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Investigation
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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China - October 1, 2003, through March 31, 2004

Summary

We have analyzed the comments of the interested parties in the antidumping duty investigation on chlorinated isocyanurates ("ISOs") from the People's Republic of China ("PRC"). As a result of our analysis of these comments, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from parties:

I. General Comments:

II. Company-Specific Comments:[1]

Jiheng:

Comment 9: *Jiheng's Allocation Methodology for Caustic Soda and Chlorine Gas*
Comment 10: *Jiheng's Consumption of Certain Customer-Provided Factors of Production*
Comment 11: *Revision to Jiheng's Reported Data for Certain Inputs*
Comment 12: *The Petitioners' January 31, 2005, Comment on the Treatment of Jiheng's By-Products*
Comment 13: *The Petitioners' January 31, 2005, Comment on Jiheng's Packing Labor*

Nanning:

Comment 14: *Surrogate Value for Sodium Sulfite*
Comment 15: *Adjustment to Surrogate Values Used for Calcium Chloride and Sulfuric Acid*
Comment 16: *Valuation of Hydrogen Gas*
Comment 17: *Subtracting By-Product Offsets in the Normal Value Calculation*
Comment 18: *Treatment of Chlorine Tail Gas*
Comment 19: *Nanning's Indirect Labor Calculation*
Comment 20: *Nanning's Shipment Date*

Background

On December 16, 2004, the Department of Commerce ("Department") published in the Federal Register the preliminary determination in the antidumping duty investigation of ISOs from the PRC. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China, 69 FR 75293 (December 16, 2004) ("Preliminary Determination"). On February 24, 2005, the Department published an amended preliminary determination. See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 9035 (February 24, 2005) ("Amended Preliminary Determination"). On April 11, 2005, the Department published its partial affirmative preliminary critical circumstances determination. See Partial Affirmative Preliminary Determination of Critical Circumstances: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 18362 (April 11, 2005) ("Preliminary Critical Circumstances Determination").

The products covered by this investigation are chlorinated isocyanurates. The period of investigation ("POI") is October 1, 2003, through March 31, 2004. For a detailed discussion of the scope of this investigation and of the events which have occurred in this investigation since

[1] The two mandatory respondents are Hebei Jiheng Chemical Co., Ltd. ("Jiheng") and Nanning Chemical Industry Co., Ltd. ("Nanning").

the Preliminary Determination, see the "Scope" and "Background" sections of the Federal Register notice. We provided parties with an opportunity to comment on our Preliminary Determination, Amended Preliminary Determination, and Preliminary Critical Circumstances Determination.

Margin Calculations

We calculated export price and normal value using the same methodology stated in the preliminary determination, except as follows:

1. To value cyanuric acid, we used an October 2002-September 2003 average price from World Trade Atlas ("WTA") based on shipment data from Israel, Italy and Taiwan into India and inflated the value to a POI equivalent value using the Indian wholesale price indices. See Comment 1 below.

2. We calculated average surrogate percentages for factory overhead, SG&A expenses, and profit using the 2003-2004 financial reports of Kanoria Chemical Industries ("Kanoria") and DCM Shriram Consolidated Ltd. ("DCM"). See Comments 2 and 3 below.

3. Where appropriate, we continued to value the respondents' (Jiheng and Nanning) reported upstream inputs used to produce the subject merchandise, because the Indian surrogate producers, like the respondents, are vertically-integrated producers in that they self-produce certain major intermediate inputs. See Comment 4 below.

4. For Nanning, we disallowed a by-product offset for chlorine tail gas because the respondent was unable to demonstrate that its chlorine tail gas was used to produce the subject merchandise or resold to an unaffiliated party during the POI. See Comment 18 below.

5. To value hydrogen gas, we used a POI average Indian import value from the WTA but removed from the calculation the aberrational price and quantity import data from Belgium. See Comment 16 below.

6. To value sodium sulfite, we used POI price data from Chemical Weekly because the Chemical Weekly price data, unlike the WTA price data, was more specific to the input used by Nanning. Because the Chemical Weekly prices for this input included an amount for excise taxes, we adjusted the price to remove the excise taxes based on data contained in the record. See Comment 14 below.

7. We corrected a calculation error in the Preliminary Determination to eliminate double counting of Jiheng's unskilled packing labor and to value Jiheng's skilled packing labor. See Comment 13 below.

8. For Jiheng, we valued the amounts it used of certain packaging and packing materials for which it did not pay, or which it purchased and subsequently received reimbursement from a U.S. customer. See Comment 10 below.

9. For Jiheng, we valued its revised usage ratios for indirect labor hour reported in its November 23, 2004, submission based on our verification findings.

10. For Jiheng, we valued its revised coal and water amounts reported in its January 10, 2005, submission based on our verification findings. See Comment 11 below.

11. Based on our verification findings, we revised Nanning's reported indirect labor amount by including a portion of labor from its electrical service center. See Comment 19 below.

Discussion of the Issues

Comment 1: *Valuation of Cyanuric Acid*

In the Preliminary Determination, the Department used an average POI Indian import value from World Trade Atlas ("WTA")[2] because the POI WTA import price, unlike Infodrive India ("Infodrive") data or the Indian price quote for this input submitted by Nanning, ensured that the calculated margins were as accurate as possible based on the data contained in the record.

Jiheng argues that the Department must not rely on the POI WTA data in the final determination because this data predominantly reflects the values of imports of cyanuric chloride and other compounds besides cyanuric acid. Specifically, Jiheng claims that the POI data contained in Infodrive indicates that 91.03 percent of the shipments contained in the WTA data under the HTS subheading 2933.6910 (i.e., "Cyanuric Acid and its Salts") were cyanuric chloride.[3] Moreover, Jiheng further argues that all of the companies listed in the POI Infodrive data (which imported the compounds reflected in the POI WTA data under the HTS subheading "Cyanuric Acid and its Salts") were in fact dye producers importing cyanuric chloride and the other non-comparable compounds rather than cyanuric acid based on these companies' stated production capabilities and product lines.

Furthermore, Jiheng relies on company-and country-specific data contained in the Directory of

[2] See Preliminary Factors Valuation Memo at page 2 and Attachment 2.

[3] Jiheng also notes that an additional 4.37 percent was attributable to atrazine, 4.37 percent to melamine, and 0.26 percent to other compounds as reflected in the Infodrive data which it submitted in Exhibit 1 of its February 15, 2005, submission.

Chemical Producers[4] and in Infodrive to further show that certain countries which account for the vast majority of imports included in the POI WTA data for cyanuric acid (i.e., Belgium, Switzerland, and Germany), are in fact only producers of cyanuric chloride. For the Indian WTA imports from both Switzerland and Belgium in particular, Jiheng argues that Indian companies listed in Infodrive (which imported product under this cyanuric acid category during the POI) were exclusively dyestuff makers using cyanuric chloride rather than cyanuric acid based on product descriptions obtained from these companies' websites.

Jiheng also claims that cyanuric acid and cyanuric chloride are not comparable to each other because each product has completely different (1) chemical compositions;[5] (2) end-use applications;[6] and (3) inputs and production processes.[7] Jiheng argues that the Department must use "comparable merchandise" for surrogate values, and that the Court of International Trade ("CIT") has held this term to mean merchandise "of the same general class or kind."[8] Jiheng also notes that the Department has considered price and use in determining what is a comparable product.

Regarding the 2002 and 2003 U.S. import prices of cyanuric acid from Taiwan provided by the petitioners, Jiheng also argues that these prices are also flawed due to the inclusion of more expensive compounds in a broad "basket category." Specifically with regard to the 2003 U.S. cyanuric acid import price data from Taiwan, Jiheng argues that the Department cannot use this data in the final determination because (1) the U.S. market is not economically comparable to the

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[4] Jiheng provided a 2004 Directory of Chemical Producers obtained from SRI Consulting, which contains separate lists of companies by country that produce cyanuric acid and cyanuric chloride in the world (see Exhibit 2 of Jiheng's February 15, 2005, submission).

[5] In support of its claim, Jiheng provides publicly available information which indicates that although cyanuric acid and cyanuric chloride each have a 1,3,5-triazine ring and thus are both derivatives of triazine, claiming that these products are otherwise not comparable at a molecular level.

[6] Jiheng provides website information from a company that sells cyanuric chloride which indicates that cyanuric chloride is used to produce agrochemicals, dyestuffs, optical brighteners, tanning agents, softening agents, pharmaceuticals, and block-builders for plastics whereas cyanuric acid is used as a swimming pool/spa disinfectant or in water treatment, and as a chlorine stablizer (see Jiheng's February 15, 2005, submission at Exhibit 3-C (page 6)).

[7] The 2000 edition of Ullmann's Encyclopedia of Industrial Chemistry indicates that the 3-step process required to produce cyanuric chloride is as follows: (1) ammonia gas and methane combine to produce hydrogen cyanide gas; (2) hydrogen cyanide gas is then combined with chlorine gas to form cyanogen chloride; and (3) cyanogen chloride is then treated to produce cyanuric chloride (see Jiheng's February 15, 2005, submission at Exhibits 6-7). On the other hand, cyanuric acid is produced from urea in just one step (see Jiheng's February 15, 2005, submission at Exhibit 6).

[8] In support of its argument, Jiheng cites to Union Camp Corp. v. United States, 8 F. Supp. 2d 848 (CIT 1998).

PRC; (2) the data is based on landed, duty-paid prices which are aberrational and internally inconsistent; and (3) the import price data is contradicted by official export price data for cyanuric acid from the Government of Taiwan.

With respect to the issue of economic comparability, Jiheng argues that using a U.S. import price for cyanuric acid would be contrary to section 773(c)(4) of the Tariff Act of 1930, as amended ("the Act"), because of the different levels of economic development between the United States and the PRC. In comparing the U.S. import and Taiwanese export prices,[9] Jiheng argues that the U.S. import data for the "cyanuric acid" category from Taiwan show wide fluctuations in price from month-to-month and that these variations imply that the data includes other compounds with higher per-metric ton values. To support this argument, Jiheng relies on non-public price data to demonstrate that the U.S. import data proposed by the petitioners must reflect a "basket category" including higher-priced items.

In contrast, Jiheng maintains that the Taiwanese cyanuric acid export values to the United States, unlike the U.S. import values, remained fairly constant between January 2003 and March 2004. For this reason, among others mentioned above for why the POI WTA price data and U.S. import price data is unreliable, Jiheng argues that the Department should use the POI average export price of 493.17 U.S. dollars ("USD") per metric ton ("MT") obtained from Taiwanese government statistics to value cyanuric acid in the final determination.

Nanning notes that the petitioners refrained from using POI WTA price data from the HTS cyanuric acid category subheading for purposes of deriving dumping margins in the petition, because even the petitioners recognized that to do so would overstate the surrogate value for cyanuric acid.

Nanning suggests that the Department use either the cyanuric price quote from an Indian supplier or the POI average cyanuric acid price from Wego (a U.S. importer) because these prices, unlike the POI WTA price data, are the best available information on the record. Nanning also claims that the U.S. import price data is flawed by relying on U.S. sales prices obtained from Wego for purposes of establishing that the prices for U.S. sales of cyanuric acid during the POI and the prior year were more stable than those of the commodities included in the WTA cyanuric acid category.[10] To further show that the WTA price data in general is flawed and riddled with inexplicable price fluctuations, Nanning also provided WTA price data on a quarterly basis applicable during the time period January 1999 through June 2004.

The petitioners and BioLab maintain that the respondents' arguments for not using the cyanuric acid value used in the Preliminary Determination are not persuasive, and that the Indian publicly

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[9] Jiheng relied on data obtained from the International Trade Commission ("ITC") website, PIERS, and the Government of Taiwan to conduct its price comparison analysis.

[10] See Nanning's February 15, 2004, surrogate value submission at Attachment 3.

available import statistics for cyanuric acid best satisfy the criteria applicable for selecting surrogate values. Specifically, these parties contend the respondents have not demonstrated that the Indian import price data contain aberrational prices for cyanuric acid. These parties further claim that the Department "has often used Indian HTS basket categories,"[11] and that the Department does not have a policy or practice against using import price data from HTS basket categories unless the basket category is demonstrably aberrational.

In response to Jiheng's reliance on the Infodrive data to analyze the content of the cyanuric acid category in the WTA data, the petitioners claim that this data source is privately compiled, has only been used in one prior investigation, and has never been used to discredit official import statistics. Moreover, the petitioners argue that the Infodrive data covers only 50 percent of imports of cyanuric acid from market economies during the POI and is therefore not as comprehensive as official Indian import statistics (i.e., WTA data). The petitioners also question the reliability of the Infodrive data by claiming that Jiheng did not include any narrative to explain how the data was gathered. In like circumstances in another case,[12] the petitioners argue that the Department declined to use Infodrive data.

Because the Infodrive data does not cover all of the same shipments as the WTA data, BioLab claims that the Infodrive data provided by Jiheng does not sufficiently demonstrate that the WTA data for cyanuric acid is based almost entirely on cyanuric chloride. BioLab argues that Nanning's challenge of the appropriateness of the WTA data is based on incomplete import data from Chemical Weekly.[13]

Noting that the price of U.S. imports of cyanuric acid during the POI was falling from a high of 1,340 USD/MT, the petitioners argue that the difference between the 1,500 USD/MT price reflected in the POI WTA data and the 1,025 USD/MT price used in the petition is not so large as to be aberrational. In support of their claim, the petitioners also provide their invoices to three different U.S. customers, which reflect prices ranging between 1,060-1,540 USD/MT.

The petitioners argue that the Taiwanese export values proposed by Jiheng (1) do not relate to India or any other country of comparable economic development (i.e., the PRC); (2) are from a

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[11] The petitioners cite the Issues and Decision Memorandum for Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004) ("Carbazole"), at Comment 4.

[12] See also Carbazole at Comment 4.

[13] Nanning only provided a summary page from CHEMIMPEX (i.e., an information source which is linked to Chemical Weekly (see Attachment 2 of Nanning's February 15, 2005, submission). The CHEMIMPEX summary page provided by Nanning indicates that there are 7 records of cyanuric acid imports into India during the POI under the HTS subheading 293369.01and 487 records of cyanuric chloride imports into India during the POI under HTS subheading 293369.02. No other information is provided by Nanning on this matter in Attachment 2 of its February 15, 2005, submission and the Department does not have access to this specific link in Chemical Weekly.

source from which the Department has never previously relied; (3) are supported principally by non-public information that cannot be scrutinized; and (4) are export rather than import data. The petitioners also point out that while Jiheng argues that Indian import statistics are unusable because they allegedly include price data for both cyanuric acid and cyanuric chloride, the Taiwanese export data themselves are labeled as cyanuric chloride.

As an alternative to the cyanuric acid value used in the Preliminary Determination, the petitioners and BioLab suggest using either the August 2003 Indian import price of cyanuric acid from Australia (as reflected in Infodrive data)[14] or the Indian import price of cyanuric acid from Taiwan (based on WTA data covering the period April 2001 to March 2003).[15] Because this data reflects market prices in the primary surrogate country, the petitioners argue that these prices are superior to the values offered by the respondents. Moreover, the petitioner agrees that the Department could "reasonably assume" that imports into India from Taiwan are also predominantly composed of cyanuric acid.[16]

In response to the Indian price quote supplied by Nanning, BioLab argues that the Department has consistently rejected the use of price quotes in favor of publicly available data. Moreover, both Bio Lab and the petitioners argue that Wego's U.S. resales of Chinese-origin cyanuric acid cannot be used since it would mean treating the United States as a surrogate for the PRC. Therefore, the petitioners argue that the "best" value on the record remains the Indian import statistics.

In response to Nanning's assertion that volatility of prices in the official Indian import statistics for "cyanuric acid and its salts" shows that other products are included in this category, BioLab argues that Nanning's own data on the commercial prices of cyanuric acid show prices ranging from 550 to 1,070 USD/MT during the POI.

In response to Jiheng's arguments that cyanuric chloride is not comparable to cyanuric acid, BioLab suggests that if cyanuric acid exports are properly classified under the tariff category for cyanuric chloride in Taiwan, then the two products must, at a minimum, be comparable.

In response to Jiheng's argument that the Department should rely on the Taiwanese export price data because the Taiwanese export prices of cyanuric acid to the United States were stable during the POI, BioLab argues that as the regulations state that "normally" all factors should come from

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[14] Petitioner's Infodrive data also contains a single shipment of 250 kilograms of cyanuric acid from Australia into India during August 2003. The Indian import price is 1,102 USD/MT. See Exhibit 4 of the petitioners' September 15, 2005, submission.

[15] BioLab provide Indian import data for HTS subheading 29336901 from the Monthly Statistics of the Foreign Trade of India which covers the period April 2001 to March 2003.

[16] After adjusting for inflation, the petitioner derived a 1,890 USD/MT price of cyanuric acid based on Indian imports from Taiwan during the period April 2001 through March 2003.

a single country,[17] data from India should be used to value all factors. BioLab maintains that neither Taiwan nor the United States is an appropriate source for surrogate values because neither country is at a level of economic development comparable to the PRC. Because the Department has reliable import price data from the surrogate country, BioLab argues that using export data from another country is not appropriate.

BioLab also argues that the Taiwanese export price data is not corroborated by the non-public data placed on the record by Jiheng, because that non-public data only accounts for an insignificant amount of the total imports into the United States from Taiwan during the POI. Moreover, BioLab maintains that the non-public data provided by Jiheng is not evidence of prices made between unrelated parties.

BioLab argues that the Infodrive data demonstrates that the official Indian statistics do in fact contain shipments of cyanuric acid, and that the price used in the Preliminary Determination is consistent with other values on the record. Specifically, BioLab claims that shipments from Taiwan into India, in the category of "cyanuric acid and its salts," ranged from 1000 to 1500 USD/MT, which are consistent with the petitioners' U.S. prices provided in the petition. BioLab also argues that Taiwan produces no cyanuric chloride based on record evidence provided by Jiheng in its November 24, 2004, factor value submission at Exhibit 2.

Department's Position:

Section 773(c)(1)(B)(2) of the Act states that the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority. We have used WTA Indian import price data from Israel, Italy, and Taiwan covering the period October 2002-September 2003 on the record to value cyanuric acid in the final determination because this WTA data, unlike the WTA data used in the Preliminary Determination and other price data submitted by the parties, represents the best information available on the record for establishing dumping margins as accurately as possible.

Section 351.408(c)(1) of the Department's regulations provides that the Department will normally use publicly available information to value the factors of production. The Department's regulations further instruct the Department to normally value all factors in a single surrogate country. See 19 CFR 351.408(c)(2). In the Preliminary Determination of this case, the Department selected India as the primary surrogate country for purposes of valuing the factors of production because India is at a level of economic development comparable to that of the non-market economy ("NME") country and is a significant producer of comparable merchandise in accordance with section 773(c)(4)(1) of the Act. Since the Preliminary Determination, none of the parties have further argued that India should not be considered the primary surrogate country in this case. Therefore, we have continued to use India as the primary surrogate country in the

[17] See 19 CFR 351.408(c)(2).

final determination.

When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is (1) an average non-export value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive.[18] In recent cases, the Department has also articulated a clear preference to use official import prices rather than domestic prices to value the respondents' reported inputs because import prices, unlike domestic prices, do not include domestic taxes.[19] In applying the Department's surrogate value selection criteria as mentioned above, the Department has found in numerous NME cases that the WTA price data represents the best available information for valuation purposes.

In accordance with the Department's regulations and practice for selecting surrogate values as noted above, we are not using POI Taiwanese export price data submitted by Jiheng for valuation purposes because there is better information on the record. We note that there is no indication of the extent to which this export price data reflects prices of exports to India or any other country comparable to the PRC. Moreover, the HTS subheading for the Taiwan export data explicitly covers cyanuric chloride rather than cyanuric acid. Jiheng has relied on non-public information for purposes of demonstrating that the Taiwanese export data included in this HTS subheading only includes cyanuric acid. However, we are unable to verify the accuracy of Jiheng's non-public data. The Department has recently articulated that non-public information provided by third parties is "of unknowable internal and external validity unless verification is conducted." See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China, 69 FR 70997 (December 8, 2004), and accompanying Issues and Decision Memorandum at Comment 1.

We also cannot use the non-public Indian price quote submitted by Nanning because the Department's preference is to base surrogate values on publicly available and country-wide data from within the surrogate country, which we are able to do and have done in this case. See, e.g., 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), and accompanying Issues and Decision Memorandum at Comment 1. Moreover, we find that the Indian price quote is unreliable because (1) it does not indicate the country of origin and as such we cannot ensure we are using market economy values and not a value reflecting NME origin or subsidized merchandise; and (2) unrebutted information on this record indicates that the Indian seller has not sold cyanuric

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[18] See Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

[19] See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 24 ("Bedroom Furniture").

acid for several years.[20]

We also find Wego's POI average U.S. prices submitted by Nanning unusable for valuation purposes for two reasons. First, Wego's prices for cyanuric acid are resale prices applicable in the U.S. market and not prices paid for this input in the surrogate country. Second, Wego's resale prices are for cyanuric acid of Chinese origin[21]. We do not rely on prices of imports from nonmarket-economy countries in determining surrogate values.

Jiheng has provided substantial evidence in support of its claim that the POI WTA price used in the Preliminary Determination is derived from Indian imports representing market-economy countries which produced cyanuric chloride and/or products[22] other than cyanuric acid. In this case, there is on the record Infodrive import data which represents 100 percent of imports of the cyanuric acid HTS category from the United States and Israel into India, but the data indicates that these imports are not cyanuric acid. Specifically, there is unusual data on the POI record showing that: (1) shipments from cyanuric acid-producing countries were for products other than cyanuric acid; (2) other shipments were from countries which appear in the Directory of Chemical Producers' list of "cyanuric chloride" world producers but not as cyanuric acid producers; and (3) the remaining shipments were from either "unspecified" countries or from countries which do not appear on either the "cyanuric acid" or "cyanuric chloride" world producer lists.

The Department has indicated in prior cases that it prefers not to use Infodrive data to derive surrogate values or to use as a benchmark to evaluate other potential surrogate values because it does not account for all of the imports which fall under a particular HTS subheading.[23] The Infodrive data in this case accounts for less than 60 percent of the total Indian imports of merchandise included in the cyanuric acid category for the POI. Because of the unique circumstances as described in the previous paragraph, where direct and complete evidence from Infodrive on two specific countries has been introduced, showing that imports from these countries do not contain the product in question, the Department is diverging from its strong preference for using the entirety of the HTS classification. Therefore, for the above-mentioned reasons, we have not used the POI WTA data to value cyanuric acid in the final determination.

In examining Indian WTA data for the 12-month period immediately preceding the POI (i.e.,

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[20] See pages 4-5 of the petitioners' February 15, 2005, submission.

[21] See page 13 of Nanning's March 15, 2005, case brief.

[22] In addition to cyanuric acid and cyanuric chloride, other products included in this HTS subheading may include atrazine, clemastine fumarate, melamine, triadimefon, mometasone fumarate, and paspalic acid based on data contained in Infodrive.

[23] See Bedroom Furniture and accompanying Issues and Decision Memorandum at Comment 10.

October 2002 - September 2003), we find shipment data from Israel, Italy, and Taiwan[24] included in the HTS cyanuric acid category.

As mentioned above, the Directory of Chemical Producers indicates that these three countries produce cyanuric acid and not cyanuric chloride. With respect to the shipment data from these three countries, we have no information on this record which indicates that the WTA Indian import data from these three countries during the above-mentioned time period is not for cyanuric acid, especially given that the HTS category is expressly labeled for cyanuric acid.[25] Therefore, we find a sufficient basis to rely on the shipment data from these three countries for purposes of valuing cyanuric acid. Furthermore, the range in prices reflected in this WTA data provides us with a better indication of the Indian import price of cyanuric acid during a representative time period. We also note that this time period is more contemporaneous than those suggested by the petitioners, as well as broader in range in countries and of greater volume. After weight-averaging the data, adjusting for inflation, and making a currency conversion in accordance with the Department's standard NME methodology, the Indian import value is 2,801.32 USD/MT.[26]

Based on the results of our analysis as described above, we find that the WTA Indian import price for shipments from Israel, Italy, and Taiwan during the period October 2002-September 2003 represents the best available information on this record for purposes of valuing cyanuric acid in accordance with section 773(c)(1)(B)(2) of the Act. Accordingly, we have used this WTA data to value cyanuric acid in the final determination.

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[24] We note that the petitioners provided Infodrive data covering the period January 2003 until early September 2004 in Exhibit 4 of their September 15, 2004, submission. The petitioners' Infodrive data does not contain Indian imports from Taiwan, Italy, or Israel during the first quarter of 2003 as reflected in the WTA data, this fact further supports our reasons for not relying on Infodrive data because it is an incomplete resource for accounting for all shipments of product into India included in a particular HTS subheading.

[25] Although no party suggested that Pre-POI Indian importation from Israel data included non-cyanuric acid entries, the Department nevertheless considered the appropriateness of this data. First, the Department noted that the relevant HTS number is intended to cover cyanuric acid and its salts. As such, this establishes a reasonable presumption that cyanuric acid is reflected in this category. Second, the Department considered only information from countries which produced cyanuric acid as per the Directory of Chemical Producers, eliminating from consideration data from countries which produced cyanuric chloride, in an effort to increase the likelihood that the data used in the calculation reflected cyanuric acid. Finally, the Department noted that the unit value regarding the Israeli entries was well within the range of the non-aberrant Italian data. As there is no information or argument on the record that the Italian data reflects any merchandise other than that properly reflected in the HTS heading - cyanuric acid - the similarity of the Italian and Israeli unit values support the presumption that the Israeli data is based on values of cyanuric acid. As a result of these considerations, the Department finds that it is reasonable to include the Pre-POI data given the totality of the available record evidence.

[26] Because this price was applicable before the POI, we adjusted this price for inflation using Indian wholesale price indices ("WPIs") published in International Financial Statistics. We calculated the inflation factor for the POI by dividing the average price index for the POI by the average WPI for the 12-month period applicable to the surrogate value. We then multiplied the price by the resulting inflation factor to arrive at a value for the POI.

Comment 2: *Production of Comparable Merchandise for Surrogate Financial Ratios*

In the Preliminary Determination, the Department used data contained in the 2002-2003 financial reports of two Indian producers of caustic soda,[27] Bihar Caustic & Chemicals Ltd. ("Bihar") and Kanoria Chemical Industries ("Kanoria"), to derive the surrogate financial ratios (i.e., factory overhead, SG&A, and profit). Since the Preliminary Determination, Jiheng submitted more contemporaneous (i.e., 2003-2004) financial reports of Bihar and Kanoria in its February 15, 2005, publicly available information ("PAI") submission. In addition, Jiheng also provided in the same response the 2003-2004 financial reports of other companies that produce caustic soda and/or two other products (i.e., calcium hypochlorite and stable bleaching powder) that the Department considers comparable to subject merchandise,[28] (see the analysis below). On February 25, 2005, the petitioners[29] submitted the 2003-2004 annual report of another Indian producer, Grasim Industries, Ltd. ("Grasim"). Of these Indian producers, HSH produces calcium hypochlorite and stable bleaching powder; Kanoria, DCM, and Grasim produce stable bleaching powder.

Section 351.408 (c)(4) of the Department's regulations directs the Department to value the financial ratios with nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country. In this case, there are several potential surrogate producers in India that produce either or both calcium hypochlorite and stable bleaching powder. Respondents consider both products comparable to subject merchandise but the

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[27] Caustic soda is an input used to produce subject merchandise. Data contained on the record of this investigation indicates that India is not a producer of the subject merchandise. Therefore, the Department has been unable to obtain financial reports of Indian producers that make the subject merchandise. Although the Department considers calcium hypochlorite comparable to the subject merchandise, the Department was unable to obtain financial reports for Indian producers of calcium hypochlorite before the Preliminary Determination. At Preliminary Determination, no parties argued that stable bleaching powder is also comparable merchandise. For purposes of the final determination, the Department considers both calcium hypochlorite and stable bleaching powder comparable to the subject merchandise. With two types of comparable merchandise which are more similar to the subject merchandise than caustic soda, available for the final determination, however, the Department is no longer considering caustic soda, an input into the subject merchandise, a comparable product.

[28] In its February 15, 2005, submission at Exhibits 12 13, 14,16, 17, 18, 19, 21, and 22, Jiheng provided the 2003-2004 financial statements of the following additional companies: Kanoria, Sree Rayalaseema Hi-Strength Hypo Limited ("HSH"), DCM, Jayshree Chemicals Limited, Chemfab Alkalis Limited, Sree Rayalaseema Alkalies and Allied Chemicals Limited ("Sree Alkalies"), The Andhra Sugars Limited, Indian Petrochemicals Corporation Limited, and Chemplast Sanmar Limited. However, Jiheng indicated that except for Kanoria, HSH, and DCM, the remaining six companies and Bihar are not producers of calcium hypochlorite or stable bleaching powder (which the Department considers comparable products to the subject merchandise for the final determination). In their February 25, 2005, PAI rebuttal submission, the petitioners submitted HSH's 2003-2004 annual reports because they claimed that the version of the report submitted by Jiheng omitted pages 42 and 43 from HSH's annual report.

[29] They are Clearon Corporation and Occidental Chemical Corporation (the "petitioners").

petitioners and BioLab Inc. (a U.S. producer of subject merchandise) disagree.

The petitioners consider only calcium hypochlorite to be a comparable product. To support their arguments, the petitioners cite Cased Pencils at Comment 5,[30] where the Department determined product "comparability" by considering whether products have "similar physical characteristics, end uses, and production processes." Based on Cased Pencils, the petitioners assert that calcium hypochlorite (1) has a chlorine level that falls between trichlor and dichlor (i.e., forms of the subject merchandise); (2) is used like the subject merchandise to sanitize swimming pools; and (3) utilizes chlorine and caustic soda as key inputs into production. By contrast, the petitioners point out that stable bleaching powder (1) has a much lower chlorine level; (2) does not appear to be in actual use for pool sanitization; and (3) does not require caustic soda as a production input. Thus, they claim even if stable bleaching powder was deemed a comparable merchandise, it is undeniable that calcium hypochlorite is much closer to the subject merchandise than is stable bleaching powder. They argue that because HSH is the only significant producer of calcium hypochlorite, the Department should use HSH's financial data for financial ratios calculation.

The petitioners further claim that stable bleaching powder and calcium hypochlorite are quite different because they differ in their chemical composition, starting raw materials, available chlorine levels, common usage, and price. Specifically, the petitioners indicate that calcium hypochlorite refers to chemical compound with the formula $Ca(OCl)_2$, and the most common form of this compound (i.e., partially hydrated) contains a 65 percent available chlorine content, whereas the less common form (i.e., anhydrous) contains a 70 percent available chlorine content. The petitioners note that Sree Rayalaseema Hi-Strength Hypo Limited ("HSH") is the only known Indian producer of this merchandise, which it produces with a 65 to 70 percent chlorine content. By contrast, the petitioners state that several Indian companies manufacture "stable bleaching powder" (which is also known as chlorinated lime).[31] Regarding their production processes, the petitioners assert that calcium hypochlorite is produced through a multi-step process in which the key raw materials are chlorine, caustic soda, and hydrated lime, while stable bleaching powder does not use caustic soda as an input and is prepared merely by "the reaction of hydrated lime with chlorine." Further, the petitioners claim that the average sales value of stable bleaching powder reflected in Indian producers' financial data is consistently much lower (by 25 percent) than the calcium hypochlorite price. Finally, the petitioners argue that the application of calcium hypochlorite differs from that of bleaching powder. Specifically, the petitioners argue that calcium hypochlorite, like the subject merchandise, is used for treatment in swimming pools and spas, but there is no evidence on the record to suggest that stable bleaching powder is actually

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[30] Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China, 67 FR 48612 (July 25, 2002) ("Cased Pencils") and the accompanying Issues and Decision Memorandum at Comment 5.

[31] Chlorinated lime is also called chloride of lime. This chemical consists of "an indefinite, complex mixture of calcium hypochlorite, calcium hydroxide, calcium chloride, and their hydrates," according to Kirk-Othmer Encyclopedia.

sold to consumers for swimming pool and spa sanitization.

Moreover, the petitioners claim that the calcium hypochlorite produced by HSH is more comparable to the subject merchandise than is stable bleaching powder. The petitioners argue that the Department should use HSH as the sole surrogate producer because HSH is the only significant producer of calcium hypochlorite in India. The petitioners further argue that if the Department decides that stable bleaching powder is comparable to the subject merchandise, the Department's practice would still favor using HSH as the sole surrogate producer for deriving financial ratios. According to the petitioners, HSH is the only significant surrogate producer of reasonably comparable merchandise (i.e., calcium hypochlorite),[32] as calcium hypochlorite constitutes a significant portion of HSH's total sales. They maintain that the other producers of stable bleaching powder are not appropriate surrogate producers because (1) each producer has substantial operations that are unrelated to production of the subject merchandise; and (2) stable bleaching powder operations constitute only a tiny fraction of total sales for each producer (e.g., 0.5 percent of DCM's total sales, and 5 percent of Kanoria's total sales). As a result, the petitioners claim that these other producers (e.g., DCM and Kanoria) are unacceptable as a source for surrogate financial ratios because of their insignificant production amounts in terms of their total production of other products.

Based on the foregoing, the petitioners urge the Department to use HSH's data to derive the surrogate financial ratios.[33]

BioLab, like the petitioners, also contends that the record demonstrates that bleaching powder is distinct from calcium hypochlorite, and is not comparable to the subject merchandise. Specifically, BioLab maintains that calcium hypochlorite contains an available chlorine content of at least 65 percent whereas two forms of the subject merchandise (i.e., trichlor and dichlor) contain approximately 90 percent and between 56-63 percent chlorine content, respectively. Because the available chlorine content for bleaching powder is much lower and "usually ranges between 24-37 percent, BioLab argues that this difference alone demonstrates that bleaching powder is not comparable to the subject merchandise. In addition, BioLab notes that bleaching powder contains more insoluble materials and is less stable than calcium hypochlorite. Therefore, BioLab maintains that bleaching powder is a separate and distinct product from calcium hypochlorite and is not comparable to the subject merchandise.

BioLab submits that if the Department decides to use the financial statements of a calcium

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[32] The petitioners note that HSH's calcium hypochlorite has "a chlorine content of 65% to 70%," which falls between that of dichlor (56% to 65%) and trichlor (approximately 90%). HSH's calcium hypochlorite is marketed in both granules and tablets, which are similar to chlorinated isocyanurates, the subject merchandise.

[33] Because HSH and the respondents are at different levels of integration where HSH purchases its major intermediate inputs but respondents self-produce certain major intermediate inputs, the petitioners state that the Department must also value the respondents' usage of chlorine and caustic soda directly in order to improve the overall accuracy of the normal value build-up (see Comments 3 and 4 below).

hypochlorite producer to derive the surrogate financial ratios, it should only use the financial statements of HSH, because the record demonstrates that HSH, unlike Kanoria and DCM, is the only Indian calcium hypochlorite producer. BioLab points out Kanoria and DCM are not producers of calcium hypochlorite because there is nothing in Kanoria's and DCM's financial statements or any other record information indicating that the company produces calcium hypochlorite. Moreover, even if the Department were to consider all three companies to be producers of products comparable to subject merchandise, BioLab argues that the Department cannot use the financial statements of DCM and Kanoria, because these companies' financial statements predominantly reflect operations related to products that are clearly not comparable to subject merchandise. According to BioLab, calcium hypochlorite and stable bleaching powder constitute the predominant portion of HSH's operations (i.e., production and sales). By comparison, BioLab contends that stable bleaching powder represents only a diminutive portion of Kanoria's and DCM's operations. For this reason, BioLab asserts that the financial ratios of these companies predominantly reflect the costs of operations related to products other than bleaching powder. Therefore, even if the Department were to treat bleaching powder as comparable to the subject merchandise (which it maintains is not), the Department should use only the financial statements of HSH (and not DCM or Kanoria) to derive the surrogate financial ratios.

Jiheng claims that "stable bleaching powder" and "calcium hypochlorite" have the same end-use applications according to product descriptions provided in the financial reports of HSH and HSH's sister company.[34] For stable bleaching powder, Jiheng maintains that HSH's sister company's financial report characterizes this product as "an effective disinfectant, bactericide, algaecide . . . widely used by municipalities, hospitals, railways, aquaculturists..." For calcium hypochlorite, Jiheng maintains that HSH's financial report mentions that this product is "used extensively in aquaculture, textile, leather, paper and sugar industries," while stable bleaching powder is used for "sanitation, water treatment." Moreover, Jiheng claims that Kirk-Othmer's Encyclopedia states that calcium hypochlorite is used for disinfection in "swimming pools and drinking water supplies... {and} as a sanitizer in households, schools hospitals, and public buildings." Based on these descriptions, Jiheng asserts that stable bleaching powder and calcium hypochlorite are comparable merchandise.

Although record evidence in this case indicates that there are at least three grades of bleaching powder (I, II, and III)[35] with each having a different available chorine content (i.e., 34.0, 32.0, and 35.0 percent by weight, respectively), Jiheng counters BioLab's assertion that calcium hypochlorite contains an available chlorine content of at least 65 percent by pointing out that the

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[34] HSH's sister company is Sree Rayalaseema Dutch Kassenbouw Limited ("DK").

[35] HSH's sister company, DK, states that it "specializes in the production of approved ISI Grade - 1, ISI Grade - II and TGV Super - 9 brands of bleaching powder." See the petitioners' February 25, 2005, Second Surrogate Values submission at Exhibit 3 at 6.

other data[36] indicates that calcium hypochlorite can contain much less than 65 percent available chlorine content. Therefore, Jiheng concludes that this range of available chlorine content clearly indicates that the "stable bleaching powder" produced by Kanoria, DCM, and HSH is comparable merchandise, satisfying identical end use applications as any other calcium hypochlorite.

Moreover, Jiheng claims that the manufacturing processes of "stable bleaching powder" and "calcium hypochlorite" are almost identical based on information contained in Kirk-Othmer's Encyclopedia. Specifically, Jiheng contends that the information in Kirk-Othmer's Encyclopedia states that most of the same chemicals are used to produce both products at issue and that only a relatively simple and minor process is required to convert stable bleaching powder into calcium hypochlorite.[37] Based on these facts, Jiheng asserts that the production process for the two products are extremely similar.

Finally, Jiheng claims, the terms "stable bleaching powder" and "calcium hypochlorite" are used interchangeably around the world. Citing BioLab's February 25, 2005, submission in Exhibit C at page 5, Jiheng notes that the entry for "bleaching powder" in Hawley's Condensed Chemical Dictionary says "see bleach; calcium hypochlorite." Also citing BioLab's February 25, 2005, submission in Exhibit C at page 9, Jiheng indicates that the entry for "bleaching powder" in the Infoplease.com Dictionary says "also called chloride of lime, chlorinated lime, calcium oxychloride." Jiheng further notes that calcium oxychloride, is synonymous with calcium hypochlorite, according to Hawley's Condensed Chemical Dictionary.

Based on the foregoing, Jiheng submits that the evidence submitted by the petitioners and BioLab shows that the products manufactured by Kanoria, DCM, and HSH and marketed as "stable bleaching powder" are all the same as calcium hypochlorite, meet the requirements of comparable merchandise, and must be used as sources of financial data for surrogate financial ratios. Because HSH, Kanoria, and DCM are producers of calcium hypochlorite and/or stable bleaching powder, Jiheng submits that HSH, Kanoria, and DCM should be used as surrogate producers.

Nanning contends that neither Bihar nor DCM are producers of identical or comparable

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[36] See the petitioners' February 25, 2005, submission at Exhibit 4 (page 7).

[37] Jiheng maintains that Kirk-Othmer's Encyclopedia states that calcium hypochlorite {$Ca(OCl)_2$}is made by drying a filter cake prepared from hydrated lime {calcium hydroxide}, caustic {sodium hydroxide}, and chlorine, and the product contains salt and water as the main diluents with small amounts of $CaCl_2$ {calcium chloride}, $Ca(ClO_3)_2$ {calcium chlorate}, $Ca(OH)_2$ {calcium hydroxide}, and $CaCO_3$ {calcium carbonate}. Jiheng also notes that bleaching powder is made by chlorination of moist hydrated lime, calcium hydroxide, $Ca(OH)_2$, and the initial product contains calcium hypochlorite and some of the impurities that are found in commercial calcium hypochlorite, except in different proportions. Jiheng further points out that on further chlorination, the dibasic compound is converted to a mixed crystal consisting largely of calcium hypochlorite and that ordinary bleaching powder is a mixture of this substance and the basic chloride; and a more stable product is obtained by mixing bleaching powder with strong NaOCl {sodium hypochlorite} solution or by chlorination of a lime - NaOH{sodium hydroxide} mixture.

merchandise. Citing Spring Lock Washers[38] and Heavy Forged Hand Tools,[39] Nanning argues that if no usable Indian surrogate producer's financial information is placed on the record, for purposes of the final determination the Department should rely upon financial data published by the Reserve Bank of India because this data is specific to a large number of diversified Indian public companies from all sectors of the Indian economy (which includes the chemical industry).

Department's Position:

Section 351.408(c)(4) of the Department's regulations directs the Department to value the financial ratios with nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country. Among the surrogate producers of comparable products, the Department prefers to value financial ratios using data from those surrogate producers whose financial data will not be distorted or otherwise unreliable. See, e.g., Cased Pencils at Comment 5; Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 66 FR 42628 (August 14, 2001) and accompanying Issues and Decisions Memorandum at Comment 5 ("Persulfates"); Heavy Forged Hand Tools from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 66 FR 48026 (September 17, 2001) and accompanying Issues and Decision Memorandum at Comment 18 ("Hand Tools").

While the statute does not define "comparable merchandise," in selecting surrogate values for overhead, SG&A and profit, the Department has considered whether products have similar production processes, end uses, and physical characteristics. When evaluating production processes, the Department has taken into account the complexity and duration of the processes and the types of equipment used in production. See Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review, 66 FR 8383 (January 31, 2001), and accompanying Issues and Decision Memorandum at Comment 7 ("Glycine"); and Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan, 62 FR 2648, 2651 (January 17, 1997).

We find that stable bleaching powder is comparable merchandise to the subject merchandise because it has similar physical characteristics, end uses, and production processes to subject merchandise. See Glycine at Comment 7. Furthermore, the complexity and duration of the processes and the types of equipment used in the production of stable bleaching powder is also similar to that of the subject merchandise. See Glycine at Comment 7. Regarding physical characteristics, the subject merchandise contains three major intermediate inputs: cyanuric acid, caustic soda, and chlorine gas. According to Kirk-Othmer's Encyclopedia of Chemical

[38] Certain Helical Spring Lock Washers from the People's Republic of China, 69 FR 12119 (March 15, 2004) and Issues and Decision Memorandum at Comment 6.

[39] Heavy Forged Hand Tools from the People's Republic of China, 69 Fed. Reg. 11371, 11382 (March 10, 2004).

Technology ("Kirk-Othmer's Encyclopedia"), stable bleaching powder contains hydrated lime and chlorine, and its initial empirical formula consists of calcium hypochlorite, which also contains caustic soda and chlorine gas as inputs. As finished products, stable bleaching powder contains a chlorine level of 35 percent, and the subject merchandise contains chlorine level of 56-90 percent. The subject merchandise can be sold in tablets or in granular form while stable bleaching powder is sold in granular form. Therefore, we determine that stable bleaching powder and the subject merchandise have similar physical characteristics. Regarding end uses, stable bleaching powder, like the subject merchandise, is used as sanitation or water treatment according to HSH's financial report. HSH's sister company (DK)'s financial report also characterizes stable bleaching powder as "an effective disinfectant, bactericide, algaecide . . . widely used by municipalities, hospitals, railways, aquaculturists..." Therefore, we determine that stable bleaching powder has similar end uses as subject merchandise.

With respect to production processes, the subject merchandise is produced in three different steps with the first step making intermediate inputs (cyanuric acid, caustic soda, and chlorine gas), the second step combining these intermediate inputs, and the third step shaping the finished products. Although there is no description of the production processes specifically employed by Kanoria and DCM, based on the description of Kirk-Othmer's Encyclopedia, we find that the production processes of stable bleaching powder and the subject merchandise are similar. Specifically, Kirk-Othmer's Encyclopedia indicates that: 1) stable bleaching powder requires the use of hydrated lime; 2) stable bleaching powder's initial empirical formula consists of calcium hypochlorite, 3) stable bleaching powder can be converted to calcium hypochlorite upon further chlorination, and 4) stable bleaching powder is in fact a mixture of calcium hypochlorite and the basic chloride. Although we have no information on the record concerning the complexity and duration of the processes and the types of equipment used in production of stable bleaching powder, the similarities in their chemical compositions strongly suggest that the general manufacturing processes used to produce both products are similar, if not identical, in nature.

Similarly, we find that calcium hypochlorite is also comparable merchandise to the subject merchandise because both have similar physical characteristics, end uses, and production processes. See Glycine at Comment 7. Like the subject merchandise, calcium hypochlorite contains caustic soda and chlorine gas as inputs. Thus, it requires a multiple-step production process as the subject merchandise does. As a finished product, calcium hypochlorite contains a chlorine level of 65 percent while the subject merchandise contains 56-90 percent chlorine. Therefore, calcium hypochlorite and subject merchandise have similar physical characteristics. In terms of application, they both are used as a water sanitizer. As stated above, Kirk-Othmer's Encyclopedia indicates that calcium hypochlorite has similar production processes as that of stable bleaching powder. Because we have determined that stable bleaching powder has similar production processes as that of the subject merchandise, we conclude that calcium hypochlorite also has similar production processes as that of the subject merchandise.

With respect to the petitioners and BioLab's argument that calcium hypochlorite has higher chlorine content and, therefore, is more comparable to the subject merchandise than stable

bleaching powder, we disagree. We find that both stable bleaching powder and calcium hypochlorite are comparable to the subject merchandise because they have similar production processes, end uses, and physical characteristics. The evidence on the record does not show a significant difference between the comparability of each product to the subject merchandise. Moreover, we find that product names appear to be used interchangeably around the world according to information contained in Hawley's Condensed Chemical Dictionary (which explains the term "bleaching powder" by stating "see bleach; calcium hypochlorite").[40]

Based on the foregoing, the Department finds that "stable bleaching powder" and "calcium hypochlorite" are both comparable products to the subject merchandise.

With respect to the petitioners' and BioLab's arguments that only HSH is the only significant producer of comparable merchandise but DCM and Kanoria are not significant producers, we disagree. In determining whether a certain product constitutes a significant portion of a company's operations, we have in this case examined the production figure rather than the sales figure of a company, consistent with Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004) ("Preserved Mushrooms 6"), and accompanying Issues and Decision Memorandum at Comment 8.

Production figures for Kanoria, DCM and HSH indicate that these three companies predominantly produce chemical compounds of which stable bleaching powder and calcium hypochlorite are subsets. The Department also determined that stable bleaching powder and calcium hypochlorite are the most comparable products to subject merchandise among products of possible surrogate companies on the record. Kanoria and DCM produce stable bleaching powder while HSH produces both stable bleaching powder and calcium hypochlorite. The Department also determines that Kanoria and DCM produce comparable merchandise at the same level of integration as the respondents produce the subject merchandise. However, HSH does not produce stable bleaching powder nor calcium hypochlorite at the same level of integration as the respondents produce subject merchandise. Because HSH's production processes are not at a comparable level of integration as the respondents, the Department has not used the financial statement of HSH for surrogate financial ratios (see Comment 3 below for further analysis on level of integration).

With respect to Grasim, although Grasim produces comparable merchandise, we find that Grasim is mainly a cement company with over 90 percent of its production consisting of cement (a product significantly less similar to comparable merchandise than chemicals) and only 0.22

[40] See BioLab's February 25, 2005, submission at Exhibit C, page 5.

percent of production consisting of stable bleaching powder.[41] By contrast, Kanoria and DCM are mainly chemical producers. Therefore, we have not used Grasim's financial data.

At the Preliminary Determination, we determined that calcium hypochlorite is a comparable product. However, we were not able to find a surrogate producer of calcium hypochlorite in India and instead relied on Bihar, a company which produces caustic soda, which product we found comparable in the absences of data from more comparable producers. Therefore, we relied on the surrogate producers of caustic soda, an input into the subject merchandise. Since the Preliminary Determination, we determined that both calcium hypochlorite and stable bleaching powder are more comparable to subject merchandise than caustic soda. Additionally, we have found three comparable Indian surrogate producers of comparable merchandise (i.e., stable bleaching powder and/or calcium hypochlorite). Therefore, we have not used Bihar's data to derive surrogate financial ratios in the final determination.

As a result, as stated in Comment 3 below, we have only used the financial data of Kanoria and DCM for purposes of deriving surrogate financial ratios for factory overhead, SG&A, and profit.

Comment 3: *Comparability in Level of Integration for Surrogate Financial Ratios*

The petitioners and BioLab argue that the Department should use the financial data of HSH to derive the surrogate financial ratios in the final determination, because HSH is the only producer of calcium hypochlorite. However, because Jiheng and Nanning self-produce certain major inputs into the production of subject merchandise, whereas HSH purchases all of its major inputs into calcium hypochlorite production, the respondents and HSH are at different levels of integration. The petitioners and BioLab maintain that the different levels of integration between HSH and the respondents renders HSH's financial ratios incomparable to that of Jiheng and Nanning without making an adjustment (i.e., valuing the intermediate inputs).

According to the petitioners and Biolab, utilizing financial ratios derived from HSH's data (which purchases all of its direct material inputs) as a proxy surrogate for the respondents (which have upstream input-producing operations for making those same material inputs), would severely understate the surrogate financial ratios derived from data contained in HSH's financial report. They claim that the reason for this distortion is because HSH does not incur any of the significant capital costs associated with owning and operating facilities for the production of chlorine and caustic soda. As a result, the factory overhead ratio calculated from HSH's financial statements will omit a significant proportion of the capital costs actually incurred by respondents and therefore is distortive. They further point out that the distortion is magnified because HSH purchases chlorine and caustic soda at market prices, which implies that the capital costs associated with chlorine and caustic soda production, as well as SG&A and profit elements, are incorporated into HSH's purchase price and therefore into the materials costs reflected in its

[41] See page 70 of Grasim's financial report submitted in Exhibit 6 of the petitioner's February 25, 2005, submission.

financial report. Therefore, they urge the Department to use financial ratios calculated from HSH's financial report but to also value the respondents' consumption of chlorine and caustic soda as direct inputs into production in order to avoid this distortion.

Jiheng contends that the Department must dismiss petitioners' argument because it is completely unsupported by any prior practice of the Department and contradicts the evidence on the record in this investigation. Citing Ball Bearings[42] and Circular Welded Steel Pipe,[43] Jiheng argues that all three companies, Kanoria, DCM, and HSH meet the requirements of being integrated producers. Specifically, Jiheng notes that in Ball Bearings, the Department excluded two of the five Indian companies which purchased 97 percent and 85 percent of their major components, respectively, and included the financial data of a company, HMT,[44] which only purchased 66 percent of its major components, because the Department found it to be at a level of integration "sufficient to consider it comparable to the Chinese respondents." In this case, Jiheng argues that HSH's total purchases of caustic soda and chlorine gas amount to only 43 percent of their reported total costs of raw materials consumed, and only 36 percent of their total production costs. Therefore, HSH is well below the percentage of components purchased by HMT (i.e., 66 percent) which indicates that HSH self-produces a large percentage of its raw materials. Jiheng claims that based on its use of HMT in Ball Bearings, the Department must find HSH a very high level of raw material production to represent a level of integration "sufficient to consider it comparable" to Jiheng. Moreover, in citing Jilin,[45] Jiheng maintains that in the absence of record evidence demonstrating otherwise, the Department cannot assume that an integrated producer necessarily has a higher overhead or SG&A ratio than a non-integrated producer.

If the Department rejects Kanoria and DCM as sources of surrogate financial data, then Jiheng argues that the Department should use the average overhead ratio of HSH and that of its sister company Sree Alkalies. Jiheng points out that (1) both companies are located in close proximity to one another; (2) HSH considers itself an integrated entity with Sree Alkalies; and (3) Sree

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[42] Notice of Final Determination Certain Ball Bearings and Parts Thereof from the People's Republic of China, 68 FR 10685 (March 6, 2003) ("Ball Bearings"), and the accompanying Issues and Decision Memorandum at comment 1-F.

[43] Notice of Final Determination Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China, 67 FR 36570 (May 24, 2002) ("Circular Welded Steel Pipe"), and the accompanying Issues and Decision Memorandum at Comment 5 (i.e., excluding integrated producer from consideration in calculating financial ratios for non-integrated respondents).

[44] These companies include: Antifriction Bearing Corporation, Ltd., ("ABC"), HMT Bearings, Limited ("HMT"), and FAG Bearings India Ltd. ("FAG"). All three purchased a portion of their major components, while the respondents manufactured most of their major components. ABC and HMT were not selected as surrogate producers.

[45] Jilin Pharmaceutical Co., Ltd. v. United States, 185 F. Supp. 2d 1343 (CIT 2001), where the CIT ordered a remand, in part, due to lack of evidence to support the assumption that vertically integrated producers have higher overhead costs than less integrated producers.

Alkalies is a chlor-alkali producer that manufactures a number of products, similar to Jiheng, which provide similar economies of scope and scale. Jiheng submits that, when HSH and Sree Alkalies are combined, the respective financial ratios of two companies would provide a fair representation of Jiheng's operations because both companies produced merchandise comparable to the subject merchandise.[46]

Department's Position:

In the comment above, we identified three companies as producers of comparable merchandise (i.e., HSH, DCM, and Kanoria), and so the analysis of the appropriate selection only examines these companies. The Department determines to use the financial data of Kanoria and DCM, and not use the financial data of HSH, in accordance with Section 351.408(c)(4) of the Department's regulations. The Department's normal practice in NME proceedings is to use, whenever possible, surrogate-country producers of identical merchandise for surrogate-value data, provided that the surrogate data is not distorted or otherwise unreliable. See, e.g.,Granular Magnesium.[47]

The Department's criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004) ("PRC Shrimp") and the accompanying Issues and Decision Memorandum at Comment 9F. The Department also has an established practice of rejecting financial statements of surrogate producers whose production process is not comparable to the respondent's production process when better information is available. See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 22183, 22193 (May 3, 2001) ("PRC Hot-Rolled"); Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) ("PRC Persulfates") and the accompanying Issues and Decision Memorandum at Comment 1.

The facts placed on the record support a determination that HSH's production process is not comparable to Nanning's and Jiheng's production process. See PRC Hot Rolled, in which the Department rejected the surrogate financial statements of a producer because "its financial information would be less comparable to that of the respondents" than other financial information on the record.

Although we find that the financial data submitted for HSH, Kanoria, and DCM are equally

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[46] Jiheng also cites Jilin which affirms the Department's remand determination to apply an average of overhead ratios from three surrogate Indian companies.

[47] See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 49345 (September 27, 2001) ("Granular Magnesium").

contemporaneous with the POI and are publicly available information, based on the information placed on the record, we find that the level of integration differs between the two mandatory respondents and HSH. However, we find the level of integration similar between the two respondents and Kanoria as well as DCM. The two mandatory respondents, Jiheng and Nanning, are integrated producers in that they self-produce certain major intermediate inputs for the production of subject merchandise, including caustic soda and chlorine gas. Jiheng has three plants (i.e., Cyanuric Acid Plant, Chlor-Alkali Plant, and TCCA Plant) and Nanning has two plants (i.e., Chlor-Alkali Plant and TCCA Plant), that self-produce intermediate inputs to subject merchandise. In order to produce these intermediate inputs, Jiheng and Nanning have certain production facilities and equipment. For example, to produce caustic soda and chlorine gas, Jiheng and Nanning have a Chlor-Alkali Plant and electrolysis equipment that transform industrial salt into caustic soda and chlorine gas. Further, Jiheng and Nanning have additional equipment to convert caustic soda from a low concentration level to a desired concentration levels. As a result, Jiheng and Nanning would incur capital expenses in connection with the production of intermediate products, and would have higher manufacturing overhead than a producer which does not own a chlor-alkali plant and not self-produce intermediate products.

Our record shows that HSH purchased all caustic soda and chlorine gas inputs that it needed to produce calcium hypochlorite. Therefore, HSH did not incur capital expenditures that are required to self-produce caustic soda and chlorine gas. Everything else being equal, HSH's manufacturing overhead would be lower than that of the producers who self-produce caustic soda and chlorine gas. Moreover, because HSH has to purchase caustic soda and chlorine at the market value, HSH's cost of manufacturing and subsequently SG&A ratio and profits will reflect the higher purchase values. Accordingly, HSH's manufacturing overhead and SG&A ratios are also not representative of Jiheng's and Nanning's experience. Consistent with PRC Hot Rolled and PRC Persulfates, we did not use HSH's financial information because we determined that HSH is not at a comparable level of integration as Jiheng and Nanning, and therefore, HSH's financial data would be less comparable to that of Jiheng and Nanning.

By contrast, our record shows that Kanoria self-produced liquid chlorine, while DCM self-produced both liquid chlorine and caustic soda. Because chlorine is a necessary input into stable bleaching powder, both Kanoria and DCM would have to incur the necessary capital expenditures in connection with stable bleaching powder production. Such capital expenditures would also have to reflect in Kanoria's and DCM's manufacturing overhead. Accordingly, the production experience of Kanoria and DCM are representative of the two respondents, Jiheng and Nanning.

Accordingly, we have relied on the financial data of Kanoria and DCM to derive surrogate financial ratios for Jiheng and Nanning in this final determination.

Comment 4: *Methodology for Valuing Caustic Soda and Chlorine Gas as By-Products*

Jiheng and Nanning self-produced caustic soda and chlorine gas (i.e., intermediate inputs used to produce subject merchandise) and reported their upstream factors of production ("FOP") for

producing caustic soda and chlorine gas in their questionnaire responses. In the Preliminary Determination, the Department valued the upstream inputs used to produce caustic soda and chlorine gas.

The petitioners and BioLab request that the Department value both caustic soda and chlorine gas directly because their proposed Indian surrogate producer, HSH, is a non-integrated producer whereas Jiheng and Nanning are integrated producers. They assert that the Department's practice on this matter is to value self-produced factors directly when the NME respondent is more integrated than the surrogate producer used for the financial ratio calculations.[48]

Jiheng and Nanning requests that the Department continue to use the methodology from the Preliminary Determination and not value caustic soda and chlorine gas directly.

Regarding valuation of caustic soda, the petitioners and BioLab further request that the Department use a different data source. Specifically, in the Preliminary Determination, the Department valued caustic soda flakes using an average POI price for caustic soda flakes based on Indian import data obtained from WTA. The petitioners and BioLab urge the Department to use POI price data from the Indian publication Chemical Weekly rather than the WTA price data for the final determination, because the Chemical Weekly price data, unlike the WTA price data on the record, provide a price for liquid caustic soda which the respondents, Jiheng and Nanning, used to produce the subject merchandise. Furthermore, the petitioners and BioLab contend that the Chemical Weekly price data is more appropriate to use because the Chemical Weekly price can be adjusted to reflect the different purity levels of the caustic soda used by the respondents.

The respondents did not address this issue.

Department's Position:

Based on the reasons mentioned in Comments 2 and 3 above, we agree with the respondents because we have not used HSH's financial data to derive the surrogate financial ratios as this Indian company, unlike the respondents, is a non-vertically integrated producer. Therefore, we find it unnecessary to directly value the caustic soda and chlorine gas amounts reported by the

[48] In support of their argument, the petitioners cite the following cases: Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine, 67 FR 55785 (August 30, 2002) ("Ukraine Wire Rod") and the accompanying Issues and Decision Memorandum at Comment 4; Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China, 68 FR 46577 (August 6, 2003) ("Barium Carbonate"), and the accompanying Issues and Decision Memorandum at Comment 3; Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 4986 (January 31, 2003) ("Vietnam Fish Fillets") and the accompanying Issues and Decision Memorandum at Comment 3; and Final Results Pursuant to Remand in Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, Inv. No. A-570-865 (November 7, 2003) ("First Anshan Remand Determination") at page 4.

respondents on the basis that use of HSH's financial data generates a surrogate ratio distortion. Accordingly, we have continued to value these respondents' reported upstream inputs used to produce caustic soda and chlorine gas in the final determination.

With respect to the petitioners and BioLab's arguments about the data source for valuing caustic soda, we consider the issue irrelevant because we are not applying a surrogate value to caustic soda in the final determination. Rather, we are valuing the inputs which the respondents used to produce caustic soda.

Comment 5: *Valuation of Electricity*

In the Preliminary Determination, the Department valued electricity using an average 2000 industrial rate from the International Energy Agency's ("IEA") publication, Energy Prices and Taxes, Second Quarter, 2002.[49]

For the reasons discussed below, Jiheng argues that the Department should use in the final determination either (1) the actual POI costs incurred by the Indian surrogate companies; (2) the costs incurred by a sample of 13 Indian chlor-alkali producers; or (3) the published Indian nation-wide rate corrected to reflect actual country-wide effective costs.

Jiheng argues that the Indian companies for which the Department will use the financial data to derive surrogate financial ratios in the final determination generate all or most their own power, and only buy power from State Electrical Boards ("SEBs") at highly discounted, specially negotiated rates. Jiheng maintains that these Indian companies (which include producers of comparable merchandise and are part of the chlor-alkali industry in India) depend primarily on self-produced power because the chlor-alkali industry in India is uniquely dependent on a reliable and affordable electricity supply due to the unreliability and high prices of the Indian electricity grid force. When Indian chlor-alkali producers do purchase electricity from the SEBs, Jiheng argues, it is at greatly reduced rates.

If the Department relies on the actual electricity costs of either the Indian surrogate companies or the larger set of 13 Indian chlor-alkali companies to value electricity, Jiheng argues that this data would accurately capture the full costs of the electricity factor as the Department will also be using the overhead financial ratios based on some of these Indian companies' financial data. On the other hand, Jiheng argues that applying the country-wide published price for general customers of the SEBs would be distortive because those rates do not reflect the fact that the chlor-alkali industry relies on self-generated power and discounted SEB rates. Therefore, Jiheng argues that applying the country-wide undiscounted electricity rate both misrepresents the companies' actual costs and double-counts the capital costs associated with electrical generation because these costs are part of the overhead ratio which the Department will derive from data

[49] After adjusting for inflation, the IEA electricity rate is 0.09 U.S. Dollars per kilowatt hour. See Preliminary Factors Valuation Memo at page 9 and Attachment 3.

contained in certain Indian companies' financial reports.

In support of its argument that the Indian chlor-alkali industry relies mainly on self-generated electricity, Jiheng provided the financial reports of 13 Indian producers in the chlor-alkali industry, the data of which shows that ten of those companies generate their own power while nine have greatly reduced rates for the SEB power they purchase. Jiheng also notes that the only chlor-alkali producer in India in the POI that did not rely on either internally generated or highly discounted power sources during the POI is in severe financial difficulty.[50] Therefore, Jiheng argues that only companies which either produced self-generated power and/or paid significantly discounted SEB electricity rates can successfully participate in chlor-alkali production in India.

In support of its argument that the Department has considered the need to take into account the energy sources of respondents and surrogates, Jiheng cites to Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, 67 FR 35479 (May 20, 2002) ("Structural Steel Beams") and the accompanying Issues and Decisions Memorandum at Comment 2, and Final Determination of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products from the People's Republic of China, 66 FR 49632 (September 28, 2001) ("PRC Hot Rolled") and the accompanying Issues and Decisions Memorandum at Comment 2.

In the Structural Steel Beams decision, Jiheng notes that the Department chose not to value a respondent's reported energy input factors in order to avoid an incorrect normal value, because the company (which was the source for surrogate financial ratios) did not generate its own electricity. Similarly, Jiheng notes that in PRC Hot Rolled the Department ruled out using the reported energy input factors for a respondent if the Indian surrogate producer purchased its power externally, by noting that to do so, when the respondents "are self-producing some or all of their energy, would be understating normal value."[51] Jiheng further notes that the Department stated in PRC Hot Rolled that it sought to "avoid double-counting" of capital costs for energy production equipment by using surrogate values for energy-producing gases which the respondent self-produced because the surrogate financial ratios were from a company that did not self-produce these items.

For the final determination, Jiheng points out that the Department will derive surrogate financial ratios from the data of firms that, unlike Jiheng, produce their own electricity. Furthermore, Jiheng states that the Department does not attempt to adjust the data in surrogate companies' financial reports to account for capital costs associated with energy production.[52] In light of these

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[50] See Jiheng's November 24, 2004, Surrogate Values Letter, which contains the 2003-2004 company annual report of Punjab Alkalies, a company functioning as a "sick" company under Indian law.

[51] Jiheng cites the Issues and Decisions Memorandum accompanying PRC Hot Rolled, Comment 2.

[52] Jiheng cites the Issues and Decision Memorandum accompanying Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003) (Polyvinyl Alcohol) at Comment 10.

considerations, Jiheng argues that the Department must base electricity costs on the costs paid by the companies whose data the Department will use to derive surrogate financial ratios in the final determination.

Alternatively, if the Department declines to use company-specific or industry-specific weighted average electricity costs, then Jiheng argues that the Department must adjust the country-wide rate to reflect the actual effective country-wide cost of electricity in India after accounting for electricity that is not paid due to theft, incomplete invoicing and uncollected invoices. In support of this approach, Jiheng claims that independent industry and business journals show that of the power generated by the SEBs, only 55 percent is billed and only 41 percent is paid.[53]

The petitioners argue that the Department has a long-established and consistent practice of preferring country-wide data over company-specific sources and that for electricity in particular, the Department has repeatedly rejected arguments that data from individual companies or industry-specific circumstances warrant the use of some narrower data to value electricity. The petitioners argue that while there are chlor-alkali producers spread throughout India, there is insufficient evidence to draw conclusions concerning the industry or to determine that the country-wide rate is inappropriate. The petitioners and BioLab both emphasize that the Department's practice is to use country-wide electricity rates whenever possible in order to avoid potential distortions from individual companies or regions, or manipulation of results through careful selection by respondents of proposed surrogate companies.

The petitioners argue that in Silicomanganese From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000) ("Silicomanganese") and the accompanying Issues and Decisions Memorandum at Comment 2, the Department defended the use of country-wide average rates, notwithstanding the respondent's characterization of those rates as aberrationally high and/or the energy-intensive nature of silicomanganese production. The petitioners note that the Department determined in Silicomanganese that "Indian industrial rates are comparable to rates in a wide range of countries."

Furthermore, the petitioners argue that electricity rates during 2000 reflected a wide range among the member states of Organization of Economic Cooperation and Development ("OECD"), and that India's industrial electricity rate is in the middle of that range. The petitioners also argue that India's nominal published rates are "comparable" to those of several other countries with significant chlorine and caustic soda production. On this point, BioLab also notes that the Department found in Silicomanganese that electrical rates in India were not aberrational based on

[53] Jiheng cites, among other sources: "Reform and Restructuring," International Water Power & Dam Construction, 55 (9), September 26, 2003; "Getting a Grip on Power," Petroleum Economist, 70 (8), August 28, 2003; "Theft Scars Indian Power Utility Results," Power Economics, 6 (7), July 1, 2003; "Power Market or Myth," Power Engineering International, 10 (3), March 24, 2002. See Jiheng's Arent Fox's February 15, 2005 Submission of Publicly Available Price Data for Use as Surrogate Values ("Jiheng Feb. 15, 2005 Surrogate Values Submission") at Exhibit 10, pages 47-49, 52-53, 63, and 83-85.

rates of 32 industrial countries

Regarding the long-standing nature of the problems in India's electricity market as presented by Jiheng, the petitioners argue that the Department stated in Silicomanganese that it "has never found that India's state of regulation makes its rates unreliable."[54]

In response to the data Jiheng provided to support its claim that Indian chlor-alkali producers rely on self-generated electricity and/or pay discounted SEB rates, the petitioners and BioLab argue that the 13 companies presented by Jiheng are an incomplete representation of the Indian chlor-alkali industry. For this reason, the petitioners and BioLab contend that the Department does not have sufficient evidence for establishing the average electricity price paid by Indian producers of intermediate inputs used to produce the subject merchandise or for that matter producers of comparable merchandise. Moreover, BioLab argues the Department stated in Silicomanganese that high costs alone did not completely account for self-generated power in the ferro-alloy industry, because other factors (such as the need to ensure a steady supply) influenced the widespread use of internal power systems. For this reason, BioLab contends that the Department concluded in Silicomanganese that "the existence of such internal generation cannot be viewed as indicative of aberrational (i.e., high) electricity rates."[55]

In response to Jiheng's suggestion that the Department use industry-specific electrical costs, the petitioners argue that the only precedent case for such an approach had case facts distinct from the present case. In particular, the petitioners argue that in Preliminary Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China, 65 FR 66703 (November 7, 2000) ("Preserved Mushrooms"), the Department used an industry-specific rate for electricity only because it had specialized knowledge of the Indian mushroom industry, and because all the producers in India were concentrated in relatively close proximity.[56] Furthermore, the petitioners contend that the Indian chlor-alkali industry, unlike the mushroom industry, is spread throughout the entire country, and the Department does not have specialized knowledge of the chlor-alkali industry. Therefore, the petitioners maintain that a similar approach taken in Preserved Mushrooms would not be correct in this case.

In response to Jiheng's argument that self-generated power and low negotiated SEB rates represent the experience of the chlor-alkali industry in India, the petitioners argue that Jiheng overlooks other influences, such as "unfairly priced import of caustic soda" and overcapacity. The petitioners argue that Jiheng's own data fails to show a high degree of correlation between

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[54] See Silicomanganese Issues and Decisions Memorandum at Comment 2.

[55] See Issues and Decisions Memorandum, Silicomanganese, Comment 2B

[56] The use of company-specific electricity rates was not reversed in the final results of this case (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)).

profitability and low electrical costs, but do show that there is a broad variation in costs across companies.

The petitioners further argue that since chlorine and caustic soda are not identical or comparable to subject merchandise, it is not clear why the experience of the Indian chlor-alkali industry is relevant, particularly since the production of calcium hypochlorite, the main product line of HSH, is only one-third as energy intensive as caustic soda.

In response to Jiheng's suggestion to adjust effective electrical tariffs to reflect the low average effective billing and collection rates, the petitioners suggest this approach would lead to an entirely hypothetical analysis, and would also assume, untenably, that a producer of comparable merchandise is engaged in illegal behavior.

Nanning did not comment on this issue.

Department's Position:

The Department's practice is defined in the Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000) ("Aspirin") and the accompanying Issues and Decision Memorandum at Comment 6 . In Aspirin, the Department stated that it normally uses and prefers a country-wide electricity rate, because this type of rate reflects a broad-base cost for electricity which ensures a fair representation of electricity costs country-wide. Rather than use the company-specific data of the Indian surrogate companies to value electricity costs, the Department decided in favor of using a broad countrywide rate because "a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country."[57] See also Silicomanganese, at Comment 2; Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China, 67 FR 6482 (February 12, 2002) ("Windshields") and the accompanying Issues and Decision Memorandum at Comment 7; Persulfates and accompanying Issues and Decision Memorandum at Comment 2; and Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China, 70 FR 9037 (Feb. 24, 2005) and accompanying Issues and Decision Memorandum at Comment 11.

The Department prefers to use country-wide rates rather than the electrical costs of individual companies, even in circumstances such as a high energy usage level and a high degree of self-generation in the industry of the surrogate companies. We disagree with Jiheng that the particular circumstances of the Indian chlor-alkali industry and the Indian electricity market mandate a departure from our normal practice.

[57] See Aspirin, Issues and Decision Memorandum at Comment 6.

Nevertheless, there are exceptions where the Department has determined that it was necessary to depart from its normal practice and use industry-specific rates. See Preserved Mushrooms and Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002), and the accompanying Issues and Decision Memorandum at Comment 6 ("Fresh Garlic"). However, in both of these instances, there were particular circumstances justifying the departure.

In Fresh Garlic, the Department concluded that the industry-specific rates were more contemporaneous than the alternative that was available and were inclusive of a broad sample of the agricultural sector in question.[58] In this case, although the rates provided by Jiheng ~~in this case~~ are contemporaneous with the POI, the sample of 13 companies only constitutes at most a quarter of Indian's chlor-alkali industry according to the information provided by the petitioners and BioLab that there are from 51 to 73 such producers in India.[59] This sample is not sufficiently broad enough to represent Indian's chlor-alkali industry as a whole. Despite the fact that the Department used industry-specific rates to value electricity in Fresh Garlic, the Department also stated in that case that "we prefer to use country-wide data whenever possible and only resort to the use of company-specific rates when country-wide data are not available."[60] By contrast, in the present case, country-wide electricity data is available.

Preserved Mushrooms was a unique case in that the Department used an industry-specific rate for electricity because of the reliability of the data coupled with the fact that all the producers in India were concentrated in relatively close proximity. Neither circumstance applies in the present case. However, we note that in subsequent Preserved Mushrooms reviews, the Department returned to country-wide SEB rates in accordance with its standard practice.[61]

Furthermore, we agree with the petitioners that the Department's general practice is not to tailor

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[58] See Fresh Garlic, Issues and Decisions Memorandum at Comment 6.

[59] See CMAI-Worldwide Caustic Soda Capacity, Thousands of Metric Tons, December 2004, in the petitioners's February 15, 2005 Final Factor Value Submission, Exhibit 8.

[60] Id.

[61] See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003) which cites to Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results and Partial Rescission of Fourth Antidumping Duty New Shipper Review and Preliminary Results of Third Antidumping Duty Administrative Review, 68 FR 10694, 10702 (March 6, 2003); and Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004) which cites to Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results and Partial Rescission of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review, 69 FR 10410, 10421 (March 5, 2004).

surrogate energy costs unless, as mentioned above in Fresh Garlic, countrywide data is unavailable. See also Polyvinyl Alcohol.

Regarding Jiheng' reliance on PRC Hot Rolled to support its claim that the Department has expressed a need to account for differences in energy sources between respondents and surrogate companies, certain other issues, besides accounting for differences in energy sources, were also involved in that case. For example, the Department noted that in order to rely on the internally generated energy factors alone, "the Department would have to conduct in essence two investigations, one into the production of the subject merchandise and another into the production of the inputs into certain factors." Because this difficulty was an additional factor behind the Department's approach in PRC Hot Rolled, the decision in that case does not signify a rejection of the general preference for country-wide rates.

Regarding Jiheng's reliance on Structural Steel Beams to support its claim that there is also sufficient evidence in this case which demonstrates the need to account for energy production methods in selecting or applying energy costs for surrogate values, we find that a different fact pattern than in the present case applied. In fact, the Department noted in Structural Steel Beams that it was concerned with capturing the capital cost of producing three gases rather than capturing the capital cost of electricity. For this reason, the Department stated explicitly that the capital cost of electricity was not an issue in Structural Steel Beams. [62]

Regarding the need to compensate for the different overhead rate experienced by the surrogate companies because of their reliance primarily on self-generated electricity, it remains the Department's view that as stated in Polyvinyl Alcohol we do not attempt to adjust the financial data in surrogate companies' annual reports to account for capital costs associated with energy production.[63]

Finally, Jiheng fails to show how its suggestion that we should compensate for the widely reported high level of loss and uncollected bills and theft in the Indian electricity market would give greater accuracy to the calculations, since these phenomena do not appear to characterize electricity purchasing practices at the surrogate companies we are using for financial ratios, or the chlor-alkali producers presented by Jiheng, all of whom account for their electrical costs as fully documented matters of public record.

Accordingly, for the reasons mentioned above, we have continued to use the country-wide rate published by the IEA in the final determination.

Comment 6: *Intermediate Input By-products: Hydrogen Gas, Chlorine Gas, Sulfuric Acid, and Ammonia Gas*

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[62] Structural Steel Beams, Issues and Decision Memorandum at Comment 2.

[63] Polyvinyl Alcohol, Issues and Decision Memorandum at Comment 10.

In the Preliminary Determination, the Department granted offsets to the normal value calculation for Jiheng's four by-products[64] and for Nanning's two by-products[65] because each respondent provided information in their questionnaire responses to support their claims that these were by-products generated in the production of subject merchandise, and they were either reused or were sold.

The petitioners and BioLab argue that the Department should disallow the deduction from normal value of the value of these by-products because such products are created during the production of intermediate products (i.e., caustic soda, chlorine gas, and cyanuric acid).

First, the petitioners argue that, if the Department uses HSH as a surrogate company, then the need to make offsets for by-products created in the chlor-alkali production process would no longer apply. Second, the petitioners argue that many of the by-products claimed by Jiheng and Nanning are not directly related to producing the subject merchandise, but rather result from the production of non-subject merchandise, and therefore do not qualify as a justification for granting offsets. In support of this argument, the petitioners cite to Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964, 61997 (November 20, 1997) (Carbon Steel Plate) and assert that it is the Department's policy to allow offsets only for by-products which are "actually produced directly as a result of the production process."

The petitioners and BioLab both argue that the Department has followed the above-noted practice by refusing to grant offsets for "by-products of the production of non-subject merchandise, notwithstanding the fact that the non-subject merchandise is used in the production of {subject merchandise}." See Ukraine Wire Rod and the accompanying Issues and Decision Memorandum at Comment 5. The petitioners and BioLab note that the Department stated that since lime dust was "not generated inescapably in the production of steel" "it is not properly construed to be produced directly as a result of the production of subject merchandise."[66] The petitioners argue that the same reasoning should rule out the allowance of offsets for the by-products resulting from the manufacture of cyanuric acid, sulfuric acid and ammonia gas.

BioLab also argues that the Department treats self-produced inputs as if they were purchased, not self-produced, and therefore there is no need to value by-products resulting from their production. In support of its argument, BioLab cites to Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China , 68 FR 46577 (August 3, 2003) (Barium Carbonate) and the accompanying Issues and Decision Memorandum at Comment

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[64] These by-products are ammonia gas, chlorine gas, hydrogen gas, and sulfuric acid.

[65] These by-products are chlorine and hydrogen gas.

[66] Ukraine Wire Rod Issues and Decisions Memorandum at Comment 5.

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Jiheng, in its rebuttal, distinguishes the facts in cases cited by the petitioners and BioLab as follows. Regarding Ukraine Wire Rod, Jiheng argues that the Department was concerned with self-produced factors used by the respondent that essentially arose in production without any sort of initial purchase. Jiheng further maintains that in Ukraine Wire Rod, the respondent mined its own iron ore and produced its own electricity. Therefore, if the Department had valued nothing but the labor and inputs associated with the mining operation and the energy production, Jiheng contends that the Department would not have been able to accurately account for the raw materials consumed and the energy and other utilities consumed. By contrast, Jiheng claims that it purchases all the inputs used to manufacture its caustic soda and chlorine gas, and does not own or operate a mine to produce these materials or the base material to produce them (i.e., salt). Therefore, Jiheng argues that the facts in this case are quite different from the facts present in Ukraine Wire Rod.

Regarding Barium Carbonate, Jiheng similarly argues that the case facts are different because in that case, as in Ukraine Wire Rod, the Department was concerned with valuing a self-produced input for which the associated capital costs would not be captured unless the self-produced input (i.e., carbon dioxide) was valued as a direct material input. Again, Jiheng argues, the facts in the instant case do not involve a component which would otherwise not be accounted for in the factor valuation.

Nanning did not address this issue.

Department's Position:

With respect to the petitioners and BioLab's arguments that these by-products were produced in the production of non-subject merchandise and therefore should be denied a credit, we disagree. We have determined that including offsets to normal value for documented and verified by-products (i.e., Jiheng's reported amounts for ammonia, chlorine, and hydrogen gases and sulfuric acid and Nanning's reported amount for hydrogen gas), even when these by-products result from intermediate stages of production, is consistent with Department practice. See, e.g., Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review, 70 FR 10965, 10976 (March 7, 2005) ("Mushrooms"). In Mushrooms, the Department granted offsets to scrap/by-product generated during the tin-can production process, an intermediate stage of production to the subject merchandise.

The petitioners' and BioLab's reliance on Carbon Steel Plate regarding by-product offsets is misplaced. In Carbon Steel Plate, the Department disallowed certain by-product offsets not because the by-product did not result directly from the production process of subject merchandise. Rather, the by-product at issue was a secondary by-product which required further refinement into a sellable product. Because the respondent in Carbon Steel Plate did not provide the factors

involved in the further refinement, the Department "only {granted} a credit for the one by-product directly produced in the production process." The Department further stated that "{a} respondent must report the factors associated with the further refining of a by-product if it wishes to receive a credit for the further refined product." See Carbon Steel Plate, 62 FR at 61991.

In this case, the by-products claimed by Jiheng and Nanning do not require further refinement. Instead, the by-products result from intermediate stages of production. Therefore, the facts in this case are different from that of Carbon Steel Plate. Further, Jiheng and Nanning have provided necessary information for their claim of by-products, including production re-use and/or sale information.[67] We have fully examined these companies' information at verification and confirmed, with one exception (i.e., Nanning's chlorine gas as noted in Comment 18 below), that the by-products at issue were compensated or were re-used in production. Therefore, we continue to grant, where applicable, by-product offsets to Jiheng and Nanning in the final determination.

Comment 7: *Reclassification and Adjustments to Certain Financial Data*

In its profit and loss statement, HSH (i.e., an Indian calcium hypochlorite producer) includes its "Trading Purchases" within an expenditure category. HSH also treats "Consumption of Other Chemicals" as other manufacturing expenses (which is also included in the "expenditure" category). Similarly, HSH also includes "Managerial Remuneration" in the expenditure category.

In their February 2005 PAI surrogate value submissions, both the petitioners and Jiheng assert that if the Department uses HSH's data to derive surrogate financial ratios, then the Department has to reclassify or make certain adjustments to the following items contained in HSH's financial data when they derived their financial ratio calculations: "Trading Purchases," "Consumption of Other Chemicals," "Manufacturing Expenses," "Managerial Remuneration," "Packing Materials," "Rents, Rates & Taxes," "Expenses/Income relating to earlier years (Net)," and "Interest Income."

The petitioners assert that the Department should exclude HSH's "Trading Purchases" from the calculation of financial ratios. Because the ratios calculated from the financial statement of the surrogate producer are applied against the cost of manufacture build-up for each respondent, the petitioners argue, the denominator of the calculation should include only manufacturing costs. The petitioners point out that HSH's financial statement indicates that it purchases aluminum sulfate as a finished product in India for export as a reseller. The petitioners maintain that HSH's "Trading Purchases" does not involve manufacturing costs and therefore, they must be excluded from the denominator.

Petitioners assert that HSH's expenses for "Consumption of other Chemicals" should be reclassified as manufacturing overhead rather than raw materials. Specifically, the petitioners

[67] With an exception of certain chlorine tail gas claimed by Nanning, see Comment 20 below for further detail.

state that HSH's financial statement treats these expenses as "other manufacturing expenses" and not as raw materials. According to the petitioners, these are most likely minor process chemicals that the Department ordinarily treats as part of manufacturing overhead rather than separately valuing.

Similarly, the petitioners propose that HSH's reported "manufacturing expenses" be reclassified as factory overhead. The petitioners note that these expenses are classified as manufacturing costs by HSH, but there is no indication that these expenses involve raw materials, labor, or energy costs; rather, they are reported separately in HSH's financial statement.

The petitioners argue that HSH's managerial remuneration should be deducted from the reported "Salaries, Wages and Bonus" category and reclassified this amount as SG&A expense.

The petitioners rebut Jiheng's position to include "Packing materials" as a cost in the denominator of the financial ratio calculations. The petitioners indicate that packing materials and labor are separately accounted for in the Department's calculations as a reduction to U.S. sales rather than as an element of manufacturing cost. Accordingly, these expenses should be excluded from the financial ratio calculations.

The petitioners disagree with Jiheng in excluding the amounts for "Rents, Rates & Taxes" from its calculation of HSH's SG&A ratio. The petitioners claim that the Department has previously found that these expenses are not excise or sales taxes (which are reported separately on HSH's financial statement), but are rather "the type of expenses that Indian producers incur in the ordinary normal course of business." Accordingly, HSH's expenses for rents, rates and taxes should be included as an addition to SG&A expense.

In addition, the petitioners disagree with Jiheng that income related to activities in a prior year should be included in the SG&A calculation. The petitioners argue that "Expenses/Income relating to earlier years (Net)" should be excluded from the SG&A calculation.

Finally, countering Jiheng's position to deduct the full amount of interest income that HSH received during its 2003-04 fiscal year as an offset to SG&A expense, the petitioners argue that the Department's policy is to allow deductions of interest income only on short-term loans. Because HSH's financial statement does not appear to specify whether or not the interest revenue was received on short-term or long-term loans, the petitioners argue that it would be inappropriate to offset SG&A expense by this amount.

Jiheng maintains that the Department should reject the petitioners' revisions to HSH's financial ratios. Regarding "Trading Purchases," Jiheng maintains that it should be treated as part of the materials, labor, and energy costs ("MLE"). In the alternative, Jiheng argues, if the Department chooses not to account for "Trading Purchases" in the MLE, then this item must be accounted for in the denominator of the SG&A ratio because it cannot be excluded outright. Jiheng further indicates that HSH listed its "Trading Purchases" as an Expenditure, but does not specify what

expenses are associated with the purchases. Pursuant to Fuyao Glass Ind. Group Co., et al. v. U.S., 2005 WL 280437, 18 (CIT2005) ("Fuyao Glass"), Jiheng argues, the CIT instructed the Department, when it cannot determine where the expenses associated with the purchase of traded goods are accounted for, to include the purchase of traded goods in the denominator of the SG&A ratio.

Regarding the petitioners position to reclassify "Consumption of other Chemicals" as manufacturing overhead rather than raw materials, Jiheng contends that such a treatment does not comport with the reality of what Jiheng reported in its factors of production worksheets. Specifically, Jiheng notes that in its November 8, 2004, submission at Exhibit SD-3, Jiheng reported all raw materials consumed, even those consumed in minute amounts, as raw materials, and not as manufacturing overhead. Thus, Jiheng submits that accounting for HSH's consumption of other chemicals as raw materials, properly classified as MLE, comports with Jiheng's actual behavior and the Department's reporting requirements for raw materials.

With respect to the petitioners reclassifying manufacturing expenses as factory overhead, Jiheng counters that these expenses should be categorized as part of the MLE. Jiheng points out that power and fuel are also listed in that category, thereby demonstrating that this category is not exclusive to items the petitioners would designate as factory overhead. Accordingly, Jiheng maintains that, like power and fuel, manufacturing expenses should be classified as MLE. Concerning the petitioners assertion that managerial salaries be deducted and the "Salaries, Wages, and Bonus" be reclassified as an SG&A expense," Jiheng contends that the petitioners assertion should be rejected. Specifically, Jiheng claims that although HSH lists its managerial salaries in the notes of the financial report rather than the schedules where SG&A is identified, the financial report does not specify whether the expenses are for managers associated with production of products or for managers who supervise SG&A activities. In support of its argument, Jiheng cites Synthetic Indigo from the People's Republic of China, 65 FR 25706 (May 3, 2000) ("Synthetic Indigo"), and the accompanying Issues and Decision Memorandum at Comment 10. Jiheng submits that in Synthetic Indigo, the Department has previously, on very similar facts, determined that there is "no basis upon which to... reclassify {managerial salaries} from direct labor costs to SG&A costs."

Jiheng did not comment on the petitioners arguments regarding "Packing materials," "Rents, Rates & Taxes," "Expenses/Income relating to earlier years (Net)," and "interest income."

Department's Position:

The issues raised in this Comment were directed to HSH's financial reports. The Department has determined not to use HSH's financial reports. See Comments 2 and 3. However, some of the issues are also relevant to the financial data of the two selected surrogate producers from India, i.e., Kanoria and DCM. These issues include: Trading Purchases, Manufacturing Expenses, Packing Materials, Rents, Rates & Taxes, and Interest Income.

Regarding "Trading Purchases," when deriving surrogate financial ratios based on the data contained in the financial report for the Indian producers, it is the Department's practice to apply the surrogate manufacturing overhead ratios to the build-up of the respondent's cost of manufacture ("COM"). The denominator of these ratios must include, to the extent possible, only the manufacturing costs incurred by the selected Indian surrogate producers of comparable merchandise whose financial data the Department used to derive surrogate manufacturing overhead ratios in this investigation so that we are applying the financial ratios on an apples-to-apples basis. See Folding Metal Tables and Chairs[68] and Amended Metal-Top Ironing Tables.[69] In the instance case, the two selected Indian surrogate producers, Kanoria and DCM, have similar items listed in their annual financial reports (i.e., "Finished Goods Purchases" for Kanoria, and "Purchases for Resale" for DCM). Because these items do not reflect the surrogate Indian producers' manufacturing costs, in calculating the surrogate manufacturing overhead ratio we have excluded these traded goods line items from Kanoria's and DCM's COM, i.e., the denominator of the overhead ratio calculation. See e.g., the Memorandum to File from Tom Killiam, Case Analyst, Investigation of Chlorinated Isocyanurates from the People's Republic of China: Factors Valuation For the Final Determination, dated May 2, 2005 ("Factors Valuation Memo").

The Department will normally include the purchase of traded goods in the denominator to calculate the SG&A and profit ratios because a company does incur SG&A expenses and realize profit on traded goods. See Amended Folding Metal Tables and Chairs, Amended Metal-Top Ironing Tables, and Fuyao Glass. In this instance, the financial data of Kanoria and DCM contain "Finished Goods Purchases" and "Purchases for Resale," Therefore, we have included the purchase of traded goods (i.e., "Finished Goods Purchases" for Kanoria, and "Purchases for Resale" for DCM) in the denominator of the SG&A and profit ratio calculations. See the Factors Valuation Memo.

Regarding "Consumption of Other Chemicals," our record shows that Jiheng and Nanning have reported detailed raw materials consumed, including those consumed in minute amounts, as raw materials, not as manufacturing overhead. Therefore, accounting for surrogate producer's consumption of other chemicals as raw materials, and classified as MLE, comports with Jiheng's and Nanning's actual experience. However, in this instance, the financial data contained in Kanoria's and DCM's Annual Reports do not have "Consumption of Other Chemicals," and therefore, the issue is no longer relevant.

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[68] See Folding Metal Tables and Chairs From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 69 FR 75913 (December 20, 2004) ("Folding Metal Tables and Chairs"), and the accompanying Issues and Decision Memorandum; see also Amended Final Results of the First Antidumping Duty Administrative Review: Folding Metal Tables and Chairs From the People's Republic of China, 70 FR 3187 (January 21, 2005) ("Amended Folding Metal Tables and Chairs").

[69] See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China, 69 FR 47868 (August 6, 2004) ("Amended Metal-Top Ironing Tables").

With respect to "Manufacturing Expenses," we find that the manufacturing expenses detailed in Schedule L of Kanoria's 2003-2004 financial report, entitled "Manufacturing Expenses," includes "Consumption of Spare Parts," "Other Manufacturing Expenses," "Power and Fuel," "Repairs and Maintenance: Plant & Machinery; Buildings; Others," and "Water Charges & Cess." We included "Power & Fuel" and "Water Charges and Cess" in the denominator in calculating the manufacturing overhead ratios, because the respondents reported their factors for these items. We included the other items listed in Kanoria's Schedule L in the numerator in calculating the manufacturing overhead ratios because these items are manufacturing overhead expenses. For DCM, we accounted for all the items listed in its Schedule 11, "Manufacturing and Other Expenses," in the Factors Valuation Memo.

With respect to "Managerial Remuneration," in this instance, the financial data contained in Kanoria's and DCM's annual reports specify this item in separate notes. Accordingly, we have deducted the amounts indicated as "managerial remuneration" from manufacturing expenses of DCM and Kanoria, and added it to their respective SG&A expenses. See Factors Valuation Memo.

Regarding "Packing Materials," the Department's practice is that packing materials and labor are separately accounted for in the Department's calculations as an addition to normal value and to the U.S. price. Accordingly, these expenses, if known, should be excluded from the financial ratio calculations. However, in this instance, the financial reports of Kanoria and DCM do not disclose this item.

Concerning "Rents, Rates & Taxes," the Kanoria and DCM financial statements both disclose "Rates and Taxes," not "Rent, Rates and Taxes." It is the Department's practice to exclude "Rates and Taxes" from the ratio calculations because we perform comparisons on a tax neutral basis. See Antidumping Duties: Countervailing Duties, 62 FR 27296, 27369 (May 19, 1997).

With respect to "Expenses/Income relating to earlier years (Net)," the issue is inapplicable because both the financial data contained in Kanoria's and DCM's annual reports do not have this item listed.

Concerning "Interest Income," the Department's policy is to allow deductions of interest income only on short-term loans. We only reduce interest and financial expenses by amounts for interest income if the Indian financial report noted that the income was short-term in nature. See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Brake drums and Brake Rotors From the People's Republic of China, 62 FR 9160 (February 28, 1997) at comment 6 ("Brake Rotors"). See also Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 61 FR 14062 (March 29, 1996). In this instance, Kanoria reported no short-term interest income. For DCM, we included short-term interest income in the calculation of SG&A expenses as a deduction.

Comment 8: *Timeliness of Publicly Available Information Contained in the Petitioner's February 25, 2005, Submission*

The Preliminary Results were published on December 16, 2004, and all parties had forty days after that date, in accordance with 351.301(c)(3)(I), to submit additional publicly available information for consideration in the final determination. On January 21, 2005, both Jiheng and Nanning requested an extension of time until February 11, 2005 in which to file PAI, which the Department granted. On February 10, 2005, BioLab requested an extension of time in which to file PAI with the Department, this time until February 15, 2005, which the Department granted. In its February 25, 2005, rebuttal surrogate values submission, the petitioners included, as additional PAI, the 2003-2004 financial report for Grasim Industries Ltd. ("Grasim") for consideration in the final determination.

Jiheng asserts that the Grasim financial report contained in the petitioner's February 25, 2005 submission was untimely filed and is not permissible under 19 CFR 351.301(c)(1) because the PAI submitted by the petitioner does not rebut, clarify, or correct the factual information submitted by Jiheng in its February 15, 2005, surrogate values submission (i.e., data contained in the financial reports of stable bleaching powder producers such as Kanoria, DCM and HSH). Jiheng further argues that unlike a recent case in which the Department admitted evidence in the form of a financial statement after the deadline had passed for PAI,[70] in this case the new information is not the updated version of a financial report already on the record, but that of a newly introduced company (i.e., Grasim). Therefore, for the reasons stated above, Jiheng argues that the Department should reject the data contained in Grasim's 2003-2004 financial report in the final determination.

Neither the petitioners nor Bio-Lab commented on this issue.

Department's Position:

The Department disagrees with Jiheng that Grasim's financial report should not remain on the record for consideration in the final determination for the following reasons mentioned below.

In its February 15, 2005, PAI submission, Jiheng provided the financial reports of three Indian companies which it later argued in its case brief were producers of comparable merchandise (i.e., stable bleaching powder). In accordance with section 351.301(c)(1) of the Department's regulations, the petitioners are entitled to rebut, clarify or correct the factual information contained in Jiheng's February 15, 2005, submission. Although the PAI submitted by the petitioners on February 25, 2005, does not rebut, clarify, or correct the factual information submitted by Jiheng in its February 15, 2005, surrogate values submission, the Department accepted the financial reports of Grasim. As Grasim is a producer of comparable merchandise (i.e., stable bleaching

[70] See Fresh Garlic and the accompanying Issues and Decisions Memorandum at Comment 5.

powder), other parties had an opportunity to correct, clarify or rebut the additional data in their briefs.

II. Company-Specific Comments:

Jiheng:

Comment 9: Jiheng's Allocation Methodology for Caustic Soda and Chlorine Gas

In its normal course of business, Jiheng allocates 53 percent of the costs of raw material inputs used during the electrolysis process at its Chlor-Alkali Plant to caustic soda production, and 47 percent of those costs to chlorine gas production. For reporting purposes, Jiheng allocated its common factors of production to caustic soda and chlorine gas based on the actual relative production volumes of 92 percent caustic soda and 8 percent chlorine gas produced during the electrolysis process.

BioLab argues that section 773 (f)(1)(A) of the Act provides that the Department must normally determine costs based on the records of the exporter or producer subject to investigation, if such records are kept in accordance with the generally accepted accounting principles ("GAAP") of the exporting country. Furthermore, BioLab maintains that explicit language contained in the Statement of Administrative Action ("SAA") states that the Department "will consider whether the producer historically used its submitted cost allocation methods to compute the cost of the subject merchandise prior to the investigation . . . and in the normal course of business," and that "if Commerce determines that costs . . . have been shifted away from production of the subject merchandise, or the foreign like product, it will adjust costs appropriately, to ensure they are not artificially reduced." [71] In this case, BioLab contends that the volume-based allocation methodology used by Jiheng in reporting its factors of production to the Department is different from the value-based allocation methodology used in the normal course of business prior to the investigation and results in an allocation of costs away from the production of subject merchandise. Therefore, BioLab maintains that the Department should rely on the cost allocation between caustic soda and chlorine gas used by Jiheng in its normal course of business.

Jiheng maintains that its allocation methodology is appropriate and reasonable and contends that the Department should reject BioLab's assertion that production costs should be allocated between caustic soda and chlorine gas based on accounting principles promulgated in a NME. In the event that the Department determines that it is more appropriate to allocate costs between caustic soda and chlorine gas in accordance with PRC accounting practices, Jiheng notes that the record contains all the information necessary to allocate costs based on a cost allocation of 53 percent to caustic soda and 47 percent to chlorine gas.

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[71] See Statement of Administrative Action, accompanying H.R. Rep. No. 103-826 at 835, U.S.C.C.A.N. 4040, 4172 (1994).

The petitioners raised this issue with similar arguments as BioLab in their pre-verification comments, but did not raise this issue in their briefs.

Department's Position:

Section 773(c)(3)(B) of the Act instructs the Department to value factors of production in terms of the quantity of the raw materials employed in producing the merchandise. In NME cases the Department's practice is to allow respondents to deviate from their GAAP by reporting their factors of production in terms of quantity, not in terms of their actual costs, because their pricing and costing systems are not meaningful. See section 771(18)(A) of the Act, see also Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review, 70 FR 10965, 10974 (March 7, 2005) ("Mushrooms 5 Prelim"). The Department finds that because China is an NME country and the NME respondent's current pricing and costing systems are not meaningful, we have requested the two respondents report their factors of production in terms of quantity in accordance with section 773(c)(3)(B) of the Act.

Using production volume to allocate common costs to different products is also consistent with the Department's practice. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel, 66 FR 49349, (September 27, 2001) ("Magnesium From Israel") and the accompanying Issues and Decision Memorandum at comment 5.[72]

In this case, as in Magnesium From Israel, caustic soda and chlorine gas share certain common factors, e.g., industry salt and electricity, and were produced during the electrolysis process in Jiheng's Chlor-Alkali Plant. Pursuant to section 771(18)(A) of the Act and Magnesium From Israel, the Department finds it reasonable for Jiheng to deviate from its GAAP by allocating the common factors in the production of two products (caustic soda and chlorine gas) according to the actual relative production volumes. Moreover, in this instance, the Department has verified Jiheng's reported data. Therefore, we have relied on Jiheng's reported consumption for caustic soda and chlorine gas in the final determination.

Comment 10: *Jiheng's Consumption of Certain Customer-Provided Factors of Production*

Jiheng has claimed that during the POI it either received certain factors from one of its U.S. customers without payment, or purchased them from a PRC affiliate of that U.S. customer and

[72] In Magnesium From Israel, the Department disagreed with the petitioners that a value-based allocation should be used for the costs associated with the magnesium casting process, in which molten magnesium is cast into either pure or alloy magnesium. As pure magnesium and alloy magnesium share a common input (i.e., molten magnesium), the Department allocated crude magnesium costs to pure and alloy magnesium based on the calculated quantity of crude magnesium consumed by each; then it allocated common casting costs based on the relative quantities of pure and alloy magnesium production.

then subsequently received reimbursement from the U.S. customer.[73] Jiheng reported the actual amount of consumption for those factors it purchased from its customer's PRC affiliate and subsequently was reimbursed by its customer, but it did not report the actual consumption amount for those factors for which it did not pay, from October 1, 2003, through December 8, 2003.

According to Jiheng, it did not pay for these factors before entering into a reimbursement agreement which became effective on December 9, 2003. See Jiheng Verification Report at page 30.[74] At verification, Jiheng provided an affidavit from that U.S. customer's PRC affiliate confirming the non-payment arrangement prior to the December 9, 2003 agreement, and the reimbursement arrangement post the December 9, 2003 agreement. See Jiheng's Verification Exhibit 14 at page 10. The reimbursement agreement covers desiccant, plastic pails, lids, dowels, carton tops and bottoms, and paper separators.

Regarding the factors for which Jiheng did not pay, the petitioners contend that Jiheng's claims warrant careful scrutiny by the Department because these factors are significant and because Jiheng was unable to provide adequate support for its claims at verification. Specifically, because the Department's verification report notes that "company officials stated that no documentary evidence existed" to support the claim that Jiheng did not pay for these factors, the petitioners maintain that even if Jiheng had no documents such as bills of lading, truck delivery notices, warehouse receipts, that the particular U.S. customer should have been able to provide a full documentary trail to support Jiheng's claim. Furthermore, the petitioners argue that Jiheng's claim is inconsistent with the terms of the agreement as indicated in the Department's verification report which states: "the contract specifies reimbursement of packaging materials" but the contract does not say anything about packaging materials for which it did not pay. Therefore, the petitioners urge the Department not to credit Jiheng's claim regarding those factors for which it did not pay. Rather, the Department should estimate consumption based on the quantities of factors otherwise reported by Jiheng and value those factors using its standard surrogate value methodology in the final determination.

BioLab also maintains that the Department should value all of these factors Jiheng consumed during the POI. Regarding the factors for which Jiheng claims it did not pay, BioLab suggests that the Department use the average consumption amount for each such factor reported for other U.S. sales for which Jiheng reported consumption amounts.

Jiheng urges the Department to reject the petitioners' and BioLab's assertions that there is insufficient evidence on the record to establish that it did not pay for these factors. Jiheng claims

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[73] We note that the parties have referred to the factors affected by these arrangements solely as "packing." As the key issue is the same whether the factor is packing, packaging, or a raw material, we have applied these "packing" observations and argument to each of the relevant factors.

[74] See Verification of the Questionnaire Response of Hebei Jiheng Chemical Co., Ltd. ("Jiheng") in the Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China ("PRC"), dated March 2, 2005 ("Jiheng Verification Report").

that throughout the investigation it has consistently provided certified information to the Department, and there is substantial evidence on the record that such an arrangement did exist concerning those factors. Specifically, Jiheng notes that in its September 3, 2003 submission, it provided the standing contract between this particular U.S. customer and Jiheng, which clearly lays out the specifics of certain factors for which Jiheng did not have to pay. Further, Jiheng indicates that a verification exhibit also contains an affidavit attesting to the same fact that Jiheng had a no-payment arrangement before the December 2003 reimbursement arrangement went into effect. Jiheng argues that prior to December 2003, it had no reason to record certain of these factors for which it did not pay in its financial records, because the particular U.S. customer has relevant information regarding these materials.

Regarding the petitioners' argument that this U.S. customer should have provided a full documentary trail to support Jiheng's explanation, Jiheng contends that it is unaware of the Department making such a request. Furthermore, Jiheng asserts that the material arrangements before and after December 2003 are completely consistent and are economically identical. Therefore, Jiheng submits that the Department must treat these two situations in the same manner in its margin calculation.

Finally, Jiheng argues that if the Department determines, contrary to the evidence on the record, that Jiheng has not sufficiently demonstrated its non-payment arrangement with the applicable U.S. customer, there is substantial evidence on record which the Department can use as facts available in the final determination. As facts available, Jiheng suggests, the Department should credit Jiheng's U.S. price with certain other values that were reported by Jiheng, for which Jiheng has claimed business proprietary treatment (see the May 2, 2005, Memorandum from the Team Leader to the File entitled Antidumping Investigation of Chlorinated Isocyanurates from the People's Republic of China: Calculation Memorandum for the Final Determination for Hebei Jiheng Chemical Co., Ltd. ("Jiheng's Calc Memo").) Jiheng maintains that there is simply no evidence on the record that Jiheng has failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department, so there is no basis for the Department applying an adverse inference.

Department's Position:

We find that Jiheng has provided evidence to support its claim that it did not pay for these factors, for which Jiheng's explanation has been consistent. See, e.g., pages C-16 and C-31 of Jiheng's Sections C and D submission dated September 10, 2004; see also pages 14-18 and Exhibits SC-6, SC-7, SC-8, SC-9, SC-10, and SC-11 of Jiheng's Sections A, C, and D supplemental response dated November 8, 2004; see also Exhibit 15 of Jiheng's November 23, 2004, submission. In circumstances where Jiheng received reimbursement from the relevant U.S. customer, Jiheng provided evidence that it either billed its U.S. customer in the same sales invoice or in a separate invoice (see, e.g., Exhibit 9 of Jiheng's November 8, 2004, submission). With respect to the non-payment arrangement, Jiheng has clearly identified each of the factors for which it did not pay (see its November 23, 2004, submission at Exhibit 15). Moreover, Jiheng also states in its

November 8, 2004, submission at Exhibits SC-7 (Revised Packing Materials Worksheet) and SC-8 (Packing materials Suppliers Chart), that "for those packing materials 100% supplied ... free of charge and delivered to Jiheng's factory, {Jiheng} reported "0" in the distance field" and that "the other ... percentage of plastic pail ... pail lid was supplied ... free of charge."

At verification, we further found that Jiheng's warehouse record reflected its reporting regarding these factors. As noted in the Department's verification report, Jiheng keeps a "manual notebook (i.e., "Packaging Material Register") to record the materials provided by" this particular U.S. customer. Based on our examination, "data contained in the notebook and packaging material ledger corroborated the statements" noted earlier in the Jiheng Verification Report. See Jiheng Verification Report at page 30. It was Jiheng's consistent practice to record the factors for which it did not pay in that manual notebook prior to the December 2003 reimbursement arrangement. After the December 2003 reimbursement arrangement, Jiheng began to keep more formal tracking records for these factors. See Jiheng Verification Report at Exhibit 14. It is also clear that Jiheng kept a separate record to distinguish the sources for each such factor it used. For example, page 5 of Jiheng's Verification Exhibit 15 demonstrates how Jiheng recorded the factors it received from various sources after December 2003 (i.e., materials for which it did not pay, received reimbursement, or purchased locally).

Regarding the petitioners' argument that the Jiheng Verification Report indicates that "the contract specifies reimbursement of packaging materials but the contract does not say anything about packaging materials for which it did not pay," the contract at issue reflects only the new reimbursement arrangement between Jiheng and the U.S. customer, and does not speak to the appropriateness of new contract.

In this case, the Department examined the evidence of the link between the material at issue and the production of subject merchandise pursuant to Preserved Mushrooms 5.[75] Although Jiheng provided: 1) a contract between it and its U.S. customer regarding non-payment for these factors; 2) an affidavit demonstrating the arrangement before the December 9, 2003, reimbursement arrangement became effective, and 3) the identification of factors at issue, Jiheng did not provide detailed transactions of the non-payment packaging/packing materials. However, based on our verification, we were able to find the link between the consumption of these factors and production of the subject merchandise. See Jiheng's Verification Report, Exhibit 14 at page 5. Pursuant to section 773 (c)(3)(B) of the Act, the Department has determined the normal value of the subject merchandise on the basis of the factors of production utilized in producing the merchandise. The Department considers certain of these factors as raw materials and therefore, the cost of these materials must be included in the cost of manufacturing ("COM"). Where the data were available on the record, the Department included Jiheng's reported consumption amounts for all packaging/packing materials in the normal value calculation in the final

[75] Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review, 70 FR 10965, March 7, 2005 ("Preserved Mushrooms 5").

determination. With the packaging/packing materials at issue included in normal value, however, because Jiheng has demonstrated that it did not include the packaging/packing value in its reported U.S. price and that it had used the packaging/packing materials, we also added the same amount to the U.S. price calculation, in order to ensure the normal value and export price calculations were conducted on the same basis. See Jiheng's Calc Memo for further discussion on this issue.

As noted above, there are 14 factors of production at issue which fall into three categories: packaging, packing, and raw materials. They are: desiccant, plastic pails, plastic pail lids, plastic pail dowels, bottle labels, origin labels, plastic bags, cartons tops and bottoms, paper separators, wooden pallets, plastic film, batch labels, copper sulfate, and aluminum sulfate. The Department considers the first seven to be "packaging" materials which are inescapably purchased as part of the subject merchandise by the ultimate consumer. As such, these are properly considered raw materials and the Department has added them to Jiheng's cost of materials accordingly. See Preserved Mushrooms 5 for the Department's treatment of similar raw materials (i.e, cans). The next five factors are used to ship the subject merchandise to the United States, and as such the Department treated these factors as packing materials. The final two factors are raw materials and the Department has added them to Jiheng's cost of materials. Finally, we note that while we valued certain of these reimbursed factors in the Amended Preliminary Determination as reported, closer examination of the record reveals the reported values were based on prices agreed within the PRC. As the statute notes at Section 771(18)(A) that in an NME "sales of merchandise in such country do not reflect the fair value of the merchandise," we have instead used surrogate valuation, consistent with Section 773(c)(1)(B).

Comment 11: *Revision to Jiheng's Reported Data for Certain Inputs*

On January 10, 2005, Jiheng submitted revised factor data for coal and water.

The petitioners and BioLab requested that the Department use Jiheng's revised coal and water data for purposes of deriving NV in Jiheng's final margin calculation.

Jiheng did not comment on this issue.

Department's Position:

We have used Jiheng's revised coal and water data for purposes of deriving NV in Jiheng's final margin calculation based on our verification findings.

Comment 12: *The Petitioners' January 31, 2005, Comment on the Treatment of Jiheng's By-Products*

In their January 31, 2005, rebuttal comments contesting the Department's Clerical Error Memo,[76] the petitioners requested that the Department postpone its consideration as to whether hydrogen gas and ammonia gas should be treated as by-products because, as the petitioners claim, Jiheng did not provide sufficient information to document its claim with respect to these two subsidiary products. In the Amended Preliminary Determination, the Department did not consider the above-mentioned comment pursuant to section 351.224(c)(3) of the Department's regulations, which states that the Secretary will not consider replies to comments submitted in connection with a preliminary determination. The Department stated that it would consider this comment in the final determination.

Department's Position:

Since the Amended Preliminary Determination, the Department has conducted verification of Jiheng's questionnaire responses, including an examination of the data reported by Jiheng with respect to all four of the above-mentioned subsidiary products. Based on our verification findings,[77] we find that Jiheng sufficiently documented its claim that all four of the above-mentioned subsidiary products should be treated as by-products for purposes of deriving NV. Therefore, for purposes of the final determination, we have continued to treat all four of the above-mentioned subsidiary products as by-products and have granted an offset for these by-products for purposes of deriving NV in Jiheng's final margin calculation.

Comment 13: *The Petitioners' January 31, 2005, Comment on Jiheng's Packing Labor*

In their January 31, 2005, rebuttal comments filed in response to the Department's January 24, 2005, Clerical Error Memo, the petitioners alleged that the Department made an error in its Preliminary Determination margin program with respect to packing labor. Specifically, the petitioners claimed that the Department valued unskilled packing labor twice and did not value skilled packing labor when deriving NV in Jiheng's preliminary margin program. In the Amended Preliminary Determination, the Department did not consider the above-mentioned clerical error allegations pursuant to section 351.224 (c)(3) of the Department's regulation, which states that the Secretary will not consider replies to comments submitted in connection with a preliminary determination. Rather, the Department stated that it would consider these clerical allegations in the final determination.

Jiheng did not comment on this issue.

Department's Position:

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[76] Memorandum to the File, dated January 24, 2005, from the team to James C. Doyle, Office Director, Regarding Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China ("China"): Analysis of Allegations of Ministerial Errors ("Clerical Error Memo")

[77] See Jiheng Verification Report at pages 26-28.

We agree with the petitioners and have corrected the above-mentioned clerical errors in Jiheng's final margin program.

Nanning:

Comment 14: *Surrogate Value for Sodium Sulfite*

In the Preliminary Determination, the Department used a POI average Indian import value of 39.14 rupees per kilogram for sodium sulfite from the WTA to value this input (based on import data listed under HTS subheading 2804.10.00).

Nanning argues that, as with cyanuric acid, the sodium sulfite value obtained from WTA reflects an unrepresentative basket category, because the eight-digit Indian HTS tariff subheading label for this input includes at least two additional compounds (i.e., sodium bi-sulfite and sodium hydrosulfites) which are more expensive than and dissimilar to sodium sulfite. Therefore, Nanning maintains that the Department should use POI price data from Chemical Weekly,[78] rather than from WTA, because the Chemical Weekly price data is more specific and representative of the prices for sodium sulfite. In addition, Nanning requests that the Department remove the 16 percent excise tax amount from the Chemical Weekly prices for this input because the information contained in Chemical Weekly indicates that the prices are inclusive of excise taxes.

The petitioners and BioLab did not address this issue in their briefs or rebuttal briefs.

Department's Position:

We agree with Nanning that the Chemical Weekly price data are more appropriate to use in this instance, because they reflect only POI prices for the same material as Nanning used, whereas the WTA price data also includes prices for other compounds besides sodium sulfite. Accordingly, we have used a tax-exclusive POI average price from Chemical Weekly to value this input in the final determination.

Comment 15: *Adjustment to Surrogate Values Used for Calcium Chloride and Sulfuric Acid*

In the Preliminary Determination, the Department used tax-exclusive POI average prices from Chemical Weekly from the Bangalore and Mumbai markets to value calcium chloride and sulfuric acid.

Nanning argues that data contained in Chemical Weekly indicates that the prices for certain states in India were only inclusive of the 16 percent central excise tax, while the prices from Mumbai

[78] The record of this investigation contains Chemical Weekly prices for sodium sulfite from the Channair and Bangalore markets applicable during the POI.

included both the 16 percent excise tax amount and an additional 4 percent sales tax amount. Nanning argues that the Department did not make the necessary sales tax adjustment to the Mumbai market prices used for the two inputs at issue and that the Department must make this price adjustment to both inputs for the final determination.

BioLab contends that Attachment 2 of the Department's Preliminary Factors Valuation Memorandum shows that in fact the tax adjustments were correctly made for Bombay (Mumbai) sales as well as for those of other locations.

Department's Position:

We determine that the relevant pages of Attachment 2 of the Preliminary Factors Valuation Memorandum show that we divided the Mumbai sales prices for these inputs by 1.2 (i.e., adjusting the price for the 4 percent sales tax and 16 percent excise tax), and the Bangalore sales prices for these inputs 1.16 (i.e., only adjusting the price for the 16 percent excise tax). Specifically, because data contained in Chemical Weekly indicated that the Bangalore and Mumbai market prices included an amount for excise taxes, we removed the excise tax amounts from the Chemical Weekly prices for these inputs. However, because data contained in Chemical Weekly also indicated that the Mumbai market prices, unlike the Bangalore market prices for these inputs included an amount for state sales taxes, we removed the state tax amount from the Mumbai market prices.

Accordingly, for the reasons stated above, we have made no change in the price calculations for these inputs in the final determination.

Comment 16: *Valuation of Hydrogen Gas*

In the Preliminary Determination, the Department used a POI average Indian import value of 684.31 rupees per kilogram for hydrogen gas from the WTA to value this by-product (based on import data listed under HTS subheading 2804.10.00).[79] This value included Indian import price data from four market-economy countries, with respective reported prices equivalent to 50.0; 97.7; 304.9; and 1318.7 rupees per kilogram.

If the Department decides to continue to treat hydrogen gas as a by-product and value it accordingly, then the petitioners and BioLab argue that the 1318.7 rupee price (i.e., which is based on Indian imports from Belgium) is aberrational because it is ten times greater than the average of the other reported values obtained for this input from WTA. For purposes of further showing that the Indian import price from Belgium is aberrational, the petitioners and BioLab claim that the Indian import price for this input from WTA (net of imports from Belgium) more closely approximates the hydrogen gas prices (i.e., 128.6 and 53.3 rupees per kilogram) reflected in the

[79] See Memorandum to: The File, from Steven Winkates, Factors Valuation For the Preliminary Determination, December 10, 2005 ("Preliminary Factors Valuation Memo"), page 5, item #18.

2003-2004 financial reports of two Indian producers of caustic soda and chlorine (i.e., Chemfab Alkalis and HSH). Based on the above-mentioned price comparisons, the petitioners and BioLab maintain that the Department should remove the Belgium price data from the Indian average price calculated for this input in the Preliminary Determination because it is the Department's practice is to remove such aberrational data when deriving average import values from WTA.[80]

Nanning argues that no record evidence exists that would establish that the import statistics for Belgium are in fact aberrational. It also argues that the quantities imported from Belgium do not appear to be aberrationally low. In addition, Nanning notes that in any surrogate value selection, one price will necessarily be the highest in a group of prices, and that the Belgian price is only four times higher than the next highest value.

Department's Position:

We have determined that the Belgium price data is aberrational in terms of value when compared with the Indian import data from the three other countries for this input, because the Belgium price is at least ten times higher than the average of the other values. We also agree with the petitioners that the fact that the Belgian price is substantially higher than the market price cited in the financial reports of two Indian producers of caustic soda and chlorine adds support to the argument that the Belgian value is aberrational, and should therefore be removed. Accordingly, for the final determination, we have removed the aberrational Belgian import value from the calculation of the average value for hydrogen gas imports into India.

Comment 17: *Subtracting By-Product Offsets in the Normal Value Calculation*

In the Preliminary Determination, the Department deducted the by-product offsets from normal value ("NV") after applying the surrogate financial ratios[81] to Nanning's cost of manufacturing ("COM") because the Indian producers' financial reports (i.e., the data used to derive the surrogate financial ratios) indicated that these Indian companies accounted for revenue from by-products as a credit to sales rather than as a debit to COM.

Nanning argues that the Department should deduct its by-product offsets from its reported COM before applying the surrogate financial ratios to COM because the Court of International Trade

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[80] In support of their argument, the petitioners and BioLab cite Chrome-Plated Lug Nuts from the People's Republic of China; Final Results of Antidumping Administrative Review, 63 FR 53872 (October 7, 1998); Notice of Final Determinations of Sales at Less Than Fair Value: Steel Wire Rope from India and the People's Republic of China, 66 FR 12759 (February 28, 2001), and the accompanying Issues and Decision Memorandum at Comment 1; and Notice of Final Determination of Sales at Less Than Fair Value: Ferro vanadium from the People's Republic of China, 67 FR. 71137 (November 29, 2002), and the accompanying Issues and Decision Memorandum at Comment 13.

[81] The surrogate financial ratios are for factory overhead, SG&A expenses, and profit, and are derived from data contained in the surrogate producers' financial statements.

("CIT") has noted that making the offset deductions after the application of financial ratios will improperly increase normal value.[82] Moreover, Nanning argues that it is the Department's long-standing practice to make the deductions from NV prior to, and not after, applying the financial ratios.[83] Therefore, Nanning maintains that the Department's method in the Preliminary Determination was a departure from its normal methodology. Nanning further notes that the Department defended its methodology in the Preliminary Determination by stating the approach at issue was intentional and explaining that the two Indian surrogate companies accounted for by-product revenue as a credit to sales rather than a deduction from manufacturing costs.[84] However, Nanning argues that although the Indian surrogate companies may reflect income from by-products as revenue in a portion of their financial reports, the by-product revenue necessarily constitutes an effective decrease in manufacturing costs to the surrogate companies and to Nanning.

The petitioners and BioLab maintain that the Department's current practice is to treat by-products in a manner consistent with the treatment by the surrogate company for the calculation of financial ratios and that this practice is necessary to ensure that financial ratios and the costs to which they are applied are calculated in a consistent manner.[85] The petitioners point out that because the Indian surrogate producers' financial data account for by-products as additions to revenue, the Department should account for any by-product credit as a deduction to NV after applying the financial ratios to COM.

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[82] In support of its argument, Nanning cites to Magnesium Corporation of America v. United States, 20 CIT 1092, 1106, 938 F. Supp. 885, 899 (1996) ("Magnesium Corporation"); Air Products and Chemicals Inc. v. United States, 22 CIT 433, 14 F.Supp. 2d 737 (1998); and Rhodia, Inc. v. United States, 26 CIT, 240 F. Supp. 2d 1247, 1250-1251 (2002).

[83] In support of its argument, Nanning cites to Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review: Certain Preserved Mushrooms for the People's Republic of China, 68 FR 41304 (July 11, 2003) and accompanying Issues and Decision Memorandum at Comment 7; Vietnam Fish Fillets and accompanying Issues and Decision Memorandum at Comments 1 and 2; Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Steel Flat Products from the People's Republic of China, 66 FR 49632 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 3; and other Department decisions' which pre-dated the above referenced cases.

[84] See Memorandum From the Team to: James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Analysis of Allegations of Ministerial Errors ("Clerical Error Allegations Memorandum") dated January 24, 2005.

[85] In support of its argument, the petitioners and BioLab cite ~~to~~ the Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 4B ("Shrimp"); and Vietnam Fish Fillets.

BioLab further argues that Nanning's argument that judicial precedent weighs in favor of deducting offsets prior to applying financial ratios in this instance is factually incorrect. BioLab points out that of three court cases Nanning cites to in its brief, only one of those cases, Magnesium Corporation, actually addresses by-products and that even this case fails to address the particular issue of concern to Nanning.

Department's Position:

We have continued to deduct the by-product offsets from NV after applying the surrogate financial ratios to COM, because (1) the financial reports we are using to derive the surrogate financial ratios indicate that all of the selected Indian companies accounted for revenue from by-products as a credit to sales rather than as a debit to COM; and (2) it is the Department's current practice to apply the financial ratios in a manner which is consistent with the case facts and with the accounting treatment which the surrogate companies use to account for by-products revenue.[86]

The Department has stated in Vietnam Fish Fillets and in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004) ("Vietnam Shrimp"), Comment 4B, that it is appropriate to apply the surrogate financial ratios to the respondents' COM in a manner consistent with the surrogate companies' treatment of the item. In this case, maintaining consistency with the surrogate companies' treatment of by-products means deducting the by-products offset from NV after applying the surrogate financial ratios to COM because it is established that the surrogate producers' financial data reflects adding by-products revenue to other income, rather than deducting it from COM.

In Vietnam Fish Fillets, the Department stated that, where applicable, it deducted from each respondent's normal value the value of by-products sold during the POI. Also, in Vietnam Shrimp, the Department noted in that case that the facts were different than in Vietnam Fish Fillets. In particular, the Department found "no mention of by-products sales" in the surrogate company's financial report. Nevertheless, the Department determined in that case also that, in the absence of other information to the contrary, there was "no reason for the Department to apply the surrogate financial ratios to any amount other than normal value." See Vietnam Shrimp, Comment 4B.

Moreover, with regard to Nanning's reliance on three CIT decisions in support of its argument that the Department is required to take into account a by-product offset before applying the surrogate financial ratios to COM, we do not find this situation discussed in those decisions. In the present investigation, the crucial determining factor is whether the Indian companies accounted for revenue from by-products as a credit to sales rather than as a debit to COM. This issue was not addressed in the CIT cases cited by Nanning and did not serve as a basis for those CIT decisions.

[86] See also page 2 of the Clerical Error Allegations Memorandum.

Finally, regarding Nanning' claim that by-product revenue could be shown on a company's income statement as an addition to revenue but still be used to decrease manufacturing costs, such a practice would double-count the effect on income associated with the sale of the by-product. Specifically, if a company adds by-product revenue of 100 rupees to revenue in the income statement (as the surrogate companies in this investigation do with their by-product revenue, according to their financial reports) but also deducted the same 100 rupees from COM, as Nanning argues might be the case, the 100 rupees would necessarily be counted twice in net income, since the latter is by definition the difference between revenue and costs. We note also that Nanning fails to offer any evidence that the surrogate companies deduct by-product revenue from COM, whereas there is clear evidence that the companies' add it to revenue.

Therefore, for the above-mentioned reasons, we have continued to use the same methodology for deducting by-product offsets from NV in the final determination as we used in the Preliminary Determination.

Comment 18: *Treatment of Chlorine Tail Gas*

In the Preliminary Determination, the Department granted Nanning a by-product offset for chlorine tail gas (i.e., a by-product generated during the chlorination process to produce the subject merchandise) because it claimed that it used this input to produce liquid chlorine (i.e., an intermediate product used to produce the subject merchandise).[87] Our verification findings indicate that Nanning used the chlorine tail gas to produce non-subject merchandise rather than the subject merchandise and that Nanning received no sales revenue for producing this by-product.[88]

The petitioners and BioLab argue that the Department should not grant Nanning a by-product offset for chlorine tail gas, because the Department's practice is to only grant such an offset to the extent that a by-product brings sales revenue or is re-used in the production of subject merchandise.[89]

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[87] See page S2-14 of Nanning's November 8, 2004, second supplemental questionnaire response.

[88] See Verification of the Questionnaire Response of Nanning Chemical Industry Co., Ltd. ("Nanning") in the Less-Than-Fair Value Investigation of Chlorinated Isocyanurates from the People's Republic of China ("PRC"), dated March 7, 2005 ("Nanning Verification Report") at page 22.

[89] In support of its argument, the petitioners cite ~~to~~ the Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China, 65 FR 33805, (May 25, 2000), and the accompanying Issues and Decisions Memorandum at Comment 13; and the 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), and the accompanying Issues and Decisions Memorandum at Comment 6.

Nanning argues that it is the Department's practice to grant an offset if the by-product is consumed in further production.[90] Specifically, Nanning claims that because its affiliated company used the chlorine tail gas transferred from Nanning to further refine the hydrogen gas used in a later production process to produce non-subject merchandise," the Department should continue to grant Nanning a by-product offset for its chlorine tail gas.

Department's Position:

In circumstances where respondents sold their by-products, the Department's practice is to offset production costs with the sales revenue of the recoveries/byproducts. See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003) ("Russia Silicon Metal"); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Silicon Metal From the Russian Federation, 67 FR 59253 (September 20, 2002); and Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China, 65 FR 33805 (May 25, 2000) ("Bulk Aspirin") and accompanying Issues and Decision Memorandum at Comment 13.

In circumstances where respondents reused their by-products, the Department's practice is to grant offsets for recoveries/byproducts which are re-entered into the production process. See Notice of Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Steel Concrete Reinforcing Bars From The People's Republic of China, 66 FR 33522 (June 22, 2001) and accompanying Issues and Decision Memorandum at Comment 5 ("Steel Concrete Reinforcing Bars").

If the respondent fails to show that the by-product was sold, or that it had commercial value and was re-used, then the Department does not allow the by-product offset. See Steel Concrete Reinforcing Bars at Comment 5C.

In the instant case, we found at verification that Nanning gave away part of its chlorine tail gas by-product to an affiliate not involved in production of subject merchandise.[91] Nanning's November 8, 2004, supplemental questionnaire response also stated that "Nanning did not sell chlorine tail gas to third parties during the POI."[92] Consistent with Russia Silicon Metal and Bulk Aspirin, we did not grant any credits for sales of the by-product chlorine tail gas claimed by Nanning. For the part of chlorine tail gas which Nanning reused in the production, we do not have sufficient evidence on the record to accurately re-allocate the by-product to such production. See Steel

[90] In support of its argument, Nanning cites to the Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741, (September 5, 2003), and the accompanying Issues and Decisions Memorandum at Comment 20.

[91] See page 22 of the Nanning Verification Report.

[92] See Nanning November 8, 2004 second supplemental questionnaire response at pages S2-13 and S2-14.

Concrete Reinforcing Bars. Therefore, for the final determination, we have not granted Nanning a by-product offset for its chlorine tail gas when deriving its normal values.

Comment 19: *Nanning's Indirect Labor Hour Calculation*

In the Preliminary Determination, we used Nanning's reported indirect labor factor amount to derive the normal values for its reported U.S. sales transactions of subject merchandise. Our verification findings indicate that Nanning had attributed the labor hours of electrical technicians at the electricity service plant to its per-hour electricity costs rather than include those labor hours in its reported indirect labor factor.[93]

BioLab argues that the Department should also include the hours of the electrical service plant workers in Nanning's indirect labor factor.

Nanning did not comment on this issue.

Department's Position:

We find that Nanning's indirect labor factor should also include the hours which Nanning erroneously added to electricity costs (i.e., the labor hours of its technicians at the electricity service plant). For the final determination, we have revised Nanning's indirect labor factor by also including the indirect labor hours of the technicians in the electrical service plant and have valued this factor accordingly. See Memorandum to: the File, from Thomas H. Killiam, Antidumping Investigation of Chlorinated Isocyanurates from the People's Republic of China: Calculation Memorandum for the Final Determination for Nanning Chemical Industry Co., Ltd, May 2, 2005 ("Nanning Final Calculation Memo").

Comment 20: *Nanning's Shipment Date*

Our verification findings indicate that Nanning reported the date when its merchandise was shipped from the port of exportation, rather than the date when the merchandise left Nanning's factory, as the shipment date for its U.S. sales of subject merchandise.[94]

BioLab argues that the Department should use the date when the merchandise left the factory as the shipment date for all of Nanning's reported U.S. sales transactions for determining this company's margin the final determination.

Nanning did not comment on this issue.

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[93] See pages 3 and 28 and Exhibit 34C of the Nanning Verification Report.

[94] See page 3 of the Nanning Verification Report.

Department's Position:

We find that Nanning should have reported the date when the merchandise left its factory as the shipment date for its U.S. sales transactions in accordance with the Department's standard antidumping duty questionnaire. Our July 22, 2004 questionnaire instructed Nanning to report as shipment date "the date of shipment from the factory or distribution warehouse to the customer." However, in the instant case we find that correcting this date has no impact when determining Nanning's margin in the final determination. Specifically, because all of Nanning's reported U.S. sales are export price ("EP") sales transactions and given that the selling expenses data contained in the Indian producers' financial reports does not permit us to separately identify the direct selling expense portion of this expense when deriving the SG&A surrogate financial ratio, it is not possible to make circumstance-of-sale ("COS") adjustments to Nanning's reported export price sales. Therefore, the above-mentioned correction to Nanning's reported shipment dates (which would only be necessary to make if we were making a COS adjustment for Nanning's U.S. credit expenses) is not necessary in our calculations.

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

Agree_____ Disagree_____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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(Date)