

Carbon Activated Tianjin Co., Ltd. and Carbon Activated Corporation, et al. v. United States,
Slip Op. 22-89, Consol. Court No. 21-00131 (CIT August 8, 2022)
Certain Activated Carbon from the People’s Republic of China

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND**

I. SUMMARY

The U.S. Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT) in *Carbon Activated Tianjin Co., Ltd. and Carbon Activated Corporation, et al. v. United States*, Court No. 21-00131, Slip Op. 22-89 (CIT August 8, 2022) (*Remand Order*). These final remand results concern the twelfth administrative review of certain activated carbon from China.¹ The CIT directed Commerce to further explain or reconsider the surrogate value (SV) for coal-based carbonized materials (carbmat) and the selection of financial statements for determining the surrogate financial ratios.²

As set forth in detail below, pursuant to the CIT’s *Remand Order*, we have provided further explanation for our selection of coconut-shell charcoal to value coal-based carbmat and further explained our selection of the financial statements for determining the surrogate financial ratios. Consequently, for purposes of these final results of redetermination, Commerce has made

¹ See *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments, and Final Rescission of Administrative Review, in Part; 2018-2019*, 87 FR 10539 (February 22, 2021) (*AR12 Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² See *Remand Order* at 41.

no changes to the mandatory respondents' margin calculations from the *AR12 Final Results*,³ or to the rate of Beijing Pacific Activated Carbon Products Co., Ltd. (Beijing Pacific), Datong Municipal Yunguang Activated Carbon Co., Ltd. (Datong Yunguang), and Shanxi Industry Technology Trading Co., Ltd. (SITT).⁴

II. REMANDED ISSUES

1. Coal-Based Carbonized Materials Surrogate Value

Background

In the *AR12 Final Results*, Commerce selected the average unit value (AUV) for Malaysian import data under Harmonized System (HS) heading 4402.90.1000 (“coconut shell charcoal”)⁵ as the SV for coal-based carbmats used to produce activated carbon after finding that there was no evidence on the record that either of the mandatory respondents used wood charcoal to produce the subject merchandise.⁶ The mandatory respondents argued that Commerce should use the Malaysian import data reported under the six-digit HS 4402.90 (“Wood Charcoal (Including Shell or Nut Charcoal), Excluding That of Bamboo”),⁷ which encompasses both HS 4402.90.1000 (“coconut shell charcoal”) and HS 4402.90.9000 (“other wood charcoal”). They argued that Malaysian HS 4402.90 afforded a more representative, broader market average and reliable SV because coconut shell-based, coal-based, and wood-based activated carbon have

³ The mandatory respondents in this administrative review are: Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) and Carbon Activated Tianjin Co., Ltd. (Carbon Activated) (collectively, the mandatory respondents).

⁴ Beijing Pacific, Datong Yunguang and SITT were not selected for individual examination during the review, but qualified for a separate rate, and are participating in the litigation.

⁵ See Petitioners' Letter, “Petitioners' Submission of Surrogate Values,” dated November 12, 2019 (Petitioners' SV Submission), at Attachment 1. The petitioners are Calgon Carbon Corporation and Cabot Norit Americas Inc.

⁶ See *AR12 Final Results* IDM at 43.

⁷ See Mandatory Respondents' Letter, “Final Surrogate Value Comments by DJAC and CA Tianjin,” dated March 30, 2020 (Respondents' Final SV Submission), at Exhibit 2A.

different physical structures, technical differences, and prices, thus, the 6-digit HS was more appropriate than HS 4402.90.1000 to value coal-based carbmat.⁸

In the CIT's *Remand Order*, the CIT held that Commerce's selection of HS 4402.90.1000 to value coal-based carbmat was unsupported by substantial evidence.⁹ Specifically, the CIT noted that Commerce's explanation that Carbon Activated's suppliers did not purchase carbmat that was made from wood also appeared to apply to coconut shell charcoal.¹⁰ Therefore, the CIT concluded that, absent evidence that the mandatory respondents used coconut shell charcoal, selecting one subcategory over another was unsupported by substantial evidence and reasoned explanation.¹¹ Moreover, the CIT viewed Commerce's reliance on its findings in *AR5 Final Results*¹² as unavailing because Commerce did not explain the relevance of that finding to Commerce's determination in this review.¹³ Therefore, because Commerce failed to explain its choice between two imperfect datasets, the CIT directed Commerce to further explain or reconsider its SV choice for coal-based carbmat.¹⁴

Analysis

In light of the CIT's *Remand Order*, Commerce has further explained its SV selection for coal-based carbmat. Based on the following analysis, Commerce continues to find that import data reported under Malaysian HS subheading 4402.90.1000 ("coconut shell charcoal") is the best available information to value coal-based carbmat.

⁸ *Id.*

⁹ See *Remand Order* at 34-35.

¹⁰ *Id.*

¹¹ *Id.*

¹² See *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 20, 2013), and accompanying IDM, at Comment 6 (*AR5 Final Results*).

¹³ See *Remand Order* at 35.

¹⁴ *Id.*

Commerce’s practice when selecting the best available information for valuing factors of production (FOP), in accordance with section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the period of review (POR), and tax and duty exclusive.¹⁵ Commerce undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.¹⁶ While there is no hierarchy for applying the SV selection criteria, “{Commerce} must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the ‘best’ {SV} is for each input.”¹⁷ Moreover, Commerce has discretion to choose which criteria to emphasize in selecting the “best available information” so long as it does so in conformity with the substantial evidence standard¹⁸ and that it must articulate a “rational and reasonable relationship” between the SV and the FOP it represents.¹⁹

In the *ARI2 Final Results*, we explained that the record contained no evidence indicating that the mandatory respondents purchased or used wood charcoal in the production of the subject merchandise.²⁰ Upon further review of the record evidence, we find the record also contains no

¹⁵ See, e.g., *First Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010), and accompanying IDM, at Comment 1.

¹⁶ See *Glycine from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying IDM, at Comment 1.

¹⁷ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008), and accompanying IDM, at Comment 2; and *Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546, 19549 (April 22, 2002), and accompanying IDM, at Comment 2.

¹⁸ See *QVD Food Co. v. United States*, 658 F.3d 1318, 1323 (Fed. Cir. 2011) (*QVD Food*).

¹⁹ See *Globe Metallurgical Inc. v. United States*, 350 F. Supp. 2d 1148, 1160 (CIT 2004) (*Globe Metallurgical*) (citing *Olympia Industrial Inc. v. United States*, 7 F. Supp. 2d 997, 1001 (CIT 1998)).

²⁰ See *ARI2 Final Results* IDM at 43.

evidence that the mandatory respondents purchased or used coconut shell charcoal to produce activated carbon exported to the United States.²¹

In past Commerce decisions and on remand, because SV information specific to coal-based carbmat was not available, Commerce found coconut shell charcoal to be the best available information with which to value mandatory respondents' coal-based carbmat, based on the reported product specifications.²² There is a long, demonstrable history in this proceeding of using coconut-shell carbmat in the production of the subject merchandise, unlike wood carbmat, which has never been used to produce the subject merchandise.²³

Moreover, we have demonstrated in the past,²⁴ including before the CIT,²⁵ that coconut-shell carbmat shares many similarities²⁶ with coal-based carbmat and is an appropriate surrogate for coal-based carbmat.²⁷ There is no direct record evidence that coal-based charcoal, coconut-shell charcoal, and wood-based charcoal share similar physical or chemical properties.²⁸ The mandatory respondents focus primarily on the physical properties of activated carbon made from different input materials, and argue that coconut-shell-based activated carbon shares some

²¹ See Carbon Activated's Letter, "Carbon Activated Section D Supplemental Questionnaire Response (Part I)," dated March 18, 2020 (CAT SDSQR), at 2, 9, and Exhibits SD-3 and SD-15; see also Datong Juqiang's Letter, "DJAC Supplemental Section D Questionnaire Response," dated March 20, 2020 (DJAC SSDQR), at 6, 7, and SD-7.

²² See *AR5 Final Results*; see also *Final Results of Redetermination Pursuant to Court Remand, Calgon Carbon Corporation, and Norit Americas Inc v. United States, et al*, Slip Op. 11-21 (CIT February 17, 2011), dated July 25, 2011 (*AR1 Remand*), available at <https://access.trade.gov/Resources/remands/11-21.pdf>, at 10-11.

²³ See, e.g., *Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review*, 76 FR 67142 (October 31, 2011) (*AR3 Final Results*), and accompanying IDM, at Comment 4b; *AR5 Final Results DM* at Comment 6; and *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51607 (November 7, 2017), and accompanying IDM, at Comment 5.

²⁴ *Id.*

²⁵ See *AR1 Remand, aff'd Hebei Foreign Trade and Advertising Corporation v. United States*, 807 F. Supp. 2d 1317, 1319 (CIT 2011), at n.2; see also *Albemarle Corp. v. United States*, 27 F. Supp. 3d.1336, 1351 (CIT 2014); *Jacobi Carbons AB, et al. V. United States*, 443 F. Supp. 3d 1312, 1314 (CIT 2020).

²⁶ Specifically, coconut shell charcoal shares similar properties with coal-based carbonized material, namely, porosity and adsorption, and that those similar properties are essential in the production of activated carbon. *Id.*

²⁷ See *AR1 Remand* at 10.

²⁸ See Respondents' Final SV Submission at Exhibit 5B.

properties with coal-based activated carbon but differs in others, as does wood-based activated carbon.²⁹ The limited portions of the U.S. International Trade Commission reports (ITC Report) on the record provided by the mandatory respondents, which devotes its discussion to steam activated carbon (the subject merchandise) produced using coal or coconut-shell charcoal,³⁰ lends some support to these claims. The ITC Report explains that coconut-shell-based activated carbon and wood-based activated carbon differ from coal-based activated carbon; the former has greater hardness and pore sizes, and the latter has lower hardness.³¹ However, the ITC Report also states that the physical properties of activated carbon (size and shape of particles, surface area, pore-size distribution, ash content, and hardness) “depend on the raw materials used, *as well as the activation process.*”³² The ITC briefly discusses the manufacturing process of activated carbon, and states that *chemically* activated carbon (non-subject merchandise) is generally made using wood.³³

Because the physical properties of activated carbon depend not only on the input materials used, but also the activation process, it is reasonable to also consider the activation process in making our SV selection. In this administrative review, the respondents both reported that they produce only *steam* activated carbon.³⁴ The limited information on the record regarding the physical characteristics of wood-based, coconut-shell-based, and coal-based activated carbon does not indicate that coal-based activated carbon is more alike one or the other

²⁹ See Mandatory Respondents’ Letter, “Comments on Draft Remand: Antidumping Duty Order on Certain Activated Carbon from the People’s Republic of China,” dated October 6, 2022 (Mandatory Respondents’ Remand Comments), at 4.

³⁰ See Respondents’ Final SV Submission at Exhibit 5A.

³¹ *Id.* (page 126 & n. 33 of PDF).

³² *Id.* (page 125 of PDF) (emphasis added).

³³ *Id.* at Exhibit 5A.

³⁴ See Datong Juqiang’s Letter, “DJAC Section D Questionnaire Response,” dated September 19, 2019 (Datong Juqiang SDQR), at DJAC Section D Response at 6; and, *e.g.*, Carbon Activated’s Letter, “Carbon Activated Response to Section D of Questionnaire (Part I),” dated September 19, 2019, at Attachments A (6) and B (6).

type of activated carbon. However, because chemically activated carbon is generally made using wood, and the respondents reported only using steam activation during the POR, we find Malaysian HS 4402.90, which includes wood-based activated carbon, is not the best information to value the respondents' carbmat.

Furthermore, Commerce has consistently selected the more specific subheading category (*i.e.*, coconut shell charcoal) to value the mandatory respondents' carbmat in this proceeding. As a result, notwithstanding the respondents' general arguments in this review about the split in properties between coconut-shell and wood-based carbmat (as compared to coal-based activated carbon), the mandatory respondents have not provided any new evidence in this review to warrant a departure from Commerce's practice of selecting coconut-shell charcoal to value the respondents' carbmat in this proceeding.³⁵ Absent new facts with respect to the materials used in producing the subject merchandise, it is reasonable for Commerce to continue to use the same HS subheading (*i.e.*, "coconut-shell charcoal") to value carbmat from review to review, as this avoids potential distortion arising from the parties' arguing merely for the most advantageous SV and limits the potential for endless cherry pickings of datasets based on the mere disagreement in how Commerce should exercise its discretion in SV selection.³⁶

Therefore, because the record indicates that wood charcoal generally undergoes an activation process (chemical) that is distinct from that of the coal-based carbmat used by the mandatory respondents (steam/thermal), we find it is appropriate to use Malaysian imports under

³⁵ See *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (recognizing Commerce's methodology from prior administrative reviews and respondents' failure to provide sufficient evidence showing that its proposed alternative would yield a more accurate result).

³⁶ See *Carbon Activated Tianjin Co. v. United States*, 547 F. Supp. 3d 1310, 1320 (CIT 2021) (recognizing that plaintiffs must "identify any record evidence" in support of their objection to Commerce's use of a particular dataset; it is not enough for plaintiffs to "simply disagree with Commerce's use of such data"); see also *Jinan Yipin Corp. v. United States*, 971 F. Supp. 2d 1296, 1314 (CIT 2014) ("The evidence that the {respondents'} cite is neither so clear nor so strong as to require Commerce to reach a result other than that which the agency reached ...").

HS 4402.90.1000 (“coconut-shell charcoal”) to value coal-based carbmat used to produce the subject merchandise.³⁷

2. Surrogate Financial Statement Selection

Background

In the *ARI2 Final Results*, Commerce calculated the surrogate financial ratios using the 2018 financial statements from the Malaysian company, Bravo Green Sdn. Bhd. (Bravo Green), a producer of identical merchandise.³⁸ Specifically, we found that although the Bravo Green 2018 financial statements are not as detailed as we prefer, they contain sufficient detail to calculate the surrogate financial ratios. Moreover, we found it more appropriate to use these financial statements as they are contemporaneous with the POR and from a producer of identical merchandise located in the primary surrogate country (Malaysia).³⁹

In the *Remand Order*, the CIT directed Commerce to further explain why the 2018 Bravo Green financial statements are preferable over the 2018 audited financial statements from Joint Stock Company Sorbent (JSC Sorbent), a Russian producer of respiratory personal protective equipment, activated carbons, coagulants, and water treatment systems,⁴⁰ and the 2018 audited financial statements from Romcarbon S.A. (Romcarbon), a Romanian producer of filters, polyethylene packaging, charcoal and other chemical products.⁴¹ Specifically, the CIT ordered that Commerce explain why the financial statements associated with the primary surrogate country outweighed other considerations or criteria, and that Commerce must fairly weigh the

³⁷ See Mandatory Respondents’ Letter, “Final Surrogate Value Rebuttal Comments by DJAC and CA Tianjin,” dated April 9, 2020, at Exhibit 1A.

³⁸ See *ARI2 Final Results*; see also Memorandum, “Twelfth Administrative Review of Certain Activated Carbon from the People’s Republic of China: Surrogate Values for the Final Results,” dated February 12, 2021 (Final SV Memorandum), at Attachment 1.

³⁹ See Final SV Memorandum at 33-34.

⁴⁰ See Respondents’ Final SV Submission at Exhibit 13D-13F.

⁴¹ *Id.* at Exhibit 13G-13H.

available options and explain its decision in light of its selection criteria, addressing any shortcomings.⁴²

Analysis

In light of the CIT's *Remand Order*, Commerce has further explained its selection of Bravo Green's 2018 financial statements to calculate the surrogate financial ratios. Pursuant to 19 CFR 351.408(c)(4), Commerce is directed to value overhead, selling, general, and administrative (SG&A) expenses, and profit using non-proprietary information gathered from producers in the surrogate country of merchandise that is identical or comparable to the subject merchandise. Commerce's preference is to derive surrogate overhead expenses, SG&A expenses, and profit using financial statements: (1) covering a period that is contemporaneous with the POR; (2) that show a profit; (3) that are from companies with a production experience similar to the mandatory respondents' production experience; and (4) that are not distorted or otherwise unreliable, such as financial statements that indicate the company received subsidies.⁴³ Additionally, we have a strong preference for valuing all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."⁴⁴ Further, the

⁴² See *Remand Order* at 40.

⁴³ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 2010-2011*, 78 FR 17350 (March 21, 2013), and accompanying IDM, at 1.C.; see also *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 28801 (May 16, 2013), and accompanying IDM, at Comment 2; *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 5414 (January 25, 2013), and accompanying IDM, at Comment 1; and *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 2013-2014*, 81 FR 21840 (April 13, 2016), and accompanying IDM, at Comment 1.

⁴⁴ See *Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d at 1323, 1335 (CIT 2014) (*Jiaxing Brother Fastener Co.*); see also *Clearon Corp. v. United States*, 37 CIT 220, 229 (CIT 2013) ("Deriving the surrogate data from one surrogate country limits the amount of distortion introduced into its calculations because a domestic producer would be more likely to purchase a product available in {its home country}).

courts have recognized our discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.⁴⁵

While we noted in the *ARI2 Final Results* that Bravo Green's 2018 financial statements are not as detailed as Commerce prefers, these financial statements contain sufficient information to calculate surrogate financial ratios.⁴⁶ Further, the 2018 Bravo Green financial statements are from a manufacturer of identical merchandise, with a similar production experience as the mandatory respondents, that is located in the primary surrogate country, which are audited, complete, publicly available, and do not show evidence of countervailable subsidies.⁴⁷

When selecting surrogate financial statements, Commerce has a long-standing practice of selecting from among potential surrogate financial statements those companies which have similar business operations and production experience as those of the mandatory respondent.⁴⁸ Though the record indicates that JSC Sorbent and Romcarbon produce activated carbons, there is no evidence that these potential surrogate companies have production comparable to that of the mandatory respondents.⁴⁹ For example, pages from JSC Sorbent's website indicate that it is a manufacturer of respiratory personal protective equipment, activated carbons, coagulants, and water treatment systems; however, its financial statements provide no information pertaining to the sales or production quantity of activated carbon or any of the products it manufactures.⁵⁰

⁴⁵ See, e.g., *FMC Corp. v. United States*, 27 CIT 240, 251 (CIT 2003) (holding that Commerce can exercise discretion in choosing between reasonable alternatives), *aff'd FMC Corp. v. United States*, 87 F. Appx. 753 (Fed. Cir. 2004); and *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1302 (CIT 2006) (*Dorbest*) (“{I}t was reasonable for Commerce not to prefer (and therefore exclude) a financial statement where one of the accounting maneuvers was, even under Respondents’ account, misleading.”)

⁴⁶ See Petitioners’ Letter, “Petitioners’ Final Surrogate Value Submission,” dated March 30, 2020 (Petitioners’ Final SV Submission), at Attachment SV2-4.

⁴⁷ See *ARI2 Final Results* IDM at Comment 5, see also Petitioners’ SV Submission at Attachment SV2-4.

⁴⁸ See, e.g., *Steel Wire Garment Hangers from the People’s Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012), and accompanying IDM, at Comment 4.

⁴⁹ See Respondents’ Final SV Submission at Exhibit 13D-13H.

⁵⁰ *Id.* at Exhibit 13F.

Because JSC Sorbent's financial statements lack this pertinent information, we are unable to determine what proportion of JSC Sorbent's production activity is related to activated carbon. In the absence of this information, Commerce cannot determine whether JSC Sorbent's production experience is similar to the production experience of the mandatory respondents or Bravo Green and, therefore, does not represent the best available information to calculate surrogate financial ratios.

With respect to the 2018 Romcarbon financial statements, these financial statements indicate that Romcarbon's activated carbon production activity is carried out in profit center no.2 which contains two workshops: a workshop of protective equipment and a workshop of activated carbon.⁵¹ Further, Romcarbon's 2018 financial statements indicate that its profit center no.2, represented only 1.34 percent of its total sales.⁵² Accordingly, as profit center no.2, which includes two workshops, represents only 1.34 percent of Romcarbon's 2018 sales, we can reasonably infer that activated carbon specifically represents an even smaller proportion of Romcarbon's 2018 sales. In contrast, 100 percent of Bravo Green's revenue is earned through the production and sale of activated carbon,⁵³ similar to the operations and sales of the mandatory respondents.

Therefore, because the record lacks information to assess the comparability of JSC Sorbent's production experience to that of the mandatory respondents, and Romcarbon's business operations and production experience are less comparable to that of the mandatory respondents, we have chosen to rely on Bravo Green's 2018 financial statements that are

⁵¹ *Id.* at Exhibit 13H.

⁵² *Id.*

⁵³ *See* Petitioners' Final SV Submission at Attachment SV2-4.

contemporaneous with the POR, and which most closely relate to the operations of a company involved in activated carbon manufacturing.⁵⁴

III. INTERESTED PARTY COMMENTS

Commerce released the Draft Remand Results to parties for comments on September 29, 2022.⁵⁵ On October 6, 2022, the petitioners and mandatory respondents submitted comments pertaining to both issues in the Draft Remand Results.⁵⁶ No other parties filed comments on the Draft Remand Results.

As explained below, we have revised our conclusion with respect to the carbmat SV and continue to reach the same conclusion that we reached in the Draft Remand Results regarding surrogate financial statements. We address each of the parties' comments and provide our analysis in turn.

Issue 1: Carbmat SV

Petitioners Comments

- Commerce's decision to value carbmat using HS 4402.90 ("Wood Charcoal (Including Shell or Nut Charcoal), Excluding That of Bamboo") rather than HS 4402.90.1000 ("coconut shell charcoal") represents a departure from previous administrative reviews where Commerce used HS 4402.90.1000 to value the carbmat input.
- Instead of switching to HS 4402.90, Commerce should instead further explain and support the use and reliance of HS 4402.90.1000 in the final remand. The mandatory respondents failed to provide evidence to warrant departing from Commerce's reliance on HS 4402.90.1000.
- Since the early segments of this proceeding, it has been Commerce's practice, based on the scientific analysis of commodity comparability presented by mandatory respondents, that the HS subcategory specific to coconut charcoal is the most accurate information

⁵⁴ See *Taian Ziyang Food Co. v. United States*, 33 CIT 828, 875 (CIT 2009) ("Commerce is tasked with choosing a surrogate representative of respondents' production experience, and is essentially required to create a "hypothetical" market value to approximate the production experience in the NME country."); see also *Certain Corrosion Inhibitors from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 7532 (January 21, 2021), and accompanying IDM, at Comment 1.

⁵⁵ See Draft Results of Redetermination Pursuant to Court Remand, *Carbon Activated Tianjin Co., Ltd. and Carbon Activated Corporation, et al. v. United States* Consol. Court No. 21-00131 (CIT August 8, 2022), dated September 29, 2022 (Draft Remand Results).

⁵⁶ See Petitioners' Letter, "Petitioners' Comments on Draft Remand Redetermination," dated October 6, 2022 (Petitioners' Remand Comments); and Mandatory Respondents' Remand Comments.

with which to value coal-based carbmat.⁵⁷

- Commerce has previously rejected the use of a broader import category under HS 4402 because the inclusion of any charcoals other than coconut charcoal diminished the accuracy of the SV, as only coconut-shell carbmat is chemically and physically similar to coal-based carbmat.⁵⁸ The mandatory respondents in this case have long advocated for only coconut-shell charcoal to value carbmat because wood charcoal is typically chemically activated due to its significantly different chemical structure.⁵⁹
- Commerce’s reliance on the value of wood-based charcoal classified under HS subheading 4402.90, which subsumes significant quantities of lower quality, lower value charcoals, is less input-specific and, thus, far less accurate than the value of coconut shell-based charcoal classified under HS subheading 4402.90.1000.

Mandatory Respondents’ Comments

- Commerce’s redetermination to use HS 4402.90 should be finalized because it complies with the CIT order and is supported by substantial evidence.
- The Draft Remand Results correctly recognize that “the record . . . contains no evidence that the mandatory respondents purchased or used coconut shell charcoal.”⁶⁰ This recognition properly corrects the flawed finding from the *AR12 Final Results* that there was no record evidence “indicating that the mandatory respondents produced subject merchandise from wood, nuts, or any other non-coal charcoal” to support coconut shell charcoal HS 4402.90.1000 over the wood charcoal HS 4402.90.9000.⁶¹
- Commerce should incorporate the following analysis in the final remand; because carbonization constitutes a key step in the production of activated carbon, the choice of carbonized material (whether based on coal, coconut shell, or wood) for further processing is directly related to the performance of the end product. Accordingly, the differences between different types of activated carbons can be directly traced to the differences between the underlying corresponding carbonized materials.
- Coal-based activated carbon shares certain properties with both coconut shell activated carbon and wood-based activated carbon. In terms of price, coconut shell activated carbon prices, which are generally high, overlap with the higher price ranges of coal-based activated carbon. By contrast, wood-based activated carbon prices, which are generally lower, overlap with the lower price ranges of coal-based activated carbon. As such, HS 4402.90.1000 (coconut shell charcoal) is unrepresentative of a range of coal-based carbonized material and yields a distorted SV.

⁵⁷ See Petitioners’ Remand Comments at 6 (citing *AR1 Remand*; and *AR3 Final Results*).

⁵⁸ *Id.* at 7 (citing *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014), and accompanying IDM, at Comment 11).

⁵⁹ *Id.* (citing Respondents’ Final SV Submission at Exhibit 5A).

⁶⁰ See Mandatory Respondent’s Comments at 2 (citing Draft Remand Results at 4).

⁶¹ *Id.* (citing *AR12 Final Results* IDM at Comment 12).

Commerce’s Position: Based on the comments provided by interested parties on the Draft Remand Results and in further consideration of the record evidence and Commerce’s practice in this proceeding with respect to valuing carbmat, we have reconsidered our selection of the carbmat SV from the Draft Remand Results. As explained in our analysis above, we find based on record evidence regarding the activation process and Commerce’s practice in this case, that the coconut-shell charcoal SV is the best available information with which to value the mandatory respondents’ coal-based carbmat.

The mandatory respondents incorrectly quote Commerce’s Draft Remand Results when they contend that Commerce recognizes that coconut-shell charcoal was not purchased or used by the respondents. What Commerce actually stated in the Draft Remand Results was that it “find{s} the record also contains no evidence that the mandatory respondents purchased or used coconut-shell charcoal to produce activated carbon *exported to the United States*” (*supra* at 4). The record in fact demonstrates that Datong Juqiang’s supplier used carbonized coconut shell in the production of activated carbon,⁶² however, this coconut-shell-based activated carbon was not sold to the United States as subject merchandise.

While the mandatory respondents note that the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) recognized that wood charcoal is a type of charcoal that can be used to create the subject merchandise and that wood charcoal and coconut shell charcoal are comparable with coal-based carbmat,⁶³ the Federal Circuit also recognized in that same decision that “Commerce was forced to select between two flawed data sets”:⁶⁴ *Cocommunity* (a coconut industry trade publication), which contained domestic Philippine prices for coconut-shell

⁶² See Datong Juqiang SDQR at Supplier A Section D Response (Exhibit D-6).

⁶³ See *Jacobi Carbons AB, et al. v. United States*, 619 Fed. Appx. 992, 1002 (Fed. Circ. 2015).

⁶⁴ *Id.*, 619 Fed. Appx. at 1000.

charcoal and Philippine import data under HS 4402, “Wood Charcoal (Including Shell or Nut Charcoal), Whether or Not Agglomerated.”⁶⁵ While the Federal Circuit did not necessarily agree with our selection of the Philippine import data under HS 4402, it upheld our selection of the Philippine import data because that data best fulfilled our SV selection criteria because it was unclear whether the *Cocommunity* publication on that record represented a broad national market.⁶⁶

The mandatory respondents’ contention that wood charcoal better represents the lower end of coal-based activated carbon is unpersuasive. The activated carbon pricing information placed on the record by the respondents is from a non-market economy (NME) company which supplies various sizes, chemical impregnations, and degrees of hardness of coal, coconut-shell, and wood-based activated carbons.⁶⁷ It is unclear how this information supports the use of a wood-based charcoal SV without further evidence or explanation.

Issue 2: Selection of Surrogate Financial Statements

Petitioners’ Comments

- Commerce correctly continued to rely on Bravo Green’s financial statements. In addition to the rationale Commerce provided, Commerce should include the following additional reasoning to explain why reliance on JSC Sorbent’s or Romcarbon’s financial statements is not appropriate.
- As Commerce noted in its Draft Remand Results, Romcarbon’s business activities are focused on other industrial segments unrelated to the production of activated carbon. Moreover, Romcarbon’s business activities are conducted in Romania, a country not on Commerce’s list of countries at the same level of economic development as China in this administrative review.
- The only prior instance in which Commerce relied on Romcarbon’s annual report was in a remand proceeding – and Commerce relied on Romcarbon’s financial statements only after determining that no other surrogate company financial statements from a country on the surrogate country list were available and usable for calculating surrogate financial

⁶⁵ *Id.*

⁶⁶ *Id.*, 619 Fed. Appx. at 1001.

⁶⁷ See Respondents’ Final SV Submission at Exhibit 5C.

ratios.⁶⁸

- The mandatory respondents' presentation of JSC Sorbent's financial statements contains several critical problems.
- The mandatory respondents excluded JSC Sorbent's administrative expenses (*i.e.*, 281,338)⁶⁹ reported on its profit and loss (P&L) statement. Commerce's practice is to add the company's administrative expenses to the numerator of the SG&A expense ratio. By excluding JSC Sorbent's administrative expenses from their calculation of the SG&A ratio, the mandatory respondents have grossly understated JSC Sorbent's SG&A ratio.
- While the mandatory respondents included JSC Sorbent's other income (*i.e.*, 134,266) as an offset to total SG&A expenses, their calculation improperly excluded the company's other expenses (*i.e.*, 74,845) from the surrogate financial ratio calculations. In so doing, the mandatory respondents failed to treat the company's other operating income and expenses in a consistent manner, as they selectively applied only the income portion as an offset to the total SG&A expenses to artificially lower the SG&A ratio. Commerce's practice with regard to other operating expenses is to add such expenses to the numerator of the SG&A ratio.
- The mandatory respondents added JSC Sorbent's total labor expenses (*i.e.*, 467,689) and contributions to social funds (*i.e.*, 137,177) reported in Note 6 (Production Costs) in the financial statements to the direct labor column.⁷⁰ This is incorrect, as the labor expenses and social contributions reported in Note 6 arise from the operations of the entire company and are not solely representative of the direct labor costs incurred in the manufacturing process. By allocating a greater expense to the direct labor column and, thus, overstating the material, labor, and energy (MLE) denominator, the mandatory respondents have understated all surrogate financial ratios. The petitioners recalculated ratios by recognizing that the 1,738,533 in cost of goods sold (COGS) *already* incorporates all production-related labor costs.
- The mandatory respondents fail to account for the components of JSC Sorbent's total amortization and depreciation expenses, which sometimes relate to assets associated with COGS and sometimes relate to assets associated with SG&A.
- The mandatory respondents incorrectly added the increase in end-of-period inventory balance in finished goods (FG) and work-in-progress (WIP) (*i.e.*, 128,117) to the total cost of materials and energy, thus further understating the surrogate financial ratios by overstating the denominator. Increases in inventory balances in FG and WIP should be deducted from the cost of raw materials, labor, and energy to arrive at the actual cost of manufacture of the goods sold during the period. This is also evident in JSC Sorbent's financial statements where the 128,117 increase in inventory balances is deducted from all other production costs to arrive at the total net expenditures for the period.

Mandatory Respondents' Comments

- Commerce improperly maintained its selection of Bravo Green to calculate the surrogate

⁶⁸ See Petitioners' Remand Comments at 9 (citing *Final Results of Redetermination Pursuant to Court Remand, Carbon Activated Tianjin Co., Ltd., et al. v. United States*, Consol. Court No. 20-00007 (CIT April 2, 2021), dated June 30, 2021, available at <https://access.trade.gov/resources/remands/21-35.pdf>).

⁶⁹ The values regarding JSC Sorbent's financial statements are expressed in Russian rubles.

⁷⁰ *Id.* at 11 (citing Mandatory Respondents' SV Submission at Exhibits 13D and 13E).

financial ratios.

- The CIT invalidated Commerce’s selection of Bravo Green on the grounds of its relatively inferior data quality as compared to JSC Sorbent and Romcarbon. Commerce was required to conduct a conjunctive comparative analysis of the data quality of the Bravo Green statement against that of the JSC Sorbent and Romcarbon statements.
- In the Draft Remand Results, Commerce claims that JSC Sorbent and Romcarbon do not have production experiences comparable to those of the mandatory respondents. This rationale impermissibly substitutes Commerce’s longstanding criteria requiring that surrogate companies produce comparable merchandise by a new rigid formula requiring production of the identical merchandise.
- Both JSC Sorbent and Romcarbon produce comparable merchandise. JSC Sorbent produces coagulants which are “substances (chemical reagents) capable of causing or accelerating the process of combining small suspended particles into groups (aggregates) due to their adhesion in collisions. The use of coagulants can increase the rate of deposition of suspended particles in the purification of liquids.”⁷¹
- Besides activated carbon, Romcarbon produces several other comparable products with similar function and end uses such as auto and industrial filters and respiratory protective equipment in addition to other chemicals such as polyethylene, polyvinyl chloride (PVC), polystyrene, and polypropylene products.
- Commerce has not explained how these other products, despite falling under the same family of chemicals as activated carbons, are not deemed comparable products.
- Commerce’s finding of a lack of comparable production experience is directly contrary to longstanding Commerce precedent selecting surrogate financial statements from companies that have small volumes of production of comparable merchandise. In the less-than-fair-value investigation of *Nails from China Investigation*, Commerce rejected the contention that the surrogate companies’ production of nails accounting for a relatively small percentage of their overall production made their financial ratios unrepresentative of a producer of nails.⁷² Commerce made similar findings in *Chlorinated Isos from China*.⁷³
- Commerce rejected the production experience rationale in *AR10 Final Results* and selected the 2016 Romcarbon financial statement and was affirmed by the CIT.⁷⁴ Here, the underlying facts are nearly identical for Romcarbon and JSC Sorbent. As such, Commerce is required by law to either follow its prior practice or alternatively provide a “reasonable explanation” for deviating from prior practice.⁷⁵
- Commerce failed to explain what information in Bravo Green’s financial statements it

⁷¹ See Mandatory Respondents’ Remand Comments at 8 (citing Respondents’ SV Submission at Exhibit 13F).

⁷² *Id.* at 9 (citing *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (*Nails from China Investigation*), and accompanying IDM, at Comment 11.

⁷³ *Id.* (citing *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of 2008-2009 Antidumping Duty Administrative Review*, 75 FR 70212 (November 17, 2010) (*Chlorinated Isos from China*), and accompanying IDM, at Comment 3.

⁷⁴ *Id.* at 10 (citing *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 53214 (October 22, 2018) (*AR10 Final Results*), and accompanying IDM, at Comment 6; and *Calgon Carbon Corporation v. United States*, 443 F. Supp. 3d 1334, 1352 (CIT 2020) (*Calgon*)).

⁷⁵ *Id.* (citing *Save Domestic Oil, Inc. v. United States*, 357 F.3d 1278, 1283 (Fed. Cir. 2004)).

considers “sufficient” and fails to address the deficiencies in Bravo Green’s financial statements which result in distortion of the financial ratios.

- Bravo Green’s superior comparable production experience is only one of several factors in the selection of financial statements – and not the most important one. The Federal Circuit has expressly stated that when selecting companies in surrogate countries, Commerce need not “duplicate the exact production experience of the Chinese manufacturer.”⁷⁶
- Commerce is required to explain whether the production experience alone outweighs the data superiority of JSC Sorbent and Romcarbon over Bravo Green, and Commerce must consider the comparative deficiencies in selecting surrogate financial statements.⁷⁷
- Bravo Green’s cost of sales potentially includes a portion of manufacturing overheads (*i.e.*, non-depreciation overheads) and does not identify an accurate amount of manufacturing overhead expenses. Consequently, the Bravo Green overhead ratio is potentially distorted.
- Because Bravo Green fails to itemize typically excludable costs such as transport expenses and packing cost, its “Operating expenses” potentially include such excludable expenses. Consequently, Bravo Green’s SG&A ratio likely double counts those expenses that distort the ratio. These distorted overhead and SG&A ratios cascade into a distorted profit ratio.
- Both JSC Sorbent’s and Romcarbon’s financial statements break out all major expense categories. Additionally, Romcarbon breaks out the cost of excludable expenses, thereby avoiding double counting.
- Settled precedent supports the choice of superior financial statements from a secondary surrogate country, even if it was not among the six designated Office of Policy list countries.⁷⁸
- In *Diamond Sawblades from China*, Commerce underscored the superiority of data quality over comparability of production experiences.⁷⁹ Further, *Diamond Sawblades from China* supports the proposition Commerce can use surrogate financial statements from surrogate countries that are at a “comparable level” of economic development if they are not among surrogate countries at the “same level.”

Commerce’s Position: Section 773(c)(1) of the Act states that “the valuation of the factors of production shall be based on the best available information regarding the values of such factors” Pursuant to 19 CFR 351.408(c)(4), Commerce values manufacturing overhead, SG&A expenses, and profit using publicly available information gathered from surrogate country

⁷⁶ *Id.* at 12 (citing *Nation Ford Chemical Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999)).

⁷⁷ *Id.* (citing *CP Kelco US, Inc. v. United States*, Slip Op. 15-27 (CIT March 31, 2015); and *Mid-Continent Steel & Wire, Inc. v. United States*, 586 F.Supp.3d 1349, 1355 (CIT 2022) (quoting *Mid Continent Steel & Wire, Inc. v. United States*, 941 F.3d 530, 544 (Fed. Cir. 2019)).

⁷⁸ *Id.* at 14 (citing *Vinh Hoan Corp. v. United States*, 179 F. Supp. 3d 1208, 1220-21 (CIT 2016)).

⁷⁹ *Id.* at 16 (citing *Diamond Sawblades and Parts Thereof from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review; 2012- 2013*, 80 FR 32344 (June 8, 2015) (*Diamond Sawblades from China*), and accompanying IDM, at Comment 5D).

producers of merchandise that is identical or comparable to subject merchandise. In choosing surrogate financial ratios, it is the Commerce’s practice to use data from market economy surrogate companies based on the “specificity, contemporaneity, and quality of the data.”⁸⁰ Additionally, in selecting surrogate producers, “Commerce may also consider the ‘representativeness of the production experience of the surrogate producers in relation to the respondents’ own experience.’”⁸¹

As is often the case when selecting surrogate financial statements, Commerce is faced with imperfect information with respect to the selection of surrogate companies to derive the surrogate financial ratios. Despite the mandatory respondents’ insistence,⁸² the CIT did not invalidate Bravo Green’s 2018 financial statements, but rather ordered that Commerce must “fairly weigh the available options and explain its decision in light of its selection criteria, addressing any shortcomings.”⁸³

Commerce’s well-established practice is to rely on the primary surrogate country for all SVs, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.⁸⁴ Commerce finds that employing data from the primary surrogate country helps ensure that there are no distortions between factors’ costs, including capital, based on their relative prices.⁸⁵

⁸⁰ See *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 IDM, at Comment 1; see also *Dorbest*, 462 F. Supp. 2d at 1262, 1301.

⁸¹ See *Dorbest*, 462 F. Supp. 2d at 1262, 1301 (citing *Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003), and accompanying IDM, at Comment 9.)

⁸² See Mandatory Respondents’ Remand Comments at 5.

⁸³ See *Remand Order* at 40.

⁸⁴ See *Jiaying Brother Fastener Co.*, 961 F. Supp. 2d at 1332-33.

⁸⁵ See *Certain Steel Nails from the People’s Republic of China: Final Results of Third Antidumping Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013), and accompanying IDM, at Comment 1.

With respect to the financial ratios derived from Bravo Green’s 2018 financial statements, they are from a company that is a producer of identical or comparable merchandise, and from a country at the same level of economic development as China, are audited, complete, publicly available, and do not show evidence of countervailable subsidies. Further, we find that Bravo Green’s financial statements provide a cost of sales and depreciation expenses related to equipment and machinery from which to derive an overhead surrogate ratio, SG&A expenses from which to derive a surrogate SG&A ratio, and a profit from which to calculate a profit ratio.⁸⁶ The mandatory respondents have failed to identify a sufficient basis for Commerce to disregard the Bravo Green financial statements and instead derive SV ratios from the financial statements of companies in a secondary surrogate country.⁸⁷ While Bravo Green does not disaggregate its financial information as much as we prefer in that its financial statements do not break out expenses related to energy, labor, or specific SG&A expenses, as noted above, they are sufficiently detailed to calculate the surrogate financial ratios, which are from a manufacturer of identical merchandise (*i.e.*, steam activated carbon) within the primary surrogate country.

The mandatory respondents contend that Bravo Green’s overhead ratio is potentially distorted because its “cost of sales” potentially includes a portion of manufacturing overhead.⁸⁸ Additionally, the mandatory respondents argue that because Bravo Green’s financial statements do not itemize typically excludible costs such as transport expenses and packing cost, its “operating expenses” potentially include such excludable expenses and consequently the SG&A

⁸⁶ See Final SV Memorandum at Attachment 1; *see also* Petitioners’ SV Submission at Attachment SV2-4.

⁸⁷ See *Globe Metallurgical*, 350 F. Supp. 2d 1148, 1160 (Commerce will disregard values from the primary surrogate country when it finds those values to be: (1) unavailable; (2) not sufficiently contemporaneous; (3) of poor quality; or (4) otherwise unreliable); *see also Tianjin Wanhua Co., Ltd. v. United States*, 253 F. Supp. 3d 1318, 1324 (CIT 2017) (To remand Commerce to use other surrogate values, the respondent must establish that the requested values were “the one and only reasonable surrogate selection on {the} administrative record, not simply that {the requested value} may have constituted another possible reasonable choice.”)

⁸⁸ See Mandatory Respondents’ Remand Comments at 12-13.

ratio likely double counts those expenses. While the mandatory respondents assume potential distortions in the financial ratios, they point to no evidence on the record to support their contention and we have no basis to make such an adjustment. Further, we find that any “potential” distortions that may arise from Bravo Green’s financial statements do not detract from the greater distortions that would arise from using JSC Sorbent’s or Romcarbon’s financial statements.

While Romcarbon’s financial statements have a greater level of detail, as noted above and further explained below, Romcarbon’s main production activities are the manufacture of various plastic products.⁸⁹ There is no breakdown in its financial statements regarding the costs and revenues of its various business units, specifically in profit center no.2, where Romcarbon’s activated carbon production takes place. Accordingly, because Romcarbon produces primarily plastic products, its costs and revenues are almost entirely unrelated to the production of activated carbon. Therefore, were Commerce to use the Romcarbon’s financial statements, the surrogate financial ratios would be largely unrelated to the production experience of the mandatory respondents and thus introduce distortions in the margin calculations.

JSC Sorbent’s financial statements suffer from similar deficiencies beyond not being from the primary surrogate country. The information on the record indicates that JSC Sorbent produces activated carbon, coagulants, and respiratory personal protection equipment.⁹⁰ JSC Sorbent’s financial statements contain no information related to the costs and revenues of its activated carbon business. Moreover, as the petitioners note, the mandatory respondents’ calculation of JSC Sorbent’s financial ratios also contain several problems. For example, the mandatory respondents excluded from their calculation of surrogate financial ratios JSC

⁸⁹ See Respondents’ Final SV Submission at Exhibit 13H.

⁹⁰ *Id.* at Exhibit 13E.

Sorbent's administrative expenses (*i.e.*, 281,338) reported on its P&L statement.⁹¹ This calculation is inconsistent with Commerce's well-established methodology for calculating the ratio representing a company's SG&A expenses as a percent of its total expenses for MLE, factory overhead, and traded goods. Therefore, for the above reasons, we continue to find that JSC Sorbent's financial statements do not represent the best available information to calculate the surrogate financial ratios.

The mandatory respondents appear to take issue with Commerce's long-standing practice of taking into account the surrogate financial company's production experience in differentiating between the production of identical merchandise and comparable merchandise, when evaluating between potential surrogate financial statements.⁹² As noted above, the record contains surrogate financial information from Bravo Green, a producer of identical merchandise (*i.e.*, steam activated carbon), JSC Sorbent, a Russian manufacturer of activated carbon and chemical coagulants, and Romcarbon, a Romanian company that is primarily a manufacturer of plastic products.⁹³ Commerce has long found it important to consider whether the potential surrogate companies have financial statements that are specific to the production of merchandise that is identical or comparable to subject merchandise.⁹⁴ In Commerce's *Notice of Proposed Rulemaking*, Commerce stated:

Given the importance of manufacturing overhead, general expenses and profit in the calculation of normal value, {Commerce} believes it is important to seek information that is as accurate as possible. To this end, paragraph (c)(4) expresses a preference for using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country for

⁹¹ *Id.*

⁹² See Mandatory Respondents' Remand Comments at 7.

⁹³ We note the information on the record with respect to JSC Sorbent and Romcarbon does not indicate whether they manufacture steam or chemical activated carbon. See Respondents' Final SV Submission at Exhibit 13E, 13F and 13H.

⁹⁴ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 86 FR 58871 (October 25, 2021) (*Solar Cells from China*), and accompanying IDM, at Comment 14.

valuing manufacturing overhead, general expenses and profit. Because {Commerce} expects that these elements will vary widely across industries, we will attempt to obtain data that is {sic} *as specific as possible to the subject merchandise*.⁹⁵

The mandatory respondents, as further clarified below, failed to demonstrate why financial data from companies producing non-subject merchandise are better information than financial data from a company that produces the merchandise under consideration.⁹⁶

Further, in *Nails from China AR2*, Commerce announced a refinement to its practice with regard to how it determines whether a company is a producer of “identical” or “comparable” merchandise. Specifically, Commerce stated that:

In the second administrative review of the antidumping duty order on steel nails from China, we have now determined that where such detailed evidence is available in the record of the proceeding, we will analyze a surrogate company’s product mix to make a determination of whether it is more reasonable to consider the company an “identical” producer as a whole or more reasonable to consider the company a producer of comparable merchandise depending on the facts of each case.⁹⁷

While the information on the record indicates that JSC Sorbent is a producer of activated carbon, there is no information indicating that it is a producer of *steam* activated carbon (the subject merchandise) or a producer of chemical activated carbon, unlike Bravo Green’s financial statements which clearly indicate Bravo Green produces steam activated carbon.⁹⁸ Additionally, while the mandatory respondents contend that chemical coagulants could be considered comparable merchandise in that these coagulants are used to purify water, they provide no

⁹⁵ See *Notice of Proposed Rulemaking and Request for Public Comments: Antidumping Duties; Countervailing Duties*, 61 FR 7308 (February 27, 1996) (*Notice of Proposed Rulemaking*) (emphasis in the original).

⁹⁶ See *Solar Cells from China* IDM at Comment 14. Additionally, in *Solar Cells from China*, we also rejected the use of a more detailed financial statement and instead used the statements more specific to the production of merchandise that is identical to the subject merchandise. *Id.*

⁹⁷ See *Certain Steel Nails from the People’s Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) (*Nails from China AR2*), and accompanying IDM, at Comment 2.

⁹⁸ See Petitioners’ Final SV Submission at Attachment SV2-4.

information as to whether the production process of these coagulants is similar to the production process of steam activated carbon or how these coagulants are comparable to steam activated carbon beyond “purification of liquids.”⁹⁹ As noted by the CIT, “it is ... settled that interested parties bear the burden of developing an adequate record on contested issues.”¹⁰⁰ However, even if the mandatory respondents had provided evidence demonstrating the comparability of JSC Sorbent’s coagulants to steam activated carbon, Bravo Green’s financial statements would remain preferable because it is a producer of identical merchandise from the primary surrogate country.

The mandatory respondents also argue that Romcarbon’s auto and industrial filters are comparable products in that they have similar function and end uses as activated carbon.¹⁰¹ Moreover, the mandatory respondents make the unpersuasive claim that plastic products like polystyrene, PVC, polyethylene, and polypropylene are comparable products to activated carbon simply because those products are in the chemical family as is activated carbon.¹⁰² As noted above, it is the interested parties’ responsibility for developing an adequate record.¹⁰³ Beyond the mandatory respondents’ assertion with respect to end use, they provide no information regarding the production process of automotive and industrial filters or any other similarities with steam activated carbon. Moreover, the mandatory respondents point to no evidence on the record which demonstrates the similarities between steam activated carbon and plastic products, which are distinct products that do not appear to share any similarities with steam activated

⁹⁹ See Mandatory Respondents’ Remand Comments at 8 (citing Respondents’ Final SV Submission at Exhibit 13E and F).

¹⁰⁰ See *Coalition of American Flange Producers v. United States*, 448 F. Supp. 3d 1340, 1357 (CIT 2020) (*American Flange*) (citing *QVD Food*, 658 F.3d at 1324).

¹⁰¹ See Mandatory Respondents’ Remand Comments at 8 (citing Respondents’ Final SV Submission at Exhibit 13H).

¹⁰² *Id.*

¹⁰³ See *American Flange*, 448 F. Supp. 3d 1357.

carbon. Finally, we note that it is unclear whether Romcarbon produces steam activated carbon or chemically activated carbon. Therefore, Bravo Green's financial statements are preferable over Romcarbon's, as they demonstrate that Bravo Green is a manufacturer of identical merchandise from the primary surrogate country.

In the *AR12 Final Results*, Commerce explained that the 2018 Bravo Green financial statements are from a producer of identical merchandise – steam activated carbon – with production experience comparable to that of the mandatory respondents.¹⁰⁴ In selecting potential surrogate producers, courts have also acknowledged that Commerce may also consider the representativeness of the production experience of the surrogate producers in relation to the NME producer's own experience.¹⁰⁵ Therefore, the mandatory respondents should be aware that a potential surrogate company's production experience is an important factor when selecting among potential surrogate financial statements.

Moreover, as we have explained on remand, the record supports our finding that Bravo Green's production experience is more representative than those of JSC Sorbent and Romcarbon. As we explain above, the record demonstrates that JSC Sorbent produces a variety of merchandise other than activated carbon – respiratory personal protective equipment, coagulants, and water treatment systems – but the company's financial statements do not provide information pertaining to the sales or production quantity of activated carbon or any of the products it manufactures.¹⁰⁶ Because we are unable to determine what proportion of JSC Sorbent's production activity is related to activated carbon in the absence of this information, and thus, it not possible to evaluate whether JSC Sorbent's production experience is similar to

¹⁰⁴ See *AR12 Final Results* IDM at Comment 5.

¹⁰⁵ See *Seah Steel Vina Corp. v. United States*, 269 F. Supp. 3d 1335, 1348 (CIT 2017).

¹⁰⁶ See Respondents' Final SV Submission at Exhibit 13F.

the production experience of the mandatory respondents or Bravo Green, it is reasonable not to rely on these financial statements in calculating surrogate financial ratios. Similarly, the record demonstrates that Romcarbon's sales of activated carbon are less than 1.34 percent of its 2018 sales, significantly different from the operation and sales of Bravo Green (100 percent),¹⁰⁷ and the mandatory respondents.¹⁰⁸

We find inapposite the mandatory respondents' reliance on *Nails from China Investigation*, wherein Commerce rejected the contention that the surrogate companies' production of nails accounting for a relatively small percentage of their overall production made their financial ratios unrepresentative of a producer of nails.¹⁰⁹ In the *Nails from China Investigation*, the surrogate financial statements in question were from the *primary surrogate country* and were from the only surrogate companies which were producers of nails.¹¹⁰ Here, neither JSC Sorbent or Romcarbon are located in the primary surrogate country nor does the record demonstrate that they are primarily producers of steam activated carbon. Additionally, in *Chlorinated Isos from China*, Commerce stated that "individual {...} production levels are irrelevant, except to the extent the different levels of {...} production affect the two companies' similarity of operations" of the mandatory respondent in that case.¹¹¹ As noted above, Bravo Green manufactures only activated carbon as do the mandatory respondents, and Commerce has continued the practice from *Chlorinated Isos from China* of finding the best available information with respect to the valuation of surrogate financial ratios based on similarities

¹⁰⁷ See Petitioners' Final SV Submission at Attachment SV2-4.

¹⁰⁸ See CAT SDSQR; and DJAC SSDQR.

¹⁰⁹ See Mandatory Respondents' Remand Comments at 9 (citing *Nails from China Investigation* IDM at Comment 11).

¹¹⁰ See *Nails from China Investigation* IDM at Comment 11.

¹¹¹ See *Chlorinated Isos from China* IDM at Comment 3.

between the mandatory respondents' operations and the surrogate financial company's(ies) operations.¹¹²

The mandatory respondents improperly focus on facts from the *AR10 Final Results* and *Calgon* to support their contention that Commerce should deviate from its practice of selecting useable financial statements from the primary surrogate country and select the Romcarbon and JSC Sorbent financial statements, which are not from Malaysia, the primary surrogate country. In the *AR10 Final Results*, after reviewing all the potential surrogate financial statements on the record, Commerce selected Romcarbon's 2016 financial statements as they were the only financial statements on the record from a country at the same level of economic development as China and that did not show evidence of countervailable subsidies.¹¹³ In the subsequent litigation, in *Calgon*, the CIT affirmed Commerce's practice to disregard financial statements which contain evidence of countervailable subsidies when it affirmed the selection of the Romcarbon financial statements over the Thai financial statements containing countervailable subsidies.¹¹⁴ The circumstances are not analogous in this case.

Finally, while the mandatory respondents cite to *Diamond Sawblades from China* as support that Commerce prefers detailed financial statements from a secondary surrogate country over financial statements from the primary surrogate country at a comparable level of economic development, we note that Commerce's selection of surrogate financial statements in that case was remanded in *Diamond Sawblades 2017* because Commerce did not explain why it determined that the Philippines were economically comparable to China and requested further

¹¹² *Id.*

¹¹³ See *AR10 Carbon* IDM at Comment 6.

¹¹⁴ See *Calgon*, 443 F. Supp. 3d at 1352.

explanation of Commerce's selection of financial statements.¹¹⁵ Subsequently on remand, Commerce obtained and used the financial statements from the primary surrogate country, which the CIT affirmed in *Diamond Sawblades 2018*.¹¹⁶ Rather than support the mandatory respondents' position, the conclusion that can be drawn from the *Diamond Sawblades from China* litigation is that financial statements from the primary surrogate country should be used, provided those financial statements meet Commerce's financial statement selection criteria and contain sufficient information to derive surrogate financial ratios.

Therefore, Commerce continues to determine that Bravo Green's 2018 financial statements represent the best available information to derive the surrogate financial ratios because they are audited, complete, from the primary surrogate country, show a profit, contain sufficient information to derive surrogate financial ratios, and are from a company that has a production experience similar to that of the mandatory respondents.

IV. FINAL RESULTS OF REDETERMINATION

Consistent with the *Remand Order*, we further explained our choice of HS code for the coal-based carbmat SV and further explained our choice of surrogate financial statements in this final redetermination. Based on the foregoing explanations, we have made no changes to our determinations in the *ARI2 Final Results* regarding the choice of the input-specific HS code used to value coal-based carbmat and the selection of surrogate financial statements. Accordingly, we have not revised the margin calculations for the mandatory respondents, Carbon Activated and Datong Juqiang, from the *ARI2 Final Results*. Thus, we also did not revise the separate rate

¹¹⁵ See *Diamond Sawblades Manufacturers' Coalition v. United States*, 219 F. Supp. 3d 1368, 1376-87 (CIT 2017) (*Diamond Sawblades 2017*).

¹¹⁶ See *Diamond Sawblades Manufacturers' Coalition v. United States*, 334 F. Supp. 3d 1353 (CIT 2018) (*Diamond Sawblades 2018*).

margin for Beijing Pacific, Datong Yunguang, and SITT,¹¹⁷ the non-individually examined respondents that qualified for a separate rate and participated in the litigation.¹¹⁸

11/16/2022

X



Signed by: LISA WANG
Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance

¹¹⁷ See *AR12 Final Results*, 86 FR 10540.

¹¹⁸ *Id.* (explaining method for determining rate for non-examined separate rate respondents).