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August 31, 2016

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 Eighth Antidumping Duty Administrative Review

SUMMARY

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

Comment 1: Value Added Tax ("VAT") and Entered Value
Comment 2: Surrogate Country Selection
Comment 3: Anthracite Coal Surrogate Value
Comment 4: Whether to Account for In-Bound Freight for Anthracite Coal Surrogate Value
Comment 5: Carbonized Material Surrogate Value
Comment 6: Hydrochloric Acid ("HCl") Surrogate Value
Comment 7: Labor

[1] Calgon Carbon Corporation and Cabot Norit Americas ("Petitioners").
[2] Jacobi Carbons AB and its affiliates (collectively, "Jacobi") and Datong Juqiang Activated Carbon Co., Ltd. ("Datong Juqiang") (collectively "mandatory respondents").
[3] Carbon Activated Tianjin Co., Ltd. ("CAC"), Shanxi Dapu International Co., Ltd. ("Dapu"), and Shanxi DMD Corporation ("Shanxi DMD").
[4] See Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015, 81 FR 11513 (March 4, 2016) ("Preliminary Results") and accompanying Decision Memorandum ("Prelim Decision Memo").

Comment 8: Coal Tar Surrogate Value
Comment 9: Brokerage and Handling ("B&H") Surrogate Value
Comment 10: Financial Statements Selection
Comment 11: Whether the Department Should Treat Sales Through Datong Juqiang Activated Carbon USA LLC ("DJAC USA") as Export Price ("EP") Sales
Comment 12: The Proper Basis for the Calculation of U.S. Duty Expenses
Comment 13: U.S. Customs and Border Protection ("CBP") Entries Incorrectly Attributed to Datong Juqiang
Comment 14: Whether Jacobi's Purchased Carbonized Materials are Correctly Valued
Comment 15: Whether to Cap Jacobi's U.S. Freight Revenue

BACKGROUND

On March 4, 2016, the Department published the Preliminary Results of this administrative review, providing parties the opportunity to submit post-Preliminary Results comments on anthracite coal surrogate value ("SV") information.[5] On March 7, 2016, Petitioners, CAC, and Dapu submitted post-preliminary anthracite coal SV comments.[6] On March 29-30, 2016, the Department conducted verification of Jacobi Carbons, Inc., Jacobi's U.S. affiliate.[7] On April 6, 2016, the Department established the deadline for case and rebuttal briefs,[8] extending the deadlines for submission of case and rebuttal briefs twice based on requests from interested parties.[9] On April 29, 2016, CAC, Datong Juqiang, Jacobi, and Petitioners submitted case briefs.[10] On May 6, 2016, Petitioners submitted rebuttal briefs.[11] In lieu of a case brief M.L. Ball Co., Inc., and several separate rate companies,[12] incorporated by reference the arguments raised by the respondents – including but not limited to, surrogate values, and company-specific issues.[13] On May 11, 2016, the Department rejected Jacobi's April 29, 2016, case brief, which

[5] See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Senior Trade Analyst, re: "Eighth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results," dated February 26, 2016 ("Prelim SV Memo") at 6.
[6] See CAC and Dapu Comments on Anthracite Coal Imports, dated March 7, 2016 and Petitioners' Comments on Anthracite Coal Surrogate Value, dated March 7, 2016. See also, CAC and Dapu Rebuttal Comments on Anthracite Coal Imports, dated March 14, 2016.
[7] See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Senior International Trade Compliance Analyst, Enforcement and Compliance, re: "Verification of the Constructed Export Price ("CEP") Sales Response of Jacobi Carbons AB in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China," dated April 5, 2016.
[8] See Memorandum to the File from Bob Palmer, Senior International Trade Analyst, Office V, Enforcement and Compliance, dated April 6, 2016.
[9] See Memorandum to the File from Ryan Mullen, International Trade Compliance Analyst, Office V, Enforcement and Compliance, dated April 8, 2016; see also Memorandum to the file from Bob Palmer, Senior International Trade Analyst, Office V, Enforcement and Compliance, dated May 2, 2016.
[10] See Petitioners' Case Brief, dated April 29, 2016, ("Petitioners' Case Brief"); Dapu, CAC, Shanxi DMD Corporation, and CAC's Case Brief, dated April 29, 2014, ("CAC's Case Brief"); Datong Juqiang's Case Brief, dated April 29, 2016, (Datong Juqiang's Case Brief"); Jacobi' Case Brief, dated April 29, 2016, which the Department rejected on May 11, 2016.
[11] See Petitioners' Rebuttal Brief, dated May 10, 2016, ("Petitioners' Rebuttal Brief").
[12] Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., Beijing Pacific Activated Carbon Products Co., Ltd., Datong Municipal Yunguang Activated Carbon Co., Ltd., and Shanxi Industry Technology Trading Co., Ltd.
[13] See Letter from M.L. Ball, dated April 29, 2016 and Separate Rate Companies Case Brief, dated April 29, 2016.

contained new factual information, and provided Jacobi an opportunity to resubmit its case brief.[14] On May 13, 2016, Jacobi submitted a revised case brief.[15] On August 9, 2016, 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, including but not limited to phosphoric acid, zinc chloride, sulfuric acid or potassium hydroxide that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO_2 gas) activated carbons are within the scope, and those containing more than 50 percent chemically activated carbons are outside the scope. This exclusion language regarding blended material applies only to mixtures of steam and chemically activated carbons.

[14] See Letter to Jacobi from Frances Veith, Acting Program Manager, Office V, re: "2014-2015 Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Reject New Factual Information," dated May 11, 2016.
[15] Jacobi' revised Case Brief, dated May 13, 2016, ("Jacobi's Case Brief").

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.

CHANGES SINCE THE PRELIMINARY RESULTS

Based on our review and analysis of the comments received from parties, we made certain changes to our margin calculations for Datong Juqiang and Jacobi.[16] Specifically, we

1. relied on Jacobi's revised U.S. sales database,[17]
2. revised the anthracite coal SV,[18]
3. revised the carbonized materials SV,[19]
4. revised the brokerage and handling SV,[20]
5. corrected the ministerial error in the period of review ("POR") inflator,[21]
6. corrected Datong Juqiang's U.S. Customs Duty ("USDUTYU") ministerial error,[22]
7. applied a freight cap to Jacobi's U.S. freight revenue and we corrected the freight revenue ministerial error,[23]
8. corrected Jacobi's U.S. interest revenue ministerial error, and[24]

[16] See Memorandum to the File through Catherine Bertrand, Program Manager, Office V, from Frances Veith, Senior International Trade Analyst, Office V, "Final Results Analysis Memorandum for Jacobi Carbons AB; Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China" dated concurrently with this memorandum ("Jacobi's Final Analysis Memo") and Memorandum to the File through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Senior Trade Analyst, Office V, "Final Results Analysis Memorandum for Datong Juqiang Activated Carbon Co., Ltd. in the Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China" dated concurrently with this memorandum ("Datong Juqiang's Final Analysis Memo").
[17] See Jacobi's Final Analysis Memo.
[18] See below at Comment 3; see also Memorandum to the File through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Senior Trade Analyst, Office V, "Eighth Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Final Results" dated concurrently with this memorandum ("Final SV Memo").
[19] See below at Comment 5; see also Final SV Memo.
[20] See below at Comment 9; see also Final SV Memo.
[21] See Final SV Memo.
[22] See below at Comment 12; see also Datong Juqiang's Final Analysis Memo.
[23] See below at Comment 15; see also Jacobi's Final Analysis Memo.
[24] See Jacobi's Final Analysis Memo.

9. reclassified Jacobi's packing inputs in the normal value calculation.[25]

DISCUSSION OF THE ISSUES:

Comment 1: Value Added Tax ("VAT") and Entered Value

Datong Juqiang's Comments:

- The Department's decision to reduce Datong Juqiang's reported U.S. prices for an unrefunded VAT amount is both contrary to the plain language of the statute[26] and unsupported by record evidence because the record shows that there is no VAT imposed on the subject merchandise at the point of (or due to the fact of) exportation.[27] Datong Jaqiang only pays VAT on domestic purchases of inputs used to produce the subject merchandise and does not receive a refund of VAT for these purchases.
- The Department is only authorized to make a deduction to U.S. price to account for taxes or duties (1) that are "imposed on the exportation" of the subject merchandise and (2) that are included in the reported U.S. price of the subject merchandise.[28]
- The Department should not calculate VETAXU (i.e., VAT) differently for EP and constructed export price ("CEP") sales, it should be the same for both using free-on-board ("FOB") export price as the base for the calculation. If the Department continues to deduct a 17 percent VAT in the final results, consistent with its well-stated practice, [29] the Department should use Datong Juqiang's FOB Chinese port of export price (FOBUNIPRC) instead of the U.S. entered value (ENTVALUE), U.S. gross unit price (GRSUPRU), or an {estimated customs value} (USNETPRI2) to calculate the applicable VAT adjustment amount.
- The Department's methodology used to calculate VAT deductions is unreasonable and unsupported by record evidence. Pursuant to 19 U.S.C. §1677a(c)(2)(B), VAT adjustments should be based upon the *amount* of VAT paid rather than the VAT *rate* paid to prevent a "multiplier effect."[30]
    - The Department did not indicate that it needed additional VAT-related information to calculate Datong Juqiang's rate incurred on inputs.

Jacobi's Comments:

- The Department has no authority to reduce Jacobi's U.S. sales prices by the amount of PRC VAT not refunded, as the PRC VAT does not meet the statutory definition under 19 U.S.C.

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[25] Id.
[26] See Datong Juqiang's case brief at 2 and 10 (citing 772(c)(2)(B) of the Tariff Act of 1930, as amended ("Act").
[27] Id. at 13 (citing the "Interim Regulations of the People's Republic of China on Value-Added Tax (2008)" at Article 2.3 that "{f}or taxpayers that export goods, the tax rate shall be zero); and at 14 citing to Globe Metallurgical Inc. v. United States, 781 F. Supp. 2d 1340, 1346-1347 (Ct. Int'l Trade 2011) and Bridgestone Ams., Inc. v. United States, 33 C.I.T. 1040, 1048-50 (2009)).
[28] Id. at 15 (citing 772a(c)(2)(B) of the Act).
[29] Id. at 20 (citing Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 61172 (October. 9, 2015) and Final Determination in the Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China, 80 FR 34893 (June 18, 2015) and accompanying Issues and Decision Memo at Comment 33).
[30] See Datong Juqiang's case brief at 16 (citing Federal Mogul v. United States, 63 F.3d 1572 (CAFC 1995) and E. I. du Pont de Nemours & Co. v. United States, 20 C.I.T. 373, 381 (1996)).

19 U.S.C. §1677a(c)(2)(B) of "export tax or other charge." Items are only covered by the statute when they are also "imposed by the exporting country on the exportation of the subject merchandise." PRC VAT is a domestic tax, not an export tax, and the record evidence confirms that no VAT is paid on Jacobi's export sales.

- The Department's preliminary results analysis memorandum for Jacobi does not correctly state the approach that the Department adopted to calculate the adjustment for irrecoverable VAT or address why it ignores Jacobi's reported entered value taken directly from Customs Form 7501. There is no basis for the Department to ignore Jacobi's accurately reported entered value and the Department's decision to do so is an unlawful application of adverse facts available.

Petitioners' Rebuttal Comments:

- The Department's adjustment to U.S. prices to account for irrecoverable VAT is fully consistent with the statute and supported by substantial evidence.[31] Irrecoverable VAT, as defined in PRC law, is a net burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost. Irrecoverable VAT is, therefore, "an export tax, duty, or other charge imposed" on exportation of the subject merchandise to the U.S.
- The Department should reject respondents' arguments and should continue to account for unrefunded VAT by reducing the respondents' reported U.S. prices. In AR7 Carbon,[32] as well as ISOS 2012-2013 and Tires 2012-2013,[33] the Department addressed and rejected respondents' argument that the VAT tax in the PRC is a domestic tax, not an "export tax, duty or other charge" and therefore should not be taken into account when adjusting U.S. prices in the seventh administrative review.[34] The Court of International Trade recently affirmed the Departments methodology in Fushun Jinly.[35]
- While understated in the Department's preliminary analysis, the Department clearly applied the same methodology in calculating Jacobi's VAT adjustment as it did in the seventh administrative review. Furthermore, the Department has already explained that it uses estimated customs value, rather than declared entered value, to calculate VAT adjustment when entered values are less than the estimated customs value. The Department has addressed and rejected Jacobi's argument that not relying on its reported entered value is an unlawful application of adverse facts available in the seventh administrative review.

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[31] See Petitioners' rebuttal brief at 66 (Citing Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings, 77 FR 36481 (June 19, 2012) ("Methodological Change")).

[32] Id. at 67 (Citing Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014, 80 FR61172 (October 9, 2015) and accompanying Issues and Decision Memorandum at 16-17 {Comment 3} ("AR7 Carbon")).

[33] Id. at 67-68 (citing Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 4539 (January 28, 2015) and accompanying Issues and Decision Memorandum at Comment 4.A ("ISOS 2012-2013") and Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 20197 (April 15, 2015) and accompanying Issues and Decision Memorandum at Comment 4 ("Tires 2012-2013")).

[34] Petitioner's Rebuttal Brief at 67 (citing to AR7 Carbon and Tires 2012-2013).

[35] See Petitioners Rebuttal Brief at 68 (citing to Fushun Jinly Petrochemical Carbon Co. v. United States, Court No. 14-00287, Slip Op. 16-25 (Ct. Int'l Trade Mar.23, 2016) ("Fushun Jinly")).

Department's Position: For the reasons explained below, we continue to apply the un-refunded (i.e., irrecoverable) VAT adjustment that we used in the Preliminary Results. We find that, for certain sales where the reported entered values are unreliable, the substitution of an alternative customs value is appropriate.

In 2012, after public comment, we announced a change of methodology with respect to the calculation of EP or constructed export price ("CEP") to include an adjustment of any (irrecoverable) VAT in certain non-market economy ("NME") countries, in accordance with section 772(c)(2)(B) of the Act.[36] In this announcement, the Department stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EPs or CEPs by the amount of the tax, duty or charge paid, but not rebated.[37]

In a typical VAT system, companies do not incur VAT expense for exports. Instead, they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports ("input VAT") and, in the case of domestic sales, the company can credit the VAT it pays on input purchases for those sales against the VAT they collect from customers.[38] That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[39] This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales, and thus we disagree with mandatory respondents' assertions that irrecoverable VAT should not be deducted from their U.S. prices pursuant to section 772(c)(2)(B) of the Act. Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[40]

In response to Jacobi's and Datong Juqiang's claim that the Department does not have the authority under the statute to adjust for VAT, we disagree. Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Although Jacobi and Datong Juqiang argue that they pay no VAT upon export, they misstate what is at issue. The issue is the irrecoverable VAT on inputs, not VAT per se. Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and

[36] See Methodological Change.
[37] Id., at 77 FR 36483; see also 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 2012") and accompanying IDM at Comment 5.
[38] See, e.g., explanations in Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014) ("Diamond Sawblades") and accompanying IDM at Comment 6; see also Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 79 FR 26712 (May 9, 2014). ("Wood Flooring 2014") and accompanying IDM at Comment 3; see also Methodological Change, 77 FR at 36483.
[39] See Methodological Change, 77 FR at 36483.
[40] Id.

is specific to, exports.[41] It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.[42] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[43] The statute does not define the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.[44] Additionally, it is set forth in PRC law, and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT falls under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax neutral net price received by the seller. This deduction is consistent with our recent refinement to our policy with respect to certain NME countries, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[45] Further, the Court of International Trade recently affirmed the Department's VAT methodology in Fushun Jinly.[46]

In accordance with 19 CFR 351.401(c), the Department makes price adjustments that are "reasonably attributable to the subject merchandise." The PRC's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. Consistent with the PRC VAT regime and our regulation, our methodology, as applied in this review, consists of performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Irrecoverable VAT is (1) the FOB value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods. The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in PRC law and regulations.[47]

In this review, in step one, we determined the irrecoverable VAT on subject merchandise by first determining the amount of tax levied on inputs and raw materials (used in the production of exports). Here, VAT is levied on inputs at a rate of 17 percent and for activated carbon there is no VAT rebate.[48] Consequently, the irrecoverable rate is equal to the full VAT percentage. Because the PRC does not provide a refund of VAT paid for inputs upon exportation of activated carbon, we find that the entire input VAT is a cost that arises as a result of export sales. Our

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[41] See Jacobi's Section C Response, dated August 14, 2015, at Exhibit C-18 (PRC Government Circular Caishui 2007, No. 90, Circular of the Ministry of Finance and the State Administration of Taxation of the People's Republic of China on Adjusting the Tax refund Rate for Some Export Commodities); see e.g., Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 57508 (September 25, 2014) and accompanying IDM at Comment 7.
[42] Id.
[43] See Frontseating Service Valves From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 71385 (December 2, 2014) and accompanying IDM at Comment 5.
[44] Id.
[45] See Methodological Change, 77 FR 36483, and Antidumping Duties; Countervailing Duties, 62 FR 27296, 27369 (May 19, 1997) (citing the SAA at 827).
[46] See Fushun Jinly, Court No. 14-00287, Slip Op. 16-25.
[47] See Jacobi's Section C Response, dated August 14, 2015, at Exhibit C-18.
[48] Id., at C-39 and C-40.

analysis is consistent with our current irrecoverable VAT policy and our treatment of irrecoverable VAT in recently completed NME cases.[49] Therefore, we have not altered our irrecoverable VAT adjustment methodology for these final results.

Furthermore, with respect to Jacobi's and Datong Juqiang's arguments as to the price used as the basis for calculating the VAT adjustment, for both mandatory respondents, certain entered values are not reliable for purposes of determining irrecoverable VAT. As noted above, the Department uses the FOB value of an exported good as the base upon which irrecoverable VAT is calculated. Entered values reported by respondents are a reasonable reflection of the FOB value of the exported goods, and generally a reflection of the commercial value of the exported merchandise. As set forth below, we find that certain entered values as reported by Jacobi and Datong Juqiang are not representative of commercial export values when compared to an ex-factory net U.S. price and/or an estimated customs value (defined as ex-factory net U.S. price plus foreign movement expense). As such, reliance upon those entered values results in an inappropriately low VAT adjustment. Accordingly, we find that, consistent with the methodology we applied in calculating Jacobi's VAT adjustment in the seventh administrative review, it is appropriate in certain instances to rely on an estimated customs value as the best proxy for an FOB China port value upon which to base the VAT adjustment.

In the second administrative review of this proceeding, we analyzed the difference between Jacobi's entered values and its estimated customs values.[50] In that segment, we found substantial differences between Jacobi's estimated customs values for its entries of certain activated carbon and the entered values reported to CBP.[51] We determined that the entered values of CEP sales made by Jacobi were being systematically understated, which we also determined would result in the under-collection of antidumping duties by CBP.[52] Accordingly, we made a determination to switch to per-unit assessment and cash deposit rates in that and subsequent reviews.[53]

We performed a similar analysis in this review, comparing Jacobi's entered values to the estimated customs values. Normally, the difference between entered value and ex-factory net U.S. price plus foreign movement expense (i.e., estimated customs value) is relatively small. This is because the net U.S. price calculated in the Department's margin program has been

[49] See e.g., 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) ("Prestressed Concrete"), and the accompanying Issues and Decision Memorandum at Comment 1; 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 the accompanying Issues and Decision Memorandum at Comment 3; and Chlorinated Isos 2012, and the accompanying Issues and Decision Memorandum at Comment 5.

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

[51] Id.

[52] Id.

[53] Id.

stripped of various expenses in order to reflect an approximation of an ex-factory price.[54] Once foreign movement expenses are added back to U.S. net price, the resulting value approximates a FOB foreign port value. Similarly, the entered values reported to CBP on CEP sales are also on an FOB foreign port value basis. Although these values should be similar, using the estimated customs values, in this review, we found that a significant percentage of Jacobi's entered values are less than the estimated customs values.[55] For Datong Juqiang, we only analyzed those sales that have a reported entered value. Applying the same analysis methodology to those sales, we also found a significant percentage of Juqiang's reported entered values are less than the estimated customs values.[56]

Because there is a gap between some declared entered values and the corresponding estimated customs value, if the entered value were to be used to calculate the VAT adjustment in those instances, there would be an inappropriately low VAT adjustment. Consistent with our practice, when we determine that reported entered values do not represent commercial values for export,[57] we find that an alternate customs value is a more appropriate basis for an FOB China port value. We find that this methodology, which is derived from information already on the record of this review, results in the most reliable base values upon which to calculate the VAT adjustment. Therefore, where reported entered values are less than the estimated customs value, we will use the estimated customs value to calculate the VAT adjustment.

In response to Datong Juqiang's argument that we should use its reported FOB price as a basis for its VAT adjustment, we note that its FOB price is either equal to its entered value or its gross unit price. Because we have determined that we cannot rely on certain entered values reported by Datong Juqiang, and will use a proxy as the FOB China port value for VAT- adjustment purposes, we find that using Datong Juqiang's FOB price, which is a mix of entered values and gross unit price, results in an inaccurate analysis. As we stated above, we have only analyzed Datong Juqiang's sales transactions where it reported an entered value and only applied the above noted methodology of using estimated customs values instead of entered values, to those sales where the reported entered value is less than the estimated customs value. Furthermore, for those sales transactions that do not have a reported entered value, we used Datong Juqiang reported gross unit price as the base price for the VAT adjustment calculation. For these reasons, we find that Datong Juqiang's reported FOB price is not the best base price for calculating

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[54] Specifically, the Department's margin program starts with a respondent's gross unit price and we remove all expenses associated with selling the product in the United States, as well as an amount for international movement expenses and profit to arrive at an ex-factory net U.S. price. See also Florida Citrus Mut. v. United States, 515 F. Supp. 2d 1324 (CIT 2007) ("Constructed export price is an approximation of an ex-factory price.").

[55] See Jacobi's Final Analysis Memo.

[56] See Datong Juqiang's Final Analysis Memo.

[57] See e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546, 19549 (April 22, 2002) ("Crawfish 2002") and accompanying IDM; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 66 FR 36551, 36554 (July 12, 2001); see also Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 70 FR 38872, 38880 (July 6, 2005) and accompanying IDM at Comment 7; and Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082, 34086 (June 13, 2005).

Datong Juqiang's VAT adjustment. Thus, it is not necessary to consider this price in our analysis for Datong Juqiang's VAT adjustment.

Regarding Jacobi's argument that we are replacing its reported entered values with an artificially-calculated value based upon AFA, Jacobi acknowledges that a prerequisite to the use of AFA is a finding under 776(a) of the Act that there is a need to resort to facts otherwise available in making a determination. But in relying upon estimated customs values in certain instances, the Department has not determined that necessary information is missing from the record, nor has it found that Jacobi withheld information, failed to provide information in the appropriate form or manner, significantly impeded the proceeding, or provided unverifiable information.[58] Accordingly, the provisions of section 776 of the Act have not been triggered. Rather, the Department has made a determination, based on the record evidence before it, about the appropriate base for the VAT adjustment. That the Department weighed the available evidence in a manner with which Jacobi disagrees does not mean that our determination is based on AFA.

Finally, we note that in both cases, Federal Mogul and E.I du Pont, which Datong Juqiang cites for the contention that VAT adjustments should be based upon the amount of VAT paid rather than the VAT rate paid to prevent a "multiplier effect," the Court directed us to recalculate the final dumping margins by implementing a tax-neutral adjustment methodology based on the amounts of foreign taxes rather than the tax rates to establish the dumping margins.[59] Unlike in those cases where the court addressed a foreign tax adjustment where the sales tax is included in the home market price and the rate was used to back out the tax on the home market price of the finished product, here the Department does not adjust U.S. price by a VAT rate. It adjusts U.S. price by an amount of tax -- an amount which is arrived at by applying a rate to a tax base.[60] In this case, the amount of tax used in the adjustment to U.S. price is the statutory amount of tax on inputs not rebated on exportation.

Comment 2: Surrogate Country Selection

CAC's Comments:

- The Department should select the Philippines as the primary surrogate country even though it was not found to be economically comparable to the PRC in the Preliminary Results. The Department has relied upon the Philippines as the primary surrogate country in prior segments of this proceeding, and it is still at a level of economic development comparable to China, even if that is not the same level, is the most significant producer of comparable merchandise and the record contains high quality Philippine SV data, including multiple contemporaneous Philippine financial statements.
- The Department should not have stopped consideration of the Philippines as the primary surrogate country just because it determined the country was not economically comparable. Under section 773(c)(4) of the Act, economical comparability is not more critical than

[58] See section 776(a) of the Act.
[59] See Federal Mogul v. United States, 63 F.3d 1572 (CAFC 1995) and E. I. du Pont de Nemours & Co. v. United States, 20 C.I.T. 373, 381 (1996).
[60] See, e.g., Prestressed Concrete, Wood Flooring, and Chlorinated Isos 2012.

significant production, and neither criteria is more critical than the statutory mandate for the Department to use the "best available information", and data quality is equally critical. The Department has previously considered countries outside of the gross national income ("GNI") band in conjunction with countries that were within the GNI band, such as in Fish Fillets,[61] and doing so is consistent with applicable U.S. Court of International Trade ("CIT") cases in which the courts held that all three criteria must be weighed together instead of creating a threshold out of economic comparability.[62] The Department should have weighed the relative data quality of the Philippines against the countries on the surrogate country list.

- As the CIT found in Clearon II, the Department must "provide an analysis of how the data from the less comparable country presented does not outweigh its economic disparity."[63]
- The Department cannot narrowly define one criterion while broadly defining another. The Department narrowly defined countries economically comparable to the PRC while finding a country with essentially any exports of activated carbon as a significant producer. Finding a country with essentially any exports of comparable merchandise as a significant producer is contrary to law.[64]
- The CIT has found the term significant producer to mean countries whose domestic production could influence or affect world trade as a permissible construction of the statute and Policy Bulletin 4.1 indicates that tiers of world production and being a net exporter are two measures of significant production. Based on this, and the relevant world export data submitted by the parties, the Philippines is the most significant producer on the record.[65]
- Thai import data is unreliable in its entirety because record evidence, including United States Trade Representative and FedEx Country reports,[66] shows the Thai Customs authority manipulates the entered values of imported merchandise. The U.S. government (including the Department) and U.S. companies have expressed concern about the lack of transparency and significant discretionary authority built into the Thai customs regime. Just as the Department disregards Thai *export* values when calculating import average unit values in a given surrogate country, the Department should disregard Thai *import* data because there is reason to suspect or believe such data are distorted. It is arbitrary for the Department to require a higher burden of proof for import data, and the CIT[67] has found that government

[61] See CAC's Case Brief at 9, (citing Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 78 FR 55676 (September 11, 2013) and accompanying Prelim Decision Memo at 13-14; unchanged in 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 AR12") and accompanying Issues and Decision Memorandum ("IDM") at Comment 1 (collectively, "Fish Fillets")).

[62] See CAC's Case Brief Br. at 4-7, (citing Ad Hoc Shrimp Trade Action Comm. v. United States, 882 F. Supp. 2d 1366, 1374 (CIT 2012); Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368 (CIT 2009) ("Ad Hoc Shrimp"); Allied Pac. Food v. United States, 32 CIT 1328, 587 F. Supp. 2d 1330 (CIT 2008) ("Allied Food 2008"); Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368 (CIT 2009) ("Amanda Foods")).

[63] See CAC's Case Brief at 6, (citing Clearon Corp. v. United States, Slip Op 15-91 (CIT 2015) ("Clearon II") at 9).

[64] See CAC's Case Brief at 8, (citing Shandong Rongxin Imp. & Exp. Co. v. United States, 774 F. Supp. 2d 1307, 1314 (CIT 2011)).

[65] See CAC's Case Brief at 11-12, (citing Fresh Garlic Producers Ass'n v. United States, 121 F. Supp. 3d 1313 (CIT 2015) ("Fresh Garlic Producers Ass'n") and the Policy Bulletin).

[66] See CAC's Case Brief at 21-22, (citing CAC's SV Submission, dated January 4, 2016, at Exhibit 8).

[67] See CAC's Case Brief at 25, (citing Yantai Oriental Juice Co. v. United States, 27 CIT 477 (2003)).

intervention that increases potential SVs is relevant to the Department's analysis and can be equally distortive.

- Additionally, the Thai financial statement relied on by the Department is three years outside the POR. The Department prefers using multiple financial statements and there are multiple more contemporaneous Philippine statements on the record.
- It is unreasonable to assume that NME respondents would select the most expensive markets from which to acquire their inputs.
- The Philippines provides the best available information for one of the most critical inputs, carbonized material, and has been used in previous segments on this proceeding.

Datong Juqiang's Comments:

- The Philippines GNI was in the bounds of the GNI of lower middle income countries as classified by the World Bank at 2037 USD and the higher middle income countries at 7893 USD. Therefore, the Philippines should be considered comparable to China's GNI of 7380 USD.
- The Philippines is a significant producer of comparable merchandise as it was a net exporter both in quantity and value, while Thailand was only one in quantity. Further, the Philippines export levels of activated carbon were eight times those from Thailand.

Petitioners' Comments:

- The Department should reject CAC's argument that Thailand is an inappropriate surrogate country as this argument has previously been rejected by the Department in the seventh administrative review. CAC has offered no evidence that demonstrates that the specific SVs relied on by the Department in this administrative review are the result of alleged Thai Customs practices and are thus unreliable.[68]
- The Philippines is not an appropriate surrogate country as it is not economically comparable to China based on GNI data, and is not on the Surrogate Country Memo. As none of the limited circumstances that would allow the Department to select a country not on the Surrogate Country Memo are present, there is no basis for the Department to select the Philippines.[69]
- The Department must reject CAC's argument that Thailand is not a significant producer of comparable merchandise, relative to the Philippines, as it is wrong. Not only is Thailand the largest exporter of comparable goods on the Surrogate Country Memo, but it is also flawed to compare Thailand, a country on the Surrogate Country Memo, to the Philippines, a country that has not been identified as at the same level of economic development as China.

[68] See Petitioners' Rebuttal Brief at 5, (citing Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,78 FR 33351 (June 4, 2013) ("Xanthan Gum from the PRC") and accompanying IDM at Comment 1; Certain Steel Threaded Rod from the People's Republic of China, 79 FR 71743 (December 3, 2014) ("Certain Steel Threaded Rod from the PRC"), and accompanying IDM at Comment 1).

[69] See Petitioners' Rebuttal Brief at 5, (citing Letter to Interested Parties, re: "Eighth Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated August 7, 2015, ("Surrogate Country Memo")).

Department's Position: In the Preliminary Results, we selected Thailand as the surrogate country. As detailed below, we continue to find that Thailand is the appropriate surrogate country in this review.

Economic Comparability

We agree with Petitioners that the Philippines is not at the same level of economic development as the PRC. As stated in the Preliminary Results, the Philippines GNI falls outside the range of GNI data represented by the countries on the surrogate country lists and is therefore not at the same level of economic development as the PRC.[70]

The Department selects the primary surrogate country for each segment of a proceeding based on the record facts of that individual segment, regardless of whether it selected the potential surrogate countries under consideration as the primary surrogate country in previous segments.[71] In other words, each segment of an antidumping proceeding is an independent segment with separate records which lead to independent determinations.[72] Moreover, with respect to GNI, Section 773(c)(4) of the Act states that the Department "shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are . . . at a level of economic development comparable to that of the {NME} country." However, the applicable statute does not expressly define the phrase "level of economic development" or what methodology the Department must use in evaluating the criterion. 19 CFR 351.408(b) states that in determining whether a country is at a level of economic development comparable to the NME country, the Department will place primary emphasis on per capita gross domestic product ("GDP") as the measure of economic comparability.[73] Although the regulation states that the Department's primary emphasis will be placed on GDP, the CIT has found the use of per capita GNI to be a "consistent, transparent, and objective metric to identify and compare a country's level of economic development" and "a reasonable interpretation of the statute."[74] As a result, we have not considered decisions in past segments of this case in considering whether the Philippines is at a level of economic development comparable to the PRC in this review because those decisions were based on different record evidence.

Regarding Datong Juqiang's argument that when looking to the World Bank's classification of economies and the relative GNI of the Philippines to the countries the Department found to be economically comparable, the Philippines is within the range of higher middle income countries

[70] See Prelim Decision Memo, at 15.
[71] 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 7 ("The surrogate country selection criteria do not include or consider whether countries have been selected in previous and unrelated proceedings. The Department selects the primary surrogate country for each proceeding based on the facts of that individual proceeding, regardless of whether the potential surrogate countries under consideration have been previously selected as surrogate countries.").
[72] See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47551 (September 16, 2009) and accompanying IDM at Comment 8.
[73] Commerce uses per capita GNI as a proxy for per capita GDP. GNI is GDP plus net receipt of primary income (compensation of employees and property income) from nonresident sources. See Policy Bulletin 04.1.
[74] See Jiaxing Brother Fastener Co. v. United States, 961 F. Supp. 2d 1323, 1329 (CIT 2014).

on the World Bank's GNI list, of which one of the countries on the Departments surrogate country list is also a higher middle income country, thus the Philippines is economically comparable to the PRC, we disagree. The Department consistently rejects parties' arguments to use the World Bank's reported upper-middle or lower-middle income thresholds or categories for the purposes of determining the level of economic development.[75] The band of countries that the Department selected in this review, in absolute terms, is a reasonable range of countries given the entire worldwide range of GNIs. The fact that a small subset of the band lies above or below the World Bank's threshold for an income group is not a basis to reject it for factor valuation purposes.[76] Furthermore, in past cases the Department has rejected the use of relative measures of GNI comparison.[77]

As we stated in the Preliminary Results, unless it is determined that none of the potential surrogate countries considered at the same level of economic development based upon 2014 GNI data are unusable because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons, we will rely on data from one of these countries.[78] The CIT cases Amanda Foods and Ad Hoc Shrimp cited by CAC are inapposite as, in both cases, the Court stated the Department must weigh economic comparability, significant production of comparable merchandise, and quality data when selecting among two countries that were on the within the range of GNI data and were considered economically comparable. As discussed above, here the Philippines is not in the GNI range of countries the Department has found to be economically comparable to the PRC and does not meet both criteria.[79] Further, both the CIT and the Federal Circuit have upheld the Department's approach to its surrogate country selection of first looking to the surrogate country list for economically comparable potential surrogate countries, then determining if the countries on that list produced comparable merchandise and were significant producers of the subject merchandise, and finally, if more than one country met steps one through three, selecting the country that had the best data on the

[75] See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 2394 (January 16, 2015) ("Fish Fillets 2015") and accompanying IDM at Comment I.

[76] See Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010).

[77] See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2011-2012, 78 FR 56211 (September 12, 2013) and accompanying IDM at Comment 1.A.

[78] See Prelim Decision Memo at 14; see also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011–2012, 79 FR 31298 (June 2, 2014) and accompanying IDM at Comment 1 ("{U}nless we find that all of the countries determined to be at the same level of economic development as the PRC are not significant producers of comparable merchandise, are not reliable sources of publicly-available SV data, are not suitable for use based on other reasons, or we find that another country not on the surrogate country list is at a comparable level of economic development and is an appropriate surrogate, we will rely on data from one of these countries.").

[79] See Ad Hoc Shrimp, 882 F. Supp. 2d at 1374; see also Amanda Foods, 647 F. Supp. 2d at 1376-1378; see also Clearon Corp. v. United States, No. 13-00073, 2014 WL 3643332, at *11 (Ct. Int'l Trade July 24, 2014)("{t}he issue before the court in *Amanda Foods* and *Ad Hoc Shrimp* was not the initial placement of a country on the potential surrogates list . . . , but rather the merits of each of the potential surrogates on the list relative to each other.").

record.[80] As set forth below, because Thailand fulfills these selection criteria, there is no need to resort to countries that are at a less comparable level of economic development, such as the Philippines as suggested by CAC.

Significant Producer

Although CAC notes that the Philippines exports a greater quantity of activated carbon than Thailand, the statute does not require that the surrogate country be the most significant producer. Section 773(c)(4)(B) of the Act requires the Department to value factors of production ("FOPs"), to the extent possible, in a surrogate country that is a significant producer of comparable merchandise. Importantly, the Act does not define the phrase "significant producer."[81] Certain legislative history suggests that the Department may consider a country to qualify as a "significant producer" if, among other things, it is a "net exporter" of identical or comparable merchandise.[82] However, that text does not define the phrase "net exporter" or explain whether a potential surrogate country must constitute a net exporter in terms of quantity, value, or both to fit the example provided in the legislative history.[83] As a result, this ambiguous provision of the Act does not compel the Department to define "significant producer" in any particular manner.[84]

The Department finds that for this industry Thailand is a significant producer, based on export quantities.[85] We prefer to consider quantity, rather than value, in determining whether a country is a significant producer.[86] Moreover, as noted above, the fact that a country is not a net exporter of a particular product, in value terms, does not necessarily mean that the country is not a significant producer of that good, given that the country could import more higher-valued products than it exports. Further, we disagree with CAC's contention that the Department has narrowly defined countries at the same level of economic development while broadly defining significant production.[87] Per-capita GNI, used by the Department to measure economic comparability, is a standard measure that is used to compare countries in a consistent manner. As noted above, the CIT has found the Department's use of GNI as "a reasonable interpretation of the statute."[88] There is no similar measure for defining significant producer that provides the

[80] See Jiaxing Brother Fastener Co. v. United States, 961 F. Supp. 2d 1323, 1335 (CIT 2014) ("Jiaxing 2014"), affd. in, Jiaxing Brother Fastener Co. v. United States, 822 F.3d 1289, 1293-96, 1298 (Fed. Cir. 2016) ("Jiaxing 2016") (upholding Commerce's determination to exclude India as a surrogate country because "India's per capital GNI was not at a level of economic development comparable to China"); see also Clearon v. United States, No. 13-00073, 2015 WL 4978995, at *4 (CIT 2015) ("Commerce's primary reliance on per capita GNI to identify economically comparable countries was not unreasonable and was in accordance with law").

[81] See section 773(c)(4)(B) of the Act; see also Policy Bulletin 04.1, available at http://enforcement.trade.gov/policy/bull04-1.html.

[82] See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590, 1988 U.S.C.C.A.N. 1547, 1623 (1988).

[83] Id.

[84] See Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006) ("Dorbest").

[85] See Prelim SV Memo at Attachment 1.

[86] See Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review, 77 FR 67337 (November 9, 2012) ("AR4 Carbon") and accompanying IDM at Comment 1.B.

[87] See CAC's Case Brief at 8.

[88] See Jiaxing Brother Fastener Co. v. United States, 961 F. Supp. 2d 1323, 1329 (CIT 2014).

same consistency in measurement for the extraordinary range of products that the Department must examine in antidumping cases. Accordingly, the Department applies export volumes from among those countries that are at the same level of economic development to determine significant producer. With respect to the Department's interpretation of significant production in this instance, as stated above, while the Court in Fresh Garlic Producers Ass'n found that one permissible interpretation of the statute is production that would influence or effect world trade, it also found that this term is "inherently ambiguous."[89] Further, the CIT found in Dorbest that the ambiguous provision of the Act does not compel the Department to define "significant producer" in any particular manner.[90]

Additionally, we disagree with CAC's argument that Thailand cannot be considered a significant producer of activated carbon because it is not within the top ten exporters of activated carbon.[91] Section 773(c)(4) of the Act states that the Department "shall utilize, to the extent possible, the prices or costs of {FOPs} in one or more market economy countries that are . . .(A) at a level of economic development comparable to that of the {NME} country…(B) significant producers of comparable merchandise." As noted above, both the CIT and the Federal Circuit have upheld the Department's approach to its surrogate country selection of first looking to the surrogate country list for economically comparable potential surrogate countries, then determining if the countries on that list produced comparable merchandise and were significant producers of the subject merchandise.[92] Here, we determined the Philippines and Thailand were significant producers because both have exports of activated carbon under the Harmonized Tariff Schedule ("HTS") number in the scope (i.e., 3802.10). However, when selecting a surrogate country from which to value surrogate values, we select one that meets each of the selection criteria. In this selection process, after determining if a country is economically comparable we next look to determine which of those countries are also a significant producer of identical or comparable merchandise. Of the economically comparable countries on our list we determined the Ecuador, Mexico, Romania, South Africa, and Thailand were the only countries that were both economically comparable and significant producers. While the Philippines was a significant producer because it had export data under HTS subcategory 3802.10 during the POR, as discussed above, it was not economically comparable to the PRC and therefore we did not consider it for our use as our primary surrogate country. The record evidence does demonstrate, however, that in this administrative review, Thailand is an exporter of identical merchandise and a significant producer based on export volume of identical merchandise.[93]

Therefore, both the Philippines and Thailand are significant producers because, in quantity terms, they are exporters of goods identical to the subject merchandise and have production of comparable merchandise as evidenced by the financial statements on the record.[94] For the reasons outlined above, we find that of the economically comparable countries to the PRC in this

[89] Fresh Garlic Producers Ass'n, 121 F. Supp. 3d at1338-39.
[90] See Dorbest at 1274.
[91] See CAC's Case Brief at 8, (citing Jacobi's Surrogate Country Comments, dated July 20, 2015, at Attachment E).
[92] See Jiaxing 2016 at 1293-96, 1298.
[93] See Jacobi's Surrogate Country Comments, dated July 20, 2015, at Attachment A and E; see also, Surrogate Country Memo.
[94] See Letter from Petitioners, dated November 12, 2014, at page 3; see also, Letter from Datong Juqiang, dated November 12, 2014, at Exhibit 1.

review Thailand is the only country that the Department considers to be both a significant producer of comparable merchandise and economically comparable.

Data Availability

Parties have raised arguments related to the reliability and representativeness of Thai import data and the Thai financial statements on the record. However, we find these arguments to be unconvincing.

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country based on data availability and reliability.[95] When evaluating SV data, the Department considers several factors, including whether the SVs are publicly available, contemporaneous with the POR, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.[96]

Initially, we do not agree with CAC's contention that Thai import data in their entirety are unreliable. In two recent cases, Xanthan Gum and Certain Steel Threaded Rod from the PRC, the Department determined that the reports from the USTR and the FedEx Country Report do not make Thai import data unreliable or inferior to Philippine data, and we declined to conclude that all Thai import data should be rejected due to the reports.[97] The CIT recently reached a similar conclusion that such evidence of possible manipulation "does not establish that Thai Customs import values are affected general, and significantly."[98] Further, other than these reports remarking on the general state of Thai Customs practices, CAC has pointed to no evidence on the record which demonstrates that the specific SVs relied on by the Department in this administrative review are the result of the alleged Thai Customs practices or government distortion and thus unreliable. Here, as in Elkay, record evidence of manipulation of Thai customs values does not rise to such a level that the Department is left with no choice but to foreclose any use of Thai import data.

CAC also contends that, in light of these reports, the Department should apply its "reason to suspect or believe" standard to Thai import data in the same manner it does with Thai exports for purposes of calculating SVs. CAC is specifically referencing the Department's longstanding practice of disregarding export prices from countries, like Thailand, which the Department has reason to believe or suspect maintain generally available non-industry specific export subsidies. This practice was recently codified with the passage of the TPEA, which amended section 773(c)(5) of the Act to accord the Department discretion to "disregard certain price or cost values without further investigation if the {Department} has determined that broadly available export subsidies existed or particular instances of subsidization occurred with respect to those

[95] See Policy Bulletin 04.1.
[96] Id.
[97] See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) ("Xanthan Gum from the PRC") and accompanying IDM at Comment 1; Certain Steel Threaded Rod from the People's Republic of China, 79 FR 71743 (December 3, 2014) ("Certain Steel Threaded Rod from the PRC"), and accompanying IDM at Comment 1.
[98] See Elkay Mfg. Co. v. United States, Slip Op. 16-69 (July 14, 2016) ("Elkay") at 22.

price or cost values or if those price or cost values were subject to an antidumping order."[99] But unlike with regard to *export* subsidies, the Department has not previously found that broadly available *import* subsidies in Thailand exist that would distort Thai import prices. Further, despite CAC's contention that manipulation of entered values occurs in Thailand, as noted, CAC provides no specific evidence that the SV used here are the result of any such distortive practices.

While we agree with CAC that the Department prefers to use multiple financial statements, we also have a greater preference of using financial statements from countries at the same level of economic development as the PRC.[100] Although the record contains multiple financial statements from the Philippines, as noted above, these financial statements come from companies operating a country that has not been found to be at the same level of economic development as the PRC. Because we have financial statements from countries at the same level of economic development, we need not turn to countries outside the GNI bookends identified on the Surrogate Country Memo.

With regard to CAC's contention that it is unreasonable to assume respondents would select the most expensive market to acquire inputs (in this case, Thailand) and about the unpredictability of the Department's surrogate country selection, as we stated above, Department selects the primary surrogate country for each segment of a proceeding based on the record facts of that individual segment, regardless of whether the potential surrogate countries under consideration have been previously selected as the primary surrogate country. Further, the Department's reliance on per capita GNI provides a predictable selection process, but it does not mean that the Department will rely on a single country for the life of the order. Rather, consistent with the statute, the Department selects the country that best meets the statute's requirements in each segment in order to establish normal values relevant to the period at hand. The Department's surrogate country selection criteria does not take into account input *costs*, but as noted above and in the Preliminary Results, the Department relies on per capita GNI, whether the potential surrogate country is a significant producer of comparable merchandise and data availability in selecting the appropriate surrogate country.

[99] See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) ("TPEA"). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015).

[100] See Jiaxing Brother Fastener Co. v. United States, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014) ("Jiaxing Brother") quoting Sodium Hexametaphosphate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 59375 (September 27, 2012) ("Sodium Hex") and accompanying IDM at Comment I.

[100] See, e.g., FMC Corp. v. United States, 27 CIT 240, 251 (CIT 2003) (holding that the Department can exercise discretion in choosing between reasonable alternatives), aff'd FMC Corp. v. United States, 87 F. App'x 753 (Fed. Cir. 2004).

Finally, the circumstances cited by CAC in Fish Fillets[101] and Pure Magnesium[102] that justified the Department's departure from the surrogate country list in that review are not present in this case. In Fish Fillets, the Department selected Indonesia as the primary surrogate country because of unique data concerns related to the primary input, i.e., whole, live fish input.[103] In Pure Magnesium, while the Department indicated that the omission of India from the surrogate country list did not preclude the use of Indian data to value FOPs, the Department did not use FOP data from India because the necessary FOP data was available from a surrogate country identified on the surrogate country list of that case. In the instant case, none of the circumstances in Fish Fillets apply because Thailand is listed as one of the potential primary surrogate countries based on 2014 GNI data, is a significant producer of comparable merchandise, and, as in Pure Magnesium, the record contains reliable Thai SV data for nearly all inputs, with the exception of one input for which there is data from a country on the surrogate country list, so there is no need to go off list to obtain data. The Department's decision not to rely on data from the Philippines, a country which is not at the same level of economic development as the PRC, is supported by the CIT. In Allied Food, the court found that "Commerce must use, 'to the extent possible,' prices or costs from a market economy country or countries that satisfy both criteria."[104] The Department's approach to only turning to data considerations after a country meets the other surrogate country selection criteria - economic comparability and significant producer of comparable merchandise – was upheld by the Federal Circuit in Jiaxing Brother Fastener. Describing the "four-step process to select a surrogate country," the Federal Circuit affirmed the CIT's decision to sustain Commerce's approach of first looking to the surrogate country list for economically comparable potential surrogate countries, then determining if the countries on that list produced comparable merchandise and were significant producers of the subject merchandise and, finally, if more than one country met steps one through three, selecting the country that had the best data on the record. . . . adequate information to evaluate them." [105] Here, as in Jiaxing Brother Fastener, there was no need for the Commerce to look to and compare the data availability of a non-economically comparable country when Thailand was a significant producer of activated carbon and had sufficiently reliable and useable surrogate value data.[106] Further, in Clearon II, which CAC cites for the contention that when presented with data from a country not

[101] See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 78 FR 55676 (September 11, 2013) and accompanying Decision Memo at 13-14; unchanged in 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") and accompanying Issues and Decision Memorandum ("IDM") at Comment 1; Ad Hoc Shrimp Trade Action Comm. v. United States, 882 F. Supp. 2d 1366, 1374 (CIT 2012); Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368 (CIT 2009).

[102] See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 34646 (June 10, 2013) ("Pure Magnesium").

[103] In Fish Fillets the data concerned centered on the unreliability and poor quality of data to value the key whole live fish input from the countries on the surrogate country list. There is no such issue with the data in the present review of activated carbon.

[104] See Allied Food at 1355.

[105] See Jiaxing Brother Fastener Co. v. United States, 961 F. Supp. 2d 1323, 1328, 1335 (Ct. Int'l Trade 2014) ("Jiaxing Brother Fastener Co."), aff'd 822 F.3d 1289, 1293 (Fed. Cir. 2016).

[106] Jiaxing Brother Fastener Co., 961 F. Supp. 2d at 1329 ("India therefore could never be a reasonable choice because at least one country, the Philippines, satisfies the statutory criterion of economic comparability, whereas India does not. [Jiaxing's] argument about the qualitative superiority of Indian data compared to Thai data ultimately concentrates on a false choice.").

on the surrogate country list, the Department must still provide an analysis of how the data does not outweigh its economic disparity, the CIT found that the Department is not required to evaluate data from non-economically comparable countries when making its surrogate value selections unless the parties provide information showing that quality data is unavailable from all of the economically comparable countries.[107] Further, the Court also held that the Department "acts not unreasonably in burdening the party proposing a non-listed country with demonstrating that no country on the surrogate country list provides the scope of 'quality' data that it requires in order to make a primary surrogate country selection."[108] Here, CAC has not provided information showing that quality data is not available from all of the countries in the GNI range that the Department found to be economically comparable, and accordingly the Department was not required to engage in this analysis.

For all the reasons stated above, we determine that Thailand is at the same level of economic development as the PRC, a significant producer of comparable merchandise, and has reliable data with which to value the mandatory respondents' FOPs. Accordingly, we will continue to us Thailand as the primary surrogate country in this administrative review.

Surrogate Values

Comment 3: Anthracite Coal Surrogate Value

CAC's Comments:

- Because the Department did not issue a post-preliminary decision addressing comments on anthracite coal, the Department prejudiced CAC's ability to write this case brief on a Department decision from a fixed record.
- The Department should not rely on the Mexican SV for anthracite coal because the Mexican import statistics are FOB and to make them on a cost, freight and insurance ("CIF") basis, the Department must make assumptions regarding ocean freight and marine insurance costs. Further, a large quantity of anthracite coal came from the United States and it is unlikely that ocean freight was used to transport the coal to Mexico and the Department did not account for this inaccuracy.
- The Department should value anthracite coal from Bulgaria or Romania because these two countries imported the most anthracite coal during the POR, are economically comparable to the PRC, and the values are reported on a CIF basis. Following this methodology would be consistent with the Department's practice identified in the Chlor Isos administrative reviews and with our practice of ensuring that the surrogate value is not aberrational when relying on a country other than the primary surrogate country to value a surrogate value.[109]

[107] See Clearon Corp., 2015 WL 4978995, at *4 (internal citations omitted).
[108] Id.
[109] See CAC's Case Brief at 32, (citing Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 81 FR 1167 (January 11, 2016) ("Chlor Isos from the PRC 2016") and accompanying IDM at Comment 1, and Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 4539 (January 28, 2015) ("Chlor Isos from the PRC 2015"), and accompanying IDM at Comment 2 (collectively "Chlor Isos")).

- The Department should not have used relative significant production to determine among the surrogate countries for an anthracite coal SV because anthracite coal is a commodity available around the world and it not unique to the activated carbon industry. Further, considering relative significant production is contrary to the Department's practice and as explained in the Policy Bulletin.[110]
- The Department did not address why it chose to rely on Mexican imports of anthracite coal over other anthracite coal import values on the record.

Jacobi's Comments:

- The Department should not use the Mexican SV for anthracite coal because it "consists of broad basket-category data," and does not reasonably reflect the value of the type of anthracite coal that Jacobi's suppliers consume as required by the applicable law.[111] Instead, the Department should use the SV from the U.S. government data published by the Energy Information Agency ("U.S. EIA") as it is the only SV option that reasonably reflects the market economy value for the specific type of anthracite coal consumed by Jacobi's suppliers. The CIT in Clearon II upheld that the Department must consider U.S. EIA data as a potential SV for anthracite coal even if it is from a non-economically comparable country.[112]
- Should the Department not use the U.S. EIA data to value anthracite coal, it should value anthracite coal from Bulgaria because this country imported the most anthracite coal during the POR. This approach would be consistent with the Department's practice in the last two Chlor Isos reviews.[113]
- The Department should not rely on Mexican SV as the Mexican import value is three times the average value the Department has found to be the best surrogate in the past three reviews, is more than double the average import value for other economically comparable countries during the POR, and the Mexican Global Trade Atlas ("GTA") data is otherwise unreliable. Mexican import statistics are FOB and to make them on a CIF basis, the Department must make estimations regarding ocean freight and marine insurance costs.

Petitioners' Comments:

- The Department should decline to consider U.S. EIA-published pricing data because the Unites States is not at the same level of economic development as China and no party has provided evidence that no country on the Surrogate Country Memo is a source of quality data.
- The Department should disregard Jacobi's argument that Mexican SV for anthracite coal "consists of broad basket-category data," and does not reasonably reflect the value of the type of anthracite coal that Jacobi's suppliers consume. Jacobi has failed to offer any record information showing that any type of coal other than anthracite is included in shipments

[110] See CAC's Case Brief at 4, citing to Policy Bulletin 04.1.
[111] See Jacobi's Case Brief at 6-7, (citing CS Wind Vietnam Co. v. United States, 971 F. Supp. 2d 1271, 1277 (CIT 2014); Blue Filed (Sichuan) Food Industrial Co., Ltd. v. United States, 949 F. Supp. 2d 1311, 1328-1329 (CIT 2013); Taian Ziyang Food Company, Ltd. v. United States, 783 F. Supp. 2d 1292, 1334-1340 (CIT 2011); and Peer Bearing Company-Changshan v. United States, 884 F. Supp. 2d 1313, 1322 (CIT 2012)).
[112] See Jacobi's Case Brief at 24, (citing Clearon II, 2015 WL 4978995 (CIT 2015)).
[113] See Jacobi's Case Brief at 25-26, (citing Chlor Isos from the PRC 2016 and accompanying IDM at Comment 1).

underlying the Mexican import statistics or any other potential surrogate countries. Jacobi has explicitly stated that its suppliers consume "generic" anthracite coal. Courts have further affirmed the Department's reliance on import categories as broad, tax-free national prices even when they reflect a basket category.[114]

- While Jacobi contends the U.S. EIA-published data represents a "better" market price, its argument rests on what it perceives as the high prices of anthracite coal found in GTA import data. The Department has found there are limited circumstances in which import data are not representative.[115] The Department should again reject this argument as it did in the seventh administrative review, as Jacobi does not demonstrate that the Mexican GTA import data is in some manner unusable or aberrational.[116]
- The Department should not rely on Bulgarian or Romanian surrogate information to value anthracite coal because neither country is a significant producer of activated carbon. Additionally, the Bulgarian and Romanian anthracite coal pricing data was placed on the record solely for benchmarking purposes. As no party timely submitted information on Bulgarian and Romanian values for anthracite coal for consideration as a SV, there is no basis for the Department to rely on that information to value anthracite coal in the final results.
- The Department should reject Jacobi's assertion that the Mexican GTA data is on a CIF basis based on information collected from the Mexican Secretariat of Economy. Rather Jacobi should have contacted GTA to verify whether the Mexican import data is on a CIF or FOB basis.
- Because it is unclear whether anthracite coal is shipped to Mexico in 20-foot or 40-foot containers, the Department should average the two freight sizes, as Jacobi does not volunteer which mode fits its exports of subject merchandise and both are publicly available and reflect the predominant world routes for Mexican imports.
- If the Department determines that the land rate calculation is representative of a significant portion of Mexico's anthracite coal imports, it would be reasonable to use the average of the ocean freight and land freight charges.
- The Department could rely on anthracite coal values from Thailand as long as it excludes the imports from Myanmar, which are PRC-origin anthracite coal re-exported from Myanmar to Thailand.

Department's Position: In the Preliminary Results, we valued anthracite coal using GTA Mexican, rather than Thai, import data for anthracite coal because we found the contemporaneous Thai import data for anthracite coal to be unreliable. For the final results, we will use Romanian GTA import data under Harmonized Schedule ("HS") code 2701.11 as the best available information for determining the SV for anthracite coal.

[114] See Petitioner's Case Brief at 21, (citing US Magnesium LLC v. United States, 70 F. Supp. 3d 1321, 1328 (CIT 2015)).
[115] Id. at 25, (citing Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012) and accompanying IDM at Comment 9).
[116] Id. at 23, (citing AR7 Carbon and accompanying IDM at Comment 5).

When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is the Department's practice to select SVs which, to the extent practicable, are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[117] Moreover, it is the Department's well-established practice to rely upon the primary surrogate country for all SVs, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.[118]

As an initial matter, we disagree with CAC's contention that it was prejudiced from writing its case brief. The Department provided CAC an opportunity to comment on information placed on the record by the Department at the Preliminary Results[119] and CAC commented on the Department's decision at the Preliminary Results and on the appropriate anthracite coal SVs to consider for the final results.

The record contains the following potential SVs for anthracite coal: (1) GTA data for Bulgaria HS category 2701.11, (2) GTA data for Ecuador HS 2701.11, (3) GTA data for Mexico HS 2701.11, (4) GTA data for Philippine HS 2701.11 from AR5, which the Department used in the sixth administrative review ("AR6") as well after adjusting it for inflation, (5) Romania GTA data for HS 2701.11, (6) GTA data for South Africa HS 2701.11, (7) GTA data for Thailand HS 2701.11, (8) GTA data for Malaysian HS 27011.11, and (9) U.S. government data published by the EIA. We have not considered anthracite coal data from Malaysia, the Philippines, or the United States, because none of these countries are at the same level of economic development as the PRC, and we have useable SV data from a country that is. Further, we have not considered anthracite coal data from Bulgaria because the record does not demonstrate that Bulgaria is a significant producer of comparable merchandise.[120]

As noted above, in the Preliminary Results, we found the contemporaneous Thai import data for anthracite coal to be unreliable.[121] Specifically, we conducted an analysis using the countries determined to be at the same level of economic development as the PRC identified on the surrogate country list from four PORs (i.e., the current POR and the prior three PORs) of this proceeding. Using the same HS category, we compared the anthracite coal SV for Thailand to

[117] See, e.g., Fuwei Films (Shandong) Co. v. United States, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing Certain 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) and accompanying IDM at Comment 10; Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008) and accompanying IDM at Comment 2).

[118] See 19 CFR 351.408(c)(2); see also Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review, 76 FR 66903 (October 28, 2011); unchanged in Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review, 77 FR 12553 (March 1, 2012).

[119] See CAC's SV submission, dated March 7, 2016.

[120] See Petitioners' Surrogate Country Comments, dated August 31, 2015, at 4.

[121] Id., at 25.

the anthracite coal SV to the other countries on the surrogate country lists,[122] and found that the Thai import data for anthracite coal over the periods and countries examined contain significant volatility (in this case there is significant price fluctuation between the Thai prices and the prices of the other countries)[123] when compared to the other countries for the same periods. [124]

We disagree with Jacobi that we should rely on anthracite coal data provided by the U.S. EIA. The United States is not at the same level of economic development as the PRC.[125] Specifically, the 2014 GNI for the United States is 55,200 U.S. Dollars ("USD") and the PRC's 2014 GNI is 7,380 USD.[126] The Department relies on SV data from a country with a GNI that is not at the same level of economic development as the NME country, only when we have been unable to obtain SVs from a country that is at the same level of economic development as the NME country.[127] This is not an issue in this administrative review.[128] While the record contains information that U.S. anthracite is similar to PRC anthracite,[129] anthracite is not unique to the PRC nor is there any information on the record that would suggest that only U.S. anthracite could be used as a suitable valuation source for Jacobi's suppliers' of generic anthracite. Moreover, CAC's argument that anthracite coal is a commodity available around the world and it not unique to the anthracite carbon industry runs counter to both its and Jacobi's arguments that the U.S. and Chinese anthracite coals are unique in the world.

We disagree with Jacobi's contention that Court precedent requires the Department to include the U.S. EIA data in a comparison of all data sets on the record when selecting SV data[130] such that even when "presented with a less economically comparable country off the list {the Department} *must still provide an analysis* of how the data from the less comparable country presented does not outweigh its economic disparity."[131] As an initial matter, the United States is less economically comparable to the PRC, by a magnitude of nearly 800 percent. In the

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[122] See, e.g., Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Administrative Review, 75 FR 36630 (June 28, 2010) and accompanying Issues and Decision Memorandum at Comment 4, and 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 Issues and Decision Memorandum at Comment 5 ("Lined Paper").
[123] See Prelim SV Memo at 6 and Attachment 2.
[124] See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying IDM at Comment 7B.
[125] See Petitioners' Surrogate Country Comments, dated August 17, 2015, at Attachment 1.
[126] Id.
[127] 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) and accompanying 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).
[128] See, e.g., 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).
[129] See Jacobi's SV Submission, dated November 18, 2014, at Exhibit SV-3.
[130] See Jacobi's Case Brief, dated May 13, 2016, at 23, citing Allied Pacific Food (Dalian) Co., Ltd. v. United States 435 F. Supp. 2d 1295, 13-14 (CIT 2006).
[131] Id. (quoting Clearon Corp., 2015 Ct. Intl. Trade LEXIS 91, at 13 (emphasis added by Jacobi, internal quotations omitted)).

Surrogate Country Memo, the Department identified the GNI range within which countries could be considered at the same level of economic development.[132] The United States falls well outside this GNI range such that the GNI of the United States cannot be considered comparable to the PRC or to the GNI range identified on the Surrogate Country Memo.[133] The Department acknowledges that on rare occasion it considers SVs from countries that are not at the same level of economic development as the NME country, but nevertheless are still at a level comparable to that of the NME country. For example in Crawfish, we used a surrogate value from Spain, even though Spain is not at the same level of economic development as the PRC, because the value from Spain was significantly greater specificity.[134] These countries are considered only when data or significant producer considerations potentially outweigh the fact that these countries are not at the same level of economic development as the NME country.[135] As explained above, however, the court in Clearon II found that the Department is not required to evaluate data from non-economically comparable countries when making its surrogate value selections unless the parties provide information showing that quality data are unavailable from all of the economically comparable countries.[136] Not Jacobi, nor any other party, has done so here. Further, in this instance, the record contains adequate data from countries that are at the same level of economic development as the PRC from which to use in the selection of an appropriate SV for anthracite coal. The Court has recognized the Department's preference for using SV data from potential surrogate countries.[137]

In summary, because we determined that the Thai anthracite coal values are aberrational, this leaves the Mexican, South African, and Romanian values as the only three values on the record of this administrative review that meet all of the Department's selection criteria, and they are of equal data quality. In the Preliminary Results, the Department used the Mexican anthracite coal value, to which respondents objected. We disagree with Jacobi's contention that the Mexican SV for anthracite coal "consists of broad basket-category data," and does not reasonably reflect the value of the type of anthracite coal that Jacobi's suppliers consume and therefore, unreliable. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the input.[138] The

[132] See Surrogate Country Memo.
[133] See Jiaxing 2014 at 1328 (holding that Department's utilization of GNI is a "consistent, transparent, and objective metric to identify and compare a country's level of economic development," and is "a reasonable interpretation of the statute").
[134] See Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014, 81 FR 21840 (April 13, 2016) and accompanying Issues and Decision Memorandum at 2 ("Crawfish").
[135] 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 accompanying IDM at Comment 1.
[136] See Clearon Corp., 2015 WL 4978995, at *4 (internal citations omitted).
[137] See, e.g., Trust Chem Company Limited v. United States, 791 F. Supp. 2d 1257, 1266 (CIT 2011) (finding that "Commerce adequately explained that 'while in the past the Department has used U.S. prices to benchmark surrogate values, the Department's current practice has been to benchmark surrogate values against imports from the list of potential surrogate countries for a given case.' Although there is no prohibition on using U.S. import data, Commerce's preference for data from potential surrogate countries was not unreasonable").
[138] See, e.g., Lined Paper and accompanying Issues and Decision Memorandum at Comment 3.

Department's preference is to satisfy the breadth of the aforementioned selection criteria, not one alone.[139] Moreover, on many occasions, the CIT has sustained the Department's use of broader basket HTS categories for SVs as supported by substantial evidence.[140] In addition, the Department previously stated that merely appearing on the low or high end of a range of values is not enough to make data aberrational.[141] While at the high end of the useable anthracite coal SVs, the historical evidence on the record does not demonstrate extreme volatility in the Mexican SV.[142] Although Jacobi contends the Mexican anthracite coal SV is higher than in previous administrative reviews, we carefully consider the available evidence with respect to the particular facts of each case and evaluate the suitability of each source on a case-by-case basis.[143] Here, the Mexican SV for anthracite coal meets our SV criteria, of being product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[144]

The Policy Bulletin does not address how to "break the tie" between multiple competing surrogate values that meet the economic and production criteria and are of the same data quality. This supports the discretion that the Department has "to determine what constitutes the best available information, as this term is not defined by statute."[145] As such, the Department will determine, on a case-by-case basis, the appropriate methodology to select among equally valid SV choices from a secondary surrogate country. The Department has, in certain instances, turned to significant production of comparable merchandise as an analysis tool in SV selection when selecting SVs from countries other than the primary surrogate country in limited circumstances when the competing values are of equal quality.[146] On the other hand, the Department has also utilized analysis of import volumes in SV selection between competing values of equal quality.[147]

With respect to Chlor Isos from the PRC 2016, the Department addressed the tie-breaking criterion between two surrogate values of equal data quality by stating that ranking alternate surrogate countries by volume of imports to value an input follows the methodology used in the

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[139] See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012) ("China Shrimp") at Comment 2.
[140] See, e.g., Writing Instruments, 984 F. Supp. 629, 640 (CIT 1997); Guangdong Chems, 460 F. Supp. 2d 1370-71 (CIT 2006); Peer Bearing, 752 F. Supp. 2d 1333, 1335 (CIT 2011); Dorbest, 462 F. Supp. 2d 1289-90 (CIT 2006).
[141] See, e.g., Wood Flooring 2014 and accompanying IDM at Comment 6 ("Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier.").
[142] See Prelim SV Memo at 6 and Attachment 2.
[143] See Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value, 77 FR 75984, (December 26, 2012), and accompanying IDM at Comment 2.
[144] See, e.g., Fuwei Films (Shandong) Co. v. United States, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing Certain 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) and accompanying IDM at Comment 10; Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008) and accompanying IDM at Comment 2.
[145] See Jiaxing Brother Fastener Co. v. United States, 2016 U.S. App. LEXIS 7196, at *4 (Fed. Cir. 2016).
[146] See Ad Hoc Shrimp Trade Action Comm. v. United States, Slip Op. 16-7, at 30-36 (CIT January 21, 2016) ("Ad Hoc Shrimp").
[147] See Chlor Isos from the PRC 2015, and accompanying IDM at Comment 2.

prior review, Chlor Isos from the PRC 2015,[148] and ensures that the SV is not aberrational when relying on an alternate surrogate country.[149] In Chlor Isos from the PRC 2016, the Department used the largest quantity of imports of chlorine to select among four equally viable SV sources.[150] In this administrative review, we ranked the alternate surrogate countries (Mexico, Romania, and South Africa) by volume of imports of anthracite coal. We found that Romanian imports of anthracite coal exceed that of Mexico and South Africa. The data on the record show that the imports of anthracite coal into Romania are so much larger than those into Mexico and South Africa that it demonstrates a much broader market average for this input. We have accordingly placed a greater weight on this consideration than on competing considerations, such as the relatively smaller export volumes of activated carbon. Thus, among the three countries, we determine for these final results of review thatRomania is the best source for a surrogate value for aanthracite coal.[151]

CAC contends that Bulgarian or Romanian GTA data are more accurate and reliable to use because the SV is already on a CIF basis. As noted above, we have not considered the Bulgarian anthracite coal import data to value this input because Bulgaria is not a significant producer of comparable merchandise. Furthermore, as discussed above, we find the Romanian data is the best available information on the record for valuing this input. Also, while CAC contends that anthracite coal imports from the United States are likely to be by a mode of transportation other than ocean freight, there is no information on the record to support this assertion.

Accordingly, Jacobi's arguments regarding the Mexican GTA data and ocean freight are moot.

Comment 4: Whether to Account for In-Bound Freight for the Anthracite Coal Surrogate Value

Petitioners' Comments:

- The Department should correct error in the anthracite coal SV freight calculation.

No Other Party Commented on This Issue.

Department's Position: This issue is moot, see above.

Comment 5: Carbonized Material Surrogate Value

Datong Juqiang's Comments:

- The Department's preliminary decision to value carbonized materials using GTA Thai import data is contrary to substantial record evidence, as GTA Thai import data are distorted by the presence of non-comparable goods and is unreliable. Record evidence shows that the majority of Thai imports under HS 4402.90.10000 are French imports of wood based charcoal used in animal feed.

[148] Id.
[149] See Chlor Isos from the PRC 2016, 81 FR at 1167, and accompanying IDM at Comment 1.
[150] Id.
[151] See Prelim SV Memo at 6 and Attachment 2.

- Petitioners' proposed GTA Mexico HS 4402.90.99 "Of Wood Charcoal" to value carbonized materials, is also unsuitable to value carbonized material because substantial record evidence establishes that imports under this heading are predominantly comprised of non-scope goods that are different than carbonized materials in terms of physical characteristics and end-uses.
- The Department should value carbonized materials using Philippine Cocommunity data because they are most similar to the input and represents the best available information. Further, the record evidence establishes that the Philippines is economically comparable and a significant producer of activated carbon and is a suitable surrogate country for this review.

CAC's Comments:

- The Department should value carbonized materials using Philippine Cocommunity data because they are most similar to the input and represents the best available information. Record evidence demonstrates that Thai imports under HS 4402.90.10000 are French imports of wood based charcoal used in animal feed and is not specific to Jacobi's input and this value is aberrational.

Jacobi's Comments:

- The Department should value carbonized material using Philippine Cocommunity data since the record confirms that Jacobi's suppliers only consumed coal-based carbonized material and the Department has previously determined that the Cocommunity was the best, most specific, surrogate value for coal-based carbonized material.[152]
- The CIT in Clearon II ruled that the Department acts unlawfully when it rejects possible benchmark data just because the data is from a country that is not on the surrogate country list. Accordingly, the Department cannot ignore the Philippine Cocomunity data when selecting a surrogate value for carbonized material.
- The Department should value carbonized materials using Philippine Cocommunity data because they are most similar to the input and represents the best available information. Record evidence demonstrates that Thai imports under HS 4402.90.10000 are highly aberrational and that the majority are French imports of wood based charcoal used in animal feed.

Petitioners' Comments:

- The Department should not use Cocommunity data either as benchmarks or as a surrogate value since the three countries (Philippines, Indonesia, and Sri Lanka) whose regional coconut data are represented in the data are not identified on the Surrogate Country Memo of countries that are at the same level of economic development as China.
- The Department cannot rely on the Cocommunity data since they are not reflective of a broad national price because the data reflect the price in Visayas, which constitutes only 17 percent of the Philippine coconut crop.

[152] See Jacobi's Br. at 33-34, Jacobi cites to 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) and accompanying IDM at Comment 6 and Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 70163 (November 25, 2014) ("AR6 Carbon").

- The surrogate value relied on by the Department in the Preliminary Results is both comparable to and less than the values relied on by the Department in previous reviews.
- Even if the Department confirms the supplemental information obtained by Jacobi and decides to impeach Thai imports from France classified under the Thai HS subheading 4402.90.10000, there is still a substantial volume of imports- 121,711 kilograms of coconut charcoal- that can be used to value carbonized material in the final results. This approach has been upheld by the CIT.[153]
- The Department should rely on Malaysian data either to benchmark or to value carbonized material as a secondary surrogate, as it has record information concerning import data for a coconut-specific tariff classification (HS subheading 4402.90.1000) and the CIF Malaysian import value is virtually identical to the Thai import value, excluding imports from France.
- Although Malaysia is not on the Surrogate Country List, it is the country with the next highest 2014 per capita GNI to Mexico (a country identified as at the same level of economic development as China on the Surrogate Country List) while there are 25 countries that separate the Philippines from the country on the Surrogate Country List with the smallest per capita GNI (i.e., Thailand). The GNI difference between Malaysia and the PRC is less than that between the Philippines and the PRC.
- When properly analyzed, the Mexican import value is overwhelmingly composed of charcoal- most of it coconut charcoal for industrial use- and corroborates the value of Thai imports (excluding France). Datong Juqiang improperly eliminates imports because of their level of trade when arguing Mexican imports are distorted by non-scope goods, and when evaluated by physical description the Mexican imports are overwhelmingly comprised of charcoal most of it coconut for industrial use.
- There is substantial evidence to support the Department's continued reliance on Thai import statistics, as both contemporaneous Malaysian and Mexican import data corroborate the Thai value used by the Department.

Department's Position: For the final results, we will continue to use the Thai GTA data under 4402.90.10000 "of Coconut Shell" to value respondents' carbonized material input.[154] Except, as discussed below, we will now exclude from the carbonized material SV calculation the imports from France included in this data.

The Department's practice, when selecting the best available information, 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. Further, 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.[155] While there is no hierarchy for applying the SV selection criteria, "the Department must weigh available

[153] See Petitioners Case Brief at 44, (citing Guangdong Chemicals Imp. & Exp. Corp. v. United States, 30 CIT 1412,1418, 460 F. Supp. 2d 1365,1370 (2006) (stating that the Department's "elimination of aberrational values has been held to be a reasonable means for compensating for flaws in a data set") (citing Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, 28 CIT 1 185, 2004 WL 1615597 , at *12 (2004)).
[154] See Datong Juqiang's SV Submission, dated March 31, 2015, at Exhibit 2A.
[155] 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.

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."[156]

The record contains six possible SVs to value carbonized materials:

(1) GTA data for Thai HS code 4402.90.10000 "of Coconut Shell";[157]
(2) GTA data for Malaysian HS code 4402.90, "Wood Charcoal (Including Shell Or Nut Charcoal), Excluding That Of Bamboo";[158]
(3) GTA data for Malaysian HS code 4402.90.10000 "0/T Bamboo: Of Coconut Shell";[159]
(4) GTA data for Mexico HS code 440290, "Wood Charcoal (Including Shell Or Nut Charcoal), Excluding That Of Bamboo";[160]
(5) GTA data for South Africa HS code 44029000, "Wood Charcoal";[161] and
(6) Cocommunity coconut shell charcoal price data from the Philippines.[162]

When presented with sufficient evidence to demonstrate a particular SV is aberrational, and therefore unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question. With respect to benchmarking, the Department examines historical import data for the potential surrogate countries for a given case, to the extent such import data is available, and/or examines data from the same HS category for the primary surrogate country over multiple years to determine if the current data appear aberrational compared to historical values.[163] Merely appearing on the low or high end of a range of values is not enough to make data aberrational.[164]

We have not considered the Philippine Cocommunity data or the Malaysian GTA data to value carbonized maternal, because this information does not come from the primary surrogate country, or a country found to be at the same level of economic development as the PRC, and we have useable SV data from the primary surrogate country. As outlined above, the court in Clearon II found that the Department is not required to evaluate data from non-economically comparable countries when making its surrogate value selections unless the parties provide

[156] 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.
[157] See Datong Juqiang's SV Submission, dated January 4, 2016, at Exhibit 2.
[158] See Petitioners' SV submission, dated September 24, 2015, at Attachment Malaysia-1.
[159] Id.
[160] See Petitioners' and Datong Juqiang's SV Submissions, dated September 24, 2015, at Attachment MEX-1-A and January 4, 2016, at Exhibit 10, respectively.
[161] See Jacobi's SV submission, dated September 24, 2015, at Exhibit SV-6.
[162] See Jacobi's and Datong Juqiang's SV submissions, dated September 24, 2015, at Exhibit SV-3 and January 4, 2016, at Exhibit 19, respectively.
[163] See Carbazole Violet and accompanying IDM at Comment 6; see also Tetrafluroethane and accompanying IDM at Comment 10.
[164] See, e.g., Wood Flooring 2014 and accompanying IDM at Comment 6 ("Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier.").

information showing that quality data is unavailable from all of the economically comparable countries.[165] Jacobi, nor any other party, has done so here.

With respect to the values under HS codes 440290 and 44029000 described as wood-based charcoal, the record demonstrates that Jacobi has not sold subject merchandise produced from wood-based charcoals.[166] As noted above, the Department undertakes to select the SV using the best available information that is on the record in light of our established SV analytical criteria. In past decisions and on remand, the Department has found coconut-shell charcoal is the best available information with which to value respondents' coal-based carbonized materials, based on the product specifications.[167]

In this case, we selected Thailand as our primary surrogate country, and for the final results, we continue to use Thailand as the primary surrogate country. Because the Department has selected Thailand as the primary surrogate country, our first preference in selecting surrogate value data for this review is to utilize publicly available prices within Thailand. With respect to the surrogate values for carbonized material in the Preliminary Results, we relied on import data under GTA Thai HS code 4402.90.10000 described as "of coconut." For purposes of these final results, and as outlined below, we continue to find that the Thai import data for HS code 4402.90.10000 are more comparable to the inputs in question, are from the primary surrogate country, are contemporaneous and represent the best available information for valuing respondents' carbonized material FOPs. As such, we have relied upon these data in these final results.

In applying the Department's surrogate value selection criteria as mentioned above, the Department has found in numerous NME cases[168] that the import data from GTA represent the best available information for valuation purposes because they represent an average of multiple price points within a specific period and are tax-exclusive. In some instances, the Department has disregarded import data where record evidence demonstrates that per-unit values are aberrational with respect to the product at issue.[169] The Department determines whether data are aberrational on a case-by-case basis after considering the totality of the circumstances.[170]

Regarding the claim that the Thai import data from France should be removed from the dataset, we agree. We note that Jacobi submitted documentation (i.e., an affidavit from Jacobi affiliates in France, Isabelle Laidin and Raphaele Bro-Capron; an affidavit from a Thai importer of French

[165] See Clearon Corp., 2015 WL 4978995, at *4 (internal citations omitted).
[166] See Jacobi's section D response titled "Response to the Department's Section D Questionnaire For Ningxia Guanghua Activated Carbon Co., Ltd. ("NXGH")," dated August 14, 2015, at Attachment at 5.
[167] See 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) and accompanying IDM at Comment 16; see also "Final Results of Redetermination Pursuant to Court Remand," dated July 25, 2011, Carbon Remand, Slip Op. 11-21, at 10-11.
[168] See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) and IDM at Comment 11.
[169] See, e.g., Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 71743 (December 3, 2014) and accompanying IDM at Comment 2.
[170] See, e.g., Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) and accompanying IDM at Comment 10.

carbonized material; and a 2013 annual sales summary from the French exporter)[171] that supports its contention that imports from the France into Thailand during the POR are not specific to the input in question. We examined the viability of this documentation and found no reason to dismiss the information as presented. In the Thai importer affidavit, the importer states that "{d}uring 2013, 2014 and 2015 {it} imported wood-based powdered charcoal from France under Thai Customs (HS) number 4402.90.10." and that {o}ne hundred percent of what {they} imported from France under 4402.90.10 during 2013, 2014 and 2015 was purchased from {}a European corporation specialized in additives for animal nutrition."[172] In addition, by quantity after excluding the French GTA imports there still remains a significant volume of imports for which to calculate a SV for respondent's carbonized material FOP. Thus, because the French imports of "carbonized material" into Thailand are not specific to the input in question, it has been excluded from the carbonized material surrogate value calculation for the final results. This CIT has upheld this approach of the Department eliminating aberrational values from data sets it is relying on.[173]

Comment 6: Hydrochloric Acid ("HCl") Surrogate Value

Datong Juqiang's Comments:

- The Department should reject the Thai import data as they are aberrationally high, and are impeached by several global benchmark prices.
- Instead the Department should rely on GTA Romania or GTA Bulgaria HTS 2806.10 import data which represent contemporaneous prices in economically comparable countries that are significant producers of comparable merchandise.

Jacobi's Comments:

- The Department's use of the GTA Thai value is not a reliable estimate of the type of HCl consumed by Jacobi's suppliers.

Jacobi's Comments:

- The Department's use of the GTA Thai value is not a reliable estimate of the type of HCl consumed by Jacobi's suppliers.
- The surrogate value used by the Department in both the final results of POR 7 and the Preliminary Results is aberrational, as there is zero record evidence that the value of HCl on the market has experienced a nearly 400% price increase since POR 6.
- The Department must instead utilize the contemporaneous Philippine HTS value.

Petitioners' Comments:

- The Department must reject the argument that Thai import values are unreliable since the values that Jacobi and DJAC rely on for benchmarking are not contemporaneous with the POR or are based on information from countries that the Department has determined are

[171] See Jacobi's SV Submission, dated January 4, 2016, at Exhibit SV-17.
[172] Id.
[173] See Petitioners Case Brief at 44, (citing e.g., Guangdong Chemicals Imp. & Exp. Corp. v. United States, 30 CIT 1412,1418, 460 F. Supp. 2d 1365,1370 (2006) (stating that the Department's "elimination of aberrational values has been held to be a reasonable means for compensating for flaws in a data set") (citing Hebei Metals & Minerals Imp & Exp. Corp. v. United States, 28 CIT 1 185, 2004 WL 1615597, at *12 (2004)).

not at the same level of economic development as the PRC. The respondents offer no independent data to impeach the reliability of the Thai import data used in this, or prior, segments. Using the same sources and exchange rates as used by Jacobi, the HCl value relied on by the Department in this review is only 29 percent higher than the average over all eight review periods and is not the highest, but rather the third highest SV used. Additionally, Jacobi itself submitted on the record the Thai import value that it now claims is aberrational.

Department's Position: The Department agrees with Petitioners and will continue to value HCl using the Thai imports of HCl under the specific HS subheading 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W" as stated in the Preliminary Results.[174]

As noted above, the Department's practice, when selecting the best available information, 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. Further, 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.[175] 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."[176] In this case, we selected Thailand as our primary surrogate country, and for the final results, we continue to use Thailand as the primary surrogate country. Because the Department has selected Thailand as the primary surrogate country, in line with our regulatory preference for valuing all surrogate values from one surrogate country, our first preference in selecting surrogate value data for this review is to utilize publicly available prices within Thailand.[177]

When presented with sufficient evidence to demonstrate a particular SV is aberrational, and therefore unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.[178] When considering benchmark data, the Department examines historical import data for the potential surrogate countries for a given case, to the extent such import data is available, and/or examines data from the same HS category for the primary surrogate country over multiple years

[174] See Prelim SV Memo at Attachment 2c.
[175] 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.
[176] 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.
[177] See 19 C.F.R. §351.408(c)(2).
[178] See Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 69938 (November 12, 2015) and accompanying IDM at Comment 6.

to determine if the current data appear aberrational compared to historical values.[179] Merely appearing on the low or high end of a range of values is not enough to make data aberrational.[180]

Although both Datong Juqiang and Jacobi contend that the Thai data for HS 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W" are aberrational, their arguments fail to impeach record information on HCl values contemporaneous with the POR and from countries that are at the same level of economic development as the PRC. Specifically, Datong Juqiang states that the Thai import data are impeached by several global benchmark prices, however the data they rely on are from U.S. imports, as well as reports [181] on Germany, Belgium, France and the United States, a source which as a result reflect prices in economies are not at the same level of economic development as the PRC.[182] Additionally, Datong Juqiang's reliance on Thai and Mexican export data during the POR is contrary to Department's practice, which has long since rejected the use of export values as surrogate values or as benchmarks for surrogate valuation.[183]

While Jacobi argues that Thai data for HTS 2806.10.000102 is aberrantly high, its argument largely relies on the fact that the Thai values for HCl are higher than they were in previous reviews. Jacobi has submitted this argument before and the Department has previously rejected it as an inappropriate benchmark comparison. In this review, as in AR7 Carbon, the Department disagrees with Jacobi's argument that the value for Thai HS code 2806.10.00102 is unusually high because the record does not contain historical data for HS code 2806.10.00102 from any of the countries we consider to be at the same level of economic development as the PRC nor data from the same HS category for the primary surrogate country Thailand over multiple years, which would permit us to evaluate whether the this data are aberrational.[184] The Department evaluates the appropriate benchmark data to evaluate whether a value is unusable; merely appearing on the low or high end of a range of values is not enough to make data aberrational.[185] As such, the Department must continue disagree with Jacobi's contention that Thai import data for HCl is unusually high.

Neither Datong Juqiang nor Jacobi have identified a rationale that would support the Department's rejection of the country-wide, tax-free, publically available Thai import statistics

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[179] 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 Violet") and accompanying IDM at Comment 6; see also 1,1,1,2-Tetrafluroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 62597 (October 20, 2014) ("Tetrafluroethane") and accompanying IDM at Comment 10; see also Mittal Steel Gatlati SA v. United States, 502 F. Supp. 2d 1295, 1308 (CIT 2007); Blue Field (Sichuan) Food Indus. Co. v. United States, 949 F. Supp. 2d 1311, 1326 (CIT 2013).

[180] See, e.g., Wood Flooring 2014 and accompanying IDM at Comment 6 ("Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier.").

[181] Chemical Industry News & Chemical Market Intelligence website. See Datong Juqiang SV Submission, dated January 4, 2016, at Exhibit 3C.

[182] Id.

[183] See, AR7 Activated Carbon and accompanying IDM at Comment 10; see also, Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 14437 (March 18, 2008) and accompanying IDM at Comment 3.

[184] Id.

[185] See, e.g., Wood Flooring 2014 and accompanying IDM at Comment 6 ("Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier.").

for HCl, classified under the highly specific HTS subheading 2806.10.000102. Therefore, the Department will continue to use the Thai import values for HCl which is the best available information on the record.

Comment 7: Labor

CAC's Comments:

- The Department should rely on the 2012 Census of the Thai National Statistic's Office ("NSO") which provides 2011 industry specific labor data rather than the 2014 data used in the Preliminary Results, as it has previously relied on similar Census data because they are very specific to the type of industry and covers all types of labor.[186]
- The Department incorrectly assumed that the NSO data is based on 24 working days a month eight working hours a day. The 2012 Thai NSO data rebuts this assumption.

Datong Juqiang's Comments:

- The Department should value labor by applying the NSO industry-specific code 20299 labor cost data from the 2012 Industrial Census instead of the NSO general manufacturing labor cost data from the NSO Labor Survey which is an overly broad basket category.
- The Department has consistently applied this preference for industry-specific labor costs, including the Thai NSO industry-specific labor cost data, and did so in AR7 of this proceeding.[187] This methodology has been sustained by the CIT as being consistent with how the Department values all other FOPs.[188]
- The Department should use the consumer price index ("CPI") data to adjust the industry-specific labor SV as it is a well-established Department policy to do so.

Petitioners' Comments:

- The Department should continue to rely on NSO general manufacturing data to value labor since it offers contemporaneous costs for the POR. The Department should not use the 2011 labor costs reported in the 2012 NSO Industrial Census as code 20299 is a basket category. Additionally, contemporaneous costs from the four quarters of this POR are far more accurate than inflating the 2011 NSO data.

Department's Position: We find that the record evidence supports our continued reliance on the 2014 Labor Force Survey data to value labor for the final results of this review. In this case,

[186] See CAC's Case Brief, at 36.

[187] See Datong Juqiang's Case Brief at 60-62, (citing Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 80 Fed. Reg. 61172 (Oct. 9, 2015), and accompanying I&D Memorandum at Comment 11; Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 71980, 71982 (December 4, 2014); and Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order, 76 FR 3084, 3086 (January 19, 2011)).

[188] Id., (citing Fish Fillets 2015 and accompanying IDM at Comment 16, (citing Taian Ziyang Food Company, Ltd. vs. United States, 918 F. Supp. 2d 1345, 1357 (CIT 2013))).

the 2014 Labor Force Survey provides superior data, even if the 2012 Industrial Census is adjusted for inflation.[189]

In valuing FOPs, section 773(c)(l) of the Act instructs the Department to use the "best available information" from the appropriate ME country. Also, the Department's SV information is normally based on publicly available information and the Department considers several factors, including the quality, specificity, and contemporaneity when choosing the most appropriate data.[190] Further, the Department's practice is to consider FOPs on a case-by-case basis wherein the Department makes product and case specific decisions as to what constitutes the "best available information" to value each input.[191]

In Labor Methodologies, we stated a preference for International Labor Organization ("ILO") Chapter 6A compared with ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.[192] However, we did not preclude all other sources for evaluating labor costs in NME antidumping duty proceedings. Rather, we continue to select the best available information to determine SVs for inputs such as labor.[193]

The 2014 Labor Force Survey data that we preliminarily used are publicly available, representative of a broad market average, tax-and duty-exclusive, specific to the industry in question, and more contemporaneous than 2012 Industrial Census data.[194] Also, a closer examination of record evidence for these two data sources reveals that the 2014 Labor Force Survey data better reflect the full spectrum of labor (i.e., fully loaded, direct and indirect) costs expressed within ILO Chapter 6A data and, in this sense, the 2014 Labor Force Survey data are preferable.[195]

In Labor Methodologies, the Department found that the ILO Chapter 6A is the preferred source of labor cost data, in that these data best account for all direct and indirect labor costs.[196] Since ILO Chapter 6A data for Thailand are not on the record of this review, we compared the direct

[189] The Department notes that Respondents referred to the incorrect year (i.e. 2006 Labor Force Survey data) in their arguments.
[190] See, e.g., Lined Paper and accompanying Issues and Decision Memorandum at Comment 3.
[191] See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1.
[192] See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092, 36093 (June 21, 2011) ("Labor Methodologies").
[193] See Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 3, and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014, 81 FR 1396 (January 12, 2016), ("TRBs") and accompanying IDM at Comment 4.
[194] Id.
[195] See Jacobi's SV Submission, dated January 4, 2016, at Exhibit SV2-15.
[196] See Labor Methodologies, 76 FR at 36092-93.

and indirect labor cost elements in the 2012 Industrial Census data and the 2014 Labor Force Survey data to the same elements described in the ILO Chapter 6A definition.[197]

Specifically, the ILO Chapter 6A data comprise compensation of employees, employers' expenditure for vocational training and welfare services (e.g., training), the cost of recruitment and other miscellaneous items (e.g., work clothes, food, housing), and taxes.[198] The 2014 Labor Force Survey data include cash for average wage, bonus, overtime, and other income, as well as in kind compensation for food, clothes, housing, and others.[199] The 2012 Industrial Census data include wages, salaries, overtime bonus, fringe benefits (medical care, others), and employer's contribution to social security.[200]

We find that the 2014 Labor Force Survey data provide categories of direct and indirect labor costs that match more closely to costs covered by the ILO Chapter 6A labor data than the 2012 Industrial Census data do. The 2014 Labor Force Survey data provide compensation of employees (cash for average wage, bonus, overtime, and other income), work clothes, food, and housing. The 2012 Industrial Census data provide compensation of employees (wages, salaries, overtime bonus) and taxes (employer's contribution to social security). Although the Appendix B of the 2012 Industrial Census data explains that fringe benefits "{r}efer to all payments in addition to wages or salaries paid to employees such as food, beverages, lodgings, rent, medical care, transportation recreational and entertainment services, etc.,"[201] the 2012 Industrial Census data do not specify whether work clothes, food, and housing are in fact included in the "Others" category of fringe benefits.[202] The 2012 Industrial Census data categorize fringe benefits only as "Medical care" and "Others."[203] Therefore, the uncertainty over whether work clothes, food, and housing are in fact included in fringe benefits of the 2012 Industrial Census data makes the 2012 Industrial Census data less detailed and potentially less similar to the ILO Chapter 6A labor data than the 2014 Labor Force Survey data. While the 2012 Industrial Census data relate to the relevant industry, they are neither contemporaneous with the POR nor more detailed than the 2014 Labor Force Survey in terms of matching categories of labor costs specified in the ILO Chapter 6A labor data. Therefore, we find that the general manufacturing labor data in the 2014 Labor Force Survey provide the best available information for purposes of these final results.

Comment 8: Coal Tar Surrogate Value

Jacobi's Comments:

- The Department should not use the Thai GTA data for coal tar as they are not reliable. The Thai value for coal tar is aberrantly high and is unrepresentative of the market coal tar

[197] See Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part, 80 FR 34893, 34899 (June 18, 2015) ("PVLT Tires"), at Comment 13, where the Department discusses the ILO Chapter 6A data.
[198] Id.
[199] See Jacobi's SV Submission, dated January 4, 2016, at Exhibit SV2-15.
[200] See Datong Juqiang's SV Submission, dated January 4, 2016, at Exhibit 7.
[201] Id.
[202] Id.
[203] Id.

price.[204] Compared to the value used in the past seven reviews it is five times as high and compared to the largest exporters of coal tar it is not representative of market price.
- The Department failed to benchmark this value, and did not ask for AUV information for determining if the coal tar value was aberrationally high like it did with anthracite coal.
- The imports used by the Department to value coal tar are not specific to the coal tar used by Jacobi's suppliers. All imports of HS 2706 into Thailand during POR8 are classified under "2706.00.00090 – Other" and not "2706.00.0002 – Tar Distilled From Coal, From Lignite Or From Peat, And Other Mineral Tars, Whether Or Not Dehydrated Or Partial."
- The Department must value coal tar with the Philippine coal tar SV used in the fifth administrative review, because it is the last usable value on record specific to Jacobi's input.

Petitioners' Comments:
- The Department should continue to rely on Thai import statistics to value coal tar as the data are corroborated by contemporaneous values for coal tar from Mexican import statistics, as well as Malaysian import statistics. Jacobi's arguments fail to address these contemporaneous corroborating values.

Department's Position: The Department agrees with Petitioners and will continue to value coal tar using Thai GTA import data under HS code 2706 "Mineral Tars, Including Reconstituted Tars."[205]

As noted above, when presented with sufficient evidence to demonstrate a particular SV is aberrational, and therefore unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question. When we examine benchmark data, the Department examines historical import data for the potential surrogate countries for a given case, to the extent such import data is available, and/or examines data from the same HS category for the primary surrogate country over multiple years to determine if the current data appear aberrational compared to historical values.[206] Merely appearing on the low or high end of a range of values is not enough to make data aberrational.[207]

We disagree with Jacobi that the record demonstrates the contemporaneous Thai coal tar data are unreliable. As an initial matter, we note that the record does not contain historical data from Thailand or the other countries from the Surrogate Country List that would enable the Department to determine whether the Thai coal tar SV is unreliable. Parties bear the burden of building an administrative record and demonstrating that a value is aberrational, it is not the responsibility of the Department to seek out and eliminate aberrational values.[208] Further, as discussed above the CIT found in Clearon II that the Department is not required to evaluate data

[204] Jacobi cites to Jacobi's SV Submission, dated January 4, 2016 at Exhibit SV2-1.
[205] See Prelim SV Memo at Attachment 2c.
[206] See Carbazole Violet and accompanying IDM at Comment 6; see also Tetrafluroethane and accompanying IDM at Comment 10.
[207] See, e.g., Wood Flooring 2014 and accompanying IDM at Comment 6 ("Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier.").
[208] See QVD Food Co. Ltd. v. United States, 685 F.3d 1318, 1325 (Fed. Cir. 2011) ("the burden of creating an adequate record lies with interested parties and not with Commerce").

from non-economically comparable countries when making its surrogate value selections unless the parties provide information showing that quality data is unavailable from all of the economically comparable countries.[209] Additionally, we note that Thailand's coal tar SV, at 1,877.59 USD/MT,[210] is less than the Mexican SV for coal tar valued at 2,270.49 USD/MT,[211] which indicates that the Thai coal tar SV is not outside the coal tar prices of other countries identified on the Surrogate Country List and does not undercut the Department's determination to use Thai values. Comparing the coal tar values used by the Department in previous reviews to determine if the Thai coal tar value is aberrational, as proffered by Jacobi, is an incorrect benchmark. Jacobi contention that the export average unit values ("AUV") of the world's largest exporters of coal tar is inapposite because it compares CIF-based value (i.e., the Thai import statistics) with FOB values (i.e., the export AUVs).[212] While Jacobi asserts that this comparison demonstrates that the Thai value relied on by the Department "is clearly not representative of the market coal tar price,"[213] the basis for this statement also improperly relies on a comparison of data that are not comparable for benchmarking purposes (i.e. data from economically comparable countries or historical Thai import data for coal tar).

While Jacobi argues that the Thai SV, HS code 2706 "Mineral Tars, Including Reconstituted Tars" does not contain coal tar and is, therefore, not specific to the input used by its suppliers, we note as an initial matter that the Department used HS code 2706 in the previous administrative reviews and found it specific to the coal tar used by respondent.[214] Further, the other SV sources for coal tar on the record are also labeled as HS code 2706 "Mineral Tars, Including Reconstituted Tars," which provides no greater specificity than what the Thai SV under HS code 2706 provides.[215] Because the Thai coal tar SV is contemporaneous, from the primary surrogate country and is equally specific to the input used by Jacobi's suppliers based on the HS description, we find that the imports under the Thai HS code 2706 "Mineral Tars, Including Reconstituted Tars" represents the best available information on the record and we will continue to value coal tar using Thai imports under HS code 2706 "Mineral Tars, Including Reconstituted Tars."

Comment 9: Brokerage and Handling ("B&H") Surrogate Value

CAC's Comments:

- If the Department continues to rely on the World Bank's ("WB") report "2016 Doing Business in Thailand" ("Doing Business, Thailand") as a source for B&H, it must, at a minimum, use the 15,000 kg container weight used by Doing Business, Thailand rather than the 10,000 kg container weight used in the Preliminary Results.[216]

[209] See Clearon II, 2015 WL 4978995, at *4 (internal citations omitted).
[210] See Jacobi's Case Brief at 43.
[211] See Petitioners' Rebuttal Brief at 49.
[212] See Jacobi's Case Brief at 43.
[213] Id.
[214] See AR7 Activated Carbon and accompanying IDM at Comment 7; see also Jacobi's SV Submission, dated September 24, 2015, at Exhibit SV-4.
[215] See Jacobi's SV Submission, dated September 24, 2015, at Exhibit SV-6.
[216] See CAC's Case Brief at 37, (citing Doing Business in Thailand 2016 Report at 77 in CAC Final SV Submission at Exhibit 21-23).

- The WB report did not previously suggest that 10,000 kg is an average weight of a 20 foot container. It does not in its 2016 report suggest that this weight is an average weight or that this weight is directly linked to the cost of shipping a container. Instead, in its 2016 report, suggests that contributors should assume the information provided is for a 20 foot container weighing 15,000 kg. The prices between the 2015 and 2016 Doing Business, Thailand reports did not significantly change even though the hypothetical weight increased by 50%, showing the weight of a container is not crucial to the calculation and the 15,000 denominator in the report is totally irrelevant to the cost.
- Further, while the Department should continue to use the container costs for the numerator, it must adjust its B&H calculations from the 10,000 kgs weight denominator used by the WB to the maximum cargo load of the container, which is more reflective of shipping reality.
- 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.[217]
- The calculation of B&H SV's requires two inquiries (1) the absolute cost, or numerator and (2) the proper weight or volume to divide the cost in order to derive the per unit cost. Inland freight also requires the distance covered in the quotation.

Petitioners' Comments:

- If the Department utilizes the WB Doing Business, Thailand source for B&H charges that explicitly names the data parameter for reporting such charges to be a shipment of 15,000 kg, then the Department would be correct to allocate such costs over 15,000 kg. However, the Department should not depart from the statistical parameters of this source data as it previously has rejected almost identical arguments in AR7 Activated Carbon.[218]

Department's Position: As noted above, the Department's practice, when selecting the best available information, 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. Further, 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.[219] 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."[220] In this case, we selected Thailand as our primary surrogate country, and for the final results, we continue to use Thailand as the primary surrogate country.

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[217] See CAC's Case Brief at 39, (citing Since Hardware (Guangzhou) Co. v. United States, 977 F. Supp. 2d 1347 (CIT 2014)).
[218] See Petitioner's Case Brief at 64-65, (citing AR7 Activated Carbon and accompanying IDM at Comment 12).
[219] 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.
[220] 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.

As an initial matter, we continue to find that rates from Doing Business, Thailand represent a broad market average, as they are based on the economy's largest business city and are thus commercially representative. Moreover, the data are publicly available and contemporaneous with the POR. Additionally, the Department has relied on Doing Business, Thailand data in prior segments of this proceeding.[221] By contrast, the data offered by CAC are company-specific, from only a handful of companies, and in no way constitute a broad market average.[222] Therefore, we continue to find that Doing Business, Thailand data are the best available data on the record for valuing B&H.

The Department agrees with CAC's assertion that the denominator of the surrogate B&H calculation should be revised. For the final results, the Department has calculated the per-unit SV for B&H by dividing the B&H costs identified in Doing Business, Thailand by 15,000 kg. Unlike prior years, the 2016 issue of this publication based its export case study on a shipment which weighs 15,000 kg.[223] We determine that the 15,000 kg weight should be used in the calculation of the B&H SV because the Doing Business, Thailand assumes that a shipment is a unit of trade and "export shipments do not necessarily need to be containerized…"[224] Further, "shipping cost based on weight is assumed to be greater than shipping cost based on volume."[225] The WB Doing Business, Thailand no longer considers whether a shipment is containerized for export purposes. If the Department were to use a weight other than 15,000 kg, the Department would be using a weight not related to the costs reported in the Doing Business, Thailand survey. Specifically, as stated above, given that the Doing Business, Thailand B&H costs are calculated based upon a shipment of 15,000 kg, it would be inconsistent and distortive to use an alternative quantity such as the container weights identified by CAC. Therefore, the Department has determined that the 15,000 kg to calculate the SV for B&H maintains the Department's internal consistency of the calculation (i.e., the numerator and the denominator of the calculation are dependent upon one another and are from the same source). In addition, this methodology is consistent with the Department's past practice.[226]

We find CAC's reliance on Since Hardware to invalidate the calculation of the B&H SV inapposite, particularly considering that Doing Business, Thailand uses weight rather than the size and weight of a container. However, 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.[227] In that case, the CIT remanded back to the Department for reconsideration of its B&H calculations because, it found that 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

[221] See AR7 Activated Carbon and accompanying IDM at Comment 12.
[222] See Shanxi DMD's SV Submission, dated January 4, 2016 at Exhibit SV-16-20.
[223] Id. at Exhibit SV-23.
[224] Id. at Exhibit SV-21.
[225] Id.
[226] See, e.g., AR6 Carbon and accompanying IDM at Comment 12; see also Certain Polyester Staple Fiber From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013, 80 FR 4542 (January 28, 2015) and accompanying IDM at Comment 4.
[227] See Since Hardware, 977 F. Supp. 2d at 1361-62.

B&H SV."[228] The CIT held that "by using Foshan Shunde's estimated 20-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."[229] Unlike the facts in Since Hardware, and despite its argument to the contrary, CAC 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 its B&H fees do not increase proportionally with the weight of the container, which makes this review similar to Dongguan Sunrise.[230] 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."[231] Therefore, absent such evidence in this review, for these final results, we will use the 15,000 kg standard weight for calculating B&H expenses, which we find avoids introducing distortions in calculating the B&H SV.

Comment 10: Financial Statements Selection

Datong Juqiang's Comments:

- The Department should utilize the 2013 Romanian Romcarbon SA ("Romcarbon") financial statements to value the financial ratios, rather than the 2011 Carbokarn Co., Ltd ("Carbokarn") financial statements, as Romcarbon's statements are from an economically comparable country, do not reflect a producer of comparable merchandise, better fit the selection criteria, and provide more detailed and relatively more contemporaneous data.[232] The mere three month lapse in contemporaneity from the POR for the statements is irrelevant.[233]
- The fact that the statements are from a secondary surrogate country should not be an impediment to its selection according to agency precedent.[234]

Jacobi's Comments:

- The Department should utilize different financial statements to calculate the financial ratios. The Department has previously found that various countervailable subsidy programs exist in Thailand and no party to the proceeding has presented evidence that these programs have

[228] Id., at 1362.
[229] Id., at 1362 (citing Since Hardware (Guangzhou) Co., Ltd. v. United States, 911 F. Supp. 2d 1362, 1380-81 (CIT 2013)).
[230] See Dongguan Sunrise Furniture Co., Ltd. v. United States, 865 F. Supp. 2d 1216, 1247 (CIT 2012).
[231] Id.
[232] See Datong Juqiang's Case Brief at 53 (citing Datong Juqiang's Second SV Submission (Jan. 4, 2016) at Exhibit 8A).
[233] See Datong Juqiang's Case Brief at 54-55 (citing Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part, 76 FR 66036 (October 25, 2011), and accompanying IDM at Comment 2).
[234] See Datong Juqiang's Case Brief. at 55-56, (citing Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 36168, 36170 (June 17, 2013), and accompanying IDM, at Comment 9 and Freshwater Crawfish Tail Meat from the People's Republic of China: Antidumping Duty Administrative Review; 2010- 2011, 77 FR 61383, 61385 (October 9, 2012) (Department applied Thai financial statements when the primary surrogate country was Indonesia)).

been terminated.[235] Further, the record contains corroborating evidence that Carbokarn benefited a subsidy in the form of a tax coupon in 2010 and 2011.[236] The Department has previously found the Thai government's tax coupon program is a countervailable export subsidy.[237] Accordingly, the Department under its normal practice should have reason to believe or suspect Carbokarn, a Thai company, benefited from countervailable subsidies.[238]

- The use of Carbokarn's financial statements which are not contemporaneous to this administrative review is counter to the Department's practice.[239]

Petitioners' Comments:

- The Department must not use the Romanian company Romcarbon's 2013 financial statements to calculate surrogate financial ratios because it is not a producer of identical and comparable merchandise. Romcarbon was primarily engaged in the production of plastics, plastic goods, filters and gas masks, and that its limited production of activated carbon served as captive capacity for internal consumption for its gas masks.[240] The statements also do not permit the removal of freight charges.
- The Department must reject Jacobi's arguments that Carbokarn benefited from countervailable subsidies as the Department has rejected this baseless assertion in the preceding review. The Department has already stated that Jacobi's claim that Carbokarn's financial statements contain evidence of countervailable subsidies and thus cannot be used is based purely on speculation.[241]
- Jacobi's argument that Carbokarn's 2011 financial statement is not contemporaneous to the POR must also be disregarded. The Department has held that financial ratios are less susceptible to change over time than material input costs, as financial ratios measure the relationship between different classes of costs and revenues – relationships not subject to inflation.[242] The alternative Romanian statement respondents argue the Department should use is similarly un-contemporaneous.

Department's Position: When selecting financial statements for purposes of calculating surrogate financial ratios, the Department's policy is to use data from one or more market economy surrogate companies based on the "specificity, contemporaneity, and quality of the

[235] See Jacobi's Case Brief at 46, (citing Final Affirmative Countervailing Duty Determination: Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (Oct. 3, 2001)).
[236] Jacobi's Case Brief at 46, (citing Datong Juqiang's Second SV Submission, dated January 4, 2016 at Exhibit 8B).
[237] Id. (citing Certain Frozen Warmwater Shrimp From the Peoples Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 50391 (Aug. 19, 2103) and accompanying IDM at 6).
[238] Id. (citing Gold East Paper (Jiangsu) Co., Ltd. v. United States, 61 F. Supp. 3d 1289, 1297-98 (CIT 2015) and Final Results of Redetermination pursuant to Court Remand, A-570-958 (May 29, 2015) (pursuant to Gold East Paper (Jiangsu) Co., Ltd. v. United States, Ct. No. 10-371, Slip Op. 15-37 (CIT 2015) at 5-6)).
[239] See Jacobi's Case Brief at 47, (citing 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) and accompanying IDM at Comment 11).
[240] See Petitioner's Case Brief at 62 (citing Petitioners' Surrogate Country Selection Letter, dated August 31, 2015 at 3-5 and Attachment 5).
[241] See Petitioner's Case Brief at 62, (citing AR7 Activated Carbon at Comment 1).
[242] See Petitioners' Case Brief at 62-63, (citing Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty and Administrative Review and New Shipper Review and Revocation of the Order in Part, 76 FR 66036 (October 25, 2011) and accompanying IDM at Comment 2).

data."[243] Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors…." In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit.[244] 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.[245] 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."[246] Additionally, the Department has a strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[247] Further, courts have recognized the Department's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[248]

The record contains 2013 financial statements from the Philippines and 2014 financial statements from Malaysia. The record also contains the 2011 financial statements of Carbokarn, a Thai producer of activated carbon, 2014 financial statements of Mexichem S.A.B. de C.V. ("Mexichem"), a Mexican chemical company, and the 2013 Romcarbon financial statements, a Romanian manufacturer of polyethylene, polypropylene, and polyvinyl chloride products. Because, as noted in Comment 2 above, the Department continues to select Thailand as the primary surrogate country in this review, we have determined not to use the financial statements from the companies within Malaysia and the Philippines because these financial statements come from companies operating in countries that have not been found to be at the same level of economic development and the statements are not from the primary surrogate country. As noted above, the Department has a strong preference, reflected in 19 CFR 351.408(c)(2), to value all FOPs in a single surrogate country and to "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[249] Because we do not find that surrogate financial data from Thailand, our primary surrogate country, are unavailable or

[243] See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances, 71 FR 29303 (May 22, 2006) ("Diamond Sawblades LTFV Final") and accompanying IDM at Comment 1.
[244] See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) and accompanying IDM at Comment 2.
[245] 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.
[246] See Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999) ("Nation Ford"); see also Magnesium Corp. of Am. v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).
[247] See Jiaxing Brother Fastener Co. v. United States, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014) ("Jiaxing Brother") quoting Sodium Hexametaphosphate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 59375 (September 27, 2012) ("Sodium Hex") and accompanying IDM at Comment I.
[248] See, e.g., FMC Corp. v. United States, 27 CIT 240, 251 (CIT 2003) (holding that the Department can exercise discretion in choosing between reasonable alternatives), aff'd FMC Corp. v. United States, 87 F. App'x 753 (Fed. Cir. 2004).
[249] See Jiaxing Brother quoting Sodium Hex and accompanying IDM at Comment I.

unreliable, the Department does not consider the financial statements from Malaysia and the Philippines to be better SV sources than the financial statements from Thailand. With respect to the Mexican financial statements, the evidence on the record indicates that Mexichem does not produce activated carbon, but produces fluorine products, vinyl, and plastic fluent products.[250] Accordingly, because the record demonstrates that Mexichem is not a producer of identical or comparable merchandise, we find Mexichem is not appropriate as a surrogate financial company.

We disagree with Jacobi's claim that Carbokarn's financial statements contain evidence of countervailable subsidies and thus cannot be used, as this argument is based purely on speculation. The fact that the Department has found the existence of countervailable subsidy programs in other investigations and reviews involving Thailand does not mean, as Jacobi suggests, that the surrogate producer in question is receiving countervailable subsidies.[251] Where the Department has reason to believe that a company received subsidies, based on information in the company's financial statements, the Department may find that the financial ratios derived from that company's financial statements are less representative of the financial experience of the company or the relevant industry compared to ratios derived from financial statements that do not contain evidence of subsidies.[252] However, it is our practice not to reject financial statements based on the grounds that the company received export subsidies unless we have previously found the specific export subsidy program to be countervailable.[253] While Jacobi contends that Carbokarn benefited from a tax coupon program there is no evidence which demonstrates that the "tax coupon receivables" are related to a Thai program previously found countervailable by the Department. Here, Jacobi does not cite or identify any specific Thai subsidy program related to the financial statements which the Department has previously found to be countervailable.[254] Therefore, the Department continues to find that Carbokarn's financial statements are suitable for use in the calculation of surrogate financial ratios.

To the extent that Jacobi draws a parallel to our practice of disregarding import prices from Thailand when selecting SVs due to the existence of broadly available non-industry-specific export subsidies,[255] the Department notes that this decision typically pertains to import-based

[250] See Petitioners' SV Submission, dated September 24, 2015, at Attachment MEX-5.
[251] See AR7 Carbon and accompanying IDM at Comment 1.
[252] See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007) and accompanying IDM at Comment 1.
[253] See, e.g., Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 16379 (March 23, 2011) and accompanying IDM at Comment 3; see also Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 1592 (January 12, 2010) and accompanying IDM at Comment 4; see also Certain Steel Threaded Rod From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 68400 (November 4, 2011) and accompanying IDM at Comment 5.
[254] See Jacobi's Case Brief at 45-47
[255] Id., at 46.

SVs, not the calculation of surrogate financial ratios.[256] Imports into a surrogate country from an exporting country that has broadly available export subsidies may reflect such subsidies in their prices, as these are broad price averages. Thus, the Department avoids using such import prices. In contrast, the Department's calculation of surrogate financial ratios is based on a specific company's costs and sales experience within the surrogate country.

Datong Juqiang contends that the Department should rely on the Romanian 2013 Romcarbon financial statements for the final results because they provide more detailed and relatively contemporaneous data. While there is some evidence which suggests that Romcarbon produces some activated carbon, its principal manufacturing activities are polyethylene, polypropylene, polyvinyl chloride, polystyrene processing, filters and protective materials.[257] Although the Department is not required to "duplicate the exact production experience of" an NME producer,[258] we note that Carbokarn's "main business is manufacture, export and import charcoal water filter, charcoal, and chemical products."[259] With respect to contemporaneity, we note that although more contemporaneous, the Romcarbon's 2013 statements, like the Thai Carbokarn 2011 statements are not contemporaneous with the POR which spans 2014 - 2015. The Department, however, has a preference of selecting financial statements from the primary surrogate country.[260] We find that non-contemporaneous statements from a country other than the primary surrogate country are not the best available information when the record contains as an alternative financial statements from a producer of comparable merchandise from the primary surrogate country. Accordingly, because Carbokarn is primarily a producer of comparable merchandise, it is from the primary surrogate country, its statements are publically available and complete, we find that Carbokarn's 2011 financial statements represent the best available information to calculate the surrogate financial ratios.

[256] See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying IDM at Comment 7 (referring to "market-economy purchases from Indonesia, Korea, and Thailand").
[257] See Datong Juqiang's SV Submission, dated January 4, 2016, at Exhibit 8A.
[258] See Nation Ford at 1377.
[259] See Datong Juqiang's SV Submission, dated January 4, 2016, at Exhibit 8B.
[260] See, e.g., AR7 Carbon and accompanying Issues and Decision Memorandum at Comment 2.

Comment 11: Whether the Department Should Treat Sales Through Datong Juqiang Activated Carbon USA LLC ("DJAC USA") as Export Price ("EP") Sales

Datong Juqiang's Comments:

- Datong Juqiang's sales process and its affiliate, DJAC USA's, involvement in sales is identical to the situation in AR7 Activated Carbon of this proceeding where the Department found all sales by DJAC USA to be EP sales. The Department should treat all of Datong Juqiang's reported sales as EP in this POR, consistent with its decision in AR7 Activated Carbon.
- As DJAC USA's functions are minimal and all sales are completed outside the United States, the Department should continue to treat all of Datong Juqiang's sales as EP in this review. While in one instance Datong Juqiang incurred a minimal warehouse expense in the U.S., it was not the result of Datong Juqiang owing its own U.S. warehouse, but rather the merchandise was temporarily stored in a third-party unaffiliated customer's warehouse.

Petitioners' Comments:

- The Department should continue to treat DJAC USA as CEP sales because Datong Juqiang has not addressed or contested any of the Department's findings relating to: (1) taking procedures necessary to import the subject merchandise; (2) issuing invoices to the unaffiliated U.S. customer; (3) receiving payment from the U.S. customer; and (4) issuing payment to Datong Juqiang.

Department's Position: We agree with Petitioners and will continue to treat sales made through Datong Juqiang's U.S. affiliate, DJAC USA, as CEP sales. While Datong Juqiang is correct that in AR7 Activated Carbon, we treated sales made by Datong Juqiang through DJAC USA as EP sales,[261] we note each review proceeds de novo and determinations in that review are based upon the specific record developed during the course of that particular segment of the proceeding.[262] In accordance with section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." Datong Juqiang contends that for sales where DJAC USA was involved, Datong Juqiang established the material terms of sale with the final U.S. customer

[261] See Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 25669 (May 5, 2015) and accompanying PDM at 21-22, unchanged in AR7 Activated Carbon.

[262] See, e.g., Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 14499 (March 12, 2012) and accompanying IDM at Comment 1; see also Qingdao Sea-Line Trading Co. v. United States, 766 F.3d 1378 (Fed. Cir. 2014)("We also hold that Commerce may change its conclusions from one review to the next based on new information and arguments, as long as it does not act arbitrarily and it articulates a reasonable basis for the change. Indeed, the Trade Court has recognized that each administrative review is a separate exercise of Commerce's authority that allows for different conclusions based on different facts in the record.") and Shandong Huarong Mach. Co. v. United States, 29 CIT 484, 491 (2005) ("{E}ach administrative review is a separate segment of proceedings with its own unique facts").

prior to importation, and these sales should therefore be considered EP sales.[263] As explained in the Preliminary Results, the evidence on the record of this administrative review demonstrates that DJAC USA paid warehousing expenses[264] and DJAC USA undertook procedures necessary to import the subject merchandise, issued invoices to the unaffiliated U.S. customer, received payment from the U.S. customer, and issued payment to Datong Juqiang.[265] The CIT has affirmed in Zara, that such sales arrangements are properly considered CEP transactions.[266] Therefore, we continue to determine that Datong Juqiang's sales made through DJAC USA are CEP sales.

Comment 12: The Proper Basis for the Calculation of U.S. Duty Expenses

Datong Juqiang's Comments:

- The Department inadvertently deducted from Datong Juqiang's US sales price the values reported in USDUTYU field rather than the corrected USDUTYU2 field. Datong Juqiang's reported USDUTYU field inadvertently includes antidumping duty deposits, while its USDUTYU2 does not.

Department's Position: We agree with Datong Juqiang that we should use USDUTYU2 in its margin calculation. In accordance with section 772(c)(2)(A) of the Act, we have deducted U.S. customs duties from the starting price. As stated in Carbon Steel Flat Products from India, there is no provision for the Department to make deductions for AD and CVD deposits and it is appropriate to use USDUTYU2, a field that does not include AD and CVD deposits.[267] Therefore, for the final results, we will use Datong Juqiang's USDUTYU2 that does not include AD and CVD deposits in Datong Juqiang's margin calculation.

Comment 13: U.S. Entries Incorrectly Attributed to Datong Juqiang

Datong Juqiang's Comments:

- In the data covering the POR a number of entries appear to have been misidentified as attributable to Datong Juqiang although the manufacturer number associated with these entries was not Datong Juqiang's.
- The Department should make every effort to ensure Datong Juqiang's rate is not applied to the entries with the observation numbers listed, and should instruct U.S. Customs and Border Protection ("CBP") to liquidate these entries with the China-wide rate.

[263] See Datong Juqiang's supplemental questionnaire response, dated October 21, 2015, ("SQR") at 2.
[264] See Datong Juqiang's section C response, dated August 17, 2015, at .pdf page 32 and SQR at 7.
[265] See SQR at 2.
[266] See Pasta Zara S.p.A. v United States, 703 F. Supp. 2d 1317, 1320-1323 (CIT 2010) ("Zara")(finding that Zara USA performed a role related to the sale of the subject merchandise in the United States that included invoicing, serving as the importer or record, and transferring title to the first unaffiliated purchaser in the United States.).
[267] See Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 31961 (June 5, 2008) ("Carbon Steel Flat Products from India") and IDM at Comment 9.

Petitioners' Comments:

- The Petitioners agree with Datong Juqiang that these entries should not be liquidated at the final rate calculated for Datong Juqiang. Additionally, Petitioners request that the Department refer this matter to CBP for appropriate action to determine whether these entries are reflective of a concerted effort to enter subject merchandise into the United States through the improper submission of information to CBP that would result in the application of an inappropriately low cash deposit rate.

Department's Position: Datong Juqiang and Petitioners contend that in the CBP data released to the parties,[268] there were discrepancies in the number of entries being attributed to Datong Juqiang by reference to its case number and that Datong Juqiang's antidumping duty rate is improperly applied to these entries.[269]

With respect to liquidating the entries which may not be attributable to Datong Juqiang's, we find that our liquidation instructions to CBP directly addresses entries entered under Datong Juqiang's company specific case number entered by companies not listed in the instructions. As an initial matter, Datong Juqiang has not demonstrated conclusively that these entries were misreported to CBP. In any event, such concern is the purview of CBP and should be properly addressed through and by CBP, which has the authority to address such issues. The Department will refer this matter to CBP and will provide CBP any relevant information, as appropriate, to assist that agency in fulfilling its statutory mission relating to AD and countervailing duty collection and enforcement.

Comment 14: Whether Jacobi's Purchased Carbonized Material are Correctly Valued

Datong Juqiang's Comments:

- The Department's decision to value carbonized materials utilized in production of subject merchandise as a separate FOP is in error because Datong Juqiang's self-production of carbonized materials was more than sufficient to support the company's production, as evidenced by the fact that the quantity of carbonized material that Datong Juqiang sold was greater than the quantity it purchased.
- Datong Juqiang self-produces carbonized materials from bituminous coal, and reported the consumption of bituminous coals as a separate FOP, but not carbonized materials as it is an intermediate input.

Petitioners' Comments:

- The Department should continue to value Datong Juqiang's consumption of carbonized material as Datong Juqiang offers no record evidence to substantiate its claims to have re-sold carbonized material, and it is only reasonable to assume that if an activated carbon

[268] See Memorandum to All Interested Parties, re: "Administrative Review of the Antidumping Duty Order of Certain Activated Carbon from the People's Republic of China: CBP Data for Respondent Selection," dated May 26, 2015.

[269] See Datong Juqiang's Case Brief at 23-24 and Petitioners' Rebuttal Brief at 73-74; see also Datong Juqiang's supplemental response, dated January 4, 2016, at 1-2 and Exhibit SSC-1.

producer purchases carbonized material as an intermediate factor of production, it is in order to consume it in its operations.

Department's Position: We agree with Petitioners and will continue to value Datong Juqiang's purchased carbonized material input. In Datong Juqiang's SQR, it reported that it purchased carbonized materials, most of which were used in production of the subject merchandise.[270] Datong Juqiang properly reported this input in its FOP database.[271]

Section 773(c) of the Act requires the Department to value all inputs utilized in producing the subject merchandise. Particularly, section 773(c)(3)(B) of the Act requires the Department to value the "quantities of raw materials employed." The calculation of NV in an NME proceeding is thus based upon the aggregation of quantities of raw materials consumed in the production of one unit of finished goods.[272] Datong Juqiang reported the specific quantities of each type of product, including carbonized materials, used to produce one metric ton of activated carbon. To exclude any of these inputs omits the amounts of raw materials used in production and prevents an accurate calculation of the NV pursuant to the statute, because the total quantity of raw materials used to produce one metric ton of subject merchandise would not be captured in that calculation as required by section 773(c)(3)(B) of the Act.[273]

We disagree with Datong Juqiang's contention that it can account for the purchased carbonized materials by adjusting its consumption of bituminous coal used in its self-production of carbonized materials. As noted above, the Department must account for all inputs used in the production of activated carbon.[274] Therefore, for the final results, we will continue to apply a SV to Datong Juqiang's purchased carbonized material input.

Comment 15: Whether to Cap Jacobi's U.S. Freight Revenue

Petitioners' Comments:

- The Department should follow its practice[275] and cap freight revenue (FRTREVU) by the amount of U.S. inland freight (INLFWCU) incurred to deliver the subject merchandise to the first unaffiliated customer.

No other party commented on this issue.

Department Position: For the final results, we will cap Jacobi's freight revenue by the amount of U.S. inland freight incurred. It is the Department's practice to not treat freight-related revenue

[270] See SQR at 16 and Exhibit SD-7.
[271] Id. at Exhibit SD-41A.
[272] See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35245 (June 12, 2013) ("PET Film"), and accompanying IDM at Comment 5.
[273] Id.
[274] See section 773(c)(3)(B) of the Act; see also, e.g., PET Film, and accompanying IDM at Comment 5.
[275] See Petitioners' case brief (citing Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 64170 (October 28, 2014), and accompanying Issues and Decision Memorandum at Comment 4) at 2 ("Welded Pipe & Tubes from Thailand - 2012-2013").

as an addition to U.S. price under section 772(c)(1) of the Act or as a price adjustment under 19 CFR 351.102(b)(38).[276] The term "price adjustment" is defined at 19 CFR 351.102(b)(38) as "any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." The Department has stated that, although we will offset freight expenses with freight revenue, where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (i.e., freight).[277] Therefore, as provided in the statute and in line with past practice, we will cap Jacobi's revenue from freight to offset directly associated expenses (i.e., inland freight - plant/warehouse to customer) for these final results.

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

31 August 2016
Date

[276] See, e.g., Welded Pipe & Tubes from Thailand - 2012-2013; Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 77 FR 61738 (October 11, 2012), and accompanying Issues and Decision Memorandum at Comment 3; and Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 39 ("Wood Flooring").
[277] See Wood Flooring.