UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-904
AR: 4/1/2011 - 3/31/2012
Public Document
IA/NME/9: RJP/EC/RMR

May 2, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

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SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC") for the period of review ("POR") from April 1, 2011, through March 31, 2012. The Department has preliminarily determined that sales of the subject merchandise in the United States were below normal value ("NV").

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

Background

On May 29, 2012, the Department initiated the fifth administrative review of certain activated carbon from the PRC for the period, April 1, 2011, to March 31, 2012.[1] The Department initiated an administrative review of 187 exporters of subject merchandise.[2] On August 23, 2012, and August 27, 2012, Calgon[3] and Petitioners[4] withdrew their request for review with

[1] See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 31568 (May 29, 2012) ("Initiation Notice"); see also Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 40565 (July 10, 2012).
[2] See id.
[3] Calgon Carbon (Tianjin) Co., Ltd. ("CCT") and Calgon Carbon Corporation (collectively "Calgon").

respect to 166 companies.[5] On December 6, 2012, the Department rescinded the review with respect to Shanxi Xuanzhong Chemical Industry Co., Ltd. and Xi'an Shuntong International Trade & Industrials Co., Ltd., because Petitioners' request for review of these companies was withdrawn and they were not part of the PRC-wide entity. The Department stated it would address the disposition of the remaining withdrawn companies that do not have a separate rate from a prior segment in this proceeding in the preliminary results of this review.[6] 23 companies remain subject to this review.[7]

On September 27, 2012, the Department extended the time period for issuing the preliminary results by 120 days.[8] As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this administrative review is now May 2, 2013.[9]

On March 14, 2013, CCT submitted information pertaining to Albemarle Corporation ("Albemarle")'s standing as a domestic interested party in this proceeding.[10] The Department received comments and rebuttals from both parties.[11] On April 3, 2013, after subsequent comments and rebuttal comments, the Department issued a letter instructing CCT that it could place information on the record that became available after March 1, 2013, the deadline for

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[4] Norit Americas Inc. and Calgon (collectively, "Petitioners").

[5] See Letter from Petitioners to the Department, "Petitioners' Withdrawal of Certain Requests for Administrative Review," dated August 27, 2012; See also Calgon's "Withdrawal of Request for Review of Calgon Carbon (Tianjin) Co., Ltd," dated August 23, 2012.

[6] See Certain Activated Carbon From the People's Republic of China; 2011-2012; Partial Rescission of the Fifth Antidumping Duty Administrative Review, 77 FR 72824 (December 6, 2012)("Partial Rescission").

[7] These companies are: Beijing Pacific Activated Carbon Products Co., Ltd.; Calgon Carbon (Tianjin) Co., Ltd.; Cherishmet Incorporated; Datong Juqiang Activated Carbon Co., Ltd.; Datong Locomotive Coal & Chemicals Co., Ltd.; Datong Municipal Yungang Activated Carbon Co., Ltd.; Jacobi Carbons AB; Jacobi Carbons, Inc.; Jacobi Carbons Industry (Tianjin); Jilin Bright Future Chemicals Company, Ltd.; Ningxia Guanghua Cherishment Activated Carbon Co., Ltd.; Ningxia Huahui Activated Carbon Co., Ltd.; Ningxia Lingzhou Foreign Trade Co., Ltd.; Ningxia Mineral & Chemical Limited; Shanxi DMD Corporation; Shanxi Industry Technology Trading Co., Ltd.; Shanxi Qixian Foreign Trade Corporation; Shanxi Sincere Industrial Co., Ltd.; Sinoacarbon International Trading Co., Ltd.; Tancarb Activated Carbon Co., Ltd.; Tangshan Solid Carbon Co., Ltd.; Tianjin Jacobi International Trading Co., Ltd.; and Tianjin Maijin Industries Co., Ltd.

[8] See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, from Emeka Chukwudebe, International Trade Compliance Analyst, Office 9, re: "Certain Activated Carbon from the People's Republic of China: Extension of Deadline for the Preliminary Results of the Fifth Antidumping Duty Administrative Review," dated September 27, 2012.

[9] See Memorandum to the Record, from Paul Piquado, Assistant Secretary for Import Administration, "Tolling Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy," dated October 31, 2012.

[10] See CCT's letter to the Department, dated March 14, 2013.

[11] On March 22, 2013, Albemarle requested that the Department reject CCT's March 14, 2013 submission because it contained new information. On March 25, 2013, the Department rejected CCT's March 14, 2013 submission. The same day, CCT requested that the Department reconsider and accept the information as it only became available after the deadline for submission of new factual information. On March 26, 2013, Albemarle submitted rebuttal comments.

submission of new factual information.[12] On April 8, 2013, CCT placed information on the record that became available from the International Trade Commission. Given the close proximity to the deadline for the preliminary results in this review and the current time constraints, we are unable to further consider CCT's comments for these preliminary results. However, we intend to address CCT's comments in the final results of this review.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations because of the large number of exporters and producers involved in the review.

On June 4, 2012, the Department placed CBP data for the Harmonized Tariff Schedule ("HTS") numbers listed in the scope of the order on the record of the review and requested comments on the data for use in respondent selection.[13] Between June 13, 2012, and June 20, 2012, we received comments and rebuttal comments from Petitioners and Jacobi.[14]

On July 11, 2012, the Department issued the respondent selection memorandum, in which it explained that, because of the large numbers of exporters or producers involved in the review (188), it would not be practicable to individually examine all companies.[15] Rather, the Department determined that it could only reasonably examine two exporters in this review.[16] Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Jacobi and Ningxia Huahui Activated Carbon Co., Ltd ("Huahui") for individual examination because they were the two largest exporters/producers of the subject merchandise, by volume, during the POR.[17]

Questionnaires

On July 12, 2012, the Department issued its non-market economy ("NME") antidumping questionnaire to Jacobi and Huahui. Between October 3, 2012, and March 25, 2013, the Department issued supplemental questionnaires and received responses from both Jacobi and Huahui.

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[12] See Letter to Calgon, re: "Certain Activated Carbon from the People's Republic of China: Reconsideration of New Factual Information Rejected on March 25, 2013" dated April 3, 2013.
[13] See Letter to All Interested Parties, re: "Administrative Review of the Antidumping Duty Order of Certain Activated Carbon from the People's Republic of China: CBP Data for Respondent Selection," dated June 4, 2012.
[14] This includes: 1) Jacobi Carbons AB and its affiliates, Tianjin Jacobi International Trading Co. Ltd., Jacobi Carbons Industry (Tianjin), and Jacobi Carbons, Inc.; and 2) PICA SASU and its subsidiary, PICA U.S.A., Inc. (collectively, "Jacobi"). For further details, see the "Affiliations and Collapsing" section of this memorandum.
[15] See Memorandum to James Doyle, Director, Office 9, AD/CVD Operations, from Javier Barrientos, Senior Analyst, Office 9, "5th Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Selection of Respondents for Individual Review," dated July 11, 2012 ("Respondent Selection Memo"), at 3.
[16] See id., at 4.
[17] See id.

Scope of the Order

The merchandise subject to the order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by "activating" with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas ("CO2") in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of the order covers all forms of activated carbon that are activated by steam or CO2, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of the order covers all physical forms of certain activated carbon, including powdered activated carbon ("PAC"), granular activated carbon ("GAC"), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride, sulfuric acid or potassium hydroxide that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO2 gas) activated carbons are within the scope, and those containing more than 50 percent chemically activated carbons are outside the scope. This exclusion language regarding blended material applies only to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within the scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States

("HTSUS") subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

DISCUSSION OF THE METHODOLOGY

Request for Revocation, In Part

On April 12, 2012, Jacobi requested revocation of the Order as to itself pursuant to 19 CFR 351.222(b)(2). In its request for revocation, Jacobi argued that it is likely to maintain three consecutive years of sales at not less than NV. Jacobi pointed out that, in AR3 Carbon,[18] the Department found de minimis margins for Jacobi, and that it believes it will qualify for zero or de minimis margins in AR4 Carbon[19] and in this current review. In accordance with 19 CFR 351.222(e)(1), Jacobi provided a certification stating the company: 1) has sold the subject merchandise in the United States at not less than fair value during the current POR, 2) has sold the subject merchandise in commercial quantities during the past three consecutive PORs, and 3) agrees to immediate reinstatement if the Department should conclude that they have sold the subject merchandise at less than NV subsequent to revocation.

We preliminarily determine that we should not revoke the Order with respect to Jacobi. 19 CFR 351.222(b)(1)(i)(B)(ii)(2)(i)[20] states that in determining whether to revoke an antidumping duty order in part, the Secretary will consider whether exporters or producers covered by the order have sold the merchandise at not less than NV for a period of at least three consecutive years.[21] In AR4 Carbon, the Department determined that Jacobi sold the subject merchandise at less than NV and assigned Jacobi a weighted-average dumping margin.[22] Therefore, as Jacobi had sales at less than NV in the fourth administrative review, we have determined not to revoke the order with respect to Jacobi because it has not met the regulatory criteria for revocation set forth in 19 CFR 351.222(b).[23]

Withdrawal of Requests for Review

As stated above, on August 23, 2012, and August 27, 2012, Petitioners and Calgon withdrew their requests for an administrative review with respect to 166 companies. The Department previously rescinded the reviews of those companies which had separate rates and stated that it would address the disposition of the remaining companies that do not have a separate rate from a

[18] See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review, 76 FR 67142 (October 31, 2011) ("AR3 Carbon").
[19] See Certain Activated Carbon From the People's Republic of China; 2010–2011; Final Results of Antidumping Duty Administrative Review, 77 FR 67337 (November 9, 2012) ("AR4 Carbon").
[20] The Department recently modified the section of its regulations concerning the revocation of antidumping and countervailing duty orders in whole or in part, but that modification does not apply to this administrative review because it was initiated prior to June 20, 2012. See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 77 FR 29875 (May 21, 2012). Reference to 19 CFR 351.222(b) thus refers to the Department's regulations in effect prior to the modification.
[21] See 19 CFR 351.222(b)(1)(i)(B)(ii)(2)(i)(A).
[22] See AR4 Carbon.
[23] Jacobi submitted its request for revocation before the publication of AR4 Carbon.

prior segment in this proceeding in the preliminary results of this review.[24] We note that the deadline to file a separate-rate application, a separate-rate certification, or a notification of no sales, exports or entries, is 60 days after the date of publication of the initiation of the administrative review.[25] Therefore, as of July 28, 2012, these remaining companies had not demonstrated eligibility for a separate rate and, thus, are considered part of the PRC-wide entity. In addition, certain companies for which review requests have not been withdrawn also did not submit either a separate-rate application or certification, and thus are considered part of the PRC-wide entity. Accordingly, while the requests for review of companies not qualifying for separate rates were withdrawn by Petitioners on August 27, 2012, those companies remain under review as part of the PRC-wide entity and the Department will make a determination with respect to the PRC-wide entity in these preliminary results and the final results.

Non-Market Economy Country

In accordance with section 771(18)(C)(i) of the Act, the designation of a country as an NME country remains in effect until it is revoked by the Department. As such, we continue to treat the PRC as an NME in these preliminary results. When the Department investigates imports from an NME country and available information does not permit the Department to determine NV under section 773(a) of the Act, then, pursuant to section 773(c)(1) of the Act, the Department determines NV on the basis of the factors of production ("FOPs") utilized in producing the merchandise.

Separate Rates

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.[26] In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME proceedings.[27] It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,[28] as amplified by Silicon Carbide.[29] However, if the Department determines that a company is wholly foreign-owned or located in a

[24] See Partial Rescission.
[25] See Initiation Notice, 77 FR at 31568-31569.
[26] See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); 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, 29307 (May 22, 2006).
[27] See Initiation Notice, 77 FR at 31569.
[28] See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers")
[29] See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.[30]

In addition to the two mandatory respondents, Jacobi and Huahui, the Department received separate-rate applications or certifications from the following 14 companies ("Separate-Rate Applicants"):

1. Beijing Pacific Activated Carbon Products Co., Ltd.
2. Calgon Carbon (Tianjin) Co., Ltd.
3. Jilin Bright Future Chemical Company, Ltd.
4. Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.
5. Ningxia Mineral & Chemical Limited
6. Shanxi DMD Corporation
7. Shanxi Industry Technology Trading Co., Ltd.
8. Shanxi Sincere Industrial Co., Ltd.
9. Tangshan Solid Carbon Co., Ltd.
10. Tianjin Maijin Industries Co., Ltd.
11. Tancarb Activated Carbon Co., Ltd.
12. Datong Municipal Yunguang Activated Carbon Co., Ltd.
13. Sinoacarbon International Trading Co., Ltd.
14. Datong Juqiang Activated Carbon Co., Ltd.

Additionally, the Department received completed responses to the Section A portion of the NME questionnaire from the mandatory respondents, Huahui and Jacobi, which contained information pertaining to the companies' eligibility for a separate rate.

Datong Locomotive Coal & Chemicals Co, Ltd, Ningxia Lingzhou Foreign Trade Co., Ltd., and Shanxi Qixian Foreign Trade Corporation, companies upon which the Department initiated administrative reviews that have not been rescinded and for which the review requests were not withdrawn, did not submit either a separate-rate application or certification. Therefore, because Datong Locomotive Coal & Chemicals Co, Ltd, Ningxia Lingzhou Foreign Trade Co., Ltd., and Shanxi Qixian Foreign Trade Corporation did not demonstrate their eligibility for separate rate status, we have preliminarily determined to consider these companies as part of the PRC-wide entity.

a. Wholly Foreign Owned

Jacobi reported that it is wholly-owned by a company located in an ME country, Sweden.[31] Calgon Carbon (Tianjin) Co., Ltd., Ningxia Mineral & Chemical Limited and Tangshan Solid Carbon Co., Ltd. demonstrated in their separate-rate certifications that they are 100 percent ME foreign owned.[32] Therefore, as there is no PRC ownership of these four companies, and because

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[30] See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

[31] See Jacobi's Section A Questionnaire Response, dated August 10, 2012, at 2.

[32] See Calgon Carbon (Tianjin) Co., Ltd.'s separate rate certification, dated July 24, 2012, at 2; see also, e.g., Tangshan Solid Carbon Co. Ltd.'s Separate Rate Certification dated July 24, 2012, at Attachment 1.

the Department has no evidence indicating that these companies are under the control of the PRC government, further separate-rate analysis is not necessary to determine whether they are independent from government control of their export activities.[33] Consequently, we preliminarily determine that Calgon Carbon (Tianjin) Co., Ltd., Jacobi, Ningxia Mineral & Chemical Limited, and Tangshan Solid Carbon Co., Ltd. have met the criteria for a separate rate.

b. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.[34] The evidence provided by the Huahui and the 11 remaining Separate-Rate Applicants[35] supports a preliminary finding of de jure absence of government control of export activities based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.[36]

c. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices ("EPs") are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[37] The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from

[33] See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104 (December 20, 1999).

[34] See Sparklers, 56 FR at 20589.

[35] These companies are Beijing Pacific Activated Carbon Products Co., Ltd., Datong Juqiang Activated Carbon Co., Ltd., Datong Municipal Yunguang Activated Carbon Co., Ltd., Jilin Bright Future Chemical Company, Ltd., Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., Shanxi DMD Corporation, Shanxi Industry Technology Trading Co., Ltd., Shanxi Sincere Industrial Co., Ltd., Sinoacarbon International Trading Co., Ltd., Tianjin Maijin Industries Co., Ltd., and Tancarb Activated Carbon Co., Ltd. See Separate-Rate Applications ("SRAs") of the aforementioned companies.

[36] See, e.g., Huahui's Section A Questionnaire Response, dated August 13, 2012, at A2-A22 and Exhibits A3-A10, Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd, dated July 18, 2012, at 1 and Exhibit 3.

[37] See Silicon Carbide, 59 FR at 22586-87; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

assigning separate rates.[38] The evidence provided by Huahui and the 11 remaining Separate-Rate Applicants supports a preliminary finding of de facto absence of government control based on the following: (1) the companies set their own EPs independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.[39] Therefore, the Department preliminarily finds that Huahui and the Separate-Rate Applicants have established that they qualify for a separate rate under the criteria established by Silicon Carbide and Sparklers.

Separate Rate Calculation

In the "Respondent Selection" section above, we stated that the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made, and selected two exporters as mandatory respondents in this review. Huahui and Jacobi participated in the review as mandatory respondents. Fourteen additional companies (listed in the "Separate Rates" section above) submitted timely information as requested by the Department and remained subject to review as separate rate respondents.

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department has limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not selected for individual examination. Section 735(c)(5)(A) of the Act instructs that we do not calculate an all-others rate using any zero or de minimis weighted-average dumping margins or any weighted-average dumping margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies excluding rates that are zero, de minimis or based entirely on facts available.[40] Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, de minimis or based entirely on 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 possible method is "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

In these preliminary results, the two mandatory respondents, Huahui and Jacobi, have weighted-average dumping margins which are above de minimis and which are not based entirely on facts available. Additionally, because using the weighted-average margin based on the calculated net U.S. sales quantities for Jacobi and Huahui would allow these two respondents to deduce each other's business-proprietary information and, thus, cause an unwarranted release of such

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[38] See id.

[39] See, e.g., Huahui's Section A Questionnaire Response, dated August 13, 2012, at A2-A22 and Exhibits A3-A10 and Tancarb Activated Carbon Co., Ltd.'s separate rate application, dated July 12, 2012, at 11-18; see also the remaining SRAs mentioned above.

[40] See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

information, we cannot assign to the separate rate companies the weighted-average margin based on the calculated net U.S. sales values from these two respondents.[41]

For these preliminary results and consistent with our practice,[42] we determine that using the ranged total sales quantities reported by Jacobi and Huahui from the public versions of their submissions to calculate a weighted-average margin is more appropriate than calculating a simple average margin.[43] These publicly-available figures provide the basis on which we can calculate a margin which is the best proxy for the weighted-average margin based on the calculated net U.S. sales values of Jacobi and Huahui without the possibility of disclosing any business proprietary information. We find that this approach is more consistent with the intent of section 735(c)(5)(A) of the Act and our use of section 735(c)(5)(A) of the Act as guidance when we establish the rate for respondents not examined individually in an administrative review.[44]

Because the calculated net U.S. sales values for Jacobi and Huahui are business proprietary, we find that 0.43 U.S. Dollars/kilogram ("USD/kg"), which we calculated using the publicly available figures of U.S. sales quantities for these two firms, is the best reasonable proxy for the weighted-average margin based on the calculated U.S. sales quantities of Jacobi and Huahui.[45] The Separate-Rate Applicants receiving this rate are identified by name in the "Preliminary Results of the Review" section of the Federal Register notice.

PRC-Wide Entity

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate-rates application or certification.[46] We have preliminarily determined that three companies for which the review requests were not withdrawn did not demonstrate their eligibility for a separate rate and are properly considered part of the PRC-wide entity. In NME proceedings, "'rates' may consist of a single dumping margin applicable to all exporters and producers."[47] As explained above in the "Separate Rates" section, all companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with

[41] See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review, 76 FR 68140 (November 3, 2011), unchanged in Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 77 FR 14493 (March 12, 2012) ("PET Film").
[42] See id.
[43] See Jacobi Section A questionnaire response, dated August 10, 2012, at Exhibit 1; see also Huahui's Public Version of Exhibit A-1 for the Section A Response, dated August 13, 2012.
[44] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 56158, 56160 (September 12, 2011); see also Galvanized Steel Wire From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 68407, 68415 (November 4, 2011).
[45] For further discussion regarding this issue, see the "Memorandum to the File from Bob Palmer, International Trade Specialist, Office 9 Re: Calculation of Separate Rate," dated concurrently with this notice.
[46] The separate-rate application and certification are available at: http://ia.ita.doc.gov/nme/nme-sep-rate.html.
[47] See 19 CFR 351.107(d).

respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities.[48] In this regard, we note that no party has submitted evidence to demonstrate that such government influence is no longer present or that our treatment of the NME entity is otherwise incorrect.

Therefore, we are assigning the PRC-wide entity a rate of 2.42 USD/kg, the only rate ever determined for the PRC-wide entity in this proceeding.[49]

Surrogate Country and Surrogate Value Data

On September 7, 2012, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value ("SV") data.[50] Between October 5, 2012, and November 13, 2012, the Department extended the deadline for surrogate country and SV comments on multiple occasions.[51] On November 20, 2012, and November 21, 2012, Petitioners, Jacobi and Huahui submitted surrogate country comments.[52] On December 10, 2012, the Department extended the deadline for SV comments to December 19, 2012.[53] On December 19, 2012, Petitioners, Jacobi and Huahui submitted SV comments.[54] On December 27, 2012, the Department extended the deadline for rebuttal comments.[55] On January 9, 2013,

[48] See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003), and accompanying Issues and Decision Memorandum at Comment 9.

[49] 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).

[50] See Department's Letter to All Interested Parties, Re: "Fifth Administrative Review of Certain Activated Carbon from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments," dated September 7, 2012 ("Surrogate Country Memo").

[51] See Memorandum for All Interested Parties, from Emeka Chukwudebe, Case Analyst, Office 9, Import Administration, "Fifth Administrative Review of Activated Carbon from the People's Republic of China: Extension of Surrogate Country Comments and Surrogate Value Submissions" dated October 5, 2012; see also Memorandum for All Interested Parties, from Emeka Chukwudebe, Case Analyst, Office 9, Import Administration, "Fifth Administrative Review of Activated Carbon from the People's Republic of China: Second Extension of Surrogate Country Comments and Surrogate Value Submissions" dated November 13, 2012.

[52] See Petitioners' Surrogate Country Selection Comments, submitted November 21, 2012 ("Petitioners' SC Comments"); Jacobi's Surrogate Country Selection Comments, submitted November 20, 2012 ("Jacobi's SC Comments"); and Huahui's Surrogate Country Selection Comments, submitted November 21, 2012 ("Huahui's SC Comments").

[53] See Memorandum for All Interested Parties, from Emeka Chukwudebe, Case Analyst, Office 9, Import Administration, "Fifth Administrative Review of Activated Carbon from the People's Republic of China: Third Extension of Surrogate Value Submission" dated December 10, 2012.

[54] See Petitioners' Surrogate Values Comments, submitted December 19, 2012; Jacobi's Surrogate Values Comments, submitted December 19, 2012 ("Jacobi's SV Comments"); and Huahui's Surrogate Values Comments, submitted December 19, 2012.

[55] See Memorandum for All Interested Parties, from Irene Gorelik, Senior International Trade Compliance Analyst, Office 9, Import Administration, "Fifth Administrative Review of Activated Carbon from the People's Republic of China: Extension of Rebuttal Surrogate Value Information" dated December 27, 2012.

Petitioners, Jacobi, and Huahui submitted rebuttal SV comments.[56] On January 18, 2013, Petitioners submitted supplemental surrogate financial ratio comments.[57]

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[58] The Department determined that Colombia, Indonesia, Peru, the Philippines, Thailand, South Africa, and Ukraine are countries whose per capita gross national incomes ("GNI") are comparable to the PRC in terms of economic development.[59] The sources of the SVs are discussed under the Normal Value section below and in the Surrogate Values Memo.[60]

Petitioner submits that for purposes of selecting an appropriate surrogate country, the Department should also consider Malaysia.[61] Petitioners note that in addition to the countries listed in the Surrogate Country Memo, Malaysia is also a significant producer of comparable merchandise with contemporaneous and publicly available data with which to obtain SVs. Citing 19 CFR 351.408 and Policy Bulletin 04.1, Petitioners contend that Malaysia meets the surrogate country requirements in this proceeding because: 1) it has a comparable per-capita GNI to the PRC, 2) its data is more specific for certain inputs, and 3) it is a significant producer and exporter of activated carbon.[62] Petitioners further dispute the validity of the Philippine data stating that the SV for anthracite coal from the Philippines is unreliable because: 1) the import data only come from two countries whose historical import prices are either aberrationally low or vary too widely to be reliable, and 2) the Philippines lacks SVs for other inputs (e.g., bituminous coal, steam). Therefore, Petitioners asserts that the Department should consider Malaysia as the appropriate surrogate country.[63] Finally, Petitioners contend that, if, the Department does not select Malaysia, either the Philippines or Thailand meets the criteria for surrogate country selection.

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[56] See Petitioners' Rebuttal Surrogate Values Comments, submitted January 9, 2013; Jacobi's Rebuttal Surrogate Values Comments, submitted January 9, 2013; and Huahui's Rebuttal Surrogate Values Comments, submitted January 9, 2013 ("Huahui's Rebuttal SV Comments").
[57] See Petitioners' "Supplement to Pre-Preliminary Information on Surrogate Financial Ratios" dated January 18, 2013.
[58] See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, (March 1, 2004) ("Policy Bulletin 04.1").
[59] See Surrogate Country Memo.
[60] See Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Emeka Chukwudebe, Case Analyst, Ricardo Martinez, Case Analyst, Office 9, "Fifth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results," dated concurrently with this notice ("Surrogate Values Memo").
[61] See Petitioners' SC Comments, at 4 through 6.
[62] See id.
[63] See id.

In their surrogate country comments and rebuttals, both Jacobi and Huahui assert that the Philippines is the more appropriate surrogate country. Jacobi contends that the Philippines is economically comparable to the PRC, a significant producer of activated carbon and SV data are available for most material inputs used by the respondents in this review.[64] Huahui agrees, stating that, because the Department found the Philippines to have the best available data in the most recent review and because of the high number of financial statements from Philippine producers on the record, the Philippines is the appropriate surrogate country in this review.[65] Huahui rebuts Petitioners' argument that Malaysia is an appropriate surrogate country, arguing that the SV information from Malaysia is incomplete and that Malaysia lacks SV information for sub-bituminous coal and certain packing inputs (e.g., bags). Huahui argues that, during the POR, it did not use bituminous coal as stated by Petitioners. Huahui argues that the Malaysian financial statements are not contemporaneous with the POR and lack sufficient detail to properly classify expenses to material, labor, or energy.[66]

Economic Comparability

As explained in the Surrogate Country Memo, the Department considers Colombia, Indonesia, Peru, the Philippines, Thailand, South Africa, and Ukraine all comparable to the PRC in terms of economic development.[67] Therefore, we consider all seven countries identified in the Surrogate Country Memo as having met this prong of the surrogate country selection criteria. Unless we find that all of these countries are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from one of these countries.[68]

Given that Malaysia is not on the surrogate country list, there is no need to consider it further in light of record evidence pertaining to the countries already on the surrogate country list.

Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as Policy Bulletin 04.1 for guidance on defining comparable merchandise. Policy Bulletin 04.1 states that "the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the

[64] See Jacobi's SC Comments.
[65] See Huahui's SC Comments.
[66] See Huahui's Rebuttal SV Comments, at 3 through 6.
[67] See, e.g., Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703, 67708 (November 2, 2011), unchanged in Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances, 77 FR 17021 (March 23, 2012).
[68] See id.

statute."[69] Policy Bulletin 04.1 further states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[70] Conversely, if the country does not produce identical merchandise, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[71] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[72] "In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise."[73] In this regard, the Department recognizes that it must do an analysis of comparable merchandise on a case-by-case basis:

> In other cases, however, where there are major inputs, i.e., inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, e.g., processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[74]

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[75] Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"[76] it does not preclude reliance on additional or alternative metrics. In this case, we examined export data published by the Global Trade Atlas ("GTA") to determine which countries included on the Surrogate Country List were producers of comparable merchandise. GTA export data indicate that all of the countries listed on the Surrogate Country List had exports of the primary HTS number included in the scope of the order during the POR, e.g., of HTS number 3802.10. However, the Philippines and Indonesia had the largest and second largest export volumes, respectively, of the aforementioned HTS number.

As noted above, all countries on the Surrogate Country List had significant exports of HTS numbers included in the scope of the order,[77] according to GTA export data, making them significant producers during the POR. Since none of the potential surrogate countries have been definitively identified as the appropriate surrogate country through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

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[69] See Policy Bulletin 04.1.
[70] See id.
[71] Policy Bulletin 04.1 also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise. See id., at note 6.
[72] See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65674 (December 15, 1997), and accompanying Issues and Decision Memorandum at Comment 1 (to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute).
[73] See Policy Bulletin 04.1, at 2.
[74] See id., at 3.
[75] See section 773(c)(1) of the Act; Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1990).
[76] See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988) ("OTCA 1988").
[77] See Surrogate Country Memo.

Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax- and duty-exclusive, and specific to the input.[78] There is no hierarchy among these criteria. It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[79] In this case, Petitioners placed SV data on the record of this review for Malaysia and financial statements from two Malaysian processors of subject merchandise as well as two Philippine processors of subject merchandise.[80] Jacobi and Huahui placed SV data on the record for the Philippines, including financial statements from several Philippine processors of subject merchandise.[81] In addition to the SV data placed on the record by interested parties, we conducted an extensive search for SVs from other countries included in the Surrogate Country Memo; however, the Department has not located usable financial statements for any country identified in the Surrogate Country Memo other than the Philippines.

The Department finds the Philippines to be an appropriate surrogate country because the Philippines is at a comparable level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of identical and comparable merchandise, and has publicly available and reliable data (with the exception of steam). With the exception of steam, we have Philippine SV data for all direct materials, energy, financial ratios and packing. Given the above facts, the Department has selected the Philippines as the primary surrogate country for this review.[82] A detailed explanation of the SVs is provided below in the "Normal Value" section of this notice.

We note that because we have determined that the Philippines is a suitable comparable surrogate country and that Malaysia is less economically comparable, we have not considered Malaysia's SV data for these preliminary results.

Affiliations and Collapsing

Section 771 (33) of the Act provides that:

> The following persons shall be considered to be 'affiliated' or 'affiliated persons':
> (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
> (B) Any officer of director of an organization and such organization.

[78] See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011, 78 FR 17350 (March 21, 2013), and accompanying Issues and Decision Memorandum at Comment I(C).
[79] See Policy Bulletin 04.1.
[80] See Petitioners' SV Submission, at Attachment 30; see also Petitioners' Supplement to Pre- Preliminary Information on Surrogate Financial Ratios, dated January 18, 2013, at Attachment 1.
[81] See Jacobi's SV Comments, at Exhibit SV-10; see also Huahui's, "Certain Activated Carbon from the People's Republic of China: Submission of Publicly Available Information to Value Factors" dated December 19, 2012, at Exhibits 14 through 17.
[82] See Surrogate Country Memo; see also Surrogate Values Memo.

(C) Partners.
(D) Employer and employee.
(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
(G) Any person who controls any other person and such other person.

Additionally, section 771 (33) of the Act stipulates that: "For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." Finally, according to 19 CFR 351.401(f)(1) and (2), two or more affiliated companies may be treated as a single entity for antidumping duty purposes if: (1) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) there is a significant potential for manipulation of price or production.[83]

Jacobi

In the final results of the fourth antidumping duty administrative review, the Department determined that Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) (collectively, "Jacobi Group") comprise a single entity, which is affiliated with Jacobi Carbons, Inc., the Jacobi Group's U.S. importer and sales office.[84] On September 1, 2011, Jacobi Carbons AB acquired PICA SASU ("PICA"), a French company, and its subsidiary, PICA U.S.A., Inc. ("PICA US").[85] From September 1, through December 31, 2011, PICA US continued to operate as a subsidiary of PICA under the ownership of Jacobi Carbons AB.[86] On January 1, 2012, PICA US was merged with Jacobi Carbons, Inc.[87] Based on evidence submitted by Jacobi in this administrative review, the Department finds that Jacobi Carbons AB is affiliated with PICA SASU ("PICA") and its subsidiary, PICA U.S.A. ("PICA USA") pursuant to section 771 (33) of the Act. Specifically, all three companies are under the common control of Jacobi Carbons AB by virtue of ownership, common board members and managers.[88] All of Jacobi's sales during the POR were sold by either Jacobi Carbons, Inc., or PICA US, Jacobi Carbon AB's US sales affiliates.[89] Accordingly, for these preliminary results, the Department will use the constructed export price ("CEP") price for sales made by Jacobi Carbons Inc. and PICA US to their first unaffiliated U.S. customers of subject merchandise during the POR.

[83] See 19 CFR 351.401(f)(1) and (2).
[84] See AR4 Carbon, 77 FR at 67338.
[85] See Section A Response of Jacobi, dated August 11, 2012, at 2-12 and exhibits 5-6.
[86] See id.
[87] See id.
[88] See id.
[89] See Section C Response of Jacobi Carbons, dated August 23, 2012, at 10.

Facts Available for NV

Sections 776(a)(1) and 776(a)(2) of the Act provide that, if necessary information is not available on the record, or 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 as provided in section 782(d); then the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information..., notifies {the Department}... that such party is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted 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.

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 in providing the information and meeting the requirements established by the Department; and (5) the information can be used without undue difficulties.

However, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission . . . , in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."[90] Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[91] An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[92]

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[90] See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1, at 870 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4198-99.
[91] See id.
[92] See id.; see also section 775(b)(1)-(4) of the Act.

Jacobi's Excluded Producers

On July 23, 2012, Jacobi sent a letter to the Department requesting to be excused from reporting FOP data for certain PRC producers.[93] On September 5, 2012, the Department notified Jacobi that due to the large number of producers that supplied Jacobi during the POR, Jacobi is excused from reporting certain FOP data.[94] Specifically, the Department did not require Jacobi to report FOP data for its smallest producers.[95]

Huahui's Excluded Producers

On July 23, 2012, Huahui requested to be excused from reporting FOP data for a PRC producer because of the limited quantity it produced.[96] On August 9, 2012, the Department notified Huahui that, because the quantity produced by one of its suppliers is limited and Huahui produced comparable products during the POR, Huahui would be excused from reporting certain FOP data.[97] Specifically, the Department did not require Huahui to report FOP data for three of its smallest unaffiliated producers as indicated in its July 23, 2012, submission.[98]

In accordance with section 776(a)(1) of the Act, the Department is applying facts available to determine the NV for the sales corresponding to the FOP data that Jacobi and Huahui were excused from reporting. As facts available, the Department is applying the calculated average NV of Jacobi's and Huahui's reported sales to the sales produced by their excluded producers, respectively. These issues are addressed in separate company-specific memoranda where a detailed explanation of the facts available calculation is provided.[99]

Date of Sale

Jacobi and Huahui reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date. In accordance with 19 CFR 351.401(i) and the

[93] See Jacobi's Request for Exclusions, dated July 23, 2012.
[94] See the Department's Letter to Jacobi, dated September 5, 2012.
[95] See id.
[96] See Huahui's Request for Exclusions, dated July 23, 2012.
[97] See the Department's letter to Huahui dated August 9, 2012.
[98] See id.
[99] See Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Emeka Chukwudebe, Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for Jacobi Carbons AB in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China, dated concurrently with this notice ("Jacobi's Prelim Analysis Memo"); see also Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Ricardo Martinez, Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for and Ningxia Huahui Activated Carbon Co., Ltd in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China, dated concurrently with this notice ("Huahui's Prelim Analysis Memo").

Department's long- standing practice of determining the date of sale,[100] and in the absence of any information to the contrary, the Department preliminarily determines that the invoice date is the most appropriate date to use as Jacobi's and Huahui's date of sale.

Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d) (2012), to determine whether Jacobi's and Huahui's sales of the subject merchandise from the PRC to the United States were made at less than NV, the Department compared the EP (or CEP) to the NV as described in the "Export Price," "Constructed Export Price" and "Normal Value" sections of this memorandum.

A. *Determination of Comparison Method*

With regard to Petitioners' allegation of targeted dumping by Jacobi and Huahui as noted above, for the preliminary results of this review, the Department is examining this issue using a "differential pricing" analysis instead of the "targeted dumping" analysis.[102] This differential pricing analysis is described below.

Pursuant to 19 CFR 351.414(c)(1) (2012), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department, nevertheless, finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping investigations.[103] In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[104] The Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this

[100] See, e.g., Certain Polyester Staple Fiber From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, and Intent To Revoke Order in Part, 76 FR 40329 (July 8, 2011) unchanged in Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part, 76 FR 69702 (November 9, 2011); see also Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review, 75 FR 68758 (November 9, 2010) unchanged in 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, 27996 (May 13, 2011).

[102] See Petitioners' Targeted Dumping Allegation Concerning Jacobi, dated November 28, 2012; see also Petitioners' Targeted Dumping Allegation Concerning Huahui, dated November 28, 2012.

[103] See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Issue I.

[104] See Jacobi's Prelim Analysis Memo; see also Huahui's Prelim Analysis Memo.

administrative review.[105] The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin.

The differential pricing analysis used in these preliminary results evaluates all purchasers, regions and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (e.g., city name) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used in these preliminary results, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (i.e., 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods

[105] See, e.g., Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 78 FR 21101 (April 9, 2013), and accompanying Decision Memorandum; Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 78 FR 17637 (March 22, 2013), and accompanying Decision Memorandum.

that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (e.g., the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method, or 2) the resulting weighted-average dumping margin moves across the de minimis threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For Jacobi, based on the results of the differential pricing analysis, the Department finds that 50 percent of Jacobi's export sales confirm the existence of a pattern CEPs for comparable merchandise that differ significantly among purchasers, regions or time periods.[106] Further, the Department determines that the average-to-average method cannot appropriately account for such differences because there is a meaningful difference in the weighted-average dumping margin when calculated using the average-to-average method and the alternative method.[107] Because the value of sales to purchasers, regions and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of Jacobi's total sales,[108]

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[106] See Jacobi Prelim Analysis Memo.
[107] See id.
[108] See id.

the Department has determined to use the mixed average-to-transaction and average-to-average method in making comparisons of CEP and NV for Jacobi.[109]

For Huahui, based on the results of the differential pricing analysis, the Department finds that 44.7 percent of Huahui's export sales confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions or time periods.[110] Further, the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margin when calculated using the average-to-average method and the alternative method.[111] Accordingly, the Department has determined to use the average-to-average method in making comparisons of EP or CEP and NV for Huahui.[112]

U.S. Price

Export Price

In accordance with section 772(a) of the Act, we calculated the EP for sales to the United States for Huahui, because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted.[113] We calculated EPs for Huahui based on the prices to its unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, where appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, foreign brokerage and handling, customs duties, domestic brokerage and handling and other movement expenses incurred. For the expenses that were either provided by an NME vendor or paid for using an NME currency, we used SVs as appropriate.[114] Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Huahui, see Huahui's Prelim Analysis Memo.

Constructed Export Price

For all of Jacobi's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act because sales of PRC-origin merchandise were made on behalf of the companies located in the PRC by a U.S. affiliate to unaffiliated purchasers in the United States.[115] For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S.

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[109] In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.
[110] See Huahui Prelim Analysis Memo.
[111] See id.
[112] See footnote 103.
[113] See, e.g., Section A Response of Huahui, dated August 13, 2012, at Exhibit A1. Section C Response of Huahui, dated August 31, 2012, at 2.
[114] See Surrogate Values Memo.
[115] See, e.g., Section A Response of Jacobi, dated August 10, 2012, at 1 and Exhibit A1. Section C Response of Jacobi, dated August 23, 2012, at 10.

movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, see Jacobi's Prelim Analysis Memo.

Further Manufactured Sales

In its original Section A Questionnaire response, Jacobi stated that it conducted some additional processing of the subject merchandise in the United States.[116] In multiple supplemental questionnaire responses, Jacobi requested that the Department exclude its further manufactured costs, and sales, when calculating its overall margin because that amount represented only 1 percent of its total U.S. sales.[117] On November 28, 2012, we directed Jacobi to provide further information regarding its further manufacturing and its sales of further manufactured products to unaffiliated customers.[118] After reviewing Jacobi's response, we determined that Jacobi did not pass the Department's 65 percent threshold to invoke the Special Rule under section 772(e) of the Act, as informed by 19 CFR 351.402(c)(2). We then requested that Jacobi report its costs for further manufactured sales ("Section E").[119] On February 7, 2013, Jacobi provided its Section E response.[120]

Jacobi argues that in prior cases, the Department has excused a respondent from reporting a small amount of further manufactured sales after it determined that the small quantity and value had no impact on the overall margin results.[121] Jacobi contends that the same conclusion applies here, stating that the sales in question are too small in quantity and value to affect the overall margin results and does not justify the Department's additional resources to analyze and verify this data. Therefore, Jacobi urges the Department to exclude its further manufactured costs, and sales, from the margin calculation.

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[116] See Jacobi's Section A Questionnaire Response, submitted August 10, 2012, at 18 and 19.
[117] See "Section C Response of Jacobi Carbons," dated August 23, 2012, at page 39; see also "Jacobi's Response to the Department's Section E Questionnaire," dated February 7, 2013, at 2; see also "Jacobi's Response to the Department's Supplemental Section D Questionnaire," dated March 25, 2013, at SD-1.
[118] See letter from the Department to Jacobi, issued November 28, 2012, where the Department request that Jacobi state whether the value added through further manufacturing in the United States exceeded the 65 percent regulatory threshold established under section 772(e) of the Act ("Special Rule").
[119] See letter from the Department to Jacobi, issued April 9, 2012, where the Department requested that Jacobi submit a complete response to Section E of the original questionnaire.
[120] See Jacobi's Response to the Department's Section E Questionnaire, submitted on February 7, 2013.
[121] See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part, 76 FR 76135 (December 6, 2011), unchanged in Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010, 78 FR 11143 (February 15, 2013) ("Diamond Sawblades").

We note that the Department has previously excused companies from reporting further manufacturing costs incurred in the United States when either the quantity of further manufactured sales in the United States are very small; or if the Special Rule under Section 772(e) is applied. We further note that this case is different from Diamond Sawblades because that case examined whether we should request Section E information and did not address whether we should refrain from using Section E information already on the record in calculating the margin. In this case, Jacobi's Section E information is on the record. The Special Rule under section 772(e) of the Act is informed by 19 CFR 351.402(c)(2), which requires the estimated average value added through further manufacturing in the United States to exceed 65 percent to invoke that rule. Based on information provided by Jacobi in a supplemental response, the estimated value added in the United States is 18 percent. Jacobi, therefore, has not met the threshold to invoke the Special Rule. Therefore, for these preliminary results, we will include Jacobi's further manufacturing costs and sales when calculating its margin.[122]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from an ME country and pays for it in an ME currency, the Department may value the factor using the actual price paid for the input.[123] During the POR, Jacobi reported that it purchased certain inputs from an ME supplier and paid for the inputs in an ME currency.[124] The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period.[125] In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average ME purchase price to value the entire input.[126] Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an

[122] For business proprietary details on our decision, see Jacobi's Prelim Analysis Memo.
[123] See Lasko Metal Products, Inc. v. United States, 43 F.3d 1442, 1445-1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs).
[124] See Jacobi's Response to the Department's Section D Questionnaire of Jacobi Tianjin's Packing Factors of Production, dated September 19, 2012, at D-9, and Exhibit JCT-2.
[125] See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61717-18 (October 19, 2006).
[126] See id.

appropriate surrogate value according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.[127] When a firm has made ME input purchases that may have been dumped or subsidized, are not bona fide, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33-percent threshold.[128]

The Department used Philippines import statistics to value the raw material and packing material inputs that Jacobi and Huahui used to produce the subject merchandise under review during the POR, except where otherwise stated below. In accordance with the legislative history of the OTCA 1988, the Department continues to apply its long-standing practice of disregarding certain prices as SVs if it has a reason to believe or suspect that these prices may have been dumped or subsidized.[129] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[130] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, the Department has not used prices from these countries in calculating the Philippine import-based SVs. Additionally, the Department disregarded prices from NME countries.[131] Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, as the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[132]

Jacobi argues that the Department should abandon its practice of excluding Indonesia when deriving SVs from import data as Indonesia no longer offers non-specific export subsidies. As such, the Department must include imports from Indonesia when calculating those SVs derived from average import values.[133]

Based on a formal investigation of Certain Cut-to-Length Carbon Steel Plates from Indonesia, the Department found that generally available export subsidies continue to exist and are being used in Indonesia.[134] Therefore the Department has excluded SVs from Indonesia.[135]

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[127] See id.
[128] See id.
[129] See OTCA 1988, reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24.
[130] See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 70 FR 54007, 54011 (September 13, 2005), unchanged in Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14170 (March 21, 2006).
[131] See PET Film, and accompanying Issues and Decision Memorandum at Comment 1.
[132] See id.
[133] See Jacobi SV Comments, at 2.
[134] See Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, and Thailand: Final Results of Expedited Sunset Reviews, 78 FR 16252, 16254 (March 14, 2013); see also, e.g., Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 8301 (February 24, 2010), and accompanying Issues and Decision Memorandum at Comment 9.

In accordance with section 773(c) of the Act, for subject merchandise produced by Jacobi and Huahui, the Department calculated NV based on the FOPs reported by Jacobi and Huahui for the POR. The Department used data from Philippine Import Statistics and other publicly available Philippine sources in order to calculate SVs for Jacobi's and Huahui's FOPs (direct materials, energy, and packing materials) and certain movement expenses. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available Philippine SVs (except as noted below). The Department's practice when selecting the best available information for valuing FOPs 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 exclusive of taxes and duties.[136]

As appropriate, the Department adjusted input prices by including freight costs to render the prices delivered prices.[137] Specifically, the Department added to the Philippine import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in Sigma Corp. v. United States.[138] For a detailed description of all SVs used for Jacobi and Huahui, see the Surrogate Values Memo.

Where the Department could not obtain publicly available information contemporaneous to the POR with which to value factors, the Department adjusted the SVs using, where appropriate, the Philippine Producer Price Index as published in the International Financial Statistics of the International Monetary Fund, a printout of which is attached to the Surrogate Values Memo, at Attachment 6. Where necessary, the Department adjusted SVs for inflation, exchange rates, and taxes, and the Department converted all applicable items to a per-metric ton basis. Although Jacobi suggested that we value water using information from Maynilad Water Services, we find that the information provided is not explicitly tax-exclusive.[139] Therefore, we valued water using data from Cost of Doing Business in Camarines Sur ("Camarines Sur"), using an average of the prices paid in the highest usage rate category in each city.[140] The Department has used the Camarines Sur publication in recent cases and notes that it was "a publicly available and easily accessible document, published for the purpose of giving the international community information, including the costs of doing business in the province of Camarines Sur,

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[135] See Certain Helical Spring Lockwashers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order, in Part, 69 FR 12119 (March 15, 2004), and accompanying Issues and Decision Memorandum at Comment 1 (the Department noted, absent evidence that the program had been terminated, it was reasonable to assume that these subsidy programs continued to exist and were utilized).

[136] See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

[137] See section 772(c)(1)(A) of the Act.

[138] See Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997).

[139] See Jacobi's SV Comments, at Exhibit 6.

[140] See Surrogate Values Memo, at Exhibit 4.

Philippines."[141] In this review, we continue to find that this publication is publicly available, and representative of the costs a company would pay for water over the POR.

We converted the SV units to the reported value units using a one-to-one conversion ratio, as done in previous cases.[142] Although this source states that the published prices are effective as of 2009, there is no information to indicate that these prices are not still in effect.[143] Therefore, we have not inflated this value for these preliminary results. The average of these prices results in a POR SV of 33.55 Ps/MT^3.[144] We valued carbonized material using GTA import data (specifically, HTS 4402). Although Jacobi argues that the Department should value coconut shell charcoal using data from Cocommunity, we found this value to be region-specific and therefore, not a broad market average.[145] With regard to Jacobi's other proposal for the Department to use the Philippine SV for HTS 4402.00.001, we note that this data is unusable because the only data available for this HTS number is for imports from Indonesia,[146] a country excluded when calculating SVs because of the presence of generally available export subsidies in that country. Therefore, for these preliminary results, we valued carbonized material using Philippine import data under HTS 4402 (Wood Charcoal (Including Shell or Nut Charcoal)), finding the data specific to the input used by Jacobi, contemporaneous, represented a broad market average, and tax and duty exclusive.[147]

We valued electricity using data from Camarines Sur.[148] Although Jacobi suggested that we value electricity using information from Manila Electric Company, we note that several of the components of the rate fluctuate on a monthly basis.[149] We further note that although neither data source is nation-wide, Camarines Sur does cover rates available in two cities in the Philippines.[150] In addition, similar to the respondents in this review, the Camarines Sur data includes rates for industrial users.[151] Finally, as explained above, the Department has used the Camarines Sur publication in recent cases.[152] In this review, we continue to find that this publication is publicly available and representative of the costs a company would pay for electricity over the POR. The report included industrial rates (in Ps/kWh) for two locations in

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[141] See, e.g., Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 4386 (January 22, 2013) ("Chlorinated Isos"), and accompanying Issues and Decision Memorandum at Comment 6; see also Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008) ("Wooden Bedroom Furniture"), and accompanying Issues and Decision Memorandum at Comment 1(D) (this source "provide{s} reliable data on business costs in the Philippines, including electricity, water, and truck rates").
[142] See id.
[143] See Chlorinated Isos, and accompanying Issues and Decision Memorandum at Comment 6.
[144] See Surrogate Values Memo, at Exhibit 4a.
[145] See Jacobi's SV Comments, at 12 and Exhibit 5.
[146] See id., at Exhibit 2b.
[147] See, e.g., AR4 Carbon, and accompanying Issues and Decision Memorandum at Comment I.
[148] See Wooden Bedroom Furniture, and accompanying Issues and Decision Memorandum at Comment 1(D) ("With regard to Doing Business in the Philippines and the 'Cost of Doing Business' in Camarines Sur, we find that these publications are reliable sources for valuing electricity…").
[149] See Jacobi's SV Comments, at Exhibit 7.
[150] See Surrogate Values Memo, at Exhibit 4a.
[151] See Surrogate Values Memo, at Exhibit 4b.
[152] See, e.g., Chlorinated Isos, and accompanying Issues and Decision Memorandum at Comment 6; see also Wooden Bedroom Furniture, and accompanying Issues and Decision Memorandum at 23.

the Philippines.[153] We averaged the industrial rates from each location to calculate a contemporaneous AUV of 7.81 Ps per kWh.[154]

We were unable to obtain an SV for purchased steam from the Philippines. However, we were able to find an SV for steam from Thailand, a country that is on the surrogate country list. We, therefore, valued steam using the steam price data published by the Electricity Generating Authority of Thailand, Glow Energy Public Company Limited 2011 annual report.[155] These steam rates represent actual country-wide, publicly-available information on tax-exclusive steam rates charged to customers in Thailand. We did not inflate this value because the utility rates are contemporaneous with the POR. The steam SV is 936.75 baht per metric ton.[156]

We used Philippine transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from the publication from the Regional Development Council of Bicol: Cost of Doing Business in Legazpi, Philippines.[157] We calculated the per-unit (e.g., per-kilogram per-kilometer) inland freight costs using the distance from Legazpi to the Philippines' largest city, Manila.[158] This information is contemporaneous with the POR.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in the Philippines. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in the Philippines that is published in Doing Business in Philippines, published by the World Bank.[159]

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the 2011 and 2012 audited financial statements of the following eight Philippine companies: (1) BF Industries; (2) Mindandao Activated Carbon Corporation; (3) Philips Carbon, Inc.; (4) Green Carbon Inc.; (5) Premium AC; (6) Davao Central Chemical Corporation; (7) Mapecon Green Charcoal Philippines, Inc.;[160] and (8) Cenapro Incorporated.[161] These companies produce identical merchandise[162]. Because the Department has chosen the Philippines as the primary surrogate country, this discussion is limited to the financial statements placed on the record from the Philippines.[163]

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153 See Surrogate Values Memo, at 4b.
154 See Surrogate Values Memo, at Exhibit 4a.
155 See id.
156 See id., at Exhibit 4c.
157 See id., at 5a.
158 See id.
159 See id., at 5b.
160 For further details on how the Department treated certain line items in the surrogate financial ratios, see Surrogate Values Memo, at Section 5.
161 See, e.g., Petitioners January 9, 2013, Rebuttal SV Submission, at Exhibits 9 and 10; Petitioners January 18, 2013, 2nd Rebuttal SV Submission, at Exhibit 1; Huahui December 19, 2012, SV Submission, at Exhibits 14, 15 and 16; Jacobi December 19, 2012, SV Submission, at Exhibit 10.
162 See id.
163 See Surrogate Values Memo, at Section 5.

On June 21, 2011, the Department published Labor Methodologies, a revision to its methodology for valuing the labor input in NME antidumping proceedings.[164] In that notice, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics ("Yearbook").

For these preliminary results, the Department calculated the labor input using the wage method described in Labor Methodologies. To value the respondents' labor input, the Department relied on data reported by the Philippines to the ILO in Chapter 6A of the Yearbook. Although the Department further finds the two-digit description Sub-Classification 24 under ISIC-Revision 3 ("Manufacture of Chemicals and Chemical Products") to be the best available information on the record because it is specific to the industry being examined, and is, therefore, derived from industries that produce comparable merchandise, the Philippines has not reported data specific to the two-digit description since 2000. However, the Philippines did report total manufacturing labor data in 2008. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using total 2008 manufacturing labor data reported by Philippines to the ILO, in accordance with section 773(c)(4) of the Act. For the preliminary results, the calculated industry-specific wage rate is 135.93 Pesos/hour.[165] A more detailed description of the wage rate calculation methodology is provided in the Surrogate Values Memo. Because these data reflect direct compensation and bonuses and none of the indirect costs reflected in Chapter 6A data, we found that the facts and information on the record do not warrant or permit an adjustment to the surrogate financial statements.[166]

As stated above, the Department used the Philippines' ILO data reported in 2008 under Chapter 6A of the ILO Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Pursuant to Labor Methodologies, the Department's practice is to consider whether financial ratios reflect labor expenses that are included in other elements of the respondent's factors of production (e.g., general and administrative expenses).[167] However, some of the financial statements used to calculate financial ratios in this review were insufficiently detailed to permit the Department to isolate whether any labor expenses were included in other components of NV. Therefore, in this review, the Department preliminary has made no adjustment to these financial statements.[168]

Use of Facts Available and Adverse Facts Available for EP/CEP

As stated above, section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the

[164] See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").
[165] See Surrogate Values Memo, at Exhibit 3c.
[166] See, e.g., Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 21738, 21743 (April 11, 2012), unchanged in Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 64100 (October 18, 2012).
[167] See Labor Methodologies, 76 FR at 36093-94.
[168] See Surrogate Values Memo, at Exhibit 6.

record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Jacobi's Missing Data for Certain Sales

During the POR, Jacobi purchased the following companies: PICA and PICA US. However, Jacobi was unable to locate the necessary information in its records for various U.S. movement and importation expenses associated with certain further manufactured sales made by PICA US. Jacobi, therefore, reported either '0' for expenses incurred or "missing data" for expenses not related for these further manufactured sales. Upon request, Jacobi provided evidence that it attempted to obtain the missing information.[169] However, because Jacobi was unable to provide its movement and importation expenses associated with these sales, the record is incomplete. As a result, we lack the necessary data to calculate a margin and the application of "facts otherwise available" is warranted.

As discussed above, pursuant to section 776(b) of the Act, the Department may use facts otherwise available with an adverse inference when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. However, we do not find Jacobi failed to cooperate with respect to obtaining the requested data from PICA's unaffiliated suppliers and, accordingly, we are not drawing an adverse inference. As Jacobi demonstrated its attempts to gather the information to our satisfaction, we are not employing an adverse inference.

[169] See Jacobi's Response to the Department's Supplemental Section D Questionnaire, submitted March 25, 2013; see also Jacobi's Response to the Department's Section E Questionnaire, submitted February 7, 2013.

Moreover, Jacobi voluntarily documented where it could not find the data for the missing information. Therefore, consistent with our practice, we are applying neutral facts available.[170] Specifically, we are using as facts available, the average of Jacobi's U.S movement and importation costs and applying it to its further manufactured sales that contain either '0' or "missing data."

PICA's Packaging Data

During the POR, Jacobi stated that it was unable to retrieve packing information for PICA's suppliers of subject merchandise because the subject merchandise further processed during the POR was several years old and there was no information available in PICA's files.[171]

Jacobi stated, however, that it reported CONNUMs for its own merchandise that was identical with the majority of the PICA's sales. Jacobi then requested that the Department use a weighted average of the packing styles for the identical CONNUMs in its margin program and apply that average to PICA's sales.[172]

We then requested that Jacobi submit all documentation demonstrating its attempts to get the packaging information from PICA's suppliers.[173] However, Jacobi failed to request an extension of its deadline on a timely basis, and it submitted its response one day after the established deadline.[174] Subsequently, the Department rejected, as untimely, information regarding Jacobi's attempts to get the supporting documentation from PICA's suppliers.[175] Therefore, because Jacobi did not provide any supporting documentation of its attempts to get the packing information from PICA's suppliers by the established deadline, we find that Jacobi did not act to the best of its availability to submit the requested information. Accordingly, we do not have the information regarding PICA's packing information, or any evidence of Jacobi's attempts to obtain it. Pursuant to section 776(b) of the Act, we applied adverse facts available to the packing FOPs for PICA's sales because Jacobi did not provide the requested documentation supporting its claim. As adverse facts available, we applied Jacobi's highest reported packing FOPs to PICA's sales.[176]

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[170] See, e.g., Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 76 FR 70706 (November 15, 2011), and accompanying Issues and Decision Memorandum at Comment 12; see also Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, 76 FR 56397 (September 13, 2011), and accompanying Issue and Decision Memorandum at Comment 9.

[171] See Jacobi's Response to the Department's Supplemental Section D Questionnaire, submitted December 28, 2012.

[172] See id.

[173] See letter from the Department to Jacobi, dated March 7, 2013.

[174] In addition, Jacobi had already requested and was granted an extension of the original deadline. See Extension of Deadline for Jacobi Carbons AB's ("Jacobi") Third Section D Supplemental Questionnaire Response dated March 14, 2013.

[175] See Memorandum for the file, from Emeka Chukwudebe, International Trade Compliance Analyst, Office 9 Import Administration, Re: "Certain Activated Carbon from the People's Republic of China ("PRC") Removal from the Record of Jacobi Carbons AB ("Jacobi") Supplemental Section D Questionnaire Response ("Jacobi's Rejection Memo"), dated March 28, 2013.

[176] See Jacobi's Prelim Analysis Memo for further discussion regarding this issue.

NXGH's Transportation Bags

Jacobi stated that it was unable to obtain usage rates for transportation bags from one of its suppliers, Ningxia Guanghua Activated Carbon Co., Ltd. ("NXGH"). We then requested that Jacobi submit all documentation demonstrating its attempts to get the information from NXGH.[177] However, Jacobi failed to request an extension of its deadline on a timely basis and it submitted its response one day after the established deadline. Subsequently, the Department rejected as untimely Jacobi's attempts to get the supporting documentation from NXGH.[178] Therefore, because Jacobi did not provide the supporting documentation of its attempts to get the information for transportation bags from NXGH by the deadline for the submission, we find that Jacobi did not act to the best of its availability to submit the requested information. Accordingly, we do not have the information in this proceeding with respect to NXGH's transport bags or evidence of Jacobi's attempts to obtain it. Pursuant to section 776(b) of the Act, we applied adverse facts available to the Transportation Bags FOP used by NXGH. As adverse facts available, we applied Jacobi's highest reported usage of PolyPro Bag FOP from its other suppliers to NXGH's Transportation Bag FOP.[179]

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Conclusion

We recommend applying the above methodology for these preliminary results.

✓ Agree   ______ Disagree

Paul Piquado
Assistant Secretary
for Import Administration

2 MAY 2013
(Date)

[177] See Jacobi's Response to the Department's Supplemental Section D Questionnaire, at page D-11.
[178] See Jacobi's Rejection Memo.
[179] See Jacobi's Prelim Analysis Memo for further discussion regarding this issue.