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May 8, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the First
Administrative Review of the Antidumping Duty Order on
Polyvinyl Alcohol from the People's Republic of China

SUMMARY

We have analyzed the comments of the interested parties in the antidumping duty administrative review on polyvinyl alcohol ("PVA") from the People's Republic of China ("PRC"). As a result of our analysis of these comments, we made changes to our margin calculations. We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Petitioners, E.I. DuPont de Nemours & Company and Celanese Chemicals, Ltd., Sinopec Sichuan Vinylon Works ("SVW"), the producer and exporter of the subject merchandise, and Solutia Inc. ("Solutia"), a U.S. manufacturer of the subject merchandise, were the only interested parties to comment on the preliminary results of review. Below is the complete list of the issues that were raised in these briefs:

- Comment 1: Cost Allocation Methodology of Acetylene and Acetylene Tail Gas Co-Products
- Comment 2: Surrogate Value for Natural Gas
- Comment 3: Surrogate Value for Coal
- Comment 4: Surrogate Value Purity Adjustment for Purchased Inputs Sourced from Chemical Weekly
- Comment 5: Surrogate Value for Methanol
- Comment 6: Valuation of Surrogate Value for Freon
- Comment 7: Inclusion of Excise Duty in Surrogate Company's Profit
- Comment 8: Inclusion of Labor Benefits in Factory Overhead
- Comment 9: Surrogate Value for Wages
- Comment 10: Treatment of By-Product Offsets
- Comment 11: Surrogate Value for Brokerage and Handling
- Comment 12: Use of Self-Produced Electricity in the Production of Certain Self-Produced Inputs

Comment 13: Use of Different Value of Self-Produced Steam as an Input to Other Self-Produced Inputs

Comment 14: Use of Self-Produced Electricity in Calculation of the Cost of 33 Degree Circulation Water

Comment 15: Calculation of 33 Degree Circulation Water in Margin Calculation Program

Comment 16: Correction of the Calculation of Train Freight

BACKGROUND

On November 7, 2005, the Department of Commerce (“Department”) published its preliminary results of review. See Polyvinyl Alcohol from the People’s Republic of China: Preliminary Results of Antidumping Administrative Review, 70 FR 67434 (November 7, 2005) (“Preliminary Results”). On November 28, 2005, Petitioners and SVW provided comments on surrogate values. Petitioners and SVW submitted case briefs on December 7, 2005. On December 16, 2005, we received rebuttal briefs from Petitioners, SVW, and Solutia. In addition, we issued a memorandum to all interested parties requesting comments regarding a change in the Department’s calculated regression-based wage rate methodology and in the allocation of the labor benefits in the financial ratio calculation. See Letter from Wendy Frankel, Director, Office 8, to All Interested Parties (February 7, 2006). Petitioners provided comments on February 14, 2006. No other parties provided comments.

DISCUSSION OF THE ISSUES

Comment 1: Cost Allocation Methodology of Acetylene and Acetylene Tail Gas Co-Products

Petitioners argue that the Department’s preliminary determination to accept SVW’s heat-based allocation of costs between acetylene and acetylene tail gas (“two co-products”) is unsupported by the record evidence and contradicts the Department’s decision in the Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People’s Republic of China, 68 FR 47538 (August 11, 2003) (“2003 PVA Investigation”). Petitioners urge the Department to reject this methodology in favor of a value-based approach. Furthermore, Petitioners state the U.S. Court of International Trade (“CIT”), in reviewing the investigation determination, concluded that “a value-based allocation methodology more accurately reflects SVW’s costs.” See Sinopec Sichuan Vinylon Works v. United States, 366 F. Supp. 2d 1339, 1347-1348 (CIT April 4, 2005) (“PVA”).

Petitioners state that the Department decided against the heat-based methodology in the 2003 PVA Investigation because the market values of acetylene and acetylene tail gas are vastly different and that the market value allocation method of these two products more accurately reflects SVW’s costs. See 2003 PVA Investigation, and accompanying Issues and Decision Memorandum at Comment 3. Petitioners argue that the Department appropriately recognized in the 2003 PVA Investigation that the heat-of-combustion methodology results in a majority of the costs being allocated to acetylene tail gas and that the market value of acetylene is 16 times the

market value of acetylene tail gas on a per cubic meter basis. Specifically, Petitioners claim that in the 2003 PVA Investigation, SVW proposed a heat-based methodology which allocated 28 percent of costs to acetylene and 72 percent to acetylene tail gas, but that a review of the pricing and cost data from the 2003 PVA Investigation record shows that 61 percent of the costs are attributable to acetylene and 39 percent are attributable to acetylene tail gas.

According to Petitioners, the relevant facts of the administrative review are virtually unchanged from those in the 2003 PVA Investigation. The market value of acetylene is still greater than that of acetylene tail gas, and the difference between the cost allocation ratios produced by heat-of-combustion and value-based methodologies is substantial. Petitioners state that the market value of acetylene is \$2.52 per cubic meter, while the market value of natural gas, which tail gas replaces in the production of methanol, is about \$0.09 per cubic meter. Petitioners argue that it was this type of disparity that led the Department to reject SVW's heat-based allocation methodology in the investigation. Petitioners maintain that the use of a heat-based allocation method is distortive and should be rejected in favor of a value-based allocation method that more accurately reflects SVW's expenses associated with PVA production.

SVW states that in the 1996 PVA Investigation, the Department determined to use the heat-of-combustion allocation methodology without any input from any interested parties. See Final Determination of Sales at Less than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 61 FR 14057 (March 29, 1996) ("1996 PVA Investigation"). SVW explains that since the 1996 PVA Investigation, it has adopted western-style accounting procedures including use of the heat-of-combustion allocation methodology.

SVW states that the Department should continue using the allocation methodology based on the heat of combustion of acetylene and acetylene tail gas. SVW maintains that it reported its factors of acetylene and acetylene tail gas based on the accounting methodology it uses in its ordinary course of business. SVW asserts that there are three possible methods for allocating raw material inputs between acetylene and acetylene tail gas: value, volume, and heat of combustion. SVW further explains that its accountants chose not to use the value-based allocation methodology because these values could change substantially over time as a result of varying sales prices of acetylene and acetylene tail gas. SVW maintains that if it used the value-based methodology, it would need to adjust its allocation ratio quarterly based on transactions in which it did not participate, *i.e.*, sales transactions of third parties. Moreover, SVW asserts making such quarterly-based allocation changes would render its books and records unstable.

Arguing that the volume-based methodology would yield a 92/8 acetylene tail gas to acetylene cost ratio, SVW maintains that, instead, its accountants and engineers adopted the heat-of-combustion methodology based on 72/28 acetylene tail gas to acetylene ratio. SVW argues that because the heat-of-combustion methodology reflects the change of internal energy and can be precisely determined, it is a more accurate, stable and consistent measure as well as a predictable base to be used in the allocation of costs between the acetylene and acetylene tail gas.

SVW and Solutia assert that in accordance with section 773(f)(1) of Tariff Act of 1930, as amended (“the Act”), the Department is required to allocate costs based on the methodology used by the respondent in its normal course of business, to reflect the actual costs as recorded in the company’s books and records. Citing Elemental Sulphur from Canada: Final Results of Antidumping Finding Administrative Review, 61 FR 8241, 8242 (March 4, 1996) (“Elemental Sulphur from Canada”), SVW argues the Department expressly recognized the importance of the costs as maintained in the respondent company’s books and records.

Continuing to argue against the value-based methodology, SVW further cites IPSCO Inc. v. United States, 965 F.2d 1056, 1061 (Fed. Cir. 1992) (“IPSCO”), where the Court of Appeals for the Federal Circuit (“CAFC”) determined that it was not appropriate to use a value-based methodology to allocate costs between co-products in the calculation of production costs and constructed value in either market or non-market economy cases. Further, SVW argues that in the 1996 PVA Investigation the Department conceded that use of a value-based methodology to allocate costs in the factors-of-production calculation is fraught with difficulties. See 1996 PVA Investigation. Solutia added that in the Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002) (“Lumber from Canada”), and accompanying Issues and Decision Memorandum at Comment 4; 2003 PVA Investigation and accompanying Issues and Decision Memorandum at Comment 3, the Department stated that the use of a value-based cost-allocation methodology in antidumping cases is rare.

SVW contends that if use of the heat-of-combustion methodology is inappropriate because SVW did not use either product for heat production, then similar reasoning must prevail regarding a value-based methodology. That is, a value-based methodology must be inappropriate because SVW did not sell either product to generate revenue, nor did it purchase either product for use in its production cycle.

Notwithstanding its above arguments, SVW asserts that in the event the Department decides to use a value-based allocation in the final results, it must correct errors contained in the Preliminary Results. SVW maintains that it reported steam as a negative by-product generated in the production of acetylene and acetylene tail gas. Thus, when the Department applied a negative surrogate value to steam, it incorrectly resulted in an upward adjustment to the cost of manufacturing. Therefore, SVW contends that if the Department adopts a value-based methodology for the final results, the Department should apply a positive surrogate value to steam in order to provide the correct by-product credit.

SVW states that Petitioners, in suggesting a surrogate value for acetylene, incorporated a surrogate value for acetylene equal to 114.65 Rupees (“Rs.”) per cubic meter (“m³”). SVW maintains that Petitioners’ suggested value is based solely on two price quotes which do not reflect countywide acetylene prices in India. Citing Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People’s Republic of China, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 4 (“CVP from China”); Final Results of Antidumping New Shipper Review: Fresh Garlic from the

People's Republic of China, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6 (“Garlic from China”); Kaiyuan Group Corp. v. United States, 343 F.2d 1289, 1312 (Fed. Cir. 2004) (“Kaiyuan Group”); and Union Camp Corp. v. United States, 941 F. Supp. 108, 116 (CIT 1996) (“Union Camp”), SVW argues that the Department normally would not rely on individual price quotes when country wide data are available. Therefore, SVW urges the Department to use its submitted value of 99.68 Rs./m³, obtained from the 2003-2004 financial statement of National Oxygen Ltd. See Exhibit 2 of SVW’s November 28, 2005, surrogate value submission, which is based on this company’s weighted-average nationwide sales prices.

Finally, SVW argues that the Department should continue to use the surrogate value for methanol it used in the preliminary results. SVW states that the price of 16.67 Rs./kilogram (“kg”) was based on Chemical Weekly and was properly used by the Department as opposed to the price of 10.881 Rs./kg suggested by Petitioners.

Solutia continues that the statute establishes a preference for the use of actual costs reflected in a company’s books and records as long as the records are in accordance with generally accepted accounting principles. Further, Solutia maintains the methodology used by SVW to assign the costs on the basis of a physical measurement rather than surrogate prices, reasonably reflects actual costs.

Solutia states that, with respect to non-market economy (“NME”) cases, the statute expressly directs the Department to base normal value on factors of production. However, Solutia argues, if the Department allocates factors of production on the basis of market prices, actual factors of production are not used. Solutia also argues that the statute requires the production costs to be independent of market prices, and that courts have repeatedly held that price-based cost allocations should be avoided. Citing IPSCO, Solutia argues, the CIT specifically rejected a price-based allocation stating, “the selling price of pipe became a basis for measuring the fairness of the selling price of pipe. This circular reasoning contravened the express requirement by the statute which set forth the cost of production as an independent standard for fair value.” See IPSCO, at 1061; see also E.I. DuPont de Nemours & Co. v. United States, 4 F. Supp.2d 1248, 1253 (CIT 1998); and Thai Pineapple Pub. Co. v. United States, 187 F.3d 1362, 1369 (Fed. Cir. 1999) (“Thai Pineapple”). Solutia maintains that the facts of Thai Pineapple, which relied on IPSCO, were different from IPSCO in the fact that raw materials were not homogeneous, had different applications, and produced different end products. Thus, according to Solutia, in Thai Pineapple, the Department developed a methodology based on the use and value of the raw material in producing different end products.

Moreover, Solutia refutes Petitioners’ contentions that this issue was directly addressed by the CIT in PVA. According to Solutia, the CIT merely addressed whether SVW was entitled to rely upon a methodology used in the 1996 PVA Investigation for the current case. Solutia asserts that the CIT never addressed the legality of the price-based allocation methodology used by the Department in the 2003 PVA Investigation. Solutia further argues that the Department has consistently stated that production costs should normally be allocated on the basis of physical

measurements, such as, weight or hours. According to Solutia, an approach based on physical measure is more appropriate in the NME context. Solutia states that section 773(c)(3) of the Act directs the Department to base normal value on factors of production, including “hours of labor required, ...quantities of raw materials employed, ...and amounts of energy and other utilities consumed...” and that allocation based on heat of combustion follows the instructions of the statute.

Solutia states the heat-of-combustion factor associated with natural gas is a unit of measure that fairly reflects the physical properties of a gas. Solutia argues that the heat-generation property of each gas represents the relative percentage of carbon and hydrogen atoms in each gas, and that although the reactions in this case are not primarily intended to serve as a source of heat, the use of heat of combustion to measure the properties of each gas is physically meaningful to the same extent because the materials are all hydrocarbons. Solutia maintains that acetylene has a higher fuel value than acetylene tail gas because it has a higher amount of carbon and hydrogen. Solutia concludes that, therefore, the fuel value or heat of combustion is an appropriate measure of the physical characteristics (i.e., carbon and hydrogen) of the co-products.

Solutia asserts that unless SVW’s methodology does not follow generally accepted accounting principles, or unless there is evidence to show that the results are unreasonable, the heat-of-combustion methodology should be followed because under the statute the respondent’s costs are reflected in its books and records. Furthermore, Solutia contends that in order to depart from that standard, the Department must have record evidence that the respondent’s accounting methodology does not reasonably reflect its production costs.

Solutia asserts that Petitioners’ argument that revenues from acetylene tail gas are far lower than revenues from acetylene is flawed because SVW does not sell acetylene or acetylene tail gas. Solutia maintains that for SVW, acetylene transferred to vinyl acetate monomer (“VAM”) production is not at the same stage of processing as acetylene sold on the open market. Solutia states that Petitioners prefer a method that allocates costs to each user in proportion to the benefit received by that user. However, Solutia argues there are no market prices for the acetylene or the acetylene tail gas produced by SVW.

Solutia describes four methods of assigning costs to joint products: physical measure; sales value split off; net realizable value; and constant margin net realizable value. Solutia states that the three latter methods cannot be used because they are based on a received benefit from revenue and SVW does not receive revenue from either co-product. Solutia argues that any attempt to use a surrogate value for acetylene and a constructed surrogate value for acetylene tail gas would not be used in any accounting system. Solutia states that the value of the input in the VAM process is a function of the market price for VAM and any value-based methodology should start from VAM because that is the product sold by SVW. Additionally, Solutia argues the record does not include surrogate values for VAM and methanol because neither is a purchased material input.

Solutia states the “market value” Petitioners assign to acetylene is higher than the value of acetylene used by an industrial user because Petitioners assume the product is dissolved in a solvent and ready for sale to consumers. Solutia claims that the purchase order submitted by Petitioners with the two acetylene prices indicates the seller is not an acetylene manufacturer but a distributor that sells in small quantities and, therefore, the “price” of the acetylene is not comparable to industrial quality acetylene purchased in bulk and used by SVW. Furthermore, Solutia maintains that SVW does not dissolve acetylene but rather transfers the acetylene to its methanol plant which is used in the production process.

According to Solutia, the surrogate value for acetylene proposed by Petitioners is significantly higher than the value that should be assigned to an industrial user, such as SVW. Solutia maintains that Petitioners’ surrogate value for acetylene is not reasonably comparable to industrial quality acetylene used by SVW or any other VAM producer for large-scale, continuous manufacturing of VAM. Solutia argues the relevant value is the value of VAM, not acetylene because acetylene is internally consumed in the production of VAM and not sold on the open market. Thus, Solutia concludes that the Department should not alter the methodology used in the preliminary results for the calculation of surrogate values for acetylene and acetylene tail gas.

Solutia states that from an accounting standpoint, the decision to produce VAM or methanol is not based on the cost assigned to acetylene or acetylene tail gas versus the cost at which it might buy natural gas. Rather it is based on the “sales-at-split-off” (i.e., value-based) accounting methodology where the post-split-off product has a market value. According to Solutia, it is not appropriate to apply a surrogate value to a midstream product in the context of a fully integrated production process.

Finally, Solutia argues that the use of SVW’s internal accounting data should be rejected only if the company’s normal accounting methodology does not follow generally accepted accounting principles. According to Solutia, SVW’s use of the heat-of-combustion methodology is consistent with the methods of assigning joint costs. Therefore, Solutia contends, a determination to deviate from SVW’s books and records depends on whether there is evidence that the value of the downstream products is vastly different from the upstream product. See Chemical Products Corp. v. United States, 645 F. Supp. 289, 297 (CIT 1986). Therefore, Solutia argues that the Department should not alter the methodology that was used in the preliminary results with respect to the co-product cost allocation.

Department’s Position: In PVA, at 1339, the CIT upheld the Department’s finding that allocating costs to the factors in question solely on the basis of potential heat of combustion, when neither acetylene nor acetylene tail gas are used by SVW for their heat-generating properties, is unreasonable, given the vastly different market values of the two co-products. In the Preliminary Results, we used the heat-of-combustion cost allocation methodology for the two co-products, acetylene and acetylene tail gas, based on the factors reported by SVW. After carefully examining the record evidence, we have determined to change our methodology from the heat-based cost allocation methodology to the value-based methodology which we used in 2003 PVA Investigation. Thus, for the final results, we are adopting a value-based allocation

methodology that more accurately reflects SVW's costs. Under the value-based methodology the cost allocation of the co-products is a better indicator of their respective values.

Both SVW and Solutia, citing section 773(f)(1) of Act and Elemental Sulphur from Canada, state 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 the generally accepted accounting principles of the exporting country... and reasonably reflect the costs associated with the production and sale of the merchandise. See Elemental Sulphur from Canada. However, we find that SVW's heat-of-combustion allocation methodology based on relative heats of production does not reflect the actual cost to SVW. As Solutia stated, the composition of each of the co-products at the elemental level, or the content of hydrogen and carbon, is directly related to the fuel value which, according to Solutia, provides a higher fuel value to acetylene than to acetylene tail gas. Although Solutia's argument provides a reason for accepting the heat-of-combustion methodology, it also acknowledges that acetylene has a higher price than acetylene tail gas. Thus, we find that SVW's books and records do not reflect a reasonable allocation, *i.e.*, it is not reasonable to allocate only 28 percent of costs to a co-product that has a market price that is at least 12 times higher than the other co-product's market price.

Additionally, we agree with Petitioners that the relevant facts of this administrative review remain unchanged from the 2003 PVA Investigation, *i.e.*, the market value of acetylene is greater than acetylene tail gas. See Factor Valuation Memorandum for the Final Results: Polyvinyl Alcohol from the People's Republic of China, from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager, to the File, dated May 8, 2006 ("Factor Valuation Memorandum"). Our examination of the record indicates that SVW allocated 72 percent of the input costs to acetylene tail gas and 28 percent to acetylene. See Final Results of Administrative Review of the Order on Polyvinyl Alcohol from the People's Republic of China: Sinopec Sichuan Vinylon Works Program Analysis for the Final Results of Review from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager, to the File, dated May 8, 2006 ("Final Analysis Memorandum"). In our analysis, we compared the price of acetylene in India with a price for acetylene tail gas derived from the Indian market price for methanol. See Final Analysis Memorandum at page 3. We found that the market value for acetylene was more than 12 times the market value of acetylene tail gas on a per-cubic-meter basis. This disparity is so different from the results yielded by SVW's allocation methodology that it understates the value of acetylene by a substantial margin. Therefore, for the final results, we have reallocated the costs of acetylene and acetylene tail gas based on their respective market values. Our analysis indicates that the value-based allocation attributes 53 percent of costs to acetylene and 47 percent to acetylene tail gas. See Final Analysis Memorandum at pages 3-4 and Exhibit 6. We reallocated costs attributed to the two co-products based on these percentages as the basis for value-based cost allocation.

We agree with SVW and Solutia that using a value-based allocation can pose problems in the antidumping context. See IPSCO; Thai Pineapple. First, the fact that SVW does not purchase or sell either co-product results in circular reasoning, *i.e.*, the selling price of a co-product becomes a basis for measuring the fairness of the selling price of the co-product. Second, the instability of

market prices for the co-products may add an additional burden on the accounting department of SVW. Third, there are other accounting and scientific approaches, different from value-based methodology, that are acceptable and legitimate. However, as we stated in the 2003 PVA Investigation at Comment 3, “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.” Though SVW and Solutia cite Lumber from Canada and 2003 PVA Investigation for the proposition that the use of value-based methodology is rare in antidumping cases, we note, however, that in these particular cases the Department did use a value-based methodology for respondents faced with fluctuating prices.

Additionally, Solutia cites section 773(c)(3) of the Act which states that the Department should base normal value on factors of production, including “hours of labor required, ...quantities of raw materials employed, ...and amounts of energy and other utilities consumed...” We disagree with Solutia because section 773(c)(3) states that “the factors of production utilized in producing merchandise include, but are not limited to,” labor hours, quantities, etc. (emphasis added). Therefore, the factors of production listed in the statute are not exhaustive. Finally, selection of cost allocation is not relevant to the utilization of factors of production because the section discusses the factors of production utilized in producing merchandise and not the bases for cost allocation.

SVW argues that if the heat of combustion-based methodology is inappropriate because SVW does not use heat, then the value-based methodology must be inappropriate also because SVW does not sell either product. However, we disagree with SVW’s reasoning because these two statements are not mutually exclusive. Whether or not SVW generates revenue from the co-products does not justify allocating significantly lower costs to a higher value co-product and vice versa. However, the fact that SVW does not use these co-products for their fuel burning capacity is essential because the co-products are chemicals used for chemical production. Because they are chemicals, their fuel burning capacity is irrelevant to their production process. Therefore, the fact that acetylene tail gas has a higher heat of combustion than acetylene is irrelevant. Finally, a sale or a purchase of a co-product does not affect the way the co-product is used in the production process whereas properties of the product matter.

Solutia objects to Petitioners’ methodology of applying “sales value at splitoff” because sales prices are not available for these products. Also, both SVW and Solutia raise the concern of value being irrelevant because SVW does not purchase or sell either co-product. Although we do not disagree with the general argument and potential circularity of it, we note that in this case the “value” of a co-product is used not in the context of SVW’s own experience with the “value” of the co-product, i.e., whether or not it is selling these co-products on an open market, but rather whether the “value” of the co-products is expressed in market terms, regardless of SVW’s own experience or lack of it. For instance, if SVW purchased or sold these co-products, it would have experienced a significantly different price allocation from that of its heat-of-combustion allocation. Therefore, for the final results, we have reallocated acetylene and acetylene tail gas co-products based on their respective market values.

In the event that we might change the cost allocation methodology from our preliminary results, both Petitioners and SVW submitted surrogate values for both co-products: acetylene and acetylene tail gas. We have determined not to use Petitioners' recommended acetylene price quotes. It is the Department's practice not to use purchase order prices when calculating a surrogate value because the Department does not have enough information to determine whether such prices were self-selected. See CVP from China; Garlic from China; Kaiyuan Group; and also Union Camp. Additionally, we have determined not to use SVW's recommended acetylene surrogate value which is based on the financial statements of National Oxygen, Ltd, an Indian producer of acetylene, because it is not the Department's preference to use sales data from a single company's financial statements to calculate a surrogate value, especially when contemporaneous, publicly available, and aggregate data are available. See Exhibit 2 of SVW's November 28, 2005, surrogate value submission. Therefore, for the final results, we obtained a contemporaneous surrogate value from the World Trade Atlas ("WTA") which has publicly available data. See Final Analysis Memorandum and Factor Valuation Memorandum at page 3.

With regard to valuation of acetylene tail gas, we were unable to obtain a market price. Therefore, we derived a price for this gas from the market price of 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. We examined the surrogate value for methanol submitted by both Petitioners and SVW. We have determined not to change the surrogate value for methanol that we used for the preliminary results, *i.e.*, we will continue using the Rs.16.67 per liter derived from Chemical Weekly for the reasons discussed in Comment 5.

Comment 2: Surrogate Value for Natural Gas

Petitioners claim that the Department incorrectly calculated the surrogate value for natural gas in the preliminary results by calculating an average of the floor and ceiling prices as provided by the Gas Authority of India, Ltd. ("GAIL"). Petitioners argue that the Department should use a surrogate value for natural gas that is no lower than the GAIL ceiling price of Rs. 2850 per thousand standard cubic meters ("SCM") plus the transportation charge of 1150 Rs. per thousand SCM. Petitioners assert that GAIL prices are capped by a regulatory scheme and thus are artificially low. Further to this point, and citing an industry publication, Petitioners argue that another Indian gas supplier purchases from GAIL at its ceiling price and then resells it to industrial consumers at more than four times its purchase amount. Petitioners also cite a GAIL study that states the prices charged by GAIL are subsidized and were half the market price during the period of review ("POR"). Additionally, Petitioners argue that there is no basis for adjusting the GAIL price for purity because SVW purifies the natural gas in order to use it as a chemical input in the cracking reaction used to produce acetylene. Petitioners contend that GAIL's customers purchase natural gas suitable for fuel and would have to perform purifying operations similar to SVW's before using the natural gas as an input in a chemical process.

SVW states that the Department properly used the GAIL prices that were in effect during the POR. SVW further asserts that the Department's decision to use the weighted-average price is consistent with the Department's determination in the PVA Remand Results from the

investigation. See Final Results of Redetermination Pursuant to Court Remand, Court 03-00791, Slip Op. 05-45 (September 21, 2005) (“PVA Remand Results”) (on the record of this review). SVW argues that GAIL sells at a range of prices between the floor price of Rs. 2150 per thousand SCM and the ceiling price of Rs. 2850 per thousand SCM and is updated on a monthly basis.” See SVW’s April 21, 2005, surrogate value submission at Attachment 14, page 2. Furthermore, SVW contends that GAIL has a 72.86 percent market share of natural gas in India, thus its prices are clearly representative of Indian market values. Finally, SVW argues that Petitioners did not identify any record evidence that would require a change for the final results and concludes that the Department should continue to base its natural gas surrogate value on the average of the GAIL floor and ceiling prices for natural gas.

Solutia did not comment on this issue.

Department’s Position: We agree with SVW and will continue to value natural gas using an average of the floor and ceiling prices offered by GAIL. First, we do not agree that simply because GAIL caps its prices, they are not useable as a surrogate value. Specifically, contrary to Petitioners’ assertions that the ceiling is artificially capped, evidence on the record indicates that GAIL in fact sells natural gas to its customers at a range of prices between the floor and ceiling prices. See SVW’s April 21, 2005, surrogate value submission at Attachment 14, page 2.

To support their arguments, Petitioners put several news and industry articles or presentations on the record, some of which date back to 1997, indicating that GAIL’s prices are artificially depressed and that one of GAIL’s customers (its joint venture with British Gas) resells the natural gas it purchases from GAIL at more than four times its purchase price. However, there is no evidence provided on the record to support the facts alleged in these articles nor their relevance to the POR. For example, one article is from 1997, while the Ernst and Young study is based on 2000 data. Because GAIL does indeed have a majority of the market share of natural gas sales in India, it is reasonable to assume that economies of scale would allow it to sell at lower prices than some competitors. Furthermore, Petitioners point to a “GAIL study” to argue that the natural gas prices from this entity were subsidized and reflected 50 percent of the market value in natural gas. However, this appears to be an undated excerpt from a larger document. There is no way to gauge from the information contained in these excerpted pages, what data were reviewed, the time period covered, or the purpose of the study. Therefore, we can not conclude that it supports Petitioners’ assertions that the GAIL prices do not reflect market-based prices for natural gas in India.

The Department has articulated its application of the Omnibus Trade and Competitiveness Act of 1988 (OCTA), Conference Report to Accompany H.R. 3, H. Report No. 100-578 at 590-91, 1988 U.S. Code and Adm. N. 1547, 1623 (1988) (OTCA Legislative History), to reject market economy input prices that may be dumped or subsidized in several proceedings. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 57420 (November 15, 2001),

and accompanying Issues and Decision Memorandum at Comment 1. In upholding the Department's practice, the CIT has required "particular, specific and objective" evidence for the Department to reject market-economy prices. Fuyao Glass Indus. Group Co., Ltd. v. U.S., Court 02-00282, Slip Op. 03 - 169 (December 18, 2003) at 28-29 . However, there is no particular, specific, and objective evidence, e.g. CVD opinions, on the record of this proceeding proving that gas in India is subsidized. See Final Results of Antidumping Duty Administrative Review: Certain Helical Spring Lock Washers from the People's Republic of China, 70 FR 28274 (May 17, 2005), and accompanying Issues and Decision Memorandum at Comment 1. In this particular proceeding, there is no existing CVD ruling on natural gas from India nor is there any other "particular, specific or objective" record information to substantiate the allegation regarding potential gas subsidization in India. Thus, consistent with our PVA Remand Results, we will continue to base the surrogate value for natural gas on an average of the GAIL floor and ceiling prices.

Finally, we agree with Petitioners that it is not appropriate for the Department to adjust the value of natural gas for differences in purity level. However, we do not agree with Petitioners' reasoning. There is no information on the record of this proceeding that the purity level of natural gas sold by GAIL differs from the purity level purchased by SVW. Therefore, for these final results, we have eliminated the purity level adjustment from our calculations. See Factor Valuation Memorandum.

Comment 3: Surrogate Value for Coal

Petitioners contend that the Department improperly used a surrogate value for various grades of bituminous coals mined in India to value coal for the preliminary results of review. Petitioners claim that while the Department restricted itself to only bituminous or sub-bituminous coals, there is substantial evidence that SVW purchases anthracite coal from local fields rather than bituminous coal. For example, according to Petitioners, anthracite coal accounts for 53.7 percent of the coal deposits in Sichuan province, the province where SVW is located. In addition, Petitioners assert, SVW's reported transportation distance for coal and the names of its coal suppliers also indicate local purchases of anthracite coal. Further, arguing that there is no information identifying any Chinese coal as "steam" coal and relying on coal descriptions from the U.S. Geological Survey and the National Coal Board of the United Kingdom, Petitioners contend that SVW's description of its coal as "steam" coal indicates that it falls within a "semi-anthracite" classification.

Finally, Petitioners state that the Department asked SVW to provide the heat value of the coal it purchased, but SVW never responded. Petitioners conclude, therefore, that in absence of information demonstrating otherwise, the Department should presume that SVW purchases anthracite coal.

SVW states that the coal it uses is steam coal which is a "soft" bituminous coal and asserts that Petitioners' argument to use the surrogate value of an anthracite coal is without merit. SVW contends that, contrary to Petitioners' claim, there is plenty of bituminous coal for purchase in

Sichuan province, arguing in fact that Petitioners' own information establishes that bituminous coal accounts for 35.6 percent of the coal mined in Sichuan province. Furthermore, according to SVW, the U.S. and U.K. resources cited by Petitioners classify coals in a different manner than they are classified in India, the surrogate country for this proceeding, and thus are not relevant to this case. Finally, in response to the Department's February 2006 supplemental questionnaire, addressing just this issue, SVW claims it provided record evidence substantiating its claims that it uses bituminous coal in its PVA production. Thus, SVW argues that the Department has no basis for revisiting its steam coal surrogate value used in the preliminary results of review.

Solutia did not comment on this issue.

Department's Position: In the preliminary results, we used information from the 2003/2004 Tata Research Institute's Energy Data Directory & Yearbook ("TERI data") to value the coal used by SVW in the production of PVA. The TERI data provide complete and comprehensive information, covering sales of all types of coal made by Coal India Limited and its subsidiaries throughout India. See Preliminary Results of Review of the Order on Polyvinyl Alcohol from the People's Republic of China: Factors of Production Valuation Memorandum for the Preliminary Results of Review, dated October 31, 2005 ("Preliminary Factor Valuation Memorandum"), at page 6. However, despite having specifically asked SVW, based on information on the record, we could not determine the useful heat value ("UHV") or the grade of SVW's coal used in the production of steam. Further, SVW did not provide any proof of the type or grade of coal that it uses. It simply stated that its coal corresponds to Indian grade C non-coking coal. Therefore, for the preliminary results we used the price for the highest-grade bituminous coal identified in the TERI data. See Preliminary Factor Valuation Memorandum at Exhibit 5.

Subsequently, we issued an additional questionnaire to SVW asking SVW to provide a breakdown of the type of coal it used in the production of PVA (i.e., anthracite or bituminous). See the Department's February 7, 2006, fifth supplemental questionnaire. In response, SVW provided invoices that indicate its purchases were of "third grade" bituminous coal. See SVW's February 14, 2006, supplemental questionnaire response. While this information is sufficient to confirm that the coal used by SVW is bituminous or "steam" coal, as identified in the TERI data, it does not confirm that "third grade" is the same as Indian C non-coking coal or in fact confirm the grade of coal at all. Therefore, in calculating the surrogate value for coal for these final results of review, we have continued to use the value from the highest grade available for steam coal from the TERI data. See Preliminary Factor Valuation Memorandum at Exhibit 5.

Comment 4: Surrogate Value Purity Adjustment for Purchased Inputs Sourced from Chemical Weekly

Petitioners argue that the Department should not have applied "purity" adjustments to the surrogate value of purchased inputs when the prices are derived from Chemical Weekly. Specifically, Petitioners argue the Department should eliminate the 31 percent purity adjustment for the hydrochloric acid value and the 42 percent purity adjustment to the value for caustic soda because SVW reported its consumption of these inputs as if it had consumed them at 100 percent

purity levels. Additionally, Petitioners maintain that for other purchased inputs valued using prices from Chemical Weekly, the Department should presume that the published prices reflect standard commercial purities (e.g., 98 percent) because in most cases purities are not listed in Chemical Weekly, and when listed, they are substantially less than 100 percent.

SVW and Solutia did not address this issue.

Department's Position: We agree with Petitioners in part. Consistent with Department practice, we treat the prices provided in Chemical Weekly as reflecting a 100 percent concentration level unless a specific purity level is identified. See page 2 of the Factor Valuation Memorandum, where we stated that "...in all cases, we assumed the chemical concentration to be 100 percent since we had no information to the contrary." For these final results, we reviewed the concentration levels reported by SVW with respect to hydrochloric acid and caustic soda, and determined that SVW reported each of these factors as if consumed at a 100 percent purity level. See Attachment S2-D7 of SVW's July 25, 2005, supplemental questionnaire response. Therefore, in valuing these two inputs for the final results of review, we made no adjustment for purity level because there was no information indicating that the Chemical Weekly values reflected anything other than a 100 percent purity concentration level.

Finally, with respect to Petitioners' latter argument that for all other inputs being valued with information from Chemical Weekly, the Department should presume that the published prices reflect standard commercial purities (e.g., 98 percent) because in most cases purities are not listed in Chemical Weekly, and when listed, they are substantially less than 100 percent, we do not agree. Petitioners have not addressed any specific inputs with regard to this argument, and have not provided any evidence to support their claim that there exists a standard commercial purity level for these unnamed items. Therefore, with respect to a purity adjustment for all other inputs valued in these final results based on information obtained from Chemical Weekly (that are not discussed elsewhere in this memorandum), we have continued to use the valuations as calculated in the preliminary results of review. See Final Analysis Memorandum and Factors Valuation Memorandum.

Comment 5: Surrogate Value for Methanol

Petitioners argue that the surrogate value (from Chemical Weekly) that the Department applied for the methanol by-product credit reflects a price for methanol sold in 200-liter containers. Petitioners assert that because SVW provides methanol to its joint venture partner through a pipeline, this Chemical Weekly price is inappropriate for use as the surrogate value for either methanol or as the starting point for deriving the market value of acetylene tail gas. Instead, Petitioners urge the Department to value methanol using the WTA price of 10.881Rs./kg which it argues reflects a price for bulk sales of methanol.

SVW asserts that Petitioners failed to provide any reasonable basis for the Department to conclude that the WTA data provide a more reasonable surrogate value for methanol than the prices contained in Chemical Weekly. SVW further contends that there is no basis to conclude

that the WTA data represent bulk purchases and that Chemical Weekly data do not and points out that the reporting units of measure in either source do not necessarily reflect the size of individual transactions that make up the aggregate data in either source. Thus, SVW urges the Department to continue valuing methanol for the final results of review as it did in the preliminary results.

Solutia did not address this issue.

Department's Position: We agree with SVW. While Petitioners have made several assertions regarding the data contained in Chemical Weekly and the WTA, they have provided no record evidence to substantiate that the WTA data reflect bulk purchases or that the Chemical Weekly data reflect solely purchases of 200-liter containers. Therefore, we will continue to use the information obtained from Chemical Weekly as the surrogate value source for methanol and as the starting point for deriving the market value of acetylene tail gas for these final results of review.

Comment 6: Valuation of Surrogate Value for Freon

Petitioners claim that the Department failed to value freon in the preliminary results because it erroneously concluded that the price published in Chemical Weekly was a related-party price based on a misinterpretation of information on the record. Petitioners explain that the record evidence was meant to explain that "Trifluoromethane" is another name for freon, not to indicate a relationship between the supplier and Indian importer of the product in question as identified in the surrogate value source. Therefore, Petitioners argue the Department should use the surrogate value they placed on the record to value freon for the final results.

SVW and Solutia did not comment on this issue.

Department's Position: We agree with Petitioners and used the value from Chemical Weekly they placed on the record to value freon for these final results of review. See Factors Valuation Memorandum at page 2.

Comment 7: Inclusion of Excise Duty in Surrogate Company's Profit

Petitioners argue that contrary to past practice, in this case the Department erroneously excluded excise duty from its calculation of the surrogate profit ratio. See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 35312 (June 24, 2004) ("WBF 2004"). Thus, Petitioners assert the Department should revise its calculation of the profit rate for the final results and include excise duties in its surrogate profit ratio. Citing WBF 2004, Petitioners contend that the Department explained that it is reasonable to assume that the Chinese respondents would not incur such taxes because they do not operate in India. Following that rationale, Petitioners assert that because SVW operates in the PRC, not India, the Department should include the excise tax in the profit ratio calculation.

SVW and Solutia did not comment on this issue.

Department's Position: We disagree with Petitioners. We intentionally excluded excise duty from the calculation of surrogate financial ratios because it is the Department's practice to exclude excise and/or sales tax but to include other taxes that are a necessary part of a businesses operations. See Final Results of Antidumping Duty Administrative Review: Folding Metal Tables and Chairs from the PRC, 71 FR 2905 (January 18, 2006) ("FMTCs 2006"), and accompanying Issues and Decision Memorandum at Comment 1B.

While Petitioners are correct that we did not remove the excise tax from the financial ratio calculation in WBF 2004, the Department has reviewed this issue and has found that our general practice is not to include this tax in these calculations. Specifically, we note that it is the Department's practice to use tax exclusive values as surrogates in NME cases when they are available and otherwise appropriate for use. See Notice of Final Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China, 68 FR 62053 (October 31, 2003), and accompanying Issues and Decision Memorandum at Comment 2. Moreover, we have found in previous cases involving products from India that excise duties and/or taxes paid by Indian producers were refundable to the producer by the Indian government. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 2003- 2004 Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Review, 71 FR 2517 (January 17, 2006), and accompanying Issues and Decision Memorandum at Comment 5. Therefore, for the final results, we continued to remove the excise duty of the Indian surrogate company from the calculation of the surrogate profit ratio.

Comment 8: Inclusion of Labor Benefits in Factory Overhead

On February 7, 2006, the Department invited interested parties to comment on the Department's proposal to include in the factory overhead calculation two employee benefit items (Staff Welfare Expenses and Contribution to Provident and Superannuation Fund) from the surrogate financial statements. In the preliminary results, we treated these items as direct labor for purposes of calculating the factory overhead, and selling, general, and administrative expense ("SG&A") ratios. In the February 7, 2006, letter we explained that we reconsidered the appropriate treatment of these items while addressing parties' comments and other aspects of the financial ratio calculations used in the preliminary results and were considering the appropriateness of including these items in factory overhead rather than treating them as direct labor costs.

Petitioners agree with the Department's proposed calculation change regarding these two items from the surrogate company's financial statements. Based on a review of the information from the International Labor Organization ("ILO") that formed the basis of the Department's calculation of the expected wage rate for the PRC, Petitioners assert that the data therein correspond closely with Jubilant's category (1) salaries, wages, bonus, gratuity & allowances, but do not include the kind of expenses included in Jubilant's Staff Welfare Expenses and Contribution to Provident and Superannuation Fund line items. Therefore, Petitioners conclude

these items are more appropriately included in the calculation of manufacturing overhead or SG&A.

SVW and Solutia did not comment on this issue.

Department's Position: The Department based its calculation of the expected PRC wage rate on the ILO's categorization of information provided by the countries it surveys. Information from the ILO website defines separately wages and labor costs. Specifically, Chapter 5B, "Wages," are defined as follows:

The concept of earnings, as applied in wages statistics, relates to remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers' contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay.

See Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision Memorandum at Comment 1B.

On the same web page, Chapter 6, "Labour Costs," are defined as including employee benefits:

For the purposes of labour cost statistics, labour cost is the cost incurred by the employer in the employment of labour. The statistical concept of labour cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labour cost. . . .

See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 7725 (February 14, 2006), and accompanying Issues and Decision Memorandum at Comment 3.

It is clear that the wages category (Chapter 5B) is exclusive of employee benefits such as pension and social security, while the labor cost category (Chapter 6) is inclusive of these employee expenses. The Department based its calculation of the regression-based expected PRC wage rate on data from Chapter 5B of the Yearbook of Labour Statistics. In the instant review, the detailed and well-defined surrogate financial data contained in Jubilant's financial statements as line items permitted the Department to easily segregate labor expenses into "Wages" (which corresponds to Chapter 5B of the ILO database and, therefore, to the Department's expected NME wage rate), and the other aforementioned labor costs (which are not included in the

Department's calculated NME wage rate). Therefore, we have determined that moving the relevant employee benefits categories from direct labor to manufacturing overhead is consistent with our regression-based expected PRC wage rate calculation and have done so for these final results of review. See Factors Valuation Memorandum.

Comment 9: Surrogate Value for Wages

On February 7, 2006, the Department invited interested parties to comment on the Department's proposal to use the updated surrogate value for wages (\$0.97 per hour) for the final results of review.

Petitioners assert that since the 2003 wage data are now available and are more contemporaneous with the POR, the Department should at least use the updated predicted wage rate that is based on 2003 data. Pointing out that the Department's updated predicted wage rate is based on data that overlaps only five months of the POR, Petitioners urge the Department to consider that that rate may serve to understate the hourly labor cost for SVW and to consider increasing the rate to reflect the World Bank's estimated real GNP growth for the PRC in 2004.

No other party commented on this issue.

Department's Position: For the final results, consistent with the Department's regulations and practice, we have applied to SVW the most recent predicted surrogate wage rate posted to the Department's web site.

Section 351.408(c)(3) of the Department's regulations directs the Department to value labor in cases involving NME countries as follows:

For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in non-market economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

Since the Preliminary Results, the Department has revised its calculation of expected wages of selected NME countries. See <http://ia.ita.doc.gov>. The Department's revised calculation of expected NME wages is consistent with its normal methodology and is based on the most current data available as of November 2005. Accordingly, for the final results, the Department has valued labor with its expected NME wage rate for the PRC at USD \$0.97 per hour. See Factors Valuation Memorandum at page 2.

Petitioners argue that the Department should use the World Bank's estimate of real GNP growth in the PRC for 2004 to adjust the Department's calculated expected PRC wage rate. The Department disagrees. As an initial matter, it would not be appropriate to make such an adjustment using an estimate. Moreover, Petitioners' suggested adjustment would be

inappropriate because a year-on-year increase in GNP would not necessarily lead to a corresponding change in wage rates of the same magnitude. The Department's annual regression analysis establishes the properly estimated relationship between per-capita GNI and wage rates. Under Section 351.408(c)(3) of the Department's regulations, the Department calculates expected NME wage rates annually using the most recently available data at the time of the calculation. These expected NME wage rates serve as the surrogate value for labor in all proceedings following their publication. Periodic adjustments are neither contemplated by the Department's regulations nor consistent with the Department's practice.

Comment 10: Treatment of By-Product Offset

SVW states that the Department credited SVW with a by-product offset to take into account the production of PVA scrap, methyl acetate, and recycled acetic acid. SVW argues that the Department deducted the by-product offset from normal value after the application of the financial ratios to SVW's production cost. According to SVW, the Department should have deducted the by-product offset from SVW's manufacturing cost prior to the application of the surrogate financial ratios. SVW maintains that this calculation is contrary to the terms of the statute and breaks the necessary link between SVW's actual experience in producing the subject merchandise, its capital costs, and the Department's normal value calculation. SVW contends that although this methodology was employed by the Department in the original investigation, it is currently subject to judicial review and an abrupt departure from the Department's longstanding administrative practice.

SVW argues that the CIT has determined that the Department is required to take into account a by-product offset prior to the Department's application of the surrogate financial ratios, as the by-product offset is properly considered an adjustment to total manufacturing costs. See Magnesium Corporation of America, 938 F. Supp. 885, 899 (CIT 1996) ("Magnesium"). According to SVW, the CIT determined that granting the by-product as an adjustment to normal value after the application of financial ratios would improperly increase normal value because the surrogate financial ratios are calculated by multiplying a percentage by an amount which has not been reduced by the amount of the by-product credits, and the CIT determined that factory overhead is generally calculated as a percentage of manufacturing costs. See Air Products and Chemicals Inc. v. United States, 14 F. Supp. 2d 737 (CIT 1998) ("Air Products"). Further, SVW maintains that in a case similar to this where the Department's preliminary results inadvertently deducted a by-product revenue offset after application of the surrogate financial ratios, the Department issued amended preliminary results to correct the error. See Amended Preliminary Antidumping Duty Determination of Sales at Less than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 10440 (March 5, 2003) ("Fish Fillets"), and accompanying Issues and Decision Memorandum at Comment 2.

Further, SVW argues that it disagrees with the Department's recent change in its administrative practice with respect to the treatment of by-product offsets in the calculation of NME normal value and that deduction of a by-product credit from the normal value in this particular case is inappropriate: the Indian surrogate producer's, Jubilant Organosys Ltd.'s ("Jubilant"), financial

statements do not establish that income from by-products was included in its financial statements as sales revenue, as opposed to a debit to manufacturing costs. SVW states that the schedules of Jubilant's financial statements that deal with revenue, income, sales, or receipts do not specifically establish by-product revenue. SVW notes that the majority of its by-product offset relates to the recycling of acetic acid and the re-use of PVA scrap, where both are re-used in the production process and no revenue is generated as a result of recycling. Therefore, SVW argues that the Department should apply the by-product offset prior to the application of the financial ratios, as opposed to making an adjustment to normal value.

Petitioners state that the Department properly subtracted the by-product credit after applying Jubilant's financial ratios because SVW recovers a significant quantity of acetic acid during the final hydrolysis stage of PVA production, and because Jubilant's production process does not include recovery of acetic acid. Petitioners maintain that Jubilant is a producer of polyvinyl acetate ("PVAc") and does not make PVA, and, therefore, does not recover the large share of acetic acid that is consumed in VAM production. Petitioners state that this was the reason the Department applied the by-product offset after the application of financial ratios during the investigation and the facts of the case have not changed in this proceeding. See PVA Remand Results at 23.

Petitioners contend that the issue cited in Magnesium is in reference to overhead costs associated with processing the by-product. Petitioners state that the preliminary determination in the underlying investigation, the Department subtracted the value of the by-products from the cost of materials; however, in its final determination, the Department applied the surrogate ratio for factory overhead to the sum of materials, labor, and energy before applying the by-product credit. Petitioners point out that Magnesium shows that the Department can subtract the by-product credit from direct costs, the cost of manufacture, the cost of production, or normal value. See Magnesium at 1092.

Additionally, Petitioners state that in Air Products, the issue was the levels of capital intensity or vertical integration, which is not present in this case, and in Fish Fillets, the Department based its decision on an examination of the surrogate producer's financial statements, its treatment of by-product revenue, and application of ratios to a comparable cost base. See Air Products; Fish Fillets. Petitioners argue that the Department sought in this review to ensure that the cost base on which surrogate financial ratios are calculated would match the cost base to which these ratios are applied.

Finally, Petitioners maintain that in this case there are significant differences in the production processes of SVW and Jubilant, and to account for them, the Department appropriately subtracted the by-product credit after the application of the surrogate financial ratios to SVW's direct costs.

Solutia did not address this issue.

Department's Position: In PVA, the CIT stated that “although Commerce has sufficiently supported its decision to apply the by-product credit after applying Jubilant’s financial ratios, it has not sufficiently explained its decision to apply Jubilant’s financial ratios without accounting for the greater costs incurred by Jubilant during its production of acetic acid, a process which Commerce has determined SVW does not undergo.” See PVA, at 1351. As an explanation of its rationale for deducting by-products from the normal value, in PVA Remand Results, the Department stated the following:

In the vast majority of the antidumping duty cases, the surrogate producers selected by the Department produce different products and incur different types of costs than the respondents. In these situations, our practice has been not to attempt to adjust the surrogate producer’s overhead figures to account for potential cost differences. See Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (Sept. 27, 2001), and accompanying Issues and Decision Memorandum at Comment 2 (Magnesium from Russia); Chrome-Plated Lug Nuts From the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 61 FR 58514, 58518 (Nov. 15, 1996); Persulfates from the People’s Republic of China; Final Results of Antidumping Administrative Review, 64 FR 69494, 69497 (Dec. 13, 1999); and Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation, 60 FR 16440, 16446-7 (Mar. 30, 1995). In order to account for potential cost differences, the Department in essence would be required to evaluate whether both the surrogate company and the respondent have identical cost structures and then adjust these cost structures on a line-by-line basis to account for observed differences. However, such a requirement is not part of the Department’s calculations.

See PVA Remand Results, at 20-21.

SVW recovers a significant portion of acetic acid in the last stage of production of PVA: the hydrolysis process. Because Jubilant is a producer of PVAc, a precursor polymer of PVA, it does not undergo the hydrolysis process necessary to recover acetic acid. See PVA at 1350. Therefore, in this particular comparison of the surrogate company and the respondent, we find that there is sufficient information to conclude that the surrogate company has similar production to the respondent (by virtue of the merchandise produced by both companies) except it does not recover this particular by-product. We also note that SVW recovers over 95 percent of acetic acid which represents a significant portion of SVW’s cost of manufacturing. See SVW’s January 18, 2005, section D questionnaire response at page 5. Consequently, deducting this by product from the cost of manufacturing would result in an understated overhead expense derived from Jubilant’s financial statements. We note that in the vast majority of antidumping cases, we do not have this knowledge of a surrogate company. In this case, we have this knowledge because the hydrolysis process is the difference between the production of PVA and PVAc. This was established in the 2003 PVA Investigation and confirmed by the CIT. See 2003 PVA Investigation, and accompanying Issues and Decision Memorandum at Comment 9; PVA at 1348-1351 (discussing the application of the by-product credit); see also the Department’s

response in PVA Remand Results at Comment 3. The relevant facts have not changed for this proceeding since the remand.

In general, we agree with SVW that the Department should take into account a by-product offset prior to the Department's application of the surrogate financial ratios, if the by-product is an adjustment to the cost of manufacturing. Furthermore, we have deducted from the cost of manufacturing SVW's by-products recovered in other production processes, e.g., methanol, oxygen, acetylene and acetylene tail gas. Jubilant's financial statements do not list by-products; therefore, it is appropriate to look into the production experience of SVW and, if it recovers some of its by-products, then we should deduct them from normal value.¹ In this particular review, it is inappropriate to deduct the value of the acetic acid by-product from the cost of manufacturing because applying the by-product credit before applying Jubilant's financial ratios would mischaracterize SVW's cost of production, in relation to acetic acid, because Jubilant's production process does not include the hydrolysis step where acetic acid is recovered. As the CIT stated PVA, 366 F. Supp. 2d at 1351:

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

With regard to the other two by-products, PVA scrap and methyl acetate, we find that it is inappropriate to deduct the value of these items from the cost of manufacturing because SVW sells these by-products. See SVW's January 18, 2005, section D questionnaire response at page 5. Therefore, we continued to deduct the by-products that SVW recovered in the last stage of PVA production from the normal value.

Comment 11: Surrogate Value for Brokerage and Handling

SVW states that one of the sources the Department used to derive the brokerage and handling surrogate value is aberrational. SVW argues that the charge of 6.3995 Rs./kg or \$140.62 per metric ton ("MT") is almost 37 times greater than the one used in the investigation. According to SVW, the Pidilite Industries Ltd. ("Pidilite") brokerage and handling charge is in excess of 10 percent of the U.S. sales value of the subject merchandise. SVW argues that this result is not within the realm of commercial reality, where brokerage and handling charges are a nominal percentage of the value of the goods. SVW maintains that one out of 19 U.S. sales observations is 37.38 Rupees/kg, whereas the remaining 18 observations range between 2.22 and 7.28 Rs./kg. SVW also points out that Pidilite data are less contemporaneous than the Essar Steel Limited ("Essar") data, the second source used by the Department. SVW urges the Department to use a surrogate value that is representative of commercial reality and supported by the record.

¹ If the surrogate company's financial statements do not indicate by-product sale revenue, but the respondent sells its by-products, then we generally deduct it from the normal value.

Petitioners state that the surrogate value for brokerage and handling is reasonable. Petitioners argue that SVW does not provide any evidence that this value is inaccurate other than the fact that one of the observations in the Pidilite data is too high. Petitioners state that Pidilite is a producer and exporter of chemicals and adhesives; thus, its experience is more representative than Essar's.

Solutia did not address on this issue.

Department's Position: We disagree with SVW. We find that it is appropriate to use the average surrogate value from these two sources. See Preliminary Determination of Sales at Less than Fair Value: Certain Artist Canvas from the People's Republic of China, 70 FR 67412, (November 7, 2005), and Final Determination of Sales at Less than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum at Comment 2. SVW provided no documentation to support its claim that one of Pidilite's brokerage and handling charges was aberrational. Additionally, the Department has stated previously that it cannot conclusively determine that a value is aberrational even when there are extreme differences in quantity and value. See Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review, 71 FR 4112 (January 25, 2006), and accompanying Issues and Decision Memorandum at Comment 2 ("Brake Rotors from the PRC"), citing Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

Furthermore, we disagree with SVW's argument that the brokerage and handling charge of Rs. 37.38 is not within the realm of commercial reality. The Department found that the values reported by Essar and Pidilite are the actual prices paid by market economy companies. It is our preference to use an Indian brokerage and handling value specific to PVA. See Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 4. We agree with Petitioners that Pidilite is a producer and exporter of chemicals and adhesives and, therefore, its experience of brokerage and handling charges is likely to be more similar to SVW's. One value, taken in isolation, could differ significantly when compared across a wide range of products, values, and special circumstances of a single transaction. However, using an average of these two values represents the broad spectrum of values that are available for a wide range of products and minimizes the potential distortions that might arise from a single price source. Most recently, the Department used the same sources in Brake Rotors from the PRC at Comment 2; Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7515 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 4. Therefore, in accordance with Department practice and section 773(c)(1) of the Act, we did not revise the surrogate value for brokerage and handling for the final results of review.

Comment 12: Use of Self-Produced Electricity in the Production of Certain Self-Produced Inputs

SVW states that the Department did not intend to apply surrogate values to self-produced inputs, and the Department should not have applied a surrogate value to electricity when valuing tap water, steam, and compressed air because the electricity used in these inputs is self-produced. SVW states that from the technical point of view, the Department correctly used the surrogate value for electricity as the initial value in the cost calculation for tap water, steam, and compressed air because they were used in the production of electricity. However, SVW argues that because these three factors actually employed self-produced electricity as an input, the calculated electricity value should be substituted back into the cost calculation of steam, compressed air, and tap water. SVW contends that the Department, theoretically, should continue this computation on an iteration basis until the difference between subsequent two iterations reach a pre-determined number, *i.e.*, substituting the first time computed value of electricity into the electricity surrogate value in the cost calculation of steam, compressed air, and tap water. Lastly, SVW concludes that the Department should perform an iteration of the surrogate value at least once with the value of self-produced electricity.

Petitioners state that the Department's use of a surrogate value for electricity in the calculation of steam, tap water, and compressed air is reasonable since electricity is used to produce these inputs, and these inputs, in turn, are used to produce electricity. Petitioners argue that the Department requested SVW to provide the factors in a reduced form so that all the factors for a control number would be isolated and the direct costs could be calculated using the factors for purchased inputs but SVW declined to provide the factors in the form requested by the Department. *See* SVW's September 20, 2005, supplemental questionnaire response. Thus, Petitioners contend that SVW should accept the Department's solution to a problem SVW itself created.

Solutia did not address on this issue.

Department's Position: SVW self-produces electricity which is an input into self-produced tap water, compressed air, and steam, which, in turn, are inputs into self-produced electricity. Although in the preliminary results we stated that we have not applied a surrogate value to self-produced inputs, in this particular instance one option was to apply the surrogate value to either electricity or tap water, compressed air, and steam, as an alternative to bypass this circularity and only as a starting point. We also note that in the calculation of the production of other inputs (*e.g.*, purified natural gas, vinyl acetate, oxygen, etc.) that are not direct or indirect inputs of electricity, we used the value of self-produced electricity.

SVW uses some self-produced factors of production (*e.g.*, tap water, steam, compressed air, and electricity) that at any given time are reciprocal and are continuously used in its production of PVA. *See* Attachment D4 of SVW's January 18, 2005, questionnaire response. However, in valuing these self-produced factors, we have treated these factors sequentially according to SVW's production process, *i.e.* from first to the fourth stage of production. Additionally, we

agree with SVW that an iteration methodology could possibly reduce the small disparity between the value of self-produced electricity and the surrogate value for electricity. Therefore, for the final results, we have applied an iteration methodology for the inputs that require electricity (*i.e.*, tap water, compressed air, and steam) and have performed a one-step iteration for these inputs. See Final Analysis Memorandum.

Comment 13: Use of Different Value of Self-Produced Steam as an Input to Other Self-Produced Inputs

SVW states that the value of steam that the Department applied in the preliminary results to other self-produced inputs was not correct. SVW claims that the Department's Excel calculation linked electricity, zero degree circulation water, power generation boiler water, de-oxygen water, oxygen, methanol, vinyl acetate, acetylene/acetylene tail gas, and the purification of natural gas to an erroneous cell for using steam as an input into the calculation of these self-produced inputs.

Petitioners and Solutia did not comment on this issue.

Department's Position: In the preliminary results, we calculated the value of steam as a sum of multiple inputs among which are electricity, power generation boiler water, de-oxygen water, oxygen, methanol, vinyl acetate, acetylene/acetylene tail gas, and the purification of natural gas. However, zero degree circulation water is not an input in self-produced steam. See Attachment D4 of SVW's January 18, 2005, questionnaire response. In the preliminary results, we iterated this value so that it would not be linked to any other calculation in order to avoid circular reference, *i.e.*, when an input X is used in the calculation of the cost of input Y and then Y is used to calculate X, it creates a circular reference. See Analysis Memorandum. In fact, this is the iteration-type solution suggested by SVW for solving the simultaneous factor issue in calculating self-produced electricity. All of the inputs linked to the iterated cell were a result of steam being an input into another factor that is an input to one of the above-mentioned factors. However, this is not the case with all of the inputs that we linked to the "iterated cell," *i.e.*, the cell where the value is not based on a formula but merely repeats the value of the formula. De-oxygen water, methanol, vinyl acetate, and acetylene/acetylene tail gas are directly linked. Therefore, we will revise the final calculations to link the above-mentioned inputs directly to the cost of steam. See Final Analysis Memorandum at page 2.

Purified natural gas, 12 degree circulation water, electricity, power generation boiler water, and oxygen use self-produced electricity. Self-produced electricity, in turn, uses steam which is used in producing purified natural gas, electricity, 12 degree circulation water, power generation boiler water, and oxygen. As a result, when we linked the iterated cell for steam for the first time, it decreased the value of the cell it originally was meant to replicate. See Final Analysis Memorandum. We also note that with each additional linkage there is an increasing discrepancy between the original cell and the iterated cell. Because SVW reported its self-produced inputs simultaneously rather than sequentially, our calculation of self-produced factors of production incurred a circular reference. Therefore, for the final results, we did not change our calculation

with respect to purified natural gas, 12 degree circulation water, electricity, power generation boiler water, and oxygen from the preliminary results.

Finally, zero degree circulation water does not use steam; therefore, we find that steam is not relevant to zero degree circulation water.

Comment 14: Use of Self-Produced Electricity in Calculation of the Cost of 33 Degree Circulation Water

SVW states that since 33 degree circulation water was not used in the production of electricity, the Department should have used the self-produced electricity value instead of a surrogate value for electricity. SVW also notes that the Department correctly used the value for self-produced electricity in the calculation of self-produced 12 degree circulation water and zero degree circulation water. SVW concludes that the Department should apply the value of self-produced electricity for valuing the cost of 33 degree circulation water.

Petitioners and Solutia did not comment on this issue.

Department's Position: We agree with SVW that self-produced 33 degree circulation water was not used in the production of self-produced electricity. However, tap water was used in 33 degree circulation water which was used in the production of self-produced electricity. As a result, this created an indirect circular reference through a third input, *i.e.*, tap water. Therefore, for the final results, we have linked the value for electricity as an input to 33 degree circulation water to an iterated link for electricity. See Final Analysis Memorandum at page 2.

Comment 15: Calculation of 33 Degree Circulation Water in Margin Calculation Program

SVW states that the Department inadvertently multiplied the value of pure water by the factor for 33 degree circulation water to obtain the cost of 33 degree circulation water. SVW contends that the Department should correct this error for the final results.

Petitioners and Solutia did not comment on this issue.

Department's Position: We agree with SVW. For the final results, we adjusted the cost of 33 degree circulation water by multiplying the surrogate value for 33 degree circulation water by the factor for 33 degree circulation water. See Final Analysis Memorandum at page 2.

Comment 16: Correction of the Calculation of Train Freight

SVW states that in the preliminary results the Department calculated a surrogate value for train freight of 0.1132 Rs./kilometer ("km")/MT based on the average of two price quotes for Indian domestic train freight rates. SVW further states that because this value was outside of the POR, the Department applied a wholesale price index ("WPI") inflator of 1.2338 to adjust the surrogate value to the POR. SVW claims that the Department made an error when it multiplied the average rate of 0.1132 Rs./km/MT by the WPI inflator of 1.2338 and obtained a value of 1.3966. SVW maintains that, instead, the Department should have multiplied the WPI inflator of 1.2338

by the average rate of 0.1132 Rs./km/MT to obtain the correct value of 0.13966 and applied this factor in the final results of the review.

Petitioners and Solutia did not comment on this issue.

Department's Position: We disagree with SVW. SVW argues that the average rate of surrogate train freight is 0.1132 Rs./km/MT. However, the train freight rate is 0.1132 Rs./km/100 kg and to obtain the correct inflated rate for the POR, we divided the uninflated 0.1132 Rs./km/100 kg by 100 to obtain the rate for a kg, and only then multiplied by 1000 to obtain the rate for MT. See Exhibit 10 of Preliminary Factors of Production Memorandum. This explains the difference between SVW's proposed rate of 0.13966 and our 1.3966 used in the preliminary results. Therefore, we did not revise the surrogate train freight rate for the final results.

RECOMMENDATION

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

Agree _____

Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)