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October 24, 2011

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

FROM: Christian Marsh
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 Third Antidumping Duty Administrative Review

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SUMMARY: We have analyzed the case and rebuttal briefs of interested parties in the third administrative review of the antidumping duty order[1] 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.[2] 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:

General Issues

Comment 1: Assignment of the Separate Rate
Comment 2: Ad Valorem Deposit Rates
Comment 3: Zeroing
Comment 4: Surrogate Values
- a. Energy Coal
- b. Carbonized Material
- c. Surrogate Financial Ratios
- d. Labor Rate

Comment 5: Issues Regarding CCT
- a. Hydrochloric Acid Purity Level Adjustment
- b. Freight Cost Calculation
- c. Plastic Wrapping Weight Conversions

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[1] See Notice of Antidumping Duty Order: Certain Activated Carbon From the People's Republic of China, 72 FR 20988 (April 27, 2007) ("Order")

[2] See Certain Activated Carbon From the People's Republic of China: Preliminary Results of the Third Antidumping Duty Administrative Review, and Preliminary Rescission in Part, 76 FR 23978 (April 29, 2011) ("Preliminary Results").

d. Raw Material Reporting by CCT and JB

Comment 6: Issues Regarding Jacobi

a. Brokerage and Handling

b. Adverse Facts Available ("AFA") for NXGH's Water Usage

BACKGROUND: The period of review ("POR") is April 1, 2009, through March 31, 2010. In accordance with 19 CFR 351.309(c)(1)(ii), the Department of Commerce ("Department") invited parties to comment on our Preliminary Results.

Between June 13 and 14, 2011, Petitioners[3], CCT[4], Huahui[5] Shanxi Industry[6], Shanxi DMD[7], and Jacobi[8] filed case briefs.[9] On June 16, 2011, the Department rejected Huahui's case because it contained new information and provided Huahui until June 20, 2011, to re-file its case brief.[10] On June 20, 2011, Huahui re-filed its case brief. On June 20, 2011, Petitioners, Albemarle[11], CCT, Huahui, Shaxi Industry, and Shanxi DMD filed rebuttal briefs.

On June 21, 2011, the Department placed labor rate data to value the input of labor on the record for comment by interested parties.[12] On July 5, 2011, Albemarle provided comments on the June 21, 2011, data. On July 7, 2011, the Department placed additional information regarding the labor rate calculation on the record for comment by interested parties.[13] On July 12, 2011, CCT filed rebuttal comments to Albemarle's July 5, 2011, labor data comments.

DISCUSSION OF THE ISSUES:

Comment 1: Assignment of the Separate Rate

Petitioners' Arguments

- Following Department precedent, the Department should use the separate rate established in the final results of the second administrative review to establish the separate rate in this proceeding, if the Department calculates zero or de minimis margins for Jacobi and CCT.

[3] Calgon Carbon Corporation and Norit Americas Inc. ("Petitioners").
[4] Calgon Carbon (Tianjin) Co., Ltd. and Calgon Carbon Corporation (collectively, "CCT").
[5] Ningxia Huahui Activated Carbon Co., Ltd. ("Huahui").
[6] Shanxi Industry Technology Trading Co., Ltd. ("Shanxi Industry").
[7] Shanxi DMD Corporation ("Shanxi DMD").
[8] Jacobi Carbons AB ("Jacobi")
[9] Jacobi filed its case brief under the one-day lag rule. See 19 CFR 351.303(c).
[10] See Letter to Huahui and Albemarle, dated June 16, 2011.
[11] Albemarle Corporation ("Albemarle").
[12] See Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Case Analyst, Office 9 re: Third Administrative Review of the Antidumping Duty on Certain Activated Carbon From the People's Republic of China: Industry Specific Surrogate Labor Rate and Surrogate Financial Ratio Adjustments, dated June 21, 2011 ("Labor Memo").
[13] See Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Case Analyst, Office 9 re: Third Administrative Review of the Antidumping Duty on Certain Activated Carbon From the People's Republic of China: Revision to Surrogate Financial Ratio Adjustments, dated July 7, 2011 ("Revised Labor Memo").

- While the Department acceded to the Court of International Trade's ("CIT") decision in Amanda Foods 2010[14] and assigned the de minimis margin to the separate rate respondents, it did so under protest.
- The facts at issue in this proceeding are distinguishable from the Brake Rotors[15] and Honey from Argentina cited by the Separate Rate Companies.[16]
- The margins calculated for Jacobi and CCT are not appropriate to calculate the separate rate because there is no basis to conclude that the Separate Rate Companies' production costs or pricing are similar to the mandatory respondents.
- Huahui's argument that previous separate rates should not be relied upon because they are subject to litigation is inconsistent with the Department's standard practice of relying on prior determinations until such time as they are conclusively overturned in subsequent litigation.
- The Department cannot use U.S. Customs and Border Protection ("CBP") data to confirm that the separate rate companies' pricing behavior is similar to that of the mandatory respondents, because there are no data on the administrative record concerning the prices at which the separate rate respondents sold subject merchandise in the United States during the POR.

Separate Rate Companies' Arguments[17]

- The Department should calculate the separate rate using zero or de minimis rates of the mandatory respondents in this administrative review because the statutory exclusion of zero, de minimis, and facts available rates from the separate rate calculation applies to investigations only.
- The CIT in Amanda Foods 2011,[18] explained that using the zero and de minimis rates received by individually reviewed respondents provides a reasonable methodology for assigning an estimated all others rate.
- The SAA[19] further supports the weight-averaging of zero and de minimis rates to calculate the separate rate.
- The Department should choose to average mandatory respondent de minimis rates because of homogeneity among the producing companies as it did in Brake Rotors[20] and Honey from Argentina.[21]

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[14] See Amanda Foods 2010; see also, Final Results of Redetermination Pursuant to Court Remand, Amanda Foods (Vietnam) Ltd., and et. al. v. United States, Court No. 08-00301 Slip Op. 10-69 (CIT June 17, 2010), dated December 2, 2010, at 4.

[15] See Brake Rotors From the People's Republic of China: Final Results of 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review, 73 FR 32678 (June 10, 2008) ("Brake Rotors").

[16] See Honey from Argentina: Preliminary Results of Antidumping Duty Administration Review and Intent Not to Revoke in Part, 72 FR 73763 (December 28, 2007), unchanged in Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 73 FR 24220 (May 2, 2008) ("Honey From Argentina").

[17] Huahui, Shanxi DMD, and Shanxi Industry (collectively "Separate Rate Companies") argued the assignment of the separate rate in their case briefs. Their arguments are summarized together here.

[18] See Amanda Foods (Vietnam) Ltd. V. United States, 774 F. Supp. 2d 1286, 1290-92 (2011) ("Amanda Foods 2011") (citing Amanda Foods (Vietnam) Ltd. V. United States, 714 F. Supp. 2d 1282, 1291-92 (2010) ("Amanda Foods 2010")).

[19] See The Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA") H.R. Doc. No. 103-316, at 873 (1994), reprinted in 1994 U.S.C.A.A.N. 4040, 4201.

- A review of CBP data affirms that the U.S. sales prices of the separate rate respondents are in line with the mandatory respondents' prices and demonstrates that dumping is unlikely with the unselected companies.
- The Department has evidence in the current review which is more probative than previously calculated rates and has no factual basis to pass through the previously calculated separate rate.

Department's Position: We agree with Petitioners that the Department should not diverge from the practice of excluding zero and de minimis margins when calculating the separate rate margin. In the Preliminary Results, the Department assigned a 0.05 U.S. Dollar per kilogram ("USD/kg") rate calculated from CCT's preliminary margin as the separate rate for those companies receiving a separate rate in this administrative review. However, for the final results of this administrative review, the Department has calculated a de minimis margin for both mandatory respondents, CCT and Jacobi.

Generally, we have looked to section 735(c)(5) of the Tariff Act of the 1930, as amended ("the Act"), which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not individually examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or de minimis margins or any margins based on total facts available.[22] Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based on total facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possibility is "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies, excluding zero and de minimis rates and rates based entirely on adverse facts available ("AFA"), in the most recently completed segment of the proceeding.[23] However, if any such nonselected company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, the Department has applied such individual rate to the nonselected company in the review in question.[24]

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[20] See Brake Rotors, 73 FR 32678.
[21] See Honey from Argentina, 73 FR 24220.
[22] See, e.g., First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 27994 (May 13, 2011).
[23] See e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 56158 (September 12, 2011).
[24] See Certain Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review, 73 FR 52015 (September 8, 2008) (changed in final results as final calculated rate for mandatory respondent was above de minimis, which remained unchanged in the amended final results); see also, Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial

Based on the facts of this case, we determine that a reasonable method for determining the margin for separate rate companies in this review is the average of the margins, other than those which are zero, de minimis, or based on total facts available, that we found for the most recent period in which there were such margins, i.e., Carbon AR 2.[25] While the statute contemplates that we may use an average of the zero, de minimis and AFA rates determined in an investigation, we have available in this review information that would not be available in an investigation, namely rates from prior proceedings. We have determined that it is more reasonable in this review to use a calculated rate from a previous segment, as this method constitutes a contemporaneous examination of individually-reviewed respondents exclusive of zero, de minimis and facts available margins, and reasonably reflects potential dumping margins for the non-selected companies.[26] The Department finds that these separate rate margins comport with the requirements of the relevant statute and the SAA, given that no data on the record exists to determine whether the non-selected companies' pricing behavior matches that of the mandatory respondents in the current review. While certain Separate Rate Companies have argued that producers of activated carbon share the similar input of coal and have similar production processes, they merely assert that such similarities result in the same level of dumping such that the Department should assign them a zero dumping margin without providing any analytical basis for this assertion. In this regard, there is no evidence on the record that demonstrates that the use of similar production processes or inputs results in similar pricing behavior or dumping practices.

We disagree with the Separate Rate Companies' argument that the SAA supports the weight-averaging of zero and de minimis rates to calculate the separate rate. The SAA states that if there are only zero or de minimis margins determined or rates based on the facts available (and there is no other entity to which a facts available margin has been applied), the Department "may use any reasonable method" to calculate the separate rate.[27] While the SAA provides an expected method in such situations – "to weight average the zero and de minimis margins and margins determined pursuant to facts available, provided that volume data is available" – the Department may depart from the expected methodology if it does not prove "feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers . . . ."[28] For the reasons explained in the immediately preceding paragraph, the Department does not consider the rates calculated in the current review to reasonably reflect the potential dumping margins of the separate rate companies. Therefore, in accordance with the guiding language of the SAA, the Department employed a distinct, reasonable method to calculate the separate rates in this review.

The Separate Rate Companies urge the Department to average the mandatory respondent de minimis rates and apply that as the separate rate because of homogeneity among the producing

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Rescission of Antidumping Duty Administrative Review, 74 FR 47191, 47195 (September 15, 2009) and accompanying Issues and Decisions Memorandum ("IDM") at Comment 16.

[25] See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208, 70209 (November 17, 2010) ("Carbon AR2") and accompanying IDM at Comment 3.

[26] See SAA at 873.

[27] Id.

[28] Id.

companies, as it did in Brake Rotors.[29] First, we do not find that "homogeneity among the producers" necessarily leads to the same level of dumping. Second, as previously stated, no record evidence demonstrates that the use of similar production processes and inputs will result in similar pricing behavior or dumping margins. Moreover, in Brake Rotors, the Department did request that respondents provide their "economic characteristics," but it was for the purpose of determining whether to use stratification when conducting sampling for respondent selection; this information was not used by the Department in determining which margin to assign to the separate rate companies.[30] Huahui also argues that the Department should review the CBP data on the record and conclude that the U.S. sales prices of the separate rate respondents are in line with the mandatory respondents' normal values. However, as Petitioners correctly point out, the CBP data on the record contains only quantity data and does not include information on entered values or any information pertaining to the separate rate companies' prices of subject merchandise entered into the United States. Therefore, there is no information on the record to make the type of comparison that Huahui suggests.

We also note that, notwithstanding the methodology adopted in Honey from Argentina, the Department's more recent practice has been not to apply a de minimis rate as the "All Others" rate in market economy ("ME") cases or as the separate rate in non-market economy ("NME") cases.[31] As seen in recent cases, the Department has found for case-specific reasons that using a calculated rate from a prior segment more reasonably reflects the potential dumping margins of non-selected companies than does a de minimis or zero rate from an ongoing segment because the margins from the previous review more accurately capture recent and potential pricing behavior of non-selected companies, given that these companies were not selected for individual examination and that there is no data on the record to determine whether the non-selected companies' pricing behavior matches that of the mandatory respondents in the ongoing review. While the Separate Rate Companies correctly note that the Department assigned de minimis rates in Honey from Argentina, it is the only case in which the Department has done so in recent history. In cases post-dating Honey from Argentina (Fish Fillets from Vietnam, Ball Bearings, PRC Shrimp), the Department has relied on other methodologies to determine the rate for non-reviewed companies.

Furthermore, in Amanda Foods 2010, the separate rate companies involved were assigned a de minimis margin only after the Department reopened the record, requested further information from the plaintiff, and performed additional data comparisons to information already on the record.[32] The Department has not undertaken such steps in this case and, therefore, finds it

[29] See Brake Rotors, 73 FR 32678.
[30] See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review, 71 FR 66304 (November 14, 2006) and accompanying Issues and Decision Memorandum at Comment 1 (". . . the Department found no discernible variation in the respondents' economic characteristics that warranted stratification.").
[31] See e.g., Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823 (September 11, 2008) ("Ball Bearings") and accompanying IDM at Comment 16; Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009) and accompanying IDM at Comment 6 ("Fish Fillets from Vietnam"); Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940, 51942 (August 19, 2011) ("PRC Shrimp").
[32] See Amanda Foods (Vietnam) Ltd., et al. v. United States, 774 F. Supp. 2d 1286, 1292 (2011).

inappropriate to rely on Amanda Foods 2011 as applicable precedent. Further, the Department complied with the Court's order to assign a de minimis separate rate under protest.[33]

Thus, we find that a reasonable method in the instant review is to assign to the non-reviewed company, Huahui, its most recent calculated rate and, for the other separate rate companies, to assign the most recent separate rate that was not calculated using zero, de minimis or rates based entirely on facts available. Pursuant to this method, we are assigning a rate of 0.44 U.S. USD/kg to Huahui, its assigned rate in Carbon AR 2. Additionally, we are assigning a rate of 0.28 USD/kg to the other companies that are eligible for a separate rate in this review, the separate rate assigned calculated in Carbon AR 2.

Comment 2: Ad Valorem Deposit Rates

Shanxi Industry and Shanxi DMD's Arguments

- The Department should calculate ad valorem cash deposit rates for the separate rate companies because there is no rationale for extending this unusual method of establishing the deposit rate.
- Ad valorem rates would treat each company equally, taking the same percentage of the relative value of their products as an antidumping duty deposit.
- The per-unit rate benefit companies who sell premium goods at higher costs while low cost goods are penalized.

Petitioners' Arguments

- Because Jacobi represents a significant portion of entries in this review and in view of the difference between Jacobi's net U.S. prices and the entered values found by the Department in Carbon AR2[34], it is entirely appropriate for the Department to continue to use per-unit rates.
- In Carbon AR2, the Department has explicitly stated its intention to utilize per-unit assessment and cash deposit rates in all future proceedings.

Department's Position: The Department will continue to utilize the per-unit assessments and cash deposit rates. In the last administrative review, the Department changed the cash deposit and assessment methodology from an ad valorem to a per-unit basis.[35] The Department' decision was based on a difference between one of the mandatory respondent's net unit price and the entered value reported to CBP.[36] The Department explained in Carbon AR2 that it would also apply this decision to "all future reviews of the order" and that "it would be extremely burdensome to determine whether to apply an ad valorem or a per-unit rate on a company-specific basis."[37] Further, we stated that this 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.[38]

[33] See id., 774 F. Supp. 2d at 1289-90.

[34] See Carbon AR2, 75 FR at 70209 and accompanying IDM at Comment 3.

[35] Id.

[36] Id.

[37] Id.

[38] Id.

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.[39] In addition, the Federal Circuit has upheld prior determinations where the Department has departed from the standard ad valorem methodology.[40] Relevant precedent from the Court of International Trade similarly teaches that the Department has the discretion to depart from this expected methodology under certain circumstances, such as when the Department learns that a respondent has undervalued its U.S. sales and would avoid the total duties due through such action.[41] In Carbon AR2, we found that the application of an ad valorem rate based on net U.S. price would yield an under-collection of duties, mostly due to undervaluing by the largest PRC exporter of the subject merchandise. In this review, despite their claims to the contrary, Shanxi Industry and Shanxi DMD do not provide any evidence or documentation, such as CF 7501, on the products they sold or the price at which they sold them. Therefore, without tangible evidence on the record, Shanxi Industry and Shanxi DMD cannot overcome the presumption that undervaluing has continued in this review and that they have engaged in such pricing behavior. In this regard, Jacobi, whose behavior was the basis for the Department to use per-unit assessment rates in Carbon AR 2, has not challenged the continued application of per-unit assessment rates in this review.

Shanxi DMD and Shanxi Industry also argue that the per-unit rate unfairly penalizes companies which have sales of low-priced products as opposed to companies which sell higher-priced premium products. As an initial matter and as discussed above, the statute permits assessment based on an ad valorem or per unit basis. Thus, there is no basis to claim a per-unit assessment and any greater payment of duties resulting from such an assessment as unfair or a penalty. Furthermore, we find that their argument is speculative, given that they have not pointed to any record evidence to support their claim that certain companies sell more low cost products as compared to other companies under review.

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[39] See, e.g., 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, 19549-50 (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 from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 70 FR 38873, 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).

[40] See Thai Pineapple Canning Indus. Corp. v. United States, 273 F.3d 1077, 1084-85 (Fed. Cir. 2001).

[41] See Wuhan Bee Healthy Co. v. United States, No. 05-00438, slip op. at 9-11 (CIT May 29, 2008)

Therefore, the Department will continue to apply the per-unit cash deposit and assessment methodology and will direct CBP to collect cash deposits and assess antidumping duties on a per-kilogram basis for entries of subject merchandise from the PRC.

Comment 3: Zeroing

Jacobi's Arguments

- The Department wrongly calculated a dumping margin for Jacobi using the practice of "zeroing," in which any negative margins (where export price ("EP") or constructed export price ("CEP") exceeds normal value ("NV")) are treated as zero in calculating the weighted average dumping margin.
- The practice of zeroing was overturned by the U.S. Court of Appeals for the Federal Circuit ("CAFC") in Dongbu Steel[42] and, as a result, the Department should abandon the practice.
- In light of the decision of the CAFC in Dongbu Steel, the Department should recalculate potential dumping duties and dumping margins for Jacobi without zeroing.

Petitioner's Arguments

- Jacobi overstated the holding of the Federal Circuit in Dongbu Steel.
- The Department's policy is currently to apply the zeroing methodology in administrative reviews and should continue this practice.

Department's Position: We have not changed our calculation of the weighted-average dumping margin, as suggested by the Jacobi, in these final results.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price {EP} or {CEP} 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 NV is greater than EP or CEP. We disagree with Jacobi that the Department's zeroing practice is an inappropriate interpretation of the Act. Because no dumping margins exist with respect to sales where NV 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 Federal Circuit has held that this is a reasonable interpretation of section 771(35) of the Act.[43]

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 this section by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this

[42] See Dongbu Steel Co. Ltd., et al. v. United States, 635 F.3d 1363 (Fed. Cir. 2011).

[43] See, e.g., Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004) ("Timken"); see also, 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"); SKF USA, Inc. v. United States, 630 F.3d 1365, 1375 (Fed. Cir. 2011) ("SKF") ("Even after Commerce changed its policy with respect to original investigations, we have held that Commerce's application of zeroing to administrative reviews is not inconsistent with the statute.") (citation omitted).

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 NV permitted to offset or cancel the dumping margins found on other sales.

This does not mean that non-dumped transactions are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped transactions examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped transactions is included in the numerator. Thus, a greater amount of non-dumped transactions results in a lower weighted-average margin.

The Federal Circuit 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."[44] 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.[45]

In 2007, the Department implemented a modification of its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations.[46] With this modification, the Department's interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in section 123(g) of the Uruguay Round Agreements Act was specifically limited to address adverse World Trade Organization ("WTO") findings made in the context of antidumping investigations using average-to-average comparisons. The Department's interpretation of the statute was unchanged in other contexts.

It is reasonable for the Department to interpret the same ambiguous language differently when using different comparison methodologies in different contexts. In particular, the use of the word "exceeds" in section 771(35)(A) of the Act can reasonably be interpreted in the context of an antidumping investigation to permit negative average-to-average comparison results to offset or reduce the amount of the aggregate dumping margins used in the numerator of the weighted-average dumping margin as defined in section 771(35)(B) of the Act. The average-to-average comparison methodology typically applied in antidumping duty investigations averages together high and low prices for directly comparable merchandise prior to making the comparison. This means that the determination of dumping necessarily is not made for individual sales, but rather at an "on average" level for the comparison. For this reason, the offsetting methodology adopted

[44] See Timken, 354 F.3d at 1342.
[45] See, e.g., Timken, 354 F.3d at 1343; see also, NSK Ltd. v. United States, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007).
[46] See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) ("Zeroing Notice").

in the limited context of investigations using average-to-average comparisons is a reasonable manner of aggregating the comparison results produced by this comparison method. Thus, with respect to how negative comparison results are to be regarded under section 771(35)(A) of the Act, and treated in the calculation of the weighted average dumping margin under section 771(35)(B) of the Act, it is reasonable for the Department to consider whether the comparison result in question is a product of an average-to-average comparison or an average-to-transaction comparison.

In U.S. Steel, the Federal Circuit considered the reasonableness of the Department's interpretation not to apply zeroing in the context of investigations using average-to-average comparisons, while continuing to apply zeroing in the context of investigations using average-to-transaction comparisons pursuant to the provision at section 777A(d)(1)(B) of the Act.[47] Specifically, in U.S. Steel, the Federal Circuit was faced with the argument that, if zeroing were never applied in investigations, then the average-to-transaction comparison methodology would be redundant because it would yield the same result as the average-to-average comparison methodology. The Court acknowledged that the Department intended to continue to use zeroing in connection with the average-to-transaction comparison method in the context of those investigations where the facts suggest that masked dumping may be occurring.[48] The Court then affirmed as reasonable the Department's application of its modified average-to-average comparison methodology in investigations in light of the Department's stated intent to continue zeroing in other contexts.[49]

In addition, the Federal Circuit recently upheld, as a reasonable interpretation of ambiguous statutory language, the Department's continued application of "zeroing" in the context of an administrative review completed after the implementation of the Zeroing Notice.[50] In that case, the Department had explained that the changed interpretation of the ambiguous statutory language was limited to the context of investigations using average-to-average comparisons and was made pursuant to statutory authority for implementing an adverse WTO report. We find that our determination in this administrative review is consistent with the Federal Circuit's recent decision in SKF.

Furthermore, in Corus I, the CAFC acknowledged the difference between antidumping duty investigations and administrative reviews, and held that section 771(35) of the Act was just as ambiguous with respect to both proceedings, such that the Department was permitted, but not required, to use zeroing in antidumping duty investigations.[51] That is, the Court explained that the holding in Timken – that zeroing is neither required nor precluded in administrative reviews – applies to antidumping duty investigations as well. Thus, Corus I does not preclude the use of zeroing in one context and not the other.

Moreover, we disagree with the Jacobi that the Federal Circuit's recent decision in Dongbu Steel requires the Department to change its methodology in this administrative review. The holding of

[47] See U.S. Steel Corp., v. United States, 621 F.3d 1351, 1362-63 (Fed. Cir. 2010) ("U.S. Steel").
[48] Id.
[49] Id.
[50] See SKF, 630 F.3d 1365.
[51] See Corus I, 395 F.3d at 1347.

Dongbu Steel, and the recent decision in JTEKT[52], was limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of investigations versus administrative reviews. The Federal Circuit did not hold that these differing interpretations were contrary to law. Importantly, the panels in neither Dongbu Steel nor JTEKT overturned prior Federal Circuit decisions affirming zeroing in administrative reviews, including SKF, which we discuss above, in which the Court affirmed zeroing in administrative reviews notwithstanding the Department's determination to no longer use zeroing in certain investigations. Unlike the determinations examined in Dongbu Steel and JTEKT, the Department here is providing additional explanation for its changed interpretation of the statute subsequent to the Final Modification for Antidumping Investigations[53] – whereby we interpret section 771(35) of the Act differently for certain investigations (when using average-to-average comparisons) and administrative reviews. For all these reasons, we find that our determination is consistent with the holdings in Dongbu Steel, JTEKT, U.S. Steel, and SKF.

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 NV, the amount by which the price exceeds NV will not offset the dumping found in respect of other transactions.

Comment 4: Surrogate Values

a. Energy Coal

CCT's Arguments

- The Department should use Coal India Limited ("CIL") data to value CCT's energy coal.
- In the Preliminary Results, the Department departed from past practice and rejected the use of CIL data, even where the Useful Heat Value ("UHV") was reported, but the supplier did not also report the ash content of the coal.
- The additional data sought by the Department on ash content is unnecessary and does not help determine where the Chinese suppliers' coal is classified in the Tata Energy Research Institute ("TERI") schemes, since TERI grades are completely defined on the basis of UHV.
- Even if ash content were relevant, CCT was not provided with a reasonable opportunity to place ash content data on the record.

Albemarle's Arguments

- The Department did request ash content of its coal input and CCT submitted ash content data.
- Because CCT's own energy coal has ash content levels that fall outside those correlating to the CIL data is proof why the information regarding ash content is relevant to selecting the appropriate surrogate value.

[52] See JTEKT Corporation v. US, **Error! Main Document Only.**642 F.3d 1378 (Fed. Cir. 2011) ("JTEKT").
[53] See i.e., Zeroing Notice, 71 FR at 77722; see also, Antidumping Proceedings: Calculation of the Weighted – Average Dumping Margin During an Antidumping Investigation; Change in Effective Date of Final Modification, 72 FR 3783 (January 26, 2007) ("Final Modification for Antidumping Investigations").

- The Department was correct to value CCT's energy coal using the Global Trade Atlas ("GTA") data since this data covers CCT's input while the CIL non-coking coal pricing data do not.

Department's Position: The Department agrees with CCT that we should value CCT's various energy coal (also referred to as "non-coking coal" or "steam coal") inputs using CIL data. In the Preliminary Results, we valued CCT's energy coal inputs using GTA Indian import data under harmonized tariff schedule ("HTS") number 2701.19.20 "Steam Coal" because we found that CCT did not report the ash contents of its energy coal inputs.[54]

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, surrogate values ("SV") which are product-specific, representative of a broad-market average, publicly available and contemporaneous with the POR, and tax/duty exclusive.[55] 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.[56] 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."[57]

Although we valued CCT's energy coal using GTA in the Preliminary Results, we have determined that using CIL data represents a better valuation as it is more specific to the input. We recognize that when we have used other sources of information to value energy coal, such as such as the Tata Energy Research Institute ("TERI") information, ash content was a separately identified indicator useful to the selection of an appropriate value.[58] However, CIL value information relies only on UHV values and does not require separate identification of ash content.[59] As CCT reported UHV values for its energy coal, we have identified the CIL value corresponding to the grade of energy coal CCT used, permitting a more specific match than the GTA permits.[60]

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[54] See "Memorandum to the File through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Katie Marksberry, International Trade Specialist, AD/CVD Enforcement, Office 9: Third Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results," dated April 22, 2011 ("Prelim SV Memo") at 7.

[55] 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.

[56] 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.

[57] 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; see also, Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Administrative Review, and Final Partial Recession of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) ("Crawfish 2002") and accompanying IDM at Comment 2.

[58] See Carbon AR2, 75 FR 70208 and accompanying IDM at Comment 4b; see also, Carbon Remand at 12-14.

[59] See Letter from Jacobi, re: Jacobi's SV Comments, dated January 13, 2011 at 3 and SV-4; see also, Letter from CCT, re: CCT's SV Comments, dated January 14, 2011 at 1.

[60] See e.g., CCT's Supplemental Section D response, dated January 6, 2011 at B-15 and C-11; see also, CCT's Supplemental Section D response, dated January 14, 2011, at D-7

We disagree with Albemarle's argument that where CCT did provide ash content information, such ash content information suggests the less specific GTA data is a better match. In examining Albemarle's claim, we noted that CCT reported ash contents not for energy coal, the factor of production at issue here, but for bituminous coal, a raw material from which activated carbon is produced.[61] Accordingly, the reported ash contents have nothing to do with the selection of a proper surrogate value for energy coal.

Therefore, in accordance with section 773(c)(1) of the Act and Department practice,[62] we find it appropriate to value the energy coal reported by CCT using CIL data, because the CIL data are (1) specific to the types of energy coal used by CCT, (2) non-export values, (3) representative of India-wide prices, and (4) contemporaneous with the POR.

b. Carbonized Material

Jacobi's Arguments

- The Department should value carbonized material using coconut shell charcoal classified under HTS 4402.90.10.
- In valuing carbonized materials, the Department's decision should reflect the Department's Draft Remand Determination and the fact that cokes of coal are not used in the production of activated carbon.

No other party commented on this issue.

Department's Position: We agree with Jacobi that the Department should value carbonized materials using Indian imports under HTS number 4402.90.10 "Coconut Shell Charcoal." In the Preliminary Results, the Department valued respondents' carbonized material inputs using GTA Indian imports reported under HTS number 2704.00.90 "Other Cokes of Coal."[63]

In the Department's recent Carbon Remand,[64] the Department stated that coconut shell charcoal shares similar properties with carbonized material and that those similar properties are essential in the production of activated carbon.[65] As we previously stated, it is the Department's practice to select SVs which are product specific.[66] Therefore, because Indian HTS number 4402.90.10 "Coconut Shell Charcoal" results in a better, input-specific price for coal-based carbonized materials, is contemporaneous and tax/duty exclusive, the Department will use Indian HTS

[61] See CCT's Supplemental Section D response, dated January 6, 2011 at B-15 and Exhibit HQ-32.
[62] 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).
[63] See Prelim SV Memo at 5.
[64] See "Final Results of Redetermination Pursuant to Court Remand," dated July 25, 2011, Carbon Remand, Slip Op. 11-21, at 10-11.
[65] Id. at 10.
[66] See PSF AR1, 75 FR 1336 and at Comment 1.

number 4402.90.10 "Coconut Shell Charcoal" to calculate the SV for CCT and Jacobi's carbonized material input.

c. Surrogate Financial Ratios

CCT's Arguments

- The Department should calculate the surrogate financial ratios using the 2009-2010 financial statement of Active Carbon India Private Limited ("Active Carbon") because it is publicly available, contemporaneous, audited, complete, and from a producer of comparable merchandise.
- The financial statements the Department used for the preliminary results are not contemporaneous with the POR.
- The Department should exclude "Freight & Hamali" because it is a freight expense. Further, there is no reason to believe that hamali is not a freight item otherwise, it would not be listed with freight.

Albemarle's Arguments

- If the Department uses Active Carbon's financial statement as submitted by CCT, the Department must correct errors in CCT's proposed calculation of the surrogate ratios.
- CCT improperly included "staff welfare" together with "salaries & wages" when these expenses are listed separately in Schedule 13 to Active Carbon's financial statement.
- "Packing Material" expense name is misrepresented. The actual name of the expense is "Packing Charges" and Active Carbon listed it as an Administrative expense in Schedule 15.
- "Sales Commission" was excluded by CCT, but should be included as it is consistent with Department practice to include such expenses.
- The Department should include "Freight & Hamali" in its overhead, selling, general and administrative ("SG&A") ratios calculation if it uses Active Carbon's financial statement in the final results.

Department's Position: Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors...." In choosing surrogate financial ratios, it is the Department's practice to use data from ME surrogate companies based on the "specificity, contemporaneity, and quality of the data."[67] In the Preliminary Results, we calculated the surrogate financial ratios using the 2007-2008 financial statements of Kalpalka Chemicals Ltd. ("Kalpalka") and Quantum Active Carbon Pvt. Ltd. ("Quantum").[68] For the final results, the Department will use Active Carbon's 2009-2010 financial statement to calculate the surrogate financial ratio because Active Carbon's financial statement is audited, from a producer of the subject merchandise, and contemporaneous and, therefore, represents the best available information with which to calculate the surrogate financial ratios. In this regard, Active Carbon's 2009-2010 financial statement is more contemporaneous than the 2007-2008 financial statements used for the Preliminary Results.

[67] See 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), and accompanying IDM at Comment 1.
[68] See Preliminary Results, 76 FR at 23988.

In deriving appropriate surrogate values for SG&A and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to materials, labor, and equipment ("MLE"), factory overhead ("OH"), 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.[69] However, in NME cases, it is impossible for the Department to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding because the Department does not seek information from or verify the information from the surrogate company.[70] 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.[71] As stated by the Court of International Trade, 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.'"[72]

Staff and Welfare

We note that Albemarle's arguments regarding "staff and welfare" expenses were made before the Department updated its labor methodology. Therefore, we find Albemarle's case brief argument regarding "staff and welfare" expenses no longer relevant, given that the new methodology requires the Department to consider these labor expenses and that no party commented on this issue in response to the Department's Labor Memo.[73]

Packing Charges

We agree with Albemarle that "packing charges" should be included in the surrogate SG&A calculation. Because we do not go beyond the financial statements in determining the appropriateness of including an item in the financial ratio calculation, we seek information only within the financial statement itself to determine the nature of the activity generating the potential adjustment to determine whether a relationship exists between the activity claimed and the principal operations of the company.[74] In this instance, "packing charges" is listed under Schedule 15, "Administrative Expenditure" in Active Carbon's financial statement.[75] Further, there are no explanatory notes or footnotes explaining what charges are included in this expense. Therefore, because there is no clear description in Active Carbon's financial statement of the

[69] 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.
[70] Id.
[71] 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.
[72] See Rhodia, 240 F. Supp. 2d at 1250 (citations omitted).
[73] See Labor Memo at 4-5 and attachment VII; see also, Letter from Albemarle, dated July 5, 2011 and Letter from CCT, dated July 12, 2011.
[74] See, e.g., Tires, 73 FR 40485 at Comment 18A.
[75] See Letter from CCT, re: Submission of Publically Available Information to Value Factors, dated May 19, 2011.

costs associated with "packing charges" that can be traced to a particular non-general operation of the company (such as packing labor or packing materials), in accordance with the Department's practice, "packing charges" should be reflected in the SG&A expense ratio for this company. Consequently, for the final results, we will classify "packing charges" as an SG&A expense.[76]

Freight & hamali

We agree with Albemarle that "freight & hamali" should be included in the surrogate SG&A calculation. Because we do not go beyond the financial statements in determining the appropriateness of including an item in the financial ratio calculation, we seek information only within the financial statement itself to determine the nature of the activity generating the potential adjustment to determine whether a relationship exists between the activity claimed and the principal operations of the company.[77] In this instance, "freight & hamali" is listed under Schedule 15, "Administrative Expenditure" in Active Carbon's financial statement.[78] Further, no explanatory notes or footnotes attached to this item explain what charges encompass the term "hamali" nor does the record contain information regarding this term or its usage. Therefore, because there is no clear definition in Active Carbon's financial statement of the costs associated with the phrase "freight & hamali" and no record evidence that can trace those costs to a particular non-general operation of the company (such as brokerage and handling or truck freight), in accordance with the Department's practice, "freight & hamali" should be reflected in the SG&A expense ratio for this company. Consequently, for the final results, we will classify "freight & hamali" as an SG&A expense.[79]

Sales commissions

We agree with Albemarle and will include sales commissions in the surrogate SG&A calculation consistent with Department practice, given that sales commissions represent standard selling expenses.[80]

d. Labor Cost

CCT's Arguments

- The Department inadvertently used the consumer price index data for Pakistan instead of the Philippines, causing the POR labor rate for the Philippines to be overstated.

Department's Position: We note that the Department has recently updated its labor methodology.[81] Therefore, we find CCT's case brief argument regarding labor no longer

[76] Id.
[77] See, e.g., Tires, 73 FR 40485 at Comment 18A.
[78] See Letter from CCT, re: Submission of Publically Available Information to Value Factors, dated May 19, 2011.
[79] Id.
[80] See 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 4.
[81] See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

relevant, given that the new methodology requires the Department to base its labor costs on a single country. Additionally, we note that in response to the Department's Labor Memo, Albemarle and CCT submitted comments and rebuttal comments concerning Active Carbon's financial statement.[82] However, these comments were not related to the new labor methodology. Specifically, Albemarle and CCT's comments concerned the expense "freight & hamali" in Active Carbon's financial statement, which we have addressed above.

Comment 5: Issues Regarding CCT

a. Hydrochloric Acid Purity Level Adjustment

CCT's Arguments

- In adjusting for the purity level of hydrochloric acid ("HCl") consumed by China National Nuclear General Company Ningxia Activated Carbon Factory ("NC"), the Department incorrectly applied the adjustment factor to the freight cost. The adjustment should only be applied to the input value.

No other party commented on this issue.

Department's Position: The Department agrees with CCT that we incorrectly applied the purity level adjustment factor to NC's freight cost of HCl because freight is not a function of the HCl's purity. Further, we note that we made a similar error in adjusting the purity level for one of Jacobi's suppliers. Therefore, for the final results, the Department will apply the HCl purity level adjustment only to the HCl surrogate input value for CCT and Jacobi.[83]

b. Freight Cost Calculation

CCT's Arguments

- The Department inadvertently applied incorrect weight conversion factors in calculating the freight cost for packing cover bags, envelopes, and rope.

No other party commented on this issue.

Department's Position: The Department agrees with CCT that the Department incorrectly converted the weight conversion factor in calculating the freight costs for transporting packing cover bags, envelops and rope. The Department incorrectly converted the freight for these factors as if they were measured in kilograms. However, CCT reported these inputs measured in

[82] See Letter from Albemarle, dated July 5, 2011; see also, Letter from CCT, dated July 12, 2011.

[83] See Memorandum to the File, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Bob Palmer, Case Analyst, AD/CVD Operations, Office 9: Final Results Analysis Memorandum for Calgon Carbon (Tianjin) in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China ("CCT's Final Analysis Memo"), dated concurrently with this memorandum; see also, Memorandum to the File, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Katie Marksberry, Case Analyst, AD/CVD Operations, Office 9: Final Results Analysis Memorandum for Jacobi Carbons AB in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China ("Jacobi's Final Analysis Memo"), dated concurrently with this memorandum.

grams.[84] Therefore, for the final results, the Department will apply the correct weight conversion factor for these inputs.[85]

c. Plastic Wrapping Weight Conversions

CCT's Arguments

- The Department improperly applied weight conversions to the reported factor consumption for plastic wrap and plastic wrapping film.

No other party commented on this issue.

Department's Position: The Department agrees with CCT that the Department inadvertently failed to apply correctly the reported weight conversion to plastic wrap and plastic wrapping film. Accordingly, for the final results, the Department will assign the surrogate value measured in square meters per metric ton ("MT") to the corresponding FOP and assign the surrogate value measured in kilograms per MT to its corresponding FOP.[86]

d. Raw Material Reporting by CCT and JB

Jacobi's Arguments

- The Department utilized the usage rate of carbonized materials for Huarin Jinbei Chemical Co. Ltd. ("JB") in calculating CCT's margin; however, it did not consider that CCT failed to fully report JB's usage of raw activated carbon in the production of finished activated carbon and thus under-reported its usages rates for electricity, labor, water, energy coal, and maintenance labor.
- It is the Department's practice to require respondents to report all raw materials used in the production of subject merchandise.
- The Department should re-calculate CCT/JB's usage rates of raw activated carbon in the production of subject merchandise to fully account for CCT/JB's usage of electricity, labor, water, energy coal, and maintenance labor.

Albemarle's Arguments

- Albemarle agrees with Jacobi that CCT appears to have understated its costs for subject merchandise produced by JB.
- The Department can use available information on the record to recalculate CCT's usage rates of powdered activated carbon to fully account for JB's usage of all direct materials.

CCT's Arguments

- JB has relied on its accounting and production records to report its FOP data and all reported FOP data accurately accounts for JB's actual production and accounting records.
- JB did not use fines to produce the product sold to the U.S. market.
- JB correctly calculated the usage of all raw materials for this product.

[84] See CCT's Section D Questionnaire Response, dated February 11, 2011 at Exhibit 24.
[85] See CCT's Final Analysis Memo at 4.
[86] See CCT's Final Analysis Memo at 4.

- The generation and consumption of dust offset each other, which is why JB did not report dust as either and input or as a by-product.

Department's Position: We agree with Jacobi and Albemarle that CCT/JB has under-reported its consumption of raw materials used to produce the product sold to the United States. At issue is CCT/JB's reported factor usage information for two key stages of production: the activation stage, through which all its activated carbon passes, and the subsequent grinding stage, through which only a portion of its production passes. In the Preliminary Results, the Department relied on CCT/JB allocation of raw materials in these stages as reported. However, it is clear from the record that at the grinding stage of production, CCT/JB reported a greater volume produced than inputs going into that stage of production. [87] In essence, CCT/JB explains that this difference is accounted for by the addition at the grinding stage of activated carbon dust.[88] CCT/JB calculated a ratio, dividing the total volume of activated carbon used to manufacture the product JB sold to CCT by the output of the grinding stage for that product.[89] CCT/JB applied this ratio to the volume of inputs used at the activation stage "to convert the average consumption of various inputs in the activation stage to the final grinding stage."[90] The application of this ratio had the effect of reducing the actual volume of inputs used at the activation stage.

Although CCT/JB claims that the product in question "requires less carbonized material as an input into the grinding stage than the other products by JB," it qualifies that statement by first stating such is "consistent with that adjustment" i.e., the ratio.[91] Accordingly it is unclear whether CCT/JB is drawing an inference based on the adjustment, or stating a fact. More importantly, CCT/JB's grinding stage methodology does not account for the generation and re-use of dust at that stage. However, the immediately preceding stage of production, activation, does account for all inputs if left unadjusted.[92] As we are required by the statute to account for all inputs, the Department will use CCT/JB's FOP consumption ratios at the activation stage and add the labor and electricity used at the grinding stage.[93] For further details, see CCT's Final Analysis Memo at 4-5.

Comment 6: Issues Regarding Jacobi

a. Brokerage and Handling

Jacobi's Arguments

- The Department incorrectly deducted domestic brokerage and handling in calculating Jacobi's net U.S. prices.
- The Department should not add the surrogate value for brokerage and handling to the total domestic movement expenses in Jacobi's margin program.

[87] See CCT's Section D Questionnaire Response, dated January 6, 2011 at Exhibit C-33, Tables 3-4.
[88] See CCT's Section D Questionnaire Response, dated November 23, 2011 at JB-11; see also, CCT's Section D Questionnaire Response, dated January 6, 2011 at C-20, JB-20.
[89] See CCT's Section D Questionnaire Response, dated January 6, 2011 at Exhibit C-33, Tables 3-4.
[90] Id.
[91] See CCT's Rebuttal Brief, dated June 20, 20011 at 4; see also, CCT's Section D Questionnaire Response, dated January 6, 2011 at Exhibit JB-33, Tables 3-4.
[92] Id.
[93] See CCT's Section D Questionnaire Response, dated January 6, 2011 at Exhibit JB-33, Tables 3-4.

No other party commented on this issue.

Department's Position: The Department agrees with Jacobi that the Department incorrectly added the surrogate value for brokerage and handling to domestic movement expenses in its margin program. Accordingly, the Department has corrected this inadvertent error.[94]

b. Adverse Facts Available for NXGH's Water Usage

Jacobi's Arguments

- The Department must correct its application of the AFA water usage rate for Jacobi's sales produced by Ningxia Guanghua Activated Carbon Co., Ltd. ("NXGH").
- Based on the Department's note in Jacobi's margin program, the Department intended to apply the adverse usage rate to only those sales that passed through the acid washing workshop; however, it applied the adverse water usage rate to all NXGH sales regardless of whether they passed through the acid washing stage.

No other party commented on this issue.

Department's Position: The Department agrees with Jacobi that the Department intended to apply an adverse usage rate only to those sales that passed through the acid washing workshop. In the Preliminary Results, the Department explained that it intended to apply as AFA the highest single, per-unit consumption of water reported by any of Jacobi's suppliers as the water used by NXGH in the acid washing stage.[95] However, in Jacobi's margin program, the Department inadvertently applied partial AFA to all of NXGH's water. Therefore, for the final results, the Department will correct Jacobi's margin program pertaining to NXGH's water in the acid washing stage.[96]

[94] Because of the business proprietary information about this issue, see Jacobi's Final Analysis Memo at 2-3.
[95] See Preliminary Results, 76 FR at 23989.
[96] See Jacobi's Final Analysis Memo at 2.

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_____

_____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____
Date