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Jacobi Carbons AB et al. Slip Op 17-39
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Jacobi Carbons AB et al. v. United States

Consol. Court No. 15-00286, Slip Op. 17-39 (CIT April 7, 2017)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (CIT or Court) in *Jacobi Carbons AB et al v. United States et al.*, Consol. Court No. 15-00286, Slip Op. 17-39 (CIT April 7, 2017) (*Remand Opinion and Order*). These final remand results concern *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015) (*AR7 Final Results*), and the accompanying Issues and Decision Memorandum (IDM). The CIT remanded three issues and directed the Department to: 1) provide a reasoned explanation as to why the range of gross national income (GNI) reflected on the Surrogate Country Memorandum[1] demonstrates economic comparability to the People's Republic of China (PRC), including why the Philippines' GNI does not;[2] 2) reconsider and further explain the Department's determination that Thailand is a significant producer of activated carbon, including the significance of Thailand's ranking as the sixth largest exporter in terms of its effect on global trade;[3] and 3)

[1] Memorandum entitled "Certain Activated Carbon from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated July 25, 2014, (Surrogate Country Memorandum).
[2] *Remand Opinion and Order*, 28-32.
[3] *Id.* at 35-37.

further explain and reconsider the Department's value-added tax (VAT) calculation with respect to Jacobi Carbons AB (Jacobi).[4] The CIT also directed the Department to reconsider the separate rate assigned to the non-mandatory respondents in accordance with any redetermination of the antidumping margin assigned to Jacobi.[5]

As set forth in detail below, pursuant to the CIT's *Remand Opinion and Order*, we have further explained our GNI range with respect to the Surrogate Country Memorandum, our determination that Thailand is a significant producer of activated carbon, and our calculation of VAT with respect to Jacobi. Consequently, for the purposes of these final results of redetermination on remand, the Department has made no changes to the mandatory respondents' margin calculations,[6] and, consequently, no changes to the separate rate margins for non-individually examined respondents that qualified for a separate rate.

B. REMANDED ISSUES

1. GNI Range

Background

In the Court's *Remand Opinion and Order*, the Court explained that, although the record contains the raw GNI data the Department relied upon in compiling the list of countries considered economically comparable to the PRC, the Department's determination regarding what constitutes "economic comparability" based on the GNI data is not discernible.[7] The Court opined that "the *Final Results* did not explain what factors {Commerce's Office of Policy} considered when it compiled the list" of surrogate countries, particularly how the Department

[4] *Id.* at 58-60.
[5] *Id.* at 64-65.
[6] The mandatory respondents in this administrative review are Jacobi and Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang).
[7] *See Remand Opinion and Order* at 31.

determined the GNI ranges.[8] The Court remanded to the Department to provide a reasoned explanation of why the range of GNI data reflected in the Department's list of countries demonstrates economic comparability to the PRC, including why the Philippines' GNI does not demonstrate this economic comparability.[9]

Analysis

Use of GNI Data in Selecting a Surrogate Country

Section 773(c)(4)(A) of the Tariff Act of 1930, as amended (the Act) states that the Department shall "to the extent possible" utilize the prices, or costs, of factors of production (FOPs) in one or more market economy (ME) countries that are, *inter alia*, "at a level of economic development comparable to that of the nonmarket economy country." The statute is silent with respect to how, or on what basis, the Department may make this determination,[10] but it is the Department's long-standing practice to use *per capita* GNI data reported in the World Bank's *World Development Report* as the indicator of the level of economic development.[11] This Court has acknowledged that "per capita GNI is a 'consistent, transparent, and objective measure to determine economic comparability,'" and that "Commerce's reliance on per capita GNI 'is a reasonable interpretation of the statutory mandate to identify and select a primary

[8] *Id.* at 29.
[9] *Id.* at 32.
[10] *See Jiaxing Brother Fastener Co. v. United States*, 822 F.3d 1289, 1293 (Fed. Cir. 2016) ("The statute does not define 'comparable'; nor does it require {the Department} to use any particular methodology in determining which countries are sufficiently comparable").
[11] *See*, *e.g.*, *Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Garment Hangers from the People's Republic of China*, 73 FR 15726, 15728 (March 25, 2008), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008); *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011), and accompanying IDM at Comment 1.

surrogate country at a level of economic development comparable to the nonmarket economy country.'"[12]

The statute does not require that the Department use a surrogate country that is: (a) at a level of economic development identical or *most* comparable to that of the nonmarket economy (NME) country; nor (b) the *most* significant producer of comparable merchandise.[13] The statute requires only that the Department use a surrogate ME country that is at a level of economic development comparable to that of the NME country, and that is a significant producer of comparable merchandise.[14] Even these requirements are not binding, as the statute requires that they be met *only to the extent possible*.[15]

Nevertheless, wherever possible, the Department selects a surrogate country at the *same* level of economic development as the NME country, which satisfies the statutory requirement to value FOPs using data from "one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country . . . ."[16] The Department does so by considering candidate countries that lie in a relatively narrow *per capita* GNI range that is *centered* on the *per capita* GNI of the NME country. This implicit association between: (a) the NME country's level of economic development; and (b) a *per capita* GNI range, *i.e.*, the idea that countries with different *per capita* GNIs can, nevertheless, be at the same level of economic development, is reasonable and consistent with the country classification schemes of non-government organizations that study economic development issues. For example,

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[12] *Remand Opinion and Order* at 26-27 (quoting *Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1328, 1330 (CIT 2014)) (internal quotations omitted).
[13] *See* section 773(c)(4) of the Act; *see also Policy Bulletin No. 04.1*, ''Non-Market Economy Surrogate Country Selection Process," (March 1, 2004) (*Policy Bulletin*), available on the Department's Web site at http://enforcement.trade.gov/policy/bull04-1.html.
[14] *See* section 773(c)(4) of the Act.
[15] *Id*. (emphasis added).
[16] *Id*.

although the United Nations and the World Bank use somewhat different country classification schemes, both classify countries on the basis of *per capita* income *ranges*, not specific *per capita* incomes.[17] For instance, although the *per capita* GNIs of the United Kingdom, the United States and Switzerland differ widely ($41,680, $53,470, and $90,680, respectively, in 2013), all three countries are understood to have attained the same high level of economic development.[18]

The same type of grouping can be made all along the continuum of *per capita* GNIs world-wide, by thinking of *per capita* income *ranges* as a flight of stairs. If the flight of stairs represents the general notion that higher income goes hand-in-hand with higher levels of economic development, then each (flat) step represents a level of economic development and: (i) for example, Peru with a *per capita* GNI of $6,270 in 2013 is on one of the lower steps on the staircase; (ii) the United States is on the highest step; (iii) the United Kingdom and Switzerland are on the same step as the United States; (iv) there are other countries on Peru's step; and (v) other countries populate the steps in between.[19] Thus, the staircase metaphor illustrates that (a) the level of economic development increases with *per capita* GNI if the difference or jump in *per capita* GNI is big enough to take one from step to step, and (b) different countries can be at the same level of economic development, even if their *per capita* GNIs differ, so long as those differences are small enough that one stays on the same step. While each (flat) step (*i.e.*, each level of economic development) is associated with a range of *per capita* GNI, the staircase itself (all the steps collectively) is associated with a relatively broad range of *per capita* GNI. There is no agreed-upon method for defining the range of *per capita* GNI for each step. The World Bank,

[17] *See* Final Results of Redetermination Pursuant to Remand, *Vin Hoan Corporation et al. v. United States*, Consol. Court No. 13-00156, Slip Op. 15-16 (February 19, 2015), at page 4 (http://enforcement.trade.gov/remands/15-16.pdf).
[18] *See* Petitioners' Post-Preliminary Comments, dated May 19, 2015, at Attachment 1.
[19] *Id.*

for example, places all countries into one of four "steps" based on *per capita* GNI: low income ($1,045 or less), lower middle income ($1,046 to $4,125), upper middle income ($4,126 to $12,745), and high income ($12,746 and higher).[20] We note that as a matter of policy, the Department has not adopted the World Bank income groups as is for the purpose of defining a "level of economic development" under section 773(c)(4)(A) of the Act, primarily because these income groups are not sufficiently "centered" on the NME countries that are subject to our antidumping proceedings. Rather, the Department defines the appropriate "step" for each NME country at issue using a relatively narrow range of *per capita* GNI, centered on the country at issue.

In the example above, involving the United Kingdom, the United States and Switzerland, one can ask which of the three countries is the most economically comparable to another country, for example, Canada, on the basis of national differences in *per capita* GNI, or some other economic variable. However, in the context of surrogate country selection, there is nothing in the statute that directs, or suggests, that the Department undertake such an analysis. Nothing in the relevant provisions of the statute requires that the Department use a surrogate country that is at a level of economic development *most* comparable to the NME country;[21] instead, the only directive is for the Department to use a surrogate country that is at a level of economic development comparable to that of the NME country. Because the Department, where possible, selects a surrogate country from a non-exhaustive list of countries,[22] all of which are at a level of economic development that is not only comparable, but the same as the NME country's level,

[20] *Id*.
[21] *See Policy Bulletin*; *see also* section 773(c)(4) of the Act and *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 2394 (January 16, 2015), and accompanying IDM at Comment I.
[22] As noted in the Surrogate Country Memorandum, the six countries identified on the surrogate country list "are likely to have good data availability and quality…." *See* Surrogate Country Memorandum.

parsing differences in the *per capita* GNIs of the surrogate country candidates on a surrogate country list would do nothing to further statutory objectives or fulfill statutory requirements. Instead, consistent with the statute, the Department attempts to distinguish among the countries on a surrogate country list, and select a primary surrogate country, on the basis of data quality and significant producer considerations.[23]

Because the non-exhaustive list of candidate countries is only a *starting point* for the surrogate country selection process, the Department also considers other countries at the same level of economic development as the NME country that interested parties propose, as well as other countries that are not at the same level of economic development as the NME country, but still at a comparable level. As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because they: (a) are not significant producers of comparable merchandise; (b) do not provide sufficient, reliable sources of publicly available surrogate value (SV) data; or (c) are not suitable for use because of other factors.[24] Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data

[23] We note that "economic comparability" is used here and elsewhere by the Department interchangeably with the statutory language, "level of economic development comparable to."

[24] *See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 4386 (January 22, 2013), and the accompanying IDM at Comment 2; *Certain Steel Threaded Rod from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*; 2010-2011, 77 FR 67332 (November 9, 2012), and accompanying IDM at Comment 1; *Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).

considerations outweigh level-of-economic-development differences or significant producer considerations.[25]

Reasonableness of the Income Range the Department Selected

In the *Remand Opinion and Order*, the Court directed the Department to "provide a reasoned explanation why the range of the GNI data reflected on {the Surrogate Country Memorandum} demonstrates economic comparability to the PRC."[26] Before examining the specific GNI range of this record, it is important to recall the two basic objectives that underlie the generation of the surrogate country list. The first objective is to provide a consistent starting point for all proceedings involving the same NME country, in this case the PRC. The second objective is to provide a reasonably predictable process so that, in any proceeding involving an NME country, interested parties understand the process and methodology that the Department follows.

At the same time, however, as noted and upheld by the Court, the Department's longstanding practice is to treat each segment of an antidumping (AD) proceeding, including the AD investigation and the administrative reviews that may follow, as independent segments with separate records which lead to independent determinations.[27] In each segment of a proceeding, parties are given opportunities to present and comment on all aspects of surrogate country selection. Because of this, the Department must attempt to balance the need for consistency and predictability with the need to retain a certain degree of flexibility to make case-specific determinations in response to parties' comments, as well as satisfy the statute's requirement to use the best available information.

[25] *See* Surrogate Country Memorandum.
[26] *See Remand Opinion and Order* at 32.
[27] *See E.I. DuPont de Nemours & Co. v. United State*s, 22 CIT 19, 32 (January 29, 1998).

While the methodology of evaluating potential surrogate countries has remained consistent over the years, the process of generating the list itself has developed in response to several different factors, including: (1) the PRC's rapid economic growth; (2) issues and arguments that arise in the context of specific proceedings; (3) the quality and availability of SV data; and (4) litigation or further guidance provided by the Courts.

With respect to the fourth factor, the Court and the U.S. Court of Appeals for the Federal Circuit (CAFC) ruled on the question of the level of economic development in various litigation. In May 2010, the CAFC invalidated the regression methodology used for labor values, in part, because the Department relied on countries that were not at a level of economic development comparable to the PRC. In that context, the CAFC noted that the Department could rely on ME countries on the case record that were between half of the PRC's GNI and between one to two times the PRC's GNI.[28] While the Department's surrogate country lists do not employ, or endorse, this particular ratio or bright line, we observe that the GNIs of surrogate countries selected for the PRC's surrogate country list fall within or near the range that the CAFC identified in 2010.

Court decisions subsequent to the *Dorbest CAFC* decision provided further guidance with regard to countries selected for the surrogate country list.[29] In February 2011, for example, the CIT faulted the Department for not selecting any surrogate countries with GNIs *higher* than the PRC, and suggested that the Department develop "a more balanced range of countries" so

[28] *See Dorbest Ltd., et al. v. United States*, 604 F. 3d 1363, 1372 (Fed. Cir. 2010) (*Dorbest CAFC*) ("Here, there were five market-economy countries with gross national incomes less than that of China and an additional eleven countries with gross national incomes between one and two times that of China. Although we need not resolve which of these countries, or which additional countries, could properly be considered economically comparable to China, some subset of these countries must surely fit the bill").

[29] We acknowledge that these decisions involved the labor methodology. However, these decisions did factor heavily into the Department's consideration of future surrogate country lists.

that the range is not "arbitrarily biased towards the low end of the *per capita* GNI."[30] Subsequent decisions, such as the *Dongguan* litigation, also seemed to find merit in surrogate country lists with GNI ranges that are "evenly distributed around the PRC's GNI."[31] In creating such lists, however, the CIT acknowledged in *Dorbest CIT* that the Department "does not have to achieve mathematical perfection" when selecting the upper and lower GNI range.[32]

General Methodology for Selecting Surrogates for the List

The annual release of the *World Bank Development Report,* which includes the latest *per capita* GNI data, initiates the process of revising the surrogate country list. The Department examines the new *per capita* GNI data for the PRC and the change in *per capita* GNI from the year before, and compares the change in the PRC's *per capita* GNI to the respective changes in *per capita* GNIs of the existing set of surrogate countries. Next, we determine whether it is necessary to re-center the GNI range in light of the year-to-year GNI changes. Due to the PRC's rapid GNI growth rate, it is almost always the case that the GNI range relied on in the previous year may need to be reset or re-centered. Over the five years leading up to this proceeding, the PRC's GNI nearly doubled, from $3,590 to $6,560. Accordingly, in each year, the Department reevaluated the GNI range and expanded it at roughly the same rate.

Table 1: Per Capita GNI Range (2009-2013)[33]

GNI Range	2009	2010	2011	2012	2013	Change (%)
PRC's GNI	3,590	4,260	4,940	5,740	6,560	82%

[30] *See Dorbest Ltd. v. United States*, 755 F. Supp. 2d 1291, 1297-98 & n.17 (CIT 2011) (*Dorbest CIT*).
[31] *See Dongguan Sunrise Furniture Co. Ltd. v. United States*, 865 F. Supp. 2d 1216, 1238 (CIT 2012) (*Dongguan*).
[32] *See Dorbest CIT,* 755 F. Supp. 2d at 1298.
[33] *See* Jacobi's Surrogate Country Comments, dated November 12, 2014, at Attachment A, Surrogate Country Memorandum, and Memorandum entitled, "Seventh Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results," dated April 29, 2015, (Preliminary SV Memorandum) at Attachment 2.

Highest GNI country on the Surrogate List	5,770	6,100	7,640	7,610	9,060	57%
Lowest GNI country on the Surrogate List	1,790	2,050	2,210	3,420	3,960	121%
GNI range (difference between highest and lowest country	3,980	4,050	5,430	4,190	5,100	28%

Moreover, we also find that the range of *per capita* GNI range presented in the Surrogate Country Memorandum and relied on in this administrative review is a reasonable basis for determining whether countries are proximate to the PRC – in other words, that they are at the same level of economic development as the PRC. It is generally accepted that the *per capita* GNI range associated with a given "level" of economic development increases (in dollar terms) for higher levels of economic development. The World Bank, for example, places all countries into one of four income groups based on *per capita* GNI: low income ($1,045 or less), lower middle income ($1,046 to $4,125), upper middle income ($4,126 to $12,745), and high income ($12,746 and higher).[34] For low income countries, only one thousand dollars separates the countries within that group,[35] whereas for high income countries, tens of thousands of dollars separate countries at the same group.[36] For example, Hungary ($13,260) and Switzerland ($90,680) are considered to be both within the same income group, whereas India ($1,570) and Bangladesh ($1,010) are not.[37] The *per capita* GNI range that the PRC occupies as an upper middle income country, $8,619 (the difference between $12,745 and $4,126) using the World Bank's range, is roughly consistent with the *per capita* GNI range that

[34] *See* Petitioners' Post-Preliminary Comments, dated May 19, 2015, at Attachment 1.
[35] *Id.*
[36] *Id.*
[37] *Id.*

the Department used ($5,100 as measured from the highest GNI country to the lowest *per capita* GNI country on the surrogate country list). The difference between these upper middle income ranges is consistent with the separation of GNIs as income levels trend upward.

The analysis of the World Bank income groups above is meant to illustrate the reasonableness of the *per capita* GNI range that the Department selected in 2013. It is not meant to imply that the Department relies on these income ranges to develop the surrogate country list. As a matter of policy, the Department decided not to adopt the World Bank income groups as is for the purpose of defining a "level of economic development" under section 773(c)(4)(A) of the Act. One of the primary reasons behind this decision is that these income groups are not sufficiently "centered" on the NME countries that are subject to our AD proceedings. For example, the PRC ($6,560) is close to the lower end of the upper middle income group cut-off ($4,125); so, if the World Bank's upper middle income group were adopted "off-the-shelf," this would eliminate a number of potential surrogate countries that are close to the PRC on the lower range. The PRC ($6,560) and Ukraine ($3,960), for instance, would not be at the same "level" within the meaning of section 773(c)(4)(A) of the Act, despite their relative proximity; whereas, Brazil ($11,690) and the PRC would be at the same level. Nevertheless, the World Bank's general premise of more expansive income ranges for higher *per capita* income countries is informative to the Department's analysis, even if the exact definitions are not necessarily appropriate for the context here of determining which set of countries are at the PRC's "level" of economic development under section 773(c)(4)(A) of the Act.

Once the *per capita* GNI range is preliminary determined using the latest data, the Department then searches for countries within that range which are suitable candidates for

inclusion on the list. For example, based on the 2012 data,[38] the Department selected a new candidate country, Bulgaria ($6,870), to take the place of Costa Rica ($7,640), and removed the Philippines from the list (explained in greater detail below). Consistent with the judicial guidance, as described above, the Department, in more recent periods, placed more emphasis on achieving a degree of "balance" in the GNI range represented by the list. We also try to preserve the same number of surrogate countries above and below the PRC (often three countries with *per capita* GNIs higher and three countries with *per capita* GNIs lower than the PRC, for a total of six).[39] On some occasions, a surrogate country may change from having a higher *per capita* GNI than the PRC, to having a lower *per capita* GNI than the PRC, or vice versa. When this happens, the Department may consider whether it is appropriate to "rebalance" the list to maintain the same number of surrogate countries above and below the PRC. This rebalancing is more likely to occur with surrogate countries in close proximity to the PRC than it is for those surrogate countries whose *per capita* GNIs are further away.

It is often the case that several of the existing surrogate countries sufficiently track the PRC, in terms of GNI, and are found to be actively used – and advocated for by interested parties – in on-going proceedings. For countries such as these, there is a strong inclination to continue relying on them, so long as the *per capita* GNIs are within the Surrogate Country Memorandum's GNI range. In other instances, however, countries on the list are periodically evaluated if they are not selected over time and sometimes replaced.[40]

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[38] The Department's initial Surrogate Country Memorandum used 2012 GNI data to create the surrogate country list. *See* Surrogate Country Memorandum at Attachment I. The Department placed on the record, surrogate country lists based on 2013 GNI data. *See* Preliminary SV Memorandum at Exhibit 2.

[39] *See* Surrogate Country Memorandum; *see also* Preliminary SV Memorandum at Exhibit 2.

[40] *See Jiaxing Brother Fastener*, 822 F.3d at 1299 ("That India has a long history of serving as the surrogate country to China does not mean {the Department" is restrained from considering the adequacy of other countries to serve that role. {The Department} is required to base surrogate country selection on the facts presented in each case, and not on grounds of perceived tradition . . . We hold that {the Department's} past practice alone of selecting India as

When changes, such as those described above, warrant consideration of adding or removing countries from the list, the Department considers a range of factors, including the SV requirements for the existing products under investigation, the data quality and availability of alternative surrogate countries, economic diversity of the manufacturing sector in the alternative countries, and the degree of specificity in the import data relied on to value the FOP. For example, with 2013 data, there were several ME countries in close proximity to the PRC ($6,560) when looking at the *per capita* GNI metric alone, such as Dominica ($6,760) and Iraq ($6,710). But, we do not consider these smaller and less diversified economies as viable surrogate countries for use across all PRC cases when measured against the factors outlined above (*e.g.*, the data quality and availability of alternative surrogate countries, and economic diversity of the manufacturing sector in the alternative countries), which indicate they may be producers of comparable merchandise.

During the process of selecting the surrogate countries, the Department relies on its case experience and professional judgment to develop this list of surrogate countries. However, it is critical to note that the list is non-exhaustive.[41] When an interested party, therefore, identifies another alternative surrogate country that is within the *per capita* GNI range of surrogates on the list, the Department accords that surrogate country the same consideration as given to those expressly identified by the Department.[42] As noted above, the Department also considers surrogate countries on the record that are outside the *per capita* GNI range of the list, but selection of such a country as the primary surrogate requires that data or significant producer

the surrogate country does not restrain {the Department} from selecting a country other than India as the surrogate country").

[41] *See* Surrogate Country Memorandum.

[42] *See Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying IDM at Comment 7.

considerations outweigh *per capita* GNI proximity concerns.

Taken in this context, the *per capita* GNI range of countries on the list represents a guideline for interested parties consistent with the statutory factors under section 773(c)(4)(A) of the Act and 19 CFR 351.408(b). It is intended to initiate a process whereby parties can focus their attention on a manageable set of potential surrogate countries. To initiate the process of evaluating countries for the primary surrogate country, a range of *per capita* GNI, as reflected by potential surrogate countries on the list, is provided to parties as a starting point. One benefit of this is that interested parties do not end up expending their resources focusing on potential surrogate countries that are not the same level of economic development as that of the PRC.

Proximity of Philippines Compared to the PRC

In the *Remand Opinion and Order*, the Court directed the Department to explain why the Philippines' GNI is not economically comparable to the PRC's GNI.[43] In the underlying review, the Department stated:

> each segment of an antidumping proceeding is an independent segment with separate records which lead to independent determinations. As a result, we have not considered decisions in past segments of this case in considering whether the Philippines is at a level of economic development comparable to the PRC in this review because those decisions were based on different record evidence…. {W}e "relied on the most recent GNI per capita data available for this proceeding at the time that economic comparability was determined for this case." Thus, our selection of Thailand as the primary surrogate country based on 2013 data is consistent with both administrative and judicial precedent. Our selection of Thailand is also consistent with section 773(c)(4) of the Act because, based on the 2013 GNI data, we determine that Thailand is at the same level of economic development as the PRC. In contrast, none of the surrogate country lists issued by the Department based on 2013 GNI data that are on the record of this review list the Philippines as being at the same level of economic development as the PRC.[44]

[43] *See Remand Opinion and Order* at 31-32.
[44] *See AR7 Final Results* at Comment 1 (internal citations omitted).

First, it is also important to note that the Philippines did not suddenly drop off the surrogate country list. Between 2009 and 2013, the absolute difference between the PRC *per capita* GNI and the Philippines *per capita* GNI grew each year. In 2009, the Philippines *per capita* GNI was $1,800 lower than that of the PRC. By 2013, the Philippines *per capita* GNI was $3,290 lower than that of the PRC. As the chart below makes clear, it was only a matter of time before the PRC – regardless of whatever "bright line" or range is used to define a level of economic development under section 774(c)(4)(A) of the Act – would eventually move into a level of economic development different than that of the Philippines.

Table 2: Comparison of the PRC and the Philippine's *per capita* GNIs (2009-2013)[45]

	2009	2010	2011	2012	2013
PRC	3,590	4,260	4,940	5,740	6,560
The Philippines	1,790	2,050	2,210	2,470	3,270

The effect of this growing disparity between the two countries' *per capita* GNI is that more ME countries' *per capita* GNI fell between the PRC and the Philippines. In fact, in the Surrogate Country Memorandum generated for this segment of the proceeding, the Office of Policy identified three ME countries with *per capita* GNIs lower than that of the PRC. Within that grouping, even though Indonesia was the country with the lowest *per capita* GNI ($3,420), it still had a higher *per capita* GNI than the Philippines and, thus, was an additional country that fell between the PRC and the Philippines, a direct effect of growing disparity between the *per capita* GNIs of the PRC and the Philippines. As stated above, the Department generally limits its surrogate country list to six countries, although interested parties may propose that other countries fitting the Department's surrogate country selection criteria for consideration but that

[45] *See* Jacobi's Surrogate Country Comments, dated November 12, 2014, at 4 and Attachments A and B.

are not on this list. Furthermore, as noted in the Surrogate Country Memorandum, "the countries listed…are likely to have good data availability and quality, *i.e.*, the specificity of these countries' data is more likely to assist the team in its valuation of inputs."[46]

While the Surrogate Country Memorandum notes that the Department is free to consider choosing a surrogate country from other countries on the case record, a country not on the surrogate country list "should be selected only to the extent that data considerations outweigh the difference in levels of economic development."[47] Thus, for the Department to select the Philippines over one of the six other countries identified in the surrogate country list which are at the *same* level of economic development as the PRC, other aspects pertaining to the selection of a surrogate country (*i.e.*, determination of significant production, data quality, and data availability) associated with the Philippines must be found to overcome gross deficiencies associated with those aspects of our analysis of countries included in the surrogate country list. In fact, no such deficiencies within the Surrogate Country Memorandum were identified and, as such, the Department did not find it necessary to consider the Philippines as the surrogate country for this segment of the proceeding.

While we find that the Philippines is not, as a general matter, beyond consideration by the Department as a potential surrogate country, we continue to find that the Philippines is less comparable to the PRC in terms of economic development relative to the six other countries identified in the Surrogate Country Memorandum. In light of this fact, and that the countries on the surrogate country list, which are at the *same* level of economic development, specifically Thailand, do not have gross deficiencies with respect to determination of significant production,

[46] *See* Surrogate Country Memorandum at Attachment I, page 2.
[47] *Id.*

data quality, and data availability, we continue to find that the Philippines is not an appropriate surrogate country for purposes of this administrative review.

2. Thailand as Significant Producer

Background

In the *AR7 Final Results*, the Department explained that Thailand is a significant producer, based on export quantities.[48] Further, we noted that we prefer to consider quantity, rather than value, in determining whether a country is a significant producer.[49]

In the Court's *Remand Opinion and Order*, the Court stated that the Department failed to explain: 1) whether Thailand actually imports higher-valued goods than it exports, which was its basis for preferring to consider total export quantities; and 2) how its reliance on total exports, without evidence of the effect on world trade, is a permissible method to determine whether a country is a significant producer.[50] Additionally, the Court faulted the Department for relying on Thailand's total exports – not net exports – to find that Thailand is a significant producer.[51] Finally, the Court explained that should the Department rely on production (instead of, or in addition to, export quantity) to seek to justify Thailand as a significant producer, it must provide a reasoned analysis supported by substantial record evidence.[52]

Analysis

Section 773(c)(4)(B) of the Act requires the Department to value FOPs, to the extent possible, in a surrogate country that is a significant producer of comparable merchandise.

[48] *See AR7 Final Results* at Comment 1.
[49] *Id.*, (citing *Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012) (*AR4 Carbon*) and accompanying IDM at Comment 1.B).
[50] *See* section 773(c)(4)(B) of the Act; *see also Remand Opinion and Order* at 37.
[51] *Id.*
[52] *Id.* at 38 fn. 20.

However, the statute and the Department's regulations are silent in defining "significant producer" of comparable merchandise.[53] Given the absence of any definition in the statute or regulations, the Department looks to other guidance, such as the *Policy Bulletin*, which states that "the meaning of 'significant producer' can differ significantly from case to case," and that "fixed standards such as 'one of the top five producers' have not been adopted" in the Department's surrogate country selection process.[54] The statute grants the Department discretion to examine various data sources for determining the best available information.[55] Certain legislative history suggests that the Department may consider a country to qualify as a "significant producer" if, among other things, it is a "net exporter" of identical or comparable merchandise.[56] Although the legislative history provides that the "term 'significant producer' includes any country that is a significant net exporter," that text does not, however, define the phrase "net exporter" or explain whether a potential surrogate country must constitute a net exporter in terms of quantity, value, or both, to fit the example provided in the legislative history.[57] This ambiguous provision of the Act also does not preclude the Department's reliance on additional or alternative metrics based on record evidence to determine which countries might be included as significant producers.[58] While the Department has used net exports as a means to

[53] *See Policy Bulletin*; section 773(c)(4) of the Act.
[54] *See Policy Bulletin*.
[55] *See* section 773(c)(1)(B) of the Act; *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011-2012*, 78 FR 39708 (July 2, 2013) and accompanying IDM at Comment 1(B) (*Fish Fillets 2013*).
[56] *See Conference Report to the 1988 Omnibus Trade & Competitiveness Act*, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988).
[57] *Id.*; *see also Fish Fillets 2013* at Comment 1(B).
[58] *Id.*; *see also Dorbest Ltd. v. United States,* 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006) (*Dorbest 2006).*

determine whether a country is a significant producer in the past, it is only one of many criteria the Department may use to determine whether a country is a significant producer.[59]

The Court has acknowledged that "{n}either the statute nor {the Department's} regulations define 'significant producer,'" and that, "{b}ecause the term 'is not statutorily defined, and is inherently ambiguous,' the {C}ourt must assess 'whether {the Department's} definition of significant producer is based on a permissible construction of the statute.'"[60] As noted above, the net exports methodology is only one means by which to determine whether a country is a significant producer of comparable merchandise. The Department has also previously stated that, if comparable merchandise is produced, a country qualifies as a producer of comparable merchandise.[61] Therefore, if the record contains evidence of domestic production of comparable merchandise, then this evidence directly addresses the requirement of significant production of comparable merchandise under section 773(c)(4) of the Act. Such evidence may include the financial statements of a commercial producer of comparable merchandise in the surrogate country.[62]

For this review, the record contains financial statements from two Thai manufacturers of activated carbon, C. Gigantic Carbon Co., Ltd. (Gigantic)[63] and Carbokarn Co., Ltd.

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[59] *See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying IDM at Comment 2.
[60] *See Remand Opinion and Order* at 34 (quoting *Fresh Garlic Producers Ass'n v. United States*, 121 F. Supp. 3d 1313, 1338 (CIT 2015) (*Garlic 2015*)).
[61] *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65676 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").
[62] *See Dorbest 2006* 462 F. Supp. 2d 1683-1684 (upholding the Department's selection of India as a significant producer using the financial statements of Indian companies), *rev'd on other grounds*, *Dorbest CAFC* 604 F.3d 1363.
[63] *See* Petitioners' Surrogate Value Submission, dated April 1, 2015, at Attachment 3.

(Carbokarn)[64] Accordingly, this record evidence,[65] in the form of financial statements of producers of identical merchandise, demonstrates that there is significant production of comparable merchandise in Thailand. Thus, this evidence, in and of itself, establishes that Thailand is a significant producer for purposes of surrogate country selection.

Nonetheless, in general, the Department has relied upon multiple other criteria in lieu of evidence of production of comparable merchandise in potential surrogate countries.[66] One such source of evidence is exports of comparable merchandise from potential surrogate countries. Furthermore, the *Policy Bulletin* states that net exports of comparable merchandise is evidence that a potential surrogate country is a significant producer of comparable merchandise.[67] The relevant legislative history does not purport to create an exhaustive definition of significant producer but, instead, states that the term significant producer "includes" significant net exporter.[68] The Court has previously recognized that the Department's interpretation of significant producer, which looked to whether the country exported comparable merchandise, is reasonable.[69] The record of this review contains Thai import and export data of activated carbon as reported by Global Trade Atlas (GTA). During the POR (2013-2014), Thailand exported 14,426,415 kg of activated carbon.[70] During the same period, Thailand imported 12,391,106 kg of activated carbon.[71] Thailand, therefore, was a net exporter of activated carbon at 2,035,309 kg

[64] *See* Datong Juqiang's Surrogate Value Submission, dated April 1, 2015, at Attachment 8.
[65] In 2013, C. Gigantic Carbon Co., Ltd. had activated carbon sales of 165,415,855 Baht and in 2010, Carbokarn Co., Ltd. had activated carbon sales of 306,799,179 Baht. *See* Datong Juqiang's Surrogate Value Submission, dated April 1, 2015, at Attachment 8, and Petitioners' Surrogate Value Submission, dated April 1, 2015, at Attachment 3, respectively.
[66] *See*, generally, *Policy Bulletin*.
[67] *Id.*
[68] *See Conference Report to the 1988 Omnibus Trade & Competitiveness Act*, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988).
[69] *See Calgon Carbon Corp. v. United States*, 190 F. Supp. 3d 1224, 1243, fn. 25 (November 18, 2016).
[70] *See* Datong Juqiang's Surrogate Country Comments, dated November 12, 2014, at Exhibit 1.
[71] *Id.*

during 2013-2014.[72] This evidence also demonstrates that Thailand can be considered a significant producer of comparable merchandise.

In the *Remand Opinion and Order*, the Court stated that:

> Commerce's rationale for disfavoring net value as a measure of significant production does little to support (or explain) its preference for considering total export quantities.[73]

In general, the Department prefers the use of quantity over value because of the inherent vagaries of determining the value of given merchandise. Such factors which may distort value vis-à-vis quantity include the relationship between the seller and customer, terms of sale, the volume of specific transactions, or market distortions. For example, in determining whether a given comparison market is viable, the statute specifies that such a determination be based on "aggregate quantity" and not value.[74] Given the potential distortion that might arise from using value instead of quantity to determine whether a potential surrogate country is a significant producer of comparable merchandise, the Department's preference for quantity over value in this situation is reasonable. Further, consideration of the value of exports of comparable merchandise, or the difference in value between imported and exported comparable merchandise, is an approach that is generally inconsistent with our stated practice. As noted in the *Policy Bulletin*, we have declined to identify a quantitative threshold, or institute a quantitative ranking of data, when determining whether a potential surrogate country is a significant producer, exporter, or net exporter of comparable merchandise.[75]

[72] We add that the fact that a country is not a net exporter of comparable merchandise does not preclude a finding that the country is a significant producer. For example, a country may have high levels of consumption that its domestic production cannot meet and, as such, must import additional merchandise.
[73] *See Remand Opinion and Order* at 35.
[74] *See* section 773(a)(1)(B)(ii)(II) of the Act.
[75] *See Policy Bulletin*.

While we have explained above that Thailand is a significant producer by record evidence of domestic production of identical merchandise (financial statements of producers of identical merchandise) and evidence of net exports by quantity (GTA data), the Court has questioned the Department's argument that Thailand's ranking among global exporters of activated carbon has an influence on world trade.[76] The Court has indicated that the Department has a responsibility to explain, with substantial supporting evidence, the significant of Thailand's ranking in terms of its effect on global trade.[77] We recognize that the Department narrowly construed the *Policy Bulletin* by speaking only to the top producers of activated carbon. However, the *Policy Bulletin* further indicates that if "there is also a middle-size group of producers, then 'significant producer' could be interpreted as one of the top ten or middle group."[78] While the Department finds, in this instance, that evidence of domestic production (financial statements of producers of identical merchandise) provides the best indication that Thailand is a significant producer of comparable merchandise, to address the Court's concerns, we provide the following analysis of the global trade of activated carbon using the GTA export statistics on the record.

The 27 countries identified in the GTA export statistics[79] can be categorized into three tiers of trade: 1) low tier exporters (0 to 1,000,000 kg); 2) mid-tier exporters (1,000,001 to 10,000,000 kg); and 3) top tier exporters (10,000,001 kg and above).[80] Focusing on 2014 export statistics, of the 27 countries identified in the GTA data, 14 are low tier exporters, eight countries, including Thailand, are mid-tier exporters, and five countries are top tier exporters of

[76] *See Remand Opinion and Order* at 37.
[77] *Id.*
[78] *See Policy Bulletin*.
[79] *See* Preliminary SV Memorandum at Attachment 1.
[80] *Id.*

activated carbon. Of the eight mid-tier exporters, Thailand's 2014 exports of 7,871,321 kg, identifies it as the fourth largest, following Canada (9,866,181 kg), Japan (9,132,807 kg), and Mexico (8,423,216 kg).[81] Consequently, this evidence demonstrates that Thailand has an influence in the global trade of activated carbon, specifically among the mid-tier exporters. However, we note that an analysis of global trade is not dispositive of whether a country is a significant producer of comparable merchandise. Rather, such an analysis is contemplated by the *Policy Bulletin* as a potential tool to determine significant production on a case-by-case basis.[82]

The record evidence, in the form of financial statements of producers of identical merchandise, [83] demonstrates that there is significant production of comparable merchandise in Thailand.[84] While we are not relying on export or net export quantity in determining that Thailand is a significant producer, the record demonstrates that Thailand is not only a significant exporter of comparable merchandise, but also a net exporter of comparable merchandise, a metric that the Department may rely on in its significant producer analysis. Accordingly, the Department continues to find that Thailand is a significant producer for purposes of surrogate country selection.

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[81] *Id.*
[82] *See Policy Bulletin*.
[83] In 2013, C. Gigantic Carbon Co., Ltd. had activated carbon sales of 165,415,855 Baht and in 2010, Carbokarn Co., Ltd. had activated carbon sales of 306,799,179 Baht. *See* Datong Juqiang's Surrogate Value Submission, dated April 1, 2015, at Attachment 8, and Petitioners' Surrogate Value Submission, dated April 1, 2015, at Attachment 3, respectively.
[84] *See Dorbest 2006* 462 F. Supp. 2d 1683-1684 (upholding the Department's selection of India as a significant producer using the financial statements of Indian companies), *rev'd on other grounds*, *Dorbest CAFC* 604 F.3d 1363.

3. Value-Added Tax Calculation

Background

In the *AR7 Final Results*, the Department noted its 2012 change of methodology with respect to the calculation of export price (EP) or constructed export price (CEP) to include an adjustment of any (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[85] In this announcement, the Department stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.[86]

Irrecoverable VAT, as defined by PRC law, is a net VAT burden that arises solely from, and is specific to, exports.[87] It is VAT paid on inputs used in the production of exports that is non-refundable and, therefore, a cost which the Department is authorized to deduct from EP and CEP under section 772(c)(2)(B) of the Act.[88]

In a typical VAT system, companies do not incur VAT expenses for exports; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports (input VAT), and, in the case of domestic sales, the company can credit the VAT they

[85] *See AR7 Final Results* and IDM at Comment 3, citing to *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (June 19, 2012) (*Methodological Change*).
[86] *See Methodological Change*, 77 FR at 36483; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) (*Chlorinated Isos 2012*), and accompanying IDM at Comment 5.
[87] *See* Jacobi's Supplemental Section C Response, dated October 21, 2014, at 30, and Exhibit SC-54.
[88] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014), and accompanying IDM at Comment 7.

pay on input purchases for those sales against the VAT they collect from customers.[89] This stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[90] This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales (*i.e.*, irrecoverable VAT). Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained in *Methodological Change* that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[91]

In its *Remand Opinion and Order*, the Court opined that the *AR7 Final Results* "lacked reasoned explanation as to why Commerce's application of the VAT rate to the value of the finished goods did not overstate the VAT amount Jacobi actually paid, and was not supported by substantial evidence."[92] The Court remanded the issue of the Department's VAT calculation for further explanation and reconsideration.

Analysis

At issue is the percentage of irrecoverable VAT included in Jacobi's selling price to the United States. While the Court indicated that we must explain why our application of the VAT rate does not overstate the amount Jacobi actually paid on inputs for the production of subject merchandise, we clarify that the amount of VAT that Jacobi actually paid to the PRC tax authorities on such inputs is irrelevant in our margin calculations. Rather, per the statute,[93] we

[89] *See*, *e.g.*, explanations in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 6; *see also Methodological Change*, 77 FR at 36483.
[90] *See Methodological Change*, 77 FR 36483.
[91] *Id.*
[92] *See Remand Opinion and Order* at 60.
[93] *See* section 772 (c)(2)(B) of the Act.

are concerned with deducting the amount of *irrecoverable* VAT *which was actually included in the selling price* of activated carbon to the United States.

The record demonstrates that Jacobi pays 17 percent VAT on input products it purchases from its suppliers[94] and that activated carbon is not included in the list of products eligible for a VAT rebate.[95] This input VAT rate in itself has no bearing on the Department's margin calculation, and, to be clear, is not the basis for why we adjusted U.S. price in the margin calculation program for Jacobi. Rather, Jacobi also reported that as a seller/exporter, the products it resells to domestic or foreign buyers are subject to 17 percent VAT, which is applied to its sales and is included in the selling price to the United States.[96] Jacobi specifically stated that "as a seller/exporter, when Jacobi resells to domestic or *foreign* buyers, the products are subject to another 17% VAT (output VAT)."[97] This "output VAT" as demonstrated by the record, is included in Jacobi's U.S. prices, and constitutes the 17 percent adjustment we made to Jacobi's margin calculation program. Pursuant to the *Methodological Change*[98] and our Court-

[94] *See* Jacobi's Supplemental Section C Response, dated October 21, 2014, at 30, and Exhibit SC-57. Jacobi also reported that as a buyer from PRC suppliers of activated carbon, "Jacobi's purchase price includes 17% VAT (input VAT)." *See* Jacobi's Supplemental Section C Response, dated October 21, 2014, at 29.
[95] *Id.*, and Exhibit SC-55.
[96] *Id.* at Exhibit SC-56, Section I "…goods exported by export enterprises, unless otherwise provided, the output tax payable shall be calculated by regarding them as domestically sold goods or they shall be subject to value added tax."
[97] *Id.* (emphasis added).
[98] *See Methodological Change*, 77 FR at 36483 ("the gross price charged to the customer must be reduced to a net price received. In cases involving imports from the PRC or Vietnam, 'included in the price' means whether the respondent has reported a price which is gross (i.e., inclusive) or net (i.e., exclusive) of tax. As such, if a gross price has been reported, a deduction must be made for those taxes imposed on the sale, and if a net price has been reported, deductions are not required. We note that, in prior cases involving imports from the PRC or Vietnam where the Department was aware that such a tax was imposed, it has typically been expressed as a percentage of the export selling price. Therefore, any such deduction to export price would also be performed on a percentage basis.").

affirmed practice,[99] we deducted the entire 17 percent (irrecoverable VAT) from the U.S. price to arrive at a U.S. net price which is on a tax neutral basis to use in our margin program. In other words, the Department's adjustment is not intended to account for the difference between Jacobi's VAT payments on input products to the PRC tax authority and output VAT payments Jacobi receives for its sales of activated carbon. Rather, the adjustment we made to Jacobi's sales price to render it tax neutral was accomplished by removing from the U.S. sales price the amount of irrecoverable VAT that Jacobi reports is included in sales made to the United States (*i.e.*, 17 percent). As a result, we determine that it is appropriate to continue deducting the 17 percent irrecoverable VAT included in the gross unit price of Jacobi's U.S. sales, as Jacobi itself reported, pursuant to section 772(c)(2)(B) of the Act.

C. SUMMARY AND ANALYSIS OF LITIGANTS' COMMENTS ON DRAFT REMAND RESULTS

The Department released the Draft Remand Results to parties for comment on June 19, 2017.[100] Carbon Activated and Jacobi commented on the surrogate country list issue, on the issue of significant production, and the VAT issue. Cherishmet incorporates arguments made by Jacobi. On July 3, 2017, we rejected Carbon Activated's June 25, 2017, submission as it

[99] *See*, *e.g.*, *Fushun Jinly Petrochemical Carbon Co. v. United States*, 37 Int'l Trade Rep. (BNA) 2866; 2016 Ct. Intl. Trade LEXIS 25; SLIP OP. 2016-25, at 30-38 ("with regard to U.S. price, neither the governing statute nor its legislative history defines 'export tax, duty or other charge imposed' for the purpose of adjusting U.S. price…Commerce reconsidered its interpretation and concluded that 'export tax, duty or other charge imposed' includes VAT that is not fully refunded upon exportation and also that whether a deduction therefore is required depends upon whether the price is reported on a gross or net basis {citing to *Methodological Change*, 77 FR at 36482-83.}…Such a methodological update, achieved through notice and comment, compels Chevron deference (citing to *United States v. Eurodif S.A.*, 555 U.S. 305, 316, 129 S. Ct. 878, 172 L. Ed. 2d 679 (2009), referencing *United States v. Mead Corp.*, 533 U.S. 218, 229 230, 121 S. Ct. 2164, 150 L. Ed. 2d 292 (2001) (citing *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984))").

[100] *See* Draft Results of Redetermination Pursuant to Court Remand, *Jacobi Carbons AB et al. v. United States*, Consol. Court No. 15-00286, dated June 19, 2017 (Draft Remand Results).

contained new factual information.[101] On July 5, 2017, Carbon Activated's resubmitted its comment with the new information redacted.[102] No other parties filed comments on the Draft Remand Results.

As explained below, we continue to reach the same conclusions that we reached in the Draft Remand Results. We address each of the parties' comments and provide our analysis in turn.

Issue 1: GNI Range

Jacobi's and Carbon Activated's Comments[103]

- Although the Department claims that it has expanded the GNI range at roughly the same rate as the PRC's GNI growth, the Department has here narrowed the range in terms of percentage difference, especially when looking at the lower limit of the GNI ranges specifically. In some years, the PRC's GNI increased slightly while the Department's GNI band increased dramatically. There is no pattern over time for the Department's treatment of the GNI band. The 2013 Philippine GNI is at the same percentage difference as the previous four years when it was found to be at the same level of economic development with the PRC.
- The Department stated that the Office of Policy relied on absolute percentage differences from the PRC's GNI to determine GNI range. The 38.1/39.6 percent 2013 GNI percentage spread is unreasonable and arbitrary when the 2011 GNI spread was 54.7/55.3 percent.
- Even if the Philippines was not at the same level of economic development with the PRC in 2013, the statute directs the Department to consider countries that are economically

[101] *See* Letter from the Department, re: "Draft Remand Determination in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China; 4/1/13--3/31/14: Rejection of Comments," dated July 3, 2017.
[102] *See* Letter from Carbon Activated, re: "Carbon Activated Corp. Comments on Draft Remand," dated July 5, 2017 (Carbon Activated Submission).
[103] *See* Jacobi's Submission at 3-18. *See also* Carbon Activated's Submission at 1-2.

comparable to the PRC, not to first consider countries that are at the same level of economic development.

- The difference between the Philippines' 2013 GNI and the lowest GNI on the 2013 surrogate country list is small, only 690 USD or 10.5 percent of the PRC's 2013 GNI. Therefore, the Philippines is economically comparable to the PRC, even if it is not at the same level of economic development with the PRC.
- The Department admits that the surrogate country list and the GNI band are a moveable concept and the Department changes the surrogate country list from year to year; the changes are not consistent, predictable or explained.
- The Surrogate Country Memorandum indicates that the Office of Policy considers the availability and quality of data, but the information the office looks at for this decision is never provided or explained by the Department. The use of the same list of countries from the *World Bank Development Report* over an entire year regardless of the product the Department is evaluating raises doubts to the Department's consideration of quality and availability of data when it develops the Country List.

Department's Position: The Department is continuing to use Thailand as the surrogate country for these final remand results. We disagree with Jacobi's contention that the Department has narrowed the number of potential surrogate countries. As stated above, the Department's practice is to preserve the same number of surrogate countries above and below the PRC (often three countries with *per capita* GNIs higher and three countries with *per capita* GNIs lower than the PRC, for a total of six).[104] While Jacobi has pointed to the actual percentage difference between the PRC's GNI and the upper and lower GNI countries of the GNI range band to

[104] *See* Surrogate Country Memorandum; *see also* Preliminary SV Memorandum at Exhibit 2.

demonstrate that the overall GNI range has narrowed, Jacobi fails to demonstrate that the number of potential surrogate countries have been reduced. Additionally, Jacobi argues that the GNI band percentage range between the years 2009 to 2011 has been roughly 50 percent and, because the Philippines 2013 GNI is 50 percent of the PRC's GNI, the Philippines falls within the Department's previously established 2009 to 2011 GNI range which should be used in the current review.[105] As an initial matter, we note the absolute percentage difference between the GNI of the PRC and the Philippines is 66.93 percent, not 50 percent, which is not within the GNI range on a percentage basis as argued by Jacobi.[106] Rather, Jacobi's reliance on percentage difference fails to recognize that the PRC's *per capita* GNI has outpaced the *per capita* GNI of the Philippines.[107] As explained above, the evidence on the record demonstrates that the PRC has experienced rapid growth in terms of GNI *per capita*. From 2000 to 2013, the PRC's GNI *per capita* has grown 605 percent, or an average of 16 percent a year, while the Philippines has grown 166 percent, or an average of 8 percent per year.[108] As the *per capita* GNI of the PRC has increased and outpaced that of the Philippines, which steadily fell behind in terms of GNI, the Department has sought other countries to fill the void left by the Philippines.

Jacobi argues that the statute does not require the Department to determine whether potential surrogate countries are at the "same" level of economic, rather the statute requires the Department to determine whether the surrogate country is at a comparable level of economic development as that of the NME country. Above, we go to great lengths to provide an explanation of what the Department evaluates in determining "level of economic development" for surrogate country selection purposes. As explained above, in the "staircase" metaphor,

[105] *See* Jacobi's Remand Comments, dated June 26, 2017, at 5.
[106] *Id.*
[107] *See* Petitioners' Post-Preliminary Comments at Attachment I.
[108] *See* Jacobi's Post-Preliminary Surrogate Country Submission, dated May 19, 2015, at Exhibit 1.

countries can be considered at a level of economic development comparable to the PRC when they are on the GNI "step" or level, with the PRC. This range is necessarily narrow; otherwise, as Jacobi asserts should be done in this proceeding, the GNI "step" would include countries whose GNI is far below or above the GNI of the NME country. The CIT, in *Juancheng Kangtai Chemical*, noting also that the Department's policy of considering a list of countries within a narrow GNI band of economic comparability is not in violation of the statute.[109] Jacobi contends that the difference between the Philippines' 2013 GNI and the lowest GNI of the 2013 surrogate country list (Ukraine) is $690, or only 10.5 percent of the PRC's 2013 GNI, and that this difference between two low-end GNI countries is enough to make the Philippines economically comparable to the PRC. However, this difference between the Philippines GNI and Ukraine GNI fails to capture the indisputable fact that the GNI of the Philippines is nearly 67 percent below that of the PRC's GNI. This percentage difference does not lend credence to the proposition that the Philippines can be at the same level of economic development comparable to the PRC.

We disagree with Carbon Activated's contention that the changes to the surrogate country list from year to year are not consistent, predictable or explained.[110] The Department's surrogate country list selection methodology, which has been applied consistently throughout the activated carbon proceedings, is described in the *Policy Bulletin*.[111] As explained above, the Department's methodology for selecting the list satisfies the statute's requirement that the Department value FOPs, to the extent possible, using data from one or more market economies

[109] *See Juangcheng Kangtai Chemical Co., Ltd. v. United States*, 2015 WL 4999476 at *7-8 (CIT Aug. 21, 2015) ({I}t was not inappropriate, contrary to Kangtai's contentions, for Commerce to (1) "narrow" a list of countries within a band for administrative feasibility, (2) take an " "expansive" view of which of those countries should be considered " "significant producers" for purposes of further comparison, and then (3) not engage in further analysis when no countries but one were left to compare, due to a lack of quality data among those countries on the OP List.").
[110] *See* Carbon Activated Submission at 4.
[111] *See Policy Bulletin*.

that are at a level of economic development comparable to that of the NME country.[112] Further, *per capita* GNI data, on which the surrogate country list is based, is a fluid measurement that can change from year to year. The Department has consistently, from year to year, examined *per capita* GNI data, based on the latest annual release of the *World Bank Development Report*, for the NME country, in this case the PRC, and the change in *per capita* GNI from the previous year, and compares the change in the PRC's *per capita* GNI to the respective changes in per capita GNIs of the existing set of surrogate countries.[113] We note that identifying potential surrogate countries based on GNI data has been affirmed by the CIT, which found the use of per capita GNI to be a "consistent, transparent, and objective metric to identify and compare a country's level of economic development" and "a reasonable interpretation of the statute."[114] The Department has here provided a through explanation of the surrogate country list and surrogate country selection process.

Carbon Activated also argues that the Surrogate Country Memorandum indicates that the Office of Policy considers the availability and quality of data, but the information the Office of Policy looks at for this decision is never provided or explained by the Department. We note that the Surrogate Country Memorandum does not say that the Office of Policy considers the availability and quality of data when creating the surrogate country list, rather it states "the countries listed below *are likely* to have good data availability and quality…."[115] Rather, the

[112] *See* section 773(c)(4) of the Act.
[113] *See Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 45128 (July 12, 2016) and accompanying PDM, unchanged in *Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 4852 (January 17, 2017).
[114] *See Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1329 (CIT 2014), *aff'd Jiaxing Brother Fastener Co. v. United States*, 822 F.3d 1289, 1293 (Fed. Cir. 2016); *see also Clearon v. United States, No. 13-00073, 2015 WL 4978995, at *4* (Ct. Int'l Trade Aug. 20, 2015) ("Commerce's primary reliance on per capita GNI to identify economically comparable countries was not unreasonable and was in accordance with law").
[115] *See* Surrogate Country Memorandum.

surrogate country list provided by the Office of Policy is a suggestion of a set of countries that the Office of Policy has found to be at the same level of economic development to the non-market economy country. It is then necessary to evaluate any record evidence related to significant production of the subject merchandise, as well as the availability and quality of data on the record of the case for the economically comparable countries on the list, before the Department selects the surrogate country.[116] Further, we note that the non-exhaustive surrogate country list is comprised of six countries within a GNI band. As outlined above, nothing precludes parties from identifying other countries within that GNI band which would make suitable surrogate countries. As explained above, Commerce selects the primary surrogate country based on data availability and reliability of data only after determining if more than one potential surrogate country satisfies the first two statutory requirements for selection as a surrogate country. This approach has been upheld by the Court.[117] During this selection process, as a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because they: (a) are not significant producers of comparable merchandise; (b) do not provide sufficient, reliable sources of publicly available surrogate value data; or (c) are not suitable for use because of other factors.[118] In this instance, as supported by record evidence, we

[116] *Id.*
[117] *See, e.g., Jinan Yipin Corp. v. United States*, 800 F. Supp. 2d 1226, 2011 (Ct. Int'l Trade 2011) ("(P)ursuant to the policy bulletin, Commerce decides from among two or more countries that are economically comparable and significant producers of the merchandise by 'assessing data and data sources' in the respective candidate countries in accordance with the criteria outlined in the section of the bulletin at issue.).
[118] *See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 4386 (January 22, 2013), and the accompanying IDM at Comment 2; *Certain Steel Threaded Rod from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 67332 (November 9, 2012), and accompanying IDM at Comment 1; *Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels*

have complete, useable data from a single country, Thailand, which is identified on the Surrogate Country Memorandum as being at the same level of economic development as the PRC and which is a significant producer of activated carbon. There was no need for the Department to look to and compare the data availability of a non-economically comparable country when Thailand was determined to be a significant producer of activated carbon and the record included sufficiently reliable and useable Thai surrogate value data.[119] Because Thailand is at the same level of economic development comparable to the PRC and a significant producer of activated carbon, and has complete, useable data to value FOPs, the Department continues to find that Thailand is the surrogate country in this administrative review.

Issue 2: Significant Production

Jacobi's and Carbon Activated's Comments[120]

- The Court found the Department's determination that Thailand is a significant producer lacking in substantial evidence; the Department has not provided in its Draft Remand Results further evidence on the record or changed its determination or analysis that Thailand was a "significant producer" of activated carbon.
- The Department's sole reliance on the two Thai financial statements to support its conclusion that Thailand is a significant producer of activated carbon is questionable because these financial statements provide only value and not quantities. The Department has often insisted that significant producer should be analyzed on quantity, not value. Further, the Department does not explain why the sales from these companies should be considered

from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances, 77 FR 17021 (March 23, 2012).

[119] *See e.g. Jiaxing Brother Fastener Co. I, 961 F. Supp. 2d at 1329* ("India therefore could never be a reasonable choice because at least one country, the Philippines, satisfies the statutory criterion of economic comparability, whereas India does not. {Jiaxing's} argument about the qualitative superiority of Indian data compared to Thai data ultimately concentrates on a false choice.").

[120] *See* Jacobi's Submission at 18-24; *See also* Carbon Activated's Submission at 2-3.

significant. Thailand having some production does not make it a significant importer, merely because the Department states that it is.

- The term "significant production" is not a completely ambiguous one that the Department can interpret at will; this is evidenced by the *Policy Bulletin* and the Court in other proceedings. While the Department has discretion in determining the definition, and does not need to select the most significant producer, its definition must be reasonable and it must consider the relative significance of production.
- Gigantic's main business includes chemical products. Accordingly, Gigantic's total sales will necessarily include sales of non-comparable merchandise. Accordingly, Gigantic's sales are not a reliable proxy for production of activated carbon.
- The Department provides no justification for how and why the sales values set forth in the financial statements demonstrate Thailand is a "significant" producer of activated carbon.
- The Department provides no justification for how and why its composition of three tiers has any justification other than to allow it to claim that Thailand is a "mid-tier exporter."
- The Department has not established why Thailand, accounting for merely 1.4 percent of 2013 global exports, can influence global trade of activated carbon.
- The Court suggested a significant producer is a country "whose domestic production could influence or affect world trade."[121] The Department has not weighed this factor considering the Philippines is the most significant producer and Thailand is the least significant.
- The Department has not explained why Thai export values are unreliable for determining "significant producer."

[121] Carbon Activated Submission at 3, citing *Garlic 2015*.

Department's Position: The Department is continuing to find that Thailand is a significant producer of comparable merchandise based on the domestic production of activated carbon, identical merchandise to the merchandise subject to the order, as evidenced by the financial statements from two Thai manufacturers of activated carbon on the record, Gigantic and Carbokarn.[122] Jacobi contends that Carbokarn's[123] 2013 sales include chemical products, and accordingly asserts that Carbokarn's total sales will necessarily include sales of non-comparable merchandise and are not a reliable proxy for production of activated carbon. However, Jacboi ignores that Carbokarn's Financial Statement Submission Form, Carbokarn lists its type of business as "Manufacture, export, and import charcoal water filter, charcoal, and chemical products."[124] Further information on the record indicates that Carbokarn is the "biggest manufacturer of coconut shell based activated carbon in the world market."[125] Additionally, the International Labor Organization and Thai industry statistics categorize a manufacturer of activated carbon under the category of "manufacturer of other chemicals and chemical products."[126] As a result, we find it is reasonable to conclude that while Carbokarn's Financial Statement Submission Form indicates that it is a "(m)anufacture(r), export(er) and import(er of) charcoal water filter, charcoal, and chemical products," as a manufacturer of activated carbon, the company would also categorize itself as a manufacturer of "other chemicals."[127]

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[122] *See* Petitioners' Surrogate Value Submission, dated April 1, 2015, at Attachment 3; *see also* Datong Juqiang's Surrogate Value Submission, dated April 1, 2015, at Attachment 8.
[123] We note that Jacobi argues in its Draft Remand Comments that Gigantic's 2013 sales include chemical products. However, Gigantic's financial statements do not indicate that it made any sales of chemical products. Instead, it is Carbokarn's financial statements that indicate that it is a "Manufacture(r), export and import charcoal water filter, charcoal, and chemical products" not Gigantic's, as claimed by Jacobi in its Draft Remand Comments. As a result, we presume that Jacobi is referencing Carbokarn and will address the merits of its arguments by evaluating the Carbokarn's financial statements. *See* Datong Juqiang's SV Submission, dated April 3, 2015, at Exhibit 8.
[124] *See* Datong Juqiang's SV Submission, dated April 3, 2015, at Exhibit 8.
[125] *Id.*
[126] *See* Carbon Activated's Surrogate Value Submission, dated June 2, 2015, at SV-1, SV-3, and SV-4.
[127] *Id.* at Exhibit 7; *see also* Carbon Activated's Surrogate Value Submission, dated June 2, 2015, at SV-1, SV-3, and SV-4.

Accordingly, with no other information on the record, outside of this indication on its financial statements, to demonstrate that Carbokarn produces anything other than activated carbon, we find that Carbokarn is an appropriate source when considering domestic production of activated carbon in our Thai significant production analysis.

Jacobi also contends that it is questionable whether to consider revenue of the Thai financial statements when making a significant production determination because this source addresses value and not quantities. Further, parties contend that the Department prefers to consider quantity rather than value when conducting a significant producer analysis. The Department disagrees. As an initial matter, we find that the financial statements of Carbokarn and Gigantic demonstrate Thai production of activated carbon, merchandise identical to the subject merchandise. These Thai financial statements, in conjunction with Thai net exports, support the finding that Thailand produces identical merchandise, such that it would provide reliable surrogate values. Reliable values require the prices of the merchandise produced to reflect the commercial market reality of producing such merchandise in a world market. The Department considers net exports of 2,035,309 kg and 472,215,034 Baht in domestic sales to be reflective of the fact that Thailand is a country that has a viable activated carbon sector.

Jacobi argues that there is no justification for how or why the Department's composition of three tiers has any justification other than to allow it to claim that Thailand is a "mid-tier exporter." Jacobi also argues that the Department has not established why Thailand, accounting for 1.4 percent of 2013 global exports, can influence global trade of activated carbon, has not explained why Thai export values are unreliable for determining "significant producer," and has not weighed the Court's finding that a significant producer is a country whose domestic production could influence or affect world trade in its remand. Further, Carbon Activated argues

that the Department must consider relevant significance of production in determining if Thailand is a significant producer of activated carbon. However, global trade analysis is not a basis the Department is using to determine whether Thailand is a significant producer of comparable merchandise. Rather, we conducted this analysis to address the Court's concerns regarding the contention that Thailand can be considered to have an impact on the global trade of activated carbon.

Importantly, the Department is not required to determine significant production on the basis of its relation to or influence on global trade. As explained above, the statute and the Department's regulations are silent in defining "significant producer" of comparable merchandise.[128] The *Policy Bulletin* indicates that this determination is made on a case-by-case basis and that "{t}he extent to which a country is a *significant* producer should not be judged against the NME country's production level or the comparative production of the five or six countries on OP's surrogate country list."[129] The *Policy Bulletin* contemplates that "'significant producer' *could* be interpreted to mean one of the top ten {producers}.[130] As stated in the *Policy Bulletin*, if there is also a middle-size group of producers, then 'significant producer' could be interpreted as one of the top ten or middle group {of producers}."[131] While we explained above that we find that Thailand is a significant producer based on record evidence of domestic production of identical merchandise (*i.e.*, the financial statements of producers of identical merchandise on the record), we applied this simple "tiered" analysis to clarify how we find that Thailand influences global trade of activated carbon, in so much as the Court directed the

[128] *See Policy Bulletin*; section 773(c)(4) of the Act.
[129] *See Policy Bulletin.*
[130] *Id.*
[131] *Id.*

Department to analyze this issue.[132] Specifically, of the 27 countries identified in the GTA data, 14 are low tier exporters, eight countries, including Thailand, are mid-tier exporters, and five countries are top tier exporters of activated carbon. Of the eight mid-tier exporters, Thailand's 2014 exports identify it as the fourth largest.[133] While Jacobi argues that the Department has not explained why Thailand's 1.4 percent share of the global activated carbon trade can influence global trade, we find that, in this case, reliance on global trade as a means to determine whether country is a significant producer would lead to an absurd result. That is, all the top five largest exporters of activated carbon (*i.e.*, China, India, Indonesia, the Philippines, and the United States) are countries that are not considered potential surrogate countries because they fall on a different GNI "step" than the PRC.[134] Section 773(c)(4) of the Act directs the Department to utilize "to the extent possible" the prices, or costs, of FOPs in one or more ME countries that are, *inter alia*, "at a level of economic development comparable to that of the nonmarket economy country, and significant producers of comparable merchandise." Accordingly, if all the largest exporters are not at a level of economic development comparable to the PRC, then it is unreasonable to consider them as potential surrogate countries when the record contains information for potential surrogate countries who are both "at a level of economic development comparable to that of the nonmarket economy country, and significant producers of comparable merchandise."[135] Instead, here, as described above, we have relied on domestic production as it provides the best indication that Thailand is a significant producer of comparable merchandise. Further, as explained above, despite Carbon Activated's contention, the statute states "significant producers of comparable merchandise;" therefore, the Department is not required to select the

[132] *See Remand Opinion and Order* at 37.
[133] *See* Preliminary SV Memorandum at Attachment 1.
[134] *Id.*
[135] *See* section 773(c)(4) of the Act.

largest exporter/producer but, rather, is only required to select an ME country which is a "significant producer." Further, contrary to Jacobi's contentions, the current evidence on the record (the two Thai financial statements) adequately supports the Department's analysis and determination that Thailand is a significant producer of activated carbon. In sum, the meaning of the term "significant," the evidence of domestic production of activated carbon, and the net exports of Thailand all support our finding here.

Issues 3: VAT

Jacobi's and Carbon Activated's Comments[136]

- The Court asked the Department to demonstrate why its actual calculation of the irrevocable VAT adjustment did not overstate the VAT amount Jacobi actually paid. The Department failed to follow the Court's instructions. Instead, the Department pretends the Court is confused by the VAT adjustment and ignores the Court's instruction.

Department's Position: We disagree with Jacobi and Carbon Activated that we failed to follow the Court's order. As noted by the Court, "the irrecoverable VAT deducted from Jacobi's CEP must be 'the amount' of VAT included in the price."[137] The Court found that the *AR7 Final Results* "lacked reasoned explanation as to why Commerce's application of the VAT rate to the value of the finished goods did not overstate the VAT amount Jacobi actually paid, and was not supported by substantial evidence," and remanded the issue for further explanation and reconsideration.[138] We have provided further explanation and clarification to the Court that the amount of VAT Jacobi actually paid to the PRC government is not relevant to the amount of VAT included in the U.S. price.

[136] *See* Jacobi's Submission at 24-28. *See* Carbon Activated's Submission at 3.
[137] *See Remand Opinion and Order* at 60.
[138] *Id.*

Despite Jacobi and Carbon Activated's contention to the contrary, the Department has followed the Court's order. As explained above, we clarified that the amount of VAT that Jacobi actually paid to the PRC tax authorities on such inputs is irrelevant in the Department's margin calculation, and, is not the basis for why we adjusted U.S. price in the margin calculation program for Jacobi. Rather, per the statute,[139] we are concerned with deducting the amount of *irrecoverable* VAT *which was actually included in the selling price* of activated carbon to the United States, as Jacobi itself reported. As explained above, Jacobi reported that as a seller/exporter, the products it sells to domestic or foreign buyers are subject to 17 percent VAT, which is applied to its sales and is included in the selling price to the United States.[140] This "output VAT" is included in Jacobi's U.S. prices, and constitutes the 17 percent irrecoverable VAT adjustment we made to Jacobi's U.S. price margin calculation program in order to arrive at a U.S. net price which is on a tax neutral basis. Further, Jacobi does not explain why, given that its U.S. sales prices include a 17 percent VAT, it would be inconsistent with section 772(c)(2)(B) of the Act for the Department to make this deduction. Accordingly, we continue to find that it is appropriate to continue deducting the 17 percent irrecoverable VAT included in the gross unit price of Jacobi's U.S. sales pursuant to section 772(c)(2)(B) of the Act.

RESULTS OF FINAL REDETERMINATION

Consistent with the *Remand Opinion and Order*, we have: 1) addressed and clarified the issue of economic comparability; 2) addressed and clarified the issue of significant production; and 3) addressed and clarified the inclusion of the irrecoverable VAT adjustment in Jacobi's margin calculation. Based on the foregoing explanations, we have also made no changes to the margin calculations for the mandatory respondent, Jacobi, from the *AR7 Final Results*; thus, we

[139] *See* section 772 (c)(2)(B) of the Act.
[140] *See* Jacobi's Supplemental Section C Response, dated October 21, 2014, at Exhibit SC-56, Section I.

have also made no changes to the separate rate margins for non-individually examined respondents that qualified for a separate rate.

8/7/2017

X 

Signed by: CAROLE SHOWERS
Carole Showers
Executive Director, Office of Policy
performing the duties of
Deputy Assistant Secretary for Enforcement and Compliance