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November 9, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Susan H. Kuhbach
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Activated Carbon from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Second Antidumping Duty Administrative Review

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SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the second administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes to the Preliminary Results.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments and rebuttal comments from interested parties:

DISCUSSION OF THE ISSUES:

General Issues
Comment 1: Assignment of Combination Rates
Comment 2: Treatment of Sales with Negative Margins
Comment 3: Per-Unit Assessment Rates
Comment 4: Surrogate Values
- **a. Coconut Shell Charcoal**
- **b. Steam Coal**
- **c. Electricity**
- **d. Steam**
- **e. Expense Exclusion in Kalpalka Financial Ratios**

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[1] See Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Second Antidumping Duty Administrative Review, and Preliminary Rescission in Part, 75 FR 26927 (May 13, 2010) ("Preliminary Results").

f. Wage Rate Methodology

Company-Specific Issues

Jacobi

Comment 5: Issues Regarding Ningxia Guanghua Activated Carbon
- **a. Facts Available for Water**
- **b. Transport Bag Surrogate Value**

Comment 6: Corrections to Submitted Data
- **a. Treatment of Indirect Labor**
- **b. Treatment of U.S. Indirect Selling Expenses**

Comment 7: Freight Revenue Expense Calculation

Huahui

Comment 8: Ministerial Error for Truck Freight Unit of Measure

Comment 9: Treatment of Domestic Freight Expenses

Shanxi DMD

Comment 10: Application of Total Adverse Facts Available

Ningxia Lingzhou

Comment 11: Status of No Shipment Certification

BACKGROUND:

The merchandise covered by the order is certain activated carbon as described in the "Scope of the Order" section of the Preliminary Results. The period of review ("POR") is April 1, 2008, through March 31, 2009. In accordance with 19 CFR 351.309(c)(ii), the Department of Commerce ("Department") invited parties to comment on our Preliminary Results.

On June 21, 2010, Petitioners[2], Jacobi[3], Huahui[4] and Albemarle[5] filed case briefs. On June 21, 2010, GHC[6] filed comments on the Department's wage rate methodology. On June 28, 2010, Shanxi DMD[7] filed a rebuttal brief. On June 30, 2010, Huahui filed a rebuttal brief. On July 1, 2010, Jacobi and Petitioners filed rebuttal briefs. On August 3, 2010, the Department placed wage rate data on the record for comment by interested parties. On September 27, 2010, the Department issued industry-specific wage rate data for comment. On October 4, 2010, the Department issued a memorandum regarding the Department's industry-specific wage rate methodology for comment. On October 7, 2010, the Department issued a correction to the October 4, 2010, data. On October 4, 2010, Huahui provided comments on the September 27, 2010, data. On October 13, 2010, Petitioners, Jacobi, and Huahui provided comments on the

[2] Calgon Carbon Corporation and Norit Americas Inc. ("Petitioners").
[3] Jacobi Carbons AB ("Jacobi").
[4] Ningxia Huahui Activated Carbon Co., Ltd. ("Huahui").
[5] Albemarle Corporation ("Albemarle"), filing case briefs in conjunction with Huahui.
[6] Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. ("GHC").
[7] Shanxi DMD Corporation ("Shanxi DMD").

October 4, 2010, and October 7, 2010, memoranda. On October 18, 2010, Huahui provided rebuttal comments. We received no further comments. The Department did not hold a public hearing pursuant to 19 CFR 351.310(d), because the hearing request made by Huahui was withdrawn.

DISCUSSION OF THE ISSUES:

Comment 1: Assignment of Combination Rates

I. Petitioners' Case Brief Arguments

- Combination rates were used in the investigation, but have not been applied since that time and should be reissued for mandatory and separate rate respondents.
- The Preliminary Results of this review gave respondents company-specific rates ranging from 3.23-67.14% and issued a PRC-wide rate of 228.11%, thus increasing incentive for producers with a higher antidumping duty margin to export goods through an exporter with a lower antidumping duty margin.[8]
- The Department has not given any explanation for its decision to discontinue the use of combination rates in administrative reviews subsequent to investigations where it has applied combination rates.
- Using a framework developed by the Department[9] to help determine whether combination rates should apply in an administrative review, they are applicable because:
    - Jacobi and its affiliates and producers continue the same sales practice as was observed in the original investigation when a combination rate was used.
    - Exporters are able to source activated carbon from a large number of suppliers, as is represented by the list of 187 companies for which Petitioners requested administrative reviews.
    - There is an incentive for suppliers to use exporters with low company-specific rates and thus avoid exporting under the significantly higher rate assigned to them is established given the wide range of rates and the high PRC-wide rate.

II. Huahui's Rebuttal Brief Arguments

- Combination rates should not be applied in the instant review.
- The Department's practice is not to assign combination rates in administrative reviews, and to deviate from this in this administrative review would require notice given to all parties and a period for comment.
- Citing to a recent remand issued by the Department[10], Huahui explains that the situation in Pistachios concerned only a single sale in both a new shipper review

[8] See Preliminary Results, 75 FR at26937.
[9] See Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios From Iran, 70 FR 7470 (February 14, 2005) ("Pistachios") and accompanying Issues and Decision Memorandum ("IDM") at Comment 2.

and an administrative review. This remand states that the feasibility of applying combination rates was more realistic due to the small volume.

- The quantity of combination rates needed would be a burden on the Department, especially as new suppliers are added.

III. Jacobi's Rebuttal Brief Arguments

- It is not the Department's current practice to apply combination rates in administrative reviews, only in original investigations.
- As outlined in the Administrative Procedures Act,[11] the Department would have to give notice and allow for comment before combination rates could be applied in the administrative review.

Department's Position: The Department finds that the assignment of combination rates is not appropriate in this administrative review. The Department's regulations provide discretion for the Department to establish combination rates.[12] Combination rates are antidumping duty rates assigned to a non-producing exporter in combination with its supplier(s).[13] In other words, if a combination rate were assigned, the exporter's established dumping margin would apply only when its merchandise is sourced from the producers from which it sourced during the administrative review. Although we have determined not to apply combination rates in this administrative review, we disagree with Jacobi and Huahui that the Department must allow for a comment period before applying combination rates in administrative reviews because the Department has the discretion to apply combination rates. In addition, the Department makes that determination in administrative reviews on a case-by-case basis with comments from the parties to that review and based on the facts of the record of that review.

According to 19 CFR 351.107(b)(1), "{i}n the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, the {Department} may establish a 'combination' cash deposit rate for each combination of the exporter and its supplying producers." However, the preamble to 19 CFR 351.107 contemplates that "if sales to the United States are made through an NME{non-market economy} trading company, we assign a noncombination rate to the trading company…"[14] This decision is discretionary, and the Court of International Trade has affirmed the Department's exercise of its discretion not to apply combination rates in administrative reviews.[15]

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[10] See Final Results of Redetermination Pursuant to Court Remand, Fujian Lianfu Forestry Co., Ltd., et. al v. United States, No. 07-00306; slip op. 09-81 (Ct. Int'l Trade 2009) (December 14, 2009), available at http://ia.ita.doc.gov/remands/09-81.pdf.

[11] Jacobi cites to 5 U.S.C. 553(c) "opportunity to participate in the process"; and 5 U.S.C. 551(5) "providing that rulemaking includes formulation, amendment or repeal of a rule."

[12] See 19 CFR 351.107(b)(1), "the {Department} may . . . " (emphasis added).

[13] See 19 CFR 351.107(b)(1).

[14] See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27303 (May 19, 1997) ("Preamble").

[15] See Tianjin Magnesium Int'l Co. Ltd. v. United States, Slip Op. 10-87 (2010); see also US Magnesium LLC v. United States, 31 C.I.T. 988, 992 (2007).

Generally, it is the Department's practice[16] to apply combination rates only in new shipper reviews and investigations. However, on a case-specific basis, the Department has considered applying combination rates in administrative reviews. In addition to information and argument on the record, the Department considers the factors set forth in Pistachios, an administrative review where the Department applied a combination rate, in determining whether to apply combination rates in administrative reviews.[17] In Pistachios, the Department exercised its discretion and assigned a combination rate in the administrative review to the exporter and its supplier of merchandise based on the specific circumstances of that case, which included, among other things: (1) the similarity of the exporter's single U.S. sale subject to the review and the exporter's single U.S. sale in the previous new shipper review in which a combination rate was applied; (2) the exporter's normal business practice of selling pistachios only to the U.S. market; (3) the exporter's ability to source the pistachios it sells from a large pool of suppliers; and (4) high cash deposit rates for other producers subject to the order and a high "all-others" rate.[18]

We have examined the facts in the instant review and found that the specific facts and circumstances that led the Department to apply a combination rate in Pistachios do not exist. First, in Pistachios, the Department found that there was a compelling argument for establishment of a combination rate in that review "because, by nature, Nima's {the exporter's} single sale to AHON {the U.S. customer} in the instant {Pistachios} review is very similar to that of its new shipper sale, in which a combination rate was applied." See id. The Department, in its Policy Bulletin Number: 03.2, "Combination Rates in New Shipper Reviews", explained that in new shipper reviews,

> there are concerns that the overly broad application of the bonding privilege and new shipper cash deposit rate diminishes the discipline of an order, particularly where other producers export through the new shipper to take advantage of benefits intended to apply solely to parties involved in the requested new shipper review. Once a new shipper review is initiated, and even after it is concluded, an exporter designated as a new shipper may become a conduit for exports from producers not involved in the new shipper review, as such producers would typically find it financially advantageous to channel their merchandise through the new shipper.

In the administrative review of Pistachios, the sale being reviewed and the sale from the prior new shipper review shared several key characteristics that were similar, if not identical. For instance, in the administrative review and the previous new shipper review,

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[16] See Policy Bulletin 03.2 "Combination Rates in New Shipper Reviews," available at http://ia.ita.doc.gov/policy/bull03-2.html ; see also Policy Bulletin 05.1, "Separate Rates and Combination Rates in Antidumping Investigations involving Non-Market Economy Countries," available at http://ia.ita.doc.gov/policy/bull05-1.pdf.

[17] See Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 76336 (December 16, 2008), and accompanying IDM at Comment 10; see also Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 40293 (July 14, 2008), and accompanying IDM at Comment 1; see also Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 7013 (February 10, 2006), and accompanying IDM at Comment 2.

[18] See Pistachios, 70 FR 7470, and accompanying IDM at Comment 2.

the non-producing exporter made only a single sale of subject merchandise during the POR.[19] Additionally, the price and quantity for both the new shipper sale and the administrative review sale were similar. Finally, the mode of transportation between the sale in the administrative review and the new shipper review were identical.[20] For these, as well as other reasons, the Department determined to apply a combination rate in that administrative review.

Here, there is no evidence on the record to demonstrate that the specific circumstances exist that compelled the Department to apply a combination rate in Pistachios (i.e., the similarity of the new shipper sale and the administrative review sale). Specifically, none of the companies subject to the instant review participated in a prior new shipper review. There is no evidence on the record for us to determine that the price, quantity, mode of transportation, and number of sales of these respondents in the previous segment were similar to the instant administrative review because all but one of the current respondents were not previously examined in the investigation or in the first administrative review.

Our regulation further contemplates that when deciding whether combination rates are appropriate, the Department will consider the practicability of their assignment. See Preamble, 62 FR at 27303 (". . . it may not be practicable to establish combination rates when there are a large number of producers"). In Pistachios, the Department noted that applying combination rates was administratively feasible in that segment of the proceeding because the Department established one combination rate for the sole combination of exporter and producer subject to that review.[21] Here, in contrast, the application of combination rates would be too large of an administrative burden to be practicable. The Department would be required to list producer/exporter combinations for the individually reviewed respondents as well as the numerous separate rate companies that are reviewed in each segment.

Furthermore, the number of combinations could grow significantly with each successive review. If we were to assign combination rates, the Department would be required to manually create a page in U.S. Customs and Border Protection's ("CBP") Automated Commercial Environment Module for every combination of exporter/producer, including situations where the exporter was also the producer of the subject merchandise (i.e., not just for non-producing exporters). Additionally, with such a large number of mandatory and separate rate respondents under review, the Department's duty with providing CBP with accurate instructions, after each segment, would be impractical to complete within statutory deadlines[22], as it would require us to enumerate every combination of exporter/producer. Thus, in addition to finding that no compelling reasons exist on this record, we also find that assigning combination rates in this review is not administratively feasible.

Finally, while the assignment of combination rates is one means of addressing Petitioners' concerns of firms with high cash deposit rates shifting their exports to the United States through firms with low cash deposit rates through illegitimate business activities, i.e., improper

[19] Id.
[20] See id.
[21] See Pistachios, 70 FR 7470 and accompanying IDM at Comment 2.
[22] See 19 U.S.C. 1504(d).

"funneling," it is not the only mechanism to address this concern. Interested parties may, of course, seek recourse by bringing such allegations of such activity to CBP under CBP's fraud provisions. Additionally, parties with the concern that a firm with a low cash deposit rate is "funneling" subject merchandise may request an administrative review. As administrative reviews are retrospective, interested parties are able to request reviews of companies that they believe may be engaging in such activities. During the course of a review, the Department would be able to fully review the respondent to which the cash deposit rate is being applied, investigate any allegations of improper use, and determine the appropriate action to be taken. In addition, because administrative reviews necessarily analyze factors of production data in an NME context, a reviewed exporter will have each of its producers' information reviewed, thus alleviating the concern of "funneling."

In the instant review, however, we note that the majority of firms for which Petitioners requested a review had a 228.11 percent cash deposit rate. See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007). Further, Petitioners withdrew their requests for review of several companies, including one with a relatively low rate of 14.51 percent.

Accordingly, we determine that the assignment of combination rates is not warranted in the instant proceeding because: (1) the particular facts that led to the assignment of a combination rate in Pistachios are not present here; (2) the large administrative burden renders applying combination rates in this instance impracticable; and (3) interested parties have additional mechanisms available to address their concerns regarding improper "funneling" through administrative reviews and CBP. Accordingly, the Department continues to find that the application of combination rates is not warranted in the instant administrative review.

Comment 2: Treatment of Sales with Negative Margins

I. Jacobi's Case Brief Arguments

- The Department wrongly used the practice of "zeroing," in which any "negative margins" (where constructed export price ("CEP") exceeds normal value) are treated as zero in calculating the weighted average dumping margin in the Preliminary Results.
- Zeroing in administrative reviews has repeatedly been found by the WTO Appellate Body to be inconsistent with U.S. obligations under the WTO Anti-Dumping Agreement and the GATT 1994.
- The Department's justification for applying the zeroing practice in administrative reviews is improper because U.S. courts have never held that the Department is required to adopt the zeroing practice.[23]
- The NAFTA Binational Dispute Panel in Stainless Sheet and Strips in Coils from Mexico reasoned that U.S. law does not permit the practice of zeroing.[24] Also,

[23] See Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 46584 (August 11, 2008), and accompanying IDM at Comment 6.
[24] See Stainless Sheet and Strips in Coils from Mexico, USA-MEX-2007-1904-01 (April 14, 2010).

the Panel noted that language in U.S. law "must be interpreted to be consistent with" U.S. international obligations.[25]

- The Department should abandon the practice of zeroing, reverting to its antidumping margin calculation methodology adopted in the original investigation.

II. Petitioner's Rebuttal Brief Arguments

- The Department has considered negative margins of dumping as non-dumped sales and previously rejected all of Jacobi's arguments to abandon the zeroing practice.
- The Department should interpret the antidumping laws based on its own assessment of the objectives of the statute, as reflected in the courts' decisions.
- The Department should keep the practice of zeroing to calculate antidumping margins in the final results.

Department's Position: Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Outside the context of antidumping investigations involving average-to average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export price ("EP") or CEP. As no dumping margins exist with respect to sales where normal value is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The United States Court of Appeals for the Federal Circuit ("CAFC") has held that this is a reasonable interpretation of the statute.[26]

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds EP or CEP, and dividing this amount by the value of all sales.

The use of the term aggregate dumping margins in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the normal value permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the

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[25] See Allegheny Ludlum Corp. v. United States, 367 F.3d 1339 (Fed. Cir. 2004).
[26] See, e.g., Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004) ("Timken"); Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023, 163 L. Ed. 2d 853 (Jan. 9, 2006) ("Corus I").

denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

The CAFC explained in Timken that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask' sales at less than fair value."[27] As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate "masked dumping" before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.[28] Notwithstanding one NAFTA Panel's decision in Stainless Sheet and Strips in Coils from Mexico, as discussed above, U.S. courts have affirmed the Department's decision to not offset non-dumped merchandise.[29]

The respondent has cited WTO dispute-settlement reports ("WTO reports") finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act ("URAA").[30] Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See 19 U.S.C. 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports.[31] With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure.

With respect to United States-Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/AB/R (April 18, 2006), the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations. See Zeroing Notice. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See id., 71 FR at 77724.

With respect to United States-Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (Jan. 9, 2007), and United States-Continued Existence and Application of Zeroing Methodology, WT/DS350/AB/R (Feb. 9, 2009), the steps taken in response to these reports do not require a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative review. For all these reasons, the various WTO

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[27] See Timken, 354 F.3d at 1343.
[28] See, e.g., Timken, 354 F.3d at 1343; Corus I, 395 F.3d 1343; Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007) ("Corus II"); and NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir. 2007) ("NSK").
[29] See id.
[30] See Corus I, 395 F.3d at 1347-49; accord Corus II, 502 F.3d at 1375; NSK, 510 F.3d 1375.
[31] See 19 U.S.C. 3533(g); see, e.g., Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) ("Zeroing Notice").

Appellate Body reports regarding "zeroing” do not establish whether the Department's denial of offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department's interpretation of the Act described above, in the event that any of the export transactions examined in this review are found to exceed normal value, the amount by which the price exceeds normal value will not offset the dumping found in respect of other transactions.

Comment 3: Per-Unit Assessments and Cash Deposit Rates

I. Petitioners’ Case Brief Arguments

- The Department should take action regarding allegations pertaining to the discrepancies between reported entered values and gross unit prices.
- Sample sales documentation detailing price per pound submitted by respondents differs from the value reported to CBP, even after mandatory respondents were asked to correct and resubmit data.
- The discrepancy between gross unit price and the entered value in respondent submissions shows that respondents are profiting without declaring the full value of the imported activated carbon. This would be rectified by specific per unit assessments and subsequent cash deposit rates, which should be evaluated for all respondents.

II. Huahui’s Rebuttal Brief Arguments

- The Department should continue the practice of calculating assessment rates ad valorem.
- The argument introduced by Petitioners is directed towards a specific company, not all respondents. Yet, all respondents would be affected.
- Petitioners did not argue that assessment rate instructions pertaining to Huahui were inaccurate or were calculated using the wrong methodology.
- The information provided by Huahui on the record confirms the values that it reported.

III. Jacobi’s Rebuttal Brief Arguments

- The Department should continue to calculate rates ad valorem.
- The difference in entered values submitted by Jacobi was because the original submission contained values that were calculated (because the actual data had not yet been compiled)[32], while the updated submission detailed actual entered values.
- A conversion error inadvertently affected some of the values given in the updated submission and the Department was alerted of this in a letter submitted on June 29, 2010.
- Sample Customs Form 7501s have been submitted that show the correct calculation and corrected figures of those that were subject to the conversion error have been accepted by the Department.

[32] See Jacobi’s Rebuttal Brief, dated July 1, 2010, at 5.

- The Department's practice is to calculate assessment rates ad valorem and only relies on per-unit assessment rates should it feel that the entered values submitted are in error and there is ample evidence on the record to support the error.
- There is no evidence on record to indicate that the values submitted by Jacobi are unreliable and Jacobi further states that the entered values are accurate as they are based on actual sales.

Department's Position: The Department has determined that, with respect to the antidumping duty order on certain activated carbon from the PRC, per-kilogram antidumping duty cash deposit and assessment rates are appropriate for the entire order.

We compared entered value data reported to CBP to the net unit price calculated in Jacobi's margin program. Although Petitioners based their argument on a comparison of Jacobi's entered values to its gross unit price, the Department has analyzed the difference between Jacobi's entered values and its net unit price.[33] This is a more appropriate comparison because the calculated net U.S. price is the price used in calculating the dumping margin (i.e., the cash deposit rate).

Based on a further analysis of information on the record of this review, the Department has found that there is a substantial difference between Jacobi's net unit price for its entries of certain activated carbon and the entered value reported to CBP. While this does not prevent the Department from calculating appropriate assessment rates, the Department is unable to calculate ad valorem cash deposit rates that will ensure the accurate collection of the total antidumping duties.[34]

Section 736(a)(1) of the Act states that the Department shall direct "customs officers to assess an antidumping duty equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise . . ." Section 351.212(b)(1) of the Department's regulations provides that the Department "normally will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes."

While the Department normally directs CBP to collect cash deposits and liquidate entries on an ad valorem basis, we are not required to do so by statute or by our regulations, and have in the past used quantity-based rates where appropriate.[35] In addition, the courts have upheld prior

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[33] Although the Department conducted a different analysis which we believe to be more accurate, an analysis of the difference between Jacobi's entered values and its gross unit price yields a similar result.
[34] See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 70 FR 38873 (July 6, 2005) ("Honey") and accompanying IDM at Comment 7.
[35] See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546, 19549 (April 22, 2002)("Crawfish 2002") and accompanying IDM; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 66 FR 36551, 36554 (July 12, 2001); Honey, 70 FR at 38880 and accompanying IDM at Comment 7; and Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082, 34086 (June 13, 2005).

determinations where the Department has made changes to the standard ad valorem methodology.[36] In the instant case, we have found that the entered values of CEP sales by Jacobi are being systematically understated, which can result in the undercollection of duties by CBP if the Department were to issue cash deposit instructions on an ad valorem basis.

Normally, the difference between entered value and the gross unit price is relatively small. In the instant review, however, there is evidence that the entered value reported by Jacobi to the Department and to CBP has little or no relation to the ultimate net unit price. Indeed, in the most recent submission provided by Jacobi, approximately 58% of total sales had a reported entered value that was less than half of Jacobi's reported net unit price, 32% of total sales had a reported entered value that was at least 60% less than the net unit price, and 8% of entries had a reported entered value that was at least 70% less than the net unit price.[37]

Finally, it should be noted that this determination will follow the Department's normal practice in applying per-unit assessment and cash deposit rates to the order in its entirety and will be applied to all respondents in this particular administrative review and all future reviews of the order.[38] Although the analysis above shows a discrepancy in the data reported by Jacobi, the other mandatory respondent, Huahui, only had EP sales and therefore did not report entered values; therefore, comparison is not possible. In addition, it would be extremely burdensome to determine whether to apply an ad valorem or a per-unit rate on a company-specific basis. The change in methodology to per-unit assessment rates will not negatively impact these companies because the total duties due will not change; they will only be allocated over quantity instead of over entered value.

We will therefore direct CBP to collect cash deposits and assess antidumping duties on a per-kilogram basis for entries of subject merchandise from the PRC. This quantity-based collection and assessment method will begin upon completion of these final results, and will be employed thereafter for all future reviews of the order.

Comment 4: Surrogate Values

4a. Coconut Shell Charcoal

I. Petitioners' Case Brief Arguments

- The value of coconut shell charcoal used in the Preliminary Results is vastly understated.[39] When compared to a benchmark value of raw coal inputs, coconut shell charcoal should have a higher value than the Department relied on in the Preliminary Results because coconut shell charcoal has been subject to initial processing that raw coal has not undergone.

[36] See Thai Pineapple Canning Indus. Corp. v. United States, 273 F.3d 1077, 1085 (CAFC 2001).
[37] See Jacobi's Submission Providing Corrected Entered Values Certain Activated Carbon from China (June 30, 2010).
[38] See Honey, 70 FR 38873 and accompanying IDM at Comment 7.
[39] See "Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Robert Palmer, Analyst, Office 9, Second Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results," dated May 13, 2010 ("Prelim SV Memo") at 4.

- The Department should look to the remand of Collated Roofing Nails, where the Department relied on valuations that reflect the upstream/downstream nature of input materials.[40]
- The Department should average the values of coconut shell charcoal found in the 2007-2008 financial statements of Kalpalka,[41] the 2008-2009 financial statements of Indo German,[42] and the Sri Lankan domestic value of coconut shell charcoal found in an article from the publication The Cocommunity, dated June 1, 2010.[43]

II. Jacobi's Rebuttal Brief Arguments

- The Department should continue to rely on Indian import statistics found in the World Trade Atlas ("WTA") to value coconut shell charcoal because it remains the only source which satisfies the Department's criteria for surrogate value ("SV") selection.
- Paslode and Certain Steel Nails are not on point because there is no relationship between the higher prices for coal and higher prices for coconut shell charcoal.
- The Department should reject Petitioners' suggested sources for coconut shell charcoal.
  - The coconut shell charcoal value found in Indo German's financial statements is not the sales price of coconut charcoal, but rather the inventory value of all charcoal materials consumed.
  - With regard to the value found in Kalpalka's financial statements, Petitioners use the value of all raw materials Kalpalka uses in the production of activated carbon.
  - Petitioners refer to the domestic price for coconut shell charcoal of Sri Lanka, which is not the surrogate country in this case.

Department's Position: We agree with Jacobi that we should continue to value coconut shell charcoal using contemporaneous WTA Indian import data under harmonized tariff schedule ("HTS") number 4402.90.10: "Coconut Shell Charcoal" as in the Preliminary Results. See Prelim SV Memo at 7. The Department notes that Petitioners do not contest that the WTA Indian import data for coconut shell charcoal is contemporaneous, product specific, tax and duty exclusive, and represents a broad-market average.

The Department's practice when selecting the best available information for valuing factors of production ("FOPs"), in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly

[40] See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China, 62 FR 51410 (October 1, 1997) ("Collated Roofing Nails") and Final Determination Pursuant to the Remand Order From the U.S Court Of International Trade, Paslode Division of Illinois Tool Works, Inc. v. United States, Court No. 97-12-02161 (January 15, 1999) ("Paslode Remand") available at http://ia.ita.doc.gov/remands/prcnails.htm; see also, Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) ("Certain Steel Nails") and accompanying IDM at Comment 12.
[41] Kalpalka Chemicals Pvt. Ltd. ("Kalpalka").
[42] Indo-German Carbons Ltd. ("Indo German").
[43] See Petitioners' Post-Prelim Rebuttal SV Submission, dated June 14, 2010 at Attachment 2.

available and contemporaneous with the POR, and tax/duty exclusive.[44] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[45] While there is no hierarchy for applying the SV selection criteria, "the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' SV is for each input."[46]

Here, Petitioners urge the Department to discontinue using the allegedly unreliable Indian WTA data for coconut shell charcoal data in favor of using the average price of three sources; prices obtained from two Indian financial statements and the Sri Lankan domestic price of coconut shell charcoal found in an article from the publication The Cocommunity.[47] For the reasons discussed below, we are continuing to use WTA Indian import data to value coconut shell charcoal.

In Tapered Roller Bearings 2009, the Department stated that the burden is on the party making the claim to establish that a particular SV is not appropriate based on the Department's preferred criteria for selecting SVs.[48] The Department has consistently found that the existence of higher prices alone does not necessarily indicate that price data are distorted or misrepresented and, thus, is not sufficient to call into question SV data, absent specific evidence the data are otherwise unrepresentative.[49] Under the Department's current practice, an interested party must provide specific evidence showing a value is aberrational and, if this evidence demonstrates the value is not viable, the Department will assess all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.[50] With respect to benchmarking, the Department's current practice is to examine import data for potential surrogate countries for a given case, to the extent such import data are available, and/or examine data from the same HTS category for the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values.[51]

Petitioners argue that the Department should use a price list from Supreme Carbon Indonesia ("Supreme Carbon"), an Indonesian activated carbon producer, as a benchmark source to demonstrate that the WTA value of coconut shell charcoal is abnormally low.[52] We find that the

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[44] See, e.g., First Administrative Review of Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010) ("PSF AR1") and accompanying IDM at Comment 1.
[45] See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005) ("Glycine 2005") and accompanying IDM at Comment 1.
[46] See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008) ("PET Film") and accompanying IDM at Comment 2; Crawfish 2002, 67 FR 19546 and accompanying IDM at Comment 2.
[47] See Petitioners' Post-Prelim Rebuttal SV Submission, dated June 14, 2010 at Attachment 2.
[48] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) ("Tapered Roller Bearings 2009") and accompanying IDM at Comment 6.
[49] See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007- 2008 Administrative Review of the Antidumping Duty Order, 75 FR 844 (January 6, 2010), and accompanying IDM at Comment 2.
[50] See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 36630 (June 28, 2010) ("CVP 23") and accompanying IDM at Comment 6.
[51] See id.
[52] See Petitioners' Post-Prelim SV Submission, dated June 2, 2010 at Attachment 2.

prices in Supreme Carbon do not yield a conclusion that the WTA price is distorted, because these particular data are from a single data point after the POR. Moreover, because Petitioners have not supplied import data for coconut shell charcoal for any other economically comparable countries, Petitioners have not demonstrated through the evidence provided that the WTA data are distorted.

Petitioners have suggested that the Department use the 2008-2009 financial statements of Indo German and the 2007-2008 financial statements of Kalpalka[53] as sources to value coconut shell charcoal. Notwithstanding the Department's decision to continue to utilize WTA data, the Department finds that these two financial statements are unsuitable to value coconut shell charcoal. The costs from the financial statements are not specific to the input or representative of actual market transactions.[54] The Department has, in prior cases, rejected sources where prices or values were not based on actualized, transaction prices.[55] Moreover, the Department prefers to select SVs which are product specific.[56] A review of Indo German's and Kalpalka's financial statements reveals that neither company had sales of coconut shell charcoal or explicit calculated costs for coconut charcoal. Instead, Indo German's financial statements use an internal cost applied to its "charcoal consumed" which was used by Petitioners to derive an SV of coconut shell charcoal.[57] Additionally, Petitioners use Kalpalka's 2007-2008 financial statements' value of all raw materials consumed to derive a value for coconut shell charcoal.[58] Because these financial statements do not provide input specific values or actual market based transactions of coconut shell charcoal, we find that these financial statements do not represent the "best" available information to derive a SV for coconut shell charcoal.

With regard to the Sri Lankan domestic value of coconut shell charcoal, as indicated in an article of The Cocommunity, we find that this source does not represent the best available information on the record because this source is not contemporaneous with the POR and provides no indication of whether these values are exclusive or inclusive of tax and/or duties.[59] The Department generally prefers sources from the selected surrogate country, which represents a broad market average and are tax and duty exclusive.[60] In the instant review, the WTA Indian import data for coconut shell charcoal are publically available, from the primary surrogate country, tax and duty exclusive, and represents a broad market average. Therefore, the Indian WTA data are a more appropriate source to value coconut shell charcoal.

Petitioners argue that the WTA value of coconut shell charcoal, an input that has been subject to initial processing, is low compared to the relative WTA value of raw coal, an input that has not

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[53] Petitioners and Jacobi both submitted Kalpalka's 2007-2008 financial statements in their post-preliminary SV submissions, which we will rely upon for the final results as they are more contemporaneous than the 2006-2007 Kalpalka financial statements. See Petitioners' Post-Prelim SV Submission, dated June2, 2010 at Attachment 18 and Jacobi's Post-Prelim SV Submission, dated June 2, 2010 at Exhibit 1.
[54] PSF AR1, 75 FR 1336 and accompanying IDM at Comment 1.
[55] See Crawfish 2002, 67 FR 19546 and accompanying IDM at Comment 2.
[56] See PSF AR1, 75 FR 1336 and accompanying IDM at Comment 1.
[57] See Petitioners' Post-Prelim SV Submission, dated June 2, 2010 at Attachment 1.
[58] See Petitioners' Case Brief dated June 21 at 8-9; see also Jacobi's Post-Prelim Surrogate Value Submission, dated June 2, 2010 at Exhibit 1.
[59] See Petitioners' Post-Prelim Rebuttal SV Submission, dated June 14, 2010 at Attachment 2, pg 2-3.
[60] See Wire Decking from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 32905 (June 10, 2010) ("Wire Decking") and accompanying IDM at Comment 5.

undergone initial processing. Therefore, consistent with the remands in Collated Roofing Nails and Certain Steel Nails, Petitioners contend the Department should rely on an SV for carbonized coconut, an intermediate, input product that reflects a higher SV, relative to the WTA value for a non-carbonized raw material such as raw coal.[61] We find that the remand determinations for Collated Roofing Nails and Certain Steel Nails are not analogous to this particular issue. In Collated Roofing Nails, the Department initially determined an SV for steel wire rod scrap that exceeded the price of steel wire rod. See Paslode Remand. Here, Petitioners attempt to compare the value of coconut shell charcoal to raw coal for the premise that raw coal should not exceed the price of coconut shell charcoal.[62] We find that there is no basis for comparison between raw coal and coconuts or coconut shell charcoal as these inputs are two distinct materials. Moreover, Petitioners did not place on the record of this review the value of raw coconut shells for the Department to make a fair and accurate comparison between the value of raw coconut shells and the value of coconut shell charcoal.

Therefore, the Department concludes that there is no evidence that the WTA Indian import data for coconut shell charcoal are distorted, and moreover, the WTA data represent the best available information on the record, in accordance with the Department's criteria stated above. We will continue to use the WTA Indian import data for the current POR to value coconut shell charcoal for these final results.

4b. Steam Coal

I. Petitioners' Case Brief Arguments

- The Department should not rely on Coal India Limited ("CIL") to value steam coal, which was in part justified by the Department in the Preliminary Results using The Energy and Resources Institute ("TERI") 2004/5 report.
- Indian domestic coal is a poor quality coal whose Useful Heat Value ("UHV") is not equivalent with Chinese steam coal and not comparable to the steam coal used by the respondents. The import value of steam coal is more appropriate because the imported steam coal's UHV is more comparable to Chinese steam coal.
- The Indian government's control of CIL has kept steam coal prices artificially low compared to Indian steam coal imports purchased at world market prices. Because of the Indian government's control of CIL coal prices, world market prices of steam coal, reflected in the average unit value of Indian imports of steam coal, are more appropriate as a market price SV.
- The Department should use the UHV and average price of Indian imports of steam coal to benchmark the import price to reflect the differences in the various grades of steam coal on a world market price based on relative UHV levels.

II. Jacobi's Rebuttal Brief Arguments

[61] See Petitioners' Case Brief at 5-7.
[62] See id.

- The Department should continue to use CIL data to value steam coal in the final results.
- Petitioners' claim that the steam coal used by Jacobi's supplier is different from Indian coal is factually incorrect. Jacobi's supplier has placed on the record information that is specific to the types and grades of steam coal used by CIL.
- Averaging CIL pricing with WTA Indian import data simply raises the price of steam coal and makes the CIL data less specific, rather than providing a more specific, country wide price for steam coal.

III. Huahui's Rebuttal Brief Arguments

- The Department should continue to use CIL data to value steam coal.
- Huahui's reported UHV for steam coal matched the specific UHV level of the grades of steam coal found in the CIL data. Moreover, Huahui's reported ash content levels correlates with the ash levels for Indian steam coal.
- CIL has adjusted prices to react to market conditions, including concerns for costs and profits. There is no evidence that CIL is subsidizing coal for its customers or that CIL admits to maintaining artificially low or below market prices for its customers.
- The world market price, which Petitioners compare to India's coal prices, is driven by many factors that make the import price of coal greater than Indian domestic prices.
- It is also inappropriate to use the world market price to benchmark CIL data.

Department's Position: The Department agrees with Jacobi and Huahui, in part, to continue to value steam coal using CIL data. However, the Department continues to find that CIL data are not applicable for all reported non-coking coal inputs (hereinafter referred to as "steam coal").[63] In the Preliminary Results, the Department used CIL data to value steam coal where the necessary data have been reported by the respondents and where the UHV specificity of the CIL data corresponds to the UHV specificity of the steam coal input used by the respondents. Otherwise, the Department used WTA Indian imports of steam coal under Indian HTS number 2701.19.20: "Steam Coal" for Jacobi's suppliers, which did not report the UHV of their steam coal input.[64]

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available and contemporaneous with the POR.[65] The Department undertakes its analysis of valuing the FOPs

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[63] Non-coking coal generally has a higher ash content than coking coal. Non-coking coal is mainly used as thermal grade coal for power generation; i.e., as a general heat source and to generate steam. See Huahui's SV Submission, dated February 24, 2010 at Exhibit 5; see also, Petitioners' SV Submission, dated February 24, 2010 at Exhibit 4 for a general discussion of coal types and grades; Huahui's Supplemental Section C-D Questionnaire Response, dated January 12, 2010 at 18; Huahui's Second Supplemental Section C-D Questionnaire Response, dated April 5, 2010 at 17.

[64] See Prelim SV Memo at 6.

[65] See PSF AR1, 75 FR 1336 and accompanying IDM at Comment 1.

on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[66] While there is no hierarchy for applying the SV selection criteria, "the Department must weigh available information with respect to each input value and make a product- specific and case-specific decision as to what the 'best' surrogate value is for each input."[67] Further, it is the Department's stated practice to use contemporaneous period-wide price averages to value FOPs from the primary surrogate country.[68]

The Department finds that the CIL data satisfies the above criteria with respect to the grade-specificity, representativeness of Indian-wide prices, publicly available information, and average non-export value in accordance with the Department's established practice.[69] Additionally, the Department determines that the CIL data are the best information available on the record of this review with which to value certain respondent's steam coal input.[70]

Petitioners argue that Indian coal is a low-quality, sub-bituminous coal with a high-ash content of 30-50% and low UHVs compared to the 6000 UHV average of Indian imports of steam coal, which makes Indian steam coal unattractive to foreign purchasers and, therefore, explains India's inability to export steam coal.[71] Petitioners argue that, in contrast, evidence on the record indicates Chinese steam coal has a low-ash content and high UHV, which has attracted foreign investment. For these reasons, contend Petitioners, Indian steam coal is not comparable to the Chinese bituminous steam coal used by the respondents.[72] With regard to Petitioners' argument that India exports a small quantity of coal because of the low quality of its coal, we note there is no evidence on the record that indicates the ash content, UHV or grades of coal India exported. Moreover, evidence on the record indicates there are reasons for India's low exports of coal other than Indian coal quality issues. For instance, India predominately relies on coal to produce electricity and the Indian power sector's demand for coal continues to grow.[73] In addition to power generation, increased demand for coal in India's steel, cement and brick sectors, among others, also applies pressure on India's domestic coal supply.[74] The increased demand for coal for India's domestic consumption and a shortfall of domestic coal production[75] indicates that India has little excess coal to export.[76] Moreover, the quantity of coal exported by India does not have any impact on the reliability of the CIL data used as an SV source to value coal used by the respondents.

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[66] See Glycine 2005, 70 FR 47176 and accompanying IDM at Comment 1.
[67] See, e.g., PET Film, 73 FR 55039 and accompanying IDM at Comment 2; Crawfish 2002, 67 FR 19546 and accompanying IDM at Comment 2.
[68] See Policy Bulletin 04.1: "Non-Market Economy Surrogate Country Selection Process," March 1, 2004, at 4; see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) ("Sawblades") and accompanying IDM at Comment 11.
[69] See Arch Chemicals Inc. v. United States, Slip Op. 09-71 (CIT 2009) ("Arch Chemicals") at 28.
[70] See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009) ("Glycine 2009") and accompanying IDM at Comment 5.
[71] See Petitioners' Case Brief, dated June 21, 2010 at 13-17.
[72] See id.
[73] See Petitioners' SV Submission, date February 24, 2010 at Exhibit 4P at 37.
[74] See id.
[75] TERI and other sources indicate that India does not domestically produce enough coal to meet its domestic demand. See Petitioners' SV Submission, date February 24, 2010 at Exhibit 4D and 4J at page 4 of 7.
[76] See id.

Petitioners suggest that Chinese exports of coal indicate a larger international demand for a higher quality coal than Indian coal and that the coal exported by the PRC is the type of coal used by the respondents.[77] We find that the evidence cited by Petitioners does not indicate the type of coal exported, i.e., coking or non-coking coal, or provide the UHVs or ash-contents of the grades of coal exported.[78] Moreover, Petitioners' argument requires an inference that the grades or types of coal exported from the PRC are the same type or grades used by the respondents. There is no record evidence for the Department to reach this conclusion.

Petitioners argue that India's steam coal is a sub-bituminous coal with a high-ash content, between 30-50 percent, an UHV of 2500 to 4000.[79] Not only does the report cited by Petitioners appear to be 17 years old, it appears to be a transcript of a hearing held in the Indian Parliament between different industry groups airing their complaints about CIL to the Indian Parliament.[80] Moreover, the transcript does not provide any factual evidence forming the basis of the complaints made against CIL. See id. Nevertheless, in the same report, the Indian Ministry of Coal reported that India produces steam coal between 1300 to plus 6200 UHV and other participants indicate that the ash content of steam coal they received from CIL ranged from 19 to 36 percent.[81] Moreover, other, more contemporaneous sources on the record indicate that Indian steam coal ranges between 13 to 49 percent ash content.[82] Even assuming, arguendo, that Indian coal may not be as desirable as other coals found on the international market, there is no evidence to demonstrate that CIL is unable to produce steam coal at the ash content and UHV's indicated in its publication. Therefore, there is no evidence on the record that indicates that the coal produced by CIL is of a different quality and is not comparable to the coals used by respondents.

As stated above, the Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific.[83] Both Jacobi and Huahui reported the UHV of the steam coal used in their production process.[84] The UHVs reported by the respondents corresponds with the UHV range of CIL's grade C and D non-coking coal.[85] Moreover, the ash contents reported by Jacobi and Huahui comport to Indian steam coal ash contents.[86] Therefore,

[77] See Petitioners' Case Brief, dated June 21, 2010 at 13-17.
[78] See Petitioners' Case Brief, dated June 21, 2010 at 13-14, see also Petitioners' SV Submission, dated February 24, 2010 at Exhibit 4A and 4B.
[79] See Petitioners' Case Brief, dated June 21, 2010 at 15-17, see also Petitioners' SV Submission, dated June 2, 2010 at Attachment 15.
[80] See Petitioners' SV Submission, dated June 2, 2010 at Attachment 15.
[81] See id.
[82] See Petitioners' SV Submission, dated February 24, 2010 at Exhibit 4D and 4J; see also Huahui's SV Submission, dated February 24, 2010 at Exhibit 5.
[83] See PSF AR1, 75 FR 1336 and accompanying IDM at Comment 1.
[84] See Huahui's Supplemental Section C-D Questionnaire Response, dated January 12, 2010 at 18 and Exhibit SD-11; see also Jacobi's Supplemental Section D Questionnaire Response for NXHH ("HHSDQR"), dated January 19, 2010, at Exhibit 4.
[85] See Huahui's SV Submission, dated February 24, 2010 at Exhibit 5.
[86] See Huahui's Supplemental Section C-D Questionnaire Response, dated January 12, 2010 at 18 and Exhibit SD-11; see also Jacobi's HHSDQR, dated January 19, 2010, at Exhibit 4.

in accordance with section 773(c)(1) of the Act and Department practice,[87] we find that the CIL data for steam coal is specific to the steam coal input used by the respondents because the SV is based on clear, objective criteria rather than a qualitative evaluation of world-wide coal market trends or sorting between differing characterizations of coal.

Although Petitioners cite evidence of the non-core[88] sector paying higher prices for coal, the evidence cited does not specify the type of coal available at these higher prices. Without such evidence, the Department cannot determine whether the type of coal being sold at these elevated prices was the type used by Huahui's and Jacobi's supplier. By contrast, CIL documents and TERI reports indicate that all coal was deregulated in the 1990's and has seen continual price increases.[89] With regard to Petitioners' contention that the Indian government's control of CIL has kept prices artificially low and unresponsive to market forces, we note that CIL made the business decision not to raise prices in order to maintain its customer base. Specifically, it appears CIL did not raise prices so that its customers could stay in business.[90] Furthermore, notwithstanding Petitioners' argument, the Department has in the past used the TERI data (based on CIL data) for purposes of calculating SVs.[91] Moreover, the CIT has found that CIL data are reliable as an SV source for steam coal.[92]

Petitioners argue that CIL's coal pricing is not in alignment with world market prices of steam coal, as represented by WTA Indian import data, and recommend that we value steam coal using world market prices. First, we note that world-wide prices are not specific to the surrogate country, India. Moreover, the use of a world-wide price for an SV would not be consistent with the plain language of the Act. Section 773(c)(1)(B) of the Act states that the valuation of the FOPs shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority. Section 773(c)(4) of the Act states that the administering authority shall utilize, to the extent possible, prices in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country. By definition, a world-wide price for steam coal cannot be specific to any appropriate country or countries. As such, we find that a world-wide price would not be a reliable indicator of prices in a market economy at a comparable level of economic development to the PRC.[93] In addition, by using a world-wide price, the Department would lose factor-specificity, which cannot constitute the best available information when specific UHV data is otherwise available.

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[87] See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010) ("China Shrimp") and accompanying IDM at Comment 3; see also Certain Magnesia Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 75 FR 45468 (August 2, 2010) and accompanying IDM at Comment 1A ("Magnesia Bricks") (where the Department sought SVs specific to the input in question).

[88] The non-core sector includes textiles, fertilizers, refractories, brick, kilns etc. "Core" customers include the power sector, steel and cement. See Petitioners' SV Submission, dated February 24, 2010 at Exhibit 4D and 4J.

[89] See Petitioners' SV Submission, dated February 24, 2010 at Exhibit 4D and 4P; see also Huahui's SV Submission, dated February 24, 2010 at Exhibit 5.

[90] See Petitioners' Post-Prelim SV Submission, dated February 24, 2010 at Attachment 12.

[91] See Glycine 2009, 74 FR 41121 and accompanying IDM at Comment 5.

[92] See Arch Chemicals at 28.

[93] See Magnesia Bricks, 75 FR 4546 and accompanying IDM at Comment 1A.

Petitioners have suggested that the Department benchmark the WTA Indian import price and the suggest UHV of imported steam coal against the CIL data because the prices of CIL's coal are unreliable. In Tapered Roller Bearings 2009, the Department stated that the burden is on the party making the claim to establish that a particular SV is not appropriate based on the Department's preferred criteria for selecting SVs.[94] Under the Department's current practice, an interested party must provide specific evidence showing a value is aberrational and, if this evidence demonstrates the value is not viable, the Department will assess all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.[95] As noted above, the weight of the evidence supports a finding that the CIL data are specific to the input used by Huahui's and Jacobi's suppliers and are otherwise reliable prices. Therefore, we find that Petitioners' suggested benchmarking methodology for steam coal removes the specificity of the UHV of CIL's data as it relates to the inputs used by the respondents.

In accordance with section 773(c)(1) of the Act, we find that the CIL data on the record satisfy the above criteria with respect to the grade-specificity, representativeness of Indian-wide prices, publically available information, contemporaneity, and average non-export value.

4c. Electricity

I. Petitioners' Case Brief Arguments

- The Department should either use the International Energy Agency's ("IEA") reported costs of electricity accounting for inflation or it should inflate each tariff rate in the March 2008 Indian Central Electricity Authority's ("CEA") tariff publication to the POR to account for the lack of market updating over time.
- Evidence on the record indicates that India has not increased its electricity prices in line with world market prices.
- Indian surrogate financial statements on the record indicate purchases of electricity at a greater cost than the SV of electricity used by the Department in the Preliminary Results.
- The Department has, over time, indicated a steady rise in electricity prices.[96] However, the Department has departed from this trend in the Preliminary Results.

II. Huahui's Rebuttal Brief Arguments

- The Department should reject Petitioners' request to inflate the electricity SV which is already contemporaneous with the POR.
- The March 2008 CEA electricity rates represent actual rates used in India during the POR and Petitioners have not provided evidence to the contrary.
- The two surrogate financial statements used by the Department to calculate surrogate financial ratios in the Preliminary Results do not report unit electricity

[94] See Tapered Roller Bearings 2009, 74 FR 3987 and accompanying IDM at Comment 6.
[95] See CVP 23, 75 FR 36630 and accompanying IDM at Comment 6.
[96] See Petitioners' Post-Prelim Surrogate Value Submission, dated June 2, 2010 at Attachment 4.

costs. Moreover, the financial statements of Hindalco Industries Limited ("Hindalco") on the record indicate that electricity unit costs do decrease.[97]

- Contrary to Petitioners' assertions, the Indian electricity rate has not increased, but the Department has applied an ever-increasing inflator to the same electricity SV source in Petitioners' sample cases.

Department's Position: The Department disagrees with Petitioners regarding their proposed electricity SV and will continue to value electricity using the electricity rates, as published, from the March 2008 publication of the Indian CEA, as in the Preliminary Results.[98]

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.[99] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[100] There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" SV is for each input.[101]

Accordingly, the Department has determined to continue valuing electricity using data from the CEA of the Government of India in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008, for the final results because it is the best available information on the record. More specifically, these electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India, which are contemporaneous with the POR.

With regard to Petitioners' assertion that the Department has departed from using an SV source that reflects an appropriate inflationary trend in India's electricity prices, we note that, in the SV memoranda of each case cited by Petitioners, the Department inflated the value of Indian electricity provided in the IEA;s Energy Prices and Taxes, Second Quarter, 2002 and Energy Prices and Taxes, Second Quarter, 2003.[102] These IEA sources used an Indian electricity price from the year 2000, which the Department inflated for each case cited by Petitioners.[103] Section 773(c)(1)(B) of the Act states that the valuation of the FOPs shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority. Additionally, it is the Department's stated practice to use contemporaneous period-wide price averages to value FOPs[104] from the

[97] See Huahui's Surrogate Value Submission, dated February 24, 2010, at Attachment 8.
[98] See Prelim SV Memo at 11 and Attachment 4.
[99] See PSF AR1, 75 FR 1336 and accompanying IDM at Comment 1.
[100] See Glycine 2005, 70 FR 47176 and accompanying IDM at Comment 1.
[101] See, e.g., PET Film, 73 FR 55039 and accompanying IDM at Comment 2; Crawfish 2002, 67 FR 19546 and accompanying IDM at Comment 2.
[102] See Petitioners' Case Brief at 31; see also Petitioners' Post-Prelim Surrogate Value Submission, dated June 2, 2010 at Attachment 4.
[103] See Petitioners' Post-Prelim Surrogate Value Submission, dated June 2, 2010 at Attachment 4.
[104] See Policy Bulletin 04.1, at 4; see also Sawblades, 71 FR 29303 and accompanying IDM at Comment 11.

primary surrogate country. Therefore, the Department's focus is concentrated upon the price of electricity in India at the time of the POR, not the role of inflation on Indian electricity rates.

Additionally, with respect to whether the Department should inflate each electricity tariff by its effective date, we continue to not adjust the SV of electricity for inflation, consistent with the Department's practice.[105] As stated above, it is the Department's stated practice to use contemporaneous period-wide price averages to value FOPs from the primary surrogate country.[106] As we found in OCTG and Prestressed Concrete Steel Wire Strand with respect to using CEA data, because the rates listed in this source are the rates that were in effect during the POR, we are not adjusting the average value for inflation. CEA data contain many different rates with effective dates ranging from 2000 to 2007; however, these rates were still the rates used in 2008.

4d. Steam

I. Petitioners' Case Brief Arguments

- The Department should not use the 2008-2009 financial statements of Hindalco as an SV source for steam because it receives a subsidy the Department has found countervailable. Citing to PRC Magnesium 08-09, the Department did not rely on Hindalco as a source to calculate surrogate financial ratios, because Hindalco "received benefits under the Duty Free Import Entitlement Scheme ("EPCG Scheme")."[107]
- The Department should value steam on the relative value of steam to natural gas.

II. Huahui's Rebuttal Brief Arguments

- The Department should continue to use Hindalco's 2008-2009 financial statements to value purchased steam.
- Annexure B of Hindalco's 2008-2009 financial statements submitted by Petitioners does not mention the Duty Free Import Entitlement Scheme.[108]
- Even if Hindalco receives benefits under an actionable subsidy program, there is no evidence to demonstrate any benefits received under that program impacts the Indian domestic purchase of steam from third parties.

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[105] See Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination, 74 FR 59117 (November 17, 2009), unchanged in Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010) ("OCTG"); see also Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 74 FR 68232 (December 23, 2009), unchanged in Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560 (May 21, 2010) ("Prestressed Concrete Steel Wire Strand").

[106] See Policy Bulletin 04.1 at 4; see also Sawblades, 71 FR 29303 at Comment 11.

[107] See Magnesium Metal from the People's Republic of China: Preliminary Results of the 2008-2009 Antidumping Duty Administrative Review, 75 FR 20817 (April 21, 2010) ("PRC Magnesium 08-09").

[108] Huahui cites Petitioners' Surrogate Value Submission, dated February 24, 2010, at Exhibit 44.

Department's Position: We disagree with Petitioners that we should disregard Hindalco's 2008-2009 financial statements as an SV source for steam purchases. In the Preliminary Results, Petitioners argued that Hindalco received benefits under the Duty Free Import Entitlement Scheme citing PRC Magnesium 07-08.[109]

As discussed above, the Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.[110] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[111] There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" SV is for each input.[112] Moreover, in valuing such factors, Congress directed the Department to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."[113]

Petitioners contend the Department should not use Hindalco's financial statements as an SV source for steam purchases because Hindalco received benefits under a subsidy titled "Duty Free Import Entitlement Scheme" which, Petitioners allege, the Department found to be countervailable.[114] A re-examination of Hindalco's financial statements confirms our determination in the Preliminary Results. Specifically, the "Duty Free Import Entitlement Scheme" is not expressly named as a countervailable subsidy in any of the Department's countervailing duty proceedings. In both magnesium administrative reviews, the Department stated that "Hindalco received benefits under the Duty Free Import Entitlement Scheme ("EPCG Scheme")"[115] and cited cases to support its determination.[116] However, the "Duty Free Import Entitlement Scheme" does not appear in any of the sources cited by the Department, but those sources do reference an Export Promotion Capital Goods Scheme ("EPCGS"). As a result of our research conducted in this case, we find that the Department mislabeled EPCGS as the Duty Free

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109 See Petitioners' Rebuttal Surrogate Value Comments, dated March 8, 2010 at 3 and Attachment 4 at 92; see also Pure Magnesium from the People's Republic of China: Preliminary Results of 2007-2008 Antidumping Duty Administrative Review, 74 FR 27090 (June 8, 2009) ("PRC Magnesium 07-08").

110 See PSF AR1, 75 FR 1336 and accompanying IDM at Comment 1.

111 See Glycine 2005, 70 FR 47176 and accompanying IDM at Comment 1.

112 See, e.g., PET Film, 73 FR 55039 and accompanying IDM at Comment 2; Crawfish 2002, 67 FR 19546 and accompanying IDM at Comment 2.

113 See Omnibus Trade and Competitive Act of 1988, H.R. Conf. Rep. No. 76 100th Cong., 2nd Session (1988) at 590.

114 See PRC Magnesium 08-09, 75 FR 20817 and PRC Magnesium 07-08, 74 FR 27090; see also Petitioners' Rebuttal Surrogate Value Comments, dated March 8, 2010 at 3 and Attachment 4 at 92.

115 See PRC Magnesium 08-09, 75 FR at 20823.

116 See PRC Magnesium 08-09, 75 FR 20817, citing Certain Iron-Metal Castings From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 64 FR 61592 (November 12, 1999), unchanged in Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review, 65 FR 31515 (May 18, 2000); see also http://ia.ita.doc.gov/esel/eselframes.html; and Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006), and accompanying IDM at ``Benchmarks for Loans and Discount Rate."

Import Entitlement Scheme in PRC Magnesium 07-08 and PRC Magnesium 08-09. Therefore, we continue to find that Hindalco's financial statements on the record of this case do not indicate any subsidy schemes the Department has found countervailable.[117]

Although we do not find that Hindalco's financial statements contain actionable subsidies in this case and, as Huahui points out, Petitioners have not explained how the presence of subsidies in Hindalco's financial statements on the record impact Hindalco's purchases of steam. In past cases, the Department has rejected market economy prices because it found a basis to believe or suspect those prices to be subsidized.[118] Here, we find no record evidence of any Indian subsidies related to the purchase of steam. Therefore, for these final results, we will continue to value the respondents' steam input with the cost of Hindalco's steam purchases as indicated in its 2008-2009 financial statements.

4e. Expense Exclusion in Kalpalka's Financial Ratios

I. Huahui's Case Brief Arguments

- The Department should remove "export expenses" from the selling, general, and administrative ("SG&A") calculation for Kalpalka in order to avoid double-counting of Huahui's truck freight and brokerage and handling expenses in the final results.
- Kalpalka is predominately an export oriented company; therefore, "export expenses" cannot reasonably be inferred to relate to non-export activity.
- No other expenses in Kalpalka's financial statements relate to the company's export activities.
- The freight costs to the port and brokerage/handling costs which have already been included in Huahui's normal value should be classified as "export expenses."

II. Petitioners' Rebuttal Brief Arguments

- The Department's inclusion of export expenses in the SG&A expenses does not lead to double-counting because Huahui was repaid for inland freight and brokerage and handling charges in the PRC.

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[117] See Petitioners' Rebuttal Surrogate Value Comments, dated March 8, 2010 at 3 and Attachment 4 at 92 (where Hindalco received benefits under the "Duty Free Import Entitlement Scheme.").

[118] See Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 29720 (May 27, 2010) and accompanying IDM at Comment 3 citing Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order, in Part, 69 FR 12119 (March 15, 2004) and accompanying IDM at Comment 1; and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 57420 (November 15, 2001) and accompanying IDM at Comment 1.

- Huahui's fails to cite any precedents that support its suggested adjustment, and the Department's practice in this proceeding is to include Kalpalka's export expenses in the surrogate SG&A expenditure.
- The Department's treatment of export expenses is also consistent with its practice in other similar proceedings.

Department's Position: The Department agrees with Petitioners that Kalpalka's "export expenses" should not be re-categorized from the SG&A and interest ("SG&A and Interest") component of Kalpalka's surrogate financial ratio calculation to the "Excluded" component.

In deriving appropriate SVs for overhead, SG&A, and profit, the Department typically examines the financial statements on the record of the review and categorizes expenses as they relate to materials, labor and energy ("MLE"), factory overhead, SG&A and profit, and excludes certain expenses (e.g., movement expenses) consistent with the Department's practice of accounting for these latter expenses elsewhere in the surrogate financial ratio calculation.[119] However, in NME cases, it is generally not possible for the Department to dissect the financial statements of a surrogate company as if the surrogate company were the respondent under review in the proceeding, because the Department does not seek information from or verify the information from the surrogate company.[120] Therefore, in calculating surrogate overhead and SG&A ratios, it is the Department's practice to accept data from the surrogate producer's financial statements *in toto*, rather than performing a line-by-line analysis of the types of expenses included in each category.[121] As stated by the CIT, the Department is "neither required to 'duplicate the exact production experience of the Chinese manufacturers,' nor undergo 'an item-by-item analysis in calculating factory overhead.'"[122]

In the Preliminary Results, the Department classified "export expenses" as SG&A and Interest. Because we do not go behind the financial statements in determining the appropriateness of including an item in the financial ratio calculation, we seek information within the financial statement to determine the nature of the activity generating the potential adjustment, to see if a relationship exists between the activity and the principal operations of the company.[123] In this instance, "export expenses" is listed under Schedule E, "Selling and Distribution Expenses" in Kalpalka's financial statements. Further, there are no explanatory notes or footnotes attached to this expense item. Therefore, because there is no clear detail in Kalpalka's financial statements that the costs associated with "export expenses" can be traced to a particular non-general operation of the company (such as truck freight or brokerage and handling), in accordance with the Department's practice, "export expenses" should be reflected in the SG&A expense ratio for

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[119] See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("Tires") and accompanying IDM at Comment 18A.
[120] See id.
[121] See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247, 1250 -1251 (CIT 2002); see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) and accompanying IDM at Comment 15.
[122] See Rhodia, 240 F. Supp. 2d at 1250.
[123] See, e.g., Tires, 73 FR 40485 and accompanying IDM at Comment 18A.

this company. Consequently, for the final results, we will continue to classify "export expenses" as an SG&A expense.[124]

Additionally, Huahui argues that, because Kalpalka is primarily an export company whose "export expense" represents over 78 percent of its total SG&A charges, "export expenses" must necessarily include Huahui's reported truck freight and brokerage and handling charges, including international freight charges Huahui did not incur during the POR. However, just because certain items are large compared to other line items there is no explanation of the specific costs included in these line items, and therefore there is no basis for the Department to differentiate and exclude costs that may be double-counted without also excluding costs that are also included in the line item that may not be accounted for elsewhere.[125] There is no other information contained in the financial statements to indicate the exact expenses Kalpalka identifies as "export expenses."

4f. Wage Rate Methodology

I. Petitioners' Case Brief Arguments

- The Department's new wage rate methodology fails to provide a sample population that is sufficiently large to generate statistically valid results and it omits many of the world's major activated carbon producing nations.
- The Department should continue to use its current regression analysis data or find more accurate and valid metrics.
- The resulting PRC wages have been significantly understated, especially in industries involving the production of activated carbon, steel, and agricultural products.

II. Huahui's and Albemarle's Case Brief Arguments

- The Department should value Huahui's labor costs using the Indian wage rates submitted by Huahui prior to the Preliminary Results. They are specific to the industries which cover the production of activated carbon in India and satisfy the statutory tests of "economic comparability" and "significant producer of comparable merchandise."[126]
- The use of Indian wage rates prevent a "mismatch" that would occur when the Department uses wage rate data from outside India to value labor, but then use actual Indian labor costs in the denominator in the calculation of the surrogate financial ratios.
- The Department has already used the publicly-available wage rates for India in the regression calculation in the Preliminary Results.[127]
- The Department may not apply a regression calculation to a small group of countries which meet the criteria of the statute because the methodology is "not feasible and would reduce the consistency and predictability of the Department's regression analysis."

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[124] See id.
[125] See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010) and accompanying IDM at Comment 30B.ii.a.
[126] See Huahui's Surrogate Value Submission, dated February 24, 2010 at Exhibit 9.
[127] See http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html#tabel.

III. Huahui's and Albemarle's Wage Rate Comments

- The Department is correct in using wage rate data related to the industry under review.
- The Department cannot use wage rate data from outside the primary surrogate country, which, in the instant review, is India.
- If labor costs vary depending on "socio-economic, political and institutional factors" then the Department should avoid the variation by not including the other countries in the surrogate labor rate.
- The Department should solely rely on the ISIC Rev. 2 Indian data. ISIC Rev. 2 data for India are more specific to the production of activated carbon than the data for other countries.
- The Department cannot interpret the term "significant" to mean "any" when that rule allows for data from countries with small export values to be used in establishing normal value, especially when those countries have a material impact on the resulting wage rate average. Therefore, the Department should exclude Bosnia, Herzegovina, Iran, Jordan and Macedonia.
- If the Department uses Peruvian data, it should use the data for "wage earners" rather than "salaried employees," because Huahui's employees are not "salaried employees."
- With regard to the Philippines, the Department should not use Philippine wage data "earnings per month" based on the "industrial/commercial survey," because the Philippines did not report any information on how the survey was conducted.
- The Department should not inflate wages based on the Consumer Price Index ("CPI"). There is no basis to presume that wages change in correlation to a country's CPI, because CPI is measured based on the cost of goods and services, but not wages.

IV. Jacobi's Wage Rate Comments

- The Department's proposed wage rate methodology is contrary to law because it includes countries with wage rates that are not significant producers, such as Ecuador, Jordan and Macedonia.
- The Department should not have used industry-specific wage data which omit the primary surrogate country because the industry classifications the Department uses includes mainly non-subject merchandise industries.
- If the Department uses industry-specific wage rates rather than broad averages, it should use the most contemporaneous data available.
- The Department should use the overall average income data from International Labor Organization ("ILO") for India to value labor during the POR. Or, as an alternative, use only an average of the countries listed on the Surrogate Country Memo that have labor data.

V. GHC's Comments

- The Department should use the Indian-specific labor rate on the record in conformity with the recent decision in Dorbest.

- None of the data provided in the Department's June 14, 2010 labor memo afford information relevant to the determination of the labor rate in this case. Only nine of the countries listed as exporters are countries whose wage rates are reflected on the record.
- The Department should continue to rely on countries being net exporters in order to qualify as significant producers.
- The Department has a long standing preference to derive SVs from the primary surrogate country if there are useable data from that country. The Department selected India as the surrogate country for this review and there is no reason for the Department to go beyond the selected surrogate country for selecting the appropriate surrogate labor rate.

VI. Petitioners' Rebuttal Brief Arguments

- The Department should continue to use its current data or find other more appropriate wage rate information for the calculation of surrogate labor cost.

VII. Petitioners' Rebuttal Wage Rate Comments

- The Department should not rely solely on Indian wage rates, because section 773(c)(1) of the Act states that the Department shall base FOPs on the best available information from a market economy country or countries. Labor cannot be treated like a substitutable commodity traded on the world market, because Indian wage rates reflect the country's unique economic development, including its history and caste system.
- If the Department relies on ISIC Rev. 2 Indian data because of the industry -specificity of category 351 and 352, then the Department should also include Colombia, El Salvador, and Nicaragua, which also report labor data under ISIC Rev. 2 category 35.[128]
- The Department should reject Huahui's bona fide benchmark to define a significant producer, because it reflects a different element of the Department's AD analysis and the Department has found small single shipments to be bona fide and sufficient for purposes of AD calculations.
- The Department did not rely on Bosnia and Herzegovina or Peruvian data for wage earners in its October 7, 2010 wage calculation release.
- The Department should continue to use total earnings statistics for the Philippines.
- The Department must inflate wage rates prior to 2008 to perform valid currency conversions because a proper comparison of SVs that are not contemporaneous requires the use of an inflation rate in the same currency as the source value prior to the conversion of wage rates into USD.
- If the Department uses data from countries reporting wage rates under ISIC Rev. 2 category 35, the Colombian data require the 1999 WPI index value of 66.9.
- If the Department relies solely on Indian wage data, it should employ a benchmark methodology using the ratio of Indian chemical industry subcategory wage rates to its most recent actual GNI, which that ratio should be used as a benchmark for the most recent PRC GNI.

[128] Petitioners state that India's blended value of 351 and 352 essentially makes its data a category 35 level of specificity.

VIII. Huahui's and Albemarle's Rebuttal Brief Arguments

- Petitioners fail to provide factual information to support their argument that Chinese wage rates have been understated especially in industries such as activated carbon, steel, and agricultural products.
- The Department should not use countries outside the GNI of countries which were identified as economically comparable to the PRC.
- The Department should explain what is the specific source of the CPI used to inflate each potential country's wage rate and why wage rate data are inflated by CPI or why wages move in step with CPI.

IX. Huahui and Albemarle's Rebuttal Wage Rage Comments

- Petitioners fail to acknowledge the Department's regulation which expresses a preference for valuing FOPs in a single country and fail to acknowledge that the Department has made a specific finding that factors unique to each country influence the SV.
- The variability of wages between countries with comparable GNIs to the PRC weighs in favor of using labor costs from the primary surrogate country.
- Petitioners err in claiming that Indian wage rate data are blended at the two digit level of ISIC Rev. 2. ISIC Rev. 2 category 35 contains non-industry specific wage rates and the Department should use the more specific three-digit 351 category.
- The Department should not include El Salvador and Nicaragua, which report labor under ISIC Rev. 2 at the two-digit level. Additionally, the Department should not use ISIC Rev. 2 Colombian data, because they are nine years old and fail the Department's filter test.
- Petitioners are unable to refute the discrepancies in the Philippine survey document which confirms that the data were not earnings but wages.
- Petitioners are mistaken that it is improper to convert national wages to USD and then inflate them and that a national CPI index should be used.
- Petitioners provide no evidence that wages rise and fall in relation to CPI, when the record demonstrates the opposite.
- Petitioners fail to point to any record evidence justifying the Department's finding that a global relationship exists between wages and GNI.

Department's Position: In Dorbest,[129] the CAFC invalidated the Department's regulation, 19 CFR 351.408(c)(3), which directs the Department to value labor using a regression-based method. As a consequence of the CAFC's decision, the Department is no longer relying on the regression-based wage rate as proscribed by the regulation. The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For the final results of this review, we have calculated an hourly wage rate in valuing Jacobi's and Huahui's reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC. Although the Department is no longer using a regression-based method to value labor, the Department has determined that reliance on labor data from

[129] Dorbest Limited et. al. v. United States, 604 F. 3d 1363 (CAFC 2010) ("Dorbest")

multiple countries, as opposed to labor data from a single country, constitute the best available information for valuing the labor input for the reasons discussed fully below.

The Department disagrees with Huahui's and Jacobi's argument that we should use only the Indian wage rate from the ILO data. While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country do not constitute the best available information for valuing the labor input due to the variability that exists across wages from countries with similar GNI. While there is a strong global relationship between wage rates and GNI, significant variation exists among the wage rates of comparable market economies. As a result, we find that reliance on wage data from a single country are not preferable where data from multiple countries are available for the Department's use.

For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with GNIs between USD 950 and USD 4,100), the hourly wage rate spans from USD 0.77 to USD 3.45.[130] Additionally, although both the Philippines and Indonesia have GNIs below USD 2,000, and both could be considered economically comparable to the PRC, Indonesia's observed wage rate is USD 0.77, as compared to the Philippines's observed wage rate of USD 3.45 – over quadruple that of Indonesia.[131] There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For these reasons, and because labor is not traded internationally as other commodities are, the variability in labor rates that exists among otherwise economically comparable countries is a characteristic unique to the labor input. Moreover, the large variance in these wage rates illustrates why it is preferable to rely on data from multiple countries for purposes of valuing labor. For these reasons, the Department maintains its long-standing position that, even when not employing a regression methodology, data from multiple surrogate countries are better than data from a single surrogate country for purposes of valuing labor. For the reasons set forth above, we find that the Indian wage rate does not constitute the best information on the record of this review. Accordingly, in order to minimize the effects of the variability that exists between wage data of comparable countries, the Department continues to employ a methodology that relies on as large a number of comparable countries as possible in order to minimize the effects of the variability that exists between wage data of individual comparable countries.[132]

Furthermore, we disagree that 19 CFR 351.408(c)(3) represents the sole exception to valuing factors from a single surrogate country, as Huahui and Albemarele argue. The statute provides ample flexibility for the Department to source factor data from more than one country in order to value factors using the best available information.[133] Additionally, although 19 CFR

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[130] See 1st October Wage Data Release; see also 2nd October Wage Data Release.

[131] See id.

[132] See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010) ("Coated Paper") and accompanying IDM at Comment 30.

[133] See Section 773(c)(1) of the Act ("the valuation of the factors of production shall be based on the best available information . . . in a market economy country or countries considered to be appropriate. . . .")(emphasis added); see also Section 773(c)(4) of the Act ("in valuing factors of production {the Department} . . . shall utilize . . . the prices or costs of factors of production in one or more market economy countries . . . .")(emphasis added).

351.408(c)(2) expresses a preference for sourcing FOPs from a single surrogate country, it provides sufficient discretion for the Department to address situations in which sourcing an FOP from a single source is not preferable. The use of the word "normally" means that this is not an absolute mandate. As we explained, the unique nature of the labor input warrants a departure from our normal preference of sourcing all factor inputs from a single surrogate country.

Moreover, we disagree with Huahui and Ablemarle that a finding that a global relationship exists between wages and GNI has not been established, or is based on outdated data. The regression analysis that the Department has performed nearly every year since 1997 – the most recent in 2009 – demonstrates on average, as GNI increase, so do hourly wage rates.[134] While Dorbest invalidated the Department's former method of valuing labor because it included data from countries that were not first determined to meet the statutory criteria, the opinion does not call into question the inherent relationship that exists between wage rates and GNI. Given this relationship, it is reasonable to look to GNI as a relevant factor in determining economic comparability for deriving the labor value.

In order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Memo.[135] At the time of the Preliminary Results, the Department compiled a non-exhaustive list of six countries, considered to be economically comparable to the PRC, for purposes of selecting the primary surrogate country for this review. In determining which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI.[136] From the list of countries contained in the Surrogate Country Memo, the Department used the country with the highest GNI (i.e., 4100) and the lowest GNI (i.e., 950) as "bookends" for economic comparability. The Department then identified all countries in the World Bank's World Development Report with per capita GNIs for 2007 that fell between the "bookends." This resulted in 52 countries, ranging from India (with USD 950 GNI) to Colombia (with USD 4100 GNI), that the Department considers economically comparable to the PRC.[137]

We further disagree with Jacobi's argument that, the Department is limited to the specific countries already contained in the Surrogate Country Memo when selecting data for the labor value. The Department has had to seek additional information in light of the CAFC's recent decision in Dorbest. Moreover, the Surrogate Country Memo states that it was not intended as an exhaustive list of economically comparable countriesor only those countries considered economically comparable to the PRC.

We are not persuaded by Petitioners' criticism that the selected band of surrogate countries excludes many of the world's major activated carbon-producing nations (i.e., the United States, the United Kingdom, Brazil, Germany, etc.). In accordance with our statutory obligation, and in response to the CAFC's decision in Dorbest, the Department has only included data from

[134] See http://www.ita.doc.gov/wages; see also Zhengzhou Harmoni Spice Co., Ltd., Jinan Yipin Corporation, Ltd., Jining Trans-High Trading Co., Ltd., Jinxiang Shanyang Freezing Storage Co., Ltd., Linshu Dading Private Agricultural Products Co., Ltd., Shanhai LJ International Trading Co., Ltd., and Sunny Import and Export Ltd., v United States, Court No. 06-00189, CIT Slip Op. 09-39 (May 13, 2009) at 20.
[135] See Surrogate Country Memo.
[136] See 19 CFR 351.408(b).
[137] See 1st October Wage Data Release; see also 2nd October Wage Data Release.

countries determined to be economically comparable with the PRC. Unless wage data from economically comparable countries were unavailable[138], it would be contrary to both the statutory directives of section 773(c) of the Act, and binding precedent set forth in Dorbest, to rely on data from non-economically comparable countries. In this review, however, wage data are available from several economically comparable countries.

Regarding the "significant producer" prong of the statute, the Department identified all countries which have exports of comparable merchandise (defined as exports under HTS 3802.10.00, the HTS code identified in the scope of this order) between 2007 and 2009.[139] In this case, we have defined a "significant producer" as a country that has exported comparable merchandise between 2007 through 2009. After screening for countries that had exports of comparable merchandise, we determine that 21 of the 52 countries designated as economically comparable to the PRC are also significant producers. Accordingly, for purposes of valuing wages for the final results, the Department determines the following 21 countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Bolivia, Colombia, Ecuador, Egypt, El Salvador, Guatemala, Honduras, India, Indonesia, Jordan, Macedonia, Morocco, Namibia, Nicaragua, Nigeria, Peru, Philippines, Sri Lanka, Thailand, Tunisia and Ukraine.[140]

Huahui and Albemarle argue that exports of activated carbon from Ecuador, Jordan, and Macedonia are so small they cannot be considered significant producers and that the Department should not interpret the term "significant" to mean "any." Huahui and Albemarle contend that Congress would not have used the term "significant" if its intent was to include any data in valuing FOPs. We do not agree with Huahui and Albemarle that defining "significant producer" as a country that exports comparable merchandise amounts to allowing "any" country to be considered a significant producer. The Department finds that a country's ability to export comparable merchandise is indicative of substantial production because it is producing merchandise at a level that surpasses its internal consumption. The AD statute and regulations are silent in defining a "significant producer," and the AD statute grants the Department discretion to look at various data sources for determining the best available information.[141] While the legislative history provides that the "term 'significant producer' includes any country that is a significant net exporter," [142] it does not preclude reliance on additional or alternative metrics for determining whether a country is a significant producer. In practice, the Department has relied on other indicia for determining whether a country is a significant producer. For example, in a recent administrative review of the antidumping duty order on wooden bedroom furniture from the PRC, the Department relied on production data for selecting the primary surrogate country.[143]

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[138] Dorbest, 604 F.3d at 1372.
[139] The export data is obtained from Global Trade Atlas ("GTA").
[140] See Surrogate Country Memo.
[141] See Section 733(c) of the Act.
[142] See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 590, 100thCong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988).
[143] See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review, 74 FR 6372 (February 9, 2009), unchanged in Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009).

While Jacobi argues that the Department has made a previous decision in the Surrogate Country Memo that Ecuador, Jordan, and Macedonia are not significant producers of activated carbon because they were omitted from the countries listed in the Surrogate Country Memo, we find that the directive in Dorbest provides sufficient basis to revisit and revise our previous decision with respect to what constitutes a "significant" producer. Consistent with other recent decisions, for these final results, we have defined "significant producer" as a country that has exported comparable merchandise during the relevant period (in this case 2007 through 2009). We find the fact that a country exports comparable merchandise to other countries to be a strong indication that the country is a significant producer of such merchandise.[144] This threshold for significant producer maximizes the size of the ultimate basket while still accounting for this criterion, which, in turn, provides the best available wage rate because multiple data points for labor will minimize potential distortions or arbitrary variations in wage data that are normally present among otherwise economically comparable countries.

The record evidence demonstrates that Ecuador, Jordan, and Macedonia had exports of comparable merchandise. Additionally, using only labor data from the countries listed on the Surrogate Country Memo limits the number of potential surrogate countries for use in the Department's wage rate calculation, and the Department's long-standing and current practice is to value labor using as many data points as possible.[145] Although we have revisited our definition of "significant producer," doing so does not disturb our selection of India as the primary surrogate country because India is also at a comparable level of economic development and a significant producer of comparable merchandise. Furthermore, India provides the best sources of data for the other FOPs in this proceeding.

Additionally, we agree with Petitioners that the bona fides analysis is inapplicable to the determination of whether a country is a significant producer of comparable merchandise. The determination as to whether a country is a significant producer examines the broad production of an entire country. A bona fides analysis, by contrast, is used to determine whether a particular transaction constitutes a legitimate commercial sale, and involves several, transaction-specific factors beyond quantity and/or value. A bona fides analysis would be unrevealing in this circumstance.

After determining the 21 countries which are economically comparable and significant producers the Department then identified which of these 21 countries also reported the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B "earnings," if

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[144] See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010) ("WBF 4") and accompanying IDM at Comment 34; Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460, 49461 (August 13, 2010); Certain Magnesia Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 75 FR 45468 (August 2, 2010), and accompanying IDM at Comment 1.b.; Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 75 FR 44764 (July 29, 2010) and accompanying IDM at Comment 2; Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 41808 (July 19,2010) and accompanying IDM at Comment 8.

[145] See Coated Paper and accompanying IDM at Comment 30; see also First Administrative Review of Sodium Hexametaphosphate From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 64695 (October 20, 2010) and accompanying IDM at Comment 3.E.

available and "wages" if not.[146] We used the most recent data available (2008) and went back five years, resulting in wage data from 2003-2008. We then adjusted the wage data for countries where it was available to the period of review using the relevant CPI.[147] Of the 21 countries that the Department has determined are both economically comparable and significant producers, 12 countries, i.e., 1) Bolivia, 2) Colombia, 3) El Salvador, 4) Guatemala, 5) Honduras, 6) India, 7) Morocco, 8) Namibia, 9) Nicaragua, 10) Nigeria, 11) Sri Lanka, and 12) Tunisia, were omitted from the wage rate valuation because there were no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the prescribed six-year period.[148]

The Department disagrees with Huahui's and Albemarle's argument that the record evidence confirms that there is no basis to presume that wages change in correlation to a country's CPI and it should not inflate the country-specific labor rates with that country's CPI. Moreover, we disagree that exchange rates act as inflators. Huahui and Albemarle do not dispute that inflation existed in the countries selected during the years in which these data were collected. Rather, Huahui and Albemarle focus upon the relationship between CPI and the labor wages in dollar terms. Huahui and Albemarle also have not demonstrated that CPI is an inappropriate inflator for wages and, thus, that wage rates should not be inflated. Huahui and Albemarle have not provided sufficient evidence that the Department should treat labor differently from other FOPs such that un-inflated wage rates would be more accurate than wage rates inflated using CPI. Thus, the Department continues to consider CPI to be the best available information to capture the inflation within a country, including its labor wage rates.[149] Further, the Department is not persuaded by Huahui's and Albemarle's submitted analysis concerning the alleged lack of correlation between CPI and labor. In their calculation, they first converted the reported data to

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[146] The Department maintains its current preference for "earnings" over "wages" data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes fewer countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for "earnings" data. Thus, if earnings data is unavailable from the base year (2008) or the previous five years (2003-2008) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use "wage" data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006) ("Antidumping Methodologies") still applies for selecting among multiple data points within the "earnings" or "wage" data. This allows the Department to maintain consistency as much as possible across the basket.

[147] Under the Department's regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department's calculations, the pool of wage rates from which we could draw from two years-worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the CPI. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also 1st October Wage Data Release; see also 2nd October Wage Data Release and the Attachment 1 for the CPI data used in the instant case.

[148] See ILO's Yearbook of Labor Statistics.

[149] See WBF 4 and the accompanying IDM at Comment 34.

USD. They state that that the CPI for Egypt increased 43.5% from 2002 to 2007, but wages increased by 17.4% in USD. For India, CPI increased 18.8% from 2002 to 2006 and actual wages in USD increased by 448%.[150] This analysis would seem to demonstrate a relationship between wages and CPI. In our analysis using Egypt and India's reported wage data on a national currency basis, Egypt's wages increased 46.11 % between 2002 and 2007, while CPI increased 31.29% from 2002 to 2007. India's wages increased 318% between 2002 and 2006, while CPI increased 18.80% from 2002 to 2007. While neither analysis demonstrates a one-to-one correlation between a country's CPI and wages, they both demonstrate a relationship between the average increase in a country's CPI and its average wage rate. As such, the Department finds that inflation existed in these countries during the years in which the wage data were collected and that there is a correlation between CPI and labor. It is the Department's longstanding practice to inflate non-concurrent data using the preferred inflator, CPI, and Huahui and Albemarle have failed to provide a sufficient basis to abandon this practice or make an exception. Accordingly, the Department has continued to use CPI data to inflate wage rates in the instant case, as they represent the best available information on the record.

Based on the selection methodology set forth above, the Department has determined it is most appropriate to rely on industry-specific wage data reported by ILO for the final results. Determinations as to whether industry-specific ILO datasets constitute the best available information must necessarily be made on a case-by-case basis. In making these determinations, the Department considers a number of factors such as the appropriateness of the ILO industry-specific data in light of the subject merchandise and the availability of industry specific data.

Because an industry-specific dataset relevant to this proceeding exists within the Department's preferred ILO source, and because, absent evidence to the contrary, the industry-specific data would be at least more specific to the subject merchandise than the national manufacturing data, the Department used industry-specific data to calculate a surrogate wage rate for the final results, in accordance with section 773(c)(1) of the Act. Thus, for this review, the Department has determined to calculate the wage rate using a simple average of the data provided to the ILO under Sub-Classification 24 of the ISIC-Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. We have determined that this is the best available information from which to derive the surrogate wage rate based on the analysis set forth below.

The ISIC code is maintained by the United Nations Statistical Division and is updated periodically. The ILO, an organization under the auspices of the United Nations, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC-Rev.2, ISIC-Rev.3, and ISIC-Rev.4. The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

Due to concerns that the industry definitions may lack consistency between different ISIC revisions, the Department finds that averaging wage rates within the same ISIC revision (i.e., not

[150] See Huahui's and Albemarle's Wage Rate Comments dated October 4, 2010 and October 7, 2010 at 11-13 and 12-15, respectively.

mixing revisions) constitute the best available information for the final results. While the Department finds use of industry-specific information is the best available information herein, the fact remains that there is a lack of information available that indicates how the wages from the selected category and other manufacturing sectors are weighted or combined. The Department finds that averaging wage rates that were reported under the same revision standard provides specificity to the industry being examined, but also ensures some degree of consistency across multiple labor data points being averaged. Accordingly, for the final results, the Department has only used industry-specific wage data from a single revision.

It is the Department's preference to use data reported under the most recent revision, however, in this case we found that none of the countries found to be economically comparable and significant producers reported data pursuant to ISIC-Rev.4. Accordingly, in this case, we turned to the industry definitions contained in ISIC-Rev.3 to find the appropriate classification for activated carbon. Under the ISIC-Rev. 3 standard, the Department identified the two-digit series most specific to activated carbon as Sub-Classification 24, which is described as "Manufacture of chemicals and chemical products." The explanatory notes for this sub-classification state that this sub-classification includes the "manufacture of activated carbon, lubricating oil additives, prepared rubber accelerators, catalysts and other chemical products for industrial use."[151] Accordingly, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 24 of the ISIC-Rev. 3 standard by countries determined to be economically comparable to the PRC and significant producers of comparable merchandise. Additionally, when selecting data available from the countries reporting under ISIC-Rev. 3, Sub-Classification 24, we used the most specific wage data available within this revision.

From the 21 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. Of these 21 countries, the following nine countries reported industry-specific data under the ISIC-Revision 3, under Classification 24, "Manufacture of chemicals and chemical products:" 1) Ecuador, 2) Egypt, 3) Indonesia, 4) Jordan, 5) Macedonia, 6) Peru, 7) Philippines, 8) Thailand, and 9) Ukraine. The following twelve, however, did not report wage data on an industry-specific basis: 1) Bolivia, 2) Colombia, 3) El Salvador, 4) Guatemala, 5) Honduras, 6) India, 7) Morocco, 8) Namibia, 9) Nicaragua, 10) Nigeria, 11) Sri Lanka, and 12) Tunisia; accordingly, these twelve countries are not included in our wage rate calculation.

While the Department prefers to use the most specific wage data available within the selected ISIC revision, because no country that was considered economically comparable and a significant producer reported earnings or wage data below the two-digit level, the Department has relied on the two-digit sub-classification in our industry-specific wage rate calculation. Accordingly, based on the above, the Department relied on data reported under ISIC-Rev.3. Sub-Classification 24 "Manufacture of chemicals and chemical products" from the following countries to arrive at the industry-specific wage rate calculated for this review: 1) Ecuador, 2)

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[151] See 1st October Wage Data Release; see also 2nd October Wage Data Release under Selected ILO Wage Rate Data.

Egypt, 3) Indonesia, 4) Jordan, 5) Macedonia, 6) Peru, 7) Philippines, 8) Thailand, and 9) Ukraine.

We disagree with Huahui and Albemarle that ISIC Rev. 2 data at Sub-Classification 351 are more specific to activated carbon than ISIC Rev. 3 data at Sub-Classification 24. We note that the UN Statistical Division's website provides a correspondence for Rev. 2 Sub-Classification 3511 (which falls under 351) and Rev. 3 Sub-Classification 2429 (which falls under 24) that lists "manufacture of activated carbon." However, the explanatory notes for Rev. 2 Sub-Classification 3511 (which falls under 351) does not list activated carbon as one of the industries covered by this classification.[152] In contrast, the explanatory notes for Rev. 3 Sub-Classification 2429 (which falls under 24) does list activated carbon as one of the industries covered by this classification. Thus, there is no conclusive record evidence to show that the ISIC Rev. 2 data at Sub-Classification 351 (which includes industries covered by 3511) are more specific to activated carbon than the ISIC Rev. 3 data at Sub-Classification 24 (which includes industries covered by 2429). Therefore, we will continue to rely on ISIC Rev. 3 data at Sub-Classification 24 as the more appropriate industry-specific data for this proceeding.

Furthermore, we are not including the Indian data from ISIC Rev. 2 sub-category 351-2 in our average of data reported under ISIC Rev. 3 sub-category 24. Therefore, we will not calculate an average industry-specific wage rate using data points, including India's, from different revisions, because, as stated above, the Department finds that averaging wage rates that were reported under the same revision standard provides specificity to the industry being examined, but also ensures some degree of consistency across multiple labor data points being averaged. With regard to Jacobi's argument that the Department return to using the broader country-specific labor rates found in the ILO data, the Department has a long-standing practice of valuing FOPs using the most specific data available. While mindful of other chemical industries wage data present in the selected ISIC Rev.3 category 24, the more narrow industry-specific data are at least more specific to the subject merchandise than country-wide data.

Huahui and Albemarle contend that the Department should not use the Philippine wage data "earnings per month" based on the "industrial/commercial survey" but instead should use the "wage rate per day." Huahui and Albemarle make this argument in part because character of the data cannot be determined based on conflicting labels regarding the type of reporting. The Department finds the ILO to be a reliable source and represents the best available data from which to derive a surrogate labor rate. Additionally, the Department has a specific preference for earnings over wage data. The Department notes that the ILO defines "earnings" under Chapter 5 of its <u>Yearbook of Labour Statistics</u> as being inclusive of "wages," and as including both bonuses and gratuities.[153] Therefore, in order to ensure that its calculation of expected NME wage rates accurately reflects the remuneration received by workers, it should rely on "earnings," and use “"wages" only when earnings are unavailable. Furthermore, we find that Huahui and Albemarle have not provided sufficient evidence to demonstrate that the Philippine earnings data in

[152] <u>See</u> Huahui and Albemarle's Wage Rate Comments dated October 4, 2010 at Exhibit 1. The explanatory notes for each ISIC classification detail all of the industries covered by that classification and which industries are excluded.
[153] <u>See</u> <u>Antidumping Methodologies</u>.

question are aberrant or erroneous. Accordingly, we do not find any basis to exclude Philippine earnings data in favor of the less preferable wage data.

We are further not persuaded by Huahui's and Albemarle's argument that using wage data from countries other than India creates a "mismatch" between the labor calculation and the denominator of the surrogate financial ratios. Section 773(c)(1) of the Act provides that, where, as in this case, the subject merchandise is exported from an NME country, "the valuation of factors of production shall be based on the best available information regarding the values of such factors in a ME country or countries considered to be appropriate by the administering authority." The statute requires the use of the "best available information," but it does not define the term, nor does it clearly delineate how the Department should determine what constitutes the best available information.[154] The Department has determined that, for this review, a wage rate that is based on industry-specific ILO data from multiple countries is the best available information for valuing the labor input. The Department has also determined that Indian surrogate financial statements represent the best available information for calculating the surrogate financial ratios. As the Federal Circuit has recognized, selecting SVs is difficult and necessarily imprecise.[155] Implicit in Huahui's and Albemarle's arguments is the assumption that the labor costs of the Indian surrogate companies correlate to the Indian wage rate reported in the ILO data. However, there is no evidence that supports this assumption. In NME cases, it is generally not possible for the Department to dissect the financial statements of a surrogate company as if the surrogate company were the respondent under review in the proceeding, because the Department does not seek information from or verify the information from the surrogate company.[156] Therefore, in calculating surrogate overhead and SG&A ratios, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category.[157] Because we cannot determine how each surrogate financial company determines its labor costs, there is no basis upon which to conclude that the surrogate labor rate calculated by the Department would inform the labor reported by the surrogate financial companies, or vice versa. Therefore, we will not make adjustments to the financial statement data, as doing so may introduce unintended distortions into the data rather than achieving greater accuracy.[158] Furthermore, as the CIT confirmed in Timken, it is within the Department's authority use India

[154] See Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 59 F. Supp. 2d 1354, 1357 (CIT 1999), aff'd 268 F.3d 1376 (Fed. Cir. 2001); China Nat'l Mach. Import & Export Corp. v. United States, 264 F. Supp. 2d 1229, 1236 (CIT 2003).
[155] Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999).
[156] See id.
[157] See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247, 1250 -1251 (CIT 2002); see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) and accompanying IDM at Comment 15.
[158] See Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007) and accompanying IDM at Comment 4; Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) and accompanying IDM at Comment 2 (stating that because the Department cannot adjust the line items of the financial statements of any given surrogate company, we must accept the information from the financial statement on an "as-is" basis in calculating the financial ratios).

as a primary surrogate country and select values from other countries without making adjustments to Indian surrogate financial ratios.[159]

With regard to Allied Pacific, it is unclear whether Huahui is suggesting that the Department use the Allied Pacific rate or another Indian wage rate. As an initial matter, the labor rate applied in Allied Pacific is wholly inappropriate in this proceeding. The labor rate applied in Allied Pacific was done under protest, in direct response to a court directive.[160] Further, the wage rate used was the result of the availability of highly industry-specific data related to the industry at issue in that proceeding and based solely on the specifics of that case.[161] When completing the remand in Allied Pacific, the Department expressed significant concerns about the accuracy and reliability of the data it was directed to employ in that case. Even setting these concerns aside, the wage data used in Allied Pacific was specific to the fishing industry, and would have no applicability to the labor inputs used in the production of certain activated carbon.

Based on the foregoing methodology, the revised wage rate to be applied in the final results is 2.13 USD/Hour. This wage rate is derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest and the statutory requirements of section 773(c) of the Act.

Company-Specific Issues

Jacobi

Comment 5: Issues Regarding Ningxia Guanghua Activated Carbon ("NXGH")

5a. Facts Available for Water

I. Petitioners' Case Brief Arguments

- Because Jacobi was unable to report the amount of water consumed by its supplier NXGH in the crushing and acid washing stages of production and only reported the water used in its boiler room the Department should apply partial facts available as WATER2 = WATER.

II. Jacobi's Rebuttal Brief Arguments

- NXGH explained to the Department that it has only one meter for its factory and reported water consumption for all stages including the crushing and washing stages.
- Because the amount of water used in the crushing and washing stages is very small, NXGH does not measure the amount of water used for those stages and cannot report a separate water usage rate.

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[159] See Timken Co. v. United States, 59 F. Supp. 2d 1371 (CIT 1999) ("Timken") at 513-514.
[160] See Allied Pacific Food, et. al v. United States, Court No. 05-00056 USCIT Slip Op. 08-138 (December 22, 2009).
[161] See Final Results of Redetermination Pursuant to Court Remand in Allied Pacific Food v. United States, pp. 34-36, Court No. 05-00056 (May 21, 2009).

- Because NXGH reported all water usage and cooperated to the best of its ability the Department should accept its reported water consumption.

Department's Position: The Department disagrees with Petitioners that it is appropriate to apply facts available to the water reported by Jacobi for its affiliate NXGH. In general, section 776(a)(1) and (2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Petitioners argue that Jacobi did not report the water used by its affiliate NXGH in the crushing and acid washing stages of production as requested by the Department. Furthermore, Petitioners state that Jacobi failed to "measure, predict or even estimate its water consumption at those stages."[162] However, Jacobi explained in its supplemental section D response for NXGH that it was reporting all of the water consumed in all stages of production, including the crushing and washing stages.[163] Therefore, we find that it is not appropriate to apply facts available to NXGH's reported water consumption as the total water consumption for all stages of consumption was reported by Jacobi for NXGH. We have determined that Jacobi has reported all of its water consumption and allocated it to each stage of production to the best of its ability.

5b. Transport Bag Surrogate Value

I. Petitioners' Case Brief Arguments

- Jacobi claimed that NXGH re-used polyethylene bags and requested an SV from India under the same HTS code 3923.21.00.[164]
- No respondents submitted documentation that proved polyethylene bags were thinner and not the same type of bag used repeatedly in transportation.
- The Department should use a separate SV for a more sturdy and durable bag.

II. Jacobi did not comment on this issue.

Department's Position: In the Preliminary Results, the Department used the SV data for PEBAGSV based upon the Indian HTS number: 3923.21.00 provided by Jacobi. The Department has now determined that a different SV is more appropriate. Therefore, pursuant to section 735(e) of the Act, we have changed this SV for the final results. As reported by Jacobi, the bags used for transporting subject merchandise could be re-used six to eight times,[165] from which we can reasonably infer that these are a heavy large woven bag similar to Huahui's heavy large woven bag,[166] which we valued using Indian HTS number 6305.33.00: "Sacks And Bags

[162] See Petitioners' Case Brief Addressing Jacobi Carbons AB and its Affiliates, dated June 22, 2010, at 7.
[163] See Jacobi's March 29, 2010 Second Supplemental Questionnaire Response at 17.
[164] See Jacobi's April 30, 2010 Supplemental Questionnaire Response at 4.
[165] See Jacobi's Response to the Department's Second Supplemental Questionnaire, March 29, 2010 at 18.
[166] See Huahui's Second Supplemental C-D Response and Third Supplemental D Response, April 5, 2010 at 17 and Exhibit 13.

Of Polyethylene Or Polypropylene."[167] Because these bags are capable of being re-used, the Department now finds that it is more appropriate to use the Indian HTS number 6305.33.00: "Sacks And Bags Of Polyethylene Or Polypropylene" to value Jacobi's PEBAGSV input because it is the most specific SV on the record.

Comment 6: Corrections to Submitted Data

6a. Treatment of Indirect Labor

I. Petitioners' Case Brief Arguments

- The Department should change its calculation of Jacobi's indirect labor hours to include the office labor that was excluded in the Preliminary Results because Jacobi described it as being unrelated to the production of merchandise.
- The workers included in the office labor (salaried supervisors, technicians, sales managers, and general administration staff) are indirectly involved in the production of merchandise to the extent that they support and sustain the company's operations.
- If the Department considers the office labor as factory overhead, it must place the salaries of those employees of the surrogate company into the overhead numerator rather than the MLE denominator.
- Petitioners cite Department precedent in which the respondent was required to report the labor of "every single manager and administrative employee not previously reported as direct or indirect labor," which the Department determined was not double-counting the management and administrative labor.[168]
- Jacobi was not cooperative because it did not report the office labor in its database, therefore the Department should value the indirect office labor as INDLAB2 = INDLAB as partial adverse facts available ("AFA").
- If the Department does not adjust Jacobi's indirect labor, it should place the salaries of general, administrative and sales employees into the overhead numerator for calculating financial ratios.

II. Jacobi's Rebuttal Brief Arguments

- The Department should not include labor that is not involved in the production of the merchandise under consideration and should continue to value Jacobi's indirect labor as reported.

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[167] See Prelim SV Memo at 8.
[168] See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007) and accompanying IDM at Comment 16.

- Jacobi reported as indirect labor the managers of the laboratory and further processing operations because they were indirectly involved in the production of merchandise. The only labor it did not include was office labor.
- Including office labor unrelated to the manufacture of the merchandise would not result in an accurate calculation of the cost of production.
- Jacobi was cooperative and clearly indicated the total labor hours both included in direct and indirect labor and excluded as office labor.

Department's Position: We agree with Jacobi that its reported indirect labor is reasonable, and we do not find that it is appropriate to include the office labor that was excluded from its calculation. Furthermore, while Petitioners argue that Jacobi failed to cooperate by not reporting the office labor in its database, Jacobi in fact reported all of its labor, direct, indirect, and the office labor that it did not include in its calculation of indirect labor, in its questionnaire responses.[169] Therefore, it is inappropriate to apply an adverse inference in this case by either setting Jacobi's indirect labor equal to its reported direct labor, or by transferring all wages, salaries, and benefits from the MLE denominator to the SG&A numerator of its financial ratio calculations. We found in the Preliminary Results that the office labor reported by Jacobi included "the general manager, finance department, and accounting department, which is not related to the production of merchandise." The original NME questionnaire states that "indirect labor includes all workers not previously reported who are indirectly involved in the production of the merchandise under consideration." Petitioners have not provided any additional evidence to demonstrate that the office labor which is being excluded by Jacobi is related to the production of merchandise. Therefore, for these final results, we are continuing to accept Jacobi's reported labor, and treat its office labor as an overhead item that would typically be covered by the surrogate financial ratios.[170]

6b. Treatment of U.S. Indirect Selling Expenses

I. Petitioners' Case Brief Arguments

- The worksheet submitted by Jacobi outlining the relative activities of Jacobi and all of its affiliates contradicts the narrative explanations of Jacobi's activities.[171]
- The way that Jacobi handles its Swedish expenses and the expenses of the U.S. subsidiary indicates the degree to which the operations of the two companies are intertwined.
- Jacobi has not even provided an estimate of the expenses incurred by Jacobi in direct support of U.S. transactions.
- As facts available, the Department should either apply a ratio of the total external costs and personnel costs of Jacobi as a percentage to the gross unit price to calculate an estimated expense element, or should set the estimated expense element to equal the currently reported incomplete indirect selling expenses ("ISEs").

[169] See Jacobi's Section D Questionnaire Response for Jacobi Tianjin, October 15, 2010, at Exhibit 5.
[170] See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010) and accompanying IDM at Comment 3.
[171] See Jacobi's May 4, 2010 Supplemental Questionnaire Response ("SQR") at 1 and Exhibit Supp D-02.

II. Jacobi's Rebuttal Brief Arguments

- Jacobi reported all of its ISEs and states that the arguments made by Petitioners were dismissed by the Department in the original investigation.
- The selling functions chart submitted by Jacobi is consistent with its narrative response, which noted that Jacobi conducted "administrative, logistics, purchasing and export related activities."
- Jacobi has reported as its ISEs the expenses associated with commercial activity in the United States and expenses incurred in the United States associated with the merchandise under review, which is consistent with 19 CFR 351.402(b).
- Jacobi did report those expenses incurred by Jacobi in Sweden which are related to the sales of subject merchandise, but including additional expenses that are unrelated to the sales of subject merchandise would be inconsistent with the law and the Department's practice.
- Petitioners' suggested calculation of additional ISEs would include expenses related to global operations for products other than subject merchandise and would be contrary to the Department's regulations.

Department's Position: We agree with Jacobi that the methodology used in its reporting of ISEs is reasonable and that the Department should not apply facts available or increase its reported ISEs in this case. Jacobi clearly reported the selling functions that are performed by Jacobi as well as the selling functions that are performed by its United States affiliate. Additionally, in its Section C questionnaire response, Jacobi provided a detailed explanation of which expenses it was including in its calculation of ISEs.[172] Additionally, Jacobi provided an explanation of the employees whose expenses are related to the United States affiliate, but who solely work for Jacobi.

We note that the CIT has upheld the Department's decision to accept the respondent's inclusion of only those selling expenses associated with subject merchandise in ISE.[173] Although Petitioners are arguing that Jacobi's responses are contradictory and indicate that it is underreporting its ISEs, we find that Jacobi consistently reported the type of selling functions that are performed by each entity and provided a detailed outline of how it calculated its reported ISE, including a breakdown of whether the expense was attributable to Jacobi or its U.S. affiliate.[174] Petitioners have made further allegations that the business activities of Jacobi and its U.S. affiliate are closely entwined, indicating that Jacobi is likely underreporting the expenses incurred by Jacobi in relation to sales of subject merchandise. However, Petitioners have not substantively demonstrated that Jacobi has failed to report expenses that are related to subject merchandise, and there is no evidence on the record of this review that there are additional expenses related to the conduct U.S. sales. The Department has included expenses reported as directly attributable to subject sales and incurred by Jacobi in its calculation of CEP. Additionally, the record does not support the conclusion that any additional expenses related to the sale of subject merchandise were incurred by Jacobi. Furthermore, the Department notes that Jacobi's ISEs were verified and found to be reasonable in the investigation and that Jacobi has

[172] See Jacobi's Section C Questionnaire Response, October 13, 2009, at Exhibit C-12.
[173] See NSK Ltd. v. United States, 358 F. Supp. 2d 1276, 1291 (CIT 2005).
[174] See Jacobi's Section C Questionnaire Response, October 13, 2009, at Exhibit C-12.

continued to apply the same methodology in both the first review and the instant review.[175] Therefore, we find that the application of facts otherwise available is not warranted under section 776(a) of the Act because the information to value Jacobi's ISEs is available on the record and we find that Jacobi provided all information required by the Department in a timely and complete manner.

Comment 7: Freight Revenue Expense Calculation

I. Petitioners' Case Brief Arguments

- Jacobi's freight adjustments must be capped by its actual expenses as determined by the Department in Polyethylene Bags.[176]

II. Jacobi's Rebuttal Brief Arguments

- A cap in this case is unreasonable because it would result in the Department failing to recognize the monies actually received by Jacobi in connection with certain sales.
- The movement expenses incurred by Jacobi are not known at the time that Jacobi invoices its customer, so it issues an invoice for an estimated amount. Although the estimated amount may be higher than the final expense incurred by Jacobi, the customer pays the invoiced amount and Jacobi realizes the full payment in its books and records.
- If the Department caps the amount paid by the customer at the amount of the actual expenses incurred by Jacobi, it would understate the total amount received from customers for certain sales.

Department's Position: The Department agrees with Petitioners that we should impose a cap on Jacobi's reported freight revenue expenses. In its questionnaire responses, Jacobi explained that it was reporting as freight revenue the additional revenue that it receives above the price charged for the activated carbon.[177] Furthermore, Jacobi reported that it issues an itemized invoice to certain customers based on an estimated freight expense and that it realizes the amount of the estimated expense in its normal books and records.

In past cases, the Department has declined to treat freight-related revenue as an addition to U.S. price under section 772(c) of the Act or as price adjustments under 19 CFR 351.102(a)(38). We based our determination on the fact that freight revenue is not listed in the statute under section

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[175] See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007); and accompanying IDM at Comment 19.
[176] See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 6857 (February 11, 2009) ("Polyethylene Bags") and accompanying IDM at Comment 6.
[177] See Jacobi's December 14, 2009, Supplemental Section A and C Questionnaire Response at 9.

772(c)(1) of the Act. Section 772(c)(1) of the Act provides that the Department may increase the price used to establish EP or CEP in the following three instances:

> (a) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to place the subject merchandise in condition packed ready for shipment to the United States,
> (b) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and
> (c) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy.

Further, according to section 772(c)(2) of the Act, freight revenue relates to the movement and transportation of subject merchandise, and freight revenue is used to offset freight expenses that are deducted from U.S. price. Section 772(c)(2) of the Act provides that the Department may reduce the price used to establish EP or CEP in the following instances:

> (A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and
> (B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C).

We further note that 19 CFR 351.401(c) directs the Department to use, in calculating U.S. price, a price which is net of any price adjustment that is reasonably attributable to the subject merchandise. The term "price adjustments" is defined under 19 CFR 351.102(b) as a "change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." Freight revenue is not included in this definition. In past cases, we have incorporated freight-related revenues as offsets to movement expenses because they relate to the movement and transportation of subject merchandise.[178] Therefore, we continue to treat freight revenue as an offset to freight costs.
In this case, however, the freight revenue earned by Jacobi exceeded the freight cost, i.e., Jacobi had a profit on sales of freight services. We find that it would be inappropriate to increase the gross unit price for subject merchandise as a result of profit earned on the sale of services (i.e., freight). Such profit should be attributable to the sale of the freight service, but not the subject merchandise. Therefore, we are capping freight revenue by the corresponding amount of freight cost (in NME cases, using the SV for freight). By capping the freight revenue, we have not

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[178] See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 41808 (July 19, 2010) ("Woven Ribbons") and accompanying IDM at Comment 3, citing Certain Woven Electric Blankets From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 5567 (February 3, 2010), unchanged in Certain Woven Electric Blankets From the People's Republic of China: Final Determination at Sales at Less Than Fair Value, 75 FR 38459 (July 2, 2010); Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 40167 (August 11, 2009) and accompanying IDM at Comment 3 ("Orange Juice Final"); see Polyethylene Bags, 74 FR 6857 and accompanying IDM at Comment 6.

included the profit earned on the sales of freight services, thus, we did not adjust the gross unit price for profit earned on sales of freight services.[179] Therefore, for the final results, we recommend capping the amount of freight revenue deducted from the movement expenses.

Huahui

Comment 8: Ministerial Error for Truck Freight Unit of Measure

I. Huahui's Case Brief Arguments

- The Department made a ministerial error in the calculation of Huahui's truck freight for all its packing materials and should correct this error for the final results.
- The Department's truck freight SV is on a metric ton ("MT") per kilometer ("km") basis, but the Department applied the MT per km SV to Huahui's packing materials freight, although Huahui reported its packing materials on a per kilogram ("kg") basis.
- The Department should correct this error by properly converting the truck freight SV for all of Huahui's packing materials from MT per km to kg per km.

II. Petitioners' Rebuttal Brief

- The Department should make no adjustment to the truck freight SV to value the truck freight of Huahui's packing materials.
- Huahui reported its packing material consumption on a kg per MT basis. Therefore, the Department should not modify the truck freight SV as applied to Huahui's packing material freight in the final results.

Department's Position: The Department agrees with Huahui that the Department made a ministerial error with regard to the truck freight SV as applied to the freight of Huahui's packing materials, because we inadvertently did not convert the truck freight SV from a per-MT to a per-kg basis for Huahui's packing inputs.

Petitioners contend the Department did not make an error because Huahui reported its packing bags in pieces per MT.[180] Although Huahui calculated the usage of its packing bags in pieces per MT, Huahui provided the weight, in kg, of each type of packing bag it used during the POR, which it multiplied by the pieces per MT usage rate.[181] Additionally, Huahui reported its other

[179] See Orange Juice Final, 74 FR 40167 and accompanying IDM at Comment 3.
[180] Petitioners cite Huahui's Supplemental Section C-D Questionnaire, dated January 12, 2010 at SD-19.
[181] See Huahui Supplemental Section C-D Questionnaire Response, dated January 12, 2010 at SD-1 and SD-8.

packing factors on a kg basis.[182] Therefore, pursuant to section 751(h) of the Act, the Department will convert the truck freight SV from a per-MT to a per-kg basis for Huahui's packing inputs. See Huahui Final Analysis Memo.[183]

Comment 9: Treatment of Domestic Freight Revenue

I. Petitioners' Case Brief Arguments

- The Department should not add Huahui's transport revenues, "door to port" and "port to boat" fees, to the gross unit price it reported for its U.S. sales for one customer.
- The authorities cited by the Department in Huahui's Prelim Analysis Memo do not justify the adjustments it made to Huahui's gross unit price.[184]
- In Polyethylene Bags and Wire Decking, the Department did not include freight related revenues as additions to the U.S. price, but rather treated freight revenue as an offset on U.S. sales**.**[185]
- The Department should consider the "door to port" fee as an offset to the SV for inland freight in the PRC and cap the amount of the "door to port" fee by the SV for inland freight.
- The Department should make no adjustment in connection with the "port to boat" fee because it did not report expenses incurred at a port in the PRC.

II. Huahui's Rebuttal Brief

- The Department properly included all elements of the price charged by Huahui to its customers.
- Petitioners err in suggesting the Department made an adjustment or offset to the gross unit price, but rather recognized that the gross price has three subordinate elements separately stated on the invoice which the customer paid as the total value of the transaction.
- Petitioners' interpretation of section 772(a) the Act is incorrect. The statute indicates that EP is the price of the subject merchandise first sold before importation, which includes all three elements, the "door to port", "port to boat," and the price of the subject merchandise.

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182 See Huahui Supplemental Section C-D Questionnaire Response, dated January 12, 2010 at SD-1.
183 "Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Robert Palmer, Case Analyst, Office 9, Final Results Analysis Memorandum for Ningxia Huahui Activated Carbon Co., Ltd. in the Second Administrative Review of Certain Activated Carbon the People's Republic of China, dated November 9, 2010 ("Huahui Final Analysis Memo") at 3-4.
184 See "Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Robert Palmer, Case Analyst, Office 9, Preliminary Results Analysis Memorandum for Ningxia Huahui Activated Carbon Co., Ltd. in the Second Administrative Review of Certain Activated Carbon the People's Republic of China, dated May 7, 2010 ("Huahui's Prelim Analysis Memo") at 7.
185 Petitioners cite Polyethylene Bags, 74 FR 6857 and accompanying IDM at Comment 6; and Wire Decking, 75 FR 32905 and accompanying IDM at Comment 6.

- These are components of the price are the full price as reflected on the purchase orders and commercial invoices.

Department's Position: The Department agrees with Petitioners, in part, that we should treat Huahui's freight revenue as offsets to the U.S. price and cap the amount of the "door to port" and "port to boat" fees by the SVs for inland freight and brokerage and handling.[186] Huahui reported that one of its customers requested that Huahui categorize two categories of transportation charges on its commercial invoices, "door to port" and "port to boat" expenses. In the Preliminary Results, the Department incorrectly added these two transport charges to Huahui's reported gross unit price in the calculation of Huahui's U.S. net price.

As stated above, the Department has declined to treat freight-related revenue as an addition to U.S. price under section 772(c) of the Act or as price adjustments under 19 CFR 351.102(b).[187] We based our determination on the fact that freight revenue is not listed in the statute under section 772(c)(1) of the Act. Further, according to section 772(c)(2) of the Act, freight revenue relates to the movement and transportation of subject merchandise, and freight revenue is used to offset freight expenses that are deducted from U.S. price. See Comment 7, above.

We further note that 19 CFR 351.401(c) directs the Department to use, in calculating U.S. price, a price which is net of any price adjustment that is reasonably attributable to the subject merchandise. The term "price adjustments" is defined under 19 CFR 351.102(b) as a "change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." Freight revenue is not included in this definition. In past cases, we have incorporated freight-related revenues as offsets to movement expenses because they relate to the movement and transportation of subject merchandise.[188] Therefore, we will treat freight revenue as an offset to freight costs.

In this instance, however, we find that the reported freight revenue, reported for one customer, earned by Huahui exceeded the freight cost, i.e., Huahui had a profit on sales of freight services.[189] We find that it would be inappropriate to increase the gross unit price for subject merchandise as a result of profit earned on the sale of services (i.e., freight). Such profit should be attributable to the sale of the freight service, but not the subject merchandise. Therefore, we are capping freight revenue by the corresponding amount of freight cost (in NME cases, using the SV for freight). By capping the freight revenue, we have not included the profit earned on the sales of freight services, thus, we did not adjust the gross unit price for profit earned on sales of freight services.[190] Therefore, for the final results, we are capping the amount of freight revenue deducted from the movement expenses.

Shanxi DMD

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[186] With regard to Petitioners' contention that Huahui did not report domestic brokerage and handling, the Department notes that Huahui reported "yes" in its U.S. sales database. See Huahui Supplemental Section C questionnaire response, dated January 12, 2010.

[187] See Polyethylene Bags, 74 FR 6857 and accompanying IDM at Comment 6.

[188] See Woven Ribbons, 75 FR 41808 and accompanying at Comment 3; Orange Juice Final, 74 FR 40167 and accompanying IDM at Comment 3; Polyethylene Bags, 74 FR 6857 and accompanying IDM at Comment 6.

[189] See Huahui Final Analysis Memo at 3.

[190] See Orange Juice Final, 74 FR 40167 and accompanying IDM at Comment 3.

Comment 10: Application of Total Adverse Facts Available

I. Petitioners' Case Brief Arguments

- The Preliminary Results demonstrate that Shanxi DMD's efforts to avoid being selected as a mandatory respondent were groundless and Shanxi DMD and/or its counsel should have known when it submitted its initial comments that its assertions were baseless.
- Shanxi DMD did not directly challenge the reliability of the CBP data but instead argued that it did not have access to the data.
- The Department should assign the PRC-wide rate to Shanxi DMD in the final results based on total AFA.
- Shanxi DMD submitted assertions that it knew to be false in order to "margin shop" and avoid being selected as a mandatory respondent.
- Shanxi DMD's actions were uncooperative and impeded this proceeding.

II. Shanxi DMD's Rebuttal Brief Arguments

- Shanxi DMD has not impeded this proceeding and no adverse inference is warranted.
- The Department requested detailed sales information and found that Shanxi DMD fully cooperated and total AFA would be unwarranted.
- If the Department does apply an adverse inference in the final results, it should update the PRC-wide rate to account for POR SVs determined to apply to the mandatory respondents because the petition rate is no longer corroborated as more contemporaneous SVs are now available.

Department's Position: The Department disagrees with Petitioners that it is appropriate to apply total AFA to Shanxi DMD. In making this determination, the Department first assessed whether the use of facts available is justified, and then whether the criteria for an adverse inference have been met, pursuant to section 776 of the Act. We find that the application of facts otherwise available is not warranted under section 776(a) of the Act. Section 776(a)(1) of the Act mandates that the Department use facts available if necessary information is not available on the record of a proceeding. In addition, section 776(a)(2) of the Act states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

If, after being notified by the Department of a deficiency, the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. See Section 782(d) of the Act. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Furthermore, section 776(b) of the Act provides that the Department, in selecting from the facts otherwise available, may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. The Act provides, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c) of the Act, rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record. See Section 776(b) of the Act.

In the Preliminary Results, the Department acknowledged that Shanxi DMD's claims about the inaccuracy of CBP data at the time of respondent selection were contradicted by the entry packages we received from CBP.[191] We also stated that "because Shanxi DMD cooperated with the Department in providing all the requested information, application of total AFA would be inappropriate and contrary to the Act." Further, Petitioners have not provided any new arguments since the Preliminary Results that would merit a reconsideration of our preliminary determination not to apply AFA to Shanxi DMD. Therefore, we continue to find that Shanxi DMD cooperated to the best of its ability in providing the requested information concerning its sales and shipments. Accordingly, for the final results, we find that the application of total AFA, pursuant to sections 776(a) and (b) of the Act, to Shanxi DMD is inappropriate and will continue to consider it as a separate rate applicant for the final results.

Ningxia Lingzhou

Comment 11: Status of No Shipment Certification

I. Petitioners' Case Brief Arguments

- The Department should give Ningxia Lingzhou Foreign Trade Co., Ltd. ("Lingzhou") the PRC-wide rate.
- Lingzhou filed a no shipment certification on September 11, 2009, despite the fact that the deadline for submission of no shipment certificates was set for June 29, 2009, 30 days after the publication of the initiation notice in the Federal Register.
- Lingzhou requested the Department accept its application because it would not prejudice any respondent.[192]
- In the Preliminary Results[193], the Department cited the initiation notice of the third administrative review for certain frozen fish fillets from Vietnam[194] to establish precedence of accepting untimely no shipment certificates. However, the case is not applicable, for it was not the Department's practice at the time to require no shipment certificates to be filed within a 30-day window upon publication of the initiation notice.

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[191] See Preliminary Results.
[192] See Certain Activated Carbon from the People's Republic of China; Statement of No Shipments by Ningxia Lingzhou Foreign Trade Company (September 11, 2009) at 3-4.
[193] See Preliminary Results, 75 FR at 26937.
[194] See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 71 FR 57465 (September 29, 2006).

- In the Preliminary Results, the Department refused the untimely request by United Manufacturing International (Beijing) ("UMI") to file a separate rate application and asserts that the same expectations to file in a timely manner should govern the decision pertaining to Lingzhou.
- The Department refused to accept untimely no shipment certifications in the final results of the Garlic 14th Review.[195]

II. Albemarle's Rebuttal Arguments

- Albemarle notes that Petitioners do not dispute whether or not Lingzhou actually had no shipments during the instant POR.
- Albemarle also notes that Petitioners did not argue against the Department's conclusion that Lingzhou had no shipments during the instant POR based upon confirmation received from an inquiry sent to CBP.[196]
- Albemarle states that governing statutes and regulations do not set deadlines for filing no shipment certifications.
- As deadlines for no shipment certifications are not codified in statutes or regulations, Albemarle believes that the Department has the authority to modify deadlines should it be applicable and so long as no prejudice or injury results from the modification.
- Albemarle notes that Petitioners do not claim prejudice or injury due to the Department's decision to accept Lingzhou's no shipment certification.
- Albemarle argues that the Garlic 14th Review cited by Petitioners is inapplicable, because the Department did not have confirmation of the claim of no shipments and did not seek information from CBP to verify this status.
- Albemarle further states that Lingzhou submitted its no shipment certification prior to the deadline for the submission of new factual information, giving the Department time to confirm the status with CBP.

Department's Position: On September 11, 2009, Lingzhou filed a no shipment certification.[197] This submission was late as the due date for submitting a no shipment certification was June 29, 2009. However, the Department inadvertently failed to notice the submission was late. Therefore, on September 30, 2009, the Department sent an inquiry to CBP to confirm Lingzhou had no shipments during the POR. In response to our no shipment inquiry to CBP, CBP did not indicate that Lingzhou made shipments to the United States during the POR. Based on the confirmation of Lingzhou's no shipment status, the Department preliminarily rescinded the review with respect to Lingzhou because Lingzhou did not export subject merchandise to the

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[195] See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review, 75 FR 34976 (June 21, 2010) ("Garlic 14th Review") and accompanying IDM at Issue 3.
[196] See Message from Director, Special Enforcement to Directors of Field Operations, Port Directors re: No Shipments Inquiry for Certain Activated Carbon from China Exported by Ningxia Lingzhou Foreign Trade Co., Ltd. (September 30, 2009).
[197] See Certain Activated Carbon from the People's Republic of China; Statement of No Shipments by Ningxia Lingzhou Foreign Trade Company (September 11, 2009).

United States during the POR.[198] Neither Petitioners nor any other interested parties submitted comments regarding Lingzhou's no shipment certification prior to the Preliminary Results. Only after the Preliminary Results did Petitioners point out that the submission was late.

Because the Department erred in not noticing the submission was late, investigated the actual claim of no-shipments, and made a preliminary decision, the Department now finds that is would be unfair to the respondent to find the submission late and reject it after it has been on the record for over a year. Therefore, in this particular instance, the Department will allow Lingzhou's no shipment certification to remain on the record and will rescind the instant review with respect to Lingzhou because the Department has determined that no shipments were made by this company in the POR.

With regard to Petitioners' argument regarding our rejection of UMI's separate rate certification, we note that UMI submitted an extension request to submit a separate rate certification eight months after the applicable deadline to submit separate rate certifications had past, clearly an untimely submission. After a review of UMI's appeal to submit a late separate rate certification, the Department properly rejected UMI's untimely separate rate certification.[199] Therefore, because the Department correctly rejected UMI's untimely separate rate certification before the Preliminary Results, we indicated that UMI will receive the PRC-wide rate because it did not submit a timely separate rate certification or application.[200] Further, because UMI has not demonstrated its eligibility for a separate rate, UMI will receive the PRC-wide rate for these final results.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

AGREE___________ DISAGREE___________

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Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

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Date

[198] See Preliminary Results, 75 FR at 26929.
[199] See Letter from the Department to UMI, dated April 5, 2010.
[200] See Preliminary Results, 75 FR at 26932 and 26933.