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November 1, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

SUMMARY

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

Comment 1: Value Added Tax and Entered Value
Comment 2: Inflator Calculation
Comment 3: Anthracite Coal Surrogate Value
Comment 4: Coal Tar Surrogate Value

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[1] Calgon Carbon Corporation and Cabot Norit Americas (the petitioners).
[2] Jacobi Carbons AB and its affiliates (collectively, Jacobi) and Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) (collectively, mandatory respondents).
[3] Carbon Activated Tianjin Co., Ltd. (CAC), Jilin Bright Future Chemicals Company, Ltd., Ningxia Mineral & Chemical Limited, Shanxi Dapu International Co., Ltd., Shanxi DMD Corporation, and Shanxi Industry Technology Trading Co., Ltd. (collectively, SR Companies). M.L. Ball Co., Inc. (M.L. Ball), a U.S. importer, submitted a letter supporting the arguments of the mandatory respondents, particularly with respect to surrogate values.
[4] *See Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 21195 (May 5, 2017) (*Preliminary Results*), and accompanying Decision Memorandum (PDM).

Comment 5: Carbonized Material Surrogate Value
Comment 6: Hydrochloric Acid Surrogate Value
Comment 7: Whether to Use Industry-Specific Thai Labor Data
Comment 8: Whether to Continue to Use the Thai Financial Statements
Comment 9: Whether to Apply Partial Adverse Facts Available for Datong Juqiang's Wood Input
Comment 10: Whether to Revise Ningxia Guanghua Activated Carbon Co., Ltd.'s Water Consumption
Comment 11: Jacobi Tianjin New Packing Variable
Comment 12: Whether to Adjust Jacobi Tianjin's Packing Variance
Comment 13: Jacobi Tianjin's Fiberboard Consumption
Comment 14: Whether to Apply Adverse Facts Available to Jacobi Tianjin's Factors of Production Allocation

BACKGROUND

On May 5, 2017, the Department published the *Preliminary Results* of this administrative review. From May 8, 2017, through May 16, 2017, the Department conducted sales and factors of production (FOP) verification of Datong Juqiang and its supplier.[5] From May 17, 2017, through May 23, 2017, the Department conducted FOP verification of Jacobi and its suppliers.[6] On June 30, 2017, the Department established the deadlines for case and rebuttal briefs.[7] The Department extended the deadlines for submission of case and rebuttal briefs on July 10, 2017,[8] and the deadline for rebuttal briefs again on July 20, 2017.[9] On July 19, 2017, the petitioners, Jacobi, and Datong Juqiang submitted case briefs.[10] Also on July 19, 2017, the SR Companies

[5] *See* Memorandum, "Verification of the Questionnaire Responses of Datong Juqiang Activated Carbon Co., Ltd. in the Antidumping Administrative Review of Certain Activated Carbon from the People's Republic of China," dated June 30, 2017 (Datong Juqiang Verification Report); and Memorandum, "Verification of Questionnaire Responses of Datong Juqiang Activated Carbon Co., Ltd.'s supplier in the Antidumping Administrative Review of Certain Activated Carbon from the People's Republic of China," dated June 30, 2017 (Datong Juqiang Supplier Report).
[6] *See* Memorandum, "Verification of the Questionnaire Responses of Ningxia Huahui Activated Carbon Co., Ltd. in the Antidumping Administrative Review of Certain Activated Carbon form the People's Republic of China," dated June 30, 2017; Memorandum, "Verification of the Questionnaire Responses of Ningxia Guanghua Activated Carbon Co., Ltd. in the Antidumping Administrative Review of Certain Activated Carbon from the People's Republic of China," dated June 30, 2017 (NXGH Verification Report); and Memorandum, "Verification of the Questionnaire Responses of Jacobi Carbons Industry (Tianjin) Company Limited in the Antidumping Administrative Review of Certain Activated Carbon from the People's Republic of China," dated June 30, 2017 (JCC Report).
[7] *See* Memorandum, "Administrative Review of Certain Activated Carbon from the People's Republic of China: Case and Rebuttal Brief Extension," dated June 30, 2017.
[8] *See* Memorandum, "Ninth Administrative Review of Certain Activated Carbon from the People's Republic of China: Case Briefs Schedule," dated July 10, 2017.
[9] *See* Memorandum, "Ninth Administrative Review of Certain Activated Carbon from the People's Republic of China: Rebuttal Brief Extension," dated July 20, 2017.
[10] *See* Petitioners' Case Brief, "Activated Carbon from People's Republic of China," dated July 19, 2017 (Petitioners' Case Brief); Jacobi's Case Brief, "Certain Activated Carbon from China (A-570-904, POR 9: 04/01/15/03/31/16)," dated July 19, 2017 (Jacobi's Case Brief); and Datong Juqiang's Case Brief, "Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China (A-570-904)," dated July 19, 2017, (Datong Juqiang's Case Brief).

submitted a collective case brief.[11] Additionally, on July 19, 2017, M.L. Ball Co., Inc. incorporated by reference the arguments raised by the respondents and SR Companies, with emphasis on the surrogate value (SV) arguments.[12] On August 4, 2017, the petitioners, Jacobi, and Datong Juqiang submitted rebuttal briefs.[13]

SCOPE OF THE ORDER

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

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

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

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO_2 gas) activated carbons are within the scope, and those containing more than 50 percent chemically activated carbons are

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[11] *See* SR Companies' Case Brief, "Activated Carbon from the People's Republic of China Case Brief," dated July 19, 2017 (SR Companies Case Brief).
[12] *See* M.L. Ball's submission titled, "Certain Activated Carbon from the People's Republic of China: Case Brief," dated July 19, 2017.
[13] *See* Petitioners' Rebuttal Brief, "Activated Carbon from People's Republic of China," dated August 4, 2017 (Petitioners' Rebuttal Brief); Jacobi's Rebuttal Brief, "Certain Activated Carbon from China (A-570-904, POR 9: 04/01/15/03/31/16)," dated August 4, 2017 (Jacobi's Rebuttal Brief); and Datong Juqiang's Rebuttal Brief, "Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China (A-570-904)," dated August 4, 2017 (Datong Juqiang's Rebuttal Brief).

outside the scope. This exclusion language regarding blended material applies only to mixtures of steam and chemically activated carbons.

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

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

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

CHANGES SINCE THE PRELIMINARY RESULTS

Based on our review and analysis of the comments received from parties, we made certain changes to our margin calculations for Datong Juqiang and Jacobi.[14] Specifically, we

1. relied on Jacobi's revised factor of production (FOP) database,[15]
2. relied on Datong Juqiang's revised U.S. sales and FOP databases,[16]
3. revised the carbonized material SV,[17]
4. revised the coal tar SV,[18]
5. revised the labor SV,[19]
6. corrected the ministerial error in the period of review (POR) inflator,[20]
7. revised Ningxia Guanghua's Activated Carbon Co., Ltd.'s (NXGH's) water consumption ratio,[21]
8. corrected Jacobi's packing input consumption ratio units,[22]

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[14] *See* Memoranda, "Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Determination Calculation Memorandum for Jacobi Carbons AB" (Jacobi's Final Calc Memo), and "Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China: Final Determination Calculation Memorandum for Datong Juqiang Activated Carbon Co., Ltd." (Datong Juqiang's Final Calc Memo), dated concurrently with this memorandum.
[15] *See below* at Comment 11; *see also* Jacobi's Final Calc Memo.
[16] *See Datong Juqiang's Final Calc Memo*.
[17] *See below* at Comment 5; *see also* Memorandum, "Ninth Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Final Results," dated concurrently with this memorandum (Final SV Memorandum).
[18] *See below* at Comment 4; *see also* Final SV Memorandum.
[19] *See below* at Comment 7 *see also* Final SV Memorandum.
[20] *See below* at Comment 2; *see also* Final SV Memorandum.
[21] *See below* at Comment 10; *see also* Jacobi's Final Calc Memo.
[22] *See below* at Comment 12; *see also* Jacobi's Final Calc Memo.

9. revised Jacobi's fiberboard consumption ratio,[23]
10. recalculated Jacobi's packing FOPs using the smallest packing quantity on the record.[24]

DISCUSSION OF THE ISSUES:

Comment 1: Value Added Tax and Entered Value

Jacobi's Comments:

- The Department has no authority to reduce Jacobi's U.S. sales prices by the amount of PRC VAT not refunded, as the PRC value added tax (VAT) does not meet the statutory definition under section 772(c)(2)(B) of the Tariff Act of 1930, as amended (the Act), of "export tax or other charge." Items are only covered by the statute when they are also "imposed by the exporting country on the exportation of the subject merchandise." PRC VAT is a domestic tax, not an export tax, and the record evidence confirms that no VAT is paid on Jacobi's export sales.
- An "export tax, duty, or other charge" is only covered by the statute when it meets the additional condition that it is "imposed by the exporting country on the exportation of the subject merchandise.[25] A tax that is imposed only on domestic transactions cannot possibly meet this statutory requirement that it be "imposed … on the exportation" of the goods. The PRC government does not "impose" this tax; this tax exists whether or not the export occurs. The statutory requirement that the tax be "imposed … on the exportation" has not been met.
- There is no evidence that VAT is included in Jacobi's U.S. sales price. Rather, all the VAT that Jacobi owes for its PRC market sales is virtually offset by the VAT Jacobi had to pay to its raw material suppliers. Consequently, because Jacobi, in fact, did not really incur any VAT cost, there is no reason to believe that the VAT was included in Jacobi's U.S. sales prices.
- The Department's preliminary results calculation memorandum for Jacobi does not correctly state the approach that the Department adopted to calculate the adjustment for irrecoverable VAT or address why it ignores Jacobi's reported entered values taken directly from Customs Form 7501. There is no basis for the Department to ignore Jacobi's accurately reported entered value and the Department's decision to do so is an unlawful application of adverse facts available (AFA).
- The law does not permit the Department to throw out Jacobi's certified entered values and replace them with an artificial calculated value comprised of facts available. This application constitutes an unlawful application of AFA because the Department may not apply AFA where none of the prerequisites for the use of AFA are met.[26]

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[23] *See below* at Comment 13; *see also* Jacobi's Final Calc Memo.
[24] *See below* at Comment 14; *see also* Jacobi's Final Calc Memo.
[25] *See* Jacobi's Case Brief at 37 (citing section 772(c) of the Act).
[26] *See* Jacobi's Case Brief at 45 (citing *Jiangsu Changbao Steel Tube Co., Ltd. v. United States*, 884 F. Supp. 2d 1295, 1303 (Ct Int'l Trade 2012)).

Datong Juqiang's Comments:

- The Department's decision to reduce Datong Juqiang's reported U.S. prices for an unrefunded VAT amount is both contrary to the plain language of the statute[27] and unsupported by record evidence because the record shows that there is no VAT imposed on the subject merchandise at the point of (or due to the fact of) exportation.[28] Datong Jaqiang only pays VAT on domestic purchases of inputs used to produce the subject merchandise and does not receive a refund of VAT for these purchases.
- The Department is only authorized to make a deduction to U.S. price to account for taxes or duties (1) that are "imposed on the exportation" of the subject merchandise and (2) that are included in the reported U.S. price of the subject merchandise.[29]
- The Department's methodology used to calculate VAT deductions is unreasonable and unsupported by record evidence. Pursuant to section 772(c)(2)(B) of the Act, VAT adjustments should be based upon the *amount* of VAT paid rather than the VAT *rate* paid to prevent a "multiplier effect."[30]
- The record reveals that the 17 percent VAT input rate being used by the Department is only applied to the value of inputs purchased by Datong Juqiang to produce subject merchandise, while the lack of any refund the Department identifies relates to the much higher value of finished merchandise sold by Datong Juqiang. Thus, the Department's decision to apply a simple 17 percent deduction to the higher sales price of the finished merchandise results in an illogical outcome.
- In *Fine Furniture*, the Court of International Trade (Court or CIT) directed the Department to apply a methodology that achieves a result in accordance with "the amounts of irrecoverable Chinese VAT that were incurred."[31] *Fine Furniture* is directly applicable to the instant case, because of the similarity in facts.
- In *China Mfrs. Alliance*, the Court recognized two questions arising from the statutory language; 1) whether a charge was imposed by the exporting authority, and if so, 2) whether the charge was included in the price.[32] The Department made no such finding here.
- The Department should not calculate VETAXU (*i.e.*, VAT) differently for export price (EP) and constructed export price (CEP) sales; it should be the same for both using free-on-board (FOB) export price as the base for the calculation. If the Department continues to deduct a

[27] *See* Datong Juqiang's Case brief at 66 (citing section 772(c)(2)(B) of the Act).
[28] *Id.* at 66 (citing the "Interim Regulations of the People's Republic of China on Value-Added Tax (2008)" at Article 2.3 that "{f}or taxpayers that export goods, the tax rate shall be zero); and at 67 (citing to *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340, 1346-1347 (Ct. Int'l Trade 2011) and *Bridgestone Ams., Inc. v. United States*, 636 F.Supp.2d 1347, 1355-57 (Ct. Int'l Trade 2009)).
[29] *Id.* at 70 (citing section 772(c)(2)(B) of the Act).
[30] *Id.* at 70 (citing *Federal Mogul v. United States,* 63 F.3d 1572 (Fed. Cir. 1995) (*Federal Mogul)* and *E.I. duPont de Nemours & Co. v. United States*, 932 F. Supp. 296, 303 (Ct. Int'l Trade 1996) (*E.I. duPont*)).
[31] *Id.* at 72 (citing *Fine Furniture (Shanghai), Ltd. v. United States*, 2016 Ct. Intl. Trade LEXIS 85, 11-15 (Ct. Int'l Trade September 9, 2016) (*Fine Furniture*)).
[32] *Id.* at 73 (citing *China Manufacturers Alliance LLC v. United States,* 205 F. Supp. 3d 1325 (Ct. Int'l Trade 2017) (*China Mfrs. Alliance*)).

17 percent VAT in the final results, consistent with its well-stated practice,[33] the Department should use Datong Juqiang's free on board (FOB) Chinese port of export price (FOBUNIPRC) instead of the U.S. entered value (ENTVALUE), U.S. gross unit price (GRSUPRU), or an {estimated customs value} (USNETPRI2) to calculate the applicable VAT adjustment amount.

Petitioners' Rebuttal Comments:

- The CIT rejected Datong Juqiang's and Jacobi's arguments that "{t}he statute…leaves no room for the Department to exercise its discretion to create {a VAT adjustment}"[34] and that VAT is "internal tax related to the cost of acquiring inputs in China" and is not a tax imposed on exportation."[35]
- In *Jacobi Carbons*, the CIT affirmed the Department's interpretation of the statute to provide for an adjustment to U.S. price for irrecoverable VAT.[36] In reaching this decision, the Court concluded that: (1) Commerce's determination that Chinese VAT is an "export tax" or an "other charge" that falls within the meaning of the statutory language in section 772(c)(2)(B) of the Act "is a permissible" construction of the statute;[37] and (2) "Chinese VAT is permissibly construed as an 'other charge' that is "imposed by {China} upon the exportation of the subject merchandise."[38]
- With respect to Jacobi's arguments that it did not incur any VAT cost upon export, the Department addressed and rejected this argument in *AR8 Carbon*.[39] The Department should again reject Jacobi's arguments in this administrative review.
- The Department should also reject Jacobi's arguments challenging its reliance on an estimated customs value, rather than Jacobi's reported entered values, in calculating the VAT adjustment. The Department's continued application of this established methodology in this current segment is appropriate where the Department continues to find that a significant percentage of Datong Juqiang's and Jacobi's entered values are less than the estimated customs values.[40]
- While Jacobi asserts that the Department's determination not to rely on its reported entered values constitutes an unlawful application of AFA, the Department has previously rejected this argument. The Department should continue to do so here.[41]

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[33] *Id.* at 20 (citing *e.g.*, *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) (*AR7 Carbon*) and *Final Determination in the Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China,* 80 FR 34893 (June 18, 2015), and accompanying Issues and Decisions Memorandum (IDM) at Comment 33).
[34] *See* Petitioners' Rebuttal Brief at 40 (citing Jacobi's Brief at 38).
[35] *Id.* (citing Datong Juqiang's Case Brief at 67).
[36] *Id.* at 41 (citing *Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159 (Ct. Int'l Trade 2017) (*Jacobi Carbons*)).
[37] *Id.* (citing *Jacobi Carbons,* 222 F. Supp. 3d at 1187).
[38] *Id.* (citing *Jacobi Carbons,* 222 F. Supp. 3d at 1188).
[39] *See* Petitioners' Rebuttal Brief at 43 (citing *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016) (*AR8 Carbon*), and accompanying IDM at Comment 1).
[40] *Id.*
[41] *Id.* at 44.

- With respect to Datong Juqiang's argument that the Department's reliance on an estimated customs value is inappropriate, and that the agency should instead be relying on the fFOB value, the Department addressed and rejected Datong Juqiang's argument in the preceding segment.[42] The Department should do so here.
- In the previous segment, the Department rejected Datong Juqiang's argument that the Department should rely on a VAT adjustment methodology that is based on the value of the VAT paid, rather than the rate at which VAT is paid.[43] The Department should again reject Datong Juqiang's argument for these final results.

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

In 2012, after public comment, we announced a change of methodology with respect to the calculation of EP or CEP to include an adjustment of any (irrecoverable) VAT in certain non-market economy (NME) countries, in accordance with section 772(c)(2)(B) of the Act.[44] In this announcement, the Department stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EPs or CEPs by the amount of the tax, duty or charge paid, but not rebated.[45]

In a typical VAT system, companies do not incur VAT expense for exports. Instead, they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports ("input VAT") and, in the case of domestic sales, the company can credit the VAT it pays on input purchases for those sales against the VAT they collect from customers.[46] That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[47] This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales, and thus we disagree with mandatory respondents' assertions that irrecoverable VAT should not be deducted from their U.S. prices pursuant to section 772(c)(2)(B) of the Act. Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained that the final

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[42] *Id.*
[43] *Id.* at 46.
[44] *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 (June 19, 2012) (*Methodological Change*).
[45] *Id.*, at 77 FR 36483; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) (*Chlorinated Isos 2012*), and accompanying IDM at Comment 5.
[46] *See, e.g.*, explanations in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) (*Diamond Sawblades*), and accompanying IDM at Comment 6; *see also Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 26712 (May 9, 2014) (*Wood Flooring 2014*), and accompanying IDM at Comment 3; *see also Methodological Change*, 77 FR at 36483.
[47] *See Methodological Change*, 77 FR at 36483.

step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[48]

In response to Jacobi's and Datong Juqiang's claim that the Department does not have the authority under the statute to adjust for VAT, we disagree. Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. While Jacobi and Datong Juqiang claim they that they pay no VAT upon export, we note that the record demonstrates that 17 percent VAT is included in Datong Juqiang's and Jacobi's U.S. sales price. With respect to Jacobi's U.S. sales, Jacobi reports that "{a}s a seller/exporter, when Jacobi resells to domestic or foreign buyers, the products are subject to another 17% VAT (output VAT)…" and provided documentation demonstrating the VAT is included in the sale to the United States.[49] With respect to Datong Juqiang, Datong Juqiang reports that its U.S. price includes VAT, which we observed during the verification of Datong Juqiang's questionnaire responses.[50] Although Jacobi and Datong Juqiang argue that they do not pay VAT upon export, they misstate what is at issue. The issue is the irrecoverable VAT on inputs, not VAT *per se*. Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports.[51] It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.[52] Further, PRC law provides that for goods exported by export enterprises, for which the PRC provides no refund of VAT, the output tax payable shall be calculated as domestic sold goods or subject to VAT.[53] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[54] The statute does not define the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.[55] Additionally, it is set forth in PRC law, and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT falls under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a

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[48] *Id.*
[49] *See* Jacobi's Section C Response, dated August 8, 2016, (Jacobi SCQR) at 40; *see also* Jacobi SCQR at Exhibit C-18e.
[50] *See* Datong Juqiang's Section C Response, dated August 10, 2016, (Datong SCQR) at pdf page 33; *see also* Datong Juqiang Verification Report at 11 and Verification Exhibits 8A through 8G.
[51] *See* Jacobi SCQR at Exhibit C-18c (PRC Government Circular Caishui 2007, No. 90, Circular of the Ministry of Finance and the State Administration of Taxation of the People's Republic of China on Adjusting the Tax Refund Rate for Some Export Commodities); *see, e.g., Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014), and accompanying IDM at Comment 7.
[52] *Id.*
[53] *Id. at* Exhibit 18c, Notice from the State Administration of Taxation of the People's Republic of China Concerning the Refund (Exemption) of Tax on Exported Commodities, Guoshuifa No. 102, July 12, 2006, "…goods exported by export enterprises, unless otherwise provided, the output tax payable shall be calculated by regarding them as domestically sold goods or they shall be subject to value added tax."
[54] *See Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014), and accompanying IDM at Comment 5.
[55] *Id.*

tax-neutral net price received by the seller. This deduction is consistent with our recent refinement to our policy with respect to certain NME countries, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[56] Further, the CIT affirmed the Department's VAT methodology in *Fushun Jinly* and *Jacobi Carbons*.[57]

In accordance with 19 CFR 351.401(c), the Department makes price adjustments that are "reasonably attributable to the subject merchandise." The PRC's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. Consistent with the PRC VAT regime and our regulation, our methodology, as applied in this review, consists of performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Irrecoverable VAT is (1) the FOB value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods. The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in PRC law and regulations.[58]

In this review, in step one, we determined the irrecoverable VAT on subject merchandise by first determining the amount of tax levied on inputs and raw materials (used in the production of exports). Here, VAT is levied on inputs at a rate of 17 percent, and for activated carbon there is no VAT rebate.[59] Because the PRC does not provide a refund of VAT paid for inputs upon exportation of activated carbon, we find that the entire input VAT is a cost that arises as a result of export sales which is passed through to the U.S. price – a cost that is reflected in the U.S. price of the respondents being individually examined.[60] Consequently, the irrecoverable rate is equal to the full VAT percentage. Our analysis is consistent with our current irrecoverable VAT policy and our treatment of irrecoverable VAT in recently completed NME cases.[61] Therefore, we have not altered our irrecoverable VAT adjustment methodology for these final results.

Furthermore, with respect to Jacobi's and Datong Juqiang's arguments as to the price used as the basis for calculating the VAT adjustment, for both mandatory respondents, certain entered values are not reliable for purposes of determining irrecoverable VAT. As noted above, the Department uses the FOB value of an exported good as the base upon which irrecoverable VAT is calculated. Entered values reported by respondents are a reasonable reflection of the FOB value of the exported goods, and generally a reflection of the commercial value of the exported merchandise.

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[56] *See Methodological Change*, 77 FR 36483;, and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) (citing the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 (1994) at 827, as reprinted in 1994 U.S.C.C.A.N. 4040).
[57] *See Fushun Jinly Petrochemical Carbon Co., Ltd., et al v. United States*, Court No.14-00287, Slip Op. 16-25 (Ct. Int'l Trade March 23, 2016) (*Fushun Jinly*); *see also Jacobi Carbons*, 222 F. Supp. 3d at 1186-1190.
[58] *See* Jacobi SCQR at Exhibit C-18.
[59] *Id.*
[60] *See* Jacobi SCQR at 40; Jacobi SCQR at Exhibit C-18e; Datong SCQR) at pdf page 33; Datong Juqiang Verification Report at 11 and Verification Exhibits 8A through 8G.
[61] *See e.g., Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014) (*Prestressed Concrete*), and accompanying IDM at Comment 1; *Wood Flooring 2014*, and accompanying IDM at Comment 3; and *Chlorinated Isos 2012*, and accompanying IDM at Comment 5.

As set forth below, we find that certain entered values as reported by Jacobi and Datong Juqiang are not representative of commercial export values when compared to an ex-factory net U.S. price and/or an estimated customs value (defined as ex-factory net U.S. price plus foreign movement expense). As such, reliance upon those entered values for purposes of calculating a VAT adjustment is inappropriate. Accordingly, we find that, consistent with the methodology we applied in calculating Jacobi's VAT adjustment in the eighth administrative review of this proceeding, it is appropriate in certain instances to rely on an estimated customs value as the best proxy for an FOB China port value upon which to base the VAT adjustment.

In the second administrative review of this proceeding, we analyzed the difference between Jacobi's entered values and its estimated customs values.[62] In that segment, we found substantial differences between Jacobi's estimated customs values for its entries of certain activated carbon and the entered values reported to U.S. Customs and Border Protection (CBP).[63] We determined that the entered values of CEP sales made by Jacobi were being systematically understated, which we also determined would result in the under-collection of antidumping duties by CBP.[64] Accordingly, we made a determination to switch to per-unit assessment and cash deposit rates in that and subsequent reviews.[65]

We performed a similar analysis in this review, comparing Jacobi's entered values to the estimated customs values. Normally, the difference between entered value and ex-factory net U.S. price plus foreign movement expense (*i.e.*, estimated customs value) is relatively small. This is because the net U.S. price calculated in the Department's margin program has been stripped of various expenses in order to reflect an approximation of an ex-factory price.[66] Once foreign movement expenses are added back to U.S. net price, the resulting value approximates a FOB foreign port value. Similarly, the entered values reported to CBP on CEP sales are also on an FOB foreign port value basis. Although these values should be similar, using the estimated customs values, in this review, we found that a significant percentage of Jacobi's entered values are less than the estimated customs values.[67] For Datong Juqiang, we only analyzed those sales that have a reported entered value. Applying the same analysis methodology to those sales, we also found a significant percentage of Datong Juqiang's reported entered values are less than the estimated customs values.[68]

Because there is a gap between some declared entered values and the corresponding estimated customs value, using the entered value to calculate the VAT adjustment in those instances would

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[62] *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208 (November 17, 2010), and accompanying IDM at Comment 3.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] Specifically, the Department's margin program starts with a respondent's gross unit price and we remove all expenses associated with selling the product in the United States, as well as an amount for international movement expenses and profit, to arrive at an ex-factory net U.S. price. *See also Florida Citrus Mut. v. United States*, 515 F. Supp. 2d 1324, 1329 (Ct. Int'l Trade 2007) ("Constructed export price is an approximation of an ex-factory price.").
[67] *See* Jacobi's Final Calc Memo.
[68] *See* Datong Juqiang's Final Calc Memo.

result in an improper VAT adjustment. Consistent with our practice, when we determine that reported entered values do not represent commercial values for export,[69] we find that an alternate customs value is a more appropriate basis for an FOB China port value. We find that this methodology, which is derived from information already on the record of this review, results in the most reliable base values upon which to calculate the VAT adjustment. Therefore, where reported entered values are less than the estimated customs value, we will use the estimated customs value to calculate the VAT adjustment.

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

Regarding Jacobi's argument that we are replacing its reported entered values with an artificially-calculated value based upon AFA, Jacobi acknowledges that a prerequisite to the use of AFA pursuant to section776(b) of the Act is a finding under 776(a) of the Act that there is a need to resort to facts otherwise available in making a determination. But the Department's determination to rely upon estimated customs values in certain instances is not based on a finding that necessary information is missing from the record, or a finding that Jacobi withheld information, failed to provide information in the appropriate form or manner, significantly impeded the proceeding, or provided unverifiable information.[70] Accordingly, the provisions of section 776 of the Act have not been triggered. Rather, the Department has made a determination, consistent with our practice and based on the record evidence in this review, about the appropriate base price for the VAT adjustment.

Finally, we note that in both cases cited by Datong Juqiang (in support of its contention that VAT adjustments should be based upon the amount of VAT paid rather than the VAT rate paid to prevent a "multiplier effect"), *Federal Mogul* and *E.I du Pont*, the Court directed us to recalculate the final dumping margins by implementing a tax-neutral adjustment methodology

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

[70] *See* section 776(a) of the Act.

based on the amounts of foreign taxes rather than the tax rates to establish the dumping margins.[71] Unlike in those cases where the court addressed a foreign tax adjustment where the VAT was included in the home market price, but no VAT was imposed on exports to the United States, and the home market tax rate was applied to the U.S. price to essentially back out the tax from the home market price of the finished product, here the Department does not adjust the U.S. price by a VAT rate. It adjusts U.S. price by an *amount* of tax -- an amount which is arrived at by applying a rate to *a tax base*.[72] In this case, the amount of tax used in the adjustment to U.S. price is the statutory amount of tax on inputs not rebated upon exportation – and is an amount that is reflected in the U.S. price of the respondents being individually examined.[73]

Surrogate Value (SV) Issues:

Comment 2: Inflator Calculation

Jacobi's Comments:

- In Attachment 1 of the Department's Prelim SV Memorandum, the inflator is calculated by dividing the 2013 average purchase power index (PPI) by the POR average PPI.[74] However, the POR PPI should be divided by the 2013 PPI to result in 0.9540; as such, the domestic trucking SV should be deflated to 2.02 Baht/metric ton (MT)/kilogram (kg).

Department's Position: In the *Preliminary Results*, we divided the 2013 average POR PPI by the average POR PPI to calculate an inflator of 1.05. However, the average 2013 PPI is 106.88 and the POR PPI is 101.96. Therefore, we agree with Jacobi, and because Thailand experienced deflation between 2013 and the POR, we have recalculated the truck deflator to reflect the deflation demonstrated in the International Monetary Fund's PPI data.[75]

Comment 3: Anthracite Coal Surrogate Value

Jacobi's Comments:

- Notwithstanding the selection of surrogate country, the Department has a legal obligation to perform and expressly articulate a comprehensive, comparative analysis of the SVs on the record in order to make SV determinations based on the "best available information" standard.[76]
- The Department should not use the Thai SV for anthracite coal, because it does not reasonably reflect the value of the type of anthracite coal that Jacobi's suppliers consume as required by the applicable law.[77] Instead, the Department should use the SV from the data

[71] *See Federal Mogul,* 63 F.3d 1572 and *E.I. du Pont,* 932 F. Supp. 296.
[72] *See, e.g., Prestressed Concrete, Wood Flooring*, and *Chlorinated Isos 2012*.
[73] *See* Jacobi SCQR at 40; Jacobi SCQR at Exhibit C-18e; Datong SCQR) at pdf page 33; Datong Juqiang Verification Report at 11 and Verification Exhibits 8A through 8G.
[74] *See* Jacobi's Case Brief at 47 (citing 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 (Prelim SV Memorandum) at Attachment 1).
[75] *See* Final SV Memorandum.
[76] *See* Jacobi's Case Brief at 2-5.
[77] *Id.* at 8.

published by the U.S. Energy Information Agency (U.S. EIA), as it is the only SV option that reasonably reflects the market economy (ME) value for the specific type of anthracite coal consumed by Jacobi's suppliers.

- The CIT previously upheld that the Department must consider U.S. EIA data as a potential SV for anthracite coal even if it is from a non-economically comparable country.[78]
- The Department should not rely on the Thai Global Trade Atlas (GTA) data because the Thai GTA data consists of broad basket-category data, whereas the U.S. EIA data is the only SV option that reasonably reflects the ME value for the type of anthracite coal most comparable to that consumed by Jacobi's suppliers.

Petitioners' Rebuttal Comments:

- To value anthracite coal, the Department should continue to rely on the contemporaneous Thai value under GTA Harmonized System (HS) subheading 2701.11, and reject Jacobi's arguments that U.S. anthracite coal prices published by the U.S. EIA are more appropriate. Jacobi's arguments are flawed in that the United States is not economically comparable to the PRC, and no party has established that any other country on the Surrogate Country List[79] is a source of quality data that would make it an appropriate selection as the primary surrogate country.

Department's Position: In the *Preliminary Results*, we valued anthracite coal using GTA Thai import data for anthracite coal as the best available information for determining the SV for this input. For the final results, we continue to find these data to be the best available information for determining the SV for anthracite coal.

When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is the Department's practice to select SVs which, to the extent practicable, are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[80] Moreover, it is the Department's well-established practice to rely upon the primary surrogate country for all SVs, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.[81]

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[78] *See* Jacobi's Case Brief at 19 (citing *Clearon Corp. v. United States*, Slip Op 15-91, WL 4978995 (Ct. Int'l Trade 2015) (*Clearon II*)).

[79] *See* Department 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 (Surrogate Country Memorandum) at Attachment I (Surrogate Country List).

[80] *See, e.g., Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (Ct. Int'l Trade 2012) (*Fuwei Films*) (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) (*Electrolytic Manganese*), and accompanying IDM at Comment 2).

[81] *See* 19 CFR 351.408(c)(2); *see also Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390 (CIT 2013) at 6 ("{T}he court must treat seriously {the Department's} preference for the use of a single surrogate country.").

With regard to Jacobi's argument regarding the Department's obligation to value FOPs with the "best available information" on the record, we note that the Court grants the Department deference with regard to its evaluation of "best available information." Particularly, "in reviewing Commerce's determination of what constitutes the best available information with respect to a particular FOP, it is not for the court to reweigh the evidence,[82] but rather, to determine if the evidence relied upon by Commerce was sufficient to support its determination while considering detracting evidence."[83] Moreover, the Court has opined that "when Commerce has determined information from the primary surrogate country to be the best available information for a FOP, it does not follow that, absent extraordinary circumstances, Commerce is additionally required to use information from a second country to manipulate and cure any and every deficiency in the primary surrogate country data."[84]

We disagree with Jacobi that we should rely on anthracite coal data provided by the U.S. EIA. The record contains two potential SVs for anthracite coal: GTA data for Thailand HS category 2701.11 and U.S. government data published by the EIA. As noted in the *Preliminary Results*, we have not relied on data from the United States because the Department does not consider the United States 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.[85] The United States is not at the same level of economic development as the PRC.[86] Specifically, the 2015 per capita gross national income (GNI) for the United States is 54,960 U.S. Dollars (USD) and the PRC's 2015 GNI is 7,820 USD.[87] The Department relies on SV data from a country with a GNI that is not at the same level of economic development as the NME country only when it has been unable to obtain SVs from a country that is at the same or comparable level of economic development as the NME country.[88] This fact pattern is not reflected in the record evidence of this administrative review.[89] While the record contains information that U.S. anthracite coal is similar to PRC anthracite coal,[90] anthracite coal is not unique to the PRC nor is there any information on the record that would suggest that only U.S. anthracite coal could be used as a suitable valuation source for Jacobi's suppliers' of generic anthracite.

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[82] *See, e.g., Tri Union Frozen Products, Inc. v. United States*, 163 F. Supp. 3d 1255, 1269 (Ct. Int'l Trade 2016), citing to *Trent Tube Div., Crucible Materials Corp. v. Avesta Sandvik Tube AB*, 975 F.2d 807, 815 (Fed. Cir. 1992).
[83] *Id*., citing to *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938) and *Suramerica de Aleaciones Laminadas, C.A. v. United States*, 44 F.3d 978, 985 (Fed. Cir. 1994).
[84] *Id*., at 163 F. Supp. 3d, at 1278.
[85] *See Preliminary Results* and PDM at 15.
[86] *See* Petitioners' Surrogate Country Comments, dated August 17, 2015, at Attachment 1.
[87] *See* Surrogate Country List.
[88] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 (April 7, 2014) (*AR9 Fish Fillets*), and accompanying IDM at Comment IA (where the Department sought SV information from Indonesia whose GNI was greater than Vietnam's because the significant producer and data quality considerations outweighed the fact that Indonesia was not at the same level of economic development as the NME country in question).
[89] *See, e.g., Certain Activated Carbon from the People's Republic of China; Final Results of Antidumping Administrative Review*, 77 FR 67337 (November 9, 2012) (*AR4 Carbon*), and accompanying IDM at Comment IC(A) (finding HTS 2701.11 for both Thailand and the Philippines "viable options" for valuing anthracite coal).
[90] *See* Jacobi's SV Submission, dated September 12, 2016, at Exhibit SV-12.

We disagree with Jacobi's contention that the Thai SV for anthracite coal "consists of broad basket-category data," and does not reasonably reflect the value of the type of anthracite coal that Jacobi's suppliers consume and is therefore, unreliable. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the input.[91] The Department's preference is to satisfy the breadth of the aforementioned selection criteria, not one criterion alone.[92] Moreover, the CIT previously has sustained the Department's use of broader basket HS categories for SVs as supported by substantial evidence.[93] The record of this proceeding supports a finding that the Thai GTA data for anthracite coal are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties. As noted above, there is no information on the record which demonstrates that Thai anthracite coal categorized under HS 2701.11 is not the same anthracite coal used by Jacobi's suppliers. Moreover, as we additionally note above, anthracite coal is not unique to the PRC nor is there any information on the record that would suggest that only U.S. anthracite coal could be used as a suitable valuation source for Jacobi's suppliers' of generic anthracite coal.

We disagree with Jacobi's contention that Court precedent requires the Department to include the U.S. EIA data in a comparison of all data sets on the record when selecting SV data[94] such that even when "presented with a less economically comparable country off the list {the Department} *must still provide an analysis* of how the data from the less comparable country presented does not outweigh its economic disparity."[95] As an initial matter, the United States is not at the same level of economic development as the PRC, as evidenced by the fact that it is not included on the list of potential surrogate countries. In the Surrogate Country Memorandum, the Department identified the GNI range within which countries could be considered at the same level of economic development.[96] The United States falls well outside this GNI range such that the GNI of the United States cannot be considered to be at the same level of economic development as the PRC.[97] The Department acknowledges that in instances where it finds that data from countries on the Surrogate Country Memorandum are unreliable or unavailable, it will

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[91] *See, e.g., Fuwei Films* 837 F. Supp. 2d at 1350-51*; see also Electrolytic Manganese*, and accompanying IDM at Comment 2.

[92] *See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012) (*China Shrimp*), and accompanying IDM at Comment 2.

[93] *See, e.g., Writing Instrument Mfrs. Ass'n v. United States Dep't Commerce*, 984 F. Supp. 629, 640 (Ct. Int'l Trade 1997); *Guangdong Chems*, 460 F. Supp. 2d 1370-71 (Ct. Int'l Trade 2006); *Peer Bearing*, 752 F. Supp. 2d 1333, 1335 (Ct. Int'l Trade 2011); *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1289-90 (Ct. Int'l Trade 2006).

[94] *See* Jacobi's Case Brief at 18-19, citing *Allied Pacific Food (Dalian) Co., Ltd. v. United States,* 435 F. Supp. 2d 1295, 13-14 (Ct. Int'l Trade 2006).

[95] *Id.* (quoting *Clearon Corp.*, 2015 Ct. Intl. Trade LEXIS 91, at 13 (emphasis added by Jacobi, internal quotations omitted)).

[96] *See* Surrogate Country Memorandum and Surrogate Country List.

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

consider SVs from countries that are not at the same level of economic development as the NME country. For example, in *Crawfish* we used a surrogate value from Spain, even though Spain is not at the same level of economic development as the PRC, because the value from Spain had significantly greater specificity compared to values from the primary surrogate country or countries on the Surrogate Country Memorandum.[98] Data from such surrogate countries are considered only when data quality or significant producer considerations potentially outweigh the fact that these countries are not at the same level of economic development as the NME country.[99] As explained above, however, the court in *Clearon II* found that the Department is not required to evaluate data from countries not on the Surrogate Country List, when making its SV selections unless the parties provide information showing that quality data are unavailable from all of the economically comparable countries.[100] Neither Jacobi nor any other party, has done so here. In this instance, the record contains adequate data from at least one of the countries at the same level of economic development as the PRC from which the Department may select an appropriate SV for anthracite coal, in the form of Thai GTA data. The Court has recognized the Department's preference for using SV data from potential surrogate countries.[101] Therefore, for the reasons explained above, we continue to find the Thai GTA data for anthracite coal to be the best available information for determining the SV for anthracite coal.

Comment 4: Coal Tar Surrogate Value

Datong Juqiang's Comments:

- The Department should not use the data reported in the six-digit basket category in Thai HS heading 2706.00, because it is not the best information available to value coal tar.
- The coal tar pitch used by Datong Juqiang's supplier is a specific grade with a pitch content of 50 to 61 percent.[102] Pitch content is an essential characteristic of the coal tar used by Datong Juqiang. According to the CIS Coal Tar Report, pitch content is the single most important factor in determining the price of coal tar pitch.[103]
- The Department must select a SV best related to the specific coal tar used by Datong Juqiang's supplier.
- When selecting the best available information to value an input, the Department must show a rational relationship between the SV and input.[104] Further, the Department is not limited to SV data choices available from the primary surrogate country alone, rather the Department is

[98] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014*, 81 FR 21840 (April 13, 2016), and accompanying Issues and Decision Memorandum at 2 (*Crawfish*).
[99] *See AR9 Fish Fillets*, and accompanying IDM at Comment 1.
[100] *See Clearon Corp.*, 2015 WL 4978995, at *4 (internal citations omitted).
[101] *See, e.g., Trust Chem Company Limited v. United States*¸791 F. Supp. 2d 1257, 1266 (Ct. Int'l Trade 2011) (finding that "Commerce adequately explained that 'while in the past the Department has used U.S. prices to benchmark surrogate values, the Department's current practice has been to benchmark surrogate values against imports from the list of potential surrogate countries for a given case.' Although there is no prohibition on using U.S. import data, Commerce's preference for data from potential surrogate countries was not unreasonable").
[102] *See* Datong Juqiang's Case Brief at 4-5 (citing Datong Juqiang Verification Report at Exhibit 7).
[103] *Id.* at 8 (citing Datong Juqiang's SV Submission, dated December 1, 2016, at Exhibit 1 "Coal Tar Pitch Production, Market and Forecast in the CIS," Infomine market research group (CIS Coal Tar Report)).
[104] *Id.* at 8 (citing *Calgon Carbon Corp. v. United States*, Slip-Op 11-21, 2011 WL 637605 at 8 (Ct. Int'l Trade 2011)).

mandated to prefer a superior data choice available from a secondary surrogate country over inferior data from the primary surrogate country.[105]

- The record demonstrates that coal tar is a byproduct of the coking process and a complex mixture of various compounds creating different grades of coal tar.[106] This information demonstrates that HS category 2706.00 is a broad basket category of different grades of coal tar. The CIT has required the Department to reject data from such broad basket categories when valuing a specific product.[107]
- Thai GTA imports in HS 2706.00 are from Spain and the United States. Datamyne export data on the record demonstrates that a substantial portion of the U.S. imports into Thailand are not coal tar but ethanol. Because U.S.-origin imports into Thailand under HS 2706.00 are not coal tar, the Department should remove the U.S.-origin imports.[108] This misclassification of ethanol is indicative of systematic misreporting of data in this HS category.
- Record evidence also shows that there are no imports into Thailand under the specific sub-categories that encompass coal tar pitch and crude coal tar. Instead, all imports came under the sub-category 27060000.090 "Other." Other record evidence indicates that imports under this "Other" sub-category are non-scope goods or highly processed coal tar derivatives used in pharmaceutical and cosmetic applications.
- Although the record does not contain price data specific to the particular grade of coal tar used by Datong Juqiang's supplier, the record contains price data for several upstream, parallel and downstream goods that are related to the production and consumption of coal tar.
- The Department could apply the Russian import coal tar price or the U.S. domestic price capped by the Czech or Polish unit price of metallurgical coke as the coal tar SV.

Jacobi's Comments:

- The Department should not use the Thai GTA data for coal tar as they are not reliable. The Thai import data from which the preliminary SV is derived suffer two flaws: 1) due to small reported import volume, the GTA data do not accurately suggest the market price of coal tar; and 2) all imports into Thailand reported under the 2706.00 HS category of the GTA dataset were in fact of the type of tar that is incomparable to the coal tar consumed by Jacobi's suppliers to produce activated carbon.
- The Thai GTA import AUV of 64.62 Baht/kg was calculated based on a total import quantity of merely 193.97 metric tons (MT).[109] Such quantity is not commercially significant, compared to the 2015 world total imports of coal tar reported under the HS category 2706.00, which were reported to be 393,786.10 MT.[110] In fact, such Thai import quantity is even insignificant compared to Jacobi's suppliers' consumption of coal tar alone.
- All imports of HS 2706.00, "Mineral Tars, Including Reconstituted Tars," into Thailand during the POR are classified in the "2706.00.00090-Other" category, not the category

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[105] *Id*. at 9 (citing *Shantou Red Garden Foodstuff Co. v. United States*, 880 F. Supp. 2d 1332, 1334 (CIT 2012)).
[106] *Id*. at 10-14.
[107] *Id*. at 14 (citing *Arch Chemicals Inc. v United States*, 33 C.I.T. 954 (Ct. Int'l Trade 2009) and *Home Meridian International, Inc. v. United States.*
[108] *Id.* at 16 (citing *Zhejiang Dunan Hetian Metal Co., Ltd. v. United States*, 652 F.3d 1333, 1240-1345 (Fed. Cir. 2011)).
[109] *See* Petitioner's SV Submission, dated September 13, 2016, at Attachment 1.
[110] *See* Jacobi's Case Brief at 29 (citing *Baoding Mantong Fine Chemistry Co., Ltd. v. United States*, Slip Op. 17-44 (CIT April 19, 2017)).

specific to coal tar, which is "2706.00.0002 – Tar Distilled From Coal, From Lignite Or From Peat, And Other Mineral Tars, Whether Or Not Dehydrated Or Partial."

- The Department should use either the 2015 import average unit value (AUV) as reported by UN COMTRADE for Spain ($310.2/MT), or the UN COMTRADE 2015 world average AUV ($341.01/MT). In the event that the Department prefers using the import AUV of a country in the Department's list of potential surrogate countries, then the UN COMTRADE 2014 import AUV for South Africa ($249.15/MT) should be used.

***SR Companies' Comments*:**

- The Department should not use the Thai GTA import data for coal tar because they are aberrantly high and based on an insignificant quantity of imports.
- The Department must consider the respondent's own purchase quantity and consumption in determining whether an SV is based on commercially significant quantities.[111]
- While the Department's PDM indicates that it relied on HS 2706.00, all imports under HS 2706.00 into Thailand are actually under HS 2706.00.00090-Other and do not appear to be the industrial coal tar used by the mandatory respondents. Specifically, the majority of Thai coal tar imports are from Spain, and the evidence on the record suggests that the coal tar from Spain is not similar to the industrial coal tar used by the mandatory respondents, but rather medical coal tar.[112]
- The record contains both import and export values of coal tar from various countries, which can be used to call into question the reliability of the Thai GTA import data. The CIT recently directed the Department to consider the relevance of similar data in determining whether import values into the primary surrogate country were aberrant.[113]
- The aberrancy of the Thai coal tar SV is also demonstrated in consideration of coal tar in relation to the other SVs of other raw materials. Coal tar is used to produce carbonized material, yet the Thai coal tar SV is valued greater than the Thai SV for carbonized material.
- The Department should rely on import or export prices of coal tar from Russia because it is a major producer of coal tar. India and Indonesia are also major importers of coal tar.
- While India, Indonesia and Russia are not on the Surrogate Country List, the Department has used SV information from less contemporaneous sources which are not on the Surrogate Country List.[114]
- Alternatively, the Department can value coal tar from Brazil and Mexico, which are major producers and exporters of coal tar.

***Petitioners' Rebuttal Comments*:**

- The Department should continue to rely on the contemporaneous Thai value under HS 2706.00 to value coal tar.
- The Department should reject Jacobi's arguments that the Thai value is aberrationally high in comparison to coal tar values used in prior segments. The coal tar value used by the

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[111] *See* SR Companies Case Brief at 2 (citing *Juancheng Kangtai Chem Co., v. United States*, 2015 Ct. Intl. Trade LEXIS 94, 65-66, 78 (August 21, 2015) and *Fuwei Films* 837 F. Supp. 2d at 1355)).

[112] *Id.* at 2-3 (citing Jacobi's SV Submission, dated April 3, 2017 (Jacobi's Final SV) at Exhibits SV2-4 and SV2-8).

[113] *Id.* at 4-5 (citing *Itochu Bldg. Products Co. v. United States*, 2017 Ct. Intl. Trade LEXIS 74, 20-23 (June 22, 2017) (*Itochu*)).

[114] *Id.* at 6 (citing *Clearon Corp. v. United States*, 2016 Ct. Intl. Trade LEXIS 110, 4 (November 23, 2016), *Juancheng Kangtai Chem Co., v. United States*, 2017 Ct. Intl. Trade LEXIS 3, 19 (January 19, 2017) and *Crawfish*).

Department has increased steadily since the second administrative review, increasing to 1,888.59 USD/MT in the previous administrative review.

- The Department should also reject Jacobi's comparison of the coal tar value relied on by the Department with the import AUVs of the world's largest exporters of coal tar. The comparison is inapposite in that it directs the Department's attention to the import AUVs of Spain, the GNI of which is far greater than that of the PRC.
- The Department should reject Datong Juqiang's arguments because the various coal tar benchmarks they submitted are from countries which are not economically comparable to the PRC. Further, the benchmarks are for products ranging from coking coal, metallurgical coke, pitch to coal tar products.[115]
- The finding that 8,382 kg of 13,970 kg imported into Thailand from the United States which appear related to a shipment of ethanol does not impeach the entirety of imports into Thailand, it only undermines imports from the United States.[116]
- The respondent's failure to place contemporaneous benchmark information from any of the countries on the Surrogate Country List amounts to SV gamesmanship.
- If the Department uses any alternative value for coal tar, it should use the Thai GTA import data under HS 2706.00 less the imports from the United States.[117]

Department's Position: The Department disagrees with the petitioners that we should continue to value coal tar using Thai GTA import data under HS 2706.00 "Mineral Tars, Including Reconstituted Tars" in the final results, as we did in the *Preliminary Results*. For the reasons explained below, we determine it more appropriate to use the 2015 UNCOMTRADE HS 2706.00 import data from Brazil for the final results.

As explained above, the Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.[118] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[119] While there is no hierarchy for applying the SV selection criteria, "the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' SV is for each input."[120] Additionally, as explained above, the Department has a strong

[115] *See* Petitioners' Rebuttal Brief at 10.
[116] *Id.* (citing Datong Juqiang's Case Brief at 17).
[117] We note that the petitioners indicate the Thai coal tar SV less the imports from the Unites States would result in a SV of 15,296.10 Baht per MT. Instead, that SV calculation would result in 48,811.51 Baht per MT after removing the U.S. imports, only 180,000 kg of Spanish imports remain valued at 8,786,072.00 baht.
[118] *See, e.g., First Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010) (*PSF 2010*), and accompanying IDM at Comment 1.
[119] *See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying IDM at Comment 1.
[120] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008) (*PET Film 2008*), and accompanying IDM at Comment 2; *see also Crawfish 2002*, and accompanying IDM at Comment 2.

preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[121] The Department relies on SV data from a country with a GNI that is not at the same level of economic development as the NME country only when it has been unable to obtain SVs from a country that is at the same level of economic development as the NME country.[122]

The record contains several sources which provide coal tar values: 1) CIS Coal Tar Report, 2) Thai GTA import data, 3) UNCOMTRADE HS 2706.00 import data (including data from Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand), and 4) UNCOMTRADE HS 2706.00 export data. As an initial matter, we disagree with Datong Juqiang that we should value coal tar using either the Russian import price or U.S. domestic price. As noted in the *Preliminary Results*, we have not relied on data from the United States because the Department does not consider the United States 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.[123] Similarly, we will not rely on Russian import data or data from any other country the Department does not consider to be at the same level of economic development as the PRC for the same reasons.

We agree with Jacobi that Thai GTA data under HS heading 2706.00 "Mineral Tars, Including Reconstituted Tars" does not represent the best available information. The Thai GTA import data do not appear to include any mineral tars from any country not excluded from our SV calculations. Specifically, the Department has on the record the three Thai 11-digit HS numbers found under HS subchapter 2706 ("Mineral Tars, Including Reconstituted Tars"): 2706.00.00000, 00002, and 00009.[124] Thai HS categories 2706.00.00000 ("Tar Distilled From Coal, From Lignite Or From Peat, And Other Mineral Tars, Whether Or Not Dehydrated Or Partially Distilled, Including Reconstituted Tars") and 2706.00.00002 ("Tar Distilled From Coal, From Lignite Or From Peat, And Other Mineral Tars, Whether Or Not Dehydrated Or Partial") contain no data for the POR.[125] The last Thai HS number 2706.00.00009 ("Other"), does not clearly identify the type of imports that are included, but the reported countries of origin are Spain and the United States.[126] Further, information on the record indicates that imports under "Other" are products other than the industrial coal tar used by the respondents. Specifically, information on the record indicates that half the imports from the United States reported under "Other" are ethanol.[127] Accordingly, it is reasonable to conclude that Thai GTA import data

[121] *See Jiaxing Brother 2014* (quoting *Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012) (*Sodium Hex*), and accompanying IDM at Comment I).
[122] *See AR9 Fish Fillets*, and accompanying IDM at Comment IA (where the Department sought SV information from Indonesia whose GNI was greater than Vietnam's because the significant producer and data quality considerations outweighed the fact that Indonesia was not at the same level of economic development as the NME country in question).
[123] *See Preliminary Results*, and PDM at 15.
[124] *See* Jacobi's SV Submission, dated April 3, 2017, at Exhibit SV2-3.
[125] *Id.*
[126] *Id.*
[127] *See* Datong Juqiang's SV Submission, dated December 1, 2016, at Exhibit 1C.

reported under HS category 2706.00 do not contain imports of coal tar comparable to the coal tar used by respondents which the Department can use as a SV.

As noted above, the record contains 2015 UNCOMTRADE HS 2706.00 import data from Brazil, Bulgaria, Mexico, South Africa, Romania, and Thailand, all countries which the Department finds to be both at a level of economic development comparable to the PRC and significant producers of comparable merchandise.[128] Because we find the Thai import data reported under HS category 2706.00 do not contain imports of coal tar comparable to the coal tar used by respondents which the Department can use as a SV, we have excluded Thai UNCOMTRADE data from consideration in this administrative review. When faced with multiple SV sources which are equally comparable and reliable, the Department has used import volume as a tie-breaking methodology.[129] When ranked by volume of imports of coal tar, we find that Brazilian imports of coal tar exceed those of South Africa, Mexico, Bulgaria and Romania (by order of import volume of coal tar).[130] The data on the record show that the imports of coal tar into Brazil are so much larger than those into South Africa, Mexico, Bulgaria and Romania that they demonstrate a much broader market average for this input. Specifically, Brazil imported 212,547 kg, followed by South Africa (47,084 kg), Mexico (32,887 kg), Bulgaria (20 kg), and Romania (14 kg).[131] Thus, among the five countries, we determine to use the 2015 UNCOMTRADE HS 2706.00 import data from Brazil for these final results, as the Brazilian SV constitutes the "best available information" for valuing coal tar, pursuant to section 773(c)(1)(B) of the Act.

Comment 5: Carbonized Material Surrogate Value

Datong Juqiang's Comments:

- To value carbonized materials, the Department should use either Thai or Philippine *Cocommunity* data instead of the distorted Thai GTA import data.
- Thai GTA import data are distorted in that a substantial proportion of the goods imported into Thailand during the POR under HTS 4402.90.1000 are wood-based charcoal powder originating from France.[132] Substantial record evidence confirms that the French-origin wood-based charcoal powder is used solely as an animal feed ingredient, and that these imports account for a significant proportion (67% by value and 42% by quantity) of usable import data under Thai GTA HTS 4402.90.10000.
- The domestic Philippine *Cocommunity* data for coconut shell charcoal is the best available information to value carbonized materials, because the Philippines satisfies the two statutory criteria of economic comparability and significant production of comparable merchandise. It is also the data used by the Department to value carbonized material in two prior PORs.

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[128] *See* Jacobi's SV Submission, dated April 3, 2017, at Exhibit SV2-3; *see also Preliminary Results* and PDM at 15.
[129] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4539 (January 28, 2015), and accompanying IDM at 9; *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1167 (January 11, 2016) (*Chlor Isos 2016*), and accompanying IDM at 6-7.
[130] *See* Jacobi's SV Submission, dated April 3, 2017, at Exhibit SV2-3.
[131] *Id.*
[132] *See* Datong Juqiang's Case Brief at 27 (citing Prelim SV Memorandum, and accompanying Excel SV sheet (Tab. "Imports_Extract").

Jacobi's Comments:

- The Department should value carbonized material using the *Cocommunity* publication that provides the Thailand domestic selling prices for coconut shell charcoal, instead of using import data from GTA under HTS heading 4402.00. The record confirms that Jacobi's suppliers only consumed coal-based carbonized material, and the subject merchandise that Jacobi sold could not be produced from wood charcoal.[133] The Department has also previously determined that the *Cocommunity* was the best, most specific, surrogate value for coal-based carbonized material.[134]
- The Department, in its fifth and sixth administrative review, ruled that the *Cocommunity* data satisfies all of the Department's criteria for an appropriate surrogate value for the carbonized material consumed by Jacobi's suppliers.[135]
- The Department should value carbonized materials using the *Cocommunity* publication that provides the Thailand domestic selling prices for coconut shell charcoal, because they are most similar to the input and represent the best available information. Record evidence demonstrates that Thai imports under HS 4402.90.10000 are highly aberrational and that the majority of Thai imports under HS heading 4402.90.10000 are French imports of wood-based charcoal used in animal feed, and not coconut charcoal at all.[136]
- Therefore, should the Department continue to ignore the *Cocommunity* data and use Thai GTA data, it must at least exclude the imports from France from the calculation of the SV, as it did in its eighth administrative review.

SR Companies Comments:

- The Department should use Thai *Cocommunity* data for coconut shell charcoal to value carbonized material because it is a more specific and superior source providing tax-exclusive prices representative of a broad-market average.
- Excluding the Thai imports from France leaves around 225 MT of carbonized material imported into Thailand. Because this amount is commercially small compared to the quantity consumed, bought, and produced by respondents, the Department should not use it as the basis for the SV.[137]
- Alternatively, the Department should exclude the data related to the French imports.[138]

Petitioners' Rebuttal Comments:

- To value carbonized material, the Department should continue to rely on the contemporaneous Thai value under HTS subheading 4402.90.10000. In the alternative, the Department should exclude Thai imports from France for calculating the SV.

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[133] *See* Jacobi's Case Brief at 22-23 (citing *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying IDM at 36).
[134] *Id.*
[135] *See* Jacobi's Case Brief at 22-24
[136] *Id.* at 25-26.
[137] *See* Separate Rate Companies' Case Brief at 13 (citing, *e.g.*, *Shanghai Foreign Trade Enterprises Co., Ltd. v. United States*, 318 F. Supp. 2d 1339 (2004) (*Shanghai Foreign Trade*); *Juancheng Kangtai Chem. Co. v. United States,* 2015 Ct. Intl. Trade LEXIS 94, *65-66, 78 (Ct. Int'l Trade Aug. 21, 2015); and *Fuwei Films*, 837 F. Supp. 2d at 1347)).
[138] *Id*. at 12 (citing, *e.g.*, *Consol. Bearings Co. v. United States*, 348 F.3d 997, 1007 (2003).

- The *Cocommunity* data include prices from the Philippines, Indonesia, and Sri Lanka, which are not on the Surrogate Country List and that are not at the same level of economic development as PRC. Each of the three countries falls far below China's 2015 per-capita GNI rank.
- *Cocommunity* data do not represent broad national prices. The Philippine value only reflects regional prices in Visayas. Moreover, Jacobi does not provide any analysis of the Sri Lankan or Indonesian data.
- The Department should not rely on the Thai *Cocomunity* data because it is not publicly available.[139]

Department's Position: We disagree with the respondents' arguments that we should use either Philippine or Thai *Cocommunity* data for valuing carbonized material. In the *Preliminary Results*, we used Thai imports under HS 4402.90.10000 to value carbonized material.[140] For the final results, we removed Thai imports from France under this HS category because these imports were not specific to the input used by the respondents, as explained below.

The Department's practice when selecting the best available information for valuing FOPs, as discussed above and in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.[141]

When presented with sufficient evidence to demonstrate that a particular SV is aberrational, and therefore unreliable, the Department will examine relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question. With respect to benchmarking, the Department examines historical import data for the potential surrogate countries for a given case, to the extent such import data are available, and/or examines data from the same HS category for the primary surrogate country over multiple years to determine if the current data appear aberrational compared to historical values.[142] Merely appearing on the low or high end of a range of values is not enough to find such data aberrational.[143]

We have not considered the Philippine *Cocommunity* data to value carbonized material, because this information does not come from the primary surrogate country, nor from a country found to be at the same level of economic development as the PRC. Additionally, we have useable SV data from the primary surrogate country, a country found to be at the same level of economic development as the PRC. As outlined above, the court in *Clearon II* found that the Department

[139] *See* Petitioners' Rebuttal Brief at 17 (citing, *e.g.*, *Prestressed Concrete Steel*, and accompanying IDM at Comment 6)).
[140] *See* Prelim SV Memorandum.
[141] *See*, *e.g.*, *PSF 2010* and accompanying IDM at Comment 1.
[142] *See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) (*Carbazole Violet*), and accompanying IDM at Comment 6; *see also 1,1,1,2-Tetrafluroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014) (*Tetrafluroethane*), and accompanying IDM at Comment 10.
[143] *See, e.g., Wood Flooring 2014*, and accompanying IDM at Comment 6 ("Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier.").

is not required to evaluate data from non-economically comparable countries when making its SV selections unless parties provide information showing that quality data is not available from any of the economically comparable countries.[144] No party has done so here.

The Department has a regulatory preference to value all factors from a single surrogate country.[145] As such, unless data to value carbonized material is shown to be aberrational, the Department will not seek data from another country.[146] Parties argue that the Thai GTA data for carbonized material is aberrant because they include data for imports from France which are based on far more expensive, wood-based charcoal used in animal feed. The record (*i.e.*, an affidavit from the previous review from Jacobi affiliates in France, Isabelle Laidin and Raphaele Bro-Capron; an affidavit from the previous review from a Thai importer of French carbonized material; 2015 and 2016 annual sales summaries from the French exporter, Thai French imports data under HS code 4402.9010 up to August 2016, and French exports data to Thailand under HS 4402.9000 up to July 2016) demonstrates that French imports under HS 4402.90.1000 were indeed wood-based charcoal.[147] Export quantities on the 2016 sales summary from the French exporter for oak tree charcoal, a.k.a. Carbovet, matches, for the most part, the export documentation quantities for "unspecified charcoal" under the HS 4402.9000, which in turn, matches Thai importer's French-origin import quantities for charcoal "of coconut shell" under HS code 4402.9010.[148] Therefore, consistent with our decision in the eighth administrative review, we have removed French import quantity and value data from our calculation of the SV for carbonized material because these imports are not specific to the input they are meant to value.[149] The question then turns on whether the remaining import quantity is the best available information on the record to value carbonized material. All parties have argued that an acceptable alternative is to rely on the Thai GTA data, excluding the imports from France. The 225 MT volume of imports remaining after excluding the French data is relatively small compared to the volume of carbonized material produced and consumed by the respondents. However, parties have not provided any information, nor does the record contain any evidence, which demonstrates that the imports which comprise the remaining 225 MT are aberrant or cannot be considered a commercial quantity.

Additionally, the Department cannot rely on Thai *Cocommunity* data for calculating a SV for carbonized materials because we are not able to confirm definitively whether the data are publicly available. Although the email correspondence submitted with the Thailand *Cocommunity* data indicates that weekly prices were available on the web, the fact that an email

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[144] *See Clearon II*, 2015 WL 4978995, at *4 (internal citations omitted).

[145]. *See* 19 CFR 351.408(c)(2); *Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390 (CIT 2013) at 6 ("{T}he court must treat seriously {the Department's} preference for the use of a single surrogate country.").

[146] *See Fuwei Films,* 837 F. Supp. 2d at 1356 (Ct. Int'l Trade 2012); *see also Calgon Carbon Corp. v. United States*, 190 F. Supp.3d 1224, 1234 (Ct. Int'l Trade 2016).

[147] *See* Jacobi's September 23, 2016 Submission Corroborating the Rebuttal Surrogate Value Comments at Attachment SVR-1; and Jacobi's April 3, 2016 Submission Corroborating Jacobi's Final Surrogate Value Comments at Attachment SV2-1.

[148] *Id.*

[149] *See AR8 Carbon* and accompanying IDM at Comment 5*; see also Guangdong Chemicals Imp. & Exp. Corp. v. United States*, 460 F. Supp. 2d 1365, 1370 (Ct. Int'l Trade 2006) (stating that the Department's "elimination of aberrational values has been held to be a reasonable means for compensating for flaws in a data set") (internal citation omitted).

inquiry was required to obtain the data suggests that the historical data are not publicly available.[150]

Therefore, for the final results, we find the Thai GTA import data for carbonized material, exclusive of the imports from France, represent the best available information to value the input used by respondents because they are not aberrant and are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax- and duty-exclusive.

Comment 6: Hydrochloric Acid Surrogate Value

***Datong Juqiang's Comments*:**

- To value hydrochloric acid (HCl), the Department should reject the aberrationally high Thai GTA import data and rely on GTA Romania and GTA Bulgaria import data for HS 2806.10.
- HCl is a fungible and internationally-traded commodity. Therefore, radical fluctuations in the price of equivalent grades of HCl from one country to another cannot be supported.[151]
- GTA Thai import data reports an extremely high AUV of $2085/MT, which is based on a total import quantity of only 106.05 MT.[152] This SV is several orders of magnitude higher than the benchmark data from other potential surrogate countries: Bulgaria and Romania.
- In *Peer Bearings*, the CIT rejected the price data of a fungible and internationally-traded commodity reported from a primary surrogate country based on a 60 percent deviation from the corresponding prices from two other potential surrogate countries.[153] The Department should apply the same rationale here.
- Further, ICIS, a publisher of price data for chemicals, provided information for European and U.S. HCl prices which, when used as benchmarks, demonstrate the aberrant Thai GTA HCl import value .
- Because both Bulgaria and Romania are potential surrogate countries, the Department could use either Bulgaria GTA import data or the Romania GTA import data to value HCl.

Jacobi's Comments:

- The Thai GTA value is not a reliable estimate of the type of HCl consumed by Jacobi's suppliers.
- The SV used by the Department in both the final results of *AR7 Carbon*,[154] *AR8 Carbon* and the *Preliminary Results* is aberrational, as there is zero record evidence that the value of HCl on the market has experienced a nearly 300% price increase since *AR6 Carbon*.[155]

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[150] *See* Jacobi's Rebuttal SV Comments, dated September 23, 2016, at Exhibit SVR-3.
[151] *See* Datong Juquiang's Case Brief at 37-38.
[152] *Id.* (citing Prelim SV Memorandum at 4).
[153] *Id.* at 40-41 (citing *Peer Bearing Company-Changshan v. United States*, 752 F. Supp. 2d 1353, 1372 (CIT 2011) (*Peer Bearings*)).
[154] *See Certain Activated Carbon form the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015) (*AR7 Carbon*), and accompanying IDM.
[155] *See Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25,, 2014) (*AR6 Carbon*), and accompanying IDM.

- More importantly, the Thai GTA import value is calculated based on a very small quantity of imports, 106.95 MT.[156] Such quantity is commercially insignificant in light of the other countries' import volume and Jacobi's supplier's actual HCl consumption volume.
- The Department must instead use Romania's GTA import AUV for the final results.

SR Companies Comments:

- The HCl SV used in the *Preliminary Results* is aberrant and must be discarded.
- The Department generally determines that an import price is aberrant when it is significantly higher than that of other listed surrogate countries that import larger quantities. In 2015, Thailand imported a significantly smaller amount of HCl at higher prices than other listed countries.[157]
- The Thai import value is also aberrant compared to Thai domestic prices for HCl during the POR. Thai government price requests for HCl contain benchmark prices for large industrial quantities of HCl at concentrations similar to those used by respondents at significantly lower prices. Additionally, a domestic price for Thailand obtained by a foreign researcher also showed significantly lower domestic price availability. Domestic European HCl prices also show the Thai HCl import data to be aberrant.[158]
- The Thai import quantity cannot be considered a commercial quantity because all but one shipment was less than a container load.
- In accordance with Department practice, the Department should instead rely on the largest importer of HCl; Bulgaria or Romania.[159]

Petitioners' Rebuttal Comments:

- To value HCl, the Department should continue to rely on the contemporaneous Thai value under HS subheading 2806.10.00102.
- The Department must reject the respondents' argument that Thai import values are unreliable because the values that the respondents rely on for benchmarking are not contemporaneous with the POR or are based on information from countries that the Department has determined are not at the same level of economic development as the PRC.
- While Jacobi provides information for one POR data set for an economically comparable country, it is unclear which country's imports were provided.[160]
- Jacobi does not provide any independent data to impeach the reliability of the import data in this, or prior, segments. Instead, they argue that that the Thai import volume is a very small quantity.
- No party has provided POR data on HCl imports from the five countries on the Surrogate Country List to benchmark the Thai GTA import data, rather Datong Juqiang has only provided calendar year (not POR) data.
- While Datong Juqiang cites to *Peer Bearing* to disqualify the Thai GTA data, Datong Juqiang fails to recognize that in that case, the Indonesian and Philippine import data for the POR were for markets found to be economically comparable with the NME in question,

[156] *See* Petitioner's SV Submission, dated September 13, 2016, at Attachment 1.
[157] *See* SR Companies' Case Brief at 16-17.
[158] *Id.* at 17 (citing DJAC SV Submission, dated December 1, 2016, at Exhibit 2, and *Itcohu* at 20-23).
[159] *Id.* at 18 (citing *Chlor Isos 2016*, and accompanying IDM at Comment 1, and *AR8 Carbon*, and accompanying IDM at Comment 3).
[160] *See* Petitioners' Rebuttal Brief at 24.

China, and the primary surrogate ME, India. Here, Datong Juqiang's benchmarks do not meet this standard.
- The Department should continue to use the contemporaneous Thai value under HTS subheading 2806.10.00102, because it is a value that comports with both the median and mean values used in the past eight segments of this proceeding and is of the same purity as the HCl used by the respondents.

Department's Position: The Department agrees with the petitioners and has continued to value HCl using the Thai imports of HCl under HS subheading 2806.10.00102, as stated in the *Preliminary Results*.[161]

As noted above, the Department's practice, when selecting the best available information, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax- and duty-exclusive. Further, the Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[162] While there is no hierarchy for applying the SV selection criteria, "the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' SV is for each input."[163] Additionally, the Department has a strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[164] In this case, we selected Thailand as our primary surrogate country, and for the final results, we continue to use Thailand as the primary surrogate country. Because the Department selected Thailand as the primary surrogate country, in line with our regulatory preference for valuing all surrogate values from one surrogate country, our first preference in selecting surrogate value data for this review is to utilize publicly available prices within Thailand.[165]

When presented with sufficient evidence to demonstrate a particular SV is aberrational, and therefore unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.[166] When considering benchmark data, the Department examines historical import data for the potential surrogate countries for a given case, to the extent such import data is available, and/or examines data from the same HS category for the primary surrogate country over multiple years

[161] *See* Prelim SV Memorandum at Attachment 1.
[162] *See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review,* 70 FR 47176 (August 12, 2005), and accompanying IDM at Comment 1.
[163] *See, e.g., PET Film 2008*; *see also Crawfish 2002*, and accompanying IDM at Comment 2.
[164] *See Jiaxing Brother 2014* (quoting *Sodium Hex*, and accompanying IDM at Comment I.
[165] *See* 19 CFR 351.408(c)(2)).
[166] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015), and accompanying IDM at Comment 6.

to determine if the current data appear aberrational compared to historical values.[167] Merely appearing on the low or high end of a range of values is not enough to make data aberrational.[168]

To value HCl, the record of this review contains: 1) Thai GTA import data under HS subheading 2806.10.00102 "Hydrochloric Acid 15% W/W To 36% W/W"; 2) Brazilian GTA import data under HS 2806.10; 3) Bulgarian GTA import data under HS 2806.10, 4) Mexican GTA import data under HS 2806.10; 5) South African GTA import data under HS 2806.10; 6) Romanian GTA import data under HS 2806.1; and, 7) Belgian, French, German, and U.S. ICIS domestic prices. Although Datong Juqiang, Jacobi and SR Companies contend that the Thai data for HS 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W" are aberrational, their arguments fail to impeach record information on HCl values contemporaneous with the POR and from countries that are at the same level of economic development as the PRC. While Datong Juqiang contends that the Thai import data are impeached by several global benchmark prices, the data they rely on are from Belgium, France, Germany, and the United States, which reflect prices in economies that are not at the same level of economic development as the PRC.[169] Additionally, Datong Juqiang, Jacobi, and SR Companies state that the Thai import data are impeached by GTA Brazil, Bulgaria, Romania, or South African import data for HS 2806.10, because the data are based on a higher volume of imports compared to the Thai GTA import data. However, the Brazilian, Bulgarian, South African, and Romanian data they suggest relying on are based on the broader HTS subcategory of 2806.10,[170] compared to the Thai data for HS 2806.10.000102, which is more specific to the input used to produce the subject merchandise. Moreover, when comparing the 2015 AUV's of HS 2806.10 from other countries on the Surrogate Country List, the Thai AUV for HS 2806.1 is $3.07 USD/kg followed by South Africa's AUV of $2.03 USD/kg.[171] The GTA import data for HS 2806.10 merely demonstrates that Thailand is on the upper range of AUV's for HS 2806.10. Accordingly, the Department considers the argument for using data representing the broad basket HS category 2806.10 to value HCl instead of using data representing the specific HS sub-category pertaining to the HCl grade used by Datong Juqiang and Jacobi to value HCl to be unpersuasive.

While parties argue that Thai data for HS 2806.10.000102 is aberrantly high, their arguments largely rely on the fact that the Thai values for HCl are higher than they were in previous reviews. Jacobi has submitted this argument before and the Department has previously rejected it as an inappropriate benchmark comparison. In this review, as in *AR8 Carbon*, the Department disagrees that the value for Thai HS code 2806.10.00102 is unusually high because the record does not contain historical data for HS code 2806.10.00102 from any of the countries we consider to be at the same level of economic development as the PRC.[172] The Department

[167] *See Carbazole Violet*, and accompanying IDM at Comment 6; *see also Tetrafluroethane*, and accompanying IDM at Comment 10; *see also Mittal Steel Gatlati SA v. United States*, 502 F. Supp. 2d 1295, 1308 (CIT 2007); *Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1326 (CIT 2013).
[168] *See, e.g., Wood Flooring 2014*, and accompanying IDM at Comment 6 ("Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier.").
[169] Chemical Industry News & Chemical Market Intelligence website. *See* Datong Juqiang SV Submission, dated December 1, 2016, at Exhibit 2.
[170] *See* Datong Juqiang's SV Submission, dated December 1, 2016, at Exhibit 2C.
[171] *See* Carbon Activated's SV Submission, dated April 3, 2017, at Exhibit SV-3.
[172] *Id.*

examines appropriate benchmark data to evaluate whether a value is unusable; merely appearing on the low or high end of a range of values is not alone enough to make data aberrational.[173] As such, the Department continues to disagree with the contention that the Thai import value for HCl is unusually high. Moreover, we note that the record does not contain historical data from the other countries from the Surrogate Country List that would enable the Department to determine whether the Thai HCl SV is unreliable. We note that interested parties bear the burden of building an administrative record and demonstrating that a value is aberrational.[174] Further, as discussed above, the CIT found in *Clearon II* that the Department is not required to evaluate data from non-economically comparable countries when making its SV selections unless the parties provide information showing that quality data is unavailable from all of the economically comparable countries.[175]

We disagree with SR Companies' contention that the Thai government documents act as an appropriate benchmark. We note that the documents to which SR Companies refer are requests for tenders. While these documents request the quantity and price at which the Thai government agencies desire to purchase HCl, these documents in no way reflect actual purchase prices which represent a broad market average.[176] Therefore, this documentation does not provide an adequate source for benchmarking or finding Thai GTA import data for HCl unreliable.[177]

Further, parties contend that the Thai imports under HS 2806.10.000102 are of such low quantity that they cannot be considered a commercial quantity compared to import quantities of other economically comparable countries. As we stated previously, no party provided information from any of the countries on the Surrogate Country List for the same HS subheading as that of the Thai GTA import data used in the *Preliminary Results*. Rather, the information on the record is for HS 2806.10.[178] This information indicates that South Africa had a lower 2015 import quantity than Thailand. However, neither the parties' arguments nor the record of this review provide an adequate reason why 106,946 kg of Thai imports under HS 2806.10.000102 could not be considered a commercial quantity.

No party has identified a rationale or provided appropriate benchmark data that would support the Department's rejection of the country-wide, tax-free, publicly available Thai import statistics for HCl, classified under the highly specific HTS subheading 2806.10.000102. Therefore, for the final results, the Department has continued to use the Thai import values for HCl which is the best available information on the record.

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[173] *See, e.g., Wood Flooring 2014*, and accompanying IDM at Comment 6 ("Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier.").
[174] *See QVD Food Co. Ltd. v. United States*, 685 F.3d 1318, 1325 (Fed. Cir. 2011) ("the burden of creating an adequate record lies with interested parties and not with Commerce").
[175] *See Clearon II,* 2015 WL 4978995, at *4 (internal citations omitted).
[176] *See* Carbon Activated Corporation's SV Submission, dated April 3, 2017, at Exhibit SV-3.
[177] *Id.*
[178] *Id.*

Comment 7: Whether to Use Industry-Specific Thai Labor Data

Datong Juqiang's Comments:

- The Department erred in preferring broad basket Thai National Statistical Office (NSO) Labor survey data for a general manufacturing sector over the industry-specific total labor cost. Further, the NSO Labor survey data fails to account for portions of indirect labor cost.
- Labor cost should be valued based on the industry-specific NSO Industrial Census data instead of the general manufacturing NSO labor survey data, because the NSO Industrial Census data of 2012 provides the Department with a product-specific data source to value labor. The labor costs under code 20299 are "industry-specific" for activated carbon.
- In *AR7 Carbon*, the Department preliminarily valued labor using the broad basket Thai NSO manufacturing data, but used the Thai NSO industry-specific labor data for the final results.[179] This methodology has been supported by the CIT.[180]
- First, unlike the 2012 NSO industry-specific data, the general manufacturing NSO data used in the *Preliminary Results*, do not include "Employer's contribution to social security system." As such, the general manufacturing NSO labor data fail to afford the Department with the total labor cost.
- The official NSO clarification letter contradicts the findings in *AR8 Carbon* and *PVLT Tires*.[181] In those instances, the Department explained that the general manufacturing data was a closer match to the International Labor Organization (ILO) Chapter 6A labor data. Evidence on this record demonstrates that the industry-specific data include all of the components of indirect labor costs covered by the ILO Chapter 6A data.
- The NSO industry-specific data are more comprehensive, particularly for indirect labor cost elements as compared to the NSO general manufacturing data, which is further demonstrated by the methodology used to collect the two types of data. Record evidence shows that the NSO industry specific data are gathered from a broad range of employees at their place of employment. In contrast, NSO official clarification shows that general manufacturing data are based on interviewing a few thousand people at their individual households.[182]
- The Department should make the 2012 industry-specific labor cost contemporaneous by applying the consumer price index (CPI) inflator in accordance with Department practice.[183]

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179 *See* Datong Juqiang's Case Brief at 50 (citing *AR7 Carbon*, and accompanying IDM at Comment 11; *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013,* 79 FR 71980, 71982 (December 4, 2014)).
180 *Id.* (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 2394 (January 16, 2015), and accompanying IDM at Comment 16, citing *Taian Ziyang Food Company, Ltd. vs. United States*, 918 F. Supp. 2d 1345, 1357 (CIT 2013) (*Taian*)).
181 *Id*. at 52-53 (citing *AR8 Carbon*, and accompanying IDM at Comment 11, and *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893, 34899 (June 18, 2015) (*PVLT Tires*), and accompanying IDM at Comment 13,
182 *Id*. at 55 (citing Datong's SV Submission, dated September 13, 2016, at Exhibit 6).
183 *Id*. at 56 (citing *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review,* 77 FR 12553, 1255 (March 1, 2012).

Petitioners' Rebuttal Comments:

- The Department should continue to rely on the Thai NSO's general manufacturing data because it offers contemporaneous costs for the POR. The Department should not rely on the 2011 labor costs reported in the 2012 NSO Industrial Census Survey under code 20299, because it is a basket category which includes potentially thousands of chemical manufacturers in dozens of industries.[184]
- While the NSO quarterly reports do not name social security payments, they do provide that all employees receive fringe benefits, the financial accounting term that includes indirect labor costs such as pension and social security costs. Moreover, the NSO quarterly reports contain two "other" columns for total labor costs that cover such labor costs.
- The Department has rejected similar arguments in *AR8 Carbon*, a fact Datong Juqiang attempts to circumvent through correspondence with the director of the NSO. This correspondence does not state that the totality of data are exclusive of social security benefit costs. Further, the language used in the director's letter seems unusually specific considering the source.
- While Datong Juqiang claims the quarterly data are not based on as broad a survey as the 2012 industry-specific data, Datong Juqiang does not point to any statistical standards which indicate that the sample size is not robust.
- Labor costs change by forces that are not predicated solely on general inflation, as the labor pool and employer strengths are unique. Contemporaneous costs from the four quarters of this POR are far more accurate than inflating 2011 NSO data. This was already true when the Department rejected these same data in *AR8 Carbon*, and the data are now more non-contemporaneous. While Datong Juqiang identifies past cases where the best information available required the use of CPI inflators, those circumstances are not present in this segment.
- The contemporaneous costs from the four quarters of this POR are far more accurate than inflating 2011 NSO data and should be used for the final results.

Department's Position: In *Labor Methodologies*, the Department stated that using data for industry-specific wages from the primary surrogate country is the best approach for valuing the labor input in NME antidumping (AD) proceedings, and that the ILO Yearbook's Chapter 6A is the preferred surrogate labor source, as it accounts for all direct and indirect labor costs (although the Department is not precluded from using other sources for valuing labor costs).[185] The CIT found the methodology for valuing labor using industry-specific data from the primary surrogate country is reasonable because it is consistent with how the Department values all other FOPs.[186]

[184] *See* Petitioners' Rebuttal Brief at 30 (citing Datong Juqiang's SV Submission, dated September 13, 2016, at Exhibit 6).
[185] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36093 (June 21, 2011) (*Labor Methodologies*); *see also Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 65616 (November 5, 2014); unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012- 2013*, 80 FR 13332 (March 13, 2015).
[186] *See Taian* at 1357.

We disagree with the petitioners that the 2012 Thai NSO labor data are a basket category which is not specific to the chemical industry. The petitioners have failed to demonstrate with record evidence why general manufacturing data would be more specific than the ILO industry classification 20299 "Manufacture of other chemical products n.e.c." The ILO's explanatory notes indicate that this category includes the production of activated carbon.[187] While the petitioners argue that the contemporaneity of the NSO data for general manufacturing wages outweighs the consideration that the SV is specific to the input, the Department has often found that specificity is more of a consideration than contemporaneity.[188]

In the *Preliminary Results*, the Department valued labor using contemporaneous NSO data for general manufacturing wages, rather than the industry-specific 2012 Thai NSO labor data, because the Department had previously determined in *PVLT Tires* that general manufacturing wages in Thailand have increased much more than the general rate of inflation (*i.e.*, consumer price index (CPI)) during the same approximate time frame as the period of the instant review.[189] However, upon further consideration, we have concluded that the 38 percent increase in general manufacturing wages would not necessarily reflect changes to the average labor cost prevailing in the chemical manufacturing industry because wages in the chemical manufacturing industry are significantly higher than Thailand's minimum wages in general manufacturing. Specifically, Thailand increased its minimum daily wage rate from 206 Baht per day (in 2011),[190] to 300 Baht per day (in 2013-14),[191] which roughly corresponded with a 38- percent increase in general manufacturing wages. Record evidence shows that in 2011, the chemical manufacturing industry's prevailing average daily wage rate was 500.8 Baht per day,[192] which was already well above the revised minimum wage level of 300 Baht per day in 2013-14. Additionally, in the five years preceding 2011, wages in the chemical products manufacturing industry increased 15 percent from 54.58 Baht per hour (*i.e.* 436 Baht per day) in 2006[193] to 62.60 Baht per hour (*i.e.* 516.8 Baht per day) in 2011, thus making unlikely an additional increase in the chemical manufacturing industry's wage rate of the magnitude of the increase in general manufacturing wages.[194] Given that the wages in the chemical manufacturing sector were already well above the new minimum wage rate, the 38- percent increase in general manufacturing wages likely had little to no effect on wages in the chemical manufacturing industry.

The petitioners argue that the NSO Labor Force Survey provides a more accurate breakout of the labor costs incurred in the manufacturing section because it includes items such as food, housing, and clothing and that the "employer's contribution to social security" could be included in the

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[187] *See* Datong Juqiang's SV Submission, dated September 13, 2016, at Exhibit 6.
[188] *See Certain Polyester Staple Fiber from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4542 (January 28, 2015), and accompanying IDM at Comment 5 (*PSF 2015*).
[189] *See* Prelim SV Memorandum at 5-6; *see also PVLT Tires,* 80 FR at 34899, and accompanying IDM at Comment 13, where the Department discusses the ILO Chapter 6A data.
[190] *See* Datong Juqiang's SV Submission, dated September 13, 2016, at Exhibit 6D.
[191] *Id.*
[192] *Id.* Based on the standard 8 hours in a working day, the average labor cost for the chemical manufacturing sector in Thailand in 2011 is calculated as 62.60*8 = 500.8 Baht/day.
[193] *Id.* at Exhibit 6B.
[194] *See* Datong Juqiang's SV Submission, dated September 13, 2016, at Exhibit 6D.

"other" item identified in the quarterly reports. While the Department in *AR8 Carbon* had found the NSO Labor Force Survey to be similar to ILO's Chapter 6A because it accounts for more labor costs,[195] upon reconsideration, we find that the 2012 NSO Industrial Census data, like the NSO Labor Force Survey data, are "fully loaded" labor costs, as represented in the ILO's Chapter 6A, which is a primary factor in selecting the best available information as described in *Labor Methodologies*.[196] Specifically, the NSO Industrial Census data reports wages, salaries, overtime, bonuses, medical care, and employer's contribution to social security.[197] While the NSO Industrial Census data reports "Fringe Benefits: Others" rather than specific items such as housing and clothing, considering the values associated with "Fringe Benefits: Others" the Department can make the reasonable assumption that such items are included in this field.[198]

Based on the Department's preference to value labor using industry-specific wage data and the record evidence showing that the minimum wage increase likely did not directly reflect changes in wage rates of the chemical manufacturing sector, we have determined it appropriate to value labor using the industry-specific 2011 rate of 62.60 Baht per hour from the 2012 NSO Industrial Census under Code 20299 "Manufacture of Other Chemical Products, n.e.c."[199] Because this rate is not contemporaneous with the review period, we have inflated it using the CPI. The Department considers the CPI to be the best available information to capture the inflation within a country, including its labor wage rates.

Comment 8: Whether to Continue to Use the Thai Financial Statements

Datong Juqiang's Comments:

- The Department should utilize the 2015 Romanian Romcarbon SA (Romcarbon) financial statements to value the financial ratios, rather than the 2011 Thai Carbokarn Co., Ltd. (Carbokarn) financial statements.
- Romcarbon's statements are from an economically comparable country, are from a producer of comparable merchandise, and provide more detailed and relatively more contemporaneous data.[200] The statements' three month lapse in contemporaneity from the POR is irrelevant because the Department has held that financial ratios are less susceptible to change.[201]

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195 *See AR8 Carbon*, and accompanying IDM at Comment 7.
196 *See Labor Methodologies*, 76 FR at 36093.
197 *See* Datong Juqiang's SV Submission, dated September 13, 2016, at Exhibit 6A.
198 *Id.*
199 *See AR7 Carbon*, and accompanying IDM at Comment 11; *see also Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, Final Partial Rescission; 2014-2015*, 82 FR 11434 (February 23, 2017), and accompanying IDM at Comment 6.
200 *See* Datong Juqiang's Case Brief at 60 (citing Datong Juqiang's SV Submission (September 13, 2016) at Exhibit 7A).
201 *Id.* (citing *Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part*, 76 FR 66036 (October 25, 2011), and accompanying IDM at Comment 2)).

- The fact that the statements are from a secondary surrogate country should not be an impediment to its selection according to agency precedent.[202]

Jacobi's Comments:

- Instead of using Carbokarn's 2011 financial statements, the Department should use the Philippines average financial ratios derived from the financial statements of Cenapro (2014), Cenapro (2015) and Mindanao (2014) to calculate the financial ratios, because they represent a broad-market average from more than one company.[203]
- First, the evidentiary record before the Department contains evidence that Carbokarn benefitted from countervailable subsidies.[204] Under Notes to Financial Statements for the year ended December 31, 2011 and 2010, at item 5: Trade and other receivables, it appears that the company received a subsidy in form of a tax coupon in both 2010 and 2011.[205]
- Second, Carbokarn's 2011 financial statement is not contemporaneous to the POR, but it covers calendar year 2011, four years prior to the POR. Because the Department has a stated policy to use contemporaneous data from ME surrogate companies when selecting financial statements for purposes of calculating financial ratios, Carbokarn's 2011 financial statements fail to satisfy the Department's own standards.
- The Philippines average financial ratios are the best information to value Jacobi's financial ratios because they do not contain evidence of known countervailable subsidies, and they are more contemporaneous with this POR than Carbokarn's 2011 financial statements.

SR Companies' Comments:

- The Department should reject the Thai financial statement because it is not contemporaneous with the POR, which is particularly important considering the 2008 financial crisis and its impact on world economies. The Philippine and Indian financial statements are from the period of global recovery making them more suitable.
- The record does not contain information about the extent of activated carbon produced by Carbokarn. Further, Carbokarn's financial statements suggest it sells high-end filter products. The Department has a strong preference for identical production.[206] The record contains financial statements from four Philippine and five Indian producers of identical merchandise.[207]

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[202] *Id.* (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168, 36170 (June 17, 2013), and accompanying IDM at Comment 9; and *Freshwater Crawfish Tail Meat from the People's Republic of China: Antidumping Duty Administrative Review; 2010- 2011*, 77 FR 61383, 61385 (October 9, 2012) (Department applied Thai financial statements when the primary surrogate country was Indonesia)).
[203] *See* Jacobi's Case Brief at 34-37.
[204] *Id.* at 35 (citing Petitioner's SV Submission, dated September 13, 2016, at Attachment 4).
[205] *Id.* at 36 (citing Petitioner's SV Submission, dated September 13, 2016, at Attachment 4 (Tax coupon receivables: 122,745.34 Baht (2010) and 462, 557.01 Baht (2011)).
[206] *See* SR Companies' Case Brief at 20.
[207] *Id.* (citing Jacobi's SV Submission, dated September 13, 2016, at Exhibit 10).

- The Department should not use Carbokarn's financial statements because they contain countervailable subsidies; specifically, Carbokarn received "Tax coupon receivables."[208]
- The Department has a strong preference for using multiple financial statements. In *AR4 Carbon*, the Department switched from Thailand to the Philippines because the Philippines provided multiple financial statements.[209] Therefore, according to Department's practice, the Philippine and Indian financial statements are the best available information.
- While the preference to value all FOPs from a single surrogate country to the extent possible is not unreasonable, the CIT has held that the Department "must still yield to reason and the sourcing of particular surrogate values from outside the primary surrogate country."[210] This is only preference and does not prevent the Department from seeking SVs from outside the primary surrogate country when there is superior information from a secondary surrogate country.[211]

Petitioners' Rebuttal Comments:

- The Department should continue to use Carbokarn's financial statements to calculate the surrogate financial ratios.
- Datong Juqiang's argument that the Department should rely on Romcarbon's financial statements is flawed because the argument is based on the false assumption that Romcarbon is (and has been) a producer of identical and comparable merchandise. Instead, Romcarbon produces a limited amount of activated carbon for internal consumption in the production of gas mask filtration materials.[212]
- Despite Datong Juqiang's claim, Romcarbon's financial statements do not permit the removal of freight charges because the line item "transportation" in the financial statement could reference any movement expenses incurred by Romcarbon, including freight for raw materials.
- The challenges to the reliability of Carbokarn's 2011 financial statements are baseless and were previously rejected by the Department. Jacobi's claim that the notes to trade receivables give rise to a "suspicion" that there may have been countervailable subsidies, were previously rejected by the Department in the two immediately preceding reviews.
- The Department should reject SR Companies' claim that relying on multiple financials statements is superior to relying on a sole financial statement. While the Department acknowledges its preference to use multiple financial statements where appropriate, that

[208] *See* SR Companies' Brief at 21 (citing *Omnibus Trade and Competitiveness Act*, HR Rep No. 100-576 at 590-591 (1988) and *Certain Frozen Warmwater Shrimp Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at Comment 6).

[209] *Id.* (citing *Certain Activated Carbon from the Peoples Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012), and accompanying IDM at Comment 1F (*AR4 Carbon*); *see also Steel Wire Garment Hangers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 28803 (May 16, 2013), and accompanying IDM at comment 1D.

[210] *Id.* at 23 (citing *Juancheng Kangtai Chem. Co. v United States*, 2015 Ct. Intl. Trade LEXIS 94, *71-72 (Ct. Int'l Trade August 21, 2015).

[211] *Id.* (citing *Diamond Sawblades Manufactures Coal. v. United States*, 219 F. Supp. 3d 1368, 1383 (CIT March, 31, 2017)).

[212] *See* Petitioner's Rebuttal Brief at 33 (citing Petitioner's Surrogate Country Letter, dated August 19, 2016 at 3 and Attachment 2).

preference is outweighed by the Department's desire to rely on a statement from the primary surrogate country when one is available.

Department's Position: When selecting financial statements for purposes of calculating surrogate financial ratios, the Department's policy is to use data from one or more ME surrogate companies based on the "specificity, contemporaneity, and quality of the data."[213] Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors…." In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit.[214] Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.[215] However, the Department is not required to "duplicate the exact production experience of an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."[216] Additionally, the Department has a strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[217] Further, courts have recognized the Department's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[218]

The record contains 2014 and 2015 financial statements for companies in the Philippines and 2015 financial statements for companies in India. The record also contains the 2015 financial statements from Romcarbon, a Romanian manufacturer of polyethylene, polypropylene, and polyvinyl chloride products, and the 2011 financial statements of Carbokarn, a Thai producer of activated carbon.

First, we have determined not to use the financial statements from the companies within India and the Philippines because these financial statements come from companies operating in countries that have not been found to be at the same level of economic development as the PRC, and the statements are not from the primary surrogate country. Regarding SR Companies' argument, citing *AR4 Carbon* in support, that the Department prefers to use multiple financial

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[213] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances*, 71 FR 29303 (May 22, 2006) (*Diamond Sawblades LTFV Final*), and accompanying IDM at Comment 1.
[214] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews,* 72 FR 52049 (September 12, 2007) and accompanying IDM at Comment 2.
[215] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying IDM at Comment 13.
[216] *See Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (*Nation Ford*); *see also Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999).
[217] *See Jiaxing Brother 2014* (quoting *Sodium Hex* and accompanying IDM at Comment I).
[218] *See, e.g., FMC Corp. v. United States*, 27 CIT 240, 251 (CIT 2003) (holding that the Department can exercise discretion in choosing between reasonable alternatives), *aff'd* in *FMC Corp. v. United States*, 87 F. App'x 753 (Fed. Cir. 2004).

statements over a single financial statement from the primary surrogate country, we note that in *AR4 Carbon,* where the Department used multiple financial statements from the Philippines, the Philippines was on the surrogate country list in that review, unlike in this review. Furthermore, as noted above, the Department has a strong preference, reflected in 19 CFR 351.408(c)(2), to value all FOPs in a single surrogate country and to "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[219] Because we do not find that surrogate financial data from Thailand, our primary surrogate country, are unavailable or unreliable, the Department does not consider the financial statements from India and the Philippines to be better SV sources than the financial statements from Thailand.

Second, Datong Juqiang contends that the Department should rely on the Romanian 2015 Romcarbon financial statements for the final results because they provide more detailed and contemporaneous data. While there is some evidence which suggests that Romcarbon produces some activated carbon, its principal manufacturing activities are polyethylene, polypropylene, polyvinyl chloride, polystyrene processing, filters and protective materials.[220] Additionally, with respect to contemporaneity, while the Romcarbon's 2015 statements are contemporaneous with the POR, the Department has a preference of selecting financial statements from the primary surrogate country when possible.[221] Although the Department is not required to "duplicate the exact production experience of" an NME producer,[222] we note that Carbokarn's "main business is manufacture, export and import of{sic} charcoal water filter, charcoal, and chemical products."[223] We therefore determine that Carbokarn is a producer of comparable merchandise,. We therefore find that contemporaneous statements from a country other than the primary surrogate country are not the best available information when the record contains as a financial statements from a producer of comparable merchandise from the primary surrogate country.

Finally, we disagree with Jacobi's claim that Carbokarn's financial statements contain evidence of countervailable subsidies and thus cannot be used, as this argument is based purely on speculation. While Jacobi and SR Companies contend that Carbokarn benefited from a tax coupon program, there is no evidence demonstrating that the "tax coupon receivables" are related to a Thai program previously found countervailable by the Department. Here, parties do not cite or identify any specific Thai subsidy program related to the financial statements which the Department has previously found to be countervailable.[224] Further, the fact that the Department has found the existence of countervailable subsidy programs in other investigations and reviews involving Thailand does not mean, as Jacobi and SR Companies suggest, that the surrogate producer in question is receiving countervailable subsidies.[225] Where the Department has reason to believe or suspect that a company received subsidies, based on information in the company's financial statements, the Department may find that the financial ratios derived from that company's financial statements are less representative of the financial experience of the company or the relevant industry compared to ratios derived from financial statements that do

[219] *See Jiaxing Brother 2014* (quoting *Sodium Hex* and accompanying IDM at Comment I).
[220] *See* Datong Juqiang's SV Submission, dated December 1, 2016, at Exhibit 3A.
[221] *See, e.g., AR7 Carbon*, and accompanying IDM at Comment 2.
[222] *See Nation Ford* at 1377.
[223] *See* Petitioner's SV Submission, dated September 13, 2016, at Attachment 4.
[224] *See* Jacobi's Case Brief at 35-36.
[225] *See AR7 Carbon*, and accompanying IDM at Comment 1.

not contain evidence of subsidies.[226] However, it is our practice not to reject financial statements based on evidence that the company received export subsidies unless we have previously found the specific export subsidy program to be countervailable.[227] Therefore, the Department continues to find that Carbokarn's financial statements are suitable for use in the calculation of surrogate financial ratios. Accordingly, because Carbokarn is primarily a producer of comparable merchandise, it is from the primary surrogate country and its statements are publicly available and complete, we continue to find that Carbokarn's 2011 financial statements represent the best available information to calculate the surrogate financial ratios.

<u>Company Specific Issues</u>

Comment 9: Whether to Apply Partial Adverse Facts Available for Datong Juqiang's Wood Input

Petitioners' Comments:

- Because Datong Juqiang did not report wood consumption, used to start the carbonization and activation furnaces, as an FOP, the Department should apply partial AFA for this input.
- Datong Juqiang has participated in previous reviews and failed to provide information requested by the Department. Further, Datong Juqiang's failure to report wood consumption constitutes a failure by Datong Juqiang to act to the best of its ability to provide information.[228]
- As partial AFA, the Department should account for Datong Juqiang's consumption of wood by doubling the reported energy coal consumption for its furnaces.

Datong Juqiang Rebuttal Comments:

- The petitioners' arguments are meritless, derived from incomplete facts and unsupported by record evidence. Rather, evidence on the record demonstrates that the Department satisfactorily verified Datong Juqiang's production process and FOPs during verification.
- While Datong Juqiang's Verification Report does not elaborate on the use of wood to start the carbonization and activation furnaces, the report unambiguously demonstrates the Department did not consider wood as an unreported FOP.[229] If the Department had considered wood as an unreported FOP, it would have scrutinized this issue further and would have required Datong Juqiang to submit accounting documentation for purchases of

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[226] *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews,* 72 FR 19174 (April 17, 2007), and accompanying IDM at Comment 1.

[227] *See, e.g., Certain Steel Nails from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011), and accompanying IDM at Comment 3; *see also Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (January 12, 2010), and accompanying IDM at Comment 4; *see also Certain Steel Threaded Rod from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 68400 (November 4, 2011), and accompanying IDM at Comment 5.

[228] *See* Petitioners' Case Brief at 3 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003)).

[229] *See* Datong Juqiang's Rebuttal Brief, dated August 4, 2017 (Datong Juqiang Rebuttal) at .pdf page 6 (citing Datong Juqiang Verification Report at 8.)

wood. However, there is no mention of wood as a material used in production in the verification report or accounting documentation.

- The Department verified the accuracy of the totality of Datong Juqiang's reported FOPs during the carbonization and activation stages. There is no doubt that Datong Juqiang did not consume wood as a FOP during the production of the subject merchandise.

Department's Position: We disagree with the petitioners that we should apply partial AFA to the wood used by Datong Juqiang to start its furnaces. Section 776(a)(1) and 776(a)(2)(D) of the Act provide that if necessary information is not available on the record or if an interested party provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act,[230] use facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.

The petitioners contend that Datong Juqiang failed to act to the best of its ability by not reporting wood as an energy input. However, as noted by Datong Juqiang, there is no evidence on the record, or any evidence found at the verification of Datong Juqiang's production facility, that would demonstrate that Datong Juqiang purchased wood to fuel its carbonization or activation furnaces during the POR.[231] Rather, as noted in DJAC's Verification Report, Datong Juqiang used wood to start the furnaces, as in beginning the combustion process which fired the furnaces, as reported by Datong Juqiang in its section D supplemental response.[232] This "starting" is a one-time process, and does not support a finding that wood was used as a continuous fuel source to heat the furnaces. Accordingly, because it seems that, based on our verification, that wood is not a material used or replaced on a frequent basis consistent with an FOP used in the production process, we find that partial AFA is not warranted for the incidental wood used by Datong Juqiang to start the heating process of its furnaces. However, the Department puts companies on notice that, in subsequent reviews, they should report consumption factors for all materials, no matter how incidental, used in the production process.

[230] Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may disregard all or part of the original and subsequent responses, as appropriate.

[231] *See* DJAC's Verification Report at VE-9 and DJAC's Section D Response, dated August 20, 2016, at Exhibit D-12.

[232] *See* Datong Juqiang's section D supplemental questionnaire response, dated February 22, 2016, at 6 and Exhibit SD-6.

Comment 10: Whether to Revise Ningxia Guanghua Activated Carbon Co., Ltd.'s Water Consumption

Petitioners' Comments:

- The Department should revise the total numerator of the ratio of the POR water consumption at the boiler rooms for NXGH to account for one extra day of water consumption, as the Department noted during the verification.
- The Department should revise the water consumption factor to account for the larger size boilers used at the activation stage, as the Department noted during the verification.

Department's Position: We agree with the petitioners that we should revise the total POR water consumption numerator. At verification, we found that the actual boiler sizes were larger than previously reported.[233] Also, because NXGH underreported the total number of days for which it used the boilers to calculate its water consumption for activation, NXGH's calculated water consumption ratio was underreported for the preliminary results.[234] Thus, for the final results. we made the appropriate adjustments to account for the larger size boilers and the additional day of water consumption.[235] Accordingly, in the final margin calculation program, we adjusted the CONNUM-specific consumption rates to account for the revised water consumption.[236]

Comment 11: Jacobi Tianjin's New Packing Variable

Petitioners' Comments:

- The Department should incorporate into its margin calculation program the new packing variable for plastic film reported by Jacobi on the first day of verification.

Department's Position: We agree with the petitioners that we should include Jacobi's packing film in the final margin calculation. As a minor correction at verification, Jacobi reported that when examining the Chinese description of certain materials, it discovered plastic film to be a different material from stretch film which had already been reported.[237] Therefore, in the final margin calculation program we used the packing[238] FOP database submitted by Jacobi post-verification, which includes the new packing variable, and valued the new packing variable using a Thai SV for plastic film, in HS 3920.10, because this HS number reflects the most similar product for which SV data is available on the record.[239]

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[233] *See* NXGH Verification Report at 7-8 and Verification Exhibit (VE) - 6,
[234] *Id.*
[235] *See* Jacobi's Final Calc Memo.
[236] *Id.*
[237] *See* Memorandum, "Verification of the Questionnaire Responses of Jacobi Carbons Industry (Tianjin) Company Limited in the Antidumping Administrative Review of Certain Activated Carbon from the People's Republic of China," dated June 30, 2017 (JCC Verification Report) at 1 and Verification Exhibit (VE) – 1.
[238] Jacobi Carbon Industry (Tianjin) Co., Ltd. (Jacobi Tianjin or JCC) packs and ships the subject merchandise to the U.S. and is affiliated with Jacobi Carbons AB.
[239] *See* Jacobi's Final Calc Memo.

Comment 12: Whether to Adjust Jacobi Tianjin's Packing Variance

Petitioners' Comments:
- Jacobi either did not apply variances, or applied incorrect variances, to adjust the standard consumption to actual consumption for certain packing materials.
- All adjusted packing material consumption values in Jacobi's packing worksheet should be multiplied by 1000 kg to bring them to a kg/MT basis.
- No column was included for drums with respect to certain packing styles.

Jacobi's Rebuttal Comments:
- Jacobi's conversion methodology is accurate, as reviewed and verified by the Department.

Department's Position: We disagree with the petitioners' comment that Jacobi did not apply or applied incorrect variances to adjust standard consumption to actual consumption. We note that Jacobi submitted an updated packing FOP calculation worksheet where Jacobi correctly applied the reported variances.[240] Moreover, the packing FOP database used in the preliminary margin calculation program used the correct variances and corresponds to the updated packing FOP calculation worksheet. Thus, there is no need to make variance calculation adjustments in the final margin calculation program.

We agree with the petitioners' comment that we should adjust packing material consumption values. Both the original and updated packing FOP calculation worksheets contain errors in labeling units of measure. The consumption value calculations in the worksheets demonstrate that the packing consumption ratios reported in Jacobi's updated packing worksheet labeled in kg/MT units actually represent kg/kg or MT/MT values. As a result, in the preliminary margin calculation program, we erroneously applied Baht/kg surrogate values to kg/kg or MT/MT unit consumption ratios. Therefore, in the final margin calculation program, we adjusted the packing material consumption ratio values to express them in kg/MT.[241]

We disagree with the petitioners that Jacobi did not include a column for drums. The original and updated packing FOP calculation worksheets and the FOP database used in the preliminary margin calculation program contain a column for drums for all packing styles;[242] moreover, we note that Jacobi had correctly set the consumption of drums to zero because no cost for drums was incurred.[243]

Comment 13: Jacobi Tianjin's Fiberboard Consumption

Petitioners' Comments:
- The Department should adjust the fiberboard consumption factor upward by the amount of weight observed during the verification.

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[240] *See* Jacobi's February 28, 2017 Section D Supplemental Questionnaire Response at Exhibit JCC-S2-7.
[241] *See* Jacobi's Final Calc Memo.
[242] *See e.g.*, Jacobi's February 28, 2017 Section D Supplemental Questionnaire Response at Exhibit JCC-S2-1.
[243] *See* Jacobi's February 15, 2017 Section D Supplemental Questionnaire Response at 17.

Jacobi's Rebuttal Comments:

- The weight of each piece of fiberboard may vary based on the specific supplier, batch, type of wood used, and humidity of the environment. The Department should not consider the weight of fiberboard it measured during the verification because of high humidity conditions which resulted in heavier than usual fiberboard weights.
- Alternatively, the Department should use the average of the two available unit weights.

Department's Position: We agree with the petitioners' comment to adjust the fiberboard factor and agree with Jacobi as to the method of adjustment. As Jacobi stated in its explanation for the discrepancy, the weight of fiberboard may vary due to various factors.[244] Adjusting the fiberboard factor for the final margin calculation program is appropriate because Jacobi's reported consumption does not account for the variance in weight due to the various factors, as stated by Jacobi. Because we have two weight values on the record,[245] and there is no indication that one value is more accurate than the other, adjusting the fiberboard factor in favor of either of the two values is not appropriate. Thus, we find it reasonable to adjust the fiberboard factor by averaging the two available unit weights in the final margin calculation program.[246]

Comment 14: Whether to Apply Partial AFA to Jacobi Tianjin's Factors of Production Allocation

Petitioners' Comments:

- The Department should apply AFA and multiply all reported factors for packing by a reversal coefficient, the total production (*i.e.* packing) volume used in the supplemental response for that factor divided by the smallest volume reported on the record, because of Jacobi's failure to report the total volume of production (*i.e.* packing) accurately and consistently.

Jacobi's Rebuttal Comments:

- The Department should use the amount of total volume of packaged merchandise presented at the verification to recalculate the reported packing factors.

Department's Position: We agree with the petitioners that the Department should apply partial AFA and modify Jacobi Tianjin's denominator based on the smallest volume of production quantity on the record (*i.e.,* the quantity of packed activated carbon), because we were unable to verify Jacobi Tianjin's production quantity.

Section 776(b) of the Act provides that the Department may use AFA when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. The Department's practice when applying partial AFA is to first assess whether the use of facts available is justified pursuant to section 776(a) of the Act, and then, whether the criteria for AFA have been met pursuant to sections 776(b) and 782(d) of the Act.[247] First, we find that the use of

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[244] *See* JCC Verification Report at 4-5.
[245] *Id.*
[246] *See* Jacobi's Final Calc Memo.
[247] *See e.g.*, *Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 16372 (April 4, 2017), and

facts available is warranted pursuant to section 776(a)(2)(D) of the Act because Jacobi Tianjin provided numerous packing denominators on the record which we could not verify. Specifically, in its initial section D questionnaire response, Jacobi Tianjin reported three different total production quantities in its packing materials worksheet,[248] electricity and water worksheets,[249] and labor worksheet.[250] In response to the Department's supplemental questionnaire, Jacobi Tianjin revised its labor worksheet production totals to correct several errors.[251] Also, in response to the Department's supplemental questionnaire, Jacobi stated that it had inadvertently utilized shipment quantity as the denominator for electricity and water, and therefore, provided an updated electricity and water calculation worksheets matching the updated labor worksheet.[252] At the verification, company officials provided calculation worksheets for energy and labor consumption factors which also contained inconsistent denominators.[253] Company officials then presented yet another denominator for the total volume of merchandise packed, which did not reconcile with any of the previously reported quantities.[254]

Second, we find that the criteria for use of AFA have been met pursuant to sections 776(b) and 782(d) of the Act because Jacobi's affiliate, Jacobi Tianjin, failed to cooperate to the best of its ability by submitting numerous conflicting denominators in their questionnaire and supplemental questionnaire responses which Jacobi Tianjin was not able to substantiate during the verification. Although Jacobi Tianjin presented another denominator during the verification with an explanation of how it was calculated, Jacobi Tianjin was not able to reconcile it with previously reported denominators or to its books and records.[255] Therefore, applying partial AFA with respect to Jacobi Tianjin's denominator is appropriate pursuant to section 776(a) and (b) of the Act. Accordingly, for the final results, as partial AFA, we used the smallest production quantity on the record as Jacobi Tianjin's total production, *i.e.* packing quantity, in order to recalculate Jacobi Tianjin's packing FOPs.[256]

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accompanying IDM at III. Use of Adverse Facts Available, Comment 1, and Comment 13; *see also First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009), and accompanying Issues and Decision Memorandum at Comment 4; *see also Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012), and accompanying IDM at Comment 7.

[248] *See* Jacobi's August 15, 2016 Section D Questionnaire Response at Exhibit B, JCC-D-9.
[249] *Id.* at Exhibit B, JCC-D-10 and JCC-D-11.
[250] *Id.* at Exhibit B, JCC-D-5.
[251] *See* Jacobi's February 15, 2016 Section D Supplemental Questionnaire Response at 2 and Exhibit JCC-S1-2.
[252] *Id.* at 16 and Exhibits JCC-S1-4 and JCC-S1-11.
[253] *See* JCC Verification Report at 9.
[254] *Id.* at 10.
[255] *Id.* at 11.
[256] *See* Jacobi's Final Calc Memo.

RECOMMENDATION

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

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Agree Disagree

11/1/2017

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Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance