PUBLIC VERSION

SINOPEC SICHUAN VINYLON WORKS
v. UNITED STATES
Court No. 03-00791 (CIT)
Slip Op. 05-45 (April 4, 2005)

FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order from the U.S. Court of International Trade (Court) in Sinopec Sichuan Vinylon Works v. United States, Court No. 03-00791, Slip Op. 05-45 (CIT Apr. 4, 2005) (Sinopec Sichuan v. United States). The Court remanded the following issues to the Department for further explanation and/or recalculation: 1) the applicability of the self-produced inputs rule with respect to the purchase of acetic acid by the respondent, Sinopec Sichuan Vinylon Works (SVW), from a joint venture supplier; 2) the surrogate value for natural gas used in the determination of normal value (NV); and 3) the rationale for applying the financial ratios of Jubilant Organosys Ltd. (Jubilant), an Indian producer of polyvinyl acetate (PVAc), to SVW's costs without accounting for either "the greater costs incurred by Jubilant during its production of acetic acid" or the fact that Jubilant produces more products and by-products than SVW[1].

The Department issued its draft final results to all interested parties on July 22, 2005. On August 8, 2005, we received comments on these final results from the respondent SVW, and

[1] We note that this issue is addressed in three parts. For further discussion, see Comments 3 through 5, below.

Celanese Chemicals, Ltd. and E.I. Dupont de Nemours & Co. (collectively "the petitioners"). We received rebuttal comments from SVW and the petitioners on August 17 and 18, 2005, respectively. These comments are addressed below.

In accordance with the Court's instructions, we have provided additional explanation on the issues of the applicability of the self-produced inputs rule with respect to SVW's purchases of acetic acid and the rationale for applying Jubilant's financial ratios to SVW's costs, and we have recalculated the selected surrogate value for natural gas.

A. Background

On April 4, 2005, the Court remanded to the Department its determination in the less than fair value investigation of polyvinyl alcohol (PVA) from People's Republic of China (PRC). See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (Aug. 11, 2003) (PVA Final), *as amended by*, Notice of Amended Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 52183 (Sept. 2, 2003) (PVA from the PRC Amended Final). The antidumping duty order subject to this review was issued on October 1, 2003. See Antidumping Duty Order: Polyvinyl Alcohol from the People's Republic of China, 68 FR 56620 (Oct. 1, 2003). The period of investigation (POI) covers the period January 1, 2002, to June 30, 2002.

In its remand order, the Court directed the Department to: 1) reconsider its analysis of whether to apply the self-produced input rule vis-a-vis SVW's purchases of acetic acid from a joint-venture supplier (especially with regard to the relevance of corporate organization to this question) and, if necessary, revise its dumping margin calculations; 2) further analyze its decision

to use the ceiling price of published Indian natural gas prices as the surrogate value for natural gas rather than an average of the published floor and ceiling prices; and 3) further explain the rationale for applying Jubilant's financial ratios to SVW's costs without accounting for either "the greater costs incurred by Jubilant during its production of acetic acid" or the fact that Jubilant produces more products and by-products than SVW.

On July 22, 2005, we issued draft final results to SVW and the petitioners. We received comments from these parties on August 8, 2005. We received rebuttal comments from SVW and the petitioners on August 17 and 18, 2005, respectively. Pursuant to the Court's remand instructions, we have analyzed the information on the record of this investigation. As discussed further below, we have provided additional explanation as required by items 1 and 3, above, and we have made changes to the Department's findings in PVA from the PRC Amended Final with regard to item 2.

B. Analysis

Issue 1: The Relevance of Corporate Organization in Determining Whether An Input is "Self-Produced"

As directed by the Court, we offer the following additional explanation regarding the relevance of corporate organization in our determination that SVW, the producer of subject merchandise, did not "self-produce" its acetic acid during the POI.

During the POI, SVW purchased acetic acid, one of the main ingredients in PVA, from its joint venture supplier, located in the PRC, of which SVW owns a minority share. See PVA Final and accompanying Issues and Decision Memorandum (PVA Decision Memo) at Comment 1. In its questionnaire response, SVW reported the factors of production used by its joint venture supplier to produce acetic acid, and SVW requested that, in its margin calculations, the

Department value the supplier's inputs, rather than the finished acetic acid purchased by SVW from its supplier. Id. However, in our final determination, we disagreed with SVW that this was an appropriate treatment of acetic acid because this was the input introduced directly into SVW's production process, and consequently we valued SVW's consumption of acetic acid using a surrogate value for acetic acid obtained from India.

The Court directed the Department to discuss how organizational control relates to determining an accurate cost of production for SVW, the producer and exporter of subject merchandise. As an initial matter, the Department notes that organizational control and corporate organization are two distinct terms. See Sinopec Sichuan v. United States, Slip-Op 05-45 at p. 10. Although the Department recognizes that organizational control is a factor in determining whether parties are affiliated and recognizes that SVW and its supplier are affiliated, the Department finds that organizational control is not a factor in determining whether the upstream inputs of SVW's affiliated supplier should be valued as SVW's own. See, *generally,* sections 771(33)(E) - (G) of the Tariff Act of 1930, as amended (the Act). This is because the only legal provision that permits valuing a nonmarket economy (NME) supplier's inputs as a producer's factor of production requires collapsing. As discussed below, these entities have not met the legal requirements for collapsing under 19 CFR 351.401(f) because they do not have production facilities for producing similar or identical products, nor is collapsing otherwise warranted. See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy, 64 FR 6615 (Feb. 10, 1999) (Pasta from Italy).

On further consideration on remand, and in direct response to the Court, the Department acknowledges that corporate organization is an element in its analysis of whether acetic acid can

be considered self-produced by SVW, the producer of subject merchandise. Corporate organization relates to a company's level of integration, which helps identify the producer of subject merchandise, and specifically, in this case, whether SVW self-produces its acetic acid factor. Corporate organization also refers to the manner in which a firm's production process is organized, and specifically, in this case, whether SVW's production facility is sufficiently similar to the production facility of its supplier to permit the Department to value the inputs from both SVW and its supplier. In order to determine whether SVW's acetic acid factor is considered self-produced and thus is to be valued based on to the upstream inputs used to produce that factor (e.g., acetic acid), or whether acetic acid is not self-produced and valued at the stage in which it is actually consumed by the producer of subject merchandise, the Department's analyses will examine the following: 1) the Department's mandate under the applicable statutory and regulatory provisions; 2) the Department's practice with respect to valuing self-produced inputs; 3) the Department's goal of accuracy in valuing the producer's acetic acid factor of production; and 4) the fact that using Jubilant's cost figures will not overstate SVW's overhead amount. As discussed further, the Department cannot value the inputs used to produce acetic acid as SVW's own factors of production because SVW does not self-produce acetic acid, SVW is not integrated with respect to acetic acid production despite its affiliation with its supplier,[2] SVW and its supplier are separate corporate entities, and SVW and its supplier cannot be collapsed into a single entity.

[2] See issue 3A for a more complete discussion on vertical integration.

1. The Department's Mandate Under the Applicable Statutory and Regulatory Provisions

In NME cases, the Department must value respondents' factors of production using surrogate values obtained from a comparable market economy country. Section 773(c) of the Act requires the Department to "determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise..." in NME cases. The Department's regulations further provide that, in identifying dumping from an NME country, the Department normally will calculate NV by valuing the "nonmarket economy *producers'* factors of production in a market economy country." See 19 CFR 351.408(a) (emphasis added).

Consistent with these provisions, the Department values the factors of production that the producer of subject merchandise uses to manufacture the merchandise.

2. The Department's Practice With Respect to Valuing Self-Produced Inputs

Consistent with its regulations and its administrative practice in both NME and market economy determinations, the Department considers a producer's factors of production as those factors purchased by the corporate entity under investigation, or otherwise obtained from other entities. In other words, the Department values only the factors of production that the producer of subject merchandise uses to manufacture the merchandise because it reflects the producer's own production experience. See e.g., Notice of Final Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China, 68 FR 43085 (July 21, 2003); Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) and accompanying Issues and Decision Memorandum at Comment 6 (Fish Fillets from Vietnam).

In determining whether a production input is self-produced, the Department first determines whether the subject merchandise producer's corporate organization is integrated with respect to the particular factor. In our examination of SVW's corporate organization, the Department finds that SVW, as the producer of subject merchandise, does not self-produce acetic acid because it purchased its acetic acid and it is not fully integrated with respect to acetic acid production.

Generally, if the NME producer of subject merchandise is integrated, such that it self-produces a material input used in the manufacture of subject merchandise, the Department will take into account the factors utilized in each stage of the production process. See Notice of Final Determination at Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China, 69 FR 34130 (June 18, 2004) (THFA from the PRC). In other words, the Department generally values the purchased inputs used in producing any intermediate input. This is the Department's self-produced input rule. For example, in a case of preserved mushrooms from the PRC produced by a fully integrated firm, the Department valued the factors that the producer used to grow the mushrooms, the factors it used to further process and preserve the mushrooms, and any additional factors the producer used to can and package the mushrooms, including any factors used to manufacture the cans (if produced in-house) because these factors reflected the subject merchandise producer's own production experience. See Final Results Valuation Memorandum for Final Results of the 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) (Final Results Valuation Memo: Mushrooms).

However, when the producer of subject merchandise obtains its factor(s) from a separate supplier entity, as SVW does in this case, the Department has a longstanding practice of valuing the actual factor(s) of production consumed by the producer of subject merchandise without looking to the supplier's upstream inputs used to produce the factor(s) in order to reflect the subject merchandise producer's own production experience. See, e.g., Fish Fillets from Vietnam. For example, if the producer of subject merchandise was not integrated but simply a processor that bought fresh mushrooms to preserve and can, the Department will value the purchased mushrooms and not the factors used to grow them because valuing the factors at the stage in which they are used by the producer of subject merchandise best reflects its production experience. See Final Results Valuation Memo: Mushrooms. The Department has applied this valuation methodology to both agricultural and industrial products. See, e.g., Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 6712 (Feb. 10, 2003) and 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 (Feb. 28, 1997). Accordingly, our standard NME questionnaire asks the respondent producer to report the factors it uses in the various stages of production in order to determine which factors are used, and at which stage of production are they consumed, in the manufacture of subject merchandise. See *Antidumping Questionnaires* at http://ia.ita.doc.gov/questionnaires/questionnaires-ad.html.

The Department also notes that there may be certain instances where the Department may not value the upstream inputs of an integrated producer. These instances are determined on a case-by-case basis depending on the facts of the case. For example, in some cases, a respondent may report upstream inputs used to produce an intermediate factor of production that accounts

for a small share of total output. The Department recognizes that, in such cases, the increased accuracy in our overall calculations that would result from separately valuing each of those inputs may be so small so as to not justify the burden of doing so. Therefore, in such situations, the Department would value the intermediate factor of production directly. See Fish Fillets from Vietnam.

In other cases, the Department may determine that valuing the upstream inputs used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, in Carbon and Certain Alloy Steel Wire Rod from Ukraine, the Department addressed whether it should value the respondent's factors used in extracting iron ore, an input to its wire rod factory. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine, 67 FR 55785 (Aug. 30, 2002) (Carbon and Certain Alloy Steel Wire Rod from Ukraine). In Carbon and Certain Alloy Steel Wire Rod from Ukraine, the Department determined that, if it were to value the extracting factors, it would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead. See also Notice of 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 (Sept. 28, 2001); Notice of 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 (Nov. 20, 1997); and Notice of

Final Determination at Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China, 62 FR 61964 (Nov. 20, 1997).

The above summary of the Department's self-produced input rule demonstrates that the Department values subject merchandise using the actual amounts of the factors utilized by *that* producer. See id. The Department defines "the producer" as the corporate entity(s) actually producing the subject merchandise. See Anshan Iron & Steel Company, Ltd. v. United States, Court No. 02-00088, Slip Op. 03-83 (CIT July 16, 2003) (Anshan Iron & Steel Co.). In the instant case, SVW is the producer of subject merchandise, and although it purchases its acetic acid from its affiliated supplier, the facts on the record indicate that: 1) SVW and its supplier are legally separate corporate entities; 2) SVW does not produce acetic acid within its corporate production facility; and 3) SVW purchases acetic acid that was produced in a separate, although affiliated, corporate production facility. Therefore, consistent with the Department's self-produced input rule, the inputs used to produce acetic acid should not be valued as SVW's own factors of production because these inputs were produced by a separate corporate entity (e.g., SVW's supplier) and were not used by SVW in its production of subject merchandise because SVW is not vertically integrated with respect to acetic acid production.

Furthermore, a finding of affiliation between a producer and its supplier does not satisfy the integration requirement of the Department's self-produced input rule and does not justify a departure from the Department's standard practice of valuing the *actual* factors of production consumed by the producer of subject merchandise. Affiliation, by itself, does not necessarily imply that a producer's factors obtained from an affiliated supplier are self-produced nor permit the upstream inputs of the supplier to be valued instead of the producer's actual inputs when both

producer and supplier are separate legal entities. For example, in CVP from the PRC, the Department applied a surrogate value to the factor that the producer purchased from an affiliated supplier instead of valuing the upstream inputs used by the affiliated supplier. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 35287 (June 24, 2004) (CVP from the PRC). Moreover, in Foundry Coke from the PRC, the Department discussed its practice of not looking beyond the producer of subject merchandise to value the upstream inputs that a supplier uses to produce one of the producer's factors. See CITIC Trading Company, Ltd. v. United States of America and ABC Coke, et al: Final Results Pursuant to Remand, at http://ia.ita.doc.gov/remands/03-23.pdf (June 17, 2003) (CITIC Trading Company). Further, in Ferrovanadium from the PRC, the Department stated that it was not appropriate to use the upstream inputs from one supplier company because it produced a factor of production and not subject merchandise. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the People's Republic of China, 67 FR 45088, 45092 (July 8, 2002) (Ferrovanadium from the PRC). Thus, the mere fact that SVW and its supplier are affiliated does not lead to the conclusion that SVW self-produces acetic acid, nor does it compel the Department to value the supplier's inputs used to produce acetic acid as SVW's own factors, because SVW itself does not produce acetic acid, SVW's supplier produces acetic acid, and SVW is a separate legal entity from its supplier.

3. Accuracy in Valuing the Producer's Acetic Acid Factor of Production

As explained above, when a producer of subject merchandise obtains a factor of production from a separate supplier entity, the Department normally values that individual factor

at the stage in which it is consumed by the producer, rather than valuing the supplier's inputs used to produce that factor because the supplier's production of the input is not reflective of the producer's production experience. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from The People's Republic of China, 69 FR 3887, (Jan. 27, 2004); and Fish Fillets from Vietnam. The reason for this practice is that the Department strives to reflect the producer's actual production experience as accurately as possible in its antidumping duty calculations by valuing factors of production actually utilized by the producers of subject merchandise. See, generally, Rhone Poulenc, Inc. V. United States, 899 F.2d 1185, 1191 (1990). The consistent application of this practice permits the Department to achieve accuracy and predictability in administering its cases.

In its brief to the Court, SVW acknowledged that it is a separate legal entity from its supplier. Yet, SVW argued that this distinction should not be the dispositive factor when determining whether the input in question is self-produced. SVW argued that the Department should find its corporate organization and relationship with its supplier to be sufficiently close so that it can be considered an integrated producer and avail itself of the self-produced input rule, resulting in the valuation of the supplier's inputs rather than SVW's own factors. Moreover, SVW argued that, in applying the self-produced input rule, the Department should consider its minority shareholdings of the joint venture affiliate, its sharing of a manufacturing site with its affiliated supplier, its operational interdependence with the joint venture affiliate, and the existence of economic benefits resulting from the partnership.

The Department disagrees with SVW's assertion that valuing the factors of its supplier as if they were SVW's own would more accurately reflect SVW's cost of production of PVA. First,

closeness of corporate organization and closeness of relationship with its supplier are not elements that the Department considers in determining whether an entity is integrated with respect to the production of a certain factor. See CVP from the PRC, CITIC Trading Company, and Ferrovanadium from the PRC. As explained above, the Department looks to a producer's corporate organization to determine whether it is integrated with respect to the factor in question in order to determine whether the factor is self-produced. If the subject merchandise producer, as an independent corporate entity, self-produces a factor used in the production of subject merchandise, the producer is considered to be integrated with respect to that factor. Based on the facts on the record of this case, SVW is a separate legal entity from its affiliated supplier and does not produce acetic acid. SVW's supplier, a separate legal entity, produces acetic acid, which is purchased by SVW and consumed in its production of subject merchandise. Therefore, the facts indicate that SVW is not vertically integrated with respect to acetic acid production.

The statute, regulations, and Department's practice require the Department to use the producers' actual factors of production to calculate dumping margins because "the most accurate calculation of normal value is based on the value of each material input actually consumed in the production of subject merchandise." See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from The People's Republic of China, 66 FR 33805 (May 25, 2000), and accompanying Issues and Decision Memorandum at Comment 11 (Bulk Aspirin Memo). The Department has consistently applied this practice in the past, calculating NVs for NME producers based solely on the producer's specific factors of production. See, e.g., Bulk Aspirin Memo. Accordingly, because SVW purchases and does not self-produce acetic acid, valuing

acetic acid, instead of its supplier's inputs into acetic acid production, is more reflective of SVW's own production experience.

Even though SVW and its supplier are affiliated through minority shareholdings, the Department's methodology precludes it from valuing upstream inputs that were not used by the actual producer of subject merchandise in normal value calculations because such valuation would not reflect the producer's, SVW's, own production experience. See CITIC Trading Company. Absent a finding of collapsing, an affiliated corporate entity that produces and supplies a factor to the producer of subject merchandise is not integrated with a producer if both the supplier and producer are separate corporate entities. See Pasta From Italy.

Furthermore, although SVW states that it shares a production site and is operationally interdependent with its supplier, the Department is precluded from collapsing SVW and its supplier into one corporate entity in order to value the supplier's upstream inputs as SVW's own because SVW and its supplier do not meet the Department's requirements for collapsing affiliated entities. SVW and its supplier are not both producers of subject merchandise and do not have production facilities for producing similar or identical products that are sufficiently similar so that a shift in the production would not require substantial retooling. Moreover, there is no indication that there exists a significant potential for the manipulation of price or production. See 19 CFR 351.401(f).[3]

[3] According to the Department's regulations, the Department will treat "two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the {Department} concludes that there is a significant potential for the manipulation of price or production." See 19 CFR 351.401(f). The Court upheld the Department's application of the collapsing analysis in an NME country. See Hontex Enterprises Inc. v. U.S., 248 F.Supp.2d 1323,1344 (CIT 2003).

The Department notes that valuing SVW's actual factors of production will lead to the most fair and accurate results of calculating an accurate NV because these factors reflect SVW's own production experience rather than the production experience of its supplier. At the outset, the Department recognizes that a producer's corporate structure is organized in a manner that will maximize its cost effectiveness. A producer's ability to compete against its competitors relies on its ability to manage its costs, including the costs of the main material input. In certain cases, a producer might find it more cost effective to self-produce the main input. In other cases, such as in this case, a producer might purchase the main material input from a supplier because it is the most cost effective way to produce the subject merchandise. Despite SVW's claims that it incurs certain economic benefits resulting from the partnership with its supplier, there is no record evidence supporting SVW's contentions. Assuming SVW did receive certain economic benefits, it would not be logical to assume that these benefits are identical to those it would receive if it produced acetic acid itself. This is because a producer's rational economic behavior is characterized by minimizing the costs of production and maximizing profits. Thus, because there is no indication of any significant economic benefits from the partnership (e.g., a reduction in costs) between SVW and its supplier, valuing the supplier's inputs as SVW's own factors of production would not represent SVW's true cost of producing subject merchandise. Moreover, although SVW argued that its operations are sufficiently intertwined with that of its supplier to consider both SVW and its supplier as a single entity for input valuation purposes, there is no evidence to suggest that SVW's operations are so interdependent with the operations of its supplier that SVW incurs the operational, maintenance and depreciation-related expenses of its supplier's plant. Additionally, SVW does not share production-related costs and expenses with

its supplier and is not involved in the supplier's decision making. Thus, there is no basis to find that valuing SVW's factors of production, instead of its supplier's inputs, is reflective of SVW's production experience and neither understates nor overstates SVW's costs.

The facts on the record indicate that SVW purchases acetic acid from its affiliated supplier. Because actual purchase prices paid in an NME currency are not considered in an NME context, the price SVW paid to its supplier for purchases of acetic acid is not relevant to this analysis.[4] Nevertheless, SVW's actual production experience is that it purchased acetic acid. Therefore, the Department's decision to value the acetic acid input at the stage in which it is used by SVW is fully in accordance with the law.

4. Using Jubilant's Cost Figures Will Not Overstate SVW's Overhead

The Department explains its basis for determining that Jubilant's cost figures will not overstate SVW's overhead in Issue 3, below.

Issue 2: Surrogate Value for Natural Gas

As directed by the Court, we offer the following further analysis regarding the calculation of the surrogate value for natural gas:

SVW uses natural gas in the production of PVA. To value this input for the final determination, the Department obtained surrogate values from the Gas Authority of India, Ltd. (GAIL), a supplier of natural gas in India, for two areas in India: "HBJ/ONSHORE" and the "Northeast." In our final decision memorandum, we stated the following:

> According to the GAIL website, natural gas in the northeastern states is "at a concessional price." See SVW's February 20, 2003, submission at Attachment 1.

[4] For a clarification on the application of the NME methodology, see 19 CFR 351.408(c)(1).

> Because this price is not the prevailing price in the market but rather is only offered on preferential terms to customers located in a particular geographic region, we find that it would be inappropriate to rely on it. As a consequence, we have continued to use the HBJ/ONSHORE natural gas prices from the GAIL website to calculate the surrogate value for natural gas for purposes of the final determination.

See PVA Decision Memo at Comment 6.

In its brief to the Court, SVW pointed out that the Department relied upon only the highest published HBJ/ONSHORE monthly rate (i.e., the ceiling price) from the GAIL website, rather than averaging the ceiling and floor prices set forth in the GAIL HBJ/ONSHORE data. See Sinopec Sichuan v. United States, Slip Op. 05-45 at 17. Because our intention was to accurately reflect the HBJ/ONSHORE prices in our calculation of NV, the Department requested that the Court issue a voluntary remand on this issue for further analysis.

After further examination of the calculation of the surrogate value for natural gas used for the final determination, we agree that we failed to take the HBJ/ONSHORE floor prices into account, and, as a result, overstated the prevailing price of natural gas in India. We find that both the ceiling and the floor prices are useable information on the record. Therefore, we have recalculated the surrogate value for natural gas as the simple average of the ceiling and floor prices for the HBJ/ONSHORE area from the GAIL website, rather than simply relying on the ceiling price. Consequently, we have revised our margin calculations to incorporate this revised surrogate value. For the specifics of this calculation, see attached "Appendix 1" of this remand.

Issue 3: Application of Jubilant's Financial Ratios to SVW's Costs Without Adjustment

In calculating the final dumping margin for SVW, we based the ratios for factory overhead, SG&A, and profit on the financial statements of Jubilant, an Indian company that produced PVAc during the POI. PVAc is a constituent of partially-hydrolyzed PVA and the

precursor polymer of fully-hydrolyzed PVA. See PVA Decision Memo at Comment 9. We selected Jubilant as the appropriate surrogate because: 1) it was a producer of comparable merchandise during the POI; 2) it produced in the chosen surrogate country (i.e., India); 3) its financial statements were contemporaneous with the POI; and 4) its production process for PVAc was comparable to that of SVW's for PVA, given that the two companies produced at "equivalent levels of vertical integration."

In its brief to the Court, SVW disagreed with the Department's finding that Jubilant was at an equivalent level of vertical integration, primarily because Jubilant produced acetic acid in its plant in India, while SVW purchased acetic acid from an affiliate. SVW concluded from these facts that Jubilant operates at a higher level of vertical integration than SVW, and, as a result, incurred higher capital costs (and consequently higher fixed overhead costs). Moreover, SVW contended that, because Jubilant also sells more products and by-products than SVW, its SG&A and profit ratios are similarly overstated.

As part of its remand order, the Court directed the Department to address SVW's arguments regarding the differences in vertical integration in SVW's production process and that of Jubilant. Specifically, the Court stated:

> Commerce has failed to respond to the Plaintiff's second argument, that because Jubilant is more vertically integrated than SVW, using its cost figures would greatly overstate SVW's overhead. Accordingly, this issue is similarly remanded to Commerce to explain why Jubilant is the appropriate surrogate, assuming the self-produced input rule cannot be applied here.

See Sinopec Sichuan v. United States, Slip Op. 05-45 at 11.

In addition, the Court stated:

> Although Commerce has sufficiently supported its decision to apply Jubilant's financial ratios, it has not sufficiently explained its decision to apply Jubilant's

> financial ratios without accounting for the greater costs incurred by Jubilant during its production of acetic acid, a process which Commerce has determined that SVW does not undergo. As Plaintiff points out, Jubilant's overhead includes the capital costs associated with its production of acetic acid. Moreover, because Jubilant sells more products and by-products than SVW, it is likely that the SG&A and profit ratios of Jubilant will also be overstated compared to SVW. . . Commerce has failed to respond sufficiently to Plaintiff's arguments and to adequately explain its decision not to account for these potentially significant disparities in its calculations.

See id. at 23.

It is the Department's view that these are two distinct concerns; therefore, we will address each issue separately.

1. *Vertical Integration*

In its simplest terms, SVW argues that, because Jubilant produces acetic acid and SVW does not, and acetic acid is used to produce PVA, Jubilant must therefore be more vertically integrated than SVW. Consequently, SVW argues that including the depreciation expenses of the machinery and equipment used to produce acetic acid, while also valuing acetic acid using a surrogate value, overstates SVW's manufacturing costs.

In selecting Jubilant as the appropriate surrogate producer in this case, we analyzed its degree of vertical integration vis-a-vis SVW's. In the final determination we indicated that:

> Jubilant begins its production process with ethanol, which it either purchases or makes by a simple process from molasses. . . Jubilant processes ethanol into ethylene which it turns into VAM and then, ultimately, into polyvinyl acetate (or "PVAc"), a comparable product to PVA. In contrast, . . .SVW produces PVA using acetylene manufactured from additional self-produced inputs, and it hydrolyzes VAM into PVA (a further processed version of PVAc).

See the March 14, 2003, memorandum from the team to Susan Kuhbach entitled "Treatment of Self-Produced Inputs in the Less Than Fair Value Investigation on Polyvinyl Alcohol from the People's Republic of China" (Vertical Integration Memo) at 12 (footnote omitted). Although we

recognized that the production processes of the two entities differed, we found that the two companies operate at equivalent integration levels with respect to the production of PVA and PVAc. As we stated in our analysis memorandum:

> in examining the data on the record relative to this issue, we find that the number and kind of inputs produced by the two companies are quite similar. As the petitioners recognize, Jubilant produces the majority of its own ethylene (i.e., the main ingredient in Jubilant's production of VAM). Jubilant also produces acetic acid, VAM, PVAc (a product which is further processed from VAM), and the majority of its own energy. See pages 7, 9, and 19 of Jubilant's 2002 annual report. Based on these similarities, it is reasonable to conclude that SVW and Jubilant are at equivalent levels of vertical integration.

Id. at 11-12 (emphasis added). This analysis was echoed in our final determination, where we continued to find that SVW and Jubilant were at equivalent levels of vertical integration based on a detailed analysis of the data on the record and a comparison of the production processes used by the two companies.

In the vast majority of the antidumping duty cases, the surrogate producers selected by the Department produce different products and incur different types of costs than the respondents. In these situations, our practice has been not to attempt to adjust the surrogate producer's overhead figures to account for potential cost differences. See Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (Sept. 27, 2001), and accompanying Issues and Decision Memorandum at Comment 2 (Magnesium from Russia); Chrome-Plated Lug Nuts From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 61 FR 58514, 58518 (Nov. 15, 1996); Persulfates from the People's Republic of China; Final Results of Antidumping Administrative Review, 64 FR 69494, 69497 (Dec. 13, 1999); and Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation, 60 FR 16440,

16446-7 (Mar. 30, 1995). In order to account for potential cost differences, the Department in essence would be required to evaluate whether both the surrogate company and the respondent have identical cost structures and then adjust these cost structures on a line-by-line basis to account for observed differences. However, such a requirement is not part of the Department's calculations. As we explained in our final determination:

> because we do not know all of the components that make up the costs of the surrogate producer, adjusting these costs may not make them any more accurate and indeed may only provide the illusion of a false precision. This reasoning was explained in Magnesium from Russia as follows:
>
> > While the petitioners may argue that the magnitude of these costs is understated, we have not attempted to make an adjustment to account for this difference because we are unable to make similar and corresponding adjustments to other costs which may have been overstated. Thus, we disagree that making such an adjustment would yield a more accurate result and indeed could introduce unintended distortions into the data.
>
> See Magnesium from Russia at Comment 2. Moreover, as SVW correctly points out in its case brief, the Department's policy has been sanctioned by the Court. See Rhodia 2002, 240 F. Supp. 2d at 1250-1251.

See PVA Decision Memo at Comment 9.

Similar to the rationale set forth above, any finding in this case that Jubilant's overhead is overstated vis-a-vis SVW's production experience because it includes depreciation expenses related to the manufacture of acetic acid – and then attempting to adjust for these differences – could introduce unintended distortions into the data.[5] For example, Jubilant could experience

[5] Of course, this argument assumes that there is a method available to perform such an adjustment. However, given that the overhead costs related to the production of acetic acid are not separately identified on Jubilant's financial statements, such an adjustment would not be possible. In any event, we note that SVW did not request that the Department adjust Jubilant's overhead ratio. Rather, it argued that the appropriate remedy would be to apply the by-product offset at an earlier stage in the cost calculations. As noted in Comment 3, below, however, there

different cost savings through its alternate production process for PVAc which we neither know about nor can adjust for in our calculations. Moreover, according to Jubilant's 2002-2003 annual report, Jubilant purchases over 20 percent of its electricity and a portion of its ethanol and VAM. See page 19 and 44 of the January 10, 2003, letter from the petitioners, page 16 and Attachment G of the February 21, 2003, letter from the petitioners, and page 2 of the March 7, 2003, letter from the petitioners. SVW, on the other hand, self-produces all of its electricity, acetylene, and VAM. Thus, we find that Jubilant is more vertically integrated in some aspects of its production of PVAc and less vertically integrated in others. For this reason, we continue to find that Jubilant's production experience forms a reasonable basis for valuing SVW's costs, and we disagree with SVW that our decision not to adjust Jubilant's overhead ratio to account for acetic acid production yields a distorted result. Indeed, adjusting the overhead rate for one isolated difference, without accounting for all differences (both known and unknown), at best would provide the illusion of a false precision.

Finally, even if the Court were to disagree with our reasoning here, we note that the appropriate remedy would not be to adjust Jubilant's overhead, as this would be in direct contradiction to our long-standing policy. Rather, it would be to select an alternate surrogate producer. In this case, however, none of the alternatives available to the Department are better than Jubilant because each of these companies produces less comparable products and/or is not located in India. Specifically, in addition to Jubliant, we have on the record of this case the financial statements of five chemical producers: 1) Vinyl Chemicals (India) Ltd. (Vinyl

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is no link between SVW's by-product credit and Jubilant's production of acetic acid and thus there is no justification for accepting SVW's solution here.

Chemicals), an Indian company which only produces vinyl acetate monomer (VAM); 2) Clariant International, Ltd. (Clariant), a Swiss chemical producer which produces in 40 countries, including India; and 3) three Asian producers of PVA, one in Japan (Kuraray Co., Ltd. (Kuraray)), one in Korea (DC Chemical Co., Ltd. (DC Chemical)), and a third in Singapore (Chemical Industries (Far East) Limited (Chemical Industries)). Of these options, only Vinyl Chemicals can clearly be classified as an Indian producer of a product comparable to PVA, but its product, VAM, is farther up in the production stream than PVAc (and thus its product is less comparable). Kuraray, DC Chemical, and Chemical Industries do not produce in India, and, while Clariant does have an Indian subsidiary, its financial statements not only are the consolidated statements of the European parent, but they do not clearly identify the products produced in India. Therefore, Jubiliant's production of PVAc remains the best available surrogate information to value SVW's production of PVA.

2. Number of Products and By-Products

In its brief to the Court, SVW argued that, because Jubilant produces more products and by-products than SVW, its SG&A and profit ratios overstate SVW's actual experience. The Court agreed that this was "likely" and directed the Department to provide further explanation as to why we should not account for these "potentially significant disparities" in our calculations. See Sinopec Sichuan v. United States, Slip Op. 05-45 at 23.

As a threshold matter, we note that we did not base SVW's SG&A expenses and profit on the absolute amounts shown on Jubilant's financial statements. Rather, we expressed Jubilant's SG&A expenses and profit as a percentage of its costs, and then we applied the resulting ratios to SVW's data. Therefore, any expenses associated with "a higher number of products and by-

products" sold by Jubilant were included in the numerator of our ratios, but these expenses were spread out over the cost of the same "higher number of products and by-products" in the denominator.

SVW's argument would be meaningful only where a company's financial ratios increase as the number of products in its product line increases (i.e., where a company incurs not only a higher level of total expenses, but it also incurs disproportionately greater expenses to produce and sell each individual unit). SVW has not argued that the chemicals industry in India experiences this type of cost structure, nor is there any evidence on the record of this case to support such a conclusion. Indeed, a company which produces and sells a single product may well have a higher SG&A ratio (and/or profit rate) than a company that is highly diversified.

Because we recognize that there is no direct correlation between the number of products sold by a company and either its level of expenses (when expressed as a percentage of cost) or its rate of return, we disagree with SVW's conclusion that the differing number of products produced by Jubilant is relevant to the issue at hand or that this difference introduces distortions (significant or otherwise) into our calculations.

C. Comments from Interested Parties

On August 8, 2005, SVW and the petitioners submitted comments on our draft redetermination. These comments are addressed below.

Comment 1: *Self-Produced Inputs*

SVW argues that the Department's decision to apply the self-produced rule to inputs produced by SVW's joint venture is unsupported by substantial evidence and is otherwise not in accordance with the law. SVW states that the Department's primary rationale is that SVW is a

separate legal entity from its affiliated supplier and does not itself produce acetic acid. SVW cites the statute, which requires normal value to be based on "factors of production utilized in producing the merchandise," and claims that the Department has historically interpreted this provision to require it to use factors of production only for inputs that are manufactured by the producer of subject merchandise or its affiliates. See 19 USC 1677b(c)(1). SVW asserts that, in this case, the Department has deviated from its standard practice and adopted a more stringent and generally unsupported interpretation of the statute. SVW argues that the Department has expressed for the first time that it will only value the factors of production for those inputs manufactured by the producer of subject merchandise and not those produced by its affiliate, an interpretation that is contrary to the statute's directive to use the "best available information regarding the values of such factors {of production} in a market economy country." See id. SVW urges that the "best available information" for the factors of production in this case are those reported in its questionnaire responses. By not using this information, SVW states, the Department has not fulfilled its mandate to calculate dumping margins as accurately as possible.

SVW further argues that the Department's determination that a producer and its affiliated supplier are not vertically integrated even though one owns a significant share of the other is contrary to the Department's practice. SVW insists that the Department's practice has been to treat affiliated producers and suppliers as if they were one vertically integrated company and to require suppliers to report their actual costs, rather than the transfer price which they charge a related producer of subject merchandise. SVW notes that in Bicycles from the PRC, the Department applied the self-produced input rule and used surrogate prices to value reported factors of production for subcomponents incorporated into subject merchandise that were

produced by an affiliated bicycle parts supplier. See Bicycles from the People's Republic of China, 61 FR 19026 (Apr. 30, 1996) (Bicycles from the PRC). SVW also argues that the Department normally requires all entities within the same corporate family to report their sales and their factors of production. SVW states that the Department has penalized producers of subject merchandise that have been unable to compel affiliated suppliers to report their actual costs of production rather than the transfer prices paid by the producers or that, for other reasons, have failed to include the data of an affiliated company in the de jure or de facto sense.

SVW notes that control is an important consideration guiding many analyses under the antidumping duty law. For example, SVW states that transactions between affiliated parties are considered to be suspect and cannot serve as the bases for an accurate calculation of the antidumping margin. In such cases, the Department may ignore such sales in deriving normal value because affiliates have the potential to manipulate prices and costs. SVW also suggests that the statute directs the Department to find that entities are affiliated where they are related and where there exists control in fact. Therefore, in making a determination of affiliation, SVW continues, the statute directs the Department to make both an actual and legal inquiry of control. For example, SVW points out that in determining whether to treat a Chinese producer as a separate entity, the Department analyzes both de jure and de facto control exercised by the Chinese government over the product in question.

Next, SVW suggests that many vertically integrated conglomerates (which function like one vertically-integrated unit) establish separate, but related, corporate entities for their different production facilities for taxation purposes or other reasons unrelated to a dumping analysis. In such scenarios, SVW supposes that the corporate group as a whole benefits from its

organizational control over the production of both inputs and the finished product, and such groups are established for the purpose of maximizing output and minimizing the cost of production. Thus, SVW argues that by limiting the definition of a vertically integrated unit to divisions of the same corporate entity (as opposed to separate entities under a common corporate umbrella), the Department has adopted an artificial test that ignores the reality of modern corporate organization. SVW notes that, as a result, it is not clear what level of ownership would be adequate to establish vertical integration under the Department's new test.

SVW insists that the draft results should be revised to encompass a balanced analysis of the evidence of operational control. SVW argues that the Department's remand results illogically suggest that even if a producer owns 100% of its supplier, such a producer would not be considered integrated with its supplier so long as they were two separate corporations. SVW further presupposes that if de jure control becomes the only basis for measuring integration, nonmarket producers will be able to manipulate the factors of production by spinning off upstream operations, creating joint ventures, or using toll operators to supply raw materials or intermediate goods.

SVW also states that the Department's antidumping duty questionnaire required SVW to report factors of production for all of its affiliated entities involved in the production of PVA. SVW cites the terms in the questionnaire, "you" and "your company," in arguing that these terms refer to the responding company, which presumably includes both the producer and its affiliates. SVW states that the Department's longtime policy of requiring companies to report both sales and cost data for all affiliated entities (including those over which the producer of the subject merchandise has operational control) runs counter to the Department's definition of a "producer"

as being the "corporate entity(ies) producing the subject merchandise." SVW also suggests that the Department has never limited its analysis of factors of production data to only those corporate entities producing the subject merchandise, as it seeks to do in this case.

Additionally, SVW maintains that the Department has deviated from its past practice in Wooden Bedroom Furniture from the PRC. See Final Determination of Sales at Less than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67313 (Nov. 17, 2004) (Wooden Bedroom Furniture from the PRC). SVW notes that in that case, the Department valued factors of production of unrelated subcontractors which were used to produce furniture parts and components (i.e., intermediate inputs) because the production and use of such furniture parts was highly integrated with the production of the subject merchandise. See id. SVW argues that the relationship between a producer and a subcontractor is more attenuated than the relationship between joint venture partners. Therefore, SVW insists that because the Department concluded in Wooden Bedroom Furniture from the PRC that factors of production for the intermediate product yielded a more accurate result than relying upon the surrogate value, the Department should utilize factors of production to value the acetic acid produced by SVW's supplier by using the supplier's factors of production.

SVW next cites Anshan Iron & Steel Co. where the Department articulated its self-produced input rule and the exceptions to the rule. See Anshan Iron & Steel Co. SVW concludes that the Department acknowledged, in Anshan Iron & Steel Co., that valuing intermediate inputs is a more accurate measure of calculating the dumping margin. Likewise, SVW argues, the factors of production for acetic acid produced by SVW's joint venture should have been used in the instant case.

SVW additionally argues that the Department abandoned its test of "organizational control," despite the fact that it argued before the Court that the degree of control a company exercises is dispositive. Instead, SVW states, the Department adopted a new test which is strongly at odds with its normal practice and fails to comply with the Court's directive to explain the nexus between organizational control and the application of the self-produced input rule. Thus, SVW insists that the Department should have analyzed: 1) whether SVW and its joint venture supplier are vertically integrated entities; 2) the level of control that SVW exercises over its joint venture; and 3) whether the joint venture was established to secure SVW's access to the most cost-effective source of acetic acid.

Finally, SVW criticizes the Department's reference to the "collapsing" doctrine because SVW argues that these two ideas are entirely separate (as the collapsing methodology deals with the horizontal relationship between two affiliated producers and the self-produced input rule deals with the vertical relationship between a producer and its supplier). Thus, SVW insists that the Department's rationale for collapsing should have no relevance here.

The petitioners argue that the Department's decision to continue to value SVW's acetic acid input with Indian surrogate prices is supported by substantial evidence and is in accordance with the law. According to the petitioners, the facts on the record indicate that SVW cannot be found to self-produce acetic acid because SVW purchases [**********] of the total quantity of acetic acid produced by a joint venture that it neither operates nor controls. The petitioners further note that the joint venture's acetic acid production is not integrated with SVW's PVA production operations. Absent such evidence, the petitioners argue, SVW cannot value the joint venture's inputs used to produce acetic acid as if they were SVW's own. In such

circumstances, the petitioners contend that application of the self-produced input rule would require the Department to depart from its practice and lead to an inaccurate cost of production for SVW because the affiliated supplier's production is not SVW's own production experience.

The petitioners argue that despite SVW's assertions that: 1) its joint venture produces acetic acid within SVW's own manufacturing site; 2) SVW purchases all of its acetic acid from its supplier; 3) the joint venture supplier directly pipes acetic acid to SVW; and 4) it obtains many of its raw material inputs for acetic acid from SVW (an argument that SVW never briefed in its filings made to the Department in the investigation, in its submissions to the Court, or in its latest set of comments), these events do not necessarily evidence SVW's control over its supplier's production of acetic acid. The petitioners note that neither physical proximity nor method of transport between two distinct companies creates a level of interdependence that warrants the application of the self-produced input rule. The petitioners also note that substantial evidence exists on the record to show that SVW is not integrated with its joint venture supplier's acetic acid production because SVW does not maintain control over its supplier and SVW's corporate organization is not integrated with that of its affiliated supplier. The petitioners point to the following undisputed facts placed on the record by SVW: 1) SVW and British Petroleum (BP) jointly own the joint venture supplier; 2) BP, not SVW, owns a majority share in the joint venture; and 3) [**********] of the affiliated producer's acetic acid production is used by SVW in producing PVA while the rests of its sales are in the open market to unaffiliated parties. Additionally, the petitioners insist that SVW has presented no evidence that it monitors or directs the raw materials consumed by its acetic acid supplier, establishes the production methods to be employed, or requires its supplier to meet particular specifications. Thus, the

petitioners argue that SVW neither independently produces acetic acid, nor owns and controls its supplier's acetic acid operations, and therefore, the Department should not apply the self-produced input rule.

The petitioners emphasize that, to date, SVW has not presented sufficient evidence as to whether it exerts control over the affiliated supplier's acetic acid production. The petitioners suggest that SVW's minority shareholding in an acetic acid facility that is controlled by BP and which sells only a [**********] of its output to SVW is not proof that SVW and its supplier are vertically integrated. The petitioners also note that SVW fails to demonstrate its vertical integration as discussed by SVW's own experts on the record of this proceeding, that vertical integration is based on the ability of a firm to exercise control over the whole production and distribution process through acquisition or ownership. Moreover, the petitioners reference the Department's 1995 investigation and 2003 review of SVW where it found that SVW had no acetic acid production capability, and state that presently, SVW merely purchases acetic acid from a separate legal entity in which it holds a minority ownership interest.

The petitioners note that the formality of corporate affiliation is not dispositive as to whether SVW is integrated with its supplier's production of acetic acid to assert that it is self-produced. The petitioners suggest that whether a company can be said to be sufficiently integrated with a supplier with respect to a factor of production so that the Department could find that it self-produces that factor is a matter of extensive control, not minority investment between the producer and the supplier. Accordingly, the petitioners maintain that there is no evidence on the record to show that SVW makes any investment, employment, production, and distribution decisions with respect to its supplier's acetic acid operations.

The petitioners finally argue that SVW's reliance on the Department's recent determination in Wooden Bedroom Furniture from the PRC and Bicycles from the PRC is misplaced. First, the petitioners point out that contrary to SVW's suggestion, in Bicycles from the PRC, the Department did not apply the self-produced input rule to the affiliated suppliers. See Bicycles from the People's Republic of China, 61 FR 19026 (Apr. 30, 1996). Second, the petitioners state that, in Wooden Bedroom Furniture from the PRC, the Department valued certain self-made, semi-finished and *subcontracted* inputs reported by three producers of subject merchandise because in "all three cases the production of the products in question was highly integrated with the production of subject merchandise." See Wooden Bedroom Furniture from the PRC. The petitioners note that the highly-integrated operations in Wooden Bedroom Furniture from the PRC are distinguishable from the instant case. In Wooden Bedroom Furniture from the PRC, the self-produced inputs in question were specific and unique to the furniture produced by each respondent. The petitioners further argue that substantial evidence on the record of that case indicated that the design, specifications, raw materials, production methods and quality standards of the subcontracted parts were all tightly controlled by the respondent producers. See, e.g., Lacquer Craft Manufacturing Company Ltd. And Dorbest Limited's Comments on Certain Issues Related to the New Shipper Review(s) and Administrative Review of Wooden Bedroom Furniture from the PRC, (Aug. 1, 2005) at 11 and 8-9, respectively. The petitioners note that in Wooden Bedroom Furniture from the PRC, the production of unique, specifically designed inputs is not at all analogous to the production of a commodity input such as acetic acid which is sold to any number of other downstream producers. Additionally, the petitioners report that there is nothing on the record of this case to indicate that SVW is either

integrated with respect to acetic acid production or maintains operational control over its supplier's acetic acid input in any manner similar to the type of control exerted by subject merchandise producers in Wooden Bedroom Furniture from the PRC.

Department's Position:

The Department agrees with the petitioners that the statute, the Department's regulations, and case precedent support its determination that SVW does not self-produce acetic acid, and consequently, the Department determined to not value the inputs used to produce acetic acid in its normal value calculation. Rather than applying surrogate values to the upstream inputs used to produce acetic acid, we are applying a surrogate value to acetic acid, the actual input used by SVW to produce subject merchandise. We find that valuing such inputs using surrogate values would not further the accuracy of the Department's normal value calculations and would be contrary to law, as discussed further below.

1. The statute requires the Department to value factors of production at the stage in which they are purchased by the producer of subject merchandise.

At the outset, the Department notes that neither the statute nor the Department's regulations expressly identify the appropriate circumstances in which inputs produced by a third-party supplier can be considered "self-produced." However, it is reasonable to infer from the applicable provisions of the statute that Congress intended the Department to value the factors of production utilized by the producer of subject merchandise. For example, section 773(c) of the Act, which pertains to valuing an NME producer's factors of production, directs the Department to base normal value on the production experience and expenses of the producer of subject merchandise, i.e., to calculate normal value on the basis of the "value of the factors of production

utilized in producing the merchandise and to which shall be added an amount for general expenses and profit…" See section 773(c)(1) of the Act. Section 771(28) of the Act defines "producer" as the "producer of subject merchandise," and additionally states that the term "exporter or producer" includes both the exporter of the subject merchandise and the producer of the same subject merchandise "to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with the production and sale of that merchandise." See section 771(28) of the Act (emphasis added). The Department is also required to value these factors of production "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." See section 773(c)(1) of the Act. While the statute does not define "best available information," it "grants to {the Department} broad discretion to determine the 'best available information' in a reasonable manner on a case-by-case basis." See Timken Co. v. United States, 166 F.Supp.2d 608, 616 (2001). Thus, the Department's calculation of a respondent's margin is based on a statutory mandate to accurately estimate the actual experiences of an NME respondent as if it were in a market economy. See Anshan Iron & Steel Co. Because the statute and regulations do not expressly govern the manner in which the Department is to value a respondent's inputs, the Department has exercised its discretion and has reasonably determined in this case to value the factors of production consumed by the respondent in its production of subject merchandise as this is the best available information on the record. Accordingly, the Department maintains that valuing the acetic acid factor used by SVW, and not the upstream inputs into producing acetic acid, is the appropriate basis in which to construct SVW's normal value.

2. The self-produced input rule applies to integrated producers.

The Department disagrees with SVW's argument that the Department is applying a new standard of analysis, for purposes of establishing SVW's normal value, by valuing SVW's purchases of acetic acid. The Department's past practice with respect to such valuation has been consistent. As explained in detail above, in the Department's analysis section, the self-produced input rule requires that the Department take into account the factors utilized in each stage of a producer's production process. See Fish Fillets from Vietnam; THFA from the PRC. The Department does not value the upstream inputs utilized by the supplier of the factor (i.e., to produce that factor) unless the producer is integrated with respect to that factor. See Fish Fillets from Vietnam; THFA from the PRC.[6]

Although SVW itself acknowledges that it is a separate legal entity from its acetic acid supplier, SVW contends that it is sufficiently integrated with its supplier to justify valuing its supplier's upstream inputs as SVW's own. SVW points to its [***] ownership interest in its supplier to support this contention. However, the Department notes that SVW's ownership interest in its supplier only establishes affiliation between the two entities, but the integration requirement implied in the self-produced rule is not satisfied by a mere finding of affiliation between a producer and its supplier. See CITIC Trading Company; CITIC Trading Co. Ltd. v. United States, Slip Op. 03-23 (Mar. 4, 2003) (where the plaintiffs failed "to provide any explanation as to why close affiliation is proof that merchandise is self-produced.") Absent any finding that SVW is an integrated producer of the acetic acid input as well as the subject

[6] Only when the NME producer is integrated with respect to a certain factor, such that it can be deemed to self-produce that factor, will the Department consider valuing the inputs used in the upstream stage of the production process. See Fish Fillets from Vietnam; THFA from the PRC.

merchandise, the Department cannot rationally apply the self-produced input rule in order to value the upstream inputs used to produce acetic acid as if acetic acid was produced by SVW itself. As explained above in the Department's analysis, the self-produced input rule applies to integrated entities, and SVW has failed to demonstrate that it is integrated with respect to acetic acid production.

3. The role of "control" with respect to corporate entities.

It is the Department's position that control is not a dispositive factor in determining whether a producer's inputs should be valued as self-produced. First, according to the statute and the Department's regulations, the term "control" is a relevant factor in antidumping law in determining whether certain persons are "affiliated." According to the statute, "control" exists when one party is legally or operationally in a position to exercise restraint or direction over the other party for purposes of affiliation. See sections 771(4)(B) and (33)(A) – (G) of the Act. The Department's regulations further define "control," within the context of affiliation, as a relationship that has the "potential to impact decisions concerning the production, pricing or cost of the subject merchandise or foreign like product." See 19 CFR 351.102(b).

Second, the Department's regulations identify a single scenario where two "producers" can be considered as a single entity. According to 19 CFR 351.401(f), the Department may find two "producers" to be a single entity if: 1) they are affiliated; 2) they have production facilities for producing similar or identical products that are sufficiently similar so that a shift in production would not require substantial retooling; and 3) there is significant potential for the manipulation of price or production. See, generally, 19 CFR 351.401(f).

The Department recognizes that control, per se, may be a factor in determining whether two entities are affiliated and whether there exists a significant potential for the manipulation of price or production such that they may be properly considered to be a single entity. However, the Department notes that *control*, by itself, is not a dispositive factor in determining whether two "affiliated producers" should be treated as a single entity.

The Department acknowledges that, while there is evidence on the record to indicate that SVW and its supplier may be *affiliated* based on SVW's [**]% ownership interest in its joint venture supplier,[7] there is insufficient record evidence to conclude that SVW and its supplier are a *single entity*. The Department's regulations specify the circumstances under which two affiliated producers can be treated as a single entity with respect to the Department's calculation of normal value. The Department's regulations state, in relevant part:

> {I}n an antidumping proceeding, the {Department} will treat two or more affiliated producers as a single entity where those two producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the {Department} concludes that there is a significant potential for the manipulation of price or production.

See 19 CFR 351.401(f)(1).

> In identifying a significant potential for the manipulation of price or production, the factors the {Department} may consider include:
>
> (i) the level of common ownership;
>
> (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and

[7] According to Section 771(33)(E) of the Act, the Department considers parties to be "affiliated" if "any person directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting stock of shares of any organization and such organization."

> (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

See 19 CFR 351.401(f)(2). Based on the facts on the record, SVW and its supplier do not qualify for treatment as a single entity under the Department's regulations because SVW and its supplier: 1) do not have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and 2) do not pose a significant potential for the manipulation of price or production, as discussed below. See 19 CFR 351.401(f).

Furthermore, based on the evidence on the record of this proceeding, we do not find that there is a significant potential for the manipulation of price or production. Consequently, SVW and its supplier should not be considered a single entity.

Although SVW argues that the Department should consider its investment in its joint venture supplier in determining whether acetic acid is self-produced, SVW's investment alone does not establish that SVW and its supplier must be treated as a single entity. SVW entered into a joint venture with BP, a multinational petroleum company, to produce acetic acid. BP owns a majority share of [**] percent of the joint venture, SVW owns a minority share of [**] percent, and a third independent company owns the remaining [*] percent. Additionally, as the petitioners point out, SVW's own experts indicate that SVW and its supplier cannot be considered as a single entity because SVW does not exert ownership and complete control over the production or distribution of its acetic acid supplier.

Although SVW maintains that it should be treated as vertically integrated, and thus a single entity, with its supplier, based on the record of this proceeding, SVW cannot be considered to be vertically integrated. "Vertical integration also means the ownership and complete control over neighboring stages of production or distribution. In particular, a vertically integrated firm would have complete flexibility to make the investment, employment, production or distribution decisions of all stages encompassed within the firm…[V]ertical integration might be thought of as a firm's decision to exercise control over the whole production and distribution process through acquisition or ownership, internal expansion or initial formation. See the petitioners' August 18, 2005, submission at 4-5 (*quoting* The Respondent's Second Supplemental Questionnaire, dated Jan. 13, 2003 (quoting Martin Perry, Vertical Integration: Determinants and Effects, in Handbook of Industrial Organization, 186 (Schmalensee and Willig, eds, 1989) (emphasis added).

Thus, despite SVW's insistence that the Court should consider its operational interdependence with its supplier, SVW has offered no compelling evidence of operational interdependence between itself and its supplier. No record evidence exists to suggest that SVW makes any investment, employment, production and distribution decisions with respect to its supplier's acetic acid operations or overall corporate operation. There is also no record evidence to suggest that SVW incurs the operational, maintenance and depreciation-related expenses of its supplier's acetic acid plant. Moreover, there are no facts on the record to indicate that SVW shares costs and expenses related to its joint venture's acetic acid production. There are also no facts on the record to indicate that SVW monitors or directs the raw materials consumed by its supplier,

establishes the production methods employed by its supplier, or requires that its supplier meet particular specifications unique to SVW.

Furthermore, SVW does not consume a significant portion of its supplier's output. Specifically, SVW consumes less than [*] percent (i.e., [***] percent) of its supplier's acetic acid output; thus, nearly all of its supplier's sales of acetic acid are to other parties. See the petitioners' August 18, 2005, submission at 4. Moreover, SVW's statements that it provides its supplier with many of its raw material inputs for acetic acid production is unsubstantiated by any submission made to the Department or to the Court. Further, SVW does not explain why providing certain raw material inputs to its supplier establishes SVW's control over its supplier's production of acetic acid.

Finally, integrated acetic acid production is neither established through SVW's close proximity to its supplier's plant nor its receipt of acetic acid through a pipe connected to its supplier. The Department notes that a sharing of a pipeline does not amount to evidence of integration. Moreover, physical proximity and the manner in which inputs are transported between two plants also are not a sufficient basis to find control or integration. As the petitioners note, interconnected pipes are merely part of a negotiated supply relationship and presumably considered an efficient way to deliver an input. See the petitioners' August 18, 2005, submission at 7.

None of the facts discussed above indicate that SVW and its supplier behave, or should be treated, as a single entity. Rather, these facts clearly support the Department's original determination that SVW and its supplier are separate entities. Accordingly, the Department will continue to value SVW's purchases of acetic acid as the relevant factor

of production (instead of its supplier's upstream inputs to produce acetic acid). The Department's treatment of SVW and its supplier as separate entities and its consequent valuation of acetic acid as the relevant factor of production is consistent with the statute and the Department's regulations.

4. SVW's reliance on case precedent is misplaced.

In its response to the Department's draft remand results, SVW cites a number of cases that allegedly require the Department to value factors of production used by both a producer of subject merchandise and its affiliates. See, e.g., Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China, 59 FR 66895 (Dec. 28, 1994) (Coumarin from the PRC); Silicomanganese from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000) (Silicomanganese from the PRC); Prestressed Concrete Steel Wire Strand from India, 68 FR 42389 (July 17 2005) (Wire Strand from Inida). SVW, however, misrepresents the Department's findings in these cases and the Department's factor valuation methodology.[8] Despite SVW's misplaced assertions, the Department

[8] Contrary to SVW's assertions, the Department did not value factors of production that were not self-produced; instead, the Department valued all of the factors of production that were self-produced by the actual producer of subject merchandise. In Coumarin from the PRC, the Department valued all factors of production consumed by the responding producer of subject merchandise, including certain intermediate inputs captively produced (i.e., self-produced). See Coumarin from the PRC, 59 FR at 66899. In Silicomanganese from the PRC, the Department valued the respondent's self-produced intermediate input (i.e., sintered manganese ore) using the value of the materials, energy and labor employed to manufacture the input. See Silicomanganese from the PRC, and accompanying Issues and Decision Memorandum at Comment 6. Finally, in Wire Strand from India, the Department never reached a determination about how to value the respondent's factors of production because the respondent's margin was based on adverse facts available. (In Wire Strand from India, the respondent failed to provide to the Department information about its own wire rod production facilities and whether its steelmaking and wire rod facilities utilized inputs obtained from affiliated suppliers–information

emphasizes that it has been the Department's consistent practice to value the factors of production that a producer of subject merchandise uses to manufacture the merchandise in order to best represent the producer's costs of production. See Fish Fillets from Vietnam; THFA from the PRC. The Department does not value a supplier's inputs unless that supplier is considered to be a single entity with the producer of subject merchandise.

SVW also fails to explain how the Department's prior determinations with respect to valuing self-produced inputs supports treating its acetic acid factor, which is purchased from a third-party supplier, as self-produced. SVW cites Bicycles from the PRC in arguing that "affiliated producers and suppliers" have been treated in the past as "if they were one vertically-integrated company." SVW's Comments, at 6. However, contrary to SVW's suggestion, in Bicycles from the PRC, the Department did not apply the self-produced input rule to the affiliated supplier. (In Bicycles from the PRC, the Department valued the smallest component (e.g., a completed fork set) that incorporated parts purchased from an affiliate. See Bicycles from the PRC, 61 FR at 19030.)

Additionally, SVW's analogy to market economy principles (i.e., the "transfer prices") is inapposite because the primary focus in any market economy normal value calculation is price, whereas in NME cases, the Department does not consider prices established in the NME when constructing normal values. NME countries, by definition, are countries that the Department has determined do not operate on market principles of cost or pricing structures, such that sales of merchandise in such countries do not reflect the fair value of the merchandise. See section 771(18) of the Act. In prior

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pertinent to the Department's analysis.) See Wire Strand from India, 68 FR at 42390.

determinations, the Department has found that antidumping cases involving NME countries are unique because the centralized pricing and production decisions of these NME countries make internal prices and costs "inherently suspect." See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48,612 (July 25, 2002), and accompanying Issues and Decision Memorandum, at Comment 12, *amended in* Notice of Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China, 67 FR 59,049 (Sept. 19, 2002). Moreover, even in a market economy case, the Department uses the value of the producer's input purchased from an affiliate and does not value a supplier's factors of production unless that input value is below the affiliated supplier's cost of production.

Moreover, SVW's reference to Anshan Iron & Steel Co. is inapplicable to the instant case because in Anshan Iron & Steel Co., the respondent's self-generation of energy inputs was "capital intensive," and the Department's determination was remanded by the Court to value the respondent's energy inputs as self-produced. The Department determined, upon remand, that valuation of the respondent's upstream inputs into the self-produced factor was appropriate. See Anshan Iron & Steel Company, Ltd., et al. v. United States of America and United States Steel Corporation and Gallatin Steel Company, et al., 358 F.Supp.2d 1236 (CIT 2004) (Anshan Iron & Steel Company 2004) Final Results of Redetermination Pursuant to Court Remand (Dec. 23, 2004). The Department notes, however, that the circumstances in Anshan Iron & Steel Company 2004 are distinguishable from the instant case because SVW does not self-produce (i.e.,

self-generate) its acetic acid but rather purchases the input from a separate (although affiliated) supplier.

SVW's reliance on the Department's recent determination in Wooden Bedroom Furniture from the PRC is also misplaced. In Wooden Bedroom Furniture from the PRC, the Department valued certain subcontracted furniture parts (i.e., bedposts and moldings) using the upstream inputs used to produce these parts (i.e., wood and plastic) because the production of these products was highly integrated with the production of subject merchandise. See Wooden Bedroom Furniture from the PRC, and accompanying Issues and Decision Memorandum, at Comment 15. Moreover, certain complications were present in Wooden Bedroom Furniture from the PRC which required the Department to value the supplier's factors of production. Those complications arose out of difficulties in determining the appropriate surrogate values to apply to the subcontracted parts. However, such complications are not present here, and thus, consistent with the Department's past practice, the Department considers it appropriate to value SVW's own factor of production, i.e., acetic acid.

In the instant case, moreover, acetic acid is unlike the uniquely designed and manufactured subcontracted parts in Wooden Bedroom Furniture from the PRC because acetic acid is a commonly-used compound that can be applied for a variety of purposes. [9]

[9] Acetic acid is used to prepare dilute acetic acids and strong ammonium acetate solution. Has been used for destruction of warts, in eardrops, as an expectorant, liniment and astringent. Is used in the manufacture of acetic anhydride, cellulose acetate, vinyl acetate, chloroacetic acid, plastics, pharmaceuticals, dyes, insecticides, laundry sour, photographic chemicals, vitamins, antibiotics, cosmetics and hormones. It is used as an antimicrobial agent, latex coagulant and oil-well acidifier. It is used in textile printing, as a preservative in foods and as a solvent for gums, resins, volatile oils and many other substances. See "Acetic Acid Fact Sheet," at http://www.npi.gov.au/database/substance-info/profiles/2.html (Sept. 15, 2005).

Moreover, the facts on the record indicate that the acetic acid produced by SVW's supplier is not specifically produced for SVW. Record evidence indicates that the majority of the chemical, [******] percent of the acetic acid output of the supplier, is sold to third-party purchasers. Thus, the Department concludes that production of the distinctive and specifically designed inputs in Wooden Bedroom Furniture from the PRC is not at all analogous to the production of a commodity input such as acetic acid, which is sold to any number of other downstream producers for a variety of commercial uses. Additionally, there is nothing on the record of this case to indicate that SVW maintains operational control over its supplier's acetic acid inputs in any manner similar to the type of control exerted by subject merchandise producers in Wooden Bedroom Furniture from the PRC.

Because SVW purchases and does not self-produce acetic acid, valuing SVW's actual factors of production will lead to the most accurate normal value calculation since these factors will reflect SVW's own production experience rather than the experience of its joint-venture supplier. As discussed above, the Department finds that there is no evidence on the record of this proceeding to indicate that SVW is integrated with its acetic acid supplier with respect to that factor. As a result, the self-produced input rule cannot be applied to SVW for purposes of valuing the upstream inputs used to produce acetic acid instead of the acetic acid actually consumed by SVW in its production of subject merchandise. Moreover, the Department has analyzed the governing provisions of the statute and its regulations, and has demonstrated that valuing acetic acid as the

relevant factor of production is a reasonable construction of the law. Moreover, the valuation of acetic acid as SVW's factor of production is consistent with the Department's practice of calculating respondent margins and case precedent. Therefore, absent evidence that SVW can be treated as self-producing acetic acid, the Department finds it appropriate to continue valuing *acetic acid* as SVW's factor of production in this segment of the proceeding.

Comment 2: *Natural Gas*

According to the petitioners, the Department's decision to recalculate the surrogate value for natural gas is not supported by record evidence. Specifically, the petitioners claim the price of Rs. 2,850 per 1000 standard cubic meter (SCM), shown on the GAIL website, is the price actually paid by consumers from January through June 2002. According to the petitioners, if anything, the prices Indian consumers paid for that period would have been higher but for the regulatory parameters established by GAIL. The petitioners assert that there is no evidence on the record that the floor price had any relevance to the price established by the Indian government. Thus, the petitioners maintain that averaging the floor and ceiling prices would understate the actual price of natural gas paid in India and fundamentally distort NV.

SVW disagrees, contending that the record fully supports the Department's decision to take floor prices into account. Specifically, SVW notes that the GAIL website indicates that the price of natural gas "varies between the floor price of Rs. 2150 per 1000 SCM and ceiling of Rs. 2850 per 1000 SCM . . ." Thus, SVW concludes that the record establishes that a range of prices existed. As a consequence, SVW maintains that the Department's decision to average the floor and ceiling prices is correct.

Department's Position

For purposes of this remand, we continue to find that it is appropriate to recalculate the surrogate value for natural gas as the simple average of the ceiling and floor prices for the HBJ/ONSHORE area from the GAIL website. According to the GAIL website,

> The supply of gas is made under a contract, the {sic}terms and conditions of which are generally standardized . . . The price varies between the floor price of Rs.2150 per 1000 SCM and ceiling of Rs.2850 per 1000 SCM and is notified on a monthly basis. Supply of gas in North Eastern states is at a concessional price varying between a floor price of Rs. 1200 and a ceiling price of Rs.1700 per 1000 SCM respectively. . .

See SVW's February 20, 2003, submission at Attachment 1.

It is clear from this description that consumers pay a range of prices and not merely the ceiling, as claimed by the petitioners. Given that our intention was to accurately reflect the HBJ/ONSHORE prices in our calculation of NV, we find that it would be distortive to rely only on the ceiling price for natural gas. Therefore, we have amended our margin calculations to incorporate the revised surrogate value.

Comment 3: *Application of the By-Product Credit*

SVW argues that the Department's decision in the final determination to apply a by-product credit related to the recovery of acetic acid only after applying the financial ratios was contrary to law. Specifically, SVW asserts that: 1) it is unclear how this methodology achieves greater accuracy in the margin calculation; 2) this methodology is contrary to the Department's practice; 3) this methodology contradicts the Department's findings that Jubilant and SVW operate at equivalent levels of integration; and 4) Jubilant incurred significant overhead costs in its production of acetic acid. SVW claims that, in its remand order, the Court directed the Department to take into account both upward and downward adjustments to SVW's normal

value. According to SVW, if the Department is unable to quantify these adjustments, it must apply Jubilant's financial ratios to SVW's production costs without adjustment (i.e., it must apply the by-product offset to SVW's costs before applying the financial ratios).

The petitioners disagree, noting that the Court found that the Department sufficiently supported its decision to award SVW a by-product credit after applying Jubilant's financial ratios. According to the petitioners, SVW's proposal should be disregarded because SVW is merely continuing to revisit arguments that were rejected by the Court. In any event, the petitioners note that the Department's decision vis-a-vis the by-product credit is supported by its prior practice. As support for this contention, the petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China, 65 FR 35296 (June 24, 2004) and Manganese Metal From the People's Republic of China; Final Results of Second Antidumping Administrative Review, 64 FR 49447 (Sept. 13, 1999).

Department's Position:

We agree with the petitioners. The Court explicitly addressed SVW's arguments in its opinion. Specifically, the Court stated:

> Commerce's decision to apply the by-product credit for acetic acid recovery after applying Jubilant's financial ratios to SVW's costs is supported by its finding – a finding that Plaintiff does not disagree with – that "SVW recovers a significant quantity of acetic acid during the final hydrolysis stage, while Jubilant does not hydrolyze PVAc into PVA." During the stage of the production process when Jubilant produces ethylene and before SVW produces acetylene the total cost per pound before recovery of acetic acid for each company is comparable, and therefore, Commerce's decision to compare the two companies at this stage is supported by the record. . . . Applying the by-product credit before applying Jubilant's financial ratios would, as Commerce argues, mischaracterize SVW's cost of production because

> Jubilant's production process does not include the hydrolysis step where acetic acid is recovered. . .
>
> The by-product credit corresponds to the amount and value of acetic acid recovered by SVW in its production process, not the cost of Jubilant's upstream production of acetic acid or the costs associated with the other products and by-products produced by SVW. Commerce's decision to apply financial ratios calculated from Jubilant's data to Plaintiff's cost before applying the by-product credit will not be disturbed by the Court.

Because the Court has not disturbed our determination to apply the financial ratios calculated from Jubilant's data to SVW's costs before applying the by-product credit, we find that SVW's argument has been sufficiently considered. The Department's methodology was affirmed by the Court. Thus we have not addressed SVW's argument further here.

Comment 4: *Surrogate Financial Ratios - Vertical Integration*

In the draft remand results, the Department stated that Jubilant does not use acetic acid to produce PVAc, and thus Jubilant's production of acetic acid is not relevant to a determination of whether its production of PVAc is more vertically integrated than that of SVW. According to SVW, this conclusion is factually incorrect. Although SVW acknowledges that Jubliant uses a different production process to produce the vinyl input that is used in producing the VAM (i.e., the major input into PVAc and PVA), SVW maintains that both companies combine the vinyl inputs with acetic acid in order to produce VAM.[10] Thus, SVW contends that, because Jubilant produces acetic acid and SVW does not (assuming that the Department continues to treat acetic acid as a purchased, rather than a self-produced, input for SVW), the Department should revise

[10] As proof of this assertion, SVW cites the petitioners' submission of February 5, 2003, in which the petitioners state "{t}he important factors in the cost of VAM, and therefore PVA, is acetylene for Sichuan and ethylene for Jubilant since these are the inputs that get combined with acetic acid to make VAM." See the petitioners' February 5, 2003, submission at page 13.

its analysis and find that Jubilant's production process is more vertically integrated than SVW's. SVW contends that the failure to do so would impermissibly double count the overhead, SG&A and profit attributable to SVW's consumption of acetic acid.

According to SVW, because the Department's determinations are required to be accurate and internally consistent, "one-sided" adjustments are not in accordance with law. SVW contends that, given that the draft remand results continued to make only an adjustment that favors the petitioners, they do not result in a fair or accurate representation of SVW's normal value. Moreover, SVW contends that this "one-sided" adjustment breaks the statutory link between SVW's production experience – which includes significant cost savings inherent in the recycling of acetic acid – with the surrogate overhead ratio applied to SVW's reported costs. Specifically, SVW contends that the statute requires the Department to include capital costs which are "representative" of SVW's experience. As a result, SVW argues that the Department must make a downward adjustment to SVW's normal value to account for the additional capital costs incurred by Jubilant in its self-production of acetic acid and other products (such as ethylene) that are not incurred by SVW.

SVW recognizes that the Department has concluded that both upward and downward adjustments are not possible here. Therefore, SVW proposes as an alternative methodology that the Department apply the by-product offset against manufacturing costs prior to applying the financial ratios. For further discussion, see Comment 3, above.

The petitioners contend that, despite overlooking the fact that Jubilant produces acetic acid in its draft redetermination, the Department properly found that SVW and Jubilant were at equivalent levels of integration and accordingly had sufficiently similar overhead costs. The

petitioners maintain that the Department should dismiss SVW's argument because it is both conclusory and self-serving. Specifically, the petitioners note that SVW was unable to point to any evidence on the record of the case to back up its assertions that: 1) acetic acid production is "complicated" and "capital intensive"; 2) Jubilant actually generates significant capital costs in its production of acetic acid; or 3) Jubilant's acetic acid costs are on a "similar scale" to those of SVW's joint venture supplier.

The petitioners further contend that SVW does not explain in any meaningful detail how Jubilant's acetic acid production has caused its overhead costs to be overstated in relation to SVW's. According to the petitioners, the record shows that Jubilant's company-wide depreciation expenses comprise a fairly low portion of both its overall overhead costs and its total cost of production of PVAc.

Moreover, the petitioners assert that SVW overlooked the fact that its overhead costs are not based on absolute amounts, but rather are first expressed as a percentage of Jubilant's direct costs and then applied to SWV's own direct costs. Thus, the petitioners maintain that any increase in Jubilant's capital costs associated with acetic acid production would be offset to some extent by an increase in the materials, labor, and energy costs associated with producing acetic acid (such as purchased methanol). The petitioners argue that, because the Department did not have the information to assess whether Jubilant incurred disproportionately greater overhead relative to its direct costs, it acted reasonably in deciding not to make an adjustment. According to the petitioners, making such an adjustment would have risked doing more harm than good, given that any resulting "precision" would only be illusory.

In any event, the petitioners argue that a comparison of SVW's and Jubilant's production

processes reveals that there are a variety of differences, some of which would result in the understatement of SVW's overhead costs. Specifically, the petitioners note that there are differences in the amount of purchased versus self-made inputs, as well as in the capital and overhead intensity of the corresponding processes. For example, the petitioners note that Jubilant purchases a significant percentage of its ethanol, VAM, and electricity, and all of its water, whereas SVW self-produces all of its acetylene, VAM, electricity, and water. Moreover, the petitioners note that Jubilant, unlike SVW, also sells many of its intermediate products, rather than further processing them into PVAc. According to the petitioners, both of these factors support a finding that Jubilant is less vertically integrated than SVW. Finally, the petitioners note that SVW's production of acetylene is likely more capital-intensive than Jubilant's production of ethylene because SVW obtains raw natural gas, purifies it, and uses a capital- and overhead-intensive cracking process, while Jubilant produces ethylene by breaking ethanol by a simpler catalytic reaction (again, potentially understating Jubilant's overhead vis-a-vis SVW's).

The petitioners contend that the Department thoroughly considered these production differences during the less-than-fair-value investigation and properly concluded that the two companies were at equivalent levels of vertical integration. The petitioners point out that, in making this finding, the Department recognized that: 1) there were differences in the production processes and capital structures of the two entities; but 2) on balance, the companies were sufficiently similar that Jubilant's costs formed a reasonable surrogate for SVW's. Specifically, the petitioners assert that the Department's refusal to adjust for differences in Jubilant's self-production of acetic acid was fair, because it was counterbalanced by its refusal to make corresponding adjustments for Jubilant's purchases of electricity, water, acetylene, and VAM.

In any event, the petitioners note that it is the Department's practice to rely in toto on the financial statements of "comparable" surrogate producers, rather than attempting to adjust these statements to conform them to a respondent's production experience in every respect. See, e.g., Magnesium from Russia at Comment 2. According to the petitioners, this practice has been upheld by the Court. See Rhodia, Inc. V. United States, 240 F. Supp. 2d 1247, 1250-51 (CIT 2002). The petitioners point out that in this case, the Department was faced with limited choices for surrogate producers, and of those, Jubilant was not only comparable in most respects, but it was the only one that produced comparable products. Thus, the petitioners conclude that using Jubilant's surrogate information is the best available information on the record to value SVW's production of PVA.

Finally, the petitioners contend that SVW's arguments are premised on a basic misunderstanding of both the Department's rationale, and the Court's opinion. According to the petitioners, SVW erroneously states that the Department adjusted SVW's direct cost base to which Jubilant's overhead ratio is applied to ensure that the surrogate producer's capital cost is representative. However, the petitioners maintain that the Department's methodology, sanctioned by the Court, was predicated upon differences in relative material costs, not differences in capital costs.

Department's Position:

In the Department's draft remand results, we acknowledged that Jubilant produced acetic acid in its production facilities in India; however, we found that Jubilant's acetic acid production was not relevant to the question at issue because we believed that it did not use this product in the production of PVAc. We have now reviewed the administrative record and agree with SVW that

this conclusion was in error. Specifically, we agree that the record shows that acetic acid is a necessary component of VAM, which is the primary input into PVAc. We have considered the integration issue in light of this fact, and we continue to find that no adjustment is warranted here.

As a threshold matter, we disagree with SVW that this difference in production process is sufficient to find that the two companies are at markedly different levels of vertical integration. As the petitioners correctly point out, there is no information on the record which substantiates any of SVW's claims as to the capital intensity of acetic acid production in general or to the degree to which Jubilant's capital costs are increased by its specific production of this material. Given the paucity of data on the record, we are unable to assess the impact of Jubilant's self-production of acetic acid on its overhead ratio. We are similarly unable to conclude that Jubilant's product experience is unrepresentative of SVW's own due to this difference.

Moreover, we disagree with SVW's implicit premise that Jubilant's acetic acid production should be viewed in isolation when analyzing whether the two companies are at equivalent levels of vertical integration. According to Jubilant's 2002-2003 annual report, Jubilant purchases over 20 percent of its electricity and a portion of its ethanol and VAM. See page 19 of the January 10 letter from the petitioners, page 16 and Attachment G of the February 21 letter from the petitioners, and page 2 of the March 7 letter from the petitioners. SVW on the other hand self-produces all of its electricity, acetylene, and VAM. Thus, we find that Jubilant is likely more vertically integrated in some aspects of its production of PVAc and less vertically integrated in others. For this reason, we continue to find that Jubilant's production experience forms a reasonable basis for valuing SVW's costs.

In calculating financial ratios using a surrogate's data, it is the Department's general practice to accept the surrogate producer's data in toto, without adjusting it for known differences in production. The theory underlying this practice was set forth in the final determination, and it remains true today:

> The reasoning behind our policy is simple – because we do not know all of the components that make up the costs of the surrogate producer, adjusting these costs may not make them any more accurate and indeed may only provide the illusion of a false precision. This reasoning was explained in Magnesium from Russia as follows:
>
> > While the petitioners may argue that the magnitude of these costs is understated, we have not attempted to make an adjustment to account for this difference because we are unable to make similar and corresponding adjustments to other costs which may have been overstated. Thus, we disagree that making such an adjustment would yield a more accurate result and indeed could introduce unintended distortions into the data.

See PVA Decision Memo at Comment 9.

In our final determination, we also considered – and rejected – a similar request by the petitioners that the Department adjust the financial ratios for observed differences. As we explained in the final determination:

> We disagree with the petitioners, and for the final determination we have not made the requested adjustment to SVW's factory overhead, SG&A, or profit. The petitioners' request in essence would require the Department to evaluate whether both the surrogate and the respondent have identical cost structures and then to adjust these cost structures to account for observed differences. However, this type of adjustment is contrary to the Department's long-standing practice of not adjusting a surrogate producer's overhead figures. See Magnesium from Russia at Comment 2; Lug Nuts from the PRC, 61 FR at 58518; Persulfates from the PRC, 64 FR at 69497; and Magnesium 1995 Investigation, 60 FR at 16446-7. For example, we addressed this issue in the 1995 less-than-fair value investigation on pure and alloy magnesium from Russia. Specifically, we stated in that case that we do not adjust surrogate producer's overhead because:
>
> > factory overhead is a combination of elements, some of which may be more or less expensive depending on the product or even the

> company. The Department has rejected item-by-item evaluation of overhead components in the past (see the final determination of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the Socialist Republic of Romania, 52 FR 17433, 17436 (May 8, 1987)), and we see no reason to alter this practice in this case.

Id.

Therefore, in accordance with our practice, we are continuing to rely on Jubilant's financial ratios, without adjustment, for purposes of these final remand results.

Finally, we disagree with SVW that the Department made a "one-sided" adjustment to SVW's normal value when we determined that it was appropriate to treat acetic acid as the relevant factor of production, rather than valuing the individual components that were used to produce this factor.[11] As discussed in Comment 1, above, this determination is consistent with the Department's long-standing policy of classifying materials introduced directly into a company's production process as the relevant factor of production. Because SVW itself does not manufacture acetic acid, but rather purchases it from an NME supplier, we find that acetic acid is SVW's factor. Thus, the Department did not "adjust" SVW's data at all with respect to acetic acid; rather, we simply valued SVW's consumption of this factor, as reported in SVW's cost database, using surrogate value information.

In any event, we note that SVW acknowledged that adjustments are not possible in this case. However, SVW's proposed "solution" to the problem (i.e., to apply the by-product credit at an earlier stage in the calculation) does not address the issue at hand. While it is true that this revision would lower SVW's margin, there is no link between SVW's by-product credit and

[11] If anything, we find that SVW's request is itself one-sided in that it does not argue that the Department should adjust the ratios in question for differences in electricity or VAM production.

Jubilant's production of acetic acid and thus there is no justification for accepting it here. As explained above, the only viable alternative would be to select a different surrogate producer and in this case each of the available alternatives are less preferable than Jubilant. Specifically, of the five companies for which we have financial statements, three are not located in India, one is a multinational company that may produce chemicals in India, and the fifth produces a less comparable product. Therefore, Jubiliant's production of PVAc remains the best available surrogate information to value SVW's production of PVA.

Comment 5: *Surrogate Financial Ratios - Different Product Mix*

According to SVW, the Court instructed the Department to adjust for the disparity between SVW's and Jubilant's overhead ratios attributable to the fact that Jubilant produces and sells more products than SVW. SVW contends that the Department failed to comply with these instructions, in that it made no adjustment to the overhead ratios but rather merely justified its existing methodology. SVW further contends that this justification was inadequate because it consisted of conclusory statements which failed to demonstrate that Jubilant's SG&A and profit ratios did not overstate SVW's normal value. SVW asserts that this action is particularly inappropriate because: 1) the Department relied upon arguments made by the petitioners in their brief to the Court; and 2) in its opinion, the Court dismissed these arguments as insufficient.

SVW posits that, because SVW sells only PVA and related products, and Jubliant sells numerous and diverse products, by definition Jubilant has greater costs. Specifically, SVW asserts that Jubilant has an operating structure that encompasses over 25 distinct products, including organic intermediates and fine chemicals (e.g., acetic acid, tri-ethyl phosphate); performance chemicals (e.g., latex, specialty gases); and plant health and animal nutrition

products (e.g., fertilizers, animal feed), while over 90 percent of SVW's sales consist of PVA. Thus, SVW contends that the Department is required to address Jubilant's high degree of horizontal operational integration and how the application of Jubilant's SG&A and profit ratios accurately reflect the SG&A and profit ratios of SVW's PVA operations.

The petitioners contend that, in its draft remand results, the Department articulated a clear and rational basis for its decision not to make any adjustments to account for the reportedly larger number of products produced and sold by Jubilant. The petitioners agree with the Department that the relevant fact in analyzing this issue is that Jubilant's SG&A expenses and profit were expressed as ratios, and not as absolute amounts. According to the petitioners, this distinction is significant because the record simply does not support SVW's speculation that Jubilant's ratios are inflated because of the supposedly larger number of products produced and sold by Jubilant. Indeed, the petitioners contend that the opposite fact pattern is likely to be true, as evidenced by a comparison between Jubilant's company-wide SG&A percentage and SVW's labor-specific SG&A percentage.[12] The petitioners assert that, as a result, the Department acted reasonably in not deviating from its longstanding practice not to adjust surrogate financial ratios for differences and thereby create the "illusion of false precision."

In any event, the petitioners contend that, even assuming arguendo that Jubilant's absolute SG&A costs are greater due to its production and sale of more types of products than SVW, it is hardly axiomatic that Jubilant's absolute profits would also be inflated. The petitioners assert that the number of products and by-products produced by a company generally has no probative value in forecasting its profits, and SVW has not pointed to any evidence on the record

[12] For further discussion, see page 24 of the petitioners' August 18, 2005, submission.

suggesting otherwise. The petitioners assert that this claim would only have merit if Jubilant's SG&A ratio or its rate of return increases with the number of products made and sold by Jubilant, and the record does not show that either its expenses or its profits did, in fact, increase at a faster rate than its total costs. The petitioners note that this relationship would depend on the cost structure and economies of scale experienced by both the chemicals industry in India and Jubilant in particular, and this information is not on the record.

Department's Position:

We disagree with SVW that our draft remand results failed to comply with the Court's instructions in any way. Specifically, the Court stated:

> because Jubilant sells more products and by-products than SVW, it is likely that the SG&A and profit ratios of Jubilant will . . . be overstated compared to SVW. . . . Therefore, this issue is remanded to Commerce to explain its rationale or to recalculate normal value after making the appropriate adjustments.

See Sinopec Sichuan v. United States, Slip Op. 05-45 at 23. Because the draft remand set forth our rationale as permitted by the Court, we have followed the Court's instructions on this matter.

Moreover, we disagree with SVW that the rationale in the draft remand results was inadequate because it had already been considered (and dismissed) by the Court. While it is true that the Court acknowledged similar arguments by the petitioners in their brief to the Court, it is not true that the Court rejected these arguments. Rather, the Court simply stated that the Department (as opposed to the petitioners) had not provided an adequate explanation.

Finally, we disagree with SVW that, because Jubilant sells over 25 products, its costs must by definition be greater than those of companies who sell fewer products. SVW's statement is conclusory and speculative, and there is no evidence on the record to support it. Absent such evidence, we have continued to operate under the logical premises that: 1) there is no direct

correlation between the number of products that a company sells and its level of expenses; and 2) even assuming such a connection existed, it is not distortive to rely on Jubilant's financial statements in this instance because we relied on its SG&A and profit ratios, and not the absolute amounts of its expenses or earnings (e.g., potentially higher selling expenses in the numerator of the ratios are offset by higher manufacturing costs in the denominator). For a complete discussion of our rationale, see the "Number of Products and By-Products" section above.

D. Conclusion

The Department hereby complies with the remand order as directed by the Court in Sinopec Sichuan v. United States and assigns a final dumping margin of 5.51 percent to SVW. Upon a final and conclusive court decision, we will publish an amended final determination to that effect.

Holly Kuga
Acting Assistant Secretary
for Import Administration

(Date)