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First Administrative Review
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MEMORANDUM

DATE: February 3, 2003

TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Susan H. Kuhbach
Acting Deputy Assistant Secretary, Group I
Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Bulk Aspirin from the People's Republic of China for the period July 6, 2000 through June 30, 2001

SUMMARY

We have analyzed the comments in the case brief submitted by the petitioner, Rhodia, Inc. ("the petitioner"), and the rebuttal briefs submitted by the respondents, Shandong Pharmaceutical Co., Ltd. ("Shandong") and Jilin Henghe Pharmaceutical Company Ltd. ("Jilin"), in the antidumping duty administrative review of aspirin from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes, including corrections of clerical errors, in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is the complete list of the issues in this review for which we received comments from the parties:

- Comment 1: Use of Import Prices Versus Domestic Prices in India to Value Certain Inputs
- Comment 2: Adjustment of Overhead and SG&A Ratios to Account for Different Levels of Integration
- Comment 3: Exclusion of Labor in the Calculation of the Overhead Ratio and Reclassification of R&D Expenses
- Comment 4: Removal of Excise Tax from Alta's Reported Material Costs for the Calculation of Overhead and SG&A Ratios

- Comment 5: Other Adjustments to the Overhead and SG&A Ratios
Comment 6: Inflation of Labor Rates
Comment 7: Valuation of a Proprietary Input for Shandong
Comment 8: Shandong's Usage of Acetic Anhydride

BACKGROUND

The merchandise covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin. Bulk aspirin may be imported in two forms: as pure ortho-acetylsalicylic acid, either in crystal form or granulated into a fine powder (pharmaceutical form); or as mixed ortho-acetylsalicylic acid, combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances.

This administrative review was requested by the petitioner, Shandong and Jilin. The period of review ("POR") is July 6, 2000 through June 30, 2001. We published the preliminary results of the review on August 7, 2002 (see Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Changed Circumstances Review, 67 FR 51,167 (August 7, 2002) ("Preliminary Results")). We invited parties to comment on our preliminary results. We received a case brief from the petitioner on September 6, 2002 and rebuttal briefs from Jilin and Shandong on September 13, 2002.¹

DISCUSSION OF ISSUES

Comment 1: Use of Import Prices Versus Domestic Prices in India to Value Certain Inputs

In the Preliminary Results, the Department used import prices in India to value raw material inputs. The petitioner argues that the Department should not use import prices to value certain inputs and instead should rely on domestic prices in India, **as reported in Indian Chemical Weekly ("ICW"), to value these inputs. Specifically, the petitioner contends that the Department should use domestic prices to value phenol, acetic acid, caustic soda, sulfuric acid and three proprietary inputs. The petitioner cites to other cases to show that the Department has stated a preference for using domestic prices over import prices. The petitioner cites to Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Republic of Romania: Final Results of Antidumping Duty Administrative Review, 56 FR 1169, 1171 (January 11, 1991); Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21,058 (May 18, 1992); Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the**

¹ Jilin and Shandong raised certain affirmative arguments in their rebuttal briefs. In accordance with section 351.309(d)(2) of the Department's regulations, which states that rebuttal briefs "may respond only to arguments raised in case briefs," we are not addressing those affirmative arguments.

People's Republic of China, 58 FR 48,833 (September 20, 1993); Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 FR 3085 (January 21, 1998); and Creatine Monohydrate from the People's Republic of China: Final Results of Antidumping Duty Review, 67 FR 10,892 (March 11, 2002) and accompanying Issues and Decision Memorandum ("Creatine"). The petitioner also cites to Creatine in which the Department noted that domestic prices are used when they are net of taxes, when taxes could be easily removed, or where domestic prices have not been distorted because of high tariffs. Although that preference for domestic prices is not unconditional, the petitioner notes that the Department relied upon domestic prices in the original investigation and should have used a similar methodology in this review.

Further, the petitioner asserts that the import statistics do not account for differences in grade or purity and, therefore, may be distorting. Citing to Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Review, 64 FR 69,503, 69,505 (Dec. 13, 1999) ("Sebacic Acid") and Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Review, 66 FR 18,439 (April 9, 2001) ("Persulfates"), the petitioner asserts that in these cases the Department found that ICW domestic prices are for 100 percent pure products. In contrast, the import statistics compiled by the Monthly Statistics of the Foreign Trade of India: Volume II - Imports ("MSFTI"), as well as import prices cited in ICW, are for chemicals of various purity levels. The petitioner points to the wide range of average unit values ("AUVs") reported in MSFTI as support for its claim that the import statistics are inaccurate and attributes the discrepancy in AUVs to differences in purity. Because of the uncertainty of the chemical content of the import statistics, the petitioner argues that the ICW domestic prices are more accurate and should be used as surrogate values in this review.

For the material inputs acetic acid, liquid sodium hydroxide (caustic soda), sulfuric acid, phenol, and certain other proprietary inputs, the petitioner contends that the data in the import statistics are flawed for the following reasons: the import statistics under Harmonized Tariff Schedule ("HTS") Chapters 28 and 29 are not limited to imports of 100 percent chemical purity and, therefore, the AUVs for those imports do not reflect chemically pure products; the chemicals are sold in different grades or purities; and "some of the chemicals, such as caustic soda, are manufactured and sold at 50 percent purity and by definition are recorded in the import statistics in a solution with water." Based on these alleged deficiencies in the import data, the petitioner urges the Department to rely on domestic values.

The petitioner also argues that the Department used the incorrect subheading from the HTS to value phenol in the preliminary results. The petitioner asserts that the relevant subheading for phenol imports is 2907.11, not 2707.60 because pure phenol, which is used in the production of salicylic acid, must have a purity of 90 percent or more by weight. Pure phenol is classified in Chapter 29, not Chapter 27 of the Indian Harmonized Tariff Schedule.

The petitioner argues that the Department should not reject domestic prices on the grounds that high Indian tariffs might distort domestic prices. With the exception of phenol as classified under HTS number 2907.11, which has a tariff rate of 60 percent, all other chemicals used in the production of

bulk aspirin are subject to tariffs of 25 to 30 percent above the base tariff rate. Citing to **Sulfanilic Acid from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review**, 65 FR 13,366 (March 13, 2000), the petitioner argues that the Department should not exclude domestic prices because of import tariffs because the rates are not sufficient as to distort the domestic market prices. The petitioner also cites to **Potassium Permanganate from the PRC: Preliminary Results of Antidumping Duty New Shipper Review**, 67 FR 303, 306 (January 3, 2002) and **Notice of Preliminary Results of New Shipper Antidumping Administrative Review: Glycine From the People's Republic of China**, 65 FR 54,211 (September 7, 2000) (as affirmed in the Final Determination, **Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review**, 66 FR 8383 (January 31, 2001)), as instances in which the Department relied on domestic ICW data, even in the presence of tariffs as high as 30 percent.

The petitioner also argues that data from surrogate companies could be used as a source for phenol factor values should the Department choose not to rely on domestic ICW data. The petitioner cites to **Createine and Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania** 61 FR 24,274, 24,279 (May 14, 1996) (“Welded Pipe from Romania”) in support of its claims that the Department has a preference for using domestic data over import data and the Department prefers producer data over import statistics. The petitioner claims that there is nothing to suggest that Indian producers purchase imported phenol and instead, the surrogate producers’ prices corroborate published ICW statistics.

Finally, the petitioner argues that if ICW import data are used to value these inputs, the Department should rely on ICW import data beginning with the data published in the September 5, 2000 issue of ICW. The petitioner asserts that annual ICW import data correspond to the MSFTI statistics and, because they are the same data, the accuracy is not improved by averaging the two sets of data. The petitioner also asserts that MSFTI data cover the twelve-month period April 2000 to March 2001, and thus are not contemporaneous with the POR. Furthermore, according to the petitioner, the data published in ICW prior to the September 5, 2000 issue are for imports preceding the POR. Therefore, the use of data from issues prior to September 5, 2000 would be inappropriate. Finally, the petitioner asserts that should the Department continue to use import data for the final results, it should use data that are contemporaneous with the POR (i.e., data for April through June 2000 should be excluded and data for April through June 2001 should be included).

Shandong states that although MSFTI statistics may be an imperfect source for surrogate prices on chemical inputs on a 100 percent concentration basis, they are preferable to ICW data, which are distorted because of high taxes and duties. Citing to **Manganese Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review**, 63 FR 12,441, 12,442 (March 13, 1998), Shandong asserts that although it is the Department’s preference to use domestic prices, in instances where the Department cannot be certain that all taxes and duties have been removed from the domestic prices, import prices are used. **See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of**

1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953 (January 10, 2001); Sulfamic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 63 FR 63,838, (November 17, 1998); and Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61,964, 61,986 (November 20, 1997). Shandong also suggests that the Department continue to use averages of the import prices from ICW and MSFTI as it did in the preliminary results, since this represents the “best available information” in accordance with section 773(c)(1) of the Act.

Jilin did not comment on this issue.

Department's Position: We agree with the petitioner, in part, that we should use domestic prices to value certain inputs in this review. As discussed in greater detail below, where the petitioner has provided information showing that the import price reflects a wide variety of purity/concentration levels for an input, we have generally used the domestic price.

The petitioner has acknowledged that the Department does not have an unconditional preference for domestic prices. In particular, the Department must be satisfied that it has removed taxes from the domestic prices. As we have explained **in the July 31, 2002 memorandum on the factors of production valuation for the preliminary results, the magnitude and consistency of the difference between domestic and import prices led us to** conclude that we were not able to remove taxes and duties from the domestic prices. Therefore, we used import prices in our preliminary results.

Based upon our review of the information submitted by the petitioner, we agree that the Indian import statistics for certain factors reflect prices for a range of grades. The differences between domestic and import prices may be caused by differences in concentration levels rather than taxes. Specifically, the petitioner has submitted information from the Indian HTS chapter headings indicating that imports of phosphoric acid, sulfuric acid, caustic soda and two proprietary inputs include products either diluted in water or other solvents and, accordingly, are potentially not reported on a 100 percent concentration basis. In Sebacic Acid and Persulfates, the Department has found that ICW domestic prices are reported on a 100 percent concentration basis. Therefore, because **the import data are for inputs with various levels of purity**, we are using domestic prices found in ICW to value these inputs. For one proprietary input, although the petitioner alleged that the import value reflect different levels of purity, the petitioner did not support the claim. Therefore, for this proprietary input, we have continued to use MSFTI import values because the difference in the domestic and import price does not appear to be caused by the breadth of the import category. See the Department's February 3, 2003 Calculation Memorandum ("Calculation Memorandum") and the Department's **February 3, 2003** Factors of Production Memorandum ("FOP Memorandum") for a complete discussion of the factor values used.

For the final input identified by the petitioner, phenol, we believe that the distorting effect of the high

Indian tariff renders the ICW domestic prices unuseable. Accordingly, consistent with the original investigation, we have continued to use MSFTI import prices for phenol for the final results. This decision is also consistent with numerous other decisions in which the Department has determined that import prices are used when the Department has determined that domestic prices are distorted by high tariffs. See Manganese Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12,441, 12,442 (March 13, 1998); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953 (January 10, 2001); Sulfanilic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 63 FR 63,838, (November 17, 1998); Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61,964, 61,986 (November 20, 1997). Furthermore, while the MSFTI import statistics for the HTS subheading 2907.11 include phenol in concentration of 90 percent or more, we do not find this concentration range to be so broad that it renders Indian import prices unuseable. Although we prefer to use data for products on a known concentration basis, we weight this preference against other considerations, such as tariff levels. Given the high tariffs imposed on phenol, we find import prices to be a more appropriate basis for the surrogate value in this review.

We agree with the petitioner that 2907.11 is the proper HTS category for the phenol used in the production of aspirin. The purity of the imports included in this subheading (*i.e.*, greater than 90 percent) is consistent with the information concerning the purity of phenol used in the production of aspirin, as reported by the respondents.

Finally, we agree with the petitioner that the import data, and in fact all data, used as the basis for surrogate values should be, to the extent possible, contemporaneous with the POR. Therefore, for the final results, we have used MSFTI import data and ICW domestic data that it are contemporaneous with the POR (*i.e.*, data for April through June 2001 were included and data for April through June 2000 were excluded.)

Comment 2: Adjustment of Overhead and SG&A Ratios to Account for Different Levels of Integration

The petitioner argues that none of the Indian producers proposed as surrogates is as integrated as the PRC respondents. Consequently, the petitioner claims, the surrogate factory overhead should be adjusted or certain inputs should be valued differently.

To support its claim that none of the proposed Indian surrogate producers is fully comparable to Jilin or Shandong, the petitioner argues that none of these companies produces the two major inputs into aspirin (salicylic acid and acetic anhydride) and aspirin itself. Moreover, while two of the surrogate producers (Alta and Gujarat) may also produce salicylic acid derivatives, the petitioner points to evidence that the overhead costs associated with these derivatives are one tenth the overhead costs

associated with aspirin and the derivatives require one half the labor needed to produce aspirin. The petitioner also compares the overhead ratios of the proposed surrogates to those of integrated aspirin producers such as Bayer and Rhodia, and finds that the latter are significantly higher. Consequently, according to the petitioner, the fact that Alta and Gujarat produce the derivatives does not mean that their overhead is comparable to that of an integrated aspirin producer. Further, the petitioner contends, because most of the salicylic acid that Alta and Gujarat produce is sold on the market (rather than consumed internally), Alta's and Gujarat's overhead is comparable to that of a single stage producer. Finally, the petitioner claims that the third Indian producer, Andhra, primarily produces sugar and that its product line and production cost ratios reflect that fact. In the petitioner's view, Andhra is an imperfect surrogate for Jilin and Shandong.

The petitioner argues that the legislative history of the factor of production methodology directs the Department to rely upon surrogates with a similar level of technology to the non-market economy ("NME") producers under investigation. See Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 100-576 at 590-91 (April 20, 1988). Similarly, recent determinations by the Department dictate that where differences exist between the respondents and the surrogate producers, the Department will make adjustments to reflect the differences. Citing to **Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, Issues and Decision Memorandum at Comment 2 (May 20, 2002) ("Structural Beams")** and **Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from The People's Republic of China, 66 FR 49,632 (September 28, 2001) ("Hot-Rolled Steel from the PRC")**, the petitioner argues that the Department must make adjustments when using a surrogate with a different level of technology than the respondents. The petitioner suggests that the Department could apply the methodology used in **Structural Beams** and use a surrogate value for the particular input not produced by the Indian company (e.g., use a surrogate value for salicylic acid and then apply Andhra's ratios without adjustment). The petitioner's alternative proposal is to restate the surrogate overhead rate to reflect the fact that the Indian companies purchase one of the major inputs and, hence, start with higher material costs and lower overhead costs.

Jilin and Shandong respond that the Indian surrogate producers' overhead and SG&A expenses are representative of the PRC producers' experiences, as affirmed by the CIT in its recent decision regarding the Department's **Redetermination Pursuant to Court Remand: Rhodia v. United States** (March 29, 2002). See **Rhodia, Inc. v. United States**, Consol. Ct. No. 00-08-00407, Slip Op. 02-109 (CIT September 9, 2002) ("**Remand Decision**"). The respondents contend that the Indian surrogate producers manufacture at least one major aspirin input, as well as some salicylic acid derivatives and are, therefore, representative of the respondents. Finally, they argue that there is no information on the record that would indicate that the further processing by the Indian surrogates to produce the derivatives is not commensurate with the additional stages of production used by the respondents to produce aspirin. Therefore, the respondents argue that the Department should continue to calculate overhead and SG&A ratios as was done in the **Remand Decision** and the **Preliminary Results**.

Jilin and Shandong also dispute the argument put forth in the petitioner's case brief that Alta's and Andhra's limited aspirin production make them imperfect surrogates, since the CIT determined that there was no information on the record to indicate that the Indian surrogate producers were less integrated than the respondents.

Department's Position: We have reviewed the record evidence regarding the three Indian producers, Alta, Andhra, and Gujarat, and have determined that Alta's data is the best available information for calculating the surrogate factory overhead and SG&A ratios.² Of the three companies, Alta is most similar to the PRC producers because it produces both aspirin and one of the major inputs into aspirin, salicylic acid. In contrast, Gujarat produces salicylic acid and salicylic acid derivatives. While these derivatives may be considered similar to aspirin, we believe that Alta better represents the capital costs incurred for the production of aspirin because it actually produces aspirin.³ With respect to Andhra, this company appears to be primarily a sugar producer. In addition, its financial statements identify it as producing chemicals, hydrogen gas, rice bran, sunflower oil, cattle feed, and wind power. Given the diversity of Andhra's output and the fact that its principal line of business is not aspirin or chemicals, Andhra's experience is not the best available information for computing the overhead and SG&A that would be incurred to produce aspirin.

We acknowledge that Alta is not identical to the PRC producers under review because it does not produce the other major input into aspirin, acetic anhydride. However, as we articulated in the remand determination, which the CIT upheld, the surrogate producer need not be a replica of the NME producers under review:

Commerce does not generally adjust the surrogate values used in the calculation of factory overhead. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 61 FR 14,057, 14,060 (Mar.29, 1996); Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25,706, 25,706-07 (May 3, 2000); Certain Helical Spring Lock Washers From

² We have not used Alta's profit because Alta operated at a loss in this period. Therefore, we have relied on the profit experiences of Gujarat and Andhra. This is consistent with the Department's practice as affirmed by the CIT. See Rhodia, Inc. v. United States, Consol. Ct. No. 00-08-00407, Slip Op. 02-109 (CIT September 9, 2002).

³ The petitioner has put information on the record of this proceeding that was not on the record of the prior proceeding in support of its claim that the capital costs for producing salicylic acid derivatives are not representative of the capital costs for producing aspirin. Because we are using information from Alta, a company that produces aspirin (in addition to salicylic acid and its derivatives), we have not addressed the possible differences in the capital costs for producing the various products.

the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 64 FR 31,143, 31,143 (May 16, 2000); Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China, 62 FR 51,410, 51,413, 51,417 (Oct. 1, 1997). Rather, once Commerce establishes that the surrogate produces identical or comparable merchandise, closely approximating the nonmarket producer's experience, Commerce merely uses the surrogate producer's data. 19 U.S.C. § 1677(c)(4) (2000); 19 C.F.R. § 351.418(c)(4) (2001). Furthermore, Commerce is neither required to 'duplicate the exact production experience of the Chinese manufacturers,' National Ford Chem. Co. v. United States, 166 F. 3d. 1373, 1377 (Fed. Cir. 1999), nor undergo 'an item-by-item analysis in calculating factory overhead.' Magnesium Corp. of Am. v. United States, 166 F. 3d. 1364, 1372 (Fed. Cir. 1999). Moreover, Commerce need not use 'perfectly conforming information,' only comparable information. Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 Fed. Reg. 7,308, 7,344 (Feb. 27, 1996).

The petitioner has pointed to certain cases where the Department has adjusted its calculations to reflect differences in the extent of the production activity undertaken by the surrogate producer(s) and the NME producers. In Hot-Rolled Steel, the NME respondents self-produced some or all of their energy, whereas the surrogate producer did not. Therefore, the Department found that "by applying a financial ratio which included in its denominator fully loaded energy costs to factors which contain a small portion, if any, of respondents' energy costs, the Department would be understating normal value." See Hot-Rolled Steel Issues and Decision Memorandum at Comment 2. The Department based its conclusion on the fact that the self generation of the energy inputs in question (*i.e.*, electricity, argon, oxygen, and nitrogen) was a heavily capital intensive process and that the facilities dedicated to the production of those energy inputs was not insubstantial. Similarly, in Structural Beams, the Department found that the respondent self-produced argon, oxygen and nitrogen, while the surrogate producer did not. Following on the precedent set in Hot-Rolled Steel, the Department again adjusted normal value.

We do not believe that the differences between Alta and the PRC aspirin producers are nearly so great as those identified (and addressed) in Hot-Rolled Steel and Structural Beams. First, there is no evidence to suggest that self production of acetic anhydride is a heavily capital intensive process. In contrast, in Hot-Rolled Steel, which relied on the determination reached in Structural Beams, the Department had evidence on the record demonstrating that the production of the inputs in question was a heavily capital intensive process. See Hot-Rolled Steel Issues and Decision Memorandum at Comment 2. Second, unlike Hot-Rolled Steel where the NME producers' factors contained a "small

portion, if any” of their energy costs, the NME producers’ reported factors of production in this proceeding include all of the material inputs for acetic anhydride. Thus, the overhead ratio is being applied to significant input factors. Third, the input in question in this proceeding is acetic anhydride, a chemical like salicylic acid or aspirin, which Alta clearly produces. Thus, the situation in this proceeding is different from that in the proceedings cited by the petitioner where the major product being produced was steel and where the self-produced inputs were energy related, i.e. electricity and gases. Given these differences in the types of inputs at issue and our position that the Department is not required to use surrogate data that conform exactly to the NME producers’ experience, the adjustment requested by the petitioner is not appropriate in this case.

Finally, the petitioner has alleged that Alta’s financial data are not appropriate because (1) Alta sells most of its salicylic acid on the market and, hence, should be compared to a single-stage producer, and (2) the overhead experience of Rhodia and Bayer is much higher than that of Alta. Regarding the former, the petitioner has not provided any evidence to support its claims that the overhead costs associated with the production of salicylic acid vary depending on whether or not the producer consumes the product or that Alta, in fact, sells the majority of its salicylic acid on the open market. Regarding the different experiences of producers such as the petitioner and Bayer, it is understandable that overhead ratios would be lower in lower wage countries if labor can be substituted for capital in the production process. Also, a proprietary affidavit submitted by the petitioner suggests that the capital costs associated with producing aspirin may not be as high as the petitioner has argued. (See August 27, 2002 submission by the petitioner at exhibit 1.)

Comment 3: Exclusion of Labor in the Calculation of the Overhead Ratio and Reclassification of R&D Expenses

The petitioner alleges that Jilin and Shandong excluded administrative, sales and “similar employees” from their reported labor costs and that the surrogate Indian producers also did not allocate labor costs to overhead. Therefore, the Department should calculate the surrogate overhead ratio as a percentage of materials and energy only, excluding labor. The petitioner also claims that Andhra included research and development (“R&D”) expenses in numerous materials, energy and other expense categories and that these expenses should be reclassified as SG&A expenses.

Jilin responds that it did not underreport certain production labor. Furthermore, Jilin argues that the petitioner’s reclassification of certain expenses from labor to SG&A is contrary to Department practice and policy. Citing to 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) (“Mushrooms from the PRC”), Jilin contends that it is Department practice to include labor in the denominator, not the numerator, when calculating rates for factory overhead and SG&A.

Shandong did not comment on this issue.

Department's Position: We agree with the petitioner, in part, and have recalculated Shandong's overhead expenses. As discussed below, Jilin and Shandong have reported their labor factors differently. Therefore, we have treated the calculation of the overhead ratio differently for each company.

With respect to Jilin, we find no evidence on the record to support the petitioner's allegation that Jilin has failed to report certain labor expenses. Therefore, we are calculating the surrogate overhead ratio as a percentage of materials, energy and total labor, and applying that ratio to Jilin's materials, energy and total labor expenses for the final results.

Shandong stated in its questionnaire response that some of its labor expenses were not reported as labor expenses but were instead included as overhead and SG&A expenses. To account for the fact that certain of Shandong's overhead labor expenses may not have been reported, we agree with the petitioner that overhead should be calculated exclusive of labor for Shandong. Accordingly, we have calculated the surrogate overhead ratio as a percentage of materials and energy, and applied that ratio to Shandong's reported materials and energy expenses. The Department has employed this methodology in other decisions cases. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Peoples Republic of China; Final Results of 1996-97 Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part, 63 FR 63,842 (November 17, 1998); Manganese Metal from the People's Republic fo China; Final Results of Second Antidumping Administrative Review, 64 FR 49,447 (September 13, 1999); and Manganese Metal From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 65 FR 30,067 (May 10, 2000).

Since we are not using Andhra's financial statements to calculate the surrogate overhead and SG&A ratios in this review the arguments regarding the allocation of Andhra's R&D expenses is moot.

Comment 4: Removal of Excise Tax from Alta's Reported Material Costs for the Calculation of Overhead and SG&A Ratios

The petitioner urges the Department to remove excise taxes from Alta's financial data prior to calculating the company's overhead and SG&A ratios, asserting that these taxes are included in the company's reported material costs. The petitioner cites to language in Alta's financial statements that it believes supports its claim.

Jilin counters that there is nothing in Alta's financial statements to indicate that excise taxes were included in the reported material costs and that the petitioner misunderstood the financial statements. Accordingly, Jilin believes that there is no basis for adjusting Alta's reported material costs for excise taxes.

Shandong did not comment on this issue.

Department's Position: The petitioner relies upon a footnote in Alta's financial statements to make the argument that excise taxes were included in raw material costs. The footnote states that "Excise Duty on finished goods is accounted on manufacture Modvat credit is accounted by adjustment against cost immediately upon receipt of the relevent (sic) inputs and booking of the invoices in respect thereof." (Jilin's January 22, 2002 supplemental response at Exhibit 4-A, page 21 of Alta's fiscal year 2001 financial report.) We do not read this footnote as indicating that excise taxes were included in the company's reported material costs. Therefore, we are not adjusting Alta's reported material costs.

Comment 5: Other Adjustments to the Overhead and SG&A Ratios

The petitioner argues in its case brief that certain adjustments should be made to the surrogate companies' overhead and SG&A ratios. Those adjustments include (1) the allocation of interest expenses to SG&A; (2) the inclusion of Andhra's "handling, transport, and expenses at sales depots" as a selling expense in the SG&A ratio calculation; (3) the classification of "Labour charges" as an overhead expense in the calculation of Gujarat's overhead ratio; and (4) the classification of "Brokerage on Sales" costs as an SG&A expense in the calculation of Gujarat's SG&A ratio.

Jilin responds that the aforementioned adjustments are incorrect and should be ignored by the Department for the final results of this review. Jilin argues that if interest expenses are included as SG&A expenses, then they must be offset **by the surrogate producers' interest income. Citing to Notice of Final Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China, 66 FR 50608, (October 4, 2001)** ("Honey from the PRC"), Jilin argues that the classification of transportation expenses as SG&A expenses would result in double-counting since movement expenses are deducted separately from U.S. price. In the calculation of Gujarat's overhead ratio, Jilin argues that "Labour charges" should be included in the overhead ratio denominator rather than the overhead numerator. Finally, Jilin contends that the petitioner incorrectly classified "Brokerage on Sales" as an SG&A expense item in the calculation of Gujarat's SG&A ratio, when instead it should have **been excluded since it is a movement expense.**

Shandong did not comment on this issue.

Department's Decision: We agree with the petitioner concerning the allocation of interest expenses to SG&A and have continued to make that adjustment. We agree with Jilin, however, that interest expenses should be offset by short-term interest income, and to the extent that we can calculate the percentage of interest income that is related to short-term interest we have made this adjustment for the final results. For Andhra and Alta we were able to estimate the amount of interest income that is related to short-term interest. We were not able to obtain this information from Gujarat's financial statements, and therefore have not offset Gujarat's interest expenses. See FOP and Calculation Memorandum for additional details.

We agree with Jilin that the inclusion of Andhra's handling, transport, and expenses at sales depots as a selling expense in the SG&A ratio calculation is incorrect and results in double-counting, since these expenses are deducted from the U.S. price. This decision to exclude these movement expenses from the calculation of Andhra's SG&A expenses is consistent with Honey from the PRC. We also agree with Jilin that the classification of "Brokerage on Sales" expenses as an SG&A expense would result in double-counting, since these expenses have been deducted from U.S. price as a movement expense.

The allocation of Gujarat's labor charges is moot since we are only using Gujarat's financial statements to calculate profit. Therefore we have not addressed this issue.

Comment 6: Inflation of Labor Rates

For the preliminary results, the Department relied on the estimated labor rate from 1999 for the PRC. The petitioner argues that the surrogate labor rate should be inflated from the 1999 value to be contemporaneous with the POR. The petitioner suggests that the Department use International Monetary Fund statistics to inflate the wage rate.

Jilin counters that the labor rate should not be adjusted because the surrogate rate is an average from multiple countries. Therefore, inflating the wage would be incorrect since that would require the inflation or deflation of labor rates of multiple countries. Jilin claims that the Department has consistently determined that the labor factor value cannot be inflated. For support, Jilin cites to: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, Notice of Intent Not To Revoke in Part and Extension of Final Results of Reviews, 67 FR 10123, 10125 (March 6, 2002); Certain Cased Pencils From the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 67 FR 2402, 2405 (January 17, 2002); Potassium Permanganate From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 67 FR 303, 306 (January 3, 2002); and Titanium Sponge From the Republic of Kazakhstan; Notice of Preliminary Results of Antidumping Duty Administrative Review, 64 FR 48793, 48794 (September 8, 1999).

Shandong did not comment on this issue.

Department's Position: For the final results, we have used the Department's revised labor rate for the PRC for 2000, as listed on the Department's website in our calculation. See www.ia.ita.doc.gov/wages/00wages/00wages.htm. This is consistent with the Department's regulation, section 351.408(c)(3), which states that the wage rate to be applied in nonmarket economy proceedings will be based on current data.

Comment 7: Valuation of a Proprietary Recovered Input by Shandong

The petitioner argues that the Department should not grant Shandong a credit for a recovered input without taking into consideration that this recycled input is used to make the new input. The petitioner argues that if the Department credits Shandong for the recovered input used in the production of aspirin, it should include the recovered input as an input in the production of the new input, at the usage rate stated in the response. The credit to the cost of production of the aspirin should be equal to the yield of the recovered input times the cost of producing the recovered material. Citing to **Hot-Rolled Steel from the PRC**, the petitioner argues that unless the recovered material is included as an input factor, the Department should not award credit upon its recovery. The petitioner also argues that there is no market for the recovered input and it should, therefore, be classified as a by-product. As a by-product, the material should be assigned a surrogate value. According to the petitioner, the best information on the record to use in assigning a surrogate value to the recovered input is the surrogate value for another recovered input. See Calculation Memorandum for further details.

Shandong claims that the Department correctly credited Shandong for the recovered input in the Preliminary Results because both the recovered and virgin forms of the input were included as inputs in the production of aspirin, and the production stages of the input and aspirin are closely linked. Furthermore, Shandong asserts that the recovered input is not a by-product and accordingly should not be treated as such.

Jilin did not comment on this issue.

Department's Decision: We agree with the petitioner that in the preliminary results the Department did not capture all of the inputs for the production of one of the aspirin inputs. Therefore, for the final results, we have corrected our calculation of the virgin input to account for 100 percent of the inputs used in the production process. See Calculation Memorandum for further details.

We disagree with the petitioner that the recovered input should be treated as a by-product and assigned a surrogate value. Because the input in question is recycled by Shandong and is essentially used as a substitute for the virgin input, the net input approach we have used properly reflects the value of the recovered input.

Comment 8: Shandong's Usage of Acetic Anhydride

The petitioner alleges that Shandong has failed to account for all of the acetic anhydride it produces in its reported factors of production for aspirin. Because the company's production figures have not been documented, the petitioner argues that the Department should recalculate the acetic anhydride usage rates to be based on total production of the factor inputs divided by total consumption of acetic anhydride during the POR.

Shandong responds that it did submit its internal production records to the Department, and that the submitted data tie to the company's production and consumption charts. Furthermore, Shandong

asserts that since it uses acetic anhydride in the production of another product, its inventories are not disproportionate.

Jilin did not comment on this issue.

Department's Decision: We disagree with the petitioner that the acetic anhydride usage rates for Shandong should be recalculated. There is nothing on the record in this review to indicate that Shandong did not accurately report its production and consumption of acetic anhydride, nor did the petitioner provide us with any reason to doubt Shandong's reported usage rates. As noted by Shandong, it provided the Department with its internal production records, and its submitted data tie to the company's production and consumption charts. We have no reason to question the accuracy of Shandong's submitted data. Therefore, we have not recalculated Shandong's acetic anhydride usage rates for the POR.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results in the Federal Register.

AGREE _____

DISAGREE _____

Faryar Shirzad
Assistant Secretary
for Import Administration

(Date)