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May 3, 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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of Antidumping
Duty Administrative Review: Certain Activated Carbon from the
People's Republic of China; 2016-2017

SUMMARY

In response to timely requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (China) for the period of review (POR) April 1, 2016, through March 31, 2017. Commerce preliminarily determines that sales of the subject merchandise in the United States were at prices below normal value (NV).

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

BACKGROUND

On June 7, 2017, pursuant to timely received requests for review, Commerce published the notice of initiation of the tenth administrative review of the antidumping duty order on certain



activated carbon from China for the POR, April 1, 2016, to March 31, 2017.¹ Commerce initiated an administrative review of 209 exporters of subject merchandise.²

On June 8, 2017, Commerce placed CBP data for imports made during the POR under the Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the order on the record of the review and requested comments on the data for use in respondent selection.³ No party submitted respondent selection comments.

On June 26, 2017, Commerce issued the respondent selection memorandum, selecting Carbon Activated Tianjin Co., Ltd. (Carbon Activated) and Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) (collectively, the mandatory respondents) for individual examination because they are the two largest exporters or producers of the subject merchandise, by volume, during the POR.⁴ On December 7, 2017, Commerce rescinded the administrative review with respect to 185 companies, continuing the review with respect to 24 remaining companies.⁵

On June 27, 2017, Commerce sent initial antidumping (AD) questionnaires to Carbon Activated and Datong Juqiang. Commerce received responses to section A of the questionnaire from both respondents in August 2017,⁶ and to sections C and D in August and September 2017.⁷ From September 2017, through April 2018, Commerce issued and received responses to supplemental questionnaires from Carbon Activated and Datong Juqiang.

On November 6, 2017, Commerce extended the preliminary results deadline until April 30, 2018.⁸ On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.⁹ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 26444 (June 7, 2017) (*Initiation Notice*).

² *Id.* at 82 FR 26445-48.

³ See Memorandum, "Certain Activated Carbon from the People's Republic of China: U.S. Customs and Border Protection Data Release for Respondent Selection," dated June 8, 2017.

⁴ *Id.* at Attachment.

⁵ See *Certain Activated Carbon from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2016-2017*, 82 FR 57721 (December 7, 2017) (AR10 Carbon Partial Rescission) (Because in the *Initiation Notice* the same company was listed twice, Shanxi Dapu International Co., Ltd. and Shanxi Dapu International Trade Co., Ltd., we continued the review with respect to 24 companies – not 25).

⁶ See Carbon Activated's August 4, 2017 Section A Questionnaire Response (Carbon Activated's Section A Response) and Datong Juqiang's August 1, 2017 Section A Questionnaire Response (Datong Juqiang's Section A Response).

⁷ See Carbon Activated's September 5, 2017 Section C Questionnaire Response (Carbon Activated's Section C Response); Carbon Activated's September 15, 2017 Section D Questionnaire Response (Carbon Activated's Section D Response); Datong Juqiang's August 21, 2017 Sections C and D Questionnaire Response (Datong Juqiang's Sections C and D Response).

⁸ See Memorandum, "Certain Activated Carbon from the People's Republic of China: Extension of Deadline for Preliminary Results of the Tenth Antidumping Duty Administrative Review," dated November 6, 2017.

⁹ See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

the next business day. The revised deadline for the preliminary results of this review is May 3, 2018.

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 CO₂ gas) activated carbons are within the scope, and those containing more than 50 percent chemically activated carbons are outside the scope. This exclusion language regarding blended material applies only to mixtures of steam and chemically activated carbons.

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

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

Any activated carbon meeting the physical description of subject merchandise provided above

that is not expressly excluded from the scope is included within the scope. The products subject to the order are currently classifiable under the HTSUS subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

DISCUSSION OF THE METHODOLOGY

Preliminary Finding of No Shipments

Calgon Carbon (Tianjin) Co., Ltd. (Calgon Tianjin), Datong Municipal Yunguang Activated Carbon Co., Ltd. (Datong Yunguang), Jilin Bright Future Chemicals Co., Ltd. (Jilin Bright Future), Shanxi Dapu International Trade Co., Ltd. (Shanxi Dapu), Shanxi Industry Technology Trading Co., Ltd. (Shanxi Industry), Shanxi Tianxi Purification Filter Co., Ltd. (Shanxi Tianxi), and Tianjin Channel Filters Co., Ltd. (Tianjin Channel) reported that they made no shipments of subject merchandise to the United States during the POR.¹⁰ To confirm these no-shipment claims, Commerce issued a no-shipment inquiry to CBP requesting that it review each company's no-shipment claim.¹¹ CBP reported that it did not have information to contradict these companies' claims of no shipments during the POR.

As stated above, Commerce rescinded this administrative review with respect to 185 companies, including Shanxi Tianxi.¹² Given that the companies referenced above for which this administrative review has not been rescinded certified that they made no shipments of subject merchandise to the United States during the POR, and there is no information contradicting their claims, Commerce preliminarily determines that Calgon Tianjin, Datong Yunguang, Jilin Bright Future, Shanxi Dapu, Shanxi Industry, and Tianjin Channel did not have shipments during the POR. Consistent with Commerce's practice, Commerce will not rescind the review with respect to these companies, but rather complete the review and issue assessment instructions to CBP based on the final results.¹³

¹⁰ See Calgon Tianjin's June 30, 2017, Datong Yunguang's July 7, 2017, Jilin Bright Future's July 7, 2017, Shanxi Dapu's June 26, 2017, Shanxi Industry's July 3, 2017, Shanxi Tianxi's June 16, 2017, and Tianjin Channel's June 16, 2017 No Shipment Certifications.

¹¹ See No shipments inquiry for certain activated carbon from the People's Republic of China exported by multiple companies (A-570-904), message number 7215301, dated August 3, 2017.

¹² See AR10 Carbon Partial Rescission.

¹³ See, e.g., *Certain Frozen Warmwater Shrimp From Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012-2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013*, 79 FR at 51306 (August 28, 2014).

Non-Market Economy Country

Commerce considers China to be a non-market-economy (NME) country.¹⁴ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding have contested such treatment. Therefore, Commerce continues to treat China as an NME country for purposes of these preliminary results.

Separate Rates

Commerce has the rebuttable presumption that all companies within an NME are subject to government control and, thus, should be assessed a single antidumping duty rate.¹⁵ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate-rate status in NME proceedings.¹⁶ It is Commerce's policy to assign all exporters of the merchandise subject to review in an NME proceeding a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME proceeding under the test established in *Sparklers*,¹⁷ as amplified by *Silicon Carbide*¹⁸ and further refined by *Diamond Sawblades*.¹⁹ However, if Commerce determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government

¹⁴ See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum to Gary Taverman, "China's Status as a Non-Market Economy," dated October 26, 2017), unchanged in *Certain Aluminum Foil From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

¹⁵ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

¹⁶ See *Initiation Notice*, 82 FR at 26444-45.

¹⁷ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

¹⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

¹⁹ See *Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China* (May 6, 2013) in *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), sustained, *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), aff'd, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>; see also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) (*Diamond Sawblades*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

control.²⁰

Commerce continues to evaluate its practice with regard to the separate-rates analysis in light of the *Diamond Sawblades* antidumping duty proceeding, and Commerce's determinations therein. In particular, in litigation involving the *Diamond Sawblades* proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate-rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the exporter under examination.²¹ Following the Court's reasoning, in recent proceedings, Commerce has concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.²² This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, Commerce would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

As discussed below, of the 24 companies under review, six companies filed a timely separate-rate application (SRA) or separate-rate certification (SRC). Commerce received completed responses to the section A portion of the NME questionnaire from Carbon Activated and Datong Juqiang,²³ which contained information pertaining to the companies' eligibility for a separate rate. Commerce received either a SRA or SRC from the following six companies (separate-rate applicants):

²⁰ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review and New Shipper Reviews*, 79 FR 4327 (January 27, 2014), and *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

²¹ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.*, at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *id.*, at 1355 ("The point here is that 'governmental control' in the context of the separate-rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); and *id.*, at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

²² See *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9.

²³ See Carbon Activated's Section A Response and Datong Juqiang's Section A Response.

1. Beijing Pacific Activated Carbon Products Co., Ltd. (Beijing Pacific),²⁴
2. Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (Cherishmet),²⁵
3. Jacobi Carbons AB and its affiliates, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) Co. Ltd. (collectively, Jacobi).²⁶
4. Ningxia Huahui Activated Carbon Co., Ltd. (Huahui),²⁷
5. Ningxia Mineral & Chemical Limited (Ningxia Mineral),²⁸ and
6. Shanxi Sincere Industrial Co., Ltd. (Sincere Industrial).²⁹

a. Wholly Foreign-Owned Applicants

Mandatory respondent Carbon Activated demonstrated that it is wholly owned by individuals located in a market-economy (ME) country, the United States.³⁰ Jacobi demonstrated that it is wholly owned by a company located in a ME country, Sweden.³¹ Finally, Ningxia Mineral demonstrated in its SRC that it is a company located in a ME territory, *i.e.* Hong Kong.³² Therefore, as there is no Chinese ownership of these three companies, and because Commerce has no evidence indicating that these companies are under the control of the Chinese government, further analyses of the *de jure* and *de facto* criteria are not necessary to determine whether they are independent from government control of their export activities.³³ Therefore, because Commerce finds all three companies have demonstrated an absence of government control of export activities, Commerce preliminarily determines that 1) Jacobi, 2) Carbon Activated, and 3) Ningxia Mineral are eligible for separate rates.

²⁴ See Beijing Pacific's July 5, 2017 Separate Rate Application (Beijing Pacific SRA).

²⁵ See Cherishmet's July 3, 2017 Separate Rate Application (Cherishmet SRA). Cherishmet is a single entity composed of Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. and Ningxia Guanghua Activated Carbon Co., Ltd. See also *Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 21195 (May 5, 2017), and accompanying PDM at 8-9; unchanged in *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51607 (November 7, 2017).

²⁶ In the third administrative review, Commerce found that Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) are a single entity, and because there were no facts presented on the record of this review which would call into question our prior finding, Commerce continues to treat these companies as part of a single entity for this administrative review, pursuant to sections 771(33)(E), (F), and (G) of the Act and 19 CFR 351.401(f). See *Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review*, 76 FR 67142, 67145 n.25 (October 31, 2011).

²⁷ See Huahui's July 7, 2017 Separate Rate Certification (Huahui SRC).

²⁸ See Ningxia Mineral's July 7, 2017 Separate Rate Certification (Ningxia Mineral SRC).

²⁹ See Sincere Industrial's June 16, 2017 Separate Rate Certification (Sincere Industrial SRC).

³⁰ See Carbon Activated's Section A Response.

³¹ See Jacobi's July 5, 2017 Separate Rate Certification.

³² See Ningxia Mineral SRC.

³³ See, *e.g.*, *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104, 71104-05 (December 20, 1999).

b. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.³⁴ The evidence provided by mandatory respondent Datong Juqiang, and separate-rate applicants, Beijing Pacific, Cherishmet, Huahui, and Sincere Industrial supports a preliminary finding of the absence of *de jure* government control of export activities based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.³⁵

c. Absence of *De Facto* Control

Typically Commerce considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.³⁶ Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.³⁷

The evidence provided by Datong Juqiang, Beijing Pacific, Cherishmet, Huahui, and Sincere Industrial supports a preliminary finding of the absence of *de facto* government control based on the following: (1) the companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.³⁸ Therefore, Commerce preliminarily finds that 1) Beijing Pacific, 2) Cherishmet, 3) Datong Juqiang, 4) Huahui, and 5) Sincere Industrial have established that they qualify for a separate rate under the criteria established by *Diamond Sawblades*, *Silicon Carbide* and *Sparklers*.

³⁴ See *Sparklers*, 56 FR at 20589.

³⁵ See Datong Juqiang's Section A Response at 1-11; Beijing Pacific's SRA; Cherishmet SRA; Huahui SRC; and Sincere Industrial SRC.

³⁶ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

³⁷ *Id.*

³⁸ See Datong Juqiang's Section A Response at 1-11; Beijing Pacific's SRA; Cherishmet SRA; Huahui SRC; and Sincere Industrial SRC.

China-Wide Entity

The remaining 16 companies under review failed to establish their eligibility for a separate rate because they did not file an SRA or an SRC with Commerce.³⁹ Hence, Commerce preliminarily determines to treat these companies as part of the China-wide entity.⁴⁰

Because no party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, Commerce is not conducting a review of the China-wide entity.⁴¹ Thus, the rate for the China-wide entity (*i.e.*, 2.42 U.S. dollars/kilogram (USD/kg)) is not subject to change pursuant to this review.⁴²

Weighted-Average Dumping Margin for Non-Examined Separate-Rate Companies

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

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to individual respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which Commerce did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that Commerce is not to calculate an all-others rate using rates for individually examined respondents which are zero, *de minimis*, or based entirely on facts available (FA). Accordingly, Commerce’s usual practice in determining the rate for separate-rate respondents not selected for individual examination has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on FA.⁴³

In these preliminary results, the two mandatory respondents, Datong Juqiang and Carbon

³⁹ See the Attachment to this memorandum for a complete listing of these companies.

⁴⁰ *Id.*

⁴¹ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).

⁴² 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).

⁴³ See *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming Commerce’s determination to assign a 4.22 percent dumping margin to the separate-rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); see also *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).

Activated, have weighted-average dumping margins which are not zero, *de minimis*, or based entirely on selection from among the facts otherwise available on the record. Additionally, because using the weighted-average dumping margin based on the U.S. sales quantities for Datong Juqiang and Carbon Activated risks disclosure of business proprietary information, Commerce cannot assign to the separate-rate companies the weighted-average dumping margin based on the U.S. sales quantities from these two respondents.⁴⁴

For these preliminary results, and consistent with our practice,⁴⁵ Commerce has preliminarily assigned to the non-individually examined companies a weighted-average rate based on publicly available ranged U.S. sales quantities of the mandatory respondents in this review. Accordingly, following the practice described above, Commerce has calculated a rate of 0.35 USD/kg for the non-individually examined respondents.⁴⁶ The separate-rate applicants receiving this rate are identified by name in the “Preliminary Results of the Review” section of the *Federal Register* notice.

Surrogate Country and Surrogate Value Data

On July 17, 2017, Commerce sent interested parties a letter inviting comments on: (1) the non-exhaustive list of countries that Commerce determined are at the same level of economic development as China based on annual per capita gross national income (GNI), (2) surrogate country selection, and (3) surrogate value (SV) data.⁴⁷ On August 25, 2017, Calgon Carbon Corporation and Cabot Norit Americas Inc. (the petitioners) and the mandatory respondents submitted comments on the list of countries.⁴⁸ On September 15, 2017, the petitioners and the mandatory respondents submitted SV comments.⁴⁹ On April 2 and 3, 2018, the mandatory respondents and the petitioners submitted additional SV comments.⁵⁰ On April 13, 2018, the mandatory respondents submitted surrogate value rebuttal comments.⁵¹ On April 13, 2018, the

⁴⁴ See, e.g., *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533, 70534-35 (November 26, 2013) (AR5 Carbon from China Final).

⁴⁵ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661 (September 1, 2010), and accompanying IDM at Comment 1.

⁴⁶ See Memorandum, “Certain Activated Carbon from the People’s Republic of China: Calculation of the Margin for Respondents Not Selected for Individual Examination,” dated May 3, 2018.

⁴⁷ See Department’s Letter Re: “Certain Activated Carbon from the People’s Republic of China (PRC): Request for Comments re: (1) Economic Development, (2) Surrogate Country and (3) Surrogate Value Information,” dated July 17, 2017 (SC Memo).

⁴⁸ See Petitioners’ August 25, 2017 Comments on Surrogate Country Selection (Petitioners’ SC Comments) and DJAC and Carbon Activated’s August 25, 2017 Comments on Surrogate Country Selection (Respondents’ SC Comments).

⁴⁹ See Petitioners’ September 15, 2017 Submission of Surrogate Values (Petitioner’s SV Submission) and DJAC and Carbon Activated’s September 15, 2017 First Surrogate Value Comments (Respondents’ SV Submission)

⁵⁰ See Petitioners’ April 3, 2018 Surrogate Value Submission and Mandatory Respondents’ April 2, 2018 Final SV Submission. Commerce notes that due to the proximity of the submission of these comments to the deadline of the preliminary results, Commerce was unable to evaluate these comments for the preliminary results.

⁵¹ See Mandatory Respondents’ April 13, 2018 Surrogate Value Rebuttal Comments (Carbon Activated and Datong Juqiang filed their comments in one submission). Commerce notes that due to the proximity of the submission of these comments to the deadline of the preliminary results, Commerce was unable to evaluate these comments for the preliminary results.

petitioners submitted pre-preliminary results comments.⁵² On April 20 2018, the mandatory respondents submitted pre-preliminary results comments.⁵³

Surrogate Country Selection

When Commerce investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate ME country or countries considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.⁵⁴ As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because either (a) they are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons.⁵⁵ Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.⁵⁶ To determine which countries are at the same level of economic development, Commerce generally relies on GNI data from the World Bank's World Development Report.⁵⁷ Further, Commerce has stated that it prefers to value all FOPs from a single surrogate country.⁵⁸

On July 13, 2017, Commerce identified Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand as countries that are at the same level of economic development as China based on per capita 2016 GNI data.⁵⁹ The petitioners recommend that Commerce select Thailand, South Africa, and Mexico as either the primary and/or secondary surrogate country.⁶⁰ Additionally, the petitioners submit Malaysia and Turkey as "countries that are economically comparable to China and that may provide valuable corroboration data".⁶¹ The petitioners argue that Malaysia and Turkey are economically comparable to China because the differences between the Malaysian and Turkish 2016 per capita GNIs and the Chinese 2016 per capita GNI were USD \$1,590 and

⁵² See Petitioners' April 13, 2018 Pre-Preliminary Results Comments. Due to the proximity of the submission of these comments to the deadline of the preliminary results, Commerce was unable to evaluate these comments for the preliminary results.

⁵³ See Mandatory Respondents' April 20, 2018 Pre-Preliminary Comments (Carbon Activated and Datong Juqiang filed their comments in one submission). Due to the proximity of the submission of these comments to the deadline of the preliminary results, Commerce was unable to evaluate these comments for the preliminary results.

⁵⁴ See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1).

⁵⁵ *Id.*

⁵⁶ See SC Memo.

⁵⁷ *Id.*

⁵⁸ See 19 CFR 351.408(c)(2).

⁵⁹ See SC Memo at Attachment.

⁶⁰ See Petitioners' SC Comments at 7.

⁶¹ *Id.*

USD \$2,920, respectively.⁶² Because Malaysia has multiple producers of activated carbon, and, thus, significant commercial production of goods identical to subject merchandise, the petitioners argue that this creates the possibility of sources in Malaysia providing high-quality surrogate value information.⁶³ In addition, the petitioners claim that although Turkey does not appear to have producers of activated carbon, it does have a robust distribution system for activated carbon.⁶⁴

For Mexico, the petitioners state that Mexico has known producers of activated carbon, and thus may be a source of publicly available financial statements for companies that are engaged in the production of the product at issue in this segment (*i.e.*, thermally activated carbon).⁶⁵ The petitioners also state that the Mexican producers earned a profit in a period contemporaneous with the POR, and issue financial statements that include detailed information that could facilitate Commerce's calculation of surrogate financial ratios.⁶⁶ The petitioners also placed import and export statistics for activated carbon from Malaysia, Thailand, Mexico, South Africa, Turkey, Brazil, Romania, and Bulgaria on the record.⁶⁷ However, despite arguing that Commerce should consider selecting South Africa, Mexico, Malaysia or Turkey, the petitioners only submitted complete data to value FOPs from Thailand.⁶⁸

The mandatory respondents recommend that Commerce select Thailand as the primary surrogate country,⁶⁹ and submitted data to value FOPs from that country.⁷⁰ Although the mandatory respondents recommend Commerce to select Thailand as the primary surrogate country, they state that Thailand may not offer contemporaneous financial statements and propose selecting the Philippines as a secondary choice for financial statements.⁷¹ The mandatory respondents claim that the Philippines is economically comparable to China because the Philippines' GNI, similar to China's, falls within the bounds of the lower-middle income and upper-middle income countries' GNIs, and it has been considered to be economically comparable to China in the past.⁷² The mandatory respondents further argue that the Philippines and Thailand are significant producers of the subject merchandise because they were net exporters of the subject merchandise.⁷³ However, in their SV submission, the mandatory respondents submitted financial statements from Romania, not from the Philippines,⁷⁴ for determining financial ratios.⁷⁵ Additionally, the mandatory respondents submitted Romanian data for hydrochloric acid,⁷⁶

⁶² See Petitioners' SC Comments at 2 and 4.

⁶³ *Id.* at 4.

⁶⁴ *Id.* at 5.

⁶⁵ *Id.* at 3.

⁶⁶ *Id.*

⁶⁷ *Id.* at 6.

⁶⁸ See Petitioners' SV Submission.

⁶⁹ See Respondents' SC Comments at 4-8.

⁷⁰ See Respondents' SV Submission.

⁷¹ See Respondents' SC Comments at 4-8.

⁷² *Id.* at 4-5.

⁷³ *Id.* at 6.

⁷⁴ See Respondents' SV Submission at Exhibit 9.

⁷⁵ *Id.* at Exhibits 1 and 9.

⁷⁶ *Id.* at Exhibits 1 and 3.

Russian import data for coal tar pitch and pitch,⁷⁷ and Philippine *Cocommunity* data for carbonized material.⁷⁸

Economic Comparability

As explained in the SC Memo, consistent with its practice and section 773(c)(4) of the Act, Commerce considers Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand to be at the same level of economic development as China.⁷⁹ Commerce treats each of these countries as equally comparable.⁸⁰ Therefore, Commerce considers all six countries identified in the SC Memo as having met this prong of the surrogate country selection criteria. Unless Commerce finds that none of these countries is a significant producer of comparable merchandise, does not provide a reliable source of publicly available surrogate data, or is unsuitable for use for other reasons, or Commerce finds that another equally comparable country is an appropriate surrogate within the GNI range, Commerce will rely on data from one of these countries.⁸¹ Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. As discussed below, Commerce preliminarily determines that one or more of these six countries are significant producers of comparable merchandise and provide usable SV information, and as such, Commerce will not rely on data from Turkey, Malaysia, or the Philippines, whose 2016 GNI do not fall within the range of GNI represented by the countries included on the surrogate country list issued by Commerce.⁸²

Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as Policy Bulletin 04.1 for guidance on defining comparable merchandise. Policy Bulletin 04.1 states "the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute."⁸³ Policy Bulletin 04.1

⁷⁷ *Id.* at Exhibits 1 and 5K.

⁷⁸ *Id.* at Exhibits 1 and 4C.

⁷⁹ See SC Memo at Attachment.

⁸⁰ See, e.g., *Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011); unchanged in *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).

⁸¹ *Id.*; see also, e.g., *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013), and accompanying IDM at Comment 5; and *Silica Bricks and Shapes from the People's Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination*, 78 FR 37203 (June 20, 2013), unchanged in *Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes from the People's Republic of China*, 78 FR 70918 (November 27, 2013).

⁸² See SC Memo at Attachment I.

⁸³ See Policy Bulletin 04.1.

further states, “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”⁸⁴ Conversely, if the country does not produce identical merchandise, then a country producing comparable merchandise is sufficient in selecting a surrogate country.⁸⁵ Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.⁸⁶ “In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise.”⁸⁷ In this regard, Commerce recognizes that it must do an analysis of comparable merchandise on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized, dedicated, or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, based on a comparison of the major inputs, including energy, where appropriate.⁸⁸

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.⁸⁹ Moreover, while the legislative history provides that the term “significant producer” include any country that is a significant “net exporter,”⁹⁰ it does not preclude reliance on additional or alternative metrics.

In this review, Commerce examined export data published by the Global Trade Atlas (GTA) to determine which countries included on the surrogate country list based on 2016 GNI data were producers of comparable merchandise. GTA export data indicate that all of the countries identified in the SC Memo had exports during the POR of the primary Harmonized Tariff Schedule (HTS) heading included in the scope, *i.e.*, exports of HTS number 3802.10.⁹¹ These volumes are: 9,222,827 kg (Thailand); 8,700,466 kg (Mexico); 1,005,730 kg (South Africa); 746,819 kg (Brazil); 87,494 kg (Romania); and 55,297 kg (Bulgaria).⁹² Commerce preliminarily determines that none of the total export volumes from the countries identified in the SC Memo are insignificant. Accordingly, Commerce finds that Thailand, Mexico, South Africa, Brazil, Romania, and Bulgaria are significant producers of comparable merchandise pursuant to section

⁸⁴ *Id.*

⁸⁵ Policy Bulletin 04.1 also states that “[i]f considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” *Id.* at note 6.

⁸⁶ See *Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674 (December 15, 1997) (“[T]o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

⁸⁷ See Policy Bulletin 04.1 at 2.

⁸⁸ *Id.*, at 3.

⁸⁹ See section 773(c)(1) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

⁹⁰ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988) (OTCA 1988).

⁹¹ See Petitioners’ SC Comments at 6 and Attachment 8.

⁹² See Petitioners’ SC Comments at 6 and Respondents’ SC Comments at Exhibit 1.

773(c)(4)(B) of the Act.⁹³ Moreover, Commerce is not precluded from using additional or alternative metrics for finding significant production.⁹⁴ After examining the record evidence, Commerce preliminarily determines that Thailand also is a significant producer because it is a net exporter of comparable merchandise.⁹⁵ Because multiple potential surrogate countries have been identified as significant producers of identical or comparable merchandise through the above analysis, and because “data quality is a critical consideration affecting surrogate country selection,”⁹⁶ Commerce then looked to the availability of SV data to determine the most appropriate surrogate country.

Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.⁹⁷ When evaluating SV data, Commerce considers several factors, including whether the SVs are publicly available, contemporaneous with the POR, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.⁹⁸

The mandatory respondents submitted financial statements from Romania for determining financial ratios.⁹⁹ Additionally, the mandatory respondents submitted Romanian data for hydrochloric acid,¹⁰⁰ Russian import data for coal tar pitch and pitch,¹⁰¹ and Philippine *Cocommunity* data for carbonized materials.¹⁰² However, Commerce only has complete SV data from Thailand on the record for all reported FOPs.¹⁰³ Additionally, Commerce preliminarily determines not to rely on data from the Philippines or Russia, because Commerce does not consider these countries to be at the same level of economic development as China, and Commerce has sufficiently reliable and useable SV data from a country at the same level of economic development. For a discussion of Romanian financial statements and Romanian GTA data, see below.

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

⁹³ See Policy Bulletin 04.1.

⁹⁴ See OTCA 1988, H.R. Rep. No. 100-576, at 590.

⁹⁵ See Petitioners’ SC Comments at 6 and Respondents’ SC Comments at Exhibit 1; see also Policy Bulletin 04.1.

⁹⁶ See Policy Bulletin 04.1.

⁹⁷ *Id.*

⁹⁸ *Id.*; see also *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009) and accompanying IDM at Comment 2.

⁹⁹ See Respondents’ SV Submission at Exhibits 1 and 9.

¹⁰⁰ *Id.* at Exhibits 1 and 3.

¹⁰¹ *Id.* at Exhibits 1 and 5K.

¹⁰² *Id.* at Exhibits 1 and 4C.

¹⁰³ See Petitioners’ SV Submission and Respondents’ SV Submission.

Partial Facts Available and Partial Adverse Facts Available for Normal Value

Legal Framework

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the less than fair value investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁰⁴ When selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.¹⁰⁵

Partial Facts Available for Carbon Activated’s Exclusion Request

On July 26, 2017, Carbon Activated requested to be excused from reporting FOP data for certain Chinese producers.¹⁰⁶ On August 15, 2017, Carbon Activated responded to Commerce’s August

¹⁰⁴ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R.Rep. No. 103-316, at 870 (1994), as reprinted in 1994 U.S.C.C.A.N. 4040, 4199.

¹⁰⁵ See Section 776(d)(3) of the Act.

¹⁰⁶ See Carbon Activated’s July 26, 2017 FOP Reporting Exclusion Request (FOP Reporting Exclusion Request).

2, 2017, supplemental questionnaire regarding suppliers and submitted a revised supplier list and contact information.¹⁰⁷ On August 21, 2017, Commerce excused Carbon Activated from reporting certain FOP data due to the large number of producers that supplied Carbon Activated during the POR.¹⁰⁸ Specifically, Commerce did not require Carbon Activated to report FOP data for its smallest producers.¹⁰⁹

In accordance with section 776(a)(1) of the Act and our past practice, Commerce is applying facts available to determine the NV for the sales corresponding to the FOP data Carbon Activated was excused from reporting. Consistent with our treatment of this issue in prior segments of this proceeding,¹¹⁰ as facts available, Commerce is preliminarily applying the calculated average NV of Carbon Activated's reported sales for which FOP data was reported to the sales of merchandise produced by its producers excluded from FOP reporting.¹¹¹

Partial Adverse Facts Available for a Certain Supplier

Commerce does not have a usable FOP database for one of Activated Carbon's suppliers which was required to report FOP data¹¹² (supplier X) because the submitted database includes subject merchandise as an input.¹¹³ In accordance with section 776(a)(1) of the Act, Commerce finds it appropriate to preliminarily select from among the facts otherwise available to determine the NV for the sales corresponding to the FOP data for which supplier X reported subject merchandise as an input because: 1) Carbon Activated did not make any requests to exclude reporting FOPs of ultimate producers to suppliers, and therefore, was required to identify and report the FOPs of supplier X's ultimate producer(s); and 2) pursuant to section 773(c)(1) of the Act, Commerce must determine NV using an FOP methodology.

Supplier X had numerous opportunities to accurately identify supplier X's ultimate producer(s) of the subject merchandise and provide the appropriate FOPs, but it did neither, despite Commerce having sent at least two questionnaires specifically requesting the identities of the ultimate producer(s). In its June 27, 2017, initial questionnaire, Commerce instructed Carbon Activated to immediately forward the section D questionnaire to any company which produces and supplies the merchandise under consideration. In its June 28, 2017 letter, Commerce asked Carbon Activated to identify all producers of the merchandise under consideration, including the

¹⁰⁷ See Carbon Activated's August 15, 2017 Factors of Production Reporting Exclusion Request Supplemental Response (Supplemental Supplier Response).

¹⁰⁸ See Commerce's Letter re: Tenth Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Supplier Exclusions, dated August 21, 2017.

¹⁰⁹ *Id.*

¹¹⁰ See, e.g., *Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 2011-2012*, 78 FR 26748 (May 8, 2013), and accompanying PDM at "Facts Available for NV," unchanged in *AR5 Carbon from China Final*.

¹¹¹ See Memorandum, "Preliminary Results Calculation Memorandum for Carbon Activated; Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China," dated May 3, 2018 (Carbon Activated's Preliminary Calculation Memorandum).

¹¹² As the names of Carbon Activated's suppliers are business proprietary, please see Carbon Activated's Preliminary Calculation Memorandum for details.

¹¹³ See Carbon Activated's April 17, 2018 Supplemental Questionnaire Response at Exhibit 1 (Carbon Activated's April 17, 2018 FOPs).

producers of suppliers.¹¹⁴ On July 26, 2017, Carbon Activated submitted a supplier exclusion request in which it reported the total number of, its suppliers.¹¹⁵ In its August 4, 2017 section A response and August 15, 2017 supplemental supplier response, Carbon Activated submitted new supplier lists exclusive of a certain direct supplier (producer/supplier Y), stating that the goods that it previously reported were sourced from this supplier were actually sourced from another producer identified in the submission (*i.e.* supplier X).¹¹⁶ In its September 5, 2017, section C response, Carbon Activated submitted a revised exhibit listing the producers/suppliers, exclusive of producer/supplier Y.¹¹⁷ On December 14, 2017, after Commerce requested that Carbon Activated clearly identify every supplier and ultimate producer of the subject merchandise, in its section C supplemental response, Carbon Activated reported supplier X as an ultimate producer, as it did in the supplemental supplier response.¹¹⁸ However, in its section D FOP database, supplier X reported activated carbon as an input, which it purchased and further processed,¹¹⁹ thus indicating that it is not the ultimate producer of the subject merchandise. Additionally, in its September 15, 2017, section D response, supplier X submitted a supplier chart where it identified producer/supplier Y as its supplier of activated carbon.¹²⁰

It remains unclear on the record which company is the ultimate producer of some of the activated carbon supplied by supplier X to Carbon Activated. Therefore, information is missing from the record pursuant to section 776(a)(1) of the Act. Further, Carbon Activated failed to provide information requested of it by the deadlines for submission pursuant to section 776(a)(2)(B). Commerce made several requests of Carbon Activated for the relevant information, as described above, satisfying its obligation to permit Carbon Activated an opportunity to remedy its deficient responses pursuant to section 782(d). Commerce therefore preliminarily determines, pursuant to section 776(b) of the Act, that Carbon Activated did not cooperate to the best of its ability in responding to Commerce's requests for information by not accurately reporting the ultimate producer(s) of certain CONNUMs which it further processed (or, alternatively, requesting the proper exclusions), despite several opportunities to do so. Thus, Commerce preliminarily determines it is appropriate to use an adverse inference in selecting from the facts otherwise available to determine the NV for the CONNUMs reported by supplier X, pursuant to section 776(b) of the Act. As adverse facts available, Commerce is preliminarily selecting the highest calculated NV on the record for any of Carbon Activated's CONNUMs.

Date of Sale

Pursuant to 19 CFR 351.401(i), Commerce normally will use the invoice date as the date of sale unless Commerce is satisfied that a different date better reflects the date on which the material terms of the sale are established. Datong Juqiang and Carbon Activated both reported the invoice date as the date of sale because they claimed that for their U.S. sales of subject

¹¹⁴ See Commerce's Letter re: Certain Activated Carbon from the People's Republic of China, dated June 28, 2017.

¹¹⁵ See FOP Reporting Exclusion Request.

¹¹⁶ See Carbon Activated's Section A Response; *see also* Supplemental Supplier Response.

¹¹⁷ See Carbon Activated's Section C Response.

¹¹⁸ See Carbon Activated's December 14, 2017 Sections A and C Supplemental Questionnaire Response (Carbon Activated's December 14, 2017 SQR).

¹¹⁹ See Carbon Activated's April 17, 2018 FOPs

¹²⁰ See Carbon Activated's Section D Response.

merchandise made during the POR, the material terms of sale were established based on the invoice date.¹²¹ Therefore, in accordance with 19 CFR 351.401(i), and Commerce’s long-standing practice in determining the date of sale,¹²² Commerce preliminarily finds that the invoice date is the most appropriate date to use as Datong Juqiang’s and Carbon Activated’s date of sale.

Comparisons to Normal Value

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

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern our examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.¹²³

In recent investigations, Commerce applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹²⁴ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of

¹²¹ See Carbon Activated’s Section A Response; see also Datong Juqiang’s Section A Response.

¹²² See, *e.g.*, *Certain Polyester Staple Fiber from the People’s Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, and Intent To Revoke Order in Part*, 76 FR 40329 (July 8, 2011), unchanged in *Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part*, 76 FR 69702 (November 9, 2011); see also *Steel Wire Garment Hangers From the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review*, 75 FR 68758 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers From the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994, 27996 (May 13, 2011).

¹²³ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int’l Trade 2014).

¹²⁴ See, *e.g.*, *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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

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

of the application of an A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-A method.

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

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

B. *Results of the Differential Pricing Analysis*

For Carbon Activated, based on the results of the differential pricing analysis, Commerce preliminarily finds that 38.1 percent of the value of Carbon Activated's U.S. sales pass the Cohen's *d* test,¹²⁵ and confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods. This result supports consideration of the application of an A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen's *d* test. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-T method to those sales identified as passing the Cohen's *d* test and the A-A method to those sales identified as not passing the Cohen's *d* test. Thus, for these preliminary results, the Commerce is applying the A-A method for all U.S. sales to calculate the weighted-average dumping margin for Carbon Activated.¹²⁶

¹²⁵ See Carbon Activated's Preliminary Calculation Memorandum at Attachment 1.

¹²⁶ *Id.*

For Datong Juqiang, based on the results of the differential pricing analysis, Commerce preliminarily finds that 0.00 percent of Datong Juqiang's U.S. sales pass the Cohen's *d* test,¹²⁷ confirming that a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods does not exist. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the A-A method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Datong Juqiang.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, EP is "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. Commerce calculated EP for the majority of sales to the United States for Datong Juqiang because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted.¹²⁸ In accordance with section 772(c)(2)(A) of the Act, where appropriate, Commerce deducted from the starting price (gross unit price) to unaffiliated purchasers foreign inland freight, foreign brokerage and handling, customs duties, U.S. brokerage and handling and other movement expenses incurred in China and the United States. For those expenses that were provided by a market economy (ME) provider and paid for in an ME currency, Commerce used the reported expense. For the expenses that were either provided by an NME vendor or paid for using an NME currency, Commerce used SVs as appropriate.¹²⁹ Additionally, in accordance with section 772(c)(2)(B) of the Act, Commerce also deducted any irrecoverable value-added tax (VAT) from the starting price as explained below. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Datong Juqiang, see Datong Juqiang's Preliminary Calculation Memorandum.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." For all of Carbon Activated's sales and a portion of Datong Juqiang's sales, Commerce based U.S. price on CEP, in accordance with section 772(b) of the Act, because sales of subject merchandise were made in the United States on behalf of the

¹²⁷ See Memorandum, "Preliminary Results Margin Calculation for Datong Juqiang Activated Carbon Co., Ltd.; Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China," dated May 3, 2018 (Datong's Preliminary Calculation Memorandum) at Attachment I.

¹²⁸ See Datong Juqiang's Section A Response at 8.

¹²⁹ See Memorandum, "Tenth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results," dated May 3, 2018 (Preliminary SV Memo).

companies located in China by their respective U.S. affiliates to unaffiliated purchasers in the United States.¹³⁰

Datong Juqiang contends that for sales where Datong Juqiang Activated Carbon USA, LLC (DJAC USA)¹³¹ was involved, Datong Juqiang established the material terms of sale with the final U.S. customer prior to importation, and these sales should, therefore, be considered EP sales.¹³² While Datong Juqiang negotiated the U.S. sales price, Commerce notes that the evidence on the record of this administrative review demonstrates that DJAC USA undertook procedures necessary to import the subject merchandise, issued invoices to the unaffiliated U.S. customer, received payment from the U.S. customer, and issued payment to Datong Juqiang.¹³³ The CIT has affirmed that such sales arrangements are properly considered CEP transactions.¹³⁴ Therefore, Commerce preliminarily determined that Datong Juqiang's sales made through DJAC USA are CEP sales.

Commerce based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, Commerce made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, and U.S. movement expenses, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, Commerce also deducted those selling expenses associated with economic activities occurring in the United States. Specifically, Commerce deducted, where appropriate, inventory carrying costs, credit expenses, and indirect selling expenses. For those expenses that were provided by an ME provider and paid for in an ME currency, if applicable, Commerce used the reported expense. For those expenses that were either provided by an NME vendor or paid for using an NME currency, Commerce used SVs as appropriate.¹³⁵ In accordance with section 772(c)(2)(B) of the Act, Commerce also deducted any irrecoverable VAT from the starting price as explained below. Additionally, Carbon Activated reported freight revenue for certain U.S. sales; therefore, consistent with its practice,¹³⁶ Commerce capped the freight revenue amount by the amount of freight expenses reported in the U.S. sales database and made an upward adjustment to the U.S. price.¹³⁷ Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Carbon Activated and Datong Juqiang, see Carbon Activated's Preliminary Calculation Memorandum and Datong

¹³⁰ See Carbon Activated's Section A Response at 13-14; see also Datong Juqiang's Section A Response at 1, 6, and Exhibit 1, and Datong Juqiang's January 12, 2018 Supplemental Sections A and C Response (Datong Juqiang's Sections A and C SQR) at 10.

¹³¹ In the seventh administrative review, Commerce determined DJAC USA and Datong Juqiang are affiliated. See *Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 25669 (May 5, 2015), and accompanying PDM, unchanged in *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015).

¹³² See Datong Juqiang's Sections C and D Response at pdf page 8.

¹³³ *Id.* at Sections A and C SQR at 2 and 10.

¹³⁴ See *Pasta Zara S.p.A. v United States*, 703 F. Supp. 2d 1317, 1320-1323 (CIT 2010).

¹³⁵ See Preliminary SV Memo.

¹³⁶ See, e.g., *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018) at Comment 12.

¹³⁷ See Carbon Activated's Preliminary Calculation Memorandum.

Juqiang's Preliminary Calculation Memorandum, respectively.
Further Manufactured Sales

Carbon Activated and Datong Juqiang did not report any further manufacturing conducted in the United States.¹³⁸

Value-Added Tax

Commerce's practice, in NME cases, is to subtract from EP or CEP the amount of any irrecoverable VAT, in accordance with section 772(c)(2)(B) of the Act. Where the irrecoverable VAT is a fixed percentage of EP, Commerce makes a tax-neutral dumping comparison by reducing the U.S. price by this percentage.¹³⁹ Thus, Commerce's methodology essentially amounts to performing two steps: (1) determining the amount (or rate) of the irrecoverable VAT tax included in the free on board (FOB) price of the subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The Chinese VAT schedule placed on the record of this review, as well as the responses of both respondents, demonstrate that the output VAT rate for activated carbon is 17 percent.¹⁴⁰ Datong Juqiang and Carbon Activated also reported that no portion of the 17 percent output VAT is recovered from the Government of China because the input VAT rebate rate, which is used to offset the output VAT, is zero.¹⁴¹ Thus, for the purposes of these preliminary results of review, for all Datong Juqiang's and Carbon Activated's sales, Commerce reduced the reported price of each U.S. sale by the irrecoverable VAT rate of 17 percent of the FOB price.¹⁴²

Normal Value

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

¹³⁸ See Datong Juqiang's Section A Response at 19; Carbon Activated's Section A Response at 17-18; and Carbon Activated's September 20, 2017 Section A Supplemental Questionnaire Response at 5-6.

¹³⁹ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483-84 (June 19, 2012).

¹⁴⁰ See Carbon Activated's Section C response at Exhibit C-14; Carbon Activated's December 14, 2017 SQR at 12 and Exhibit SAC-25; Datong Juqiang's Section C response at 26-27 and Exhibit C-3; and Datong Juqiang's Sections A and C SQR at 23-24 and Exhibit 26.

¹⁴¹ See Carbon Activated's December 14, 2017 SQR at 12 and Exhibit SAC-25; see also Datong Juqiang's Section C Response at 18.

¹⁴² See Carbon Activated's Preliminary Calculation Memorandum and Datong Juqiang's Preliminary Calculation Memorandum.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, Commerce calculated NV based on FOPs reported by the respondents for the POR, except as discussed above under the “Facts Available and Adverse Facts Available for Normal Value” section. In accordance with 19 CFR 351.408(c)(1), Commerce will normally use publicly available information to find an appropriate SV to value a particular FOP. To calculate NV, Commerce multiplied the reported per-unit factor-consumption rates by publicly available SVs. Commerce’s practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.¹⁴³

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, Commerce uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping or subsidization.¹⁴⁴ However, neither Datong Juqiang nor Carbon Activated provided evidence that they made purchases of ME inputs during the POI.¹⁴⁵

Commerce used Thai import statistics as reported by the GTA to value the raw materials, energy, and packing material inputs that Datong Juqiang and Carbon Activated used to produce the subject merchandise under review during the POR, except where otherwise stated below. These data are contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and represent a broad market average. In accordance with section 773(c)(5) of the Act and the legislative history of the OTCA 1988, Commerce continues to apply its long-standing practice of disregarding SVs without further investigation if broadly available export subsidies existed or particular instances of subsidization occurred with respect to those SVs or if those SVs were subject to an antidumping order.¹⁴⁶ In this regard, Commerce previously found that it is appropriate to disregard such prices from India, Indonesia, Republic of Korea (Korea), and Thailand because Commerce determined that these countries maintain broadly available, non-

¹⁴³ See, *e.g.*, *Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing *Certain Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 10); see also *Electrolytic Manganese Dioxide from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), IDM at Comment 2.

¹⁴⁴ See, *e.g.*, *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

¹⁴⁵ See Carbon Activated’s Section D Response and Datong Juqiang’s Sections C and D Response at 6.

¹⁴⁶ See section 773(c) of the Act, as amended in section 505 of the Trade Preferences Extension Act of 2015; *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015); see also OTCA 1988, H.R. Rep. No. 100-576, at 590-91.

industry-specific export subsidies.¹⁴⁷ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, Commerce finds that it is reasonable to infer that all exporters from the above-mentioned countries may have benefitted from these subsidies. Therefore, Commerce has not used average unit import values from these countries in calculating the Thai import-based SVs. Additionally, Commerce disregarded prices from NME countries because those prices are not based on market principles.¹⁴⁸ Finally, imports that were labeled as originating from an “unspecified” country were excluded from the SVs, as Commerce could not be certain that they were not from either an NME country or a country with general export subsidies.¹⁴⁹

In accordance with section 773(c) of the Act, for subject merchandise produced by Datong Juqiang and Carbon Activated, Commerce calculated NV based on the FOPs reported by Datong Juqiang and Carbon Activated for the POR. Commerce used data from Thai import statistics and other publicly available Thai sources to calculate SVs for Datong Juqiang’s and Carbon Activated’s FOPs (direct materials, energy, and packing materials) and certain movement expenses.¹⁵⁰ To calculate NV, unless otherwise noted, Commerce multiplied the reported per-unit FOPs by publicly available Thai SVs.

As appropriate, Commerce adjusted input prices by including freight costs to render the prices delivered prices.¹⁵¹ Specifically, Commerce added to the Thai import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory.¹⁵² Where necessary, Commerce adjusted SVs for exchange rates, and converted all applicable items to a per-metric ton basis. For a detailed description of all SVs used for Datong Juqiang and Carbon Activated, see the Preliminary SV Memo.

The mandatory respondents placed Philippines *Cocommunity* data on the record to value carbonized materials,¹⁵³ while the petitioners placed Thai GTA data for coconut shell charcoal on the record.¹⁵⁴ As noted above, Commerce prefers to use SV data which are exclusive of taxes

¹⁴⁷ See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying IDM at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying IDM at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying IDM at 17, 19-20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying IDM at 23; *Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, and Thailand*, 78 FR 16525 (March 14, 2013), and accompanying IDM at 5-7.

¹⁴⁸ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008); see also, section 773(c) of the Act.

¹⁴⁹ *Id.*

¹⁵⁰ See Preliminary SV Memo.

¹⁵¹ See section 772(c)(1)(A) of the Act.

¹⁵² See *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997).

¹⁵³ See Respondents’ SV Submission at Exhibit 4C.

¹⁵⁴ See Petitioners’ SV submission at Attachment 1.

and representative of broad market averages¹⁵⁵ and has a regulatory preference for valuing all FOPs in a single surrogate country, where possible.¹⁵⁶ Because Commerce has complete SV data from Thailand, it therefore prefers to value all FOPs in Thailand. Accordingly, Commerce preliminarily valued carbonized materials using the Thai GTA data for coconut shell charcoal.

Commerce valued electricity using data published by the Electrical Generating Authority of Thailand in *Annual Report 2016*. Commerce calculated an average of the prices of energy sales to various customers.¹⁵⁷ Commerce did not inflate/deflate this rate because it is contemporaneous with the POR.

Commerce valued inland truck freight using a price list published in *Doing Business-Thailand*, which measures the time and cost (excluding tariffs) associated with exporting or importing a shipment of goods. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods weighing 15,000 KG by ocean transport in Thailand transported in a dry-cargo, 20-foot full container load.¹⁵⁸ Commerce did not inflate or deflate this rate because it is contemporaneous with the POR.

Commerce valued brokerage and handling expenses using a price list published in *Doing Business Thailand*, which measures the time and cost (excluding tariffs) associated with exporting a standard shipment of goods. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods weighing 15,000 KG by ocean transport in Thailand transported in a dry-cargo, 20-foot full container load.¹⁵⁹ Commerce did not inflate or deflate this rate because it is contemporaneous with the POR.

Commerce valued water using price data based on Thai water tariffs as published at <http://www.mwa.co.th> by the Metropolitan Waterworks Authority (MWA) of Thailand.¹⁶⁰ These data were reported to have been accessed in March 2014 by the mandatory respondents, however, the same rates were in effect when last accessed in April 2018 by Commerce, and therefore, were most likely in effect during the POR.¹⁶¹ Commerce did not inflate or deflate this price information because it is contemporaneous with the POR.

To value factory overhead, selling, general, and administrative (SG&A) expenses, and profit, Commerce used the 2011 audited financial statement of a Thai activated carbon company, Carbokarn Co., Ltd. (Carbokarn).¹⁶² While Commerce notes that these financial statements are

¹⁵⁵ See, e.g., *Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 10; *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying IDM at Comment 2.

¹⁵⁶ See 19 CFR 351.408(c)(2).

¹⁵⁷ See Preliminary SV Memo.

¹⁵⁸ See Respondents' SV Submission at Exhibit 10A.

¹⁵⁹ See Petitioner's SV Submission at Attachment 6B.

¹⁶⁰ See Respondents' SV Submission at Exhibit 7.

¹⁶¹ See Preliminary SV Memo at Attachment 2.

¹⁶² See Petitioner's SV Submission at Attachment 4.

not contemporaneous with the POR, Carbokarn's 2011 financial statements are the only financial statements on the record from Thailand and are otherwise complete, publicly available, contain sufficient information to calculate surrogate financial ratios, and contain no evidence of countervailable subsidies. With respect to the Romanian financial statements on the record, these financial statements are from a company which produces polyethylene, polypropylene, and polyvinyl chloride products, which is not merchandise comparable to the subject merchandise.¹⁶³ As such, Commerce preliminarily determined that Carbokarn's financial statements are the best available information on the record regarding the valuation of factory overhead, SG&A, and profit. Furthermore, using Thai financial statements is consistent with our regulatory preference for valuing all FOPs in a single surrogate country.¹⁶⁴

In NME antidumping duty proceedings, Commerce prefers to value labor solely based on data from the primary surrogate country.¹⁶⁵ In *Labor Methodologies*, Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country.¹⁶⁶ We continue to follow our practice of selecting the best available information on the record to determine SVs for inputs such as labor. In this case, Commerce valued labor consumption based on Thailand's National Statistical Office (NSO) Labor Force Survey of Whole Kingdom, which was based on data from surveys taken during the POR. Commerce valued labor using a single-country labor cost based on compensation data consistent with the International Standard Classification of Occupation, 2008 (ISCO-08) of the International Labor Organization.¹⁶⁷ The data cover the last three quarters of 2016 and the first quarter of 2017 for all manufacturing sectors. Because these rates were in effect during the POR, Commerce has not adjusted the calculated rate for inflation or deflation.

Currency Conversion

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

¹⁶³ See Respondents' SV Submission at Exhibit 9.

¹⁶⁴ See 19 CFR 351.408(c)(2).

¹⁶⁵ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

¹⁶⁶ *Id.*

¹⁶⁷ See Preliminary SV Memo.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

5/3/2018

X



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



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

ATTACHMENT

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

Company

1. Beijing Embrace Technology Co., Ltd.
2. Datong Municipal Yunguang Activated Carbon Co., Ltd.
3. Jilin Bright Future Chemicals Co., Ltd.
4. Meadwestvaco (China) Holding Co., Ltd.
5. Ningxia Guanghua A/C Co., Ltd.
6. Ningxia Guanghua Activated Carbon Co., Ltd.
7. Ningxia Guanghua Chemical Activated Carbon Co., Ltd.
8. Ningxia Jirui Activated Carbon
9. Shanxi Dapu International Trade Co. Ltd.
10. Shanxi DMD Corporation
11. Shanxi Industry Technology Trading Co. Ltd.
12. Tancarb Activated Carbon Co. Ltd
13. Tangshan Solid Carbon Co., Ltd.
14. Tianjin Channel Filters Co., Ltd.
15. Tianjin Jacobi International Trading Co. Ltd.
16. Tianjin Maijin Industries Co., Ltd.

