

11/17/2011

**Results of Redetermination Pursuant to Court Remand:  
Carbazole Violet Pigment 23 from the People's Republic of China  
*Trust Chem Company Limited v. United States*  
Court No. 10-00214, Slip Op. 11-97 (CIT August 3, 2011)**

Public Document

**Summary**

The Department of Commerce (Department) has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court) in *Trust Chem Company Limited v. United States*, Court No. 10-00214, Slip Op. 11-97 (August 3, 2011) (*Trust Chem*). This action arises out of the final results of the administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from the People's Republic of China (PRC) for the December 1, 2007, through November 30, 2008, period of review (POR). See *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010), and accompanying Issues and Decision Memorandum (*Final Results*).

The Court remanded this case to the Department to reconsider and provide further explanation of the Department's determination that the World Trade Atlas (WTA) data used to value nitric acid were not aberrational. See *Trust Chem*, Slip Op. at 23. Pursuant to the Court's instructions, we have considered information on the record of this proceeding, including comments submitted by interested parties subsequent to the Court's ruling. Based upon our analysis, we preliminarily determine the Indian WTA data used in the *Final Results* continue to be the best information available to value the nitric acid used by respondent Trust Chem Co., Ltd. (Trust Chem) in the production of CVP 23. A discussion of the factual and procedural background of this case and our analysis of the information relating to the valuation of nitric acid follows.

## Background

On June 28, 2010, the Department published its final results of the administrative review of the antidumping duty order on CVP 23 from the PRC for the December 1, 2007, through November 30, 2008 POR. *See Final Results*. In the *Final Results*, the Department determined that Trust Chem did not provide sufficient evidence to show the Indian import data for nitric acid from WTA were aberrational and found the Indian WTA data constituted the best information available to value nitric acid in accordance with its current practice. The Department noted that even though it did not know whether the WTA data reflected prices for 60 percent (“weak” strength) or 98 percent (“high” strength) nitric acid, it did know based on record evidence that the prices in *Chemical Weekly*, the source Trust Chem proposed, were for 60 percent nitric acid, not the 98 percent nitric acid Trust Chem used to produce CVP 23, and that a simple conversion based on relative concentration levels would not be accurate. *Id.*, and accompanying Issues and Decision Memorandum at Comment 4.

Subsequently, Trust Chem challenged the Department’s selection of WTA data to value nitric acid. On August 3, 2011, the Court issued its opinion on this matter. With respect to Trust Chem’s argument that the *Chemical Weekly* data were more specific to and thus more representative of, the nitric acid used to produce CVP 23, the Court upheld the Department’s use of WTA data. *See Trust Chem*, Slip Op. at 10. As for Trust Chem’s assertion that the WTA data were aberrational, the Court found that the Department’s decision to give no weight to the numerical differences between the WTA data and *Chemical Weekly* prices, and its decision to not use U.S. import data, were reasonable. *Id.* at 11-13 and 15-18. The Court also upheld the Department’s determination that Trust Chem’s argument regarding the Indian import quantities was not persuasive. *Id.* at 13-15. However, the Court ruled the Department: (i) did not provide

an adequate explanation as to why it could not compare the WTA data with the *Chemical Weekly* prices to determine whether the WTA data were aberrational; and (ii) did not address petitioners' proposed surrogate value from the Indian Department of Commerce's Export Import Data Bank.<sup>1</sup> *Id.* at 18-23. Thus, the Court remanded this matter to the Department, ordering it to reconsider and provide further explanation regarding its determination that the WTA data used to value nitric acid were not aberrational. *Id.* at 23. The Court also noted the record did not contain specific pricing data from the POR that was representative of the type of nitric acid used by Trust Chem, and therefore stated it would be appropriate for the Department to re-open the record. *Id.*

On August 11, 2011, the Department placed historical WTA data<sup>2</sup> for imports of nitric acid from India and the other potential surrogate countries identified for the instant review on the record.<sup>3</sup> Also on August 11, 2011, the Department issued a letter inviting interested parties to submit comments on these historical import data as they pertain to the WTA value selected for nitric acid in the instant review.<sup>4</sup>

On August 19, 2011, Trust Chem and petitioners submitted comments to the Department. On August 22, 2011, Trust Chem filed a letter requesting that the Department reject petitioners' comments, in part, on the grounds that those comments were unresponsive to the historical WTA data placed on the record or did not pertain to the WTA value used as the surrogate value for nitric acid. On August 23, 2011, Trust Chem and petitioners filed rebuttal comments.

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<sup>1</sup> Petitioners are Nation Ford Chemical Company and Sun Chemical Corporation.

<sup>2</sup> These data reflect imports for each country, on an annual basis, during the period December 2003 through November 2008.

<sup>3</sup> The other potential surrogate countries identified for this administrative review were the Philippines, Indonesia, Colombia, Thailand, and Peru.

<sup>4</sup> The Department noted in its letter that it would not consider comments associated with import volume, as the Court already addressed this issue in Trust Chem and upheld the Department's finding.

On October 14, 2011, the Department released its draft determination pursuant to the Court's remand and provided parties an opportunity to comment. *See* Draft Results of Redetermination Pursuant to Court Remand: Carbazole Violet Pigment 23 from the People's Republic of China, *Trust Chem Company Limited v. United States*, Court No. 10-00214, Slip Op. 11-97 (CIT August 3, 2011), dated October 13, 2011 (Draft Remand Results). On October 19, 2011, Trust Chem timely filed comments, and on October 25, 2011, petitioners timely filed rebuttal comments.<sup>5</sup>

### **Comments on Historical WTA Import Data**

In its August 19, 2011, comments, Trust Chem argues the average unit value (AUV) used in the *Final Results* of \$10,474 per MT based on POR WTA Indian import data is aberrational when compared to the AUVs based on POR WTA data for the other potential surrogate countries, which range from \$457 to \$3,894 per MT, and the five countries' combined weighted AUV for the POR of \$565 per MT. Trust Chem also asserts the simple AUV for India for the period December 2003 through November 2008 (\$12,213 per MT) is aberrational compared to the simple AUVs it calculates for the other potential surrogate countries for this same period, which range from \$366 to \$4,239 per MT. Finally, Trust Chem contends the weighted AUV for India for the five-year period (\$10,711 per MT) is aberrational compared to the weighted AUVs it computes for each of the other five countries for the five-year period, which range from \$378 to \$2,469 per MT, as well as the overall weighted AUV of \$465 per MT it calculates for the five

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<sup>5</sup> Rebuttal comments were due on October 24, 2011 and petitioners' rebuttal comments are dated as such. Although these comments were not filed until October 25, 2011, we have not rejected them as being untimely filed. For more information, *see* Memorandum from Deborah Scott to the File, "Carbazole Violet Pigment 23 from The People's Republic of China; Memorandum Regarding Acceptance of Petitioners' Rebuttal Comments Filed in Response to the Draft Remand Results," dated October 28, 2011.

countries. Because all of these mathematical comparisons show the Indian WTA data result in AUVs many times higher than the other five countries' AUVs, Trust Chem asserts the Department should value nitric acid based on prices from *Chemical Weekly*.

In their August 19, 2011, comments, petitioners contend the Indian AUV of \$10,474 per MT for the POR is consistent with the Indian AUVs for each of the four years prior to the POR and is less than the Indian five-year simple AUV of \$12,213 per MT. Petitioners argue the average import values for eight of the eleven countries included in the POR WTA Indian import data are greater than \$10,474 per MT, and in order for the Department to find the Indian AUV aberrational, it must, by extension, find each of the eight country-specific values to be aberrational; there is, petitioners aver, no support for doing so. Petitioners also maintain the data from the other potential surrogate countries were flawed. Petitioners assert the HTS category for the Philippines and Indonesia includes nitric acid as well as all other sulphonitric acids. Petitioners contend the HTS category for Colombia and Peru includes nitric acids of all concentrations (*i.e.*, ranging from 1 percent to 100 percent), and based on the data, likely encompasses large amounts of lower concentration nitric acid and thus lower values. Petitioners argue the Thai data are incomplete, since Thailand has another HTS category, 280800000102 (available from Global Trade Atlas (GTA)<sup>6</sup>), that is specific to nitric acid with concentrations of 15 percent or higher and thus more specific to the high concentration nitric acid used by Trust Chem. Petitioners claim the Thai GTA import values, which result in a POR AUV of \$3,894 per

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<sup>6</sup> Both WTA and GTA, which are published by Global Trade Information Services, are based on publicly-available import prices reported in the *Monthly Statistics of the Foreign Trade of India*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce, Government of India. Because the WTA software is limited to the number of significant digits it can manage, it reports Indian import data in U.S. dollars. The Indian import data in GTA are reported in their original currency value (*i.e.*, Indian rupees) to the nearest digit. Thus, WTA and GTA report Indian import statistics based on the same source, but present the data in different currencies, and the GTA do not suffer from a loss of data due to rounding. Because the data stem from the same source and the differences are relatively minor, the WTA and GTA data are comparable.

MT,<sup>7</sup> are much more comparable to the WTA Indian import data than the other potential surrogate countries' values. Petitioners maintain this average for Thailand effectively corroborates the Indian import values.

Additionally, petitioners provide a publicly-available Internet price list for various concentrations of nitric acid, including 98 percent nitric acid, and maintain the prices for 98 percent nitric acid (\$10,738 and \$13,907 per MT) corroborate the Indian WTA data. *See* Petitioners' August 19, 2011, comments at page 4 and Exhibit B. Also, citing the *Directory of World Chemical Producers*, petitioners argue there are 16 nitric acid producers in India but only zero to two producers in each of the other potential surrogate countries. *Id.* at Exhibit B. Since the other potential surrogate countries' production is limited or nonexistent, petitioners assert, it is natural to assume the other countries' imports would be in greater volumes and consist almost entirely of dilute nitric acid used in fertilizer production. *Id.*

Finally, petitioners contend their originally proposed surrogate value of \$839.44 per MT from the Indian Department of Commerce's Export Import Data Bank was flawed because it was based on the only data available to them at that time, which were values from 2007-2008 and quantities from 2008-2009 (Apr-Dec). Petitioners also claim the conversion to U.S. dollars was not done properly. Petitioners argue that when the conversion to U.S. dollars is done properly, the AUV is \$10,211 per MT, which establishes the surrogate value of \$10,474 per MT is not aberrational. *Id.* at pages 4-5 and Attachment C.

In its August 23, 2011, rebuttal comments, Trust Chem first refers to its August 22, 2011

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<sup>7</sup> The Department notes the POR AUV for Thailand based on WTA data is also \$3,894 per MT. *See* the Department's Memorandum to the File, "Carbazole Violet Pigment 23 from The People's Republic of China; Memorandum Placing WTA Import Data for Nitric Acid on the Record," dated August 11, 2011 (August 11, 2011 Memorandum) at Attachment 2.

request that the Department reject petitioners' comments, in part, because they were not responsive to the Department's call for comments. Next, Trust Chem disagrees with petitioners' argument that the historical Indian WTA data are consistent with the POR AUV of \$10,474 per MT. Trust Chem avers the only consistency in the Indian WTA data is that they are aberrational, as shown by the wide range of, and incredible year-to-year fluctuations in, the historical Indian AUVs. In addition, Trust Chem contends petitioners did not provide any support for their argument that in order to find the Indian value to be aberrational, the Department must find the average import value for eight of the countries reflected in the Indian WTA data to be aberrational. Trust Chem insists no such legal requirement exists; therefore, Trust Chem urges the Department to rebuff this argument.

Reiterating that the historical WTA data for the other potential surrogate countries clearly show the Indian WTA data are aberrational, Trust Chem rebuts petitioners' attempted repudiation of the other potential surrogate countries' data. Trust Chem maintains petitioners have not established whether the Philippine and Indonesian WTA data actually include any imports of sulphonitric acid. As for petitioners' argument that the WTA data for Colombia, Peru, and Thailand include nitric acid of all concentrations, Trust Chem asserts the same is true for the Indian WTA data. Trust Chem also argues petitioners have not provided any support for their statements that the Indian import data reflect higher concentrations of nitric acid and the other countries' data reflect lower concentrations of nitric acid. Lastly, Trust Chem avers that even when compared to the Thai WTA data, the Indian WTA data continue to be aberrational.

In their August 23, 2011, rebuttal comments, petitioners acknowledge the Indian WTA AUV is higher than that for the other countries, but argue this is to be expected given the reasons articulated in their August 19, 2011, comments. Petitioners claim any grouping of the quantities

and values for the other potential surrogate countries over any period of time is flawed and does not establish the Indian WTA data are aberrational. Petitioners aver Trust Chem's mathematical analysis of the WTA import data for the various countries does not account for the concentration needs and production capability of each country or the shipment methods utilized for different concentrations. Petitioners argue dilute nitric acid is one of the world's highest volume and lowest unit value chemicals and is used in large quantities to produce fertilizer. Petitioners contend dilute nitric acid can be shipped in stainless steel containers, but concentrated nitric acid can only be stored and shipped in glass or Teflon lined composite containers. *See* Petitioners' August 23, 2011 rebuttal comments at 3-4. Petitioners argue that when the POR WTA data for India and the other potential surrogate countries<sup>8</sup> are examined on a monthly basis, it is apparent that only the quantities and unit value of Indian imports are consistent with concentrated nitric acid imports packed in Teflon or glass containers. *Id.* at 4-5 and Exhibit 2. Petitioners therefore urge the Department to continue to find that the Indian WTA data constitute the best information available for valuing nitric acid.

Department's Position:

As an initial matter, the Department addresses Trust Chem's request that the Department reject petitioners' August 19, 2011, comments as being unresponsive to the historical WTA data placed on the record and unrelated to the WTA value chosen as the surrogate value for nitric acid. The Department finds that petitioners provided this information to place the worldwide variation in nitric acid volumes and values reflected in the WTA data into context. Therefore, the portion of petitioners' comments called into question pertains to the validity of the historical

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<sup>8</sup> For this comparison, petitioners indicated they did not use WTA data for Thailand, but rather relied on Thai GTA data for HTS category 28080000102, which is specific to nitric acid with concentrations of 15 percent or higher.

WTA data placed on the record. Accordingly, the Department has not rejected petitioners' August 19, 2011, comments.

In the *Final Results*, the Department stated it could not establish whether the WTA value of \$10,474 per MT was aberrational compared to the price of \$215 per MT from *Chemical Weekly* because the sources were not the same. See *Final Results*, and accompanying Issues and Decision Memorandum at Comment 4. The Department explained it had a strong preference for using data from the same sources, and cited two cases in which it had previously noted this preference, *Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum at Comment 2 (*Hot-Rolled Steel from Romania*) and *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (*Lined Paper Products from the PRC*). The Court states in *Trust Chem* that the Department benchmarked values from various sources against one another in *Hot-Rolled Steel from Romania*. The Department acknowledges this was the case. Specifically, the Department found in *Hot-Rolled Steel from Romania* that “where we had insufficient data from one source, we also compared the AUVs derived from COMTRADE, CAPMAS, and the WTA data to each other.” As explained in *Hot-Rolled Steel from Romania*, CAPMAS (Egyptian Central Agency for Public Mobilization and Statistics) data are a primary source from the Egyptian government and COMTRADE (United Nations Commodity Trade Statistics Database) and WTA are secondary sources that generally depend on statistics generated by national agencies such as CAPMAS. Thus, the multiple sources the Department relied upon in *Hot-Rolled Steel from Romania* were

either primary or secondary sources of government-generated data.

The situation described for *Hot-Rolled Steel from Romania* contrasts with the instant case, where the two sources at issue – WTA and *Chemical Weekly* – have virtually no relationship, since WTA is based on Indian government statistics and *Chemical Weekly* is based on market prices for certain locations in India. Further, in the instant case, the WTA value of \$10,474 per MT and the *Chemical Weekly* value of \$215 per MT represent only two price points. As the Department stated in *Lined Paper Products from the PRC*, “having one number as a benchmark to test the reliability of the surrogate values alleged to be aberrational is not sufficient because there is nothing to support which of the two numbers, if either, is accurate. In such a vacuum, argument could be made in either direction as to which number is aberrational.” Contrasting only these two figures, one could argue that the WTA value is aberrationally high, or conversely, that the *Chemical Weekly* value is aberrationally low. Thus, we find it is not appropriate to benchmark the WTA value against the *Chemical Weekly* price.

As for the fact that the Department used *Chemical Weekly* to value nitric acid in the original investigation and first administrative review of CVP 23 from the PRC, the Department notes that purity level was not an issue during either of those two segments of the proceeding. Subsequent to the conclusion of those two segments of the proceeding, the Department learned from record evidence that *Chemical Weekly* quoted prices for nitric acid with a concentration level of 60 percent. *See Final Results*, and accompanying Issues and Decision Memorandum at Comment 3. In addition, information on the record of the instant review demonstrates the producer used nitric acid with a concentration level of 98 percent to manufacture CVP 23. Further, record information indicates a direct correlation did not exist between 60 and 98 percent nitric acid such that a simple conversion of the prices in *Chemical Weekly* based on the relative

concentrations would provide an accurate valuation of 98 percent nitric acid. *Id.* at Comment 4. The Department finds that prices for an input clearly not used by the respondent, and that cannot be adjusted for purity level, logically should not be used as a benchmark. Thus, the Department determined in the *Final Results*, and continues to maintain, that prices for 60 percent nitric acid are not the best information available for benchmarking or for assigning a surrogate value to the 98 percent nitric acid used by the respondent.

For this remand re-determination, the Department has considered the historical WTA data on nitric acid imports from India and the other potential surrogate countries, and the parties' comments on such data, to determine if the surrogate value used in the *Final Results* is aberrational. First, we examine the AUVs computed for each of those countries for the December 2007 through November 2008 POR, which are as follows: \$457 per MT (Philippines); \$508 per MT (Indonesia); \$548 per MT (Peru); \$1,556 per MT (Colombia); \$3,894 per MT (Thailand); and \$10,474 per MT (India). *See* the August 11, 2011, Memorandum at Attachments 1 and 2. Trust Chem argues the Indian AUV is aberrational compared to those for the other potential surrogate countries because it is mathematically many times greater. However, as explained more fully below, we find the wide variation between all of these figures is likely attributable to differences in the concentration levels of the nitric acid. Thus, we find the POR AUVs for the other potential surrogate countries cannot be used to establish that the Indian AUV for the POR is aberrational.

As for the Indian AUVs for the four annual periods prior to the POR, these figures range from a low of \$7,571 per MT to a high of \$16,056 per MT. *Id.* at Attachment 1. Trust Chem contends the Indian WTA data are consistently aberrational. The Department disagrees. First, the Department already examined historical Indian import data from the GTA in the *Final*

*Results* and found the \$10,474 per MT surrogate value did not appear to be aberrational, but rather, fell in line with the historical GTA data. *See Final Results*, and accompanying Issues and Decision Memorandum at Comment 4. As noted previously, the Indian import data in WTA and GTA originate from the same source (*i.e.*, the *Monthly Statistics of the Foreign Trade of India*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce, Government of India), but are in different currencies, and there is no data loss in GTA due to rounding. Because the WTA and GTA data come from the same source and the differences between the two are relatively minor, we find the WTA and GTA data are comparable. Thus, while some variation between the WTA and GTA data exists, the figures from both sources are in the same range and show the same trends. Furthermore, as petitioners point out, the WTA AUV of \$10,474 per MT for the POR is below the five-year simple average Indian WTA AUV of \$12,213 per MT for the five years examined. Additionally, the surrogate value used in the *Final Results* is in line with the five-year weighted AUV calculated from WTA Indian import data of \$10,711 per MT. As a result, the Department finds the historical Indian import data from WTA show the POR AUV of \$10,474 per MT is not aberrational, since the historical averages are in line with the POR AUV.

With respect to the historical data for the other potential surrogate countries, Trust Chem argues that since the simple and weighted five-year Indian AUVs are mathematically many times higher than the simple and weighted five-year AUVs for each of the other potential surrogate countries, the Indian data are aberrational. Petitioners argue the data for the other potential surrogate countries are flawed for various reasons. The Department agrees with Trust Chem that petitioners have not established whether the Philippine and Indonesian WTA data actually include sulphonic acid imports. The Department also agrees with Trust Chem that petitioners'

claim that the WTA data for Colombia, Peru, and Thailand include nitric acid of all concentrations fails because the same holds true for the Indian WTA data. As a result, we have not placed any merit on these assertions by petitioners.

However, although the AUVs for the other potential surrogate countries are lower than the Indian AUVs, the Department observes the data for the other countries are generally consistent. Specifically, for those years in which imports occurred, the AUVs for the Philippines, Indonesia, and Peru fall within the same range for each individual country. *See* August 11, 2011 Memorandum at Attachment 2. What is clear from these data is that there is a very wide variation in global nitric acid prices, both over the five-year historical period and during the POR itself. Petitioners have presented a compelling argument that Trust Chem's mathematical analyses do not reflect the concentration requirements and production capability of each country or the shipment methods required for different purity levels of nitric acid. While there is no specific evidence to demonstrate the actual concentration(s) of nitric acid imported into India and the other potential surrogate countries during the five-year period, information on the record suggests the pricing for different concentrations of nitric acid is exponential and higher concentrations of nitric acid require more stringent storage and shipment methods. For instance, the publicly-available price list provided in petitioners' comments illustrates that higher concentration nitric acid, particularly 98 percent nitric acid, sells for prices that are notably higher than those for lower concentration nitric acid. *See* Petitioners' August 19, 2011, comments at Attachment B, Exhibit 2. Using this price list and information regarding the density (which correlates with purity level) of nitric acid, petitioners determine the per-MT price of 98 percent nitric acid is \$10,738 (based on the 30 gallon price quoted in the price list) and

\$13,907 (based on the 15 gallon price).<sup>9</sup> *Id.* at Attachment B, Exhibits 2, 3 and 4. Also, information on the record indicates the safe storage and transport of higher concentrations of nitric acid, including 98 percent nitric acid, requires different, more stringent methods, leading to increased costs. *Id.* at Attachment B, statement of John Dickson and Exhibit 1 and at Petitioners' May 17, 2010 letter at 2. Petitioners also offer a monthly breakdown of the nitric acid import quantities for India and the other potential surrogate countries during the POR and argue the relatively smaller quantities and unit value of Indian imports are in line with concentrated nitric acid imports packed in Teflon or glass containers. *See* Petitioners' August 23, 2011, rebuttal comments at 5 and Exhibit 2. While these monthly data do not specify concentration levels, it is notable that Peru, the Philippines, and Indonesia, the countries with relatively lower AUVs, imported relatively larger quantities on a monthly basis, whereas India, with its relatively higher AUV, imported comparatively smaller volumes on a monthly basis. Since the record indicates it is more difficult and costly to store and ship higher concentration nitric acid, the data suggest the larger volume of imports into Peru, the Philippines, and Indonesia likely would have consisted of lower concentrations of nitric acid. Accordingly, the Department finds the fact that the other potential surrogate countries have lower AUVs than India's (both for the POR and the historical period) is not sufficient to deem the Indian WTA data aberrational, and the WTA AUV used in the *Final Results* appears to be consistent with the higher price range one would expect for 98 percent nitric acid.

Finally, we address the surrogate value petitioners proposed from the Indian Department of Commerce's Export Import Data Bank of \$839 per MT. The Department did not consider

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<sup>9</sup> We acknowledge these are U.S. prices and not specific to the POR. However, we have considered them as a measure of how the concentration level of nitric acid affects price.

using this value in the *Final Results* because we did not find the Indian WTA data to be aberrational. Also, petitioners explain in their August 19, 2011, comments that they made an error in calculating their proposed surrogate value and that when converted properly to U.S. dollars, the AUV of \$10,211 per MT corroborates the Indian AUV of \$10,474 per MT. *See* Petitioners' August 19, 2011, comments at 4-5 and Attachment C. However, the Department notes petitioners' recalculation is still based on data from different periods – *i.e.*, the values are from 2007-2008 and the quantities are from 2008-2009 (Apr-Dec). Thus, the Department will not consider petitioners' proposed value of \$839 per MT or the source in light of this deficiency.

#### **Comments on the Draft Remand Results**

In its comments submitted on October 19, 2011, Trust Chem argues the Department's Draft Remand Results did not account for the magnitude of the discrepancies between the Indian AUVs and the AUVs for the other potential surrogate countries. Trust Chem claims that instead of finding the AUVs for the other countries showed the Indian WTA data were aberrational, the Department concluded the other countries' significantly lower AUVs were insufficient to establish the WTA data were aberrational. By ignoring the comparison between the WTA data for India and the other potential surrogate countries, Trust Chem asserts the Department's conclusion is not supported by the record evidence.

Trust Chem maintains the Department's conclusion that high AUVs reflect higher concentration nitric acid and low AUVs reflect lower concentration nitric acid is based on speculation. Trust Chem also argues the Department's conclusions that "the data **suggest**{s that} larger volume of imports into Peru, the Philippines, and Indonesia **likely** would have consisted of lower concentrations of nitric acid" and the Indian AUV "**appears** to be consistent with the higher price range **one would expect** for 98 percent nitric acid" are based on speculation. *See*

Trust Chem's October 19, 2011 comments at 3-4, citing the Draft Remand Results at 14 (emphasis added by Trust Chem). Trust Chem avers the Department's conclusions contradict the Department's recognition that the record contains no evidence regarding the actual concentration levels of nitric acid imported into India and the other potential surrogate countries. *Id.*, citing *Id.* at 13. As such, Trust Chem asserts the Department's finding in the Draft Remand Results that the Indian WTA data are not aberrational is not supported by record evidence.

Trust Chem contends the Court noted in *Trust Chem* that the record did not contain price data specific to the 96 to 98 percent nitric acid used by Trust Chem's supplier to manufacture CVP 23. *See* Trust Chem's October 19, 2011, comments at 4, citing *Trust Chem* at 23, footnote 28. While the Department subsequently placed historical WTA import data on the record, Trust Chem states the Draft Remand Results correctly noted none of the WTA data indicated the actual concentrations of the imported nitric acid. As a result, Trust Chem contends, the record still does not contain any information to properly ascertain the Indian WTA data are not aberrational.

Lastly, Trust Chem argues the price list for "98+%" nitric acid that petitioners placed on the record is questionable for three reasons. First, Trust Chem argues, the price list is for nitric acid with a concentration level higher than 98 percent whereas its supplier uses 96 to 98 percent nitric acid. Since the Department found production costs for higher concentration levels of nitric acid are exponential, Trust Chem claims 96 to 98 percent and "98+" percent nitric acid are not comparable. *See* Trust Chem's October 19, 2011, comments at 5, citing the Draft Remand Results at 13.

Second, Trust Chem states, the price list reflects U.S. prices for 2011, not prices from a country deemed to be at an economic level of development comparable to the PRC for the POR. Trust Chem avers that since the Department was quick in the *Final Results* to reject period-

specific, nationwide U.S. import data establishing the Indian WTA data were aberrational, it is hypocritical for the Department to accept less representative company-specific, non-POR data to conclude the Indian data are not aberrational.

Third, Trust Chem claims its supplier is an industrial purchaser and consumer of nitric acid that purchases 96 to 98 percent nitric acid in metric ton quantities. Citing its March 17, 2009, questionnaire response at Exhibit D-7, Trust Chem references the total amount, in metric tons, of 96 to 98 percent nitric acid its supplier purchased during the POR, along with the range of quantities (in metric tons) purchased in each transaction, and contends its supplier's purchases were in tanker truck load quantities. As a result, Trust Chem asserts prices quoted for 15 or 30 gallon quantities cannot be deemed representative of industrial tanker purchases made in metric tons. Trust Chem also argues the Department's reliance on price quotes for small purchase quantities in the Draft Remand Results is in contrast to the original investigation involving CVP 23 from the PRC, where the Department found published price lists for small purchase quantities were not representative of industrial or commercial sized purchases. *See* Trust Chem's October 19, 2011, comments at 6, citing *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China*, 69 FR 67304 (November 17, 2004) (*Final Determination*), and accompanying Issues and Decision Memorandum at Comment 4. Specifically, Trust Chem claims in that proceeding the Department correctly refused to rely on prices quoted in the *Aldrich Handbook* because that source quoted sales prices for small quantities that were unsuitable for industrial consumption. As with the 15 and 30 gallon prices for "98+" percent nitric acid, Trust Chem argues the quantities of the other nitric acid products on the petitioners' submitted price list are also too small to be representative of industrial purchases in metric tons that are delivered in tanker trucks. Accordingly, Trust Chem argues the

Department should not rely upon this price list for any reason whatsoever in its final remand results.

In their October 24, 2011, rebuttal comments, petitioners state they fully support the Department's draft remand redetermination and urge the Department to make the same determination for the final results.

First, petitioners address Trust Chem's argument that the Department should have found the Indian WTA data to be aberrational based on the other potential surrogate countries' appreciably lower AUVs. Although the Department agreed the other countries' AUVs were lower than India's, petitioners assert the Department found the large variation in AUVs was due to differences in concentration levels and thus the POR AUVs for the other countries could not be used to establish the Indian POR AUV was aberrational. *See* Petitioners' October 24, 2011, rebuttal comments at 2-3, citing the Draft Remand Results at 11. Petitioners claim the record fully supports this conclusion.

Next, petitioners refute Trust Chem's contention that the Department merely speculates that high AUVs reflect higher concentration nitric acid and low AUVs reflect lower concentration nitric acid. While the Department acknowledges there is no specific evidence regarding the actual concentration levels of imports into India and the other countries, petitioners maintain, the Department has shown, based on record evidence, that lower import values with larger import quantities represent lower purity levels and higher values with smaller quantities reflect higher purity levels. Petitioners claim the Department specifically cites the extensive information provided by petitioners on the concentration needs and production capability of each country and the different shipment methods and costs required for different concentration levels. *See* Petitioners' October 24, 2011, rebuttal comments at 3, citing the Draft Remand Results at

13-14. Petitioners assert Trust Chem does not refer to this record evidence but instead mocks the Department's use of certain words. Petitioners argue the record evidence substantiates the Department's findings, particularly when those findings are fully quoted. Petitioners' October 24, 2011, rebuttal comments at 4, citing the Draft Remand Results at 14 (“{s}ince the record indicates it is more difficult and costly to store and ship higher concentration nitric acid, the data suggest the larger volume of imports into Peru, the Philippines, and Indonesia likely would have consisted of lower concentrations of nitric acid” and “the fact that the other potential surrogate countries have lower AUVs than India’s (both for the POR and the historical period) is not sufficient to deem the Indian WTA data aberrational, and the WTA AUV used in the *Final Results* appears to be consistent with the higher price range one would expect for 98 percent nitric acid”).

Petitioners also disagree with Trust Chem's argument that the record does not contain pricing information for 96 to 98 percent nitric acid and thus does not include information to establish the Indian WTA data are not aberrational. Petitioners contend Trust Chem could have placed information on the record regarding nitric acid prices and concentration levels to bolster its position, but did not do so. Petitioners insist the record evidence amply supports the logical conclusions made by the Department.

Finally, petitioners address Trust Chem's arguments with respect to the publicly-available price list they placed on the record. Petitioners assert these prices were never intended to be used as surrogate values. Petitioners cite the Draft Remand Results at 13, wherein the Department noted that higher concentration nitric acid correlates with higher prices and that the per-MT price of 98 percent nitric acid was \$10,738 based on the 30 gallon price on the price list

and \$13,907 based on the 15 gallon price. Petitioners claim these prices are more representative of the Indian AUV the Department used as a surrogate value.

As for the contention that the prices on the price list are for “98+” percent nitric acid whereas Trust Chem’s supplier uses 96 to 98 percent nitric acid, petitioners state the normal range for lower concentration nitric acid is 30 to 70 percent, and assert the magnitude between 30 to 70 percent and 96 to 98 percent nitric acid is much different than the magnitude between 96 to 98 percent and “98+” percent nitric acid. Petitioners claim there is no evidence of exponential cost differences between 96 and 98+ percent nitric acid.

With respect to the argument that the price list reflects U.S. prices, petitioners contend this is not a reason to find these prices are not probative. Rather, petitioners maintain, these prices are probative of the general price for high purity nitric acid since this price list is available to global purchasers. Petitioners claim these prices are also probative of the price differences between high and low concentration nitric acid and the production and transportation costs reflected in high concentration nitric acid.

Regarding Trust Chem’s claims about quantity, petitioners assert that while quantity would affect price, the record does not contain any information regarding any cost differences resulting from transportation or quantity differences between the Indian imports and tanker truck quantities delivered to Trust Chem’s supplier. Petitioners also argue that while the nitric acid used by Trust Chem is shipped in tanker trucks, Trust Chem does not provide details on the type of tank used. *See* Petitioners’ October 24, 2011, rebuttal comments at 7, citing Trust Chem’s October 19, 2011 comments at 7. Petitioners claim specialized metal tanks are required to transport high purity nitric acid and this would likely increase the transportation costs of the nitric acid delivered to Trust Chem.

Department's Position:

The Department disagrees with Trust Chem and will address each of its arguments in turn. First, Trust Chem argues the Department's Draft Remand Results did not account for the large differences between the Indian AUVs and the other potential surrogate countries' AUVs and, contrary to record evidence, found the other countries' lower AUVs were insufficient to deem the WTA data aberrational. In *Trust Chem*, the Court found that since Trust Chem did not place adequate comparative data on the record, the Department's "decision not to place weight on the numerical differences between the WTA data and the *Chemical Weekly* data was not unreasonable." Thus, without comparative data to use as a metric, the Court found the magnitude between the WTA data and *Chemical Weekly* data was irrelevant.

Subsequent to the Court's ruling in *Trust Chem*, the Department placed historical WTA data regarding nitric acid imports from India and the other potential surrogate countries on the record. See the August 11, 2011, Memorandum at Attachments 1 and 2. Thus, the record now contains comparative data. However, the Department finds that merely looking at the numerical differences between the Indian AUVs and the AUVs for the other potential surrogate countries without considering other factors surrounding those price differences is an insufficient means for reasonably determining which data are more relevant. As we explained in our Draft Remand Results, we find the numerical differences between the data for India and the other countries which Trust Chem cited in its August 19, 2011, comments are likely due to price variations arising from differences in concentration levels. In making this determination, the Department relied on information on the record. First, the record indicates nitric acid is produced at varying concentration levels and different concentration levels are used for different purposes. See Petitioners' May 17, 2010, letter at 1-2 and Petitioners' August 19, 2011, comments at

Attachment B, statement of John Dickson. Second, the record indicates the cost of producing higher concentration nitric acid is significantly higher than the cost of manufacturing lower concentration nitric acid. High strength (*i.e.*, higher concentration) nitric acid is made by subjecting weak strength (*i.e.*, lower concentration) nitric acid to a second chemical process which concentrates the weak nitric acid. *See* Petitioners' May 17, 2010 letter at 1-2. The fact that higher concentration nitric acid must undergo a second chemical reaction signifies there are additional production costs involved. Third, information on the record indicates higher concentrations of nitric acid must be stored and transported using different, more stringent methods, leading to greater costs. *Id.* at 2; *see also* Petitioners' August 19, 2011, comments at Attachment B, statement of John Dickson and Exhibit 1. While we acknowledge the record does not contain specific information about the concentration level(s) of nitric acid imported into India and the other potential surrogate countries, we find that nitric acid is not produced and sold in a singular form, but, rather, is produced and sold at varying concentration levels depending on its intended use. As a result, we find that merely looking at the numerical differences between the Indian and other countries' AUVs is insufficient to make a determination that the Indian WTA data are aberrational.

Second, Trust Chem argues the Department has speculated that high AUVs reflect high concentration nitric acid and low AUVs reflect lower concentration nitric acid. Trust Chem also argues the Department has speculated that the larger volume of imports into Peru, the Philippines, and Indonesia was likely made up of lower concentrations of nitric acid and the Indian AUV appears consistent with the higher price range one would anticipate for 98 percent nitric acid. As discussed above, the record indicates that higher concentration nitric acid inherently bears more costs due to the second chemical process that must be performed to

manufacture higher concentration nitric acid, as well as the more rigorous storage and transport requirements. We note information regarding these facts was placed on the record in May 2010, and Trust Chem has never rebutted this information. As for the conclusions that Peruvian, Philippine, and Indonesian imports were likely of lower concentration nitric acid and the Indian AUV appeared consistent with the higher price range for 98 percent nitric acid, the Department based these findings on the monthly import data the petitioners placed on the record as part of their rebuttal comments. *See* Petitioners' August 23, 2011, rebuttal comments at 5 and Exhibit 2; *see also* the Draft Remand Results at 13-14. Therefore, we disagree with Trust Chem that we have not made these conclusions based on record evidence.

Third, Trust Chem argues the record lacks pricing data to properly determine the Indian WTA data are not aberrational. The information on the record, including the WTA data for the POR and the historical period the Department placed on the record and the monthly import quantities that petitioners placed on the record, is the best information available to the Department. As petitioners point out in their October 24, 2011, rebuttal comments, Trust Chem was free to place information on the record regarding nitric acid prices and concentration levels, but chose not to. Furthermore, we find Trust Chem's reference to its supplier using 96 to 98 percent nitric acid is somewhat confusing. While Trust Chem initially reported it used 96 percent nitric acid in its section D questionnaire response, all of Trust Chem's subsequent references to nitric acid were to 98 percent nitric acid. *See* Trust Chem's March 17, 2009, section D questionnaire response at Appendix D-9 (reporting it used 96 percent nitric acid) and Trust Chem's July 31, 2009, supplemental questionnaire response at 17 ("Longding dilutes nitric acid from 98% to 38% with water..."), at 24 ("The water used in diluting nitric acid from 98% to

38%...”), at Appendix S1-29 (reporting it used 98 percent nitric acid), and at Appendix S1-33 (reporting the water usage for diluting nitric acid from 98 to 38 percent).

Lastly, we disagree with Trust Chem’s assertions regarding the price list data. As an initial matter, we note the Department has not used the price list to determine the surrogate value for nitric acid. Instead, we relied on the price list in looking at the correlation between price and concentration levels. *See* the Draft Remand Determination at 13 (stating the price list “illustrates that higher concentration nitric acid, particularly 98 percent nitric acid, sells for prices that are notably higher than those for lower concentration nitric acid”).

With respect to Trust Chem’s claim that 96 to 98 percent and “98+” percent are not comparable, we agree with petitioners that Trust Chem has taken the reference to exponential cost differences out of context. As noted above, with the exception of its initial questionnaire response, all of Trust Chem’s references to nitric acid were to 98 percent nitric acid. Even if Trust Chem’s supplier did use 96 percent nitric acid, any cost difference between 96 to 98 percent nitric acid and “98+” percent nitric acid would be relatively small compared to cost differences between lower concentration nitric acid (*e.g.*, 30 to 70 percent) and 96 to 98 percent or “98+” percent nitric acid, because the latter would have had to undergo a second chemical process. *See* Petitioners’ May 17, 2010, letter at 1-2.

Regarding Trust Chem’s argument that the price list reflects contemporaneous U.S. prices, we emphasize once again that we have not used these prices to derive a surrogate value for nitric acid. As for Trust Chem’s claim that it was hypocritical for the Department to use the price list to conclude the Indian WTA data are not aberrational when we rejected U.S. import data for that same purpose in the *Final Results*, we stress that we did not use the price list to determine whether the WTA data were aberrational. Rather, we considered the price list data as

a measure of how the concentration level of nitric acid reflects price.<sup>10</sup> See the Draft Remand Determination at 13 (stating “the per-MT price of 98 percent nitric acid is \$10,738 (based on the 30 gallon price quoted in the price list) and \$13,907 (based on the 15 gallon price)” and noting that “we have considered {these prices} as a measure of how the concentration level of nitric acid affects price”); see also Memorandum from Deborah Scott to the File, “Carbazole Violet Pigment 23 from The People’s Republic of China; Prices for Lower Concentration Nitric Acid Based on the Price List,” dated November 15, 2011 (showing that, based on the price list, the price for 5 percent solution nitric acid is \$585 per MT and the price for 5 percent solution reagent grade nitric acid is \$1,288 per MT<sup>11</sup>).

With respect to Trust Chem’s allegations regarding quantity, we recognize that Trust Chem’s supplier purchased nitric acid in metric tons and not in gallon increments. However, while we acknowledge that quantity can affect the unit price for nitric acid, the relevant issue is how cost factors specific to concentration levels affect the final price of the nitric acid. There is nothing on the record to indicate that the relationship between quantity and price changes the effects of those factors. Accordingly, Trust Chem’s argument that its supplier purchased “tanker truckload quantities” is less relevant to how quantity affects price than to the issue of how transportation of highly concentrated nitric acid drives costs. While the record does not contain any information about the type of tank used to deliver the nitric acid to Trust Chem’s supplier, evidence from both the review and remand proceedings is clear that high concentration nitric acid has more stringent transportation requirements, resulting in higher costs for the nitric acid

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<sup>10</sup> We could not use the U.S. import data on the record for this purpose because they do not specify prices by concentration level.

<sup>11</sup> We did not calculate the per-MT price for 65, 70, and 90 percent nitric acid based on the prices in the price list because those prices are for 2.5 liter volumes and hence do not represent prices for commercial quantities.

transported to Trust Chem's supplier. While the specific effects of quantity and high concentration are not directly quantifiable based on the record in this proceeding, Trust Chem has not produced evidence to suggest that large purchase quantities negate the higher costs related to high concentration nitric acid. Finally, as for Trust Chem's reference to the Department's refusal to use prices from the *Aldrich Handbook* in the original investigation, we note the issue during that segment of the proceeding was whether to use the *Aldrich Handbook* as a source for a surrogate value for a particular input. See *Final Determination*, and accompanying Issues and Decision Memorandum at Comment 4. In the instant case we have not used the price list to derive a surrogate value for nitric acid, but to look at how the concentration level of nitric acid affects price. Moreover, in contrast to the prices in the *Aldrich Handbook*, which the Department stated were "not based on commercial quantities,"<sup>12</sup> we find that a 30 gallon quantity could potentially be used for industrial purposes. *Id.*

### **Results of Redetermination**

For the reasons stated above, the Department has not made any changes to its Draft Remand Results. Thus, the Department continues to find the WTA Indian import data for the POR constitute the best information available to value the nitric acid used by Trust Chem's supplier to produce CVP 23 in this proceeding. As a result, Trust Chem's margin continues to be 30.72 percent. If the Court approves these results of redetermination, the Department will instruct U.S. Customs and Border Protection (CBP) to liquidate appropriate entries for the period

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<sup>12</sup> The *Aldrich Handbook* cited prices for 250 or 500 milliliter bottles.

December 1, 2007, through November 30, 2008. We will issue liquidation instructions directly to CBP.

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

11/17/2011  
\_\_\_\_\_  
Date