69 FR 34130, June 18, 2004

A-570-887
Investigation
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MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Less Than Fair Value Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China: October 1, 2002 through March 31, 2003

SUMMARY:

We have analyzed the case briefs of Penn Specialty Chemicals, Inc. ("the petitioner") and of Qingdao Wenkem Trading Co., Ltd., ("QWTC"), ("the respondent") and the rebuttal brief of the petitioner in the less than fair value investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes from the Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China, 69 FR 3887 (January 27, 2004) ("Preliminary Determination"). The specific calculation changes for the above-referenced investigation can be found in Analysis for the Final Determination of Tetrahydrofurfuryl Alcohol from the People's Republic of China, (June 10, 2004) ("Final Analysis Memo"). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this investigation:

I. General Comments

Comment 7: Furfural Value
Comment 8: Values for Dregs and Residue
Comment 9: Value for Hydrogen
Comment 10: Packing Value

BACKGROUND:

The merchandise covered in the investigation is tetrahydrofurfuryl alcohol ("THFA") as described in the "Scope of the Investigation" section of the Federal Register initiation notice. See 68 FR 42686 (July 18, 2003). The period of investigation ("POI") is October 1, 2002, through March 31, 2003. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Determination. From February 9 through February 12, 2004, the Department conducted a factors of production verification at the production facilities of Zhucheng Huaxiang Chemical Co., Ltd. ("ZHC") and on February 13, 2004, the Department conducted a sales verification at the offices of the exporter, Qingdao Wenkem (F.T.Z.) Trading Co., Ltd. ("QWTC"). See Verification of Factors of Production for Zhucheng Huaxiang Chemical Co., Ltd. and for the Sales of Qingdao Wenkem (F.T.Z.) Trading Co., Ltd. in the Antidumping Duty Investigation of THFA from the People's Republic of China (March 10, 2004) ("Verification Report").

On March 9, 2004, the Department of Commerce ("Department") released to the interested parties for comment an analysis memorandum with an attached calculation sheet and a factor valuation memorandum for the Department's post-preliminary calculation. See Memorandum to the File from Peter Mueller, Case Analyst, through Robert Bolling, Program Manager: Analysis for the Post-preliminary Calculation of Tetrahydrofurfuryl Alcohol from the People's Republic of China, Qingdao Wenkem (F.T.Z.) Trading Co., Ltd., and attached calculation sheet, (March 9, 2004), ("Post-Prelim Analysis Memo"), and Memorandum to the File from Peter Mueller, Case Analyst, through Edward C. Yang, Office Director: Post-Preliminary Calculation, Factors Valuation Memorandum (March 9, 2004) ("Post-Prelim Factors Memo"), (collectively, "Post-Prelim Calculation").

On March 19, 2004, the respondent filed comments concerning the Post-Prelim Calculation. On March 23, 2004, the petitioner filed comments concerning publicly available information to value factors of production.

On April 5, 2004, the petitioner and the respondent submitted case briefs with respect to the sales and factors of production verification and the Department's Preliminary Determination. On April 7, 2004, the Department rejected both the petitioner's case brief and the respondent's case brief, concluding that the each contained new information that was untimely filed in accordance with section 351.301(b)(1) of the Department's regulations. On April 8, 2004, the petitioner submitted its revised case brief. On April 9, 2004, the respondent submitted its revised case brief.

On April 19, 2004, the petitioner filed a rebuttal brief. On April 22, 2004, the Department rejected the respondent's extension request and rebuttal brief and explained in its letter that the extension request

and the rebuttal brief were both improperly filed because the Department does not accept emails of documents as substitutes for officially and properly filing a document (i.e., the Department only accepts submissions that are officially filed with a date stamp and the time of receipt).

DISCUSSION OF THE ISSUES:

I. Changes from the Preliminary Determination

Based on the results of verification and the Post-Prelim Calculation, we have made revisions to the data used for the final determination. The changes to the margin calculation are listed below:

- We are beginning our normal value calculation at stage 2 in the production process (i.e., the furfural to furfuryl alcohol stage). We are using the furfural value from the Hyderabad, India Drugs Market for the last quarter of 2002 and the first quarter of 2003 as published in the Indian journal *Chemical Weekly*, because it represents the most complete and contemporaneous data available.

- We are applying facts available for the surrogate value for the supplier freight in transporting furfural from the supplier to ZHC.

- We are including the catalysts, consumed in stage 2 and stage 3, as direct material inputs in our normal value calculation.

- We are relying upon adverse facts available to estimate ZHC's consumption of the self-produced hydrogen, steam, electricity, and catalyst.

- We found that ZHC under-reported the amount of labor consumed in the furfuryl alcohol production stage. We adjusted the labor consumption amount in our normal value calculation to include this adjustment.

II. General Issues

Comment 1: The Use of Adverse Facts Available

The petitioner argues that the producer of the subject merchandise in this investigation, ZHC, did not provide the Department with critical information concerning factors of production, particularly concerning the multi-stage production process, and that therefore the respondent should receive the highest possible margin. The petitioner also argues that the respondent failed to provide an accurate account of the indirect inputs used to produce certain factor inputs consumed in the THFA production process, which warrants the uses of adverse facts available.

The petitioner argues that the input furfural, which is consumed as an intermediate input in the

production of THFA, was not reported to the Department correctly. Specifically, the petitioner points to the THFA consumption worksheets submitted by the respondent on February 4, 2004.[1] The petitioner argues that according to these worksheets, ZHC's total consumption of furfural does not match the total amount of furfural produced on-site by ZHC. Therefore, the petitioner contends that the respondent did not report a certain amount of furfural purchased from an outside supplier for the production of THFA. The petitioner points out that the respondent did not provide record evidence explaining how or why the amount of furfural consumption is different than the amount of furfural production at ZHC.

Additionally, the petitioner argues that the respondent failed to provide the data necessary to complete a multi-stage analysis of the factors of production. In particular, the petitioner argues that beginning a multi-stage analysis of the factors of production with the consumption of the corn cobs, or using alternative raw material inputs, such as sugarcane bagasse or rice/oat hulls, would be an inaccurate depiction of the factors of production consumed in the production of THFA. Therefore, the petitioner argues that the Department should apply to the respondent adverse facts available based on the fact that the respondent did not provide information concerning the discrepancy in the amount of furfural produced and consumed, did not provide a complete and accurate picture of the consumption of corn cobs and did not provide the Department with any information concerning its consumption of sugarcane bagasse or rice/oat hulls in the multi-stage production process of THFA, and due to the respondent's failure to provide sufficient data for the indirect inputs used to produce certain factor inputs consumed in the THFA production process.

The respondent did not address this issue.

Department's Position: The Department disagrees with the petitioner that the respondent should receive the highest possible margin and, in effect, receive total adverse facts available in the current investigation. The Department does, however, agree with the petitioner that the respondent failed to provide an accurate depiction of the amount of furfural purchased from outside suppliers and finds that facts available is warranted regarding freight charges incurred at ZHC for a certain amount of furfural transported to ZHC from outside suppliers. Additionally, the Department agrees that facts available, with an adverse inference, should be used due to the respondent's failure to provide sufficient data for the indirect inputs used to produce certain factor inputs consumed in the THFA production process.

According to section 776(a) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.308, the Department will use facts otherwise available in reaching a determination whenever: (1) necessary information is not available on the record, or (2) an interested party or any other person: (a) withholds information requested; or (b) fails to provide information requested in a timely manner and in the form required; or (c) significantly impedes a proceeding; or (d) provides information that cannot be verified.

After examining the administrative record thoroughly, we found that the record did provide evidence

[1] See QWTC's February 4, 2004 Response at Appendices D2-4-1 to D2-4-3.

that the respondent: (a) withheld information that the Department requested; and (b) provided information that could not be verified.

Facts Available for Withholding Information

In the Department's original Section D Questionnaire, the Department requested raw material amounts, the means of transport, and the distance each material traveled from the supplier to its factory for those inputs used in the manufacturing of one metric ton of THFA. See Section D Factors of Production Questionnaire, at D-4, dated August 29, 2003. In response, the respondent provided the raw material inputs consumed in the third stage of production only (i.e., the furfuryl alcohol to THFA stage), which did not include any consumption amounts for furfural.

In the Department's November 18, 2003 Supplemental D Questionnaire, the Department asked the respondent to explain whether it produced or purchased any furfural which was eventually used to produce THFA and to provide the ratio of furfural produced on-site to furfural purchased from an outside supplier. In its December 3, 2004 Supplemental Section D Response, QWTC stated that ZHC produces furfural on-site. As a second part to the question, the Department requested that if furfural was purchased from an outside supplier, to provide the name of the supplier and supporting documentation showing the terms of the purchase(s). In response, the respondent did not provide information concerning any external supplier(s), nor did it provide documentation showing terms of any purchase(s) of furfural.

On February 4, 2004, the respondent filed a response which reported the monthly consumption amounts of the inputs required to manufacture THFA during the POI. As a part of this response, the respondent reported its total on-site production of furfural and its consumption amount of furfural as an input into furfuryl alcohol production during the POI.

During the Department's February 9 through 12, 2004 factors of production verification at ZHC, the Department verified ZHC's total production of furfural, the size of the furfural holding tanks at ZHC, and the consumption of furfural as an input into furfuryl alcohol production. The Department did not, however, inquire about information concerning furfural purchased from an outside supplier, nor did the respondent volunteer such information.

Subsequent to verification, the furfural discrepancy in the respondent's reported factors of production data was pointed out by the petitioner based on information verified during the Department's verification. As stated previously, the Department verified both the production and consumption amounts of furfural at ZHC and furthermore verified the size of the furfural holding tanks. Taking into consideration these verified amounts, the Department finds that a certain amount of furfural was not manufactured and/or stored on-site at ZHC and must have been purchased from an outside party. This conclusion is further supported by the respondent's own statement in its case brief, where it noted that, "furfural is delivered in bulk...to the respondent." See respondent's case brief, dated April 9, 2004.

When the Department decides to resort to facts available, it must determine the most appropriate information to form the basis for the dumping margin calculation. While the Department is always concerned about such discrepancies, we did not identify any attempt by the respondent to purposely mislead the Department or to distort information on the record, nor does the record indicate that respondent did not cooperate to the best of its ability or that the respondent impeded the investigation. Further, since the Department did not inquire at the factors of production verification about the purchase of furfural from an outside supplier, nor ask follow-up questions after its November 18, 2003 Supplemental D Questionnaire, the Department determines that the record does not support the use of total adverse facts available.

However, the record evidence does indicate that a certain amount of furfural was purchased from outside suppliers. Therefore, we have determined to apply facts available for the supplier freight in transporting the furfural from the supplier to ZHC in an amount reflective of the minium of: (1) the distance between the non-market economy ("NME") producer and the closest port; or (2) the distance between the NME producer and its supplier, or the weighted-average distance if there are multiple suppliers. See Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China, 62 FR 51410, 51413 (October 1, 1997). Because the distance from the outside supplier of furfural is not part of the record, we have chosen the distance between the NME producer and the closet port for the supplier freight amount.

Adverse Facts Available for Unverified Information

The Department agrees with the petitioner that the respondent failed to provide the data necessary to complete an analysis of the indirect inputs consumed in producing certain factors of production.

In NME cases, it is the Department's practice to collect data on all direct inputs actually used to produce the subject merchandise, including any indirect inputs used in the in-house production of any direct input. See 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 (November 20, 1997). As such, the Department requested information on all direct inputs and any indirect inputs produced in-house by the respondent, in its August 29, 2003 Section D Questionnaire and in several Supplemental Questionnaires thereafter.[2] In the respondent's January 5, 2004 Supplemental D Response, the respondent reported the indirect factor inputs consumed in producing the hydrogen, electricity, and steam required for one metric ton of THFA. The respondent did not report consumption amounts for the indirect factor inputs consumed in producing the catalyst used in the furfuryl alcohol to THFA stage. Additionally, in its February 4, 2004 Supplemental D Response, the respondent submitted a consumption chart which reported the monthly consumption amounts for the factors used in the production of furfural, furfuryl alcohol, and THFA.

[2] See THFA from China: Response to Supplemental for Section D, (December 3, 2003); THFA from China: Response to Supplemental for Sections C and D, (December 10, 2003); THFA from China: Response to Supplemental for Sections A, C, and D, (December 29, 2003); THFA from China: Response to Supplemental for Section D, (January 5, 2004); THFA from China: Response to Supplemental for Section D, (February 4, 2004).

As stated in the Verification Report, the Department verified the accuracy of the reported amounts for the electricity, steam, hydrogen, and catalysts consumed in the production of furfural, furfuryl alcohol, and THFA. Further, as noted in the Verification Report, the Department requested from the respondent internal records tying indirect inputs to production records and/or sub-ledgers for the consumption amounts of the indirect inputs used to manufacture: hydrogen (i.e., crude salt and water); steam and electricity, (i.e., dregs, coal, and water); and the indirect inputs consumed in order to produce the catalyst used in the furfuryl alcohol to the THFA production stage. The respondent was unable to provide records tying the aforementioned indirect inputs to production records and/or sub-ledgers. See Verification Report, at 38 and 39. Further, the Department found during verification that the respondent did not include the labor and energy associated with the production of hydrogen, steam, and electricity in its reported consumption amounts. See Verification Report at 38. The Department, therefore, is rejecting the indirect input data for the respondent's self-produced hydrogen, steam, electricity, and catalyst because the aforementioned indirect inputs could not be verified. See Verification Report at 38 and 39.

As such, we are continuing to use the surrogate values that were used in the Post-Prelim Calculation for the respondent's self-produced input of hydrogen. For the respondent's self-produced electricity, steam, and catalyst (i.e., the catalyst in the furfuryl alcohol to THFA production stage), the Department is using surrogate values based on publicly available information. See Memorandum to the File from Peter Mueller, Case Analyst, through Edward C. Yang, Office Director: Final Calculation, Factors Valuation Memorandum, (June 10, 2004). As stated above, the Department attempted to verify the indirect inputs at the factor of production verification but the respondent was unable to provide supporting documentation for these indirect inputs. Section 776(b) of the Act provides that if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the administering authority, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from: (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under section 753; or (4) any other information placed on the record. See section 776(b) of the Act.

The Department finds that the respondent did not act to the best of its ability because it did not provide records tying its indirect inputs (i.e., the water and crude **salt required for hydrogen, the coal, dregs, and water required for steam, the coal and dregs required for electricity, and the inputs consumed in producing the catalyst) to production records and/or sub-ledgers**. The Department did, however, verify the consumption of hydrogen, steam, electricity, and catalysts. See Verification Report. Accordingly, for the purposes of the final determination, the Department has relied upon adverse facts available to estimate ZHC's consumption of its self-produced hydrogen, steam, electricity, and catalyst. In estimating ZHC's monthly consumption of the self-produced hydrogen, steam, electricity, and catalyst during the POI, the Department has selected other information placed on the record in accordance with section 776(b)(4), which we found to be the most relevant data available from the POI. Accordingly, we have used the single highest month of consumption in ZHC's facilities during the

POI in order to calculate the surrogate values for the self-produced inputs of electricity, steam, hydrogen, and catalyst required for THFA production. See Final Analysis Memo. This methodology is similar to the one outlined in Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) and accompanying Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, at pages 13 and 14.

Finally, the Department disagrees with the petitioner that it must apply the highest possible margin for QWTC. According to 19 CFR 351.308(a) of the Department's regulations, if an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Secretary may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." Although we have identified certain areas were the respondent did not act to the best of its ability to comply with a request for information, we find that the respondent did cooperate to the best of its ability in all other areas. Therefore, we are not applying the highest possible margin for the overall margin calculation and are only applying facts available with an adverse inference to the self-produced inputs of electricity, steam, hydrogen, and catalyst.

Comment 2: Starting Point for Calculation of Export Price

The petitioner argues that the proper starting point for the calculation of export price is the price between the manufacturer, ZHC, and the trading company, QWTC. The petitioner states that in the Preliminary Determination the Department used the delivered price between QWTC and unaffiliated purchasers in the United States as the starting point for the calculation of export price. The petitioner contends that the controlling statute (i.e., the Act), the legislative history explaining changes to that statute (i.e., the Trade Agreements Act of 1979 ("the 1979 Act")), and the administrative record in this current investigation support its claim that the starting point for the calculation of the export price to the United States is the price between the manufacturer, ZHC, and the trading company, QWTC, rather than the price from QWTC to the first unaffiliated customers in the United States.

The petitioner notes the definition of export price, in section 772(a) of the Act, and explains that in the Preliminary Determination the Department determined that the export price was the appropriate basis of analysis for comparison with normal value. According to section 772(a) of the Act, export price is defined as follows:

> The price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States... .

The petitioner highlights the phrase "or to an unaffiliated purchaser for exportation to the United States" which, the petitioner argues, was added to the definition of export price by the 1979 Act to clarify that the starting point for the calculation of export price would be the price from a manufacturer/producer to a "middleman" if a manufacturer knew that the sale was intended for exportation to the United States. Also, the petitioner argues that ZHC knew that the sale to QWTC was intended for exportation to the United States and that therefore QWTC acted as a "middleman." Thus, the petitioner asserts that the starting point for the calculation of export price should start at ZHC.

The petitioner argues further that legislative history accompanying the definition of export price clarifies that "if a producer knew that the merchandise was intended for sale to an unrelated purchaser in the United States under terms of sale fixed on or before the date of importation, the producer's sale price to an unrelated middleman will be used as the purchase price."[3] The petitioner contends that the producer, ZHC, knew that the merchandise was intended for sale to an unrelated purchaser in the United States and that QWTC acted as the "unrelated middleman" for these sales. Further, the petitioner claims that this legislative history makes no distinction between the calculation of export price in antidumping investigations of companies in market economy countries or antidumping investigations of companies in non-market economy countries, and is therefore applicable to ZHC and QWTC, the producer and middleman of the subject merchandise, respectively.

In support of its argument, the petitioner points to sales contracts and accompanying statements on the record submitted by ZHC and QWTC in which they acknowledge that ZHC's sales to QWTC during the POI were sales for export to an unaffiliated purchaser in the United States. Furthermore, the petitioner argues that ZHC's statement that it "sets the price for the subject merchandise exported to the United States" is a clear indication that ZHC had knowledge that the sales are for export to the United States.[4] The petitioner argues that ZHC knew QWTC (i.e., "the middleman") was selling THFA to unaffiliated purchasers in the United States and knew the price being charged to the U.S. customers. Therefore, the petitioner argues, ZHC had knowledge of the sales to the United States of THFA and should be used as the starting point for the calculation of export price.

Additionally, the petitioner argues that the administrative record contains all the documentation necessary to calculate export price using ZHC as the starting point. The petitioner states that each sales invoice from ZHC to QWTC for exports of THFA to the United States during the POI is included on the record and that these documents provide all the information it needs to calculate export price.

Also, the petitioner asserts that in the Preliminary Determination the Department did not adhere to the controlling statute and the explicit legislative direction concerning the calculation of export price. The petitioner contends that the Department's statement in the Preliminary Determination that it "focuses its attention on the exporter, in this case QWTC, rather than the manufacturer (i.e., ZHC), as our concern

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[3] See S. Rep. No. 96-249, at 94 (1979), reprinted in Volume 125 U.S.C.C.A.N. 381, 480

[4] See ZHC's October 1, 2003 Section A Response, at page 3.

is the manipulation of dumping margins," is not supported by the record in this investigation. The petitioner argues that the record is devoid of any evidence or investigation-specific analysis of the Department's concern of the manipulation of dumping margins, that justifies the Department's use the exporter rather than the manufacturer as the basis for calculating the export price.

Further, the petitioner argues that basing the export price on sales between QWTC and the unaffiliated U.S. customers, as the Department did in the Preliminary Determination, inappropriately inflates the export price and thereby lessons the remedy due to the domestic industry. Furthermore, the petitioner contends that because the normal value is restricted exclusively to an analysis of the factors of production, and does not include the costs associated with the "middleman," that an inherent differential is created between export price and normal value that skews the comparison in favor of the respondent.

Moreover, the petitioner argues that the starting points for export price and normal value used by the Department in its Preliminary Determination was not an "apples to apples" comparison as required by U.S. antidumping duty law. The petitioner contends that differences in levels of trade, physical characteristics, and in selling expenses must be eliminated in order to create an "apples to apples" comparison in this investigation. Further, the petitioner argues that if the aforementioned differences are not eliminated, the result will be an "apples to oranges" comparison, which would unfairly skew the comparison of export price and normal value in favor of either the petitioner or respondent, and would therefore fail to correctly determine the existence and degree of dumping.

Lastly, the petitioner argues that the Department may consider ZHC as the exporter because ZHC has acknowledged on the record that it is the exporter of subject merchandise to the United States. The petitioner asserts that QWTC is a privately-owned, foreign-funded entity located in a free trade zone and operates only as the middleman for ZHC and therefore should not be used as the starting point for export price.

The respondent did not address this issue.

Department's Position: The Department disagrees with the petitioner that the starting point for the calculation of export price should begin with the producer, ZHC. Section 772(a) the Act permits the Department to use the price from a producer to a middleman if the producer knew the merchandise was intended for sale to the United States under terms of sale fixed on or before the date of importation. The relevant price, in such a sales situation, is the price at which the first party in the chain of distribution has knowledge of the U.S. destination. However, this practice is restricted with regard to NME cases since the Department does not base export price on internal transactions between two companies located in the NME country.

A producer's knowledge of destination is a moot issue in NME cases because the knowledge test applies only to exporters that have dealings with entities outside of the NME country. In an NME situation, the Department ignores transactions between producers and exporters that are both in-

country, since we will not base export price on internal transactions between two companies located in the NME country. See Fresh Garlic from the People's Republic of China, Final Results of Antidumping Duty Administrative Review, 62 FR 23758 (May 1, 1997).
Applying the principles explained above to the facts of this case, we determine that, although ZHC had knowledge of the U.S. destination of the merchandise and is the first party in the distribution chain, its transaction with QWTC was an internal transaction between two companies located in an NME country. We further determine that the party after ZHC in the distribution chain is QWTC and that there is ample evidence to indicate that QWTC had knowledge of the U.S. destination of the merchandise when it sold the merchandise to U.S. customers. Therefore, the appropriate starting point for application of our knowledge test is the transaction between QWTC and the U.S. customers because the sale from QWTC to U.S. customers is the first market-based sale in the chain of distribution for export to the United States.

Comment 3: Freight Deduction to Calculation of Export Price

The petitioner argues that the Department's calculation of export price fails to deduct certain costs, charges, and expenses. The petitioner contends that although the Department deducted an amount for ocean freight and insurance from QWTC's export price in its Preliminary Determination, the Department must also deduct an additional amount from export price for expenses related to the shipment of the subject merchandise within the United States.

The respondent did not address this issue.

Department's Position: The Department disagrees with the petitioner that an additional amount must be deducted from export price for expenses related to the shipment of the subject merchandise within the United States. The sales invoices, the international freight forwarding invoices, and the bills of lading submitted to the record by QWTC show that international freight from QWTC to the ultimate customer in the United States was included in the total price for the subject merchandise. See Verification Report, at Exhibits TT through BBB.

At QWTC's sales verification, the Department examined QWTC's international freight forwarding invoices for each QWTC sale to the United States during the POI. The Department tied each international freight forwarding invoice to the respective bills of lading for each sale and tied each bill of lading to a packing list and the original sales invoice. For every sale of subject merchandise to the United States, the Department found no discrepancy between the amounts paid by QWTC for international freight, as reported on the international freight forwarding invoices, and the amounts reported on the bills of lading, the packing lists, and the sales invoices. See Verification Report, at Exhibits TT through BBB. Further, the Department examined QWTC's Section C database and found that the total amount paid on a per metric basis for international shipping matched with the amount reported the international freight forwarding invoice. See Verification Report, at 18.

Therefore, the Department concludes that all costs associated with international freight are included in the international freight price and that deducting an additional amount for expenses related to the shipment of the subject merchandise withing the United States would result in double-counting.

Comment 4: Surrogate Values for the Ocean Freight Deduction

The petitioner argues that the Department must use surrogate values for the international freight expenses in the export price calculation. The petitioner contends that QWTC made payments for international freight expenses to PRC companies and not market-economy suppliers during the POI and that therefore, the Department should value certain of the movement expenses using surrogate values.

The respondent did not address this issue.

Department's Position: We disagree with the petitioner. We have continued to use the market economy cost to value international freight. According to 19 CFR 351.408(c)(1), "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier." In this investigation, the NME respondent purchased a service input, in this case the service of freight forwarding company, for which it payed a market economy supplier in a market-economy currency.

The Department examined this issue at the sales verification at QWTC by examining all sales invoices, packing lists, bills of lading, and international freight forwarding invoices relating to the shipment of the subject merchandise to the United States. The Department found that QWTC uses U.S. shipping companies for its shipments of THFA to the United States and makes payments in United States Dollars. See Verification Report, at 18. We examined every bill of lading from the POI and found that the names of the shipping companies and their addresses were all located in the United States. In addition, we found that each U.S. transport company through which QWTC shipped THFA had an agent in the PRC who coordinated the shipment for the freight forwarding company located in the United States. See Verification Report, at 18 and 19. **Therefore, the Department will use the value of the service used by the NME respondent**. See Certain Helical Spring Lock Washers from the People's Republic of China, Final Results of Antidumping Duty Administrative Review, 64 FR 13403 (March 18, 1999).

Comment 5: Multi-Stage Factors of Production

The petitioner argues that the Department must value electricity, hydrogen, steam, and catalysts in accordance with the Department's Post-Prelim Calculation, or as requested by the petitioner. The petitioner asserts that the Department cannot value these factors of production using a multi-stage factor analysis.

The petitioner contends that valuing input factors of production produced at ZHC's on-site production facilities and then transmitting those factors to the THFA production facility leads to an inaccurate result

because significant elements of cost for the input factors of production would not be adequately accounted for in the overall factor build-up of THFA. Further, the petitioner argues that the respondent did not provide the data necessary to complete a multi-stage factors analysis for steam, hydrogen, electricity, and catalysts. For these factors, the petitioner argues that the respondent failed to provide supporting documentation concerning hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation. Consequently, the petitioner argues that valuing the factors of production by using a multi-stage factors analysis for these factors of production without timely, complete, and accurate data concerning labor, materials, energy and capital costs would grossly understate the normal value calculation.

The respondent did not address this issue.

Department's Position: We agree with the petitioner that we should not use multi-stage factors analysis for electricity, hydrogen, steam, and the catalyst used in the furfuryl alcohol to THFA production stage. At the factor of production verification, the Department attempted to verify the multi-stage inputs ("indirect inputs") used to produce the electricity, hydrogen, steam and the catalyst used in the furfuryl alcohol to THFA production stage required for THFA production. The Department explained in the Verification Report that ZHC was unable to provide us supporting documentation for the consumption of coal, dregs, and water used to produce electricity and steam; the crude salt and water used to produced hydrogen; and the inputs consumed to produced the catalyst used in the furfuryl alcohol to THFA production stage. See Verification Report, at 37-39. In addition, the Department found that ZHC did not report labor and electricity as an input used to manufacture electricity and steam. See Verification Report, at 38.

As stated above in Comment 1, the Department is resorting to facts available, with an adverse inference, in this investigation for the factor inputs of electricity, hydrogen, steam and the catalyst used in the furfuryl alcohol to THFA production stage. See Position in Comment 1, above, and the Final Analysis Memo.

Comment 6: THFA Production Starting Point

QWTC argues that the factors of production analysis for THFA should start from the furfuryl alcohol stage and not the furfural stage. The respondent contends that because both the petitioner's and the respondent's manufacturing process for THFA begins at furfuryl alcohol, furfuryl alcohol should be the starting point for the factors analysis.

QWTC argues, however, that if the furfuryl alcohol stage is not chosen as the starting point for the factor of production analysis, the Department should begin at the earliest step in the production process, where raw material biomasses are the inputs used to produce furfural. The respondent argues that the Department should use biomasses such as corn cobs or alternative biomasses such as sugarcane bagasse, rice/oat hulls as the beginning of the factors analysis. The respondent explains that the biomass input is the material from which pentose is extracted and that without biomass and the

subsequent production of pentose, furfural production is not possible. Therefore, QWTC contends that the extracted pentose taken from the biomass is the key material required for production of furfural and that, if a multi-stage analysis is used, the Department should begin its factors of production beginning with the biomass used to manufacture furfural.

The petitioner argues that the respondent's claim that it does not make THFA from furfural is incorrect. The petitioner explains that it does make THFA from furfural at its production facility in Memphis, Tennessee, which the Department toured on October 22, 2003. Additionally, the petitioner argues that starting the factor of production analysis with biomasses such as sugarcane bagasse, rice/oat hulls, or corn cobs is not supported by record evidence and therefore should not be considered as a potential starting point for the factors of production analysis.

Department's Position: We disagree with the respondent's arguments that the factors of production analysis should begin with either furfuryl alcohol or with a biomass such as corn cobs, sugarcane bagasse, or rice/oat hulls.

In the Preliminary Determination, the Department used furfuryl alcohol as the starting point for the factors of production analysis and stated that if it changed its methodology, interested parties would be provided an opportunity to comment. On March 9, 2004, the Department released its Post-Prelim Calculation to the interested parties in which the factors of production valuation began with the furfural input. The respondent's comments in its March 19, 2004 submission argued that the Department should begin the valuation of factors of production analysis with furfuryl alcohol and stated that if the Department decides not to begin with furfuryl alcohol, the Department should begin with corn cobs or an alternative biomass such as sugarcane bagasse or rice/oat hulls. The Department is not considering alternative biomasses because the record does not contain information which supports using an alternative biomass such as sugarcane bagasse or rice/oat hulls. Neither the respondent nor the petitioner placed on the record factor of production values for alternative biomasses such as sugarcane bagasse, or rice/oat hulls. Further, during the factor of production verification, the Department noted that ZHC crushed corn cobs to manufacture furfural, an input into the second stage of multi-stage production process. See Verification Report, at 20. The Department verified the consumption amount for corn cobs but did not examine consumption amounts for any alternative biomasses. Although in the past the Department has valued factors of production using comparable inputs, the Department finds that the record does not contain information in support of using an alternative biomass.

The Department disagrees with regard to respondent's argument that the Department should begin its factors of production analysis either at the first stage (i.e., the corn cobs to furfural stage), or at the third stage (i.e., the furfuryl alcohol to THFA stage). The Department articulated its general policy with regard to the valuation of factors of production in its Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 4993 (January 31, 2003), when it explained:

> Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise. If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process.

After careful consideration of the complete record of evidence gathered in this investigation, we have determined that beginning the normal value calculation at the second stage (i.e., the furfural to furfuryl alcohol production stage) would lead to a more accurate result than beginning the normal value calculation using the first stage (i.e., the biomass to furfural production stage), or the third stage (i.e., the furfuryl alcohol to THFA production stage). The considerations we examined included: (1) a discrepancy between the production and consumption amounts of furfural, which leads the Department to question the level of furfural production of the respondent; (2) the accuracy of a publicly available surrogate for corn cobs when beginning the normal value calculation with corn cobs; and (3) the accuracy of a publicly available surrogate value for furfuryl alcohol when beginning the normal value calculation with furfuryl alcohol. See Final Analysis Memo for a full explanation of the discrepancy between the production and consumption amounts of furfural.

Regarding the first consideration, a discrepancy between the production and consumption amounts of furfural bringing to question the level of furfural production of the respondent, the Department notes that ZHC produces furfural, furfuryl alcohol, and THFA at its facilities. At the Department's factor of production verification, we examined the consumption amount for corn cobs, the production of furfural, and the consumption amount for furfural, and verified the accuracy of each. As stated above in Comment 1, a discrepancy exists between the verified amount of furfural that ZHC produced and the verified amount of furfural that ZHC consumed. As a result, the Department can reasonably conclude that ZHC did not produce all of the furfural consumed in the furfuryl alcohol stage of production. A company which owns all the productive assets and self-produced all the inputs would incur all the risk inherent in establishing such a productive system. As a result, the facts of this case cast doubt onto the extent to which ZHC is in fact fully integrated, and therefore casts significant doubt onto whether the extent of its integration is compatible with our preferred methodology.

In regard to the second consideration, the accuracy of publicly available surrogate value information for corn cobs when beginning the normal value calculation with such material, the Department finds that a reliable publicly available surrogate value for corn cobs was not included as part of the record. Therefore, corn cobs cannot be used as the starting point for the normal value calculation. During the course of the this investigation, the Department undertook an independent search for publicly available corn cob values but was unable to find reliable data. In the Department's Preliminary Determination, the Department gave interested parties 40 days from the publication date of the Preliminary Determination to submit publicly available information to value factors of production for the final determination. On March 23, 2004, the petitioner submitted publicly available information for corn cobs including: (1) a price as provided by the petitioner's Indian supplier of furfural; and (2) a price for Indian corn cobs as supplied by an agricultural specialist at the United States Department of

Agriculture. The Department finds that these corn cob prices are unsubstantiated by the record evidence because there is no source documentation for either price. Further, time periods for each of the submitted corn cob values are not defined, which further calls into question the reliability of the petitioner's submitted values for corn cobs. Therefore, we disagree with QWTC that the normal value calculation should begin with corn cobs, because a reliable publicly available surrogate for corn cobs was not included as part of the record in this case.

In regard to the third argument, beginning the normal value calculation with furfuryl alcohol, the Department articulated its concern in the Preliminary Determination that the inherent problem with beginning the normal value calculation using furfuryl alcohol is that furfuryl alcohol is part of a basket category in the Harmonized Tariff Schedule. In the Preliminary Determination, the Department stated that, "as this basket category includes the subject merchandise, we recognize that a more appropriate surrogate value for furfuryl alcohol may be required. However, at the time of this preliminary determination, it is the most appropriate surrogate value that we can locate." In the Department's Post-Prelim Calculation, the Department began its calculation with furfural to alleviate this basket category problem. Therefore, we disagree with QWTC that the starting point of the normal value calculation should be furfuryl alcohol, because there is an inherent problem with beginning a normal value calculation using a basket category input.

Finally, the respondent's argument that the petitioner begins its production process at the furfuryl alcohol stage is not supported by record evidence. On October 22, 2003, the Department conducted a tour of Penn Specialty Chemical Limited's facilities in Memphis, TN. See Memorandum to the File from Peter Mueller, Case Analyst, through Robert Bolling, Program Manager, Plant Tour and Meeting with Penn Specialty Chemicals, Ltd., (October 24, 2003). During the tour, Department officials toured the various production stages involved in the manufacturing of THFA. When calculating a normal value, the Department is not concerned with the petitioner's production process. Therefore, the respondent's argument that the Department should begin its normal value calculation at the furfuryl alcohol stage because the petitioner does so does not hold merit for the purpose of this investigation.

Thus, for the Final Determination, we have determined that starting the normal value calculation with furfural provides us the most accurate calculation for normal value.

Comment 7: Furfural Value

QWTC argues that the surrogate value the Department assigned to furfural is spurious. The respondent contends that the Department's surrogate value for furfural is for a highly refined pharmaceutical grade and that commercial grade furfural is the grade used to produce furfuryl alcohol. Further, the respondent contends that highly refined furfural is not necessary for the production of furfuryl alcohol and can in fact have a deleterious effect on the efficiency of the subsequent reaction.

The respondent argues that the values supplied by the petitioner for furfural in its June 23, 2003 petition may have been imports into India from China and been redistilled to a pharmaceutical grade prior to

use. The respondent argues that furfural should have a surrogate value reflecting the relevant grade used by ZHC to produce furfuryl alcohol as opposed to a highly refined grade of furfural, which is used to produce pharmaceuticals.

The petitioner argues that the record does not support the respondent's argument. More specifically, the petitioner argues that any differences between pharmaceutical and commercial grade furfural is not explained by the record evidence. Further, the petitioner argues that there is no record evidence indicating that the valuation chosen for furfural by the Department in its Post-Prelim Calculation represents a highly refined grade of furfural. Also, the petitioner argues that there is no evidence on the record that use of a pharmaceutical grade furfural in the production of THFA would have a deleterious effect on the efficiency of the subsequent production processes.

Department's Position: We disagree with the respondent that the surrogate value the Department assigned to furfural is spurious. As the Department stated in its Post-Prelim Factors Memo, we selected prices of "furfuraldehyde" from the "Hyderabad, India Drugs Market" for the last quarter of 2002 and the first quarter of 2003 as presented in the Indian publication *Chemical Weekly* because they represented the most complete and contemporaneous data. We have reviewed the administrative record and found no information on the administrative record indicating that the valuation chosen for furfural by the Department in its Post-Prelim Calculation represents a "highly refined" grade of furfural. In addition, there is no information on the administrative record that the use of a pharmaceutical grade furfural in the production of THFA would have a deleterious effect on the efficiency of the subsequent production processes.

Therefore, for the normal value calculation for the final determination, we will continue to use the furfural value from the Post-Prelim Calculation.

Comment 8: Values for Dregs and Residue

QWTC argues that if the calculation of normal value is to begin from the furfural stage, then the costs for dregs and residue should be included only as part of the furfural to furfuryl alcohol production stage. The respondent contends that the costs for dregs and residue should not be included as a component of the THFA production stage as this would result in double counting.

The petitioner argues that the respondent's argument concerning double counting of dregs and residue lacks merit as it ignores the respondent's failure to verify dregs and residue at the verification, as outlined in the Department's verification report. See Verification Report, at 38. The petitioner argues that QWTC failed to provide the Department with verifiable data concerning dregs and residue in its responses and during the factors of production verification. Thus, the petitioner argues that the Department should use the value for dregs as an input into the production of steam only as outlined in its March 23, 2004 submission.

Department's Position: At the factor of production verification, the Department attempted to verify the indirect inputs used to produce the steam and energy required for the production of THFA production. The Department explained in the Verification Report, at page 38, that ZHC was unable to provide us supporting documentation for the consumption of dregs used to produce power and steam and that we were unable to corroborate the amounts submitted in earlier responses for water, coal, and dregs. In addition, the Department found that ZHC did not report labor and electricity as an input used to manufacture electricity and steam. See Verification Report, at 38.
As explained above in Comment 1, the Department is resorting to facts available, with an adverse inference, for the electricity and steam used to produce THFA. See Final Analysis Memo.

Comment 9: Value for Hydrogen

QWTC argues that the surrogate value for hydrogen used in the Preliminary Determination and the surrogate value for hydrogen submitted petitioner are not representative of the true cost of the hydrogen used in the THFA production process. The respondent argues that the hydrogen used in the production of THFA is a waste product produced on-site at ZHC's parent company and not compressed hydrogen purchased from external suppliers and that therefore the value of hydrogen used in the Preliminary Determination is unrepresentative of the true value of the hydrogen used by ZHC in the production of THFA.

QWTC explains that the value of transported hydrogen is substantially higher than the price of ZHC's self-produced hydrogen and that therefore the surrogate value used in the Preliminary Determination is unrepresentative of the true value of hydrogen. The respondent argues that transported hydrogen has additional costs not included in the cost of self-produced hydrogen; costs such as the energy required to compress the hydrogen into cylindrical barrels, the packing material cost of the cylindrical barrels, and the higher freight costs associated with transporting compressed gas. Further, the respondent argues that hydrogen can be produced using many technologies and that the electrolysis method used on-site at ZHC is common and the most cost-effective method. Therefore, QWTC contends that the surrogate value for hydrogen used in the Preliminary Determination is unrepresentative of the true value of hydrogen gas and is uncomparable to the waste hydrogen used by ZHC in its production of THFA.

The petitioner argues that the QWTC's argument concerning the surrogate valuation of hydrogen lacks merit as it ignores the respondent's failure to verify certain factors of production used in the electrolysis method, as outlined in the Department's verification report. Further, the petitioner contends that the respondent's argument regarding the production, packaging, and transportation of hydrogen is information that is undocumented on the record and is being presented for the first time and that the Department should reject these arguments. Lastly, the petitioner argues that the Department should use the surrogate valuation for hydrogen provided to the Department in its March 23, 2004 letter.

Department's Position: We disagree with the respondent that the Department should change its surrogate valuation for hydrogen. The respondent's argument that the cost of hydrogen chosen by the Department in its Post-Prelim Calculation is unrepresentative of the true value of the hydrogen used by ZHC in the production of THFA, is unsubstantiated by record evidence. The administrative record does not contain information indicating that the valuation chosen for hydrogen by the Department in its

Post-Prelim Calculation is unrepresentative of the true value of the hydrogen used by ZHC in the production of THFA. QWTC did not submit information to the administrative record showing that transported hydrogen has additional costs not included in the cost of self-produced hydrogen. Additionally, QWTC did not submit information to the administrative record showing that hydrogen can be produced using many technologies and that the electrolysis method used on-site at ZHC is common and the most cost effective method.

Further, at the factor of production verification, the Department toured the facility from which ZHC obtains hydrogen and also examined the reported consumption amounts for hydrogen. However, as stated in our Verification Report, the Department was unable to verify the consumption amounts for the inputs (i.e., crude salt and water) used to make hydrogen at ZHC's production facilities. See Verification Report, at 38.

Therefore, as explained above in Comment 1, the Department is resorting to facts available, with an adverse inference, for the hydrogen used to produce THFA. See Final Analysis Memo.

Comment 10: Packing Value

QWTC argues that the costs for packing material may be double counted and that International Maritime Organization approved iron drums are available in third countries. In addition, the respondent points out that furfural is delivered in bulk to its production facilities.

The petitioner did not address this issue.

Department's Position:

We disagree with the respondent that packing costs are double counted. In our Post-Prelim Calculation we took into account all the packing costs associated with shipping one metric ton of THFA to the United States. Further, we have not included in our calculation any packing costs associated with furfural delivered to ZHC.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related model match and margin calculations accordingly. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for all reviewed firms in the Federal Register.

AGREE_____ DISAGREE_____ DISCUSS_____

_____

James J. Jochum
Assistant Secretary
for Import Administration

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Date