double-counting.

[10] See Final Results of Redetermination Pursuant to Court Remand, Sinopec I, at 20 (citing PVA Final, at 11-12).

the levels of integration between SVW and the surrogate. See Final Results of Redetermination Pursuant to Court Remand, Sinopec I, at 22. However, even if it Jubilant incurs certain costs that SVW does not, the Department does not have the necessary information to adjust Jubilant's financial statement, so as to remove such potential costs. The Department also finds that opening the record of this investigation will not likely yield any better or more accurate information regarding Jubilant's costs, or lack thereof, for its PVA production from PVAc because Jubilant is not a respondent in this proceeding. Accordingly, the Department cannot compel Jubilant to provide the information necessary to distinguish any potential cost discrepancies arising from the difference between the production process used by Jubilant and that used by SVW.

More importantly, however, is the Department's longstanding practice of accepting data, including overhead and SG&A information, from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category. See Persulfates from the PRC (The Department does not tailor the factory overhead and SG&A expenses of a surrogate company to match the experience of the PRC producer.) The Court upheld this practice in Rhodia, Inc. v. United States, stating:

> Based on this analysis of the evidence, Commerce refrained from adjusting the Indian surrogate producers' data in its calculation of the normal value on remand. This decision is consistent with Commerce's normal practice because Commerce does not generally adjust the surrogate values used in the calculation of factory overhead…Rather, once Commerce establishes that the surrogate produces identical or comparable merchandise, closely approximating the nonmarket economy producer's experience, Commerce merely uses the surrogate producer's data…Unless there is substantial evidence in the record which supports a finding that the surrogate producers are less integrated that (sic) the PRC producers, and as a result have a lower overhead ratio, Commerce cannot depart from its standard practice.

See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247, 1250-1251 (Sept. 2000) (Commerce is neither required to duplicate the exact production experience of the integrated manufacturers, nor undergo an item-by-item analysis in calculating factory overhead).

Thus, because reopening the record will likely not provide any better or more accurate information, the Department finds that adhering to its customary practice of using Jubilant's financial ratios, without adjustment, as permitted by the Court, will yield the most accurate NV calculation.

iii. The Department's Revised NV Calculation

In addition to remanding the Department's treatment of SVW's acetic acid inputs, the Court instructed the Department:

> To reanalyze its…calculation of the firm's overhead costs as discussed in section (C) (of the remand). To perform the requisite overhead cost revisions, Commerce may either adhere to its customary practice of using the surrogate producer's data without adjustment, or it shall reopen the record to obtain data reasonably necessary to adjust Jubilant's overhead so that it accounts for differences between its manufacturing processes and those of SVW. Naturally, Commerce's revised treatment of SVW's acetic acid purchases shall be reflected in the revisions to SVW's overhead costs.

See Sinopec II, at 17. In addition, the Court directed that the Department "should adopt a calculation method that avoids double-counting insofar as it is reasonably avoidable." Id. Therefore, in accordance with the Court's remand instructions, the Department has both reanalyzed its treatment of SVW's acetic acid inputs and its calculation of overhead costs. Cognizant of the Court's concerns regarding the adoption of a calculation method that avoids double-counting, the Department reanalyzed its treatment of SVW's acetic acid inputs and has determined that the surrogate value of the purchased acetic acid contains the overhead, SG&A and profit related to the production and sale of acetic acid. Therefore, we found that applying the financial ratios of Jubilant, which produces acetic acid, to the acetic acid surrogate value may

have added additional costs. In our revised NV calculation,[11] we have not applied any financial ratios to the purchase value of acetic acid. Thus, while the Department is adhering to its customary practice of using the surrogate producer's data without adjustment, it has modified how these data are applied to the FOPs of PVA. By making this adjustment, the Department has performed the overhead cost revisions prescribed by the Court by removing the overhead, SG&A and profit associated with producing acetic acid from SVW's overhead cost and its NV. The recalculated margin for these final remand results is 0.00 percent ad valorem. See Appendix 1.

C. Comments from Interested Parties

On September 21, 2006, SVW and the petitioners submitted comments on our draft remand results. These comments are addressed below.

Comment 1: ***Self-Produced Inputs***

SVW notes that the Department, in its draft remand results, asks all of the right questions regarding SVW's ability to legally and/or operationally control its JV affiliate. Nevertheless, SVW argues that the Department should reopen the administrative record and solicit relevant information in order to accurately determine whether or not SVW exercises de facto control over its JV. SVW asserts that the Department's narrow focus on the companies' legal identities in the initial investigation produced an administrative record devoid of information pertaining to SVW's ability to operationally control its JV (i.e., the level of common ownership, shared management, board members or employees, and whether the firms are intertwined). Thus, while the Department properly contemplated whether SVW exerted operational control over its JV in its draft remand results, its determination that SVW did not exercise de facto control over its JV is based on a lack of evidence on the record, rather than on specific facts and information demonstrating the JV's autonomy from SVW. SVW reasons that it was the Department's

[11] See Appendix I: SVW's Recalculated Margin (Appendix 1).

responsibility, in the initial investigation, to request specific information from SVW regarding its ability or inability to operationally control its JV. Therefore, rather than placing the blame on SVW for failing to answer questions that were never posed or to provide information that was never requested, the Department should reopen the record to provide SVW an opportunity to submit responses and/or information regarding its ability or inability to control its JV affiliate.

Department's Position:

The Department disagrees with SVW's assertion that it should reopen the administrative record to solicit new information regarding SVW's ability to exercise de facto control over its affiliated JV. As discussed in Issue 1 above, the Department asked numerous questions pertaining to SVW's relationship with its affiliates, as well as the appropriateness of applying the self-produced input rule to SVW's acetic acid purchases. Thus, SVW, prior to the PVA Final, had ample opportunity to place additional facts and information on the administrative record in support of its position that the acetic acid inputs SVW purchased from its JV supplier qualified as self-produced. Now, in hindsight, SVW argues that the onus was on the Department to request additional information regarding SVW's ability to exert de facto control over its supplier. SVW, however, requested that the Department treat its purchased acetic acid inputs as self-produced; therefore, the onus was on SVW to sufficiently demonstrate, by placing supporting documentation on the administrative record, its entitlement to such treatment. See NSK Ltd. v. United States, 919 F.Supp. 442, 449 (CIT 1996). The Department provided SVW with reasonable and numerous opportunities to build up the investigation record with information and documentation substantiating SVW's self-produced input entitlement claims, including occasions for submitting information pertaining to SVW's ability, or lack thereof, to exert de facto control over its affiliate.

In addition, the Court, in remanding the Department's treatment of SVW's acetic acid inputs, did not direct the Department to reopen the record for this purpose. Specifically, the Court remanded the case to the Department to "reanalyze its treatment of SVW's acetic acid inputs." See Sinopec II, at 17. As discussed in Issue 1 above, the Department previously requested, on more than one occasion, specific responses and information regarding SVW's relationship with its JV affiliate. As the Court held in SKF USA Inc v. United States, "Commerce's mandate is to determine dumping margins as accurately as possible. Commerce must thus gather accurate data from respondents, after giving respondents a reasonable opportunity to participate in the review. Ultimately, respondents have the responsibility of creating an adequate record." See SKF USA Inc v. United States, 391 F.Supp. 2d 1327, 1334 (CIT 2005) (citing Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States, 178 F. Supp. 2d 1305, 1317 (2001); Bowe-Passat v. United States, 17 CIT 335, 339 (CIT 1993); and Tianjin Mach. Imp. & Exp. Corp. v. United States, 806 F. Supp. 1008, 1015 (1992)). Therefore, in adhering to the Court's remand instructions to further analyze and explain its treatment of SVW's acetic acid, the Department reevaluated SVW's relationship with its JV based on information already on the administrative record.

The Court in Sinopec II instructed the Department to reanalyze its treatment of SVW's acetic acid inputs. Specifically, the Court directed the Department to assess, in addition to the legal connections between SVW and its JV affiliate, the possibility that SVW exerts de facto (i.e., operational) control over its affiliate. See Sinopec II, at 10. As discussed in Issue 1 above, the Department acknowledges that it paid particular heed to the legal connections, or lack thereof, between SVW and its affiliated supplier; however, we also addressed, to a lesser extent, SVW's ability or inability to operationally control its JV affiliate. However, pursuant to the

Court's instructions, we have conducted a comprehensive de facto analysis of SVW's relationship with its JV, in light of the facts and information on the administrative record. This expanded operational analysis, coupled with our review of the existence, or lack thereof, of de jure connections between these two entities, supports our continued finding that SVW's acetic acid purchases do not qualify as self-produced inputs.

Comment 2: ***The Department's Calculation of SVW's Overhead Costs***

SVW notes that the Court limited the Department to only two alternatives for performing overhead cost revisions in Sinopec II. Specifically, the Court directed the Department to "either adhere to its customary practice of using the surrogate producer's data without adjustment, or it shall reopen the record to obtain data reasonably necessary to adjust Jubilant's overhead so that it accounts for differences between its manufacturing processes and those of SVW." See Sinopec II, at 17. While SVW supports the Department's reasoning behind opting not to reopen the record of this investigation, SVW questions the Department's decision to adopt what SVW deems to be its own overhead cost revision methodology, rather than adhere to its customary practice of using the surrogate producer's data without adjustment, which was the first alternative posed by the Court. Specifically, SVW argues that the Department's revised calculation method departs from its normal by-product offset practice in effect at the time of the PVA Final – deducting the offset from manufacturing costs prior to the application of the financial ratios – and made an adjustment to its normal practice by deducting the value of the by-product offset from NV, after application of the financial ratios.

Thus, SVW posits, not only did the Department continue to make the prohibited adjustment made in the PVA Final (i.e., the deduction of by-product value from the NV calculation rather than as a deduction to manufacturing costs) in the draft remand results, it also

incorporated a second adjustment to counteract the adverse results of the first adjustment. SVW suggests that while the Department may have devised a purported means by which to avoid the double counting of overhead, SG&A and profit attributable to acetic acid inputs, SVW's manufacturing costs still include the value of acetic acid and all other by-products produced in the PVA production process. Consequently, SVW asserts, the Department should amend its draft remand results to give effect to the Court's specific directive to adopt one of the two overhead cost revision alternatives provided for in Sinopec II. Therefore, SVW asserts, the Department must grant the by-product offset in accordance with the Department's standard methodology in effect at the time of the PVA Final, without adjustment.

The petitioners, like SVW, note that the Court provided the Department with two options for performing the requisite overhead cost revisions: using the surrogate producer's data without adjustment or reopening the record to garner additional information reasonably necessary to adjust Jubilant's overhead. Rather than applying the first option presented by the Court in Sinopec II, the petitioners postulate that the Department's modification of the manner by which Jubilant's overhead data is applied to the FOPs of PVA more closely resembles the revisions contemplated by the second remand option of "reopen{ing} the record to obtain data reasonably necessary to adjust Jubilant's overhead so that it accounts for differences between its manufacturing processes and those of SVW." See Sinopec II, at 17. The petitioners argue that such an application of the surrogate's data not only fails to adhere to the Department's customary practice of using such data without adjustment, but is inconsistent with the Court's first remand option.

The petitioners cite Rhodia, Inc. v. United States[12] in support of their proposition that the Department erroneously relied on false distinctions between adjusting a surrogate producer's data and modifying how unadjusted data is applied in performing the requisite overhead cost revisions discussed by the Court in Sinopec II. According to the petitioners' theory, regardless of whether the Department modifies a surrogate's data or revises its application, the Department is adjusting the surrogate producer's data by one means or another. By applying Jubilant's financial ratios to only some of the FOPs of PVA, the Department has simultaneously failed to appropriately adhere to the Court's remand instructions, as well as the Department's customary practice of using the surrogate's data without adjustment.

Furthermore, the petitioners assert that the Department, in an effort to avoid double-counting, acted arbitrarily and, therefore, unreasonably in revising its calculation methodology by choosing to account for only one (i.e., self-produced vs. purchased acetic acid) of a number of differences in the manufacturing processes of SVW and Jubilant. Other differences include overhead cost differentials between SVW and Jubilant's VAM production processes, the Department's allocation of only a portion of SVW's natural gas costs to acetylene, and the fact that Jubilant sells a significant amount of the intermediate products it created during the PVAc process.

In addition, the petitioners conclude that the Department contradicts its own assertions[13] regarding its inability to remove costs incurred by Jubilant, but not by SVW, by doing essentially what it says it is unable to do: making a downward adjustment to the surrogate overhead, SG&A and profit values based on Jubilant's costs associated with the production of acetic acid, without providing a rational basis for making such an adjustment. Regardless, the petitioners argue, any

[12] See Bulk Aspirin from China, 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum at comment 4. See also Rhodia, Inc. v. United States, 240 F.Supp. 2d 1247, 1249-1250 (CIT 2002).
[13] See Final Results of Redetermination Pursuant to Court Remand, Sinopec I, at 18.

potential overstatement of overhead costs resulting from Jubilant's production of acetic acid is far outweighed by those overhead costs incurred by SVW in its manufacturing process, coupled with the various aspects of Jubilant's manufacturing process that reduce its financial ratios. The petitioners concede that the Department must address the Court's concerns regarding the treatment of acetic acid overhead costs in its final remand results; however, the petitioners suggest that the Department do so by clearly explaining why revising its calculation methodology based on only one of a number of differences in the manufacturing processes of SVW and Jubilant is not only arbitrary, but likely to diminish the accuracy of its NV calculation. Thereafter, the petitioners assert, the Department must either make no adjustment, or make any and all adjustments related to the important differences between SVW's and Jubilant's production processes.

The petitioners' second assertion is based on its position that the Department, in its PVA Final, did not overstate SVW's overhead costs by double-counting overhead costs related to acetic acid inputs. Rather, the petitioners posit, the Department misinterpreted the concerns expressed by the Court in Sinopec II regarding Jubilant's self-production of acetic acid and SVW's purchase of this input. The petitioners note that while the Court expressed apprehension regarding the Department's application of Jubilant's financial ratios to the surrogate value of acetic acid, it did not conclude, as a matter of law, that the Department double-counted the overhead, SG&A, and profit associated with Jubilant's acetic acid production. Rather, the petitioners argue, the Court merely stated that the Department "seems to have double-counted." See Sinopec II, at 16. Thereupon, the petitioners reason, the Court provided an opportunity for the Department to explain, in law and in fact, that its application of Jubilant's financial ratios did not overstate overhead costs by double-counting. While the petitioners agree with the Court that

double-counting should be avoided, the petitioners assert that a calculation that appears to double-count, may do just the opposite.[14]

The petitioners argue that the facts and evidence on the record of this case demonstrate that surrogate financial ratios were applied to purchased inputs. The petitioners opine that while surrogate values for inputs reflect the market price for those inputs and, therefore, should include the total cost of the input plus the producer's profit margin, when another producer uses those inputs to make a product under investigation, that second producer will always have an additional set of overhead and SG&A expenses reflecting the second producer's cost structure. Thus, the petitioners reason, because the Department always adds amounts for overhead, SG&A expenses and profit to input values that already reflect the overhead, SG&A expenses and profit of the manufacturer of the input, no overstatement of overhead costs by double-counting overhead costs related to acetic acid has occurred in this case. Accordingly, the petitioners theorize, no adjustment is necessary. Therefore, the petitioners conclude, the Department unreasonably tried to avoid double-counting, where double-counting likely did not even occur.

Finally, the petitioners recommend that the Department conform the final remand results to the Court's instructions by following the second remand option, which calls for obtaining "data reasonably necessary to adjust Jubilant's overhead so that it accounts for differences between its manufacturing processes and those of SVW." See Sinopec II, at 17. The petitioners acknowledge that the Department, in its draft remand results, explained its position regarding reopening the record in order to obtain additional information concerning Jubilant's costs for its PVA production from PVAc. The petitioners assert, however, that the Department had other

[14] The petitioners cite Sigma Corp. v. United States, 117 F.3d 1401, 1407-1408 (Fed. Cir. 1997); Holmes Products Corp. v. United States, 795 F. Supp. 1205, 1208 (1992); and Floral Trade Council v. United States, 775 F. Supp. 1492, 1502-1503 (1991), to highlight instances where the Department erroneously added an additional cost to the calculations even though such a cost was wholly unrepresentative of actual production costs.

options available to it beyond reopening the record. Specifically, the petitioners suggest that the Department could have chosen to utilize other evidence already on the record as a means of accounting for any differences in the manufacturing processes of SVW and Jubilant. Nevertheless, the petitioners argue that the Department chose not to proceed with this alternative and further, provided no reasonable explanation for declining to do so.

In addition, the petitioners promulgate their support for the Department's position, prior to the draft remand results, whereby the Department followed its customary and past practice of using surrogate financial ratios, without adjustment, while simultaneously applying a by-product credit for SVW's acetic acid recovery. The petitioners recognize that the Court in Sinopec II expressed concern with the Department's explanation for employing such a methodological approach. However, the petitioners speculate that should the Department provide a well-reasoned explanation and justification, supported by substantial evidence, for continuing to adhere to its customary and past practice in the final remand results, the Court may be more willing to uphold the Department's PVA Final calculation methodology. In addition, the petitioners encourage the Department, in its final remand results, to reanalyze and highlight the erroneous thinking behind SVW's argument that it does not follow that the application of a by-product credit for recovery of a particular input requires an adjustment to the surrogate overhead costs pertaining to that input. The petitioners theorize that by reexamining SVW's overhead costs, the Department may sufficiently demonstrate for the Court that the methodology it employed in the PVA Final does, in fact, avoid "unreasonable inconsistencies" while at the same time produce the most accurate dumping margin calculation.

Department's Position:

The Department notes that SVW's concerns regarding the Department's application of the by-product credit were previously addressed in the Final Results of Redetermination Pursuant to Court Remand, Sinopec I. Noting that its methodology was affirmed by the Court, the Department asserted that "Because the Court had not disturbed our determination to apply the financial ratios calculated from Jubilant's data to SVW's costs before applying the by-product credit, we find that SVW's argument has been sufficiently considered." See Sinopec I, at 35. Nevertheless, SVW raises the same argument again in its comments to our draft remand results, albeit couched within SVW's criticism of the Department's chosen overhead cost revision methodology. The petitioners also comment on the Department's method of applying a by-product credit, encouraging the Department to reanalyze and highlight the erroneous thinking behind SVW's argument that it does not follow that the application of a by-product credit for recovery of a particular input requires an adjustment to the surrogate overhead costs pertaining to that input. The Department finds that, because the Court has already upheld the Department's determination regarding its application of Jubilant's financial ratios to SVW's costs before applying the by-product credit, the Department's by-product application to NV in this case has been resolved.

The petitioners further argue that the Department, in recalculating SVW's overhead costs, erroneously relied on a false distinction between adjusting a surrogate producer's data and modifying how unadjusted data is applied. In addition, the petitioners assert that the Department, rather than applying the first option presented by the Court in Sinopec II,[15] chose instead to modify the manner by which Jubilant's overhead data is applied to the FOPs of PVA.

[15] "To perform the requisite overhead cost revisions, Commerce may either adhere to its customary practice of using the surrogate producer's data without adjustment…" See Sinopec II, at 18.

The Department first notes that no adjustments were made to the surrogate's data in recalculating SVW's overhead costs. In addition, the Department disagrees with the petitioners that there is no distinction between adjusting a surrogate's data and applying unadjusted data in a modified manner. It is the Department's longstanding practice to accept a surrogate's data, including overhead and SG&A information, from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category. See Persulfates from the PRC, at 69497. The Department, however, is mindful of the Court's concerns regarding double-counting a certain portion of the NV in its application of a surrogate company's financial ratios to a respondent's FOPs. For example, if a respondent reports indirect labor hours and it is likely that the overhead ratio already accounts for such labor costs, the Department's practice is to ignore the reported labor hours in the calculation of the NV.[16] In the current remand results, the Department made no adjustments to the surrogate's data, but rather followed its practice of adapting the application of the overhead ratio to avoid the possibility of double-counting.

In light of the alternative presented by the Court of reopening the record, the Department looked at the administrative record anew to determine whether the record data is the best available information. The Department found that not only is there ample evidence on the administrative record by which to address the Court's direction regarding recalculating SVW's overhead costs, but that opening the record of this investigation would not likely yield any better

[16] "The Indian wage rate is a comprehensive wage rate which also includes employers' social security expenditures and welfare services. Therefore, consistent with Department practice, we have not included provident fund payments and employee welfare expenses in the numerator of the factory overhead rate calculation." See Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 71 FR 2905, 2908 (Jan. 16, 2006) (citing Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 FR 3085, 3091 (January 21, 1998).

or more accurate information regarding Jubilant's costs. In addition, Jubilant is not a respondent in this proceeding, and thus, cannot be compelled to provide the information necessary to distinguish any potential cost discrepancies arising from the difference between the production process used by Jubilant and that used by SVW. Therefore, the Department performed the requisite overhead cost revisions using Jubilant's unadjusted financial ratios, which is information already on the administrative record, in accordance with the Court's direction in Sinopec II. Furthermore, the Department's calculation methodology not only follows Department practice, but also addresses the Court's concerns regarding double-counting.

The petitioners also assert that the Department, in an effort to avoid double-counting, arbitrarily and unreasonably revised its calculation methodology by choosing to account for only one (i.e., self-produced vs. purchased acetic acid) of a number of differences between the manufacturing processes of SVW and Jubilant. The Department notes, however, that the Court in Sinopec II specifically remanded the Department's treatment of SVW's acetic acid inputs, which goes hand-in-hand with the Court's order to reanalyze and revise the calculation of SVW's overhead costs. Nowhere in Sinopec II does the Court specifically refer to another manufacturing process, other than that process by which acetic acid is produced. The Court notes "Naturally, Commerce's revised treatment of SVW's acetic acid purchases shall be reflected in the revisions to SVW's overhead costs." See Sinopec II, at 17. Therefore, in accordance with the Court's instructions, the Department reasonably accounted for any potential discrepancies between SVW's and Jubilant's acetic acid manufacturing processes in its revised treatment of SVW's acetic acid purchases.

D. Conclusion

The Department hereby complies with the remand order as directed by the Court in Sinopec II and assigns a final dumping margin of 0.00 percent ad valorem to SVW. Upon a final and conclusive court decision, we will publish an amended final determination to that effect.

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David M. Spooner
Assistant Secretary
for Import Administration

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Date