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November 20, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

SUMMARY

The Department of Commerce ("Department") has analyzed the comments submitted by Petitioners,[1] mandatory respondents,[2] and certain separate rate companies[3] in the fifth administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC"). Following the Preliminary Results[4] and the analysis of the comments received, we have made changes to the margin calculations for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On May 8, 2013, the Department published the Preliminary Results of this administrative review. On June 5, 2013, the Department fully extended the time limit for completion of the final results

[1] Calgon Carbon Corp. and Cabot Norit Americas ("Petitioners").
[2] Jacobi Carbons AB ("Jacobi") and Ningxia Huahui Activated Carbon Co, Ltd. ("Huahui"), collectively ("mandatory respondents").
[3] Calgon Carbon (Tianjin) Co., Ltd. ("Calgon Tianjin") and Ningxia Guanghua Cherishment Activated Carbon Co., Ltd. ("Cherishmet").
[4] See Certain Activated Carbon From the People's Republic of China: Preliminary Results of the Fifth Antidumping Duty Administrative Review; 2011-2012, 78 FR 26748 (May 8, 2013) ("Preliminary Results").

of this administrative review.[5] On August 26, 2013, the Department established the deadline for case and rebuttal briefs.[6] The Department extended the deadlines for submission of case and rebuttal briefs twice based on requests from interested parties.[7] On May 28, 2013, interested parties submitted surrogate value ("SV") comments.[8] On September 5, 2012, Petitioners, Albemarle,[9] Calgon,[10] Cherishmet, Huahui and Jacobi submitted case briefs. On September 13, 2013, Petitioners, Albemarle and Huahui submitted rebuttal briefs.[11] In lieu of a case brief, Carbon Activated Corporation incorporated by reference the arguments raised by the respondents – including but not limited to, surrogate values, and company-specific issues.[12]

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[13] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. The revised deadline for the final results of this review is now November 20, 2013.

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 ("CO_2") in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 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 CO_2, regardless of the raw material, grade, mixture, additives, further washing or post-activation

[5] See Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, through James Doyle, Office Director, Office 9, Antidumping and Countervailing Duty Operations, from Bob Palmer, International Trade Compliance Analyst, Office 9, Antidumping and Countervailing Duty Operations: Certain Activated Carbon from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated June 5, 2013.
[6] See Memorandum to the File from Bob Palmer, Senior International Trade Analyst, Office 9, Import Administration, dated August 26, 2013.
[7] See Memorandum for All Interested Parties from Emeka Chukwudebe, International Trade Analyst, Import Administration, dated August 29, 2013; see also Memorandum to the file from Emeka Chukwudebe, International Trade Analyst, Import Administration, dated September 6, 2013.
[8] See e.g., Jacobi's Post-Preliminary Surrogate Values Submission, dated May 28, 2013 and Cherishmet's Post-Preliminary Surrogate Values Submission, dated May 24, 2013.
[9] Albemarle Corporation ("Albemarle").
[10] Calgon Carbon Corporation and Calgon Carbon (Tianjin) Co., Ltd. (collectively, "Calgon").
[11] See Petitioners' Rebuttal Brief, dated September 13, 2013; see also Albemarle/Huahui's Rebuttal Brief, dated September 13, 2013.
[12] See Letter from Carbon Activated Corporation ("CAC"), dated September 5, 2013.
[13] See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

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 CO_2 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 ISSUES:

General Issues

Comment 1: Whether Albemarle Corporation is a Domestic Interested Party

Calgon's Arguments:

- The Department should rescind this administrative review with respect to Calgon Tianjin because Albemarle, the only party seeking a review of Calgon Tianjin, does not have standing under section 771(9)(C) of the Tariff Act of 1930, as Amended ("the Act") to request this review.

- The Department should use Black's Law Dictionary to define the term wholesaler because numerous federal courts including the United States Supreme Court have relied on this source to determine the meaning of legal terms.
- According to federal precedents, the Black's Law Dictionary definition is the starting point of regulatory interpretation, and the Department can reject this definition if there is a valid interpretative or regulatory reason for doing so. The Department should not rely on the analysis of wholesale trade in Roland[14] because subsequent Supreme Court decisions demonstrate that it is erroneous and inapplicable to the present case. Further, Roland was subsequently expressly overturned by the Supreme Court and superseded by congressional mandate.
- The Supreme Court has held the precise meaning of term changes with the specific statute in which it is found.[15] Accordingly, because the term wholesaler in Roland was made in the context of a different statute, the meaning used in Roland should not be used to interpret wholesaler in the Act.
- The Black's Law Dictionary definition of "wholesaler" is more specific than the North American Industry Classification System ("NAICS") definition of "wholesale trade," and completely disposes of the interpretative question at issue. The Black's Law Dictionary definition, as compared to the NAICS definition, is more consistent with the regulatory purpose behind section 771(9)(C) of the Act and Department's regulations.
- NAICS does not provide a definition of "wholesaler," but provides a description of the NAICS category of "wholesale trade" for statistical purposes. Further, the U.S. Census Bureau has clarified that NAICS is used for the narrow purpose of facilitating collection and presentation of statistical data, and has warned against using NAICS for other regulatory purposes. Accordingly, NAICS cannot serve as a tool for interpreting the term wholesaler.
- Application of the NAICS definition is inconsistent with the Department's approach in other determinations, such as the WBF Memo,[16] where the Department did not apply a NAICS definition to determine standing as a domestic producer.
- In light of the new legal and factual information on the record, an overbroad definition of the term "wholesaler" would lead to opportunistic behavior and abuse of the Department's administrative review process. Therefore, the Department should reconsider its application of NAICS to interpret "wholesaler" in AR3 Carbon.[17]
- Even if the NAICS definition is used to interpret "wholesaler" under section 771(9)(C) of the Act, Albemarle does not qualify as a wholesaler. Specifically, a requirement under NAICS is that a wholesaler category claimed by an entity must be the "primary business" of that entity.

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[14] See Roland Electrical Co. v. Walling, 326 U.S. 657 (1945) ("Roland").
[15] Calgon cites FAA v. Cooper, 132 S. Ct. 1441, 1448 (2012).
[16] Calgon cites to Letter from Letter from Albemarle, re: "Certain Activated Carbon from the People's Republic of China: Rebuttal Comments Regarding the Census Bureau's Wholesaler Definition," dated July 1, 2013 at Exhibit 3, "Memorandum from Wendy Frankel to Edward C. Yang: Whether Kimball International, Inc., Kimball Furniture Group, Inc., and Kimball Hospitality Inc. (collectively, "Kimball") is a U.S. Producer of Wooden Bedroom Furniture: Administrative Review of Wooden Bedroom Furniture from the People's Republic of China ("PRC"), dated November 4, 2008,"(public version) ("WBF Memo").
[17] 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").

Albemarle has not demonstrated it is primarily a wholesaler. Imposing this requirement is important because the key interpretative question is the meaning of the phrase "wholesaler of a domestic like product" rather than "wholesaler" in isolation. In other words, a wholesaler of the relevant domestic product whose primary business involves imported rather than domestically-produced products would not be a wholesaler of the domestic like product under NAICS principles. Moreover, contrary to Albemarle's claim, the "primary business" requirement would not deprive domestic producers of standing as a domestic interested party. The Department can apply the factors used to determine whether a party claiming to be a domestic producer has such standing.

- The "primary business" requirement would be a reasonable counterpart to the WBF Memo requirements in the context of wholesalers.
- Regardless of which definition is used, the Department should require that a party claiming to be a wholesaler establish its bona fide credentials that it engaged in wholesaler activities on a regular and sustained basis during the POR. Contrary to Albemarle's claim, the Department has established a number of factors to determine whether a party is a bona fide domestic producer in the WBF Memo.
- The regulatory and statutory purpose behind the concept of "domestic interested party" requires that the party seeking such as status has a substantive interest in domestic production. A bona fide producer or wholesaler of a domestic like product that has substantial import activities can certainly qualify as a domestic interested party.
- New factual developments warrant finding that Albemarle is not properly considered a wholesaler.

Albemarle's Rebuttal:

- Albemarle is properly considered a domestic interested party.
- Black's Law Dictionary should not be used to define wholesaler. None of the cases cited by Calgon suggest that Black's Law Dictionary is the preferred source for defining ambiguous terms. Further, none of the cases cited by Calgon interprets the term wholesaler, but rather demonstrates that the courts use this as one source among many to interpret terms.
- Despite Calgon's argument to discount Roland, the fact that the Supreme Court reexamined its conclusions in Roland with respect to the Fair Labor Standard Act's ("FLSA") meaning of "retail" and that Congress modified the FLSA does not shed doubt on the Supreme Court's interpretation of "wholesaler" in that case. That case dealt with the breadth of the term "retailer" under the FLSA.
- NAICS remains the best available source to define "wholesaler" because it offers an inter-agency definition that the Department has used in the past and provides a highly-specific definition. While Calgon has argued that NAICS is for statistical purposes and should not be used for regulatory purposes, NAICS is used by various government agencies for a variety of purposes and not just for statistical applications, as pointed out by the NAICS itself. Commerce also previously found the NAICS definition to be a reliable source in AR3 Carbon, and Commerce has relied on the NAICS in numerous other contexts.
- The WBF Memo does not support departing from the NAICS definition of wholesaler because the Department recognizes that domestic interested parties may have more than one basis for standing stemming from the differing types of business in which it engages.
- The Department has also previously rejected a requirement that an interested party have a "sufficient stake" in the industry to request an administrative review. Any such requirement

that standing may only be conferred upon a party's "primary business activity" would be contrary to the statute, logic and past practice.

- Despite Calgon's assertion, the evidence on the record does not warrant deviating from the conclusion in AR3 Carbon because they do not demonstrate finding that Albemarle is not properly considered a "wholesaler."[18]
- Calgon's argument that a broad definition of "wholesaler" conflicts with the regulatory and statutory objectives is unavailing because neither the statute, legislative history, nor past precedent suggest there is some kind of threshold requirement for what kind of domestic interest the interested party must have.
- The Department does not need to determine whether the Albemarle satisfies the wholesaler "primary business" requirements under the NAICS definition. The Department is not attempting to classify a company for statistical analysis, but to find an administrable definition of wholesaler. Any requirement leading to a conclusion that standing may be conferred upon a party's primary business activity would be contrary to the Department's interpretation of statutory and regulatory requirements.
- Adopting a "primary business test" for the purpose of rejecting Albemarle's domestic interested party status without notice and comment procedures would violate the Administrative Procedure Act.

Department's Position: In AR3 Carbon,[19] the Department conducted an administrative review of Calgon Tianjin because the Department determined, in that review, that Albemarle was a wholesaler of the domestic like product and, therefore, a domestic interested party eligible to request an administrative review on a foreign exporter.[20] In the instant review, Albemarle again claimed domestic interested party status as a wholesaler under section 771(9)(C) of the Act and requested an administrative review of Calgon Tianjin.[21] Calgon has challenged Albemarle's standing as a wholesaler and, therefore, as a domestic interested party.[22] Thus, whether Albemarle may request a review of Calgon Tianjin depends on its status as a domestic interested party within the meaning of section 771(9)(C) of the Act. As discussed below, we have determined to continue our practice of filling this gap in the statute by referring to the NAICS definition of "wholesale trade" because we find it provides a highly specific, administrable definition of the undefined term "wholesaler" in section 771(9)(C) of the Act. Applying this

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[18] For business proprietary information related to Albemarle, see Albemarle/ Hauhui's Rebuttal Brief, dated September 13, 2013; see also Memorandum to the File, through Catherine Bertrand, Program Manager Office V, from Bob Palmer, Senior Trade Analyst, Office V, re: Fifth Administrative Review of Certain Activated Carbon from the People's Republic of China: Evidence on the Record Related Albemarle Corporation's Wholesaler Status," dated concurrently with this memorandum ("Albemarle Wholesaler Memo").

[19] See AR3 Carbon, 76 FR 67142.

[20] See Letter from Albemarle, re: Certain Activated Carbon from the People's Republic of China: Comments Regarding the Census Bureau's Wholesaler Definition, dated June 21, 2013 at Exhibit 2, "Memorandum to James Doyle, Director, Office 9, through Catherine Bertrand, Program Manager, Office 9, from Katie Marksberry, International Trade Specialist, re: Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Selection of Additional Mandatory Respondent," dated September 29, 2010 public version ("AR3 Carbon Respondent Selection Memo") at 4-5.

[21] See Letter from Albemarle, re: "Certain Activated Carbon from the People's Republic of China," dated April 30, 2012 at 2.

[22] See, e.g., Letter from Calgon, re: "Activated Carbon from the People's Republic of China, Fifth Review (2011-2012): Albemarle Corporation's Alleged Standing as a 'Wholesaler,'" dated August 1, 2012.

definition in accordance with our past practice, and after a review of the record, we find that Albemarle is a wholesaler of the domestic like product and, therefore, a domestic interested party. Consequently, Albemarle has standing to request an administrative review of a foreign exporter, specifically, Calgon Tianjin.

Adoption of the NAICS Definition of "Wholesale Trade" for Purposes of Interpreting "Wholesaler" Under Section 771(9)(C) of the Act

The term "wholesaler" is not defined in the Act, legislative history, or the Department's regulations. Because there is no definition of the term "wholesaler" found in the Act, legislative history, or the Department's regulations, the Department has turned to other sources in search of an appropriate, administrable definition of "wholesaler" as that term appears in section 771(9)(C) of the Act. As an initial matter, the Department notes that in AR3 Carbon, it adopted the Census Bureau's NAICS definition of "wholesaler" because it provided characteristics of a wholesaler against which a party could be measured, and because it is a source used for defining industries by the U.S. government.[23] Given that the NAICS definition of "wholesaler" provides an administrable definition for purposes of this administrative review, as discussed below, the Department finds no reason to depart from its prior reliance on this definitional source from AR3 Carbon to define and interpret Albemarle's status as a "wholesaler in the United States of a domestic like product" pursuant to section 771(9)(C) of the Act.

We are not persuaded by Calgon's arguments that the NAICS wholesaler definition is no longer relevant because Roland, a Supreme Court case which referenced a Census definition of "wholesale trade" in articulating a definition for a different term, "retail," was subsequently overturned and superseded by congressional mandate. That the Supreme Court reexamined its conclusions in Roland with respect to the Fair Labor Standard Act's ("FLSA") meaning of "retail" in Idaho Sheet,[24] and that Congress subsequently modified the FLSA after Roland, does not undermine the fact that the Supreme Court itself cited favorably to a Census definition of "wholesale trade" in Roland.[25] Neither fact undermines the validity of the NAICS definition of "wholesale trade" as such. Moreover, Idaho Sheet did not reexamine the meaning of "wholesaler," but instead dealt with the term "retail" under the FLSA.[26] Further, other federal courts have followed the Supreme Court's definition of wholesale from Roland.[27] Finally, the fact that a court rejected application of the definition of "wholesale trade" as applied in Roland in the context of interpreting a state sales act casts no doubt on the appropriateness of adopting the NAICS definition to interpret wholesaler under section 771(9)(C) of the Act.[28]

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[23] See AR3 Carbon Respondent Selection Memo at 4.
[24] See Idaho Sheet Metal Works, Inc. v. Wirtz, 383 U.S. 190 (1966) ("Idaho Sheet").
[25] See Roland, 326 U.S. at 674.
[26] See Idaho Sheet.
[27] See Holtz v. Plastore, Inc., 760 F.Supp. 698, 699 (N.D.Ill. 1991) citing Bowles v. Mannie & Co., 155 F.2d 129, 134 (7th Cir. 1946) ("'wholesaling is said to cover sales 'to ... an industrial consumer so long as the purpose of the customer in buying such goods is to ... use them for business needs as supplies or equipment'" (quoting Roland, 326 U.S. 657, 674, 66 (1946))).
[28] See Lee v. Thermal Engineering Corp., 352 S.C. 81, 93-94 (S.C. App. 2002).

Calgon also argues that the term "wholesale" in Roland was made in the context of analyzing a different statute, and, therefore, the meaning established in that discussion should not be used to interpret the term "wholesaler" in the Act because the Supreme Court has held that "the precise meaning of {a} term changes within the specific statute in which it is found."[29] This argument is inapposite. The statute at issue in Roland, the FLSA, did not call for interpreting a statutory term of "wholesaler" in the first place; it called for an interpretation of the word "retail," of which various definitions of "wholesale" were considered in differentiating "retail."[30] In any event, the Department is not relying on the definition of wholesale articulated in Roland; it is relying on the NAICS definition of "wholesale trade" itself because it provides a highly specific, administrable definition for defining "wholesaler" for purposes of determining standing of a domestic interested party to request an administrative review under the Act.[31]

Calgon cites several cases for the proposition that courts have consistently relied on Black's Law Dictionary when interpreting undefined legal terms.[32] However, these cases do not provide a compelling reason to depart from the Department's selected definition of wholesaler in this administrative review because courts have also resorted to other definitional sources besides Black's Law Dictionary in interpreting statutory terms.[33] Moreover, the cases cited by Calgon in which the courts have defined "wholesale" using dictionary descriptions, and not the NAICS, were in contexts that do not shed light upon the definition of "wholesaler" for purposes of section 771(9)(C) of the Act.[34] Similarly, those cases do not demonstrate that the NAICS is an otherwise unreliable source from which to derive an administrable definition of "wholesaler." With regard to the Act specifically, "when the Department exercises its authority in the course of adjudication, its interpretation governs in the absence of unambiguous statutory language to the contrary or unreasonable resolution of language that is ambiguous."[35] The Department has exercised that authority here by selecting an administrable definition of "wholesaler" by consulting the NAICS definition of "wholesale trade."

We also disagree with Calgon's contention that Black's Law Dictionary provides a better definition of "wholesaler" than the NAICS definition. The Department notes that the sixth edition of Black's Law Dictionary, which was in place when section 771(9)(C) was promulgated by Congress in 1979,[36] defined wholesaler as "one who buys in comparatively large quantities,

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[29] See FAA v. Cooper, 132 S. Ct. 1441, 1448 (2012).
[30] See Roland, 326 U.S. at 673-74.
[31] We also note that the term "wholesale trade" from the Census Bureau as applied in the 1946 Roland case does not the same as that in the more recent NAICS definition. Compare Roland, 326 U.S. at 674, with Memorandum to the File, from Bob Palmer, International Trade Analyst, Office 9, re: Fifth Administrative Review of Certain Activated Carbon from the People's Republic of China: Wholesaler Definition, dated June 4, 2013, at Attachment I and II.
[32] See Calgon's Case Brief at 4-5.
[33] See, e.g., BP Products North America Inc., v. United States, 716 F.Supp. 2d 1291, 1295 (CIT 2010) (consulting dictionaries and the Encyclopedia Britannica in determining the Harmonized Tariff Schedule terms).
[34] See, e.g., First Fashion USA, Inc. v. Best Hair Replacement, 2009 U.S. Dist. LEXIS 113882 (S.D. Fla. Nov. 20, 2009) (consulting Black's Law Dictionary definition of "wholesaler" to define that term under a settlement agreement); Johnson v. Mossy Oak Props., 2012 U.S. Dist. LEXIS 167605 (N.D. Ala. Nov. 27, 2012) (consulting Black's Law Dictionary definition of "wholesale," among other sources, to determine whether a state sales representative's commission contracts law applied in order to resolve a contract dispute).
[35] See United States v. Eurodif, 555 U.S. 305, 316 (2009).
[36] See Trade Agreements Act of 1979, Pub. L. No. 96-39, s. 101, 93 Stat. 144, 179 (1979).

and then resells, usually in smaller quantities, but never to the ultimate consumer. He sells either to a 'jobber,' a sort of middleman, or to a 'retailer,' who in turn sells to the consumer."[37] The ninth edition of Black's Law Dictionary defines wholesaler as "one who buys large quantities of goods and resells them in smaller quantities to retailers or other merchants, who in turn sell to the ultimate consumer."[38] Neither definition provides the detail and specificity that lends itself to a detailed analysis of Albemarle's status as a wholesaler, nor does it provide an analytical framework for wholesaler analyses in other proceedings. Unlike Black's Law Dictionary, the NAICS definition provides a more detailed description of a wholesaler's activities and business practices that can be applied to evidence on the record with regard to Albemarle's business practices and activities. For example, Black's Law Dictionary does not establish whether the prospective wholesaler's business is orientated for walk-in business, open to the general public, or methods of delivery.[39] While Calgon argues that the NAICS definition of the term "wholesale trade" is for statistical purposes and, further, that the Census Bureau warned against using NAICS for other regulatory purposes, we note that NAICS is used by various federal agencies for administrative, regulatory, and taxation purposes, among others.[40] Further, the Department has relied upon NAICS classifications in other proceedings before it.[41]

Application of the NAICS Definition of Wholesaler

The NAICS definition of "wholesale trade" describes the wholesaling process as "an intermediate step in the distribution of merchandise. Wholesalers are organized to sell or arrange the purchase or sale of (a) goods for resale (i.e., goods sold to other wholesalers or retailers), (b) capital or durable nonconsumer goods, and (c) raw and intermediate materials and supplies used in production."[42] Furthermore, the fundamental characteristic of a wholesaler, based on the NAICS definition, is that it is not set up to attract walk-in business, but operates out of warehouses and sales offices that are distinct from retail store locations.[43] In addition, the NAICS definition has a further clarification that indicates: "Establishments arranging for the purchase or sale of goods owned by others or purchasing goods, generally on a commission basis are known as business to business electronic markets… These establishments operate from

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[37] See Letter from Calgon, re: "Activated Carbon from the People's Republic of China: Comments on Wholesaler Definition," dated June 21, 2013, at Exhibit 1.
[38] See id.
[39] See Memorandum to the File, from Bob Palmer, International Trade Analyst, Office 9, re: Fifth Administrative Review of Certain Activated Carbon from the People's Republic of China: Wholesaler Definition, dated June 4, 2013, at Attachment I and II.
[40] See Letter from Calgon, re: "Activated Carbon from the People's Republic of China: Comments on Wholesaler Definition," dated June 21, 2013 at Exhibit 3 page 5 of 6.
[41] See e.g., Final Negative Countervailing Duty Determination: Live Swine from Canada, 70 FR 12186 (March 11, 2005) and accompanying Issues and Decision Memorandum ("IDM") at Comment 1; Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 76 FR 15295 (March 1, 2011) and accompanying IDM at Comment 1; see also Export Trade Certificate of Review, 78 FR 58286 (September 23, 2013), AR3 Carbon Respondent Selection Memo at 4-5, unchanged in AR3 Carbon.
[42] See Memorandum to the File, from Bob Palmer, International Trade Analyst, Office 9, re: Fifth Administrative Review of Certain Activated Carbon from the People's Republic of China: Wholesaler Definition, dated June 4, 2013, at Attachment I and II; see also AR3 Carbon Respondent Selection Memo at 4-5.
[43] See id.

offices and generally do not own or handle the goods they sell."[44] Moreover, according to this clarification, "For NAICS, it is how merchandise is sold not what is sold or how it is used…. Both wholesalers and retailers sell merchandise as their primary activity. Between these two sectors, the chief distinction for NAICS is on whether the facilities are open to the general public or not."[45] Using this definition, we find that Albemarle's commercial activities are consistent with those of a wholesaler because it is not set up to attract walk-in business, and arranges for the sale of goods owned by others.[46]

We disagree with Calgon that Albemarle must show that wholesaling of domestic like product is its "primary business" before it may be considered a "wholesaler of the domestic like product" under the Act. As an initial matter, while NAICS establishes a "primary business" requirement, this requirement is intended for use by the Census Bureau for its own statistical purposes, namely, to "collect, tabulate, present, and analyze data about the economy of the United States."[47] The Department is not conducting a statistical analysis in this administrative review, but rather has adopted a definition of "wholesaler" with sufficient detail that can be administered and applied to parties seeking wholesaler status to request administrative reviews.

In addition, section 771(9)(C) of the Act does not impose a minimum requirement of domestic activity for purposes of standing. The Act, legislative history, regulations, and case law contain no indication that a party that predominantly imports subject merchandise cannot be considered a producer or wholesaler of the domestic like product for purposes of requesting an administrative review, and we have made no previous determination to that effect. By contrast, we have considered parties to be producers or wholesalers of domestic like product even though they also import subject merchandise.[48] Simply because section 771(9)(C) of the Act mentions that a wholesaler must be one "in the United States of a domestic like product," does not mean that a wholesaler must only, or primarily, wholesale domestic like product, as opposed to imported subject merchandise as well.[49] The Department has not set a threshold amount of domestic activity to be considered a domestic interested party.

The Department also disagrees with Calgon's claim that the Department has set forth stringent bona fide requirements for a party claiming to be a domestic interested party. While Calgon references the WBF Memo in making this allegation, there, the Department determined that an importer that also manufactured sample pieces of furniture was a producer of subject

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[44] See id.
[45] See id.
[46] See Letter from Albemarle, re: "Certain Activated Carbon from the People's Republic of China: Comments Regarding the Census Bureau's Wholesaler Definition," dated June 21, 2013 at 6.
[47] See Letter from Calgon, re: "Activated Carbon from the People's Republic of China: Comments on Wholesaler Definition," dated June 21, 2013 at Exhibit 3 at page 2 of 6.
[48] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) (where the WBF Memo was adopted); see also Final Determination of Sales at Less Than Fair Value; Digital Readout Systems and Subassemblies Thereof from Japan, 53 FR 47844 (November 28, 1988) and accompanying IDM at Comment 1 (finding that a company had standing to file an antidumping petition because although the company imported a significant proportion of the transducers it sold, it also operated as a wholesaler of some U.S.-made transducers).
[49] See section 771(9)(C) of the Act.

merchandise.[50] In the WBF Memo, we did not establish criteria for *all* parties seeking status as domestic interested parties, but for parties seeking standing as *producers* of the domestic like product.[51] Because the WBF Memo did not address the definition of "wholesaler," we turned to other sources, specifically, the Census Bureau's NAICS definition. In addition, we find there is no inconsistency between the Department's approach of articulating a definition of domestic producer in the WBF Memo and adopting a definition of wholesaler in the instant administrative review. Producers and wholesalers of domestic like product have distinct business operations and thus require specific definitions. In the WBF Memo, the Department determined a set of criteria for domestic producers. In AR3 Carbon and this administrative review, the Department turned to another source to identify a highly specific, administrable definition of "wholesaler" in determining the meaning of "wholesaler in the United States of a domestic like product."

We also disagree with Calgon that the Department has established a broad interpretation of "wholesaler" that conflicts with the statute and regulations or otherwise frustrates the Department's regulatory objectives. Calgon argues that the Department should establish a requirement that a domestic interested party have a sufficient "stake" in the domestic industry to request an administrative review. However, the statute, the regulations, and our past practice do not require us to determine whether a domestic interested party has a sufficient "stake" in the industry to request an administrative review.[52] Calgon's citation to Conoco is inapposite because the key issue in that case was whether the Court of International Trade ("CIT") had jurisdiction to review certain orders of the Foreign Trade Zones Board.[53] The Federal Circuit did not hold that domestic interested parties under section 771(9)(C) of the Act must have a sufficient stake in the domestic industry. Calgon merely cites to a footnote in that case, in which the Federal Circuit paraphrased the meaning of section 516 of the Act, which Calgon asserts must have the same meaning as in section 771(9)(C), as allowing a "domestic competitor, not directly involved in the specific import transaction, the right to initiate a protest proceeding with Customs."[54] This is dicta and provides no further insight into some specific threshold of "domestic competition" for purposes of requesting an administrative review of an antidumping duty order.[55] Furthermore, the CIT has cautioned the Department against reading additional requirements into section 771(9)(C) of the Act.[56] Finally, to the extent that Calgon references that the Department is authorized to disregard section 771(9)(C) for standing purposes pursuant to section 732(c)(4)(B) if the party is an importer of the subject merchandise or related to foreign producers, we note that this requirement pertains to the issue of industry support in filing a

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[50] See WBF Memo at 2-4.
[51] See id.
[52] See AR3 Carbon Respondent Selection Memo at 3-4; see also WBF Memo at 4-5.
[53] See Conoco, Inc. v. United States Foreign-Trade Zones Bd., 18 F.3d 1581 (Fed. Cir. 1994).
[54] See id. at 1587 n. 18.
[55] See id.
[56] See Brother Indus. (USA) v. United States, 801 F. Supp. 751, 757-59 (CIT 1992) (holding that, in a case challenging the Department's denial of domestic interested party status to a company seeking to file an antidumping petition, the fact that the company performed design and engineering abroad, or that major parts in its production are imported, did not preclude a finding that the company was part of the domestic industry. The Court found that "contrary to the governing statute ITA has improperly focused on whether the product is 'domestic,' rather than whether {the company} is engaging in manufacturing in the United States").

petition, not in requesting an administrative review.[57] Indeed, the inclusion of this provision that authorizes the Department to disregard certain positions in section 732(c)(4) of the Act suggests that Congress was aware that domestic parties could also be importers of subject merchandise and Congress provided for the consideration of this issue when appropriate, i.e., in section 732(c)(4) of the Act but not section 771(9)(C) of the Act.

We also disagree with Calgon's argument that the evidence on the record warrants a finding that Albemarle is not a wholesaler.[58] As stated above, the Department has not established a threshold of wholesaling of domestic like product, and has not determined that a party must demonstrate that it has a "sufficient stake" in the domestic industry. Rather, the Department has adopted a reasonable definition of "wholesaler" which the evidence on the record demonstrates that Albemarle has met. For a further discussion of the record evidence as it applies to Albemarle's standing as a wholesaler, see Albemarle Wholesaler Memo.

In summary, because the NAICS's wholesaler definition is specific to the question of Albemarle's wholesaler status and the NAICS is used by the Department and other agencies to provide standardized industry definitions, we continue to find the NAICS's wholesaler definition appropriate to define Albemarle's wholesaler status. The Department is not establishing a broad definition of "wholesaler," but instead used the NAICS's wholesaler definition as a framework to develop an administrable definition of wholesaler. The Department has not broadened the NAICS's definition to accommodate Albemarle, but rather Albemarle has demonstrated that it meets the Department's definition of "wholesaler" using the NAICS. The continued treatment of Albemarle as a wholesaler does not establish a precedent that could be abused by other parties; other parties wishing to establish they are wholesalers of domestic like product would be evaluated on their own facts and circumstances. Because we find that the record demonstrates that Albemarle is a wholesaler of the domestic like product and, therefore, a domestic interested party under section 771(9)(C) of the Act, Albemarle may request an administrative review of Calgon Tianjin under 19 CFR 351.213(b). Accordingly, Calgon Tianjin remains under review as a non-examined, separate rate respondent.

Comment 2: Use of an Alternative Comparison Method in Administrative Reviews

Jacobi's Arguments:

- The Department is not authorized to conduct a differential pricing analysis in this administrative review because section 777A(d)(1)(B) of the Act is limited to original investigations.

[57] The Department notes that domestic producers who are also importers who have affiliated exporters have requested administrative reviews of foreign exporters in the past. See e.g., Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007) ("Activated Carbon LTFV") and First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) (and this instant review where Calgon Carbon Corporation, a Petitioner in this case and the U.S. affiliate of Calgon Tianjin, requests administrative reviews of foreign importers).

[58] The facts on the record pertaining to Albemarle are business proprietary information. See Albemarle Wholesaler Memo.

Petitioners' Rebuttal:

- The Department has the discretion to apply the alternative methodology in administrative reviews because the Department has authority to fill in gaps in the statutory scheme to effectively implement the antidumping law.
- Jacobi has not demonstrated that the Department's methodology does not: 1) comply with the statute, 2) fails to meet the purpose of section 777A(d)(l)(B)(i) of the Act, and 3) is unreasonable.

Department's Position: The Department disagrees with Jacobi's claim that it does not have the statutory authority to employ an alternative comparison method in administrative reviews. Section 771(35)(A) of Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." The definition of "dumping margin" calls for a comparison of normal value ("NV") and export price ("EP")or constructed export price ("CEP"). Before making the comparison called for, it is necessary to determine how to make the comparison.

Jacobi posits that the Department has no statutory authority to consider the application of an alternative comparison method in administrative reviews. Jacobi states that Congress made no provision for the Department to apply an alternative comparison method in section 777A(d)(2) of the Act. Indeed, section 777A(d)(1) of the Act applies to "Investigations" and section 777A(d)(2) of the Act applies to "Reviews". Section 777A(d)(1) discusses, for investigations, the standard comparison methods (i.e., average-to-average or A-to-A, and transaction-to-transactions or T-to-T) and then provides for an alternative comparison method (average-to-transaction or A-to-T) that is an exception to the standard methods when certain criteria have been meet. Section 777A(d)(2) discusses, for reviews, the maximum length of time over which the Department may calculate weighted-average NV in administrative reviews. Section 777A(d)(2) has no provision for the comparison method to be employed in administrative reviews. Therefore, to follow Jacobi's logic and to paraphrase Jacobi's conclusion at page 40 of its case brief, should the Department wish to apply any comparison method in administrative reviews, then it must await a statutory amendment to do so. Such an absurd conclusion would infer that Congress did not intend that Department ever make a comparison of NVs and EPs or CEPs in order to calculate a dumping margin as described in section 771(35)(A) of the Act.

To fill this gap in the statute, the Department has promulgated regulations to specify how comparisons between NV and EP or CEP would be made in administrative reviews.[59] The Department's regulations at 19 CFR 351.414 (b) describe the methods by which NV may be compared to EP or CEP in antidumping investigations and administrative reviews (i.e., A-to-A, T-to-T, and A-to-T). These comparison methods are distinct from each other. When using T-to-T or A-to-T comparisons, a comparison is made for each export transaction to the United States. When using A-to-A comparisons a comparison is made for each group of comparable export transactions for which the EPs, or CEPs, have been averaged together (i.e., for an averaging

[59] See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews").

group[60]). 19 CFR 351.414(c)(1) fills the gap in the statute concerning the choice of a comparison method in the context of administrative reviews. In particular, the Department has determined that in both antidumping investigations and administrative reviews, the A-to-A method will be used "unless the Secretary determines another method is appropriate in a particular case."

The Act, the SAA, and the Department's regulations do not address the circumstances that could lead the Department to select a particular comparison method in an administrative review. Indeed, whereas the statute addresses this issue specifically in regards to investigations, the statute conspicuously leaves a gap to fill on this same question in regards to administrative reviews.[61] In light of the statute's silence on this issue, the Department indicated that it would use A-to-A comparisons as the default method in administrative reviews, but would consider whether to use an alternative comparison method on a case-by-case basis.[62] At that time, the Department also indicated that it would look to practices employed by the Department in antidumping investigations for guidance on this issue.[63]

In antidumping investigations, the Department examines whether to use the A-to-T method consistent with section 777A(d)(1)(B) of the Act:

> The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if:
>
> > (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
> >
> > (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).[64]

Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of an administrative review, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in antidumping investigations. Accordingly, the Department finds the analysis that has been used in antidumping investigations instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

The SAA does not demonstrate that the Department may consider the application of an alternative comparison method in investigations only. The SAA does discuss section 777A(d)(1)(A)(i) of the Act, concerning the types of comparison methods that the Department

[60] See 19 CFR 351.414(d)(2).
[61] See section 777A(d)(1)(B) of the Act; SAA, at 842-43; 19 CFR 351.414.
[62] See Final Modification for Reviews, 77 FR at 8107.
[63] See id. at 77 FR at 8102.
[64] See section 777A(d)(1)(B) of the Act.

may use in investigations. That provision, however, is silent on the question of choosing a comparison method in administrative reviews. Section 777A(d)(1)(A) does not require or prohibit the Department from adopting a similar or a different framework for choosing a comparison method in administrative reviews as compared to the framework required by the statute in investigations. The SAA states that "section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction comparison methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods."[65] Like the statute, the SAA does not limit the Department to undertake such an examination in investigations only.[66]

The silence of the statute with regard to application of an alternative comparison method in administrative reviews does not preclude the Department from applying such a practice in this situation. Indeed, the Federal Circuit has stated that the "court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances."[67] Further, the court has stated that this "silence has been interpreted as 'an invitation' for an agency administering unfair trade law to 'perform its duties in the way it believes most suitable' and courts will uphold these decisions '{s}o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious."[68] We find that the above discussion of the relevance of the statute with respect to investigations is a logical, reasonable and deliberative method to fill the silence in the Act with regard to administrative reviews.

Comment 3: Withdrawal of the Targeted Dumping Regulation

Jacobi's Arguments:

- The Department's 2008 withdrawal of the targeted dumping regulation, 19 CFR 351.414(f)(1)(ii) and (2) (2007), violated the requirements of the Administrative Procedures Act ("APA"). The Department withdrew the targeted dumping regulation without notice and comment as required. Notice and comment apply both when promulgating regulations and when repealing a rule.[69]
- Additionally, the Department did not satisfy the "good cause" exception because no good cause in fact existed. The Department's explanation that good cause existed because notice and comment "is impracticable and contrary to the public interest" was unsubstantiated. The good cause exception to the notice and comment requirement should be "narrowly construed and only reluctantly countenanced."[70] The good cause

[65] See SAA at 843.
[66] See id.
[67] See United States Steel Corp. v. United States, 621 F.3d 1351, 1357 (Fed. Cir. 2010).
[68] See Mid Continent Nail Corp. v. United States, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010), citing U.S. Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996).
[69] See Tunik v. Merit Sys. Protection Bd., 407 F.3d 1326, 1342 (Fed. Cir. 2005) ("Tunik").
[70] See id. at 1342.

exception is rarely accepted by the Federal Circuit and is usually used in the case of a national emergency.[71]

- In National Customs Brokers, the Federal Circuit upheld U.S. Customs and Border Protection's ("CBP's") reliance on the good cause exception because a change in the statute required CBP to bring its regulations into compliance immediately. Two sister circuit decisions cited by the Department in its withdrawal notice cut against its own claims of impracticability and in any event are unpersuasive authority where the Federal Circuit has its own rich body of precedent regarding the good cause exception. Levesque articulated that "policy-based time pressures" are an insufficient reason to invoke the good cause exception. [72] Riverbend Farms was a fact-specific case whose findings do not apply here.
- "Public interest" under the APA refers to the threat of anticipatory evasion by the regulated parties once they know they will soon face new restrictions, and no such threat was present here because the regulation had been in place for over 10 years, had never been used, and even if it were applied merely resulted in the use of A-T comparisons for sales found to be targeted. It is difficult to imagine how the public interest was implicated to justify waiver of notice and comment.
- The CIT very recently found in Gold East Paper that the targeted dumping regulation was improperly withdrawn under the APA. Jacobi is entitled to application of the withdrawn regulation and, as such, the Department should only apply the alternative methodology to those sales that are targeted.

Petitioners' Rebuttal:

- The Department did provide adequate notice and comment under the APA when it solicited two rounds of public comments on the appropriate targeted dumping analysis.
- Assuming proper notice and comment was not provided, the Department previously explained that "good cause" did exist because the withdrawn regulation was preventing parties from obtaining relief from injurious imports and that immediate withdraw was necessary to permit Congressionally mandated relief.
- If the Department were to determine that the 2008 regulation was improperly withdrawn, then the appropriate solution would be to apply the A-to-T method for all U.S. sales which was the Department's practice in administrative reviews under the targeted dumping regulation.

Department's Position: The Department disagrees with Jacobi that the withdrawal of the targeted dumping regulation violated the APA such that Jacobi is entitled to its application. While the CIT recently held that the issuance of the Department's interim final rule withdrawing the targeted dumping regulation was defective,[73] the Court's ruling is not final and conclusive as that matter is still in litigation. In addition, the regulations at issue, 19 CFR 351.414(f) and (g), and 19 CFR 351.301(d)(5) (2007), established criteria for analyzing allegations and making targeted dumping determinations in antidumping duty investigations, not in the context of an

[71] See Reeves v. Simon, 507 F.2d 455, 459 (Temp. Emer. Ct. App. 1974) and Shimek v. Dep't of Energy, 685 F.2d 1372, 1375 (Temp. Emer. Ct. App. 1981).
[72] See Levesque v. Block, 723 F.2d 175 (1st Cir. 1983).
[73] See Gold East Paper, 918 F. Supp. 2d at 1327-28.

administrative review as here.[74] Furthermore, the targeted dumping regulation was properly withdrawn pursuant to the APA. During the withdrawal process, the Department engaged the public to participate in its rulemaking process. In fact, the Department's withdrawal of its regulations in December 2008 came after two rounds of soliciting public comments on the appropriate targeted dumping analysis. The Department solicited the first round of comments in October 2007, more than one year before it withdrew the regulation by posting a notice in the Federal Register seeking public comments on what guidelines, thresholds, and tests it should use in conducting an analysis under section 777A(d)(1)(B) of the Act.[75] As the notice explained, because the Department had received very few targeted dumping allegations under the regulations then in effect, it solicited comments from the public to determine how best to implement the remedy provided under the statute to address masked dumping. The notice posed specific questions, and allowed the public 30 days to submit comments.[76] Various parties submitted comments in response to the Department's request.[77]

After considering those comments, the Department published a proposed new methodology in May 2008 and again requested public comment.[78] Among other things, the Department specifically sought comments "on what standards, if any, {it} should adopt for accepting an allegation of targeted dumping."[79] Several of the submissions[80] received from parties explained that the Department's proposed methodology was inconsistent with the statute and should not be adopted.[81] Moreover, several entities explicitly stated that the Department should not establish minimum thresholds for accepting allegations of targeted dumping because the statute contains no such requirements.[82]

These comments suggested that the regulation was impeding the development of an effective remedy for masked dumping. Indeed, after considering the parties' comments the Department explained that because "the provisions were promulgated without the benefit of any experience on the issue of targeted dumping, the Department may have established thresholds or other criteria that have prevented the use of this comparison methodology to unmask dumping."[83] For this reason, the Department determined that the regulation had to be withdrawn.[84] Although this withdrawal was effective immediately, the Department again invited parties to submit comments,

[74] See 19 CFR 351.414(f)-(g) and 19 CFR 351.301(d)(5) (2007); Withdrawal Notice, 73 FR at 74930-31.
[75] See Targeted Dumping in Antidumping Investigations; Request for Comment, 72 FR 60651 (October 25, 2007).
[76] See id.
[77] See Public Comments Received December 10, 2007, Department of Commerce, http://ia.ita.doc.gov/download/targeted-dumping/comments-20071210/td-cmt-20071210-index.html (December 10, 2007) (listing the entities that commented).
[78] See Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations, 73 FR 26371, 26372 (May 9, 2008).
[79] See id.
[80] The public comments received June 23, 2008 and submitted on behalf of several domestic parties can be accessed at: http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html.
[81] See, e.g., Letter from Kelley, Drye and Warren to the Department: "Comments on Targeted Dumping Methodology, Comments," ("Letter from Kelley Drye") dated June 23, 2008, at 2.
[82] See, e.g., letter from Committee to Support U.S. Trade Laws, to the Department: "Comments on Targeted Dumping Methodology" at 25; see also Letter from Kelley Drye at 29.
[83] See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 73 FR 74930, 74931 (December 10, 2008) ("Withdrawal Notice").
[84] See id.

and gave them an additional 30 days to do so.[85] The comment period ended on January 9, 2009, with several parties submitting comments.[86]

The course of the Department's decision-making demonstrates that it sought to actively engage the public. This type of public participation is fully consistent with the APA's notice-and-comment requirement.[87] Moreover, various courts have rejected the idea that an agency must give the parties an opportunity to comment before every step of regulatory development.[88] Rather, where the public is given the opportunity to comment meaningfully consistent with the statute, the APA's requirements are satisfied. The touchstone of any APA analysis is whether the agency has, as a whole, acted in a way that is consistent with the statute's purpose.[89] Here, similar to the agency in Mineta, the Department provided the parties more than one opportunity to submit comments before issuing the final rule. As in Mineta, the Department also considered the comments submitted and based its final decision, at least in part, upon those comments. Just as the court in Mineta found all of those facts to indicate that the agency's actions were consistent with the APA, so too the Department's actions here demonstrate that it fulfilled the notice and comment requirements of the APA.

The APA does not require that a final rule that the agency promulgates must be identical to the rule that it proposed and upon which it solicited comments.[90] Here, the Department actively engaged the public in its rulemaking process; it solicited comments and considered the submissions it received. In fact, that the numerous comments prompted the Department to withdraw the regulation demonstrates that the Department provided the public with an adequate opportunity to participate. In doing so, the Department fully complied with the APA.

Further, even if the two rounds of comments that the Department solicited before the withdrawal of the regulation were insufficient to satisfy the APA's requirements, the Department properly declined to solicit further comments pursuant to the APA's "good cause" exception. This exception provides that an agency is not required to engage in notice and comment if it determines that doing so would be "impracticable, unnecessary, or contrary to the public interest."[91] The Federal Circuit has recognized that this exception can relieve an agency from issuing notice and soliciting comment where doing so would delay the relief that Congress intended to provide.[92] In National Customs Brokers, the Federal Circuit rejected a plaintiff's argument that the U.S. Customs Service failed to follow properly the APA in promulgating

[85] See id.
[86] See Public Comments Received January 23, 2009, Department of Commerce, (Jan. 23, 2009).
[87] See, e.g., Arizona Pub. Serv. Co. v. EPA, 211 F.3d 1280, 1299–1300 (D.C. Cir. 2000) (holding that the EPA's decision to not implement a rule upon which it had sought comments did not violate the APA's notice and comment requirements because the parties should have understood that the agency was in the process of deciding what rule would be proper).
[88] See Fed. Express Corp. v. Mineta, 373 F.3d 112, 120 (D.C. Cir. 2004) ("Mineta") (holding that the Department of Transportation's promulgation of four rules, each with immediate effect, only after the issuance of which the public was given the opportunity to comment, afforded proper notice and comment).
[89] See id.
[90] See e.g., First Am. Discount Corp. v. CFTC, 222 F.3d 1008, 1015 (D.C. Cir. 2000).
[91] See 5 USC 553(b)(B).
[92] See, e.g., National Customs Brokers and Forwarders Ass'n of Am., Inc. v. United States, 59 F.3d 1219, 1223 (Fed. Cir. 1995).

certain interim regulations when it had published these regulations without giving the parties a prior opportunity to comment. Moreover, although the U.S. Customs Service solicited comments on the published regulations, it stated that it "would not consider substantive comments until after it implemented the regulations and reviewed the comments in light of experience" administering those regulations.[93] The U.S. Customs Service explained that "good cause" existed to comply with the APA's usual notice and comment requirements because the new requirements did not impose new obligations on parties, and emphasized its belief that the regulations should "become effective as soon as possible" so that the public could benefit from "the relief that Congress intended."[94] The Court recognized that this explanation was a proper invocation of the "good cause" exception and explained that soliciting and considering comments was *both* unnecessary (because Congress had passed a statute that superseded the regulation) "*and* contrary to the public interest because the public would benefit from the amended regulations."[95] For this reason, the Court affirmed the regulation against the plaintiff's challenge.[96]

The Department disagrees with Jacobi that National Customs Brokers is not informative in this case. The Department's basis for invoking the "public interest" exception here is almost identical to the one that the Federal Circuit sustained in National Customs Brokers. The regulations that the Department withdrew were designed to implement the provision that Congress codified at section 777A(d)(1)(B) of the Act. However, these regulations were originally promulgated before the Department had ever performed any such analysis in an actual proceeding.[97] Perhaps reflecting this dearth of practical experience, the regulations imposed several requirements that were not part of the statute. *Compare* 19 USC 1677f-1(d)(1)(B) *with* 19 CFR 351.414(f), (g).[98] After receiving comments on various proposals to amend its methodology under this regulation and deliberating on the issue, the Department determined that the regulations "may have established thresholds or other criteria that ha{d} prevented the use of this {alternative} comparison methodology to unmask dumping."[99] These criteria, the Department noted, were inadvertently denying "relief to domestic industries suffering material injury from unfairly traded imports"—relief that Congress intended to grant by passing the statutory provision in the first instance.[100] Immediate withdrawal of the regulation was therefore necessary to allow parties to take advantage of the statutory remedy.[101] This interest in granting congressionally-mandated relief without undue delay is exactly the basis upon which the Federal

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93 See id., at 1220–21.
94 See id., at 1223.
95 See id., at 1224 (emphasis).
96 See id.
97 See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27374–76 (May 19, 1997) (final rule); 19 CFR 351.414(f), (g) and 351.301(d)(5) (1997).
98 For example, 19 CFR 351.414(f)(2) provided that the Department would normally limit the application of the A-to-T methodology to those sales that constituted targeting, while the statutory provision does not contain this limitation. Similarly, the regulations provided that an allegation of targeted dumping is due no later than thirty days before the scheduled date of the preliminary determination—both requirements that are not present in the statute. See 19 CFR 351.414(f)(3) and 351.301(d)(5).
99 See Withdrawal Notice, 73 FR at 74931.
100 See id.
101 See section 777A(d)(1)(B) of the Act.

Circuit sustained the agency's invocation of the "public interest" exception to notice and comment procedures in National Customs Brokers.

In fact, the only difference between this situation and National Customs Brokers is that in the latter scenario Congress passed a statute that affirmatively abrogated the prior regulation. But this distinction is insignificant. When an administering agency finds that the effect of a regulation is to curtail statutorily mandated relief, the agency may act to remedy that situation, regardless of whether the statutory mandate is new or old. Nor does the fact that the Department was not aware of this potential effect for a period of time justify additional delay. Rather, it was appropriate for the Department to revoke the regulation as soon as it became apparent that there may be an effect "contrary to {the Department's} intention in promulgating the provisions and inconsistent with {the Department's} statutory mandate. . . ."[102] Immediate revocation was all the more appropriate given that the Department had *already* conducted two rounds of notice and comment and received suggestions that the regulation may have been ineffective.

Moreover, National Customs Brokers disproves Jacobi's assertion that the public interest exception applies only to situations of emergency or possible crisis. In fact, courts have at various times suggested that a multitude of different factors can form grounds for a determination that the public interest supports a shortened comment period and an immediate effective date for a regulation.[103] To be sure, we agree with Jacobi to the extent it argues that the courts have suggested that these factors do not include generalized interests in fiscal savings or other efficiencies.[104] But an agency's concern that a regulation may have an effect that is contrary to its statutory mandate and congressional intent is not this kind of generalized interest. Moreover, as explained above, the Department's withdrawal of the targeted dumping regulation came after *two full rounds* of notice and comment, and provided for additional comment opportunities after the regulation's withdrawal went into effect.

In short, the regulation at issue may have had the unintentional effect of preventing the Department from employing an appropriate remedy to unmask dumping. Such effect would have been contrary to congressional intent. The Department's revocation of such a regulation without additional notice and comment was based upon a recognized invocation of the "public interest" exception. Accordingly, there was no basis for the Department to base its analysis in the instant proceeding upon the withdrawn regulation.

Comment 4: Differential Pricing Analysis

Jacobi's Arguments:

- The Department must perform its differential pricing analysis in a manner consistent with the statute. Its interpretation of section 777A of the Act is contrary to the statute and thus fails Chevron prong one, and its interpretation is unlawful under Chevron prong two because the methodology is unreasonable.

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[102] See Withdrawal Notice, 73 FR at 74931.
[103] See, e.g., Omnipoint Corp. v. F.C.C., 78 F.3d 620, 630 (D.C. Cir. 1996) (crediting the agency's explanation that a shortened comment period was necessary because the usual comment procedures "would undermine the public interest by delaying additional competition in the wireless marketplace").
[104] See, e.g., Levesque v. Block, 723 F.2d 175, 185 (1st Cir. 1983).

- The Department fails to appreciate that the term "differ" adopts the concept of injurious targeting. Jacobi asserts that the SAA explicitly links the term "differ" with targeting and that this concept is ignored in the Department's differential pricing analysis.
- The differential pricing analysis ignores the statutory term "significantly," which requires an assessment of what is significant in a particular case. The Department's differential pricing analysis merely creates a mechanical test which is applied no matter how "absurd" the results.
- The Department incorrectly considers the "Cohen's *d* test" to be a generally recognized statistical measure, whereas the "t-test" is actually the recognized measure of "statistical significance." The Cohen's *d* test does not measure statistical significance and only measures and standardizes the size of a difference between two mean values. Thus, the Cohen's *d* test only measures the extent of a difference, i.e., the "effect size" between the mean of a test group and the mean of a comparison group.
- Whether the Department finds the size of the difference to be "small" or "large" is insignificant, because it is not measured in relation to anything but the standard deviation of the population being studied. Such a measurement is arbitrary because to find that a difference is large does not necessarily mean that the difference is statistically significant.
- Even with the Department's use of the "large" (i.e., 0.8) effect size, this is a lower threshold than the one standard deviation that was used by the Department in its Nails test.[105] Accordingly, the "loose" standards of the Nails test have been made even lower in the Department differential pricing analysis.
- The Department cannot necessarily apply the Cohen's *d* test whenever it has "at least two observations." Having at least two observations in each of two groups does not necessarily allow for a statistically meaningful conclusion about the difference between the means of those two groups.
- The t-test is the more traditional and widely recognized test for determining whether the difference between two mean values is statistically significant. In contrast to the Cohen's *d* test, which serves a narrower purpose to standardize a measure of the size difference, the t-test is the basic way to measure whether the difference between two means is statistically significant. Because the Cohen's *d* test and the t-test measure different issues, the Department should apply both tests and find differential pricing only when both standards are satisfied, allowing the Department to ensure that a measured difference is both statistically significant and economically meaningful.
- The Department's differential pricing analysis incorrectly considers both positive and negative values of the Cohen's *d* coefficient rather than only positive values that may suggest targeting. The Department's analysis allows higher priced US sales transactions to the allegedly target to provide evidence suggesting possible injurious differential pricing whereas the entire purpose of the statute is to address lower priced sales. Both positive and negative values of the Cohen's *d* coefficient are treated as equivalent; higher prices are being treated in the Department's analysis in the same manner as lower prices (i.e., dumped sales). The Department should consider only the positive values of the

[105] See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008) (Nails), and as modified in Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) ("Wood Flooring").

Cohen's *d* coefficient (i.e., lower priced sales) to avoid overstating the quantity of sales allegedly targeted. To not make this change would render the Department's interpretation contrary to the statute.

- The Department's analysis determines variance based on a simple average rather than on a weighted average. By using a simple average, the results are distorted because too much weight is given to the variance from the allegedly targeted groups, which are often going to be smaller and with lower variance. In contrast, a weighted average approach would adjust for differences in the sizes of the groups being compared.
- The Department failed to adhere to the statutory mandate to explain why the standard comparison method cannot be utilized; it interpreted section 777A(d)(1)(B) of the Act simply to require the calculation of three different weighted-average dumping margins. If the difference between the standard comparison method and the applicable methodology is more than 25 percent, then the Department concludes that use of the standard comparison method cannot account for the pricing differences. This is a results-oriented tautology that cannot be what the framers of the targeting provision intended. Use of a pre-determined formula does not satisfy the requirement to "explain why."[106]
- The Department should not apply the alternative comparison method to all U.S. sales, but must limit its application to those transactions meeting the definition of differential pricing. By applying the A-to-T comparison method to all U.S. sales in other proceedings, the Department has ignored the notion that "pattern" and "differ significantly" relate to a subset of allegedly targeted sales, and not to the entire sales universe; has failed to explain why such differences cannot be taken into account.

Petitioners' Rebuttal:

- Jacobi's arguments that the differential pricing analysis is inconsistent with the statute are all arguments previously addressed by the Department. The Department has not ignored important statutory terms in its application of the differential pricing analysis and has found the Cohen's *d* test to be a recognized statistical measure.
- The Department properly measured significant price differences using both positive and negative values of the Cohen's *d* coefficient.
- The Department reasonably exercised its authority in applying a simple average of the variances of the test and comparison groups rather than a weighted average.
- The Department is not required to limit application of the alternative methodology only to those sales that pass the differential pricing test because: 1) the Department properly explained why use of an alternative comparison method was necessary in this case; and 2) the Department is not required to limit the A-to-T comparison method to those transactions that meet the definition of differential pricing.
- Therefore for the final results, if more than 66 percent of Jacobi's U.S. sales pass the Cohen's *d* test, then the Department should apply an alternative comparison method to all U.S. sales consistent with its new policy.

Department's Position: The Department disagrees with Jacobi that the differential pricing analysis is unreasonable or arbitrary. To the contrary, and as explained in the Preliminary

[106] Jacobi cites to Chang Chun Petrochemical Co., Ltd. v. United States, 906 F. Supp. 2d 1369 (CIT 2013).

Results, the Department continues to develop its approach pursuant to its authority to address potential masked dumping.[107] In carrying out this statutory objective, the Department determines whether "there is a pattern of export prices (or constructed export prices) for comparable merchandise that differs significantly among purchasers, regions, or periods of time, and…. why such differences cannot be taken into account using {the A-to-A or T-to-T comparison method}."[108] With the statutory language in mind, the Department has relied on the differential pricing analysis to determine whether these criteria are satisfied such that application of an alternative methodology is appropriate.[109]

Jacobi presents several arguments regarding the Department's differential pricing analysis in the Preliminary Results. As an initial matter, we note that Jacobi's arguments have no grounding in the language of the statute. Jacobi does not argue that the Department's reliance on the Cohen's *d* test violates the statutory language. Rather, Jacobi advocates for an alternative approach and puts forth several reasons why it believes the Department should modify its approach from the Preliminary Results. There is nothing, however, in the statute that mandates *how* the Department measure whether there is a pattern of EPs that differs significantly. To the contrary, carrying out the purpose of the statute here is a gap filling exercise by the Department. As explained in the Preliminary Results and below, the Department's differential pricing analysis is reasonable, and the use of Cohen's *d* test as a component in this analysis is in no way contrary to the law.

According to Jacobi, it is insufficient for the Department to determine that a "significant difference" exists, despite the fact that this is the precise statutory language. Jacobi claims that the difference must also be shown to have "statistical significance" before the Department may consider use of the alternative methodology. Jacobi claims that the Department must employ the t-test to determine statistical significance in order for the Department's analysis to be lawful. Jacobi's claim has no basis in the statutory language, which only requires a finding of a pattern of prices that differ "significantly." The statute does not require that the difference be "statistically" significant, only that it be significant. Jacobi fails to demonstrate that the Department's reliance on the Cohen's *d* test, which is a generally recognized statistical measure of effect size, is unreasonable and that some higher threshold, not enumerated in the statutory language, must be satisfied.

Nothing in Jacobi's submitted arguments undermines the Department's reliance on the Cohen's *d* test. Jacobi's reliance on the article "It's the Effect Size, Stupid" does not undermine the validity of the Cohen's *d* test or the Department's reliance on it to satisfy the statutory language.[110] Interestingly, the first sentence in the abstract of the article states: Effect size is a simple way of quantifying the difference between two groups <u>and has many advantages over the use of tests of</u>

[107] See Preliminary Results, and accompanying Decision Memo at 20.
[108] See section 777A(d)(1)(B) of the Act (emphasis added).
[109] See 19 CFR 351.414(c)(1).
[110] See Jacobi's Case Brief dated September 5, 2013, ("Jacobi's Case Brief"), at 50-55; see also Letter from Jacobi, "Rebutting Factual Information," dated May 13, 2013 at Attachment A, Coe, "It's the Effects Size, Stupid: What effect size is and why it is important," Paper presented at the Annual Conference of British Educational Research Association (September 2002), http://www.leeds.ac.uk/educol/documents/00002182.htm.

statistical significance alone.[111] Effect size is the measurement that is derived from the Cohen's *d* test. Although Jacobi argues that effect size is a statistic that is "widely used in meta-analysis," we note that the article also states that "{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a *true measure of the significance of the difference*."[112] The article points out the precise purpose for which the Department relies on the Cohen's *d* test to satisfy the statutory language, to measure whether a difference is significant. To the extent Jacobi cites to page five of Coe's article to argue that "significance" is often meant to imply "statistical significance," the author's comment relates to the use of the term "significance" in the context of the field of statistics, not in the context of statutes written by Congress. We note that this paper was presented at an Educational Research Conference,[113] where the goals and objectives for statistical analysis are distinct from the Department's purposes of measuring a pattern of prices that differ significantly for a given population of U.S. sales. If Congress had intended to require a particular result be obtained with a t-test to ensure the "statistical significance" of price differences that mask dumping as a condition for applying an alternative comparison method, Congress presumably would have used language more precise than "differ significantly." The Department, tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, reasonably does not agree with Jacobi's that the term "significantly" in the statute can mean only "statistically significant", which in turn can only be determined by application of a t-test. The law includes no such directive. The analysis employed by the Department, including the use of the Cohen's *d* test, reasonably fills the statutory gap as to how to determine whether a pattern of prices "differ significantly." Further, the use of the t-test as well as other statistical measures is to determine from a sample (i.e., the data at hand) of a larger population an estimate of what the actual values (e.g., the mean or variance) of the larger population may be with a "statistical significance" attached to that estimate. However, the Department's use of the Cohen's *d* test is based on the entire population of U.S. sales by the respondent, and, therefore, there are no estimates involved in the results and accordingly "statistical significance" is not a relevant consideration.

We disagree with Jacobi that information contained in the Wikiversity webpage is persuasive authority that undermines the Department's determination to use the Cohen's *d* test. Jacobi cites to the Wikiversity webpage on "Effect Size" to conclude that "the Cohen's *d* test serves as a compliment for, but not a replacement for traditional tests of statistical significance."[114] Here again, Jacobi's argument assumes that the statutory term "significantly" can only refer to "statistical significance." On the contrary, the Department has chosen to make use of a generally recognized measure of effect size in a practical analysis of an exporter's pricing data to make a determination the statute calls upon the Department to make.

[111] See Letter from Jacobi, "Rebutting Factual Information," dated May 13, 2013 at Attachment A, Coe, "It's the Effects Size, Stupid: What effect size is and why it is important," Paper presented at the Annual Conference of British Educational Research Association (September 2002), http://www.leeds.ac.uk/educol/documents/00002182.htm.
[112] See id, at 5 (emphasis added).
[113] See Jacobi's Case Brief, at 50; see also Letter from Jacobi, "Rebutting Factual Information," dated May 13, 2013 at Attachment A, Coe, "It's the Effects Size, Stupid: What effect size is and why it is important," Paper presented at the Annual Conference of British Educational Research Association (September 2002).
[114] See Jacobi Case Brief, at 52; see also Letter from Jacobi, "Rebutting Factual Information," dated May 13, 2013 at Attachment A, "Effective Size" excerpts from Wikiversity, date March 11, 2013.

Jacobi's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary is incorrect.[115] In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what constitutes a large effect.[116] Although Jacobi focuses on this excerpt for the proposition that the "guidelines are somewhat arbitrary," the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted."[117] The author further explains that the Cohen's *d* test is a "commonly used measure{}" to "consider the difference between means in standardized units."[118] At best, the article may indicate that although the Cohen's *d* test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Jacobi contends, that the Cohen's *d* test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.

Jacobi relies on excerpts from the above mentioned articles to argue that characterization of a difference as, for example, "large," is dependent on the standard deviation to which it is compared. Such concern, however, is alleviated in a situation where sampling is not used and the universe of data is known. For that reason, Jacobi's claim that a "measured difference might be completely unreliable and completely a construct of the *small sample size* and random noise in the data" is not of concern when using Cohen's *d* in the context of the differential pricing analysis.[119] When using the Cohen's *d* test, the Department should have before it all reported sales from a company during the period of review, rather than a sample of those sales. For example, Coe notes that "{i}deally, in calculating effect-size one should use the standard deviation of the full population, in order to make comparisons fair."[120] The Cohen's *d* test is run on a company's entire population of U.S. sales, thereby eliminating all uncertainty that may result from relying on a sample of data. For example, in a typical case an exporter reports all of its sales made to the United States of the subject merchandise. Given that the Department has the entire population of data in each case, concerns about sampling errors are simply misplaced.

Contrary to Jacobi's claim, the statute does not require that the Department consider only lower priced sales in the differential pricing analysis. The Department has the discretion to consider sales information on the record in its analysis and to draw reasonable inferences as to what the data show. Contrary to Jacobi's claim, it is reasonable for the Department to consider both lower priced and higher priced sales in the Cohen's *d* analysis because higher priced sales are equally capable as lower priced sales to create a pattern of prices that differ significantly. Further, higher priced sales will offset lower priced sales, either implicitly through the calculation of a weighted-average price or explicitly through the granting of offsets, that can mask dumping. The statute states that the Department may apply the A-to-T comparison method if "there is a *pattern of export prices* . . . for comparable merchandise that *differ* significantly among purchasers, regions, or periods of time," and the Department "explains why *such differences* cannot be taken into

[115] See id., at 50.
[116] See Letter from Jacobi, "Rebutting Factual Information," dated May 13, 2013 at Attachment A, David Lane et al., Chapter 19 "Difference Between Two Means."
[117] See id.
[118] See id.
[119] See id., at 149 (emphasis added).
[120] See Coe, at 7.

account" using the A-to-A comparison method.[121] The statute directs the Department to consider whether a pattern of prices differ significantly. The statutory language references prices that "differ" and does not specify whether the prices differ by being lower or higher than the remaining prices. The statute does not provide that the Department considers only higher priced sales or only lower priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. The Department has explained that higher priced sales and lower priced sales do not operate independently; all sales are relevant to the analysis.[122] Higher or lower priced sales could be dumped or could be masking other dumped sales—this is immaterial in the Cohen's *d* test and in answering the question of whether there is a pattern of EPs that differ significantly because this analysis includes no comparisons with NVs and section 777A(d)(1)(B)(i) of the Act contemplates no such comparisons. By considering all sales, higher priced sales and lower priced sales, the Department is able to analyze an exporter's pricing practice and to identify whether there is a pattern of prices that differ significantly. Moreover, finding such a pattern of prices that differ significantly among purchasers, regions, or periods of time, signals that the exporter is discriminating between purchasers, regions, or periods of time within the U.S. market rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in a discriminating pricing behavior, there is cause to continue with the analysis to determine whether the A-to-A method or the T-to-T method can account for such pricing behavior. Accordingly, both higher and lower priced sales are relevant to the Department's analysis of the exporter's pricing behavior.

Jacobi argues that the Department should use a weighted average rather than a simple average of the variances for the test and comparison groups when calculating the pooled standard deviation of the Cohen's *d* coefficient.[123] Jacobi claims that the correct approach is a weighted average, based on the frequency of observations, to adjust for differences in sizes between the test and comparison groups, and that a simple average gives too much weight to the variance from the test groups.[124] As explained above with respect to other issues, there is no statutory directive with respect to how the Department should determine whether a pattern of EPs that differ significantly exists, let alone how to calculate the pooled standard deviation of the Cohen's *d* coefficient. The Department's intent is to rely on a reasonable approach that affords predictability. The Department finds here that the best way to accomplish this goal is to use a simple average (i.e., giving equal weight to the test and comparison groups) when determining the pooled standard deviation. By using a simple average, the respondent's pricing practices to each group will be weighted equally, and the magnitude of the sales to one group does not skew the outcome (although we note that within both the test group and comparison group, the Department uses weight averaging when calculating the variance for each group). Jacobi provides an example that it claims demonstrates that the Department is "over weighing" the test group.[125] Jacobi's example attempts to demonstrate that the simple average approach leads to

[121] See section 777A(d)(1)(B) of the Act (emphasis added).
[122] See Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) ("Plywood") and accompanying IDM at Comment 5.
[123] See Jacobi's Case Brief, at 60-63.
[124] See id.
[125] See id.

distorted results.[126] This example, however, is results oriented and actually provides further support for the Department's use of a simple average. If, in Jacobi's hypothetical, the standard deviations are reversed between the test and comparison groups, the exact opposite result is derived. The Department is not persuaded that the results yielded by this example based on hypothetical data demonstrate that the Department's proposed approach is unreasonable generally or as applied in this administrative review. Therefore, we disagree with Jacobi's claim that the proper approach is to account for differences in the size of each group. Rather, the Department finds it reasonable to use a simple average, in which the respondent's pricing practices to each group will be weighted equally, and the magnitude of the sales to one group does not skew the outcome.

In sum, Jacobi has presented a suggested alternative methodology for the Department to employ. Jacobi's arguments, however, fall short of demonstrating that the Department's current methodology and use of the Cohen's *d* test does not comply with the statute, fails to address the requirements of section 777A(d)(1)(B)(i) of the Act, or is unreasonable.

Jacobi claims that the Department has failed to articulate a reasonable explanation as to why using the default A-to-A comparison method cannot account for the pricing differences found, because it has interpreted section 777A(d)(1)(B)(ii) of the Act as simply requiring the calculation of weighted-average dumping margins using the A-to-A comparison method and an alternative comparison method. Thus, Jacobi argues that use of predetermined formulas does not satisfy the requirement to explain "why" the standard comparison method cannot account for the observed pricing behavior. Jacobi also claims that an alternative comparison method should be applied only to the U.S. sales found to have been differentially priced, and that it cannot be applied to all U.S. sales.

We disagree with Jacobi. As we explained in the Preliminary Results, if the difference between the A-to-A and A-to-T calculations is meaningful, this demonstrates that the A-to-A method cannot account for such differences and, therefore, an alternative method would be appropriate.[127] The Department has determined that 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 A-to-A method and the appropriate alternative method, or 2) the resulting weighted-average dumping margin moves across the de minimis threshold. Here such a meaningful difference existed for Jacobi because when comparing Jacobi's weight-averaged dumping margin calculated pursuant to the A-to-A comparison method and an alternative comparison method based on applying the A-to-T comparison method to the U.S. sales which pass the Cohen's *d* test and applying the A-to-A comparison method to the U.S. sales which do not pass the Cohen's *d* test, the calculation using the appropriate alternative comparison, the calculation using the appropriate comparison method moves Jacobi's weight-averaged dumping margin across the de minimis threshold.[128] This threshold is reasonable

[126] See id.
[127] See Preliminary Results, and accompanying Decision Memo at 21.
[128] See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Emeka Chukwudebe, Case Analyst, Office V, re: Final Results Analysis Memorandum for Jacobi Carbons AB in the Fifth Review of Certain Activated Carbon from the People's Republic of China," dated concurrently with this memorandum ("Jacobi's Final Analysis Memo") at 1 and Attachment III.

because when comparing the weighted-average dumping margins calculated using the two comparison methods allows the Department to quantify the extent to which the A-to-A comparison method cannot take into account different pricing behaviors exhibited by the exporter in the U.S. market.

In addition, we disagree with Jacobi that we used the A-to-T method for too large a percentage of its U.S. sales. When the criteria for application of the A-to-T method are satisfied, section 777A(d)(1)(B) of the Act does not limit application of the A-to-T method to certain transactions. Instead, the provision expressly permits the Department to determine dumping margins by comparing weighted-average NVs to the EPs (or CEPs) of individual transactions. Although the Department does not find that the language of section 777A(d)(1)(B) of the Act mandates application of the A-to-T method to all sales (or even to any sales), it does find that this interpretation is a reasonable one and is more consistent with the Department's approach to the selection of the appropriate comparison method under section 777A(d)(1) of the Act.

In the Preliminary Results, the Department explained that the differential pricing analysis relied on a tiered approach to applying an alternative comparison method. Depending on the extent of the pattern of prices that differ significantly, the Department applied the A-to-T comparison method to either all U.S. sales, a subset of U.S. sales, or no U.S. sales:

> If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of export prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative 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 identified pattern of export prices that differ significantly support consideration of the application of an average-to-transaction method to those sales identified by the Cohen's *d* test as part of the pattern of significant price differences as an alternative to the average-to-average method. 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.[129]

The Department finds that this approach is reasonable because whether, as an alternative methodology, the A-to-T comparison method is applied to all U.S. sales, a subset of U.S. sales, or no U.S. sales, depends on what percentage of U.S. sales pass the Cohen's *d* test. Thus, there is a direct correlation between the U.S. sales that establish a pattern of EPs that differ significantly and to what portion of the U.S. sales the A-to-T comparison method is applied.

[129] See Preliminary Results, and accompanying Decision Memo at 20-21.

The Department disagrees with Jacobi's claim that the Department's analysis with respect to section 777A(d)(1)(B)(ii) of the Act will be a meaningless, self-fulfilling determination. In Xanthan Gum from the PRC,[130] Xanthan Gum from Austria,[131] and CWP from Thailand,[132] the Department found that a pattern of prices that differ significantly existed for four different respondents, yet the A-to-A comparison method could account for such differences and the Department used the A-to-A comparison method to calculate the weighted-average dumping margins for Fufeng, Deosen, JBL and Saha Thai in their respective final determination of investigation or final results of review. For these proceedings above, the Department did not find a meaningful difference in the weighted-average dumping margins calculated using the A-to-A comparison method and an alternative comparison method. When using the A-to-A comparison method, dumping may be masked by explicit offsetting when aggregating the comparison results for the averaging groups, as well as implicit offsetting within the averaged EPs (or CEPs) within each averaging group. Comparing the weighted-average dumping margins calculated using the two comparison methods allows the Department to quantify the extent to which the A-to-A comparison method cannot take into account different pricing behaviors exhibited by the exporter in the U.S. market.

With regard to Jacobi's arguments that the Department should not apply the A-to-T comparison method to all U.S. sales when more than 66 percent or more of total sales pass the differential pricing test, these arguments are irrelevant under the facts of this case. Specifically, based on the facts of this case, the Department has applied the A-to-T comparison method only to Jacobi's U.S. sales found to have passed the Cohen's *d* test, and it has applied the A-to-A comparison method to Jacobi's other U.S. sales. For the reasons discussed immediately above, this application of A-T to a limited number of Jacobi's sales is reasonable.

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[130] See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) ("Xanthan Gum from the PRC"), and accompanying Memorandum to the File from Brandon Farlander, International Trade Compliance Analyst, Office 4, AD/CVD Operations, "Final Determination Analysis Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) and Shandong Fufeng Fermentation Co., Ltd.," ("Fufeng") (Public Version) at page 6 (May 28, 2013); and Memorandum to the File from Erin Kearney, International Trade Compliance Analyst, Office 4, AD/CVD Operations, "Final Determination Analysis Memorandum for Deosen Biochemical Ltd.," ("Dosen") (Public Version) at page 6 (May 28, 2013).

[131] See Xanthan Gum From Austria: Final Determination of Sales at Less Than Fair Value, 78 FR 33354 (June 4, 2013) ("Xanthan Gum from Austria"), and accompanying Memorandum To The File, From Karine Gziryan, International Trade Analyst, Office 4, AD/CVD Operations, and Drew Jackson, International Trade Analyst, Office 4, AD/CVD Operations, Through Robert Bolling, Program Manager, Office 4, AD/CVD Operations, "Antidumping Duty Investigation of Xanthan Gum From Austria: Final Determination Margin Calculation for Jungbunzlauer Austria AG" ("JBL") (Public Version) at page 14 (May 28, 2013).

[132] See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 65272 (October 31, 2013) ("CWP from Thailand"), and accompanying Memorandum to the File From Jun Jack Zhao, International Trade Compliance Analyst, AD/CVD Enforcement, Office 7, Through Mark Hoadley, Program Manager, AD/CVD Enforcement, Office 7, "Final Results of the Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand: Analysis Memorandum for Saha Thai Steel Pipe (Public) Company, Ltd." at pages 2-3 (October 23, 2013).

Comment 5: Whether to Include Indonesian Imports in GTA Data

Jacobi's Arguments:

- While in the Preliminary Results the Department disregarded imports from Indonesia, South Korea, Thailand, and India because these countries maintain broadly available, non-industry specific export subsidies, because it found it reasonable to infer that all exporters from these countries may have benefitted from these subsidies, the Department should reconsider this conclusion with respect to Indonesia. There is no reasonable basis to suspect that Indonesian producers benefit from broadly available, non-industry specific export subsidies, and thus to exclude Indonesian import data when calculating SVs.
- The U.S. Trade Representative's ("USTR's") National Trade Estimates ("NTE") support the conclusion that Indonesia provides no generally available export subsidies. According to the USTR, Indonesia's export subsidy programs ended in 2004.
- Evidence from the World Trade Organization ("WTO") confirms that Indonesia was required to eliminate all export subsidies by January 1, 2003, according to its obligations under the WTO SCM Agreement, and the WTO Secretariat's 2007 Trade Policy Review Mechanism Report ("TPRM Report") of Indonesia confirmed no export subsidies. The Department's countervailing duty ("CVD") investigations of Indonesian exports actually support the conclusion that Indonesia does not provide generally available export subsidies. Specifically, since 2000, there have been only four CVD investigations of imports from Indonesia by the Department, and export subsidies were only alleged in the 2001 investigation but found not utilized.[133] In the other three CVD investigations for Indonesia, there were no allegations of export subsidies and no evidence that any were discovered in these investigations.[134]
- Based on the above evidence, for the final results, the Department must not reject Indonesian import data to value direct and packing materials.

Petitioners' Rebuttal:

- The Department correctly excluded import data from Indonesia in calculating SVs.
- The Department has considered and rejected arguments similar to Jacobi's in prior cases such as Xanthan Gum from the PRC.[135]
- The Department should continue to exclude imports from Indonesia in its calculation of SVs of carbonized material.

Department's Position: The Department agrees with Petitioners and for these final results, continues to exclude imports from Indonesia in calculating the SVs. In the Preliminary Results, the Department followed its practice when valuing factors of production ("FOP") using import

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[133] Jacobi cites to the Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia, 66 FR 49637, 49639 (September 28, 2001).

[134] See Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia, 71 FR 47174 (August 16, 2006) ("Certain Lined Paper Products from Indonesia"); Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007) ("Coated Free Sheet Paper from Indonesia 2007"); and Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination, 75 FR 59209 (September 27, 2010) ("Coated Paper from Indonesia 2010").

[135] See Xanthan Gum from the PRC and accompanying IDM at Comment 4.

statistics for the surrogate country of excluding imports from Indonesia, South Korea, Thailand, and India because those countries maintain broadly available, non-industry specific export subsidies.[136] As such, the Department has found that it is reasonable to infer that all exporters from Indonesia, South Korea, Thailand, and India may have benefitted from these subsidies. This practice has been upheld by the Court.[137]

Jacobi argues that the Department did not have a sufficient basis for reaching this conclusion with respect to imports from Indonesia in the Preliminary Results, and that record evidence now demonstrates that there is no reasonable basis to suspect that Indonesian exporters benefit from broadly available, non-industry specific export subsidies.

As Jacobi correctly states, the Department does not use SV data which it has reason to believe or suspect may be dumped or subsidized.[138] Guided by the legislative history, the Department's practice is not to conduct a formal investigation to ensure that such values are not dumped or subsidized.[139] Instead, the Department bases its decision on information that is available to it at the time it makes its determination.[140] However, we disagree with Jacobi's assertion that in the instant investigation there is not sufficient evidence on the record to believe or suspect that Indonesia maintains broadly available export subsidies.

Jacobi objects to the Department's reliance on the 2005 sunset review of the CVD order on certain cut-to-length carbon quality steel plate from Indonesia to exclude imports from Indonesia from the information used to value Jacobi's FOPs as the sunset review is not close enough in time to this POR, undercutting the reasonableness of relying it.[141] Jacobi also maintains that because in the sunset review the Department received no response from the Government of Indonesia or other respondent interested parties, the sunset review reflects the absence of positive information regarding the presence of generally available export subsidies in Indonesia. However, the Department determined that the lack of any response, instead of reflecting an absence of positive information regarding the presence of generally available export subsidies, as suggested by Jacobi, demonstrates just the opposite.[142] In other words, having already found countervailable subsidies that resulted in the issuance of the order, the Department explained that it "did not receive a response from the foreign government or from any other respondent

[136] See id.
[137] See, e.g., China National Machinery Import & Export Corp. v. United States, 293 F. Supp. 2d 1334, 1339 (CIT 2003) (aff'd, 104 Fed. Appx. 183 (Fed. Cir. 2004)).
[138] See, e.g., Plywood, 78 FR 25946.
[139] See Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100-576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24; see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758 (June 4, 2007) unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007).
[140] See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 24552, 24559 (May 5, 2008), unchanged in Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008) ("PET Film 2008").
[141] See Jacobi's Case Brief dated September 5, 2013, at page 27.
[142] See Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005) ("CTL Plate"), and accompanying IDM at Issue 1.

interested party," and "{a}bsent argument or evidence to the contrary, we find that countervailable programs continue to exist and be used."[143]

Jacobi also remarks that the Department conducted no administrative reviews of the Indonesian Plate CVD order prior to completion of the expedited sunset review in 2005, claiming this supports its argument that there is no positive evidence of the existence of generally available export subsidies in Indonesia. Once again, the Department finds that these facts support the opposite conclusion. The Department explained that because there had been no administrative reviews, there had been "no evidence submitted to the Department that any programs found to be countervailable in the investigation have been terminated," and "that countervailable programs continue to exist and be used."[144] Thus, in spite of Jacobi's argument that there is no information on the existence of generally available export subsidies and, thus, no substantial, specific, and objective evidence to support a reason to believe or suspect the existence of such subsidies, the Department finds otherwise. Not only did the Department find that countervailable programs exist and are used, it also explained the nature of the subsidy. Specifically, the Department described the Rediscount Loan Program: "The sale of the letters of credit and export drafts provides companies with working capital at lower interest rates than they would otherwise pay on short-term commercial loans. This program constitutes an export subsidy."[145]

Jacobi also argues that the USTR's NTE reports support the conclusion that Indonesia does not provide generally available export subsidies. According to Jacobi, a review of the annual NTE reports for the period since the entry into force of the WTO SCM Agreement confirms that Indonesia no longer grants export subsidies, claiming that these reports indicate that it is questionable whether the Indonesian export subsidies have been generally available for exporters since 1996 at least, but that it is clear that these export subsidies are no longer available and have not been available at least since 2004. Contrary to Jacobi's claims, we find that the USTR NTE reports do not support such a conclusive finding. The 2005-2007 NTE reports found that in 2004 the Indonesian government ended "several programs that offered subsidized loans to agriculture and small and medium businesses to support exports." This specific finding does not lead to the conclusion that all export subsidies ended, especially those for large companies and other industries that are not mentioned. More recently, in 2005, the Department still found that active export subsidies exist.[146] Lastly, and as Jacobi similarly argues on other issues, the Department does not agree that the absence of any discussion regarding Indonesia's export subsidy programs since 2007 in the USTR reports necessarily means that no export subsidies exist. Rather, the Department finds that the absence of affirmative evidence does not allow for such a conclusion.

Jacobi also states that in addition to the USTR's NTE reports, the Department has also looked to evidence contained in various WTO materials to support its belief or suspicion that countries

[143] See id.
[144] See id., and accompanying IDM at Issue 1; see also Certain Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, and the Republic of Korea: Final Results of Expedited Sunset Review, 76 FR 12702 (March 8, 2011).
[145] See CTL Plate, and accompanying IDM at Issue 3.
[146] See id.

provide generally available, non-industry-specific export subsidies.[147] However, Jacobi maintains that reliance on such materials in the instant investigation confirms that Indonesia does not provide generally available, non-industry-specific export subsidies. As support for its argument, Jacobi uses the same flawed logic that it made in pointing to the lack of a response from the Government of Indonesia or any respondent on the record of the sunset review discussed above. That is, the record of the sunset review reflected the absence of positive information regarding the presence of generally available export subsidies in Indonesia. Similarly, Jacobi states that pursuant to the WTO SCM Agreement concluded during the Uruguay Round of multilateral trade negotiations which established the WTO, the time period for Indonesia to meet the requirements of the agreement and eliminate all export subsidies was January 1, 2003 and, according to Jacobi, no WTO Member has alleged either in the Committee on Subsidies and Countervailing Measures or under the WTO Dispute Settlement Understanding that Indonesia currently maintains export subsidies. However, we do not agree that this affirmatively demonstrates that Indonesia has eliminated all export subsidies, any more than the absence of positive information regarding the presence of generally available export subsidies in the sunset review or in the USTR's NTE reports means that countervailable subsidies ceased to exist.

Jacobi argues that the absence of current export subsidies in Indonesia is further confirmed by the 2007 TPRM Report of Indonesia conducted by the WTO Secretariat.[148] Jacobi states that the TPRM Report is something that the Department has found probative as evidence to believe or suspect that a country maintains generally available, non-industry specific export subsidies, citing Fuyao II, 29 C.I.T. at 117. According to Jacobi, the TPRM Report, issued on November 6, 2007, stated that in 2004, the Indonesian Government ended several credit programs that offered subsidized loans for agriculture and small- and medium-sized businesses to support exports. While Jacobi notes that the report describes other assistance for exports, Jacobi argues that these are either not in the form of countervailable subsidies or not generally available to exporters, or both. However, notwithstanding Jacobi's claims, we find that the 2007 TPRM Report does contain evidence of generally available, non-industry-specific export subsidies in Indonesia. Specifically, the report explains:

> The state-owned Bank Export Indonesia (BEI), which opened in September 1999, provides pre-shipment and post-shipment financing facilities for exporters, which was formerly provided by Bank Indonesia. BEI guarantees letters of credit and issues guarantees for domestic exporters who need loans from local banks. In August 2005, BEI announced that it would serve as a financier for export credits rather than as a guarantor, since capital markets have increasingly filled the latter role.[149]

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[147] See Jacobi's Case Brief at page 32.
[148] See id.
[149] See TPRM section III.3.iii.(d)89 at 58, contained in Jacobi's Post-Prelim SV Submission, at Exhibit FSV-3 Part 7 at page 33.

Finally, Jacobi asserts that the Department's investigations of CVD in Indonesia support the conclusion that there are no generally available, non-industry-specific export subsidies provided by the Government of Indonesia. Jacobi claims that since 2000 there have been only four CVD investigations of imports from Indonesia, and in three investigations involving paper products from 2006-2010, there were no allegations of export subsidies and no evidence that export subsidies were discovered during the course of the investigations.[150] Jacobi argues that this is compelling evidence of the absence of generally available export subsidies during this period. The Department does not agree. The fact that there were no allegations of export subsidies in a specific proceeding involving the paper sector is not indicative of the absence of generally available, non-industry-specific export subsidies.[151] On the contrary, the Department continues to find that, as a result of the final results of the 2005 CTL Plate sunset review discussed above, where the Department found unequivocally that countervailable programs continue to exist and to be used, as well as the information from the 2007 TPRM Report showing that the state-owned BEI serves as financier of export credits, there is reason to continue to believe or suspect that exports from Indonesia may be subsidized.[152]

Surrogate Values

Comment 6: Carbonized Material Surrogate Value

Jacobi's Arguments:

- The Department should value carbonized materials using the average Philippine domestic prices from Cocommunity.[153]
- The plain language of the antidumping statute requires that the Department value FOPs using the best available information. Further, the CIT has rejected the Department's use of SVs derived from broad basket Harmonized Tariff Schedule ("HTS") category where more specific information was available.
- The record currently before the Department indicates that none of Jacobi's suppliers utilized wood or wood charcoal in producing the subject merchandise; rather, Jacobi's suppliers only used carbonized materials that are coal-based.
- The record contains expert reports indicating that wood charcoal was not and could not be used to produce the type of granular activated carbon sold by Jacobi in the U.S. market.
- The Department has recognized in past segments of this proceeding and in remand redetermination that coconut shell charcoal is the best alternative for coal-based carbonized material.
- The evidence on the record demonstrates that Cocommunity data contain broad market averages from the surrogate country, are contemporaneous, and are tax and duty exclusive.

[150] Jacobi cites Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia, 71 FR 47174 (August 16, 2006); see also Coated Free Sheet Paper from Indonesia 2007 and Coated Paper from Indonesia 2010.
[151] See, e.g., Xanthan Gum from the PRC , and accompanying IDM at Comment 3.
[152] See id.
[153] See Jacobi's Preliminary SV Submission, dated December 19, 2012 at Exhibit SV-5.

- The HTS category used to value carbonized materials did not include Philippine imports of coconut shell charcoal because the specific HTS category for coconut shell charcoal does not contain usable import data.
- The Philippine import data used by the Department in HTS heading 4402: "Wood Charcoal (Including Shell Or Nut Charcoal)" is unrepresentative of the Philippine coconut shell charcoal market and are not wood charcoal but activated carbon and lava rocks.

Petitioners' Rebuttal:
- The Department has correctly valued carbonized materials using import data for HTS heading 4402.
- Despite Jacobi's claims, wood and nutshell charcoal are used as feedstock to produce activated carbon.
- The supposed import data on hardcopy spreadsheets regarding HTS heading 4402 provided by Jacobi is not reliable, because it does not document the source of the data and does not appear to match the import data used by the Department and should not be used to undermine the Global Trade Atlas ("GTA") data.
- Imports under HTS heading 4402 include coconut shell charcoal from Japan as well as carbonized materials that are wood based and other materials; thus, the Department may appropriately rely on this information.
- Although Jacobi contends that there is only a small volume of non-excluded imports under HTS heading 4402, small volume alone does not undermine the quality of the data.

Department's Position: The Department agrees with Jacobi to value carbonized materials using coconut shell charcoal prices from Cocommunity, a coconut industry trade publication. In the Preliminary Results, the Department valued carbonized material inputs using Philippine import data from GTA reported under HTS heading 4402: "Wood Charcoal (Including Shell Or Nut Charcoal), Whether Or Not Agglomerated" because Cocommunity previously did not appear to represent a broad market average.[154]

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available and contemporaneous with the POR, and tax and duty exclusive.[155] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[156] While there is no hierarchy for applying the SV selection criteria, "the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' SV is for each input."[157]

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[154] See Preliminary Results, and accompanying Decision Memo at 27.
[155] See, e.g., First Administrative Review of Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010) ("PSF 2010") and accompanying IDM at Comment 1.
[156] See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005) and accompanying IDM at Comment 1.
[157] See, e.g., PET Film 2008 and accompanying IDM at Comment 2; see also Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Administrative Review, and Final Partial

Petitioners correctly state that activated carbon may be manufactured from wood or nut charcoal, in addition to coal. However, Jacobi has provided certifications from industry experts which state that activated carbon which meets certain specifications with regard to iodine level, density and hardness could not be produced from wood charcoal.[158] Further, the record demonstrates that the subject merchandise sold by Jacobi during the POR meet the specifications identified in the certifications, and that Jacobi has not sold subject merchandise produced from wood or nut charcoals.[159] As stated above, the Department undertakes to select the SV using the best available information that is on the record and that is product-specific. Further, the CIT has stated that product specificity must be the primary consideration in determining the best available information when considering SV selection.[160] In past decisions and on remand, because SV information specific to coal-based carbonized materials was not available, the Department has found coconut shell charcoal is the best available information with which to value respondents' coal-based carbonized materials, based on the product specifications.[161]

We agree with Jacobi that we should value coal-base carbonized materials using coconut shell charcoal prices found in Cocommunity. Cocommunity is a monthly trade publication from the Asian and Pacific Coconut Community ("APCC") which was established under the auspices of the United Nations. The APCC is an intergovernmental organization consisting of 15 member countries and accounts for 85-90% of the world production of coconut.[162] As stated above, we did not use Cocommunity in the Preliminary Results, because it previously did not appear to represent a broad-market average.[163] However, in its post-preliminary SV submission, Jacobi provided a certification from an official from the Philippine Coconut Authority, Philippine Department of Agriculture, stating that the price of coconut shell charcoal in the Visayas (the region identified in Cocommunity) is similar to that of Mindanao which is the largest coconut producing region in the Philippines.[164] Therefore, the prices for Visayas found in Cocommunity are representative of over 75% of the Philippines.[165] Consequently, the coconut shell charcoal prices are representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.[166]

Additionally,[167] Jacobi has provided the four Philippine 10-digit HTS numbers found under HTS subchapter 4402: 4402.00.00.01, 00.02, 00.03, and 00.09. HTS subchapter 4402: "Wood Charcoal (Including Shell Or Nut Charcoal), Whether Or Not Agglomerated" is a category which

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Recession of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) ("Crawfish 2002") and accompanying IDM at Comment 2.

[158] See Jacobi's Post-Preliminary SV Submission, dated May 28, 2013 at Exhibit FSV-1.

[159] See Jacobi's Section C Questionnaire Response, dated August 23, 2012, ("SCQR") at 2-8.

[160] See Taian Ziyang Food Co., Ltd. v. United States, 783 F.Supp.2d 1292, 1330, (CIT 2011).

[161] See Activated Carbon LTFV and accompanying IDM at Comment 16; see also "Final Results of Redetermination Pursuant to Court Remand," dated July 25, 2011, Carbon Remand, Slip Op. 11-21, at 10-11.

[162] See Jacobi's Preliminary SV Submission, dated December 19, 2012 at Exhibit SV-5.

[163] See Preliminary Results, and accompanying Decision Memo at 27.

[164] See Jacobi's Post-Preliminary SV Submission, dated May 28, 2013 at Exhibit FSV-1.

[165] See id.

[166] See PSF 2010, and accompanying IDM at Comment 1.

[167] Jacobi submitted information on spreadsheets regarding Philippine imports under HTS heading 4402. However, this information is unrevealing.

contains import data from the four sub-categories. Philippine HTS category 4402.00.0001 "Of Coconut Shell, Not Agglomerated," contains Philippine import data for Indonesia and Vietnam. The Department did not use import data reported under this Philippine HTS number in the Preliminary Results, because Indonesia and Vietnam are excluded from the Department's SV calculations.[168] Philippine HTS numbers 4402.00.0002 "Of Wood, Not Agglomerated" contains Philippine import data for Indonesia and HTS category 4402.00.0003 "Of Wood (Including Shell Or Nut), Agglomerated" contains no data.[169] The last Philippine HTS number 4402.00.0009: "Other," does not clearly identify the type of imports included in this sub-category.[170] Accordingly, it is reasonable to assume that Philippine import data reported under HTS subchapter 4402 does not contain imports of coconut shell charcoal.

Therefore, for the final results, we will use the average of the coconut shell charcoal prices found in Cocommunity. The prices found in Cocommunity are representative of a broad-market average, publicly available and contemporaneous with the POR, tax and duty exclusive and more specific to the input used by Jacobi's suppliers.[171]

Comment 7: Truck Freight

Cherishmet's Arguments:

- In the Preliminary Results, the Department valued foreign inland truck freight charges based on publicly available date from the Cost of Doing Business in Legazpi, Philippines ("Doing Business Legazpi"). This data fails to provide a broad market average for valuing truck freight charges.
- For the final results, the Department should value truck freight using data from the Confederation of Truckers Association of the Philippines, Inc. ("CTAP").
- The CTAP data provides a comprehensive database concerning prescribed truck freight charges for transporting containerized cargo in the Philippines. It provides discrete charges for two categories of container load (20 footer and 40 footer) covering a total of 111 routes, covering several destinations, and spread out all over the country.
- The Doing Business Legazpi data is limited to transportation of cargo from Legazpi to Manila and, thus, is based on one price point only. It is a much narrower set of data than the CTAP data, which provides a set of 222 price data points. Because the Doing Business data is based on one route only, it cannot be subjected to any serious analysis, as compared to the CTAP data. This is a compelling reason to prefer the CTAP data.
- If the Department selects the CTAP data for the final results, the Department should apply the weighted average methodology provided by Cherishmet for computing the unit average truck freight rate.[172]

Petitioners' Rebuttal:

[168] See Preliminary Results, and accompanying Decision Memo at 27.
[169] See Jacobi's Post-Preliminary SV Submission, dated May 28, 2013 at Exhibit FSV-1.
[170] See id.
[171] See id.; see also, e.g., Jacobi Section D Questionnaire Response for Datong Forward Activated Carbon Co., Ltd., dated September 19, 2012 at D-4.
[172] See Cherishmet Group's Post-Preliminary Surrogate Value Data ("Cherishmet's Post-Prelim SVS"), dated May 28, 2013, at Exhibit 1.

- The Department should reject the CTAP data and continue to use the freight surrogate value used in the preliminary results because: 1) the CTAP data only includes containerized cargo while data from Doing Business Legazpi also includes loose cargo shipments, 2) the average CTAP freight rates are not accurately reported, and 3) the weighted average calculation provided by Cherishmet is missing a significant amount of data.
- If the Department selects the CTAP data for the final results, the Department should use the corrected calculations provided by Petitioners.[173]

Department's Position: For the final results, the Department has determined that the Philippines CTAP truck rate data are the best available information on the record for valuing domestic truck rates. Section 773(c)(1) of the Act directs the Department to use "the best available information" from an appropriate market-economy country to value FOPs. In selecting the most appropriate SV, 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.[174] The Department's preference is to satisfy the breadth of the aforementioned selection criteria.[175] Moreover, 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 of valuing the FOPs.[176] As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[177]

The Department has selected the CTAP truck data because we find these rates to be a broad market average of actual truck freight rates charged in the Philippines, specific to the input being valued, publicly available and contemporaneous with the POR. The CTAP truck data contains more data points and represents truck rates from a larger representation of the Philippines than the Doing Business Legazpi single truck rate. Additionally, the Department has relied on CTAP data in other proceedings before the Department.[178]

Although Petitioners argue that the Doing Business Legazpi source represents "loose cargo" truck freight rate used by a respondent,[179] it is not clear from the evidence on the record whether

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[173] See Petitioners' Post-Preliminary Surrogate Value Comments ("Petitioners' Post-Prelim SV Comments"), dated June 7, 2013, at Exhibit C-1.
[174] See, e.g., First Administrative Review of Sodium Hexametaphosphate From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 64695 (October 20, 2010), and accompanying IDM at Comment 3.
[175] See id.
[176] See Certain Preserved Mushrooms from the PRC: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying IDM at Comment 1 ("Mushrooms from the PRC"); see also Crawfish 2002, and accompanying IDM at Comment 2.
[177] See Mushrooms from the PRC, accompanying IDM at Comment 1.
[178] See, e.g., Wood Flooring, and accompanying IDM at Comment 18; Steel Wire Garment Hangers From the People's Republic of China: Antidumping Duty Administrative Review, 2010-2011, 77 FR 66952 (November 8, 2012); unchanged in Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011, 78 FR 28803 (May 16, 2013).
[179] See Jacobi's Pre-Prelim SVS submission at Exhibit 9.

the truck freight used by the respondents is exclusively "loose cargo" or containerized. Further, the Department has a preference for calculating SVs based on a broad market average.[180] While Cherishmet argues that the CTAP data on the record provides 111 routes for both 20 foot and 40 foot containers for a total of 222 data points, we agree with Petitioners that CTAP truck data are incomplete. Although Cherishmet provided the CTAP truck rate price data for 111 Philippine truck routes, the record contains collaborated distance data for only 32 of the 111 routes.[181] Further, Cherishmet did not establish how it derived the container weights used in its truck freight SV calculation, whereas Petitioners provided documentation for the container weights used in its truck SV calculation.[182] Nevertheless, we continue to find that the CTAP truck data represents a broad market average, and is superior to the single truck rate available in Doing Business Legazpi. Additionally, we disagree with Cherishmet's contention that we should weight-average the CTAP truck data when calculating the truck SV. It is simply not practical to use the CTAP data to calculate a weight-average truck freight for each of the CTAP price data points because there is no evidence of the frequency of how common a particular route may be or the average load weight transported on those routes.

Therefore, for the final results, we will use the CTAP truck data because it is the best available information on the record as it represents a broad market average, is specific to the input and contemporaneous with the POR. To calculate the truck SV, we will calculate a simple average of the truck freights from CTAP for 32 destinations within the Philippines, and the driving distances for these 32 destinations. We will use the average truck rate of the 32 destinations for the 20 and 40 foot containers using the truck container weights provided by Petitioner.

Comment 8: Huahui's Carton Surrogate Value

Huahui's Argument:

- The Department should use Philippine import data for HTS heading 4819.10: "Cartons, Boxes & Cases Corrugated Paper & Paperbd" to value its "Carton 2" FOP rather than import data for HTS heading 4819.30 "Sacks and bags, having a base of a width of 40 cm or more" because Carton 2 is a carton not a sack.

No other party commented on this issue.

Department's Position: We agree with Huahui and, for the final results, we have updated the margin calculation for Huahui's input to use Philippine import data HTS heading 4819.10: "Cartons, Boxes & Cases Corrugated Paper & Paperbd" to value Carton 2.[183]

Comment 9: Steam

[180] See Mushrooms from the PRC and accompanying IDM at Comment 1.
[181] See Petitioners' Post-Prelim SV Comments at Exhibit C-3; Cherishmet's Post-Prelim SVS at Exhibit 1.
[182] See Petitioners' Post-Prelim SV Comments at Exhibit H-2.
[183] See "Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Senior Analyst, Office V, re: Final Results Analysis Memorandum for Ningxia Huahui Activated Carbon Co., Ltd. in the Fifth Review of Certain Activated Carbon from the People's Republic of China," dated concurrently with this memorandum ("Huahui Final Analysis Memo") at 2.

Albemarle's Arguments:

- The Department recently valued steam using South African GTA data in both the preliminary results of the 2011-2012 administrative review of Chlorinated Isos[184] and in the final results of the 2010-2011 administrative review in that case when it was unable to find a value in the Philippines, the designated surrogate country. For the final results, the Department should value steam using import data from South Africa for natural gas because the source used in the Preliminary Results is from one single source while the South African import data is country-wide.

No other party submitted comments regarding this issue.

Department's Position: We have followed the SV selection criteria as outlined above in Comment 7. For steam, during the Preliminary Results, the Department calculated steam using data from the 2011 Electrical Generating Authority of Thailand annual report of Glow Energy Public Company Limited ("Glow Energy"). Since the Preliminary Results, parties placed GTA import data from South Africa on the record to value steam.[185]

The Department prefers to value all inputs in one primary surrogate country.[186] However, there are no data from the Philippines with which to value this input as no party has placed this information on the record. Therefore, the Department must go outside of its primary surrogate country to select an SV. The Department has two choices on the record to value steam: 1) Thailand data from Glow Energy, or 2) GTA import data from South Africa for natural gas. [187]

First, 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.[188] Therefore, we consider both countries as having met this prong of the surrogate country selection criteria. Next, as noted in the Surrogate Country Memo, all countries mentioned above had significant exports of HTS numbers included in the scope of the order,[189] according to GTA export data, making them significant producers during the POR.

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[184] See 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 IDM at Comment 11.

[185] See Huahui's Post-Prelim Surrogate Value Submission ("Huahui's Post-Prelim SVS"), dated May 28, 2013, at Exhibit 1.

[186] See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010), and accompanying IDM at Comment 2B; see also Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004) ("Furniture from China"), and accompanying IDM at Comment 3.

[187] See id.

[188] 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"); see also, 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).

[189] See Surrogate Country Memo.

We also note that both sources are contemporaneous with the POR.[190] With regard to broad market average, we note while the data from Thailand is from a single source, the Department has previously found that data from GTA represents a broad market average and is tax and duty exclusive.[191] Therefore, in this case the GTA data from South Africa serves as better data than the data from Glow Energy. We note that the Department has recently used this information to value steam in Chlorinated Isos.[192] We further note that no party raised any concerns about valuing steam using GTA import data for natural gas (i.e., no party submitted rebuttal comments and argued that the GTA data is for a basket category, or unrepresentative of the factor, etc.), or concerns that the Department uses GTA import data for natural gas to value steam.

Therefore, because natural gas and steam have the same British Thermal Unit content and parties did not contest the equivalency of steam and natural gas, for the final results, the Department is using GTA import data from South Africa, an economically comparable country to the PRC that is a significant producer of identical or similar merchandise, to value steam rather than the single source pricing data from Thailand which is not based on a broad market average.[193]

Comment 10: Brokerage and Handling

A. Container Weight

Huahui's Arguments:

- Rather than basing the brokerage and handling SV on a 20-foot container with a dry weight of 10,000 kilograms ("kg"), the Department should use the more accurate dry weight ranges between 24.25 metric tons and 28.31 metric tons.
- Petitioners provide no evidence that Philippine container weights range from 5 to 15 metric tons. Rather, container weight information Petitioner placed on the record indicates container weights of 21.6 metric tons.

No other party commented on this issue.

Department's Position: We disagree with Huahui's arguments regarding the denominator for calculating movement expenses and will continue to use a 10,000 kg denominator for movement expenses, rather than Huahui's proposed denominator. In past cases when using the World Bank's Doing Business publications as the source for valuing movement expenses in other reviews, we have recognized that Doing Business reports a 10,000 kg container weight.[194] In Bedroom Furniture 2011, we determined that 10,000 kg is more appropriate because the survey directs participants to report brokerage and handling costs on a basis equivalent to 10 metric tons per container and the Department is deriving the brokerage and handling SV from the World

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[190] See Huahui's Post-Prelim SVS at Exhibit 1.

[191] See e.g., 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), and accompanying IDM at Comment 11.

[192] See Chlorinated Isos, and IDM at Comment 11.

[193] See id.

[194] See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review and Final Rescission, in Part, 77 FR 14495 (March 12, 2012) ("Tires 2012"), and accompanying IDM at Comment 11.

Bank's Doing Business in India survey compiled on this basis.[195] We note that the methodology employed in reporting prices between Doing Business in India and Doing Business in Philippines[196] are the same, and that using the 10,000 kg denominator is appropriate.[197] Finally, with respect to Huahui's comment regarding the container weights from Maersk and two logistics companies identified in its post-preliminary SV submission, as noted earlier, Doing Business, the source that we are using for valuing movement expenses, compiles and reports data on a 10,000 kg container weight basis rather than on a greater than 20,000 kg weight basis.[198] Similarly, with regard to the 21,600 kg container weight provided by Petitioners, the Doing Business source compiles its data based on 10,000 kg container weights; therefore, to use any other container weight would disrupt the integrity of the SV calculation because the brokerage and handling charges were collected on the basis of 10,000 kg containers. We note that our determination is based upon a standard calculation from a source used in many other proceedings, i.e., Doing Business.[199] Therefore, for the final results, we continue to use the 10,000 kg standard container weight for calculating movement expenses

B. Letter of Credit Fees

Huahui's Argument:

- Consistent with the CIT's opinion in Baroque Timber,[200] the Department should adjust brokerage and handling to exclude letter of credit fees.

No other party commented on this issue.

Department's Position: We disagree with Huahui's argument regarding letter of credit fees and will make no adjustments to the brokerage and handling SV. The Doing Business study information on the record does not establish how much of "the document preparation fees" are related to securing letters of credit and how much of those expenses relate to other components of brokerage and handling expense. We note that the World Bank instructs in its request for information to assume using letters of credit for its export expenses. However, there is no value attached with the assumed letters of credit on the record of this review.[201] Accordingly, without

[195] See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 76 FR 49729 (August 11, 2011) ("Bedroom Furniture 2011"), and accompanying IDM at Comment 6.
[196] See Huahui's SV submission, dated December 19, 2012 at Exhibit 13 Doing Business 2011: Philippines ("Doing Business in Philippines").
[197] See Certain Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011, 78 FR 16651 (March 18, 2013) ("Nails 2013"), and accompanying IDM at Comment 3R.
[198] See Tires 2012, and accompanying IDM at Comment 11, see also Huahui's SV submission, dated May 28, 2013 at Exhibit 2.
[199] See, e.g., Bedroom Furniture 2011, Tires 2012 and Nails 2013.
[200] Huahui cites Baroque Timber Industries (Zhongshan) Co., Ltd. v. U.S., 925 F.Supp.2d 1332, 1347-1348 (CIT 2013) ("Baroque Timber").
[201] See Since Hardware (Guangzhou) Co., Ltd. v. United States, 911 F. Supp. 2d 1362, 1378 (CIT 2013) (upholding the Department's decision not to deduct letter of credit expenses from brokerage and handling costs because letters of credit were not included in the listed expenses for document preparation, and "even if the letter of credit expenses are embedded…, the court agrees that without knowing the exact breakdown of the data included in the World bank report, {Commerce} can no more deduct a letter of credit expense than add extra expenses which Foshan Shunde incurred but are not reflected by the World Bank data").

values associated with assumed letters of credit, we could not make an adjustment to the brokerage and handling SV. In order to make such an adjustment, Hauhui should have provided the necessary information.[202] We note that it is the responsibility of the interested party to provide that information. Additionally, we note the Department has not, to date, issued its final remand redetermination in Baroque Timber and the CIT has not provided a final ruling on that case. For these reasons, we disagree that there is sufficient support warranting an adjustment to the values reflected in the Doing Business 2011: Philippines study.

Comment 11: Water

Albemarle's Comments:

- Data from the Philippines Cost of Doing Business in Camarines Sur ("Camarines Sur") is limited to only two cities, Naga City and Irira City.[203]
- For the final results, the Department should value water using data from the Philippine Local Water Utilities Administration ("LWUA") because: 1) this source provides both regional and provincial averages and thus is a country-wide source not limited to a single region in the Philippines; and 2) the Department previously determined this source to be publicly available, tax exclusive and country-wide data in other proceedings and has relied on it to calculate water SVs.

No other party commented on this issue.

Department's Position: We have followed the SV selection as outlined above in Comment 7. After reviewing both the Philippine data from Camarines Sur and LWUA, we have determined that both values are publicly available, from the primary surrogate country, and specific to the input in question. With respect to broad-market averages, we agree with Albemarle that the source used in the Preliminary Results is from one single source while the LWUA data is country-wide.[204] Thus, for these final results we will use data from LWUA to calculate water because it best satisfies the Department's SV selection criteria. We also note that the Department has recently used this information to value water in Bedroom Furniture 2011.[205]

Comment 12: Chemical Purity Adjustment

Huahui's Arguments:

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[202] "{a}lthough Commerce has authority to place documents in the administrative record that it deems relevant, 'the burden of creating an adequate record lies with [respondents] and not with Commerce.'" QVD Food Co. v. United States, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (quoting Tianjin Mach. Imp. & Exp. Corp. v. United States, 806 F. Supp. 1008, 1015 (CIT 1992)); see also Wash. Int'l Ins. Co. v. United States, 2009 Ct. Intl. Trade LEXIS 93, slip op no. 09-00078 at 11 n.12 (CIT July 29, 2009) ("It is the interested party to an administrative review who bears the burden of production on its claim"); Chia Far Indus. Factory Co. v. United States, 343 F. Supp. 2d 1344, 1362 (CIT 2004) ("Ultimately, the burden of creating an adequate record lies with the respondents, not Commerce").

[203] See Albemarle's Case Brief at 12, 13.

[204] See Huahui's Post-Prelim SV Submission, dated May 29, 2013, at Exhibit 3.

[205] See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part, 75 FR 5952 (February 5, 2010); unchanged in, Bedroom Furniture 2011.

- The Department should make purity level adjustments to the Philippine import data from GTA to account for the purity of Huahui's hydrochloric acid ("HCl") and sodium hydroxide ("NaOH").

No other party commented on this issue.

Department's Position: The Department disagrees with Huahui that any purity level adjustments are necessary to the Philippine import data from GTA. In the Preliminary Results, the Department valued Huahui's HCl and NaOH using Philippine import data from GTA.[206] In the past, the Department has adjusted the SV to reflect the concentration of the respondent's factor purity level if the record demonstrated that the two concentration levels were different and provided the necessary information to make the adjustment.[207] While Huahui has provided its HCl and NaOH purity levels, we note that the record does not indicate a specific concentration level for the Philippine import data and we are, therefore, unable to determine if the imports are at a different level of concentration than the HCl and NaOH used by Huahui. Absent such evidence, we have no basis for making an adjustment to the SV for concentration levels, and, accordingly have made no such adjustment for the final results.

Jacobi Company-Specific Issues

Comment 13: Adverse Facts Available for Certain Packing Factors

Jacobi's Comments:

- According to section 782(d) of the Act and the CIT, the Department must: 1) find the response to a request for information deficient; 2) provide the party an opportunity to explain or correct the deficiency; and 3) determine whether such explanation or correction is unsatisfactory or untimely. These requirements apply equally to a submission that is not timely filed as it does to a submission that does not contain complete information.
- Therefore, the Department should reverse its preliminary decision to apply AFA to PICA's FOPs because the Department did not allow Jacobi ample time to remedy the situation.

Petitioners' Rebuttal:

- The Department's application of AFA to PICA's packing FOPs is consistent with the statute and supported by record evidence.
- The Department originally provided Jacobi an opportunity to correct a deficiency which included an extension of the due date. Jacobi failed to provide the correction by the time limit provided and did not seek another extension of the due date.
- Therefore, the Department followed the requirements as stated in both section 782(d) of the Act and 19 CFR 351.302 and was consistent with its regulations and practice.

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[206] See "Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Emeka Chukwudebe, Analyst, Office 9, and Ricardo Rivera, Analyst, Office 9, re: Fifth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results," dated May 2, 2013, at 4-5.

[207] See, e.g., Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008), and accompanying IDM at Comment 4 (where the Department used the Indian industry trade publication Chemical Weekly).

Department's Position: The Department agrees with Petitioners and continues to find that Jacobi's supplemental questionnaire response was properly rejected and removed from the record in accordance with the Department's regulations and practice. In the Preliminary Results, the Department rejected Jacobi's April 19, 2012, supplemental section D questionnaire response ("SSDQR"), because Jacobi did not submit the supplemental or request an extension in a timely manner pursuant to 19 CFR 352.302(c).[208]

The Department's regulations provide that the agency "may, for good cause, extend any time limit established by this part."[209] Further, parties requesting extensions are required to submit a written request "before the time limit specified" by the Department, and must "state the reasons for the request." In addition, "an extension granted to a party must be approved in writing."[210] As noted by the CIT in Grobest, the Department has the discretion to "set and enforce deadlines."[211] Furthermore, 19 CFR 351.302(d) states that the "Secretary will not consider or retain in the official record" any "untimely filed factual information, written argument, or other materials" that the Secretary rejects;[212] otherwise any party would be allowed to provide the Department with information at the parties' leisure and expect the agency to review the information timely and issue a binding determination.[213]

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.[214]

Jacobi stated, however, that it reported control numbers ("CONNUM") 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.[215]

On March 7, 2013, the Department issued Jacobi a supplemental Section D questionnaire with a deadline of March 18, 2013 requesting that Jacobi submit all documentation demonstrating its attempts to get the packaging information from PICA's suppliers.[216] The letter cautioned that if Jacobi was unable to respond by the established deadline it must so notify the Department and

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[208] See Preliminary Results; see also Letter from Catherine Bertrand, Program Manager, Office 9, "Certain Activated Carbon from the People's Republic of China: Rejection of Supplemental Section D Questionnaire Response and Removal from the Record" (March 28, 2013) ("Rejection Letter").
[209] See 19 CFR 351.302(b).
[210] See 19 CFR 351.302(c).
[211] See Grobest & I-Mei Industrial (Vietnam) Co., Ltd., v. United States, 815 F. Supp. 2d 1342, 1365 (CIT 2012) ("Grobest").
[212] See 19 CFR 351.302(d).
[213] See Furniture from China, and accompanying IDM at Comment 82.
[214] See Jacobi's Response to the Department's Supplemental Section D Questionnaire, submitted December 28, 2012.
[215] See id.
[216] See Letter from Catherine Bertrand, Program Manager, Office 9, "Certain Activated Carbon from the People's Republic of China: Supplemental Section D Questionnaire" (March 7, 2013)("Jacobi's Third Supplemental D"); see also 19 CFR 351.302(c) "{b}efore the applicable time limit specified under 19 CFR 351.301 expires, a party may request an extension…;" see also Preliminary Results, and accompanying Decision Memo at 31.

submit a request for an extension of the deadline.[217] Jacobi's SSDQR further instructed Jacobi that if the Department did not receive either the requested information or a written request before 5:00 p.m. ET on the established deadline, the Department may conclude that Jacobi declined to cooperate and will reject any submissions after the deadline in accordance with 19 CFR 351.302(d).[218] Therefore, Jacobi was on notice that it must timely file either a request for an extension or the response to the questionnaire before the 5:00 p.m. deadline on March 18, 2013. On March 14, 2013, Jacobi submitted a request for an extension of 2 days, which would have made the new due date March 20, 2013. On March 22, 2013, Jacobi submitted its SSDQR, one day after the approved deadline extension. On March 28, 2013, the Department rejected, and removed from the record, Jacobi's untimely filed SSDQR pursuant to 19 CFR 351.302(d).[219]

We disagree with Jacobi that there was no legal reason to remove its SSDQR from the record. As explained above, the Department rejected Jacobi's SSDQR pursuant to 19 CFR 351.302(b). 19 CFR 351.302(d) states that the Secretary will not consider or retain in the official record "untimely filed factual information, written argument, or other material that the Secretary rejects."[220] Consistent with this regulatory provision, the Department routinely removes untimely filed submissions from the record of antidumping duty and countervailing duty proceedings.[221] Therefore, because Jacobi's SSDQR was untimely filed material the Department rejected, we removed the SSDQR from the record in accordance with the Department's regulations.[222] In this regard, the Department notes that it is important for an agency, and not responding parties, to control the administrative process including the timing of receipt of information. Furthermore, receipt of information often leads to the need for supplemental questionnaires and for sufficient time to analyze and verify, as needed, all the relevant responses. This need is all the greater in an antidumping investigation or administrative review given the extremely large volume of information that must be gathered and analyzed. For all these reasons and consistent with the Department's regulations, the Department continues to find it appropriate to reject and remove from the record of this review Jacobi's untimely filed SSDQR.

Comment 14: Calculation for Inland Freight and U.S. Credit Expenses

Petitioners' Arguments:

- Petitioners note that the CEP verification report for Jacobi noted errors in the calculation of inland freight ("INFWC") and U.S. imputed credit expenses ("CREDITU").

[217] See Jacobi's Third Supplemental D at 2.
[218] See id.
[219] See Preliminary Results, and accompanying Decision Memo at 31; see also Rejection Letter.
[220] See 19 CRF 351.302(d) and 19 CRF 351.302(d)(i); see also 19 CFR 351.104(a)(2) ("The Secretary, in making any determination under this part, will not use factual information, written argument, or other material that the Secretary rejects").
[221] See, e.g., Narrow Woven Ribbons with Woven Selvedge From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 47363-364 (August 8, 2012); see also Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 32539, 32542-543 (June 1, 2012); see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine, 66 FR 50401 (October 3, 2001) and accompanying IDM at Comment 5.
[222] See Preliminary Results, 77 FR at 46702 and Rejection Letter.

- The Department should therefore ensure that it uses the correct INFWC and CREDITU for Jacobi.

No other party submitted comments regarding this issue.

Department's Position: The Department agrees with Petitioners, and will ensure that the correct INFWC and CREDITU are used for Jacobi in the final results.

Comment 15: Accurate Liquidation Instructions

Jacobi's Arguments:

- In past reviews, the Department inadvertently did not insure that: 1) its liquidation instructions reflect the fact that Jacobi's exports activated carbon from multiple producers; and 2) the liquidation instructions reference the importer of record, Jacobi Carbons, Inc.
- For the final results, the Department should 1) revise the cash deposit instructions to include the name, case number and cash deposit rate for each individual producer/exporter; and 2) reference the importer, Jacobi Carbons, Inc.

Petitioners' Rebuttal:

- The record contains no information that the cash deposit language used in the last three reviews resulted in an inaccurate collection of cash deposits or assessment of antidumping duties.
- The Department does not use chain rates in administrative reviews and the instruction format suggested by Jacobi is used only in original investigations.
- Such a change would likely lead to greater opportunity for an inadvertent error in cash deposit or assessment rates.
- Therefore, for the final results, the Department should decline to make these changes to the cash deposit and assessment instructions.

Department's Position: The Department agrees with Petitioners, in part. While the Department has the discretion to apply combination rates, the Preamble to the Department's regulations states that "if sales to the United States are made through a NME trading company, we assign a non-combination rate to the trading company . . . ."[223] We have continued to follow this approach in the current review because the Department has not changed its general practice of not assigning combination rates in antidumping duty administrative reviews.[224] In limited circumstances, the Department has applied combination rates in administrative reviews, where there is a compelling reason to do so. In this review, however, we find that there is no compelling reason to apply combination rates.

As an initial matter, we note that the preamble to the Department's regulations contemplates that when deciding whether combination rates are appropriate, the Department will consider the

[223] See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27303 (May 19, 1997) ("Preamble").
[224] Policy Bulletin 03.2 covers combination rates in new shipper reviews, not administrative reviews, while Policy Bulletin 05.1 applies to investigations only.

practicality of their assignment.[225] Here, we find the situation similar to that described in prior segments of this proceeding[226] and in Bedroom Furniture 2011[227] where the Department found "the application of combination rates would be too large of an administrative burden to be practicable"[228] because the Department would be required to list producer/exporter combinations for the individually reviewed respondents as well as the numerous separate rate companies that are reviewed in each segment. Therefore, for the final results, the Department will continue to assign deposit and assessment rates by exporter rather than producer and exporter. Specifically, all entries by Jacobi will continue to be based on one rate in this review.

With regard to Jacobi's request for the Department to properly identify the importer and exporter, we agree with Jacobi and will correct the liquidation instructions to reference the exporter as Jacobi Carbons AB and the importer as Jacobi Carbons Inc.

Huahui Company-Specific Issues

Comment 16: Huahui's FOPs for Powdered Activated Carbon[229]

Petitioners' Arguments:

- The FOP data for powdered activated carbon ("PAC") are unusable, contrary to the statute and the Department's questionnaire instructions because Huahui's FOP databases submitted after December 20, 2012 fail to account for under-sieve materials used in production.
- That Huahui claims to account for all of its under-sieve material in its overall cost of production is contrary to the statute and is irrelevant under the Department's nonmarket economy ("NME") methodology. Huahui's suggestion that it is proper to account for under-sieve used as a direct input to PAC in the overall production of other subject merchandise is inconsistent with the Department's requirement that NV and dumping margin calculations be made on a product-specific basis. Huahui's proposed method eliminates under-sieve products accounting for a significant percentage of total inputs used to produce PAC.
- Huahui characterized its self-produced under-sieve as a co-product with granular activated carbon ("GAC"), assigned this under-sieve a value and tracked it through its records into production of PAC. Moreover, that Huahui has overstated its FOP quantities for GAC production by failing to take an offset for under-sieve produced as a co-product with GAC is not a justification for underreporting product-specific FOP quantities for PAC.

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[225] See Preamble, 62 FR at 27303 ("it may not be practicable to establish combination rates when there are a large number of producers . . . .").
[226] 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, (November 17, 2010) ("Activated CarbonAR2"), and accompanying IDM at Comment 1.
[227] See Bedroom Furniture 2011, and accompanying IDM at Comment 16.
[228] See Activated CarbonAR2, and accompanying IDM at Comment 1; see also Bedroom Furniture 2011, and accompanying IDM at Comment 16.
[229] While PAC is bracketed in Petitioners' and Huahui's case and rebuttal briefs, respectively, PAC is publically identified in submissions previously provided by Huahui. See Huahui's supplemental section D questionnaire response, dated December 20, 2012 ("DecSDR") at D-26-28; see also Huahui's supplemental section D questionnaire response, dated March 15, 2013 ("MarSDR"), at II-5-6 and Petitioners' Case Brief, dated September 6, 2013 and Albemarle/Huahui's Rebuttal Brief, dated September 13, 2013.

- In other NME cases, the Department has consistently included FOPs for self-produced materials in calculating NV and has valued them using market-economy SVs, even where the NME producer values the product at zero in its books and records.[230]
- Because under-sieve material has the same inputs and has undergone all the same processing as GAC when the two products are separated during the sieving process, the FOPs for under-sieve material and their associated values must at least be equal to those of the GAC products co-produced with it.
- Huahui's December 20, 2012, FOP data captures the under-sieve material. Accordingly, the Department should use the December 20, 2012, FOP data for the final results.
- Alternatively, the Department could value Huahui's under-sieve material using the activated carbon SV on the record.
- The Department must ensure that it accounts for all the inputs used to produce PAC.[231]

Huahui's Rebuttal:

- The Department should not use the December 20, 2012, FOP database because it improperly included self-produced under-sieve in the numerator of the FOP calculations and distorted the results because under-sieve material because the usage of materials is included in each stage of production. Huahui's revised August 8, 2013 FOP database fully complied with the Department's questionnaire and the statute because it accounts for all raw materials consumed to produce PAC, which represents the best available information to determine NV.
- The Department should not include Huahui's self-produced under-sieve in the FOP calculation for PAC because: 1) the FOPs for self-produced under-sieve are captured in the FOPs of other subject merchandise and to so include them again would amount to double-counting; 2) Huahui does not track the cost of under-sieve production or account for it in its books and records; 3) Huahui made the corrections required by the Department to remove self-produced under-sieve from FOP calculations for PAC; and 4) Huahui recalculated PAC FOPs as if the entire quantity of finished product was made by direct-produced PAC (rather than under-sieve). The recent PET Film[232] final results supports Huahui's position because that proceeding addressed whether to value recycled PET chip as an FOP and the Department denied assigning a zero value to that input because the company's records did not support it; here self-produced under-sieve is not a raw material input.
- Huahui made the corrections required by the Department and recalculated the PAC FOPs in essence assigning the consumption of inputs directly withdrawn to produce PAC to the entire amount of PAC produced, including under-sieve. This is a reasonable approach because this methodology is a close approximate to that used to for DYE PAC.[233] Further, PAC and DYE PAC share nearly identical CONNUMs and therefore similar raw material consumption.

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[230] Petitioners cite Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35245 (June 12, 2013) ("PET Film") and accompanying IDM at Comment 5.

[231] Certain inputs are business proprietary information. For further information, see "Huahui Final Analysis Memo at 3-5.

[232] Huahui cites to PET Film, and accompanying IDM at Comment 5.

[233] While DYE PAC is bracketed in Petitioners and Huahui's case and rebuttal briefs, respectively, PAC is publically identified submissions previously provided by Huahui. See DecSDR at D-26-28.

- The Department should not use FOPs for other subject merchandise to value self-produced under-sieve because this under-sieve does not share the same yield rate with subject merchandise that have different forms.
- The Department should not use the December 20, 2012 FOPs because those FOPs improperly included under-sieve materials in the numerator of the FOP calculations and distorts the results as under-sieve is included in each stage of production.

Department's Position: The Department agrees with Petitioners that Huahui's FOPs for its self-produced under-sieve materials should be included in the NV calculation for PAC. In its December 20, 2012 FOP database, Huahui reported its consumption of all under-sieve materials used to produce PAC. In its MarSDR, Huahui removed its input quantity of self-produced under-sieve materials from the numerator of its FOP calculations for PAC which reduced the raw materials consumed for PAC.[234] The Department used the MarSDR FOP database in the Preliminary Results.[235] After the Preliminary Results, the Department issued supplemental questionnaires and, on August 8, 2013, the Department received a revised FOP database from Huahui per the Department's request.[236]

Huahui reports that it produces under-sieve during the stage where other activated carbon products are sized (crushed and sifted) into finished products.[237] These under-sieve materials do not meet standard product specifications and are typically collected from the floor beneath the sizing machines and stored for unspecified periods until the material is sold as scrap or re-used in production.[238] We note the Department has previously determined that materials which undergo activation are subject merchandise, and therefore, are not by-products or eligible for a by-product offset.[239]

The Department erred in its AugSQR, in which it requested Huahui remove the total quantity of under-sieve used in the production of PAC from the denominator of its production quantity of PAC. After further consideration, we determined that, by removing the quantities of under-sieve materials used in the production of PAC, Huahui improperly attempted to introduce an offset by deducting the FOPs for under-sieve from the FOPs used in the production of PAC given its own characterization of under-sieve as scrap.[240] Accordingly, we find that it is appropriate to include all under-sieve products used in the production of PAC in both the numerator and denominator of the PAC NV calculation.

Section 773(c) of the Act requires the Department to value all inputs utilized in producing the subject merchandise. Particularly, section 773(c)(3)(B) of the Act requires the Department to

[234] See Huahui's supplemental section D questionnaire response, dated March 15, 2013 ("MarSDR") at Exhibit II-1 and II-14.
[235] See "Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Ricardo Rivera, Analyst, Office 9, re: Preliminarily Results Analysis Memorandum for Ningxia Huahui Activated Carbon Co., Ltd. in the Fifth Review of Certain Activated Carbon from the People's Republic of China, dated May 2, 2013 at1."
[236] See Huahui's supplemental section D questionnaire response, dated August 8, 2013 ("AugSDR").
[237] See Huahui's supplemental section D questionnaire response, dated May 10, 2013 ("MaySDR") at 1; see also DecSDR at D-27.
[238] See id.; see also DecSDR at D-14 and D-15.
[239] See Activated Carbon LTFV, and accompanying IDM at Comments 5 and 23.
[240] See, e.g., MarSQR at Exhibit II-1 and II-14-15.

value the "quantities of raw materials employed." The calculation of NV in an NME proceeding is thus based upon the aggregation of quantities of raw materials consumed in the production of one unit of finished goods.[241] In the instant review, Huahui reported the specific quantities of each type of product, including under-sieved materials, used to produce one metric ton of PAC. To exclude any of these inputs omits the amounts of raw materials used in production and prevents an accurate calculation of the NV because the total quantity of raw materials used to produce one metric ton of subject merchandise would not be captured.[242]

Huahui contends that it should not report the FOPs for under-sieve materials used in the production of PAC because the costs associated with producing under-sieve are already captured in its factory-wide raw material consumption. Huahui reports that it produces under-sieve as a part of its GAC production process and captured FOPs for self-produced under-sieve in its various GAC products.[243] Although it may be true that the self-produced under-sieve is related to GAC, Huahui must appropriately allocate FOP consumption to PAC.[244] By removing self-produced under-sieve from PAC, the result is that Huahui has under-reported its inputs to make PAC. While Huahui may have overstated its FOP quantities for GAC production by failing to properly allocate FOPs between GAC and PAC, this is not a justification for underreporting the product-specific FOP quantities for PAC.

To eliminate any potential for double-counting for GAC, Huahui should have accounted for the self-produced under-sieve by making proper FOP allocations. However, Huahui did not properly allocate FOPs between GAC and PAC, and in any event it did not otherwise provide the information necessary for proper allocation. While the record supports Huahui's claim that it used under-sieve in the production of subject merchandise,[245] Huahui has not provided evidence of whether all the consumed under-sieve was produced during the POR and whether POR-produced under-sieve was the under-sieve used during the POR. Thus, this issue is similar to PET Film where a respondent claimed an adjustment for recycled inputs, but the adjustment was not adequately supported by record evidence.[246] Huahui cannot now omit the FOPs associated with self-produced under-sieve from the production of PAC because we must account for all materials used to produce that control number ("CONNUM"). As record evidence demonstrates that Huahui consumed under-sieve during the production of PAC, the Department must include the FOPs for self-produced under-sieve materials.[247]

We disagree with Huahui's contention that the AugSQR FOPs for PAC are accurate because they resemble the FOPs for DYE PAC, a similar product. While PAC and DYE PAC are similar

[241] See PET Film, and accompanying IDM at Comment 5.
[242] See id.
[243] See DecSQR at D-27.
[244] See, e.g., Xanthan Gum from the PRC , and accompanying IDM at Comment 8, "Our policy, consistent with section 773(c)(1)(B) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise. Accordingly, our standard NME questionnaire asks respondents to report the FOPs used in the various stages of production."
[245] See, e.g., MarSQR at Exhibit II-1 and II-14-15.
[246] See PET Film, at Comment 5 (where the Department would have given an offset if the record support such an offset).
[247] See Huahui's Section C and D Questionnaire Response, dated August 31, 2012 at Exhibit D-6-7; see also DecSQR at Exhibit D-4.

two products is that under-sieve material was used to produce PAC, but not DYE PAC.[248] The CIT has stated that the Department "has considerable discretion in deciding how it will treat a particular production input or cost when identifying factors of production."[249] Accordingly, because a significant additional input, specifically under-sieve, was used to produce PAC, the Department determines that such production is distinctly different from the production of DYE PAC, and nevertheless, the Department must account for all inputs used in the production of PAC.[250]

Therefore, for the final results, the Department will use the PAC FOP information from Huahui's December 20, 2012, FOP database to calculate NV for PAC. Specifically, the Department has replaced PAC FOPs in the AugSQR FOP database with the PAC FOPs from the December 20, 2012, database because the December 20, 2012, database accurately captures the volume of the under-sieve FOP used in the production of PAC.[251] Additionally, the Department will not use an activated carbon SV to value the under-sieve materials. Certain inputs used in the production of PAC are business proprietary. For a discussion of those inputs please see Huahui's Final Analysis Memo at 3-5.

RECOMMENDATION

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

AGREE ___✓___ DISAGREE ________

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

20 NOVEMBER 2013
Date

[248] See, e.g., DecSQR at Exhibit D-4.
[249] See Jinan Yipin Corporation, et al v. United States, 526 F.Supp. 2d 1347, 1373 (CIT 2007).
[250] See section 773(c)(3)(B) of the Act; see also, e.g., PET Film, and accompanying IDM at Comment 5.
[251] See Huahui Final Analysis Memo at 3-5.