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A-570-853
Second Administrative Review
POR: 07/06/01 - 06/30/02
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MEMORANDUM

DATE: August 7, 2003

TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary, Group I
Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Bulk Aspirin from the People's Republic of China for the period July 1, 2001 through June 30, 2002

SUMMARY

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

Comment 1: Use of Import Prices Versus Domestic Prices in India to Value Phenol
Comment 2: Adjustment of Overhead and SG&A Ratios to Account for Different Levels of Integration

Comment 3: Removal of Excise Tax from Alta's Reported Material Costs for the Calculation of Overhead and SG&A Ratios

Comment 4: Other Adjustment to the Overhead and SG&A Ratios

BACKGROUND

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

This administrative review was requested by the petitioner, and the respondents, Shandong and Jilin. The period of review ("POR") is July 1, 2001 through June 30, 2002. We published the preliminary results of the review on April 9, 2003. See Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 17343 (April 9, 2003) ("Preliminary Results"). We invited parties to comment on our preliminary results. We received case briefs from the petitioner and Jilin on May 9, 2003, and rebuttal briefs from Jilin and Shandong on May 16, 2003.

DISCUSSION OF ISSUES

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

In the Preliminary Results, the Department used import prices in India to value phenol. Because the phenol procured by Indian producers would most likely be the "precise grade and quality of phenol (or any other production factor) used by Jilin or Shandong," the petitioner argues that the Department should not use import prices to value phenol and instead should rely on the average purchase price of the Indian surrogate companies to value this input. Citing Creatine Monohydrate from the People's Republic of China: Final Results of Antidumping Duty Review, 67 FR 10892 (March 11, 2002) ("Creatine") and Notice of Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Romania, 61 FR 24274, 24279 (May 14, 1996) ("Pipe from Romania"), the petitioner states that in previous cases the Department has deferred to domestic data over import data on the basis that the domestic data more closely reflect the purchasing practices of producers who source their inputs locally. According to the petitioner, there is no evidence to suggest that an Indian producer of aspirin would purchase imported phenol. Since, in the petitioner's estimation, the average unit costs for phenol purchased by the Indian surrogate companies Andhra Sugar ("Andhra") or Alta Industries ("Alta") provide "conservative, reliable estimates of the value of phenol" these values should be used to value phenol for the final results.

The petitioner also argues that the import statistics compiled by the Monthly Statistics of the Foreign Trade of India: Volume II - Imports ("MSFTI") are for varying grades and purity levels of phenol. Specifically, the petitioner points to varying average unit values for imports of phenol from different countries to illustrate that the imports are of varying purity levels. In contrast, the petitioner claims that the average value of purchases of phenol by the Indian surrogate companies "is precisely the average price for phenol used to produce salicylic acid." See petitioner's case brief at 5. Citing Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Review, 64 FR 69503, 69505 (Dec. 13, 1999), Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 65 FR 18968, 18971 (April 10, 2000), and Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Review, 66 FR 18439 (April 9, 2001), the petitioner asserts that the Department found that Indian Chemical Weekly ("ICW") domestic prices are for 100 percent pure products. In contrast, the import statistics compiled by MSFTI are for chemicals of various purity levels. Because of the uncertainty of the chemical content of the imported product, the petitioner argues that the costs reported in the Indian surrogate companies' financial statements are more accurate and should be used as surrogate values in this review. The petitioner asserts that domestic prices should also be used because "{t}he Department has recognized the importance of using surrogate values that reflect the same purity levels as those used by the respondent." See petitioner's case brief at 6 and Potassium Permanganate From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 66 FR 46775 (September 7, 2001) and accompanying Issues and Decision Memorandum at Comment 18.

Furthermore, the petitioner contends that the calculation of normal value is distorted by the use of import statistics to value surrogate values because the surrogate overhead, SG&A and profit rates are expressed as a percentage of materials, labor and energy costs ("MLE"). According to the petitioner, these lower overhead, SG&A and profit ratios result from the fact that the Indian surrogate companies purchase most of their raw materials in the domestic market where raw material costs are higher. That is, the ratio of overhead to MLE will be lower for a company that incurs higher material costs. The petitioner argues that mixing raw material values from one source (e.g., import statistics) with overhead, SG&A and profit rates from another source causes a substantial impact on the final results and does not accurately reflect the experience of producers in developing countries.

The petitioner also asserts that the Department should not reject domestic prices on the grounds that high Indian tariffs might distort domestic prices. The petitioner argues that if the Department determines that high tariffs distort raw material costs, then it must logically conclude that high tariffs similarly distort the entire Indian economy. However, the petitioner asserts that there is no evidence that tariffs distort domestic prices. Instead, the petitioner contends that the relatively low import price indicates that only the lowest-priced products are imported. Comparing the prices of phenol paid by the Indian surrogate companies (as derived from their financial statements) to the MSFTI import statistics, the petitioner concludes that it is more likely that the import statistics include technical grade phenol than that domestic prices are distorted by tariffs. The petitioner also points to the individual import statistics, which have varying average unit values, and the explanatory notes in the Harmonized Tariff Schedule

("HTS"), which indicate that HTS number 2907.11 is for phenol with "a purity of 90 percent or more by weight" in a solution of water or another normal solvent, in support of the argument that the import statistics are more likely to represent the price of technical grade phenol, rather than chemically pure or USP (pharmaceutical grade) phenol.

The petitioner argues that the assumption that tariffs of only 25 percent distort domestic prices is inconsistent with other cases, such as Sulfanilic Acid from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 65 FR 13366 (March 13, 2000), Potassium Permanganate from the PRC: Preliminary Results of Antidumping Duty New Shipper Review, 67 FR 303, 306 (January 3, 2002), and Notice of Preliminary Results of New Shipper Antidumping Administrative Review: Glycine From the People's Republic of China, 65 FR 54211 (September 7, 2000) (as affirmed in the final, Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review, 66 FR 8383 (January 31, 2001)). Hence, the petitioner requests that the Department value phenol using domestic prices for the final results.

The respondents contend that the Department should continue to value phenol using MSFTI import statistics. Shandong argues that although MSFTI data for phenol may include imports of varying purity levels, it is preferable to domestic price data, which are inclusive of distorting taxes and duties. Jilin asserts that the petitioner's contention that domestic prices are more specific than import prices in terms of chemical purity is unsubstantiated. Even if, *in arguendo*, the import statistics represent phenol of less than 100 percent purity, Jilin argues that "the Department was well within the bounds of its discretion when it decided to use import prices for phenol in preference to domestic prices." See Jilin rebuttal brief at 4.

Jilin further argues that on numerous occasions the Department has used import prices after concluding that domestic prices are distorted by high tariffs. See Manganese Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12441, 12442 (March 13, 1998) ("Manganese Metal"); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953 (January 10, 2001) ("Tapered Roller Bearings"); Sulfanilic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 63 FR 63838 (November 17, 1998) ("Sulfanilic Acid"); Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964, 61986 (November 20, 1997) ("Carbon Steel Plate"). Jilin also cites to the CIT ruling in the aspirin investigation where the court noted that the use of import values is not a departure from prior Department practice. See Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343, 1351 (CIT 2001). Jilin notes that in previous cases the Department has rejected the use of individual price quotes from specific companies in favor of broader market averages. See Carbon Steel Plate, 61 FR 61964, 61981 (Nov. 20, 1997). Jilin also argues that the petitioner failed to demonstrate that the Department's use of MSFTI data to value phenol was an impermissible exercise of its discretion. Citing Nation Ford Chemical Co. v. United States, 166

F.3d 1373, 1376 (Fed. Cir. 1999) (citing Lasko Metal Prods, Inc. v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994)) and Magnesium Corp. of Am. v. United States, 166 F.3d 1634, 1371 (Fed. Cir. 1999), Jilin argues that the Court of Appeals for the Federal Circuit (CAFC) has acknowledged that section 773(c)(1) of the Act "accords Commerce wide discretion in the valuation of factors of production." Moreover, Jilin argues that the statute does not restrict the Department "to using only domestic prices to value factors of production, just because the non-market economy ("NME") respondent procures the valued material domestically or because the Department uses domestic prices to value other materials." See Jilin's rebuttal brief at 3.
Therefore, Jilin states that because the petitioner has failed to demonstrate that the Department's exercise of discretion in using import statistics was unreasonable, the Department should continue to use import statistics to value phenol.

Finally, Jilin argues that the petitioner's speculations that the Department's mixing of import and domestic prices somehow distorts the overhead, SG&A and profit ratios are unsubstantiated and thus should be disregarded by the Department. Similarly, Jilin contends that the petitioner's claims that import statistics reflect widely differing products that cannot be used for aspirin production are unsubstantiated and should be rejected.

Shandong asserts that although it is the Department's preference to use domestic prices, in instances where the Department cannot be certain that all taxes and duties have been removed from the domestic prices, import prices are used. See Manganese Metal, at 12442, and Bulk Aspirin from the People's Republic of China; Final Results of the Antidumping Duty Review 68 FR 6710 (Feb. 10, 2003) ("First Aspirin Review") and accompanying Issues and Decision Memorandum at Comment 1. Since there is no record evidence as to whether the Indian surrogate companies purchase domestic or imported phenol, Shandong argues that the petitioner cannot reasonably reach conclusions regarding the disparity between import and domestic prices. All that is clear, according to Shandong, is that the Indian surrogate producers are paying an inflated price for phenol, which arguably could be the result of the distorting effects of the high Indian tariffs and taxes.

Moreover, Shandong states that the petitioner's analysis ignores the Department's preference for contemporaneous data since the MSTFI data are clearly contemporaneous, but the Indian surrogate producers' data only overlap with a portion of the POR. Consequently, Shandong argues that the Department should continue to use MSFTI data as it did in the Preliminary Results, since this represents the "best available information" in accordance with section 773(c)(1) of the Act.

Department's Position: We have continued to value phenol using MSFTI import prices in this review. As explained in the April 2, 2003 Factors of Production Valuation for the Preliminary Results memorandum, we took into account several considerations in deciding between domestic and import values. First, we were concerned that we were not able to remove the effective duties and taxes from domestic prices. Second, there were purity and concentration issues. For many of the chemical inputs, the import statistics covered wide ranges of purities and concentrations. Third, we sought to avoid

using domestic prices when they were distorted by virtue of high tariffs. Although the petitioner has correctly pointed to the possibility that the import statistics for phenol may include concentration levels as low as 90 percent, we have concluded that any increase in accuracy that might be achieved by using a domestic price in India is outweighed by the distortion to Indian domestic prices caused by protective tariffs.

The petitioner claims that the 25 percent tariff on phenol during the POR was not distortive. However, the petitioner has not included the additional **10 percent** safeguard duty that was also in effect during the POR. **Moreover, the petitioner contends that the difference between the import value and the domestic price for phenol (as calculated from the Indian surrogate producers' financial statements or ICW) is due to the range of concentration levels reflected in the import statistics. However, the difference very closely approximates the level of duties which indicates that any difference in price is due to duties and not purity levels. Therefore, because of the high tariff and the impact it appears to have on the domestic price in India for phenol, we are using the import price.**

This is consistent with our valuation of phenol in the original investigation and the first administrative review of this order. Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000); First Aspirin Review, 68 FR 6710 (Feb. 10, 2003). As Jilin has pointed out, it is longstanding Department practice to reject domestic prices that are distorted by reason of high tariffs. This practice has been upheld by the CAFC. Nation Ford Chem. Co. v. United States, 166 F.3d. 1373, 1377 (Fed. Cir. 1999).

Further, we acknowledge the Creatine and Pipe from Romania precedents cited by the petitioner. In both cases, the Department used domestic prices to value inputs based on the circumstances of those cases. However, neither of those cases gave rise to concerns about the distortive effects of tariffs on domestic prices. Specifically, the Department found in Creatine that the domestic prices were not distorted by reason of high tariffs. In Pipe from Romania, the domestic prices that were used were compared to import values and found to approximate them, indicating no distortion.

While the petitioner is correct that the Department seeks to use surrogate values for the same purity levels, we will balance this preference against other considerations, such as tariff levels. We acknowledge that the MSFTI import statistics for the HTS subheading 2907.11 include phenol in concentration of 90 percent or more. However, we do not find this concentration range to be so broad that it renders Indian import prices unuseable. Furthermore, MSFTI data are contemporaneous with the POR.

Finally, we disagree with the petitioner's assertion that the use of import statistics as surrogate input values distorts the amounts calculated for overhead, SG&A and profit. As stated in the preamble to the Department's Proposed Rulemaking, the Department "is not required to use 'perfectly conforming information' for factor valuations." Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 Fed. Reg. 7308, 7344 (Feb. 27, 1996). This

proposition was supported by the CIT in its ruling in Rhodia II. Additionally, to make a meaningful adjustment to the overhead, SG&A and profit ratios to mirror the Indian producers' experiences, we would need to break out phenol from the raw material costs in the financial statements, which the data do not permit.

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

The petitioner argues that none of the Indian producers proposed as surrogates is as integrated as the PRC respondents. Since the respondents' production of acetic anhydride and salicylic acid is for captive production, rather than resale, the petitioner claims that the respondents' activity and structure more closely resemble Rhodia or Bayer, than the Indian producers. Furthermore, the petitioner alleges that the gap between the overhead costs of integrated producers such as Rhodia and Bayer and the Indian surrogate companies "is exacerbated by the fact that the surrogates do not duplicate the production steps employed by Jilin and Shandong." See petitioner's case brief at 12. Consequently, the petitioner claims, the surrogate factory overhead ratio should be adjusted.

To support its assertion that Alta, the Indian producer, is not fully comparable to Jilin or Shandong, the petitioner argues that while the PRC respondents produce acetic anhydride as well as aspirin, Alta does not. Rather, Alta primarily produces salicylic acid and does not produce acetic anhydride. Consequently, the petitioner claims that Alta's overhead ratio "cannot fully capture the capital costs and other overhead associated with self-production of acetic anhydride." See petitioner's case brief at 12. According to the petitioner, because Alta purchases its acetic anhydride, the overhead costs are imbedded in the price Alta pays, whereas Shandong and Jilin incur overhead costs associated with the production of acetic anhydride. Therefore, the petitioner reasons that the application of Alta's overhead rate to the MLE costs of Shandong and Jilin understates the overhead costs incurred by the respondents. The petitioner also asserts that there is no evidence on the record in this review to suggest that Alta produced aspirin during the POR. Even if Alta did produce some aspirin, the petitioner argues that the company is primarily a producer of intermediate chemicals, and as such should not be used as a surrogate for fully-integrated pharmaceutical manufacturers.

The petitioner argues that the legislative history of the factor of production methodology directs the Department to rely upon surrogates with a similar level of technology to the NME producers under investigation. See Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 100-576 at 590-91 (April 20, 1988). According to the petitioner, recent determinations by the Department dictate that where differences exist between the respondents and the surrogate producers, the Department will make adjustments to reflect the differences. Citing **Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, 67 FR 35479 (May 2, 2002) and accompanying** Issues and Decision Memorandum at Comment 2 ("Structural Beams"), and Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from The People's Republic of China, 66 FR 49632 (September 28, 2001) and accompanying Issues and

Decision Memorandum ("Hot-Rolled Steel"), the petitioner argues that the Department must make adjustments when using a surrogate with a different level of integration than the respondents. To remedy the alleged gap in overhead costs incurred by the respondents and Alta, the petitioner suggests that since another Indian producer, Andhra Sugars, produces acetic anhydride, it would be appropriate for the Department to apply Andhra's overhead ratio to the materials cost for producing acetic anhydride.

Jilin and Shandong respond that Alta's overhead and SG&A expenses are representative of the PRC producers' experiences, as affirmed by the CIT in its decision regarding the Department's Redetermination Pursuant to Court Remand: Rhodia v. United States (March 29, 2002) ("Remand Decision"). See Rhodia, Inc. v. United States, 240 F. Supp. 2d. 1247 (CIT 2002) ("Rhodia II"). The respondents contend that according to Rhodia II, "{u}nless there is substantial evidence in the record which supports a finding that the surrogate producers are less integrated that (sic) the PRC producers, and as a result have a lower overhead ratio, Commerce cannot depart from its standard practice." Rhodia II 240 F. Supp. 2d at 1250. The respondents argue that there is no evidence on the record that would demonstrate that, because Alta does not produce acetic anhydride it is less integrated than the respondents. Furthermore, the respondents contend that there is no evidence in this review to indicate that Alta did not produce aspirin during the POR. In fact, Shandong points to Exhibit 1 of the petitioner's brief, which states that Alta produces aspirin. Therefore, the respondents contend that, in accordance with Rhodia II, as a salicylic acid and aspirin producer, Alta's production is comparable to that of the respondents.

Shandong also argues that in the CIT's affirmation of the Department's Remand Decision, it was recognized that "once Commerce establishes that the surrogate produces identical or comparable merchandise, closely approximating the nonmarket economy producer's experience, Commerce merely uses the surrogate producer's data. 19 U.S.C. § 1677b(c)(4) (2000); 19 C.F.R. § 351.408(c)(4) (2001)." See Rhodia II. Shandong also states that the cases cited by the petitioner are easily distinguishable from the present review, and that the Department has already found that the facts of those proceedings are not applicable to the current review. Finally, the respondents argue that there is no information on the record to indicate that the further processing by the Indian surrogates to produce salicylic acid derivatives is not commensurate with the additional stages of production used by the respondents to produce aspirin. Therefore, the respondents argue that the Department should continue to calculate overhead and SG&A ratios as was done in the Remand Decision, the first administrative review, and the Preliminary Results.

Department's Position: We have reviewed the record evidence regarding the three Indian producers, Alta, Andhra, and Gujarat, and continue to find that Alta's data is the best available information for calculating the surrogate factory overhead and SG&A ratios.[1] Based on its financial statement, Alta

[1] We have not used Alta's profit because Alta operated at a loss in this period. Therefore, we have relied on the profit experiences of Gujarat and Andhra. This is consistent with the Department's

clearly produces salicylic acid and salicylic acid derivatives, and it produces aspirin. (The evidence regarding Alta's aspirin production is discussed further below.) Andhra produces acetic anhydride (the second major input into aspirin) and aspirin, but Andhra's major products are sugar, caustic soda, and energy. Aspirin accounts for only 1.5 percent of the total value of Andhra's sales in fiscal year 2001-2002. Therefore, its data are less representative of the capital costs of aspirin production. Gujarat produces methyl salicylate, but does not produce aspirin. Therefore, we believe that Alta's data are preferred to Gujarat's because of Alta's position as an aspirin producer.

We acknowledge that there is no direct evidence on the record that Alta produced aspirin during the period covered by its financial statements, the 2000-2001 fiscal year. However, the company's financial statements at page 5 indicate that Alta sold aspirin during that period. Moreover, there is no evidence that Alta acted as a reseller of aspirin in this period. We also note that Alta produced aspirin in the prior fiscal year (petitioner's case brief at Exhibit 1) and the company's website indicates that it currently produces aspirin. See http://www.altaind.com/product3.html. (A printout of Alta's website is appended to our final factors valuation memo.) Thus, the evidence supports the conclusion that Alta has been and continues to be an aspirin producer. Consequently, of the three Indian companies for which we have data, we continue to find that Alta is most similar to the PRC producers because it produces both aspirin and one of the major inputs into aspirin, salicylic acid.

We further acknowledge that Alta is not identical to the PRC producers under review because it does not produce the other major input into aspirin, acetic anhydride. However, as we explained in the Remand Decision and the first administrative review of this order, the Department's practice has been that a surrogate producer need not be a replica of the NME producers under review. (See Remand Decision at Comment 1 and First Aspirin Review Issues and Decision Memorandum at Comment 2.) In upholding the Remand Decision, the court in Rhodia II stated:

> Commerce does not generally adjust the surrogate values used in the calculation of factory overhead. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 61 FR 14057, 14060 (Mar. 29, 1996); Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706, 25706-07 (May 3, 2000); Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 64 FR 31143, 31143 (May 16, 2000); Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China, 62 FR 51410, 51413, 51417 (Oct. 1, 1997). Rather, once Commerce establishes that the surrogate produces identical or comparable merchandise,

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practice as affirmed by the CIT. See Rhodia II, 240 F. Supp. 2 1247 (CIT 2002).

> closely approximating the nonmarket producer's experience, Commerce merely uses the surrogate producer's data. 19 U.S.C. § 1677(c)(4) (2000); 19 C.F.R. § 351.408(c)(4) (2001). Furthermore, Commerce is neither required to 'duplicate the exact production experience of the Chinese manufacturers,' Nation Ford Chem. Co. v. United States, 166 F.3d. 1373, 1377 (Fed. Cir. 1999), nor undergo 'an item-by-item analysis in calculating factory overhead.' Magnesium Corp. of Am. v. United States, 166 F. 3d. 1364, 1372 (Fed. Cir. 1999). Moreover, Commerce need not use 'perfectly conforming information,' only comparable information. Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 Fed. Reg. 7308, 7344 (Feb. 27, 1996).

See Rhodia II, 240 F. Supp. 2d. 1247, 1250-1251 (CIT 2002). Moreover, it has been our experience that it is almost always not possible to achieve exact symmetry between the NME producer and the surrogate producer.

The petitioner has pointed to certain cases where the Department has adjusted its calculations to reflect differences in the extent of the production activity undertaken by the surrogate producer(s) and the NME producers. In Hot-Rolled Steel, the NME respondents self-produced some or all of their energy inputs, whereas the surrogate producer did not. Therefore, the Department found that "by applying a financial ratio which included in its denominator fully loaded energy costs to factors which contain a small portion, if any, of respondents' energy costs, the Department would be understating normal value." See Hot-Rolled Steel, 66 FR 49632 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 2. The Department based its conclusion on the fact that the self generation of the energy inputs in question (i.e., electricity, argon, oxygen, and nitrogen) was a heavily capital intensive process and that the facilities dedicated to the production of those energy inputs were not insubstantial. Similarly, in Structural Beams the Department found that the respondent self-produced argon, oxygen and nitrogen, while the surrogate producer did not. Following on the precedent set in Hot-Rolled Steel, the Department again adjusted normal value. See Structural Beams, 67 FR 35479 (May 2, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

We do not find that the differences between Alta and the PRC aspirin producers are nearly so great as those identified (and addressed) in Hot-Rolled Steel and Structural Beams. **First, there is no evidence to suggest that self production of acetic anhydride is a heavily capital intensive process.[2] In contrast, in Hot-Rolled Steel which relied on the determination reached in Structural Beams, the Department had evidence on the record demonstrating that the production of the inputs in question was a heavily capital**

[2] As noted above, of the Indians companies whose data are on the record, only Andhra produces acetic anhydride. Given the relative unimportance of acetic anhydride to Andhra's overall production and sales, there is no way to isolate capital costs associated with this product.

intensive process. See Hot-Rolled Steel, 66 FR 49632 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 2. Second, unlike Hot-Rolled Steel where the NME producers' factors contained a "small portion, if any" of their energy costs, the NME producers' reported factors of production in this proceeding include all of the material inputs for acetic anhydride. Id. Thus, the overhead ratio is being applied to significant input factors. Third, the input in question in this proceeding is acetic anhydride, a chemical like salicylic acid or aspirin, which Alta produces. Because of the similarity of acetic anhydride to the products produced by Alta, we cannot say that additional capital costs would be incurred by Alta if it also produced acetic anhydride. This situation can be distinguished from that in the proceedings cited by the petitioner where the major product being produced was steel and where the self-produced inputs were energy related, i.e., electricity and gases, and, consequently, different (and additional) capital costs would be incurred to produce the self-produced inputs.

As explained above, we have selected the Indian producer that is most similar to the PRC producers' experience in producing aspirin. If we had information for an Indian company that produced acetic anhydride, salicylic acid and aspirin, we would attempt to use that information. However, we do not have such information. Nor do we have a basis, beyond the petitioner's speculation, for concluding that the Alta's overhead ratio understates the overhead that would be incurred if Alta also produced acetic anhydride.

Nevertheless, we have examined carefully the adjustment proposed by the petitioner to address the alleged understatement, i.e., using Andhra's overhead ratio to calculate the overhead rate for acetic anhydride. We do not believe it is appropriate here. First, as explained above, Andhra's principal businesses are sugar, caustic soda, and energy. Acetic anhydride accounts for only 1.3 percent of Andhra's sales. Therefore, we cannot agree that Andhra's overhead is a better measure of the overhead that would be incurred to produce acetic anhydride than that of Alta, a chemical producer. Second, while the petitioner has put forward a theoretical argument that Alta's overhead ratio results in understating the overhead needed to produce aspirin, there is no factual information showing the extent of the understatement (if any). As noted above, the petitioner's construct assumes that additional overhead would be incurred if Alta were to change its product mix by also producing acetic anhydride, but there is no evidence indicating that any additional overhead would approximate the level incurred by Andhra. Finally, even if the Department were to make the requested adjustment, the difference between the two overhead rates is not sufficient to have an effect on the outcome of this review.

Finally, the petitioner has suggested that Alta's financial data are not appropriate because the overhead experience of Rhodia and Bayer is much more similar to the PRC producers than that of Alta. Section 773(c)(4) directs the Department to value factors of production in a country that is economically comparable to the NME. For the reasons explained above, we have concluded that Alta's data are adequate for valuing overhead and SG&A. Therefore, we have no reason to leave India as our surrogate country. Moreover, it is understandable that overhead ratios would be lower in lower wage countries if labor can be substituted for capital in the production process.

Comment 3: Removal of Excise Tax from Alta's Reported Material Costs for the Calculation of Overhead and SG&A Ratios

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

The respondents counter that the language in Alta's financial statements is at best unclear, but does not clearly indicate that excise taxes were included in the reported material costs. Accordingly, the respondents believe that there is no basis for adjusting Alta's reported material costs for excise taxes.

Department's Position: The petitioner relies upon a footnote in Alta's financial statements to make the argument that excise taxes were included in raw material costs. The footnote states that "The cost of Raw/Packing Material is determined on First In First out basis after taking full credit of duty on eligible inputs in accordance with Central Excise Rules 1944." Alta's 2001-2002 fiscal year financial report at 21 in Jilin's March 13, 2003 submission. We do not read this footnote as indicating that excise taxes were included in the company's reported material costs. Therefore, we are not adjusting Alta's reported material costs.

Comment 4: Ministerial Error in the Overhead and SG&A Ratio for Alta

Jilin argues in its case brief that a ministerial error was made in the calculation of the total material, labor and energy used in the denominator for calculating of the overhead and SG&A ratios for Alta. Specifically, Jilin stated that the Department incorrectly entered a figure for "power and fuel" in the calculation worksheet.

The petitioner and Shandong did not comment on this issue.

Department's Decision: We agree with Jilin and have corrected the calculation for the final results.

RECOMMENDATION

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

AGREE ____ DISAGREE ____

_____
James J. Jochum
Assistant Secretary
for Import Administration

_____
(Date)