68 FR 47538, August 11, 2003

A-570-879
Investigation
Public Document
AD/CVD/I/2: AG

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Grant Aldonas, Under Secretary

FROM: Jeffrey May
Deputy Assistant Secretary, Group I
AD/CVD Enforcement

DATE: August 4, 2003

SUBJECT: Issues and Decision Memorandum for the Antidumping Investigation of Polyvinyl Alcohol from the People's Republic of China

Summary

We have analyzed the comments of the interested parties in the antidumping investigation of polyvinyl alcohol (PVA) from the People's Republic of China (PRC). As a result of our analysis of the comments received from interested parties, we have made changes in the rate assigned to the sole respondent in this case, Sinopec Sichuan Vinylon Works (SVW). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from parties.

1. Valuation of an Input Supplied by a Joint Venture Partner
2. Treatment of Acetylene Tail Gas as Co-Product vs. By-Product
3. Cost Allocation Methodology for Acetylene and Acetylene Tail Gas
4. Adjustment of Factors of Production for Vinyl Acetate Monomer (VAM)
5. Surrogate Value for Activated Carbon
6. Surrogate Value for Natural Gas
7. Valuation of N-Methyl-2-Pyrrolidone (NMP)
8. Clerical Error in the Preliminary Determination
9. Application of a By-Product Credit in the Calculation of the Surrogate Financial Ratios
10. Adjustments to the Surrogate Financial Ratios for Differences in Integration Levels
11. Surrogate Value for Ocean Freight

Background

On March 20, 2003, the Department of Commerce (the Department) published its preliminary determination in the antidumping investigation of PVA from the PRC. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the People's Republic of China, 68 FR 13674 (Mar. 20, 2003) (Preliminary Determination). The product covered by this investigation is PVA. The sole respondent, SVW, requested a hearing, which was held at the Department on May 29, 2003. The period of investigation (POI) is January 1, 2002, through June 30, 2002.

We invited parties to comment on our preliminary determination. We received comments from the petitioners, Celanese Ltd. and E.I. du Pont de Nemours & Co., and from SVW. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary determination.

Margin Calculations

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

- We included the labor costs associated with selling, general, and administrative (SG&A) employees as part of the base to which the financial ratios were applied in this case based on our determination that these costs are included in the total labor costs shown on the financial statements of the Indian surrogate producer. We find that this treatment is necessary in order to equate the base on which the financial ratios are calculated (i.e., total materials, labor, and energy costs) to the base to which they are applied. See the August 4, 2003, memorandum from the team to the file entitled, "U.S. Price and Factors of Production Adjustments for the Final Determination" (the calculation memorandum).

- We adjusted the reported sales and factors data to account for minor errors found at verification. See the calculation memorandum.

- For the surrogate value for inland truck freight, we used the point-to-point Indian freight rates published in Chemical Weekly because this information is publicly available information contemporaneous with the POI, unlike the surrogate value used in the preliminary determination. See the calculation memorandum.

- We reallocated SVW's total costs of producing acetylene and acetylene tail gas between these two products using a value-based allocation methodology. See Comment 3.

- We adjusted the VAM utilization factor for each type of PVA by the ratio of the observed purity level to the assumed purity level. See Comment 4.

- We based the surrogate value for activated carbon on an Indian price quote for low-grade, black powder activated carbon, rather than Indian import data as published by the Monthly Statistics of Foreign Trade of India (MFSTI), because this is the type of activated carbon used by SVW in its production process. See Comment 5.

- We corrected a clerical error in the calculation of labor costs for VAM. See Comment 8.

- For SVW's CIF shipments from the port of Guangzhou, we valued ocean freight using an invoice from a market-economy ocean freight supplier for the shipment of PVA to the United States from Guangzhou. See Comment 11.

Discussion of the Issues

Comment 1: *Valuation of an Input Supplied by a Joint Venture Partner*

During the POI, SVW purchased acetic acid, one of the main ingredients in PVA, from a joint- venture partner located in the PRC. In its questionnaire response, SVW reported the factors of production used by the joint venture to produce acetic acid, and SVW requested that the Department value these factors, rather than the finished acetic acid, in its margin calculations. However, in our preliminary determination we disagreed with SVW that this was an appropriate treatment of the input, and consequently we valued SVW's consumption of acetic acid using a surrogate value obtained from India.

SWV argues that the Department should reconsider its position and value acetic acid using the factors required to make it. According to SVW, the Department's decision in the preliminary determination was based on an incorrect legal analysis which focused on the supplier's location within the corporate organizational chart, rather than on whether the supplier's production of acetic acid is integrated into the production of subject merchandise. SVW claims that the effect of this analysis is to "eviscerate" the self-produced input rule[1] because it limits its application only to instances where the input is produced

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[1] Consistent with this methodology, we generally value the individual factors of production of an intermediate input if that input is self-produced by a respondent. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 4986, 4993 (Jan. 31, 2003) (unchanged in the final determination) (Fish Fillets from Vietnam).

by a branch or a division of the respondent. SVW asserts that this interpretation of the rule elevates form over substance, where the corporate organizational chart becomes the determinative factor in whether the self-produced input rule applies instead of whether the "affiliated" supplier's production of the input is integrated within the respondent's production of the subject merchandise.

SVW comments that the Department cited only one determination to support the analysis in its preliminary determination, 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). However, SVW asserts, it is unclear whether the factual circumstances in that case are similar to those present here because there was no discussion in the Federal Register notice regarding any affiliation between the companies involved.

In contrast, SVW asserts that there is ample precedent where the Department has valued the factors of affiliated suppliers in other proceedings. Specifically, SVW claims that the Department applied the self-produced input rule and used surrogate prices to value the reported factors of production for subcomponents produced by an affiliated supplier in Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 19026, 19030 (Apr. 30, 1996) (Bicycles from the PRC), as well as the cans produced by an affiliated party in Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China, 63 FR 72255, 72267 (Dec. 31, 1998) (Mushrooms from the PRC).[2] SVW asserts that the Department continued this policy as recently as April 2003, when it valued the factors of production of an affiliated supplier of sulfuric acid in the preliminary results of the most recent review of the antidumping duty order on bulk aspirin from the PRC. See Bulk Aspirin from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 68 FR 17343 (Apr. 9, 2003) (Aspirin from the PRC).[3] Indeed, SVW claims that the questionnaire issued in this proceeding requested factors data from affiliated parties.

Moreover, SVW asserts that the Court of International Trade (CIT) has upheld the Department's use of the self-produced input rule (citing Rhodia, Inc. v. United States, 185 F.Supp. 2d 1343,1349 (CIT Nov. 30, 2001) (Rhodia 2001)) and has also required the Department to apply this rule to affiliated companies. Specifically, SVW states that the CIT remanded, for additional explanation, the

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[2] Regarding the latter case, SVW observes that the Department's decision not to use the affiliated canner's factors of production for the final determination stemmed solely from the fact that the canner's data could not be verified and not because the canner had a separate legal identity.

[3] This calculation is not set forth in the preliminary results, but rather is explained in the calculation memorandum issued in that case. See the June 26, 2003, memorandum from Alice Gibbons to the file entitled "Placing Information on the Record in the Antidumping Duty Investigation of Polyvinyl Alcohol from the People's Republic of China," which contains the relevant pages from the bulk aspirin calculation memorandum.

Department's decision in the less-than-fair-value investigation on foundry coke from the PRC, where the Department determined that it was not appropriate to value the factors of production for coal purchased by the respondent from a mine in which it had a minority ownership interest, referring to Final Determination of Sales at Less Than Fair Value: Foundry Coke Products from the People's Republic of China, 66 FR 39487 (July 31, 2001), and accompanying decision memorandum at Comment 3 and CITIC Trading Co., Ltd. v. United States, 2003 Ct. Intl. Trade Lexis 33, *43-45 (Mar. 4, 2003) (CITIC Trading).

In this case, SVW argues that its ownership interest in its joint-venture supplier is large and substantial. Moreover, SVW asserts that the joint venture manufactures the acetic acid within SVW's manufacturing site, which it supplies through pipes directly to SVW. Also, SVW contends that acetic acid is a major input of the final product and the joint venture produced this input to meet the purity and concentration levels required by SVW's production process. According to SVW, these facts prove that the affiliated supplier's production of acetic acid is vertically integrated into SVW's production of PVA.

SVW maintains that the decision not to apply the self-produced input rule will ignore the fact that SVW experiences substantial economic benefits from its vertical integration and will impermissibly inflate its actual costs of production. SVW contends that presuming that the purchase price of an input from an unaffiliated party is the same as the cost of producing the input oneself is contrary to law and basic economic theory.

SVW asserts that, if the factors of production for the joint venture are not used, then the overhead percentage applied from the Indian surrogate producer, which produces acetic acid in its own production process, will be severely overstated. SVW asserts that the antidumping law is remedial in nature and thus it is the Department's duty to determine SVW's dumping margin as accurately as possible. According to SVW, inflating NV by not using its factors of production to produce acetic acid, when the Indian producer's overhead includes the capital costs of producing acetic acid, does not result in the accurate calculation of NV in this case.

In the alternative, SVW argues that, if the Department does not use the joint venture's factors of production to calculate the cost of producing acetic acid, it should reduce the Indian producer's overhead to account for the fact that it is inflated by the capital costs of producing acetic acid and value acetic acid using the Indian price quote provided by SVW in its surrogate value submissions dated April 29 and 30, 2003.

The petitioners disagree that SVW self-produces acetic acid. Rather, the petitioners contend that SVW purchases acetic acid produced by an independent joint venture which SVW neither operates nor controls and, as a consequence, it is not entitled to count the joint venture's factors of production as its own.

The petitioners argue that SVW and its joint venture are not vertically integrated. At the outset, the petitioners state that SVW's submission on vertical integration contains an excerpt from a textbook on industrial organizations. According to this source, vertically integrated companies both own and have complete control over "neighboring" stages of production.[4] The petitioners point out that SVW does not own a controlling interest in its joint venture and it purchases only a small percentage of this company's total output of acetic acid. Thus, the petitioners assert that SVW's interactions with its joint venture fail the test prescribed by SVW's own experts.

Moreover, the petitioners disagree that the location of the joint venture, the method of its distribution of acetic acid, or the purity level to which it produces acetic acid is relevant to this issue. According to the petitioners, proximity alone is not evidence of vertical integration. The petitioners posit that a steel producer may be vertically integrated with an iron ore producer located far from the steel mill; conversely, an affiliated trucking company located on the same street as the steel producer may not be vertically integrated with the trucking company. Similarly, the petitioners assert that piping acetic acid directly to SVW may be an efficient way to transport this material; however, running a conduit between separate production plants that are owned and controlled by different interests does not integrate the operations. Finally, the petitioners maintain that SVW would only purchase acetic acid that meets its chemical requirements, irrespective of its relationship with the supplier.

In any event, the petitioners assert that SVW overstates the importance of acetic acid in the production process. According to the petitioners, acetic acid accounts for a relatively minor part of the cost of production because it is recycled. Nonetheless, the petitioners maintain that the importance of the input again is not germane to this issue because companies may purchase significant inputs or self-produce insignificant ones.

Finally, from a legal standpoint, the petitioners comment that the CIT has rejected the argument that the five-percent ownership rule for establishing affiliation in market-economy cases is determinative of self production. The petitioners state further that, in market-economy cases, the Department values a major

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[4] Specifically, the petitioners state that SVW submitted on the record of this investigation an excerpt from a textbook which states, in relevant part:

> 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, and distribution decisions of all stages encompassed within the firm.

See Martin Perry, Vertical Integration: Determinants and Effects in Handbook of Industrial Organization, Schmalensee and Willig, eds., p. 186 (1989), appended to SVW's January 13, 2003, supplemental questionnaire response at Attachment 5.

input purchased from an affiliated supplier based on the higher of the transfer price, market price, or the affiliate's cost of production. According to the petitioners, there is no reason why respondents in a non-market economy (NME) should be held to a lesser standard. Therefore, the petitioners argue that the Department should apply the same principle here and value the acetic purchased from SVW's joint venture using the higher of the surrogate price (which is the NME equivalent of the purchase price) or the constructed value (which is the NME equivalent of the cost).

Department's Position:

In accordance with our practice, we have continued to value acetic acid itself using a surrogate value, rather than valuing the individual components of this factor, for purposes of the final determination.

Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise. See Fish Fillets from Vietnam, 68 FR at 4993. If the NME respondent self-produces an input, we take into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a firm that grew raw mushrooms and then preserved and canned them, the Department valued the factors used to grow the mushrooms, the factors used to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in-house). If, on the other hand, the firm was not integrated, but simply a processor that bought fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them. See the final results valuation memorandum for Final Results of First New Shipper Review and First Antidumping Duty Administrative Review; Certain Preserved Mushrooms From the People's Republic of China, 66 FR 31204 (June 11, 2001). This policy has been applied to both agricultural and industrial products. See, e.g., Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recission, 67 FR 50866 (Aug. 6, 2002) (unchanged in the final results), 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, 9171 (Feb. 28, 1997). Accordingly, our standard NME questionnaire asks respondents to report the factors that the producer of the subject merchandise used in the producer's various stages of production.

In this case, SVW produces PVA using certain self-produced inputs. Specifically, SVW produces its own electricity and steam, as well as various intermediate inputs used in the production of the finished PVA. For example, SVW makes its own acetylene and methanol, both of which are used to produce VAM, the major input into the final product. In accordance with our policy, we have valued the factors of production used to make each of these self-produced inputs, as well as the additional factors of production not produced "in-house," using surrogate values.

We disagree with SVW that acetic acid is appropriately classified as a self-produced input in this case. SVW itself does not manufacture acetic acid, but rather purchases it from an NME supplier.

Therefore, the acetic acid itself is the relevant factor of production to SVW because it is the input introduced directly into SVW's production process. As such, we have valued it using a surrogate value consistent with our practice.[5] See Fish Fillets from Vietnam, 68 FR at 4993; see also Ferrovanadium from the PRC, 67 FR at 45092.

SVW was unable to cite any final decisions where the Department treated a supplier's factors as a respondent's own. Rather, SVW cites two cases, Mushrooms from the PRC and Bicycles from the PRC, where the Department did not value the suppliers' factors and a third case, Aspirin from the PRC, where the Department has not issued a final ruling.[6] Regarding Aspirin from the PRC, the Department will issue a final ruling on this matter on August 7, 2003.
We also disagree that the CIT has required that we apply the self-produced input rule to "affiliated" companies. Specifically, the issue under consideration in Rhodia 2001 did not involve affiliated suppliers, but rather how to value the respondent's own factors of production. Moreover, while the CIT required the Department to explain its treatment of the factors of production of a related coal mine in CITIC Trading, it did not require the Department to use these factors in its analysis; therefore, on remand we continued to rely on a surrogate value for the coal purchased from the coal mine in question. See Final Results Pursuant to Remand; CITIC Trading Company, Ltd. v. United States of America and ABC Coke et al., Court No. 01-00901, Slip Op. 03-23 (CIT Mar. 4, 2003), filed on June 17, 2003, at Issue 4.

Finally, we disagree with SVW that there is any legal justification for treating the joint venture's factors as if they were SVW's own. In essence, SVW's argument is that the Department should, as in certain market-economy cases, collapse the respondent and its supplier and thus treat them as a single entity for dumping purposes. However, even if this were a market-economy situation, the Department's regulation on collapsing would not apply because it is limited to situations involving affiliated producers of similar or identical merchandise. See 19 CFR 351.401(f). The supplier of the input is not a producer of PVA.

We also disagree with the petitioners that the major-input rule applies in NME cases. The purpose of this rule is to test transfer prices between affiliated parties in order to ensure that these prices are not understated due to extra-market considerations. Because our practice is to value an NME factory's factors of production using surrogate values, rather than relying on transfer prices between NME entities, this concern is not present in NME cases.

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[5] We disagree with SVW that the questionnaire requests that respondents report factors data for "affiliated" parties. We examined the questionnaire issued to SVW in this case and found no instructions to this effect.

[6] Regarding Mushrooms from the PRC, the Department's final determination was based on total adverse facts available; therefore, any arguments concerning how the Department would have valued the "affiliated" canner's factors of production are speculative.

Therefore, for purposes of the final determination, we have continued to value acetic acid using a surrogate value from India. As the surrogate value, we have continued to use the average Indian domestic price for the POI calculated using data published in Chemical Weekly, instead of the Indian price quote provided by SVW in its submissions dated April 29 and 30, 2003. As outlined in Notice of Final Determination of Sales at Less than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 49345 (Sept. 27, 2001), and accompanying decision memorandum at Comment 6 (Granular Magnesium from the PRC), the Department has a clear preference for using country-wide prices such as those published in Chemical Weekly, as opposed to specific price quotes, unless there is sound evidence on the record of the proceeding indicating that the input used in the production of subject merchandise is of a specific type, which would not be accurately represented by more general public data. See also Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 66 FR 15076 (Mar. 15, 2001), and accompanying decision memorandum at Comment 9 (Manganese Metal from the PRC). In this case, the information on the record indicates that the prices published in Chemical Weekly and the price quote provided by SVW are equally product-specific and both are for prices within the POI. Therefore, we find no basis to reject the Chemical Weekly data in preference for the price quote in question.

Finally, we disagree with SVW's argument that we should reduce the Indian producer's overhead to account for the fact that the Indian company produces acetic acid whereas SVW does not. As explained in Comment 10, below, this type of adjustment is contrary to the Department's long-standing practice of not adjusting a surrogate producer's overhead figures. 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 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) (Lug Nuts from the PRC); Persulfates from the People's Republic of China; Final Results of Antidumping Administrative Review, 64 FR 69494, 69497 (Dec. 13, 1999) (Persulfates from the PRC); and Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation, 60 FR 16440, 16446-7 (Mar. 30, 1995) (Magnesium 1995 Investigation). For further discussion of the rationale behind the Department's practice, see Comment 10.

Comment 2: *Treatment of Acetylene Tail Gas as Co-Product vs. By-Product*

In its questionnaire response, SVW reported that it produced both acetylene and acetylene tail gas, and it classified these inputs as co-products. We accepted this classification for the preliminary determination, based in part on our treatment of acetylene tail gas as a co-product in a previous less-than-fair-value (LTFV) investigation on PVA from the PRC. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China, 61 FR 14057 (Mar. 29, 1996).

The petitioners argue that the Department erred in the preliminary determination by accepting SVW's treatment of acetylene tail gas as a co-product. Instead, the petitioners maintain that this input should be treated as a by-product. The petitioners cite the definition of a by-product in various cost accounting texts, which indicate that by-products have "low" relative sales values and are incidental to the production of major products.[7] The petitioners contend that SVW fails this by-product "test" because SVW would never choose to intentionally produce acetylene tail gas. According to the petitioners, the process for which SVW uses this material, methanol production, is more economical using purified natural gas as the feedstock.[8]

In addition, the petitioners contend acetylene tail gas should be properly classified as a by-product based on the Department's own test for determining whether a joint product is a co-product or a by-product. The petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel, 66 FR 49349 (Sept. 27, 2001), and accompanying decision memorandum at Comment 3 (Magnesium from Israel) and Elemental Sulphur From Canada; Final Results of Antidumping Finding Administrative Review, 61 FR 8239, 8241-8243 (Mar. 4, 1996) (Elemental Sulphur from Canada), where the Department analyzed the following five factors: 1) how the company records and allocates costs in the ordinary course of business, in accordance with its home country's generally accepted accounting principles (GAAP); 2) the significance of each product relative to the other joint products; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls production of the product; (5) whether the product requires significant further processing after the split-off point.

The petitioners address each of the points of the five-factor test in turn. Regarding the first factor, the petitioners cite section 773(f)(1)(A) of the Act, which directs the Department to calculate costs using the respondent's records if such records are kept in accordance with home-country GAAP.[9] The petitioners contend that the assumption underlying this section of the Act is that a company's "normal"

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[7] Specifically, the petitioners cite the following sources: Cost Accounting: Processing, Evaluating, and Using Cost Data, Wayne Morse and Harold Roth, p. 157 (1986); Cost Accounting: A Managerial Emphasis, Charles T. Horngren, Srikant M. Datar, and George Foster, p. 556 (2003) (Horngren); and Cost Accounting: A Comprehensive Guide, Steven Bragg, p. 198 (2001).

[8] To support this assertion, the petitioners compare SVW's own costs for methanol produced using acetylene tail gas and natural gas as the feedstock. The petitioners comment that the cost to produce methanol using acetylene tail gas is almost double the cost to produce it using natural gas.

[9] The petitioners cite two cases in which the Department has not accepted the respondent's costs recorded in the ordinary course of business because it found that the respondent's cost allocations were unreasonable (Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina, 60 FR 33539, 33547 (June 28, 1995) (OCTG from Argentina), and Elemental Sulphur from Canada, 61 FR at 8241).

accounts are reliable because they were not developed for purposes of responding to an antidumping investigation. To support this assertion, the petitioners cite: 1) Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From Taiwan, 61 FR 14064, 14071 (Mar. 29, 1996) (PVA from Taiwan), which states that the Department may only consider evidence from a producer regarding the proper allocation of its costs if it has used such allocations historically; and 2) the Senate Finance Committee Report on the 1994 amendments to the antidumping statute, which says, "{P}articularly where allocation methodologies are used, the Committee expects the Department to accept only those methodologies used . . . in a period before the antidumping investigation was initiated" (S. Rep. No. 103-412 at 75 (1994)). The petitioners comment that SVW began treating acetylene tail gas as a co-product in 1996 in the wake of the 1996 antidumping duty investigation on PVA. As a consequence, the petitioners argue that both SVW's decision to adopt this treatment and its methodology for allocating costs between acetylene and acetylene tail gas are suspect. Moreover, the petitioners maintain that, to their knowledge, every other acetylene producer in the world accounts for acetylene tail gas as a by-product. Therefore, the petitioners contend that the fact that SVW accounts for acetylene tail gas as a co-product in the ordinary course of business is meaningless.

The petitioners argue that the Department considers the second factor (i.e., a product's relative sales value compared with that of the other main products produced in the joint processes) to be even more important, citing OCTG from Argentina, 60 FR at 33539, and Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Sebacic Acid from the People's Republic of China, 59 FR 565, 569 (Jan. 5, 1994). The petitioners disagree with SVW (see below) that, when analyzing this factor, the appropriate comparison would be between acetylene tail gas and methanol (i.e., the end product produced from acetylene tail gas). Rather, the petitioners contend that the real issue is whether the value of acetylene tail gas is significant relative to the value of acetylene (i.e., the product produced in the same production stage as acetylene tail gas). According to the petitioners, acetylene must have a higher economic value than acetylene tail gas because it is a traded product with a market value while acetylene tail gas is not. Because the petitioners were unable to obtain a market price for acetylene tail gas, to further illustrate their point they present a comparison between a price for acetylene tail gas derived from an Indian market price for methanol and an Indian market price for acetylene. Their comparison shows that the price for acetylene tail gas is significantly lower than that for acetylene.

Regarding the third and fourth factors, the petitioners assert that at verification SVW acknowledged that the production of acetylene tail gas is an unavoidable consequence of producing acetylene, referring to the April 29, 2003, memorandum from Elizabeth Eastwood and Alice Gibbons to the file entitled "Verification of the Questionnaire Responses of Sinopec Sichuan Vinylon Works in the Antidumping Duty Investigation of Polyvinyl Alcohol from the People's Republic of China" (the verification report) at page 12. Moreover, the petitioners maintain that SVW cannot meaningfully control the production of acetylene tail gas. The petitioners state that SVW produces acetylene using the same production process that they themselves use. According to the petitioners, companies that use this process can do very little to increase the ratio of acetylene to acetylene tail gas produced. The petitioners state that,

although SVW asserted at verification that it intentionally set the amount of acetylene tail gas it produces when it installed its equipment, this action is correct only in a technical sense. Specifically, the petitioners maintain that SVW's production process is designed to realize the eight-percent maximum acetylene yield, and consequently SVW is purposely minimizing the amount of acetylene tail gas produced. According to the petitioners, this fact confirms the relative insignificance of acetylene tail gas to SVW.

Finally, the petitioners assert that the fact that SVW's acetylene tail gas requires no further processing reinforces its classification as a by-product. According to the petitioners, the Department has held in previous cases that significant additional processing may indicate that the product in question should be treated as a co-product, citing OCTG from Argentina, 60 FR at 33547. Therefore, according to the petitioners, because acetylene tail gas requires no further processing by SVW, it should properly be treated as a by-product.

Regarding the valuation of acetylene tail gas, the petitioners argue that the Department should reverse-engineer the price for this input using the cost of the purified natural gas used to make methanol in SVW's natural gas methanol plant. Specifically, the petitioners contend that the Department should perform the following three steps: 1) the Department should calculate the cost of methanol produced from purified natural gas and use this cost as the starting point; 2) the Department should then deduct the cost of all inputs used to make methanol from acetylene tail gas; 3) finally, the Department should use this residual value as the value of acetylene tail gas.

SVW maintains that the Department should continue to treat acetylene tail gas as a co-product. SVW states that, in the first investigation of PVA from the PRC, the Department itself determined that acetylene tail gas was a co-product, without any comment from the parties. SVW points out that the Department cited its decision in that case as one of the reasons for treating acetylene tail gas as a co-product here, referring to the March 14, 2003, concurrence memorandum prepared for the preliminary determination (the Concurrence Memorandum).

SVW asserts that the Department's conclusion in the prior LTFV investigation of PVA is still valid today. SVW states that the Department verified that SVW has treated acetylene tail gas as a co-product since December 1996. Regarding the petitioners' contention that SVW changed its treatment of acetylene tail gas in its books and records in anticipation of an antidumping case, SVW asserts that this is untrue. SVW maintains that there is no way in 1996 that it could know that a new antidumping case on PVA would be filed in 2002. In any event, SVW maintains, its decision to treat acetylene tail gas as a co-product in its books and records resulted from the PRC's adoption of GAAP in the mid-1990's. Specifically, SVW claims that, as a result of changes in Chinese accounting procedures, it decided to treat acetylene tail gas as a co-product to reflect its equal value with acetylene to the company. SVW cites the Department's verification findings, where company officials explained that acetylene tail gas is a significant product for the company "because it is used as the feedstock for

methanol production in the Methanol (I) plant, while acetylene is a significant product because it is the feedstock for VAM."[10]

SVW asserts that the petitioners' reliance on PVA from Taiwan is misplaced. According to SVW, in PVA from Taiwan, the Department stated it would put great weight on the way in which a respondent has historically allocated costs in its books and records. SVW asserts that the Department rejected the respondent's volume-based allocation methodology in that case only because it found at verification that such a methodology had not been used historically by the respondent. Nonetheless, SVW maintains that in that case (as well as in other cases)[11] the Department stated it relies heavily on the way in which a respondent has historically allocated costs in its books and records. As noted above, SVW points out that the Department confirmed at verification that its co-product treatment has been in use since December 1996.

Moreover, SVW disagrees with the petitioners that the value of acetylene tail gas is insignificant relative to acetylene. SVW concedes that, when one compares the price for acetylene tail gas derived from the Indian market price for methanol to an Indian market price for acetylene, acetylene tail gas appears much less valuable. However, SVW asserts that this comparison is suspect because the petitioners used a surrogate value for acetylene which is ten times higher than the value of acetylene the Department calculated for the preliminary determination.

Finally, SVW contends that its production process was designed to give acetylene and acetylene tail gas equal weight. According to SVW, it does not minimize its production of acetylene tail gas, contrary to the petitioners' arguments. SVW claims that the verification report supports this assertion because it states that "although acetylene tail gas is an unavoidable consequence of producing acetylene in general, SVW intentionally set the amount of acetylene tail gas produced when it installed its equipment" (verification report at page 15). Therefore, because it considers acetylene and acetylene tail gas to have equal value, SVW argues that the Department should continue to treat these chemicals as co-products for purposes of the final determination.

Department's Position:

In order to determine whether joint products are to be considered co-products or by-products, the Department looks to several factors. See, e.g., Magnesium from Israel at Comment 3 and Elemental Sulphur From Canada, 61 FR at 8241-42. Among these factors are the following: 1) how the

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[10] Verification report at page 15.

[11] SVW cites Elemental Sulfur from Canada, 61 FR at 8241, where the Department stated that its practice is to use a company's costs as recorded in its books and records in accordance with home country GAAP if the Department is satisfied that such costs reasonably reflect the costs of producing the subject merchandise.

company records and allocates costs in the ordinary course of business, in accordance with its home country GAAP; 2) the significance of each product relative to the other joint products; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls production of the product; 5) whether the product requires significant further processing after the split-off point. No single factor is dispositive in our determination. Rather, we consider each factor in light of all of the facts and circumstances surrounding the case.

In this case, we find that SVW correctly classified acetylene and acetylene tail gas as co-products based on our analysis of the factors outlined above. Regarding the first factor, we verified that SVW treats acetylene tail gas as a co-product in its normal books and records and has done so since 1996. See the verification report at page 12. Although it is true that SVW began this treatment around the time of the prior LTFV investigation on PVA from the PRC,[12] we do not find this to be cause for concern in this case. Rather, the focus of our analysis is on whether the respondent attempted to manipulate its data in order to affect the outcome of the current proceeding. See, e.g., PVA from Taiwan, 61 FR at 14071-14072. For example, had SVW changed its treatment of these costs after the start of the dumping case and reported them using its new methodology, we would question this treatment because the possibility would exist that SVW was departing from its books and records in order to affect the outcome of the case. However, we find that this fact pattern is not present here, given that SVW adopted its co-product methodology almost seven years ago.

Regarding the second factor, we find that acetylene tail gas is a significant product under any of the measurements of value proposed by the parties to this case. Specifically, SVW allocated over 60 percent of the costs of the joint stream to from acetylene tail gas. Under the petitioners' proposed reallocation of costs (see Comment 3, below), the petitioners themselves assign over 30 percent to this product. Based on these figures, we find that the value of acetylene tail gas comprises a substantial portion of the total value of two joint products.

Regarding the third and fourth factors, while we agree with the petitioners' assertion that acetylene tail gas is an unavoidable consequence of producing acetylene and that SVW cannot meaningfully control the production of this input, we disagree that these facts confirm that acetylene tail gas is an insignificant

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[12] We disagree with SVW's assertion that the Department itself determined the co-product treatment for acetylene and acetylene tail gas in the 1996 investigation of PVA from the PRC. We have reviewed the public version of SVW's section D questionnaire response, as well as the public version of the supplemental questionnaire issued in that case, and find no evidence that supports this assertion. See the August 4, 2003, memorandum from Alice Gibbons to the file entitled, "Public Information from Sinopec Sichuan Vinylon Works Section D Questionnaire Responses on the Record in the Investigation of Polyvinyl Alcohol from the People's Republic of China." Moreover, SVW provided no such evidence itself in this proceeding.

product for SVW. As previously discussed, even under the petitioners' proposed cost reallocation, the value of acetylene tail gas in relation to acetylene is significant.

Regarding the fifth factor, acetylene tail gas does not undergo further processing after the split-off point. This fact alone does not change our treatment of acetylene tail gas as a co-product given the relative value of acetylene tail gas vis-a-vis acetylene.

The Department has wide latitude in determining which factors of the five-factors test are most significant. As we stated in Magnesium from Israel, no single factor is dispositive in our determination; instead, we consider each factor in light of all of the facts and circumstances surrounding the case. See Magnesium from Israel at Comment 3. Consequently, because we find that SVW has historically treated acetylene and acetylene tail gas as co-products in its normal books and records and the value of each of these products is significant, we have continued to accept SVW's treatment of acetylene and acetylene tail gas as co-products for purposes of the final determination.

Comment 3: *Cost Allocation Methodology for Acetylene and Acetylene Tail Gas*

In its questionnaire response, SVW allocated costs between acetylene and acetylene tail gas using their relative heats of combustion. According to the petitioners, if the Department decides to continue to treat acetylene tail gas as a co-product, this methodology is inappropriate because neither product is used by SVW as a fuel. The petitioners state that the Department has ample precedent for adjusting a respondent's reported allocation methodologies, citing PVA from Taiwan, 61 FR at 14072, Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (Apr. 22, 2002), and accompanying decision memorandum at Comment 4 (Softwood Lumber from Canada), and Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand, 60 FR 29533, 29559-62 (June 5, 1995) (Canned Pineapple).

In this case, the petitioners maintain that SVW's allocation methodology results in the majority of the costs being allocated to acetylene tail gas. The petitioners contend that this result is counterintuitive because acetylene is a tradable product (unlike acetylene tail gas), and therefore acetylene must have a higher market value than acetylene tail gas, and acetylene tail gas replaces purified natural gas in one of SVW's two methanol plants, so it should not (but does) have a value higher than purified natural gas.

Instead, the petitioners assert that a value-based allocation methodology makes the most sense in this case because acetylene and acetylene tail gas have significantly different market values. According to the petitioners, accounting texts confirm that a value-based methodology is the correct treatment here.[13] Moreover, the petitioners contend that the Department has used a value-based methodology to allocate

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[13] For example, the petitioners cite one text which posits that revenues are generally a better indicator of benefits than physical measures (Horngren at 558, 560-561).

costs in previous cases, citing Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 10530, 10539 (Mar. 7, 1997) (Sebacic Acid from the PRC), PVA from Taiwan, 61 FR at 14071, and Softwood Lumber from Canada at Comment 4. Consequently, the petitioners assert that the Department should reverse-engineer a value for acetylene tail gas using the cost of the purified natural gas used to produce methanol in SVW's natural gas methanol plant. According to the petitioners, this methodology has the dual advantage of being based on SVW's books and records and accurately accounting for the value of the acetylene tail gas to SVW.

SVW disagrees that a value-based allocation methodology is appropriate to value acetylene tail gas. According to SVW, this methodology would be problematic because SVW neither sells nor purchases acetylene or acetylene tail gas and both products are merely intermediate products in its production process. Further, SVW argues that it is because of their status as intermediate products in the production process that the Department chose to treat acetylene and acetylene tail gas as co-products in the 1996 investigation of PVA from the PRC.

SVW comments that the accounting texts on which the petitioners rely indicate that there are several acceptable methods of allocating joint costs among co-products, including physical units. According to SVW, the company's accountants rejected value as the allocation methodology because the value of acetylene and acetylene tail gas could change significantly over time and, as a result, SVW would be dependent on sales prices set by third parties. Therefore, SVW asserts that it would have had to adjust its allocation ratio frequently to account for these varying sales prices, which would have, in turn, compromised the consistency of its accounting system. SVW cites Elemental Sulphur from Canada, 61 FR at 8241, in which the Department stated, "{N}ormal accounting practices provide an objective standard by which to measure costs, while allowing a respondent a predictable basis on which to compute those costs."

Further, SVW asserts that it could have allocated the costs between acetylene and acetylene tail gas using the volume of each input produced (i.e., 92 percent of the costs to acetylene tail gas and 8 percent of the costs to acetylene). However, SVW claims that allocating costs using a volume-based allocation methodology would be distortive because this methodology would allocate a disproportionate share of the costs to acetylene tail gas. SVW asserts that it chose its heat-of-combustion methodology, which allocates 72 percent of the costs to acetylene tail gas and 28 percent of the cost to acetylene, because it is a predictable methodology and is reflective of the relative values of acetylene and acetylene tail gas as intermediate products in their production processes. According to SVW, the allocation ratio obtained using the heat-of-combustion methodology is almost identical to that used by the Department in the 1996 investigation of PVA from the PRC.

SVW claims that the petitioners do not understand heat of combustion as a chemical and physical concept. SVW explains that the heat of combustion measures how much energy a particular substance is capable of releasing during a reaction. According to SVW, because energy costs money, the amount

of energy acetylene and acetylene tail gas produces in their respective reactions is indicative of their value to SVW.

Finally, SVW argues that it would be inappropriate to align SVW's two methanol production processes as a method for determining the allocation of costs between acetylene and acetylene tail gas. SVW asserts that these processes are quite different, because the facility using natural gas uses technology that is 20 years ahead of its facility using acetylene tail gas. Therefore, according to SVW, aligning the costs of production from the two processes will not produce a meaningful comparison. Consequently, SVW maintains that the Department should continue to accept its heat-of-combustion allocation methodology for purposes of the final determination.

Department's Position:

In determining an appropriate cost allocation method, the Department looks first to the books and records of a respondent. Section 773(f)(1)(A) of the Act states that costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. Where we find that a respondent's books and records do not reasonably reflect the actual cost to the company, our practice has been to adjust these costs as necessary. This practice has been sustained by the CIT (see, e.g., Laclede Steel Co. v. United States, 1994 Ct. Intl. Trade LEXIS 186 (CIT Oct. 12, 1994), where the CIT upheld the Department's decision to reject respondent's reported depreciation expenses in favor of verified information obtained directly from the company's financial statements that was consistent with Korean GAAP).

In this case, SVW has argued that it allocates costs between acetylene and acetylene tail gas in its cost accounting system using the relative heats of combustion of the two products. Because the Department has a preference for allocation methods which are based on equivalent units (see Softwood Lumber from Canada at Comment 4), we accepted SVW's allocation method for the preliminary determination. For the final determination, however, we have re-evaluated the reasonableness of this methodology in light of the use to which SVW puts both joint products.

According to the Merriam-Webster dictionary, acetylene is defined as "a colorless gaseous hydrocarbon . . . used chiefly in organic synthesis and as a fuel (as in welding or soldering)." In its production process, SVW uses acetylene for organic synthesis, rather than as a fuel. As a result, the heat-generation properties of these materials is not as meaningful in this process. Moreover, the two gases cannot be substituted for each other in SVW's production process. Based on these facts, combined with an analysis of the market values for these intermediate products (see below), we find that the respondent's allocation methodology based on relative heats of production does not reasonably reflect the actual cost to SVW.

Basing the allocation of costs solely on potential heats of combustion when the potential heat is not a factor in the process at hand is not reasonable given the vastly different market values of the joint products at issue in this case (or their downstream products). In reaching this conclusion, we compared the price of acetylene in India with a price for acetylene tail gas derived from the Indian market price for methanol.[14] We found that the market value for acetylene was more than fifteen times the market value of acetylene tail gas on a per-cubic-meter basis. Under SVW's methodology, however, SVW assigned costs/factors to acetylene of just over four times the costs/factors reported for acetylene tail gas.[15] This disparity is so large that we find that SVW's allocation methodology yields distortive results in that it understates the value of acetylene by a substantial margin. For further details of this comparison, see the August 4, 2003, memorandum from Elizabeth Eastwood to the file entitled "Acetylene and Acetylene Tail Gas Market Value Analysis Performed for the Final Determination in the Antidumping Duty Investigation on Polyvinyl Alcohol from the People's Republic of China."

We recognize that a value-based cost allocation methodology can be problematic in an antidumping context. The most obvious problem is the potential circularity of the analysis, whereby prices are used to determine the product-specific costs which in turn are either compared to those same product-specific prices or are used to determine prices. In an antidumping context, the POI prices of subject merchandise to the United States are alleged to be at unfair levels and, therefore, may not capture the appropriate value differences between subject and non-subject products. Other market factors may also create problems with using prices as a basis of allocation, such as volatile market prices, temporary surges in supply and demand, and specific market preferences for specific products. For these reasons, we believe that the use of a value-based cost allocation method is appropriate in an antidumping context in only very limited instances. See, e.g., Softwood Lumber from Canada at Comment 4.

However, given the fact that neither product is used as a fuel here, as well as the significantly different revenue-producing powers of the two joint products, we believe a value-based allocation methodology produces a more reasonable and accurate reflection of costs in this case. Further, while we agree with SVW's assertion that prices may not be an appropriate allocation basis for joint costs if prices fluctuate significantly, we have no evidence on the record of this investigation to support that prices were

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[14] Because we were unable to obtain a market price in India for acetylene tail gas, we calculated one using the market price for methanol. Specifically, we deducted from this price the cost of all factors used to produce methanol except acetylene tail gas, as reported in SVW's factors-of-production database. (These costs were determined by valuing the reported factors using the relevant surrogate values described in the Federal Register notice issued for the preliminary determination. See Preliminary Determination, 68 FR at 13680.)

[15] When the relative production volumes are factored into this equation, the relative revenue streams from acetylene and acetylene tail gas are at a ratio of approximately three to one, while SVW allocated its costs to acetylene and acetylene tail gas at a ratio of approximately one to four.

changing significantly during the period. Therefore, we have determined that it is appropriate to reject SVW's allocation methodology because it does not reasonably reflect the costs associated with the production and sale of PVA, as required by the Act. See also Canned Pineapple, 60 FR at 29559-29562, where the Department rejected respondent's argument for a weight-based joint cost allocation for pineapple and used a value-based cost allocation, citing as one of its reasons the relationship of the revenue-producing powers of the joint products that resulted from the pineapple production process. Accordingly, for the final determination, we re-allocated SVW's costs between acetylene and acetylene tail gas based on each product's relative market value. Because the details of this calculation are proprietary in nature, we are unable to discuss them here. For further discussion, see the calculation memorandum at Attachment 7. This reallocation continues to support our treatment of acetylene and acetylene tail gas as co-products, as discussed in Comment 2, above, because the value assigned to acetylene tail gas is substantial.

Comment 4: *Adjustment of Factors of Production for VAM*

In their case brief, the petitioners allege that SVW misreported the factors of production associated with producing VAM during the POI. Specifically, the petitioners contend that SVW shifted costs away from PVA and onto non-subject merchandise by basing its factor allocation formulas on an "assumed" purity level for PVA rather than the actual purity level of the finished product. Because SVW's response in its rebuttal brief was unclear, we requested that SVW submit additional information on this topic. SVW did so on June 2, 2003, and the petitioners commented on this submission on June 4, 2003.

In both its rebuttal brief and June 2 submission, SVW maintains that it correctly calculated the VAM usage factors for each type of PVA. SVW asserts that its average actual purity level for the POI is very close to the assumed purity level. Although SVW admits that its VAM allocation coefficients are calculated using the assumed purity level of PVA, it argues that it accounts for the actual purity level in its calculation of the VAM usage factors because this calculation includes the actual production quantity of each type of PVA. According to SVW, the use of actual production quantities means that the actual purity level of each type of PVA has been incorporated automatically into its calculations. SVW provided an illustration using the calculations performed for a sample product. Therefore, SVW claims that any further adjustment to its VAM utilization factors will only overstate NV.

The petitioners allege that SVW's example is meaningless because it assumes the correctness of what it is trying to prove. Specifically, the petitioners comment that SVW's allocation formula requires the total quantity of VAM used to produce a metric ton of PVA; however, the petitioners claim, SVW calculates this amount using its assumed purity level and then uses it to demonstrate that the assumed purity level is adjusted to actual. The petitioners calculate a revised VAM usage amount using SVW's reported data, which is higher than the amount used in SVW's example. Therefore, the petitioners assert, SVW has not shown that its calculation of the VAM usage factors include the actual purity levels of PVA.

More importantly, the petitioners assert that SVW has not addressed the central question of whether it has allocated the cost of VAM away from the subject merchandise. According to the petitioners, information obtained at verification shows that the actual purity levels of the export sales examined at verification differ from the assumed purity level. Further, the petitioners assert that they raised the issue of SVW's allocation of VAM in their March 27, 2003, pre-verification comments, where they commented that SVW's reported VAM usage rates were less than the theoretical usage rates at almost every hydrolysis level. Consequently, the petitioners assert, the Department should correct SVW's allocation error by adjusting the VAM utilization factor for each type of PVA by either the ratio of the highest-observed purity level to the assumed purity level or the ratio of the average-observed purity level to the assumed purity level.

Department's Position:

We have examined the information on the record of this investigation related to this topic, and we find that SVW has not demonstrated clearly that it accounted for the actual purity level of PVA in its calculation of the VAM usage factors. Although we afforded SVW an additional opportunity to explain its calculations after the public hearing in this case, we find that SVW's explanation was inadequate. Therefore, we have adjusted the reported VAM utilization factor for each type of PVA by the ratio of the actual purity level for each type of PVA to the assumed purity level.

According to information obtained at verification, SVW calculates the allocation coefficients for VAM using the assumed purity level of PVA. See the verification report at verification exhibit 12. In its June 2 submission, SVW stated that it calculates usage factors for VAM based on these allocation coefficients. According to SVW, although the allocation coefficients are calculated using the assumed purity level of PVA, the VAM usage factors are adjusted to actual purity levels because the total actual production quantity of each type of PVA is included in the calculation. SVW then goes on to provide the formulas showing how it determined each element of its calculation.

We disagree with SVW that these formulas demonstrate that the VAM usage factors incorporate the actual PVA purity level. Specifically, SVW provided three formulas: one for the VAM allocation coefficient, a second for the allocated VAM consumption level for specific PVA, and a final one for the VAM usage factor. The first of these formulas does not refer to the actual production quantity at all. While the second formula refers to the production quantity, the same amount is included in both the numerator and the denominator (and thus it is cancelled out). Finally, the production quantity is also used in the third formula, but there it merely serves to state SVW's calculation on a per-unit basis.

Given these facts, we find that SVW's calculation methodology is flawed. Therefore, we have revised SVW's allocations by adjusting the VAM utilization factor for each type of PVA by the ratio of the actual purity level for each type of PVA to the assumed purity level.

Comment 5: *Surrogate Value for Activated Carbon*

For purposes of the preliminary determination, we valued activated carbon using data from MFSTI for the period April 2001 through January 2002.

SVW argues that the Department should value activated carbon using the Indian price quotes contained in its April 29, 3003, submission for the final determination. SVW asserts that it uses low-grade black powder in its production process. According to SVW, because Indian import data does not differentiate between different types of activated carbon, this data incorporates prices for types of activated carbon that are not used by SVW. Moreover, SVW contends that the Department has a preference for price quotes for the type of activated carbon used in the production of the subject merchandise over data from MFSTI when both are present on the administrative record. As support for this assertion, SVW cites Sulfanilic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 48597, 48600 (Sept. 16, 1997) (Sulfanilic Acid from the PRC); Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 64 FR 69503, 69506 (Dec. 13, 1999); and Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 67 FR 69719 (Nov. 19, 2002), and accompanying decision memorandum at Comment 2.

The petitioners assert that the Department correctly used MFSTI data to value activated carbon for the preliminary determination. The petitioners argue that there is no evidence on the record to support SVW's claim that it uses low-quality activated carbon and the verification report is silent on this topic. Nonetheless, the petitioners allege that the facts on the record suggest SVW uses a special quality of activated carbon because the verified distance from SVW to its supplier of activated carbon is considerable. According to the petitioners, the distance from SVW to its supplier suggests that SVW is using a particular quality of activated carbon that it cannot purchase from a closer facility. Therefore, the petitioners argue that the Department should continue to rely on MFSTI data that approximate an average price for activated carbon of all qualities.

Department's Position:

The Department's practice is, to the extent practicable, to select surrogate values which are: 1) non-export average values; 2) most contemporaneous with the POI; 3) product-specific; and 4) tax-exclusive. See the March 14, 2003, memorandum to the file from the team entitled, "Preliminary Determination Factors Valuation Memorandum" (the factors memorandum) at page 2. See also, e.g., Manganese Metal From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12441, 12442 (Mar. 13, 1998). In addition, as outlined in Granular Magnesium from the PRC at Comment 6, the Department has a clear preference for using country-wide prices such as those published in Chemical Weekly or MFSTI, as opposed to specific price quotes, unless there is evidence on the record of the proceeding demonstrating that the input used in the production of subject merchandise is of a specific

type, which would not be accurately represented by more general public data. See also Manganese Metal from the PRC at Comment 9.

Where there is evidence on the record that the country-wide data is for an overly broad category of merchandise and price quotes for the type of a particular input used in the production of subject merchandise are available, we may accord greater weight to the product-specific price quotes. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530, and accompanying decision memorandum at Comment 1. In this case, the information on the record indicates that the type of activated carbon used by SVW in the production of subject merchandise is low-grade, black powder activated carbon having a certain density. See SVW's February 5, 2003, submission at page 5. Therefore, because the import statistics are not product-specific, the data on the record shows that the price for activated carbon with different specifications varies widely,[16] and SVW provided a price quote for the same density of activated carbon used in its production process, we find that it is appropriate to base the surrogate value for activated carbon on a price quote for the final determination. Specifically, we find that the product-specific price quote for the same density of activated carbon consumed by SVW represents the best information available for this input.[17] Consequently, we have valued activated carbon using this price quote for the final determination.

Comment 6: *Surrogate Value for Natural Gas*

In the preliminary determination, the Department valued natural gas using information from the website of the Gas Authority of India, Ltd. (GAIL), a supplier of natural gas in India, covering the POI. SVW argues that this valuation is inappropriate because the Department used only the highest published monthly rates from the GAIL website. SVW claims that the application of the highest rate does not reflect the actual value of natural gas during the POI. Therefore, SVW contends that, for purposes of the final determination, the Department should recalculate the surrogate value for natural gas using the average of all of the monthly natural gas prices during the POI shown on the GAIL website in order to avoid unintentionally applying adverse facts available to SVW's calculations.

The petitioners agree with the surrogate value for natural gas the Department used in the preliminary determination. The petitioners assert that the lower price reported by GAIL is not a true market price but rather is sold on concessional terms. Further, the petitioners comment that most of GAIL's gas falls in the category HBJ/ONSHORE, which is priced according to an international basket of fuel oil.

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[16] According to the price quotes provided by SVW, the price of activated carbon ranged from 18.5 Rupees per kilogram to 41 Rupees per kilogram depending on the product specifications.

[17] The price quotes reflected several other product specifications. Because we do not have all of the specifications for the type of activated carbon used by SVW, we have matched the type as closely as possible using the information on the record.

Therefore, the petitioners assert that calculating a weighted-average surrogate value using all monthly price quotes for natural gas reported on the GAIL website would approximate the price used in the preliminary determination because it would be based largely on the price of the HBJ/ONSHORE gas category. Consequently, the petitioners assert that in the final determination the Department should continue to value natural gas using the HBJ/ONSHORE GAIL prices used in the preliminary determination.

Department's Position:

We disagree with SVW. 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. 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.

Comment 7: *Valuation of NMP*

In the preliminary determination, we did not value a number of raw materials that we deemed insignificant in the PVA production process. As we stated in the factors memorandum, these materials were reported as used in very small amounts and may have been included in factory overhead. See the factors memorandum at page 4.

The petitioners contend that one of these materials, NMP, is a high-cost item and even a small quantity can have a significant impact on the overall cost of PVA. Therefore, they assert, the Department should value it for the final determination. To illustrate this point, the petitioners refer to their March 27 submission at Attachment A, in which they provided the cost of NMP to DuPont. According to the petitioners, surrogate value data is available for NMP in the "Materials Imported" section of Indian Chemical Weekly and consequently this data should be used in the Department's calculations for the final determination.

SVW did not comment on this issue.

Department's Position:

In the factors valuation memorandum we prepared for the preliminary determination, we explained that we did not value NMP for two reasons: 1) it was consumed in SVW's production of PVA during the POR in very small amounts; 2) it may have been classified as part of factory overhead on the financial statements of the Indian surrogate producer from which the financial ratios were derived (i.e., Jubilant Organosys Ltd. (Jubilant)). See the factors memorandum at page 4.

In their case briefs, the petitioners address the first of these concerns, but not the latter. Because the determination of whether NMP is part of factory overhead is a threshold matter, to decide the issue it is first necessary to determine if the items in question are direct or indirect materials. Under normal accounting practices, direct materials are classified as raw materials whereas indirect materials are treated as part of factory overhead. The distinction lies in whether the costs are incurred with respect to a particular product. Specifically, indirect materials are defined as

> usually items used in the production process but not traceable to a particular product. This category also includes items that are added directly to products but whose cost is so small that the effort of tracing that cost to individual products would be greater than the benefit of accuracy (e.g., the cost of glue used in furniture manufacturing).

See "Overhead Cost Accumulation, Distribution and Allocation" by Donald E. Keller, issued by the American Institute of Certified Public Accountants, included as Attachment I to the Concurrence Memorandum.

In this case, SVW reported that it used a small quantity of NMP to produce acetylene and acetylene tail gas. Although the surrogate value for NMP is over $2,000 per metric ton (see the June 11, 2003, memorandum from Alice Gibbons to the file entitled, "Placing Information on the Record in the Antidumping Duty Investigation of Polyvinyl Alcohol from the People's Republic of China"), we find that the quantity consumed in the production of the finished PVA is so small as to render "the effort of tracing that cost to individual products . . . greater than the benefit of accuracy." Because the figures underlying this conclusion are proprietary, we are unable to discuss them here. For further discussion, see the August 4, 2003, memorandum to the file from Elizabeth Eastwood entitled "NMP Cost Analysis Performed for the Final Determination in the Antidumping Duty Investigation on Polyvinyl Alcohol from the People's Republic of China."[18]

Therefore, we have classified NMP as an indirect material for purposes of the final determination. As such, we believe that NMP is included in the overhead ratio applied to SVW's costs, and consequently we did not value this item as a separate raw material for purposes of the final determination in order to avoid the possibility of double-counting it in our calculation of NV.

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[18] Our analysis differs from the petitioners' analysis in that the petitioners allocated all of the costs for NMP to acetylene. Because we find that acetylene and acetylene tail gas are co-products, we find that this methodology is inappropriate. See Comments 2 and 3. As a consequence, we allocated the cost of NMP between these two intermediate inputs using SVW's reported data.

Comment 8: *Clerical Error in the Preliminary Determination*

The petitioners assert that the Department made a clerical error in the preliminary determination because it did not include direct labor hours in its calculation of the total labor cost to produce VAM.

SVW did not comment on this issue.

Department's Position:

We have corrected our calculation of the total labor cost for VAM by including the direct labor hours.

Comment 9: *Application of a By-Product Credit in the Calculation of the Surrogate Financial Ratios*

For purposes of the preliminary determination, we based the ratios for factory overhead, SG&A, and profit for SVW on the financial statements of an Indian company that produced PVAc during the POI, Jubilant. PVAc is a constituent of partially-hydrolyzed PVA and the precursor polymer of fully-hydrolyzed PVA.

As part of our analysis of this issue, we found that a significant quantity of by-product acetic acid was generated during the final stage of the PVA production process. Because the PVAc manufactured by Jubilant did not undergo this final production stage, we concluded that the denominator of the financial ratios did not account for these by-products. Consequently, we applied Jubilant's financial ratios to SVW's costs prior to making any offset for the recovery of acetic acid in order to equate the base on which the ratios were calculated (e.g., materials, labor, and energy) with the base to which they were applied.

SVW asserts that this methodology is inappropriate because it inflates SVW's costs beyond their actual level. SVW contends that there is no evidence on the record that Jubilant does not use recycled acetic acid in its production process. In contrast, SVW claims that the record reflects that the surrogate producer actually does generate acetic acid during production, because the 2001 annual report of VAM Organic Chemical Ltd. (VOCL) refers to "acetic acid recovery from the VAM plant."[19] Therefore, SVW alleges that the Department's decision in the preliminary determination was based on speculation rather than fact. As such, SVW asserts that this decision cannot withstand the scrutiny of judicial review, in light of the CIT's finding that speculation does not constitute substantial evidence. In support of this assertion, SVW cites Rhodia, Inc. V. United States, 240 F. Supp. 2d 1247, 1250 -

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[19] VOCL was the predecessor company to Jubilant. At the public hearing held in this proceeding, SVW's counsel indicated that he believed that the financial ratios used in the preliminary determination were based on VOCL's 2001 data.

1251 (CIT Sept. 9, 2002) (Rhodia 2002), where the CIT held that the Department must follow its standard practice of accepting a surrogate producer's overhead without adjustment absent substantial evidence that the surrogate producer is less integrated than the respondent.

As a consequence, SVW argues that the Department should apply overhead, SG&A, and profit following its standard practice (i.e., only after giving SVW full credit for its recovered acetic acid). SVW maintains that, in similar circumstances, the CIT specifically dismissed the Department's decision to apply overhead to upstream stages in the calculation and as a result the Department reversed its decision and applied overhead only once (i.e., to materials, labor, and energy). SVW cites Rhodia 2001, 185 F. Supp. 2d at 1347-1349**,** and Rhodia 2002, 240 F. Supp. at 1250-1251. Moreover, SVW claims that, while the Department has adjusted overhead in the past, it has never adjusted SG&A and profit. Because SG&A and profit have no relationship to the integration or lack thereof in SVW's production process, SVW asserts that these amounts should be calculated after the by-product offset has been made.

The petitioners argue that the Department's preliminary decision to apply the by-product offset at the end of the calculation was correct. According to the petitioners, not making this adjustment would result in a gross understatement of SVW's NV rather than an overstatement as claimed by SVW.

The petitioners disagree that the Department's decision was based on speculation. The petitioners maintain that the record of this case clearly shows that Jubilant is a producer of PVAc - not PVA - and, unlike SVW, it does not use recycled acetic acid in its production process. Specifically, the petitioners state that acetic acid is produced from methyl acetate, which is generated during the hydrolyzation process in the production of PVA. Because Jubilant ceased production of PVA in 1996, the petitioners assert that Jubilant does not hydrolyze its PVAc and therefore it does not generate acetic acid to be recycled.

The petitioners also disagree that the CIT's decision in Rhodia 2001 constrains the Department's actions in this case. Rather, the petitioners assert that Rhodia 2001 supports the Department's preliminary determination because, in Rhodia 2002, the CIT was clear that the Department has the discretion to make adjustments in the application of surrogate ratios in order to compensate for differences in production processes.

Department's Position:

Prior to the preliminary determination in this case, the petitioners argued that Jubilant's production process was at a different level of vertical integration than SVW's. The petitioners asserted that, as a result, valuing each component in SVW's production of PVA would understate the company's factory overhead, SG&A, and profit. Therefore, the petitioners requested that the Department begin its valuation at either the ultimate or penultimate stage of the production process.

After examining the data on the record related to this issue, we concluded that both companies were at equivalent levels of vertical integration. Nonetheless, we found that sufficient differences existed in the production processes undertaken by the two companies which, if not accounted for, would result in the understatement of factory overhead, SG&A, and profit. Specifically, we stated:

> Regarding the petitioners' claims about the differing amounts of overhead for ethylene produced by Jubilant and acetylene produced by SVW, we note that the overhead costs incurred as a result of the two processes are almost the same when expressed on a per-pound basis. The difference in the overhead percentages cited by the petitioners appears to be a direct result of a difference in the relative material costs associated with the two processes, not their relative capital intensity or degree of vertical integration. Specifically, prior to the recovery of acetic acid, the total materials costs in the Chem Systems study for acetylene are $0.2527 per pound, while the total materials costs in the SRI study for ethylene are $0.2562 per pound. This suggests that the real difference in the overhead rates is attributable to the recovery of substantially all of the acetic acid used in the acetylene process. Because the base on which the overhead rate is calculated (i.e., materials, labor, and energy) would not match the base to which the overhead rate normally is applied (i.e., total raw materials costs, labor, and energy, less recovered by-products), it may be appropriate in this case to apply the overhead rate to SVW's cost data prior to the offset for acetic acid recovery . . . (footnote omitted)
>
> . . . [G]iven that the denominator of the overhead ratio does not appear to account for significant by-products generated during the PVAc production process, we recommend applying Jubilant's overhead ratio to SVW's total material, labor, and energy costs prior to making any offset for the recovery of acetic acid. Because the same principle holds true for Jubilant's SG&A and profit ratios, we further recommend applying these ratios to SVW's costs prior to the offset for acetic acid as well.

See the March 13, 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" (the self-produced inputs memo) at pages 12 - 14.

We agree with SVW that the record demonstrates that Jubilant recovered acetic acid during its 2001-2002 fiscal year.[20] We disagree, however, that this fact invalidates the conclusions that Jubilant did not generate significant quantities of acetic acid through its production process and, for this reason, it is appropriate to make the by-product offset at the final stage of the calculation.

The record in this case shows that acetic acid is recovered at two steps in the production process for PVA – first during the production of VAM and again when VAM is hydrolyzed into the finished

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[20] Specifically, note "##" on page 43 of Jubilant's 2001-2002 annual report reads: "Does not include Acetic Acid recovery from VAM plant."

product. SVW itself recovers a small amount of acetic acid during the production of VAM. As explained in a memorandum to the file on this topic:

> During the plant tour of SVW's VAM plant on April 2, 2003, company officials stated that the small amount of acetic acid which does not react in the VAM production process is recovered and recycled at the VAM stage. In addition, company officials stated that SVW reported its factor for acetic acid at the VAM stage net of this recovered amount.

See the June 23, 2003, memorandum from Elizabeth Eastwood and Alice Gibbons to the file entitled "Acetic Acid Recovery Process in the Antidumping Duty Investigation of Polyvinyl Alcohol from the People's Republic of China."

Recovery of acetic acid prior to the final hydrolysis stage is not at issue here, and this recovery does not affect the calculation of the financial ratios to any degree. Instead, the issue relates to the significant amount of acetic acid recovered when VAM is hydrolyzed into PVA. The salient fact is that SVW recovers a significant quantity of acetic acid during the final hydrolysis stage, while Jubilant does not hydrolyze PVAc into PVA. As a consequence, the quantities of acetic acid recovered by the two companies are not equivalent and to treat them as if they were would not be appropriate.

The truth of this conclusion is evident when one analyzes the cost studies placed on the record by the petitioners. As described above, the costs of producing PVA using an ethylene process (similar to the process used by Jubilant to produce PVAc) and the costs of producing PVA using an acetylene process (like SVW's) are virtually identical prior to the recovery of acetic acid. Because Jubilant does not recover acetic acid in the final stage, the financial ratios calculated using Jubilant's data do not account for the significant acetic acid by-product credit claimed by SVW. In order to fully capture the overhead associated with the production of PVA, therefore, it is necessary to apply these ratios to the same base of costs used in the denominator of the calculation (i.e., materials costs incurred prior to the final production stage, energy, and labor). We disagree with SVW that this issue is one of integration; rather, it is a question of simple mathematics.

Finally, SVW's reliance on the CIT's decision in Rhodia 2001 is misplaced. In that case, the CIT determined that the Department "failed to identify any evidence in the record to support {its}conclusion" that aspirin producers in the PRC were more fully integrated than their Indian counterparts, and thus it remanded to the Department its decision to apply overhead to upstream inputs. See Rhodia 2001, 185 F. Supp. at 1349. In this case, however, the evidence on the record fully supports our findings that: 1) SVW and Jubilant are at equivalent levels of integration; and 2) application of the financial ratios calculated from Jubilant's data to SVW's costs net of by-product credits would result in a significant understatement of factory overhead, SG&A, and profit. Therefore, we have continued to apply the financial ratios in question to SVW's data before deducting the by-product credit for purposes of the final determination.

Comment 10: *Adjustments to the Surrogate Financial Ratios for Differences in Integration Levels*

As explained in Comment 9, above, the Department based the financial ratios used in this case on data obtained from the financial statements of Jubilant, an Indian manufacturer of PVAc. Because we found that Jubilant does not generate significant by-products during the production of PVAc, we applied these ratios to SVW's costs prior to the deduction for the by-product credit.

According to the petitioners, the Department's calculation establishes an important principle in this case: that adjustments should be made for material differences between SVW and Jubilant with respect to direct costs that are the basis for the application of the surrogate's overhead, SG&A, and profit ratios.

The petitioners comment that SVW produces all of its electricity and VAM (the major input into PVA) whereas Jubilant purchases approximately a quarter of each of these inputs. The petitioners contend that the Department should account for these production differences by adding an adjustment for purchased inputs to SVW's cost base to which the ratios are applied. Specifically, the petitioners propose that the Department: 1) increase SVW's electricity and VAM costs to equal the equivalent costs had SVW purchased the same percentage of these inputs; and 2) include these revised costs in the base to which the financial overhead ratios are applied.[21] The petitioners assert that this calculation will have the effect of adjusting the basis for the application of the financial ratios while leaving the total direct cost for the respondent consistent with the Department's verification findings.

The petitioners further contend that a similar adjustment is unnecessary to account for the fact that Jubilant self-produces acetic acid, while SVW does not. The petitioners maintain that Jubilant's direct costs for producing acetic acid are close to the surrogate value for acetic acid used in the preliminary determination. Therefore, the petitioners assert that, because SVW's and Jubilant's costs are already equivalent, no additional adjustment to the denominator is necessary.

SVW argues that it would be unfair for the Department to adjust overhead for differences in electricity and VAM production while making no adjustment for differences related to acetic acid.[22] Rather, SVW asserts that the Department should revert to its "standard" methodology of applying the financial ratios after giving SVW credit for its recycled acetic acid. SVW asserts that Jubilant's level of vertical integration is identical to its own, except that Jubilant's overhead is already inflated because it includes overhead for producing acetic acid, while the Department has refused to give SVW any credit for its own production of the same material. Given these circumstances, SVW contends that the Department

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[21] The petitioners do not propose adding the higher electricity and VAM costs to SVW's total costs, but merely the associated overhead, SG&A, and profit related to this adjustment.

[22] That said, however, SVW continues to argue that it does self-produce acetic acid.

should not compound its initial mistake and make additional adjustments to the overhead, which are not based on the evidence on the record.

Department's Position:

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.

See Magnesium 1995 Investigation, 60 FR at 16447.

The Department's practice of not engaging in a line-by-line evaluation of surrogate overhead components has not changed since the Magnesium 1995 Investigation. For example, in Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Final Results and Rescission in Part of Antidumping Duty Administrative Review, 61 FR 51427, 51429 (Oct. 2, 1996) (TRBs from Romania), the Department stated that it generally does not dissect the overhead rate of a surrogate country and apply only components relevant to the producer. The Department further stated that,

> [r]arely, if ever, will it be known that there is an exact correlation between overhead expense components of the NME producer and the components of the surrogate overhead expenses. Therefore, the Department normally bases normal value completely on factor values from a surrogate country on the premise that the actual experience in the NME cannot meaningfully be considered. Accordingly, Department practice is to accept a valid surrogate overhead rate as wholly applicable to the NME producer in question.

See TRBs from Romania, 61 FR at 51429.

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 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 CIT. See Rhodia 2002, 240 F. Supp. 2d at 1250-1251. Specifically, the CIT stated in Rhodia:

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

Although the petitioners have not technically requested that we adjust the ratios themselves, we find that accepting their argument would have the same effect.[23] Therefore, because it is our practice to accept the data from the surrogate producer *in toto*, we have not adjusted SVW's overhead, SG&A, or profit to account for differences in energy or VAM production between SVW and Jubilant.

Comment 11: *Surrogate Value for Ocean Freight*

During the POI, SVW made a small number of shipments on a CIF basis. In its questionnaire response, SVW reported that it shipped this merchandise using market-economy suppliers, and it reported the amount of freight expenses charged by these companies. However, because SVW

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[23] For example, the petitioners could have argued that the denominator of the ratios is overstated because Jubilant purchases a portion of its electricity and VAM and, as a consequence, we should adjust the denominator of the ratios.

actually paid for this freight to a PRC company in local currency, we did not accept the expenses reported by SVW. Rather, we valued ocean freight using a surrogate value, in accordance with our practice. See Preliminary Determination, 68 FR at 13678. Specifically, as the surrogate value, we used a price quote obtained in the 2001-2002 administrative review of indigo from the PRC. See Synthetic Indigo from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11371, 11372 (Mar. 10, 2003).

On April 29, SVW submitted additional surrogate values for consideration in the final determination. As part of this submission, SVW provided a number of invoices from a U.S. ocean freight company for the shipment of PVA to the United States, and it argued that these invoices should be used to value ocean freight in this case. In its case brief, SVW reiterates that the surrogate value used in the preliminary determination substantially overstates its actual ocean freight charges for PVA and does not reflect the commercial reality. Rather, SVW maintains that it is more accurate to use a weighted-average of the freight expenses reflected in its April 29 submission because these expenses were obtained from its U.S. customer, relate to actual shipments of PVA during the POI, and were paid in U.S. currency.

SVW maintains that using these invoices to value ocean freight will result in the application of ocean freight charges reflective of SVW's actual experience during the POI. In the event that the Department continues to use the price quote relied on in the preliminary determination, SVW requests that the Department correct an apparent clerical error in the calculation of the per-unit amount. Specifically, SWV claims that in the preliminary determination, the Department did not divide the per-container price quote by the number of metric tons in a container. SVW contends that the Department should do so for the final determination.

The petitioners argue that the Department should continue to use the surrogate value relied on in the preliminary determination. The petitioners contend that the invoices submitted by SVW do not provide a reliable basis for calculating a surrogate value for ocean freight for SVW's CIF sales for the following reasons: 1) these shipments are from different ports than those used as the port of export for SVW's CIF shipments; 2) the invoices submitted on April 29 show that shipment costs per container vary considerably depending on the port of loading; and 3) a comparison of the surrogate value used in the preliminary determination to those submitted by SVW on April 29 suggests that the freight charges for SVW's CIF shipments may be higher than those for the other ports. Regarding the latter point, the petitioners observe that the surrogate value used in the preliminary determination is approximately the same as the highest ocean freight cost for SVW's FOB sales. Therefore, the petitioners contend that an accurate weighted average by port of the April 29 freight invoices would approximate the surrogate value used by the Department in the preliminary determination. Thus, the petitioners argue that the Department should continue to rely on the surrogate value used in the preliminary determination.

Department's Position:

After reviewing the ocean freight data on the record of this case, we find that there is a significant variation in the ocean freight expenses in SVW's April 29 submission, and there is a correlation between the amount of the expense and the ports of exportation and importation. Therefore, we disagree with SVW that it would be appropriate to base the surrogate value for ocean freight on a weighted-average of the expenses provided in SVW's April 29 submission.

Nonetheless, we also disagree with the petitioners that these expenses are unreliable. They are actual invoices for ocean freight services provided by a market-economy supplier and denominated in a market-economy currency for the shipment of PVA to the United States during the POI. As such, we find that they are equally reliable as the price quote used in the preliminary determination. Consequently, we have considered these expenses when selecting the appropriate surrogate value for purposes of the final determination.

Regarding the specific shipments in question, SVW exported the merchandise from two ports in the PRC, Shanghai and Guangzhou. Because the price quote used in the preliminary determination is for the shipment of merchandise from Shanghai and none of the invoices in the April 29 submission are for shipments from that port, we have continued to use this price quote to value ocean freight for SVW's exports from Shanghai. Regarding the remaining shipments from Guangzhou, we based the surrogate value on the invoice amount for the shipment from the port of Huangpu to the east coast of the United States.[24] We find that the freight expenses for this shipment are a reasonably accurate reflection of SVW's ocean freight experience because they are for the shipment of the same merchandise from the same port to approximately the same destination.

Regarding SVW's claim that we incorrectly calculated the ocean freight surrogate value for the preliminary determination, we disagree. We have reviewed our calculations and find that we properly divided the per-container ocean freight surrogate value by the number of metric tons per container. See the March 14, 2003, memorandum from the team to the file entitled, "U.S. Price and Factors of Production Adjustments for the Preliminary Determination." Therefore, no correction to our calculations is necessary.

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[24] According to SVW, Huangpu and Guangzhou are the same port. See the transcript of the public hearing held in this case, on file in the Central Records Unit, Room 1870 of the main Department of Commerce building. In the transcript, the names of these ports were mistranscribed as Wong Pu and Long Jo, respectively.

Recommendation

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

Agree____ Disagree ____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Grant Aldonas, Under Secretary

_____
(Date)