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MEMORANDUM TO: 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

FROM: Irene Darzenta Tzafolias
Director, Office VIII
AD/CVD Operations Office VIII

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

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SUMMARY

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

Comment 1: Use of Import Statistics In lieu of Highest Calculated Normal Value as Adverse Facts Available
Comment 2 Coal Tar Surrogate Value
Comment 3: Carbonized Material Surrogate Value
Comment 4: Hydrochloric Acid Surrogate Value
Comment 5: Labor Surrogate Value
Comment 6: Whether to Continue to Use the Thai Financial Statements

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[1] Calgon Carbon Corporation and Cabot Norit Americas (the petitioners).
[2] Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) and Carbon Activated Tianjin Co., Ltd. (Carbon Activated) (collectively, the respondents).
[3] Jacobi Carbons AB and Jacobi Carbons, Inc. (Jacobi).
[4] *See Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 23254 (May 18, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 7: Value-Added Tax Adjustments
Comment 8: Ministerial Errors

BACKGROUND

On May 18, 2018, Commerce published the *Preliminary Results* of this administrative review. On June 18, 2017, the petitioners, the respondents, and Jacobi timely submitted case briefs.[5] On July 3, 2018, the petitioners and the respondents submitted rebuttal briefs.[6]

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

[5] *See* Petitioners' Case Brief, "Activated Carbon from People's Republic of China," dated June 19, 2018 (Petitioners' Case Brief); Carbon Activated's and Datong Juqiang's Case Brief, "Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China (A-570-904)," dated June 18, 2018 (Respondents' Case Brief); and Jacobi's Case Brief, "Certain Activated Carbon from China (*A-570-904, POR 10: 04/01/16 - 03//31/17),*" dated June 18, 2018 (Jacobi's Case Brief). Jacobi's case brief supports the arguments of the respondents, particularly with respect to financial statements, value-added tax, ministerial errors, and SVs for coal tar, carbonized material, hydrochloric acid, and labor.
[6] *See* Petitioners' Rebuttal Brief, "Activated Carbon from People's Republic of China," dated July 3, 2018 (Petitioners' Rebuttal Brief); Respondents' Rebuttal Brief, "Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China (A-570-904)," dated July 3, 2018 (Respondents' Rebuttal Brief).

with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

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

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

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

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

CHANGES SINCE THE PRELIMINARY RESULTS

Based on our review and analysis of the comments received from the interested parties, we made certain changes to our margin calculations for Carbon Activated, Datong Juqiang, and the separate rate companies.[7] Specifically, we:

1. revised the adverse facts available (AFA) methodology for a certain supplier to Carbon Activated,[8]
2. revised the coal tar surrogate value (SV),[9]
3. revised the labor SV,[10]
4. revised the financial ratio SVs,[11]

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[7] *See* Memoranda, "Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results Calculation Memorandum for Carbon Activated" (Carbon Activated's Final Calculation Memorandum) and "Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China: Final Results Margin Calculation for Datong Juqiang Activated Carbon Co., Ltd." (Datong Juqiang's Final Calculation Memorandum), dated concurrently with this memorandum; *see also* Memorandum, "Tenth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Final Results," dated concurrently with this memorandum (Final SV Memorandum)
[8] *See below* at Comment 1.
[9] *See below* at Comment 2.
[10] *See below* at Comment 5.
[11] *See below* at Comment 6.

5. revised the methodology for calculating the 17 percent output VAT rate,[12]
6. corrected certain ministerial errors in Carbon Activated's margin calculation program.[13]

Comment 1: Use of Import Statistics In Lieu of Highest Calculated Normal Value as Adverse Facts Available

Petitioners' Comments:

- As AFA, Commerce should rely on Thai import statistics (HTS 3802.10.00000) to value activated carbon for further processing instead of Carbon Activated's highest calculated normal value (NV) so that Carbon Activated does not benefit from its failure to cooperate.[14]
- Commerce must ensure that the selected inference is sufficiently adverse to deter future uncooperative behavior.[15]
- If Commerce continues to rely on the highest NV as AFA, it will inappropriately reward Carbon Activated for its uncooperative behavior[16] and incentivize respondents in future segments to report greater quantities of activated carbon as an intermediate input rather than reporting the upstream factors of production (FOPs).[17]
- Commerce should rely on its intermediate input methodology because it is unable to value the upstream FOPs.[18]

Carbon Activated's Rebuttal Comments:

- Carbon Activated appropriately reported activated carbon as an input for one of its suppliers (supplier X) which purchased and further processed the input.[19]
- Commerce conflated the purchased semi-processed activated carbon with the finished activated carbon.[20]
- Contrary to the petitioners' assertion, Carbon Activated did not fail to cooperate. It appropriately reported supplier X as the ultimate producer of all finished activated carbon.[21]
- Commerce should not rely on AFA because Commerce never specifically pointed to any deficiencies with respect to supplier X's FOP database.[22]
- Application of the intermediate input methodology is not appropriate because it requires a finding that valuing the factors used in a production process will yield an inaccurate result because a "significant element of cost would not be adequately accounted for in the overall

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[12] *See below* at Comment 7.
[13] *See below* at Comment 9.
[14] *See* Petitioners' Case Brief at 5-7.
[15] *Id.* at 3 (citing *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1338 (Fed. Cir. 2016) (*Nan Ya Plastics*)).
[16] *Id.* at 4.
[17] *Id.* at 8-9.
[18] *Id.* at 5-6, n.4 (quoting *Shenzhen Xinboda Indus. Co. v. United States*, 279 F. Supp. 3d 1265, 1270 (CIT 2017).
[19] *See* Carbon Activated's Rebuttal Brief at 1.
[20] *Id.* at 2.
[21] *Id.* at 4-5.
[22] *Id.* at 6-7 (citing section 782(d) of the Act and *Hyundai Steel Co. v. United States*, 282 F. Supp. 3d 1332, 1344-1345 (CIT 2018)).

factors buildup."[23] This concern arises in the context of agricultural products because of the lack of detailed accounts of production that could be verified by Commerce.[24] Such concern is absent in the present case because the record contains NV data for similar control numbers (CONNUMs).[25]

- Previously, in similar scenarios, Commerce determined NV by applying respondent's own upstream FOP data for self-produced intermediate inputs to the purchased intermediate inputs.[26]
- Relying on Thai data under HTS 3802.10.00000, as advocated by the petitioners, would produce distorted results because the proposed SV would be more than the highest FOB price for the sales based on semi-processed activated carbon input.[27]
- Contrary to the petitioners' argument, not using the Thai import data for valuing intermediate activated carbon will not incentivize Carbon Activated to report purchases of activated carbon in lieu of upstream FOPs because the highest FOB value of the sales with activated carbon used as an input is exceeded by the FOB values of some of its other sales.[28]
- Commerce should not rely on AFA in determining the NV for supplier X's sales, and should instead rely on the average NV calculated for the remaining sales.[29]

Commerce's Position: Consistent with our analysis in the *Preliminary Results*, we continue to find it appropriate to apply AFA to the sales supplied by supplier X because Carbon Activated improperly reported that supplier X is the ultimate producer of subject merchandise. In our June 27, 2017, initial questionnaire, we instructed Carbon Activated to immediately forward the section D questionnaire to any company which produces and supplies the subject merchandise. In our June 28, 2017, letter, we asked Carbon Activated to identify all producers of the merchandise under consideration, including the producers of suppliers.[30] Notably, Carbon Activated continues to claim in its case brief that we should accept FOPs from supplier X which include subject merchandise. Record evidence demonstrates that supplier X purchased some quantity of activated carbon which it further processed.[31] Without the further processing, the purchased activated carbon would have been subject merchandise when exported to the United

[23] *Id.* at 12-13 (quoting *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329, 26331 (May 4, 2006) (*Fresh Garlic from China*).
[24] *Id.* (citing *Zhengzhou Harmoni Spice Co. v. United States*, 617 F. Supp. 2d 1281, 1288 (CIT 2009) (*Zhengzhou Harmoni Spice*)).
[25] *Id.* at 15.
[26] *Id.* (citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36166 (June 17, 2013) (*Diamond Sawblades from China 2013*), and accompanying Issues and Decision Memorandum (IDM) at Comment 8.
[27] *Id.* at 17.
[28] *Id.* at 18.
[29] *Id.*
[30] *See* Commerce's Letter re: Certain Activated Carbon from the People's Republic of China, dated June 28, 2017.
[31] *See* Carbon Activated's September 15, 2017 Initial Section D Questionnaire Response (Carbon Activated's September 15, 2017 DQR) at Attachment B, Exhibit D-4.

States. Therefore, contrary to Carbon Activated's claims, supplier X is not the ultimate producer of the input, which is itself subject merchandise.

The record provides us with three options for selecting an AFA value for supplier X's FOPs: 1) the highest calculated NV for any of Carbon Activated's suppliers; 2) Thai Global Trade Atlas (GTA) import data to calculate a SV for activated carbon; or 3) the highest NV calculated for any respondent and its suppliers. The purpose of the application of AFA is to ensure cooperation, and therefore Commerce must ensure that the inference (in selecting from the facts available) is sufficiently adverse to do so.[32]

With respect to effectively applying AFA, we agree with the petitioner that a respondent could potentially avoid reporting accurate FOPs for higher-valued finished goods if instead a respondent could expect Commerce to apply as AFA the highest NV among the respondent's other producer-suppliers. Accordingly, for the final results, we have determined in this instance that it is appropriate to rely on the maximum NV calculated for *any* producer in this segment of the proceeding, including Datong Juqiang, as an AFA value for the NV of subject merchandise produced by supplier X.[33] Using this option places the spectrum for the selection of maximum NV outside the control of any specific respondent and therefore mitigates the potential for the manipulation identified above.

We disagree with the petitioners that Commerce should use Thai GTA import data to calculate a SV for activated carbon. We have a practice of not valuing subject merchandise using SVs and have departed from that practice only when the upstream FOPs have been found to be inadequate.[34] Here, we are able to select an AFA plug that is based on adequately reported FOPs, as discussed above, and which is sufficiently adverse to ensure cooperation. Therefore, for these final results, we decline to use SVs for valuing subject merchandise as AFA.

We also disagree with Carbon Activated that we should value the purchased activated carbon input using its own upstream FOP data for self-produced activated carbon. The precedent cited by Carbon Activated, *Diamond Sawblades from China 2013*, did not involve an application of AFA, whereas our present determination does involve such an application.[35] This distinction is important because Commerce may potentially choose from any of the facts on the record when applying AFA,[36] and therefore the precedent cited in *Diamond Sawblades from China 2013* is inapposite.

Additionally, Carbon Activated claims that the record demonstrates that it sold some higher-valued subject merchandise than the highest value of sales with activated carbon used as an input, implying that maximum calculated NV is already adverse. Assuming *arguendo* that all of

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[32] *See Nan Ya Plastics* ("Commerce 'may employ {such} inferences . . . to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'") (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Rep. No. 103-316, vol. 1, at 870 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4199).
[33] *See* Carbon Activated's Final Calculation Memorandum.
[34] *See, e.g., Fresh Garlic from China*; *see also Zhengzhou Harmoni Spice*.
[35] *See Diamond Sawblades from China 2013* at Comment 8 (explaining that case-specific facts required the selection of an alternative SV calculation method).
[36] *See* Section 776(b) of the Tariff Act of 1930, as amended (the Act).

Carbon Activated's reported FOB values are reliable, there is no reason to conclude that they correlate with NVs. In fact, record evidence demonstrates the opposite. Certain CONNUMs for which Carbon Activated has reported higher FOB values have lower calculated NVs than some other CONNUMs with lower reported FOB values. Therefore, this argument is unpersuasive.

Comment 2: Coal Tar Surrogate Value

Respondents' Comments:

- Commerce should select a SV that is specific to the inputs used by the respondents.[37]
- Thai HTS 2706.00, preliminarily used to value the coal tar pitch input, is unrepresentative of the specific type of coal tar pitch input utilized by the respondents because it is a basket category covering five types of tar, with coal tar being only one of them.[38] Moreover, HTS 2706.00 includes high-valued products prepared by further distillation, dehydration or reconstitution of coal tars.[39]
- The coal tar category under the same HTS includes various products such as coal tar pharma products and coal tar shampoo that are vastly different from the coal tar used by the respondents.[40]
- Prices for U.S.-origin imports are unreliable because they are not supported by the corresponding US Export Datamyne data and should be rejected.[41]
- There were no imports into Thailand under more specific HTS subheadings which would encompass inputs used by the respondents, *i.e.* HTS 27060000.001 ("tar acid, crude, coal") and 27060000.002 ("extract residues (coal), low temp, coal").[42]
- All Thai imports from Spain and the United States were in the HTS subheading 2706.00.00090 "Other" which includes distilled, dehydrated or reconstituted mineral tars – not coal tar.[43]
- The average unit value (AUV) of Thai HTS 2706.00 is aberrational in relation to certain benchmarks such as the prices for coking coal (raw material to coal tar pitch), metallurgical coke, pure coal tar pitch, and other further processed higher-valued derivative products.[44]
- Commerce should: (1) use Global Coal Tar Pitch Market Report 2018 or CIS Coal Tar Pitch Report 2017 price data for coal tar pitch with 100 percent pitch content (*i.e.* higher

[37] *See* Respondents' Case Brief at 9 (citing *Taian Ziyang Food Company, Ltd. v United States*, 918 F. Supp. 2d 1345, 1365 (CIT 2013) (*Taian 2013*) and *Arch Chems., Inc. v. United States*, Consol. Court No. 08-00040, Slip Op. 2009-71 (CIT 2009)).
[38] *Id.* at 7-8, 10-11.
[39] *Id.* at 14.
[40] *Id.* at 1, 12-15, and 19.
[41] *Id.* at 16-17.
[42] *Id.* at 17.
[43] *Id.* at 17-18 (citing *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) (*AR9 Carbon Final*), and accompanying IDM at Comment 4).
[44] *Id.*

SV) to value the coal tar pitch used by the respondents; and (2) cap those prices by the price of metallurgical coke, of which coal tar pitch is a by-product.[45]

- Alternatively, Commerce is not limited to SV data choices from the primary surrogate country alone,[46] and consistent with its methodology in *AR9 Carbon Final*, Commerce should select Mexican import data under HTS 2706.00 because these data represent the broadest market average among all potential surrogate countries for valuing coal tar pitch.[47]

Petitioners' Rebuttal Comments:

- Commerce should reject the respondents' arguments and rely on the Thai import data under HS code 2706.00 if the input consumed is coal tar, or HS 2708.10 if the input consumed is coal tar pitch.[48]
- Respondents used the terms "pitch," "coal tar," and "coal tar pitch" inconsistently throughout various submissions.[49]
- The record evidence demonstrates that "coal tar pitch" and "pitch" are essentially the same and should be valued as "pitch" under HS code 2708.10.[50]
- Alternatively, with respect to HS 2706.00, contrary to the respondents' implications, it is incumbent on respondents to demonstrate that the record data are not specific, and they have not done so.[51]
- Respondents failed to provide POR-contemporaneous evidence that Thai imports do not involve coal tar and divert Commerce from the real issue that the input is a pitch product, and not crude coal tar.[52]
- Respondents' argument that HTS 2706.00.00090 does not pertain to coal tar because it covers imports of other distilled, dehydrated, or reconstituted mineral tars, *i.e.* other than "tar acids" (HTS 2706.00.00001) or "extract residues" (HTS 2706.00.00002), contains two flaws: (1) the argument incorrectly presumes that tar acids and extract residues are forms of coal tar pitch, whereas tar acids are an extract from crude coal tar, and (2) it ignores the fact that the proper category for coal tar pitch is HS 2708.10.[53]
- If the input consumed by the respondents is coal tar pitch, then Commerce should not use import data under HTS subheadings 2706.00.00001, 00002, or 00090 because they represent coal tar and its immediate extracts, which would be upstream products in relation to the input.[54]

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[45] *Id.* at 20-35 (citing *Monosodium Glutamate from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances*, 79 FR 58326 (September 29, 2014), and accompanying IDM at Comment 11.
[46] *Id.* at 10 (citing *Shantou Red Garden Foodstuff Co. v. United States*, 880 F. Supp. 2d 1332, 1334 (CIT 2012).
[47] *Id.* at 35-38.
[48] *See* Petitioners' Rebuttal Brief at 1-2.
[49] *Id.* at 3-4.
[50] *Id.* at 5.
[51] *Id.* at 7 (citing *US Magnesium LLC v. United States*, 70 F. Supp. 3d 1321, 1328 (CIT 2015)).
[52] *Id.* at 8.
[53] *Id.* at 9.
[54] *Id.* at 11.

- If Commerce does not use HS 2708.10 for valuing the input for the final results, it should reject the respondents' argument that Thai import data under HS 2706.00 are distorted.[55] Respondents come to this conclusion by making speculative inferences from unrelated benchmarks that certain Thai imports under HS 2706.00 are comprised of substantially different products from coal tar pitch.[56]
- The fact that data reported by Datamyne does not show U.S. exports to Thailand under HTS 2706.00 is not relevant because the GTA data show those exports, and there are various reasons why Datamyne may have failed to report the appropriate exports.[57]
- Commerce should rely on the plain meaning of tariff classifications because there is no clear and compelling evidence of misreporting under HS 2706.00.[58]
- Commerce should reject the respondents' arguments based on multiple sources of benchmark data because those data are for cherry-picked products and are from countries which have per-capita gross national incomes (GNIs) that are far above or far below China's per-capita GNI.[59]
- The benchmark data submitted by the respondents do not provide reliable or accurate benchmarks for the input at issue.[60]
- Commerce should reject the respondents' argument that the value of coal tar pitch should be capped by the value of a "by-product," coking coal (metallurgical coke).[61] Coal tar pitch is not a by-product of metallurgical grade (or coking) coal. Coke and crude coal tar are both produced through the process of carbonizing metallurgical grade coal. Then, crude coal tar is distilled and refined to produce coal tar pitch.
- If Commerce finds that the factor at issue is coal tar, classifiable under HS 2706.00, then Commerce should find that Thai import values are not aberrational and are generally comparable to the average value across all six countries identified to be at the same level of economic development as China.[62]
- The respondents should have made clear in their responses that "COALTARPITCH" should be treated as synonymous with "PITCH."[63] Commerce should rely on partial AFA by treating all purported "coal tar" consumed by the respondents to have 100 percent purity pitch because respondents: (1) failed to provide a clear description of the input, (2) identified the actual input for the first time in their case brief, and (3) provided misapplied arguments related to coal tar classifiable under HS 2706.00.

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[55] *Id.* at 11-12.
[56] *Id.* at 12.
[57] *Id.* at 12-13.
[58] *Id.* at 14-16 (citing *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009), and accompanying IDM at Comment 4).
[59] *Id.* at 17-18.
[60] *Id.*
[61] *Id.* at 18.
[62] *Id.* at 23-26 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012), and accompanying IDM).
[63] *Id.* at 27-28.

Commerce's Position: We disagree with the petitioners that we should continue to rely on Thai import data under HS 2706.00 to value coal tar (*i.e.*, coal tar pitch)[64] in the final results, as we did in the *Preliminary Results.* For the reasons explained below, we determine it more appropriate to use the Mexican import data under HS 2706.00.

Commerce's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.[65] Commerce undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[66] While there is no hierarchy for applying the SV selection criteria, "{Commerce} must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' SV is for each input."[67]

Record evidence indicates that coal tar and pitch are distinct inputs. Carbon Activated reported both pitch and coal tar as separate inputs in the production process of the same producer-supplier and provided separate cost breakdowns for both.[68] Whether coal tar and pitch were used for the same purpose in the production process is inapposite to what the inputs actually were. There is no information on the record that rebuts the respondents' reporting of coal tar and pitch as separate inputs.

In the *Preliminary Results*, we used Thai imports under HS 2706.00, "Mineral Tars, Including Reconstituted Tars" to value coal tar.[69] This HTS category includes three subheadings: (1) HTS 2706.00.00.002, "Tar Distilled from Coal, from Lignite or from Peat, and Other Mineral Tars, Whether or Not Dyhydrated or Partial," (2) HTS 2706.00.00.000, "Tar Distilled from Coal, from Lignite or from Peat, and Other Mineral Tars, Whether or Not Dehydrated or Partially Distilled, Including Reconstituted Tars," and (3) HTS 2706.00.00.090, "Other."[70] All imports under HS

[64] Respondents have used the terms coal tar and coal tar pitch interchangeably throughout their case brief.
[65] *See, e.g.*, *First Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010) (*PSF 2010*) and accompanying IDM at Comment 1.
[66] *See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying IDM at Comment 1.
[67] *See, e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008) (*PET Film 2008*), and accompanying IDM at Comment 2; *see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546, 19549 (April 22, 2002), and accompanying IDM at Comment 2.
[68] *See* Carbon Activated's September 15, 2017 DQR at Attachment C, Exhibit D-1, D-4, and D-12; *see also* Carbon Activated's January 9, 2018 Section D Supplemental Questionnaire Response at 11.
[69] *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 at Attachment 1.
[70] *See* Respondents' April 2, 2018 Surrogate Value Submission at Exhibit 4 (although the respondents reference to Exhibit 4 regarding HTS 27060000.001, "tar acid, crude, coal," we did not find any information for Thailand under that subheading either in Exhibit 4 or on the GTA website).

2706.00 were made under the subheading HTS 2706.00.00.090, "Other." Upon reconsideration for these final results, we find that imports under the subheading "Other" do not represent the best available information for valuing coal tar, because the remaining two subheadings more accurately describe the input in question – "tar distilled from coal" – and the subheading HTS 2706.00.00.090 itself represents a basket category.

Therefore, for these final results, we find that the Mexican import data under HTS 2706.00, "Mineral Tars, Including Reconstituted Tars" constitute the best available information on the record.[71] First, Mexico is at the same level of economic development as China and is identified on Commerce's Office of Policy List (OP List).[72] Second, although other potential surrogate countries provide equally comparable and reliable data for valuing coal tar, Mexican imports represent the largest volume– Mexico (464,801 kilograms (kg)), Brazil (275,687 kg), South Africa (115,989 kg), Romania (0 kg), and Bulgaria (0 kg).[73] Therefore, for the final results we valued coal tar using the Mexican import data under HTS 2706.00.

Comment 3: Carbonized Material Surrogate Value

Respondents' Comments:

- To value carbonized materials, Commerce should use either Thai or Philippine *Cocommunity* data instead of the distorted Thai GTA import data.
- The domestic Philippine *Cocommunity* data for coconut shell charcoal is the best available information to value carbonized materials, because the Philippines satisfies the two statutory criteria of economic comparability and significant production of comparable merchandise. It is also the data used by Commerce to value carbonized material in two prior PORs (*i.e*. PORs 5 and 6).
- The Philippines is economically comparable to China.[74] Specifically, the Philippines' 2016 per capita GNI of $3,580 United States dollars (USD) is within the bounds of the per capita GNI of lower middle-income countries ($2,079 USD) and higher middle-income countries ($8,210 USD). The Philippines continues to be at a similar level of economic development to China ($8,260 USD), whose per capita GNI is proximate to those of higher middle-income countries.[75]
- The significantly higher levels of exports from the Philippines (62,945 MT—seven times those from Thailand) also shows that the SVs based on the Philippine data are likely to be more reliable and accurate compared to the Thai SVs.[76]

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[71] *See* Final SV Memorandum at Attachment 1.
[72] *See* Commerce 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 at Attachment (OP List).
[73] *See e.g. AR9 Carbon Final* and accompanying IDM at Comment 4 ("{Commerce} has used import volume as a tiebreaking methodology.").
[74] *See* Respondents' Case Brief at 48 (citing Respondents' August 25, 2017 Surrogate Country Comments).
[75] *See* Respondents' August 25, 2017 Surrogate Country Comments (Respondents' SC Comments) at 4.
[76] *See* Respondents' Case Brief at 48-49 (citing Respondents' SC Comments, providing POR GTA export quantity for HS 3802.10 (Activated Carbon) of 9,223 MT for Thailand, and USComtrade2016 data export quantity of 62,945 MT for the Philippines).

- The current record contains nearly contemporaneous *Cocommunity* monthly price data for the Philippines (2015-16), yielding an AUV of $355.92 USD/MT.[77] This average price is supported by official letters evidencing its broad market coverage, tax-exclusivity and overall reliability.
- Therefore, Commerce should use the Philippine *Cocommunity* data for coconut shell charcoal to value carbonized material.
- Alternatively, should Commerce decide to apply Thai GTA import data, it should exclude French, Japanese, and German imports.
- Thai GTA import data reported under HTS 4402.90.1000 are distorted in that a substantial proportion of the goods imported into Thailand during the POR under HTS 4402.90.1000 is wood-based charcoal powder originating from France.[78] Moreover, even the petitioners acknowledge this infirmity in the Thai GTA import data. Substantial record evidence confirms that the French-origin wood-based charcoal powder is used solely as an animal feed ingredient, and that these imports account for a significant proportion (72 percent by value and 52 percent by quantity) of usable import data under Thai GTA HTS 4402.90.10000.[79]
- The record contains monthly import data by a Thai importer and corresponding export information by a French exporter, showing that the first five months of imports (April-August 2016) reported in this HTS subheading were transactions between one French exporter and one Thai importer.[80] Additionally, the record includes a sworn declaration from the Thai importer stating that the imported goods are comprised of wood-based charcoal powder, which can solely be used as an animal feed.[81] Commerce held in its prior proceedings (*i.e.*, PORs 8 and 9) that wood-based charcoal is not comparable to coal-based carbonized materials, and rejected the French-origin imports.[82]
- A comparative analysis of import data reported from the four countries that exported goods to Thailand under this HTS heading during the POR (*i.e.*, France, Laos, Japan, and Germany) also reveals the anomaly in the Thai import data from France. In the ordinary course of commerce, when the same goods are purchased in larger quantities, the AUV is comparatively lower on account of quantity discounts. However, in spite of the higher quantity of French-origin imports compared to the quantity of imports from Laos, the AUV of French imports is much higher (*i.e.*, $1,270.37 USD/metric ton (MT)) as

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[77] *See* Respondents' September 15, 2017 Surrogate Value Comments (Respondents' September 15, 2017 SV Comments) at Exhibits 4B-C.
[78] *See* Respondents' Case Brief at 39 (citing 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 (Prelim SV Memorandum), at Attachment 1, Excel SV sheet (Tab. "Imports_Extract")).
[79] *Id*. at 40.
[80] *Id.* at 39 (citing Respondents' September 15, 2017 SV Comments at Exhibit 4A).
[81] *Id*.
[82] *Id.* at 43 (citing *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 Fed. Reg. 61,172 (Oct. 9, 2015) (*AR7 Carbon Final*), and accompanying IDM, at Comment 6; *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 Fed. Reg. 62088, 62091 (September 8, 2016) *(AR8 Carbon Final)*; *see also AR9 Carbon Final* and accompanying IDM, at Comment 5).

compared to the AUV of imports from Laos (*i.e.*, $528.47 USD/MT), which suggests that goods imported from France are not comparable to goods imported from Laos.[83]

- The Japanese origin imports of 16 kg at an aberrationally high AUV (*i.e.*, $25,923.71 USD/MT) is an outlier that should be rejected. Likewise, Commerce should reject the anomalous zero-quantity imports from Germany.

Petitioners' Rebuttal:

- To value carbonized material, Commerce should continue to rely on the contemporaneous Thai import data under HTS subheading 4402.90.10000.
- The Philippines is not a primary surrogate country, is not at the same level of economic development as China, and is not listed by Commerce on the OP List. Moreover, the respondents admit in their case brief that the Philippine *Cocommunity* data are not POR-contemporaneous.[84]
- Respondents argue that the per capita GNI of the Philippines ($3,580 USD) is "within the bounds" of the GNI countries listed. However, it is $4,680 USD lower than that of China ($8,260 USD), an amount that is far greater than the $3,000 USD-or-less difference generally observed for market economy countries that appear on Commerce's OP List as being at the same level of economic development as China.[85,86]
- Commerce's practice is to use the SV data from other market economy countries in the OP List only when no usable data are available from the primary surrogate country.
- Commerce can resort to data from otherwise economically comparable countries not in the OP List only when no usable data are available from the primary surrogate country and the OP List countries.
- Meeting these conditions, the data from Malaysia takes precedence over the data from the Philippines. The per capita GNI of Malaysia (*i.e.*, $9,850 USD) has a difference of only $1,590 USD from that of China. In addition, Malaysia is a country with substantial activated carbon production, and with a tariff category specific to coconut shell charcoal.[87]
- Thai GTA import data under HTS subheading 4402.90.10000 are from a market economy country that Commerce has determined to be at the same level of economic development, is POR-contemporaneous,[88] and is specific to coconut charcoal.[89]
- Commerce has previously recognized the applicability and accuracy of coconut-charcoal-specific import data under HTS subheading 4402.90, as opposed to the use of other nut-based (other than coconut-based) or wood-based charcoal.[90]

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[83] *See* Respondent's Case Brief at 43.
[84] *See* Petitioners' Rebuttal Brief at 32.
[85] *Id.* at 33.
[86] *Id.* at 33-34.
[87] *Id.*
[88] *Id.* at 35.
[89] *Id.* at 38-39.
[90] *Id*. at 36-37.

- Respondents do not point to the current record for why import data from France, Germany, and the United States should be excluded, but only refer to information specific to imports from France from prior years.[91]
- Therefore, under Commerce's "three-part test"[92] for disqualifying imports, there is no contemporaneous data on the record to impeach, either in whole or in part, the Thai import data.
- Should Commerce consider in this segment information pertaining to prior periods as evidence of AUV distortion via French imports, that methodology would still prove superior to the use of non-contemporaneous Philippine data that is not from a country on the OP List.

Commerce's Position: We disagree with the respondents' arguments that we should use either Philippine or Thai *Cocommunity* data for valuing carbonized material. In the *Preliminary Results*, we used Thai imports under HS 4402.90.10000 to value carbonized material.[93] For these final results, as discussed below, we continue to use Thai import data under HTS subheading 4402.90.10000 to value carbonized material.

As discussed above, Commerce's practice when selecting the best available information for valuing FOPs, as discussed above and in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.[94]

When presented with sufficient evidence to demonstrate that a particular SV is aberrational, and therefore unreliable, we will examine relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question. With respect to benchmarking, we generally examine historical import data for the potential surrogate countries for a given case, to the extent such import data are available, and/or examine data from the same HTS category for the primary surrogate country over multiple years to determine if the current data appear aberrational compared to historical values.[95] Merely appearing on the low or high end of a range of values is not enough to find such data aberrational.[96]

As an initial matter, we have not considered the Philippine *Cocommunity* data to value carbonized material for the final results because this information does not come from the primary

[91] *Id.* at 39 (citing Respondents' September 15, 2017 SV Comments at Exhibit 4A).
[92] *Id.* at 15 (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010), and accompanying IDM at Comment 2).
[93] *See* Prelim SV Memorandum.
[94] *See, e.g., PSF 2010* and accompanying IDM at Comment 1.
[95] *See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010), and accompanying IDM at Comment 6; *see also 1,1,1,2-Tetrafluroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), and accompanying IDM at Comment 10.
[96] *See, e.g., Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 26712 (May 9, 2014) (*Wood Flooring 2014*), and accompanying IDM at Comment 6 ("Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier.").

surrogate country or from a country found to be at similar level of economic development as China. Additionally, we have useable SV data from the primary surrogate country, a country found to be at the same level of economic development as China. The court in *Clearon II* found that Commerce is not required to evaluate data from non-economically comparable countries when making its SV selections unless parties provide information showing that quality data are not available from any of the economically comparable countries.[97] As discussed below, the parties have not done so here.

Commerce has a regulatory preference to value all factors from a single surrogate country.[98] As such, unless Thai import data to value carbonized material are shown to be aberrational, we will not seek data from another country.[99] The respondents argue that the Thai GTA import data for carbonized material are aberrant because they include data for imports from France, which are allegedly based on far more expensive, wood-based charcoal used in animal feed. However, contrary to the respondents' argument, the administrative record lacks information that demonstrates that French imports under HTS 4402.90.1000 were indeed wood-based charcoal. Specifically, contrary to the respondents' assertion that a declaration they placed on the record demonstrates that all French imports were comprised of wood-based charcoal powder, the record evidence only contains email correspondence and Thai import data from France that cover a part of the POR (April 2016-July 2016), which goes through March 2017.[100] Accordingly, we find that the record lacks sufficient basis for us to conclude that Thai GTA import data for the entire POR is aberrational.

The respondents argue that the petitioners also acknowledge the infirmity in Thai GTA import data when the petitioners compare the Thai GTA import data that exclude the French origin imports to the AUVs from all six countries on the OP List.[101] However, the petitioners submitted the Thai GTA import data that exclude imports from France in an effort to demonstrate that the use of Thai import data, exclusive of imports from France, would still prove superior to the use of non-contemporaneous Philippine data that is not from a country on the OP List.[102] As stated above, the administrative record lacks information demonstrating that French imports under HTS 4402.90.1000 were indeed wood-based charcoal. Therefore, Commerce does not have record evidence to conclude that the Thai GTA import data for carbonized material are aberrant.

With regard to the various arguments alleging data aberrations, we find that there is no basis to change our SV for carbonized materials from the *Preliminary Results*. First, with regard to the respondents' argument that, should we decide to use Thai GTA import data to value carbonized

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[97] *See Clearon Corp. v. United States*, Slip Op 15-91, WL 4978995 (CIT 2015) (*Clearon II*), at *4 (internal citations omitted).
[98] *See* 19 CFR 351.408(c)(2); *Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390 (CIT 2013) at 6 ("{T}he court must treat seriously {the Department's} preference for the use of a single surrogate country.").
[99] *See Fuwei Films*, 837 F. Supp. 2d at 1356 (CIT 2012); *see also Calgon Carbon Corp. v. United States*, 190 F. Supp.3d 1224, 1234 (CIT 2016).
[100] *See* Respondents' September 15, 2017 SV Comments at Exhibit 4A.
[101] *See* Respondent' Case Brief at 40 (citing Petitioners' April 13, 2018 Pre-Preliminary Results Comments at 10 ("the non-French Thai imports classified under HTS subheading 4402.90.10000 have a value of only 53 cents per kilogram, a value that is generally comparable to that of all six countries on the OP List.")).
[102] *See* Petitioners' Rebuttal Brief at 41.

material, we should also exclude Japanese data because it is aberrationally high, the argument is unconvincing because merely appearing on the low or high end of a range of values is not enough to find such data aberrational.[103] Moreover, the respondents have not provided any information, nor does the record contain any evidence, which demonstrates that the Thai imports from Japan which comprise the 16 KG are aberrational.

Second, the respondents' argument that, should we apply Thai GTA import data, we should also exclude the zero-quantity German data, is not supported by information available on the record.[104] We have previously found that the zero-quantity imports are attributable to rounding small import quantities to zero.[105] With no record evidence demonstrating the alleged anomaly of the data, we find no basis to exclude the zero-quantity data in this review.

Third, the respondents' argument that Commerce should use Thai *Cocommunity* data is not supported by information available on the record, and respondents did not make an argument to support this position in their case brief.[106] In addition, the petitioners' rebuttal argument regarding whether usable data from Malaysia would have precedence over the data from the Philippines, the argument does not require consideration by Commerce because, as previously discussed, the record contains usable data from the primary surrogate country.

Therefore, for the final results, we continue to find that the Thai GTA import data under HTS subheading 4402.90.10000 represent the best available information to value the carbonized material used by the respondents because they are not aberrant, and are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax- and duty- exclusive.

Comment 4: Hydrochloric Acid Surrogate Value

Respondents' Comments:

- To value hydrochloric acid (HCl), Commerce should reject the aberrationally high Thai GTA import data and rely either on Romanian GTA or Bulgarian GTA import data for HS 2806.10.[107] Of these two data sources, Bulgarian GTA import data for HS 2806.10 are more reliable because they contain a significantly higher quantity of imports and represent a broader market average.[108]

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[103] *See, e.g., Wood Flooring 2014*, and accompanying IDM at Comment 6 ("Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier."); *see also*, *e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and First New Shipper Review,* 72 FR 52052 (September 12, 2017), and accompanying IDM at Comment 4.
[104] *See* Respondents' Case Brief at 43.
[105] *See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 35616 (July 27, 2018), and accompanying IDM; *see also Forged Steel Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value*, 83 FR 50339 (October 5, 2018) and accompanying IDM at Comment 3; *see also Solarworld Ams., Inc. v. United States*, Ct. No. 16-00134, Slip Op. 2018-53, at 14 (CIT May 18, 2018).
[106] *See* Respondents' Case Brief at 38-49.
[107] *Id.* at 55-57.
[108] *Id.* at 57.

- HCl is a fungible and internationally-traded commodity. Therefore, radical fluctuations in the price of equivalent grades of HCl from one country to another cannot be supported.[109]
- Thai GTA import data under HTS subheading 2806.10.00102 report an extremely high AUV of $1,717 USD/MT, which is based on a total import quantity of 279.23 MT.[110] This SV is significantly higher than the benchmark data from the other potential surrogate countries, Bulgaria and Romania.
- Bulgarian GTA import data under HS 2806.10 for the POR are based on a significantly higher quantity of imports, *i.e.*, 22,102 MT, and yield an AUV of $65.28 USD/MT. Because Bulgaria is a potential surrogate country in this proceeding, the Bulgarian import data for HCl are probative to test the accuracy and reliability of the AUV from Thai import data. Notably, the Bulgarian import quantity is 79 times higher than the Thai import quantity; the Bulgarian AUV is 1/26th of the Thai AUV.[111] This suggests that the Thai import AUV is aberrationally high as compared to the corresponding Bulgarian import value.
- Likewise, Romanian GTA import data under HS 2806.10 for the POR are based on a significantly higher quantity of imports, *i.e.* 7,089 MT with an AUV of $61.97 USD/MT. Like Bulgaria, Romania is a potential surrogate country. Thus, its import price for HCl, being representative of a broader market average, is more reliable than the Thai import price.[112]
- In *Peer Bearings*, the CIT rejected the price data of a fungible and internationally-traded commodity reported from a primary surrogate country based on a 60 percent deviation from the corresponding prices from two other potential surrogate countries.[113] Commerce should apply the same rationale here and reject the Thai price of HCl.[114]
- Further, Independent Chemical Information Service (ICIS), a publisher of price data for chemicals, provides European and U.S. HCl prices which, when used as benchmarks, demonstrate the aberrant Thai GTA HCl import value.[115]
- Bulgarian GTA import data under HS 2806.10 reported for the POR represent a contemporaneous, country-wide average market price of HCl in Bulgaria. Bulgaria fulfills the two statutory criteria of (a) economic comparability and (b) significant production of comparable merchandise. In addition, the average Bulgarian HCl price of $65.28 USD/MT is more probative than Thai import prices because the international prices of HCl in other market economy countries at a higher level of economic development (*i.e.*, Germany, Belgium and France) varied in the range of €45-100 Euro/MT, which is in the same range as the Bulgarian price of $65.28/MT.[116] Even the U.S. price of $85-$110 USD/Short Ton for HCl corroborates the Bulgarian price and is, therefore, more reliable.[117] The Bulgarian price is further corroborated by the Romanian price of $61.97 USD/MT.

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[109] *See* Respondents' Case Brief at 49.
[110] *Id.* (citing Prelim SV Memorandum at Attachment 1). We note that the quantity specified in the Respondents' Case Brief for Thai GTA import data under HTS subheading 2806.10.00102 for the POR is 273.23 MT. However, the Prelim SV Memorandum demonstrates that the quantity is 27.923 MT (27,923 kg).
[111] *Id.* at 51.
[112] *Id.* at 52.
[113] *Id.* at 52-53 (citing *Peer Bearing Company-Changshan v. United States*, 752 F. Supp. 2d 1353, 1372 (CIT 2011) (*Peer Bearings*)).
[114] *Id.*
[115] *Id.* at 53 (citing the Respondents' September 15, 2017 SV Comments at Exhibit 3).
[116] *Id.* at 55.
[117] *Id.* at 51.

- In sum, Commerce should reject the Thai import data and apply either the Bulgarian import data or the Romanian import data to value HCl in the final results.

Petitioners' Rebuttal Comments:

- To value HCl, Commerce should continue to rely on Thai import data under HTS subheading 2806.10.00102.
- Although respondents acknowledge the importance of looking at historical data within the same country when evaluating whether data are aberrant, they failed to undertake such analysis.[118]
- The record evidence demonstrates that the AUV derived from Thai GTA import data under HTS subheading 2806.10.00102 is twenty-five percent lower than the AUVs used by Commerce in the three immediately preceding administrative reviews, all three of which were based on data from Thailand.[119]
- The Thai import value for this POR is not aberrational in comparison to the average import value relied on during the past nine administrative reviews, at only 5.8 percent higher than the historical average for all nine prior reviews conducted by Commerce.[120]
- Further, the respondents have cherry-picked the contemporaneous import data discussed in their brief, presenting as benchmarks the import values for only Bulgaria and Romania.[121]
- However, the Thai import AUV for HCl (*i.e.*, $1,717 USD/MT) are generally comparable with the average Cost Insurance and Freight (CIF)-based import values across all six countries on the OP List for this POR ($837 USD/MT).[122]
- When the CIF-based import values of the six countries on the OP List are considered, it is the Bulgarian and Romanian import values ($65 USD/MT and $62 USD/MT, respectively) that are outliers.
- Excluding the aberrationally low import values for Bulgaria and Romania from the analysis, the POR-specific Thai import value for HCl is only 59 percent higher than the average CIF value for the remaining countries on the OP List (*i.e.*, Thailand, Mexico, Brazil, South Africa) (*i.e.*, $1,224 USD/MT).
- Commerce should reject the respondents' use of ICIS German, Belgian, French, and U.S. domestic price benchmarks because all involve information from countries that have vastly higher per-capita GNIs relative to China, and thus, are not economically comparable to China.[123]
- While the respondents cite to *Peer Bearings* to disqualify the Thai GTA data, the respondents fail to recognize that in that case, the respondents' arguments relied on a benchmarking exercise focusing on countries that primarily were on Commerce's OP List.[124] In contrast, the respondents in this review have ignored the import values for HCl from three market

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[118] *Id*. at 43. The petitioner notes that the Thai GTA value used by Commerce to value HCl for this instant POR is 25 percent lower than the average value of Thai import values that Commerce had relied on in the three immediately preceding administrative reviews.
[119] *Id.* at 44.
[120] *Id.*
[121] *Id*. at 45.
[122] *Id*.
[123] *Id.* at 46-47.
[124] *Id.* at 47. (citing P*eer Bearings* at 1369-72)

economy countries that Commerce has determined to be at the same level of economic development as China (*i.e.*, Mexico, Brazil and South Africa), as well as historical data for Thailand, and have instead presented pricing information from Bulgaria, Romania and other non-comparable economies.[125]

- Commerce should continue to use the contemporaneous Thai GTA data because they reflect a value that comports with average values used in the past nine segments of this proceeding,[126] and is generally comparable with the average import value across all six countries on the OP List.

Commerce's Position: We agree with the petitioners that the Thai GTA import data are the best available information on the record to value HCl. Therefore, we continue to value HCl using the Thai imports of HCl under HS subheading 2806.10.00102 for the final results, as we did in the *Preliminary Results*.

As discussed above, our practice, when selecting the best available information, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax- and duty-exclusive. Further, Commerce undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[127]
Also as discussed above, when presented with sufficient evidence to demonstrate a particular SV is aberrational, and therefore unreliable, Commerce will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.[128] The CIT in *Peer Bearings* stated, "{t}he statute requires Commerce to compare the chosen data set with other data sets on the record and thereby determine what is the best available information….[129] In order to evaluate whether a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.[130]

To value HCl, the record of this review contains: 1) Thai GTA import data under HTS subheading 2806.10.00102;[131] 2) Thai GTA import data under 2806.10;[132] 3) Brazilian GTA import data under HS 2806.10; 4) Bulgarian GTA import data under HS 2806.10, 5) Mexican

[125] *Id.*
[126] *Id.*
[127] *See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying IDM at Comment 1.
[128] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015), and accompanying IDM at Comment 6.
[129] *See Peer Bearings* at 1373 (citing 19 C.F.R. § 351.408(c)(2) (providing that "the Secretary *normally* will value all factors in a single surrogate country") (emphasis added by CIT); and 19 U.S.C. § 1677b(c)(1) (requiring Commerce to identify the "best available information" regarding the value of a factor of production in a market economy country or countries considered to be appropriate by the administering authority)).
[130] *See, e.g., Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying IDM at Comment 14.
[131] *See* Petitioners' September 15, 2017 Surrogate Value Submission (Petitioners' September 15, 2017 SV Submission) at Attachment 1.
[132] *See* Petitioners' April 3, 2018 Surrogate Value Submission (Petitioners' April 3, 2018 SV Submission) at Attachment 8.

GTA import data under HS 2806.10; 6) South African GTA import data under HS 2806.10; 7) Romanian GTA import data under HS 2806.10; 8) Malaysian GTA import data under 2806.10;[133] and 9) Belgian, French, German, and U.S. ICIS domestic prices.[134] Although the respondents argue that the Thai data for HTS 2806.10.000102 are aberrational, their arguments fail to call into question record information on HCl values contemporaneous with the POR and from a country that is at the same level of economic development as China. Specifically, the respondents argue that the Thai import data are impeached by Bulgarian or Romanian GTA import data for HS 2806.10, because the AUVs from Romania and Bulgaria are significantly lower and are based on a higher volume of imports compared to the Thai GTA import data. However, the Bulgarian and Romanian data they suggest relying upon are based on the broader HS subcategory of 2806.10,[135] compared to the Thai data for HS 2806.10.000102, which is more specific to the input used by the respondents to produce the subject merchandise. Specifically, the description of the Thai HS category indicates a concentration range, *i.e.*, "Hydrochloric Acid 15% W/W To 36% W/W."

Thai data for HTS 2806.10.000102 is more specific to the input used to produce the subject merchandise, compared to the other data on the record. GTA HS category 2806.10 "Hydrochloric Acid" reported by Romania ($0.06 USD/kg (7,107,500 kg)),[136] Bulgaria ($0.07 USD/kg (22,110,000 kg)),[137] Malaysia ($0.34 USD/kg (8,673,844 kg)),[138] Mexico ($0.30 USD/kg (12,085,197 kg)),[139] Brazil ($0.356 USD/kg (5,060,900 kg)),[140] Thailand ($1.94 USD /kg (460,919 kg)),[141] and South Africa ($2.5 USD/kg (100,073 kg))[142] is not as specific as the input used by the mandatory respondents because the description of this HS category does not indicate a concentration range.[143] Nevertheless, when the Thai SV used in the *Preliminary Results* is compared to the range of benchmarks on the record, the specific Thai GTA import data is not the highest reported figure, as both figures reported for the Thai and South African GTA import data under HS 2806.10 category, *i.e*., the less specific category, are greater in value than the more specific HCl SV used in the *Preliminary Results* (*i.e.* $1.7 USD/kg (27,923 kg)).[144]

Also, when historical data for Thailand are considered, the Thai import value used for this segment is not aberrationally high, but is instead lower than the Thai import values under the eleven-digit subheadings used in previous segments (*i.e.*, $2.76 USD/kg for POR7, $2.39 USD/kg for POR8, and $1.72 USD/kg for POR9).[145] Therefore, the respondents' argument that

[133] *Id.*
[134] *See* Respondents' September 15, 2017 SV Comments at Exhibit 3.
[135] *Id.*
[136] *See* Petitioners' April 3, 2018 SV Submission at Attachment 8.
[137] *Id.*
[138] *Id.*
[139] *Id.* (the AUV was adjusted to reflect CIF-based value).
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] Although the petitioners and respondents made arguments using MT-based values in Metric-Ton basis, we used kg-based values for our position, as the GTA import data on the record are on a kg basis.
[144] *See* Prelim SV Memorandum at Attachment 1.
[145] *See* Petitioners' April 3, 2018 SV Submission at Attachment 11 (placing on the record excerpts from SV memoranda from the following prior administrative reviews: *Certain Activated Carbon from the People's Republic*

the Thai import values used for this segment are aberrationally high is unpersuasive. Further, we note that the respondents' argument that the ICIS data demonstrate that the Thai GTA HCl import value is aberrational is unpersuasive because the ICIS data are not from economically comparable countries.

With respect to volume, we have consistently found that small import quantities alone are not inherently distortive.[146] In this instance, we have no basis to conclude that the import quantity for the input-specific Thai HCl SV results in distortion of the AUV. Indeed, the AUV for the input-specific Thai HCl SV is within the range of the AUV for the South African and Thai GTA HS 2806.10 category (the less specific category), which are the AUVs with the next closest import quantities.

After conducting a comparison with the other benchmarks on the record, we continue find the Thai GTA data under HS subheading 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W" are the best available information from which to value HCl input. Further, the CIT held that product specificity must be the primary consideration in determining the best available information when considering SV selection.[147] Therefore, because the Thai value reported for HS category 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W" is specific to the input used by the respondents' suppliers, a broad market average, from the primary surrogate country, and within the range of values and quantities of other countries which report imports under HS category 2806.10 "Hydrochloric Acid," we have continued to value the hydrochloric acid input using the Thai GTA data for HS category 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W."

Comment 5: Labor Surrogate Value

Respondents' Comments:

- Commerce should value labor by using cost data issued by the National Statistical Office (NSO) of Thailand in 2012, *i.e.* NSO Industrial Census data, under the industry-specific code 20299 ("Manufacture of Other Chemical Products, n.e.c.") instead of Thai NSO Labor Force Survey general manufacturing data.[148]
- The general manufacturing data represent a basket category while the industry-specific data are more specific to the input.[149] Published explanatory notes on the record show that the industrial class 2029 contains "activated carbon, lubricating oil additives,

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of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 61172 (October 9, 2015), and accompanying IDM; *Certain Activated Carbon from the People's Republic of the PRC: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016), and accompanying IDM; and *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), and accompanying IDM.)

[146] *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 82 FR 18115 (April 17, 2017), and accompanying IDM at Comment 3.

[147] *See Taian Ziyang Food Company Ltd., v. United States*, 783 F. Supp. 2d 1292, 1300, 1330 (CIT 2011) (*Taian 2011)*.

[148] *See* Respondents' Case Brief at 57-58.

[149] *Id.* at 58.

prepared rubber accelerators, catalysts, and other chemical products for industrial use."[150] Further, the NSO Industrial Census data reveal that none of the sub-classifications under class 2029 other than code 20299, *i.e.* "Manufacture of other chemical products, n.e.c.," could encompass the subject merchandise.

- The NSO Labor Force Survey general manufacturing data are incomplete because they fail to account for portions of indirect labor costs, *i.e.*, the data do not include the cost of "{e}mployer's contribution to Social security system."[151] The NSO Industrial Census industry-specific data are far more comprehensive because they capture both direct and indirect labor costs.
- Commerce preferred the industry-specific NSO Industrial Census rather than the NSO Labor Force Survey in *AR9 Carbon Final*.[152]
- Commerce should not follow its decision in *AR8 Carbon Final* where it preferred general manufacturing labor cost data reported in the NSO Labor Force Survey report[153] because the current administrative record is more comprehensive and contains an official clarification letter regarding NSO Industrial Census data specificity and quality, issued by the NSO of Thailand.[154]
- The NSO Industrial Census labor cost data are more comprehensive also because they are reported based on a significantly larger sample size.[155]
- Commerce should apply a Consumer Price Index (CPI) inflator to render the 2012 industry-specific NSO Industrial Census data contemporaneous.[156]

Petitioners' Rebuttal Comments:

- Commerce should continue valuing labor by using the more contemporaneous Thai NSO Labor Force Survey data for the final results.[157]
- Commerce has the authority to decline relying on a letter of clarification if the letter does not explain the methodology by which the differences in data can be accounted.[158]

Commerce's Position: In *Labor Methodologies*, we stated that using data for industry-specific wages from the primary surrogate country is the best approach for valuing the labor input in NME antidumping proceedings, and that the ILO Yearbook's Chapter 6A is the preferred surrogate labor source, as it accounts for all direct and indirect labor costs (although we are not precluded from using other sources for valuing labor costs).[159] The CIT found the methodology

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[150] *Id.* at 60 (citing Respondents' September 15, 2017 SV Comments at Exhibit 8).
[151] *Id.* at 58, 65-66.
[152] *Id.* at 62.
[153] *Id.* at 65 (citing *AR8 Carbon Final* and accompanying IDM at Comment 7).
[154] *Id.* (citing Respondents' September 15, 2017 SV Comments at Exhibit 8C).
[155] *Id.* at 68-69.
[156] *Id.* at 71 (citing *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12533, 12555 (March 1, 2012)).
[157] *See* Petitioners' Rebuttal Brief at 48-49 (citing *Diamond Sawblades Manufacturers' Coalition v. United States*, Consol. Court No. 16-00124, Slip Op. 18-28, at 27 (CIT March 22, 2018) (*Diamond Sawblades 2018*)).
[158] *Id.* 49-50 (citing *Diamond Sawblades 2018* at 27-28).
[159] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36093 (June 21, 2011) (*Labor Methodologies*); *see also Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 65616 (November 5, 2014); unchanged in *Steel Wire Garment Hangers from the People's*

for valuing labor using industry-specific data from the primary surrogate country to be reasonable because it is consistent with how Commerce values all other FOPs.[160]

In the *Preliminary Results*, we valued labor using contemporaneous NSO Labor Force Survey data for general manufacturing wages, rather than the industry-specific 2012 Thai NSO Industrial Census data, because these data were initially deemed to be both contemporaneous and specific to the input.[161] The primary factor in selecting the best available information as described in *Labor Methodologies* is specificity.[162] As stated above, specificity must be the primary consideration in determining the best available information when considering SV selection.[163] Therefore, upon reconsideration, we determine that it is appropriate to value labor using the 2012 NSO Industrial Census data under code 20299 "Manufacture of Other Chemical Products, n.e.c."[164] because these data encompass the most specific wage data for activated carbon industry on the record. Further, because this labor rate is not contemporaneous with the review period, we have inflated it using the CPI.[165] Commerce considers the CPI to be the best available information to capture the inflation within a country, including its labor wage rates. By contrast, the NSO Labor Force Survey data offer greater contemporaneity, but it cannot be adjusted to greater specificity.

Comment 6: Whether to Continue to Use the Thai Financial Statements

Respondents' Comments:

- Commerce should use the 2016 Romanian Romcarbon SA (Romcarbon) financial statements to value the financial ratios, rather than the 2011 Thai Carbokarn Co., Ltd. (Carbokarn) financial statements.
- Because Romcarbon is a Romanian company, its statements are from an economically comparable country, as identified by Commerce, and from a country that satisfies the statutory criteria of significant production of comparable merchandise under Policy Bulletin 04.1.[166] Consequently, Romania qualifies as a secondary surrogate country.
- In addition, Romcarbon's profit center no. 2 includes an "Active Coal Workshop" that is dedicated to the production of activated carbon.[167] Because it is a producer of identical and comparable merchandise in an economically comparable country, Romcarbon represents a

Republic of China: Final Results of Antidumping Duty Administrative Review; 2012- 2013, 80 FR 13332 (March 13, 2015).

[160] *See* Respondents' Case Brief at 64 (citing *Taian 2013*).

[161] *See Preliminary Results* and accompanying PDM at 28.

[162] *See Labor Methodologies*, 76 FR at 36093.

[163] *See Taian 2011*.

[164] *See AR7 Carbon Final* and accompanying IDM at Comment 11; *see also Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, Final Partial Rescission; 2014-2015*, 82 FR 11434 (February 23, 2017), and accompanying IDM at Comment 6.

[165] *See* Carbon Activated's Final Calculation Memorandum.

[166] *See* Import Admin., U.S. Dep't of Commerce, *Non Market Economy Surrogate Country Selection Process*, Policy Bulletin 04.1 (2004), https://enforcement.trade.gov/policy/bull04-1.html (last visited October 9, 2018) (hereinafter "Policy Bulletin 04.1.").

[167] *See* Respondents' Case Brief at 74-75 (citing Respondents' September 15, 2017 SV Comments at Exhibit 9).

surrogate company with comparable production and financial experience to the respondents.[168]

- Furthermore, Romcarbon's financial statements are very detailed and provide discrete line items for the cost of raw materials, labor, energy and other overhead, and selling, general and administrative expense (SGA) line items.[169] Under established policy, Commerce disregards financial statements that are not sufficiently detailed to permit calculation of one or more of the surrogate financial ratios.[170]
- The 2016 Romcarbon financial statements, unlike the 2011 Carbokarn financial statements, are fully contemporaneous with the POR.
- The fact that the statements are from a secondary surrogate country should not be an impediment to their selection according to agency precedent.[171]

Petitioners' Rebuttal Comments:

- Commerce should continue to use Carbokarn's financial statements to calculate the surrogate financial ratios.
- The respondents' argument that Commerce should rely on Romcarbon's financial statements is flawed because the argument is based on the false assumption that Romcarbon is (and has been) a producer of identical and comparable merchandise. Instead, the information in Romcarbon' financial statements makes it clear that the manufacture of activated carbon is not one of the company's main business activities.[172]
- In the *Preliminary Results*, Commerce noted that although Carbokarn's statement is not contemporaneous with the POR, other factors Commerce considers when selecting surrogate financial statements support the use of the Carbokarn's statement in this segment.[173]
- Commerce already noted in its *Preliminary Results* that Romcarbon is not a significant producer of identical or comparable merchandise of activated carbon. Specifically, Commerce found that Romcarbon's statements "are from a company which produces polyethylene, polypropylene, and polyvinyl chloride products, which is not merchandise comparable to the subject merchandise."[174]
- The respondents' assertion that Romcarbon is a surrogate company with a comparable production and financial experience to the respondents because Romcarbon's profit center no. 2 includes an "Active Coal Workshop" that is dedicated to the production of activated carbon, is contradicted by information in Romcarbon's financial statement, which makes clear that Romcarbon's business activities are focused primarily in other areas.[175]

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[168] *Id.* at 74-75.
[169] *Id.* at 74 (citing Respondents' September 15, 2017 SV Comments at Exhibit 9).
[170] *Id.* (citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 Fed. Reg. 35723, 35725 (June 24, 2014)).
[171] *Id.* (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168, 36170 (June 17, 2013), and accompanying IDM at Comment 9; and *Freshwater Crawfish Tail Meat from the People's Republic of China: Antidumping Duty Administrative Review; 2010- 2011*, 77 FR 61383, 61385 (October 9, 2012)).
[172] *See* Petitioners' Rebuttal Brief at 51-54.
[173] *Id.* at 51 (citing *Preliminary Results*, and accompanying PDM at 28, and 19 CFR 351.408(c)(2)).
[174] *Id.* at 51-52 (citing *Preliminary Results*, and accompanying PDM at 28).
[175] *Id.* at 52.

- The respondents' argument that Romcarbon's financial statement is "very detailed" and provides line items including the cost of raw materials, labor, energy, other overhead and SG&A, is irrelevant here because as a threshold matter, Romcarbon's operations do not involve the production of merchandise that is identical or comparable to activated carbon to any significant extent.[176]
- Commerce declined to rely on Romcarbon's financial statements in the two immediately preceding segments, as well as in the *Preliminary Results*, explaining that the benefits of using Carbokarn's financial statements outweighed those of Romcarbon's financial statement, pointing to the fact that Romcarbon did not produce merchandise identical to or comparable to activated carbon, and in addition, did not involve operations in the primary surrogate country.[177]
- In this instance, ensuring the similarity of merchandise produced to reflect the experience of the respondents is far more important than the contemporaneity of the financial statements. Therefore, Commerce should continue to rely on the Carbokarn financial statements in the final results.
- Furthermore, Commerce's use of Thai financial statements is consistent with the agency's regulatory preference for valuing all FOPs in a single surrogate country.[178]
- Commerce preliminarily concluded that Thailand offers the financial statements of a producer of identical merchandise. In contrast, because Romcarbon does not produce merchandise identical or comparable to activated carbon, there is no basis to use Romcarbon's financial statements as a data source from a secondary surrogate country.[179]

Commerce's Position: In accordance with 19 CFR 351.408(c)(4), Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise, in the surrogate country, to value manufacturing overhead, general expenses, and profit.[180] Additionally, for purposes of selecting surrogate producers, we may examine how similar a proposed surrogate producer's production experience is to the NME producer's production experience.[181] However, we are not required to "duplicate the exact production experience of an NME producer," nor must we undertake "an item-by-item analysis in calculating factory overhead."[182]

When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is Commerce's practice to select SVs which, to the extent practicable, are product-specific, representative of a broad-market average, publicly available, contemporaneous

[176] *Id.* at 53.
[177] *Id.* at 54.
[178] *Id.*
[179] *Id.* at 56.
[180] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews,* 72 FR 52049 (September 12, 2007), and accompanying IDM at Comment 2.
[181] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying IDM at Comment 13.
[182] *See Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (*Nation Ford*); *see also Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999).

with the POR, and exclusive of taxes and duties.[183] Additionally, we have a strong preference for valuing all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[184] Further, the courts have recognized our discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[185] Moreover, when selecting among the available surrogate financial ratios, Commerce generally will not consider surrogate financial statements which contain evidence of countervailable subsidies when other useable statements are available .[186]

Commerce bases the valuation of the FOPs on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate...."[187] In valuing such factors, Congress further directs Commerce to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."[188] In determining whether a financial statement contains evidence of countervailable subsidies, Commerce will first determine whether an alleged subsidy has been found countervailable in a prior countervailing duty proceeding.[189]

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[183] *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), and accompanying IDM at Comment 2.

[184] *See Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1335 (CIT 2014) (quoting *Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012), and accompanying IDM at Comment I).

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

[186] *See Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Recession of Antidumping Duty Administrative Review*, 75 FR 49460 (August 13, 2010), and accompanying IDM at Comment 9.

[187] *See* section 773(c)(1) of the Act.

[188] *See* Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 76 100th Cong., 2nd Session (1988) at 590; *see also, e.g., Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009) at Comment 2 (citing *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007) and accompanying IDM at Comment 1 (where Commerce determined that the financial statements of several companies that had received countervailable subsidies did not constitute the best available information to value the surrogate financial ratios and, consequently declined to use them)).

[189] *See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part*, 75 FR 57449 (September 21, 2010) and accompanying IDM at Comment 6 ("Because this is not a specific countervailable subsidy program determined by the Department to confer countervailable benefits, the Department determines that there is no evidence that Jindal Steel received countervailable subsidies, based on its 2008-09 financial statements"); *Clearon Corp. v. United States*, 800 F. Supp. 2d 1355, 1359 (CIT 2011) (citing *Final Results of the 3rd New Shipper Reviews: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 74 FR 29473 (June 15, 2009), and accompanying IDM at 4-5).

The record contains 2016 financial statements from Romcarbon, a Romanian manufacturer of polyethylene, polypropylene, and polyvinyl chloride products; 2016 financial statements from Kekwa Indah Sdn. Bhd., a Malaysian company engaged principally in the manufacture of granular powder activated carbon and provision of machinery hiring services;[190] 2016 financial statements from Century Chemical Works Sendirian Berhad, a Malaysian company whose principal activities are manufacturing and sale of activated carbon products and renting of warehouse;[191] and the 2011 financial statements of Carbokarn, a Thai producer of activated carbon.[192]

As previously discussed, Commerce has a strong preference to value all FOPs in a single surrogate country. However, for the final results, we have re-examined the line item "tax coupon receivables" in Carbokarn's financial statements and found that it refers to a program that Commerce countervailed in *Thai Shrimp.*[193] Further, to the extent available, we have a preference to use contemporaneous data from market economy (ME) surrogate companies when selecting financial statements for purposes of calculating financial ratios. While Carbokarn's statement is from a producer of identical merchandise, representative of a broad-market average, exclusive of taxes and duties, audited, complete, publicly available, and contains enough information to calculate surrogate financial ratios, Carbokarn's 2011 financial statements are not contemporaneous with the POR, as they cover calendar year 2011, five years prior to the POR. Therefore, Carbokarn's 2011 financial statements are not the best available information because we have financial statements on the record that better meet all of our selection criteria.

With respect to the Malaysian 2016 Kekwa Indah Sdn. Bhd. (Kekwa Indah) and 2016 Century Chemical Works Sendirian Berhad financial statements, Malaysia is not a primary surrogate country, is not at a similar level of economic development as China, and is not listed on the OP List. Further, Malaysia is not at a similar level of economic development as China because its per capita GNI does not fall within the range of GNIs of countries on the OP List. Malaysia's 2016 per capita GNI of $9,850 USD is greater than that of Romania (*i.e.*, $9,470 USD), the country with the highest 2016 per capita GNI from the OP List.[194]

With respect to the Romanian 2016 Romcarbon financial statements, while we find that Romcarbon's principal manufacturing activities are polyethylene, polypropylene, polyvinyl chloride, polystyrene processing, filters and protective materials, we also find evidence that demonstrates that Romcarbon produces some activated carbon.[195] Therefore, because they are the only remaining financial statements on the record from a country at the same level of economic development as China and are audited, complete, publicly available, and include some production of identical merchandise, and do not show evidence of countervailable subsidies,

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[190] *See* Petitioners' April 3, 2018 SV Submission at Exhibit 4A.
[191] *Id.* at Exhibit 4B.
[192] *See* Petitioners' September 15, 2017 SV Submission.
[193] *See Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) (*Thai Shrimp*), and accompanying IDM at IV.A.1.
[194] *See* Commerce'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.
[195] *See* Respondents' SV Comment, at Exhibit 9, pdf page 1299 (Romcarbon's profit center no. 2 includes a "Workshop of Active Carbon".).

Romcarbon's financial statements are the best available information to calculate surrogate financial ratios. Therefore, we recalculated financial ratios based on the 2016 financial statements of Romcarbon for the final results.

Comment 7: Value-Added Tax Adjustments

Respondents' Comments:

- Adjustment of the U.S sale price by 17 percent of the higher of entered value or net adjusted U.S. sales price is contrary to the plain meaning of the statute and unsupported by record evidence.[196]
- Even if Commerce rejects the respondents' argument that making VAT adjustments is contrary to law, it must make the VAT adjustments based on FOB price.[197]
- Commerce's VAT deduction is not authorized by the plain language of the statute because VAT is not "imposed . . . on the exportation of the subject merchandise."[198]
- Neither of the respondents pay VAT on exportation of subject merchandise because the export sale is exempt from the VAT scheme.[199]
- The only VAT paid by the respondents is VAT paid for domestic purchases of inputs, which is an internal tax and is not a tax "imposed on exportation of subject merchandise."[200]
- Chinese VAT is an internal tax related to the cost of production in China.[201]
- "Commerce's interpretation of the antidumping law cannot be contrary to the plain language of the statute or conflict with plain congressional intent."[202]
- Commerce's VAT deduction policy is unlawful and *ultra vires* of the controlling statute.[203]
- Commerce made no actual finding that a 17 percent VAT was *imposed* on *exports* of subject merchandise.[204]
- Alternatively, Commerce should change its VAT deduction methodology and calculate the U.S. price adjustment amount by applying the 17 percent VAT rate to the value of inputs purchased and not to the higher value of the finished merchandise sold.[205]
- Alternatively, Commerce should at least apply the VAT rate allegedly imposed on the exportation: (1) for EP sales, to the FOB price declared by Datong Juqiang upon the exportation of the merchandise from China – not to the entered value, U.S. net price, or

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[196] *See* Respondents' Case Brief at 78.
[197] *Id.*
[198] *Id.* at 81 (quoting section 772(c)(2)(B) of the Act).
[199] *Id.* at 82.
[200] *Id.* at 82 (citing *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340, 1346-1347 (CIT 2011)).
[201] *Id.* at 83 (citing *Bridgestone Ams., Inc. v. United States*, 636 F. Supp. 2d 1347, 1356 (CIT 2009)).
[202] *Id.* at 83 (citing *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1371-72 (Fed. Cir. 2010)).
[203] *Id.* at 83 (citing *Qingdao Qihang Tyre Co. v. United States*, 308 F. Supp. 3d 1329 (CIT 2018)).
[204] *Id.* at 87 (citing *China Mfrs. Alliance, LLC v. United States*, 205 F. Supp. 3d 1325, 1346-1351 (CIT 2017)).
[205] *Id.* at 89-90 (citing *Federal Mogul v. United States*, 63 F.3d 1572 (Fed. Cir. 1995) and *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, 36482-36483 (June 19, 2012)).

gross U.S. sales price; and (2) for CEP sales, to the "FOB value" or "entered value" – not net adjusted U.S. price.[206]

Petitioners' Rebuttal Comments:

- U.S. law permits Commerce to adjust U.S. price to account for irrecoverable VAT.[207]
- "'{B}ecause the Chinese VAT is refunded in the context of domestic sales but not exports' it is reasonably treated as a penalty being applied at the time of exportation."[208]
- "Adjusting for an output VAT charged on the exportation of the merchandise" is different from adjusting for a domestic tax.[209]
- Commerce should reject the respondents' claim that there is no VAT imposed at the point of exportation because the VAT at issue is the irrecoverable VAT.[210]
- The 17 percent VAT applicable to the production of activated carbon, but not rebated upon export, functions as an export tax.[211]
- Commerce should continue applying the VAT rate to the higher of estimated customs value or entered value because the FOB and entered values reported by the respondents are often undervalued.[212] Commerce has followed this methodology in the most recent three administrative reviews in this proceeding, which has been sustained by the CIT.[213]
- Record evidence demonstrates that the respondents' entered values are unreliable.[214]

Commerce's Position: VAT is an indirect, *ad valorem* consumption tax imposed on the purchase (sale) of goods. It is levied on the purchase (sale) price of the good, *i.e.*, it is paid by the buyer and collected by the seller. For example, if the purchase price is $100 and the VAT rate is 15%, the buyer pays $115 to the seller, $100 for the good and $15 in VAT. VAT is typically imposed at every stage of production. Thus, under a typical VAT system, firms (1) pay VAT on their purchases of production inputs and raw materials ("input VAT") as well as (2) collect VAT on sales of their output ("output VAT").

Firms calculate input VAT and output VAT for tax purposes on a company-wide (not transaction-specific) basis, *i.e.*, in the case of input VAT, on the basis of <u>all input purchases</u> regardless of whether used in the production of goods for export or domestic consumption, and in the case of output VAT, on the basis of <u>all sales to all markets</u>, foreign and domestic. Thus, a firm might pay the equivalent of $60 million in total input VAT across all input purchases and collect $100 million in total output VAT across all sales. In this situation, however, the firm would remit to the government only $40 million of the $100 million in output VAT collected on

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206 *Id.* at 95-98 (citing *AR7 Carbon Final*, and accompanying IDM at Comment 3).
207 *See* Petitioners' Case Brief at 57 (citing *Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159, 1182-88 (CIT 2017) (*Jacobi Carbons I*) ("{T}he Chinese VAT is permissibly construed as an 'other charge' that is 'imposed by China upon the exportation of the subject merchandise.'")).
208 *Id.* at 58-59 (citing *Jacobi Carbons I* at 1188).
209 *Id.* at 58, n.36 (citing *Jacobi Carbons AB v. United States*, No. 15-00286, 2018 Ct. Intl. Trade LEXIS 47, at *59 n.49 (CIT 2018) (*Jacobi II*)).
210 *Id.* at 59 (citing *AR9 Carbon Final* and accompanying IDM at Comment 1).
211 *Id.* at 61.
212 *Id.*
213 *Id.*
214 *Id.* at 64.

its sales because of a $60 million credit for input VAT paid that the firm can claim against output VAT.[215] As result, the firm bears no "VAT burden (cost)": the firm, through the credit, is refunded or recovers all of the $60 million in input VAT that it paid, and the $40 million remittance to the government is simply a transfer to the government of VAT paid by (collected from) the buyer with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer of the good, not on the firm.

This would describe the situation under Chinese law except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. Instead, Chinese tax law requires a reduction in or offset to the input VAT that can be credited against output VAT. This formula for this reduction/offset is provided in Article 5 of the 2012 PRC government tax regulation, *Notice of the Ministry of Finance and the State Administration of Taxation on VAT and Consumption Tax Policies for Exported Goods and Labor Services* ("*2012 VAT Notice*"):[216]

$$\textbf{Reduction/Offset} = \mathbf{(P - c)} \times \mathbf{(T_1 - T_2)},$$

where,

P = (VAT-free) FOB value of export sales;

c = value of bonded (duty- and VAT-free) imports of inputs used in the production of goods for export;

T_1 = VAT rate; and

T_2 = refund rate specific to the export good.

Using the example above, if P = $200 million, c = 0, T_1 = 17% and T_2 = 10%, then the reduction/offset = ($200 million - $0) x (17% - 10%) = $200 million x 7% = $14 million.

Chinese law then requires that the firm in this example calculate creditable input VAT by subtracting the $14 million from total input VAT, as specified in Article 5.1(1) of the *2012 VAT Notice*:

Creditable input VAT = Total input VAT – Reduction/Offset

Using again the example above, the firm can credit only $60 million – $14 million = $46 million of the $60 million in input VAT against output VAT. Because the $14 million is not creditable (legally recoverable), it is not refunded to the firm. Thus, the firm incurs a cost equal to $14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of $T_1 - T_2$. This cost therefore functions as an "export tax, duty, or other charge" because the firm does not incur it but for exportation of the subject merchandise, and under Chinese law must be recorded

[215] The credit if not exhausted in the current period can be carried forward.
[216] *See* Memorandum, "Placement of Circular No. 39 on Record," dated August 13, 2018, at Attachment, *Notice of the Ministry of Finance and the State Administration of Taxation on VAT and Consumption Tax Policies for Exported Goods and Labor Services*, Article 5 (Ministry of Finance, State Administration of Taxation, 2012 No. 39, issued May 25, 2012).

as a cost of exported goods.[217] It is for this "export tax, duty, or other charge" that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act,.[218]

It is important to note that under Chinese law the reduction/offset described above is defined in terms of, and applies to, total (company-wide) input VAT across purchases of all inputs, whether used in the production of goods for export or domestic consumption. The reduction/offset does not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint for the simple reason that such treatment under Chinese law applies to the company as a whole, not specific markets or sales. At the same time, however, the reduction/offset is calculated on the basis of the FOB value of exported goods, so it can be thought of as a tax on the company (*i.e.*, a reduction in the input VAT credit) that the company would not incur but for the export sales it makes, a tax fully allocable to export sales because the firm under Chinese law must book it as cost of exported goods.

The VAT treatment under Chinese law of exports of goods described above concerns only export sales that are <u>not</u> subject to output VAT, the situation where the firm collects no VAT from the buyer, which applies to most exports from China. However, the *2012 VAT Notice* provides for a limited exception in which export sales of certain goods are, under Chinese law, deemed domestic sales for tax purposes and are thus subject to output VAT at the full rate.[219] The formulas discussed above from Article 5 of the *2012 VAT Notice* do not apply to firms that export these goods, and there is therefore no reduction in or offset to their creditable input VAT. For these firms, creditable input VAT = total input VAT, *i.e.*, these firms recover all of their input VAT. At the same time, export sales of these firms are subject to an explicit output VAT at the full rate, T_1.[220] Commerce must therefore deduct this tax from U.S. price[221] under section 772(c) of the Act to ensure tax-neutral dumping margin calculations.[222]

[217] Article 5(3) of the *2012 VAT Notice* states: "Where the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of exported goods and services."
[218] Because the $14 million is the amount of input VAT that is not refunded to the firm, it is sometimes referred to as "irrecoverable input VAT." However, that phrase is perhaps misleading because the $14 million is not a fraction or percentage of the VAT the firm paid on purchases of inputs used in the production of exports. If that were the case, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the *2012 VAT Notice* as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the $14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula's reliance on the FOB export value as the tax basis for the calculation. The $14 million is a reduction in or offset to what is essentially a tax credit, and it is calculated based on and is proportional to the value of a company's export sales. Thus, "irrecoverable input VAT" is in fact, despite its name, an export tax within the meaning of section 772(c) of the Act.
[219] *See 2012 VAT Notice*, Article 7. For these goods, the VAT refund rate on export is zero.
[220] *See 2012 VAT Notice*, Article 7.2(1).
[221] Commerce will divide the VAT-inclusive export price by (1 + T), where T is the applicable VAT rate.
[222] Pursuant to sections 772(c) and 773(c) of the Act, the calculation of NV based on factors of production in NME antidumping cases is calculated on a VAT-exclusive basis, so U.S. price must also be calculated on a VAT-exclusive basis to ensure tax neutrality.

Because export sales of activated carbon are among these goods where no reduction in or offset to their creditable input VAT applies,[223] and consequently, are deemed to be domestic sales,[224] export sales of activated carbon are subject to the full 17 percent output VAT rate. Other information on the record also corroborates that export sales of activated carbon were subject to the 17 percent output VAT rate and that no reduction in, or offset to, creditable input VAT applied. Carbon Activated unequivocally stated that the applicable VAT rate for subject merchandise was 17% and that it was not eligible for any VAT exemptions or rebates upon export sales of subject merchandise.[225] Moreover, Carbon Activated submitted a sample accounting voucher which shows a separate VAT line item amounting to 17 percent of the separate sales price line item, which was included in the FOB price charged on the customer invoice,[226] and a screenshot from the official website of China State Administration of Taxation showing a VAT rebate rate of 0 percent for activated carbon.[227]

Considering the formula used by the Chinese tax authorities to determine the VAT output, we revised our calculation methodology to use the respondents' reported FOB values to calculate the VAT adjustment.[228] The formula used by the Chinese tax authorities is output VAT = FOB * exchange rate/ (1+legal VAT rate) * legal VAT rate.[229] Commerce is required to calculate antidumping duty margins "as accurately as possible, and to use the best information available to do so."[230] Therefore, we determine that adjustment to U.S. price is most accurate based on the respondents' reported FOB values because those FOB values are the values used by the Chinese tax authorities.

Comment 8: Ministerial Errors

Carbon Activated's Comments:

- Commerce should correct two ministerial errors in Carbon Activated's margin calculation program.[231]
- First, Commerce should correct the double counting of the "SULPHUR" input.
- Second, Commerce should add packing labor cost ("PAKLAB_IN") to the cost of other packing FOPs and not to the cost of direct and indirect labor.

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[223] *See 2012 VAT Notice*, Article 7 and Memorandum, "Placement of Circular 90 on Record," dated September 27, 2018, at Attachment, *Circular of the Ministry of Finance and the State Administration of Taxation of the People's Republic of China on Adjusting the Tax-refund Rate for Some Export Commodities* (Ministry of Finance, State Administration of Taxation, 2007 No. 90, issued June 19, 2007).
[224] *See 2012 VAT Notice*, Article 7.
[225] *See* Carbon Activated's December 14, 2017 Section A and C Supplemental Questionnaire Response at 12.
[226] *Id.* at Exhibit SAC-25. Additionally, Carbon Activated and Datong Juqiang reported the inclusion of the 17 percent output VAT in their reported FOB unit prices. *See* Carbon Activated's September 5, 2017 Initial Section C Questionnaire Response at 34 and Datong Juqiang's August 21, 2017 Initial Section C Questionnaire Response at 27.
[227] *Id.*
[228] *See* Carbon Activated's and Datong Juqiang's Final Calculation Memoranda.
[229] *See 2012 VAT Notice.*
[230] *See Lasko Metal Products Inc. v. United States*, 43 F.3d 1442, 1443 (Fed. Cir. 1994).
[231] *See* Respondents' Case Brief at 99-100.

Commerce's Position: We agree with Carbon Activated that our preliminary calculations contained those two errors. Therefore, for these final results, we have revised our calculations accordingly.[232]

RECOMMENDATION

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

☒ ☐

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Agree Disagree

10/16/2018

X James Maeder

Signed by: JAMES MAEDER

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

[232] *See* Carbon Activated's Final Calculation Memorandum.