A-570-904
POR: 4/01/17-3/31/18
Public Document
E&C/Office VIII: MJA, RJP

December 11, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

---

I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by the petitioners,[1] the mandatory respondents,[2] and a China-wide rate company, Tancarb,[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: Selection of the Primary Surrogate Country
Comment 2: Bituminous Coal Surrogate Value
Comment 3: Coal Tar Surrogate Value
Comment 4: Calculation of Surrogate Financial Ratios
Comment 5: Application of Adverse Facts Available for Merchandise Produced by Certain Suppliers of Carbon Activated
Comment 6: Selection of Appropriate Factors of Production Database for Carbon Activated
Comment 7: Correction of Preliminary Results Calculation Error
Comment 8: Treatment of Tancarb Activated Carbon Co., Ltd.

[1] Calgon Carbon Corporation and Cabot Norit Americas, Inc. (collectively, the petitioners).
[2] Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) and Carbon Activated Tianjin Co., Ltd. (Carbon Activated) (collectively, the mandatory respondents).
[3] Tancarb Activated Carbon Co., Ltd. (Tancarb).
[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; 2017-2018*, 84 FR 27758 (June 14, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

On June 14, 2019, Commerce published the *Preliminary Results* of this administrative review. On October 7, 2019, the petitioners, the mandatory respondents, and Tancarb timely submitted case briefs.[5] On October 15, 2019, the petitioners and Carbon Activated submitted rebuttal briefs.[6]

III. 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' Letter, "Activated Carbon from People's Republic of China," dated October 7, 2019 (Petitioners' Case Brief); Mandatory Respondents' Letter, "Case Brief of Datong Juqiang Activated Carbon Co., Ltd., Carbon Activated Tianjin Co., Ltd. and Carbon Activated Corporation in the Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China (A-570-904)," dated October 7, 2019 (Respondents' Case Brief); Tancarb's Letter, "Activated Carbon from the People's Republic of China - Case Brief," dated October 7, 2019 (Tancarb's Case Brief); and Jacobi Carbons AB's (Jacobi's) Letter, "Jacobi's Letter In Lieu of Case Brief, Certain Activated Carbon from China (A-570-904, POR 11: 04/01/17-03/31/18)," dated October 7, 2019 (wherein Jacobi concurred with, and incorporated by reference, the arguments made by the mandatory respondents).

[6] *See* Petitioners' Letter, "Certain Activated Carbon from the People's Republic of China," dated October 15, 2019 (Petitioners' Rebuttal Brief); and Carbon Activated's Letter, "Rebuttal Brief of Carbon Activated in the Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China (A-570-904)," dated October 15, 2019 (Carbon Activated's 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 (HSUS) subheading 3802.10.00. Although the HSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. 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 bituminous coal surrogate value (SV),[8]
2. revised the coal tar SV,[9]
3. revised the financial ratio SVs,[10]
4. applied adverse facts available (AFA) in valuing the merchandise produced by Carbon Activated's unaffiliated supplier, Supplier X,[11] and

[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), both dated concurrently with this memorandum; *see also* Memorandum, "Eleventh 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* Comment 2.
[9] *See* Comment 3.
[10] *See* Comment 4.
[11] *See* Comment 5; Supplier X's name is business proprietary information (BPI). *See* Carbon Activated's Final Calculation Memorandum for this supplier's full name.

5. corrected certain errors in Datong Juqiang's margin calculation program.[12]

V. DISCUSSION OF THE ISSUES

Comment 1: Selection of the Primary Surrogate Country

Respondents' Comments:

- Commerce should select Romania as the primary surrogate country for the final results because it provides the best and most reliable SV for bituminous coal (Harmonized Schedule (HS) subheading 2701.12) and financial ratios. Romania also affords reliable SVs for all other material and non-material inputs (except coal tar, which should be valued based on Russian import data in HS 2706.00).[13]
- In evaluating the comparative quality of SV data available from two or more countries, Commerce's established practice is to weigh the merits of SVs for principal material inputs and financial ratios that account for a significant proportion of the normal value (NV).[14]
- Applying this principle confirms that as compared to Malaysia, Romania affords a vastly superior surrogate country choice.[15]
- Bituminous coal is one of the most significant inputs consumed in the production of subject merchandise; as such, it predominantly contributes towards the NV build up and the resulting dumping margin. The Malaysian SV based on import data under HS 2701.12 (*i.e.*, $511 U.S. dollar (USD)/metric ton (MT)) is aberrantly high, unreliable and contradicted by record evidence.[16]
- All three Malaysian financials statements that are currently on the record are insufficiently disaggregated and fail to yield accurate financial ratios.
    - In the *Preliminary Results*, Commerce valued financial ratios based on Romanian company Romcarbon SA (Romcarbon), stating that the other financial statements considered for the preliminary results (financial statements from the two Malaysian companies Century Chemical Works' and Ten Meng Keong) failed to itemize the cost of raw materials and energy.
    - In their final SV submission (dated May 13, 2019), the petitioners submitted the financial statements of an additional Malaysian company, Bravo Green Sdn. Bhd. (Bravo Green). However, like the financial statements from the other two Malaysian companies, Bravo Green's financial statements fail to itemize the cost of raw materials, labor and energy.
- Romania provides superior quality and more reliable data for bituminous coal and financial statements, as well as for all other inputs. First, the Romanian bituminous coal (> = 5833 kilocalorie (kcal)/kilogram (kg)) SV of $136 USD/MT under HS subheading 2701.12 is

[12] *See* Comment 7.
[13] *See* Respondents' Case Brief at 1-3.
[14] *Id.* at 5 (citing *Certain Steel Nails from the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013); *Jiaxing Brother Fastener Co. v United States*, 11 F. Supp. 3d 1326 (CIT 2014); and *Tri Union Frozen Prods. v. United States*, 163 F. Supp. 3d 1255 (CIT 2016)).
[15] *Id.* at 7.
[16] For discussion of our selection of the bituminous coal surrogate value, *see* Comment 2, *infra*.

reliable and corroborated by SV data from all other countries listed on the OP List[17] (varying in the range $96-144 USD/MT). Also, the Romcarbon financial statements provide discrete breakouts for all of the important cost elements including raw materials, energy and labor.
- The petitioners did not object to the choice of Romania in their SV rebuttal submission and pre-preliminary comments. Therefore, Commerce should select Romania as the primary surrogate country.

Petitioners' Rebuttal Comments:
- For the *Preliminary Results*, Commerce correctly selected Malaysia as the primary surrogate country, because Malaysia provides the best and most reliable SVs for principal inputs and financial ratios. Malaysia also satisfies each of the three statutory criteria: (1) it is at the same level of economic development as China, (2) it is a significant producer of identical merchandise, and (3) it provides quality and complete information to value the mandatory respondents' factors of production (FOP).
- Commerce correctly used the Malaysian import value for HS subheading 2701.12 (bituminous coal) to value the bituminous coal used by the mandatory respondents for the *Preliminary Results.*[18]
- If Commerce does not rely on the Malaysian import value under HS 2701.12 to value bituminous coal, it should rely on Brazilian imports under 2701.12, because Brazilian import volume exceeds the combined import volume of all five other OP List countries.
- As Malaysia is a major producer of activated carbon (as reflected in both its trade statistics and the presence of multiple significant producers of activated carbon), and a coconut charcoal import value is available only for Malaysia, the use of Malaysian SVs for all but HS 2701.12 would conform with Commerce's practice.[19]
- That Commerce chose to depart from Malaysia for one SV, financial ratios, does not demonstrate that Malaysia is not the best surrogate country. In past instances, like in the *Preliminary Results*, Commerce has chosen a primary surrogate country and relied on information from a secondary country for one or two surrogate values.[20]

Commerce's Position: As discussed in the *Preliminary Results*, when Commerce investigates imports from a non-market-economy (NME) country, section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), directs it to base NV, in most circumstances, on the basis of the value of the FOPs utilized in producing the merchandise. The valuation of the FOPs shall be based on the best available information regarding the values of such factors in a market-economy (ME) country or countries considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic

[17] *See* Commerce's Letter, "Certain Activated Carbon from the People's Republic of China (China): Request for Comments re: (1) Economic Development, (2) Surrogate Country, and (3) Surrogate Value Information," dated September 14, 2018 (OP List).
[18] For discussion of our selection of the bituminous coal surrogate value, *see* Comment 2, *infra*.
[19] *Id.*
[20] *See* Petitioners' Rebuttal Brief at 26 (citing *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of New Shipper Review; 2015–2016*, 82 FR 47469 (October 12, 2017), explaining that Commerce selected Thailand as the primary surrogate country and used financial statements from a South African producer).

development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[21] As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country, unless it is determined that none of the countries are viable options because either (a) they are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons.[22] Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.[23] To determine which countries are at the same level of economic development, Commerce generally relies on Gross National Income (GNI) data from the World Bank's World Development Report.[24] Further, Commerce normally prefers to value all FOPs from a single surrogate country because deriving surrogate data from one surrogate country limits the amount of distortion introduced into the calculations in that a domestic producer would be more likely to purchase a product available in the domestic market.[25]

Based on the foregoing criteria, in the *Preliminary Results*, we selected Malaysia as the primary surrogate country. However, we used Romanian financial statements for the purpose of calculating the financial ratios because the 2017 financial statements from the Romanian company Romcarbon are the only financial statements on the record suitable for use in calculating surrogate financial ratios.[26] As detailed below, we continue to find that Malaysia is the appropriate primary surrogate country in this review.

Economic Comparability

Malaysia and Romania are both economically comparable to China, as both countries are on the OP List, and are therefore determined, based on per capita GNI, to be at the same level of economic development as China.[27]

Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act states that Commerce shall value FOPs, to the extent possible, in a surrogate ME country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as the Policy Bulletin for guidance on defining comparable merchandise. The Policy Bulletin states that "in all cases, if identical merchandise is

[21] *See* Policy Bulletin 04.1, Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004 (Policy Bulletin 04.1).
[22] *Id*.
[23] *See* OP List.
[24] *Id*.
[25] *See* 19 CFR 351.408(c)(2); *see also Clearon Corporation and Occidental Chemical Corp. v. United States*, Slip Op. 13-22, at 12-14 (CIT 2013).
[26] *See Preliminary Results* PDM at 115-16.
[27] *See* OP List.

produced, the country qualifies as a producer of comparable merchandise."[28] Therefore, if the record contains a producer of identical merchandise, the requirement of comparable merchandise under section 773(c)(4) of the Act is satisfied. There is no need to look further at countries with only comparable merchandise.

Further, the Act does not define the phrase "significant producer." However, the statute grants Commerce discretion to examine various data sources to determine the best available information.[29] Legislative history suggests that Commerce may consider a country to qualify as a "significant producer" if, among other things, it is a "net exporter" of identical or comparable merchandise.[30] However, that text does not define the phrase "net exporter" or explain whether a potential surrogate country must constitute a net exporter in terms of quantity, value, or both to fit the example provided in the legislative history.[31] Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"[32] it does not preclude Commerce from relying on additional or alternative metrics. It is Commerce's practice to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics).[33] In this case, none of the countries in the OP List are net exporters of subject merchandise.[34] Further, production data of comparable merchandise are not available on the record. Therefore, we analyzed exports of comparable merchandise from the six OP List countries, as a proxy for production data.

The mandatory respondents have argued that Commerce should select Romania as the primary surrogate country, questioning the reliability of Malaysian import data for certain inputs and the Malaysian financial statements on the record. Specifically, the record contains financial statements of three Malaysian companies (*i.e.*, Century Chemical Works Sendirian Berhad, Tan Meng Keong Sdn. Bhd., and Bravo Green Sdn. Bhd.). All three Malaysian financial statements indicate that their principal business activity is the manufacture of activated carbon, which is identical to the subject merchandise in this proceeding. Accordingly, for the final results of this proceeding segment, we find that Malaysia provides the best available information on the record

---

[28] *See* Policy Bulletin 04.1.
[29] *See* Section 773(c) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F. 3d 1373, 1377 (Fed. Cir. 1999).
[30] *See* H.R. Rep. No. 100-576, at 590, 1988 U.S.C.C.A.N. 1547, 1623 (1988).
[31] *Id.*
[32] *Id.*
[33] *See Xanthan Gum from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013), and accompanying PDM at 4-7 (unchanged in *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013)).
[34] On the record, we have export data from the Global Trade Atlas (GTA) for entries made under the HS subheading 3802.10, covering the subject merchandise. *See* Mandatory Respondents' Letter, "DJAC and Carbon Activated Surrogate Country Comments: Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China," dated October 12, 2018 at Exhibit 1. The export volumes for the OP List countries are: 16,475,976 kg (Malaysia); 1,308,800 kg (Brazil); 8,778,259 kg (Mexico); 849,850 kg (Russia); 612,474 kg (Kazakhstan); and 34,000 kg (Romania). The import volumes for the OP List countries are: 32,892,163 kg (Malaysia); 14,854,141 kg (Russia); 14,449,228 kg (Mexico); 5,797,030 kg (Brazil); 2,004,526 kg (Kazakhstan); and 1,106,000 kg (Romania).

because it satisfies the statutory requirements for selection as a surrogate country and it provides stronger evidence of production of the subject merchandise in the form of multiple financial statements. The record contains information from multiple countries that are at the same level of economic development, and are also exporters of activated carbon. However, because there are multiple Malaysian financial statements on the record, all of which contain evidence of production of identical merchandise, there is more direct evidence on the record that Malaysia is a significant producer of identical merchandise. There is no equivalent information on the record with respect to Romanian production, and therefore the record in this case does not support a finding that Romania satisfies section 773(c)(4)(B) of the Act, which requires Commerce to value FOPs, to the extent possible, in a surrogate country that is a significant producer of comparable merchandise. With respect to Romanian surrogate values on the record, there is only one financial statement on the record from a Romanian company, Romcarbon. While Romcarbon's profit center no.2 includes an "Active Coal Workshop," which is dedicated to the production of activated carbon, its financial statements indicate that its principal activities are the manufacture of polyethylene, polypropylene, polyvinyl chloride, polystyrene processing, filters and protective materials.[35] We find that this is not evidence of "significant production," especially as compared to the three financial statements from Malaysian activated carbon producers on the record. Accordingly, because there is record evidence indicating that Malaysia has domestic production of identical merchandise, in the form of multiple financial statements from activated carbon producers, we determine that Malaysia provides the best available information on the record because it is the only country on the OP List that is a significant producer of identical merchandise.

Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.[36] The record contains complete, publicly-available, contemporaneous, and specific Malaysian data for nearly all of the inputs used by the two mandatory respondents to produce the subject merchandise during the period of review (POR).[37] Additionally, as discussed above, we do not reach the analysis of data reliability with respect to Romania in this review. Because, as discussed above, the record does not contain sufficient evidence demonstrating that Romania provides the best available information on the record any arguments pertaining to the reliability of the Romanian data for the purpose of the selection of the primary surrogate country are moot.

Given the above facts, we continue to use Malaysia as the primary surrogate country for the final results. Malaysia is at the same level of economic development as China, a significant producer of identical merchandise, and generally has reliable data with which to value the mandatory

[35] *See* Respondents' Letter, "First Surrogate Value Comments by DJAC and CA Tianjin: Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China," dated November 9, 2018 (Respondents' November 9, 2018 Surrogate Value Submission) at Exhibit 9 pdf page 1303 (Romcarbon's profit center no. 2 includes a "Workshop of Active Carbon").
[36] *See* Policy Bulletin 04.1.
[37] *See* Petitioners' Letter, "Certain Activated Carbon from the People's Republic of China – Petitioners' Submission of Surrogate Values," dated November 9, 2018.

respondents' FOPs. However, although Commerce generally has a preference for valuing all factors from a single surrogate country, as discussed below in Comment 2, we have determined that the Malaysian data for bituminous coal is not appropriate for use in the final results. Additionally, as we found in the *Preliminary Results*, while the Malaysian financials provide evidence that Malaysia is a producer of identical merchandise, the only financial statements on the record which are usable for the calculation of the surrogate financial ratios are the Romcarbon statements from Romania.[38]

Comment 2: Bituminous Coal Surrogate Value

Respondents' Comments:

- Malaysian HS 2701.12, preliminarily used to value bituminous coal input, is unrepresentative of the type of bituminous coal input utilized by the mandatory respondents because it is a category covering high heat value (*i.e.*, same or higher than 5,833 kcal/kg) bituminous coal, inapplicable to the bituminous coal with a lower heat value (*i.e.*, less than 5,833 kcal/kg) used by the mandatory respondents. Therefore, for the final results, Commerce should use HS 2701.19 to value bituminous coal input (*i.e.*, $100 USD/MT).[39]
- HS 2701 provides three breakouts at the 6-digit HS level, as follows: 2701.11 (Anthracite coal), 2701.12 (Bituminous coal), and 2701.19 (Other Coal).[40]
- Sub-heading Note 2 to Chapter 27 defines bituminous coal under HS 2701.12 as follows - "For the purposes of sub-heading 2701.12, "bituminous coal" means coal having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14 percent and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg. Consequently, all other bituminous coal, whose calorific value is less than 5,833 kcal/kg, are classified under HS 2701.19.[41]
- Record evidence confirms that during the POR, Datong Juqiang, Datong Juqiang's supplier,[42] and certain suppliers to Carbon Activated utilized bituminous coal with a heat value less than the threshold limit of 5,833 kcal/ kg.[43] The test report and the sworn-in declarations of the managers of Datong Juqiang and its supplier, provided in the responses, confirm that the bituminous coal utilized by Datong Juqiang and its supplier has a gross calorific value below this threshold.[44] Further, one of Carbon Activated's suppliers' test report provides the chemical composition including ash and moisture content of bituminous coal, based on which the mandatory respondents were able to calculate its heat value, which works out to be

[38] *See* Comment 4, below.
[39] *See* Respondents' Case Brief at 26-27.
[40] *Id.* (citing Carbon Activated's Letter, "Carbon Activated Response to Section D Supplemental Questionnaire (Part I)," dated February 21, 2019 (Carbon Activated's FebSuppDQR Part I) at 19. The mandatory respondents stated, "Although these breakouts were indicated in the context of Thai tariff, the Malaysian tariff (and, other country's tariff as well) contain identical breakouts since the WCO tariff classification is harmonized at 6-digit HS level. Further, on account of harmonization, notes to Chapter 27 in the Thai and the Malaysian tariffs are identical.").
[41] *Id.*
[42] *See* Datong Juqiang's Final Calculation Memorandum.
[43] *See* Respondents' Case Brief at 27.
[44] *Id.* (citing to Datong Juqiang's Letter, "DJAC Supplemental D response," dated February 12, 2019 (Datong Juqiang's FebSuppDQR) at 8 and 32 and Exhibits SD-12, SD-13, and SD-56. These were test result reports that do not demonstrate the calorific value, and sworn-in testimonies by the General Managers of the respondent company, Datong Juqiang and its supplier).

below the kcal/kg threshold.[45] Therefore, for the final results, irrespective of its choice of surrogate country, Commerce should value bituminous coal input based on HS 2701.19 for Datong Juqiang, Datong Juqiang's supplier and this supplier of Carbon Activated.

- With regard to bituminous coal used by Carbon Activated's other supplier, Supplier C,[46] there is no record information about the heat content of coal. Accordingly, the most reasonable option to value such bituminous coal is to apply a simple average of surrogate value from HSHS 2701.12 and HSHS 2701.19. Further, since Commerce applied Supplier C's FOP data to compute the NV for an excused supplier, the same simple average surrogate value should be applied to value the underlying bituminous coal in the activated material produced by this excused supplier.[47]
- Even if HS 2701.12 was applicable, the Malaysian import value of $511 USD/MT under HS 2701.12, used in the *Preliminary Results* to value bituminous coal, is demonstrably unreliable and impeached by substantial record evidence.
- The preponderant proportion of imports (750,000 kg out of 896,711 kg, *i.e.*, 84 percent of total imports) reported in Malaysian HS 2701.12 originated from the Philippines.[48] Moreover, according to the Trade Data Monitor (TDM) data submitted by the mandatory respondents, during the period between 2010-2018, imports from Philippines under HS 2701.12 to Malaysia were recorded in only one month, August 2017.[49] This fact raises the possibility of an incorrect reporting of the description of goods on account of a misclassification. Also, a letter from the Philippine Department of Energy evidences that there were no exports of coal from the Philippines to Malaysia during the POR.[50] Further, a letter from the Philippine Statistics department containing 2017-2018 export data for goods from Chapter 27 of the Philippine tariff schedule shows that there were no exports of coal to Malaysia during the POR.[51]
- The Malaysian domestic market price data for bituminous coal for the POR, obtained from the Malaysian Energy Commission, also demonstrates that the Malaysian import data under HS 2701.12 is aberrational.[52] While these price data are expressed in units of energy, they enable derivation of the price in USD/MT value for an equivalent grade of bituminous coal with an average heat content of 5200 kcal/MT, which is comparable to the heat value of the bituminous coal used by Datong Juqiang, Datong Juqiang's supplier and Supplier C.[53]

---

[45] *Id.* at 27-28 (citing *Silicon Metal From the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 3084-01 (January 19, 2011), and accompanying Issues and Decision Memorandum (IDM) at Comment 6 ("UHV = 8900 - 138 (A + M), where A is ash percentage and M is moisture percentage.") Mandatory respondents stated that the formula that they used was as follows: 8900 – 138*(ash % + Moisture %) = 8900 – 138*(10.76 + 14.25) = 5448.6 kcal/kg.).

[46] The identity of this supplier is business proprietary. For Supplier C's identity, *see* Carbon Activated's Final Calculation Memorandum.

[47] *See* Respondents' Case Brief at 27-28.

[48] *Id.* at 9 (citing Mandatory Respondents' Final Surrogate Comments, dated May 13, 2019 (Respondents' Final SV Submission), at Exhibit 2B).

[49] *Id.* at 9-10 (citing Respondents' Final SV Submission at Exhibit 3A).

[50] *Id.* at 10 (citing Respondents' Final SV Submission at Exhibit 3B).

[51] *Id.* at 10 (citing Respondents' Final SV Submission at Exhibit 3C).

[52] *Id.* (citing Respondents' Final SV Submission at Exhibit 3K).

[53] *Id.* (In Exhibit 3K to the Respondents' Final SV Submission, mandatory respondents provided a conversion chart demonstrating how they derived the USD/MT values from the domestic bituminous coal price that they received from the Malaysian Energy Commission, which was in RM/MMBTU values. For this calculation, they used a

- Malaysian data are also impeached by the corresponding import data reported under HS 2701.12 from other OP List countries, because although the Malaysian import AUV of $511 USD/MT is based on minimal import volumes (*i.e.*, 897 MT), accounting for 0.01 percent of the total quantity (*i.e.*, 27,587,713 MT) and 0.003 percent of the total value (at $ 458,000 USD) of the aggregated imports in all six OP List countries (*i.e.*, $3,540,161,000 USD), it is about 300 percent higher than the weighted average price of all imports in the six OP List countries (*i.e.*, $128 USD/MT).[54] As such, the record evidence establishes that the Malaysian import value under HS 2701.12 is aberrational.
- Malaysian import data under HS 2701.12 (*i.e.*, $511 USD/MT) are also inconsistent with the corresponding SV data applied by Commerce in recent review proceedings (*i.e.*, $79.87 USD/MT for POR 8, $90.43 USD/MT for POR 9 and $91.36 USD/MT for POR 10).[55]
- Conversely, the Romanian import AUV under HS 2701.12 for the POR (*i.e.*, $136 USD/MT) is within a reasonable range of 6 percent of the weighted-average price of all imports in the six OP List countries, and the data yields a reliable surrogate value for high heat value bituminous coal.
- Alternatively, the Brazilian import AUV of $141 USD/MT also affords a reliable SV since it is based on the largest quantity of imports (*i.e.*, 18,263,785 MT) among the OP List countries.[56] The choice of Brazilian SV data (due to its much higher import quantity) is supported by agency precedent, as approved by the Court of International Trade (CIT). In *Calgon Carbon Corp. v. United States*, the CIT approved Commerce's methodology to prefer a SV data source that was representative of the highest volume of imports.[57]

Petitioners' Rebuttal Comments:

- Commerce correctly used the Malaysian import value under HS 2701.12 to value the bituminous coal used by the mandatory respondents for the *Preliminary Results* and should continue to use the same value to value bituminous coal input for the final results.[58]
- The mandatory respondents' assertion that Commerce should use import values for merchandise classified under HS subheading 2701.19 is meritless, as the mandatory respondents failed to submit documents to support their assertion on the record.[59] In their final SV submission, the mandatory respondents identify HS 2701.12 as the proper HS

conversion factor (*i.e.*, 1 kg of bituminous coal input=0.02057554 MMBTU), derived using certain conversion rates taken from X-rates monthly. Mandatory respondents argue that therefore, during the POR, the price of the exact same energy grade of bituminous coal in Malaysia ranged from $77 to $101 USD/MT, barely one-sixth the average price of $511USD/MT, the value preliminarily used to value bituminous coal input used during the POR.).

[54] *Id.* at 10-14 (The import quantities for all the OP List countries under HS 2701.12 are as follows: 18,263,785 MT (Brazil); 7,986,768 MT (Mexico); 920,773 MT (Russia); 377,503 MT (Romania); 37,988 MT (Kazakhstan); and 897 MT (Malaysia)).

[55] *See* Respondents' Case Brief at 16.

[56] *See* Respondents' Case Brief at 13-14. We note that the total quantity of imports under HS 2701.12 for all six OP List Countries is 27,587,713 MT (*See* Respondents' Case Brief at 13; *see also* Respondents' Final SV Submission at Exhibit 2B).

[57] *See* Respondents' Case Brief at 15 (citing *Calgon Carbon Corp. v. United States*, 38 Int'l Trade Rep. (BNA) 2202 (CIT 2017).

[58] *See* Petitioners' Rebuttal Brief at 5.

[59] *Id.* at 5-9.

category to value bituminous coal input, as the other coal inputs are valued using HS 2701.19-valuations which is consistent with Commerce's practice in prior segments.[60]

- In its pre-preliminary results comments,[61] Carbon Activated cited to its February 21, 2019 supplemental response to support its claim that HS 2701.19 is necessary to value its bituminous coal input.[62] However, that response makes no claim that the bituminous coal input used by Carbon Activated possessed physical characteristics that would justify using a SV under HS 2701.19. Instead, in that questionnaire response, Carbon Activated only highlighted the difference between the bituminous material input and 'smoke coal,' stating that "both bituminous coal and smoke coal belong to the same technical grade of bituminous coal. The difference between the two is of degree, not of kind."[63]
- For Datong Juqiang, in response to Commerce's instruction asking Datong Juqiang to state the kcal and heat value, the ash content, moisture content, useful heat value and any other defining characteristics of the bituminous coal it purchased, including a list of each shipment obtained, by vendor, Datong Juqiang only provided a test report for one bituminous coal vendor, which does not designate a useful heat value. Datong Juqiang failed to provide the requested information, despite having repeated those instructions in the heading of its response. Instead, Datong Juqiang calculated the heat value in its brief, using the ash and moisture content values. Datong Juqiang also provided a sworn-in declaration by its general manager attesting to the heat content value of the bituminous coal that Datong Juqiang used in the production of subject merchandise.[64]
- For Datong Juqiang's supplier, Datong Juqiang claimed that to the best of its knowledge, the gross calorific value of the non-coking bituminous coal it purchased is lower than 5,833 kcal/kg. In making this statement, Datong Juqiang provided no indication that this claim pertained to bituminous coal direct materials, as opposed to energy coal consumed. Instead of providing Commerce with a test report for bituminous coal that they used in the production of subject merchandise, Datong Juqiang's supplier provided a purchase contract that covers bituminous coal and other inputs, and provided a sworn-in declaration by its general manager attesting to the heat content value of the bituminous coal that Datong Juqiang's supplier used in the production of subject merchandise during the POR.[65]
- The Malaysian import value under HS subheading 2701.12 (*i.e.*, $500 USD/MT) is not aberrational, even when compared to import values under HS subheading 2701.12 from other OP List countries (160 percent higher than the POR average (*i.e.*, $192 USD/MT), or when compared to historical benchmarking data on the record of this segment (208 percent higher than the average value of the SVs used to value bituminous coal from previous PORs, including this POR (*i.e.*, $162.27 USD/MT)).[66]
- If Commerce does not rely on Malaysian import value under HS 2701.12 to value bituminous coal, it should rely on Brazilian imports under 2701.12, because Brazilian import volume exceeds the combined import volume of all five other OP List countries.[67]

[60] *Id.* at 6.
[61] *Id.* (citing to Respondents' May 29, 2019 Pre-Preliminary Results Comments at 6).
[62] *Id.* (citing to Carbon Activated's FebSuppDQR at 19.)
[63] *See* Petitioners' Rebuttal Brief at 6-7.
[64] *Id.* (citing to Datong Juqiang's Letter, "DJAC Supplemental Section D response," dated February 12, 2019 (Datong Juqiang's SDQR), at Exhibits SD-12 and SD-13).
[65] *Id.* at 8-9 (citing to Datong Juqiang's SDQR at 32-33 and Exhibit SD-56).
[66] *Id.* at 14.
[67] *Id.* at 16-17.

Commerce's Position: We disagree with the mandatory respondents that we should use HS 2701.19 to value bituminous coal used as a raw material input in the production of the subject merchandise, and we disagree with the petitioners that we should continue to rely on Malaysian import data under HS 2701.12 to value this input. For the reasons explained below, we determine that the Romanian import data under HS 2701.12 is the best available information on the record to value bituminous coal used as a raw material input.

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.[68] 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.[69] 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."[70] Additionally, Commerce has a strong preference to value all FOPs in a single surrogate country, pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[71]

In this case, we selected Malaysia as our primary surrogate country, as discussed above, and for the final results, we continue to use Malaysia as the primary surrogate country. Because Commerce selected Malaysia as the primary surrogate country, our first preference in selecting surrogate value data for this review is to utilize publicly available prices within Malaysia.[72]

In the *Preliminary Results*, we used Malaysian imports under HS 2701.12, to value bituminous coal used as a raw material input into the production of activated carbon.[73] The mandatory respondents argue that we should use HS 2701.19 to value the bituminous coal used by certain respondents and suppliers that used bituminous coal with a lower heat value.[74] However, there is

---

[68] *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.

[69] *See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005) (*Glycine from China*), and accompanying IDM at Comment 1.

[70] *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) (*Crawfish from China*), and accompanying IDM at Comment 2.

[71] *See 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.

[72] *See* 19 CFR 351.408(c)(2).

[73] *See* Memorandum, "Eleventh Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results," dated June 10, 2019 (Preliminary SV Memo), at Attachment 1.

[74] *See* Respondents' Case Brief at 26-27.

no information on the record that supports the mandatory respondents' assertion that HS 2701.19 is the more appropriate HS subheading to value the bituminous coal input used by the mandatory respondents in the production of the subject merchandise. The mandatory respondents assert, "Sub-heading Note 2 to Chapter 27 defines sub-heading 2701.12, 'bituminous coal' as coal having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14 percent and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg. Consequently, according to the mandatory respondents, all other bituminous coal which has a calorific value less than 5,833 kcal/kg is necessarily classified under HS 2701.19."[75] However, "Sub-heading Note 2 to Chapter 27" pertains specifically to Thai HS data, not Malaysian data.[76] The record does not contain similar information with respect to the Malaysian imports under Chapter 27, and as such there is no record evidence to support the use of Malaysian import SV data under HS 2701.19 to value the raw material input, of bituminous coal, into the production of activated carbon. Further, the mandatory respondents have not provided any evidence that they used a sub-bituminous coal, a lower quality bituminous coal used as a heat source in the production of steam, as a raw material input, which would be categorized as HS 2701.19. Instead, the record is clear that the mandatory respondents have used bituminous coal as the raw material input into the production of the subject merchandise.[77] Therefore, for the final results, we continue to use HS 2701.12 to value the mandatory respondents' bituminous coal raw material input.

The mandatory respondents also argue that the Malaysian bituminous coal value under HS code 2701.12, which was used in the *Preliminary Results*, is aberrational.[78] When presented with evidence intended to demonstrate that 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.[79] When considering benchmark data for purposes of determining whether a value is aberrational, Commerce examines historical import data for the potential surrogate countries for a given case, to the extent such import data are available, and/or examines data from the same HS category for the primary surrogate country over multiple years to determine if the current data appear aberrational compared to historical values.[80] Merely appearing on the low or high end of a range of values is not enough to make data aberrational.[81]

With regards to the alleged aberrancy of the Malaysian import data under HS 2701.12, we agree with the mandatory respondents that the reliability of the Malaysian data under HS 2701.12 is called into question by the corresponding import data reported under HS 2701.12 from other OP

---

[75] *Id.*
[76] *See* Carbon Activated's FebSuppDQR Part I at 19.
[77] *Id.*; *see also* Datong Juqiang's SDQR at 8.
[78] *See* Respondents' Case Brief at 9-16.
[79] *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.
[80] *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.
[81] *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), 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.").

List countries. First, the Malaysian import AUV of $511 USD/MT is based on a limited import volume (*i.e.*, 897 MT), accounting for 0.01 percent of the total import quantity (*i.e.*, 27,587,713 MT) from all six OP List countries for the POR. Second, with respect to Malaysia's import value, as noted above, Commerce prefers to have historical data on the record with which to evaluate whether a value is aberrational.[82] However, Commerce has, in the past, compared the alleged aberrational value with values from countries on the OP List.[83] Here, the Malaysian import value of bituminous coal is approximately 297 percent higher than the weighted average price of all imports in the six OP List countries under HS 2701.12 (*i.e.*, $128 USD/MT), and 163.7 percent higher than the simple average price of all imports in the OP List countries (*i.e.*, $193.8 USD/MT).[84] As we do not have data from the same HS category for the primary surrogate country over multiple years, we are unable to evaluate the aberrancy of the Malaysian data in comparison to historical values.

We do not find the mandatory respondents' arguments pertaining to Malaysian imports of bituminous coal from the Philippines persuasive. The mandatory respondents argue that although a preponderant proportion of imports (750,000 kg out of 896,711 kg, *i.e.*, 84 percent of total imports) into Malaysia under HS 2701.12 reportedly originated in the Philippines, such imports were only recorded in one month.[85] Further, the mandatory respondents provide a letter from the Philippines Statistics Department allegedly demonstrating that there were no exports of coal to Malaysia from the Philippines during the POR.[86] It is Commerce's practice not to rely on country-specific export data to challenge the validity of country-specific import data because these data are not a suitable benchmark to test the validity of selected SV data.[87] Given different reporting and inspection requirements and timing considerations, it is unrealistic to expect export information to correspond one-to-one with import statistics for any given shipment of merchandise. Therefore, Commerce does not expect one country's export quantities to be a one-to-one identical match to another country's import data.[88] As such, we find that export data from the Philippines are not reliable for purposes of evaluating the legitimacy of the corresponding import volumes into Malaysia.[89] We also did not further evaluate the viability of the mandatory respondents' assertion that the Malaysian domestic market price data for bituminous coal, for the POR, obtained from the Malaysian Energy Commission, demonstrates that the Malaysian import

---

[82] *See Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 79 FR 94 (January 2, 2014), and accompanying IDM at Comment 2.
[83] *Id.*; *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 53214 (October 22, 2018), and accompanying IDM at Comment 4.
[84] *See* Respondents' Final SV Submission at Exhibit 2B.
[85] *See* Respondents' Case Brief at 9-10 (citing Respondents' Final SV Submission at Exhibit 2B).
[86] *Id.*
[87] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37715 (July 2, 2014), and accompanying IDM at Issue 1.B.
[88] *See First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009), and accompanying IDM at Comment 3.f ("The Department does not expect one country's export quantities to be a one to one ratio to another country's import data.").
[89] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017), and accompanying IDM at Comment 13.

data under HS 2701.12 are aberrational[90] because these price data are expressed in units of energy (*i.e.*, Ringgit per one million British thermal unit (MMBTU)), and there is not sufficient record evidence to support the conversion factor used by the mandatory respondents (*i.e.*, 0.02057554 MMBTU/kg) to convert the reported Ringgit per energy unit values (Ringgit/MMBTU) into USD/MT values. In their SV submission, the mandatory respondents demonstrated how they calculated the conversion factor used to convert the reported Ringgit/MMBTU values into USD/MT values (*i.e.*, 0.02057554 MMBTU/kg).[91] However, this conversion factor was calculated based on the assumption that the Malaysian domestic bituminous coal has a calorific value of 5200 kcal/kg. Because there is no record evidence supporting that assumption, we did not further evaluate this assertion.

As noted above, it is Commerce's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record. Upon reconsideration for the final results, we find that the record does not contain a suitable bituminous coal value from the primary surrogate country, Malaysia. Both parties argued that in the alternative, Commerce should use Brazilian imports under 2701.12, because Brazilian import volume exceeds the combined import volume of all five other OP List countries. As discussed above, Commerce generally seeks to minimize the number of countries that it relies on for surrogate value data.[92] Because the only usable financial statements on the record for the calculation of financial ratios come from Romcarbon, a Romanian company, Commerce is already relying on a secondary source for surrogate values. Therefore, we decline to rely on a third country, and for the final results, we have valued the bituminous coal input using the Romanian import data under HS 2701.12.[93]

Comment 3: Coal Tar Surrogate Value

Respondents' Comments:

- In the *Preliminary Results*, Commerce valued Carbon Activated's coal tar pitch input based on import data reported under HS 2708.10 ("Pitch from coal and other mineral tars").[94] HS 2708.10 covers 100 percent pure pitch distilled in a tar workshop from coal or other mineral tars. Carbon Activated's "Coal Tar Pitch" input is synonymous with "Coal Tar" input (utilized by Datong Juqiang) and, therefore, merits classification in the same heading as coal tar, *i.e.*, HS subheading 2706.00 ("Tar distilled from coal, from lignite or from peat"), instead

[90] *Id.* (citing Respondents' Final SV Submission at Exhibit 3K).
[91] *See* Respondents' Final SV Submission at Exhibit 3K
[92] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2016-2017*, 83 FR 46704 (September 14, 2018), and accompanying IDM at Comment 1.
[93] *See* Final SV Memorandum at Attachment 1.
[94] *See* Respondents' Case Brief at 29. However, we note that contrary to the respondents' comments, even though Commerce included the HS subheadings for both HS Code 2706.00 (Coal Tar) and HS 2708.10 (Coal Tar Pitch) in the Preliminary SV Memo, for the *Preliminary Results*, only HS Code 2706.00 was used to value coal tar pitch for both Datong Juqiang and Carbon Activated. *See* Preliminary SV Memo at Attachment 1; *see also* footnote 106, below.

of 2708.10 ("Pitch from Coal and Other Mineral Tars"), which is a HS subheading for pure pitch.[95]

- Record evidence demonstrates that Carbon Activated's suppliers utilized coal tar pitch similar to Datong Juqiang's coal tar. While pitch is the single most predominant constituent of coal tar (*a.k.a.*, coal tar pitch), it is not identical to coal tar, which is comprised of several other constituents. Pitch is derived from coal tar or coal tar pitch through a series of production steps. In other words, pitch is a value-added product in relation to coal tar or coal tar pitch. As such, Commerce impermissibly conflated two different inputs-"coal tar pitch" and "pitch" in the preliminary results. Therefore, Commerce should value Carbon Activated's "coal tar pitch" input using HS 2706.00.[96]
- The Malaysian surrogate value of coal tar (or, coal tar pitch) based on import data in HS 2706.00, preliminarily used to value coal tar input, is anomalous since it is higher (at an AUV of $1,629 USD/MT) than the average price of valued added product, pitch, reported in Malaysian HS 2708.10 (*i.e.*, AUV of $722.87 USD/MT).[97] This fact establishes that the Malaysian HS 2706.00 import data for coal tar is distorted by the inclusion of non-subject goods, and therefore, anomalous and unreliable.
- Coal tar and coal tar pitch are one and the same and both are covered under HS 2706.00. Since the Malaysian import data under HS subheading 2706.00 ($1,629.5 USD/MT) is unreliable, Commerce cannot apply the resulting AUV to value coal tar and coal tar pitch. This provides an additional rationale to reject Malaysia as a primary surrogate country.[98]
- The record affords an alternative, superior SV for coal tar/coal tar pitch. It is Commerce's well-established practice to value an input by selecting a SV based on the largest quantity of imports. Among the OP List countries, Russia reported the largest quantity of imports under HS subheading 2706.00. As such, the Russian import data under HS 2706.00 ($163 USD/MT) is representative of the broadest market average, and affords the most reliable SV. Romania did not have any imports under HS 2706.00 during the POR.[99]
- The choice of Russian data under HS 2706.00 is further supported by the fact that the Russian import data for pitch reported under HS 2708.10 ($434 USD/MT), which is a higher value product than coal tar, is higher than the Russian import data for coal tar under HS 2706.00 ($163 USD/MT) .[100]

Petitioners' Rebuttal Comments:

- In the *Preliminary Results*, Commerce valued "coal tar pitch" input using the Malaysian import value for merchandise classified under HS subheading 2708.10 "Pitch from Coal and Other Mineral Tars", and it valued "coal tar" using the Malaysian import value under HS 2706.00 "Tar distilled from coal, from lignite or from peat."[101]
- The mandatory respondents are wrong that "coal tar pitch" and "coal tar" are synonymous, and should be valued using HS 2706.00. To the contrary, Commerce correctly listed "Coal

[95] *Id.*; *see also* Respondents' Final SV Submission at Exhibit 2B.
[96] *See* Respondents' Case Brief at 29-30.
[97] *Id.* at 21-22.
[98] *Id.*
[99] *Id.* at 23.
[100] *Id.*
[101] *See* Petitioners' Rebuttal Brief at 17.

Tar Pitch" as the input reported by the mandatory respondents and used the import value under HS subheading 2708.10 as the appropriate SV.

- For those producer-suppliers that used binder materials, both Datong Juqiang and Carbon Activated reported the input as "coal tar pitch." Neither respondents reported using "coal tar" as an input.[102]
- Carbon Activated also made a contradictory statement in its questionnaire responses by stating that "this coal tar pitch is commonly known as 'pitch' in the industry, which is solid at normal temperatures."[103] Thus, Carbon Activated conceded during the questionnaire phase of this segment that "coal tar pitch" is actually "pitch" and not "coal tar."[104]
- Coal tar is the by-product of the coke production process. In contrast, coal tar pitch is a downstream product that is manufactured by further distilling coal tar. Whether it is called "pitch" or "coal tar pitch," the binding material identified by Carbon Activated is not a by-product of coke.[105]
- The petitioners also placed on the record a declaration executed by a domestic industry official stating that the U.S. industry consumes coal tar pitch as the primary input for its re-agglomeration binder, and that to the best of his knowledge, coal tar pitch is properly classified under HS subheading 2708.10. This further demonstrates that "coal tar pitch" is "pitch" such that valuations under HS subheading 2708.10 are appropriate.
- Commerce should also reject the mandatory respondents' argument that Commerce should rely on the Russian import value under HS 2706.00, because as stated above, the mandatory respondents did not report consumption of "coal tar," but instead reported the use of "coal tar pitch." Therefore, any arguments about the Malaysian import value under HS subheading 2706.00 are inapplicable to this segment and are moot.

Commerce's Position: In the *Preliminary Results*, we valued the coal tar pitch input using GTA Malaysian import data under HS 2706.00.[106] However, we disagree with the respondents that we should continue to rely on import data under HS 2706.00 to value coal tar[107] in the final results.[108] For the reasons explained below, we determine that it is more appropriate to use Malaysian import data under HS 2708.10 to value coal tar pitch used by the mandatory respondents for the final results.

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

---

[102] *Id.* at 18.
[103] *Id.*
[104] *Id.*
[105] *Id.* at 20 (citing Respondents' SV Submission at Exhibit 5E).
[106] *See* Preliminary SV Memo at Attachment 1. In the Preliminary SV Memo at 5, Commerce included the HS subheadings for both HS Code 2706.00 (Coal Tar) and HS 2708.10 (Coal Tar Pitch). However, for the *Preliminary Results*, only HS Code 2706.00 was used to value coal tar pitch for both Datong Juqiang and Carbon Activated. *See* Preliminary SV Memo at Attachment 1.
[107] The respondents appear to have used the terms "coal tar" and "coal tar pitch" interchangeably throughout their case brief.
[108] While the respondents argue that Commerce should use HS subheading 2706.00 ("Tar distilled from coal, from lignite or from peat"), instead of 2708.10 ("Pitch from Coal and Other Mineral Tars"), to value Carbon Activated's "coal tar pitch" input, as noted above, in the *Preliminary Results*, Commerce actually used HS subheading 2706.00.

are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.[109] 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.[110] 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."[111]

Carbon Activated stated in its response that the coal tar pitch that its supplier used to produce the subject merchandise during the POR "is commonly known as 'pitch' in the industry, which is solid at normal temperatures."[112] Additionally, for those producer-suppliers that used binder materials, both Datong Juqiang and Carbon Activated reported the input as "coal tar pitch," not "coal tar."[113] Also, record evidence indicates that coal tar, through the fractionated distillation process, yields two different types of coal tar pitch: binder and impregnating grade.[114] There is no information on the record that substantiates the mandatory respondents' assertion that HS 2708.10 covers 100 percent pure pitch distilled in a tar workshop.[115] Therefore, upon reconsideration for these final results, we find that imports under the subheading HS 2706.00 do not represent the best available information for valuing coal tar, because the record evidence supports a conclusion that HS 2706.00 covers coal tar, which is a by-product of the coke production process, whereas HS 2708.10 covers pitch, a product of the coal tar distillation process. Accordingly, the mandatory respondents' argument that the Malaysian SV under HS 2706.00 is anomalous because it is higher than the Malaysian AUV under HS 2708.10 (*i.e.*, the more value-added product) is moot, because we are not using HS 2706.00 to value the respondent's coal tar pitch input for the final results.

Therefore, for these final results, we find that the Malaysian import data under HS 2708.10, constitute the best available information on the record to value the coal tar pitch used by the mandatory respondents in the production of the subject merchandise,[116] because HS 2708.10 is product-specific in that it is a provision for "Pitch from Coal and Other Mineral Tars." Accordingly, for the final results, we have valued the coal tar pitch used by both of the mandatory respondents based on the Malaysian import data under HS 2708.10.

---

[109] *See*, *e.g.*, *PSF 2010* IDM at Comment 1.
[110] *See Glycine from China* IDM at Comment 1.
[111] *See, e.g.*, *PET Film 2008* IDM at Comment 2; *see also Crawfish from China* IDM at Comment 2.
[112] *See* Carbon Activated's Letter, "Carbon Activated Response to Section D Parts II and III First Supplemental Questionnaire," dated March 15, 2019, at 4.
[113] *See* Carbon Activated's Letter, "Carbon Activated Response to Section D Questionnaire (Part II)," dated October 22, 2018, at Attachment A (page 4 and Exhibit D-1) and Attachment B (page 4 and Exhibit D-1); Carbon Activated's Letter, "Carbon Activated Response to Section D Part I Second Supplemental Questionnaire," dated March 25, 2019 (Carbon Activated's March SuppDQR), at Exhibit 2 SD-15; Carbon Activated's Letter, "Carbon Activated Response to Section D Supplemental Questionnaire," dated May 9, 2019, at Exhibit 3 SD-3; *see also* Datong Juqiang's Letter, "DJAC Section D Questionnaire Response," dated September 7, 2018, at 4 and Exhibits D-1, D-2, and D-3; and Datong Juqiang's SDQR at 31-33.
[114] *See* Respondents' November 9, 2018 Surrogate Value Submission at Exhibit 5E.
[115] *See* Respondents' Case Brief at 29.
[116] *See* Final SV Memorandum at Attachment 1.

Comment 4: Calculation of Surrogate Financial Ratios

Respondents' Comments:

- In the *Preliminary Results*, Commerce utilized the 2017 Romcarbon financial statements to value the financial ratios.[117] Commerce's preliminary allocations of certain income and expense line items under certain accounting categories are contradicted by substantial record evidence and are otherwise not in accordance with law.[118]
- Commerce improperly excluded the "Note 5-Income from Penalties" line item from the financial ratio calculations without proffering any rationale. For the final results, Commerce should include the income from penalties charged in the ratio calculation to offset sales, general and administrative expenses (SG&A) because it can be inferred that Romcarbon's "Income from Penalties" are related to, and accrue in the course of, its general operations and are recorded under "Other Gains and Losses."[119] This inference is further supported by Commerce's settled practice of allocating expenses on penalties charged under the accounting category of SG&A expenses.
- Commerce also excluded "Note 5 - Gain/(Loss) on adjustment of investment property at fair value" and "Note 5 - Gain /(Loss) on disposal of investment property" line items from the financial ratio calculations without proffering any rationale. However, because Romcarbon's general business activity is manufacturing of goods, "investment in property," which is an entirely different category of activity, is extrinsic to Romcarbon's general business operations. Therefore, income from such "investment property" distorts Romcarbon's reported "profit before tax." Accordingly, for the final results, Commerce should include these line items in the calculation of the financial ratios to offset Romcarbon's reported "profit before tax" in order to obtain an adjusted profit before tax that arises solely from the company's general operations (*i.e.*, manufacturing activities).
- Commerce also excluded the "Note 5 – Other Gains" line item from the ratio calculations without proffering any rationale. Under Commerce's longstanding and settled practice, "Other gains" - income accrued from miscellaneous activities - are treated as a part of the general operations of the company unless the financial statement explicitly indicates otherwise. Therefore, for the final results, the "other gains" line item should be applied to offset the SG&A expenses.
- Commerce improperly allocated "Note 7-Social contributions and Meal tickets" under SG&A expenses.[120] For the final results, Commerce should re-allocate these two line items under labor. As Commerce's NV build up already includes the cost of employers' contribution to social security and meal expenses, by allocating these two-line items under SG&A, Commerce impermissibly double-counted these expenses.

[117] *See* Respondents' Case Brief at 30 (citing Preliminary SV Memo at 10-11, and accompanying Excel worksheet, at Tab. "Romcarbon").
[118] *See* Respondents' Case Brief at 30.
[119] *Id.* at 31.
[120] *Id.* at 35 (citing Preliminary SV Memo and accompanying Excel worksheet, at Tab. "Romcarbon").

Petitioners' Rebuttal Comments:

- Commerce properly calculated surrogate financial ratios, as Commerce's preliminary calculations of financial ratios were in line with Commerce's prior administrative practice.[121]
- If Commerce were to accept the mandatory respondents' proposed modifications to the financial ratio calculations, it would result in a negative profit for Romcarbon.
- For "Note 5 -Income from Penalties Charged," Commerce's decision to exclude income from penalties charged from the calculation of surrogate financial ratios is consistent with the agency's practice of excluding from the calculation of surrogate financial ratios, gains and losses: (1) that are long term in nature, (2) that are not directly tied to a company's main operating activities, or (3) both long term and not core business related.[122]
- For "Note 5 - Gain/(Loss) on adjustment of investment property at fair value" and "Note 5 - Gain / (Loss) on disposal of investment property," the mandatory respondents' arguments are inconsistent in how they are requesting Commerce to treat the preliminarily disallowed offsets. For Romcarbon's non-core operating income from penalties charged, they request Commerce to apply it as an offset to SG&A. However, at the same time, mandatory respondents request Commerce to deduct Romcarbon's investment income from the company's pre-tax profit as a disallowed SG&A offset. This likely relates to their attempt to avoid the establishment of a net negative profit for Romcarbon.
- For "Note 5 – Other Gains," this was rightfully excluded from the calculation of surrogate financial ratios in the *Preliminary Results*, as the line item "other gains" represents income that does not directly arise from core operating activities.[123]
- For "Note 7 - Social Contributions" and "Meal Tickets," the mandatory respondents are incorrect in asserting that Commerce double-counted Romcarbon's expenses for social contributions and meal tickets. As Commerce's NV calculations do not include employer's social security contributions and meal expenses, Commerce did not double-count these expenses by classifying them under SG&A.[124]

Commerce's Position: In deriving appropriate surrogate values for SG&A, factory overhead and profit, Commerce typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to materials, labor, and equipment (MLE), overhead, SG&A, and profit, and excludes certain expenses (*e.g.*, movement expenses) consistent with Commerce's practice of accounting for these latter expenses elsewhere.[125] However, in NME cases, it is impossible for Commerce to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding because Commerce does not seek information from or verify the information from the surrogate company.[126] Therefore, in calculating surrogate overhead and SG&A ratios, it is Commerce's practice to accept data from the surrogate producer's financial statements *in toto*, rather than performing a line-by-line analysis of the types of expenses included in each

[121] *See* Petitioners' Rebuttal Brief at 26.
[122] *Id.* at 27.
[123] *Id.* at 29-31.
[124] *Id.* at 32.
[125] *See Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014), and accompanying IDM at Comment 6.
[126] *Id*.

category.[127] As stated by the CIT, Commerce is "neither required to 'duplicate the exact production experience of the Chinese manufacturers,' nor undergo 'an item-by-item analysis in calculating factory overhead.'"[128]

With respect to the line item "Income from Penalties Charged" in Note 5-Other Gains and Losses, we agree with the mandatory respondents that we made an error by excluding this line item as an offset to SG&A. Romcarbon's financial statements itemizes "Expenses with fines and penalties" in Note 9-Other Income.[129] Because the expense is included in the SG&A section, we have moved "Expenses with fines and penalties" to SG&A as an offset.[130]

With respect to the treatment of "Note 5 - Gain/(Loss) on adjustment of investment property at fair value" and "Note 5 - Gain / (Loss) on disposal of investment property," we disagree with the mandatory respondents that these items should be treated as an offset to SG&A. We will include items which are gains/losses on investments as offsets to SG&A if those investments are short-term.[131] Further, these line items are related to investments in real estate which is "held for future capital appreciation" and not related to administrative or productive activity[132] and, therefore, not related to the primary operations of the company.[133] Similarly, with respect to "Note 5 – Other Gains," there is no information which links this item to the general operations of the company, unlike "Note 3-Other Income," which we have included as an offset to SG&A. Accordingly, we will not include "Note 5 - Gain/(Loss) on adjustment of investment property at fair value," "Note 5 - Gain / (Loss) on disposal of investment property," or "Note 5 – Other Gains" as offsets to the SG&A financial ratio calculation.

With respect to "Note 7 - Social Contributions" and "Meal Tickets," we disagree with the mandatory respondents that this should be included under labor. When labor items, such as social security contributions, clothing, housing, or meals, *etc.*, are clearly included in the SV for labor, we will include such items in the labor category of the surrogate financial ratios calculations to avoid double-counting such expenses.[134] The Malaysian SV for labor provides no information whether Social Contributions and/or Meal Tickets are included in the SV for

---

[127] *See Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1250-51 (CIT 2002) (*Rhodia*).
[128] *See Rhodia*, 240 F. Supp. 2d at 1250.
[129] *See* Respondents' Final SV Submission at Exhibit 10.
[130] *See* Final SV Memorandum.
[131] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 9753 (February 22, 2011), and accompanying IDM at Comment 1.
[132] *See* Respondent's Final SV Submission at Exhibit 10 (Independent Auditor's Report page 24).
[133] *See Certain New 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 18.D, where Commerce explained that it was its practice to exclude from the calculation of the surrogate financial ratios "income from long-term financial assets because such income is related to investing activities and is not associated with the general operations of the company.".
[134] *See Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 82 FR 11428 (February 23, 2017), and accompanying IDM at Comment 14.

labor.[135] Accordingly, because these items are not included in the labor SV, we are considering them as SG&A expenses for the purposes of calculating the surrogate financial ratios.

Finally, we note that we made an error in arithmetic when calculating the SG&A financial ratio. In the *Preliminary Results*, we had identified certain line items from Notes 3 and 5 as offsets to SG&A and set these items as negative values, identified in the row "Total Revenue."[136] However, in the row labelled "Total for Calculation," the formula for the SG&A numerator already sets the SG&A offset value as a negative value, which incorrectly resulted in the values which should be treated as SG&A expense offsets, being treated as additions to SG&A expenses rather than deductions to those expenses.[137] For the final results, we have set the values used as offsets to SG&A expenses to be positive values so that the value in the row labelled "Total Revenue" is correctly treated as a negative value in the numerator of the SG&A expense ratio calculation.[138]

Comment 5: Application of Adverse Facts Available for Merchandise Produced by Certain Suppliers of Carbon Activated

Petitioners' Comments:

- In its final results, Commerce should apply partial AFA to a supplier of mandatory respondent Carbon Activated, Supplier X, due to its failure to substantiate during verification fundamental information submitted to Commerce over the course of this segment. In addition, Commerce should apply AFA to three additional suppliers of Carbon Activated that failed to cooperate from the outset of this segment.[139]
- Commerce's verification of Carbon Activated's Supplier X reveals that the supplier was unable to substantiate two critical aspects of its reporting, which was contained in Carbon Activated's questionnaire responses.
- First, Commerce officials were unable to verify Supplier X's reported total production quantity that was used as the denominator in the calculation of the per-unit consumption of its FOPs.
- Second, Commerce officials were also unable to verify Supplier X's September 2017 reported consumption for carbonized materials, a significant input in the activated carbon production process.
- As information provided by an interested party could not be verified, Commerce must apply AFA to this supplier.[140]
- In addition, Commerce should apply AFA to three additional suppliers of Carbon Activated that failed to cooperate from the outset of this segment. The record demonstrates that those three suppliers, along with Supplier X, account for a substantial percentage of the total quantity of subject merchandise sold by Carbon Activated in the United States during the

[135] *See* Petitioners' SV Submission at Attachment 4.
[136] *See* Preliminary SV Memo at 10-11, and accompanying Excel worksheet at tab "Romcarbon."
[137] *Id.*
[138] *See* Final SV Memo and accompanying Excel worksheet at tab "Romcarbon."
[139] *See* Petitioner's Case Brief at 2.
[140] *Id.* at 7 (citing *Yantai Timken Co. v. United States*, 521 F. Supp. 2d 1356, 1372-1377 (CIT 2007) (upholding Commerce's application of partial AFA to three expenses the company failed to substantiate at verification)).

POR. However, for the *Preliminary Results*, Commerce applied neutral facts available (FA) to those three suppliers, which means there is no downside for Carbon Activated's failure to provide information for these suppliers. Given that this quantity exported to the United States is significant, Commerce should apply AFA to all four suppliers so as not to allow for manipulation of the record in this and future reviews.[141]

- As AFA, Commerce should apply the highest NV calculated for any CONNUM in this segment of the proceeding to these four suppliers.[142]

Carbon Activated's Rebuttal Comments:

- The petitioners wrongfully draw a parallel between Supplier X, which failed verification, and the three uncooperative suppliers, reasoning that "Carbon Activated's submission of information for Supplier X that was ultimately unverifiable is as much of a failure to cooperate as is its failure to provide information for three other suppliers." These are two different situations and should be treated differently.
- Also, the petitioners conflate Supplier X with Carbon Activated, referring to the interchangeably, as if they are one and the same such that Carbon Activated is to be held equally responsible for its supplier's failure to verify certain accounting of its finished goods and raw materials. However, the petitioners fail to develop their reasoning as to why Carbon Activated should effectively be collapsed with Supplier X. Notably, the petitioners fail to explain how Carbon Activated failed to act to the best of its ability.[143]
- Even assuming, *arguendo*, that with respect to Supplier X's merchandise, Carbon Activated is to be subjected to an AFA rate, the petitioners' choice of the AFA rate (*i.e.*, the highest calculated NV in this proceeding segment) is contradicted by the record evidence, because the highest NV proposed by the petitioners is based on subject merchandise which is produced using a source material which is a fundamentally different coal than the raw material underlying both of the CONNUMs produced by Supplier X.
- Commerce should apply the calculated NV for two of Supplier C's[144] CONNUMs because these two CONNUMs produced by Supplier C have the same physical material and form as the CONNUMs produced by Supplier X.[145]
- For the three uncooperative supplier-producers, Commerce should continue to apply neutral FA, because Carbon Activated made its best possible efforts in attempting to persuade the three suppliers to provide the relevant FOP data.[146] Further, controlling judicial precedent also supports the application of a neutral FA rate for the three uncooperative suppliers.[147]

Commerce's Position: We agree, in part, with the petitioners. Specifically, we agree that we should apply AFA in valuing the merchandise produced by Supplier X. However, with respect to the three unresponsive companies, we disagree that we should apply AFA in our valuation of the subject merchandise they supplied. In the *Preliminary Results*, we applied neutral FA with

---

[141] *Id.*
[142] *Id.* at 7.
[143] *See* Carbon Activated's Rebuttal Brief at 12-13.
[144] Supplier C's identity is BPI. For this company's name, *see* Carbon Activated's Final Calculation Memorandum.
[145] *See* Carbon Activated's Rebuttal Brief at 14-15.
[146] *Id*. at 2-12.
[147] *See Itochu Building Product Co., Inc. v. United States*, 2018 WL 1445676, 26-27 (March 22, 2018).

respect to the merchandise supplied by these unaffiliated non-responsive companies[148] and will continue to do so for the final results.

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

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

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

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[149] When selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[150]

As noted by the petitioners, during our verification of Supplier X's books and records, it failed to substantiate its total POR production quantity used as the denominator for all its FOP

[148] *See Preliminary Results*, and accompanying PDM at 17.
[149] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994), at 870.
[150] *See* Section 776(d)(3) of the Act.

consumption.[151] Further, Supplier X failed to substantiate the reported consumption quantity of its main input, carbonized materials.[152] Accordingly, because we could not verify two critical components of its FOP reporting, pursuant to section 776(a)(2)(D) of the Act, we determine that Commerce was unable to verify information Supplier X submitted to Commerce and, because the information that Supplier X provided was unverifiable, Supplier X did not act to the best of its ability. Thus, an adverse inference in selecting from the facts available is warranted pursuant to section 776(b)(1) of the Act. As AFA, we intend to rely on the highest NV calculated for any CONNUM in this review as the NV of the CONNUMs produced by Supplier X, rather than valuing individual FOPs, because the denominator used to derive all of Supplier X's reported FOPs is unreliable.[153]

We disagree with Carbon Activated that, in applying AFA in valuing the merchandise produced by Supplier X, we should use a CONNUM with the same physical characteristics as those produced by Supplier X. Section 776(b)(1)(A) of the Act states that Commerce "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." Specifically, we disagree with Carbon Activated that we should use the NVs of CONNUMs with the similar physical characteristics produced by Supplier C to value the products produced by Supplier X. Commerce may employ an adverse inference to ensure that a party does not obtain a more favorable result by failing to cooperate that if it had cooperated.[154] By applying the NVs of similar products to Supplier X's products, we would effectively be applying a neutral FA plug, as we are doing to Carbon Activated's supplier-producers which we excused from reporting FOPs.[155] The application of neutral FA is not remedial in nature, or adverse, so as to ensure cooperation, as contemplated by *Nan Ya Plastics* and the SAA. Therefore, for these final results, we find it appropriate to apply the highest NV calculated for any CONNUM in this segment of the proceeding to the CONNUMs produced by Supplier X.

Additionally, we disagree with the petitioners that we should apply AFA in valuing the merchandise produced by the three unaffiliated Carbon Activated supplier-producers which were non-responsive. As noted in the *Preliminary Results*, despite Carbon Activated's documented efforts to obtain the required FOP data from those supplier-producers, two of those supplier-producers ultimately failed to cooperate, and one of the supplier-producers had closed its operations.[156] Additionally, Carbon Activated purchased the subject merchandise from those

---

[151] *See* Memorandum, "Verification of the Questionnaire Responses of Carbon Activated Tianjin Co., Ltd.'s Supplier in the Antidumping Administrative Review of Certain Activated Carbon from the People's Republic of China," dated September 27, 2019, at 6-7.
[152] *Id.* at 8.
[153] For further details, *see* Carbon Activated's Final Calculation Memorandum.
[154] *See Nan Ya Plastics Corp. v. United States*, 810 F. 3d 1333, 1338 (Fed. Cir. 2016) (*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 SAA at 870).
[155] *See* Commerce's Letter, "Eleventh Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Supplier Exclusions," dated September 13, 2018.
[156] *See Preliminary Results* PDM at 17; *see also* Carbon Activated's Letter, "Carbon Activated Response to Section D," dated September 28, 2018, at 2-3 and Attachment E-1; Carbon Activated's Letter, "Carbon Activated Response to Section D (Part II) in the Eleventh Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China," dated October 22, 2018 (Carbon Activated's DQR (Part II)), at 2-3 and Attachment C; Carbon Activated's Letter, "Carbon Activated Response to Section D (Part III) in the Eleventh

supplier-producers through one or more trading companies and other supplier-producers which further manufactured the subject merchandise, and there is no evidence on the record which establishes that Carbon Activated had an existing relationship with those uncooperative supplier-producers.[157] The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has generally rejected the application of AFA to a cooperating respondent that is unable to provide the data of an unaffiliated party. In *Mueller*, the Federal Circuit recognized a narrow exception when the respondent is in a position to induce the unaffiliated party's cooperation.[158] The Federal Circuit in *Mueller* recognized that Commerce has a legitimate policy goal to compel cooperation of unaffiliated supplier-producers through the respondent both under sections 776(a) (facts otherwise available) and 776(b) (AFA) of the Act. However, the Federal Circuit stated that any application of those policies must be "reasonable on the particular facts and the predominant interest in accuracy is properly taken into account."[159] In *Mueller*, the Federal Circuit remanded the case for Commerce to recalculate the rate for the respondent affected by the non-cooperation, because the adverse inference had not created any direct adverse effect on the non-cooperating supplier-producer. Additionally, the Federal Circuit distinguished *Changzhou*, where "cooperating parties could not have induced the non-cooperating party to provide complete and accurate information," because the cooperating parties in *Changzhou* did not purchase goods from the non-cooperating parties and did not have an existing relationship.[160] In this instance, as noted above, Carbon Activated purchased the subject merchandise from the relevant supplier-producers through one or more trading companies and other supplier-producers which further manufactured the subject merchandise. We are, thus, not able to establish that Carbon Activated had an existing relationship with those uncooperative supplier-producers. Accordingly, we find that it is inappropriate to apply AFA to Carbon Activated as a result of the failure of these non-responsive supplier-companies to participate and, for the final results, we continue to apply the average NV to the sales of subject merchandise produced by the uncooperative supplier-producers.[161]

Comment 6: Selection of Appropriate Factors of Production Database for Carbon Activated

Carbon Activated's Comments:

- In its supplemental questionnaire dated April 30, 2019, Commerce instructed Carbon Activated to recalculate the FOP variables MIXTURE, CARBONIZEDMATERIALM, DIRLABM, INDIRLABM, ELECTRICITYM, WATERM, and ENERGYCOALM, based on an incorrect formula.[162] Carbon Activated complied with Commerce's instructions and, in

Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China," dated November 1, 2018 (Carbon Activated's DQR (Part III)), at 2-3 and Attachment B.

[157] *See Preliminary Results* PDM at 17; *see also* Carbon Activated's Letter, "Correction to Factor of Production Reporting Exclusion Request," dated August 24, 2018; and Carbon Activated's DQR (Part II) at 2-3.

[158] *See Mueller Comercial De Mexico v. United States*, 753 F. 3d 1227, 1233, 1235 (Fed. Cir. 2014) (*Mueller*).

[159] *Id.* at 1233.

[160] *Id.* at 1235 (citing *Changzhou Wujin Fine Chem. Factory Co., Ltd. v. United States*, 701 F. 3d 1367 (Fed. Cir. 2012) (*Changzhou*)).

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

[162] *See* Respondents' Case Brief at 41.

the *Preliminary Results*, Commerce used the May 9, 2019 FOP database (cacfop04), which is the FOP database that uses the incorrect formula.

- Commerce should use the March 25, 2019 FOP database (cacfop03) as it was created using the most accurate formula for calculating MIXTURE. Specifically, the bituminous coal consumed for the base product is already the amount of bituminous coal required to produce one MT of finished product, thus, there is no need to multiply this consumption with ACTIVATEDMATERIAL in the further processor's[163] database. On the other hand, the anthracite coal in Supplier B's[164] FOP database is the amount of anthracite coal required to produce one MT of activated material used by the further processor to produce the final product, which should in fact be multiplied with ACTIVATEDMATERIAL in the further processor's database.
- Because these seven FOPs are inflated due to the incorrect formula used in cacfop04, Commerce should use cacfop03 in the final results.

Petitioners' Rebuttal Comments:

- Carbon Activated's request to switch databases is illogical and unsupported by record evidence.
- Without supporting evidence, Carbon Activated claims that when the further processor mixed inputs from two different suppliers it had a yield loss on the anthracite-based activated carbon obtained from Supplier B, but none on the bituminous-based activated carbon obtained from Supplier C.[165]
- Carbon Activated claims that it obtained finished activated carbon from Supplier C while Supplier B's FOP database reflects the amount of anthracite coal used to produce one MT of activated carbon. This statement is in contrast with the chain of production described in Carbon Activated's DQR (Part II) where Carbon Activated reported that it would use the upstream FOPs utilized by Supplier B and Supplier C for production of bituminous-coal-based activated carbon, which were acid washed by the further processor.[166] However, it now claims to have only experienced a yield loss on only anthracite-based activated carbon, and not on bituminous-based activated carbon or both forms of activated carbon.
- Supplier B and C have demonstrated their consumption of anthracite and bituminous coal[167] to produce one MT of activated carbon.[168] The activated carbon produced by Suppliers B and C were mixed together, termed MIXTURE, and then acid-washed by the further processor. Carbon Activated applied only its consumption factor to the anthracite coal from Supplier B. It is illogical, and contradicted by other record statements, to treat only the feedstock activated carbon from Supplier C as product activated by Supplier C that required no consumption factor at the further processor, but to treat the feedstock activated carbon

[163] The further processor's identity is BPI. For this company's name, *see* Carbon Activated's Final Calculation Memorandum.
[164] Supplier B's identity is BPI. For this company's name, *see* Carbon Activated's Final Calculation Memorandum.
[165] Supplier C's identity is BPI. For this company's name, *see* Carbon Activated's Final Calculation Memorandum.
[166] *See* Petitioners' Rebuttal Brief at 33 (citing Carbon Activated's DQR (Part II) at Attachment A at 1).
[167] Commerce notes that, while the petitioners' rebuttal brief indicates that Supplier C used anthracite coal, Supplier C actually reported that it used bituminous coal in its production process. *See* Petitioners' Rebuttal Brief at 34; and Carbon Activated's DQR (Part III) at Attachment D, Exhibit D-6.
[168] *See* Petitioners' Rebuttal Brief at 34-35 (citing Carbon Activated's DQR (Part I) at Attachment D and Carbon Activated's DQR (Part III) at Attachment A).

from Supplier B as if it were raw coal that was neither carbonized nor activated and instead was a raw feedstock input.
- Carbon Activated provides no support for the position inherent in its claim, which is that Supplier C could report the amount of inputs consumed per MT that would later be washed, mixed, and packaged by the further processor.
- Commerce properly instructed Carbon Activated to reflect the further processor's consumption factor for the mixed production of control numbers that used both anthracite-based activated carbon and bituminous-based activated carbon to both incoming sets of upstream FOPs.
- If Commerce relies on cacfop03, then Commerce must adjust the freight factor applied to direct materials. Whereas cacfop04 includes both DINLFT (freight distances for the main supplier to port) and DINLFT2 (freight distance between Suppliers B and C to the further processor), cacfop03 includes only DINLFT. Therefore, DINLFT2 would need to be included in database cacfop03 in order for Commerce's calculations to reflect both DINLFT + DINLFT2 and to account for all supplier distances.

Commerce's Position: We agree with the petitioners that Commerce used the correct FOP database in the *Preliminary Results*. As noted by the petitioners, Carbon Activated suggests that the bituminous coal from Supplier C does not incur the same, or any, yield loss from the acid washing process undertaken by the further processor as the anthracite coal from Supplier B. In Exhibit D-6 of Supplier C's section D questionnaire response, Supplier C reports the consumption of bituminous coal per unit of subject merchandise produced.[169] If we use Carbon Activated's formula for MIXTURE, Supplier C's consumption quantity for the product acid-washed by the further processor remains the same post-acid wash, without accounting for any yield loss incurred by the further processor. While Carbon Activated reports that Supplier C's activated carbon was acid-washed by the further processor,[170] the formula reported in Carbon Activated's Supp DQR (Part I) does not include the yield loss incurred by further processing as it does for Supplier B's input.[171] Moreover, the record shows that acid washed products incur yield-loss during production, it is reasonable to assume that all further processors incur some level of yield-loss. Accordingly, because the formula used in the FOP database, cacfop03, for the acid-washed products produced by the further processor does not include the yield loss of input product provided by Supplier C, for the final results we will continue to use cacfop04 as this FOP database includes the correct formula for calculating MIXTURE, CARBONIZEDMATERIALM, DIRLABM, INDIRLABM, ELECTRICITYM, WATERM, and ENERGYCOALM.

Comment 7: Correction of Preliminary Results Calculation Error

Datong Juqiang's Comments:
- Commerce should correct a ministerial error in Datong Juqiang's margin calculation program.[172] In the *Preliminary Results*, Commerce calculated Datong Juqiang's freight using

[169] *See* Carbon Activated's DQR at Attachment D (Exhibit D-6)
[170] *See* Carbon Activated's DQR (Part II) at Attachment A.
[171] *See* Carbon Activated's March SuppDQR at 7-8.
[172] *See* Respondents' Case Brief at 37-40.

the uncapped freight distances for each input. For the final results, Commerce should rely on the reported *Sigma*[173] capped distances in its margin calculation program, in calculating the freight cost for the inputs.[174]

Commerce's Position: We agree with Datong Juqiang, that in our preliminary calculations we used uncapped freight distances instead of *Sigma* capped distances to calculate the FOP for each input reported by Datong Juqiang. Therefore, for these final results, we have revised our calculations to rely on *Sigma* capped freight distances.[175]

Comment 8: Treatment of Tancarb Activated Carbon Co., Ltd.

Tancarb's Comments:

- Tancarb filed its separate rate application (SRA) after the established deadline, and Commerce rejected its SRA.[176] However, Commerce should accept Tancarb's untimely filed SRA because accepting the SRA is consistent with judicial precedent and would not unduly burden Commerce.[177] The rejection of the application could cause undue and disproportionate harm to Tancarb's importers.[178]
- In the immediately preceding administrative review (*i.e.*, POR 2016-2017), Commerce initiated the review on Tancarb. However, due to miscommunication between Tancarb and its counsel, Tancarb' separate rate certification (SRC) was not timely filed. Accordingly, Tancarb was assigned the China-wide entity rate for the 2016-2017 POR. Tancarb was not aware of this error until its entries began to liquidate sometime after the final results for the 2016-2017 POR published on October 22, 2018 and Commerce issued liquidation instructions.
- Once it realized the error in the 2016-2017 administrative review, Tancarb inquired as to its status in the current, 2017-2018 administrative review. The review had been initiated on Tancarb, but no SRA had been filed on behalf of Tancarb in the current review either. The deadline to file an SRA in the 2017-2018 (*i.e.*, July 6, 2018) had already passed by the time Tancarb became fully aware of this issue.
- The preliminary results were due on June 10, 2019, and Tancarb filed its late SRA on April 5, 2019. The SRA was also filed prior to the end of the 30-day new facts deadline.[179]
- The CIT also has noted that it will "review on a case-by-case basis whether the interests of accuracy and fairness outweigh the burden placed on the Department and the interest in

[173] *See Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997) (*Sigma*).
[174] *Id.*
[175] *See* Datong Juqiang's Final Calculation Memorandum.
[176] *See* Tancarb's Letter, "Request to Accept Separate Rate Application," dated April 5, 2019. Commerce notified Tancarb of its intent to reject and remove the untimely submission from the record on April 29, 2019. *See* Commerce's Letter to Tancarb, "Rejection of Untimely Filed Separate Rate Application," dated April 11, 2019 (ACCESS Barcode 3818243-01); and Memorandum, "Reject and remove Separate Rate Application," dated April 12, 2019 (ACCESS Barcode 3818654-01).
[177] *See* Tancarb's Case Brief at 9-10.
[178] *Id.* at 1.
[179] *Id.*

finality."[180] In *Grobest*, the CIT noted that Commerce is limited by the fact that the antidumping statute is remedial in purpose, not punitive, and by the statute's goal of determining margins as accurately as possible. With this understanding, the court in *Grobest* held that the interest of fairness outweighed the burden placed on Commerce in considering the acceptance of an untimely filed SRA, ruling Commerce's rejection of the late-filed submission was an abuse of discretion.[181]

Petitioners' Rebuttal Comments:

- Commerce acted appropriately in treating Tancarb as a part of the China-wide entity and should continue to do so in the final results.[182]
- In *Grobest*, the SRA in question was filed 95 days late but more than seven months before the preliminary results of the administrative review. The Court also noted that the plaintiff in the case (*i.e.*, Amanda Foods (Vietnam) Ltd.), was prompt in correcting its error once it was discovered. In contrast, Tancarb filed its SRA nine months late and only two months prior to the deadline for the *Preliminary Results*. Moreover, while Tancarb claims to have taken prompt remedial action after becoming aware of a problem (*i.e.*, "sometime after October 22, 2018"),[183] it did not actually file its separate rate application until April 5, 2019, more than five months later.

Commerce's Position: Commerce disagrees with Tancarb's assertions regarding the rejection of its untimely-filed SRA and Commerce's treatment of Tancarb in the *Preliminary Results* as part of the China-wide entity. Accordingly, we continue to find that Tancarb should be treated as part of the China-wide entity for these final results.

As a threshold matter, the deadline to submit an SRA was 30 days after the publication of the *Initiation Notice* in the *Federal Register*.[184] Publication of the *Initiation Notice* in the *Federal Register* constitutes public notification to interested parties, explains the requirements for demonstrating eligibility for a separate rate, and provides the applicable deadlines for which were clearly established in the *Initiation Notice*. In addition, Commerce provides all interested parties with an opportunity to request an extension of time to file their submissions. Specifically, 19 CFR 351.302(c) states that:

> Before the applicable time limit established under this part expires, a party may request an extension pursuant to paragraph (b) of this section. An untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists. The request must be in writing, in a separate, stand-alone submission, filed consistent with § 351.303, and state the reasons for the request. An extension granted to a party must be approved in writing.

---

[180] *Id.* at 4 (citing *Grobest & I-Mei Industrial (Vietnam) Co., Ltd. v. United States*, 815 F. Supp. 2d 1342, 1365 (CIT 2012) (*Grobest*)).
[181] *Id.*
[182] *See* Petitioners' Rebuttal Brief at 37.
[183] *Id.* at 39 (citing Tancarb's Letter, "Activated Carbon from the People's Republic of China - Request to Accept Separate Rate Application," dated April 5, 2019 (Tancarb Request Letter), at 2).
[184] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 26258 (June 6, 2018) (*Initiation Notice*).

(1) An extension request will be considered untimely if it is received after the applicable time limit expires or as otherwise specified by the Secretary.
(2) An extraordinary circumstance is an unexpected event that:
  (i) Could not have been prevented if reasonable measures had been taken, and
  (ii) Precludes a party or its representative from timely filing an extension request through all reasonable means.

At no time prior to the July 6, 2018, SRA deadline did Tancarb request an extension of time to file its SRA, as directed in the regulations. Rather, Tancarb submitted, simultaneously, a letter requesting acceptance of the untimely submission and the now-rejected SRA on April 5, 2019, 273 days after the deadline.[185] In its April 5, 2019 Letter, Tancarb asserted that "the interests of accuracy and fairness outweigh any burden placed on the Department in considering this SRA several months late." In the same letter, Tancarb also cited to the CIT ruling in *Grobest*, asserting that the CIT concluded that Commerce's rigid application of its deadline constituted an abuse of discretion.[186]

In this case, Tancarb did not provide any extension request—it simply filed its April 5th letter requesting consideration of the untimely submission along with the untimely SRA. In addition, Commerce disagrees with Tancarb's claim as support for its untimely submission, that the circumstances in this case mirror those in the administrative review subject to *Grobest*. In *Grobest*, the CIT held that rejecting an SRC that was three months late was an abuse of discretion because, *inter alia*, the SRC had been submitted early in the proceeding, the respondent was diligent in attempting to correct the error, and the burden on the agency to consider the certification would have been minimal.[187]

However, none of those circumstances exist here. Tancarb's untimely submission was not "early in the proceeding." It was submitted 273 days after the established deadline expired and two months before the *Preliminary Results* were issued.[188] There is no evidence on the record that Tancarb demonstrated any diligence in filing timely information, as Tancarb did not communicate with Commerce regarding any difficulties in submitting its SRA until April 5, 2019. Further, presenting untimely information 273 days after the established deadline is not an example of diligence, as referenced in *Grobest*.

Additionally, in *Grobest*, the CIT found that the facts of that case suggested that the administrative burden of reviewing the SRC, rejected by Commerce, would not have been great because Commerce had granted the respondent company separate-rate status in the preceding three administrative reviews without needing to conduct a separate-rate analysis.[189] Therefore, the Court found that, but for the untimeliness of its submission, the respondent would likely have received a separate rate in the segment in question, with minimal administrative burden imposed

[185] *See* Tancarb Request Letter.
[186] *Id.* (citing *Grobest*, 815 F. Supp. 2d at 1342).
[187] *See Grobest*, 815 F. Supp. 2d at 1367.
[188] *See* Commerce's Letter, "Eleventh Antidumping Administrative Review of Certain Activated Carbon from the People's Republic of China (China): Rejection of Untimely Filed Separate Rate Application, dated April 11, 2019; *see also* rejected submission under ACCESS Barcode 3815792-01.
[189] *See Grobest*, 815 F. Supp. 2d at 1367.

upon Commerce, and, as a result of its rejected submission, was likely assigned an inaccurate and disproportionate margin.[190] In this case, Tancarb was denied separate rate status in the preceding 2016-2017 administrative review as a result of its failure to file an SRC. The administrative burden imposed upon Commerce for this review, therefore, would have been far greater than that contemplated by the CIT in *Grobest* because Commerce would have had to conduct a complete separate-rate eligibility analysis. Thus, Tancarb's assertion that "Tancarb's submission was early enough in the proceeding to minimize concerns for finality, and accepting Tancarb's response would not overly burden Commerce,"[191] is incorrect. Commerce did not make an inaccurate determination. Rather, Tancarb failed to timely provide an SRA in order to demonstrate its eligibility for a separate rate.

Furthermore, notwithstanding the distinctions between this case and *Grobest*, the case law regarding Commerce's authority to reject untimely-filed submissions has developed such that Commerce's determination is further supported by the Federal Circuit's ruling in *PSC VSMPO*.[192] In *PSC VSMPO*, the Federal Circuit explained that the CIT "erred when, in spite of this determination {that the information was untimely submitted}, it ordered Commerce to admit the affidavit into the record because of circumstances the Court described as 'not typical.'" The Federal Circuit further stated that the CIT's decision to remand Commerce's determination to reject an untimely-filed document was an improper intrusion into Commerce's power to apply its own procedures for the timely resolution of antidumping reviews.[193] Thus, based on the distinction between this case and *Grobest*, as well as subsequent support from the Federal Circuit in *PSC VSMPO*, it was within Commerce's authority to reject Tancarb's untimely SRA in this review, considering the extreme lateness of Tancarb's untimely filing. Accordingly, we find that the circumstances of this case are more comparable with those addressed in *PSC VSMPO* than *Grobest*.

Commerce establishes deadlines to ensure its ability to complete administrative proceedings within statutorily mandated deadlines. The CIT has long recognized the need to establish and enforce time limits for filings, the purpose of which is to aid Commerce in the administration of the antidumping laws.[194] The purpose of requiring the submission of SRAs within 30 days of the publication of review initiations is to ensure that Commerce has sufficient time to gather information, issue supplemental questionnaires, if necessary, make separate rate determinations, then address the separate rate companies in the preliminary results. In this administrative review, we have done exactly that for the eight companies that timely filed their SRAs or SRCs.[195] Thus, we find that Tancarb has been appropriately assigned the China-wide entity rate in this review for its failure to submit a timely filed SRA.

---

[190] *Id.*
[191] *See* Tancarb's Case Brief at 7.
[192] *See PSC VSMPO-Avisma Corp. v. United States*, 688 F. 3d 751, 761 (Fed. Cir. 2012) (*PSC VSMPO*).
[193] *Id.*
[194] *See Nippon Steel Corp. v. United States*, 118 F. Supp. 2d 1366, 1377 (CIT 2000); *see also Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 69644 (November 10, 2015), and accompanying IDM at Comment 19.
[195] *See Preliminary Results* PDM at 5-6.

VI. 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*.

☒	☐
Agree	Disagree

12/11/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance