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May 1, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Activated Carbon from the People's Republic of China; 2015-2016

SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (PRC) for the period of review (POR) April 1, 2015, through March 31, 2016. The Department preliminarily determines that sales of the subject merchandise in the United States were at prices below normal value (NV).

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

BACKGROUND

Initiation

On June 6, 2016, the Department published the notice of initiation of the ninth administrative review of certain activated carbon from the PRC for the POR, April 1, 2015, to March 31, 2016.[1]

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 36268 (June 6, 2016) (*Initiation Notice*).

The Department initiated an administrative review of 206 exporters of subject merchandise.[2] On September 27, 2016, the Department extended the period for issuing the preliminary results until May 1, 2017.[3]

Respondent Selection

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

On June 6, 2016, the Department placed CBP data for imports made during the POR under the Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the order on the record of the review and requested comments on the data for use in respondent selection.[4] On June 13, 2016, the Department received comments from the petitioners.[5] No other party submitted respondent selection comments and no party submitted rebuttal comments.

On June 17, 2016, the Department issued the respondent selection memorandum, in which it explained that, because of the large numbers of exporters and producers involved in the review (206 companies at the time of initiation) and the Department's resource constraints, it would not be practicable to examine all companies individually.[6] Rather, the Department determined that it could only reasonably examine two exporters or producers in this review.[7] Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) and Jacobi Carbons AB (Jacobi)[8] for individual examination because they are

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[2] *Id.* at 81 FR 36270-72.
[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Elizabeth Lobaugh, International Trade Compliance Analyst, Office V, re: "Certain Activated Carbon from the People's Republic of China: Extension of Deadline for Preliminary Results of the Ninth Antidumping Duty Administrative Review," dated September 27, 2016.
[4] *See* Memo to All Interested Parties, re: "Administrative Review of the Antidumping Duty Order of Certain Activated Carbon from the People's Republic of China: CBP Data for Respondent Selection," dated June 6, 2016.
[5] The petitioners are Calgon Carbon Corporation and Cabot Norit Americas Inc.
[6] *See* Memorandum to James C. Doyle, Director, Office V, from Bob Palmer, International Trade Compliance Analyst, Office V, "Ninth Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Selection of Respondents for Individual Review," dated June 17, 2016 (Respondent Selection Memo). In the Respondent Selection Memo, the Department inadvertently stated it initiated a review for 214 companies.
[7] *See* Respondent Selection Memo, at 4-5.
[8] In the third administrative review of the *Order*, the Department found that Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) are a single entity and, because there were no facts presented on the record of this review which would call into question our prior finding, the Department continues to treat these companies as part of a single entity for this administrative review, pursuant to sections 771(33)(E), (F), and (G) of the Act and 19 CFR 351.401(f). *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review*, 76 FR 67142, 67145 n.25 (October 31, 2011). *See also* Preliminary Decision Memorandum.

the two largest exporters or producers of the subject merchandise, by volume, during the POR.[9]

The Department received responses to section A of the questionnaire from both respondents in July 2016, and to sections C, D and E, when applicable, from both respondents in August 2016. From August 2016, through April 2017, the Department issued supplemental questionnaires to DJAC and Jacobi. The Department received responses to the supplemental questionnaires from September 2016, through April 2017.

Scope of the Order

The merchandise subject to the order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by "activating" with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO_2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of the order covers all forms of activated carbon that are activated by steam or CO_2, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of the order covers all physical forms of certain activated carbon, including powdered activated carbon (PAC), granular activated carbon (GAC), and pelletized activated carbon.

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

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

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use

[9] *Id.* at Attachment.

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

DISCUSSION OF THE METHODOLOGY

Preliminary Finding of No Shipments

Calgon Carbon (Tianjin) Co., Ltd., (Calgon Tianjin), Sinoacarbon International Trading Co., Ltd. (Sinoacarbon), and Shanxi Dapu International Trade Co., Ltd. (Shanxi Dapu) reported that they made no shipments of subject merchandise to the United States during the POR.[10] To confirm Calgon Tianjin's, Sinoacarbon's, and Shanxi Dapu's no shipment claim, the Department issued a no-shipment inquiry to CBP requesting that it review each company's no-shipment claims.[11] CBP did not report that it had information to contradict these companies claims of no shipments during the POR.

Given that Calgon Tianjin, Sinoacarbon, Shanxi Dapu certified that they made no shipments of subject merchandise to the United States during the POR and there is no information calling their claims into question, the Department preliminarily determines that Calgon Tianjin, Sinoacarbon, and Shanxi Dapu did not have shipments during the POR. Consistent with the Department's practice, the Departnment will not rescind the review with respect to Calgon Tianjin, Sinoacarbon, Shanxi Dapu, but rather complete the review and issue assessment instructions to CBP based on the final results.[12]

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[10] *See* Calgon Tianjin's June 23, 2016, submission regarding "Activated Carbon from the PRC: No Sales Certification"; *see also* Sinoacarbon's June 13, 2016, submission and Shanxi Dapu's July 5, 2016, submission.
[11] No shipments inquiry for certain activated carbon from the People's Republic of China exported by multiple companies (A-570-904), message number 7018303.
[12] *See, e.g., Certain Frozen Warmwater Shrimp From Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012-2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013*, 79 FR at 51306 (August 28, 2014).

Non-Market Economy Country

The Department considers the PRC to be a non-market-economy (NME) country.[13] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has argued to change, or submitted evidence on the record calling into question, this determination. Therefore, the Department continues to treat the PRC as an NME country for purposes of these preliminary results.

Separate Rates

The Department has the rebuttable presumption that all companies within the a NME are subject to government control and, thus, should be assessed a single antidumping duty rate.[14] In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME proceedings.[15] It is the Department's policy to assign all exporters of the merchandise subject to review in an NME proceeding a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME proceeding under the test established in *Sparklers*,[16] as amplified by *Silicon Carbide*[17] and further refined by *Diamond Sawblades*.[18] However, if the Department determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is

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[13] *See, e.g., 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 Decision Memorandum at 5, unchanged in *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).

[14] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

[15] *See Initiation Notice*, 81 FR at 36268-69.

[16] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

[17] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

[18] *See* Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), sustained, *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), aff'd, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). This remand redetermination is on the Enforcement and Compliance website at http://enforcement.trade.gov/remands/12-147.pdf; *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memo at 7, unchanged 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 Issues and Decision Memorandum (IDM) at Comment 1.

independent from government control.[19]

The Department continues to evaluate its practice with regard to the separate-rates analysis in light of the *Diamond Sawblades* antidumping duty proceeding, and the Department's determinations therein. In particular, in litigation involving the *Diamond Sawblades* proceeding, the U.S. Court of International Trade (CIT) found the Department's existing separate-rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the exporter under examination.[20] Following the Court's reasoning, in recent proceedings, the Department has concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[21] This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, the Department would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

As discussed below, of the 206 companies for which the Department has initiated a review, 186 companies did not file a separate-rate application (SRA) or separate-rate certification (SRC). Fourteen companies filed a timely SRA or SRC. One company, Ningxia Guanghua Activated Carbon Co., Ltd. (Ningxia Guanghua), filed a timely SRC, but reported no shipments or sales to the United States (*see below* for a further discussion regarding Ningxia Guanghua).

The Department received completed responses to the section A portion of the NME questionnaire from the mandatory respondents, Datong Juqiang and Jacobi (a single entity comprised of three companies),[22] which contained information pertaining to the companies' eligibility for a separate rate. The Department received either a SRA or SRC from the following 14 companies (separate-rate applicants):

[19] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review and New Shipper Reviews*, 79 FR 4327 (January 27, 2014), and *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).
[20] *See, e.g., Advanced Technology I*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.*, at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *id.*, at 1355 ("The point here is that 'governmental control' in the context of the separate-rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *id.*, at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (Footnotes omitted).
[21] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9.
[22] *See* footnote 8.

1. Beijing Pacific Activated Carbon Products Co., Ltd. (Beijing Pacific),
2. Carbon Activated Tianjin Co., Ltd. (Carbon Activated)
3. Datong Municipal Yunguang Activated Carbon Co., Ltd. (Yunguang),
4. Jilin Bright Future Chemicals Co., Ltd. (Jilin Bright Future),
5. Ningxia Guanghua,
6. Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (Cherishmet),
7. Ningxia Huahui Activated Carbon Co., Ltd. (Huahui),
8. Ningxia Mineral & Chemical Limited (Ningxia Mineral),
9. Shanxi Industry Technology Trading Co., Ltd. (Shanxi ITT),
10. Shanxi Sincere Industrial Co., Ltd. (Sincere Industrial),
11. Shanxi Tianxi Purification Filter Co., Ltd. (Tianxi Purification),
12. Tancarb Activated Carbon Co., Ltd. (Tancarb),
13. Tianjin Channel Filters Co., Ltd. (Channel Filters), and
14. Tianjin Maijin Industries Co., Ltd. (Maijin Industries).

a. Wholly Foreign-Owned Applicants

Jacobi reported that it is wholly owned by a company located in a market-economy (ME) country, Japan.[23] Carbon Activated and Ningxia Mineral also demonstrated in their separate-rate certifications that they are wholly owned by a company located in a ME country (*i.e.*, the United States and Hong Kong, respectively).[24] Therefore, as there is no PRC ownership of these three companies, and because the Department has no evidence indicating that these companies are under the control of the PRC government, further analyses of the *de jure* and *de facto* criteria are not necessary to determine whether they are independent from government control of their export activities.[25] Therefore, because the Department finds all three companies have demonstrated an absence of government control of export activities, the Department preliminarily determines that Jacobi, Carbon Activated, and Ningxia Mineral are preliminarily eligible for separate rates.

b. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.[26] The evidence provided by mandatory respondent Datong

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[23] *See* Jacobi's July 15, 2016 Section A Questionnaire Response (Jacobi's Section A Response).
[24] *See, e.g.,* Carbon Activated's SRC, dated June 24, 2016, at 2; *see also* Ningxia Minieral's SRC, dated July 5, 2016, at 2.
[25] *See, e.g., Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104, 71104-05 (December 20, 1999).
[26] *See Sparklers*, 56 FR at 20589.

Juqiang and eleven separate-rate applicants[27] supports a preliminary finding of the absence of *de jure* government control of export activities based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.[28]

c. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[29] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.[30]

The evidence provided by Datong Juqiang and eleven of the separate-rate applicants supports a preliminary finding of the absence of *de facto* government control based on the following: (1) the companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.[31] Therefore, the Department preliminarily finds that 1) Beijing Pacific, 2) Cherishmet, 3) Channel Filters, 4) Datong Juqiang, 5) Huahui, 6) Jilin Bright Future, 7) Maijin Industries, 8) Shanxi ITT, 9) Sincere Industrial, 10) Tianxi Purification, 11) Tancarb, and 12) Yunguang, have established that they qualify for a separate rate under the criteria established by *Diamond Sawblades*, *Silicon Carbide* and *Sparklers*.

Cherishmet Single Entity

In the first administrative review of the *Order*, the Department found that Beijing Pacific, Cherishmet, and Ningxia Guanghua were affiliated pursuant to sections 771(33) (E), (F) and (G) of the Act and that these companies should be treated a single entity pursuant to 19 CFR

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[27] These companies are: 1) Beijing Pacific, 2) Cherishmet, 3) Channel Filters, 4) Huahui, 5) Jilin Bright Future, 6) Maijin Industries, 7) Shanxi ITT, 8) Sincere Industrial, 9) Tianxi Purification, 10) Tancarb, and 11) Yunguang.
[28] *See e.g.*, Datong Juqiang's July 18, 2016 Section A Questionnaire Response at 2-10 (Datong's Section A Response); Beijing Pacific's SRA, dated July 13, 2016, at 10-13, Cherishmet SRA, dated July 13, 2016, at 10-14, and Maijin Industries SRC, dated June 27, 2016, at 5.
[29] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).
[30] *Id.*
[31] *See* generally Separate-Rate Applicants.

351.401(f).[32] In this administrative review, Beijing Pacific reports that it had a change in ownership, such that the link of common ownership between it and Cherishmet no longer exists.[33] Further, there is no information on the record which indicates that these two companies share board members or managers or have intertwined operations. Additionally, no facts were presented on the record of this review which would call into question the Department's determination that Cherishment and Ningxia Guanghua should be treated as a single entity.[34] Therefore, based on the information provided by Beijing Pacific, the Department preliminary finds that Beijing Pacific is no longer part of the Cherishmet single entity, which is now comprised only of Cherishmet and Ningxia Guanghua.[35]

PRC-Wide Entity

The remaining 186 companies under review failed to establish their eligibility for a separate rate because they did not file an SRA or an SRC with the Department.[36] Hence, the Department preliminarily determines to treat these companies as part of the PRC-wide entity.[37]

Because no party requested a review of the PRC-wide entity and the Department no longer considers the PRC-wide entity as an exporter conditionally subject to administrative reviews, the Department is not conducting a review of the PRC-wide entity.[38] Thus, the rate for the PRC-wide entity (*i.e.*, 2.42 U.S. dollars/kilogram (USD/kg)) is not subject to change pursuant to this review.[39]

<u>Weighted-Average Dumping Margin for Non-Examined Separate-Rate Companies</u>

As stated above in the "Respondent Selection" section, the Department employed a limited examination methodology in this review, as it did not have the resources to examine all companies for which an administrative review was initiated, and selected the two largest exporters by volume as mandatory respondents in this review, Datong Juqiang and Jacobi. Eleven additional companies (identified in the "Separate Rates" section above) remain subject to review as non-examined, separate-rate respondents.

The statute and the Department's regulations do not address the establishment of a rate to be

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[32] *See Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results*, 74 FR 21317, 21319 (May 7, 2009), unchanged in *First Administrative Review of Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995, 57998 (November 10, 2009); *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088, 62089 n.11 (September 8, 2016).
[33] *See* Beijing Pacific's SRA, dated July 13, 2016, at 18 and Exhibits 9 and 18.
[34] *See* Cherishmet's SRA, dated July 13, 2016 and Cherishmet's Supplemental SRA, dated February 24, 2017.
[35] *Id.* and Cherishmet's SRA, dated July 13, 2016, at Exhibit 14.
[36] *See* Attachment I to this memorandum for a complete listing of these companies.
[37] *Id.*
[38] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).
[39] *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).

applied to individual respondents not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which the Department did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that the Department is not to calculate an all-others rate using rates for individually examined respondents which are zero, *de minimis*, or based entirely on facts available (FA). Accordingly, the Department's usual practice in determining the rate for separate-rate respondents not selected for individual examination has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on FA.[40]

In these preliminary results, the two mandatory respondents, Datong Juqiang and Jacobi, have weighted-average dumping margins which are not zero, *de minimis*, or based entirely on FA. Additionally, because using the weighted-average dumping margin based on the U.S. sales quantities for Datong Juqiang and Jacobi risks disclosure of business proprietary information, the Department cannot assign to the separate-rate companies the weighted-average dumping margin based on the U.S. sales quantities from these two respondents.[41]

For these preliminary results, and consistent with our practice,[42] the Department has preliminarily assigned to the non-individually examined companies a weighted-average rate based on publicly available ranged U.S. sales quantities of the mandatory respondents in this review. Accordingly, following the practice described above, the Department has calculated a rate of 0.82 USD/kg for the non-individually examined respondents.[43] The separate-rate applicants receiving this rate are identified by name in the "Preliminary Results of the Review" section of the *Federal Register* notice.

<u>Surrogate Country and Surrogate Value Data</u>

On August 2, 2016, the Department sent interested parties a letter inviting comments on: (1) the non-exhaustive list of countries that the Department determined are at the same level of economic development as the PRC based on annual per capita gross national income (GNI), (2) surrogate country selection, and (3) surrogate value (SV) data.[44] On August 9, 2016, the petitioners, Jacobi, Datong Juqiang, and Carbon Activated submitted comments on the list of

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[40] *See Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming the Department's determination to assign a 4.22 percent dumping margin to the separate-rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); *see also Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).
[41] *See, e.g., AR5 PRC Carbon Final*, 78 FR at 70534-35.
[42] *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661 (September 1, 2010) and accompanying IDM at Comment 1.
[43] *See* Memorandum, "Certain Activated Carbon from the People's Republic of China: Calculation of the Margin for Respondents Not Selected for Individual Examination," dated May 1, 2017.
[44] *See* Department's Letter Re: "Certain Activated Carbon from the People's Republic of China Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated August 2, 2016 (SC Memo).

countries.[45] On August 15, 2016, the petitioners submitted rebuttal comments on the list of countries.[46] On August 19, 2016, the petitioners and Datong Juqiang submitted surrogate country selection comments.[47] On August 30, 2016, the Department extended the deadline for SV comments and rebuttal SV comments to September 13, 2016 and September 23, 2016, respectively.[48] On September 13, 2016, the petitioners, Datong Juqiang and Jacobi submitted SV comments.[49] On September 23, 2016, the petitioners and Jacobi submitted rebuttal SV comments.[50] On December 1, 2016 Datong Juqiang submitted additional SV comments.[51] On April 3, 2017, Carbon Activated, Datong Juqiang, and Jacobi submitted additional SV comments.[52]

Surrogate Country Selection

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[53] As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because either (a) they 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.[54] Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic

[45] *See* the petitioners' August 9, 2016 Comments on the Department's List of Potential Surrogate Market Economy Countries (Petitioners' SC Comments); Datong Juqiang's August 9, 2016 Comments on the List of Economically Comparable Countries (Datong's SC Comments); Jacobi's August 9, 2016 Comments on Surrogate Country List (Jacobi's SC Comments); and Carbon Activated's August 9, 2016 Comments on Surrogate Country List.
[46] *See* the petitioners' August 12, 2016 Rebuttal Addressing Respondents' Comments on the Department's List of Potential Surrogate Market Economy Countries.
[47] *See* the petitioners' August 19, 2016 Petitioners Comments on Surrogate Country Selection (Petitioners' SC Selection Comments); and Datong Juqiang's August 19, 2016 Surrogate Country Comments (Datong's SC Selection Comments).
[48] *See* Memorandum, "Ninth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Value Submissions for All Interested Parties," dated August 30, 2016.
[49] *See* the petitioners' September 13, 2016 Submission of Surrogate Values (Petitioners' SV Submission); Datong Juqiang's September 13, 2016 First Surrogate Value Comments (Datong's SV Submission); and Jacobi's September 12, 2016 Surrogate Value Comments (Jacobi's SV Submission).
[50] *See* the petitioners' September 23, 2016 Rebuttal Comments Addressing Respondents' Surrogate Value Submissions (Petitioners' SV Rebuttal); Jacobi's September 23, 2016 Rebuttal Surrogate Value Comments; and Jacobi's September 23, 2016 Submission Corroborating the Rebuttal Surrogate Value Comments (Jacobi's SV Rebuttal Corroboration).
[51] *See* Datong Juqiang's December 1, 2016 Final Surrogate Value Comments (Datong's Final SVs).
[52] The Department notes that due to the proximity of the submission of these comments to the deadline of the preliminary results, the Department was unable to evaluate these comments for the preliminary results.
[53] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1).
[54] *Id*.

development.[55] To determine which countries are at the same level of economic development, the Department generally relies on GNI data from the World Bank's World Development Report.[56] Further, the Department has stated that it prefers to value all FOPs from a single surrogate country.[57]

On August 2, 2016, the Department identified Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand as countries that are at the same level of economic development as the PRC based on per capita 2015 GNI data.[58] The petitioners recommend that the Department select Thailand, Mexico, and/or Malaysia as either the primary and/or secondary surrogate country.[59] The petitioners argue that Malaysia is economically comparable to the PRC because Malaysia is economically comparable to Brazil which is economically comparable to the PRC.[60] The petitioners also argue that Malaysia has significant production of activated carbon because it has several producers of activated carbon and placed import and export statistics for activated carbon from Malaysia on the record.[61] However, despite arguing that the Department should consider selecting Mexico or Malaysia, the petitioners only submitted complete data to value FOPs from Thailand.[62]

Datong Juqiang recommends that the Department select Thailand as the primary surrogate country[63] and submitted data to value FOPs from that country.[64] Although Datong Juqiang submitted financial ratios from Thailand,[65] it states that Thailand may not offer multiple useable and contemporaneous financial statements and proposes to select the Philippines as a secondary choice for financial statements.[66] Datong Juqiang argues that the Philippines is economically comparable to the PRC because the Philippines' GNI, similar to the PRC's, falls within the bounds of the lower-middle income and upper-middle income countries' GNIs and it has been considered to be economically comparable to the PRC in the past.[67] Datong Juqiang further argues that Thailand and the Philippines are significant producers of the subject merchandise because they were net exporters of the subject merchandise.[68] Datong Juqiang and Jacobi submitted data to value financial statements from the Philippines.[69] Additionally, Jacobi submitted financial ratios from India and anthracite coal values from the United States,[70] and Datong submitted data from Germany for hydrochloric acid, and financial statements from Romania.[71] Both Datong Juqiang and Jacobi submitted Philippine and Thai *Cocommunity* data

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[55] *See* SC Memo.
[56] *Id*.
[57] *See* 19 CFR 351.408(c)(2).
[58] *See* SC Memo at Attachment I.
[59] *See* Petitioners' SC Selection Comments at 6.
[60] *Id.* at 4; *see also* Petitioner's SC Comments at 2.
[61] *Id.*
[62] *See* Petitioners' SV Submission.
[63] *See* Datong's SC Selection Comments at 4-8.
[64] *See* Datong's SV Submission.
[65] *See id.* at Exhibit 7.
[66] *See* Datong's SC Selection Comments at 4-8.
[67] *Id.* at 4-5; *see also* Datong's SC Comments at 2-4.
[68] *See* Datong's SC Selection Comments at 6.
[69] *See* Datong's Final SVs at Exhibit 3B; and Jacobi's SV Submission at Exhibit SV-10.
[70] *See* Jacobi's SV Submission at Exhibits SV-10 and SV-12.
[71] *See* Datong's SV Submission at Exhibits 3, 7A.

for carbonized materials.[72]

The petitioners argue that the Department should not rely on SV data from Germany, India, the Philippines, or the United States because none of these countries are at the same level of economic development as the PRC.[73] The petitioners also argue that the Department, similar to its decision in the eighth (2014-2015) administrative review, should not rely on SV data from Romania, because the single identified producer from Romania is a widely diversified holding company with very limited volume of activated carbon production;[74] or from Mexico because the respondents failed to explain why surrogate values from Thailand are unreliable.[75]

Economic Comparability

As explained in the SC Memo, consistent with its practice and section 773(c)(4) of the Act, the Department considers Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand to be at the same level of economic development as the PRC.[76] The Department treats each of these countries as equally comparable.[77] Therefore, the Department considers all six countries identified in the SC Memo as having met this prong of the surrogate country selection criteria. Unless the Department finds that none of these countries is a significant producer of comparable merchandise, does not provide a reliable source of publicly available surrogate data, or is unsuitable for use for other reasons, or the Department finds that another equally comparable country is an appropriate surrogate within the GNI range, the Department will rely on data from one of these countries.[78] Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. As discussed below, the Department preliminarily determined that one or more of these six countries are significant producers of comparable merchandise and provide all of the required SV information, and as such, the Department will not rely on data from Germany, India, Malaysia, the Philippines, or the United States, whose 2015 GNI do not fall within the range of GNI represented by the countries included on the surrogate country list issued by the Department.[79]

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[72] *See id.* at Exhibit 11; and Jacobi's SV Submission at Exhibits SV-14 and SV-15; *see also* Jacobi's SV Rebuttal Corroboration.
[73] *See* Petitioners' SV Rebuttal.
[74] *Id.* at 3; *see also* Petitioners' SC Selection Comments at 3.
[75] *See* Petitioners' SV Rebuttal.
[76] *See* SC Memo.
[77] *See, e.g., Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).
[78] *Id.; see also, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013), and accompanying IDM at Comment 5; and *Silica Bricks and Shapes from the People's Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination*, 78 FR 37203 (June 20, 2013), unchanged in *Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes from the People's Republic of China*, 78 FR 70918 (November 27, 2013).
[79] *See* SC Memo at Attachment I.

Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as Policy Bulletin 04.1 for guidance on defining comparable merchandise. Policy Bulletin 04.1 states "the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute."[80] Policy Bulletin 04.1 further states, "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[81] Conversely, if the country does not produce identical merchandise, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[82] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[83] "In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise."[84] In this regard, the Department recognizes that it must do an analysis of comparable merchandise on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized, dedicated, or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, based on a comparison of the major inputs, including energy, where appropriate.[85]

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[86] Moreover, while the legislative history provides that the term "significant producer" include any country that is a significant "net exporter,"[87] it does not preclude reliance on additional or alternative metrics.

In this review, the Department examined export data published by the Global Trade Atlas (GTA) to determine which countries included on the surrogate country list based on 2015 GNI data were producers of comparable merchandise. GTA export data indicate that all of the countries

[80] *See* Policy Bulletin 04.1.
[81] *Id.*
[82] Policy Bulletin 04.1 also states that "{i}f considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.
[83] *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").
[84] *See* Policy Bulletin 04.1 at 2.
[85] *Id.*, at 3.
[86] *See* section 773(c)(1) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).
[87] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988) (OTCA 1988).

identified in the SC Memo had significant exports during the POR of the primary Harmonized Tariff Schedule (HTS) heading included in the scope, *i.e.*, exports of HTS number 3802.10.[88] Because multiple potential surrogate countries have been identified as significant producers of identical or comparable merchandise through the above analysis, the Department then looked to the availability of SV data to determine the most appropriate surrogate country.

Data Availability

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.[89] 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.[90]

Datong Juqiang and Jacobi submitted financial statements from the Philippines for determining financial ratios.[91] Additionally, Jacobi submitted financial statements from India and anthracite coal values from the United States,[92] and Datong submitted German data for hydrochloric acid, and Romanian financial statements.[93] Both Datong Juqiang and Jacobi submitted Philippine and Thai *Cocommunity* data for carbonized materials.[94] However, the Department only has complete SV data on the record for all reported FOPs from Thailand.[95] Additionally, the Department preliminary determines not to rely on data from Germany, India, the Philippines or the United States, because the Department does not consider these countries to be at the same level of economic development as the PRC and the Department has sufficiently reliable and useable SV data from a country at the same level of economic development. For a discussion of Romanian financial statements and Thai *Cocommunity* data, see below.

The Department finds Thailand to be a reliable source for SVs because Thailand is at the same level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available data. In consideration of these factors, the Department has selected Thailand as the primary surrogate country for this review. A detailed explanation of the SVs is provided below in the "Normal Value" section of this memorandum.

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[88] *See* Petitioners' SC Comments at 5 and Attachment 4.
[89] *See* Policy Bulletin 04.1.
[90] *Id.*; *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349 (March 17, 2009), and accompanying IDM at Comment 2.
[91] *See* Datong's Final SVs at Exhibit 3B; and Jacobi's SV Submission at Exhibit SV-10.
[92] *See* Jacobi's SV Submission at Exhibits SV-10 and SV-12.
[93] *See* Datong's SV Submission at Exhibits 3, 7A.
[94] *Id.* at Exhibit 11; *see also* Jacobi's SV Submission at Exhibits SV-14 and SV-15, and Jacobi's SV Rebuttal Corroboration.
[95] *See* Petitioners' SV Submission; Datong's SV Submission; and Jacobi's SV Submission (No data from Malaysia was submitted, and only financial statements and carbonized material data from Philippines was submitted).

Facts Available for Normal Value

Jacobi's Exclusion Request

On July 1, 2016, Jacobi requested to be excused from reporting FOP data for certain PRC producers and FOP data for suppliers of producers.[96] On July 12, 2016, the Department excused Jacobi from reporting certain FOP data due to the large number of producers that supplied Jacobi during the POR.[97] Specifically, the Department did not require Jacobi to report FOP data for its smallest producers or from the suppliers of its producers.[98]

In accordance with section 776(a)(1) of the Act, the Department is applying facts available to determine the NV for the sales corresponding to the FOP data Jacobi was excused from reporting. Consistent with our treatment of this issue in prior segments of this proceeding, as facts available, the Department is applying the calculated average NV of Jacobi's reported sales to the sales of merchandise produced by its producers excluded from reporting.[99] Also, to provide complete product coverage for certain missing FOPs, the Department is applying an average NV calculated from per-unit factor-consumption rates for FOPs reported in the eighth administrative review to the missing FOPs for identical product types in the current review.[100]

Date of Sale

Pursuant to 19 CFR 351.401(i), the Department normally will use the invoice date as the date of sale unless the Department is satisfied that a different date better reflects the date on which the material terms of the sale are established. Datong Juqiang and Jacobi both reported the invoice date as the date of sale because they claimed that for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date.[101] Therefore, in accordance with 19 CFR 351.401(i), and the Department's long-standing practice in determining the date of sale,[102] the Department preliminarily finds that the invoice date is the most appropriate date to use as Datong Juqiang's and Jacobi's date of sale.

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[96] *See* Jacobi's July 1, 2016, Request for Exclusion from FOP Reporting.
[97] *See* Department's Letter re: Certain Activated Carbon from the People's Republic of China, dated July 12, 2016.
[98] *Id.*
[99] *See, e.g., Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 2011-2012*, 78 FR 26748 (May 8, 2013) and accompanying Preliminary Decision Memorandum at "Facts Available for NV," unchanged in *AR5 PRC Carbon Final*.
[100] *See* Memorandum, "Preliminary Results Calculation Memorandum for Jacobi," dated May 1, 2017 (Jacobi's Preliminary Calculation Memo), for a detailed explanation of the facts available calculation.
[101] *See* Jacobi's Section A Response; *see also* Datong's Section A Response.
[102] *See, e.g., Certain Polyester Staple Fiber from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, and Intent To Revoke Order in Part*, 76 FR 40329 (July 8, 2011), unchanged in *Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part*, 76 FR 69702 (November 9, 2011); *see also Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review*, 75 FR 68758 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994, 27996 (May 13, 2011).

Comparisons to Normal Value

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

A. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern our examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.[103]

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[104] The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes.

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[103] *See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying IDM at Comment 1; *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014).

[104] *See, e.g., Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-A method.

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

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

B. *Results of the Differential Pricing Analysis*

For Jacobi, based on the results of the differential pricing analysis, the Department preliminarily finds that 86.8 percent of the value of Jacobi's U.S. sales pass the Cohen's *d* test,[105] and confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-T method to all U.S. sales. Thus, for these preliminary results, the Department is applying the A-A method for all U.S. sales to calculate the weighted-average dumping margin for Jacobi.[106]

For Datong Juqiang, based on the results of the differential pricing analysis, the Department preliminarily finds that 14.6 percent of Datong Juqiang's U.S. sales pass the Cohen's d test,[107] confirming that a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods does not exist. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the A-A method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Datong Juqiang.

<u>U.S. Price</u>

Export Price

In accordance with section 772(a) of the Act, EP is "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section

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[105] *See* Jacobi's Preliminary Calculation Memo at Attachment 3.

[106] *Id.*

[107] *See* Memorandum, "Preliminary Results Calculation Memorandum for Datong Juqiang Activated Carbon Co., Ltd.; Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China," dated May 1, 2017 (Datong's Preliminary Calculation Memo) at Attachment III.

772(c) of the Act. The Department calculated EP for the majority of sales to the United States for Datong Juqiang because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted.[108] In accordance with section 772(c)(2)(A) of the Act, where appropriate, the Department deducted from the starting price (gross unit price) to unaffiliated purchasers foreign inland freight, foreign brokerage and handling, customs duties, domestic brokerage and handling and other movement expenses incurred in the PRC and the United States. For those expenses that were provided by a market economy (ME) provider and paid for in an ME currency, the Department used the reported expense. For the expenses that were either provided by an NME vendor or paid for using an NME currency, the Department used SVs as appropriate.[109] Additionally, in accordance with section 772(c)(2)(B) of the Act, the Department also deducted any irrecoverable value-added tax (VAT) from the starting price as explained below. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Datong Juqiang, *see* Datong Juqiang's Preliminary Calculation Memo.

Constructed Export Price

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)." For all of Jacobi's sales and a portion of Datong Juqiang's sales, the Department based U.S. price on CEP, in accordance with section 772(b) of the Act, because sales of subject merchandise were made in the United States on behalf of the companies located in the PRC by their respective U.S. affiliates to unaffiliated purchasers in the United States.[110]

Datong Juqiang contends that for sales where Datong Juqiang Activated Carbon USA, LLC (DJAC USA)[111] was involved, Datong Juqiang established the material terms of sale with the final U.S. customer prior to importation, and these sales should, therefore, be considered EP sales.[112] While Datong Juqiang negotiated the U.S. sales price, the Department notes that the evidence on the record of this administrative review demonstrates that 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.[113] The CIT has affirmed that such sales arrangements are properly considered CEP transactions.[114] Therefore, the Department preliminarily determined that Datong Juqiang's sales made through

[108] *See* Datong's Section A Response, at 8.
[109] *See* Memorandum, "Ninth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results," dated May 1, 2017 (Preliminary SV Memo).
[110] *See* Jacobi's Section A response at A-12 and A-13; *see also* Datong's Section A Response at 1, 6, and Exhibit A-1 and Datong's Supplemental Section C Response, dated October 20, 2016, at Exhibit SC-1.
[111] In the seventh administrative review, the Department determined DJAC USA and Datong Juqiang are affiliated. *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 Preliminary Decisions Memorandum, unchanged in *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).
[112] *See* Datong Juqiang's Section C Response, dated August 10, 2016, at pdf page 8.
[113] *See* Datong Juqiang's Supplemental Section C Reponse, dated October 20, 2016, at SC-13.
[114] *See Pasta Zara S.p.A. v United States*, 703 F. Supp. 2d 1317, 1320-1323 (CIT 2010) (*Zara*).

DJAC USA are CEP sales.

For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. Specifically, the Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. For those expenses that were provided by an ME provider and paid for in an ME currency, if applicable, the Department used the reported expense. For these expenses that were either provide by an NME vendor or paid for using an NME currency, the Department used SVs as appropriate.[115] Additionally, in accordance with section 772(c)(2)(B) of the Act, the Department also deducted any irrecoverable VAT from the starting price as explained below. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Jacobi and Datong Juqiang, *see* Jacobi's Preliminary Calculation Memo and Datong Juqiang's Preliminary Calculation Memo, respectively.

Further Manufactured Sales

In its original section A questionnaire response, Jacobi stated that it conducted some additional processing of the subject merchandise in the United States.[116] On August 8, 2016, Jacobi provided its section E response.[117] The Department deducted Jacobi's further manufacturing costs from its U.S. selling prices in accordance with section 772(d)(2) of the Act.

Value-Added Tax

The Department's practice, in NME cases, is to subtract from EP or CEP the amount of any irrecoverable VAT, in accordance with section 772(c)(2)(B) of the Act. Where the irrecoverable VAT is a fixed percentage of EP, the Department makes a tax-neutral dumping comparison by reducing the U.S. price by this percentage.[118] Thus, the Department's methodology essentially amounts to performing two steps: (1) determining the amount (or rate) of the irrecoverable VAT tax included in the FOB price of the subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The PRC VAT schedule placed on the record of this review demonstrates that, the VAT rate for activated carbon is 17 percent.[119] Datong Juqiang and Jacobi also reported that activated carbon's input VAT rebate rate is zero.[120] Thus, for the purposes of these preliminary results of review, for all Datong Juqiang's and Jacobi's sales, the Department reduced the price of each

[115] *See* Preliminary SV Memo.

[116] *See* Jacobi's Section A Response at A-12 and A-13.

[117] *See* Jacobi's August 8, 2016 Section E Questionnaire Response.

[118] *See 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, 36483-84 (June 19, 2012).

[119] *See* Jacobi's Section C response at 38 and Exhibit C-18.

[120] *Id.* at 38 and Exhibit C-18c; *see also* Datong's Section C Response at pdf page 33 and Exhibit C-3.

U.S. sale by the irrecoverable VAT rate of 17 percent of entered value.[121]

Normal Value

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

Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by the respondents for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value a particular FOP. To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[122]

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping or subsidization.[123] Where the Department finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,[124] the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to the ME purchase's respective share of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.[125] When a firm has made ME

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[121] *See* Jacobi's Preliminary Calculation Memo and Datong's Preliminary Calculation Memo.
[122] *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; *see also 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), IDM at Comment 2.
[123] *See, e.g., Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).
[124] *See Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Antidumping Methodologies: Market Economy Inputs*).
[125] *Id.*

input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.[126] Jacobi provided evidence that it had ME purchases of bags.[127] The Department addresses Jacobi's reported ME purchases of this input during the POR that were paid for in ME currency in Jacobi's Preliminary Calculation Memo. Where appropriate, the Department added freight expenses to the ME prices for this input.[128]

The Department used Thai import statistics as reported by the GTA to value the raw materials, energy, and packing material inputs that Datong Juqiang and Jacobi used to produce the subject merchandise under review during the POR, except where otherwise stated below. These data are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and represent a broad market average. In accordance with section 773(c)(5) of the Act and the legislative history of the OTCA 1988, the Department continues to apply its long-standing practice of disregarding certain prices as SVs if it has a reason to believe or suspect that these prices may have been dumped or subsidized.[129] In this regard, the Department previously found that it is appropriate to disregard such prices from India, Indonesia, Republic of Korea (Korea), and Thailand because the Department determined that these countries maintain broadly available, non-industry-specific export subsidies.[130] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, Korea and Thailand may have benefitted from these subsidies. Therefore, the Department has not used average unit import values from these countries in calculating the Thai import-based SVs. Additionally, the Department disregarded prices from NME countries because those prices are not based on market principles.[131] Finally, imports that were labeled as originating from an "unspecified" country were excluded from the SVs, as the Department could not be certain that

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[126] *Id.*

[127] *See* Jacobi's August 15, 2016 Section D Questionnaire Response at Exhibit JCC-D-6*; see also* Jacobi's February 15, 2017 Supplemental Questionnaire Response at Exhibit JCC-S1-6.

[128] *See* Jacobi's Preliminary Calculation Memo.

[129] *See* section 773(c) of the Act, as amended in section 505 of the Trade Preferences Extension Act of 2015; *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015); *see also* OTCA 1988, H.R. Rep. No. 100-576, at 590-91.

[130] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23; *Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, and Thailand*, 78 FR 16525 (March 14, 2013), and accompanying Issues and Decision Memorandum at 5-7.

[131] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008); *see also*, section 773(c) of the Act.

they were not from either an NME country or a country with general export subsidies.[132]

In accordance with section 773(c) of the Act, for subject merchandise produced by Datong Juqiang and Jacobi, the Department calculated NV based on the FOPs reported by Datong Juqiang and Jacobi for the POR. The Department used data from Thai import statistics and other publicly available Thai sources to calculate SVs for Datong Juqiang's and Jacobi's FOPs (direct materials, energy, and packing materials) and certain movement expenses.[133] To calculate NV, unless otherwise noted, the Department multiplied the reported per-unit FOPs by publicly available Thai SVs.

As appropriate, the Department adjusted input prices by including freight costs to render the prices delivered prices.[134] Specifically, the Department added to the Thai import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*.[135] Where necessary, the Department adjusted SVs for exchange rates, and converted all applicable items to a per-metric ton basis. For a detailed description of all SVs used for Datong Juqiang and Jacobi, *see* the Preliminary SV Memo.

Datong and Jacobi placed Thai *Cocommunity* data on the record to value carbonized materials,[136] while the petitioners placed Thai GTA data for coconut shell charcoal on the record.[137] As noted above, the Department prefers to use SV data which are tax exclusive and representative of broad market averages.[138] Because the Department does not have the source information for the Thai *Cocommunity* data, the Department cannot determine whether these data are tax exclusive or represent a broad market average. Accordingly, the Department preliminarily valued carbonized materials using the Thai GTA data for coconut shell charcoal.

The Department valued electricity using data published by the Electrical Generating Authority of Thailand in *Annual Report 2015*. The Department calculated an average of the price of energy sales to various customers.[139] The Department did not inflate/deflate this rate because it is contemporaneous with the POR.

The Department valued inland truck freight based on the results of Thailand's Office of Transport and Traffic Policy and Planning report entitled "Strategic Development of Transport

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[132] *Id.*
[133] *See* Preliminary SV Memo.
[134] *See* section 772(c)(1)(A) of the Act.
[135] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997).
[136] *See* Datong's SV Submission at Exhibits 3, 7A; and Jacobi's SV Submission at Exhibits SV-14 and SV-15; *see also* Jacobi's SV Rebuttal Corroboration.
[137] *See* Petitioners' SV submission at Attachment 1.
[138] *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.
[139] *See* Preliminary SV Memo.

Infrastructure in Thailand Year 2015-2022."[140] Because this information is based on 2013 data, the Department inflated it to the POR based on the Producer Price Index.

The Department valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods from Thailand.[141] The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published by the World Bank in *Doing Business 2016: Measuring Regulatory Quality and Efficiency*.[142] The Department did not inflate/deflate this rate because it is contemporaneous with the POR.

The Department valued water using price data based on Thai water tariffs as published at http://www.mwa.co.th) by the Metropolitan Waterworks Authority (MWA) of Thailand.[143] The Department did not inflate or deflate this price information because it is contemporaneous with the POR.

To value factory overhead, selling, general, and administrative (SG&A) expenses, and profit, the Department used the 2011 audited financial statement of a Thai activated carbon company, Carbokarn Co., Ltd. (Carbokarn). While the Department notes that these financial statements are not contemporaneous with the POR, Carbokarn's 2011 financial statements are the only financial statements on the record from Thailand and are otherwise complete, publicly available, contain sufficient information to calculate surrogate financial ratios, and contain no evidence of countervailable subsidies. With respect to the Romanian financial statements on the record, these financial statements are from a company which produces polyethylene, polypropylene, and polyvinyl chloride products, which is not merchandise comparable to the subject merchandise.[144] As such, the Department preliminarily determined that Carbokarn's financial statements are the best available information on the record regarding the valuation of factory overhead, SG&A, and profit. Furthermore, using Thai financial statements is consistent with our regulatory preference for valuing all FOPs in a single surrogate country.[145]

In NME antidumping duty proceedings, the Department prefers to value labor solely based on data from the primary surrogate country.[146] In *Labor Methodologies*, the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. The Department continues to follow our practice of selecting the best available information on the record to determine SVs for inputs such as labor. In this case, the Department valued labor consumption based on Thailand's National Statistical Office (NSO) Labor Force Survey of Whole Kingdom, which were based on data from surveys taken during the POR. The Department valued labor using a single-country labor cost based on compensation data consistent with the International Standard Classification of Occupation, 2008 (ISCO-08) of

[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.*
[144] *See* Datong's SV Submission at Exhibit 7A.
[145] *See* 19 CFR 351.408(c)(2).
[146] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

the International Labor Organization.[147] The data cover the last three quarters of 2015 and the first quarter of 2016 for all manufacturing sectors. Because these rates were in effect during the POR, the Department has not adjusted the calculated rate for inflation/deflation.

<u>Currency Conversion</u>

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

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒ ☐

Agree Disagree

5/1/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

[147] *See* Preliminary SV Memo.

ATTACHMENT I

Companies Preliminarily Not Eligible for a Separate Rate and to Be Treated as Part of PRC-Wide Entity

Company

1. AmeriAsia Advanced Activated Carbon Products Co., Ltd.
2. Anhui Handfull International Trading (Group) Co., Ltd.
3. Anhui Hengyuan Trade Co. Ltd.
4. Anyang Sino-Shon International Trading Co., Ltd.
5. Baoding Activated Carbon Factory
6. Beijing Broad Activated Carbon Co., Ltd.
7. Beijing Embrace Technology Co., Ltd.
8. Beijing Haijian Jiechang Environmental Protection Chemicals
9. Beijing Hibridge Trading Co., Ltd,
10. Bengbu Jiutong Trade Co, Ltd.
11. Changji Hongke Activated Carbon Co., Ltd.
12. Chengde Jiayu Activated Carbon Factory
13. China National Building Materials and Equipment Import and Export Corp.
14. China National Nuclear General Company Ningxia Activated Carbon Factory
15. China Nuclear Ningxia Activated Carbon Plant
16. China SDIC International Trade Co., Ltd.
17. Chongqing Feiyang Active Carbon Manufacture Co., Ltd.
18. Da Neng Zheng Da Activated Carbon Co., Ltd.
19. Datong Carbon Corporation
20. Datong Changtai Activated Carbon Co., Ltd.
21. Datong City Zuoyun County Activated Carbon Co., Ltd.
22. Datong Fenghua Activated Carbon
23. Datong Forward Activated Carbon Co., Ltd.
24. Datong Fuping Activated Carbon Co. Ltd.
25. Datong Guanghua Activated Co., Ltd.
26. Datong Hongtai Activated Carbon Co., Ltd.
27. Datong Huanqing Activated Carbon Co., Ltd.
28. Datong Huaxin Activated Carbon
29. Datong Huibao Active Carbon Co., Ltd.
30. Datong Huibao Activated Carbon Co., Ltd.
31. Datong Huiyuan Cooperative Activated Carbon Plant
32. Datong Kaneng Carbon Co. Ltd.
33. Datong Locomotive Coal & Chemicals Co., Ltd.
34. Datong Tianzhao Activated Carbon Co., Ltd.
35. DaTong Tri-Star & Power Carbon Plant
36. Datong Weidu Activated Carbon Co., Ltd.
37. Datong Xuanyang Activated Carbon Co., Ltd.
38. Datong Zuoyun Biyun Activated Carbon Co., Ltd.
39. Datong Zuoyun Fu Ping Activated Carbon Co., Ltd.
40. Dezhou Jiayu Activated Carbon Factory

41. Dongguan Baofu Activated Carbon
42. Dongguan SYS Hitek Co., Ltd.
43. Dushanzi Chemical Factory
44. Fu Yuan Activated Carbon Co., Ltd.
45. Fujian Jianyang Carbon Plant
46. Fujian Nanping Yuanli Activated Carbon Co., Ltd.
47. Fujian Xinsen Carbon Co., Ltd.
48. Fujian Yuanli Active Carbon Co., Ltd.
49. Fujian Active Carbon Industrial Co., Ltd.
50. Fujian Yuanli Active Carbon Industrial Co., Ltd.
51. Fujian Zhixing Activated Carbon Co., Ltd.
52. Fuzhou Taking Chemical
53. Fuzhou Yihuan Carbon
54. Great Bright Industrial
55. Hangzhou Hengxing Activated Carbon
56. Hangzhou Hengxing Activated Carbon Co., Ltd.
57. Hangzhou Linan Tianbo Material (HSLATB)
58. Hangzhou Nature Technology
59. Hangzhou Waterland Environmental Technologies Co., Ltd.
60. Hebei Foreign Trade and Advertising Corporation
61. Hebei Luna Trading Co., Ltd.
62. Hebei Shenglun Import & Export Group Company
63. Hegongye Ninxia Activated Carbon Factory
64. Heilongjiang Provincial Hechang Import & Export Co., Ltd.
65. Hongke Activated Carbon Co., Ltd.
66. Huaibei Environment Protection Material Plant
67. Huairen Huanyu Purification Material Co., Ltd.
68. Huairen Jinbei Chemical Co., Ltd.
69. Huaiyushan Activated Carbon Group
70. Huatai Activated Carbon
71. Huzhou Zhonglin Activated Carbon
72. Inner Mongolia Taixi Coal Chemical Industry Limited Company
73. Itigi Corp. Ltd.
74. J&D Activated Carbon Filter Co. Ltd.
75. Jiangle County Xinhua Activated Carbon Co., Ltd.
76. Jiangsu Taixing Yixin Activated Carbon Technology Co., Ltd.
77. Jiangxi Hanson Import Export Co.
78. Jiangxi Huaiyushan Activated Carbon
79. Jiangxi Huaiyushan Activated Carbon Group Co.
80. Jiangxi Huaiyushan Suntar Active Carbon Co., Ltd.
81. Jiangxi Jinma Carbon
82. Jiangxi Yuanli Huaiyushan Active Carbon Co., Ltd.
83. Jianou Zhixing Activated Carbon
84. Jiaocheng Xinxin Purification Material Co., Ltd.
85. Jilin Province Bright Future Industry and Commerce Co., Ltd.
86. Jing Mao (Dongguan) Activated Carbon Co., Ltd.

87. Kaihua Xingda Chemical Co., Ltd.
88. Kemflo (Nanjing) Environmental Tech
89. Keyun Shipping (Tianjin) Agency Co., Ltd.
90. Kunshan Actview Carbon Technology Co., Ltd.
91. Langfang Winfield Filtration Co.
92. Link Shipping Limited
93. Longyan Wanan Activated Carbon
94. Meadwestvaco (China) Holding Co., Ltd.
95. Mindong Lianyi Group
96. Nanjing Mulinsen Charcoal
97. Nantong Ameriasia Advanoed Activated Carbon Product Co., Ltd.
98. Ningxia Baiyun Carbon Co., Ltd.
99. Ningxia Baota Activated Carbon Co., Ltd.
100. Ningxia Baota Active Carbon Plant
101. Ningxia Guanghua A/C Co., Ltd.
102. Ningxia Blue-White-Black Activated Carbon (BWB)
103. Ningxia Fengyuan Activated Carbon Co., Ltd.
104. Ningxia Guanghua Chemical Activated Carbon Co., Ltd.
105. Ningxia Haoqing Activated Carbon Co., Ltd.
106. Ningxia Henghui Activated Carbon
107. Ningxia Honghua Carbon Industrial Corporation
108. Ningxia Huinong Xingsheng Activated Carbon Co., Ltd.
109. Ningxia Jirui Activated Carbon
110. Ningxia Lingzhou Foreign Trade Co., Ltd.
111. Ningxia Luyuangheng Activated Carbon Co., Ltd.
112. Ningxia Pingluo County Yaofu Activated Carbon Plant
113. Ningxia Pingluo Xuanzhong Activated Carbon Co., Ltd.
114. Ningxia Pingluo Yaofu Activated Carbon Factory
115. Ningxia Taixi Activated Carbon
116. Ningxia Tianfu Activated Carbon Co., Ltd.
117. Ninxia Tongfu Coking Co., Ltd.
118. Ningxia Weining Active Carbon Co., Ltd.
119. Ningxia Xingsheng Coal and Active Carbon Co., Ltd.
120. Ningxia Xingsheng Coke & Activated Carbon Co., Ltd.
121. Ningxia Yinchuan Lanqiya Activated Carbon Co., Ltd.
122. Ningxia Yirong Alloy Iron Co., Ltd.
123. Ningxia Zhengyuan Activated
124. Nuclear Ningxia Activated Carbon Co., Ltd.
125. OEC Logistic Qingdao Co., Ltd.
126. OEC Logistics Co., Ltd. (Tianjin)
127. Panshan Import and Export Corporation
128. Pingluo Xuanzhong Activated Carbon Co., Ltd.
129. Pingluo Yu Yang Activated Carbon Co., Ltd.
130. Shanghai Activated Carbon Co., Ltd.
131. Shanghai Astronautical Science Technology Development Corporation
132. Shanghai Coking and Chemical Corporation

133. Shanghai Goldenbridge International
134. Shanghai Jiayu International Trading (DezhouJiayu and Chengde Jiayu)
135. Shanghai Jinhu Activated Carbon (Xingan Shenxin and Jiangle Xinhua)
136. Shanghai Light Industry and Textile Import & Export Co., Ltd.
137. Shanghai Mebao Activated Carbon
138. Shanghai Xingchang Activated Carbon
139. Shanxi Blue Sky Purification Material Co., Ltd.
140. Shanxi Carbon Industry Co., Ltd.
141. Shanxi DMD Corporation
142. Shanxi Newtime Co., Ltd.
143. Shanxi Qixian Foreign Trade Corporation
144. Shanxi Qixian Hongkai Active Carbon Goods
145. Shanxi Supply and Marketing Cooperative
146. Shanxi Tianli Ruihai Enterprise Co.
147. Shanxi U Rely International Trade
148. Shanxi Xiaoyi Huanyu Chemicals Co., Ltd.
149. Shanxi Xinhua Activated Carbon Co., Ltd.
150. Shanxi Xinhua Chemical Co., Ltd. (formerly Shanxi Xinhua Chemical Factory)
151. Shanxi Xinhua Protective Equipment
152. Shanxi Xinshidai Import Export Co., Ltd.
153. Shanxi Xuanzhong Chemical Industry Co., Ltd.
154. Shanxi Zuoyun Yunpeng Coal Chemistry
155. Shenzhen Sihaiweilong Technology Co.
156. Shijiazhuang Xinshuang Trade Co., Ltd.
157. Sincere Carbon Industrial Co. Ltd.
158. Taining Jinhu Carbon
159. Tangshan Solid Carbon Co., Ltd.
160. Tianchang (Tianjin) Activated Carbon
161. Tianjin Century Promote International Trade Co., Ltd.
162. Taiyuan Hengxinda Trade Co., Ltd,
163. Tonghua Bright Future Activated Carbon Plant
164. Tonghua Xinpeng Activated Carbon Factory
165. Top One International Trading Co., Ltd.
166. Triple Eagle Container Line
167. Uniclear New-Material Co., Ltd.
168. United Manufacturing International (Beijing) Ltd.
169. Valqua Seal Products (Shanghai) Co.
170. VitaPac (HK) Industrial Ltd.
171. Wellink Chemical Industry
172. Xi Li Activated Carbon Co., Ltd.
173. Xi'an Shuntong International Trade & Industrials Co., Ltd.
174. Xiamen All Carbon Corporation
175. Xingan County Shenxin Activated Carbon Factory
176. Xinhua Chemical Company Ltd.
177. Xuanzhong Chemical Industry
178. Yangyuan Hengchang Active Carbon

179. Yicheng Logistics
180. Yinchuan Lanqiya Activated Carbon Co., Ltd.
181. Zhejiang Topc Chemical Industry Co.
182. Zhejiang Quizhou Zhongsen Carbon
183. Zhejiang Xingda Activated Carbon Co., Ltd.
184. Zhejiang Yun He Tang Co., Ltd.
185. Zhuxi Activated Carbon
186. Zuoyun Bright Future Activated Carbon Plant