

("PRC") because its antidumping rate was *de minimis* (1.27 percent).<sup>1</sup> The antidumping duty rate for Shandong Xinhua Pharmaceutical Factory, Ltd. ("Shandong") was decreased from 16.51 to 6.42 percent. The PRC-wide rate was unchanged from the *Final Determination*. As there is now a final and conclusive court decision in this action, we are amending our *Final Determination*.

**EFFECTIVE DATE:** December 30, 2003.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Background**

Following publication of the *Final Determination*, Rhodia, Inc., the petitioner in this case, and the respondents, Jilin and Shandong, filed a lawsuit with the CIT challenging the Department's *Final Determination*. Rhodia challenged the Department's use of import data rather than domestic data as a surrogate value for the aspirin input, phenol. Rhodia also challenged the Department's normal value calculation for the respondent Shandong because the Department excluded purchased salicylic acid where it had determined this input was not used in the production of bulk aspirin for export. Jilin and Shandong challenged the Department's application of the factory overhead ratio and the Department's use of a weighted average to calculate surrogate factory overhead, selling general and administrative expenses, and profit ratios. Also, the respondents challenged, and the Department voluntarily requested remand on, the issue of including traded goods in the denominator of the factory overhead ratio.

On November 30, 2001, the CIT affirmed the Department's *Final Determination* with respect to the use of import price to value the input phenol and the calculation of Shandong's normal value excluding purchased salicylic acid. See *Rhodia, Inc. v. United States*, 185 F. Supp. 2d 1343 (CIT 2001)

("Rhodia I"). The Court remanded the above-referenced proceeding to the Department for reconsideration of the overhead calculation methodology applied in the *Final Determination*. In the underlying investigation, the Department was required to develop values for factory overhead, SG&A, and profit relying on "surrogate" data from Indian producers of comparable merchandise. See section 773(c) of the Act. Regarding factory overhead, the Department used information from three Indian producers: Andhra Sugars, Alta Laboratories, and Gujarat Organics, Ltd. In the *Final Determination*, the Department found that the PRC producers of bulk aspirin were more fully integrated than the Indian producers. Therefore, the Department reasoned, the PRC producers would have a higher overhead-to-raw material ratio than the surrogate Indian producers. To account for this in computing normal value, the Department applied the overhead ratio calculated from the Indian producers' data twice, once to reflect the overhead incurred in producing the inputs for aspirin, and again to reflect the overhead incurred in producing aspirin from those inputs.

The Court pointed to the lack of evidence or explanation regarding the Department's position that integrated producers would experience higher overhead ratios than non-integrated producers. Additionally, the Court questioned the Department's conclusion that the Indian producers were less integrated than the PRC producers. Specifically, the Court found that the Department could not reasonably infer this from the evidence cited in the *Issues and Decision Memorandum*. Therefore, the Court remanded this issue to the Department and asked the agency to identify the facts in the record that support its *Final Determination*. *Rhodia I*, 185 F. Supp. 2d at 1348-1349 (CIT 2001).

The second issue remanded to the Department related to the calculation of the ratios for overhead, SG&A, and profit. In the *Final Determination*, the Department computed a weighted average of the overhead, SG&A, and profit of the three Indian surrogate producers. However, citing to the agency's usual practice of using simple averages in these situations, the Court ruled that the Department had provided no explanation for departing from this practice. Thus, the Court directed the Department to explain its reasoning for computing weighted averages in this case. *Rhodia I*, 185 F. Supp. 2d at 1349-1351 (CIT 2001).

Finally, the Department sought, and the Court granted, a voluntary remand to correct the calculation of the overhead ratio by removing traded goods from the denominator. *Rhodia I*, 185 F. Supp. 2d at 1357 (CIT 2001).

To assist it in complying with the Court's instructions, the Department asked the parties to identify information on the record of the proceeding regarding the extent of integration of Indian producers of comparable merchandise. See the December 13, 2001, letter to Rhodia, Inc., Jilin and Shandong. Responses were received from the three parties on January 15, 2002, and rebuttals were received on January 22, 2002.

The *Draft Redetermination Pursuant to Court Remand* ("Draft Results") was released to the parties on February 4, 2002. In its *Draft Results*, the Department reviewed the record evidence regarding the extent to which the Indian surrogate producers are integrated and concluded that the evidence did not support the *Final Determination* in this regard. We also reconsidered our use of weighted-average ratios for overhead, SG&A, and profit, and amended our calculations using simple averages. Finally, in accordance with our voluntary request for remand, we removed "trade sales" (or "traded goods") from the denominator in calculating the overhead ratio.

Comments on the *Draft Results* were received from Rhodia, Inc. and Shandong on February 11, 2002, and rebuttal comments were received from the petitioner and Jilin on February 14, 2002. On March 29, 2002, the Department responded to the Court's Order of Remand by filing its Final Results of Redetermination pursuant to the Court remand ("Final Results of Redetermination"). The Department's Final Results of Redetermination were identical to the *Draft Results*.

The CIT affirmed the Department's Final Results of Redetermination on September 9, 2002. See *Rhodia II*, 240 F. Supp. 2d 1247 (CIT 2002). On October 14, 2003, the CIT's decision was affirmed by the Federal Circuit. *Rhodia II*, 240 F. Supp. 2d 1247 (CIT 2002) *aff'd* mem. Ct. No. 03-1097 (October 14, 2003); 2003 U.S. App. LEXIS 21424. We have recalculated the dumping margin for the respondents based upon the changes set forth above.

**Amendment to the Final Determination**

Because there is now a final and conclusive decision in the court proceeding, effective as of the publication date of this notice, we are amending the *Final Determination* and

<sup>1</sup> In accordance with the Department's changed circumstances review (see *Bulk Aspirin from the People's Republic of China: Final Results of Changed Circumstances Review*, 67 FR 65537 (October 25, 2002)), Jilin Henghe Pharmaceutical Co. is the successor-in-interest to Jilin Pharmaceutical Co., and as such Jilin Henghe Pharmaceutical Co. will be excluded from the antidumping duty order on bulk aspirin from the PRC.