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November 3, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Edward C. Yang
Senior Executive Coordinator
for China/NME Unit

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

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SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the first administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes to Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results, 74 FR 21317 (May 7, 2009) ("Preliminary Results"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments and rebuttal comments from interested parties:

DISCUSSION OF THE ISSUES:

General Issues

Comment 1: Treatment of Sales with Negative Margins

Comment 2: Surrogate Financial Ratios

- **a. Miscalculated Expenses**
- **b. Use of Indo German Carbons' Financial Statements**
- **c. Use of Core Carbons' Financial Statements**
- **d. Use of Quantum Active Carbons' Financial Statements**

Comment 3: Surrogate Values

- **a. Wage Rate Methodology**
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CCT

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Comment 21: Qualification for a Separate Rate

Hebei Foreign

Comment 22: Separate Rate Status

BACKGROUND:

The merchandise covered by the order is certain activated carbon as described in the "Scope of the Order" section of the Preliminary Results. The period of review ("POR") is October 11, 2006, through March 31, 2008. In accordance with section 351.309(c)(ii) of the Department of Commerce's ("the Department") regulations, we invited parties to comment on our Preliminary Results.

On September 14, 2009, Petitioner Norit[1], Petitioners[2], Calgon Carbon (Tianjin) Co., Ltd. ("CCT")[3], Jacobi[4], Cherishmet[5], Sorbent[6], and three separate-rate respondents[7] ("SR Respondents") filed case briefs. On September 22, 2009, we placed on the record of this review, certain information from the now-terminated changed circumstance review ("CCR") initiated for Hebei Foreign Trade and Advertising Corporation ("Hebei Foreign"), one of the companies not selected for individual examination, but granted a separate rate in the Preliminary Results. We allowed interested parties to comment on the information we placed on the record. On September 23, 2009, CCT, Jacobi, Petitioner Norit, Petitioners, and Cherishmet filed rebuttal briefs. On September 29, 2009, Petitioners submitted comments regarding Hebei Foreign. The Department did not hold a public hearing pursuant to 19 CFR 351.310(d), as all hearing requests made by interested parties were withdrawn.

DISCUSSION OF THE ISSUES:

Comment 1: Treatment of Sales with Negative Margins

Sorbent and Jacobi argue that the Department should discontinue its practice of "zeroing" for the final results of this review. Sorbent and Jacobi contend that the Department's practice of adjusting negative margins, where constructed export price ("CEP") is higher than normal value

[1] Norit Americas Inc.

[2] Calgon Carbon Corporation and Norit Americas Inc. For purposes of addressing all arguments submitted by specific interested parties, we have distinguished Petitioner Norit from Petitioners as a whole because Petitioner Norit has filed case briefs specific to CCT and its parent company Calgon Carbon Corporation ("CCC"), the U.S. parent company of CCT, who happens to also be one of the Petitioners.

[3] The Department also refers to Calgon Carbon Corporation ("CCC"), the U.S. parent company of CCT.

[4] Jacobi includes Jacobi Carbons AB and its affiliates, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons, Inc.

[5] Cherishmet includes Cherishmet Incorporated, Beijing Pacific Activated Carbon Products Co., Ltd. ("Beijing Pacific"), Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. ("GHC"), and Ningxia Guanghua Activated Carbon Co., Ltd. ("GH").

[6] Sorbent Technologies Corporation is currently known as "Albemarle Sorbent Technologies Corp." and includes its parent company, Albemarle Corporation.

[7] The SR Respondents are: Ningxia Lingzhou Foreign Trade Company ("Lingzhou"), Ningxia Huahui Activated Carbon Co., Ltd. ("Huahui"), and Tangshan Solid Carbon Co., Ltd. ("Tangshan").

("NV"), on any U.S. transaction to zero for purposes of determining total potential uncollected dumping duties and the overall weighted-average margin has been consistently found by the World Trade Organization ("WTO")[8] as a violation of U.S. obligations under the GATT 1994 and the WTO Antidumping Agreement.

Further, Sorbent and Jacobi assert that the Department's "zeroing" practice is not required by any statutory law and the Department should abandon this practice in order to comply with the United States' obligations under the WTO.[9] Sorbent also asserts that the statute directs the Department to analyze NV and export price, which requires the Department to consider the export price for non-dumped sales.[10] Lastly, Sorbent and Jacobi contend that the Department has abandoned its practice of "zeroing" in investigations and should now adopt that practice for administrative reviews, claiming it is unfair for the Department to utilize a different antidumping margin calculation methodology in an administrative review than used in the original investigation. Sorbent and Jacobi argue that the Court of Appeals ("Fed. Cir.") expressly rejected a distinction between these proceedings in Corus Staal.[11]

In rebuttal, Petitioners argue that Jacobi and Sorbent's arguments regarding the zeroing methodology have been previously rejected by the Department.[12] Petitioners assert that it is the Department's responsibility to interpret the antidumping statute and that the courts have long given special deference to the Department in its interpretation and application of the statute.[13] Furthermore, Petitioners maintain that WTO rulings do not have the status of "supreme law" in the United States and it is not the responsibility of the Department to interpret and apply the WTO agreements or decisions of its dispute settlement bodies. Petitioners argue that the Department may not modify its current practice of zeroing in administrative reviews until it completes the notification and comment process required by the Uruguay Round Agreements Act ("URAA") allowing parties to comment before modifications are enacted. See 19 U.S.C. §§ 3533, 3538. Finally, Petitioners urge the Department not to alter its long recognized position that

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[8] Jacobi and Sorbent cite to United States – Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (07-0081), January 9, 2007; United States – Continued Existence and Application of Zeroing Methodology, WT/DS350/AB/R, February 9, 2009; United States – Measures Relating to Zeroing and Sunset Reviews – Recourse to Article 21.5 of the DSU by Japan, WT/DS322/AB/RW (09-3902), August 18, 2009.

[9] Sorbent cites to Timken Co. v. United States, 354 F.3d 1334, 1341 (Fed. Cir. 2004) ("Timken 2004"), cert. denied, 543 U.S. 976 (2004); United States – Laws, Regulations and Methodology for Calculating Dumping Margins, WT/DS294 First Written Submission of the United States, 77-78 (January 31, 2005); Certain Softwood Products from Canada: Sales at Less Than Fair Value, USA-CDA-2002-1904-02, Hearing Tr. At 208: 13-17 (September 28, 2004).

[10] Sorbent cites to section 752 of the Tariff Act of 1930, as amended ("Act").

[11] Sorbent cites to Corus Staal BV v. U.S. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 546 U.S. 1089 (2006) ("Corus Staal").

[12] Petitioners cite to Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comment 3; SFK USA, Inc. v. Unites States, Appeal No. 2007-1502 (Fed. Cir. 2008) ("SKF"); Koyo Seiko Co. v. United States, 543 U.S. 976 (2004); Corus Staal; Timken 2004; Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722, 77724 (December 27, 2006).

[13] Petitioners cite to Smith-Corona Group v. United States, 713 F.2d 1568, 1571 (Fed. Cir. 1983).

the statutory regime is best and most fairly effectuated when negative margins of dumping are treated as non-dumped sales, but not allowed to cancel out positive margins.

Department's Position:

The Department disagrees with Sorbent and Jacobi that we should change our calculation of the weighted-average dumping margin for the final results. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the NV exceeds the export price and constructed export price of the subject merchandise." Outside the context of antidumping investigations involving average-to-average comparisons, we continue to interpret this statutory definition to mean that a dumping margin exists only when NV is greater than export or constructed export price. As no dumping margins exist with respect to sales where NV is equal to or less than export price ("EP") or CEP, the Department does not treat these non-dumped sales as offsetting the amount of dumping found with respect to other sales.[14] The CAFC has repeatedly held that this is a reasonable interpretation of the antidumping statute.[15]

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." We apply these provisions by aggregating all individual antidumping margins, each of which is determined by the amount by which NV exceeds export price or constructed export price, and dividing this amount by the value of all U.S. sales.

The use of the term "aggregate dumping margins" in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the NV exceeds the export price and constructed export price of the subject merchandise." Sections 772(a) and (b) of the Act define terms "export price" and "constructed export price" as "the price at which the subject merchandise is first sold (or agreed to be sold). . . ." Because sales occur in transactions rather than in aggregate, it is reasonable to interpret terms "export price" and "constructed export price" in relation to individual transactions. The statute and the SAA lend further support to the Department's interpretation.[16] The price used to establish "export price" or "constructed export price" is subject to various adjustments under section 772(c) and/or section 772(d) of the Act. The SAA explains that in calculating constructed export price, for example, Commerce must adjust for direct selling expenses and that Commerce will typically consider these expenses when "reported on an appropriate transaction-specific basis and will deduct from constructed export price to the extent that they are incurred after the importation."[17] If the terms "constructed

[14] This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to recognize that the weighted-average margin will reflect any non-dumped merchandise examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

[15] See, e.g., Timken 2004; SKF, 537 F.3d at 1381; Corus Staal, 395 F. 3d at 1347.

[16] See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H. Doc. 103-316, vol. 1 at 826, 103rd Cong., 2d Sess. (1994) ("SAA").

[17] See SAA at 826.

export price" and "export price" are reasonably interpreted as relating to individual transactions, then the dumping margin is also reasonably understood as relating to individual transactions. In Corus Staal, the respondent unsuccessfully argued that the antidumping statute unambiguously contemplates the use of "all subject merchandise" to calculate the weighted average as opposed to calculating individual dumping margins for each export transaction.[18] The CAFC rejected this argument explaining that, while in investigations Commerce compares average U.S. price to average normal value and in reviews it compares U.S. price with to monthly average normal value on an entry by entry basis, the distinction is subsumed under Commerce's methodology and the zeroing methodology is permissible in both contexts.[19]

For these reasons, the Department's practice of denying offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department's interpretation of the Act described above, the Department has continued to deny offsets to dumping based on export transactions that exceed NV in this review and has not changed the methodology employed in calculating the respondents' weighted-average dumping margins for these final results.

Comment 2: Surrogate Financial Ratios

a. Miscalculated Expenses

Sorbent claims that the Department should correct an error it made in the calculation of the surrogate financial ratios. Sorbent argues that the Department included 16,402,806 Rupees ("Rs") of Core Carbon's "export sales expenses" and 17,168,348 Rs of Kalpalka Chemical Pvt., Ltd. ("Kalpalka") "export expenses" as sales, general and administrative ("SG&A") expenses in the calculation of the surrogate financial ratios. Instead, Sorbent contends the Department should move these expenses from "SG&A and Interest" to "Excluded" for the calculation of the surrogate financial ratios. Sorbent asserts the Department excludes export expenses to avoid double counting where the mandatory respondents separately report export expenses. Sorbent asserts Core Carbons' reported export sales expenses relate to export sales rather than general operations of Core Carbons.[20] In rebuttal, Petitioners argue that Sorbent has misread and misapplied the findings in Thermal Paper LTFV and there is no reason to exclude the line-item export sales expenses from SG&A for Core Carbons or Kalpalka.[21] Petitioners contend all sales expenses are SG&A unless a specific class, such as freight, can be identified as direct double counting with the U.S. sales deductions. Moreover, Petitioners assert that all domestic inland freight and export international freight expenses are removed from the SG&A calculation.

[18] See Corus Staal.

[19] Id.

[20] Sorbent cites Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decisions Memorandum at Comment 3 ("Thermal Paper LTFV"), where export expenses are distinguishable from export sales expenses.

[21] Petitioners claim that the issue may be moot as Kalpalka's 2006-2007 financial statements are not contemporaneous with the POR and 2007-2008 financial statements are not on the record.

Additionally, Petitioners argue the Department generally does not parse SG&A expenses, which Petitioners claim the Department has previously explained.[22]

Department's Position:

The Department agrees with Petitioners that Core Carbons "export sales expenses" and Kalpalka's "export expense" should not be recategorized from "SG&A and Interest" to "Excluded." It is the Department's practice to avoid double-counting costs and to exclude certain expenses where the record demonstrates that double counting would result.[23] In the instant review, as in Thermal Paper LTFV, the Department finds that there are no line item details in either Core Carbons' or Kalpalka's financial statements to indicate that these export expenses are related to the non-general operations of the company. Therefore, because there is nothing to demonstrate that "export sales expenses" and "export expenses" of Core Carbons or Kalpalka's financial statements have not been included elsewhere in our calculations of NV, we have not re-categorized these expenses.

b. Use of Indo German Carbons' Financial Statements

Petitioners argue that the Department should not use 2007-2008 Indo German Carbons Ltd. ("Indo German") financial statements in the calculation of surrogate financial ratios for the final results. Petitioners claim that Indo German's financial ratios do not have either a profit and loss ("P&L") statement or the notes and schedules for the P&L statement. Petitioners argue that the Department has previously rejected incomplete financial statements.[24] Moreover, Petitioners argue that Indo German financial statements are not public because they are missing authentication stamps from the Indian Registrar of Companies ("Registrar").

In rebuttal, Jacobi argues the Department should reject Petitioners' assertions that Indo German's financial statements are incomplete and not publicly available. Jacobi urges the Department to continue using Indo German's financial statements for the final results. Jacobi argues that the Department does not require a stamp from the Registrar and that statements acquired from public sources other than the Registrar are no less public without the stamp. Moreover, Jacobi states that it submitted a complete financial statement, which the Department should continue to use for the final results.

Cherishmet also rebuts Petitioners' suggestion that the Department should reject Indo German's financial statements as incomplete and not publicly available. Cherishmet argues that a review of the Indian Ministry of Corporate Affairs' ("MCA") website indicates that complete 2007-2008 Indo German's financial statements are available. Moreover, Cherishmet states that the

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[22] Petitioners cite Frontseating Service Values from the People's Republic of China: Final Determination and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009) and accompanying Issues and Decision Memorandum at Comment 1 ("FSV 2009").

[23] See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 12, 2007), and accompanying Issues and Decisions Memorandum at Comment 1.

[24] Petitioners cite to FSV 2009 at Comment 1 and Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus, 66 FR 33528 (June 22, 2001) and accompanying Issues and Decisions Memorandum at Comment 2.

Department has a long standing practice of accepting and using downloaded financial statements, and such statements will not bear the stamp or seal of the Registrar and are no less authentic.

Department's Position:

The Department agrees with Jacobi and Cherishmet and will continue to use Indo German's financial statements for the final results because Indo German's financial statements are publicly available, complete and audited, and contemporaneous with the POR.[25]

The Department's criteria for selecting among surrogate companies' financial statements are: public availability, complete and audited, representative of the industry, and contemporaneous with the POR.[26] For the final results, the Department continues to find that Indo German's financial statements are publicly available, complete and audited, representative of the industry, and contemporaneous. With regard to Petitioners' claims that Indo-German 2006-2007 financial statements are incomplete, we note that the Indo-German's financial statements submitted by Jacobi included the statement, P&L, and supporting schedules.[27] Thus, pursuant to the Department's practice, these financial statements are complete.

Although Petitioners claim that Indo German's financial statements are not publicly available, Cherishmet has indicated that they are available through the MCA's website. We disagree with Petitioners regarding absence of the authentication stamp on the financial statements. As Cherishmet downloaded copies of financial statements from the Indian Registrar of Companies' website, as such, they will not bear the stamp of the Registrar. In Kitchen Racks, the Department found that financial statements filed with the Registrar to be within the public realm because these statements are either published on the Registrar's website or the public can obtain the hardcopy at the Registrar's office.[28]

In this case, Indo German's financial statements are in the public realm because they are publicly available from the Registrar. Furthermore, these financial statements are accessible in their entirety on the MCA website. Thus, for the final results, the Department will continue to use the audited financial statements of Indo German Carbons, Ltd. to calculate the surrogate financial ratios because these statements are publicly available, complete and audited, representative of the industry, and contemporaneous. See Jacobi Surrogate Value Submission, dated February 13, 2009 at Exhibit SV-8.

c. Use of Core Carbons' Financial Statements

[25] See "Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Blaine Wiltse, Analyst, Office 9, re; First Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results" dated April 30, 2009 ("Prelim Surrogate Value Memo") at 13.

[26] See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3 ("Chlorinated Isos"). See also FSV 2009 at Comment 1.

[27] See Jacobi Surrogate Value Submission, dated February 13, 2009 at Exhibit SV-8.

[28] See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, 74 FR 36656 (July 24, 2009) and accompanying Issues and Decision Memorandum at Comment 10 ("Kitchen Racks").

Petitioners argue the Department should continue to rely on the 2007-2008 financial statements of Core Carbons to calculate surrogate financial ratios for the final results. Petitioners state that Core Carbons' 2007-2008 financial statements are contemporaneous, complete and public. Moreover, Petitioners contend that if the Department decides to use less contemporaneous financial statements for the final results it should use Core Carbons' 2006-2007 because it is complete, publicly available and encompasses similar products and production methods used by respondents in this review.

No other party commented on this issue.

Department's Position:

As in the Preliminary Results, the Department will continue to rely on Core Carbons' 2007-2008 financial statements in calculating the surrogate financial ratios for the final results. The Department will not use Core Carbons' 2006-2007 financial statements for the final results because the 2007-2008 financial statements cover 12 months of the POR vis-a-vis the 2006-2007 financial statement covering only six months of the POR, which is consistent with our practice. The Department uses one set of financial statements from a company that overlaps the most months of the appropriate POR when the record contains multiple financial statements from a single company.[29] Therefore, the Department will continue to use Core Carbons' 2007-2008 financial statements in the calculation of surrogate financial ratios for the final results rather than Core Carbons' 2006-2007 financial statements.

d. Use of Quantum Active Carbon's Financial Statements

Petitioners argue that the Department should not use Quantum Active Carbon's ("Quantum") 2006-2007 and 2007-2008 financial statements to calculate surrogate financial ratios for the final results. Petitioners claim that the P&L statement of Quantum's 2006-2007 financial statement is not publicly available and therefore, unsuitable for the calculation of surrogate financial ratios. Moreover, Petitioners argue that Quantum's 2006-2007 financial statements are not contemporaneous because they encompass significant pre-POR activity. Additionally, Petitioners claim that Cherishmet did not provide the source of Quantum's 2007-2008 financial statements and, accordingly, are not publicly available. Moreover, Petitioners claim the Department cannot use either of Quantum's financial statements because Quantum is a significant producer of pine wood powdered activated carbon. Petitioners argue that because pine wood powdered activated carbon is a chemically produced product, Quantum's major inputs, products and production technology is inapposite to this proceeding and therefore inappropriate for use in calculating surrogate financial ratios.

Cherishmet argues that the Department should use both Quantum's 2006-2007 and 2007-2008 financial statements in the calculation of surrogate financial ratios for this review. Cherishmet

[29] See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Partial Recession of Antidumping Duty Administrative Review, 73 FR 52273 (September 9, 2008) and accompanying Issues and Decisions Memorandum at Comment 3("Vietnam Shrimp AR 2"); Honey From the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Reviews, 70 FR 9271 (February 25, 2005) and accompanying Issues and Decision Memorandum at Comment 3 (where the Department used the more contemporaneous financial statements to calculate surrogate financial ratios).

asserts that it has submitted complete 2006-2007 Quantum financial statements, and if the Department concludes that it cannot accept the P&L statement as in the Preliminary Results, the Department has sufficient information from the acceptable portions of Quantum's 2006-2007 financial statements to calculate relevant financial ratios. Alternatively, Cherishmet argues the Department should use Quantum's 2007-2008 financial statements for the final results because they are complete and publicly available from the MCA. Cherishmet asserts the Department has found that financial statements filed with the Registrar to be within the public realm.[30] Moreover, Cherishmet contends that Petitioners' claim that Quantum's 2007-2008 financial statements are not authentic because they do not bear the Registrar's stamp is not relevant because Indian companies must electronically file their financial statements with the Registrar, thus eliminating the stamp, and because the financial statements were downloaded from MCA's website, they will not bear a stamp. Additionally, Cherishmet argues Quantum's financial statements are specific to the activated carbon industry and related to a company that is comparable to Cherishmet's production activity.

In rebuttal, Petitioners argue the Department should reject Cherishmet's argument for using Quantum's 2006-2007 and 2007-2008 financial statements for the final results. Petitioners assert that Quantum's 2006-2007 P&L statement is not publicly available because the documents are not on the Registrar's website nor do Cherishmet's copies have the Registrar's stamp of authentication as if obtained directly from the Registrar. Petitioners argue the Department does not rely on incomplete financial statements, including those missing profit and loss statements.[31] Moreover, Petitioners assert the Department will have to obtain separate MCA copies to ascertain the completeness of Cherishmet's submission of Quantum's 2007-2008 financial statements.

Cherishmet rebuts Petitioners' claim that Quantum's 2006-2007 and 2007-2008 financial statements are unsuitable for use in the final results. In addition to arguments made above, Cherishmet argues that Quantum's 2006-2007 P&L statement is derived from the financial statements on the record, i.e., "sales" and "profit before tax" are located in the Director's Report,[32] and therefore complete. Moreover, Cherishmet argues that, contrary to Petitioners' claims, Quantum's 2006-2007 financial statements cover six months of the POR. Cherishmet contends that the Department does not require exact contemporaneity for acceptance of financial statements.[33] Cherishmet asserts that if the Department does not use Quantum's 2006-2007 financial statements it should use Quantum's 2007-2008 documents.

Department's Position:

The Department agrees, in part, with Cherishmet regarding Quantum's financial statements. For the final results, we will use Quantum's 2007-2008 financial statements to value the surrogate

[30] Cherishmet cites Kitchen Racks at Comment 10.

[31] Petitioners cite FSV 2009 at Comment 1.

[32] Cherishmet cites its Surrogate Value Submission dated February 13, 2009, at Exhibit 25.

[33] Cherishmet cites Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007) and accompanying Issues and Decisions Memorandum at Comment 3.

financial ratios for this review, but will continue to reject Quantum's 2006-2007 financial statements because the 2007-2008 financial statements cover more months of the POR than the 2006-2007 financial statements. In the Preliminary Results, we rejected Quantum's 2006-2007 financial statements because Cherishmet did not explain how or where it obtained the P&L statement in its Surrogate Value Submission.[34] In Cherishmet's post-preliminary surrogate value submission, Cherishmet provided complete Quantum 2007-2008 financial statements which are publicly available, complete and audited, and contemporaneous with the POR.[35]

As stated in Comment 2b above, the Department's criteria for selecting among surrogate companies' financial statements are: public availability, complete and audited, representative, and contemporaneous with the POR.[36] First, while Petitioners argue that the Quantum 2007-2008 financial statements are not publicly available because they do not bear the stamp of the Registrar, Cherishmet argues that it downloaded copies from the Registrar's website and, as such, they will not bear the stamp of the Registrar. As stated above in Comment 2b, in Kitchen Racks, we determined that financial statements filed with the Registrar are within the public realm.[37] Second, there is nothing to suggest that Quantum's 2007-2008 financial statements are incomplete. Indeed, we note that Cherishmet submitted audited Quantum 2007-2008 financial statements.[38] Third, Petitioners argued that Quantum's financial statements are unsuitable because Quantum's production experience is not related to the respondents. However, Petitioners presume that pinewood activated carbon is chemically activated. The information on the record indicates that Quantum's pinewood activated carbon is manufactured using steam activation and not chemical activation.[39] Additionally, record evidence indicates that both Quantum and Jacobi use coconut shells in their production processes.[40] As both Quantum and Jacobi use coconut shells in the production of activated carbon, the Department finds the production process of Quantum is comparable to the respondents' production experience.[41] In light of the foregoing, the Department finds that the Quantum 2007-2008 financial statement is complete, public and contemporaneous with the POR.

As stated above, because Quantum's 2007-2008 covers 12 months of the POR compared with the 2006-2007 financial statements covering only six months of the POR, we will not use

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[34] See Prelim Surrogate Value Memo at 14. See also Cherishmet's Surrogate Value Submission dated February 24, 2009, at Exhibit 1.

[35] See Cherishmet's Surrogate Value Submission dated July 20, 2009 at Exhibit 1.

[36] See Chlorinated Isos at Comment 3. See also FSV 2009 at Comment 1.

[37] See Kitchen Racks at Comment 10.

[38] See Cherishmet's Surrogate Value Submission dated July 20, 2009 at Exhibit 1.

[39] See Petitioners Rebuttal Surrogate Value submission dated February 23, 2009 at Exhibit 5.

[40] See Petitioners Rebuttal Surrogate Value submission dated February 23, 2009 at Exhibit 5; see also Cherishmet Supplemental Section D Questionnaire Response dated January 23, 2009 at 13.

[41] See Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews, 74 FR 50952 (October 2, 2009) and accompanying Issues and Decisions Memorandum at Comment 7, where the Department examines the surrogate company's production experience when selecting financial statements on which to base a surrogate financial ratio.

Quantum's 2006-2007 financial statements for the final results. As noted in Comment 2c above, the Department's practice is to use one set of financial statements from a company that overlaps the most months of the appropriate POR when the record contains multiple financial statements from a single company.[42] Thus, for the final results, the Department will rely on Quantum's 2007-2008 financial statements rather than Quantum's 2006-2007 financial statements to calculate the surrogate financial ratios.

Accordingly, for the final results, the Department will average Quantum's 2007-2008 financial statements with financial statements from Kalpalka, Core Carbons 2007-2008, and Indo-German, as fully discussed above, to calculate the surrogate financial ratios for the final results.

Comment 3: Surrogate Values

a. Wage Rate Methodology

Cherishmet and Sorbent argue that the Department should not continue to use the surrogate value for labor based on the Department's regression-based calculation. Cherishmet and Sorbent contend that the Department's regression-based calculation is comprised of wage rates from countries which are not economically comparable to the PRC and are not significant producers of comparable merchandise, resulting in distorted and inflated wage rates that do not represent the best available information. Additionally, Sorbent contends that the Department's regression methodology overstates the actual wage rates of a country. Sorbent asserts that, as the Department did not explain why it is not possible to use the surrogate labor cost from India in the Preliminary Results, the Department should now follow the direction of the Court of International Trade ("CIT") and adopt a new surrogate value for labor.[43] Cherishmet and Sorbent argue that the CIT ruling in Allied 2008 concluded that 19 CFR 351.408(c)(3) is invalid because it contradicts section 773(c) of the Act. Specifically, Cherishmet and Sorbent argue that the statute directs the Department to select surrogate values using data from a market economy ("ME") country at a comparable level of economic development to that of the non-market economy ("NME") country that is a significant producer of comparable merchandise.

Cherishmet also contends that the CIT's recent ruling in Taian Ziyang[44] demonstrates that the Department cannot rely on 19 CFR 351.408(c)(3) to calculate its labor rate. Furthermore, Sorbent argues that the wage rate regression is not entitled deference under Chevron[45] because the statute does not permit this methodology and, in any event, is unreasonable. Sorbent asserts that the Department never stated that it was deleting language from the 1996 proposed regulation limiting the regression calculation to countries which are economically comparable to the NME. Sorbent argues that, to the contrary, the Department: 1) confirmed that it left 19 CFR

[42] See Vietnam Shrimp AR 2 at Comment 3.

[43] Sorbent cites to Allied Pacific Food Co., Ltd. v. United States, 587 F. Supp. 2d 1330, 1360 (CIT 2008) ("Allied 2008") and subsequent final results of redetermination pursuant to court remand, Allied Pacific Food, et. al v. United States, Court No. 05-00056 Slip Op. 08/138 (CIT 2008).

[44] Cherishmet cites to Taian Ziyang Food Co., Ltd. v. United States, Slip Op. 09-67 (CIT 2009) ("Taian Ziyang").

[45] Sorbent cites to Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 842-843, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984) ("Chevron").

351.408(c)(3) unchanged; and 2) affirmatively endorsed economic comparability as the primary threshold requirement for evaluating which countries should be included in the regression calculation.[46]

Sorbent states the Department should use the Indian labor rate for the final results because this will be consistent with the other surrogate values on the record and will avoid a mismatch of data that would otherwise exist if the financial ratios, which are calculated based on Indian labor costs, are applied to the respondents' costs of production, which are calculated based on non-Indian labor costs. Additionally, Sorbent maintains that the Department must consider the Indian labor rate to be an accurate source since it is already using this within its regression-based calculation. For these reasons, Cherishmet and Sorbent argue that, for the final results, the Department should use the Indian wage rate, as compiled by the International Labor Organization ("ILO"), as its surrogate value source for labor.

In rebuttal, Petitioners argue that the Department has previously rejected the argument that it should abandon its regression-based calculation in favor of the Indian wage rate.[47] Additionally, Petitioners rebut Sorbent's claims that the Department's regression-based method results in improperly high wage rates, arguing that the Department's methodology mitigates these types of distortions.[48] Petitioners claim that the Department's regression-based calculation is scrutinized every year to ensure it meets suitability criteria which maximizes the accuracy of the regression analysis and minimizes the effects of the potential variability. Petitioners assert that if the Department were to change its wage rate methodology, the change should be made on the basis of a rulemaking rather than in the context of the current review.

Department's Position:

We disagree with Cherishmet and Sorbent regarding the appropriate wage rate used in the Preliminary Results and have continued to use our regression-based methodology to calculate the surrogate value for labor in the final results of this review. This decision is consistent with recent determinations in FSV 2009 and Tissue Paper 2009.[49] Moreover, we disagree with Cherishmet and Sorbent and continue to consider our regression methodology pursuant to 19 CFR 351.408(c)(3) and section 773(c)(4) of the Act.

Section 773(c)(1) of the Act provides that, where, as in this case, the subject merchandise is exported from an NME country, "the valuation of factors of production shall be based on the best available information regarding the values of such factors in a ME country or countries

[46] Sorbent cites to Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27367 (May 19, 1997).
[47] Petitioners cite to Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 70 FR 38872 (July 6, 2005) and accompanying Issues and Decision Memorandum at Comment 6.

[48] Petitioners cite to Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61720 (October 19, 2006).

[49] See also Certain Tissue Paper Products From the People's Republic of China: Final Results and Partial Rescission of the 2007-2008 Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 74 FR 52176 (October 9, 2009) and accompanying Issues and Decision Memorandum at Comment 7 ("Tissue Paper 2009").

considered to be appropriate by the administering authority." While the Act does not define "best available information," it provides that the Department, "in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." See section 773(c)(4) of the Act. In accordance with the guidance provided, and discretion afforded pursuant to section 773(c) of the Act, the Department calculates the labor wage rate using a regression analysis. This is in contrast to the Department's valuation of other factors of production ("FOPs") primarily because wage rates are less a function of economic comparability, and more a function of other social and political factors. 19 CFR 351.408(c)(3) provides that the Department will use regression-based wage rates reflective of the observed relationship between wages and national income in ME countries and the calculated wage rate will be applied in NME proceedings each year. The calculation will be based on current data, and will be made available to the public.

The Department disagrees that its method for valuing labor is in contravention of the statute. The Department determines that the regression methodology constitutes the best available information for purposes of valuing labor. The Department's methodology avoids extreme variances in labor wage rates that exist across market economies, and instead, accounts for the global relationship between gross national income ("GNI") and wages. This is then used to determine an expected wage rate for the specific NME country, using that country's GNI. When promulgating its regulations, the Department explained that: "{U}se of this average wage rate will contribute to both the fairness and the predictability of NME proceedings." By avoiding the variability in results depending on which economically comparable country happens to be selected as the surrogate, the results are much fairer to all parties. To enhance predictability, the average wage to be applied in any NME proceeding will be calculated by the Department each year, based on the most recently available data, and will be available to any interested party. See Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7345 (February 27, 1996). Although section 773(c) of the Act provides guidelines for the valuation of the FOPs, it also accords the Department wide discretion in the valuation of FOPs. See Nation Ford Chemical Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999) ("Nation Ford"); accord Magnesium Corp. of America v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).

The statute requires the use of the "best available information," but it does not define the term, nor does it clearly delineate how the Department should determine what constitutes the best available information. See Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 59 F. Supp. 2d 321354, 1357 (CIT 1999), aff'd 268 F.3d 1376 (Fed. Cir. 2001); China Nat'l Mach. Import & Export Corp. v. United States, 264 F. Supp. 2d 1229, 1236 (CIT 2003). The Department's regulation prescribes a methodology that reflects a permissible interpretation of what the statute allows with respect to the determination of labor wage rates, by calculating the market-economy wage rate for a country at a comparable level of economic development that is for a market-economy country with the same per capita GNI as the NME. While the requirement to use the "best available information" is an unqualified statutory mandate, the Act only directs the Department to draw factor values from economically comparable countries and significant producers of comparable merchandise, "to the extent possible." See section 773(c)(4) of the Act. For this reason, we do not find that we can select values that meet the requirements of sections 773(c)(4)(A) and (B) of the Act, if such values do

not represent the "best available information. . . in a market economy country or countries considered to be appropriate by {the Department}" as required by section 773(c)(1) of the Act. Moreover, the CIT found the Department's regulation is not inconsistent with its statutory mandate. See Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262 (CIT 2006) ("Dorbest I"). The Department considers that its regression analysis sufficiently takes economic comparability of market economies, utilized in the regression, into account. The regression analysis utilized by the Department calculates a wage rate that reflects what the market-economy rate would be for a country at a level of economic development comparable to the NME country. The regression analysis' function is to determine the relationship between income and wages. The use of the regression and application of the subject NME country's GNI generates an expected wage rate for a market-economy country at a comparable level of development, and constitutes the use of the best available information. In addition, the expected wage rate calculated for the NME country is "by definition a wage rate for a producer country at a comparable level of development, as required by section 773(c)(4) of the Act." See Dorbest I, 462 F. Supp. 2d at 1293.

Additionally, relying only on data from countries that are economically comparable to each NME would undermine, rather than enhance, the accuracy of the Department's regression analysis. The number of "economically comparable" countries would be extremely small. For example, when examining countries with GNIs that range between US$ 700 and US$ 2500 (e.g., countries that might be considered economically comparable to the PRC), there are just nine countries out of a full dataset of 61 countries used in the revised wage rate calculation in May 2008.[50] A regression based on such a small subset of countries would be highly dependent on each and every data point and, thus, the inclusion or exclusion of any one country could have an extreme effect on the regression results from case-to-case, and from year-to-year. Relying on a broad data set, as opposed to data from just the economically comparable countries, maximizes the accuracy of the regression results, minimizes the effects of the potential year-to-year variability in the country basket, and provides predictability and fairness. See, e.g., Antidumping Duties, Countervailing Duties: Final Rule, 62 FR 27296, 27367 (May 19, 1997); see also Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback and Request for Comments, 71 FR 61716, 61720 (October 19, 2006) ("Antidumping Methodologies").

Cherishmet and Sorbent further argue that the Department's labor regression is contrary to the statute because it does not focus on the significant producer criterion and overlooks the purpose in using a regression methodology, which is to provide a more accurate labor value that is stable and predictable across all cases. Contrary to Cherishmet and Sorbent's contentions, the regression methodology accomplishes a more stable labor value by providing a variable average that "smoothes out" the variations in the data and permits, in a predictable manner, the estimation of a market-economy wage rate relative to a level of GNI that is as accurate as practicable, with the least amount of volatility across cases. Furthermore, in determining surrogate values for FOPs, the Department need not "duplicate the exact production experience of the {PRC} manufacturers." See Nation Ford, 166 F.3d at 1377 (citing Magnesium Corp. of America v. United States, 938 F. Supp. 885 (CIT 1996), aff'd 166 F.3d 1364 (Fed. Cir. 1999) (upholding the Department's use of a surrogate value for a primary input of production where the actual input differed from the production experience in the NME)). See

[50] Due to the lag-time in data availability, the regression calculation performed in 2008, is based on data from 2005.

also Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 268 F.3d 1376, 1381 (Fed. Cir. 2001) ("we have specifically held that Commerce may depart from surrogate values when there are other methods of determining the 'best available information' regarding the values of the factors of production.").

The Department does not find the respondents' reliance on Allied 2008 to be persuasive. For reasons previously stated, the Department finds that the regression methodology, applied pursuant to 19 CFR 351.408(c)(3), constitutes the best available information for purposes of valuing labor in NME cases. The courts have affirmed the Department's regression analysis methodology in its entirety. See Dorbest Ltd. v. United States, 547 F.Supp. 2d 1321 (CIT 2008) ("Dorbest II"). Furthermore, the decision in Allied 2008 is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted.

In the alternative, Cherishmet and Sorbent argue that the Department should value labor using a single, surrogate country. While surrogate values for other FOPs are selected from a single surrogate country, due to the gross variability between wage rates and GNI, we do not find reliance on wage data from a single surrogate country reliable for purposes of valuing the labor input. While there is a strong positive correlation between wage rates and GNI, there is also variation in the wage rates of comparable market economies. For example, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., where GNI is below US$ 2500), the wage rate spans from US$ 0.21 to US$ 2.06. See "Expected Wages of Selected NME Countries," revised in May 2008, and available at http://ia.ita.doc.gov/wages/index.html. To further illustrate, Cherishmet and Sorbent advocate that instead of relying on the regression methodology, the Department should value labor using India's single wage rate. Colombia is another country (in addition to India) with a GNI of under US$ 2500. India's wage rate is approximately US$ 0.21, as compared to Colombia's observed wage rate of US $1.14. The large variances in these two countries' wages (not to mention the variances which occur when wage rates are considered for other market-economy countries with comparable economies) illustrate the arbitrariness of relying on a wage rate from a single country.

Because the Department's regression analysis utilizes the best available information for the calculation of a surrogate value for labor, complies with the Department's regulation, and comports with the statute, the Department continues to value labor in this segment of the proceeding using its regression analysis, as provided in 19 CFR 351.408(c)(3). Thus, for the final results of this review, we have continued to use the regression-based wage rate of $1.04 per hour as the surrogate value for labor.

b. Time Period Used for Surrogate Values

Jacobi argues that in the Preliminary Results, the Department made an error with respect to the time period used for World Trade Atlas ("WTA") surrogate value data. Specifically, Jacobi asserts that the Department included data from April 2008, which is outside the POR, and double-counted data from September 2007.

CCT and Cherishmet also argue that the Department used the incorrect time period to calculate surrogate values for certain direct materials, by-products, packing materials and energy coal derived from WTA data. CCT argues that the Department double counted source data for October 2006 and included April 2008. Cherishmet argues that the Department double counted

September 2007 and included April 2008. CCT and Cherishmet argue the Department should correct these errors to avoid double counting and include only data from the POR.

In rebuttal, Petitioners argue the Department did not make any errors regarding the time period used for the surrogate values. Petitioners and Petitioner Norit state that the Prelim Surrogate Value Memo lists the POR as the time period for the surrogate value data for materials, by-products, packing materials and energy coal in Attachment 1 and Attachment 4, which identifies the period October 1, 2006 to April 1, 2008 as the period used to calculate the surrogate values. See Prelim Surrogate Value Memo. Therefore, Petitioners claim the period used to calculate surrogate values includes only data for months within the POR.

Department's Position:

The Department agrees with Jacobi, CCT, and Cherishmet that incorrect time periods were used in the Preliminary Results. Upon review, it is clear that the downloaded WTA data used for surrogate value calculations included September 2007 twice and April 2008. We have corrected the double-counting of September 2007 and the inclusion of April 2008 for these final results and used the appropriate months, October 2006 through March 2008. See "Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Blaine Wiltse, Analyst, Office 9, re; First Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Final Results" dated November 3, 2009 ("Final Surrogate Value Memo").

c. Bituminous Coal

Jacobi notes the Department's surrogate value memorandum in the Preliminary Results listed HTS subcategory 2701.12.00: "Bituminous Coal" for the bituminous coal surrogate value. However, Jacobi argues that, for the final results, the Department ought to use Harmonized Tariff Schedule ("HTS") subcategory 2701.19.10: "Coking Coal" to value bituminous coal because both Petitioners and Jacobi agreed that this subcategory is specific to the type of bituminous coal used in the manufacturing of activated carbon.

CCT, Cherishmet, SR respondents, and Sorbent also assert that the Department made an error in the Preliminary Results regarding the HTS category used for the bituminous coal surrogate value. These parties note that the Department stated that it used HTS number 2701.19.10: "Coking Coal" to value bituminous coal in the Preliminary Results, citing to the Prelim Surrogate Value Memo. However, these interested parties note, on page 4 of the Prelim Surrogate Value Memo and in the surrogate value spreadsheet from which the margins are calculated, the Department used HTS number 2701.12.00: "Bituminous Coal." CCT argues the Department should correct this error and use HTS 2701.19.10: "Coking Coal" to value bituminous coal.

SR respondents argue, (and Sorbent states it supports, adopts as its own, and incorporates by reference arguments in full made by the SR respondents), that the Department should use HTS 2701.19.10: "Coking Coal" to value bituminous coal. SR Respondents argue that in the underlying investigation, the Department determined that bituminous coal should be valued

using HTS number 2701.19.10: "Coking Coal."[51] Moreover, SR respondents and Sorbent claim that HTS 2701.19.10: "Coking Coal" is more specific to the higher quality, lower ash, lower volatile metallurgical grade bituminous coal used to produce the subject merchandise. For support, SR Respondents and Sorbent cite section 773 of the Act, which directs the Department that the valuation of the factors of production shall be base on the best information regarding the values of such factors in a market economy country. SR respondents and Sorbent argue that the Department prefers surrogate values which are: 1) non-export average values; 2) most contemporaneous with the period of investigation; 3) product-specific; and 4) tax exclusive. Moreover, they assert that both Petitioners and Jacobi requested HTS number 2701.19.10: "Coking Coal" and the Department agreed citing the Surrogate Value Memo at 6-7. Additionally, SR respondents and Sorbent argue that the Department should not rely on HTS number 2701.12.00: "Bituminous Coal" because the Indian import volume during the POR was too small and did not represent commercial quantities. Moreover, they argue the likelihood of aberrational average unit value increases when import volumes upon which they are based are miniscule. SR respondents and Sorbent argue that the CIT ruled the Department can rely on Indian import statistics as the basis of surrogate values only "after concluding that they {the import statistics} are based on commercially and statistically significant quantities." They argue that only 234 metric tons ("MT") of bituminous coal entered India under HTS number 2701.12.00: "Bituminous Coal" and during the same period, 30,498,562 MT of bituminous coking coal entered India (with China and Indonesia removed) under HTS number 2701.19.10: "Coking Coal" and, therefore, HTS number 2701.12.00: "Bituminous Coal" is aberrational and should not be used by the Department to price bituminous coal.

Cherishmet asserts that neither HTS number 2701.12.00: "Bituminous Coal" nor HTS number 2701.19.10: "Coking Coal" from the Indian import data published in the WTA should be used to value bituminous coal or sub-bituminous coal in the final results, but rather the Department should use Coal India Ltd. ("CIL") price data. Cherishmet argues that the Department should not use HTS number 2701.12.00: "Bituminous Coal" import data to value bituminous and sub-bituminous coal because InfoDrive data indicate that a different class of merchandise called Austin Black 325 accounts for 89 percent of the total POR Indian imports under HTS number 2701.12.00: "Bituminous Coal". Cherishmet claims Austin Black 325 is a high-end product manufactured from bituminous coal and misclassified under this HTS number Moreover, Cherishmet asserts that HTS 2701.12.00: "Bituminous Coal" is inappropriate because the Petitioners stated in footnote 2 of Petitioners' February 13, 2009 surrogate value submission that "India import statistics do not report any data under the HTS subcategory for bituminous coal, 2701.12, as the India ministry has moved all imports of bituminous coking coal to subcategory HTS number 2701.19.10, 'coking coal,'" and therefore, HTS number 2701.12.00: "Bituminous Coal" should not be used to value bituminous and sub-bituminous coal. Cherishmet argues that HTS number 2701.19.10: "Coking Coal" should also not be used to value bituminous and sub-bituminous coal because coking coal is used in the production of coke and coke is used in steel making and metallurgical industries. Instead, argues Cherishmet, the Department should use CIL price data submitted in its February 13, 2009 surrogate value submission. Cherishmet refers to its arguments for using CIL data in its steam and energy coal comments. See comment 3g below.

[51] SR Respondents cite to "Memorandum to the File through Jim Doyle, Office Director, Office 9, Carrie Blozy, Program Manager, Office 9, from Anya Naschak, Senior Analyst, Office 9, re; Antidumping Duty Investigation of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Determination," dated October 4, 2006 at 6.

In rebuttal, Petitioners argue that the Department correctly used HTS number 2701.12.00: "Bituminous Coal" to value bituminous feed stock and HTS number 2701.19.20: "Steam Coal" to value energy coal based on respondents' reported inputs.[52] Petitioners state that the Department valued bituminous coal in the underlying investigation under HTS number 2701.19.10: "Coking Coal" because no respondent reported consumption of non-metallurgical bituminous (non-coking quality) coal, whereas here, all respondents reported non-coking quality bituminous coal for carbonization or producing steam. Petitioners assert that, contrary to Cherishmet's claims, Austin Black 325 is a form of ground non-coking quality bituminous coal and its inclusion in the data does not invalidate HTS number 2701.12. Additionally, Petitioners argue the Department should not use the value of domestically produced Indian coal to calculate surrogate values for bituminous coal because Indian coal is of such low quality that it is unsuitable for coking or charring and activating to produce subject merchandise.[53] Moreover, Petitioners claim that the coal consumed by respondents is of higher quality than domestic Indian coal and much closer to the quality of coking-quality coal India imports.[54] Additionally, Petitioners argue that India's domestic coal market is inappropriate because of the Indian government's intervention in the Indian coal market and CIL's monopolistic hold over Indian coal prices.

Cherishment rebuts SR Respondents assertions that all parties agreed to use HTS number 2701.19.10: "Coking Coal" to value bituminous coal. Cherishmet states that it uses bituminous coal in the production of the subject merchandise and has always advocated that the Department must value bituminous coal and sub-bituminous coal using CIL price data for D Grade non-long flame, non-coking bituminous coal. Cherishmet argues WTA and InfoDrive India data indicate no heading to apply to non-coking grades of bituminous and sub-bituminous coal.

Department's Position:

The Department agrees with CCT, Jacobi and certain SR Respondents that HTS number 2701.19.10: "Coking Coal" is the correct surrogate for bituminous coal for the final results. In the Preliminary Results, the Department stated on page 6 of the Prelim Surrogate Value Memo that it would use HTS number 2701.19.10: "Coking Coal" to value bituminous coal.[55] However, HTS number 2701.12.00: "Bituminous Coal" was inadvertently used to value the bituminous coal input.[56] For the final results, the Department will continue to use HTS number 2701.19.10: "Coking Coal" to value bituminous coal as stated on page 6 of the Prelim Surrogate Value Memo. In light of the interested parties' comments we explain the decision below.

[52] Petitioners state that Cherishmet incorrectly asserts that they share Cherishmet's position that HTS number 2701.12 should not be used. See Letter from Kelley Drye dated September 24, 2009, at 20.

[53] Petitioners cite their Surrogate Value Submission dated February 13, 2009, at Exhibit 28A.

[54] Petitioners cite their Surrogate Value Submission dated February 13, 2009, at Exhibit 2.

[55] See Prelim Surrogate Value Memo at 6.

[56] See Id. at 4 and attachment 4.

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available and contemporaneous with the POR.[57] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[58] There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.[59]

With regard to Petitioners' argument that HTS number 2701.12.00: "Bituminous Coal" is the correct surrogate to value bituminous coal, the CIT stated that the Department may use InfoDrive data if, among other conditions, a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive data.[60] Here the Infodrive data on the record represent 89 percent of the total WTA Indian imports under HTS number 2701.12.00: "Bituminous Coal."[61] Moreover, the Infodrive data indicate that 80 percent of the Indian imports under HTS number 2701.12.00 are Austin Black 325, which is a pigment and filler for rubber and plastic products.[62] Petitioners argue that Austin Black 325 is only a ground bituminous coal. However, information placed on the record by Cherishmet indicates that this product has no relation to the production of activated carbon and is a different product than the coal used by respondents in the production of activated carbon.[63] The Department finds that the Infodrive data represent a significant portion of the overall imports (80 percent) under HTS number 2701.12.00: "Bituminous Coal". Further, other record evidence indicates that those products are unrelated to the production of activated carbon.[64] Therefore, we find that HTS number 2701.12.00: "Bituminous Coal" is inappropriate to apply to the bituminous coal input used to produce activated carbon.[65]

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[57] See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 12th Administrative Review, 73 FR 34251 (June 17, 2008) and accompanying Issues and Decision Memorandum at Comment 2 ("Garlic AR12").

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

[59] See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2 ("Crawfish 2002").

[60] See Globe Metallurgical Inc., v United States, Slip Op. 09-37 at 5, 8 (CIT 2009) ("Globe Metallurgical").

[61] See Cherishmet's Surrogate Value Submission dated July 20, 2009 at Exhibit 7.

[62] Id.

[63] Id.

[64] Id. (where product information explains that Austin Black 325 is used in rubber and plastic products)

[65] See Thermal Paper LTFV at Comment 9.

Cherishmet asserts it uses the same grade of coal to produce activated carbon as CIL's D grade non-long flame, non-coking bituminous coal and so the Department should use CIL data to value its bituminous coal. In Cherishmet's Supplemental Section D response, Cherishmet stated that its steam coal has a Useful Heat Value ("UHV") of 4500kcal/kg, which the Department finds is similar to CIL's D grade non-long flame, non-coking bituminous coal.[66] See Comment 3g below. Cherishmet states it used block coal as a raw material, but it did not provide sufficient information, such as a UHV, for the bituminous coal it used.[67] Although the Department finds that CIL data satisfy the above criteria with respect to the grade-specificity, representativeness of Indian-wide prices, and publicly available information, Cherishmet did not provide specific information that would allow the Department to select a more specific surrogate value using the CIL data. Therefore, the Department will continue to use WTA HTS number 2701.19.10: "Coking Coal" to value Cherishmet's bituminous coal input.

With respect to Petitioners' argument that the CIL data are aberrational and unreliable due to the Indian government's control of the coal industry and the absence of market pricing, record evidence does not support Petitioners' argument.[68] As a result, the Department is unable to determine the effect government intervention in the Indian coal industry may have on prices. Furthermore, not withstanding Petitioners' argument, the Department has used CIL data in the past for calculating surrogate values. See Glycine 2009 and accompanying Issues and Decisions Memorandum at Comment 5. Additionally, the CIT has upheld the Department's use of the TERI data, which are based upon CIL data, for calculating the surrogate value for coal. See Arch Chemicals Inc. v. United States, Slip Op. 09-71 (CIT 2009) ("Arch Chemical"). Thus Petitioners' argument is not determinative in the Department's decision to use WTA HTS number 2701.19.10: "Coking Coal" rather than CIL to value bituminous coal.

As the Department finds that HTS number 2701.12.00: "Bituminous Coal" is inappropriate for use as the surrogate value for bituminous coal, and as parties have not provided the specific information necessary to use CIL data, the Department will use HTS number 2701.19.10: "Coking Coal" as we indicated in the Preliminary Results. The Department has determined that, of the sources on the record, HTS number 2701.19.10: "Coking Coal" from WTA Indian import data are the best source for the bituminous coal surrogate value that is publicly available, represents a broad market average, is chosen from the surrogate country, is tax and duty-exclusive, and is specific to the input. Therefore, these data represent the best available information on the record.

d. Hydrochloric Acid

Jacobi contends that the Department's justification to use WTA data over Chemical Weekly data is unsupported by the evidence on record. Jacobi argues that, although the Jacobi suppliers, their production process, and the type of industrial grade hydrochloric acid ("HCL") consumed remained virtually the same in this administrative review, as in the underlying investigation

[66] See Cherishmet's Supplemental Section D Response dated January 23, 2009 at 21.

[67] See Cherishmet's Supplemental Section D Response dated June 23, 2009 at 8.

[68] See Petitioners' Surrogate Value Submission, dated February 13, 2009 at Exhibit 3E.

("LTFV")[69], the Department used WTA data instead of Chemical Weekly data. Jacobi maintains that the HCL it used during the POR is the same quality as the HCL priced in Chemical Weekly. Jacobi argues that the WTA data for industrial grade HCL are less specific to the input compared with the Chemical Weekly data, as the HCL featured in Chemical Weekly is particular to HCL averaging 30 percent concentration and exclusive for industrial grade HCL. Conversely, Jacobi argues that WTA's HCL data have no limits on concentrations, quantities, or grades, which demonstrates that the specificity of the input within those two sources is not equal. Jacobi contends that the WTA data are unsuitable because: inconsistent units of measure were used, the HTS subcategories for HCL are too broad, thus over-inclusive, and the WTA data contain aberrational pricing due to the inclusion of pharmaceutical-grade HCL. Jacobi contends that the Department's deviation from Chemical Weekly in this review conflicts with the Department's practice of relying on Chemical Weekly data over that of WTA data. Jacobi asserts that Petitioners agreed that Chemical Weekly provides the most reliable data. Additionally, Jacobi asserts that the Department determined WTA data as aberrational in comparison to Chemical Weekly. Therefore, Jacobi requests that the Department, instead, should use Chemical Weekly data to value HCL as it did in the LTVF.

Cherishmet argues the Department incorrectly stated that WTA data are specific to the type of HCL used in the production of activated carbon. Cherishmet argues that Chemical Weekly represents prices of chemicals purchased for industrial use, specific to the input used by respondents. Cherishmet further argues that WTA data cover many diverse products that may contain HCL in combination with other ingredient and argues InfoDrive India data covering HTS number 2806.10.00 underscore this point.[70] Cherishmet argues the Department has used Chemical Weekly in many other proceedings, finding WTA data for HCL was aberrational.[71]

In rebuttal, Petitioners argue that the Department should continue to use WTA data to value HCL. Petitioners assert that the Department justified its case in comparing two equal sources and it was within the Department's discretion to choose between comparable data sources.[72] Petitioners argue that relying on Chemical Weekly in the LTFV does not require the Department to continue using that source here, as it is the Department's practice to select surrogate values on best information available from the record in each segment of a proceeding pursuant to section 773 (c)(1) of the Act. Petitioners argue that there is no reason to reject WTA data because there

[69] Jacobi notes that, the Department has previously acknowledged that Jacobi purchases and consumes high volumes of standard industrial grade HCL. See Jacobi Case Brief dated September 15, 2009, at 6.
[70] See Letter from Grunfeld dated September 15, 2009 at 27. Cherishmet cites GHC Surrogate Value Letter July 20, 2009 at Exhibit 8.

[71] Cherishmet cites to 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 (April 13, 2009); Final Determination of Sales at Less Than Fair Value: Steel Nails from China, 73 FR 33977 (June 16, 2008) and accompanying Issues and Decision Memorandum at Comment 18 ("PRC Nails"); Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008) and accompanying Issues and Decision Memorandum at Comment 4; Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from China, 72 FR 60632 (October 25, 2007) and accompanying Issues and Decision Memorandum at Comment 17; Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 28274 (May 17, 2005) and accompanying Issues and Decision Memorandum at Comment 10.

[72] Petitioners cite Wuhan Bee Healthy Co. v United States, 29, 374 F. Supp. 2d 1299, 1304 (CIT 2005), quoting Geum Poong Corp. v United States, 193 F. Supp. 2d 1363, 1369, 26 322 (CIT 2002).

is no way to compare the relative purchase volumes and concentrations of HCL from the two sources.[73] Moreover, Petitioners state that Cherishmet is wrong in its argument that the Department always relies on domestic prices over import prices for selecting surrogate values and the Department has rejected a criteria hierarchy for selecting surrogate values.[74] Additionally, Petitioners argue that Chemical Weekly does not indicate its data sources or how data is collected making it less reliable than WTA data.

Cherishmet also rebutted Jacobi's implication that Jacobi is different from GHC and other respondents in the grade of HCL used in production. Cherishmet states that the record shows that GHC uses industrial grade HCL as demonstrated at verification.[75] Cherishmet also asserts that the Department has established a preference for Chemical Weekly, arguing that WTA data for HCL are aberrant, unreliable and unrepresentative of Cherishmet's input. Moreover, Cherishmet states WTA data are internally aberrant because prices range from 15 Rs/kg to 480 Rs/kg. Cherishmet claims this review is unlike that of Threaded Rod, in that the deficiencies in the WTA data in this case are argued on the record.[76]

Department's Position:

The Department disagrees with Petitioners that HCL should continue to be valued using Indian import statistics from WTA for all respondents. In the Preliminary Results, the Department used WTA data to value HCL. However, after further considering the information contained on the record of the instant review, we find that Chemical Weekly data are the best information available to value HCL input for those respondents who provided specific purity levels of HCL.

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available and contemporaneous with the POR.[77] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[78] There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input

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[73] See Petitioner Rebuttal Brief dated September 24, 2009, at 7-8.

[74] Petitioners cite to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China, 55 FR 55036 (September 17, 2008) and accompanying Issues and Decisions Memorandum at 5-6.

[75] Cherishmet refers to a BPI purchase quantity of HCL. See Cherishmet Rebuttal Brief dated September 24, 2009 at 28. Cherishmet cites Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Irene Gorelik, and Robert Palmer, Analysts, Office 9, re; Verification of the Sales and Factors Response of Ningxia Guanghua Cherishmet Activated Carbon Company, Ltd. in the First Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China ("PRC"), dated August 31, 2009, at 28 ("GHC Verification Report").

[76] Cherishmet cites to Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 8907 (February 27, 2009) and accompanying Issues and Decisions Memorandum at Comment 4 ("Threaded Rod").

[77] See Garlic AR12 at Comment 2.

[78] See Glycine 2005 at Comment 1.

value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.[79]
In applying the Department's surrogate value selection criteria as mentioned above, the Department has found in numerous NME cases that the import data from Chemical Weekly represent reliable information for valuation purposes because they represent multiple prices over time, are representative of prices during the POR in India, are product-specific, and can be made tax-exclusive.[80] In the instant case, we find that Chemical Weekly is the best source for valuing the input of HCL for Jacobi, who reported specific HCL concentration levels. We note that the data from Chemical Weekly are contemporaneous, and specific to the chemical in question. Therefore, the Chemical Weekly data used include multiple transactions from multiple markets, making the data representative of prices in India.[81]

Jacobi's suppliers, NXGH and NXHH, at verification, provided HCL test documentation which indicated the purity level of the consumed HCL within a specific range.[82] Additionally, Jacobi provided correspondence from a Chemical Weekly official who states that the purity of HCL reported in Chemical Weekly is also reported within similarly specific ranges.[83] Therefore, the Department will not make any adjustments to the Chemical Weekly data in order to make prices specific to the purity levels of the chemicals used by Jacobi in this case. Neither CCT nor Cherishmet provided the purity levels of their HCL.

While Jacobi asserts that InfoDrive data indicate India's imported HCL is for medicinal use and Petitioners' argue Jacobi's supporting documentation demonstrates HCL purity comparable with Chemical Weekly, we note that the quantities reported in the InfoDrive import data submitted by Cherishmet and Jacobi do not amount to an adequately high percentage of the corresponding WTA HTS number for HCL for the Department to conclude that the import data are not reflective of comparable HCL.[84] Furthermore, the WTA data lists the HTS number for HCL, but does not provide information with respect to the purity for HCL. Thus, we find that with Chemical Weekly prices, we are able to calculate a more specific surrogate value for Jacobi's HCL input because the Chemical Weekly prices of HCL are based on 30-33% percent purity level and the WTA data do not include information about HCL purity.

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[79] See Crawfish 2002 at Comment 2.

[80] See Activated Carbon LTFV at Comment 18.

[81] See Jacobi's Surrogate Value Submission dated February 13, 2009 at Exhibit 6.

[82] See "Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Analyst, Office 9, re: Verification of the Sales and Factors Response of Jacobi's Supplier, Ningxia Guanghua Activated Carbon Co., Ltd. ("NXGH"), in the 1st Administrative Review of Certain Activated Carbon from the People's Republic of China ("PRC")" dated September 2, 2009 at Exhibit 19; "Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Analyst, Office 9, re: Verification of the Sales and Factors Response of Jacobi's Supplier, Ningxia Huahui Activated Carbon Co., Ltd. ("NXHH"), in the 1st Administrative Review of Certain Activated Carbon from the People's Republic of China ("PRC")" dated August 31, 2009 at Exhibit 18. The purity levels are business proprietary information.

[83] See Jacobi's Additional Surrogate Value Comments dated July 20, 2009 at Exhibit 4.

[84] WTA data reports HCL kg, while Jacobi's Infodrive data reports a variety of quantity units. See Prelim Surrogate Value Memo at 4. See Jacobi's Additional Surrogate Value Comments dated July 20, 2009 at Exhibit 6.

We disagree with Cherishmet's claim that the Department prefers domestic prices over WTA data. The Department considers both sources equally reliable and has no stated preference for selecting one over the other. Rather, the Department considers the case-specific facts and, based upon those facts, selects the best available information so that surrogate values are specific to the input and contemporaneous with the POR.[85] Cherishmet argues that WTA data for HCL are aberrant and unreliable and that there are price differences between WTA data and Chemical Weekly. Cherishmet is correct in noting that in certain previous cases, the Department found WTA import values for HCL to be aberrant. See Cherishmet Case Brief at 24-28, citing Lock Washers and Nails. We note however, that in accordance with recent practice, and the Department's practice going forward, merely citing to previous administrative segments is insufficient to demonstrate that a given surrogate value, especially one based on annual and potentially different data points, is aberrant.[86] The Department shall make a determination regarding whether a given surrogate value is aberrant or unrepresentative based upon the evidence on the record of that case. In this review, we find that Cherishmet has not demonstrated that the WTA value for HCL was not market driven or has dramatically changed from year to year or displays other indicia of aberrance. In general, the Department considers both sources (WTA and Chemical Weekly) to be acceptable sources of surrogate value data. The Department will use Chemical Weekly when a party has identified an input chemical with its purity level and when the WTA HTS category is not a direct match to the chemical input. In the instant review, only Jacobi identified the purity level of its HCL input, while CCT and Cherishmet have not. Therefore, the Department will continue to value HCL using the WTA Indian import value for CCT and Cherishmet, who have not reported purity levels of their HCL input, and will value HCL using Chemical Weekly for Jacobi, who reported and provided evidence of purity level of their chemical input. Additionally, it is the Department's practice to remove the taxes from Chemical Weekly data. See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007), and accompanying Issues and Decision Memorandum at Comment 18 ("Activated Carbon LTFV").

Although Petitioners provided Chemical Weekly HCL price quotes with the taxes removed[87], they did so only by providing a worksheet, and the actual source documentation which reports taxes in Chemical Weekly is not on the record of this administrative review. Therefore, as the source information required to remove the taxes is not on the record, the Department is unable to make the adjustment for this review.[88]

e. Carbonized Materials

Bituminous-based Charcoal

[85] Glycine 2009 at Comment 3.

[86] See Threaded Rod citing Clorinated Isos and accompanying Issues and Decisions Memorandum at Comment 2 and 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) and accompanying Issues and Decisions Memorandum at Comment 2.

[87] See Petitioners' Surrogate Value Submission dated February 13, 2009 at Exhibit 13a.

[88] See Jacobi's Surrogate Value Submission dated February 13, 2009 at Exhibit 6.

Jacobi and Cherishmet argue that, for the final results, the Department should use Indian import data under HTS number 4402.00.10: "Coconut Shell Charcoal" to value carbonized material rather than HTS number 2704.00.90: "Other Cokes of Coal." Jacobi argues that the Department's valuation of carbonized materials in the Preliminary Results, using HTS subcategory 2704.00.90: "Other Cokes of Coal" is not supported by the record. Rather, Jacobi asserts that HTS 2704.00.90: "Other Cokes of Coal," is a subcategory for a type of coal, a metallurgical grade coal, which includes graphitized coal, and not used to produce subject merchandise. See Jacobi's Surrogate Value Submission dated July 13, 2009, at Exhibit 1. Instead, Jacobi argues that, for the final results, the Department ought to value carbonized materials using HTS subcategory 4402.00.10: "Coconut Shell Charcoal," as in the LTFV, which encompasses the types of carbonized material used in the production of subject merchandise as demonstrated on the record of this review. See NXGH Section D questionnaire response dated September 12, 2008 at Exhibit D-2-G. Additionally, Jacobi suggests that the Department ought to employ a reasonable consistency in its NV calculation methodology from review to review so that parties can proactively price their products sufficiently to avoid dumping. Jacobi asserts that, otherwise, the remedial statute of the antidumping law becomes penalizing rather than corrective.

Cherishmet argues that when choosing surrogate values, the Department considers the available evidence in light of the particular facts of each industry, and must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the best surrogate value is for each input.[89] Arguing that the products found under HTS 2704.00.90: "Other Cokes of Coal" are nothing like the products under HTS 4402.00.10: "Coconut Shell Charcoal," Cherishmet provides a declaration from an alleged subject matter expert, who conducted laboratory tests to demonstrate the similarities of coconut shell based charcoal to bituminous and anthracite coal based carbonized materials. Cherishmet's expert explained the difference between low ash metallurgical coke and the carbonized materials used in the production of activated carbon.[90] Cherishmet asserts that based on the declaration, coconut shell-based charcoal under HTS 4402.00.10: "Coconut Shell Charcoal" is most similar to the FOPs used by Cherishmet's producers.[91] Additionally, Cherishmet argues that the Department should not use Petitioners' alternative surrogate value from the Gujarat NRE Coke Ltd.'s ("Gujarat") 2007-2008 financial statements.[92] Cherishmet states that Gujarat produces metallurgical coke which has a very different use than that of carbonized materials used in activated carbon production and has a higher value than the WTA data used by the Department.

In rebuttal, Petitioners reject Jacobi's and Cherishmet's request to use HTS 4402.00.10: "Coconut Shell Charcoal." Petitioners urge the Department to use HTS 2704.00.90: "Other

[89] Cherishmet cites Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009) and accompanying Issues and Decision Memorandum at Comment 3.

[90] See Letter from Grunfeld dated September 14, 2009 at 5 and 8-9. Cherishmet cites GHC Surrogate Value Letter dated July 20, 2009 at Exhibit 2.

[91] Cherishmet cites GHC Surrogate Value Letter dated July 20, 2009 at Exhibit 2.

[92] Cherishmet cites to Petitioners's Surrogate Value Submission dated February 13, 2009 at Exhibit 8a.

Cokes of Coal" to value bituminous materials used as feedstock at the activation stage of production. Petitioners claim that bituminous coke is a reasonable surrogate value source considering coke and bituminous char are both sourced from bituminous coal. Moreover, contrary to the alleged expert opinions submitted by respondents, Petitioners argue that record evidence shows that many forms of coke can be used to produce activated carbon.[93] Petitioners assert that HTS 4402.00.10: "Coconut Shell Charcoal" does not reflect the value of bituminous coal charcoal and that the source of the raw material used to produce the charcoal is critical to its physical characteristics, cost of product and its value. Moreover, Petitioners argue that the value of Indian imports of coconut shell charcoal from Sri Lanka under HTS 4402.00.10: "Coconut Shell Charcoal" are much lower than the global price of coconut shell. Petitioners claim that the value of coconut shell charcoal proffered by respondents is a fraction of the value of raw coconut shells used in the LTFV. Petitioners argue an appropriate surrogate value for a processed product should not be less than the value of the raw material to make that product, which makes the product from Sri Lanka an inappropriate surrogate value for coconut shell charcoal.[94] Additionally, Petitioners claim Indian imports of coconut shell charcoal from Sri Lanka are actually coconut dust, which is not representative of the coconut charcoal used for activated carbon and accounts for the low value of Sri Lankan exports of coconut shell charcoal to India.[95]

Department's Position:

The Department agrees with Petitioners that carbonized materials produced from bituminous coal should be valued using HTS 2704.00.90: "Other Cokes of Coal." In the Preliminary Results, the Department used HTS 2704.00.90: "Other Cokes of Coal" to value carbonized materials because the underlying material is formed from various forms of heated bituminous coal and to a lesser extent, anthracite coal.[96]

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available and contemporaneous with the POR.[97] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[98] There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.[99]

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[93] Petitioners cite to their Surrogate Value Rebuttal dated July 30, 2009 at Exhibit 1.

[94] Petitioners cite to Final Determination Pursuant to the Remand Order from the U.S. Court of International Trade in Paslode Division of Illinois Tool Works, Inc, v United States, Ct. No. 97-12-02161 (January 15, 1999).

[95] Petitioners cite to their Letter dated March 9, 2009 at Exhibit 1 and Attachment 1.

[96] See Prelim Surrogate Value Memo at 7.

[97] See, e.g., Garlic AR12 at Comment 2.

[98] See Glycine 2005 at Comment 1.

[99] See Crawfish 2002 at Comment 2.

In Tapered Roller Bearings 2009, the Department stated that the burden is on the party making the claim to establish that a particular surrogate value is not appropriate based on the Department's preferred criteria for selecting surrogate values.[100] In Globe Metallurgical, the CIT stated that the Department may use InfoDrive data if, among other conditions, a significant portion of the overall imports under the relevant HTS category is represented by the InfoDrive data.[101] Cherishmet and Jacobi argue the InfoDrive data for HTS 2704.00.90: "Other Cokes of Coal" demonstrate that India imports under HTS 2704.00.90: "Other Cokes of Coal" are low-ash metallurgical coke.[102] However, the Department notes that the InfoDrive data reflect only half of the reported WTA quantity of imports under HTS 2704.00.90: "Other Cokes of Coal" [103] With the InfoDrive data on the record, we are unable to identify that the remaining imports under HTS 2704.00.90: "Other Cokes of Coal" are definitively not a carbonize material that could be used by respondents in the production of subject merchandise. See Tapered Roller Bearings 2009 at Comment 6. Moreover, it is not the Department's normal practice to analyze WTA's underlying data within InfoDrive for completeness, given that the InfoDrive data do not account for all of the Indian imports which fall under a particular HTS subheading. See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 44827 (August 9, 2007) and accompanying Issues and Decision Memorandum at Comment 2 ("Mushrooms 2007").

Cherishmet and Jacobi both submitted affidavits by experts stating that using low ash metallurgical coke in the production of activated carbon is commercially unviable and unsuitable.[104] Although Cherishmet argues that it tested materials to demonstrate that low ash metallurgical coke is unlike coconut charcoal, Cherishmet did not demonstrate that it tested material from a sample that would be classified under HTS 2704.00.90: "Other Cokes of Coal." Moreover, as the InfoDrive India data on the record for HTS 2704.00.90: "Other Cokes of Coal" does not represent 100% of the WTA Indian import data, the Department cannot determine whether material tested is similar to the HTS category used to value carbonized material. Additionally, Jacobi's affidavit asserts that high carbon graphitized products categorized under HTS 2704.00.90: "Other Cokes of Coal" are unusable for the production of activated carbon. While this may be true, Jacobi has not demonstrated that all products imported under HTS 2704.00.90: "Other Cokes of Coal" during the POR are, in fact, high carbon graphitized products. Therefore, the Department will continue to value coal carbonized materials under HTS 2704.00.90: "Other Cokes of Coal" for the final results, as we find it to be the best information available on the record.

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[100] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Anditumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decision Memorandum at Comment 6 ("Tapered Roller Bearings 2009").

[101] See Globe Metallurgical.

[102] For InfoDrive data see Jacobi Additional Surrogate Value Comments dated July 20, 2009 at Exhibit 2 and Cherishmet Surrogate Value Submission dated July 20, 2009 at Exhibit 3.

[103] See Prelim Surrogate Value Memo at Attachment 4.

[104] See Cherishmet Surrogate Value Submission dated July 20, 2009 at Exhibit 2. See also Jacobi's Additional Surrogate Value Comments dated July 20, 2009 at Exhibit 1.

Anthracite-based Charcoal

Cherishmet argues that the Department should not use the Petitioners' proposed HTS number 2701.20.10: "Briquettes, ovoids and similar solid fuels manufactured from coal, anthracite agglomerated" to value anthracite-based charcoal.[105] Cherishmet states that the process of producing products under HTS number 2701.20.10: "Briquettes, ovoids and similar solid fuels manufactured from coal, anthracite agglomerated" is different from anthracite-based carbonized materials, which are used by respondents to produce subject merchandise.[106] Moreover, Cherishmet argues that InfoDrive India demonstrates that products imported under HTS number 2701.20.10: "Briquettes, ovoids and similar solid fuels manufactured from coal, anthracite agglomerated" are high-value, finished, ready for end-use filter products called "EVERZIT," whereas the carbonized materials used by Cherishmet are an input for activated carbon production.

In rebuttal, Petitioners argue that HTS number 2701.20.10: "Briquettes, ovoids and similar solid fuels manufactured from coal, anthracite agglomerated" serves as a proper surrogate value for non-activated charred anthracite despite Cherishmet's objections. Petitioners argue that Cherishmet's carbonized anthracite and briquettes undergo the same production process and that EVERZIT is used for water treatment the same as activated carbon. Additionally, Petitioners state no other party has provided a surrogate value more specific to anthracite-based carbonized material.

Department's Position:

The Department agrees with Cherishmet that anthracite carbonized materials should not be valued under HTS 2701.20.10: "Briquettes, ovoids and similar solid fuels manufactured from coal, anthracite agglomerated". In the Preliminary Results, the Department valued carbonized anthracite coal as carbonized materials under HTS 2704.00.90: "other cokes of coal."

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available and contemporaneous with the POR.[107] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[108] There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.[109]

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[105] Cherishmet cites Petitioners' Surrogate Value Submission, (February 13, 2009) at 8 and Exhibit 9.

[106] See Letter from Grunfeld dated September 14, 2009 at 11. Cherishmet cites, GHC Surrogate Value Letter at Exhibit 4.

[107] See, e.g., Garlic AR12 at Comment 2.

[108] See Glycine 2005 at Comment 1.

[109] See Crawfish 2002 at Comment 2.

In Globe Metallurgical, the CIT stated that the Department may use InfoDrive data if, among other conditions, a significant portion of the overall imports under the relevant HTS category are represented by the InfoDrive India data. Here, Cherishmet has demonstrated that 100% of Indian imports under HTS 2701.20.10: "Briquettes, ovoids and similar solid fuels manufactured from coal, anthracite agglomerated" are a product which is an end use filter media and not an intermediate input used in the production of activated carbon.[110] See Globe Metallurgical. Therefore, for these final results, the Department will to disregard HTS 2701.20.00: "Briquettes, ovoids and similar solid fuels manufactured from coal, anthracite agglomerated" and continue to use the surrogate value from the Preliminary Results, because HTS number 2704.00.90: "other cokes of coal" represents the best available information on the record.

f. Coal Tar

Cherishmet argues that if the Department continues to use WTA import data for coal tar, it should exclude Singapore and the United States from the import data under HTS number 2706.00.10: "Coal Tar." Alternatively, Cherishmet argues that the Department can use the data that Cherishment placed on the record to average Indian domestic prices for coal tar. Cherishmet claims that WTA's coal tar average unit values ("AUV") of 8.55 Rs/kg from Romania, 23.68 Rs/kg from Singapore and 21.79 Rs/kg from the United States vary widely and call into question the imports reflected in the Indian import statistics. Cherishmet claims that WTA export data from the United States for HTS number 2706.00.00: "Tar Distilled From Coal, Lignite Or Peat & Other" indicate no exports of mineral tars from the United States to India during the POR. Moreover, Cherishmet asserts that the India InfoDrive data indicate that the United States exportation of a high-value medicinal product, Coal Tar Topical Solution, was misclassified under HTS number 2706.00.10: "Coal Tar." Thus, Cherishmet argues the United States should be excluded from the Indian import data. Cherishmet further claims that its calculations between WTA's export data for Singapore and WTA's Indian import data indicate that nearly 40 percent of coal tar imports from Singapore must have an above-average AUV. Cherishmet contends that the 40 percent of the coal tar imports from Singapore must be high-end coal tar products that were misclassified under the Indian HTS number 2706.00.10: "Coal Tar" resulting in a WTA price of 23.68 Rs/kg. Cherishmet argues that the Singapore WTA export price to India of 6.3417 Rs/kg is the correct surrogate value for coal tar. If the Department continues to use WTA import data for the final results, Cherishment argues that the Department should limit the WTA AUV to the modified Singapore price of 6.3417 Rs/kg, and the Romanian price of 8.55 Rs/kg. Finally, Cherishmet argues that if the Department finds that it cannot use the Indian WTA import data, Cherishmet maintains that the Department should use the 11.73 Rs/kg average price of Indian coal tar from the Indian financial statements Cherishmet submitted to derive the surrogate value for coal tar.[111]

In rebuttal, Petitioners urge the Department to find that all Indian imports under HTS number 2706.00.10: "Coal Tar" are, on a weighted-average basis, representative of the value of coal tar

[110] See Cherishmet Surrogate Value Comments dated February 23, 2009 at Exhibit 4.
[111] Cherishmet cites to GHC's Surrogate Value Letter dated July 20, 2009 at Exhibit 8. See also Letter from Grunfeld, dated September 15, 2009 at 14.

used by respondents and reject Cherishmet's arguments to exclude the United States and Singapore from the Indian import data. Petitioners argue that the U.S. imports cannot be disqualified based on the small sample of 531 kilograms of coal tar solution out of a total 396,894 kilograms of Indian coal tar imports, accounting for only 0.13 percent of Indian coal tar imports. Additionally, Petitioners argue that it is incorrect to compare a small portion of Singapore exports under HTS 2706 to the AUV of Indian imports from Singapore under HTS 2706.00.10: "Coal Tar," because it unfairly compares an aggregate of the HTS category at four digits versus the more specific eight digits. Additionally, Petitioners claim Cherishmet's calculated 11.73 Rs/kg price from Indian financial statements supports the 21.79 Rs/kg average value of Indian imports of coal tar. Lastly, Petitioners request that the Department reject Cherishmet's proposition because the Department does not alter import data except for: 1) where a tariff category is a broad basket category and 2) concrete evidence exists, such as a lack of industry to make a specific good in that basket category.[112] Moreover, Petitioners assert the Department prefers a complete, India-wide value over company-specific values.[113]

Department's Position:

The Department disagrees with Cherishmet that Indian Import data in WTA are a flawed surrogate value source for coal tar. In the Preliminary Results, the Department relied on WTA data for HTS 2706.00.10 "coal tar" for the coal tar surrogate value source. As explained below, we find that Cherishmet has not demonstrated that WTA data for coal tar are inappropriate and should be replaced with another surrogate value source for this input.

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available and contemporaneous with the POR.[114] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[115] There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.[116]

In Tapered Roller Bearings 2009 at Comment 6, the Department stated that the burden is on the party making the claim to establish that a particular surrogate value is not appropriate based on the Department's preferred criteria for selecting surrogate values. In Globe Metallurgical, the CIT stated that the Department may use InfoDrive data if, among other conditions, a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive

[112] Petitioners cite Globe Metallurgical.

[113] Petitioners cite Zhejiang Native Produce & Animal By-Products Import & Export Corp., et al. v United States, Slip Op. 04-109 at 12-13 (August 26, 2004).

[114] See Garlic AR12 at Comment 2.

[115] See Glycine 2005 at Comment 1.

[116] See Crawfish 2002 at Comment 2.

data. Moreover, the existence of higher prices alone does not necessarily indicate that price data is distorted or misrepresented. See Tapered Roller Bearings 2009 at Comment 6. Thus, the existence of a higher price is not sufficient to exclude a particular surrogate value, absent specific evidence that the value is otherwise abnormal or unreliable.

Cherishmet provided InfoDrive data to demonstrate that Indian imports of high priced U.S. coal tar products have skewed coal tar prices in the WTA data. However, the InfoDrive data indicates India only imported 15,709 kg of coal tar from the United States under HTS number 2706.00.10: "Coal Tar" as opposed to the 396,894 kg reported in the WTA data. Because the InfoDrive data on the record with reagard to coal tar imports from the United States consists of only a very small percentage of coal tar imports from the United States as reported in the WTA data, we cannot use it as a basis conclude that the WTA data are flawed. See Globe Metallurgical.

Regarding Cherishmet's suggestion that the Department use Singapore export data, we note that, consistent with our established practice, we only use export data when they represent the best available information on the record and no other appropriate surrogate value data are available from the potential surrogate countries provided by the Department's Office of Policy.[117] See Carbon Steel Plate from Romania. By simply arguing that the export quantities versus import quantities predictably differ, Cherishmet has not established that the Singapore export data are more reliable than the Indian import data. The Department does not expect one country's export quantities to be a one to one ratio to another country's import data. Thus, we find that there are other appropriate surrogate value data available from India, the primary surrogate country, using WTA's import data. Consequently, consistent with our practice, we will not use Singapore export data because the record contains reliable import data with which to value coal tar.[118]

Additionally, with respect to valuing coal tar with Indian financial statements submitted by Cherishmet, the Department's general preference for WTA data over company financial statements is because WTA data are contemporaneous, publicly available, and representative of a broad market average.[119] Accordingly, we will not rely on the financial statements submitted by Cherishmet because the record contains more reliable data with which to value coal tar. Therefore, the Department determines that WTA Indian import data for HTS number 2706.00.10: "coal tar" used in the Preliminary Results remains the best available information on the record and we will continue to rely upon HTS number 2706.00.10: "Coal Tar" for the final results.

The Department has determined that, of the sources on the record, Indian Import data from WTA are the most contemporaneous source for the coal tar surrogate value that is publicly available, represents a broad market average, is chosen from the surrogate country, is tax and duty-

[117] Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

[118] See, e.g., See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comments 7B, 7C, and 7D; Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum at Comment 3.

[119] See Mushrooms 2007 at Comment 2.

exclusive, and is specific to the input. Therefore, for the final results, we find that Indian import data represents the best available information for valuing coal tar and we will rely upon this source to value coal tar for the final results.

g. Energy and Steam Coal

Cherishmet argues the Department should use CIL data, the underlying data for the 2004-2005 Energy Research Institute ("TERI") Directory data, rather than Indian import data under HTS number 2701.19.20: "steam coal" to value energy and steam coal. Cherishment notes the Department is familiar with TERI data and adopted these data in the past.[120] Cherishmet contends that the WTA data do not account for the differences in grade of coals used by Cherishmet, whereas the CIL data are the most accurate, reliable and contemporaneous price data that are specific to coal inputs used by Cherishmet. Cherishmet asserts that record evidence indicated D Grade non-coking coal has a UHV of 4200 to 4940 and that GHC provided the UHV data which demonstrate they use D Grade non-coking coal.[121] Additionally, Cherishmet asserts the Department has adopted CIL data in many other antidumping proceedings and these data should be used to value energy and steam coal.[122] Cherishmet claims the Department has a preference for domestic prices over import prices and should use CIL it data to value energy and steam coal at 816.35 Rs/MT.[123]

In rebuttal, Petitioners urge the Department to reject Cherishmet's request to use CIL data rather than WTA data under HTS number 2701.19.20: "Steam Coal." Petitioners argue that WTA data are more representative and reliable because the same problems with India's low quality coal and pricing distortions facing bituminous metallurgical quality coal also pertain to steam and energy coal.[124] Petitioners urge the Department to continue using the WTA data under HTS number 2701.19.20: "Steam Coal" for the final results.

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[120] Cherishmet cites to Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, FR 48195 (August 18, 2008), and accompanying Issues and Decisions Memorandum at Comment 9. See also Letter from Grunfeld dated September 15, 2009, at Footnote 8.

[121] See Letter from Grunfeld dated September 15, 2009 at 17. See also Cherishmet's Supplemental Section D Questionnaire Response dated January 23, 2009.

[122] Cherishmet cites to Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007), and accompanying Issues and Decision Memorandum at Comment 19; Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009), and accompanying Issues and Decision Memorandum at Comment 5; Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China, 66 FR 33522 (June 22, 2001) and accompanying Issues and Decision Memorandum at Comment 5.

[123] Cherishmet cites Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Review, 68 FR6710, 6712 (February 10, 2003), and accompanying Issues and Decision Memorandum at Comment 1; Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 FR 3085, 3087 (January 21, 1998).

[124] Petitioners cite to their Surrogate Values dated February 13, 2009 at Exhibit 2. See also Petitioners' Letter dated September 24, 2009 at 26-28.

In rebuttal, Cherishmet asserts that the Department should not use WTA data for any coal inputs. Cherishmet states it used a steam coal with an UHV of approximately 4500kcal/kg which CIL data categorize as D grade non-long flame, non-coking coal.[125] Therefore, Cherishmet argues that CIL data provide the price for the specific variety of steam coal used by Cherishmet. Additionally, Cherishmet states that the Department may add the 165 Rs/MT pithead charge to steam coal as found in the CIL data "price notification," which provides a surrogate value for grade D non-long flame, non-coking steam coal of 981.35 Rs/MT. [126]

Department's Position:

The Department agrees with Cherishmet, in part, to value steam coal using CIL data, but the Department does not find that CIL data are applicable to all respondents in this case. In the Preliminary Results, the Department used WTA HTS 2701.12.00: "Steam Coal" to value steam coal reported by respondents. The Department determines that CIL data, which Cherishmet submitted, are the best available information on the record to calculate the surrogate value for steam coal where the necessary data have been reported by the respondents and where the UHV specificity of the CIL data corresponds to the UHV specificity of the steam coal input used by respondents.[127]

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available and contemporaneous with the POR.[128] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[129] There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.[130] Generally, when considering pricing data, the Department prefers to use a publicly available price that reflects numerous transactions between many buyers and sellers because the experience of a single producer is less representative of the cost of an input in a surrogate country.[131]

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[125] Cherishmet cites to its Supplement Section D Questionnaire Response dated January 23, 2009, at 21 and its Surrogate Value submission dated February 13, 2009, at Exhibit 15.

[126] See Cherishmet's Surrogate Value submission dated February 13, 2009 at Exhibit 15.

[127] See Id.

[128] See Garlic AR12 at Comment 2.

[129] See Glycine 2005 at Comment 1.

[130] See Crawfish 2002 at Comment 2.

[131] See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China, 66 FR 33522 (June 22, 2001) and accompanying Issues and Decision Memorandum at Comment 5.

The Department finds that the CIL data satisfy the above criteria as much as TERI data with respect to the grade-specificity, representativeness of Indian-wide prices, publicly available information, and average non-export value in accordance with the Department's established practice. See Arch Chemical, Slip Op. 09-71 (CIT 2009) at 28. However, we also find that the CIL data are contemporaneous, as opposed to the TERI data on the record. Additionally, since the TERI data are based directly upon the CIL data, the Department determines that the CIL data are the best information available on the record of this review with which to value certain respondent's steam coal input.[132]

The Department will value steam coal for those respondents who have provided a more precise description of the types of steam and energy coal they use. Specifically, Cherishmet reported that it uses a non-coking coal with a UHV of 4500 kcal/kg.[133] CCT has reported that it uses non-coking coals with UHV ranges of 3360-4200, 4200-4940, 4940-5600, and 5600-6200.[134] Where, as here, we have information submitted by Cherishmet and CCT on the record that is grade-specific, we have determined to use the CIL data to calculate the surrogate value for Cherishmet and CCT's steam coal input because they are grade-specific. Furthermore, the Department finds that Cherishmet's steam coal UHV of 4500 kcal/kg falls within grade D, non-coking coal category, which has a UHV between 4200 kcal/kg and 4940 kcal/kg according to the CIL data. Additionally, the Department finds that CCT's steam coals with UHV of 3360-4200, 4200-4940, 4940-5600, and 5600-6200 are grades E, D, C and B respectively, as indicated in the CIL data.[135] Moreover, the record does not support Petitioners' argument that the CIL data are aberrational and unreliable due to the Indian government's control of the coal industry and the absence of market pricing.[136] As a result, the Department is unable to conclude whether any alleged government intervention in the Indian coal industry may have affected prices. Furthermore, notwithstanding Petitioners' argument, the Department has in the past used the CIL data for calculating surrogate value purposes. See Glycine 2009 at Comment 5. Moreover, the CIT has previously upheld the Department's use of the TERI data for calculating the surrogate value for coal. See Arch Chemical, Slip Op. 09-71 (CIT 2009).

Given that CIL prices are more specific than the WTA prices and are more contemporaneous than the TERI prices, the Department finds that the CIL data are the best available information on the record by which to calculate the surrogate value for steam coal because they are (1) non-export values, (2) representative of India-wide prices, (3) contemporaneous with the POR, (4) specific to the steam coal input used by Cherishmet and CCT, and (5) tax- exclusive. Additionally, the Department has determined that it is appropriate to add the 165 Rs/MT to the value of steam coal because this adjustment is indicated as necessary in CIL's "Price Notification" documentation.[137]

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[132] See Glycine 2009 at Comment 5.

[133] See Cherishmet Supplemental Section D Questionnaire Response dated January 23, 2009 at 21.

[134] See CCT Supplemental Section D Questionnaire Response dated February 17, 2009 at 44, 53, and 69. See also CCT Supplemental Section D Questionnaire Response dated March 16, 2009.

[135] See Cherishmet Surrogate Value submission dated February 13, 2009 at Exhibit 15.

[136] See Petitioners' Surrogate Value Submission, dated February 13, 2009 at Exhibit 3E.

[137] See Cherishmet's Surrogate Value submission dated February 13, 2009 at Exhibit 15.

h. Surrogate Value Applied to Activated Carbon

Petitioners argue that the Department should value consumption of activated carbon used in production using WTA import data under HTS number 3802.10: "activated carbon." Petitioners contend that, where a respondent shows consumption of activated carbon, whether labeled as powder, fines, or byproduct, the proper surrogate value must be based on a material that is both carbonized and activated. Specifically, Petitioners note that where NXGH reported COCARMAT and provided the relevant documentation for this FOP, the record shows that the FOP should be considered activated carbon rather than carbonized material. See Petitioners' Case Brief dated September 14, 2009 at 8 and footnote 6.

In rebuttal, CCT adds that the surrogate value for carbon fines should be derived from HTS number 2714.10.00: "bituminous or oil shale & tar sands" rather than HTS number 3802.10: "activated carbon" as suggested by Petitioner Norit because HTS number 3802.10: "activated carbon" denotes a finished product, activated carbon, while carbon fines are a semi-finished material.

In rebuttal, Jacobi argues that Petitioners' assertion that for the final results the Department should assign a surrogate value using WTA data to NXGH's market-economy inputs of charcoal fines is unfounded and that the Department should continue to value these market-economy inputs using the market economy prices reported because more than one third of NXGH's consumption of this input was sourced from market-economy sources.[138] Furthermore, Jacobi rebuts Petitioners' allegation that a surrogate value is needed for NXGH's market-economy purchases because these are affiliated-party transactions. Rather, Jacobi argues that all the information on the record supports the conclusion that these transactions took place through arm's-length business relationships. Additionally, Jacobi contends that Petitioners' claim that NXGH's input of charcoal fines is actually the by-product activated carbon is unsubstantiated by the record which demonstrates these fines are a by-product of the granulation stage of production and that NXGH introduces these fines during the carbonization stage of production. Finally, Jacobi asserts that Petitioners' argument that NXGH's inputs of charcoal fines should be valued using the HTS classification for activated carbon is groundless, arguing instead that, if the Department were to use an HTS classification instead of properly valuing these inputs with the market-economy prices paid, then the facts on the record would obligate the Department to use the HTS classification for coconut charcoal.

Department's Position:

The Department disagrees with both Petitioners and respondents with respect to the valuation of activated carbon. At the outset of this review, the Department accepted Cherishmet's, CCT's and Jacobi's requests to exclude reporting FOPs for certain smaller producers of activated carbon. See Preliminary Results. This had the result of a small volume of certain products not having a corresponding set of FOPs for activated carbon which was subject to additional processing. Therefore, the Department will, as in the Preliminary Results, in accordance with section 776(a)(1) of the Act, apply facts available ("FA") to determine the NV for the sales

[138] Jacobi cites to Antidumping Methodologies, 71 FR 61716.

corresponding to the FOP data that for activated carbon used as a material input. See Comments 5a and 17b below.

We also disagree with Petitioners' argument that the Department should value NXGH's coconut shell charcoal purchase as activated carbon. In the Preliminary Results, the Department found that NXGH purchased over 33 percent of its coconut shell charcoal from market economy sources and valued those purchases with the market economy prices. See Prelim Surrogate Value Memo at 5. As the record contains no new evidence to refute that NXGH purchased a significant portion coconut shell charcoal from market economy sources, consistent with our policy regarding market-economy purchases, the Department will continue to value this input with the market economy price as in the Preliminary Results. See Antidumping Methodologies, 71 FR 61716, 61718.

Finally, with respect to the surrogate value assigned to charcoal fines and byproducts, we disagree with Petitioners' suggestion to value charcoal fines and by-products using HTS number 3802.10: "activated carbon." In the Preliminary Results, the Department granted byproduct offsets to CCT for its non-activated byproducts (such as pressroom powder byproduct, middlings, slurry, tailings and non-activated fines). See CCT's supplemental response dated April 6, 2009 at 6. The Department valued those by-products using HTS number 2714.10.00: "bituminous or oil shale & tar sands" and HTS number 2701.19.90: "other coal w/n pulvrsd but ntagldmrtd," as appropriate. See Prelim Surrogate Value Memo at 10. As the record contains no evidence that CCT's by-products are activated carbon, the Department will, for the final results, continue to value CCT's by-products as we did in the Preliminary Results.

i. HTS Numbers Used for Starch, Paint Thinner, and Ink Surrogate Values

Starch

Cherishmet argues the Department should use HTS number 1108.12.00: "Corn, not modified," and not HTS number 3505.10.90: "Albumins; modified starches, glue," because YG Chemical disclosed it uses corn starch, thus HTS number 1108.12.00: "Corn, not modified," is more appropriate for starch.

In rebuttal, Petitioners argue that YG Chemical uses the starch as glue, thus HTS number 3505.10.90: "Albumins; modified starches, glue," is more appropriate.

Department's Position:

The Department agrees with Cherishmet that starch should be valued under HTS number 1108.12.00: "corn, not modified, starch." Cherishmet reports in a supplemental section D questionnaire that the starch it uses is a corn starch.[139] Therefore, the Department will use HTS number 1108.12.00: "Corn, not modified, starch" to value starch in the final results. See "Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9 from Robert Palmer, Analyst, Office 9, re; Final Results Analysis Memorandum for Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. ("GHC") in the Antidumping Duty Administrative

[139] See Cherishmet Supplemental Section D Questionnaire Response, dated June 23, 2009 at 24 and Exhibit SSSD-11.

Review of Certain Activated Carbon the People's Republic of China, dated November 3, 2009 ("GHC Final Analysis Memo").

Paint Thinner

Cherishmet argues that the Department should use HTS number 3814.00.10: "organic composite solvents & thinners" instead of HTS number 3814.00.20: "prepared paint or varnish remover" to derive the surrogate value for paint thinner. Cherishmet claims the products under HTS number 3814.00.20: "prepared paint or varnish remover" are used to remove existing paint finish, unlike Beijing Pacific which thins the paint to increase volume and decrease the paint concentration before it is used in the packing process.

No other party commented on this issue.

Department's Position:

The Department agrees with Cherishmet that nitrocellulose thinner should be valued using HTS number 3814.00.10: "Organic Composite Solvents and Thinners." In the Preliminary Results, we valued nitrocellulose thinner under HTS number 3814.00.20: "Prepared Paint or Varnish Removers." Cherishmet reported that it used a nitrocellulose thinner not varnish remover.[140] Therefore, the Department determines that HTS number 3814.0010: "Organic Composites, Solvents and Thinners" is more appropriate to calculate the surrogate value for nitrocellulose thinner for the final results. See GHC Final Analysis Memo.

Ink

Cherishmet argues the Department should use HTS number 3215.90.90: "inks not printing" to derive the surrogate value for ink rather than HTS number 3215.00: "printing, writing or drawing inks & inks." Cherishmet argues that the ink used by Beijing Pacific is not printing ink, fountain pen ink, ball-pen ink or other drawing ink.

In rebuttal, Petitioners argue that Cherishmet has not provided sufficient evidence regarding the specificity of its packing ink to qualify for any other sub-schedule.

Department's Position:

The Department agrees with Petitioners. In the Preliminary Results, we valued Cherishmet's ink under HTS number 3215.00: "Printing, Writing or Drawing Inks and Inks." In Tapered Roller Bearings 2009 at Comment 6, the Department stated that the burden is on the party making the claim to establish that a particular surrogate value is not appropriate based on the Department's preferred criteria for selecting surrogate values. Here, Cherishmet has not provided additional evidence on the record to compel a change from the Preliminary Results. Therefore, the Department will continue to use HTS number 3215.00: "Printing, Writing or Drawing Inks and Inks" for the final results.

Company-Specific Issues

[140] See Cherishmet Supplemental Section D Questionnaire Response, dated January 26, 2009 at 26.

CCT

Comment 4: Application of Total Adverse Facts Available

Petitioner Norit argues that, pursuant to sections 776 and 782 of the Act, the Department ought to assign total adverse facts available ("AFA") to CCT in the final results because it failed to provide information in the form requested by the Department and has not cooperated to the best of its ability.[141] Petitioner Norit claims that CCT did not follow the Department's repeated instructions to report FOPs on a CONNUM-specific basis, instead using only 11 of the 15 product characteristics required by the Department.[142] As a result, Petitioner Norit claims that the NV calculated for CCT does not reflect actual inputs required to produce each CONNUM. Petitioner Norit contends that the record evidence indicates, through CCT's own admission, that it tracks production on a batch-specific basis, which allegedly identifies each of the physical characteristics of the CONNUMs. Petitioner Norit, therefore, claims that CCT could have reported FOP data as requested by the Department, but failed to do so. Petitioner Norit also argues that it had identified other record evidence indicating that CCT was able to report CONNUM-specific FOP data.[143]

Petitioner Norit notes that the CIT has upheld the Department's application of total AFA to respondents, even when portions of respondents' data had been verified.[144] Petitioner Norit asserts that the deficiencies in CCT's data undermine the reliability of CCT's responses in *toto*. Citing to Rhone Poulenc, Inc. v. United States, 899 F. 2d 1185, 1191 (Fed. Cir. 1990), Petitioner Norit notes that the Department must calculate dumping margins as accurately as possible, which, it claims, is negated by CCT's deficient reporting of FOPs on a CONNUM-specific basis. Petitioner Norit also notes that the Department has, in the past, relied on partial AFA where respondents fail to demonstrate that a chosen allocation is the most specific, and least distortive, allocation possible.[145] Petitioner Norit contends that, like in NSK 2007, the respondent has not shown that the allocation methodology in its reported data is more accurate or specific than that requested by the Department. Petitioner Norit notes that in a recently completed proceeding, the Department relied on total AFA for a respondent that failed to provide FOP information in the form and manner requested.[146] Petitioner Norit draws comparison between the circumstances surrounding the total AFA determination for a respondent in Threaded Rod (and other proceedings) and the instant proceeding. See Petitioner Norit's Case Brief dated September 15, 2009 at 16-18. Lastly, Petitioner Norit asserts that, as AFA, the Department ought to apply the AFA rate of 228.11 percent, calculated in the LTFV.

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[141] Petitioner Norit cites to Nippon Steel Corp. v. United States, 337 F.3d 1373, 1381 (Fed. Cir. 2003) ("Nippon Steel").

[142] Petitioner Norit claims that CCT failed to report FOP data for 4 product characteristics: ash content, apparent density, hardness, and abrasion.

[143] Petitioner Norit cites to its letters dated November 10, 2008, March 12, 2009, and May 5, 2009.

[144] Petitioner Norit cites to Steel Auth. Of India v. United States, 25 CIT 482, 486-7, 149 F. Supp 2d 921, 928-9 (2001).

[145] Petitioner Norit cites to NSK Ltd. v. United States, 481 F.3d 1355, 1359-61 (Fed. Cir. 2007) ("NSK 2007").

[146] Petitioner Norit cites to Threaded Rod at Comment 5.

In rebuttal, CCT argues that the application of total AFA is unwarranted because it has reported FOP data to the best of its ability during the course of the review. CCT notes that, despite Petitioner Norit's repeated arguments, the Department had already accepted CCT's FOP reporting methodology and addressed this fully in the Preliminary Results. CCT contends that Petitioner Norit has not provided any additional information on the record since the Preliminary Results that would justify a finding of total AFA for the final results.

Department's Position:

The Department disagrees with Petitioner Norit that it is appropriate to apply total AFA to CCT. In making this determination, the Department first assessed whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met, pursuant to section 776 of the Act. We find that the application of facts otherwise available is not warranted under section 776(a) of the Act. Section 776(a)(1) of the Act mandates that the Department use facts available if necessary information is not available on the record of a proceeding. In addition, Section 776(a)(2) of the Act states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

If, after being notified by the Department of a deficiency, the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. See Section 782(d) of the Act. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Furthermore, section 776(b) of the Act provides that the Department, in selecting from the facts otherwise available, may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. The Act provides, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record. See Section 776(b) of the Act.

In the Preliminary Results, the Department acknowledged that CCT's individual producers could not provide FOP data on a CONNUM-specific basis. See Preliminary Results, 74 FR at 21326. We also noted that "CCT has provided detailed and potentially verifiable information on the standards used in the ordinary course of business by CCT and its producers…{and} provided samples of FOP consumption data, reconciliation worksheets, and FOP source documentation used in the ordinary course of business by its producers." See id.; CCT's Supplemental Section D Questionnaire Response dated February 17, 2009; and CCT's Second Supplemental Section D Questionnaire Response dated March 13, 2009 at 2 and Exhibits FW-7, FW-9, FW-11, XX-4.

Further, we stated that:

> CCT has explained that each of its producers maintains records on the consumption of all raw materials. CCT notes that its producers do not track data during the production process for four product characteristics within the CONNUM: apparent density, hardness, abrasion, and ash content. However, CCT claims that it has provided its FOP data based on as much detail as the books and records…and its producers' records would allow.[147]

Pursuant to the record evidence, we preliminarily determined that, "CCT's FOP reporting methodology is sufficient to preliminarily calculate an accurate dumping margin. Nonetheless, we are hereby notifying CCT that it should begin to track all records generated in the normal course of business that would allow CCT and its producers to report FOP consumption in future segments of this proceeding taking into account as many CONNUM characteristics as possible." Id. However, we also put CCT on notice that "there is no reason to conclude that respondents in future segments would be unable to report FOPs on a CONNUM-specific basis, notwithstanding the fact that previous respondents have been unable to do so, based on the manner in which they chose to maintain their records." See id. The Department has, in the past, addressed similar situations in the same manner.[148]

Because the Department was unable to verify all respondents' and all respective producers' data due to the breadth of information to verify and the relative burden of verifying this amount of data with the limited time available, we did not verify CCT's sales or FOP data. However, as stated in the Preliminary Results, CCT's data were sufficient to calculate a preliminary margin. Moreover, Petitioner Norit has not provided any new arguments since the Preliminary Results that would merit a reconsideration of our preliminary determination to calculate CCT's antidumping margin based on the reported data. Therefore, for the final results, we find that the application of total AFA, pursuant to sections 776(a) and (b) of the Act, to CCT is inappropriate and have accepted the reported data for the final results.

Comment 5: Corrections to Submitted Data

a. Treatment of the Universe of Factor Data for NV

Petitioner Norit argues that if the Department does not apply total AFA to CCT in the final results, it should require CCT to submit a revised FOP database to include the factor data necessary to establish NVs for all reported U.S. sales during the POR. Petitioner Norit argues that the Department's alleged unintentional instruction for CCT to remove fields in the FOP database marked "activated carbon" resulted in a partial loss of the NV used to calculate a dumping margin. Petitioner Norit posits that the Department's intention to eliminate the

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[147] See id., and CCT's Supplemental Section D Questionnaire Response dated February 17, 2009 at 3-7.

[148] See Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 73 FR 58113 (October 6, 2008) and accompanying Issues and Decision Memorandum at Comment 2. Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (March 31, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

activated carbon data from the FOP database was to grant CCT's request to exclude purchases of activated carbon from upstream suppliers. Petitioner Norit further posits that the Department allegedly intended to limit the revisions only to certain producers for CCT, rather than excluding a certain percentage of CCT's U.S. sales of subject merchandise from the margin calculation program, which, Petitioner Norit alleges, is contrary to Department practice.[149] Consequently, Petitioner Norit argues that the Department should include all originally reported U.S. sales to calculate the dumping margin.

In rebuttal, CCT argues that the Department should not reverse its decision to exclude CONNUMs produced during the POR using purchased activated carbon. Contrary to Petitioner Norit's assertion that a portion of U.S. sales would also be excluded, CCT argues that no U.S. sales have been removed from the analysis as a result of the Department's instruction to remove CONNUMs containing purchased activated carbon. CCT contends that, even where FOP data for a particular CONNUM are not available, the Department can calculate dumping margins using a surrogate NV in the same manner that the Department allegedly frequently applies where any U.S. sale is missing NV data. Lastly, CCT argues that the percentage of U.S. sales affected by the exclusion of purchased activated carbon is very small, as attested by Petitioner Norit.

Department's Position:

The Department disagrees with Petitioner Norit regarding the exclusion of activated carbon from CCT's FOP database in calculating the NV. In the Preliminary Results, we stated that, "the Department did not require CCT to report FOP data for the following producers: (1) Datong Nanjiao Huiyuan A/C Co. Ltd.; (2) Datong Fuping Activated Carbon Co., Ltd.; (3) Hongke Activated Carbon Co., Ltd.; (4) Ningxia Luyuangheng Activated Carbon Co., Ltd.; (5) Datong Hongtai Activated Carbon Co., Ltd.; and (6) Shanxi Xuanzhong Chemical Industry Co., Ltd." See Preliminary Results, 74 FR at 21320-1.

Further, we stated that CCT:

> would not be required to report FOP data for products that were produced prior to the POR…{and} it was not required to report FOP data for products that were purchased by and not produced by CCT's producers, as indicated in CCT's October 11, 2008, response. Additionally, the Department notified CCT that, upon CCT's acceptance of the terms of the FOP data exclusions, the Department shall determine the appropriate facts available to apply, in lieu of the actual FOP data, to the corresponding U.S. sales of subject merchandise.

See id. at 21321.

Subsequently, in two separate supplemental questionnaires, the Department clearly requested CCT to remove CONNUMs for upstream producers who sold activated carbon to CCT's

[149] Petitioner Norit cites to Honey From Argentina: Final Results of Antidumping Duty Administrative Review, 69 FR 30283 (May 27, 2004) and accompanying Issues and Decision Memorandum at Comment 16; Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 61 FR 38139 (July 23, 1996). Petitioner Norit adds that the Department will exclude only up to five percent of foreign market sales that are made outside the normal course of business. Here, CCT's database revision excludes more than that five percent threshold.

producers and who did not sell directly to CCT. See the Department's Supplemental Questionnaires dated May 19, 2009, and July 20, 2009. We disagree with Petitioner Norit that our request to remove models containing activated carbon as an FOP was unintentional. Moreover, contrary to Petitioner Norit's argument that the removal of models containing activated carbon as an FOP results in a partial loss of NV, we intend to, as in the Preliminary Results, in accordance with section 776(a)(1) of the Act, apply FA to determine the NV for the sales corresponding to the FOP data CCT was excused from reporting, which now also includes the sales corresponding to the models which contained activated carbon as an FOP. Specifically, to account for the reported U.S. sales corresponding to the FOPs of the excused producers, the Department shall assign the weighted-average NV as the NV for the sales corresponding to the excluded FOPs, as we did in the Preliminary Results margin calculation.[150] As such, we will continue to do so for the final results. For further details, see "Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9 from Irene Gorelik, Analyst, Office 9, re; Analysis Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China: Calgon Carbon (Tianjin) Co., Ltd. ("CCT"), dated November 3, 2009 ("CCT AR1 Final Analysis Memo").

b. Treatment of U.S. Indirect Selling Expenses

Petitioner Norit argues that, if the Department does not rely on total AFA for CCT, then it should recalculate CCT's U.S. indirect selling expense ("ISE") ratio. Petitioner Norit claims that CCT has incorrectly calculated its U.S. ISE by using a ratio that does not include certain costs. Petitioner Norit claims that CCT has not provided a basis for any exclusions other than asserting that CCT used internal allocation factors to calculate the ISE. Petitioner Norit contends that, despite the Department's requests for explanations of the ISE ratio calculation, CCT has merely alluded to the LTFV, where the Department allegedly accepted CCT's ISE ratio calculation, and that the ISE ratio calculation methodology is the one used in the normal course of business. Petitioner Norit argues that CCT's claim that it used the same methodology as in the LTFV is irrelevant because each segment of a proceeding stands on the record evidence developed in that segment. Consequently, Petitioner Norit argues, CCT has not shown on the record why any exclusions from the ISE are justified in this segment of the proceeding. Petitioner Norit contends that, notwithstanding 19 CFR 351.401(b)(1), CCT has repeatedly failed to respond directly to the Department's requests for information and explanation of the ISE ratio calculation methodology and underlying documentation. Petitioner Norit concludes that, because the numerator and denominator of the ISE calculations should be based on equivalent data, there is no basis for CCT to exclude any expenses from its ISE ratio calculation. Consequently, Petitioner Norit urges the Department to recalculate CCT's U.S. ISE ratio by not allowing the exclusions claimed by CCT, as seen in CCT's June 17, 2009, response at Attachment C-53.

In rebuttal, CCT argues that it properly reported ISE to the Department, despite Petitioner Norit's claims that CCT excluded certain selling expenses. CCT contends that Petitioner Norit's actual complaint concerns the allocation methodology of the ISE rather than the alleged exclusion of any expenses. CCT claims that it reported ISE consistent with the methodology accepted by the

[150] See Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Irene Gorelik, Senior Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for Calgon Carbon (Tianjin) Co., Ltd., in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China, dated April 30, 2009 at 8.

Department in the underlying investigation, which is based on the expenses actually recorded in the normal course of business. CCT states that its normal accounting records utilize allocation factors for certain common expenses between business segments. CCT notes that these allocation factors were in use prior to the antidumping duty proceeding and have not been demonstrated as unreasonable by Petitioner Norit.

Department's Position:

The Department disagrees with Petitioner Norit regarding the allocation of CCT's reported ISE. Section 772(d)(1)(D) of the Act directs the Department to reduce CEP by the amount of "any selling expenses not deducted under subparagraph (A), (B), or (C)." Consistent with this section of the Act, it is our general practice to include a portion of U.S. interest expenses in the calculation of indirect selling expenses because these expenses have not been deducted from CEP elsewhere in our calculations.[151]

Additionally, the Department's regulations at 19 CFR 351.401(g)(1)-(3) state that: 1) we "may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided {we are} satisfied that the allocation method used does not cause inaccuracies or distortions;" 2) "any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to {the Department's} satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions;" and 3) "in determining the feasibility of transaction-specific reporting or whether an allocation is calculated on as specific a basis as is feasible, {we} will take into account the records maintained by the party in question in the ordinary course of its business, as well as such factors as the normal accounting practices in the country and industry in question and the number of sales made by the party during the period of investigation or review."

After examining the information on the record with respect to the expenses at issue, we have concluded that they were appropriately excluded from the calculation of CCT's ISE because they are G&A expenses associated with CCT's U.S. further-manufacturing operations, U.S. manufacturing expenses and third-country manufacturing expenses, rather than expenses incurred to sell subject merchandise. See CCT's Supplemental Questionnaire Response dated June 17, 2009, at Exhibit C-53. As to whether the amount of the excluded expenses was appropriately calculated, we find no reason to question CCT's allocation methodology because it employed the same methodology to allocate these expenses to its manufacturing operations as CCT itself uses in the ordinary course of business. See CCT's Questionnaire Response dated June 17, 2009. Further, given that this ratio is used in CCT's normal books and records and the underlying expenses are general in nature, we find that the allocation was calculated on as specific a basis as is feasible. As a result, we have determined that the allocation method does not cause inaccuracies or distortions and we have continued to accept CCT's calculation for purposes of the final results.

[151] See, e.g., Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 40167 (August 11, 2009) and accompanying Issues and Decision Memorandum at Comment 4; Stainless Steel Sheet and Strip From the Republic of Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 64950 (December 17, 2001) and accompanying Issues and Decision Memorandum at Comment 1; and Stainless Steel Plate in Coils From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 66 FR 64107 (December 11, 2001) and accompanying Issues and Decision Memorandum at Comment 14.

c. Treatment of Factor Data for Labor, Electricity, and Water

Petitioner Norit argues that, if the Department does not rely on total AFA for CCT, then it should used revised data for the final results that exclude carbon fines from the production quantity (denominator) reported in its responses. Petitioner Norit provides a breakdown of CCT's reported quantity of finished goods production, byproduct production and total production during the POR. See Petitioner Norit's Case Brief dated September 15, 2009, at 25. Petitioner Norit claims that the labor, electricity and water FOPs were reported by dividing consumption of those inputs by the total production quantity. Petitioner Norit also notes that CCT reported that it recycled byproduct carbon fines back into production. Petitioner Norit then noted that, following the Department's requests to explain how recycled fines were accounted for in CCT's FOP reporting, CCT revised its denominator by removing the quantity of carbon fines reintroduced into production during the POR. Petitioner Norit argues that carbon fines reintroduced into production should not be included in the total production quantity used to calculate FOPs because the recycled carbon fines do not represent finished output that was sold. Accordingly, Petitioner Norit argues, the Department ought to use CCT's revised direct labor, warehouse labor, electricity, and water input factors for the final results.

In rebuttal, CCT argues that the Department accepted CCT's inclusion of carbon fines from the production denominator in the Preliminary Results to calculate electricity, water, and labor FOPs. CCT argues that, contrary to Petitioner Norit's assertion that carbon fines are semi-finished product and do not represent finished output that was sold, the fact that carbon fines are a semi-finished product in the manufacturing process and reused in production does not mean it ought to be excluded from the production denominator. CCT also notes that Petitioner Norit has not cited to any case precedent where the Department has opined in favor of Petitioner Norit's proposition here.

Department's Position:

The Department disagrees with Petitioner Norit with respect to the proper calculation of consumption of water, labor, and electricity vis-à-vis a production quantity (denominator) that includes consumption of recycled carbon fines. The Department has, in the past, stated that fines should be included in the calculation of the production quantity.[152] Moreover, we have stated that "CCT's activated carbon powder and CCT's fines, floating fines, and dust are considered merchandise within the scope of this investigation because all of these materials are steam activated carbon." See Activated Carbon LTFV at Comments 5 and 23. Thus, as we stated in Silicon Metal from Russia, the fines are properly included in the production denominator where the fines are considered in-scope products. Furthermore, as we stated in Silicomanganese from the PRC, we found that "excluding fines from the production quantity used to calculate the reported factors would overstate the factors of production, because: silicomanganese fines are the same chemistry as the parent alloy; the scope of that review included all compositions, forms and

[152] See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003) and accompanying Issues and Decision Memorandum at Comment 11 ("Silicon Metal from Russia") (where we stated that "{b}oth Russian producers' production of silicon metal fines fall within the scope of this investigation, have the same chemical properties of silicon metal sold in the U.S. market, and are sold as finished products.").

sizes of silicomanganese, including fines…"[153] In accordance with the Department's practice, because carbon fines are within the scope, we are including fines in the total production quantity. Thus, we have not recalculated the energy, labor, and water FOPs, as suggested by Petitioner Norit, for the final results.

d. Treatment of Freight for Tolling Operations

Petitioner Norit argues that the Department should account for steel container return freight for the final results. Contrary to CCT's claim, Petitioner Norit argues that the distance FOP incurred to return steel drums to Datong Carbon ("DCC") is not factory overhead cost. Petitioner Norit contends that the steel drums are used to transport the pressroom product to the toll-processors and, thus, the return trip for the steel drums to DCC for refilling must be accounted for. Petitioner Norit argues that the return freight cost for the steel drums is the same as the distance factors for transporting raw material to the factory. Petitioner Norit argues that, because CCT failed to report return freight distances for the reported factors, for the final results, the Department should double the distance factors that CCT reported for transporting the material from DCC to the toll-processors.

In rebuttal, CCT argues that it has properly treated freight costs associated with transporting empty steel drums between the toll-processors and CCT as overhead expenses. CCT contends that the Department should reject Petitioner Norit's argument that the Department ought to account for the return freight of empty drums as an FOP. CCT argues that the freight expense is negligible because of the distances traveled do not exceed 18 kilometers. CCT also notes that Petitioner Norit has not contested the treatment of the return freight of empty drums as overhead expenses. CCT argues that any freight associated with the steel drums is captured in the overhead financial ratios applied to CCT's reported materials, labor, and energy. CCT notes that reporting the return freight would amount to double-counting. Lastly, CCT argues that the return freight of the steel drums is not related to the transportation of material inputs because the drums are empty, thus there is no basis for adding a freight adjustment to the reported FOPs.

Department's Position:

The Department disagrees with Petitioner Norit regarding the return freight expense of the steel drums used for pressroom product deliveries from the tollers back to DCC. Petitioner Norit has not provided any evidence on the record to suggest the addition of return trip freight expenses to the pressroom product freight expense is appropriate or required. The Department's practice in valuing domestic freight for material purchases has been based on the delivered price of those purchases.

Consistent with our practice, in the Preliminary Results, we stated that:

> {a}s appropriate, the Department adjusted input prices by including freight costs to render them **delivered prices**. Specifically, the Department added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance **from the domestic supplier to the factory** or the distance from the

[153] See Silicomanganese From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000) and accompanying Issues and Decision Memorandum at Comment 2 ("Silicomanganese from the PRC").

> nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in Sigma Corp. v. United States, 117 F. 3d 1401, 1408 (Fed. Cir. 1997).[154]

Moreover, as we did not value return freight of empty steel drums in the Activated Carbon LTFV, and the circumstance of pressroom product transfers in this review appear to be the same as in the underlying investigation, with no record evidence to suggest otherwise, we will not, for the final results, value the return freight of empty drums for pressroom product transfers from the tollers to DCC.

Comment 6: Freight Expense Calculation

CCT argues that, in the Preliminary Results, the Department failed to apply the reported weights and densities of packing materials in calculating the freight costs for packing materials.[155] Specifically, CCT contends that the Department should account for packing material densities according to the suggested changes in CCT's Case Brief dated September 14, 2009 at page 8. The change would affect lines 921 through 924 in the margin calculation program.

No other interested party commented on this issue.

Department's Position:

We agree with CCT that the Department did not properly convert the freight expense associated with the packing material inputs. As the surrogate value for inland truck freight is on a per kilogram per kilometer rate, it was necessary to convert the packing inputs before applying the truck freight. The Department has now converted the units of measure for the packing inputs so that the freight expense is properly applied. For further details, see CCT AR1 Final Analysis Memo.

Comment 7: Surrogate Margin for Further Manufactured Sales

CCT argues that the Department should revise the surrogate margin calculation applied in the Preliminary Results to CCC's further manufactured sales in the United States, which were excused under the Special Rule.[156] CCT argues that, although it supports the Department's preliminary decision to apply the weighted-average margin from CCT's other U.S. sales to the quantity of further-manufactured sales, the method used to calculate the surrogate margin was incorrect. Specifically, CCT contends that, in the Preliminary Results, the Department inflated a

[154] See Preliminary Results, 74 FR at 21327 (emphasis added); see also Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative and New Shipper Reviews, 71 FR 59432 (October 10, 2006) unchanged in final results Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007).

[155] CCT notes that the same error was made in the LTFV, and was corrected for the final determination. See Activated Carbon LTFV.

[156] CCT cites to section 772(e) of the Act and "Memorandum to James C. Doyle, Director, Office 9, through Catherine Bertrand, Program Manager, Office 9, from Irene Gorelik, Senior Analyst, Office 9, Re; Special Rule for Merchandise with Value Added after Importation," dated April 30, 2009 ("Special Rule Memo").

"surrogate" margin applied to the excluded further-manufactured sales quantity and value by applying the dumping margin calculated for CCT's U.S. sales. CCT claims that this inflation of a "surrogate" margin for further-manufactured sales occurred by applying a margin percentage of net prices to the margin percentage of average gross prices of the further-manufactured sales, which is a departure from the methodology applied in the underlying investigation. CCT notes that the CIT has, in the past, required for the Department to recalculate margins where similar methodology was used.[157] CCT argues that, to correct this allegedly unintended error, the Department should adjust the gross price of the U.S. further-manufactured sales to a net basis before applying the surrogate margin to those sales. CCT claims that this can be accomplished in two ways, in that: 1) the Department can adjust the gross price to a net price basis using a weighted-average ratio between gross price and net price for the other U.S. sales, or 2) the Department could deduct the reported further-manufactured expenses, which have already been submitted on the record of the review. CCT notes that it has, for the Department's convenience, performed the necessary calculation to correct the error. See CCT's Case Brief dated September 14, 2009, at 14-15 and Exhibits 1 and 2.

In rebuttal, Petitioner Norit argues that, contrary to CCT's claim that the Department permitted the exclusion of submitting further-manufactured sales data, it is inappropriate for CCT to request that the Department calculate a surrogate margin for further manufactured sales based on the piecemeal data submitted by CCT. Petitioner Norit argues that the Department should not permit CCT to exclude further manufactured sales under the Special Rule only to claim that the Department should use the limited data on the record to calculate a surrogate margin using the methods suggested by CCT. Petitioner Norit contends that the record evidence shows the relative differences between CCT's CEP sales and CCC's further manufactured sales and that the Department ought to continue applying the surrogate dumping margins on CCT's non-value added sales to the gross price of the value-added sales for the final results. Additionally, Petitioner Norit argues that, with respect to the recommendations provided by CCT, there is no basis for the Department to accept CCT's claim that expense ratios for the value-added sales are the same as expense ratios for the non-value added sales.

Petitioner Norit claims that, upon review and comparison of the information provided by CCT as support for exclusion under the Special Rule and CCT's case brief, the record shows that CCT did not actually qualify for the Special Rule exclusion from reporting further manufactured sales. See Petitioner Norit's Rebuttal Brief dated September 24, 2009, at 10-12. Consequently, Petitioner Norit argues that the Department ought to apply an AFA surrogate margin to the value-added sales on the basis that CCT's sales do not meet the special rule threshold defined in section 351.402(c)(2) of the Department's regulations.[158] Further, Petitioner Norit notes that, while CCT cites to Acciai 2001 to support its claim for using net prices for value-added sales, CCT failed to note that the expenses on the record of that proceeding were verified by the Department, unlike here, where none of CCT's information has been verified. Petitioner Norit

[157] CCT cites to Acciai Speciali Terni S.p.A. v. United States, 142 F. Supp. 2d 969 (CIT 2001) ("Acciai 2001").

[158] Petitioner Norit cites to Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 66 FR 36551 (July 12, 2001) and accompanying Issues and Decision Memorandum at Comment 28; Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Brazil, 70 FR 28271 (May 17, 2005) and accompanying Issues and Decision Memorandum at Comment 5.

argues that the correct methodology is not as CCT suggests but to apply a surrogate margin from the non-value added sales to the value-added sales on a product-code specific basis. Petitioner Norit suggests that the Department calculate the weighted-average margin on the non-value added sales and then apply the product-code specific weighted average margins to the gross unit prices and quantities of the value-added sales. Petitioner Norit contends that by utilizing this methodology, the Department should apply the higher of the product-code specific margins or the overall weighted-average margin on a product-code (for each product code) to prevent CCT from benefitting from its alleged failure to provide complete value-added data.

Department's Position:

We agree, in part, with CCT regarding the surrogate margin applied to CCC's U.S. value-added sales. Furthermore, we disagree with Petitioner Norit's allegation that CCT's arguments in its case brief call into question the veracity of CCT's reported value-added data for purposes of the special rule exclusion requirements. We find that the net-price to gross-price comparison in CCT's case brief dated September 14, 2009, is not sufficient evidence to reverse our preliminary determination to exclude further manufactured sales or apply an adverse inference to the value-added sales.

As we stated at the Preliminary Results, we found that "the information that CCT provided regarding its further-manufactured sales to be a reasonable basis for measuring whether the value added difference meets the threshold required by the Department's regulations. As contemplated by the regulations, CCT compared the net transfer price for the activated carbon input with the net resale price of the further processed product."[159]

Section 772(e) of the Act states that for purposes of determining CEP for further manufacturing purposes the following shall be used: (1) the price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person. If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administering authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed CEP may be determined on any other reasonable basis.

Section 351.402(c)(3) of the Department's regulations states that "[f]or purposes of determining dumping margins under paragraphs (1) and (2) of section 772(e) of the Act, the Secretary may use the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons." The weighted-average dumping margins referenced in section 351.402(c)(3) of the Department's regulations are in fact calculated based on the prices referred to in section 772(e) of the Act. In other words, in order to determine weighted-average margins under paragraphs (1) and (2) of section 772(e), the Department must first begin with the price paid by an unaffiliated party. And, as is the Department's practice, once the

[159] See "Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Irene Gorelik, Senior Case Analyst, Office 9: Special Rule for Merchandise with Value Added after Importation for the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China," dated April 30, 2009 ("Special Rule Memo").

weighted-average dumping margin is calculated based upon prices paid, the resulting margin is applied as the surrogate margin to the transactions to which the special rule applied.[160]

In the Preliminary Results, we stated that

> for CCT, the Department preliminarily determines that the remaining quantity of sales of identical or other subject merchandise to unaffiliated persons are sufficient to provide a reasonable basis for comparison and that the use of these sales is appropriate as a basis for calculating margins of dumping on the value-added merchandise.

See Preliminary Results, 74 FR at 21326.

Further, we stated that "for purposes of these preliminary results, the Department has applied the weighted-average margin from CCT's other U.S. sales to the quantity of U.S. further manufactured sales." See id. Upon review of our past practice in applying the special rule exclusion to the margin calculation, we determine that the SAS programming language used to apply the special rule in the Preliminary Results was incorrect. In the Special Rule Memo, we found that CCT has a substantial number of non-further-manufactured U.S. sales of subject merchandise which provide a reasonable basis for comparison, which would not lead to distortive results. See Special Rule Memo at 8.

We agree with CCT that the Department improperly applied a weighted-average margin to the value-added sales. In the Preliminary Results, we excused CCT from reporting its U.S. re-sales of subject merchandise further processed by CCC in the United States.See Preliminary Results, 74 FR at 21326. We further stated that "for purposes of these preliminary results, the Department has applied the weighted-average margin from CCT's other U.S. sales to the quantity of U.S. further manufactured sales." See id. However, our mathematical application of this determination in the Preliminary Results is not consistent with our practice. Thus, CCT's argument citing to Acciai 2001 is irrelevant because we are correcting the margin program for the final results.

Therefore, for the final results, and pursuant to the Department's statute, regulations, past practice[161] and the Special Rule Memo, we will correct the programming language to use the margin calculated on sales to unaffiliated parties as the proxy margin for the sales subject to the special rule. Consequently, we determine that CCT's argument that the Department ought to apply a surrogate margin to the value-added sales net of expenses is moot because, as stated above, we are correcting the SAS programming language for the final results.

Comment 8: Importer-Specific Assessment Rate

[160] See, e.g., Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review, 67 FR 6488 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 17 ("Brazil Silicon Metal").

[161] See, e.g., Brazil Silicon Metal.

CCT argues that the Department's calculation of an importer-specific assessment rate for one of the importers[162] ("Importer X") did not account for returned product. Specifically, CCT argues that, to avoid over-collecting antidumping duties from Importer X, the Department must, for the final results, adjust the margin calculation program to reflect the quantity and entered value of material that was cancelled and returned. CCT argues that the appropriate method to adjust for the returned merchandise is to divide the total USD value of dumped goods calculated for Importer X by the total entered value for the original imported quantity for Importer X, which included the returned merchandise. See CCT's Case Brief dated September 14, 2009, at page 18. CCT claims that the Department has used this methodology in another case.[163]

In rebuttal, Petitioner Norit argues that, although it does not oppose CCT's request to correct the importer-specific assessment rate for Importer X, the Department must ensure that the entry is subject to payment of antidumping duties based on CCT's original sale to Importer X. Petitioner Norit notes that section 752 of the Act requires the Department to determine a dumping margin based on the normal value and export price of each entry of subject merchandise.

Department's Position:

The Department agrees with CCT regarding our calculation of importer-specific assessment rates in the margin program. With respect to assessment rates, section 351.212(b)(1) of the Department's regulations states that the Department normally "will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes." See 19 CFR 351.212(b)(1). See also Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009) and accompanying Issues and Decision Memorandum at Comment 7.

In accordance with our regulation, the Department has a longstanding practice of calculating an importer-specific ad valorem duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. See, e.g., Color Picture Tubes From Japan; Final Results of Antidumping Administrative Review, 62 FR 34201, 34211 (June 25, 1997); Antifriction Bearings (Other Than Tapered Roller Bearings) From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 61 FR 2081, 2083 (Jan. 15, 1997); FAG Kugelfischer Georg Schafer KGaA v. United States, 19 CIT 1177 (1995), aff'd 86 F. 3d 1179 (Fed. Cir. 1996) ("FAG"). The Department has found that this methodology yields the best representation of what the dumping margins on sales of merchandise entered are, because in most cases respondents are unable to link specific entries to specific sales. The Department's practice has been affirmed in FAG. In that case, the plaintiff challenged the Department's assessment rate methodology of dividing the calculated antidumping duties by the entered value of the sales used to calculate those duties arguing, in part, that the Department should have used the actual entered value of entries during the POR. FAG, 19 CIT at 1178. The CIT held that the Department's method was "more

[162] The name of the importer is business proprietary information.

[163] CCT cites to Notice of Final Results of Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip from Mexico, 67 FR 6490 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 15 ("Sheet and Strip from Mexico").

accurate" even though "Commerce was aware of FAG's data on the record pertaining to total sales and actual entered values." Id. at 1181.

In the Preliminary Results, the Department used the variable "QTYU" as the quantity variable throughout the margin calculation program, which CCT reported was net of returns, as requested by the Department. See CCT's Questionnaire Response dated January 7, 2009 at 15.[164] The importer-specific assessment rate calculation in the margin program accounted for the total value of dumping duties divided by the entered value, which is expressed as the total quantity of entered merchandise by importer. In this case, the total quantity of entered merchandise, by importer, was drawn from the variable "QTYU" which, as reported, is net of returns. CCT argues that in Sheet and Strip from Mexico, the Department continued to calculate importer-specific assessment rates in accordance with its practice but also accounted for returned merchandise that was re-exported to a third country in the denominator of the assessment calculation. See Sheet and Strip from Mexico at Comment 15, (where we stated that "we should include the entered value of merchandise sold to unaffiliated parties outside the United States in the denominator used to determine the assessment rate in order to facilitate the U.S. Customs Service's collection of antidumping duties on subject merchandise.").

For the final results, we will continue to calculate importer-specific assessment rates pursuant to our regulation and practice, dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes. Because CCT has reported that some quantities of subject merchandise sold to and entered by Importer X were later returned to CCC and re-exported to a third country[165], and the record contains no evidence to the contrary, we shall include the original entered quantity, defined as "OQTYU" in the denominator of the importer-specific assessment rate calculation for Importer X. However, for all future reviews, the Department will require documentary evidence showing any such re-exportation or re-sale of returned merchandise to a third country for purposes of importer-assessment rate calculation. For further details, see CCT AR1 Final Analysis Memo.

Comment 9: Ministerial Error for Units of Measure Conversions

a. PE Film

CCT argues that the Department made certain errors in converting units of measurement for the FOP vis-à-vis the units of measure for the surrogate values of those FOPs. Specifically, for PE wrapping film and packing plastic wrapping film, the WTA data source is HTS number 3920.10.12: "Plates Sheets Films Foil & Strip Of Poly," which is reported as Rupees per kilogram. CCT argues that, because those two FOPs are reported on a meter basis, the Department attempted to convert the source value from Rupees per kilogram to Rupees per meter based on CCT's reported ratio of 80 meters per kilogram. CCT contends that the Department incorrectly multiplied the source unit of measure by 80 rather than dividing by 80 to convert the units to Rupees per meter for PE wrapping film. However, CCT argues that, for packing plastic wrapping film, which is reported in kilograms, not meters, the Department must revert back to the Rupees per kilogram unit of measure, as follows:

[164] However, CCT also provided a revised sales listing which included variable fields representing original invoice quantities ("OQTYU") and returned merchandise quantities ("AQTYU"), respectively. See id.

[165] See CCT's Questionnaire Response dated October 8, 2008, at 49-50.

(PLASTIC_WRAPFILM_QTY * (80 * PEFILMSV_USD + PLASFILMFT)).

No other interested party commented on this issue.

Department's Position:

The Department agrees with CCT with respect to the unit of measure conversion for PE film in the margin program calculation string. Therefore, pursuant to section 735(e) of the Act, we have corrected this ministerial error for the final results. For further details, see CCT AR1 Final Analysis Memo.

b. Plastic Strap/Packing String

CCT argues that the Department made errors in converting units of measurement for the FOP vis-à-vis the units of measure for the surrogate values of those FOPs. CCT argues that the Department used a single surrogate value for two different FOPs in the Preliminary Results. By converting the units of measure of the surrogate value source from Rupees per kilogram to Rupees per meter, the Department multiplied the surrogate value by 0.4 and then by 2.5 to obtain the value in Rupees per meter. CCT contends that this conversion is unclear as the record shows that the proper conversion factor that it reported is 8.3 grams/meter. See CCT's Supplemental Response dated July 31, 2009 at Exhibit 1, page 3. CCT contends that, to correct this ministerial error, the Department should use the reported conversion factor of 8.3 grams/meter as follows:

(198.466 Rs/kg) * (0.0083 kg/meter) = 1.64727 Rs/meter.

No other interested party commented on this issue.

Department's Position:

The Department agrees with CCT with respect to the unit of measure conversion for plastic strap/packing string in the margin program calculation string. Therefore, pursuant to section 735(e) of the Act, we have corrected this ministerial error for the final results. For further details, see CCT AR1 Final Analysis Memo.

c. Plastic Rope

CCT argues that the Department made errors in converting units of measurement for the FOP vis-à-vis the units of measure for the surrogate values of those FOPs. CCT claims that the Department incorrectly converted the source value for plastic rope from Rupees per kilogram to Rupees per piece. Specifically, CCT posits that the Department multiplied the source value by 0.4 and then by 2.5 to obtain a unit of measure in Rupees per meter. CCT contends that the correct conversion factor of 8.3 grams per meter is reported in its Supplemental Response dated July 31, 2009, at Exhibit 1, page 8. CCT contends that, to correct this ministerial error, the Department should use the reported conversion factor of 8.3 grams/meter as follows:

(198.466 Rs/kg) * (0.0083 kg/meter) * (0.40 meters/pieces) = 0.65891.

No other interested party commented on this issue.

Department's Position:

The Department agrees with CCT with respect to the unit of measure conversion for plastic rope in the margin program calculation string. Therefore, pursuant to section 735(e) of the Act, we have corrected this ministerial error for the final results. For further details, see CCT AR1 Final Analysis Memo.

Jacobi

Comment 10: Application of Adverse Facts Available

a. Application of Total AFA for Jacobi and NXHH

Petitioners argue that Jacobi and its unaffiliated producer, NXHH, failed to cooperate to the best of their ability by providing FOP data based on standards and allocations rather than product-specific information as requested by the Department. Petitioners contend that there is information on the record, resulting from the Department's verification of Jacobi and NXHH, which reveals that Jacobi and NXHH maintained information that would have enabled them to report FOP data on a CONNUM-specific basis. Petitioners state that Jacobi and NXHH did not inform the Department prior to verification that they produced and maintained data by factory, month, workshop, stage of production, and even by furnace and shift, despite the fact that this data would yield FOP data that were production and product-specific, and thus more accurate, than the data placed on the record by Jacobi and NXHH. Petitioners argue that this conflicts with the requirements repeatedly upheld by the courts that the respondent bears the burden of creating a complete and accurate administrative record[166] and that the use of general allocations, where product-specific usage rates were available, results in a less accurate margin calculation.[167]

Petitioners also contend that, as Jacobi and NXHH never informed the Department of NXHH's additional and more detailed production records, the Department could not have known of the omission until it was discovered at verification, and thus is not obliged to provide an opportunity to remedy such a deficiency found at verification under sections 782(d) and (e) of the Act.[168] Furthermore, Petitioners assert that the Department's standard does not permit the substitution or recalculation of the response when significant errors are found in the verification process.[169] Additionally, Petitioners maintain that, although the Department notified parties in the

[166] Petitioners cite to China Steel Corp. v. United States, 306 F. Supp. 2d 1291, 1306 (CIT 2004); Nippon Steel; NSK 2007.

[167] Petitioners cite to Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

[168] Petitioners cite to Reiner Brach GmbH & Co. KG v. United States, 26, CIT 549, 559-64, 206 F. Supp. 2d 1323, 1332-38 (2002); PRC Nails at Comment 20 E.

[169] Petitioners cite to Tianjin Machinery Import & Export Corp. v. United States, 353 F. Supp. 2d 1294, 1304-05 (CIT 2004); Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review, 56 FR 65228 (December 16, 1991) at Comment 46; Final Determination of Sales at Less Than Fair Value: Nitromethane From the People's Republic of China, 59 FR 14834, 14835 (March 30, 1994).

Preliminary Results that future respondents would need to report FOPs on a CONNUM-specific basis, this notification was made before the Department conducted verification and discovered that Jacobi and NXHH actually maintained records that would have enabled them to report FOP data on a CONNUM-specific basis in the current proceeding. Petitioners argue that, given Jacobi and NXHH's failure to inform the Department of the additional and more detailed production records, the Department should conclude that Jacobi and NXHH intentionally and repeatedly failed to provide FOP data that are accurate, specific and internally consistent, that reflects the companies' true consumption of input materials. Petitioners argue that Jacobi and NXHH's failure to report FOP data reflecting the inputs actually consumed in the production of subject merchandise amounts to the same type of omission that occurred in Threaded Rod,[170] where the Department resorted to total AFA, and that Jacobi and NXHH's failure to report CONNUM-specific FOP data affects all components of NV. Additionally, Petitioners contend that the Department relied on total AFA for respondent Jilin Bright Future Industry and Commerce Company, Ltd. and Jilin Bright Future Chemicals Co., Ltd. in Activated Carbon LTFV and should apply the same rationale towards Jacobi and NXHH.[171] Petitioners urge that, consistent with sections 776 and 782 of the Act, the Department should find that Jacobi and NXHH withheld information which impeded the review and apply total AFA to Jacobi and NXHH in the final results.[172]

In rebuttal, Jacobi argues that, both it and NXHH acted to the best of their ability in reporting FOPs and, therefore, should not be subject to AFA for willful non-compliance, pursuant to sections 776(a) and (b) of the Act. Jacobi argues that Petitioners' claim that NXHH should have used more detailed production records to report FOPs is unsubstantiated because to ensure the completeness required by the Department, it was necessary for NXHH to report FOPs based on the production records that flow into its accounting system and can be tied to NXHH's financial statements. Furthermore, Jacobi contends that Petitioners' allegation that NXHH failed to provide monthly, factory-specific, workshop-specific and stage of production-specific information is unfounded as the FOP data that NXHH provided was factory-specific and built up from monthly, workshop-specific data. Finally, Jacobi argues that the Department has made no finding that NXHH failed to cooperate or comply with a request for information and, therefore, should rely on NXHH's reported FOP data in the final results.

Department's Position:

The Department disagrees with Petitioners that it is appropriate to apply total AFA to Jacobi and NXHH due to alleged inconsistencies in NXHH's production documentation or alleged inaccuracies in Jacobi/NXHH's reported FOPs. Section 776(a)(2) of the Act states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or

[170] Petitioners cite to Threaded Rod at Comment 5. Petitioners also cite to Final Determination of Sales at Less than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China, 74 FR 2049, 2051-52 (January 14, 2009), and accompanying Issues and Decisions Memorandum at 3-8, 33-38 ("SDGE from China").

[171] Petitioners cite to Activated Carbon LTFV at 87-95.

[172] Petitioners cite to Nippon Steel; and Reiner Brach GmbH & Co KG v. United States, 26 CIT 549, 559-64, 206 F. Supp. 2d 1323, 1332-38 (2002); Steel Auth. of India, Ltd. v. United States, 25 CIT 482, 486-87, 149 F. Supp. 2d 921, 989-29 (2001); in arguing the Department may disregard submitted information and use total, as opposed to partial, facts available when the submitted information is deficient, even when respondent's data has been verified.

manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act of 1930, facts otherwise available in reaching the applicable determination.

If, after being notified by the Department of a deficiency, the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Furthermore, section 776(b) of the Act provides that the Department, in selecting from the facts otherwise available, may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See also SAA at 870. The Act provides, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record. See 776(b) of the Act.

Pursuant to section 776(b) of the Act, the Department may use information that is adverse to the interest of that party when the party fails to cooperate by not acting to the best of its ability in responding to the Department's request for information. See Nippon Steel, 337 F. 3d at 1382. Further, section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998) ("Semiconductors").

In this case, we find that the application of total AFA for Jacobi and NXHH is not appropriate. The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met, pursuant to section 776 of the Act. We find that the application of facts otherwise available is not warranted under section 776(a) of the Act because Jacobi and NXHH: (A) submitted the requested information by the submitted deadlines; (B) with the exception of the Activated Carbon Test Report and Ash Wash/Drying Test Report, provided its information in a timely manner and in the form or manner requested; (C) did not significantly impede this proceeding under the antidumping statute; and (D) reported U.S. sales and the majority of their FOPs were confirmed by the Department through verification.

We note that, while there were additional production records discovered during the Department's verification that Jacobi and NXHH should have used in reporting FOP consumption, Jacobi and NXHH were able to demonstrate that their books and records reconciled to their reported FOP data and the Department was able to complete a verification of the majority of normal value. Although Petitioner contends that Jacobi and NXHH seriously omitted production documentation that could have been used to report FOPs on a more specific basis, we note that

Jacobi and NXHH explained that they reported their FOP data in the most specific and accurate method as possible by utilizing the most detailed production records maintained in the normal course of business that reconcile with their audited financial statements.[173] Furthermore, the production records discovered by the Department during verification contained additional information for only two of the 15 reported product characteristics, those being Mesh Size and Iodine.[174] Therefore, although we note that Jacobi and NXHH should have reported these additional production documents prior to the Department's verification, we find that if it were possible to use these documents to report FOPs on a more specific basis it would affect only two of the 15 product characteristics. Therefore, we find that the circumstances here differ from those in Threaded Rod, (where the respondent was unable to tie its U.S. sales database to its accounting records), and those in SDGE from China, (where the respondent's missing information impacted the entire FOP dataset, and consequently). See Threaded Rod at Comment 5 and SDGE from China at Comments 1 and 3. Thus, it would be improper to apply total AFA to Jacobi and NXHH based on the rationale in those cases.

Petitioners argue that the Department's discovery during verification of the existence of additional production records demonstrates that Jacobi and NXHH deliberately withheld production documentation that could have been used to report FOP consumption on a more specific basis. However, the Department does not consider that its verification findings support the conclusion that Jacobi and NXHH attempted to mislead the Department by omitting these additional production documents from the record. Furthermore, we find that there is no record evidence that would clearly demonstrate how the information contained in these production reports would have enabled Jacobi and NXHH to report its FOP consumption on a more specific basis in the current review. Therefore, the Department cannot assume, contrary to the statements made by Jacobi and NXHH on the record, that these production records could have been used to report FOPs on a more specific basis or further tied to Jacobi and NXHH's financial statements. These findings do not support the application of total AFA to Jacobi and NXHH and differ significantly from the Department's AFA determinations in Activated Carbon LTFV (where, at verification, the Department discovered information that contradicted specific statements and data provided by respondents and the Department found that the failure to report the existence of this information was a deliberate, methodological choice rather than an oversight or some other error). See Activated Carbon LTFV at Comment 27.

Furthermore, we find that Jacobi and NXHH have not impeded this proceeding under the antidumping statute, as these companies have responded to our questions throughout the course of the administrative review. Moreover, the documentation and corresponding FOPs reported by Jacobi and NXHH were verifiable. Finally, we consider that Jacobi and NXHH have cooperated to the best of their ability in the current review. However, the Department will expect that Jacobi and NXHH will be able to report all FOP data on a CONNUM-specific basis using all product characteristics in subsequent reviews, as the Department considers that its documentation and data collection requirements should now be fully understood by Jacobi and NXHH.

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[173] See Jacobi's Supplemental Section D Submission for Jacobi/NXHH, submitted on April 8, 2009, ("Jacobi/NXHH Supplemental Section D"), at 7; see also Jacobi's Supplemental Questionnaire Response for Jacobi/NXHH, submitted on July 17, 2009, ("Jacobi/NXHH Supplemental Response dated July 17, 2009") at 1-2 and 11.

[174] See Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Julia Hancock, Senior Analyst, Office 9, re: Verification of the Sales and Factors Responses of Jacobi's Supplier, Ningxia Huahui Activated Carbon Co., Ltd., in the 1st Administrative Review of Certain Activated Carbon from the People's Republic of China, dated August 31, 2009, ("NXHH Verification Report"), at 9-11 and VE-18.

b. Application of Total AFA for Jacobi and NXGH

Petitioners argue that Jacobi and its unaffiliated producer, NXGH, failed to cooperate to the best of their ability because they failed to provide complete and accurate responses to the Department's questions by the relevant deadlines and in the form and manner requested. Specifically, Petitioners argue that despite the Department's instructions to calculate per-unit factor amounts based on inputs as recorded under Jacobi's normal accounting system, NXGH used a "hybrid methodology" created for the purpose of this review. Petitioners assert that neither Jacobi nor NXGH contacted the Department before preparing the FOP response, as instructed by the Department. Additionally, Petitioners assert that neither company clearly disclosed the inconsistent FOP reporting methodology to the Department. Petitioners note that, because Jacobi and NXGH participated in the LTFV, they should have been aware of the necessity of maintaining records of all of their FOPs, and failed to do so. Specifically, Petitioners cite Jacobi and NXGH's failure to distinguish between carbonized materials and coal that was carbonized internally. Petitioners argue that Jacobi and NXGH admitted at verification that they applied standard coefficients to first-stage, activation factors of production, but did not apply coefficients to the second-stage carbonization factors of production. Furthermore, Petitioners assert that Jacobi and NXGH never acknowledged that they had more accurate production records, and could have produced a more accurate and less distortive allocation. Therefore, Petitioners contend that Jacobi and NXGH have failed to comply with the Department's instructions and thus, have significantly impeded the Department's conduct of this review.

Petitioners argue that the Department discovered the hybrid reporting methodology used by Jacobi and NXGH at verification. Citing the Department's verification report, Petitioners assert that Jacobi and NXGH used a combination of actual and standard usage rates to create the co-efficient rate used in reporting FOP data, but were unable to explain the lack of adjustments used.[175] In addition to the lack of explanation, Petitioners argue that Jacobi and NXGH were unable to provide documentation for the standard or actual cost ratios, and neither were reconciled or verified. Additionally, Petitioners point out that counsel for Jacobi and NXGH was responsible for completing the calculation of the reported FOP data. Petitioners cite the Department's Issues and Decision Memorandum from the original investigation to support their assertion that Jacobi and NXGH should have been aware of the correct methodology for reporting FOPs and documenting usage ratios.[176] Petitioners assert that because the respondent bears the burden of creating a complete and accurate record and Jacobi and NXGH withheld necessary information, the Department should find that Jacobi and NXGH significantly impeded this review.[177] Additionally, Petitioners assert that the Department is not obligated to provide Jacobi and NXGH an additional opportunity to correct their responses because they did not

[175] See Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Julia Hancock, Senior Analyst, Office 9, re: Verification of the Sales and Factors Response of Jacobi's Supplier, Ningxia Guanghua Activated Carbon Co., Ltd., in the 1st Administrative Review of Certain Activated Carbon from the People's Republic of China, dated September 2, 2009, ("NXGH Verification Report"), at 13-14.

[176] See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007) and accompanying Issues and Decisions Memorandum at 22.

[177] See Nippon Steel; see also section 776(a)(2)(A), (B), (C) of the Act.

inform the Department that they had used both actual and standard usage ratios, and therefore the Department could not have known of the omission until verification.[178] Additionally, Petitioners argue that although the Department put respondents on notice in the Preliminary Results that they would be expected to report FOP data on a CONNUM- specific basis in future segments of this proceeding, the warning was made before the Department discovered that Jacobi and NXGH actually maintained the records necessary to do so, and therefore the previous warning should be disregarded.

In rebuttal, Jacobi argues that it reported consumption using the most precise information available by using the actual consumption ratio provided by NXGH. Jacobi also argues that the reporting methodology was on the record of the proceeding prior to verification and that it was not attempting to manipulate the Department but was attempting to provide the most accurate information available.[179] Furthermore, Jacobi states that it was not attempting to manipulate the Department by not incorporating a standard yield loss into the carbonization stage of production, and that using a standard yield coefficient would not have led to different or better results. Jacobi argues that there is no reason to adjust NXGH's FOPs and that the suggestion that Jacobi willfully impeded the review by using an actual consumption ratio in one stage of one supplier's FOP reporting is absurd and Petitioners' request should be rejected by the Department. Finally, Jacobi argues that Petitioners' claim that NXGH failed to provide documentation related to standard or actual cost ratios is based on a factory worker's inability to explain the standard yield calculation during the plant tour. Furthermore, Jacobi argues that NXGH responded to every request by the Department for supporting documentation and placed the company on the record of the proceeding, and that the documents were verified.[180] Jacobi requests that the Department recognize that it was fully cooperative and disregard the Petitioners' allegations.

Department's Position:

The Department disagrees with Petitioners that it is appropriate to apply total AFA to Jacobi and NXGH due to alleged inconsistencies in their production documentation or alleged inaccuracies in Jacobi and NXGH's reported FOPs. Section 776(a)(2) of the Act states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act of 1930, facts otherwise available in reaching the applicable determination.

If, after being notified by the Department of a deficiency, the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the

[178] See Reiner Brach GmbH & Co. KG v. United States, 26 CIT 549, 559-64, 206 F. Supp. 2d 1323, 1332-38 (2002); see also PRC Nails at 53.

[179] Jacobi cites to its Questionnaire Response dated July 8, 2009, ("Jacobi/NXGH Supplemental Response dated July 8, 2009"), at Exhibit SD-03.

[180] Jacobi cites to NXGH Verification Report at 15 and Exhibit VE-5; and the Jacobi/NXGH Supplemental Response dated July 8, 2009, at 7 and SD-03.

information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Furthermore, section 776(b) of the Act provides that the Department, in selecting from the facts otherwise available, may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See also SAA at 870. The Act provides, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record. See 776(b) of the Act.

Pursuant to section 776(b) of the Act, the Department may use information that is adverse to the interest of that party when the party fails to cooperate by not acting to the best of its ability in responding to the Department's request for information. See Nippon Steel, 337 F. 3d at 1382. Further, section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See Semiconductors 63 FR at 8932.

In this case, we find that the application of total AFA for Jacobi and NXGH is not appropriate. The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met, pursuant to section 776 of the Act. We find that the application of facts otherwise available is not warranted under section 776(a) of the Act because Jacobi and NXGH: (A) submitted the requested information by the submitted deadlines; (B) with the exception of the Iodine Analysis Record, provided its information in a timely manner and in the form or manner requested; (C) did not significantly impede this proceeding under the antidumping statute; and (D) reported U.S. sales and the majority of their FOPs were confirmed by the Department through verification.

We note that, while there were additional production records discovered during the Department's verification that Jacobi and NXGH should have used in reporting FOP consumption, Jacobi and NXGH were able to demonstrate that their books and records reconciled to their reported FOP data and the Department was able to complete a verification of the majority of normal value. Although Petitioner contends that Jacobi and NXGH seriously omitted production documentation that could have been used to report FOPs on a more specific basis, we note that Jacobi and NXGH stated that they reported all FOP data in the most specific manner possible based on the production records maintained in their normal course of business for each stage of production.[181] Furthermore, the production records discovered by the Department during verification contained additional information for only one of the 15 reported product characteristics, that being Iodine.[182] Therefore, although we note that Jacobi and NXGH should have reported these additional production documents prior to the Department's verification, we

[181] See Jacobi/NXGH Supplemental Response dated July 8, 2009, at 2.

[182] See NXHH Verification Report, at 9-11 and VE-18.

find that if it were possible to use these documents to report FOPs on a more specific basis it would affect only one of the 15 product characteristics. Therefore, we find that the circumstances here differ from those in Threaded Rod, (where the respondent was unable to tie its U.S. sales database to its accounting records), and those in SDGE from China, (where the respondent's missing information impacted the entire FOP dataset, and consequently). See Threaded Rod at Comment 5 and SDGE from China at Comments 1 and 3. Thus, it would be improper to apply total AFA to Jacobi and NXGH based on the rationale in those cases.

Petitioners argue that the Department's discovery during verification of the existence of additional production records demonstrate that Jacobi and NXGH deliberately withheld production documentation that could have been used to report FOP consumption on a more specific basis. However, the Department does not consider that its verification findings support the conclusion that Jacobi and NXGH attempted to mislead the Department by omitting these additional production documents from the record. Furthermore, we find that there is no record evidence that would clearly demonstrate how the information contained in these production reports would have enabled Jacobi and NXGH to report its FOP consumption on a more specific basis in the current review. Therefore, the Department cannot assume, contrary to the statements made by Jacobi and NXGH on the record, that these production records could have been used to report FOPs on a more specific basis.

Petitioners also argue that the Department's verification findings revealed a hybrid methodology used by Jacobi and NXGH to report its FOP consumption data. However, this methodology was not discovered at verification, as claimed by Petitioners, rather it was reported, documented, and explained to the Department on several occasions by Jacobi and NXGH.[183] Furthermore, the Department was able to verify Jacobi and NXGH's actual consumption amounts for anthracite coal, coal tar, carbonized materials, and chemicals.[184] These findings do not support the application of total AFA to Jacobi and NXGH and differ significantly from the Department's AFA determinations in Activated Carbon LTFV (where, at verification, the Department discovered information that contradicted specific statements and data provided by respondents and the Department found that the failure to report the existence of this information was a deliberate, methodological choice rather than an oversight or some other error). See Activated Carbon LTFV at Comment 27.

Furthermore, we find that Jacobi and NXGH have not impeded this proceeding under the antidumping statute, as these companies have responded to our questions throughout the course of the administrative review. Moreover, the documentation and corresponding FOPs reported by Jacobi and NXGH were verifiable. Finally, we consider that Jacobi and NXGH have cooperated to the best of their ability in the current review. However, the Department will expect that Jacobi and NXGH will be able to report all FOP data on a CONNUM-specific basis using all product characteristics in subsequent reviews, as the Department considers that its documentation and data collection requirements should now be fully understood by Jacobi and NXGH.

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[183] See Jacobi Carbons Response to the Department's Section D Questionnaire for Ningxia Guanghua Activated Carbon Co., Ltd., submitted on October 24, 2008, ("Jacobi/NXGH Section D Response"), at D-2-10 and Exhibit D-2-D; see also Jacobi's Supplemental Section D Response for NXGH, submitted on April 8, 2009 ("Jacobi/NXGH Supplemental Section D Response"), at 14-15; see also Jacobi/NXGH Supplemental Response dated July 8, 2009, at 6-8 and Exhibit SD-03.

[184] See Jacobi/NXGH Verification Report, at 15-16.

c. Application of Partial Adverse Facts Available for Jacobi and NXHH

Petitioners argue that if the Department does not rely on total AFA for Jacobi and NXHH, then it should apply partial AFA by relying on the highest single reported quantity for each FOP for all products in calculating an antidumping margin for Jacobi, and using the highest single reported quantity for each FOP, across all supplier FOPs reported by Jacobi, for all products supplied by NXHH.

No other party commented on this issue.

Department's Position:

We disagree with Petitioner that the application of partial AFA is appropriate to Jacobi and NXHH due to alleged inconsistencies in production documentation or alleged inaccuracies in Jacobi and NXHH's reported FOPs. The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met. See section 776(a) of the Act, as discussed in Comment 10a. The Department finds that the application of facts otherwise available is not warranted under section 776(a) of the Act. In the Preliminary Results, the Department relied on Jacobi and NXHH's reported FOP information and we have not found sufficient justification to alter this in the final results.

As stated in Comment 10a above, we note that Jacobi and NXHH did not properly supply to the Department all the documents generated during production which should have been used when reporting Jacobi and NXHH's FOP consumption, however, Jacobi and NXHH were able to demonstrate that their books and records reconciled to the reported FOP data and the Department was able to complete a verification of the majority of the NV. Furthermore, we find that there is no record evidence that would clearly demonstrate how the information contained in the additional production reports would have enabled Jacobi and NXHH to report FOP consumption on a more specific basis. Additionally, Jacobi and NXHH explained their FOP reporting methodologies to the Department as being the most accurate method possible utilizing the production records that reconcile with their audited financial statements. Therefore, this does not demonstrate that Jacobi and NXHH did not act to the best of their ability to comply with the Department's requests for information. See sections 776(a) and (b) of the Act. Accordingly, we do not find that the application of partial AFA with respect to Jacobi and NXHH's reported FOPs is appropriate, and will include this data in the calculation of a margin for Jacobi in the final results.

d. Application of Partial Adverse Facts Available for Jacobi and NXGH

Petitioners argue that if the Department does not rely on total AFA for Jacobi and NXGH, then it should apply partial AFA by relying on the highest single reported quantity for each FOP for all products in calculating an antidumping margin for Jacobi, and using the highest single reported quantity for each FOP, across all supplier FOPs reported by Jacobi, for all products supplied by NXGH.

No other party commented on this issue.

Department's Position:

We disagree with Petitioner that the application of partial AFA is appropriate to Jacobi and NXGH due to alleged inconsistencies in its production documentation or alleged inaccuracies in Jacobi and NXGH's reported FOPs. The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met. See section 776(a) of the Act, as discussed in Comment 10b. The Department finds that the application of facts otherwise available is not warranted under section 776(a) of the Act. In the Preliminary Results, the Department relied on Jacobi/NXGH's reported FOP information and we have not found sufficient justification to alter this in the final results.

As stated in Comment 10b above, we note that Jacobi and NXGH did not properly supply to the Department all the documents generated during production which should have been used when reporting Jacobi and NXGH's FOP consumption, however, Jacobi and NXGH were able to demonstrate that their books and records reconciled to their reported FOP data and the Department was able to complete a verification of the majority of normal value. Furthermore, we find that there is no record evidence that would clearly demonstrate how the information contained in the additional production reports would have enabled Jacobi and NXGH to report FOP consumption on a more specific basis. Additionally, as stated in Comment 10b above, Jacobi and NXGH previously reported their methodology for reporting its FOP consumption data to the Department, and this was relied upon in the Preliminary Results and successfully verified. Therefore, this does not demonstrate that Jacobi and NXGH did not act to the best of their ability to comply with the Department's requests for information. See sections 776(a) and (b) of the Act. Accordingly, we do not find that the application of partial AFA with respect to Jacobi/NXGH's reported FOPs is appropriate, and will include this data in the calculation of a margin for Jacobi in the final results.

Comment 11: Facts Available for Jacobi and DTHB

Petitioners argue that Jacobi and DTHB incorrectly allocated the self-produced portion of its carbonized material ("CARBMAT") required per kilogram of output by not allocating its bituminous coal consumption by the total amount of CARBMAT required per kilogram of output. Petitioners contend that Jacobi and DTHB's methodology results in the under reporting of the amount of bituminous coal required to carbonize and then activate to obtain a kilogram of finished product. Petitioners assert that the Department must use facts available to correct this error to ensure that the proper amounts of total input consumption are calculated through all stages of production.

In rebuttal, Jacobi argues that Petitioners' assertions that the Department should apply FA to the reported CARBMAT for DTHB are baseless as the Department found that Jacobi properly calculated the FOPs for its suppliers in the Preliminary Results. Jacobi contends that there is no reason to depart from this finding in the final results. Furthermore, Jacobi reiterates that DTHB purchased a small amount of coal, rather than purchasing only carbonized material, and that its FOPs were reduced by the percentage of self-produced carbonized material versus purchased carbonized material. Jacobi argues that this adjustment was necessary to prevent NV being increased twofold, once with the carbonization FOP and once with the activation FOP.

Department's Position:

The Department agrees, in part, with Petitioners that Jacobi and DTHB have misapplied the percentage of self-produced CARBMAT. In the Preliminary Results, the Department relied on

Jacobi and DTHB's allocation of self-produced CARBMAT as reported. However, we have now determined that Jacobi and DTHB improperly applied the percentage of self-produced CARBMAT to the output yield ratio from the coal consumption in the carbonization stage, rather than to the amount of CARBMAT required per kilogram of finished product.[185] Furthermore, we find Jacobi's argument that its method of allocating self-produced CARBMAT was necessary to prevent NV from being increased twice to be inaccurate. The result of Jacobi and DTHB's improper allocation of the percentage of self-produced CARBMAT is that Jacobi and DTHB have under-reported their consumption of bituminous coal for their self-produced CARBMAT. Therefore, the Department will recalculate Jacobi and DTHB's percentage of self-produced CARBMAT to the amount of CARBMAT required per kilogram of output for the final results. We disagree with Petitioners' argument that, pursuant to section 776(a) of the Act, facts available ought to be applied to CARBMAT. Because the Department is able to recalculate the CARBMAT allocation with information that is available on the record, application of facts available to CARBMAT is unnecessary and inappropriate. For further details, see "Memorandum from Blaine Wiltse, Analyst, to Catherine Bertrand, Program Manager, re: Administrative Review of Certain Activated Carbon from the People's Republic of China: Analysis for the Final Results of Jacobi Carbons AB and its affiliates, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons, Inc.," dated November 3, 2009 ("Jacobi AR1 Final Analysis Memo").

Comment 12: Yield Loss Reporting by Jacobi and DTHB and DTFW

Petitioners argue that Jacobi misreported the consumption data for its suppliers DTHB and DTFW because the consumption data were decreased, rather than increased, after the acid washing stage. Petitioners assert that Jacobi removed material during processing yet reported more finished output than material inputs which was not possible. Petitioners assert that Jacobi/DTHB and Jacobi/DTFW erroneously reported the accounting of their yield loss ratios by multiplying, instead of dividing, by the less-than-one yield loss ratios. Petitioners argue that the Department should reject Jacobi's assertions that dividing the pre-wash volume by the less-than-one usage rate is inconsistent with multiplying usage rates at other production stages because these other usage rates were not less-than-one yield ratios (resulting from a calculation based on output volume/input volume), but rather reflected the opposite (a calculation based on input volume/output volume). Petitioners state that when yield loss is expressed as a factor greater-than-one then it is appropriate to multiply the yield loss by the output volume to determine total consumption. However, when yield loss is expressed as a factor less-than-one, Petitioners assert that it is necessary to divide the output volume by the yield loss to accurately determine total consumption. Furthermore, Petitioners argue that Jacobi's claim that the only usage ratio that can increase a factor is one where a supplier has added inputs is erroneous because processes that require the removal of unwanted materials and are expressed as the remainder amount/pre-processed amount, then division by that less-than-one usage factor must be done to derive the cumulative total input/total output factor.

Petitioners argue that the Department should use facts available to adjust Jacobi/DTHB and Jacobi/DTFW's yield loss methodology because the currently utilized methodology understates

[185] See Jacobi's Response for Datong Huibao Activated Carbon Co., Ltd., dated October 27, 2008, ("Jacobi/DTHB's 10/27/09 Response"), at D-4-9 and Exhibit D-4-D; see also Jacobi's Questionnaire Response for DTHB and DTFW, dated April 7, 2009, ("DTHB & DTFW's 4/7/09 Response"), at 10-11.

reported FOP consumption data in the acid wash stage. Petitioners urge the Department to either utilize the specific programming language provided by Petitioners to correct Jacobi's misreported FOPs or rely on total AFA for Jacobi.[186]

In rebuttal, Jacobi argues that the activation yield needs to be divided by the acid washing yield at the acid washing stage for DTHB and DTFW because to do otherwise would be inconsistent with the overall methodology of multiplying the usage rates for each stage of production. Jacobi argues that dividing the usage rate at the acid washing stage implies that there is more activated carbon after acid washing than before, which is inaccurate.

Department's Position:

The Department agrees with Petitioners that Jacobi/DTHB and Jacobi/DTFW have misapplied yield loss ratios in the acid washing stage. In the Preliminary Results, the Department relied on Jacobi/DTHB and Jacobi/DTFW's allocation of yield loss ratios in the acid washing stage as reported. However, we have now determined that, because Jacobi/DTHB and Jacobi/DTFW calculated the yield loss ratio in the acid wash stage by dividing output by input,[187] the corresponding acid wash stage FOPs should have been divided, rather than multiplied, by the resulting less-than-one yield loss ratio to determine FOP consumption. Jacobi argues that this method is inconsistent with multiplying usage ratios in other stages of production and will result in reporting more activated carbon after acid washing than before. However, we find this argument to be erroneous because in other stages of production Jacobi calculated its usage rates by dividing input by output resulting in a greater-than-one ratio. In those instances (i.e., where yield loss ratio is greater than one) it is appropriate to multiply the ratio by the FOP to determine consumption levels, but when the ratio is calculated by dividing output by input, resulting in a less-than-one ratio, then it is necessary to divide the FOP by the ratio to determine consumption levels.

The Department has determined that the result of this improperly applied yield loss ratio is that FOP consumption was decreased for Jacobi/DTHB and Jacobi/DTFW's products processed through the acid wash stage,[188] when in actuality these FOP consumption levels should have been increased due to the material loss through the acid wash stage.[189] Therefore, we find that Jacobi/DTHB and Jacobi/DTFW have under-reported the FOP consumption levels for products processed in the acid wash stage.

The Department will correct this error and properly determine Jacobi/DTHB and Jacobi/DTFW's FOP consumption for products subject to acid wash stage processing. To correct these errors, the Department will first divide Jacobi/DTHB's and Jacobi/DTFW's FOP consumption ratios by the appropriate less-than-one acid wash yield loss ratio to bring the FOP consumption ratio back to the level prior to Jacobi's misapplied yield loss ratio. Then the Department will divide these

[186] See Petitioners' Case Brief Addressing General Issues, Cherishment, and Jacobi, dated on September 15, 2009, at 58-61.

[187] See DTHB & DTFW's 4/7/09 Response, at 13; see also Jacobi/DTHB's 10/27/09 Response, at Exhibit D-4-E; see also Jacobi/Datong Forward Response dated October 27, 2008, at Exhibit D-5-G.

[188] See DTHB & DTFW's 4/7/09 Response, at Exhibits SD-01 and SD-08.

[189] See id., at 5 and 24.

figures again by the appropriate less-than-one yield loss ratio to determine the actual FOP consumption rates for Jacobi/DTHB and Jacobi/DTFW's products subject to acid wash processing. We disagree with Petitioners' argument that, pursuant to section 776(a) of the Act, facts available ought to be applied to the yield loss ratios. Because the Department is able to recalculate the yield loss ratios with information that is available on the record, application of facts available is unnecessary and inappropriate. For further details, see Jacobi AR1 Final Analysis Memo.

Comment 13: Ministerial Error for Domestic Brokerage and Handling

Jacobi argues that the Department erroneously deducted brokerage and handling in the calculation of the net price in the Preliminary Results because Jacobi did not incur any domestic brokerage and handling. Jacobi asserts that the Department should change the programming language for domestic movement expenses to read:

DCMOVEU = HMFREIGHT;.

No other interested party commented on this issue.

Department's Position:

The Department agrees with Jacobi that the Department made an error by deducting brokerage and handling in the calculation of the net price. Therefore, pursuant to section 735(e) of the Act, we have corrected this ministerial error for the final results. For further details, see Jacobi AR1 Final Analysis Memo.

Comment 14: Ministerial Error for Quantity Variable Used

Jacobi argues that the Department failed to deduct returned merchandise from the total quantity used to calculate Jacobi's margin in the Preliminary Results. Jacobi asserts that the Department should use the following programming language:

QTYU = (QTYU – QTYRETU) / 2204.622;.
No other interested party commented on this issue.

Department's Position:

The Department agrees with Jacobi that we inadvertently neglected to deduct returned merchandise from the total quantity used to calculate Jacobi's margin in the Preliminary Results. Therefore, pursuant to section 735(e) of the Act, we have corrected this ministerial error for the final results. For further details, see Jacobi AR1 Final Analysis Memo.

Comment 15: Ministerial Error for Units of Measure Conversions

Jacobi argues that in the Preliminary Results the Department did not convert Jacobi's billing adjustments to metric tons, and that the Department should apply a conversion factor of 2204.622 to convert movement expenses and selling expenses from dollars per pound to dollars per metric ton. Jacobi asserts that the Department should use the following programming language:

GUPADJU = BILLADJU * 2204.622;.

No other interested party commented on this issue.

Department's Position:

The Department agrees with Jacobi that we made a ministerial error by inadvertently neglecting to convert Jacobi's billing adjustments to metric tons in the Preliminary Results. Therefore, pursuant to section 735(e) of the Act, we have corrected this ministerial error for the final results. For further details, see Jacobi AR1 Final Analysis Memo.

Cherishmet

Comment 16: Application of Total Adverse Facts Available

Petitioners argue that the Department should apply total AFA to GHC because GHC refused to report product specific FOP data and instead reported average FOP usage data and therefore the information necessary to calculate an accurate margin for GHC is missing from the record of this review. Petitioners note that the verification report demonstrates that the Department discovered at verification that GHC does maintain product-specific production records in the normal course of business and GHC could have used the records to report actual product-specific FOP usage. Petitioners argue that the failure of GHC to report product-specific FOP data has resulted in a record that is devoid of the information necessary to calculate an accurate margin. Furthermore Petitioners assert that accurate FOP data are essential, within the respondent's control, and that the court has consistently held that the respondent bears the burden of creating a complete and accurate administrative record.[190] Petitioners assert that the Department's goal is to calculate the most accurate margin possible, and that the Department must assume that a general allocation is less accurate than product-specific FOP data.[191] Furthermore, Petitioners stated that GHC not only had numerous opportunities to report product-specific FOP data, but also failed to contact the official in charge with questions when preparing its FOP response and failed to disclose the existence of its production records. Petitioners conclude that the Department should find that information is missing from the record and that GHC significantly impeded the investigation.[192]

Petitioners argue that GHC and Cherishment did not act to the best of their ability in providing requested information, and therefore should be subject to an adverse inference. Petitioners assert that although the Department cannot draw an adverse inference from only a failure to respond, the Department may draw an adverse inference in cases where respondents have failed to cooperate.[193] Petitioners cite specific instances throughout the review where GHC stated that it does not record or maintain cost accounts on a product-specific basis, and compare those statements to the Department's verification report which clearly show that the Department

[190] See, e.g., Nippon Steel, 337 F.3d at 1382-84; see also NSK 2007.

[191] See, e.g., Rhone Poulence, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

[192] See 19 U.S.C. § 1677e(a)(2)(A), (B), (C).

[193] See Nippon Steel, 337 F.3d at 1383.

discovered product-specific production records, and that some of GHC's records from the POR had been destroyed. Additionally, Petitioners assert that GHC should have been prepared to provide product-specific FOPs, especially because it repeatedly requested this review and sought to participate as a mandatory or voluntary respondent. Petitioners conclude by arguing that the fact that the Department verified portions of GHC's responses does not prevent the application of total AFA because GHC's failure to report product-specific FOPs completely undermines the reliability of its response.[194]

In rebuttal, GHC argues that the application of total AFA to GHC is unsupported by the facts on the record and the law, and is based on an overly simplistic reading of the Department's verification report. GHC asserts that section 776 of the Act provides two scenarios that allow the Department to apply FA or AFA to a respondent. GHC argues the first scenario, which allows the Department to apply FA if the respondent fails to provide information, regardless of the reason for the failure, does not apply because GHC provided responses to all of the Department's questions in a timely manner.[195] Furthermore, GHC argues that the second scenario, which allows the Department to apply total AFA in cases where the respondent is not cooperative should not be applied because an adverse inference must be supported by substantial evidence, which the facts of this case do not support.[196] Citing the verification report, GHC argues that Petitioners are misrepresenting the fact that GHC did not provide copies of documents as a major failure. GHC argues that in actuality, its reported FOPs were complete and subjected to multiple reviews by the Department, and that the documents that were allegedly withheld were irrelevant. GHC asserts that Petitioners are basing their conclusion that there is not information on the record of the case to calculate an accurate margin on the language of the verification report, rather than the actual underlying facts of the case.

To demonstrate that it fully cooperated with the Department, GHC references its January 23, 2009, supplemental section D questionnaire response, in which the Department requested production records, and in which GHC states they provided nearly 100 pages of production records. Furthermore, GHC argues that the provided production records clearly demonstrated that the methodology it used to report product-specific FOP usage rates. GHC states that during verification, the Department was provided with various documents, including a contract notice, carbonization production bill, activation production bill, and records of grinding, carbonization, activation and further processing, and that these documents are the reason that Petitioners' are concerned that critical documents were not disclosed to the Department. GHC asserts that the documents provided at verification could not have been be considered to be responsive to the requests of the Department, and none of the documents could have been used by GHC to report its FOPs differently or more accurately and the documents were not connected in any way to the measurement of material consumption in a given period. Additionally, GHC asserts that documents that record intermediate production steps are not needed to determine material consumption, specifically noting that the grinding and carbonization records contain little information, and the activation records are kept on a rolling basis and are not product-specific.

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[194] See Steel Auth. of India, Ltd. v. United States, 215 CIT 482, 486-87, 149 F. Supp. 2d 921, 928-29 (2001); see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China, 74 Fed. Reg. 2049, 2051-52 (Jan. 14, 2009) and accompanying Issues and Decision Memorandum at 37-38.

[195] See Nippon Steel, 1337 F.3d 1373.

[196] See id.; see also Micron Tech., Inc. v. United States, 117 F.3d 1386, 1394 (Fed. Cir. 1997).

GHC further argues that the documents in question could not be used to create more accurate FOP reporting, and that the Department attempted to test whether the alleged missing documents could be used to track inputs and outputs, and concluded that the documents did not allow for a more accurate FOP report than what was used by GHC to report its material, energy, and labor.[197] GHC additionally argues that the alleged missing documents reflect only planned or estimated quantities, and therefore are not suitable for use in calculating actual material consumption or in computing an FOP database.

GHC asserts that, not only did it not impede the Department, but it went out of its way to find a way to conform its production records to the Department's requirements in an understandable and reasonable way. Furthermore, GHC reasserts that the documents that were presented at verification would not have allowed GHC to report its FOPs on a more specific basis, and cannot detract from GHC's assertion that its reporting basis was as specific as possible. GHC explains that its records of finished products do not include records for inputs, thus, product or CONNUM specific information must be derived through allocation. GHC argues that it could not have provided the Department with a product-specific FOP report based on its existing document and financial systems, and therefore had to use the best methodology it could derive to allocate and report its FOPs as accurately as possible. GHC explains its allocation methodology and emphasizes that it has put its best effort into this process.[198]

Department's Position:

We disagree with Petitioner that the application of total AFA for GHC is appropriate because of the existence of certain production records found by Department officials at verification.

Section 776(a)(2) of the Act states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

If, after being notified by the Department of a deficiency, the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Furthermore, section 776(b) of the Act provides that the Department, in selecting from the facts otherwise available, may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See also SAA at 870. The Act provides, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of

[198] See GHC's September 11, 2008 Section D Questionnaire Response at 9-10.

section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record. See 776(b) of the Act.

Pursuant to section 776(b) of the Act, the Department may use information that is adverse to the interest of that party when the party fails to cooperate by not acting to the best of its ability in responding to the Department's request for information. See Nippon Steel, 337 F.3d at 1382. Further, section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See Semiconductors, 63 FR at 8932.

In this case, we find that the application of total AFA for GHC is not appropriate. The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met, pursuant to section 776 of the Act. We find that the application of facts otherwise available is not warranted under section 776(a) of the Act because the GHC: (A) submitted the requested information by the submitted deadlines; (B) with the exception of the verification of a carbonization production bill and an activation production bill, GHC provided most information in a timely manner and in the form or manner requested; (C) did not significantly impede this proceeding under the antidumping statute; and (D) the majority of its FOPs were confirmed by the Department through verification.

We note that GHC was able to demonstrate that its books and records reconciled to its reported FOP data. GHC was also able to demonstrate that its source sales documents reconciled to the reported U.S. sales, and the Department was able to complete a verification of the majority of normal value. Although Petitioners' contend that GHC's previously undisclosed carbonization bill and activation bill demonstrate GHC had the ability to track CONNUM specific-product data. The Department noted in GHC's verification report that the production records list the quantity to be produced which is taken from the contract notice.[199] Moreover, the production records do not track inputs or outputs of materials used to produce the subject merchandise.[200] With regard to the disclosed production records containing CONNUM specific-product information, we note that GHC reported that GHC and Cherishmet produce three separate reports that provide product characteristics which were used to accurately report its CONNUMs.[201]

Because GHC did not maintain the CONNUM-specific records for the POR that would allow GHC to report the POR-specific yield ratios, GHC constructed a reasonable alternative allocation

[199] See Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Julia Hancock, Senior Analyst, Office 9, Irene Gorelik, Senior Analyst, Office 9, and Robert Palmer, Case Analyst, Office 9 re: Verification of the Sales and Factors Response of Ningxia Guanghua Cherishmet Activated Carbon Company, Ltd. in the First Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China ("PRC") ("GHC Verification Report") at 14.

[200] Id. at 15.

[201] See GHC Supplemental Section C Questionnaire Response dated March 30, 2009 at 4.

methodology based on records maintained by GHC, and provided examples of such records, responding in the form and manner requested to the Department's request for information.[202] Moreover, we find that we were able to reconcile GHC's FOPs to its accounting records.[203] Specifically, the Department was able to: (1) tie the company's purchases of the input to the VAT invoice to the general ledger; (2) tie the VAT invoice to the sub-ledger; (3) tie the purchases and consumption of the input from the VAT invoices and inventory accounts to the general ledger; and (4) tie the wages of the company's labor summary sheets to the general ledger. Because most of GHC's FOPs were verified and GHC's reported quantity and value of U.S. sales were verified, we find that GHC provided useable FOPs, in a timely manner, which the Department was able to verify. See GHC Verification Report. Therefore, the Department finds that, pursuant to section 776 of the Act, there is no basis for applying total AFA to GHC for the final determination. Furthermore, because the data submitted by GHC complied with the standards outlined in section 782(e) of the Act, we have determined that there is sufficient reliable information to accurately calculate a dumping margin for the final determination and will not apply total AFA for GHC for the final determination. However, the Department notes that GHC is on notice that the Department requires complete verifiable records, and in future proceedings will be required to present accurate and verifiable records of all production and accounting records. See Nippon Steel, 337 F. 3d at 1382-1383.

Comment 17: Application of Partial Adverse Facts Available

a. Cherishmet and GHC

Petitioners argue that if the Department does not rely on total AFA for Cherishmet/GHC, then it should apply partial AFA by relying on the highest single reported quantity for each FOP for all products in calculating an antidumping margin for GHC, and using the highest single reported quantity for each FOP, across all supplier FOPs reported by Jacobi, for all products supplied by GHC.

No other party commented on this issue.

Department's Position:

We disagree with Petitioner that the application of partial AFA is appropriate to GHC. The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met. See section 776(a) of the Act, as discussed in Comment 15. The Department finds that the application of facts otherwise available is not warranted under section 776(a) of the Act because GHC: (A) submitted the requested information by the submitted deadlines; (B) with the exception of the verification of a carbonization production bill and an activation production bill, GHC provided most information in a timely manner and in the form or manner requested; (C) did not significantly impede this proceeding under the antidumping statute; and (D) the majority of its FOPs were confirmed by the Department through verification. See Comment 15. Additionally, we have found that the carbonization and production bill found at GHC's verification would not impact its reported

[202] See GHC Supplemental Section D Questionnaire Response dated January 23, 2009 at 7 and Exhibit DS-9.1, DS-9.2, DS-9.3, DS-9.4, DS-9.5, DS-9.6, and DS-9.7.

[203] See GHC Verification Report 23-26.

FOPs or construction of the CONNUMs. Therefore, we do not find that the application of partial AFA is appropriate for GHC in the final results.

b. Activated Carbon and Potassium

Petitioners argue that the Department should apply partial AFA in assigning a dumping margin to GHC in the final results. As partial AFA, Petitioners state that the Department ought to rely on the single highest reported quantity for each FOP for all products in calculating the margin. Petitioners argue that the Department should value the activated carbon input from Indian imports under HTS number 3802.10: "Activated Carbon" multiplied by the quantity of activated carbon impregnated with the input. Additionally, Petitioners state the Department should multiply the highest impregnation factor reported by the value of potassium hydroxide under HTS number 2815.20.00: "Potassium Hyproxide (Caustic Potash)".[204]

In rebuttal, GHC argues that the Department should reject Petitioners argument to apply partial AFA to activated carbon and potassium because: 1) GHC states that the Department exempted GHC from reporting the FOPs of the activated carbon supplier; 2) GHC asserts that the product at issue is not so unique that it requires an application resulting in double-counting; and 3) GHC argues that it reported all its FOPs and removed certain FOPs at the Department's instruction.

Department's Position:

The Department disagrees with Petitioners that partial FA or applying a higher average value is appropriate for activated carbon or potassium for Cherishmet's product. In the Preliminary Results, the Department used the average normal value of reported FOPs for purchased activated carbon, whose factors the Department excluded.[205] Moreover, in a supplemental questionnaire, the Department requested Cherishmet exclude all FOPs associated with the product produced with the excluded purchased activated carbon. See Cherishmet's Supplemental Section D Questionnaire dated June 23, 2009 at 2. We intend to, as in the Preliminary Results, in accordance with section 776(a)(1) of the Act, apply FA to determine the NV for the sales corresponding to the FOP data that GHC was excused from reporting, which now also includes the sales corresponding to the models which contained activated carbon as an FOP. Specifically, to account for the reported U.S. sales corresponding to the FOPs of the excused producers, the Department shall assign the weighted-average NV as the NV for the sales corresponding to the excluded FOPs, as we did in the Preliminary Results margin calculation.[206] As such, we will continue to do so for the final results. For further details, see GHC Final Analysis Memo.

c. Acid Washing Yield Loss

[204] Although this input was bracketed as business proprietary information ("BPI") in case briefs and rebuttal briefs, counsel for GHC allowed this input to be public information. See "Memorandum to the File from Bob Palmer, Analyst, Office 9, re; Certain Activated Carbon from the People's Republic of China: Phone Call with Counsel for Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd." dated September 29, 2009.

[205] See Letter from the Department to Ningxia Guanghua Cherishmet Activated Carbon Co. Ltd, dated October 17, 2009.

[206] See "Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Robert Palmer, Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for Ningxia Guanghua Cherishmet Activated Carbon Co. Ltd. (''GHC'') in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China," dated April 30, 2009.

Petitioners claim that YGAC and YG Chemical's reported yield loss during acid washing is unsupported by any source documentation. Petitioners argue that the Department should apply the higher of YGAC and YG Chemical's reported factors or the highest single reported quantity for each factor of production reported for other products by GHC. Alternatively, Petitioners suggest the Department should apply as partial facts available the value of finished activated carbon under HTS number 3802.10: "Activated Carbon" multiplied by the quantity of activated material that is acid washed for each product.

In rebuttal, Cherishmet urges the Department to reject Petitioners' request that the Department ought to apply FA to value a yield loss factor for acid washing. Cherishmet argues it provided full responses and examples of how YGAC and YG Chemical determined yield loss. Moreover, Cherishmet claims the assigned yield loss did not affect total consumption and had no effect on the companies' reported FOPs.

Department's Position:

The Department disagrees with Petitioners that the Department should apply an adverse application to YG Chemical and YGAC, with regard to acid washing for the final results. We have examined evidence on the record and find that there is no basis to apply an adverse inference to YG Chemical or YGAC's reported yield information. Pursuant section 782(i)(3) of the Act, the Department was not required to conduct on-site verification in this review and did not elect to do so. Where the Department elects not to verify, it will rely on timely submitted information, unless there is evidence that the information is unreliable. See Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (January 31, 2007) and accompanying Issues and Decisions Memorandum at Comment 8. YG Chemical and YGAC indicated that they assigned yield loss on internal standards and long-term production experience.[207] Because there is no evidence on the record to cast doubt upon this allocation, as in the Preliminary Results, we will continue to rely on data submitted by YG Chemical and YGAC.

Comment 18: Columnar Coal

Petitioners argue the Department should value the consumption of columnar coal for merchandise produced by YGAC as activated carbon under HTS number 3802.10: "Activated Carbon," because the consumption of columnar coal is the consumption of activated carbon.

No other party commented on this issue.

Department's Position:

The Department disagrees with Petitioners that YGAC purchased activated carbon for consumption. Cherishmet explained in its Section D supplemental questionnaire response that columnar coal is an activated carbon, in pellet form, produced by YG Chemical, which YGAC purchased and then resold to its customer.[208] The Department will not value columnar coal as

[207] See Cherishmet Supplemental Section D Questionnaire Response dated June 23, 2009 at 9 and 15.

[208] See Supplemental Section D Response of GHC and BPACP: Administrative Review of the Antidumping Order on Certain Activated Carbon from the People's Republic of China dated June 23, 2009 at 22.

activated carbon for the final results. As YGAC did not use columnar coal as an input for production, there is no action for the Department to take and, therefore, valuing this material input is moot.

Comment 19: Ministerial Error for Units of Measure Conversion

a. Plastic Bags

Cherishmet argues that the Department incorrectly converted the surrogate value for plastic bags from kilograms to pieces. Cherishmet asserts that GHC, YG Chemical and YGAC all reported packing bag factors in kilograms and there is no conversion necessary.

No other party commented on this issue.

Department's Position:

The Department agrees with Cherishmet that the Department incorrectly converted the surrogate value for plastic bags. In supplemental questionnaire responses, Cherishmet clarified that packing bags are on a kilogram per metric ton basis.[209] Therefore, pursuant to section 735(e) of the Act, for the final results, the Department will not convert the surrogate value for packing bags from kilograms to pieces. See Final Surrogate Value Memo and GHC Final Analysis Memo.

b. Packing Freight

Cherishmet argues that the Department did not convert the truck rate from a per metric ton to a per kilogram basis before applying the surrogate value to the reported packing factors, but instead applied the truck freight surrogate value to the packing inputs without dividing by 1,000. Cherishmet states the Department should correct this error by dividing the truck rate by 1,000 for Cherishmet's packing inputs.

No other party commented on this issue.

Department's Position:

The Department agrees with Cherishmet that the Department made a ministerial error regarding Cherishmet's truck rate for packing inputs. Therefore, pursuant to section 735(e) of the Act, for the final results, the Department will convert Cherishmet's packing inputs on a metric ton basis with regard to the surrogate value for truck freight. See Final Surrogate Value Memo and GHC Final Analysis Memo.

Comment 20: Ministerial Error for Domestic Inland Freight Calculation

Cherishmet argues that the Department incorrectly used the distance from GHC to the Chinese port of exit to calculate the domestic inland freight charges for Beijing Pacific's suppliers YG

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[209] See Cherishmet Supplemental Section D Questionnaire, dated April 9, 2009 at Exhibit SSD-3. See also Cherishmet Supplemental Sectoin D Questionnaire, dated June 23, 2009 at 23.

Chemical and YGAC. Cherishmet claims the Department should use the distance from YG Chemical and YGAC to Beijing Pacific's warehouse to the port of exit to calculate the domestic inland freight charges for these two companies.

No other party commented on this issue.

Department's Position:

The Department agrees with Cherishmet that the Department made a ministerial error in separating the domestic inland freight distances of Beijing Pacific's suppliers and GHC. Accordingly, pursuant to section 735(e) of the Act, for the final results, the Department will assign the correct inland freight distances to Beijing Pacific's suppliers and GHC to calculate the domestic inland freight charges for the final results. See Final Surrogate Value Memo and GHC Final Analysis Memo.

Comment 21: Qualification for a Separate Rate

Petitioners argue that entities with ties to, and including, GHC, GH and Beijing Pacific and GHC's third shareholder ("Party A") are affiliated pursuant to Department regulations and do not qualify for a separate rate since they are state-owned and state-controlled companies through, Party A, a state owned and controlled company through its parent company.[210] Petitioners claim the recent verification of GHC demonstrates that Party A controls GHC because Party A: 1) has a direct managerial link; 2) is a government entity; 3) has expertise with the subject merchandise; 4) traded the subject merchandise with GHC and; 5) cooperates with GHC. Therefore, Petitioners argue the government of China has the potential to impact decisions of production, pricing and cost of the subject merchandise according to 19 CFR 351.102(b). Thus, for the final results, Petitioners urge the Department to assign the PRC-wide entity rate to GHC, GH, Beijing Pacific, Party A, and all companies with ties to Party A.

In rebuttal, Cherishmet argues that Petitioners' assertion that Party A can control GHC is unsupported by fact and is contrary to law and Department policy. Cherishmet states that the Department undertook a two part analysis, pursuant to regulation, to determine the status between the Cherishmet companies, and found GHC and Party A affiliated according to section 771(33) of the Act, but not as a single entity which should be collapsed pursuant to 19 CFR 351.401(f).[211] Cherishmet argues that finding companies so intertwined as to require being treated as a single respondent[212] is the exception to the rule pursuant to Department regulation[213]

[210] The name of GHC's shareholder ("Party A") and Party A's parent company is business proprietary information. GHC's other shareholders are Cherishmet Inc. and GH. See Letter from Petitioners dated September 15, 2009 at 44-50. See also "Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Robert Palmer, Analyst, Office 9, re; Final Results Analysis Memorandum for Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. ("GHC") in the Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China," dated November 3, 2009, for disclosure of entities involved.

[211] Cherishmet cites "Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Robert Palmer, Case Analyst, AD/CVD Operations, Office 9, re; Preliminary Determination in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Affiliation Memorandum of Ningxia Guanghua Cherishmet Activated Carbon Co. Ltd.," dated April 30, 2009 ("GHC Affiliation Memo").

[212] Colloquially referred to as "collapsing."

and characterized the practice in Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 19089 (May 3, 1989). Furthermore, Cherishmet cites to Certain Iron Construction Castings from Canada: Final Results of Antidumping Duty Administrative Review, 55 FR 460 (January 5, 1990) where the Department considered if affiliated companies operated as distinct entities by examining if one company has the ability to manipulate its affiliate's prices and affect production decisions. Cherishmet states the Department adopted this practice in proposed regulations, which were published as 19 CFR 351.401(f). Cherishmet asserts the CIT has approved this practice in Nihon Cement Co. v. United States, 17 CIT 400 (1993) ("Nihon Cement"). Moreover, Cherishmet asserts the CIT has held that ownership interest and overlapping board of directors do not create a collapsing scenario.[214] Cherishmet states the CIT relied on Nihon Cement to reverse the Department's decision to collapse two sister companies with common ownership.[215] Cherishmet asserts the Department has since expanded its criterion with respect to non-market economies to include the potential to manipulate non-market economy exporters' export decisions.[216] Cherishmet argues the Petitioners' focus on Party A and its parent company is irrelevant and masks the difference between Party A and GHC.

Moreover, Cherishmet contends the arguments Petitioners make regarding the verification report emphasize the lack of manipulative potential that Party A has over GHC as do GHC's answers in its questionnaire responses.[217] Cherishmet argues the Department verified GHC's independence from the state[218] and found no evidence to attribute the ability of one company to manipulate the other. In Ball Bearings, where the factors of manipulation between two affiliates were stronger than in this instance, Cherishmet states the Department ruled against collapsing the two affiliates and the CIT agreed, that under the totality of the circumstances, there was insufficient evidence to warrant collapsing.[219] Cherishmet argues the totality of circumstances surrounding Cherishmet and Party A show that they operate independently despite affiliation. In Steel Plate, Cherishmet asserts the Department has indicated that common ownership by a state-owned asset

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[213] See Letter from Grunfeld dated September 24, 2009 at footnote 24 for case examples provided by Cherismet.

[214] Cherishmet cites Nihon Cement at 426.

[215] Cherishmet cites FAG Kugelfischer George Schafer KGaA v. United States, 932 F. Supp. 315 (CIT 1996).

[216] Cherishmet cites Hontex Enterprises, Inc v. United States, 28 CIT 1000, 1020 note 17 (2004).

[217] Cherishmet cites its Supplemental Section A Questionnaire Response dated December 11, 2008. See Letter from Grunfeld dated September 24, 2009 at 36.

[218] Cherishmet cites Sigma Corp v. United States, 17 CIT 1288, 1302 (1993), citing Tianjin Machinery Import & Export Corp. v. United States, 16 CIT 931, 935 (1992) stating that to establish independence from the state, it is the Department's duty to verify the company's information.

[219] Cherishmet cites Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 70 FR 54711 (September 16, 2005) ("Ball Bearings") and accompanying Issues and Decisions Memorandum at Comment 10; Koyo Seiko Co., Ltd. v. United States, 415 F. Supp. 2d 1323, 1346 (2007).

is not stand alone proof that two companies are affiliated.[220] In this case, Cherishmet argues Party A does not maintain a controlling interest in GHC and has established its separate rate under the four factors of *de facto* control.[221] Cherishmet requests that the Department not collapse GHC Party A.

Department's Position:

The Department disagrees with Petitioners that Party A should be found as a single entity with GHC, controlling Cherishmet as an extension of the Chinese government and giving the PRC wide rate to all members of the new collapsed entity. In the Preliminary Results, the Department found Beijing Pacific, GHC, GH, and Party A affiliated, but we did not find Party A as part of the single entity with Beijing Pacific, GH and GHC.[222] Additionally, in the Preliminary Results, Cherishmet qualified for a separate rate.

In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Department will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or the cost of the subject merchandise or foreign like product. See 19 CFR 351.102(b)(3). In the GHC Affiliation Memo, the Department clearly explained the criteria used for treating affiliated producers as a single entity for the purposes of calculating antidumping margins in antidumping proceedings pursuant to 19 CFR 351.401(f).[223]

Petitioners argue that Party A's common ownership interest and membership on GHC's board of directors indicates Party A's ability to control GHC. In the GHC Affiliation Memo, we noted Party A's membership on GHC's board of directors.[224] Moreover, we note that GHC's other shareholders, Cherishmet Inc. and GH, appoint the same number of board members as Party A and restrain Party A's ability to exert control.[225] Petitioners point to the verification report as evidence that the single individual appointed by Party A to GHC has rights and influence superseding GHC's managers.[226] To the contrary, evidence on the record indicates that this individual, if he were present at GHC, would not have the ability to control or the potential to

[220] Cherishmet cites Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Preliminary Results of New Shipper Review, 73 FR 67124, 67125 (November 13, 2008) ("Steel Plate").

[221] Id., at 67126 listing the four *de facto* factors of control.

[222] See GHC Affiliation Memo at 7-8.

[223] See Id. at 5-7.

[224] See GHC Affiliation Memo at 3- 4.

[225] See Cherishmet Supplemental Section A Questionnaire Response dated March 16, 2009 at Exhibit SSA-1, for GHC's Articles of Association.

[226] See Petitioners case brief dated September 15, 2009 at 49.

manipulate GHC's production or pricing decisions.[227] However, in the Preliminary Results, we determined that the overlap of ownership made GHC affiliated with Party A.

The CIT has found in Hontex Enterprises, Inc. v. United States, 342 F. Supp. 2d 1225 (CIT 2004) that without clear evidence that a individual can exercise restraint over a company, there is no grounds to find the individual can control of production or manipulate prices pursuant to the Department's collapsing regulation, 19 CFR 351.401(f). GHC has emphasized that Party A does not have the ability to influence distribution, employment, production, pricing or investment decisions.[228] The CIT affirmed the Department's decision not to collapse two companies where there was no significant potential for manipulation of price or production. See Chia Far Indus. Factory Co., Ltd. v. United States, 28 CIT 1337, 343 F.Supp. 2d 1344 (CIT 2004). Because the record contains no evidence of manipulation of price or production pursuant to 19 CFR 351.401(f), we affirm are decision from the Preliminary Results not to find Party A as a single entity with the other companies of the Cherishmet entity.

With regards to commercial activities between Party A and GHC, the Department has found no evidence on the record to indicate that Party A and GHC share distribution channels, customer information or are contractually bound to sell or purchase activated carbon to one another. As the CIT found in TIJID, Inc. v. United States, 366 F.Supp.2d 1286 (CIT 2005) ("TIJID"), the evidence on the record must demonstrate the relationship has the potential to impact decisions concerning the production, pricing, or costs of the subject merchandise or foreign like product. The evidence in the instant review indicates that the relationship between Party A and GHC is sporadic and absent any significant impact that would lead to a finding of control. See TIJID, 366 F.Supp.2d at 1293.

While Petitioners have questioned the separate rate status of Party A, we note that the separate rate of Party A is not in question here. Petitioners have attempted to argue that Party A's affiliation with GHC, as a state-owned and allegedly state controlled entity, is enough to imply control of Cherishemet and deny the Cherishmet Group's separate rate status. As Cherishmet points out, Party A's common ownership of GHC does not in itself demonstrate that the PRC central government controls GHC.[229] Indeed, the Department has in the past granted separate rates to companies that were wholly owned by government entities when evidence of actual government control was not present.[230] As the record contains no new or contradictory evidence since the Preliminary Results, the Department will continue to grant Cherishmet separate rate status for the final results.

Hebei Foreign

[227] See Cherishmet Supplemental Section A Questionnaire Response dated March 16, 2009 at Exhibit SSA-1, for GHC's Articles of Association.

[228] See Cherishmet Supplemental Section A Questionnaire Response dated December 11, 2009 at 43-44, where Cherishmet explains Party A's inability to influence GHC.

[229] See Steel Plate, citing Thermal Paper LTFV at Comment 7.

[230] See Id. citing 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 (May 22, 2006) and accompanying Issues and Decisions Memorandum at Comment 16.

Comment 22: Separate Rate Status

Petitioners argue that, because Hebei Foreign Trade and Advertising Corporation ("Hebei Foreign") has committed a fraud upon the Department, the Department should revoke Hebei Foreign's separate rate and assign the China-wide rate margin. Petitioners cite to the changed circumstances review ("CCR") that was initiated to determine whether Hebei Shenglun Advertising and Exhibit Corporation was the successor-in-interest to Hebei Foreign, and the Department's determination to rescind the review because it was initiated based on information that was later determined to be false.[231] Petitioners assert that the rescission notice was accurate, but did not completely reflect the nature of Hebei Foreign's behavior, which included committing a fraud on the Department in the original investigation and continuing through to the CCR. Specifically, Petitioners reference Hebei Foreign's supplemental questionnaire response, and assert that Hebei Foreign's statements, including the statement that Wang Kezheng and Jiang Hua do not work at Hebei Foreign, make it clear that it intentionally misrepresented the nature of its operations, as well as the relationship between Wang Kezheng and Jiang Hua and the company. Furthermore, Petitioners argue that Hebei Foreign's statements make it clear that the official company certifications, executed by Wang Kezheng in connection to its application for a CCR and its supplemental questionnaire responses, are inaccurate and baseless. Petitioners assert that Hebei Foreign's responses also demonstrate that Wang Kezheng and Jiang Hua are using Hebei Foreign as a front company and therefore taking advantage of Hebei Foreign's separate rate. Futhermore, Petitioners assert that the statements by Hebei Foreign on the record of the CCR reveal that Hebei Foreign's characterization of its operations in the original investigation were inaccurate and deceptive.

No other parties commented on this issue.

Department's Position:

The Department agrees in part with Petitioners with respect to Hebei Foreign's separate rate status. In the Preliminary Results, we granted separate rate status to Hebei Foreign based on its timely filed separate rate certification. See Preliminary Results. After that preliminary determination, the Department had initiated, but since terminated, a changed circumstances review ("CCR") for Hebei Foreign. See Certain Activated Carbon From the People's Republic of China: Notice of Initiation of Changed Circumstances Review, 74 FR 19934 (April 30, 2009) and Certain Activated Carbon from the People's Republic of China: Notice of Rescission of Changed Circumstances Review, 74 FR 48723 (September 24, 2009) ("CCR Rescission").[232]

Based on the information submitted to the Department in the now terminated CCR, the Department placed on the record of this review certain information submitted by Hebei Foreign. See "Memorandum to the File from Katie Marksberry, Analyst, re; Certain Activated Carbon from the People's Republic of China," dated September 22, 2009. The information that we

[231] See Certain Activated Carbon from the People's Republic of China: Notice of Rescission of Changed Circumstances Review, 74 FR 48723 (September 24, 2009).

[232] In the CCR Rescission, we stated that "because there has been no change in Hebei Foreign's operations from the period of investigation, and because this CCR was initiated based on information that was later determined to be false, and the certifications submitted by Hebei Foreign are questionable, we find that a rescission of this review is appropriate." See CCR Rescission.

placed on the record of this review shows that documents within the CCR were certified by an individual who we determined was not employed by Hebei Foreign. See CCR Rescission at 48724. Hebei Foreign's submissions admitted that this individual did not work for Hebei Foreign. Furthermore, this same individual also certified Hebei Foreign's separate rate certification on the record of this review. See Hebei Foreign's Separate Rate Certification dated September 16, 2008.

The record evidence shows that certain information submitted to obtain a separate rate was incorrect. See CCR Rescission and Hebei Foreign's Separate Rate Certification dated September 16, 2008. Because the separate rate certification was certified by an individual not employed by Hebei Foreign, we cannot determine that Hebei Foreign actually filed a separate rate certification in this segment of the proceeding or whether the information contained within that separate rate certification is reliable and accurate. Thus, the Department determines that Hebei Foreign's separate rate certification is invalid, pursuant to section 351.303(g)(1) of the Department's regulations.

Pursuant to 19 CFR 351.303(g), "a person must file with each submission containing factual information the certification in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph(g)(2) of this section: (1) For the person's officially responsible for presentation of the factual information: 'I, (name and title), currently employed by (person), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.' (2) For interested party's legal counsel or other representative: 'I, (name), of (law or other firm), counsel or representative to (person), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.'"

In the CCR, and as placed upon the record of the instant administrative review, the Department issued a questionnaire to Hebei Foreign seeking clarification of its successor-in-interest statements. This questionnaire specifically asked Hebei Foreign to explain the identities of the individuals who contacted Hebei Foreign's customer. See Hebei Foreign's July 6, 2009 submission at 6. In response to the questionnaire, Hebei Foreign stated, the email address "WKZ represents Mr. Wang Kexheng who is the manager of No. 1 Business Department." Id. The questionnaire response continues, "Actually…Wang Kexheng...{is} not working at Hebei Foreign." Id.

The certification of factual information is not a new requirement. It is one which the Department intends have real meaning as applied to individuals at companies appearing before the Department, including any legal or non-legal representatives. To treat the requirement otherwise would violate our obligation to administer faithfully the provisions of the Act and would irreparably damage the integrity of Departmental procedures. Therefore, the Department may consider whether any further action is warranted. In this way, we will continue to ensure that the responses the Department receives and uses to make its determinations are thorough and accurate.

In accordance with the discussion related to the separate rate certification above, because the Department cannot reasonably rely upon the information submitted by Hebei Foreign based upon its submission made in the CCR that the individual who certified the separate rate response is not employed by Hebei Foreign, the Department is revoking the separate rate granted to Hebei

Foreign in the Preliminary Results of this administrative review and therefore finding that Hebei Foreign is subject to the PRC-wide entity rate of 228.11 percent.

RECOMMENDATION

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

AGREE_____ DISAGREE_____

_____
Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____
Date