A-570-904
Administrative Review
POR: 4/1/2019 – 3/31/2020
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June 21, 2021

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

FROM: Irene Darzenta Tzafolias
Director, Office VIII
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Activated Carbon from the People's Republic of China; 2019-2020

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain activated carbon from the People's Republic of China (China) for the period of review (POR) April 1, 2019, through March 31, 2020. Commerce preliminarily determines that sales of the subject merchandise in the United States were made at prices below normal value (NV).

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

II. BACKGROUND

On June 8, 2020, pursuant to timely requests for review, Commerce published the notice of initiation of the thirteenth administrative review of the AD order on certain activated carbon from China for the POR.[1] Commerce initiated an administrative review of 76 exporters of subject merchandise.[2]

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 35068 (June 8, 2020) (*Initiation Notice*).
[2] *Id.* at 35070-71.

On June 12, 2020, Commerce placed on the record of the review CBP data for imports made during the POR under the Harmonized Tariff Schedule of the United States (HTSUS) number listed in the scope of the order and requested comments on the data for use in respondent selection.[3]

On July 8, 2020, Commerce issued the Respondent Selection Memorandum, selecting Carbon Activated Tianjin Co., Ltd. (Carbon Activated) and Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) (collectively, the mandatory respondents) for individual examination because based on the CBP data, they were the two largest exporters of the subject merchandise, by volume, during the POR.[4]

On July 13, 2020, Commerce sent initial AD questionnaires to the mandatory respondents. Commerce received responses to section A of the questionnaire from both mandatory respondents on August 18, 2020,[5] responses to section C on September 10, 2020,[6] and responses to section D on September 17 and 24, 2020.[7] From January 2021 through June 2021, Commerce issued and received responses to supplemental questionnaires from the mandatory respondents.

On July 21, 2020, Commerce tolled all preliminary and final deadlines in administrative reviews by 60 days.[8] On January 15, 2021, Commerce extended the preliminary results deadline until April 30, 2021.[9] On March 24, 2021, Commerce further extended the preliminary results deadline until June 18, 2021.[10] Accordingly, the deadline for the preliminary results of this review is June 21, 2021.[11]

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[3] *See* Memorandum, "Certain Activated Carbon from the People's Republic of China: U.S. Customs and Border Protection Data Release for Respondent Selection," dated June 12, 2020.

[4] *See* Memorandum, "Thirteenth Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Selection of Respondents for Individual Review," dated July 8, 2020 (Respondent Selection Memorandum).

[5] *See* Carbon Activated's Letter, "Carbon Activated Response to Sec. A of Questionnaire," dated August 18, 2020 (Carbon Activated's Section A Response); and Datong Juqiang's Letter, "Section A Response for Datong Juqiang Activated Carbon Co., Ltd," dated August 18, 2020 (Datong Juqiang's Section A Response).

[6] *See* Carbon Activated's Letter, "Carbon Activated Response to Sec. C of Questionnaire," dated September 10, 2020 (Carbon Activated's Section C Response); and Datong Juqiang's Letter, "DJAC Section C Response," dated September 10, 2020 (Datong Juqiang's Section C Response).

[7] *See* Datong Juqiang's Letter, "DJAC Section D Response," dated September 17, 2020 (Datong Juqiang's Section D Response); and Carbon Activated's Letter, "Carbon Activated Response to Sec. D of Questionnaire," dated September 24, 2020 (Carbon Activated's Section D Questionnaire Response).

[8] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

[9] *See* Memorandum, "Certain Activated Carbon from the People's Republic of China: Extension of Deadline for Preliminary Results of the Thirteenth Antidumping Duty Administrative Review," dated January 15, 2021.

[10] *See* Memorandum, "Certain Activated Carbon from the People's Republic of China: Extension of Deadline for Preliminary Results of the Thirteenth Antidumping Duty Administrative Review," dated March 24, 2021.

[11] On June 17, 2021, the President signed into law the Juneteenth National Independence Day Act, making June 19 a Federal holiday. *See* Juneteenth National Independence Day Act, S. 475, Pub. L. No. 117-17 (2021). Because the Federal holiday fell on a Saturday, it was observed on Friday, June 18, 2021. Where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for these preliminary results is on June 21, 2021.

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 (CO_2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

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

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

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

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

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

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within the scope. The products subject to the order are currently classifiable under the HTSUS subheading 3802.10.00. Although the

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

IV. DISCUSSION OF THE METHODOLOGY

A. Preliminary Finding of No Shipments

Beijing Pacific Activated Carbon Products Co., Ltd. (Beijing Pacific), Jilin Bright Future Chemicals Co., Ltd. (Jilin Bright Future), Shanxi Dapu International Trade Co., Ltd. (Shanxi Dapu), Shanxi Industry Technology Trading Co., Ltd. (SITT), Shanxi Tianxi Purification Filter Co., Ltd. (Shanxi Tianxi), and Tianjin Channel Filters Co., Ltd. (Tianjin Channel) reported that they made no shipments of subject merchandise to the United States during the POR.[12] To confirm these no-shipment claims, Commerce issued a no-shipment inquiry to CBP requesting that it review each company's no-shipment claim.[13] CBP reported that it did not have information to contradict these companies' claims of no shipments during the POR.[14] Because these companies certified that they made no shipments of subject merchandise to the United States during the POR, and there is no information contradicting their claims, Commerce preliminarily determines that the following companies did not have shipments during the POR: (1) Beijing Pacific; (2) Jilin Bright Future; (3) Shanxi Dapu; (4) SITT; (5) Shanxi Tianxi; and (6) Tianjin Channel. Consistent with Commerce's practice, Commerce will not rescind the review with respect to these companies, but rather complete the review and issue assessment instructions to CBP based on the final results.[15]

B. Non-Market Economy Country

Commerce considers China to be a non-market-economy (NME) country.[16] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding have contested such treatment. Therefore, Commerce continues to treat China as an NME country for purposes of these preliminary results.

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[12] *See* Beijing Pacific's Letter, "No Shipment Certification," dated June 28, 2020; Jilin Bright Future's Letter, "No Shipment Certification," dated July 15, 2019; Shanxi Dapu's Letter, "No Shipment Certification," dated June 26, 2020; SITT's Letter, "No Shipment Certification," dated July 8, 2020; Shanxi Tianxi's Letter, "No Shipment Certification," dated July 2, 2020; and Tianjin Channel's Letter, "No Shipment Certification," dated July 2, 2020.

[13] *See* No Shipments Inquiry for Certain Activated Carbon from the People's Republic of China Exported by Multiple Companies (A-570-904), message number 0225401, dated August 12, 2020.

[14] *See* Memorandum, "Certain Activated Carbon from China (A-570-904)," dated August 14, 2020.

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

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

C. Separate Rates

Commerce has a rebuttable presumption that all companies within an NME are subject to government control and, thus, should be assessed a single AD rate.[17] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[18] It is Commerce's policy to assign all exporters of the merchandise subject to review in an NME proceeding a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate rate, Commerce analyzes each exporting entity in an NME proceeding under the test established in *Sparklers*,[19] as amplified by *Silicon Carbide*,[20] and further refined by *Diamond Sawblades*.[21] However, if Commerce determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.[22]

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades* proceeding, and Commerce's determinations therein. In particular, in litigation involving the *Diamond Sawblades* proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the exporter under examination.[23] Following the CIT's reasoning, Commerce has concluded that

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

[18] *See Initiation Notice*, 85 FR at 35069.

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

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

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

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

[23] *See, e.g.*, *Advanced Technology I*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind

where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[24] This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, Commerce would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

As discussed below, nine companies, including the mandatory respondents, filed a timely separate rate application (SRA) or separate rate certification (SRC). Commerce also received completed responses to the section A portion of the NME AD questionnaire from the mandatory respondents,[25] which contained information pertaining to the companies' eligibility for a separate rate. Commerce received either an SRA or SRC from the following seven companies that were not selected for individual examination (separate rate applicants):

1. Datong Municipal Yunguang Activated Carbon Co., Ltd. (Yunguang);[26]
2. Jacobi Carbons AB and its affiliates, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) Co. Ltd. (collectively, Jacobi);[27]
3. Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (Guanghua Cherishmet);[28]
4. Ningxia Huahui Activated Carbon Co., Ltd. (Huahui);[29]
5. Ningxia Mineral & Chemical Limited (Ningxia Mineral);[30]
6. Shanxi Sincere Industrial Co., Ltd. (Sincere Industrial);[31] and

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of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations, ' including terms, financing, and inputs into finished product for export."); and *id.* at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

[24] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9, unchanged in *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014), and accompanying IDM.

[25] *See* Carbon Activated's Section A Response; and Datong Juqiang's Section A Response.

[26] *See* Yunguang's Letter, "Separate Rate Application," dated July 15, 2020 (Yunguang SRA).

[27] *See* Jacobi's Letter, "Separate Rate Certification," dated July 8, 2020 (Jacobi SRC). In the third administrative review, Commerce found that Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) Co., Ltd. should be treated as a single entity, and because there were no facts presented on the record of this review which call into question our prior finding, Commerce continues to treat these companies as part of a single entity for this administrative review, pursuant to sections 771(33)(E), (F), and (G) of the Act and 19 CFR 351.401(f). *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review*, 76 FR 67142, 67145 n.25 (October 31, 2011).

[28] *See* Guanghua Cherismet's Letter, "Separate Rate Certification," dated July 8, 2020 (Guanghua Cherishmet SRA).

[29] *See* Huahui's Letter, "Separate Rate Certification," dated July 8, 2020 (Huahui SRC).

[30] *See* Ningxia Mineral's Letter, "Separate Rate Certification," dated July 8, 2020 (Ningxia Mineral SRC).

[31] *See* Sincere Industrial's Letter, "Separate Rate Certification," dated July 2, 2020 (Sincere Industrial SRC).

7. Tancarb Activated Carbon Co., Ltd. (Tancarb).[32]

i. Wholly Foreign-Owned Applicants

Mandatory respondent Carbon Activated demonstrated that it is wholly owned by individuals located in a market-economy (ME) country, the United States.[33] Jacobi demonstrated that it is wholly owned by an ME company located in an ME country, Sweden.[34] Finally, Ningxia Mineral demonstrated in its SRC that it is an ME company located in an ME territory, Hong Kong.[35] Therefore, as there is no Chinese ownership of these three companies, and because Commerce has no evidence indicating that these companies are under the control of the Chinese government, further analyses of the *de jure* and *de facto* criteria are not necessary to determine whether they are independent from government control of their export activities.[36] Therefore, because Commerce finds that all three companies have demonstrated an absence of government control of export activities, Commerce preliminarily determines that: (1) Carbon Activated; (2) Jacobi; and (3) Ningxia Mineral are eligible for separate rates.

ii. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.[37] The evidence provided by mandatory respondent, Datong Juqiang, and separate rate applicants, Yunguang, Guanghua Cherishmet, Huahui, Sincere Industrial, and Tancarb supports a preliminary finding of the absence of *de jure* government control of export activities based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.[38]

iii. Absence of *De Facto* Control

Typically Commerce considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set

[32] *See* Tancarb's Letter, "Supplemental Separate Rate Application Questionnaire Response," dated April 30, 2021 (Tancarb SRA).
[33] *See* Carbon Activated's Section A Response.
[34] *See* Jacobi SRC.
[35] *See* Ningxia Mineral SRC.
[36] *See, e.g.*, *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71104-05 (December 20, 1999).
[37] *See Sparklers*, 56 FR at 20589.
[38] *See* Datong Juqiang's Section A Response; Yunguang SRA; Guanghua Cherishmet SRA; Huahui SRC; Sincere Industrial SRC; and Tancarb SRA.

by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[39] Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.[40]

The evidence provided by Datong Juqiang, Yunguang, Guanghua Cherishmet, Huahui, Sincere Industrial, and Tancarb supports a preliminary finding of the absence of *de facto* government control based on the following: (1) the companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.[41] Therefore, Commerce preliminarily finds that (1) Datong Juqiang; (2) Yunguang; (3) Guanghua Cherishmet, (4) Huahui; (5) Sincere Industrial; and (6) Tancarb have established that they qualify for a separate rate under the criteria established by *Diamond Sawblades*, *Silicon Carbide*, and *Sparklers*.

China-Wide Entity

The remaining 61 companies[42] under review failed to establish their eligibility for a separate rate because they did not file an SRA or an SRC with Commerce.[43] Hence, Commerce preliminarily determines to treat these companies as part of the China-wide entity.[44]

Because no party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, Commerce is not conducting a review of the China-wide entity.[45] Thus, the rate for the China-wide entity (*i.e.*, 2.42 U.S. dollars/kilogram (USD/kg)) is not subject to change pursuant to this review.[46]

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[39] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).
[40] *Id.*
[41] *See* Datong Juqiang's Section A Response; Yunguang SRA; Guanghua Cherishmet SRA; Huahui SRC; Sincere Industrial SRC; and Tancarb SRA.
[42] The total number of company names for which Commerce initiated this review is 76. Six of those companies under review submitted no shipment certifications. Two of those companies for which Commerce initiated this review are the mandatory respondents, and seven are separate rate applicants. One of the separate rate applicants, Jacobi, includes two other company names from the initiation notice in its single-entity group. *See Initiation Notice*, 85 FR at 35070.
[43] *See* Appendix II in the accompanying *Federal Register* Notice for a complete listing of these companies.
[44] *Id.*
[45] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).
[46] *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).

D. Dumping Margin for Non-Examined Separate Rate Companies

As stated in the Respondent Selection Memorandum, Commerce employed a limited examination methodology in this review, as it did not have the resources to examine the large number of companies for which an administrative review was initiated, and selected the two largest exporters by volume as mandatory respondents in this review, Datong Juqiang and Carbon Activated.[47] Seven additional companies (identified in the "Separate Rates" section above) remain subject to review as non-individually examined, separate rate respondents.

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate rate respondents which Commerce did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that Commerce is not to calculate an all-others rate using rates for individually examined respondents which are zero, *de minimis*, or based entirely on facts available (FA). Accordingly, Commerce's usual practice in determining the rate for separate rate respondents not selected for individual examination has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on FA.[48]

In these preliminary results, the two mandatory respondents, Datong Juqiang and Carbon Activated, have weighted-average dumping margins which are not zero, *de minimis*, or based entirely on FA. Additionally, because using the weighted-average dumping margin based on the U.S. sales quantities for Datong Juqiang and Carbon Activated risks disclosure of business proprietary information, Commerce cannot assign to the separate rate companies the weighted-average dumping margin based on the U.S. sales quantities from these two respondents.[49]

For these preliminary results, and consistent with our practice,[50] Commerce has preliminarily assigned to the non-individually examined companies a weighted-average rate based on the publicly available ranged U.S. sales quantities of the mandatory respondents in this review. Accordingly, following the practice described above, Commerce has calculated a rate of $ 0.58 USD/kg for the non-individually examined respondents.[51] The separate rate applicants receiving

[47] *See* Respondent Selection Memorandum at 1.
[48] *See Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); *see also Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).
[49] *See, e.g.*, *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533, 70534-35 (November 26, 2013) (*AR5 Carbon from China Final*).
[50] *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661 (September 1, 2010), and accompanying IDM at Comment 1.
[51] *See* Memorandum, "Certain Activated Carbon from the People's Republic of China: Calculation of the Margin for Respondents Not Selected for Individual Examination," dated concurrently with this memorandum.

this rate are identified by name in the "Preliminary Results of the Review" section of the *Federal Register* notice.

E. Surrogate Country and Surrogate Value Data

On January 19, 2021, Commerce sent interested parties a letter inviting comments on: (1) the non-exhaustive list of countries that Commerce determined are at the same level of economic development as China based on annual per capita gross national income (GNI); (2) surrogate country (SC) selection; and (3) surrogate value (SV) data.[52] On February 5, 2021, the mandatory respondents submitted comments on economically comparable countries.[53] On February 11, 2021, Calgon Carbon Corporation and Cabot Norit Americas Inc. (collectively, the petitioners), and the mandatory respondents submitted comments on the list of countries, respectively.[54] On October 9, 2019, the petitioners submitted rebuttal comments in response to the Respondents' SC Comments.[55] On February 22, 2021, Commerce extended the deadline for SV comments and rebuttal SV comments to March 4 and 15, 2021, respectively.[56] On March 4, 2021, the petitioners and the mandatory respondents submitted SV comments, respectively.[57] On March 15, 2021, the petitioners submitted rebuttal comments to the Respondents' SV Submission.[58] On May 19, 2021, the mandatory respondents submitted final SV comments.[59]

Surrogate Country Selection

When Commerce investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate ME country or countries considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[60] As a general rule, Commerce selects an SC that is at the same

[52] *See* Commerce's Letter, "Certain Activated Carbon from the People's Republic of China (China): Request for Comments, (1) Economic Development, (2) Surrogate Country and (3) Surrogate Value Information," dated January 19, 2021 (SC Memo).
[53] *See* Mandatory Respondents' Letter, "Carbon Activated's Economically Comparable Countries Comments," dated February 5, 2021 (Respondents' Economically Comparable Countries Comments).
[54] *See* Petitioners' Letter, "Petitioners' Comments on Surrogate Country Selection," dated February 11, 2021 (Petitioners' SC Comments); *see also* Mandatory Respondents' Letter, "DJAC and Carbon Activated's Surrogate Country Comments," dated February 11, 2021 (Respondents' SC Comments).
[55] *See* Petitioners' Letter, "Petitioners' Rebuttal Comments Regarding Respondents' Surrogate Country Letter," dated February 22, 2021 (Petitioners' Rebuttal SC Comments).
[56] *See* Memorandum, "Surrogate Value Submissions for All Interested Parties," dated February 22, 2021.
[57] *See* Petitioners' Letter, "Petitioners' Submission of Surrogate Values," dated March 4, 2021 (Petitioners' SV Submission); *see also* Mandatory Respondents' Letter, "First Surrogate Value Comments," dated March 4, 2021 (Respondents' SV Submission).
[58] *See* Petitioners' Letter, "Petitioners' Rebuttal Comments Addressing Respondents' Surrogate Value Submission," dated March 15, 2021 (Petitioners' Rebuttal SV Submission).
[59] *See* Mandatory Respondents' Letter, "Final Surrogate Value Comments by DJAC and CA Tianjin," dated May 19, 2021. Due to the proximity of the submission of these comments to the deadline of the preliminary results, Commerce was unable to evaluate these comments for the *Preliminary Results*.
[60] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1).

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.[61] 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.[62] To determine which countries are at the same level of economic development, Commerce generally relies on GNI data from the World Bank's World Development Report.[63] Further, Commerce has stated that it prefers to value all FOPs from a single SC.[64]

On August 25, 2020, Commerce identified Brazil, Malaysia, Mexico, Romania, Russia, and Turkey (OP List Countries) as countries that are at the same level of economic development as China based on per capita 2019 GNI data.[65] In Respondents' Economically Comparable Countries Comments, the mandatory respondents noted that Romania ($12,630 USD per capita GNI) and Brazil ($9,130 USD per capita GNI) form the two bookends for the six OP List Countries, and that any other country with a per capita GNI between the two bookends stands at the same level of economic development as the six OP List Countries.[66] Further, the mandatory respondents noted that the statute permits selection of an SC at a comparable level of economic development,[67] and asserted, as such, an SC that is held as economically comparable to China could also be legitimately selected outside of the OP List Countries. In sum, the mandatory respondents suggested that Commerce should apply a flexible approach to its selection of SVs, rather than limit the selection of SVs from the OP List Countries.[68]

In Respondents' SC Comments, the mandatory respondents did not argue for Commerce to select a specific country as either the primary and/or secondary SC.[69] However, the mandatory respondents placed import and export statistics for activated carbon from Brazil, Malaysia, Mexico, Romania, Russia, and Turkey on the record.[70] The mandatory respondents note that of the six OP List Countries, only Malaysia is a net exporter in terms of both quantity and value.[71] However, the mandatory respondents state that exports of comparable merchandise are an appropriate proxy for the levels of domestic production of comparable merchandise and assert that in terms of export data alone, all six OP List Countries evince commercial levels of exports.

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[61] *Id*.
[62] *See* SC Memo.
[63] *Id*.
[64] *See* 19 CFR 351.408(c)(2).
[65] *See* SC Memo at Attachment.
[66] *See* Respondents' Economically Comparable Countries Comments at 2-3.
[67] *Id.*
[68] *Id.*
[69] *See* Respondents' SC Comments.
[70] *Id*. at 4-5 and Exhibit 1 (The chart at pages 4-5 of Respondents' SC Comments provides the comparative export/import data for HS subheading 3802.10. The POR exports of comparable merchandise in terms of quantity are as follows: Brazil (663,604 kg), Malaysia (19,991,330.95 kg), Mexico (11,193,828 kg), Romania (20,485 kg), Russia (1,650,814.89 kg), and Turkey (213,649 kg). The POR imports of comparable merchandise in terms of quantity are as follows: Brazil (5,115,602 kg), Malaysia (10,693,006.48 kg), Mexico (16,008,666 kg), Romania (1,767,378 kg), Russia (16,725,440.28 kg), and Turkey (10,919,597 kg)).
[71] *Id.*

Further, the mandatory respondents argue that the 2019 financial statements of the Romanian company Romcarbon SA (Romcarbon) evince significant domestic production of activated carbon and comparable merchandise.[72] The mandatory respondents further note that when faced with two or more countries that are both economically comparable and significant producers of comparable merchandise in selecting the primary SC, it is Commerce's standard practice to examine the quality of data.[73]

Although the mandatory respondents did not make an explicit recommendation to Commerce on the potential primary SC in Respondents' SC Comments, in their SV submission, the mandatory respondents submitted data to value FOPs primarily from Malaysia.[74] Additionally, the mandatory respondents submitted Russian import data for coal tar, Brazilian import data for hydrochloric acid, Turkish import data for carbonized material, Mexican import data for natural gas, and Romanian financial statements for the calculation of financial ratios.[75]

The petitioners submitted rebuttal SV comments to the Respondents' SV Submission, stating that the SVs submitted by the mandatory respondents include imports from NMEs and economies that Commerce has identified as having widely available subsidies.[76] Further, the petitioners argue that the mandatory respondents proffer unwarranted alternatives to Malaysian carbonized material, coal tar pitch, bituminous coal, and hydrochloric acid, and provide benchmark data to demonstrate the Malaysian SVs, SVs from the country proffered as the primary SC by the petitioners, are normative.[77] In addition, the petitioners also argue that the mandatory respondents' proffered SVs for marine insurance and inland insurance are not supported by record evidence, that the mandatory respondents failed to account for all applicable charges in the ocean freight SV, that the mandatory respondents' proffered calculations for inland freight and brokerage and handling expenses are incorrect, the labor SV is not POR-contemporaneous, and that their proffered financial statements from Romcarbon are not from a company that specializes in the production of activated carbon.[78] The petitioners also contend that the Mexican and Brazilian SVs proffered by the mandatory respondents require conversion from an free on board (FOB) to a cost, insurance, and freight basis.[79]

The petitioners recommend that Commerce select Malaysia and/or Mexico as either the primary and/or secondary SC.[80] Because Malaysia has multiple producers of activated carbon, and, thus, significant commercial production of goods identical or comparable to the subject merchandise, the petitioners argue that this creates the possibility of sources in Malaysia providing high-quality SV information.[81] The petitioners also argue that Malaysia is one of only a small number of countries with a Harmonized Tariff Schedule (HTS) that includes a tariff classification that is

[72] *Id.* at Exhibit 2.
[73] *Id.*
[74] *See* Respondents' SV Submission.
[75] *Id.* at Exhibits 1, 2-A and 14B.
[76] *See* Petitioners' Rebuttal SV Submission at 2.
[77] *Id.* at 4-18.
[78] *Id.* at 19-28.
[79] *Id.* at 18-19.
[80] *See* Petitioners' SC Comments at 7.
[81] *Id.* at 3-4.

specific to coconut-shell charcoal (*i.e.*, HTS subheading 4402.90.1000), a direct material that is consumed in significant quantities in the production of subject merchandise.[82]

The petitioners also placed on the record import and export statistics for activated carbon from Brazil, Malaysia, Mexico, Romania, Russia, and Turkey.[83] The petitioners note that of the OP List Countries, Malaysia is the single largest exporter of activated carbon during the POR (*i.e.*, 19,991,366 kg), and is also the only net exporter. The petitioners argue that Malaysia's position of a net exporter of activated carbon corroborates the existence of significant activated carbon production in Malaysia.[84]

For Mexico, the petitioners contend that although Mexico has two known producers of activated carbon, to the best of the petitioners' knowledge, the financial statements of the activated carbon-producing entities are not publicly available.[85] The petitioners assert that Mexico may, however, represent a country of significant commercial production that may serve as a secondary source of publicly available SV information.[86] Especially, the petitioners assert that although Mexico is a net importer, it still has two major producers of activated carbon, and when domestic demand is high, both domestic and foreign producers may supply products to satisfy that demand, causing Mexico to be a net importer of activated carbon.[87]

For Turkey, the petitioners report that although they have identified a Turkish producer of activated carbon, Tekkim, its financial statements are not publicly available. For Romania, the petitioners report that the only company engaged in the production of activated carbon that the petitioners were able to identify, Romcarbon, is a diversified holding company that produces various plastic compounds, with limited production of activated carbon in connection with the production of protective materials.[88] For Russia, the petitioners report that although they identified a few producers of activated carbon in Russia, the petitioners were unable to obtain public copies of the financial statements of any of these companies because none of these producers are publicly listed. For Brazil, the petitioners contend that to the best of their knowledge, there are no Brazilian manufacturers of activated carbon that are publicly listed and publish their financial statements.[89]

The petitioners also submitted rebuttal SC comments to the Respondents' SC Comments, stating "{R}espondents' failure to identify potential surrogate countries that they believe satisfy {Commerce}'s criteria is problematic{.}"[90] Specifically, the petitioners argue that the mandatory respondents' failure to identify potential primary and/or secondary surrogate

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[82] *Id.*
[83] *Id*. at 6 (The chart at page 6 of Petitioners' SC Comments provides the comparative POR export/import quantity data for HS subheading 3802.10.).
[84] *Id.* at 6 (We note that based on the Global Trade Atlas (GTA) data and (for Romania) Trade Data Monitor (TDM) data submitted by the petitioners on page 6 of Petitioners' SC Comments, of the six OP List Countries, Malaysia is the only net exporter of merchandise categorized under HTS subheading 3802.10, the HTS subheading included in the scope of the order.).
[85] *Id.*
[86] *Id.*
[87] *Id.* at 6-7.
[88] *Id.*
[89] *Id.*
[90] *See* Petitioners' Rebuttal SC Comments at 3.

countries in the Respondents' SC Comments effectively deferred their provision of the requested information until the next SV submission.[91] The petitioners argue that this failure to provide the requested information in a timely manner prejudices Commerce, as well as the petitioners, as both the Commerce and the petitioners will have less time to consider potential surrogate countries.[92] Further, with regards to the mandatory respondents' contention that Romania is a significant producer of subject merchandise, and the mandatory respondents' provision of Romcarbon's 2019 financial statements to support this claim, the petitioners argue that the Romanian POR export quantity of activated carbon (*i.e.*, 20.5 metric tons), hardly qualifies as a commercially viable quantity.[93] Moreover, the petitioners assert that Romcarbon's 2019 financial statements demonstrate that the company specializes primarily in the manufacture of a wide array of plastic products and accessories for motor vehicles, while the production and sale of activated carbon represents a tiny fraction of the company's overall operations.[94] To support this argument, the petitioners point to the fact that Romcarbon's 2019 revenue from respiratory protective equipment and active carbon workshop (*i.e.*, 2,111,661 Lei) amounts to 1.1 percent of the company's total 2019 net sales (*i.e.*, 183,857,280 Lei).[95] Therefore, the petitioners argue, the mandatory respondents' claim that Romania, and Romcarbon in particular, is a significant producer of subject merchandise is not supported by record evidence.[96]

Despite their argument that Commerce should consider selecting Malaysia and/or Mexico as the primary and/or secondary SC, the petitioners submitted complete data to value FOPs only from Malaysia in their SV submission.[97]

Economic Comparability

As explained in the SC Memo, consistent with its practice and section 773(c)(4) of the Act, Commerce considers Brazil, Malaysia, Mexico, Romania, Russia, and Turkey to be at the same level of economic development as China.[98] Commerce treats each of these countries as equally comparable.[99] Therefore, Commerce considers all six countries identified in the SC Memo as having met this prong of the SC selection criteria. Unless Commerce finds that none of these countries is a significant producer of comparable merchandise, none provides a reliable source of publicly available SV data, or none is suitable for use for other reasons, or Commerce finds that another equally comparable country is an appropriate surrogate within the GNI range, Commerce

[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *See* Petitioners' SV Submission.
[98] *See* SC Memo at Attachment.
[99] *See, e.g.*, *Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011); unchanged in *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).

will rely on data from one of these countries.[100] Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. As discussed below, Commerce preliminarily determines that one or more of these six countries are significant producers of comparable merchandise and provide usable SV information.[101]

Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in an SC that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as Policy Bulletin 04.1 for guidance on defining comparable merchandise. Policy Bulletin 04.1 states "the terms 'comparable level of economic development, ' 'comparable merchandise, ' and 'significant producer' are not defined in the statute."[102] Policy Bulletin 04.1 further states, "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[103] Conversely, if the country does not produce identical merchandise, then a country producing comparable merchandise is sufficient in selecting an SC.[104] Further, when selecting an SC, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.[105] "In cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise."[106] In this regard, Commerce recognizes that it must do an analysis of comparable merchandise on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized, dedicated, or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, based on a comparison of the major inputs, including energy, where appropriate.[107]

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

[101] *See* SC Memo at Attachment.

[102] *See* Policy Bulletin 04.1.

[103] *Id.*

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

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

[106] *See* Policy Bulletin 04.1.

[107] *Id.*

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.[108] Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"[109] it does not preclude Commerce from relying on additional or alternative metrics.

In this review, Commerce examined import and export data published by the GTA (for Malaysia, Mexico, Russia, Brazil and Turkey) and TDM (for Romania) to determine which countries included on the SC list based on 2019 GNI data were producers of comparable merchandise during the POR.[110] The GTA/TDM export data indicate all of the countries identified in the SC Memo had exports and imports during the POR of the primary HTS heading included in the scope, *i.e.*, exports of HTS number 3802.10.[111] Further, these GTA/TDM export/import data indicate that of the six OP List Countries, only Malaysia was a net exporter of activated carbon during the POR.

Further, the record in this review contains financial statements from two Malaysian manufactures of activated carbon (*i.e.*, Century Chemical Works Sendirian Berhad and Bravo Green Sdn. Bhd.), which is identical, and therefore, comparable, merchandise to the subject merchandise. The record also contains financial statements from one other company/country, Romcarbon in Romania. 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.[112] We find that this is not evidence of "significant production," especially as compared to the two financial statements from Malaysian activated carbon producers on the record. Therefore, Commerce preliminarily finds that Malaysia is the only country on the OP List Countries that is a significant producer of comparable merchandise pursuant to section 773(c)(4)(B) of the Act,[113] as Malaysia is the only net exporter among the OP List Countries, and provides more direct evidence of production of identical, and therefore, comparable merchandise in the form of financial statements from more than one Malaysian company.

Data Availability

If more than one potential SC satisfies the statutory requirements for selection as an SC, Commerce selects the primary SC based on data availability and reliability.[114] When evaluating SV data, Commerce considers several factors, including whether the SVs are publicly available,

[108] *See* section 773(c)(1) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F. 3d 1373, 1377 (Fed. Cir. 1990).
[109] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576 (1988) at 590 (OTCA 1988); *see also* Policy Bulletin 04.1.
[110] *See* Petitioners' SC Comments at 6 and Attachment 6.
[111] *Id*.
[112] *See* Respondents' SV Submission at Exhibit 14B.
[113] *See* Policy Bulletin 04.1.
[114] *Id*.

contemporaneous with the POR, representative of a broad market average, tax – and duty-exclusive, and specific to the inputs being valued.[115]

The record contains complete, publicly-available, contemporaneous, and specific Malaysian data for all of the inputs used by the two mandatory respondents to produce the subject merchandise during the POR.[116] Additionally, Malaysia is one of only a small number of countries with a HTS that includes a tariff classification that is specific to coconut-shell charcoal (*i.e.*, HTS subheading 4402.90.1000), a direct material that Commerce has determined to share similar properties with the coal-based carbonized material consumed in the production of subject merchandise.[117] Further, the two Malaysian financial statements on the record indicate that both companies are manufacturers of activated carbon.[118] While the two Malaysian financial statements are not as detailed as Commerce prefers in that neither of them have separate line items breaking down the cost of raw material, labor and energy, these financial statements are contemporaneous with the POR, provide sufficient information to calculate surrogate ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit. Further, the two Malaysian financial statements are from a country at the same level of economic development as China and are audited, complete, publicly available, and do not show evidence of countervailable subsidies. Therefore, for these preliminary results, Commerce determines to rely on the two Malaysian financial statements, as we find them to be the best available information on the record for use in calculating surrogate financial ratios.

As the record provides that Malaysia is the only country on the OP List Countries that is a significant producer of comparable merchandise pursuant to section 773(c)(4)(B) of the Act, we do not reach the analysis of data reliability with respect to other OP List Countries in this review.

Based on the foregoing, Commerce finds Malaysia to be a reliable source for SVs because: (1) Malaysia is at the same level of economic development as China pursuant to 773(c)(4) of the Act; (2) is a significant producer of comparable merchandise; and (3) has reliable and usable data to value all FOPs and to calculate surrogate financial ratios. In consideration of these factors, Commerce has selected Malaysia as the primary SC for this review. A detailed explanation of the SVs is provided below in the "Normal Value" section of this memorandum.[119]

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[115] *Id.*; *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349 (March 17, 2009), and accompanying IDM at Comment 2.
[116] *See* Petitioners' SV Submission.
[117] *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review*, 76 FR 67142 (October 31, 2011), and accompanying IDM at Comment 4.
[118] *See* Petitioners' SV Submission at Attachment 5.
[119] *See* Memorandum, "Thirteenth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results," dated concurrently with this PDM (Preliminary SV Memorandum).

F. Partial Facts Available

Legal Framework

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

Partial Facts Available for Carbon Activated's FOP Reporting Exclusion Request

On July 24, 2020, Carbon Activated requested to be excused from reporting FOP data for certain unaffiliated Chinese producer-suppliers.[120] On July 28, 2020, Commerce granted, in part, the request to be excused from reporting certain FOP data due to the large number of producers that supplied Carbon Activated during the POR.[121] Specifically, Commerce did not require Carbon Activated to report FOP data for its smallest producer-suppliers.[122]

In accordance with section 776(a)(1) of the Act and our past practice, Commerce is applying facts available to determine the NV for the sales corresponding to the FOP data Carbon Activated was excused from reporting. Consistent with our treatment of this issue in prior segments of this proceeding,[123] as facts available, Commerce is preliminarily applying the average calculated NV of Carbon Activated's sales for which FOP data was reported to the sales of merchandise produced by the producer-suppliers for which Commerce excused FOP reporting.[124]

G. Date of Sale

Pursuant to 19 CFR 351.401(i), Commerce normally will use the invoice date as the date of sale unless Commerce is satisfied that a different date better reflects the date on which the material terms of the sale are established. Additionally, if Commerce bases the date of sale on the invoice date, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.[125]

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[120] *See* Carbon Activated's July 24, 2020 FOP Reporting Exclusion Request.
[121] *See* Commerce's Letter, "Carbon Activated Supplier Exclusions," dated July 28, 2020.
[122] *Id.*
[123] *See, e.g.*, *Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 2011-2012*, 78 FR 26748 (May 8, 2013), and accompanying PDM at "Facts Available for NV," unchanged in *AR5 Carbon from China Final*.
[124] *See* Memorandum, "Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China; Preliminary Results Calculation Memorandum for Carbon Activated," dated concurrently with this memorandum (Carbon Activated's Preliminary Calculation Memorandum).
[125] *See, e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM at Comment

The mandatory respondents both reported the invoice date as the date of sale because they claimed that for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date.[126] However, for certain sales transactions Carbon Activated reported that the date of shipment preceded the date of invoice.[127] Therefore, in accordance with 19 CFR 351.401(i), and Commerce's long-standing practice in determining the date of sale,[128] Commerce preliminarily finds that the invoice date is the most appropriate date to use as Datong Juqiang's and that the earlier of either shipment date or invoice date is the most appropriate date to use as Carbon Activated's date of sale.

H. Comparisons to Normal Value

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

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates a weighted-average dumping margin by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In a less-than-fair-value investigation, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern our examination of this question in the context of an administrative review, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in a less-than-fair-value investigation.[129]

11; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results and Preliminary Rescission of New Shipper Review*; 2015-2016, 82 FR 31301 (July 6, 2017).

[126] *See* Carbon Activated's Section A Response; *see also* Datong Juqiang's Section A Response.

[127] *See* Carbon Activated's Letter, "Carbon Activated Response to Second Section D Questionnaire," dated June 9, 2021 at Exhibit 2.

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

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

In prior investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the A-T method is appropriate in a particular situation pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1).[130] Commerce finds that the differential pricing analysis used in prior investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-A method in calculating a respondent's weighted-average dumping margin.

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

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

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

difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.[131]

Results of the Differential Pricing Analysis

For Carbon Activated, based on the results of the differential pricing analysis, Commerce preliminarily finds that 36.4 percent of the value of Carbon Activated's U.S. sales pass the Cohen's *d* test,[132] confirming that a pattern of prices for comparable merchandise that differ

[131] The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. *See Apex Frozen Foods Private Ltd. v. United States*, 862 F. 3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

[132] *See* Memorandum, "Preliminary Results Calculation Memorandum for Carbon Activated," dated concurrently with this memorandum (Carbon Activated's Preliminary Calculation Memorandum) at Attachment 1.

significantly among purchasers, regions or time periods exists. However, the analysis shows that there is no meaningful difference in the weighted-average dumping margins when calculated using the A-A and the alternative to the A-A methods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the A-A method. Accordingly, Commerce preliminarily determines it appropriate to apply the A-A method for all U.S. sales to calculate the weighted-average dumping margin for Carbon Activated.

For Datong Juqiang, based on the results of the differential pricing analysis, Commerce preliminarily finds that 0 percent of Datong Juqiang's U.S. sales pass the Cohen's *d* test,[133] confirming that a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods does not exist. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the A-A method. Accordingly, Commerce preliminarily determines it appropriate to apply the A-A method for all U.S. sales to calculate the weighted-average dumping margin for Datong Juqiang.

I. U.S. Price

Export Price

In accordance with section 772(a) of the Act, EP is "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. Commerce calculated EP for some of Datong Juqiang's sales to the United States because the first sale to an unaffiliated party was made before the date of importation by Datong Juqiang in China and the use of CEP was not otherwise warranted.[134] In accordance with section 772(c)(2)(A) of the Act, where appropriate, Commerce deducted from the starting price (gross unit price) to unaffiliated purchasers foreign inland freight, foreign brokerage and handling, ocean freight, customs duties, U.S. brokerage and handling and other movement expenses incurred in China and the United States. For those expenses that were incurred for services provided by an ME vendor and paid for in an ME currency, Commerce used the reported expense. For the expenses that were incurred for services that were either provided by an NME vendor or paid for using an NME currency, Commerce used SVs as appropriate.[135] Additionally, in accordance with section 772(c)(2)(B) of the Act, Commerce also deducted any output value-added tax (VAT) from the starting price as explained below. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Datong Juqiang, *see* Datong Juqiang's Preliminary Calculation Memorandum.

[133] *See* Memorandum, "Preliminary Results Margin Calculation for Datong Juqiang Activated Carbon Co., Ltd.," dated concurrently with this memorandum (Datong Juqiang's Preliminary Calculation Memorandum) at Attachment 1.
[134] *See* Datong Juqiang's Section A Response at 7-8.
[135] *See* Preliminary SV Memorandum.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." For all of Carbon Activated's sales and a portion of Datong Juqiang's sales, Commerce based U.S. price on CEP, in accordance with section 772(b) of the Act, because sales of subject merchandise were made in the United States on behalf of the companies located in China by their respective U.S. affiliates to unaffiliated purchasers in the United States.[136]

Datong Juqiang contends that for sales where Datong Juqiang Activated Carbon USA, LLC (DJAC USA)[137] was involved, Datong Juqiang established the terms of sale with the final U.S. customer prior to importation, and these sales should, therefore, be considered EP sales.[138] While Datong Juqiang negotiated the U.S. sales price, Commerce finds that the evidence on the record of this administrative review demonstrates that DJAC USA undertook procedures necessary to import the subject merchandise, issued invoices to the unaffiliated U.S. customer, received payment from the U.S. customer, and issued payment to Datong Juqiang.[139] The CIT has affirmed that such sales arrangements are properly considered CEP transactions.[140] Therefore, Commerce preliminarily determined that Datong Juqiang's sales made through DJAC USA are CEP sales.

Commerce based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, Commerce made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, and U.S. movement expenses, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, Commerce also deducted those selling expenses associated with economic activities occurring in the United States. Specifically, Commerce deducted, where appropriate, inventory carrying costs, credit expenses, U.S. repacking costs, indirect selling expenses in accordance with section 772(d)(1) of the Act. Further, in accordance with sections 772(d)(3) and 772(f) of the Act, Commerce deducted CEP profit. For those expenses that were incurred for services provided by an ME vendor and paid for in an ME currency, if applicable, Commerce used the reported expense. For those expenses that were incurred for services either provided by an NME vendor or paid for using an NME currency, Commerce used SVs, as appropriate.[141] In accordance with section 772(c)(2)(B) of the Act, Commerce also deducted output VAT from the

[136] *See* Carbon Activated's Section A Response at 1, 13 and Carbon Activated's Section C Response at 12; *see also* Datong Juqiang's Section A Response at 7-8, and Exhibit 8; *see also* Datong Juqiang's Letter, "DJAC Supplemental Section C Questionnaire Response," dated May 10, 2021 (DJAC Supp C Response) at 24 and Exhibit SC-1.
[137] In the seventh administrative review, Commerce determined DJAC USA and Datong Juqiang are affiliated. *See Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 25669 (May 5, 2015), and accompanying PDM, unchanged in *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015).
[138] *See* DJAC Supp C Response at 7.
[139] *Id.* at Exhibit SC-8; *see also* Datong Juqiang's Section A Response at 7.
[140] *See Pasta Zara S.p.A. v United States*, 703 F. Supp. 2d 1317, 1320-1323 (CIT 2010).
[141] *See* Preliminary SV Memorandum.

starting price as explained below. Additionally, Carbon Activated reported freight revenue for certain U.S. sales; therefore, consistent with its practice,[142] Commerce capped the freight revenue amount by the amount of freight expenses reported in the U.S. sales database and made an upward adjustment to the U.S. price.[143] Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Carbon Activated and Datong Juqiang, *see* Carbon Activated's Preliminary Calculation Memorandum and Datong Juqiang's Preliminary Calculation Memorandum, respectively.

Value-Added Tax

Commerce's recent practice in NME cases is to adjust EP (or the CEP) for the amount of any unrefunded (herein irrecoverable) VAT in certain NMEs, in accordance with section 772(c)(2)(B) of the Act.[144] Commerce has previously explained that, when an NME government imposes an export tax, duty, or other charges on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[145] Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP by this same percentage.[146]

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

Firms calculate input VAT and output VAT for tax purposes on a company-wide (not transaction-specific) basis, *i.e.*, in the case of input VAT, on the basis of *all input purchases* regardless of whether used in the production of goods for export or domestic consumption, and in the case of output VAT, on the basis of *all sales to all markets*, foreign and domestic. Thus, a firm might pay the equivalent of $60 million in total input VAT across all input purchases and collect $100 million in total output VAT across all sales. In this situation, however, the firm would remit to the government only $40 million of the $100 million in output VAT collected on its sales because of a $60 million credit for input VAT paid that the firm can claim against output VAT.[147] As a result, the firm bears no "VAT burden (cost)": the firm through the credit is

[142] *See, e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018), and accompanying IDM at Comment 12.
[143] *See* Carbon Activated's Preliminary Calculation Memorandum.
[144] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).
[145] *Id.*; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.A.
[146] *Id.*
[147] The credit, if not exhausted in the current period, can be carried forward.

refunded or recovers all of the $60 million in input VAT it paid, and the $40 million remittance to the government is simply a transfer to the government of VAT paid by (collected from) the buyer with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer of the good, not on the firm.

This would describe the situation under Chinese law except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. Instead, Chinese tax law requires a *reduction in or offset to* the input VAT that can be credited against output VAT. The formula for this reduction/offset is provided in Article 5 of the 2012 Chinese government tax regulation, *Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services* (*2012 VAT Circular*):[148]

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

where,
P = (VAT-free) FOB value of export sales;
c = value of bonded (duty – and VAT-free) imports of inputs used in the production of goods for export;
T_1 = VAT rate; and,
T_2 = refund rate specific to the export good.

Using the example above, if P = $200 million, c = 0, T_1 = 17% and T_2 = 10%, then the reduction/offset = ($200 million – $0) x (17% – 10%) = $200 million x 7% = $14 million. Chinese law then requires that the firm in this example calculate creditable input VAT by subtracting the $14 million from total input VAT, as specified in Article 5.1(1) of the *2012 VAT Circular*:

Creditable input VAT = Total input VAT – Reduction/Offset

Using again the example above, the firm can credit only $60 million – $14 million = $46 million of the $60 million in input VAT against output VAT. Since the $14 million is not creditable (legally recoverable), it is not refunded to the firm. Thus, the firm incurs a cost equal to $14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of $T_1 - T_2$. This cost therefore functions as an "export tax, duty, or other charge" because the firm does not incur it *but for* exportation of the subject merchandise, and under Chinese law must be recorded as a cost of exported goods.[149] It is for this "export tax, duty, or other charge" that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act.[150]

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[148] *See* Datong Juqiang's Section C Response Exhibit C-3a.

[149] Article 5(3) of the *2012 VAT Circular* states: "If the tax refund rate is lower than the applicable tax rate, the tax for the difference calculated accordingly shall be included in the cost of exported goods and labor services."

[150] Because the $14 million is the amount of input VAT that is not refunded to the firm, it is sometimes referred to as "irrecoverable input VAT." However, that phrase is perhaps misleading because the $14 million is not a fraction or percentage of the VAT the firm paid on purchases of inputs used in the production of exports. If that were the case, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the *2012 VAT Circular* as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the $14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula's reliance on the FOB export value as the tax basis for the calculation. The $14 million is a reduction in or offset to what is essentially a tax credit, and it is calculated based on and is proportional to the

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

The VAT treatment under Chinese law of exports of goods described above concerns only export sales that are *not* subject to output VAT, the situation where the firm collects no VAT from the buyer, which applies to most exports from China. However, the *2012 VAT Circular* provides for a limited exception in which export sales of certain goods are, under Chinese law, deemed domestic sales for tax purposes and are thus subject to output VAT at the full rate.[151] The formulas discussed above from Article 5 of the *2012 VAT Circular* do not apply to firms that export these goods, and there is therefore no reduction in or offset to their creditable input VAT. For these firms creditable input VAT = total input VAT, *i.e.*, these firms recover all of their input VAT. At the same time, export sales of these firms are subject to an explicit output VAT at the full rate, T_1.[152] Commerce must therefore deduct this tax from U.S. price[153] under section 772(c) of the Act to ensure tax-neutral dumping margin calculations.[154]

The Chinese VAT schedule placed on the record of this review, as well as the responses of both the mandatory respondents, demonstrate that the output VAT rate for activated carbon is 13 percent for all sales during the POR.[155] Thus, for the purposes of these preliminary results of review, for all of the mandatory respondents' sales, Commerce reduced the reported price of each U.S. sale by the output VAT rate of 13 percent of the FOB price.[156]

J. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine the NV using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV on the FOPs because

value of a company's export sales. Thus, "irrecoverable input VAT" is in fact, despite its name, an export tax within the meaning of section 772(c) of the Act.

[151] *See 2012 VAT Circular*, Article 7. For these goods, the VAT refund rate on export is zero.

[152] *See 2012 VAT Circular*, Article 7.2(1).

[153] Commerce will divide the VAT-inclusive export price by (1 + T), where T is the applicable VAT rate.

[154] Pursuant to sections 772(c) and 773(c) of the Act, the calculation of NV based on FOPs in NME antidumping cases is calculated on a VAT-exclusive basis, so U.S. price must also be calculated on a VAT-exclusive basis to ensure tax neutrality.

[155] *See* Carbon Activated's Section C Response at 35-39; and Datong Juqiang's Section C Response at 29-31 and Exhibit C-3a.

[156] *See* Carbon Activated's Preliminary Calculation Memorandum and Datong Juqiang's Preliminary Calculation Memorandum.

the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, Commerce calculated NV based on FOPs reported by the respondents for the POR, except as discussed above under the "Facts Available" section. In accordance with 19 CFR 351.408(c)(1), Commerce will normally use publicly available information to find an appropriate SV to value a particular FOP. To calculate NV, Commerce multiplied the reported per-unit factor-consumption rates by publicly available SVs. Commerce's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are input-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[157]

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, Commerce uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping or subsidization.[158] However, neither Datong Juqiang nor Carbon Activated provided evidence that they made purchases of ME inputs during the POR.[159]

Commerce used Malaysian import statistics as reported by the GTA to value the raw materials, packing materials, and certain energy inputs that the mandatory respondents used to produce the subject merchandise during the POR. These data are contemporaneous with the POR, publicly available, input-specific, tax-exclusive, and represent a broad market average. In accordance with section 773(c)(5) of the Act and the legislative history of the OTCA 1988, Commerce continues to apply its long-standing practice of disregarding SVs without further investigation if broadly available export subsidies existed or particular instances of subsidization occurred with respect to those SVs, or if those SVs were subject to an AD order.[160] In this regard, Commerce previously found that it is appropriate to disregard such prices from India, Indonesia, the Republic of Korea, and Thailand because Commerce determined that these countries maintain broadly available, non-industry-specific export subsidies.[161] Based on the existence of these

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

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

[159] *See* Carbon Activated's Section D Response at D-5; *see also* Datong Juqiang's Section D Response in DJAC Response at Exhibit D-5, and in Supplier Response at Exhibit D-5.

[160] *See* section 773(c)(5) of the Act; *see also* OTCA 1988, H.R. Rep. No. 100-576 at 590-91.

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

subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, Commerce finds that it is reasonable to infer that all exporters from the above-mentioned countries may have benefitted from these subsidies. Therefore, Commerce has not used average unit import values from these countries in calculating the Malaysian import-based SVs. Additionally, Commerce disregarded prices from NME countries because those prices are not based on market principles.[162]

In accordance with section 773(c) of the Act, for subject merchandise produced by Datong Juqiang and Carbon Activated, Commerce calculated NV based on the FOPs reported by Datong Juqiang and Carbon Activated for the POR. Commerce used data from Malaysian import statistics and other publicly available Malaysian sources to calculate SVs for Datong Juqiang's and Carbon Activated's FOPs (direct materials, energy, and packing materials) and certain movement expenses.[163] To calculate NV, unless otherwise noted, Commerce multiplied the reported per-unit FOPs by publicly available Malaysian SVs.

As appropriate, Commerce adjusted input prices by including freight costs to render the prices delivered prices. Specifically, Commerce added to the Malaysian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory.[164] Where necessary, Commerce adjusted SVs for exchange rates, and converted all applicable items to a per-metric ton basis. For a detailed description of all SVs used for Datong Juqiang and Carbon Activated, *see* the Preliminary SV Memorandum.

As noted above, although the mandatory respondents submitted data to value FOPs primarily from Malaysia,[165] the mandatory respondents submitted Russian import data for coal tar, Brazilian import data for hydrochloric acid, Turkish import data for carbonized material, Mexican import data for natural gas, and Romanian financial statements for the calculation of financial ratios.[166] Commerce prefers to use SV data which are exclusive of taxes and representative of broad market averages[167] and has a regulatory preference for valuing all FOPs in a single SC, where possible.[168] Because Commerce has complete SV data from Malaysia for

Hot-Rolled Carbon Steel Flat Products from India, Indonesia, and Thailand: Final Results of Expediated Sunset Reviews, 78 FR 16252 (March 14, 2013), and accompanying IDM at 5-7.

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

[163] *See* Preliminary SV Memorandum.

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

[165] *See* Respondents' SV Submission.

[166] *Id.* at Exhibits 1, 2-A and 14B.

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

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

all FOPs and more than one set of usable financial statements from Malaysia, Commerce need not look beyond Malaysia, the primary SC, to value the mandatory respondents' FOPs.

Commerce preliminarily valued bituminous coal using the Malaysian GTA data for bituminous coal reported under HS 2701.12.[169] Further, Commerce preliminarily valued anthracite coal using the Malaysian GTA data for anthracite coal reported under HS 2701.11.[170]

Commerce preliminarily valued carbonized materials using the Malaysian GTA data for coconut-shell charcoal applicable to the previous POR (covering from April 1, 2018 through March 31, 2019) and inflated the value to make it POR-contemporaneous, as the Malaysian imports covering this POR were only from a broadly-subsidized economy.[171]

Commerce valued electricity using the price data based on Malaysian electricity tariffs as published by the Malaysian Investment Development Authority (MIDA).[172] Commerce calculated an average of the prices of energy sales to various customers.[173] As the rates were in effect during the POR, we did not adjust the average value for inflation.

Commerce valued inland truck freight using a price list published in *Doing Business 2020-Malaysia*, which measures the time and cost (excluding tariffs) associated with exporting or importing a shipment of goods.[174] The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods weighing 15,000 kg by ocean transport in Malaysia.[175] Commerce did not inflate or deflate this rate because it is contemporaneous with the POR.

Commerce valued brokerage and handling expenses using a price list published in *Doing Business 2020-Malaysia*, which measures the time and cost (excluding tariffs) associated with exporting a standard shipment of goods. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods weighing 15,000 kg by ocean transport in Malaysia.[176] Commerce did not inflate or deflate this rate because it is contemporaneous with the POR.

Commerce valued water using National Water Services Commission (SURUHANJAYA PERKHIDMATAN AIR NEGARA: SPAN)'s water rates for different regional areas in Malaysia by user types, as published by MIDA.[177] Specifically, we used the "Commercial/Industrial" rates. Commerce did not inflate or deflate this price information because it is contemporaneous with the POR.

[169] *See* Preliminary SV Memorandum.
[170] *Id.*
[171] *See* Petitioners' SV Submission at Attachment 1.
[172] *See* Preliminary SV Memorandum.
[173] *Id*.
[174] *See* Petitioners' SV Submission at Attachment 6A.
[175] *Id*..
[176] *Id*. at Attachment 6B.
[177] *Id.* at Attachment 3D.

In NME AD proceedings, Commerce prefers to value labor solely based on data from the primary SC.[178] In *Labor Methodologies*, Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the primary SC.[179] Also, we continue to follow our practice of selecting the best available information on the record to determine SVs for inputs such as labor. Therefore, Commerce valued labor consumption based on manufacturing-specific Malaysian labor data covering the year 2018, from the International Labor Organization (ILO).[180] Although these data do not cover the POR, it is the best available information because these data are from the primary SC, are publicly available, and are specific to the input.[181] Thus, Commerce has adjusted the Malaysian rate from the ILO for inflation, to make it POR-contemporaneous.[182]

To value factory overhead, SG&A expenses, and profit, Commerce used the financial statements of two Malaysian producers of identical or comparable merchandise (*i.e.*, Century Chemical Works Sendirian Berhad, and Bravo Green Sdn. Bhd.) covering the 12-month period ending December 31, 2019, submitted by the petitioners.[183]

According to 19 CFR 351.408(c)(4), Commerce is directed to value overhead, SG&A expenses, and profit using non-proprietary information gathered from producers of merchandise that is identical or comparable to the subject merchandise in the SC. Commerce's preference is to derive surrogate overhead expenses, SG&A expenses, and profit using financial statements covering a period that is contemporaneous with the POR,[184] that show a profit, from companies with a production experience similar to respondents' production experience, and that are not distorted or otherwise unreliable, such as financial statements that indicate the company received subsidies.[185] In addition, Commerce has a strong preference to value all FOPs from a single SC.

For these preliminary results, as discussed above under the "Data Availability" section, Commerce determines it appropriate to rely on the two financial statements from Malaysia, as we find them to be the best available information on the record for use in calculating surrogate financial ratios. While the petitioners submitted surrogate financial ratios, calculated based on the financial statements for the two Malaysian companies (*i.e.*, Century Chemical Works

[178] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).
[179] *Id*.
[180] Petitioners' SV Submission at Attachment 4.
[181] *See Labor Methodologies*, 76 FR at 36093.
[182] *See* Preliminary SV Memorandum.
[183] *Id.* at Attachment 5.
[184] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 2010-2011*, 78 FR 17350 (March 21, 2013), and accompanying IDM at 1.C.
[185] *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 28801 (May 16, 2013), and accompanying IDM at Comment 2; *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 5414 (January 25, 2013), and accompanying IDM at Comment 1; and *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014*, 81 FR 21840 (April 13, 2016), and accompanying IDM at Comment 1.

Sendirian Berhad and Bravo Green Sdn. Bhd.), we recalculated the submitted ratios based on Commerce practice.[186]

Additionally, we note that the two Malaysian financial statements do not break out energy or labor expenses in the notes to their income statements. When Commerce is unable to segregate expenses in the calculation of the surrogate financial ratios that would otherwise be included in the NV calculation, it is Commerce's practice to disregard these expenses in the calculation of NV in order to avoid double-counting costs which have necessarily been captured in the surrogate financial ratios.[187] Here, we did not disregard energy or labor in the NV calculation because the two Malaysian financial statements separate overhead expenses (*i.e.*, depreciation) from the rest of the cost of manufacture (*i.e.*, material, labor, and energy expenses). Moreover, we used the lump sum of material, labor, and energy expenses as the denominator in our calculation of the surrogate financial ratios. Therefore, we did not double-count energy and labor expenses when we included them in our NV calculation.

K. Currency Conversion

Where necessary, Commerce made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates, as certified by the Federal Reserve Bank, in effect on the dates of the U.S. sales.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒ ☐

Agree Disagree

6/21/2021

X James Maeder

Signed by: JAMES MAEDER

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

[186] *See* Preliminary SV Memorandum; *see also 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.

[187] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838, 16839 (April 13, 2009), and accompanying IDM at Comment 2.