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November 18, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

SUMMARY

The Department of Commerce ("Department") analyzed the comments submitted by Petitioners,[1] mandatory respondents,[2] certain separate rate companies,[3] and importers[4] in the sixth administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC"). Following the Preliminary Results[5] 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 22, 2014, the Department published the Preliminary Results of this administrative review. On June 19, 2014, the Department fully extended the time limit for completion of the

[1] Calgon Carbon Corp. and Cabot Norit Americas ("Petitioners").
[2] Jacobi Carbons AB ("Jacobi") and Ningxia Guanghua Cherishmet Activated Carbon Co, Ltd. ("Cherishmet"), collectively ("mandatory respondents").
[3] Calgon Carbon (Tianjin) Co., Ltd. ("Calgon Tianjin") and Ningxia Huahui Activated Carbon Co., Ltd. ("Huahui").
[4] Carbon Activated Corp. ("Carbon Activated"), M.L. Ball Co., Ltd. ("ML Ball"), and Nichem Co. ("Nichem").
[5] See Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 29419 (May 22, 2014) ("Preliminary Results").

final results of this administrative review.[6] The Department extended the deadlines for submission of case and rebuttal briefs twice based on requests from interested parties.[7] On July 3, 2014, Albemarle,[8] Calgon,[9] Carbon Activated, Cherishmet, Huahui, and Jacobi submitted case briefs.[10] On July 18, 2014, Petitioners and Albemarle submitted rebuttal briefs.[11] On July 29, 2014, pursuant to 19 CFR 351.302(d), we rejected Jacobi's case brief because it contained untimely new factual information, and instructed Jacobi to resubmit a redacted case brief, which it submitted on July 30, 2014.[12] On September 24, 2014, the Department held a public hearing limited to issues raised in case and rebuttal briefs.

SCOPE OF THE ORDER

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

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

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent,

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[6] See Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, through James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Bob Palmer, International Trade Compliance Analyst, Office V, Antidumping and Countervailing Duty Operations: Certain Activated Carbon from the People's Republic of China ("PRC"): Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated June 19, 2014.

[7] See Memorandum to the File, from Frances Veith, Senior International Trade Analyst, Enforcement and Compliance, dated June 11, 2014; see also Memorandum to the File, from Frances Veith, Senior International Trade Analyst, Enforcement and Compliance, dated June 13, 2014 and Memorandum To the File, from Bob Palmer, Senior International Trade Analyst, Enforcement and Compliance, dated July 9, 2014.

[8] Albemarle Corporation ("Albemarle").

[9] Calgon Carbon Corporation and Calgon Carbon (Tianjin) Co., Ltd. (collectively, "Calgon").

[10] On July 3, 2014, ML Ball and Nichem submitted a letter supporting arguments made by the Chinese respondents; see Letter from ML Ball and Nichem, dated July 3, 2014.

[11] See Petitioners' Rebuttal Brief, dated July 18, 2014; see also Albemarle's Rebuttal Brief, dated July 18, 2014.

[12] See Letter from Catherine Bertrand, Program Manager, Office V, Enforcement and Compliance, to Jacobi Carbons AB, "Certain Activated Carbon from the People's Republic of China: Rejection of New Information in Case Brief," dated July 29, 2014.

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

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

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

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

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within the scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

DISCUSSION OF THE 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 does not have standing under section 771(9)(C) of the Tariff Act of 1930, as amended ("the Act") to request this review.
- While in the Preliminary Results, as in the prior review, the Department used the U.S. Census Bureau's 2007 North American Industry Classification System ("NAICS") to define

a "wholesaler of a domestic product,"[13] for these final results the Department should use the Black's Law Dictionary meaning of "wholesaler."

- Black's Law Dictionary defines a "wholesaler" as "{o}ne who buys large quantities of goods and resells them in smaller quantities to retailers or other merchants, who in turn sell them to the ultimate consumer." Albemarle's activities during the POR do not satisfy this definition.
- Numerous federal courts including the United States Supreme Court have relied on Black's Law Dictionary to determine the meaning of legal terms.[14] In light of the "overwhelming court precedents" relying on Black's Law Dictionary, the Department must provide justification for rejecting the Black's Law Dictionary definition and further explain why an adaptation of the NAICS principle is consistent with the regulatory purpose.
- In the Preliminary Results, the Department focuses on the "not open to the general public" criterion in the NAICS definition of "wholesale trade" but whether administrable or not, the Department has completely failed to address why it ignored the dictionary definition of "wholesaler."
- The Department's definition of "wholesaler of a domestic like product" is inconsistent with the regulatory purpose envisaged by 19 CFR 351.213(b) and 351.102(b)(17), and section 771(9)(C) of the Act, the latter of which uses the phrase "a manufacturer, producer, or wholesaler in the United States." This phrase confirms that the legislature intended a broad definition of wholesaler. This same phrase is present in section 516 of the Act, and the term "manufacturer, producer, or wholesaler" is intended to cover a "domestic competitor" of the subject imports.[15] Adopting an excessively broad definition would undermine section 771(9)(C) of the Act and the Department's regulations by providing the same privilege to parties with no substantive interest in domestic production, and section 732(c)(4)(B) of the Act authorizes the Department to disregard section 771(9)(C) for standing purposes if the party is an importer of subject merchandise or related to foreign importers.
- The Department's use of the NAICS definition of "wholesale trade" to define "wholesaler" is inconsistent with its determinations in other cases, where it did not use NAICS. In the Wooden Bedroom Furniture Memo ("WBF Memo"), the Department established a number of factors to determine whether a party is a bona fide domestic producer. The Department did not apply NAICS definitions even though there are NAICS definitions for the manufacturing

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[13] See Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012– 2013, 79 FR 29419 (May 22, 2014) (" Preliminary Results"); see also Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012, 78 FR 70533 (November 26, 2013) (" AR5 Carbon") and accompanying Issues and Decisions Memorandum ("IDM") at Comment 1; see also 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").

[14] Calgon cites to: Christensen v. Harris County, 529 U.S. 576, 586-88 (2000); Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1945); Christopher v. SmithKline Beecham Corp., 132 S. Ct. 2155, 2176 (2012); F.A.A. v. Cooper, 132 S. Ct. 1441, 1458 (2012); Nationsbank v. Variable Annuity Life Ins. Co., 513 U.S. 251, 264 (1995); Sanford v. MemberWorks, Inc., 625 F.3d 550, 559 (9th Cir. 2010); Checkrite Petroleum, Inc. v. Amoco Oil Co., 678 F.2d 5, 9 (2d Cir. 1982); United States v. Nason, 269 F.3d 10, 16 (1st Cir. 2001); In re Johnson, 269 B.R. 324, 326 (Bankr. M.D. Pa. 2001); First Fashion USA, Inc. v. Best Hair Replacement Mfrs., Inc., 09-60938-CIV, 4040325 (November 20, 2009); Johnson v. Mossy Oak Properties, Inc., 7:11-CV-4205-RDP, 2012 WL 5932437 (November 27, 2012); Lee v. Thermal Engineering Corp., 352 S.C. 81 (S.C. App. 2002), 93-94; Hoffman v. Van Pak Corp., 16 S.W.3d 684, 689 (Mo.Ct.App. 2000).

[15] Calgon cites to U.S.-Conoco, Inc. v. Foreign-Trade Zones Bd., 18 F.3d1581, 1587 n.18 (Fed. Cir.1994).

and furniture manufacturing sectors that are comparable to the NAICS "wholesale trade" definition.[16]

- Even if the NAICS definition of "wholesale trade" were used to interpret "wholesaler" under section 771(9)(C) of the Act, Albemarle still does not qualify as a wholesaler. Specifically, NAICS principles require that a wholesaler demonstrate that: 1) its primary business activity involves a domestic like product, and 2) all of its sales and purchase facilities are not open to the general public. By not providing evidence of both, Albemarle failed to satisfy the NAICS requirement. For the former requirement, in AR5 Carbon, the Department waived this requirement for Albemarle but the requirement is designed for statistical purposes. The Department cannot impose a double standard by ignoring this fundamental NAICS requirement.
- Finally, 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.
- The Department established a number of factors to determine whether a party is a bona fide domestic producer. As consistent with the WBF Memo, a party claiming status as a domestic producer—or as in this case a wholesaler—should establish its bona fide credentials that it engaged in wholesaler activities on a regular and sustained basis during the POR. There is no reasonable explanation why these same requirements do not apply to wholesalers.
- Waiving the bona fide requirements for a party claiming to be a domestic interested party leads to an unfair competitive advantage.

Albemarle's Rebuttal:

- Calgon reiterates the same arguments it has used in prior reviews and has not presented new information to substantiate its claim that Albemarle is not a wholesaler.
- As in previous reviews, the Department found in the Preliminary Results that Albemarle qualifies as a wholesaler for purposes of section 771(9)(C) of the act, and engaged in extensive fact-finding in making that determination.
- The Black's Law Dictionary terms used in the cases cited by Calgon are irrelevant because they provide no basis for using Black's Law Dictionary instead of the NAICS to define "wholesaler." Specifically, none of the Supreme Court cases cited by Calgon suggests 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. There are countless other cases in which the courts have used other sources than Black's Law Dictionary.[17]
- In the Preliminary Results as well as in AR5 Carbon and AR3 Carbon, the Department found the NAICS definition to be a reliable source and relied on the NAICS in numerous other contexts.
- 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 argues that NAICS is for statistical purposes and should not be

[16] Calgon cites to the WBF Memo, which was referenced in AR5 Carbon. See AR5 Carbon and accompanying IDM at Comment 1. However, that underlying memorandum is not on the record of this administrative review.
[17] Albemarle cites, for example, BP Prods. North Am. Inc. v. United States, 716 F. Supp. 2d 1291, 1295 (CIT 2010); Roland Elec. Co. v. Walling, 326 U.S. 657, 673-74 (1946).

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.

- 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 they engage.
- 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 conclusions made in the Preliminary Results, AR5 Carbon, and AR3 Carbon because they do not demonstrate finding that Albemarle is not properly considered a "wholesaler."
- Calgon's argument that a broad definition of "wholesaler" conflicts with the regulatory and statutory objectives is unavailing because the statute, legislative history, or past precedent do not suggest there is some kind of threshold requirement for what kind of domestic interest the domestic interested party must have.
- The Department does not need to determine whether 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.[18] Furthermore, it is accepted that a party may have more than one basis for being an "interested party."
- Therefore, for the final results, the Department should reject Calgon's arguments and continue to find Albemarle as a wholesaler.

Department's Position: In AR3 Carbon, 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.[19] Likewise, in the immediately preceding AR5 Carbon administrative review, we determined Calgon Tianjin to be a separate rate respondent because we concluded 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]

[18] Albemarle cites Paralyzed Veterans of America v. West, 138 F.3d 1434, 1436 (Fed. Cir. 1998) (stating that the APA's notice and comment requirements apply to rules that "effect a change in existing law or policy or which affect individual rights and obligations").

[19] See Certain Activated Carbon From the People's Republic of China: Preliminary Results of the Third Antidumping Duty Administrative Review, and Preliminary Rescission in Part, 76 FR 23978, 23979 (April 29, 2011), unchanged in AR3 Carbon.

[20] See AR5 Carbon and accompanying IDM at Comment 1.

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 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 determine 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.[23] Applying this 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 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 and AR5 Carbon, it adopted the Census Bureau's NAICS definition of "wholesaler" because it provided measurable characteristics of a wholesaler, and because it is a source used for defining industries by the U.S. government.[24] 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 source to define Albemarle's status as a "wholesaler in the United States of a domestic like product" pursuant to section 771(9)(C) of the Act.

Calgon cites several cases for the proposition that courts have consistently relied on Black's Law Dictionary as the starting point when interpreting undefined legal terms.[25] 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

[21] See Letter from Albemarle, re: "Certain Activated Carbon from the People's Republic of China," dated April 30, 2013 at 2.
[22] See, e.g., Letter from Calgon, re: "Certain Activated Carbon from the People's Republic of China (PRC): Allegation Concerning Albemarle Corporation's Standing as a 'Domestic Wholesaler,'" dated June 7, 2013.
[23] See, e.g., AR5 Carbon and accompanying IDM at Comment 1.
[24] See AR5 Carbon and accompanying IDM at Comment 1.
[25] See Calgon's Case Brief at 5-6 (citing, e.g., Nationsbank v. Variable Annuity Life Ins. Co., 513 U.S. 251, 264 (1995); United States v. Nason, 269 F.3d 10, 16 (1st Cir. 2001))

sources besides Black's Law Dictionary in interpreting statutory terms.[26] Indeed, the cases Calgon relies on establish that Black's Law Dictionary may be one source among many on which that a court or agency may rely in discerning undefined statutory terms, but they do not mandate that Black's Law Dictionary is the only, or even the starting, source.[27] Moreover, the cases cited by Calgon in which the courts have defined "wholesaler" 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.[28] Similarly, those cases do not demonstrate that the NAICS is an otherwise unreliable source from which to derive an administrable definition of "wholesaler."[29] 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."[30] The Department exercises that authority here by selecting an administrable definition of "wholesaler" by consulting the NAICS definition of "wholesale trade."

Calgon argues that the Department cannot completely ignore the definition of "wholesaler" as provided by Black's Law Dictionary. As we have previously stated, and as further discussed below, Black's Law Dictionary does not provide 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.[31] Further, we disagree with Calgon's contention that Black's Law Dictionary provides a better definition of "wholesaler" than the NAICS definition as described below. As an initial matter, however, the Department notes that the record does not contain an excerpt from Black's Law Dictionary with the definition of "wholesaler" and thus Calgon failed to build the record of this review and support its argument with the very definition it proffers.[32] Rather, Calgon cites to numerous court cases to cobble

[26] See, e.g., Dependable Packaging Solutions, Inc. v. United States, 757 F.3d 1374, 1379 (Fed. Cir. 2014) (sustaining the Court of International Trade's ("CIT") reliance on Merriam-Webster's Online Dictionary to define "vase" in interpreting explanatory notes to a Harmonized Tariff Schedule of the United States number); BP Products North America Inc., v. United States, 716 F. Supp. 2d 1291, 1294-95 & n.9 (CIT 2010) (consulting Oxford English Dictionary, Webster's Third New International Dictionary, and the Encyclopedia Britannica in determining the Harmonized Tariff Schedule terms).

[27] See, e.g., Christopher v. SmithKline Beecham Corp., 132 S. Ct. 2156, 2176 (2012) (resorting to Black's Law Dictionary to define "sale" under the Fair Labor Standards Act).

[28] See, e.g., First Fashion USA, Inc. v. Best Hair Replacement, 2009 U.S. Dist. LEXIS 113882, *20 (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); Lee v. Thermal Eng'g Corp., 572 S.E.2d 298 (S.C. App. 2002) (relying on Black's Law Dictionary to define "wholesale" and "wholesaler" under South Carolina's Sales Representative Act).

[29] We note that the U.S. Supreme Court has cited favorably to a previous Census definition of "wholesale trade" in articulating a definition for a different but related term, "retail," under the Fair Labor Standards Act. Roland, 657 U.S. at 674; see also AR5 Carbon at Comment 1.

[30] See United States v. Eurodif, 555 U.S. 305, 316 (2009).

[31] See AR5 Carbon and accompanying IDM at Comment 1.

[32] "{T}he burden of creating an adequate record lies with {interested parties} and not with Commerce." QVD Food Co., Ltd. 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)).

together a working definition of "wholesaler" which, again, does not provide the detail and specificity that lends itself to a detailed analysis of Albemarle's status as a wholesaler, and it does not provide an analytical framework for wholesaler analyses in other proceedings. Unlike the court cases citing to Black's Law Dictionary, which are largely irrelevant to interpreting "wholesaler" in the context of antidumping and countervailing duty proceedings, 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, the portions of Black's Law Dictionary cited in the case briefs does not establish whether the prospective wholesaler's business is orientated for walk-in business, open to the general public, or methods of delivery.[33] While Calgon argues that the NAICS definition of the term "wholesale trade" is for statistical purposes, we note that NAICS is also used by various federal agencies for administrative, regulatory, and taxation purposes, among others.[34] Further, the Department has relied upon NAICS classifications in other proceedings before it.[35] We also add that the NAICS is administered by the U.S. Census Bureau, which is itself part of the Department of Commerce.

Application of the NAICS Definition of Wholesaler

As explained in the Preliminary Results,[36] 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."[37] 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.[38] In addition, the NAICS definition has a further clarification that indicates: "{e}stablishments 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 offices and generally do not own or handle the goods they sell."[39] Moreover, according to this clarification, "{f}or 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."[40] Using this definition, we find that Albemarle's

[33] See Letter from Albemarle, dated July 5, 2013 ("Albemarle Response") at Exhibit 6.
[34] See AR5 Carbon at Comment 1.
[35] See e.g., Final Negative Countervailing Duty Determination: Live Swine from Canada, 70 FR 12186 (March 11, 2005) and accompanying 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).
[36] See Preliminary Decision Memorandum at "Domestic Interested Party Status."
[37] See Albemarle Response at Exhibit 6.
[38] See id.
[39] See id.
[40] See id.

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.[41]

We disagree with Calgon's contention that Albemarle failed to demonstrate its business is located to attract walk-in business. Evidence on the record demonstrates that Albemarle does not operate retail space for the sale of activated carbon.[42] In the previous review, the Department determined that Albemarle's offices are not designed for walk-in business and evidence on the instant record provides no indication that is not the case in this review.[43]

We disagree with Calgon that Albemarle must show that wholesaling of domestic like product is its "primary business" activity 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."[44] 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.[45] 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.[46] 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 taken inconsistent approaches by applying NAICS to interpret "wholesaler" in this case and not applying NAICS definitions to interpret "producer" in Wooden Bedroom Furniture from China.[47] Similar to the Black's Law Dictionary definition of "wholesaler," Calgon also failed to place the WBF Memo

[41] See id. at 1-3, Exhibit 1-5.
[42] See id. at 2.
[43] See AR5 Carbon and accompanying IDM at Comment 1.
[44] See Albemarle Response at Exhibit 6.
[45] 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).
[46] See section 771(9)(C) of the Act.
[47] See AR5 Carbon and accompanying IDM at Comment 1 (discussing the WBF Memo).

on the record of this review in support of its argument.[48] In any event, as we discussed in AR5 Carbon, the Department interpreted "producer" using several criteria in the WBF Memo, and did not rely on NAICS classifications that may have been relevant to that interpretation.[49] However, this does not discount the fact that NAICS is a reliable source for interpreting "wholesaler" in this case, which is a different category of domestic interested party altogether. Likewise, we disagree 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 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 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 AR3 Carbon, AR5 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 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 interest" or "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 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

[48] QVD Food, 658 F.3d at 1324 (quoting Tianjin Mach., 806 F. Supp. at 1015).
[49] See AR5 Carbon and accompanying IDM at Comment 1 (discussing the WBF Memo).
[50] See id.
[51] See id.
[52] See id.
[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.

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 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.

In summary, because the NAICS "wholesale trade" 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 wholesaler definition appropriate to define Albemarle's wholesaler status. The Department is not establishing a broad definition of "wholesaler," but instead used the NAICS wholesaler definition as a framework to develop an administrable definition of wholesaler. The Department has not broadened the NAICS 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

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[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").

[57] The Department notes that domestic producers who are also importers with 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, 9508 (March 2, 2007) ("Activated Carbon LTFV") (Calgon Carbon Corporation filed a case brief); 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 accompanying Issues and Decision Memorandum at "Background" n.2 ("AR1 Carbon") (identifying Petitioners as including Calgon Carbon Corporation); and this 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.

Calgon Tianjin under 19 CFR 351.213(b). Accordingly, Calgon Tianjin remains under review as a non-examined, separate rate respondent.

Comment 2: Differential Pricing

The Department preliminarily determined that application of an alternative methodology was not appropriate for Cherishmet or Jacobi, and, accordingly, applied the average-to-average comparison method.[59] For these final results, as a result of various changes made in the weight-averaged margin calculations discussed below, the Department has applied the average-to-transaction comparison method only to Jacobi's U.S. sales found to have passed the Cohen's *d* test, and it has applied the average-to-average comparison method to Jacobi's other U.S. sales that did not pass the Cohen's *d* test.

A. Withdrawal of the Targeted Dumping Regulation

Jacobi's Arguments:

- The Department must perform its differential pricing analysis and apply a remedy consistent with 19 CFR 351.414(f)(1)(ii) and (2) (2007).
- The Department's 2008 withdrawal of the targeted dumping regulation[60] violated the requirements of the Administrative Procedures Act ("APA") because it withdrew the targeted dumping regulation without notice and comment as required. Notice and comment apply both when publicizing regulations and when repealing a rule.[61]
- The Department's Withdrawal Notice claimed "good cause" to disregard notice and comment because the original regulation had become "impracticable and contrary to the public interest," but 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."[62] The good cause exception is rarely accepted by the Federal Circuit and is usually used in the case of a national emergency.[63]
- "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 average-to-transaction ("A to 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.

[59] See Prelim Decision Memo at 20.

[60] See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 73 FR 74930, 74931 (December 10, 2008) ("Withdrawal Notice").

[61] See Tunik v. Merit Sys. Protection Bd., 407 F.3d 1326, 1342 (Fed. Cir. 2005) ("Tunik").

[62] See id. at 1342.

[63] See Reeves v. Simon, 507 F.2d 455, 459 (Temp. Emer. Ct. App. 1974); Shimek v. Dep't of Energy, 685 F.2d 1372, 1375 (Temp. Emer. Ct. App. 1981).

- The CIT has found that the targeted dumping regulation was improperly withdrawn under the APA.[64]
- The Department has claimed that the targeted dumping regulation never applied to administrative reviews, only investigations, but this is without merit because the regulation governs the Department's use of the targeted dumping methodology, regardless of the proceeding.

Petitioners' Rebuttal:

- The Department has already employed the margin methodology Jacobi argues should be employed, and any change to the Department's differential pricing test would not impact Jacobi's margin.
- The Department's calculation of normal value for Jacobi is supported by substantial evidence and in accordance with law.
- Assuming the Department makes no significant changes to its normal value calculation, application of the alternative methodology will continue to yield no significant change in the results of the two methodologies.
- The Department is not precluded from applying a differential pricing analysis by the 2008 withdrawal of its targeted dumping regulations because the Department already explained that it did provide the public with adequate notice and comment opportunity consistent with its obligations under the APA when the Department solicited two rounds of public comments on the appropriate targeted dumping analysis.
- Assuming proper notice and comment was not provided, as the Department explained in AR5 Carbon, "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 average-to-transaction ("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. At the outset, the regulations at issue, 19 CFR 351.414(f), (g) and 19 CFR 351.301(d)(5) (2007), established criteria for making targeted dumping determinations in antidumping duty investigations, not in the context of an administrative review as is the case here.[65] Furthermore, while the CIT held that the issuance of the Department's interim final rule withdrawing the targeted dumping regulations was defective in Gold East Paper,[66] the CIT's ruling is not final and conclusive as that matter is still in litigation. As discussed in greater detail below, we disagree with Gold East Paper. Also, Baroque Timber is completely inapposite because the CIT never had the occasion to consider the merits of those plaintiffs' regulatory withdrawal

[64] See e.g., Gold East Paper (Jiangsu) Co., Ltd. v. United States, 918 F. Supp. 2d 1317 (CIT 2013) ("Gold East Paper"); see also Baroque Timber Industries (Zhongshan) Company, Ltd. v. United States, 925 F. Supp. 2d 1332, 1340 (CIT 2013).
[65] See 19 CFR 351.414(f)-(g) and 19 CFR 351.301(d)(5) (2007); Withdrawal Notice, 73 FR at 74930-31.
[66] See Gold East Paper, 918 F. Supp. 2d at 1327-28.

challenge. Although Baroque Timber noted in a footnote that the challenge was "similar" to that made in Gold East Paper and that "the Government's defense of the withdrawal does not appear strong,"[67] on remand the Department made several changes to surrogate values, after which the Department "determined that the average-to-average comparison method accounts for any pattern of prices that differ significantly for each company" and applied that method to both respondents in calculating their revised weighted-average dumping margins.[68] The CIT subsequently sustained the Department's findings on this point, noting that no party contested "Commerce's targeted dumping determinations."[69] Because Baroque Timber never decided whether the Department properly withdrew its regulation in the first place, this case is inapposite to the question of whether regulations governing targeted dumping were in effect for that review.

Contrary to the findings in Gold East Paper, the targeted dumping regulations were 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 regulations 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.[70] 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.[71] Various parties submitted comments in response to the Department's request.[72] Notably, none of the respondents in this review commented.

After considering those comments, the Department published a proposed new methodology in May 2008 and again requested public comment.[73] Among other things, the Department specifically sought comments "on what standards, if any, {it} should adopt for accepting an allegation of targeted dumping."[74] Several of the submissions[75] received from parties explained that the Department's proposed methodology was inconsistent with the statute and should not be

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[67] Baroque Timber, 925 F. Supp. 2d at 1340 n.10.
[68] See Baroque Timber Industries (Zhongshan) Company, Limited, et al. v. United States, Consol. Court No. 12-00007, Slip Op. 13-96, Final Results of Redetermination Pursuant to Court Order, at 26-27 (November 14, 2013), available at http://enforcement.trade.gov/remands/13-96.pdf.
[69] See Baroque Timber Indus. (Zhongshan) Co. v. United States, 971 F. Supp. 2d 1333, 1338 n.15 (CIT 2014).
[70] See Targeted Dumping in Antidumping Investigations; Request for Comment, 72 FR 60651 (October 25, 2007).
[71] See id.
[72] 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).
[73] See Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations, 73 FR 26371, 26372 (May 9, 2008).
[74] See id.
[75] 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.

adopted.[76] 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.[77] Again, none of the respondents in this review commented.

These comments suggested that the regulations were 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."[78] For this reason, the Department determined that the regulations had to be withdrawn.[79] Although this withdrawal was effective immediately, and the Department did not replace the regulatory provisions with new provisions, the Department again invited parties to submit comments, and gave them an additional 30 days to do so.[80] The comment period ended on January 9, 2009, with several parties submitting comments.[81] Just like the first and second comment periods prior to the withdrawal, none of the respondents in this review submitted comments.

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.[82] Moreover, various courts have rejected the idea that an agency must give the parties an opportunity to comment before every step of regulatory development.[83] 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.[84] 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 do the Department's actions here demonstrate that it fulfilled the notice and comment requirements of the APA.

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[76] See, e.g., Letter from Various Domestic Producers to the Department, titled "Comments on Targeted Dumping Methodology, Comments," dated June 23, 2008, ("Letter from Various Domestic Producers") at 2 (http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/kdw-td-cmt-20080623.pdf).
[77] 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 Various Domestic Producers at 29.
[78] See Withdrawal Notice at 74930-31.
[79] See id. at 74931.
[80] See id.
[81] See Public Comments Received January 23, 2009, Department of Commerce (Jan. 23, 2009), available at http://enforcement.trade.gov/download/targeted-dumping/comments-20090123/td-cmt-20090123-index.html.
[82] 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).
[83] 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).
[84] See id.

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.[85] 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 regulations 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 regulations 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."[86] 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; 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 certain interim regulations when it had published these regulations without giving the parties a prior opportunity to comment.[87] 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.[88] 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."[89] 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."[90] For this reason, the Court affirmed the regulation against the plaintiff's challenge.[91]

In short, the regulations 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 regulations 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 regulations.

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[85] See, e.g., First Am. Discount Corp. v. CFTC, 222 F.3d 1008, 1015 (D.C. Cir. 2000).
[86] See 5 USC 553(b)(B).
[87] See, e.g., National Customs Brokers and Forwarders Ass'n of Am., Inc. v. United States, 59 F.3d 1219, 1223 (Fed. Cir. 1995).
[88] See id. at 1220–21.
[89] See id. at 1223.
[90] See id. at 1224 (emphasis added).
[91] See id.

B. Application of the Differential Pricing Analysis

Jacobi's Arguments:

- The Department must perform its differential pricing analysis in a manner consistent with section 777A(d) of the Act. Its interpretation of section 777A(d) of the Act is contrary to the statute and, thus fails Chevron prong one, and the Department's interpretation is unlawful under Chevron prong two because the methodology is unreasonable.[92]
- The discretion to adopt a reasonable methodology does not extend to a methodology with features that ignore the key statutory terms of "differ," "pattern" and "significantly" as stated in section 777A(d) of the Act.
- The Department fails to appreciate that the term "differ" means more than to simply be "unlike" or "distinct" but must be understood in the context of "targeting." The SAA[93] explicitly links the term "differ" with "targeting dumping" and that this concept is ignored in the Department's differential pricing analysis.
- The differential pricing analysis ignores the statutory term "pattern" which requires that there must be enough prices that differ significantly to represent a "reliable sample" from which to draw conclusions about "targeting."
- The differential pricing analysis also ignores the statutory term "significantly," which requires an assessment of what is significant in context. If price differences are merely "large," they may not have "meaning" in the targeted dumping context if the price differences do not suggest targeting.
- "The Department incorrectly considers the 'Cohen's *d* test' to be a generally recognized statistical measure of 'significance,'" 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. Jacobi claims, therefore, that this "simply reflects the variance or random 'noise' in the data."
- Whether the Department finds the size of the difference to be "small," "medium" 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 and may simply be the result of the small sample size and random noise in the data.
- Jacobi further criticizes the Department's use of the "large" threshold, which is stated as 0.8, is even less meaningful than the 1.0 standard deviation threshold which was part of the Department's *Nails* test, which in itself was criticized as being "too loose a standard."
- While the Department states that it can use the Cohen's *d* test when there are at least two observations in the test, having at least two observations in each of two groups does not mean anything meaningful can be said about the difference between the means of those two groups.
- The Department should report both the Cohen's *d* test and t-test statistics and find the existence of differential pricing only when both standards have been met. Applying the t-test

[92] Jacobi cites Chevron, U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 104 S. Ct. 2778 (1984).
[93] See Statement of Administrative Action, accompanying the Uruguay Round Agreement Act, House Doc. 103-316, at 656 ("SAA").

would allow the Department to determine whether the difference being observed is real, and not just a feature of the random variation in the data itself. Checking the Cohen's *d* test would then allow the Department to confirm that the difference is large enough to be considered evidence of possible targeted dumping.

- 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 U.S. sales transactions to the alleged 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 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 Preliminary Results did not provide any reasoned explanation of why the definition of pattern of export prices used in the previous tests has been abandoned or how these higher prices are now being included in identifying the existence of targeted dumping or differential pricing are relevant to the existence of hidden dumping. The Department should only consider positive differences as possibly indicating a "significant" difference and possibly rising to the level of a meaningful "pattern" that warrants further evaluation.
- The Department should not exclude the test-group sales from the base-group sales used in calculating the Cohen's *d* coefficient. For example, where one customer (A) accounts for 90 percent of a product's sales and a second customer (B) accounts for the remaining 10 percent of the product's sales, if the sales to the test group are excluded from the base group, and customer A's sales are found to pass the Cohen's *d* test, then customer B's sales will also pass the Cohen's *d* test. This skews the results of the analysis and creates a bias. The base group for determining the mean for one customer (e.g., the mean of the 90 percent of sales) is entirely different than the base group for determining the mean for the second customer (e.g., the mean of the 10 percent of sales).
- The 33percent–66 percent thresholds used to determine whether differential pricing or targeted dumping occurs should be applied to each situation (i.e., customer, regions, and time periods) on an individual basis rather than on an aggregate basis because applying the Cohen's *d* test results on an aggregate basis does not allow finding a pattern and ignores the statutory requirement that differences be significant.

Petitioners' Rebuttal:

- Assuming the Department makes no significant changes to its normal value ("NV") calculation application of the alternative methodology will yield no significant changes and renders Jacobi's arguments moot.
- Because Congress did not specify a particular methodology to determine whether significant price differences exist in the antidumping context, it falls to the Department to determine a reasonable methodology to do so. Jacobi's claims that the Department has ignored key statutory terms in its differential pricing analysis do not undermine the use of this test to effectuate section 777A(d) of the Act's statutory purpose.
- The Department is not statutorily required to implement a t-test or to supplement the Cohen's *d* test, and it may appropriately exercise its authority to implement a reasonable scheme to

determine whether export prices differ significantly within the meaning of 1677f-1(d) of the Act. The Department has discredited this argument in other cases.

- The Department is properly measuring significant price differences using both positive and negative variances. This argument was previously rejected by the Department.
- Jacobi's argument that the Department should not have compared the test group to other sales excluding the test group because it allegedly adds bias to the test is misplaced. The Department's objective under the statute is to determine 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..."[94] In order to measure whether prices differ in one group from the norm, the test group must be of sales that are not in the control group, representing the norm.
- The Department should reject Jacobi's arguments that it is contrary to the statute for the Department to aggregate the results of the differential pricing run independently to test for differences in pricing by purchaser, region or time period and that the 33 percent-66 percent threshold should be applied to each group on an individual basis. The Act specifically directs the Department to determine whether differential pricing exists among purchasers, regions, or periods of time.[95] All sales for which there is evidence of differential pricing should be included in the 33 percent-66 percent test.

Department's Position: As an initial matter, we note that Jacobi's arguments do not rely on 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 puts forth several reasons unrelated to the statutory language why it believes the Department should modify its approach from the Preliminary Results. However, there is nothing in the statute that mandates how the Department measures whether there is a pattern of prices that differs significantly or explains why the average-to-average ("A-to-A") method or the transaction-to-transaction method cannot account for such differences. On 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 elsewhere in this memorandum, the Department's differential pricing analysis is reasonable, and the use of the Cohen's *d* test as a component in this analysis is in no way contrary to the law.

With Congress' implementation of the Uruguay Round Agreements Act, section 777A(d) of the Act states:

> (d) Determination of Less Than Fair Value.--
>
> (1) Investigations.--
>
> (A) In General. In an investigation under subtitle B, the administering authority shall determine whether the subject merchandise is being sold in the United States at less than fair value--
>
> (i) by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or

[94] Petitioner cites section 777A(d)(1)(B)(i) of the Act.
[95] See id.

(ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(B) Exception. 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).

(2) Reviews.--In a review under section 751, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

The SAA expressly recognizes that:

> New 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 methodology cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, i.e., where targeted dumping may be occurring.[96]

The SAA further discusses this new section of the statute and the Department's change in practice to using the A-to-A method in investigations:

> In part the reluctance to use the average-to-average methodology had been based on a concern that such a methodology could conceal "targeted dumping." In such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[97]

The SAA states that consideration of the A-to-T method is in response to concerns about whether the A-to-A method could conceal "where targeted dumping *may* be occurring."[98] However, neither the statute nor the SAA state that this is the only reason why the Department could resort to the A-to-T method, simply that this *may* be a situation where the A-to-T method would be appropriate. As stated in the statute, the requirements for considering whether to apply the A-to-T method are that there exists a pattern of prices that differ significantly and that either the A-to-

[96] See SAA at 843.
[97] See SAA at 842.
[98] See SAA at 843 (emphasis added).

A method or the transaction-to-transaction method cannot account for such differences. In our view, the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-to-A method is the appropriate tool to measure whether, and if so to what extent, a given respondent is dumping the subject merchandise at issue in the U.S. market.[99] While targeting may be occurring with respect to such sales, it is neither a requirement nor a pre-condition for the Department to otherwise determine that the A-to-T method is warranted based upon a finding that the two statutory requirements have been satisfied. The Cohen's *d* test examines whether there exists a pattern of prices that differ significantly for comparable merchandise among purchasers, regions or time periods.

The Department disagrees with Jacobi that the SAA's reliance on "targeting" and "targeted dumping" infers additional meaning to the words "pattern," "differ" and "significantly" beyond our understanding of these words in the statute. First, in the context of the statute, the Department interprets "pattern" to mean some type of order or arrangement which can be discerned. When looking at an exporter's pricing behavior overall, as when using the A-to-A method to ascertain the extent of an exporter's dumping, no order may be apparent; however, when this same behavior is arranged by purchasers, regions or time periods, then an order of prices may be apparent, as is done in the Cohen's *d* test where pricing levels are examined between each purchaser, region or time period and all other purchasers, regions or time periods for comparable merchandise. Furthermore, the statute requires that this arrangement or order of prices, which is apparent when examined by purchaser, region or time period, must exhibit significant differences. The Department has interpreted this to denote differences that are relative to the variations of prices within each group. As discussed above, one such situation where such a pattern of prices that differ significantly may exist is where targeted dumping is occurring. As discussed in the SAA, this is where dumping is concealed, or masked, with higher-priced sales.[100]

Jacobi inference that "differ" is modified by the SAA to mean something with respect to "targeting" or "targeted dumping" but this is not part of the either the statute or the SAA, and makes no sense. Such phrases as "differ targeting," "targeted differ" or even "differ targeted" have no reasonable meaning. Further, this inference by Jacobi is unnecessary because the statue itself provides a modifier which qualifies "differ" – "differ significantly." Section 777A(d)(1)(B)(i) of the Act specifies "a pattern of {prices}for comparable merchandise that differ significantly." Therefore, Jacobi's argument that the term "differ" connotes something which is not provided for or supported by either the statute or the SAA is meritless.

Likewise, Jacobi's injection of additional meaning into the word "significantly" is also unsupported by either the statute or the SAA. As discussed further below, Jacobi conflates the term "significantly" with "statistically significant" as well as the purposes between a measure of effect size, such as the Cohen's *d* coefficient, and a measure of statistical significance, such as the results of the t-test. No such requirement exists. Rather, as in the Cohen's *d* test used by the Department for Jacobi, the Department has ensured that each of the differences in prices, as

[99] See 19 CFR 351.414(c)(1).
[100] See SAA at 842-43.

reported by Jacobi, have significance to the extent provided by the widely accepted applications of the Cohen's *d* coefficient.

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" rather than simply being "large" 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.

The Department disagrees with Jacobi's argument that "statistical significance" is equivalent with "significance." Jacobi, as stated above, conflates and sows confusion with regards to meaning of these two terms just as with the meaning behind effect size and statistical significance while stirring in references to a "reliable sample" and sample size. In statistics, there are a number of statistical measures which can be used to quantify a given set of data. Examples of such statistical measures are the mean and variance of a population. When statistical measures, such as the mean and variance, cannot be calculated for a population, then these values can be estimated by the selection of a random sample of data from that population. These estimations are not the same as the actual values if they could be measured from the population. Consequently, each of these estimations has an associated "statistical significance" which quantifies the reliability of the estimation (i.e., how close is the estimation, within a specified confidence interval, of the actual value?). One can then select another random sample (or multiple random samples) to calculate other estimation(s) of the statistical measures. These estimations (e.g., of the mean) will each be different than each of the other estimation(s) and will each have an associated statistical significance as to the difference between each estimation and the actual value of the statistical measure (e.g., the mean) of the population. Further, each of these estimations will vary randomly since they are based on a random sample of data from the population. This randomness is exemplary of the "noise" or sampling error that is inherent when an actual statistical measure of a population is estimated based on data in a random sample from that population.

In order to determine the "significance" of the difference in the pattern of prices among purchasers, regions or time periods, the Department has relied upon a concept called the "effect size," and in particular a specific approach developed by Jacob Cohen called the "*d*" statistic or, as the Department has labeled it, the "Cohen's *d* coefficient." This "significance" denotes whether this difference is significant and has meaning, and it is distinct from the concept of "statistical significance" discussed above in relationship to the estimation of the actual values of statistical measures of a given population of data. In the final determination of Xanthan Gum from the PRC, the Department described "effect size" in response to a comment from Deosen, an examined respondent in that investigation:

> Nothing in Deosen's submitted articles undermines the Department's reliance on the Cohen's d test. Deosen'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. Interestingly, the first sentence in the abstract of the article states: Effect size is a simple way of quantifying the difference between two groups *and has many advantages over the use of tests of statistical significance alone*. Effect size is the measurement that is derived from the Cohen's d test. Although Deosen 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*." The article points out the precise purpose for which the Department relies on Cohen's d test to satisfy the statutory language, to measure whether a difference is significant.[101]

Accordingly, when evaluating the significance of a difference between two populations (i.e., the "effect size") based on a random sample from each of these two populations, both the "statistical significance" and the "significance" play roles. First, the statistical significance of the difference in the two means of the random samples is analyzed, such as with the t-test as described by Jacobi in its case brief. Here, the difference is evaluated relative to the standard error in the estimation of the two means, which is dependent on the "noise" or sampling error of these two estimates. When this ratio exceeds accepted thresholds based on confidence intervals determined appropriate for the test, then this difference is found to be statistically significant. Next, the difference of the means is analyzed for its "significance" or effect size. As noted above, the measure of effect size is used in conjunction with the evaluation of statistical significance and "may therefore be said to be a true measure of the significance of the difference." This is evaluated based on the ratio of the difference to the pooled standard deviation of the two samples. The pooled standard deviation is based on the standard deviation (i.e., the variance) of the data in each of the samples. As with the analysis of statistical significance, there are generally accepted thresholds as to the significance of the difference in the means. When there is a wide variance in the data in the samples, then the pooled standard deviation is large and the difference in the means which is necessary to meet the established threshold is correspondingly large. Likewise, if the variance in the data in the samples is small, then the pooled standard deviation is also small and the difference in the means which is necessary to meet the established threshold is correspondingly small.

In examining the requirement provided in section 777A(d)(1)(B)(i) of the Act, the Department has relied upon "effect size," and specifically the Cohen's *d* coefficient, to evaluate whether the difference in the pattern of prices for comparable merchandise among purchasers, regions or time periods is significant. However, unlike in the description above, the data upon which the statistical measure of effect size is based are not random samples but rather the entire population of data (i.e., the U.S. sales to each purchaser, region and time period). Jacobi has reported all of its sales of subject merchandise in the U.S. market during the period of review, and it is this data upon which the Department is basing its analysis consistent with the requirements of section 777A(d)(1)(B), just as it has when calculating Jacobi's weighted-average dumping margin.

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[101] 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 the accompanying IDM at Comment 3(emphasis in the original, internal citations omitted); quoting from 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 (Sept. 2002), http://www.leeds.ac.uk/educol/documents/00002182.htm.

Accordingly, the Department's calculation of the Cohen's *d* coefficient includes no noise or sampling error as the underlying means and variances used to calculate the Cohen's *d* coefficient are not estimates but the actual values based on the complete U.S. sales data as reported by Jacobi in this review. Therefore, Jacobi's insistence that the Department must first consider the statistical significance of its analysis, such as by the inclusion of a t-test, is misplaced and would be inappropriate.

Furthermore, to the extent that Jacobi argues that "significance" is often meant to imply "statistical significance," we note 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, 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, 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.[102] 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.

The Department disagrees with Jacobi's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary.[103] Although these thresholds have qualitative labels, as described in the Prelim Decision Memo, the Department stated that of these three thresholds, "the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists."[104] In other words, the significance required by the Department in its Cohen's *d* test affords the greatest meaning to the difference of the means of the prices among purchasers, regions and time periods. Furthermore, as originally stated in Xanthan Gum from the PRC:

> In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what constitutes a large effect. Although Deosen 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." The author

[102] See AR5 Carbon and accompanying IDM at Comment 4.
[103] See Jacobi's Case Brief at 48.
[104] See Prelim Decision Memo at 20.

> further explains that Cohen's d is a "commonly used measure{}" to "consider the difference between means in standardized units."[105]

Therefore, despite Jacobi's contention, the Department finds the Cohen's *d* test is a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.[106]

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"[107] is not of concern when using the Cohen's *d* coefficient in the context of the differential pricing analysis. As discussed above, when using the Cohen's *d* test, the Department has before it all Jacobi's U.S. sales of subject merchandise during the POR, rather than a sample of those sales. The Cohen's *d* test is run on Jacobi's entire population of U.S. sales, thereby eliminating all uncertainty that may result from relying on a sample of that data. Given that the Department has the entire population of data in each case, concerns about sampling errors are simply misplaced.

Jacobi's comparison of the "large" threshold (i.e., 0.8) for the Cohen's *d* coefficient with the use of one standard deviation in the first step of the Nails test is meritless. The 0.8 "large" threshold is used to gauge difference in the means relative to the pooled standard deviation of the pattern of prices to a purchaser, region or time period with all other prices of comparable merchandise. As described above, the pooled standard deviation is based upon the variance of all of the sale prices in each group. However, the one standard deviation used in the first step of the Nails test determined the maximum price under which the mean sale price to an allegedly targeted purchaser, region or time period must fall in order for the sales to that allegedly targeted group to pass the first step of the Nails test. Further, this standard deviation was calculated based on the mean sale prices to each purchaser, region or time period, and not on the individual sale prices within each group. Therefore, Jacobi's attempt to connect-the-dots between these two analyses is inappropriate.

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 as capable as lower priced sales to create a pattern of prices that differ significantly. 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, which 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 account" using the A-to-A comparison method.[108] The statute directs the Department to consider

[105] See Xanthan Gum from the PRC and the accompanying IDM at Comment 3 (internal citations omitted); quoting from David Lane et al., Chapter 19 "Effect Size," Section 2 "Difference Between Two Means."
[106] See id.; see also Certain Steel Nails From the People's Republic of China Final Results of the Fourth Antidumping Duty Administrative Review, 79 FR 19316 (April 8, 2014) and accompanying IDM at Comment 7.
[107] See Jacobi's Case Brief at 51.
[108] See section 777A(d)(1)(B) of the Act (emphasis added).

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 consider 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.[109] 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 prices 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 exhibits multiple pricing behaviors 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 varying pricing behaviors which result in significantly different prices among purchasers, regions or time periods, 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 behaviors. Accordingly, both higher and lower priced sales are relevant to the Department's analysis of the exporter's pricing behavior.

Furthermore, contrary to Jacobi's assertions, the SAA, as quoted above, recognizes that with targeted dumping, "an exporter may sell at a dumped {e.g., perhaps lower} price to particular customers or regions, while selling at higher prices to other customers or regions."[110] Thus, Congress, in recognizing the concerns regarding targeted, or masked, dumping, recognized that this not only included lower-priced sales which may be dumped, but also higher-priced sales which could conceal or mask dumping. Congress provided a remedy which is permitted to address these concerns when the two statutory requirements have been satisfied. The first of these requirements identify the potential pricing behaviors in the U.S. market which may lead to masked dumping, namely a pattern of prices that differ significantly. Without such a fact pattern, masked dumping cannot occur. The second requirement then must demonstrate that one of the two standard comparison methods cannot account for such differences, such that this potential for masked dumping is actually being fulfilled by the exporter's pricing behaviors in the U.S. market. Therefore, the Department's consideration of both lower- and higher-priced sales as being part of a pattern of prices that differ significantly is consistent with the SAA, and Jacobi's insistence that "differ significantly" can only refer to lower-priced sales is meritless.

Further, the Department finds that Jacobi's "extreme" example (i.e., to demonstrate the inappropriateness of considering both lower- and higher-priced sales as contributing to a pattern of prices that differ significantly) is a prime example which demonstrates the need to consider that higher-priced sales can pass the Cohen's *d* test. If for comparable merchandise, sales to a

[109] 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.
[110] See SAA at 842.

single customer are markedly higher than the weighted-average price to all customers, and the prices to all other customers are slightly below this weighted-average price only the higher-priced sales to the one customer pass the Cohen's d test, which the Department should disallow. Assume, arguendo, that the NV for this merchandise is equal to the weighted-average price to all sales. For an A-to-A comparison, there is no dumping. However, with the A-to-T method, comparisons with the lower-priced sales all result in dumping, whereas the comparisons with the higher-priced sales to the one customer result in potential offsets, perhaps enough to mask the entire amount of dumping found for the vast majority of sales of this product. Jacobi's "extreme" example illustrates the reason why higher-priced sales, along with lower-priced sales, must be considered as potentially contributing to a pattern of prices that differ significantly.

The Department disagrees with Jacobi's assertion that the sales in each test group should also be included in the comparison group rather than have the test and comparison groups be independent (i.e., mutually-exclusive) of each other. This would result in purchasers', regions' or time periods' sale prices being compared to themselves.

We disagree with Jacobi that the Department should consider the results of the Cohen's *d* test by purchaser, by region, and by time period separately from one another. The Department considered all information on the record of this review in its analysis and drew reasonable inferences as to what that data show. Under the Cohen's *d* test and ratio tests, the Department considers the pricing behavior of the producer or exporter in the U.S. market as a whole. The Department does not find the results of the Cohen's *d* test by purchaser, region or time period to be analogous to an aggregation of "apples and oranges" but rather to be different aspects of the pricing behavior(s) of the single producer or exporter. This analysis, based on the Cohen's *d* and ratio tests, informs the Department as to whether there exists a pattern of prices that differ significantly for the producer or exporter as a whole. There is no provision in the statute requiring the Department to determine the existence of a pattern of prices that differ significantly by selecting only one of either purchaser, region or time period. Likewise, the results of the differential pricing analysis, including both criteria provided in the statute, will determine whether the A-to-A method is the appropriate comparison method with which the Department calculates a single weighted-average dumping margin for the producer or exporter, which is also meant to evaluate the amount of dumping for the producer or exporter as a whole.

The Department disagrees with Jacobi's claim that it is inappropriate to aggregate the results of the individual comparison within the Cohen's *d* test to determine whether there exists a pattern of prices that differ significantly. As described in the Prelim Decision Memo, the Cohen's *d* test evaluates whether sales of comparable merchandise to a particular purchaser, region or time period exhibit prices that are significantly different from sales to all other purchasers, regions or time periods, respectively.[111] As such, this analysis must be done for "comparable merchandise" for each of the three specified categories, the results of which are then aggregated for the producer or exporter as a whole to determine whether there exists a pattern of prices that differ significantly for that producer or exporter. When a particular sale is found to be at a significantly different price by more than a single category (i.e., by purchaser, region or time period), that sale is only counted once when aggregating the value of U.S. sales which have passed the Cohen's d

[111] See Prelim Decision Memo at 20-21.

test (i.e., the numerator of the ratio test). Neither the statute nor the SAA specifies that this aggregation is limited to or must be segregated by each of the three ways which an exporter could structure its pricing behaviors, nor is there any reasonable, logical reason to do so. In fact, logic and reason dictates that each of the comparison results within the Cohen's *d* test be aggregated into one overall analysis because if such a pattern is found to exist, then the Department will examine whether the standard A-to-A method can account for such differences. The purpose of this analysis is to determine whether the A-to-A method is an appropriate tool with which to measure the respondent's amount of dumping. The Department undertakes a similar process when measuring this amount of dumping. Specifically, the Department makes comparisons between NVs and EPs or CEPs for comparable merchandise, and then aggregates these comparison results, across purchasers, regions and time periods, to determine the amount of dumping for that respondent as a whole. Therefore, the Department continues to find that its use of the Cohen's *d* and ratio tests in these final results is consistent with the statute and is a reasonable execution of its mandate to calculate the weighted-average dumping margin for Jacobi.

C. Explanation of the Differential Pricing Analysis

Jacobi's Arguments:

- Section 777A(d)(1) of the Act sets forth an "exception" to the statutorily mandated preference for using average-to-average AD margin calculation methodology.
- The statutory language in section 777A(d)(1)(B)(ii) also clearly dictates that, prior to applying the average-to-transaction method, the Department must explain why the use of the default average-to-average method cannot account for the pricing differences. The Department's perfunctory explanation in other cases that simply stating there were differences in the margins using the A-to-A method as compared to the A-to-T methodology does not constitute a reasonable explanation. The mere fact that the Department found a difference does not in any way prove why the "significantly" different pricing of exports "cannot be taken into account."
- Therefore, if the Department continues to find that Jacobi engaged in "differential pricing," the Department must adhere to the statutory requirement and provide a sufficient explanation as to why the normal AD calculation methodology cannot be utilized.

No other interested party commented on this issue.

Department's Position: The Department disagrees with Jacobi that we did not provide an explanation of why the A-to-A methodology cannot account for pricing differences. As explained in the Preliminary Results, if the difference in the weighted-average dumping margins calculated using the A-to-A method and an appropriate alternative comparison method is meaningful, then this demonstrates that the A-to-A method cannot account for such differences and, therefore, an alternative method would be appropriate.[112] The Department 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 when both margins are above de minimis; or 2) the

[112] See Prelim Decision Memorandum at "Determination of Comparison Method."

resulting weighted-average dumping margin moves across the de minimis threshold.[113] Here, such a meaningful difference exists for Jacobi because when comparing Jacobi's weight-averaged dumping margin calculated pursuant to the A-to-A method and an alternative comparison method based on applying the A-to-T method only to those U.S. sales that passed the Cohen's *d* test, Jacobi's weighted-average dumping margin moves across the de minimis threshold.[114] This threshold is reasonable because 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 method cannot take into account different pricing behaviors exhibited by the exporter in the U.S. market. Therefore, for these final results, the Department finds that the A-to-A method cannot take into account the observed differences.

Comment 3: Whether Separate Rate Respondents Should Receive Zero or De Minimis Margins

Albemarle's and Huahui's Arguments:

- If both mandatory respondents get zero or de minimis margins, the Department should assign a zero margin to Huahui because the statute and SAA recognize that assigning a zero margin as a separate rate is a reasonable method.[115]
- The Department should not pull forward rates from previous administrative reviews because those rates may not reflect conditions prevailing during subsequent administrative reviews. Indeed, the CIT has found this practice unreasonable in ongoing litigation.[116]

Carbon Activated's Arguments:

- If both mandatory respondents get de minimis margins, the Department should assign the separate rate companies a de minimis margin.
- Per section 735(c)(5)(B) of the Act, if the dumping margins for all individually investigated exporters or producers are zero or de minimis, the Department "may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated." Thus, the statute does not preclude assigning de minimis margins to separate rate companies, [117] and the Department has assigned separate/all others rate companies de minimis margins in other cases.[118]
- The Amanda Foods line of cases support the proposed method of averaging de minimis mandatory respondent rates to calculate a separate rate.[119]

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[113] See id.

[114] See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, International Trade Analyst, Office V, re: "Analysis of the Final Results of the Sixth Administrative Review of Certain Activated Carbon from the People's Republic of China: Jacobi Carbons AB ("Jacobi")," dated concurrently with the memorandum.

[115] Huahui cites section 735(c)(5)(B) of the Act and the SAA at 873.

[116] Huahui cites Albemarle Corp. v. United States, 931 F.Supp.2d 1281, 1296 (CIT 2013).

[117] Carbon Activated cites Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368, 1380-81 (CIT 2009) ("Amanda Foods").

[118] Carbon Activated cites Brake Rotors from the People's Republic of China, 73 FR 32678 (June 10, 2008); Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 73 FR 24220, 24221 (May 2, 2008).

[119] Carbon Activated cites Amanda Foods, 647 F. Supp. 2d at 1380-82; Amanda Foods (Vietnam) Ltd. v. United States, 714 F. Supp. 2d 1282 (CIT 2010) ("Amanda Foods II").

Petitioners' Rebuttal:

- The Department should not assign de minimis margins to the separate rates respondents because assigning Carbon Activated and Huahui zero margins in this review based on de minimis margins of the mandatory producers is not required by the statute, contrary to the Department's established policy, and not supported by the record evidence. Further, Carbon Activated's reliance on the Amanda Foods cases is misplaced.

Department's Position: For the final results, the weighted-average dumping margins that the Department calculated for the mandatory respondents were not zero or de minimis. Therefore, Albemarle's, Carbon Activated's and Huahui's arguments are moot, and we will use the methodology set forth in section 735(c)(5)(A) of the Act to calculate the separate rate for the final results.

Surrogate Values

Comment 4: Anthracite Coal Surrogate Value

Jacobi's Arguments:

- The statute mandates the selection of SVs comparable to the factors of production ("FOPs") as consumed by the producer.[120]
- In Taian, the CIT rejected the Department's use of a surrogate value derived from a broad basket Harmonized Tariff Schedule ("HTS") category where more specific information was available and held that product specificity must be the primary consideration by the Department in determining the "best available information."[121]
- The Department should value anthracite coal using data from the U.S. Energy Information Administration ("EIA"). It is the best surrogate value ("SV") choice for anthracite coal because it is specific to the input used to by Jacobi's producers.
- The fact that the EIA data are domestic prices from the United States is not a concern because the Surrogate Country Memo notes that if unsuitable FOP information cannot be found from the countries on the list, the Department may seek information from other countries, including the United States.[122] The record contains questionnaire responses, test reports, and photographs to demonstrate that Jacobi's suppliers consumed raw, bulk anthracite coal.
- After excluding NME imports, the Philippine Global Trade Atlas ("GTA") import data used in the Preliminary Results are comprised of only two U.S. import entries. Regarding the first entry, there is no corroborating record evidence from Port Import/Export Reporting Service ("PIERS")[123] or the Philippine Bureau of Information Services ("BIS") that the entry was ever shipped from the United States. For the second entry, the PIERS export data and BIS data on the record demonstrate the anthracite coal in the Philippine GTA import data were

[120] See section 1677b(c)(1) of the Act.
[121] Jacobi cites Taian Ziyang Food Company Ltd., v. United States, 783 F. Supp. 2d 1292, 1300-40 (CIT 2011) ("Taian").
[122] Jacobi cites to Department's Letter to All Interested Parties, Re: "Sixth Administrative Review of Certain Activated Carbon from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments," dated August 2, 2013 ("Surrogate Country Memo").
[123] PIERS is a trade information service that uses publically available ship manifest data in its reporting.

not raw, bulk anthracite coal, but a finished product identified as a Leopold Filter, from Xylem, Inc. ("Xylem"), that would not be used in the production of activated carbon.
- Import, export, and historical data from multiple countries, including the Philippines, demonstrate that the POR average unit value ("AUV") of the Philippine GTA import data for anthracite coal are aberrational and are unreliable.
- Using POR GTA import data from other countries would be inappropriate because record evidence demonstrates that such import values include imported products that are not raw, bulk anthracite coal used by Jacobi's suppliers.

Cherishmet's Arguments:
- The Department should value anthracite coal using Philippine GTA data used in AR5 Carbon because EIA data on the record demonstrate this is not an unreasonable value for anthracite coal and no parties contested this value in AR5 Carbon. EIA data corroborate the AR5 Carbon Philippine GTA data.
- Alternatively, data from Ukraine provide the second best surrogate value for anthracite coal because: 1) there is legal precedent for preferring best available information from a secondary surrogate country over an inferior quality data from a primary surrogate country; 2) Ukraine is satisfies the statutory criteria for an appropriate surrogate country; and 3) GTA Ukraine import data and Metal Expert Ukraine domestic price data provide the most reliable and corroborated price data for valuing anthracite coal.
- There is no explanation on the record to account for the drastic differences between the Philippine GTA data in this review from the Philippine GTA data used in AR5 Carbon.
- The POR Philippine GTA data are distorted and unreliable because the data are based entirely on exports from the United States, of which data from ZEPOL Corporation ("ZEPOL")[124] indicate 94 percent were for an anthracite-based activated carbon product that is not comparable to anthracite coal as the former is a downstream processed product in contrast to anthracite coal which is an unprocessed raw material.
- The Department should not use POR GTA data from Colombia, Indonesia, or Thailand because the export data from the countries which purportedly supply Colombia, Indonesia, and Thailand do not match the import data for these countries, and some of the supplying countries do not have anthracite coal reserves.

Albemarle's and Huahui's Arguments:
- The Department should value anthracite coal using data from the EIA because they meet the Department's criteria for SV selection and are the most specific to the input.
- That the EIA data are domestic prices from the United States is not a reason to reject it because Petitioners' argument with respect to the importance of the level of economic development of the SV's source country does not explain why the input-specific and contemporaneous EIA data are not the best available information.[125] In WIMA, the CIT affirmed the Department's choice to use a SV from the United States as reasonable and supported by substantial record evidence in valuing Chinese lindenwood.

[124] Similar to PIERS, ZEPOL is a trade information service that uses publically available ship manifest data in its reporting.
[125] Albemarle and Huahui cite Writing Instrument Mfrs. Ass'n v. U.S. Dep't of Commerce, 984 F. Supp. 629, 638 (CIT 1997) ("WIMA"), aff'd 178 F.3d 1311 (Fed. Cir. 1998).

- The POR Philippine GTA data are unusable because: 1) it pertains to a broad category and thus is not specific to the anthracite coal used to produce activated carbon; and 2) evidence from PIERS and ZEPOL indicate that the Philippine GTA data consist of exports of anthracite-based water filtration media manufactured for end use. The Petitioners have not placed any evidence on the record establishing that the grotesquely inflated AUV derived from the Philippine GTA data are reflective of respondents' economic reality.
- The Department also should not consider POR GTA data from Indonesia, Thailand, or Colombian because the data from these countries are either distorted or unreliable.
- If the Department does not use data from EIA, alternatively, the Department should value anthracite coal using Philippine GTA data from AR5 Carbon.

Carbon Activated's Arguments:

- The 2012 EIA data for Pennsylvania coal represent the best available information on the record for valuing anthracite coal and meets all the Department's criteria for selection of a surrogate value.
- The Department is required to use the "best available information" for assigning values to a respondent's FOPs and financial ratios.
- The POR Philippine GTA data used in the Preliminary Results to value anthracite coal do not constitute the "best available information" on the record because the record demonstrates that the POR Philippines GTA data for anthracite coal consist of highly processed finished filter media for water solutions.
- Petitioners' attempt to corroborate the POR Philippines GTA data with Indonesian imports is unfounded.

Petitioners' Rebuttal:

- The Department should continue to rely on the contemporaneous Philippine GTA data to value anthracite coal because it satisfies the Department's SV selection criteria and represents the best information on the record for valuing anthracite coal.
- Respondents' argument that first U.S. entry from November 2012 under HTS 2701.11 is misclassified because it is not corroborated by the Philippine BIS or from private services such as PIERS and ZEPOL, is speculative at best. Because this argument only applies to the November 2012 entry, it does not undermine the March 2013 entry under HTS 2701.11 that constitutes the majority of the entries during that period. The fact that PIERS did not record a similarly sized entry from the United States during the period does not invalidate the reliability of the GTA data. The PIERS data could equally be an error as the Department previously recognized that the PIERS data may not be as reliable as other primary sources.[126]
- None of the descriptions for the March 2013 entry in either of PIERS, ZEPOL or the Philippine BIS data demonstrate that the entries under HTS 2701.11 are not specific to the type of anthracite coal used by the respondents.
- The description of the filter media of Xylem's Leopold product does not provide evidence that it is a finished activated product. Rather, it appears that filter anthracite coal and

[126] Petitioners cite Wuhu Fenglian Co., Ltd. v. United States, Slip Op. 13-27 at 20-21 (CIT 2013) ("Wuhu Fenglian").

anthracite coal used by the respondents is likely to be very similar in physical characteristics and is the same type of coal.

- The AUVs presented by the respondents do not undermine using POR Philippine GTA import data because, for example, the November 2012 entry valued at $3,272/metric ton ("MT"), while on the high end of the spectrum, is very close to the $3,125/MT price for "anthracite pellets" from Zambia imported into the Philippines as recorded in the Philippine BIS data. To the extent that BIS data are relevant and reliable, it demonstrates that imports of anthracite coal into the Philippines are consistently higher than the values advocated by respondents. When removing from the BIS listing all AUVs from the PRC, Korea, and Indonesia that are typically excluded from SV calculations, the AUVs remaining are $712.78/MT from Singapore and $997/MT for the U.S. entry upon which the Department relied. The SV of $1,190/MT upon which the Department relied is not significantly higher than these values.
- In prior reviews, respondents have stated that the type of coal used in the production of their activated carbon is in HTS 2701.11. Further, in several reviews respondents did not argue when the Department relied on imports into HTS 2701.11 to value anthracite coal. Therefore, the Department should continue to value anthracite coal using HTS 2701.11.
- While respondents argue the $997/MT SV is aberrantly high, this value is no more aberrantly high for this POR than the non-contemporaneous AR5 Carbon value of $48.65/MT was aberrantly low for the last POR.
- None of the other sources of surrogate values suggested by respondents meet the statutory requirements for surrogate value selection. Specifically, 1) the data from AR5 Carbon is non-contemporaneous and has not been demonstrated to be similarly specific for this review, 2) the United States is not economically comparable to China and is not on the Surrogate Country Policy list and specificity does not trump all other considerations, and 3) Ukraine is not on the surrogate country list and there is no record evidence that Ukraine is a significant producer of comparable merchandise.
- Finally, if the Department chooses not to rely on Philippine import data to value anthracite coal, the Department should rely on any, or an average, of data from Indonesia, Thailand, and Colombia because all are reliable.

Department's Position: The Department agrees with Cherishmet, Albemarle/Huahui, Carbon Activated and Jacobi that anthracite coal should not be valued using contemporaneous Philippine GTA import data under HTS 2701.11 "Anthracite Coal, Not Agglomerated." Section 773(c)(1)(B) of the Act directs the Department to use the best information available from the appropriate ME country to value FOPs. In selecting the most appropriate SVs, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad market average, is tax- and duty-exclusive, and is specific to the input.[127] The Department's preference is to satisfy the breadth of the aforementioned selection criteria.[128] Moreover, the Department's regulatory preference is to select publicly available SVs

[127] See Fuwei Films (Shandong) Co. v. United States, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012); Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009) ("Fish Fillets 2009") and accompanying IDM at Comment 2.

[128] See Fish Fillets 2009 and accompanying IDM at Comment 2.

from a single surrogate country.[129] However, where all of the criteria cannot be satisfied, the Department will choose a SV based on the best information available on the record.[130]

We disagree with Petitioners' arguments that the contemporaneous information in Philippine GTA import data under HTS 2701.11 "Anthracite Coal, Not Agglomerated" are appropriate to value respondents' anthracite coal input in this administrative review. Cherishmet and Jacobi have placed PIERS[131] and ZEPOL[132] export data on the record, which demonstrate that entries in the Philippine GTA import data under HTS 2701.11, as relied on for the Preliminary Results, are not bulk anthracite coal used by the respondents, but a processed anthracite product.[133] When using trade information services, such as Infodrive, [134]to disregard GTA import data, our practice is to consider the trade service data if it represents a significant portion of the overall imports under the relevant HTS category of the GTA data. If the trade service data represent a significant portion of the GTA import data and the trade service data demonstrate the imports are not what were entered under the HTS category, we do not use that HTS category to value the input.[135] Further, the CIT has recognized the Department's authority to use trade service information to corroborate or discard information derived from GTA.[136] In this review, after removing imports from NME and subsidized countries, the Philippine GTA import data has two imports from the United States, one of 87,090 kilograms ("kg") and one of 5,643 kg.[137] The PIERS and ZEPOL data demonstrate that the entry of 87,090 kg, or 94 percent of GTA's Philippine import data from the United States, is not bulk anthracite coal, but a filter product made from anthracite called "Leopold Underdrain."[138] Petitioners argue that this filter product is not steam activated carbon, but is anthracite coal that respondents would use in the production of activated carbon. However, information placed on the record by Cherishmet and Jacobi indicates that this product has no relation to the production of activated carbon and is a different product than the bulk anthracite coal used by respondents.[139] Specifically, information on the record indicates that the Leopold product is produced from anthracite coal which has been

[129] See 19 CFR 351.408(c).
[130] See Fish Fillets 2009 and accompanying IDM at Comment 2.
[131] See Jacobi's SV Submission, dated November 20, 2013 at Exhibit SV-3.
[132] See Cherishmet's SV Submission, dated November 20, 2013 at Exhibit 3B.
[133] We note Jacobi also placed information from BIS which reports an entry of 80,993 kg from the supplier, Xylem, which is the manufacturer of the Leopold product. However, because this quantity does not match the quantity found in the GTA data, we have not used this information for our determination. See Jacobi's SV Submission at Exhibit SV-3.
[134] Infodrive India ("Infodrive").
[135] See AR1 Carbon and accompanying IDM at Comment 3.c. ("The Department finds that the Infodrive data represent a significant portion of the overall imports (80 percent) under HTS number 2701.12.00: "Bituminous Coal". Further, other record evidence indicates that those products are unrelated to the production of activated carbon").
[136] See Globe Metallurgical, Inc. v. United States, 33 C.I.T. 435, 439-40 (CIT 2009); see also, Calgon Carbon Corp. v. United States, 2011 Ct. Intl. Trade LEXIS 21, *27-30 (CIT 2011).
[137] See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Emeka Chukwudebe, International Trade Analyst, Office V, re: "Sixth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results," dated May 16, 2014 ("Prelim SV Memo") at Attachment 2a.
[138] See Jacobi's SV Submission at Exhibit SV-3 and Cherishmet's SV Submission at Exhibit 3B.
[139] See id. (where product information explains that Leopold Underdrain is used to improve water drainage, water filtering and is manufactured to specific utility coefficients).

processed to produce a "low-uniformity coefficient" to extend the life and efficiency of water filters.[140] Accordingly, because information on the record demonstrates that a significant portion (i.e., 94 percent) of the contemporaneous Philippine GTA import data under HTS 2701.11 "Anthracite Coal, Not Agglomerated" are not bulk anthracite coal, but rather a process anthracite product, we will not use any data from that category to value the respondents' anthracite coal input.

Citing Wuhu Fenglian, Petitioners also contend that the Department has recognized that PIERS data may not be as reliable as other primary sources and that the Department does not typically use export data to impeach import data.[141] While the Department typically does not rely on export data to impeach import data, the record contains information from two separate trade information service providers, PIERS and ZEPOL, which report the same quantity, product, shipping date, and destination pertaining to the same quantity reported in the GTA data.[142] Further, while the Department did not rely on PIERS data in Wuhu Fenglian, it did not do so because it found information provided by U.S. Customs and Border Protection better served for purposes of respondent selection.[143] Accordingly, the Department finds that two separate sources, the data from PIERS and ZEPOL, represent a significant portion of the overall imports (i.e., 94 percent) under HTS number 2701.11: "Anthracite Coal, Not Agglomerated." Further, record evidence demonstrates that the Leopold product is unrelated to the production of activated carbon.[144] Therefore, we find that, in this administrative review, contemporaneous information under HTS number 2701.11: "Anthracite Coal, Not Agglomerated" is inappropriate to apply to the anthracite coal input used to produce activated carbon.[145]

The Department disagrees with Jacobi, Albemarle, Huahui, and Carbon Activated that we should rely on anthracite coal data provided by the U.S. EIA. As an initial matter, we note that the United States is not at the same level of economic development at the PRC.[146] Specifically, the gross national income ("GNI") for the United States is 48,602 USD and the PRC's GNI is 4,940 USD.[147] Further, the Department relies on SV data from countries whose GNI is not at the same level of economic development as the NME country, but still at a level comparable to that of the NME country, only when we have been unable to obtain SVs from any other source that is at the same level of economic development as the NME country.[148] Furthermore, in this and previous

[140] See id.
[141] See Wuhu Fenglian, 899 F. Supp. 2d at 1355.
[142] See Jacobi's SV Submission at Exhibit SV-3; Cherishmet's SV Submission at Exhibit 3B.; see also Prelim SV Memo at Attachment 2a.
[143] See Wuhu Fenglian 899 F.Supp.2d at 1366.
[144] See Jacobi's SV Submission at Exhibit SV-3 and Cherishmet's SV Submission at Exhibit 3C. (where product information explains that Leopold Underdrain is used to improve water drainage, water filtering and is manufactured to specific utility coefficients).
[145] See AR1 Carbon and accompanying IDM at Comment 3.c.
[146] See Cherishmet SV Submission, dated April 21, 2014 at Exhibit 2A.
[147] See id.
[148] See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 79 FR 19053 (April 7, 2014) ("Fish Fillets AR9") and IDM at Comment IA (where the Department sought SV information from Indonesia whose GNI was greater than Vietnam's because the significant producer and data quality considerations outweighed the fact that Indonesia was not at the same level of economic development as the NME country in question).

administrative reviews, we have found suitable information from the primary surrogate country under the appropriate HTS number, specifically HTS number 2701.11: "Anthracite Coal, Not Agglomerated," from which to value respondents' anthracite coal inputs; we need not find or rely on SV information from countries whose GNI is far above the PRC's.[149] Additionally, we find Albemarle's and Huahui's reliance on WIMA to support the use of EIA data misplaced. In WIMA, the Department sought a SV for lindenwood, one of the primary inputs in that case, which is indigenous to the PRC.[150] Because of the uniqueness of this input and the difficulties the Department experience finding a suitable SV, the Department used U.S. basswood as the SV for this input because expert testimony on the record of that case indicated basswood was most similar to lindenwood, the input used by the PRC producer.[151] Here, while the record contains information that U.S. anthracite is similar to PRC anthracite,[152] anthracite is not unique to the PRC nor is there any information on the record which would suggest that only U.S. anthracite could be used as suitable replacement for PRC anthracite.

For the final results, we valued respondents' anthracite coal input using the SV from AR5 Carbon.[153] In the fifth review, we found that Philippine GTA import data under HTS number 2701.11: "Anthracite Coal, Not Agglomerated" was specific to the input, publically available, tax and duty free, and from the primary surrogate country.[154] We note that no parties contested that SV in the previous review. While Petitioners argue that the AR5 Carbon value for anthracite coal has not been demonstrated to be similarly specific for this review, we note there is no information on the record which demonstrates, unlike the contemporaneous Philippine imports under HTS number 2701.11 as used in the Preliminary Results, that the AR5 Carbon Philippine GTA imports under HTS 2701.11 are something other than bulk anthracite coal. Without such information, we have no reason to disregard the information provided by the GTA data. Further, we disagree with Petitioners' argument that the Department should not use the anthracite coal SV from AR5 Carbon, but use an average of the anthracite coal SVs from Indonesia, Thailand, and Colombia. While the Department uses SV information from countries other than the primary surrogate country, we have only done so when there is no data from the primary surrogate country[155] However, the Department has a demonstrated preference of valuing inputs using data

[149] See, e.g., Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review, 77 FR 67337 (November 9, 2012) ("AR4 Carbon") and accompanying IDM at Comment IC(A) (finding HTS 2701.11 for both Thailand and the Philippines "viable options" for valuing anthracite coal).
[150] See WIMA, 984 F. Supp. at 636.
[151] See id.
[152] See Jacobi's SV Submission at Exhibit SV-3.
[153] See Jacobi's SV Rebuttal Submission, dated December 16, 2013, at Exhibit SVR-4.
[154] See Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 26748 (May 8, 2013), and accompanying Prelim Decision Memo at 25, unchanged in AR5 Carbon.
[155] 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 2013") and accompanying IDM at Comment 11 (relying on GTA import data from South Africa to value steam where there was no data on the record from the primary surrogate country, the Philippines).

from the primary surrogate country.[156] Further, the Department uses non-contemporaneous SVs when they represent the best available information on the record matching the input in question.[157] Therefore, for the final results, the Department will value anthracite coal using the anthracite coal SV from AR5 Carbon, inflated to the current POR using the Philippine producer price index information on the record of this review.[158]

Comment 5: Surrogate Financial Statement Selection

A. Related Party Transactions

Jacobi's Arguments:

- The Department must disregard the financial statements of Philippine Japan Activated Carbon Corp. ("Philippine Japan"), BF Industries, Inc. ("BF Industries") and Philips Carbon Inc. ("Philips Carbon") because the Department's practice is to disregard financial statements with affiliated party transactions.
- The Department must exclude Philippine Japan's financial statements because it manufactures activated carbon expressly for sale to affiliates and exclude BF Industries and Philips Carbon because there are significant transactions of raw materials between these companies.

Albemarle's and Huahui's Arguments:

- Both Albemarle and Huahui adopt and incorporate arguments made by the mandatory respondents regarding the selection of companies used for the calculation of the surrogate financial ratios and the calculation methodology used therein.

Petitioners' Rebuttal:

- With regard to the financial statements from Philippine Japan, the Department already rejected the same arguments brought by Jacobi in prior reviews and should continue to do so in this review.

Department's Position: When selecting financial statements for purposes of calculating financial ratios, the Department's policy is to use data from ME surrogate companies based on the "specificity, contemporaneity, and quality of the data."[159] In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from

[156] See 19 CFR 351.408(c); see also Clearon Corp. v. United States, Slip Op. 13-22 at 27 (CIT 2013) (acknowledging that the Department's preference is reasonable because "deriving the surrogate data from one surrogate country limits the amount of distortion introduced into its calculations"); Bristol Metals L.P. v. United States, 703 F. Supp. 2d 1370, 1374 (CIT 2010).

[157] See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712 (May 9, 2014) ("Wood Flooring") and accompanying IDM at Comment 9.

[158] See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Senior Trade Analyst, Office V, re: "Sixth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Final Results," dated concurrently with this memo ("Final SV Memo") at Attachment I.

[159] See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006), and accompanying IDM at Comment 1.

producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit. Although the regulation does not define what constitutes "comparable merchandise," it is the Department's practice, where appropriate, to apply a three-prong test that considers: (1) physical characteristics; (2) end uses; and (3) production process.[160] Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.[161] However, the Department is not required to "duplicate the exact production experience of" an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."[162]

The record of this review contains six surrogate financial statements from producers of identical merchandise in the Philippines. We note that no party contested, and we continue to find, that all six of these Philippine surrogate financial statements: (1) are publicly available; (2) are contemporaneous with the POR; (3) are from an approved surrogate country; (4) come from companies that produced identical merchandise; (5) are from companies that were profitable; and (6) are complete.[163] The record contains a seventh financial statement from the Philippines for Cenapro Incorporated. However, this company did not demonstrate a profit during the POR and the Department's practice is not to include financial statements from surrogate companies which do not demonstrate a profit.[164]

With regard to Jacobi's arguments that Philippine Japan and BF Industries had transactions with related parties such that the Department must question their independence and reliability, we find these arguments speculative in nature. Jacobi points to no record evidence as to how and to what degree these transactions with affiliates were allegedly distortive. Moreover, as Petitioners correctly state, we have previously declined to reject financial statements, including that of Philippine Japan, where evidence did not demonstrate related party transactions cause a distortion in the calculation of the surrogate financial ratios.[165] Therefore, we will continue to rely on these financial statements, with the exception of Philips Carbon, for the final results. With respect to our reliance on the Philips Carbon financial statement, see below at Comment 5D.

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[160] See, e.g., Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 38459 (July 2, 2010), and accompanying IDM at Comment 2.

[161] See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010), and accompanying IDM at Comment 13.

[162] See Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999); see also Magnesium Corp. of Am. v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).

[163] See Petitioners' SV Submission, dated November 20, 2013, at Exhibit 6A) BF Industries; Exhibit 6B) Premium AC Corporation ("Premium AC"); Exhibit 6C) Davao Central Chemical Corporation ("Davao"); Exhibit 6D) Philips Carbon, and; Exhibit 6E) Philippine Japan. See also Jacobi's SV Submission, dated November 20, 2013, at Exhibit SV-7) Mapecon Green Charcoal Philippines, Inc. ("Mapecon").

[164] See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010-2011, 78 FR 22513 (April 16, 2013) and accompanying IDM at Comment 6, see also, Cherishmet's SV Submission, dated November 20, 2013, at Exhibit 9A) Cenapro Inc.

[165] See AR4 Carbon and accompanying IDM at Comment I.F.

B. Whether the Financial Ratios of BF Industries are Outliers

Cherishmet's Arguments:

- The Department should exclude the financial statement of BF Industries because its overhead and selling, general and administrative ("SGA") ratios are far outside of the range of the corresponding ratios evidenced from the other five financial ratios. Averaging in the financial ratios of BF Industries result in an overall skewed set of average financial ratios.

Petitioners' Rebuttal:

- The Department relies on an average of multiple financial statements to capture the entire range of industry experience.
- The Department should reject Cherishmet's argument because Cherishmet is unable to cite to any elements of the financial statements, BF Industries' website, or any other objective evidence to substantiate its claim.

Department's Position: We disagree with Cherishmet that we should reject the financial statements of BF Industries simply because its calculated financial ratios are alleged to be outliers from the other financial ratios on the record. The Department generally prefers to use more than one set of financial statements where possible to replicate the experience of producers of certain activated carbon in the surrogate country.[166] Cherishmet's arguments are speculative and point to no evidence on the record which demonstrates that BF Industries' financial statements are unusable. Accordingly, for the final results, we will continue to rely on BF Industries' financial statements to calculate surrogate financial ratios.

C. Whether BF Industries Financial Statements Demonstrate Benefits Received from Countervailable Subsidies

Carbon Activated's Arguments:

- The Department should reject BF Industries' financial statements because record evidence indicates BF Industries meets the threshold of "reason to believe or suspect" it of being subsidized because it received export packing and omnibus credits.[167]
- The Department consistently found that export packing credits are countervailable.
- The Department also found numerous tax incentives available under the Omnibus Investment Code are countervailable.

Petitioners' Rebuttal:

- The Department should reject Carbon Activated's arguments in the final results because the Department has not conducted any recent subsidy investigations involving goods from the Philippines since 1986. In addition, there is no evidence that the export loans received by BF Industries are related to the programs the Department examined in 1986.
- If, however, the Department determines that export packing credit programs and/or omnibus credits from commercial banks disqualify a company's financial statements, the Department

[166] See Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 74644 (December 17, 2012) and accompanying IDM at Comment 4.

[167] Carbon Activated cites Canned Tuna from the Philippines; Final Results of Countervailing Duty Administrative Review, 51 FR 43758 (December 4, 1986) ("Tuna").

must also disqualify the financial statements of Philips Carbon and Premium AC because they too contain export packing credit programs and/or omnibus credits from commercial banks

Department's Position: As explained above, the Department considers several criteria when selecting surrogate financial statements to calculate surrogate financial ratios. Where we have reason to believe or suspect that the company producing comparable merchandise benefited from countervailable subsidies, the Department normally considers the financial ratios derived from that company's financial statements to be less representative of the financial experience of the relevant industry than the ratios derived from financial statements of a company that does not contain evidence of subsidization.[168] Here, we disagree with Carbon Activated's arguments that we reject the financial statements of BF Industries because they contain references to export packing credits and tax incentives allegedly received under a countervailable subsidy program. We note that the Department revoked the countervailing duty order on Tuna in 1988, and the Department has not subsequently found the programs cited by Carbon Activated countervailable.[169] Therefore, because BF Industries produces identical merchandise and its financial statements are free of countervailable subsidies, and otherwise meet the Department's criteria stated above, the Department will use its financial statements to calculate surrogate financial ratios.

D. Whether to Reject Financial Statements with Non-Interest Bearing Loans

Carbon Activated's Arguments:

- The Department should exclude the financial statements of 1) BF Industries, 2) Davao, 3) Philips Carbon, and 4) Philippine Japan, because evidence indicates that they received "non-interest bearing loans or advances from shareholders with no definitive call period."[170] Wood Flooring involved the same surrogate country, the Philippines, and the same phenomena in the Philippine financial statements.
- For the final results, the Department should only rely on the 2012 financial statements of Premium AC and Mapecon Green Charcoal Philippines ("Mapecon") to calculate the surrogate value financial ratios.

Petitioners' Rebuttal:

- The Department should reject arguments made by Carbon Activated for following reasons:
    - In the case of BF Industries, the advances were for amounts from BF Industries to affiliated parties. This is not a case of a company receiving an interest free loan from affiliated parties.
    - Philips Carbon should not be used for the final results because evidence on the record indicates that Philips Carbon received an interest free cash advance from BF Industries. The Department considers companies obtaining, and not providing,

[168] See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 36630 (June 28, 2010) ("Carbazole") and accompanying IDM at Comment 1.
[169] See Canned Tuna From the Philippines; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order, 53 FR 9788 (March 25, 1988).
[170] Carbon Activated cites Wood Flooring and accompanying IDM at 22 (citing Plywood and accompanying IDM at Comment 7).

interest-free advances as potentially disqualified, it is Philips Carbon, and not BF Industries, that should not be used for the final results.

- Davao's non-interest bearing accounts payable do not pertain to interest free loans from affiliated parties or cash advances from shareholders. However, if the Department determines that non-interest accounts payable disqualifies Davao's financial statement, then the financial statements of Premium AC and Philippine-Japan should also be disqualified because they contain similar transactions.

- If the Department considers the receipt of non-interest bearing advances a basis for disqualifying financial statements it must apply the policy consistently. Specifically, Mapecon's financial statement indicates it received advances from related parties but it reported no interest expenses on advances or loans. If such transactions trigger disqualification, then the Department should disqualify Mapecon.

Department's Position: We agree, in part, with Carbon Activated and Petitioners that we should not use the financial statement of Philips Carbon in the final results. As noted above, in the Preliminary Results, we used the financial statements of BF Industries, Davao, Philips Carbon, Philippine Japan, Premium AC, and Mapecon to calculate the surrogate financial ratios.

In NME cases, it is the Department's practice to reject the financial statements of companies which explicitly state that they received interest-free loans or did not claim any interest expense, because we cannot determine the final impact of the interest-free loan on the financial ratios.[171] Accordingly, we will reject any financial statements with evidence of non-interest bearing loans or advances from shareholders with no definite call period.[172]

With respect to Philips Carbon, Philips Carbon's financial statements state in Note 13 that it received non-interest bearing cash advances from stockholders and a related company during 2012.[173] We have previously stated that we do not consider related-party transactions in this case to disqualify financial statements from consideration for surrogate financial ratios.[174] However, because Philips Carbon's financial statements explicitly state that its stockholders, which are not identified as a related party, provided non-interest bearing cash advances payable on demand, we consider the stockholder cash advances to be non-interest bearing loans which disqualify Philips Carbon's financial statements from use in calculating the surrogate financial ratios.

Additionally, as Petitioners notes with respect to BF Industries, Davao, Mapecon, Premium AC and Philippine Japan, these financial statements do not demonstrate or explicitly state they received interest-free loans.[175] Accordingly, for the final results, we will continue to use these financial statements to calculate surrogate financial ratios.

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[171] See Plywood and accompanying IDM at Comment7; see also Wood Flooring and accompanying IDM at Comment 2.
[172] See id.
[173] See Petitioners' SV Submission at Exhibit 6D page 10.
[174] See AR4 Carbon and accompanying IDM at Comment 1.C.F.
[175] See Petitioners' SV Submission at Exhibit 6A) BF Industries; Exhibit 6C) Davao and; Exhibit 6E) Philippine Japan. See also Jacobi's SV Submission, dated November 20, 2013, at Exhibit SV-7) Mapecon Green Charcoal Philippines, Inc. ("Mapecon").

Comment 6: Surrogate Financial Ratio Calculation

A. Calculation of Premium AC's Surrogate Financial Ratios

Jacobi's Arguments:

- In the Preliminary Results, the Department erred in its classification of traded and finished goods when calculating the surrogate financial ratios for Premium AC.
- Specifically, the Department included the beginning inventory in SG&A and the closing inventory in Raw Materials rather than including both the opening and closing line items in the SG&A denominator.
- For the final results, the Department should correct this error and consistently apply the change in traded/finished goods to include both the opening and closing stock in the same category of expense.

Petitioners' Rebuttal:

- Agrees with Jacobi.

Department's Position: In the Preliminary Results, we categorized Premium AC's beginning inventory, 61,856,116, under traded/finished goods.[176] In deriving appropriate surrogate values for SG&A and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to materials, labor, and equipment ("MLE"), factory overhead ("OH"), SG&A, and profit, and excludes certain expenses (e.g., movement expenses) consistent with the Department's practice of accounting for these latter expenses elsewhere.[177] However, in NME cases, it is impossible for the Department to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding because the Department does not seek information from or verify the information from the surrogate company.[178] Therefore, in calculating surrogate overhead and SG&A ratios, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category.[179] As stated by the CIT, the Department is "neither required to 'duplicate the exact production experience of the Chinese manufacturers,' nor undergo 'an item-by-item analysis in calculating factory overhead.'"[180]

We agree with Jacobi and Petitioners, in part, that we made an error in the treatment of the open and closing stock identified Premium AC's financial ratio calculation. As noted above, in the Preliminary Results, we categorized Premium AC's beginning inventory, 61,856,116, under traded/finished goods. Additionally, we categorized Premium AC's line item "Less: Unused Materials/supplies Inventory" under raw materials.[181] Premium AC identifies these items in

[176] See Prelim SV Memo at Attachment 6b.
[177] See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("Tires") and accompanying IDM at Comment 18A.
[178] See id.
[179] See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247, 1250-51 (CIT 2002) ("Rhodia").
[180] See Rhodia at 1250 (citations omitted).
[181] See Prelim SV Memo at Exhibit 6b.

Note 6 as "Unused Materials/Supplies."[182] The amounts in these line items can be found in Note 14 "Cost of Sales," as "Add: Inventory, Beg," 61, 856,116, and "Less: Inventory, End," 44,611,098."[183] Because these items are not identified as finished goods, but are identified as "materials and supplies" by Premium AC, and we do not go behind the financial statement to determine appropriate categorization of a surrogate financial company's line items, we consider the amounts identified in Note 6 as raw materials and not finished goods. Accordingly, for the final results, we have re-categorized the 61, 856,116 from traded and finished goods to raw materials.[184]

B. Calculation of Mapecon's Surrogate Financial Ratios

Jacobi's Arguments:

- The Department made errors in its classification of two expenses on Mapecon's financial statements.
- For the final results, the Department should: 1) move the line item for "Gas, Grease, and Oil" from overhead to the column for energy expenses because the Department classifies these as direct energy expenses; and 2) exclude "Transportation/Trucking" expenses from the surrogate financial ratio calculation pursuant to the Department's past practice of avoiding double-counting trucking expenses, considering Jacobi has separately reported this expense in its section C database.

Petitioners' Rebuttal:

- The Department should reject Jacobi's argument and leave the line items in place.
- Jacobi fails to recognize the unique nature of the line-items and their placement in the financial statement. Specifically, "Gas, Grease, and Oil" are non-fuel lubricants and should remain categorized as "manufacturing overhead." "Transportation/Trucking" relates to SG&A costs of travel and transport, such as the hypothetical examples of moving office furniture or transportation related to sales visits.

Department's Position: As explained above, in NME cases, it is impossible for the Department to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding because the Department does not seek information from or verify the information from the surrogate company.[185] Therefore, in calculating surrogate overhead and SG&A ratios, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category.[186]

In the Preliminary Results, we categorized "Gas, Grease, and Oil" as overhead and "Transportation/Trucking" as an SG&A expense.[187] We agree with Jacobi that we should re-categorize "Gas, Grease, and Oil" from overhead, because "gas" in "Gas, Grease, and Oil" is a

[182] See Petitioners' SV Submission at Exhibit 6B.
[183] See id.
[184] See Final SV Memo at Attachment 3b.
[185] See Tires and accompanying IDM at Comment 18A.
[186] See Rhodia at 1250 (citations omitted).
[187] See Prelim SV Memo at Exhibit 6e.

fuel/source of energy. Similarly, in BF Industries' financial statement we categorized "Fuel, oil, and lubricants" as energy, because of the descriptor "fuel."[188] Accordingly, because Mapecon categorizes "Gas, Grease, and Oil" under Note 12A "Cost of Goods Manufactured and Sold" and we consider gas a fuel, we will move the line item "Gas, Grease, and Oil" from overhead to energy.[189]

With respect to "Transportation/Trucking," we disagree with Jacobi that this line item should be excluded from the calculation of the SG&A ratio. Because we do not go beyond the financial statements in determining the appropriateness of including an item in the financial ratio calculation, we seek information only within the financial statement itself to determine the nature of the activity generating the potential adjustment to determine whether a relationship exists between the activity claimed and the principal operations of the company.[190] Because there is no clear definition or record evidence that can trace this line item to a particular non-general operation of the company (such as brokerage and handling or truck freight), in accordance with the Department's practice, "Transportation/Trucking," should be reflected in the SG&A expense ratio for this company. Consequently, for the final results, we will continue to classify "Transportation/Trucking" as an SG&A expense.[191]

Although not argued by any party, in our review of Mapecon's financial statements, we corrected other inadvertent errors in the calculation of its financial ratios. In the Preliminary Results, we inadvertently categorized the line items "Salaries and Wages," "Depreciation," and "Fuel and Oil" in Note 12B "Cost of Service" as labor, overhead and energy expenses, respectively.[192] As stated above, in calculating surrogate overhead and SG&A ratios, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category.[193] Because these items are located under "Cost of Service" and not identified as manufacturing costs, the line items under "Cost of Service" should be categorized as SG&A expenses. Therefore, for the final results, we have categorized Mapecon's Note 12 B. "Cost of Service" line items "Salaries and Wages," "Depreciation," and "Fuel and Oil" as SG&A expenses.[194]

C. Categorization of Bank Charges for Premium AC and Davao

Jacobi's Arguments:

- The Department should exclude bank charges from its calculation of the surrogate SG&A expense ratios for Premium AC and Davao.
- Jacobi separately reported bank charges in its section C database as CREDCARD. The inclusion of these expenses in the surrogate financial ratios constitutes double-counting.

[188] See Prelim SV Memo at Exhibit 6a.
[189] See Final SV Memo at Attachment 6a
[190] See, e.g., Tires and accompanying IDM at Comment 18A.
[191] See Final SV Memo at Attachment 3d.
[192] See Prelim SV Memo at Exhibit 6e.
[193] See Rhodia at 1250 (citations omitted).
[194] See Final SV Memo at Attachment 6d.

Petitioners' Rebuttal:

- This line item is properly included as part of SG&A because credit card fees are not the same as bank services and related fees provided to a company.

Department's Position: We disagree with Jacobi that we should exclude bank charges from Premium AC's and Davao's calculation of the surrogate SG&A expense ratios because Jacobi reported credit card charges in its section C questionnaire response. In the Preliminary Results, and in accordance with the Department's practice, we included bank charges because this line item includes selling expenses that are appropriately classified as SG&A for purposes of calculating the surrogate financial ratios.[195]

As stated above, in calculating surrogate overhead and SG&A ratios, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category.[196] There is no information contained in Premium AC's or Davao's financial statements which suggests that credit card expenses are included in the line item "bank charges."[197] Without the ability to segregate specific types of expenses, excluding the whole line item from the calculation of SG&A could lead to unintentional distortions rather than resulting in more accurate ratios because it would result in the exclusion of certain expenses appropriately classified as SG&A and not captured elsewhere in the Department's calculations. The Department's practice of not making such adjustments to surrogate financial statements was upheld by the CIT in where the Court cited cases supporting the position that the Department is not required to duplicate the exact production experience of the Chinese manufacturers nor undergo an item-by-item analysis in calculating factory overhead.[198] The same principle applies to the calculation of the surrogate SG&A ratio. Thus, the Department has not excluded the line item in question from the calculation of the SG&A ratio for the final results.

D. Categorization of Insurance Expenses for Davao and Philips Carbon

Jacobi's Arguments:

- The Department should exclude insurance expenses from its calculation of surrogate financial ratios for Davao and Philips Carbon.
- Jacobi separately reported insurance expenses incurred by itself in its section C database as MARNINU. The inclusion of these expenses in the surrogate financial ratios constitutes double-counting.

Petitioners' Rebuttal:

- A company's insurance expenses cover all of its assets. Based on the companies' financials, Philips Carbon's and Davao's total fiscal period insurance covers company plant equipment, lab equipment, buildings, inventory, office equipment, etc. As such, total company insurance expenses belong in SG&A.

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[195] See, e.g., Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262, 1301 n. 36 (CIT 2006) (explaining that bank charges are included in SG&A).
[196] See Rhodia, at 1250 (citations omitted).
[197] See Petitioners' SV Submission at Exhibit 6B-C.
[198] See Rhodia at 1250 (citations omitted).

Department's Position: For the final results, we have not excluded insurance expenses for the Davao financial statement from the calculation of SG&A because there is no information which demonstrates that Davao's insurance expenses are limited to insurance expenses incurred for shipping merchandise.[199] As explained above, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category.[200] Because the line item "insurance expenses" in Davao's financial statements do not appear to reference non-general insurance expenses, such as marine insurance, incurred by the company, this line item should be considered a general administrative expense. Accordingly, we will continue to include this line item in our calculation of Davao's SG&A ratio.

E. Categorization of Travel and Transport Expenses For Davao

Jacobi's Arguments:

- The Department should exclude "Travel and Transport" expenses in its calculation of overhead expense for Davao.
- The Department's standard methodology is to exclude transportation expenses on the manufacturing side of the normal value calculation as these expenses are separately captured in the Department's margin calculation using a surrogate value for truck freight expenses. These expenses were properly excluded in the Department's calculation of BF Industries, Premium AC, and Philips Carbon.
- The inclusion of these expenses in the surrogate financial ratios constitutes double-counting and is inconsistent with the Department's treatment of this expense for the other financial statements and prior segments of this proceeding.

Petitioners' Rebuttal:

- The Department should reject Jacobi's claims because Davao's reported "travel" and "transportation" costs are not freight costs that would double-count freight costs. Davao's financial statements state separately the value of raw materials consumed as part of the cost of goods sold, which therefore should include material delivery.
- "Travel" is a financial term that normally covers the movement of company employees. Similarly, "transport" as a financial term normally covers company conveyances, such as transportation of repair crews, movement of goods within the company, corporate travel costs, etc., but not in- or out-bound freight (i.e., delivery expenses).

Department's Position: In our financial ratio calculations for Davao, we included the "raw materials" line item from the cost of sales schedule in the materials, labor, and energy denominator, and classified "travel and transportation" expenses from the schedule as overhead (i.e., we included the item in the numerator of the overhead ratio).[201] Jacobi asserts that the classification of transportation expenses as overhead was improper, arguing that the Department's methodology is to exclude transportation expenses in the manufacturing side to

[199] This issue is moot with respect to Philip Carbon because we are not using its financial statements in the final results.
[200] See Rhodia at 1250 (citations omitted).
[201] See Prelim SV Memo at Attachment 6c.

avoid double counting. We disagree with Jacobi and, for the reasons set forth below, continue to classify "travel and transportation" expenses as overhead.

In Davao's financial statements, apart from the fact that the transportation expense line item is included as a component of the cost of goods sold, there is no indication, either on the face of the income statement itself or in the accompanying notes, as to what specifically this item includes or to what activities it relates. In the Preliminary Results, we included this line item in the numerator of the overhead ratio, reasoning that freight related to transporting purchased raw materials is typically included in the raw material expenses on the financial statement. Thus, the separate "travel and transportation" line item likely relates to other activities (e.g., within-factory transportation, vehicles used by factory management, etc.) and is more appropriately classified as overhead. Accounting practice prescribes generally that raw materials inventory on a company's balance sheet is to be valued at a cost that includes all necessary expenditures to acquire such materials and bring them to the desired condition and location for use in the manufacturing process.[202] This valuation includes not only the purchase price of the raw material, but also freight charges (most commonly referred to as "freight-in") on incoming materials and other miscellaneous expenses such as handling or insurance incurred by the buyer related to the purchase.[203] Therefore, the raw material inventory value on a company's financial statement will necessarily include all of these attendant charges in addition to the material itself. Given the foregoing, it is reasonable for our purposes to presume that the raw material line item in Davao's financial statements is likewise inclusive of freight-in expenses, and that the transportation expenses at issue represent overhead charges. Faced with uncertainty as to the exact nature of this line item, and lacking conclusive evidence that the expenses at issue are in fact related to the transport of raw material to the factory, we must make reasonable conclusions based on the available information in classifying this item for our surrogate financial ratio calculations. In this case, the assumptions we made with regard to the Davao financial statement line items (i.e., that the expenses at issue are more appropriately classified as overhead because the raw material value likely includes incoming freight) are both reasonable and solidly grounded in accounting practice and procedure. Accordingly, for the final results, we continue to treat "travel and transportation" expenses from Davao's financial statements under cost of goods sold as an overhead item in our surrogate financial ratio calculations.

F. Labor in Financial Ratios

Carbon Activated's Arguments:

- For the final results, pursuant to its practice as explained in Labor Methodologies,[204] if any financial statements identify labor line items that International Labor Organization ("ILO") 6A labor already covers, to avoid double-counting, the Department must remove them from the SG&A numerator in its calculation of the surrogate financial ratios.

[202] See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China, 79 FR 25572 (May 5, 2014) and accompanying IDM at Comment 11.
[203] Occasionally, a separate, temporary "freight-in" account is used to record incoming freight costs, but for purposes of stating the value of "raw material inventory" on the balance sheet, this amount is added to the purchase price of the materials. See id.
[204] See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

Petitioners' Rebuttal:

- The Department should disregard Carbon Activated's arguments because it confuses factory labor costs and total company employee costs. The Department does not request, and respondents do not provide, hours worked by general administrators, managers, sales staff and other general and administrative workers that conduct functions away from the factory floor.
- The Department should disregard Carbon Activated's comments and/or make the following adjustments:
    - In BF Industries' financial statements, the line items "other benefits" and "social security payments" covers both factory workers and SG&A staff. Because BF Industries reports amounts for each, the Department can bifurcate these expenses between labor and SG&A or adhere to its practice and not re-classify these line items.
    - For Philippine Japan, the Department should only make corrections to the allocation of employee benefits and retirement cost.
    - Regarding Premium AC, Mapecon, Davao, and Philips Carbon, the Department should leave these as is because the Department properly allocated the labor expenses.

Department's Position: As an initial matter, we have no basis for including the wages and salaries of directors, managers, executives, administrative and sales personnel as labor expenses in calculating the surrogate financial ratios. The labor expenses included in the denominator of the surrogate financial ratios are direct and indirect expenses related to manufacturing labor. Directors, managers, executives, and administrative and sales personnel are not employed in manufacturing products and thus their wages are more appropriately considered SG&A expenses.

Nonetheless, we recognize that, in some cases, there are certain SG&A expenses in surrogate financial statements that should be reclassified as labor in calculating surrogate financial ratios. Chapter 6A of the ILO Yearbook reflects all manufacturing costs related to labor, including wages, earnings, benefits, housing, training, etc.[205] Certain of these expenses are not manufacturing wages, but wage-related expenses such as benefits. These items could be treated as SG&A expenses, rather than labor costs, in the financial statements used to calculate financial ratios because they are not direct wages but overhead costs associated with wages. Therefore, in Labor Methodologies, the Department stated the following:

> Finally, the Department will determine whether the facts and information available on the record warrant and permit an adjustment to the surrogate financial statements on a case- by-case basis. If there is evidence submitted on the record by interested parties demonstrating that the NME respondent's cost of labor is overstated, the Department will make the appropriate adjustments to the surrogate financial statements subject to the available information on the record. Specifically, when the surrogate financial statements include disaggregated overhead and selling, general and administrative expense items that are already

[205] See id. at 36093 ("Chapter 6A data that reflects all costs related to labor including wages, benefits, housing, training, etc. ...").

included in the ILO's definition of Chapter 6A data, the Department will remove these identifiable costs items.[206]

In this review, we valued labor using data from Chapter 6A of the ILO Yearbook and the surrogate financial statements include sufficiently detailed labor-related expenses to allow the Department to isolate manufacturing labor, indirect labor and non-remuneration type compensation, such as employee benefits. Moreover, not only do the surrogate financial statements separately identify wage expenses from wage related benefits, but the financial statements separately list SG&A and manufacturing-related salaries and benefits. For example, some of the financial statements contain separate line items for wages, social security and retirement benefits under both the cost of goods sold section of the statements and under the SG&A expenses section of the statements.[207] Consistent with Labor Methodologies, we will treat any item identified as indirect labor or employee benefits in the cost of goods sold section of each of the surrogate financial statements as a labor expense to be included in the denominator of the surrogate financial ratios. We do not find a basis for treating employee benefits listed under SG&A expenses in the surrogate financial statements as manufacturing labor given that the surrogate financial statements have already identified employee benefits relating to manufacturing wages in the cost of goods sold section of the statements. As a result, we treated manufacturing-related salaries and benefits as labor expenses and SG&A-related salaries and benefits as SG&A expenses in our surrogate financial ratios. Accordingly, we have made the following adjustments:

BF Industries:
We re-categorized the line item "Employees' benefits" from labor to SG&A because it is identified as a general and administrative expense under Note 16 "General and Administrative Expenses."[208]

Premium AC:
We re-categorized the line items "SSS, Philhealth Contribution" and "POG-ibig Cont" from labor to SG&A because it is identified as a general and administrative expense under Note 16 "Administrative Expenses."[209]

Mapecon:
We re-categorized the line items "Employee Welfare" and "SSS, Philhealth and HDMF Contribution" from labor to SG&A because it is identified as a general and administrative expense under the general heading Note 14 "Operating Expenses."[210]

[206] See id. at 36094.
[207] See Petitioners' SV Submission at Exhibit 6A.
[208] See Petitioners' SV Submission at Exhibit 6A; see also Final SV Memo at Attachment 6a.
[209] See Petitioners' SV Submission at Exhibit 6B; see also Final SV Memo at Attachment 6b.
[210] See Jacobi's SV Submission at Exhibit SV-7; see also Final SV Memo at Attachment 6d.

Philippine Japan:
We re-categorized the line item "Employee Benefits" from labor to SG&A because it is identified as a general and administrative expense under Note 13 "General and Administrative Expenses."[211]

Comment 7: ILO 6A Labor Calculation

Carbon Activated's Arguments:

- In Wood Flooring, the Department found that some of the ILO 6A data reported for the Philippines resulted in an inappropriately high value.[212]
- Because the Department has acknowledged this issue, for the final results, the Department must make the same correction here to ensure the margins are calculated as accurately as possible.

Petitioners' Rebuttal:

- If the Department confirms with the ILO that the error for the wood product industry is universal, and makes the same correction in this review, then the Department must place the monthly direct labor cost on the record for the chemical industry to obtain the total inflated surrogate value for labor.
- Petitioners reserve the right to submit ministerial error comments on any revised calculations.

Department's Position: In the Wood Flooring Preliminary Results,[213] the Department used Sub-classification 20 of the United Nations' International Standard Classification of All Economic Activities ("ISIC"), Revision 3, "Manufacture of Wood and of Products of Wood and Cork, except Furniture." Subsequent to the Wood Flooring Preliminary Results, parties filed new information demonstrating that Sub-classification 20 was flawed, including an acknowledgement from the ILO that the information represented indirect labor costs and not total monthly compensation. All parties who commented on the matter were in agreement with the adjustment made by the Department to correct the error. The Department used the adjusted ILO 6A data for the final results in Wood Flooring.[214]

In the instant review, the Department is using Sub-classification 24 of the United Nations' ISIC Revision 3, "Manufacture of Chemicals and Chemical Products," a different sub-classification than that at issue in Wood Flooring. And unlike Wood Flooring, the ILO has not indicated that the data are erroneous for Sub-classification 24. Moreover, neither Carbon Activated, nor any other party, provided specific allegations explaining how the data are flawed or provided substantial evidence to support such a claim. Therefore, for these final results we are not making any adjustments or changes to the labor SV.

[211] See Petitioners' SV Submission at Exhibit 6E; see also Final SV Memo at Attachment 6e
[212] Carbon Activated cites Wood Flooring and accompanying IDM.
[213] See Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 70267 (November 25, 2013), and accompanying Preliminary Decision Memorandum ("Wood Flooring Preliminary Results").
[214] See Wood Flooring and accompanying IDM at Comment 10.

Comment 8: Electricity

Albemarle's, Huahui's, and Cherishmet's Arguments:

- The Department should only use data from the Philippines National Power Corporation ("NPC") to value electricity.
- The NPC rate information is representative of main grid rates for every major region in the Philippines, including Camarines Sur province, whereas the DB Camarines Sur[215] data capture price data for only two cities in a small province of the Philippines. No record evidence suggests that Camarines Sur is a representative market for electricity consumption, and indeed record evidence indicates that Camarines Sur's population, electricity consumption, and industrial activity are insignificant when compared to the Philippines as a whole.
- The NPC data provide broad market averages for all of the Philippines and already include the province of Camarines Sur.
- The NPC data are contemporaneous with the POR, while the DB Camarines Sur data are unclear regarding contemporaneity.
- The NPC data are exclusive of taxes and duties, while no evidence suggests that the DB Camarines Sur data are similarly tax- and duty-free. To the contrary, from their context, the DB Carmines Sur data appear to provide a "bottom line" cost of electricity that includes taxes.
- The NPC provides information regarding its calculation methodology and the source of its data, while the same information is lacking with regard to the DB Camarines Sur data.
- Because the NPC data satisfy all of the Department's surrogate value selection criteria, there is no sound reason for also using the fatally flawed DB Camarines data. At a minimum, Cherishmet argues that the Department should not accord the DB Camarines Sur data the same weight as the NPC data.
- The Department has previously recognized the superiority of the NPC data in another segment of this proceeding.

Petitioners' Rebuttal:

- The Department should reject the Respondents' argument because: 1) the NPC data reflect heavily subsidized, below-market electricity rates, 2) the NPC rates are below the wholesale prices that the NPC charged to utilities and, 3) the NPC rates are below the actual cost for distribution of electricity to end-users at market prices.
- Cherishmet does not cite any precedent supporting the exclusion of DB Camarines Sur data or the use of the NPC data. Though Albemarle and Huahui cite a prior segment of this proceeding to support their argument that the Department should use NPC data, more recent administrative proceedings support the use of MERALCO data.
- For example, in other cases such as in Fresh Garlic,[216] the Department relied on the more accurate, specific, and contemporaneous industrial rates from MERALCO. The record of

[215] Doing Business in Camarines Sur ("DB Camarines Sur").

[216] Petitioners cite Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011–2012, 79 FR 36721 (June 30, 2014) ("Fresh Garlic") and accompanying IDM at Comment 2.

this review also contains MERALCO's 2012 Annual Report, which is contemporaneous with this review.

- Thus, for the final results, the Department should rely on the MERALCO rates to value electricity.

Department's Position: In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs that are, among other considerations, non-export average values, closest in time with the POR, product-specific, and tax-exclusive.[217] We find the DB Camarines Sur electricity rates to be the best available information for valuing the respondents' electricity input for the reasons stated below.

First, the Department previously found that "utility rates represent a current rate as indicated by the effective date listed for each of the rates provided."[218] The DB Camarines Sur electricity rates were effective beginning in 2009, and the fact that these rates appeared on a webpage with a copyright date of 2012 indicates that these rates were still in effect during the POR.[219] Further, there is no record evidence indicating that the rates have been changed recently. Thus, we find that the DB Camarines Sur electricity rates are contemporaneous with the POR.

Second, the DB Camarines Sur electricity rates are specific to the input being valued because they pertain to industrial consumption.[220] The NPC data do not include specific rates for industrial users. While, in other cases, the Department considered Meralco data for industrial users when sufficient information the record of those cases permitted,[221] this record contains only Meralco's 2012 annual report, which does not provide sufficient detail to determine whether the Petitioners' electricity SV of 8.09 Philippine Pesos ("PhP") per kilowatt hour ("kWh") is specific to industrial end-users.[222] Further, the Meralco financial statements provide an average retail rate of 9.64 PhP per kWh, which is an average rate and not specific to a particular end user (i.e., residential, commercial, or industrial).[223] In contrast, the DB Camarines Sur data consist of a single industrial user rate for two cities in the Philippines, Naga City and Iriga City. Thus, the

[217] See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

[218] See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 4875 (January 30, 2014) ("Chlorinated Isos") and accompanying IDM at Comment 2E (finding that the electricity rates from DB Camarines Sur "likely were, absent evidence to the contrary, effective beginning in 2009, and thus continued to represent the current rate during the POR," and that, "because the effective date of these rates was set prior to the POR, and these rates have remained unchanged in prior proceedings, we continue to find them to be reliable and conservatively valued as contemporaneous rates without any adjustment for inflation").

[219] See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2012, 79 FR 51954 (September 2, 2014) ("WBF 2014") and accompanying IDM at Comment 10.

[220] See Petitioners' SV Submission at Exhibit 4A.

[221] See Chlorinated Isos and accompanying IDM at Comment 2E.

[222] See Petitioners' Rebuttal SV Submission, dated December 17, 2013 at Attachment 3, at 69, 72.

[223] See id. at 24.

DB Camarines Sur publication allows the Department to calculate an average electricity rate (average market rates are preferred by the Department) that is specific to industrial users[224] without introducing possible distortions that could occur from using non-industrial rates that should not be applied to the respondents.

With respect to Albemarle's, Huahui's, and Cherishmet's arguments that NPC has a broader market than DB Camarines Sur, we note that NPC operates power generation and grid maintenance.[225] Further, NPC's prices do not appear to be to end users, but to local electricity cooperatives.[226] Specifically, NPC's prices are Small Power Utilities Group ("SPUG") rates, which are the rates at the generation station or to the grid[227] and not rates charged by the distributing utilities to end users. Therefore, because the rates reported in NPC's annual report do not reflect actual rates charged to end users (i.e., residential, commercial, or industrial users), we no longer find that a combination of NPC and DB Camarines Sur data represent the best available information with which to value the respondents' electricity input.

Additionally, we do not believe we should reject the DB Camarines Sur electricity rates in favor of NPC or Meralco data based on a lack of information regarding whether DB Camarines Sur electricity rates include taxes. While Albemarle and Huahui speculate that the DB Camarines Sur rates likely included taxes, neither Albemarle nor Huahui cite record evidence supporting that proposition.[228]

The position outlined above is consistent with the one recently taken by the Department in Chlorinated Isos.[229] In that case, the Department found that data from NPC and Meralco do not represent the best available information for valuing electricity when compared to data from DB Camarines Sur.[230] In Chlorinated Isos, the Department found that NPC data were inferior to Meralco and DB Camarines Sur data because they do not include specific rates for industrial users.[231] The same is true of the present review.

In support of its argument that the Department should value electricity with the NPC data, Albemarle cites AR4 Carbon. In AR4 Carbon, the Department valued electricity using NPC data.[232] However, in that review the Department did not compare electricity rates from NPC or

[224] See Fish Fillets AR9 and accompanying IDM at Comment III ("It is the Department's practice to choose SVs that are specific to the input, representative of broad market averages . . . .").
[225] See Petitioners' Rebuttal SV Submission at Attachment 2 at 17.
[226] See Petitioners' Rebuttal SV Submission at Attachment 2 at 3 (where the local government provides funds to the electricity cooperative so it can pay NPC for fuel), 20 (where NPC discusses power customers as cooperatives); see also Jacobi's SV Submission at Exhibit SV-5.
[227] See Petitioners' Rebuttal SV Submission at Attachment 2 at 7 (as an example of NPC power generation), 17 ("NPC was retained as a {government owned and controlled corporation} (a) to perform the missionary electrification functions, i.e. provision of power generation and its associated power delivery systems in areas that are not connected to the transmission system, through its Small Power Utilities Group (SPUG)…"); see also Jacobi's SV Submission at Exhibit SV-5.
[228] See Petitioners' SV Submission at Exhibit 4A.
[229] See Chlorinated Isos and accompanying IDM at Comment 2E.
[230] See id.
[231] See id.
[232] See AR4 Carbon and accompanying IDM at Comment III.A.

Meralco to electricity rates from DB Camarines Sur, as it did in Chlorinated Isos. Simply because the Department valued an input with a certain surrogate value source in past proceedings does not mean it will find that source to be the best available information for valuing that input in other proceedings where the record in those proceedings contains other potential surrogate value sources.[233] Each proceeding stands on its own based on the record evidence in that proceeding.[234] Pursuant to section 773(c)(1) of the Act, the Department must evaluate all information contained on the administrative record of each proceeding in order to determine the "best available information" with which to value a respondent's inputs. In this review, for the reasons explained above, we determine that electricity rates from DB Camarines Sur constitute the "best available information" for valuing Cherishmet's and Jacobi's electricity consumption.

Comment 9: Water

Albemarle's and Huahui's Arguments:

- The Department should only use data from the Philippines Local Water Utilities Administration ("LWUA") to calculate the water surrogate value because the LWUA data represents a broad market average whereas the data from both Maynilad[235] and Manila Water pertain to only one highly-urbanized city.
- If the Department continues to include data from the Manila area providers, the Department should adjust the calculation methodology so as to prevent double-weighting Manila data by counting it both in the country-wide LWUA data and in the Maynilad and Manila Water data.
- Commerce's preliminary treatment of the surrogate value for water is inconsistent with its treatment of a similar issue in AR5 Carbon.

Cherishmet's Arguments:

- The Department should value water based exclusively on country-wide LWUA data because those data best satisfy the surrogate value selection criterion of affording a broad market average.
- Furthermore, the country-wide LWUA data impliedly include the data reported by Manila Water and Maynilad. As such, repeating the two sets of regional data in deriving an overall surrogate value for water introduces an avoidable distortion.
- In AR5 Carbon, the Department relied on only LWUA.

Petitioners' Rebuttal:

- LWUA is the Philippine government entity responsible for the overall administration and organization of the water system. Its rates are at a different level of distribution from the commercial industrial rates charged by Manila Water and Maynilad.
- While the Manila Water and Maynilad data reflect prices paid by specific classes of end-users, no such specificity in the level of distribution or the class of consumer is available in the LWUA data, which only give rates by quantity of water consumed.
- The Manila Water and Maynilad industrial end-user's rates are thus, if anything, superior in the specificity of the level of distribution and category of customer.

[233] See WBF 2014 and accompanying IDM at Comment 10.
[234] U.S. Steel Corp. v. United States, 637 F. Supp. 2d 1199, 1218 (CIT 2009).
[235] Maynilad Water Services, Inc. ("Maynilad").

- Further, because the Department found that the LWUA data are based on a water utility covering areas of the Philippines outside of Manila, the three data sources are complementary and only all three together provide rates of a national scope.
- If the Department modifies its calculations for the final results, the Department should not use the LWUA rates and should only rely on the industrial-specific rates of both Manila Water and Maynilad.

Department's Position: In the Preliminary Results, the Department calculated the surrogate value for water using an average rate from the following three sources: 1) Manila Water; 2) Maynilad; and 3) LWUA. The Department continues to calculate the surrogate value for water using an average rate from Manila Water, Maynilad, and LWUA. While we agree with Albemarle and Huahui that we used only LWUA to value water in the previous administrative review, each proceeding stands on its own based on the record evidence in that proceeding. Simply because the Department valued an input with a certain surrogate value source in past proceedings does not mean it will find that source to be the best available information for valuing that input in other proceedings where the record in those proceedings contains other potential surrogate value sources or different factual information. The Department must evaluate all information contained on the administrative record of each proceeding in order to determine the "best available information" with which to value a respondent's inputs.[236]

The Department disagrees with Albemarle's and Huahui's argument that the inclusion of data from Manila Water and Maynilad double-weighs Manila metro area rates or introduces other distortions. Rather, the Department finds that using data from all three sources provides the best representation of water value in the Philippines by covering different parts of the country.[237] Specifically, the LWUA promotes and oversees "the development of water supply systems in provincial cities and municipalities outside of Metropolitan Manila."[238] Manila Water covers areas in the "East Zone concessionaire," including parts of Manila and metro Manila.[239] Maynilad covers areas in the "West Zone" including parts of Manila and metro Manila not covered by Manila Water.[240] For example, Manila Water covers "Manila (San Andres and Sta. Ana only)" and "Makati City (east of South Super Highway)," while Maynilad covers "Manila (all but portions of San Andres & Sta. Ana)" and "Makati (west of South Super Highway)."[241] Therefore, the information on the record indicates that these three sources cover different geographical areas of the Philippines, and their collective use to calculate the surrogate value for water is representative of a more comprehensive broad-market average than can be obtained from any of the sources individually.[242]

[236] See Wood Flooring and accompanying IDM at Comment 10.
[237] See Wood Flooring and accompanying IDM at Comment 11.
[238] See id.
[239] See id.
[240] See Jacobi's SV Submission at Exhibit SV-6.
[241] See id. and Wood Flooring and accompanying IDM at Comment 11.
[242] See Wood Flooring and accompanying IDM at Comment 11.

Comment 10: Coal Tar

Cherishmet's Arguments:

- The Department should value coal tar based on GTA Philippines HTS 2706.00 data instead of HTS 2707.99 because it is more specific to coal tar. Further, because contemporaneous Philippine GTA import data for HTS 2706.00 is not available, the Department should value coal tar using GTA Philippines HTS 2706.00 data for the year ending 2012.
- The Department should not value coal tar using GTA Indonesian data under HTS 2706.00 because this data is not from the primary surrogate country.

Petitioners' Rebuttal:

- The Department should continue to value coal tar using Philippine GTA data reported under HTS heading 2707.99: "Oils & Products Nesoi As Coal Tar Distillates Etc" because there is no information on the record that further distillation of coal tar significantly transforms it or adds value to coal tar.
- The Department should reject the SV proposed by Cherishmet because it is non-contemporaneous and predates the current period of review.
- A non-contemporaneous value of very sporadic and small quantities of Philippine imports is not superior to the contemporaneous value of large volumes of trade of the same commodity. Here, the 2012 Philippine coal tar SV Cherishmet proposes is based on only 19,280 kg of Dutch imports into the Philippines, while the Indonesian coal tar SV represents 11.4 million kg of imports from multiple MEs.
- Accordingly, if the Department determines that the further distillation of coal tar into coal-tar oil removes specificity, it should rely on the contemporaneous Indonesian SV to value coal tar. The Department has a long-standing practice of using SVs from secondary surrogate countries.

Department's Position: We agree with Cherishmet that we should value coal tar using Philippine import data from GTA reported under HTS heading 2706.00 "Mineral Tars, Including Reconstituted Tars." Additionally, we will use the SV from the previous POR which we will inflate using inflator data on the record for the Philippines. In the Preliminary Results, we valued coal tar using Philippine import data from GTA reported under HTS heading 2707.99: "Oils & Products Nesoi As Coal Tar Distillates Etc."[243]

As stated above, the Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available and contemporaneous with the POR, and tax and duty exclusive.[244] 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.[245] While there is no hierarchy

[243] See Prelim SV Memo at 4.

[244] See, e.g., Fuwei, 837 F. Supp. 2d at 1350-51; 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.

[245] 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.

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."[246]

We disagree with Petitioners' contention that HTS 2707.99: "Oils & Products Nesoi As Coal Tar Distillates Etc." is specific to the input used by Cherishmet. Cherishmet reports that it uses coal tar in its production process,[247] not "distillates" of coal tar as the description of HTS 2707.99 states. 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.[248] As we have found in previous reviews, HTS heading 2706.00 "Mineral Tars, Including Reconstituted Tars" is specific to the input used by Cherishmet,[249] and record evidence demonstrates that it is specific to the input used by Cherishmet in this POR.[250] Accordingly, we will value Cherishmet's coal tar input using Philippine import data from GTA reported under HTS heading 2706.00 "Mineral Tars, Including Reconstituted Tars."

Further, we disagree with Petitioners' argument that the 2012 data under HTS heading 2706.00 represents too small a quantity to value Cherishmet's input. When making SV selections, the Department considers whether the SV is publicly available, contemporaneous with the POR, represents a broad market average, chosen from a single approved surrogate country, is tax and duty-exclusive, and is specific to the input.[251] Further, the Department consistently finds that small quantities alone are not inherently distortive.[252] While the 2012 data under HTS heading 2706.00 is not contemporaneous with the POR, we note that the small quantities do not render the data unusable.

Finally, we disagree with Petitioners' assertion that we should not use the 2012 data under HTS heading 2706.00 because it is not contemporaneous. While we agree that the Department has used SV information from countries other than the primary surrogate country in the past, we have only done so when the data from the secondary surrogate country represents the best available information.[253] However, the Department has demonstrated a preference of valuing

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[246] See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008), and accompanying IDM at Comment 2 ("PET Film 2008"); see also Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Administrative Review, and Final Partial Recession of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) ("Crawfish 2002") and accompanying IDM at Comment 2.
[247] See e.g., Cherishmet's Section C and D Questionnaire Response, dated September 3, 2013 at Exhibit D-5.
[248] See Taian, 783 F. Supp. 2d at 1330.
[249] See Calgon Carbon Corp. v. United States, Slip Op. 11-21, at 21-23 (CIT 2011) (sustaining the Department's use of Indian HTS 2706.00.10 to value coal tar in first administrative review).
[250] See Cherishmet's SV Submission at Exhibit 2; see also Cherishmet's Section C and D Questionnaire Response at Exhibit D-5.
[251] See Fish Fillets 2009 and accompanying IDM at Comment 9.
[252] See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review, 2011-2012, 78 FR 56209 (September 12, 2013), and accompanying IDM at Comment 4.
[253] See Chlorinated Isos 2013 and accompanying IDM at Comment 11.

inputs using data from the primary surrogate country.[254] Moreover, according to the CIT, deriving surrogate data from one surrogate country limits the amount of distortion introduced into the NV calculations because a surrogate producer would be more likely to purchase a product available in the domestic market.[255] Further, the Department has used non-contemporaneous SVs when they represent the best available information on the record.[256] Accordingly, although GTA data for the HTS heading 2706.00 "Mineral Tars, Including Reconstituted Tars" are not contemporaneous with the POR, they are the best information available on the record matching the inputs of coal tar, and they can be adjusted for inflation to reflect a coal tar value for the POR. Accordingly, in the final results of this administrative review, we valued coal tar with the SV from the previous administrative review, reported under the GTA for Philippine HTS category 2706.00, after adjusting said data for inflation.[257]

Comment 11: Carbonized Materials

Cherishmet's Arguments:

- The Department should value carbonized materials based on GTA Philippines HTS 4402.00 instead of Cocommunity data because GTA Philippines import data under HTS 4402.00 affords a superior data choice as compared to Cocommunity data for valuing Cherishmet's carbonized material.
- The Department's precedent from AR1 Carbon and the investigation demonstrates that coal-based carbonized materials share key functional properties of absorption and porosity with coconut shell charcoal, and thus carbonized materials and coconut shell charcoal are interchangeable.
- The GTA Philippines data meets all of the Department's criteria for SV selection, and the CIT in Jacobi Carbons found that the Cocommunity data failed to satisfy two criteria, broad market average and tax and duty exclusivity. The Cocommunity data for this POR is similar to that faced in Jacobi Carbons in that it is from one region only and fails to evidence that it is tax and duty exclusive.
- The past reviews and remand redeterminations the Department relied upon in the Preliminary Results in selecting Cocommunity data are distinguishable. Unlike in AR5 Carbon, there is no record evidence tying the carbonized materials used by Cherishmet to the coconut shell charcoal price data reported in Cocommunity, and the AR5 Carbon record contained disaggregated data for each of the sub-headings under HTS 4402 which evidenced that the imports were unrepresentative of coconut shell charcoal prices; such record evidence is lacking in this review.

Petitioners' Rebuttal:

- The courts, and the Department in AR5 Carbon, have found the data from Cocommunity provides a reliable surrogate source for valuing Philippine coconut shell charcoal.

[254] See 19 CFR 351.408(c); see also Clearon, 2013 CIT LEXIS 27, *20 (acknowledging that the Department's preference is reasonable because "deriving the surrogate data from one surrogate country limits the amount of distortion introduced into its calculations").
[255] See id.
[256] See Wood Flooring and accompanying IDM at Comment 9.
[257] See Final SV Memo at Attachment 1.

- In this review, it was Cherishmet that first proposed and provided the must updated data from Cocommunity for the Department to rely on.
- The Cocommunity data is specific to the input reported by Cherishmet and completely contemporaneous with the POR.
- Therefore, for the final results, the Department should continue to rely on the Cocommunity data to value carbonized materials.

Department's Position: The Department agrees with Petitioners that we should value carbonized materials using data from Cocommunity, a coconut industry trade publication, and will continue to do so for the final results. In the Preliminary Results, the Department valued carbonized material inputs using Cocommunity because Philippine import data from GTA reported under HTS heading 4402: "Wood Charcoal (Including Shell Or Nut Charcoal), Whether Or Not Agglomerated" does not contain imports of coconut shell charcoal.[258]

As explained above, the Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available and contemporaneous with the POR, and tax and duty exclusive.[259] 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.[260] 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."[261]

As an initial matter, we note Cherishmet itself requested the Department value its carbonized material input using data from Cocommunity.[262] Cherishmet correctly states that the Department has found that coal-based carbonized materials and coconut shell carbonized materials share similar properties.[263] Additionally, Cherishmet correctly states that in AR4 Carbon we did not use Cocommunity, because it previously did not appear to represent a broad-market average or was tax and duty exclusive.[264] However, for this administrative review, the record contains 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

[258] See Prelim SV Memo at 5 and Attachment 8.
[259] See, e.g., PSF 2010 and accompanying IDM at Comment 1.
[260] 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.
[261] 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 Recession of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) ("Crawfish 2002") and accompanying IDM at Comment 2.
[262] Cherishmet's SV Submission, dated November 20, 2013 at Exhibit 4.
[263] See Activated Carbon LTFV and accompanying IDM at Comment 16; see also Calgon Carbon Corp. v. United States, consol. court no. 09-00524, slip op. 11-21, "Final Results of Redetermination Pursuant to Court Remand," dated July 25, 2011, at 10-11, available at http://enforcement.trade.gov/remands/11-21.pdf.
[264] See AR4 Carbon and accompanying IDM at Comment I.C.C; see also Jacobi Carbons Ab v. United States, 992 F. Supp. 2d 1360, 1367-69 (CIT 2014) (sustaining the Department's findings that Cocommunity in AR4 Carbon was not reflective of a broad market average or tax- and duty-exclusive).

in Cocommunity) is similar to that of Mindanao which is the largest coconut-producing region in the Philippines and that this price is exclusive of tax.[265] Further, despite Cherishment's contention to the contrary, the record contains no evidence which disputes the certifications provided by the Philippine Coconut Authority. Therefore, the prices for Visayas found in Cocommunity are representative of over 75 percent of the Philippines.[266] Consequently, the coconut shell charcoal prices are representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.[267] 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.[268] We note that we reached the same conclusion in the most recently completed AR5 Carbon review.[269]

We disagree with Cherishmet that Philippine GTA information under HTS heading 4402: "Wood Charcoal (Including Shell Or Nut Charcoal), Whether Or Not Agglomerated" represents the best available information. As we explained in the Preliminary Results, the Philippine GTA information under HTS heading 4402 does not appear to include coconut shell charcoal from any country not excluded from our SV calculations, and accordingly we valued carbonized materials using data from Cocommunity.[270] Specifically, the Department has on the record the four Philippine 10-digit HTS numbers found under HTS subchapter 4402: 4402.00.0001, 0002, 0003, and 0009.[271] HTS subchapter 4402: "Wood Charcoal (Including Shell Or Nut Charcoal), Whether Or Not Agglomerated" is a category which contains import data from the four sub-categories. Philippine HTS category 4402.00.0001 "Of Coconut Shell, Not Agglomerated," contains Philippine import data only for Indonesia and Vietnam. The Department does not use import data reported from Indonesia and Vietnam, because Indonesia and Vietnam are excluded from the Department's SV calculations.[272] Philippine HTS numbers 4402.00.0002 "Of Wood, Not Agglomerated" contains Philippine import data for only Indonesia, and HTS category 4402.00.0003 "Of Wood (Including Shell Or Nut), Agglomerated" contains no data for the POR.[273] The last Philippine HTS number 4402.00.0009: "Other," does not clearly identify the type of imports included in this sub-category.[274] Accordingly, it is reasonable to conclude that Philippine import data reported under HTS subchapter 4402 does not contain usable imports of coconut shell charcoal for which the Department can use as a SV.

Therefore, for the final results, we will continue to use the average of the coconut shell charcoal prices found in Cocommunity. The prices found in Cocommunity are representative of a broad-

[265] See Jacobi's Post-Preliminary SV Submission, dated May 28, 2013 at Exhibit FSV-1.
[266] See id.
[267] See PSF 2010, and accompanying IDM at Comment 1.
[268] See Taian 783 F. Supp. 2d at 1330.
[269] See AR5 Carbon at Comment 6.
[270] See Prelim SV Memo at 5.
[271] See Prelim SV Memo at Attachment 8.
[272] See Preliminary Results and accompanying Preliminary Decision Memo at 24.
[273] See Prelim SV Memo at Attachment 8.
[274] See id.

market average, publicly available and contemporaneous with the POR, tax and duty exclusive and more specific to the input used by Cherishmet.[275]

Comment 12: Brokerage and Handling Denominator

Cherishmet's Arguments:

- The Department should adjust the brokerage and handling ("B&H") charges by applying Cherishmet's average full container load weight because it is specific to the subject merchandise and the experience of Cherishmet as a respondent. The Department's use of an assumed weight of 10,000 kg from Doing Business: Philippines 2013 is contradicted by substantial record evidence from Maersk showing that a 20-foot container would carry a full load of 28.2 MT, not 10 MT. This data was applied by the Department in the countervailing duty investigation regarding galvanized steel wire from China.
- The Department's reliance on 10,000 kg is contradicted by CS Wind.[276] In the CS Wind draft remand redetermination, the Department revised its B&H charges by dividing the aggregate cost of document preparation and customs clearance charges reported in Doing Business by the average weight of the shipment instead of the hypothetical 10,000 kg. Cherishmet's B&H charges should be determined based on the average weight of its export shipments.
- The Department has embraced a policy of applying the average of the respondent's actual shipment weight to compute B&H charges.[277]

Carbon Activated's Arguments:

- If the Department continues to rely upon the Doing Business: Philippines 2013 report for the final results, it should only use the actual reported cost as the numerator and then use other record information to reasonably assign the denominator weight or volume to derive the unit cost; namely the respondent's average weight per 20-foot container.
- The Department's use of the World Bank data assumes that weight is determinative of shipping costs. However, the record does not support this assumption.
- The CIT has found that the Department cannot rest on the presumption that the per-container World Bank costs bear some relationship to the weight of the product inside.[278]
- The calculation of this surrogate value requires two separate inquiries: (1) the absolute cost, or numerator and; (2) the proper weight or volume (i.e., the denominator) to divide into the cost in order to derive the per-unit cost.

Petitioners' Rebuttal:

- Based on recent decisions in Nails and Tie Wire, the Department should reject respondents' arguments and continue calculating B&H in accordance with the Department's methodology.[279]

[275] See id.; see also, e.g., Cherishmet's Section C and D Questionnaire Response, dated September 3, 2013 at 4.
[276] Cherishmet cites to CS Wind Vietnam Co. v. United States, 971 F. Supp. 2d 1271, 1294-95 (CIT 2014) ("CS Wind").
[277] Cherishmet cites to Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value, 79 FR 31092, 31093 (May 30, 2014) ("VN Pipe").
[278] Carbon Activated cites Since Hardware (Guangzhou) Co. v. United States, 977 F. Supp. 2d 1347 (CIT 2014).

Department's Position: We disagree with Cherishmet's and Carbon Activated's arguments regarding the denominator for calculating movement expenses and will continue to use a 10,000 kg denominator for movement expenses, rather than Cherishmet's and Carbon Activated's proposed denominators. 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 the Doing Business publications report a 10,000 kg container weight.[280] In Bedroom Furniture 2011, we determined that a 10,000 kg denominator is more appropriate than using the maximum container weight or a respondent's own average packed container weight, because the survey directs participants to report brokerage and handling costs on a basis equivalent to 10 MT per container and the Department is deriving the handling&H SV from the World Bank's Doing Business in India survey compiled on this basis.[281] We note that the methodology employed in reporting prices between Doing Business in India and Doing Business in Philippines[282] are the same, and that using the 10,000 kg denominator is appropriate because using a different weight "would result in using a weight-basis not related to the costs reported in the World Bank's Doing Business."[283] With respect to Cherishmet's and Carbon Activated's contentions that we should use the container weights experienced by the respondents, as noted earlier, Doing Business in Philippines, the source that we are using for valuing movement expenses, compiles and reports data on a 10,000 kg container weight basis;[284] 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.[285] We note that our determination is based upon a standard calculation from a source used in many other proceedings, i.e., Doing Business in Philippines.[286]

With respect to Cherishmet's contention that CS Wind demonstrates the Department has recognized that it should use average shipment weight rather than the 10,000 kg container weight used by the World Bank's methodology, we note that the company in CS Wind did not ship in

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[279] Petitioners cite Certain Steel Nails from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Third Antidumping Duty Administrative Review, 78 FR 16651(March 18, 2013) ("Nails") and IDM at Comment 3; see also Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 25572 (May 5, 2014) ("Tie Wire") and IDM at Comment 5.

[280] See e.g., 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; 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.

[281] 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.

[282] See Petitioners' SV Submission, dated November 20, 2013 at Exhibit 7B, Doing Business 2013: Philippines ("Doing Business in Philippines").

[283] See Nails 2013 and accompanying IDM at Comment 3R.

[284] See Tires 2012 and accompanying IDM at Comment 11; see also Petitioners' SV Submission, dated November 20, 2013 at Exhibit 7B.

[285] See Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 44008 (July 29, 2014) and accompanying IDM at Comment 8.

[286] See, e.g., Bedroom Furniture 2011; Tires 2012; Nails 2013.

containers, but rather laid them in pyramid fashion on the ship.[287] Accordingly, the Court found the Department's valuation of B&H in that case using the World Bank's 10,000 kg container methodology unreasonable because "{b}y converting the document costs to a per kilogram value based on the weight of a hypothetical twenty-foot container, and then multiplying that value by the weight of CS Wind's actual shipments, Commerce has applied a proportional increase in the B&H fees" and "failed to explain why document preparation costs, as opposed to other B&H fees, would change depending on the size or weight of the shipment."[288] However, here the respondents shipped the subject merchandise in containers,[289] which is not a unique product that cannot be shipped in containers like wind towers, and which renders CS Wind factually distinct.[290]

Cherishmet partially cites VN Pipe in support of its argument that the Department has embraced the policy of applying the average of the respondent's actual shipping weights to compute B&H charges. In that case, the Department stated that:

> …we applied the load weight of 10 MT because it is normally the assumed weight for the B&H charges in the World Bank's Doing Business publications. However, after careful examination of the record, specifically Doing Business in India 2013, we find that the assumed weight of 10 MT is not referenced in that publication. Therefore, we have revised the weight applied to the B&H charges to apply Sonha's actual average load weight per 20-foot container.[291]

Accordingly, the Department has not "embraced" a policy of using the average of a respondent's actual shipping weight. Rather, the record in that case simply did not contain an explanation of the 10,000 kg container methodology the Department used in its calculation of B&H, and the Department applied the respondent's actual average load weight for its B&H calculation. Here, by contrast, the record contains this information, and we will continue to rely on the World Bank's 10,000 kg container methodology in these final results.[292]

Finally, we find Carbon Activated's reliance on Since Hardware to invalidate the calculation of the B&H SV inapposite. In Since Hardware, using information from that record, the Department attempted to create a B&H SV by blending information found in Doing Business and the respondent's own container weights.[293] However, the CIT remanded the case because, by using the respondent's estimated 20-foot container weight that the Department converted from a reported 40-foot container weight, the Department "forced an unexplained increase into Foshan Shunde's B&H surrogate value."[294] The CIT held that "by using Foshan Shunde's estimated 20-

[287] See CS Wind, 971 F. Supp. 2d at 1294.
[288] See id. at 1295.
[289] See Jacobi's Section C response, dated August 23, 2013 at Exhibit C-7; see also Cherishmet's Supplemental Section C Response, dated March 4, 2014 at Exhibit 2SC-1
[290] See CS Wind, 971 F. Supp. 2d at 1294 ("CS Wind, however, did not containerize its wind tower segments, instead laying them in a pyramid fashion on the ship").
[291] See VN Pipe and accompanying IDM at Comment 5 (footnotes omitted).
[292] See Petitioners' SV Submission at Exhibit 7B.
[293] See Since Hardware, 977 F. Supp. 2d at 1361-62.
[294] See id. at 1362.

foot container weight, Commerce implicitly relies upon a relationship between B&H costs and container weight that, as Foshan Shunde argues, does not appear to find support in the record."[295] Unlike the facts in Since Hardware, and despite its argument to the contrary, Carbon Activated has pointed to no information on this record demonstrating that the respondents accrued documentation preparation and customs clearance costs on a per-container basis or provided any information which demonstrates that B&H fees do not increase proportionally with the weight of the container, which makes this review similar to Dongguan Sunrise.[296] In Dongguan Sunrise, the CIT sustained the Department's conversion of the Doing Business data to a 40-foot container because the respondent "ha{d} not presented evidence that brokerage costs are based on value, not volume, and do not increase proportionally with the number of cubic feet."[297] Therefore, absent such evidence in this review, for these final results, we continue to use the 10,000 kg standard container weight for calculating B&H expenses, which we find avoids introducing inaccuracies in calculating the B&H SV.

Comment 13: Jacobi's Packing Calculation

Jacobi's Arguments:

- In the Preliminary Results, the Department double counted Jacobi Tianjin's consumption of pallets, PE Bags, and poly pro bags in its calculation of normal value.
- For the final results, the Department should correct these inputs in Jacobi's final margin program.

No other interested party commented on this issue.

Department's Position: We agree with Jacobi that we inadvertently double counted its pallets, polyethylene packing bags ("PEBAG") and polypropylene packing bags ("PPROBAG"). In Jacobi's section D responses, it explained that it provided both per unit and per kg consumption of these inputs for use depending on whether the SV was based on units (PEBAG2, PPROBAG2, and PALLET2) or kg (PEBAG, PPROBAG, and PALLET).[298] In the Preliminary Results, we calculated Jacobi's margin using both reported consumption quantities. For the final results, we are correcting this ministerial error, and will calculate pallets, PEBAGS and PPROBAGS using only these inputs reported on a kg basis, i.e., PEBAG, PPROBAG, and PALLET.

[295] See id. at 1362 (citing Since Hardware (Guangzhou) Co., Ltd. v. United States, 911 F. Supp. 2d 1362, 1380-81 (CIT 2013)).
[296] See Dongguan Sunrise Furniture Co., Ltd. v. United States, 865 F. Supp. 2d 1216, 1247 (CIT).
[297] See id.
[298] See Jacobi's Section D Supplemental Questionnaire Response, dated February 25, 2014 at Exhibit JCC-SD-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

18 NOVEMBER 2014
Date