A-570-904
Remand – ARP 4/1/13—3/31/14
Court No. 15-00286
E&C/VIII: RJP
PUBLIC DOCUMENT

Jacobi Carbons AB et al. v. United States

Consol. Court No. 15-00286, Slip Op. 18-46 (CIT April 19, 2018)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (Commerce) 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. 18-46 (CIT April 19, 2018) (*Jacobi AR7 II*) and the Court's August 22, 2018 *Order* amending its order in *Jacobi AR7 II*.[1] 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), and Commerce's first remand redetermination (First Remand Redetermination) issued in accordance with the Court's prior decision in *Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159 (CIT 2017) (*Jacobi AR7 I*). In *Jacobi AR7 II*, the Court remanded four issues to Commerce: 1) to further explain or reconsider Commerce's determination that Thailand is a significant producer of activated carbon, and, if Commerce continues to rely on net exports or domestic production as evidence of significant production, to explain why such metrics provide a permissible interpretation of "significant producer;"[2] 2) to

[1] *See Jacobi Carbons AB et al v. United States et al.*, Ct. No. 15-00286, ECF 132 (August 22, 2018 *Order*) (amending *Jacobi AR7 II*).
[2] *See Jacobi AR7 II* at 31-32.

further explain or reconsider whether the Thai financial statements used in the final results contain evidence of a countervailable subsidy or otherwise provide suitable surrogate financial data, and to reevaluate the relative merits of each proposed source of financial ratios;[3] 3) to reconsider or further explain Commerce's position with respect to proposed carbonized material benchmarks and, if appropriate, to reconsider its carbonized material surrogate value (SV) selection;[4] and, 4) to further explain and reconsider Commerce's value-added tax (VAT) methodology and calculation with respect to Jacobi Carbons AB (Jacobi), including addressing evidence suggesting Jacobi's ability to offset input VAT against output VAT collected from foreign customers, whether the VAT adjustment is properly made on the basis of an estimated customs value instead of on a reported free-on-board (FOB) value, and the evidence supporting the rejection of the VAT calculation methodology proposed by Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang).[5] The Court also directed Commerce to reconsider the separate rate assigned to the non-mandatory respondents in accordance with any redetermination of the antidumping margin assigned to Jacobi.[6] Further, in its August 22, 2018 *Order*, the Court also directed Commerce to consider Slip Opinion No. 18-97 entered in *Aristocraft of America LLC v. United States*, CIT 15-00307, 2018 WL 3816781 (not reported in Fed. Reporter) (CIT August 9, 2018) (*Aristocraft*) as it relates to the Chinese irrecoverable VAT.

As set forth in detail below, pursuant to *Jacobi AR7 II*, we have further explained our determination that Thailand is a significant producer of activated carbon and have further explained our carbonized material SV selection. Additionally, in accordance with *Jacobi AR7 II* and the August 22, 2018 *Order*, we have reconsidered our selection of surrogate financial

[3] *Id.* at 37-38.
[4] *Id.* at 49.
[5] *Id.* at 58-60.
[6] *Id.* at 60.

statements and our VAT calculation methodology. Consequently, for the purposes of these final results of redetermination on remand, Commerce has made changes to the margin calculations for Jacobi, as well as recalculated the margin for the separate rate companies, the entries of which are subject to this litigation.[7]

B. REMANDED ISSUES

1. Thailand as Significant Producer

Background

In *Jacobi AR7 I*, the Court ordered Commerce to address: 1) 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; 2) why Commerce relied on Thailand's total exports – not net exports – to find that Thailand is a significant producer; and 3) should Commerce 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.[8]

Based on the Court's order in *Jacobi AR7 I*, Commerce explained that the financial statements from two Thai manufacturers of activated carbon, C.Gigantic Carbon Co., Ltd. (Gigantic)[9] and Carbokarn Co., Ltd. (Carbokarn)[10] demonstrate that there is significant production of comparable merchandise in Thailand and establish that Thailand is a significant producer for purposes of surrogate country selection.[11] Additionally, we provided information

[7] *See* Memorandum to the File, re: "Second Remand Redetermination Analysis Memorandum for Jacobi Carbons AB in the Antidumping Duty Review of Certain Activated Carbon from the People's Republic of China," dated concurrently with these remand results (Jacobi Second Remand Analysis Memo).
[8] *See* section 773(c)(4)(B) of the Act; *see also Jacobi AR7 I*, 222 F. Supp. 3d at 1181.
[9] *See* Petitioners' SV Submission, dated April 1, 2015, at Attachment 3.
[10] *See* Datong Juqiang's SV Submission, dated April 1, 2015, at Attachment 8.
[11] *See* First Remand Redetermination at 20-21.

related to Thailand's status as a net exporter of activated carbon and explained our rationale for preferring quantity over value as a measure of significant production.[12] Finally, to address the Court's concerns, we provided an analysis of the global trade of activated carbon using the Global Trade Atlas (GTA) export statistics on the record and the significance of Thailand's ranking in terms of its effect on global trade.[13]

In *Jacobi AR7 II*, the Court held that, with respect to domestic production as evidence for finding Thailand as a significant producer, Commerce did not explain whether, or why, Gigantic's and Carbokarn's sales are significant.[14] The Court also held that, reliance on evidence of domestic production, without explaining its significance, reads the word "significant" out of the statute.[15] Further, the Court found that reliance on record evidence of domestic production in the form of financial statements, absent any discussion of its significance, fails to adequately substantiate Commerce's finding that Thailand is a significant producer. Accordingly, the Court held that if Commerce "continues to rely on evidence of domestic production or net exports, it must explain why, with substantial supporting evidence, those metrics constitute a permissible interpretation of significant producer."[16]

[12] *Id.* at 22.
[13] *Id.* at 22-24.
[14] *See Jacobi AR7 II* at 27.
[15] *Id*.
[16] *Id.* at 31-32.

Analysis

In accordance with *Jacobi AR7 II*, and for the reasons set forth below, Commerce continues to find that Thailand is a significant producer of comparable merchandise. As previously stated in *AR7 Final Results*, section 773(c)(4)(B) of the Tariff Act of 1930, as amended (the Act), requires Commerce to value factors of production (FOP), to the extent possible, in a surrogate country that is a significant producer of comparable merchandise. Importantly, the Act does not define the phrase "significant producer."[17] Certain legislative history suggests that Commerce may consider a country to qualify as a "significant producer" if, among other things, it is a "net exporter" of identical or comparable merchandise.[18] However, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter," it does not preclude reliance on additional or alternative metrics.[19] As a result, section 773(c)(4)(B) of the Act does not compel Commerce to define "significant producer" in any particular manner,[20] including comparison of the import and export volumes.

The Court appears to believe that, using record evidence, Commerce can discern the trends and impacts particular countries have on the world trade of activated carbon.[21] However, we disagree that significant production means production "having or likely to have influence or

[17] *See* section 773(c)(4)(B) of the Act; *see also Import Admin., U.S. Dep't of Commerce, Non–Market Economy Surrogate Country Selection Process*, *Policy Bulletin 04.1* (2004) (*Policy Bulleting 04.1*), available at http://enforcement.trade.gov/policy/bull04-1.html.
[18] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590, 1988 U.S.C.C.A.N. 1547, 1623 (1988).
[19] *Id.*
[20] *See Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006).
[21] *See Jacobi AR7 II* at 30 ("[i]n *Jacobi (AR7) I*, the court remanded Commerce's significant producer determination, in part, because the agency had "fail{ed} to persuade that reliance on total exports, devoid of evidence of influence on world trade, is a permissible method of interpreting the term '*significant* producer'").

effect" on world trade.[22] Rather, we interpret "significant" to mean, in general terms, a noticeably or measurably large amount. Even if a finding of significance were to also require a finding of influence on world trade, there is no evidence on the record that would allow an assessment of the effect of Thailand's production on world trade. That said, there is also no record evidence indicating that Thailand's level of production of activated carbon was so low that it failed to affect world trade. The GTA export statistics on the record identify 24 countries which have exported activated carbon for the year ending March 2014 (the POR).[23] The export quantities range from 250 million kilograms (kg) (China) to 32 kg (Morocco).[24] With an export quantity of 7.8 million kg, Thailand is the ninth largest global exporter of activated carbon, and it is the eighth largest global exporter of activated carbon if China's exports are not considered. Importantly, when considering Thailand's export quantity within the context of the countries identified on the surrogate country list, including all countries which are not on the list but which fall within the surrogate country Gross National Income (GNI) band, Thailand is the largest exporting country of activated carbon.[25] In making the comparisons above, we find that, although it is not the largest overall global exporter, Thailand's global exports are not insignificant, and its export quantity is large compared to other exporters of comparable merchandise as reflected in the GTA data.[26] Moreover, the Act does not require Commerce to seek the largest overall global exporter in order to find significant production; it only requires a

[22] *Id.* (citing *Garlic Remand Redetermination* and *Fresh Garlic Producers Ass'n v. United States*, 121 F. Supp. 3d 1313, 1338 (CIT 2015) (internal quotations omitted)).
[23] The data identifies 27 countries, however for the year ending March 2014, three countries, Australia, Chile and Nicaragua, do not report exports of activated carbon. *See* 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 (Prelim SV Memorandum), at Attachment 1.
[24] *Id.*
[25] *Id.* at Attachment 2; *see also* Letter from Jacobi, re: "Jacobi's Initial Comments on Surrogate Country Selection," dated November 12, 2014, at Attachment B.
[26] *See* Prelim SV Memorandum at Attachment 1.

reasonable finding that a country's exports are significant.[27] Moreover, the record lacks information that would allow us to determine the factors or benchmarks which impact the global trade in activated carbon. However, we use exports as an available measure and a proxy for domestic production.[28] Therefore, as demonstrated above, when compared to the exports of other exporting countries for which record data exists, Thailand's exports are significant as Thailand is the ninth largest global exporter and the largest exporting country among the countries included in the surrogate country GNI band.

While not definitive, the reference to net exporters in the legislative history indicates that exports provide some indication of significant production.[29] A country's status as a net exporter supports a finding of significant production because, as noted above, we interpret "significant" to mean a noticeably or measurably large amount. In addition, when a country is a net exporter, the assumption is that it produces more than it imports and consumes. The record contains export and import information for only two additional countries, allowing us to make a comparison of the net exports of Indonesia, Thailand and the Philippines.[30] The GTA data on the record indicates that Thailand exported 1,172,897 kg more activated carbon than it imported, signifying Thailand was a net exporter of activated carbon during the POR.[31] Additionally, record evidence indicates that the Philippines had a net export quantity of 60,662,341 kg and Indonesia a net

[27] *See* section 773(c)(4)(B) of the Act.
[28] *See e.g., Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 81 FR 71071 (October 14, 2016) and accompanying Preliminary Decision Memorandum at 7, unchanged in *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review*, 82 FR 18611 (April 20, 2017).
[29] *See Conference Report to the 1988 Omnibus Trade & Competitiveness Act*, H.R. Rep. No. 100-576, at 590, 1988 U.S.C.C.A.N. 1547, 1623 (1988).
[30] *See* Datong Juqiang's Surrogate Country Comments, dated November 12, 2014, at Exhibit 1; *see also* Calgon Carbon Corporation and Cabot Norit Americas (collectively, Petitioners) Surrogate Country Comments, dated November 12, 2014, at 3-4.
[31] *See* Datong Juqiang's Surrogate Country Comments, dated November 12, 2014, at Exhibit 1.

export quantity of 11,112,825 kg.[32] *Policy Bulletin 04.1*, which describes Commerce's non-market economy (NME) surrogate country selection process, explains that though no one particular method of determining significant production is required by the statute, a demonstration that a country is a net exporter satisfies the statutory requirement.[33] Based on the net export quantities above, Indonesia, the Philippines, and Thailand can all be considered significant producers of activated carbon.

Accordingly, for this remand redetermination we continue to find that Thailand is a significant producer of activated carbon. As we note above, the Court takes issue with our discussion of exports and net exports absent a discussion of Thailand's influence on world trade.[34] As noted above, we disagree that a finding that there is significant production necessarily requires that we find production "having or likely to have influence or effect" on world trade. Additionally, the record does not contain information on the global trade of activated carbon, at least with respect to the factors that would demonstrate how a particular country's exports, lack of exports, or status as a net exporter, may influence world trade, and thus such an assessment is not possible here. However, the record evidence – the significant quantity of Thai exports compared to global exports of activated carbon; the fact that Thailand is the largest exporter among the countries which fall within the surrogate country GNI band of potentially-comparable countries; and the fact that Thailand exports more activated carbon than it imports (*i.e.*, is a net exporter) – suggests that Thailand bears an influence on the global trade in activated carbon. Accordingly, with this record evidence as support, we continue to find that Thailand is a significant producer of identical merchandise.

[32] *See id.* and Petitioners' Surrogate Country Comments, dated November 12, 2014, at 3-4, respectively.
[33] *See Policy Bulletin 04.1*, (explaining that "'significant producer' could mean a country that is a net exporter, even though the selected surrogate country may not be one of the world's top producers").
[34] *See Jacobi AR7 II* at 29.

2. Financial Ratios

Background

In the *AR7 Final Results*, we used Carbokarn's 2011 financial statements because we found that they were complete, audited, publicly available, from the primary surrogate country, were otherwise suitable for calculating the surrogate financial ratios, and did not contain countervailable subsidies.[35] Further, we acknowledged the lack of POR contemporaneity.[36]

In *Jacobi AR7 II*, the Court stated that because Commerce did not address whether Carbokarn's 2011 financial statements line item amount "tax coupon receivables" bears any relation to the tax coupon program Commerce found countervailable in *Thai Shrimp*,[37] the Court cannot "ascertain whether Commerce reasonably exercised its discretion" in finding that Carbokarn's 2011 financial statements do not contain countervailable subsidies.[38] The Court remanded this issue, stating that "Commerce's determination to rely on Carbokarn's 2011 financial statements to value financial ratios is remanded for reconsideration and further explanation as to whether the financial statement reflects the receipt of countervailable subsidies or otherwise provides suitable surrogate financial data."[39]

Analysis

In accordance with 19 CFR 351.408(c)(4), Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise, in the surrogate

[35] *See AR7 Final Results* and accompanying IDM at Comment 2.
[36] *Id.*
[37] *See Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) (*Thai Shrimp*) and accompanying IDM at IV.A.1.
[38] *See Jacobi AR7 II* at 36.
[39] *Id.* at 38.

country, to value manufacturing overhead, general expenses, and profit.[40] Additionally, for purposes of selecting surrogate producers, Commerce examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.[41] However, Commerce is not required to "duplicate the exact production experience of" an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."[42]

When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is Commerce's practice to select SVs which, to the extent practicable, are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[43] Additionally, Commerce has a strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[44] The courts have recognized Commerce's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[45] Moreover, when selecting among the available surrogate financial

[40] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and accompanying IDM at Comment 2.
[41] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying IDM at Comment 13.
[42] *See Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999); *see also Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999).
[43] *See, e.g., Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 10; *see also Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying IDM at Comment 2.
[44] *See Jiaxing Brother Fastener Co. v. United States*, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014) (*Jiaxing Brother*) quoting *Sodium Hexametaphosphate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012) (*Sodium Hex*) and accompanying IDM at Comment I.
[45] *See, e.g., FMC Corp. v. United States*, 27 CIT 240, 251 (CIT 2003) (holding that the Department can exercise discretion in choosing between reasonable alternatives), aff'd *FMC Corp. v. United States*, 87 F. App'x 753 (Fed. Cir. 2004).

ratios, Commerce has elected to use surrogate financial statements which contain evidence of countervailable subsidies only when those financial statements represent the "best available information."[46]

Commerce bases the valuation of the FOPs on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate...."[47] In valuing such factors, Congress further directs Commerce to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."[48] In determining whether a financial statement contains evidence of countervailable subsidies, Commerce will first determine whether an alleged subsidy has been found countervailable in a prior countervailing duty proceeding.[49]

As instructed by the Court, we have re-examined the line item "tax coupon receivables" in Carbokarn's financial statements and found that it is similar to the program Commerce found countervailable in *Thai Shrimp*.[50] In *Thai Shrimp*, we determined that the purpose of the

---

[46] *See Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Recession of Antidumping Duty Administrative Review*, 75 FR 49460 (August 13, 2010) (*Shrimp from China*) and accompanying IDM at Comment 9.

[47] *See* section 773(c)(1) of the Act.

[48] *See* Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 76 100th Cong., 2nd Session (1988) at 590; *see also, e.g., Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009) at Comment 2 (citing *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007) at Comment 1 (where Commerce determined that the financial statements of several companies that had received countervailable subsidies did not constitute the best available information to value the surrogate financial ratios and, consequently, did not use them)).

[49] *See*, *e.g.*, *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part*, 75 FR 57449 (September 21, 2010) (*Seamless Carbon and Alloy Steel PRC Final*) and accompanying IDM at Comment 6 ("Because this is not a specific countervailable subsidy program determined by the Department to confer countervailable benefits, the Department determines that there is no evidence that Jindal Steel received countervailable subsidies, based on its 2008-09 financial statements"); *see also Clearon Corp. v. United States*, 800 F. Supp. 2d 1355, 1359 (CIT 2011) (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Third New Shipper Reviews*, 74 FR 29473 (June 22, 2009), and accompanying IDM at 4-5 (June 15, 2009)).

[50] *See Thai Shrimp* and accompanying IDM at IV.A.1.

program "Tax Coupons for Exported Goods" is to refund import duties paid for the imported raw materials and other inputs used in the production of exported goods and found the program to be a countervailable subsidy program.[51] Carbokarn's financial statements identify the line item "tax coupon receivables" under note 5: Trade and other receivables.[52] We find it reasonable to conclude that Carbokarn's "tax coupons receivables" are related to the program "Tax Coupons for Exported Goods" because Carbokarn is an exporting company.[53] We therefore have reason to believe or suspect that the "tax coupon receivables" in Carbokarn's financial statements have been previously found by Commerce to be a countervailable subsidy. However, Carbokarn's statement is otherwise from a producer of identical merchandise, representative of a broad-market average, exclusive of taxes and duties audited, complete, publicly available, and contains enough information to calculation surrogate financial ratios.[54] The statements are not contemporaneous with the POR, as previously discussed.[55]

We have previously acknowledged that Gigantic's financial statements also contain subsidies which Commerce has previously found countervailable.[56] Specifically, we previously countervailed a program providing exemption from corporate income tax, under the Investment Promotion Act (IPA) of B.E. 2520 (IPA Sec. 31), that appeared in Gigantic's financial statements.[57] Gigantic's financial statements are otherwise from a producer of identical

[51] *Id.* (finding the program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of tax revenue forgone by the Thai government, is contingent upon export performance and thus specific under sections 771(5A)(A) and (B) of the Act, and consistent with 19 CFR 351.519(a)(4), confers a benefit in the amount of the drawback or remission).
[52] *See* Datong Juqiang's SV Submission, dated June 2, 2015, at Exhibit 1.
[53] *Id.*
[54] *Id.*
[55] *Id.*; *see also AR7 Final Results* and accompanying IDM at Comment 2.
[56] *See Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Thailand*, 70 FR 13462 (March 21, 2005); *see also Ball Bearings and Parts Thereof from Thailand: Final Results of Countervailing Duty Administrative Review*, 61 FR 729 (January 6, 1997).
[57] *Id.*

merchandise (activated carbon), publicly available, contemporaneous with the POR, and exclusive of taxes and duties, audited, and contain sufficient information from which to calculate surrogate financial ratios.[58]

The record contains the 2010, 2011, and 2013 financial statements of Carbokarn and the 2013 financial statements of Gigantic. The record also contains 2013 financial statements from companies within Indonesia and the Philippines.[59] As explained above, Commerce has a strong preference, reflected in 19 CFR 351.408(c)(2) and upheld by this Court,[60] to value all FOPs in a single surrogate country and "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable," and then preferably, to find data from countries on the surrogate country list.[61] However, because Commerce continues to determine that Thailand is the primary surrogate country, we have determined not to use the financial statements from the companies within Indonesia and the Philippines because these financial statements come from companies operating in countries that have not been found to be at the same level of economic development or within the GNI range of the countries on the surrogate country list, and there are usable statements on the record from a country that is at the same level of economic development and a significant producer of identical merchandise.

As discussed in *AR7 Final Results*, we continue to find it inappropriate to use the 2013 financial statements for Carbokarn because they do not provide sufficient detail on expenses

[58] *See* Petitioners' SV Submission, dated March 31, 2015, at Attachment 3.
[59] *See* Jacobi's SV Submission, dated November 18, 2014, at Exhibit SV-8; Datong Juqiang's SV Submission, dated November 18, 2014, at Exhibit 6A-D; and Petitioners' SV Submission, dated November 18, 2014, at Attachment 5.
[60] *See, e.g.*, *Clearon Corp. v. United States*, 2013 CIT LEXIS 27, (CIT 2013), at 12.
[61] *See Jiaxing Brother*, 11 F. Supp. 3d at 1332-33 (quoting *Sodium Hex* and accompanying IDM at Comment I); *see also Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014) (*Aluminum Extrusions*) and accompanying IDM at Comment 1.

which would allow us to calculate accurate surrogate financial ratios.[62] Specifically, the statements do not detail the company's cost of goods sold, selling, general and administrative expenses, or labor expense.[63] Carbokarn's 2010 financial statements are not contemporaneous with the POR, nor are they fully translated, which significantly hinders our ability to determine whether they contain evidence of the same countervailable subsidy as the 2011 Carbokarn statements.[64]

Therefore, the only statements on the record which are useable, in that they are from a country on the surrogate country list (the primary surrogate country), are fully translated, audited, publicly available, and provide sufficient detail on expenses to allow us to calculate accurate surrogate financial ratios, are the 2011 Carbokarn statements and the 2013 Gigantic statements. As discussed above, both of these statements contain evidence of subsidization. However, Commerce has previously used financial statements from companies that received actionable subsidies when all of the financial statements on the record indicated the existence of actionable subsidies.[65] Because Gigantic's 2013 financial statements are more contemporaneous than the Carbokarn financial statements, are from a country at the same level of economic development as China, are publicly available, and are audited, Gigantic's financial statements are the best available information from which to calculate surrogate financial ratios, despite the evidence of a previously countervailed subsidy. Therefore, for this remand redetermination, we

[62] *See Aluminum Extrusions* and accompanying IDM at Comment 1.
[63] *See AR7 Final Results* and accompanying IDM at Comment 2.
[64] *See* Prelim SV Memorandum at Attachment 10.
[65] *See, e.g., Shrimp from China* and accompanying IDM at Comment 9; *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008) and accompanying IDM at Comment 3; *Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010) and accompanying IDM at Comment 8.

find that Gigantic's 2013 financial statements are the best available information on the record to calculate surrogate financial ratios.

3. Carbonized Materials

Background

In the *AR7 Final Results*, we valued carbonized materials using Thai imports of coconut shell charcoal classified under Harmonized Schedule (HS) code 4402.90.10000 "of Coconut Shell" because it is specific to the input used by Jacobi, from the primary surrogate country, publicly available, exclusive of taxes and duties, represents a broad market average, and is contemporaneous with the POR.[66] As part of its analysis of the potential SV data, Commerce evaluates whether the data appear aberrational compared to historical values, to the extent such import data are available, and/or examines data from the same HS category for the primary surrogate country over multiple years.[67] In the underlying review we did not conduct this comparison because the record did not contain historical import data for the potential surrogate countries.

In *Jacobi AR7 II*, the Court held that although the U.S. Trade Representative Report or Fed-Ex Country Report on Thailand that were on the record (which express concerns regarding Thai Customs practices) did not render Commerce's SV or surrogate country selections unsupported by substantial evidence, these reports required further consideration by Commerce.[68] Additionally, the Court noted that the CIT has repeatedly found that economic

[66] *See AR7 Final Results* and accompanying IDM at Comment 6.
[67] *See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) (*CVP 23 from the PRC)* and accompanying IDM at Comment 6; *see also 1,1,1,2-Tetrafluroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014) and accompanying IDM at Comment 10.
[68] *See Jacobi AR7 II* at 42-43.

comparability is not a basis on which to disregard data for benchmarking purposes.[69] Therefore, the Court ordered Commerce to reconsider or further explain its position with respect to the proposed benchmarks and, if appropriate, reconsider its SV selection in light of the proposed benchmark data.[70]

Analysis

When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is Commerce's practice to select SVs which, to the extent practicable, are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[71] Moreover, it is Commerce's well-established practice to rely upon the primary surrogate country for all SVs, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.[72] When determining whether prices are aberrational, Commerce has found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus it is not a sufficient basis upon which to exclude a particular SV.[73] Rather, interested parties must provide specific evidence showing the value is aberrational. In testing the reliability of SVs alleged to be

[69] *Id*. at 46-47 (citing various cases).
[70] *Id.* at 49.
[71] *See, e.g., Fuwei Films*, 837 F. Supp. 2d at 1350-51 (citing *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 10); *see also Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying IDM at Comment 2.
[72] *See* 19 CFR 351.408(c)(2); *see also Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review*, 76 FR 66903 (October 28, 2011), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012).
[73] *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015) (*Hangers from the PRC*) and accompanying IDM at Comment 5 (*citing Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final*

aberrational, Commerce's practice is to examine GTA import data for potential surrogate countries for a given case, to the extent such import data are available.[74] Commerce has also examined data from the same HS category, for the surrogate country whose data are allegedly aberrational, over multiple years to determine if the current data appear aberrational when compared to historical values.[75]

To conduct the benchmark exercise as contemplated by the Court, we selected benchmarks that represent coconut shell charcoal and are valued in United States dollars/kilogram ($/kg). The record contains the following possible SVs to value carbonized materials: (1) contemporaneous GTA data for Thai HS 4402.90.10000 "of Coconut Shell" ($1.14);[76] (2) contemporaneous GTA data for Sri Lankan HS 4402.90.10 "Wood Charcoal (Including Shell Or Nut Charcoal), Whether or Not Agglomerated Coconut Shell Charcoal" ($0.46);[77] (3) *Cocommunity* coconut shell charcoal price data from the Philippines for AR5 ($0.39), AR6 ($0.35) and AR7 ($0.34);[78] (4) contemporaneous *Cocommunity* coconut shell charcoal price data from Indonesia ($0.36);[79] (5) GTA data for Indonesian HS 4402.90.9000 "Oth Wood Charcoal (Including Shell of Nut Charcoal), Of Coconut Shell" ($0.97).[80] For benchmarking purposes, we excluded GTA data for countries which reported HS category

Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 56158 (September 12, 2011) and accompanying IDM at Comment 12).

[74] *See Hangers from the PRC* and accompanying IDM at Comment 5 (citing *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012) and IDM at Comment 1).

[75] *Id.* (*citing CVP 23 from the PRC* and accompanying IDM at Comment 6).

[76] *See* Datong Juqiang's SV Submission, dated March 31, 2015, at Exhibit 2A.

[77] *See* Petitioners' SV Submission, dated June 2, 2015, at Attachment 12.

[78] *See* Jacobi's SV Submission, dated November 18, 2014, at Exhibit SV-4, and Jacobi's SV Submission, dated June 2, 2015, at Exhibit SV-1.

[79] *Id.* at Exhibit SV-4.

[80] *See* Petitioners' SV Submission, dated June 2, 2015, at Attachment 12.

4402.90 as "Wood Charcoal (Including Shell or Nut Charcoal), Excluding That Of Bamboo" because we found that this HS category is not similar to the input used by the respondents.[81]

In the *AR7 Final Results*, we did not consider the *Cocommunity* data from either Indonesia or the Philippines, because this information does not come from the primary surrogate country, or a country found to be at the same level of economic development as the PRC.[82] However, the Court stated that the statute does not prohibit Commerce from considering benchmark data from countries which are not economically comparable, "for corroboration purposes, … when determining which information from countries at a level of economic development comparable to China is the best available information."[83] Although we still consider it inappropriate to include the SV information from Indonesia, the Philippines, and Sri Lanka in our analysis, because these countries are not within the GNI range of economic comparability with the PRC as determined by the surrogate country list, given the Court's instruction, we have addressed this information for this remand redetermination.

As an initial matter, we note that the contemporaneous GTA data for Indonesia, Sri Lanka, and Thailand are on a cost, insurance and freight (CIF) basis,[84] while the Indonesian and Philippine *Cocommunity* data are domestic prices that do not include these freight expenses.[85] Consequently, comparing the *Cocommunity* data and the GTA data results in a comparison of data which are on different bases: domestic, non-economically comparable coconut shell charcoal prices, exclusive of freight charges (*Cocommunity* data), and imported coconut shell charcoal prices, inclusive of freight charges (GTA data). Nonetheless, we compared the Thai SV

[81] *See AR7 Final Results* at Comment 6.
[82] *Id*.
[83] *See Jacobi AR7 II* at 48-49 (quoting *Peer Bearing Company-Changshan v. United States*, 752 F. Supp. 2d 1353, 1372 (CIT 2011) (*Peer Bearing*) (quotations omitted)).
[84] *See* Petitioners' SV Submission, dated June 2, 2015, at Attachment 12; *see also* Datong Juqiang's SV Submission, dated March 31, 2015, at Exhibit 2A.
[85] *See* Jacobi's SV Submission, dated November 18, 2014, at Exhibit SV-4.

for carbonized material, used in the *AR7 Final Results*, with each of the potential coconut shell charcoal SV prices on the record, which range from $0.34 USD/kg to $0.97 USD/kg. The contemporaneous GTA Thai price of $1.14 is only 3.18 times higher than the $0.36 average of all the *Cocommunity* prices of on the record. Additionally, the average of the *Cocommunity* prices are roughly one third of the Thai GTA data used in the *AR7 Final Results*. The Thai SV is 2.5 times higher than the contemporaneous Sri Lankan GTA data, and 1.18 times higher than the contemporaneous Indonesian GTA data. Commerce has previously examined whether a SV is aberrational compared to other import data in the *Fish Fillets from Vietnam Remand.* There, Commerce found that the proposed SV was aberrational because the average unit values varied between 30 and 79 times greater than the average of the rest of the import data.[86] However, Commerce finds that the Thai GTA import data SV in this instance is not so substantially higher than the domestic prices for coconut shell on the record so as to render it unusable. Even in considering the lower end of the range considered in the *Fish Fillets from Vietnam Remand*, 30 times higher is significantly different than our finding here that the value is, at most, 3.18 times higher. The CIT has previously sustained Commerce's use of a SV in similar circumstances.[87] Further, notwithstanding the U.S. Trade Representative Report or Fed-Ex Country Report on the record, we note that there is no information on the record which demonstrates that the entries under the Thai HS for coconut shell charcoal encompass anything other than coconut shell charcoal. With no specific evidence to the contrary and given our findings that the Thai SV is not aberrational, is from the primary surrogate country, and otherwise meets our SV criteria, we

[86] *See* Final Results of Redetermination Pursuant to *Catfish Farmers of America v. United States*, Consol. Court No. 08-00111, Slip Op. 09-96 (September 14, 2009), dated December 10, 2009, at 4-7 (*Fish Fillets from Vietnam Remand*), sustained in *Catfish Farmers of Am. v. United States*, 641 F. Supp. 2d 1362 (CIT 2009) (*Catfish*).
[87] *See Vinh Hoan Corporation v. United States*¸ 234 F. Supp. 3d 1332, 1339-1340 (CIT 2017) (where a comparison to historical import data showed that the potential SV was eight percent higher than the prior year and three times higher than the lowest SV).

find that the Thai GTA data for coconut shell charcoal is reliable and continues to represent the best available information to value carbonized materials.

4. Value-Added Tax Calculation

Background

Based on the Court's order in *Jacobi AR7 I*, which ordered Commerce to provide a "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,"[88] we clarified that the amount of VAT that Jacobi actually paid to the Chinese tax authorities on such inputs is irrelevant in our margin calculations. Rather, based on our understanding of the function of the Chinese VAT laws and the statute,[89] we were concerned with deducting from the U.S. price the amount of irrecoverable VAT which was actually included in the selling price of activated carbon to the United States.[90]

In *Jacobi AR7 II*, the Court held that Commerce's inconsistent explanations introduced uncertainty as to whether the adjustment is intended to account for an unrefunded input VAT imposed on exported goods that could be understood as an "other charge," or instead, an output VAT collected on these exports by application of Chinese law, which could be considered an "export tax" under U.S. law.[91] The Court further held that Commerce must: 1) reconcile the inconsistencies between the *AR7 Final Results* and the First Remand Redetermination;[92] 2) address the evidence that Jacobi recovers the input VAT it incurs by the offset it takes collecting

[88] *See Jacobi AR7 I* at 1154.
[89] *See* section 772(c)(2)(B) of the Act.
[90] *See* First Remand Redetermination at 26-27.
[91] *See Jacobi AR7 II* at 56.
[92] *Id.* at 57.

output VAT, suggesting that the input VAT is not irrecoverable;[93] and 3) explain why the amount of the export tax, duty, or other charge is determined on the basis of the FOB price of the output (or the estimated customs value) rather than the value of the inputs.[94,95] Further, the Court held that Commerce must address whether it is using gross or net prices to calculate the adjustment and, in so doing, address the evidentiary support for rejecting Datong Juqiang's proposed calculation methodology (*i.e.,* VAT = FOB * exchange rate / (1+ legal VAT rate) * legal VAT rate).[96] Finally, in its August 22, 2018 *Order,* the Court directed Commerce to address the VAT-related questions raised in *Aristocraft*.[97]

On July 18, 2018, Commerce placed on the record the *Notice of the Ministry of Finance and the State Administration of Taxation on VAT and Consumption Tax Policies for Exported Goods and Labor Services* and allowed parties an opportunity to comment.[98] On July 23, 2018, the petitioners provided comments noting that Commerce has relied on this notice in several recent cases as a basis for adjusting U.S. price.[99]

Analysis

The Court held that Commerce must clarify whether the VAT adjustment is intended to account for an unrefunded input VAT imposed on exported goods that could be understood as an

[93] *Id.*
[94] *Id.*
[95] Additionally, the Court instructed that if we continue to disregard Jacobi's FOB values, we must explain why the reliability of Jacobi's entered values is pertinent when Commerce is attempting to determine the export VAT "imposed by" China. *Id*. at 58. Because we are not disregarding Jacobi's FOB values, we are not addressing the reliability of Jacobi's entered values in this remand redetermination.
[96] *Id.* at 60.
[97] August 22, 2018 *Order*.
[98] *See* Memorandum, re: "Certain Activated Carbon from the People's Republic of China," dated July 18, 2018, at Attachment "*Notice of the Ministry of Finance and the State Administration of Taxation on the Policies of Value-added Tax and Consumption Tax Applicable to Exported Goods and Services*" (*2012 VAT Notice*).
[99] *See* Letter from the petitioners, re: "Certain Activated Carbon from the People's Republic of China—Petitioners' Comments on Placement of China's 2012 Value Added Tax Circular on the Record of Remand Record (Ct. No. 15-00286)," dated July 23, 2018, at 2-3.

"other charge," or instead, an output VAT collected on these exports by application of Chinese law, which could be considered an "export tax" under U.S. law.[100] Commerce continues, as it did in the *AR7 Final Results*, to find that it is appropriate to adjust the U.S. price to account for the amount of VAT imposed upon the subject merchandise exported to the United States and clarifies its reasoning below. However, Commerce has made this adjustment on a different basis than previously explained to the Court. We explain further below.

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

Firms calculate input VAT and output VAT for tax purposes on a company-wide basis, *i.e.*, in the case of input VAT, on the basis of *all input purchases* regardless of whether used in the production of goods for export or domestic consumption, and in the case of output VAT, on the basis of *all sales to all markets,* foreign and domestic. Thus, a firm might pay the equivalent of $60 million in total input VAT across all input purchases and collect $100 million in total output VAT across all sales. In this situation, however, the firm would remit to the government only $40 million of the $100 million in output VAT collected on its sales because of a $60 million credit for input VAT paid that the firm can claim against output VAT.[101] As result, the firm bears no "VAT burden (cost)": the firm through the credit is refunded or recovers all of the

[100] *See Jacobi AR7 II* at 56.
[101] The credit if not exhausted in the current period can be carried forward.

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

This would describe the situation under Chinese law except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. Instead, Chinese tax law requires a *reduction in or offset to* the input VAT that can be credited against output VAT. This formula for this reduction/offset is provided in Article 5 of the 2012 PRC government tax regulation, *2012 VAT Notice*:[102]

Reduction/Offset = (P – c) x **(T_1 – T_2)**,

where,

P = (VAT-free) FOB value of export sales;

c = value of bonded (duty- and VAT-free) imports of inputs used in the production of goods for export;

T_1 = VAT rate; and

T_2 = refund rate specific to the export good.

Using the example above, if P = $200 million, c = 0, T_1 = 17% and T_2 = 10%, then the reduction/offset = ($200 million - $0) x (17% - 10%) = $200 million x 7% = $14 million.

Chinese law then requires that the firm in this example calculate creditable input VAT by subtracting the $14 million from total input VAT, as specified in Article 5.1(1) of the *2012 VAT Notice*:

Creditable input VAT = Total input VAT – Reduction/Offset

Using again the example above, the firm can credit only $60 million – $14 million = $46 million of the $60 million in input VAT against output VAT. Since the $14 million is not

[102] *See 2012 VAT Notice*, Article 5.

creditable (legally recoverable), it is not refunded to the firm. Thus, the firm incurs a cost equal to $14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of $T_1 - T_2$. This cost, therefore, functions as an "export tax, duty, or other charge," because the firm does not incur it *but for* exportation of the subject merchandise, and under Chinese law must be recorded as a cost of exported goods.[103] It is for this "export tax, duty, or other charge" that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act.[104]

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

---

[103] Article 5(3) of the *2012 VAT Notice* states: "Where the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of exported goods and services."

[104] Because the $14 million is the amount of input VAT that is not refunded to the firm, it is sometimes referred to as "irrecoverable input VAT." However, that phrase is perhaps misleading because the $14 million is not a fraction or percentage of the VAT the firm paid on purchases of inputs used in the production of exports. If that were the case, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the *2012 VAT Notice* as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the $14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula's reliance on the FOB export value as the tax basis for the calculation. The $14 million is a reduction in or offset to what is essentially a tax credit, and it is calculated based on and is proportional to the value of a company's export sales. Thus, "irrecoverable input VAT" is in fact, despite its name, an export tax within the meaning of section 772(c) of the Act.

The VAT treatment under Chinese law of exports of goods described above concerns only export sales that are *not* subject to output VAT, the situation where the firm collects no VAT from the buyer, which applies to most exports from China. However, the *2012 VAT Notice* provides for a limited exception in which export sales of certain goods are, under Chinese law, deemed domestic sales for tax purposes and, thus, *are* subject to output VAT at the full rate.[105] The formulas discussed above from Article 5 of the *2012 VAT Notice* do not apply to firms that export these goods, and there is, therefore, no reduction in, or offset to, their creditable input VAT. For these firms, creditable input VAT = total input VAT, *i.e.*, these firms recover all of their input VAT. At the same time, export sales of these firms are subject to an explicit output VAT at the full rate, T_1.[106] Commerce must, therefore, deduct this tax from U.S. price[107] under section 772(c) of the Act, to ensure tax-neutral dumping margin calculations.[108]

Consistent with the above explanation of the two categories of exported goods with respect to the VAT that is collected as identified in Chinese law, Commerce recognizes that it erred in its earlier treatment of VAT as it applies to Chinese exports of activated carbon in this administrative review. Specifically, as noted above, exports of certain goods are deemed domestic sales under Chinese law and are, therefore, subject to an output VAT.[109] Activated carbon is among the goods for which exports are deemed domestic sales.[110] Sales of activated

[105] *See 2012 VAT Notice*. For these goods, the VAT refund rate on export is zero.
[106] *See 2012 VAT Notice*, Article 7.2(1).
[107] Commerce will divide the VAT-inclusive export price by (1 + T), where T is the applicable VAT rate.
[108] Pursuant to sections 772(c) and 773(c) of the Act, the calculation of normal value based on factors of production in NME antidumping cases is calculated on a VAT-exclusive basis, so U.S. price must also be calculated on a VAT-exclusive basis to ensure tax neutrality.
[109] *See* Article 7 of the *2012 VAT Notice* and Jacobi's SCQR at Exhibit SC-56, Circular Guoshuifa 2006 No. 102, *Notice from the State Administration of Taxation of the People's Republic of China Concerning the Refund (Exemption) of Tax on Exported Commodities* (*Notice 102*).
[110] *See Notice 102*; *see* Article 7 of the *2012 VAT Notice*; *see also* Jacobi's SCQR at Exhibit SC-56.

carbon are subject to an output VAT at a rate of 17 percent.[111] This means that export sales of activated carbon are *not* subject to "irrecoverable VAT," as previously understood, nor are sales of activated carbon subject to a reduction in, or offset to, creditable input VAT by adjusting for "irrecoverable VAT."[112] Therefore, the reduction in, or offset to, creditable input VAT paid (*i.e.*, the irrecoverable VAT described above) is not relevant to the calculation of any adjustment of any "export tax, duty, or other charge" in the case of activated carbon.[113] Instead, a 17 percent output VAT is imposed on export sales of activated carbon, because such sales are deemed domestic sales under Chinese law, and as reported by Jacobi.[114] This 17 percent output VAT is collected by exporters of activated carbon from foreign buyers of activated carbon, including U.S. buyers. Thus, pursuant to section 772(c)(2) of the Act, the output VAT imposed on the export sales of activated carbon is an "export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States," and Commerce must make a downward adjustment to the U.S. price by the percentage of output VAT collected on export sales of activated carbon.[115]

In its August 22, 2018 *Order*, this Court provided Commerce with an opportunity to consider the *Aristocraft* opinion as it relates to Chinese irrecoverable VAT.[116] Specifically, the Court in *Aristocraft* asks:

- If irrecoverable VAT means "taxes prohibited from exemption and offset," *i.e.* an amount of unrefunded tax charged on "inputs and raw materials," and this

[111] The output VAT is collected by exporters of activated carbon from foreign buyers of activated carbon.
[112] *See* Jacobi's SCQR at Exhibit SC-55.
[113] *Id*.
[114] *See Notice 102*.
[115] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483 (June 19, 2012) *(Methodological Change)*.
[116] August 22, 2018 *Order*.

"irrecoverable VAT" is in some way linked to the amount of input VAT a respondent pays:

- How is the amount of input tax actually deducted from a respondent's VAT liability "not relevant" to the adjustment of the respondent's EP and CEP?
- Is the relationship between the two "not calculable"?
- Is the link between irrecoverable VAT and the amount of input VAT a respondent pays generally not calculable or knowable because of the complexity of the Chinese VAT system (i.e. the exact link is just not possible)?
- Is the link between irrecoverable VAT and the amount of input VAT a respondent pays generally knowable but not calculable *on this record*, because of respondents' failures to proffer enough information and explanation against a dense and complicated Chinese VAT system such that Commerce can make a transaction-specific adjustment to respondents' EP or CEP?
- Commerce must further explain or reconsider, if appropriate, how Commerce's deduction of "taxes prohibited from exemption and offset" accounts for an amount of "input VAT not fully recouped on export sales" that a respondent includes in its price of subject merchandise.[117]

As noted above, with respect to goods for which exports are deemed domestic sales, such as activated carbon, Commerce finds that, based on Chinese law, these sales are subject to an output VAT of a given amount, and that such export sales are not subject to a reduction in, or

[117] *See Aristocraft*, 2018 WL 3816781 at *5.

offset to, creditable input VAT ("irrecoverable VAT"), as explained above.[118] Therefore, because activated carbon is such a good, the concept of a reduction in, or offset to, the company's input VAT liability (*i.e.*, "irrecoverable VAT") is not relevant in the case of activated carbon. Commerce is, therefore, deducting from U.S. price the 17 percent output VAT imposed upon export sales of activated carbon to arrive at a tax-neutral dumping comparison, pursuant to section 773(c) of the Act. Accordingly, the questions posed to Commerce in *Aristocraft*, which concern the category of export sales that are *not* deemed domestic sales, are not applicable, because the input VAT or "irrecoverable VAT" is not a consideration in the adjustment Commerce is making with respect to sales of activated carbon.

In its remand order, this Court held that Commerce must "address {record} evidence suggesting Jacobi's ability to offset input VAT against output VAT collected from foreign customers, suggesting that the input VAT is not, in fact, irrecoverable."[119] As explained above, record evidence supports Jacobi's position that, in most months, Jacobi credits the output VAT it collects from its customers against the input VAT paid to its suppliers. Further, Commerce acknowledges that such recovery indicates that input VAT paid by Jacobi is not irrecoverable. This accords with Commerce's understanding of how the VAT treatment of activated carbon differs from that of other export goods which are not treated as domestic sales, *i.e.*, most other goods. However, as explained above, a 17 percent output VAT is imposed upon all sales, domestic or export, of activated carbon which Jacobi is required to collect, and reports having collected, from its customers.[120] It is this 17 percent output VAT imposed on the export sale of

[118] *See* Article 7 of the *2012 VAT Notice* and *Notice 102*.
[119] *See Jacobi AR7 II* at 58.
[120] *See* Article 7 of the *2012 VAT Notice* and *Notice 102*.

activated carbon, and not irrecoverable input VAT, for which Commerce is adjusting the U.S. price.

As noted in the First Remand Redetermination, the record demonstrates that Jacobi pays 17 percent input VAT on products it purchases from its suppliers,[121] and further demonstrates that activated carbon is not included in the list of exported products eligible for a reduction in, or offset to, creditable input VAT paid (*i.e.*, irrecoverable VAT).[122] Further, 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)...."[123] This is consistent with *Notice 102*, Section I and I(1):[124]

> "With regard to the following 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*.
>
> (1) The goods which the state expressly provides no refund (exemption) of value added tax;" ….[125]

Thus, as noted above, export sales of activated carbon are not subject to reduction in, or offset to, creditable input VAT, and export sales of activated carbon "shall be subject to value added tax." Because the output VAT for activated carbon is 17 percent,[126] and this amount is not rebated upon export, the 17 percent output VAT functions as an export tax imposed by the Chinese

[121] *See Jacobi AR7 II* at 29-30; *see also* Jacobi's SCQR at 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 AR7 II* at 29.
[122] *See Jacobi AR7 II* at 29-30; *see also* Jacobi's SCQR at Exhibit SC-55 and SC-56.
[123] *See* Jacobi's SCQR at 30 (emphasis added) and Exhibit SC-58.
[124] *See* Article 7 of the *2012 VAT Notice*.
[125] *Id.* at Exhibit SC-56 (emphasis added).
[126] *Id.* at Exhibit SC-54.

authorities on the exportation of the subject merchandise, pursuant to section 772(c)(2)(B) of the Act.

While the record indicates that Jacobi conducts a reconciliation in which it offsets output VAT collected from its sales of activated carbon with input VAT paid on input purchases in accordance with Chinese law to arrive at a net VAT creditable amount,[127] Commerce's adjustment is not intended to account for the total amount of net VAT creditable, which is a company-wide total amount and is neither market- nor product-specific. That is, Commerce does not allocate the total amount of net VAT creditable across a respondent's export sales. Rather, as noted in the *Methodological Change*, when the "export tax, VAT, duty, or other charge will be a fixed percentage," Commerce "will adjust the export price or constructed export price downward by the same percentage," due to the imposition of VAT by the Chinese government on resellers and producers such as Jacobi and Datong Juqiang.[128] As noted above, because sales of activated carbon are deemed domestic sales under Chinese law, the sales of exported activated carbon are "subject to value added tax" (*i.e.*, the output VAT), and the "state expressly provides no refund (exemption) of value added tax"[129] (*i.e.*, no reduction in, or offset to, creditable input VAT), the output VAT (in this case imposed at a rate of 17 percent) is necessarily included in the U.S. price. Accordingly, the record evidence supports a finding that Jacobi collected output VAT on the subject merchandise it sold for export, and this amounts to "an export tax, duty or other charge imposed" on export sales of activated carbon – in other words, a VAT burden on exports. The Court has concluded that it is reasonable for Commerce

[127] *Id.* at Exhibit SC-58.
[128] *See Methodological Change*, 77 FR at 36483.
[129] *See* Article 5 of the *2012 VAT Notice.*

to include costs arising as a result of export sales as a deduction from export price.[130] Therefore, pursuant to section 773(c) of the Act, Commerce is required to deduct such a charge from U.S. price to reach a tax-neutral dumping comparison.[131]

Accordingly, we are adjusting the U.S. sales price by deducting from the U.S. sales price the amount of output VAT that Jacobi reports is included in its sales made to the United States (*i.e.*, 17 percent of FOB price) to render the comparison tax neutral. As a result, we determine that it is appropriate to continue deducting the 17 percent output 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.

As explained above, the Chinese tax authorities impose a 17 percent output VAT on Jacobi's export sales of the subject merchandise, because the sales are treated as domestic sales. The formula used by the Chinese tax authorities to determine the output VAT is output VAT = FOB * exchange rate / (1+ legal VAT rate) * legal VAT rate.[132] Jacobi explains that its reported entered values are the FOB China port values used in the Chinese tax authorities' output VAT calculations.[133] Therefore, because Commerce is required to calculate antidumping duty margins "as accurately as possible, and to use the best information available to do so,"[134] we find that using Jacobi's reported FOB values[135] to determine the adjustment to U.S. price is most accurate because Jacobi's reported FOB values are the values used by the Chinese tax authorities in the formula noted above, and therefore is the basis on which the output VAT burden was calculated by the Chinese tax authorities. Accordingly, we have revised our calculation methodology to use

[130] *See Juancheng Kangtai Chemical Co., Ltd. v. United States*, 2017 WL 218910 (2017) (*Kangtai*), *11.
[131] *See* section 772(c)(2)(B) of the Act.
[132] *See* Jacobi's SCQR at Exhibit SC-56; *see also 2012 VAT Notice*.
[133] *See* Jacobi's SCQR at 30.
[134] *See Lasko Metal Products Inc. v. United States*, 43 F.3d 1442, 1443 (Fed. Cir. 1994)
[135] Jacobi's FOB values are the reported entered values, which are reported on a gross basis inclusive of the cost of goods, transportation to the port, and brokerage and handling expenses at the port of export.

Jacobi's reported FOB values (gross FOB value as reported by Jacobi to the Chinese tax authorities) and the output VAT rates established in *Interim Regulation*,[136] (*i.e.*, output VAT = FOB value / (1 + 0.17) * 0.17). Therefore, our adjustment to U.S. price is equal to Jacobi's reported FOB values minus the output VAT calculated in accordance with the above formula.[137]

This Court also held that Commerce must "explain why the VAT adjustment is properly made on the basis of an estimated customs value instead of the FOB value on which the PRC assesses it" and "address the evidentiary support for rejecting {Datong Juqiang}'s proposed calculation methodology."[138] We have reconsidered our calculation methodology used to deduct the VAT from Jacobi's U.S price, as explained above, and have determined that the calculation methodology proposed by Datong Juqiang and the calculation methodology as found in Chinese law result in an accurate adjustment to U.S. price. We, therefore, are no longer rejecting Datong Juqiang's methodology, but instead relying on it, as we have determined that Datong Juqiang's calculation and the calculation as laid out in Chinese law are the same.

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

The Department released the Draft Remand Results to interested parties for comment on September 13, 2018.[139] Jacobi and the SR Companies[140] commented on the issue of significant

[136] *See* Jacobi's SCQR at Exhibit SC-54, *Interim Regulation of the People's Republic of China on Value Added Tax (2008 Revision)*, Effective 2009 (*Interim Regulation*).
[137] Because Jacobi's entered values are the FOB values, and because those values are reported on a U.S. dollar-per-pound basis, we do not need to convert the FOB values from Chinese RMB to U.S dollars. *See* Jacobi's SCQR at Exhibit SC-1 and Exhibit SC-38.
[138] *See Jacobi AR7 II* at 59-60.
[139] *See* Draft Results of Redetermination Pursuant to Court Remand, *Jacobi Carbons AB et al. v. United States*, Consol. Court No. 15-00286, dated September 13, 2018 (Draft Remand Results).
[140] Carbon Activated Tianjin Co., Ltd., Jilin Bright Future Chemicals Co., Ltd., Ningxia Mineral and Chemical Ltd., Shanxi DMD Corp., Shanxi Industry Technology Trading Co., Ltd., Shanxi Sincere Industrial Co., Ltd., Tancarb Activated Carbon Co., Ltd., and Tianjin Maijin Industries Co., Ltd. (collectively, SR Companies).

production, the issue of financial statements, the carbonized materials SV issue and VAT. No other interested parties filed comments on the Draft Remand Results.

As explained below, we have not made changes to the determinations we made in the Draft Remand Results. We address each of the parties' comments and provide our analysis in turn.

Issue 1: Significant Production

Jacobi's and the SR Companies' Comments[141]

- Commerce continues to adopt a statutory interpretation of the term "significant" that is unreasonable and therefore unlawful. Specifically, Commerce's interpretation of "significant" to mean "noticeably or measurably large" is subjective and contradictory with *Policy Bulletin 04.1* which finds that "a judgement should be made consistent with the characteristics of world production of, and trade in, comparable merchandise."[142]
- Commerce's interpretation of "significant producer" is contrary to the Court's ruling in *Jacobi AR7 I* in the which the Court stated, "Commerce's reasoning fails to persuade that reliance on total exports, devoid of evidence of influence on world trade, is a permissible method of interpreting the term 'significant producer,' and, thus, identifying significant producer countries."[143]
- By relying on total exports and net exports, Commerce failed to demonstrate how the record demonstrates that Thailand is a significant producer. The Court has already found Commerce's reliance on Thailand's global export ranking in this case insufficient.[144]

[141] *See* Letter from Jacobi, re: "Jacobi Carbon's Comments on Draft 2nd Remand Redetermination," dated September 25, 2018, (Jacobi's Comments) at 2-10; *see also* Letter from SR Companies, re: "Comment on Second Draft Remand Determination," dated September 25, 2018, (SR Companies' Comments) at 1-5.
[142] *See* Jacobi's Comments at 5.
[143] *Id.* at 6 (citing *Jacobi AR7 I* at 1181).
[144] *Id.*

Further, Commerce's attempt to identify Thailand as the largest exporter among the countries at the same level of economic development as China is misplaced according to Commerce's Policy Bulletin.

- Commerce's explanation that when a country is a net exporter, the assumption is that it produces more than it imports or consumes is wrong. The fact that a country is a net exporter simply indicates that the country exports more than it imports. Further, Commerce fails to explain why Thailand's net export quantity is noticeably or measurably large when it is the smallest of the three net export data points on the record. Further, Thailand is not a net exporter based on value.
- While the Court has upheld that Commerce need not rely on the most significant producer on the record, Commerce's determination of significant production does not exist in a void. Commerce must consider the ultimate purpose of this analysis – to find reliable SV data that most accurately represents the purchasing and production situation of the mandatory respondent.
- Commerce has not addressed the relevance of data quality with respect to surrogate country selection. The Court noted that Thailand's selection as surrogate country also rests on whether it has quality SV data and remains an open question. Jacobi submits that Thailand is not a proper primary surrogate country, in part, because it does not produce any reliable surrogate financial statement and Commerce has purportedly failed to address this issue in the Draft Remand Results.[145]

Commerce's Position: Commerce continues to find that Thailand is a significant producer based on the activated carbon export data on the record, as Thailand is the ninth largest global

[145] *See* Jacobi's Comments at 9-10 (citing *Jacobi AR7 II* at 20, n.18).

exporter and the largest exporting country among the countries included in the surrogate country GNI band. As noted above, the Act does not define the phrase "significant producer"[146] and section 773(c)(4)(B) of the Act does not compel Commerce to define "significant producer" in any particular manner.[147] Rather, we interpret "significant" to mean, in general terms, a noticeably or measurably large amount.[148]

Despite the parties' contention that *Policy Bulletin 04.1* limits our interpretation of "significant production" to mean production "having or likely to have influence or effect" on world trade, we note that Commerce has interpreted "significant" to mean, in general terms, a noticeably or measurably large amount in several cases.[149] Here, we consider Thailand's total export quantity for the POR, 7.8 million kg, as a noticeably or measurably large amount, specifically compared to the other 24 countries which have exported activated carbon for the year ending March 2014 (the POR).[150] Additionally, while parties contend that Thailand's export quantity is far less in comparison to the top five exporters, specifically the Philippines, we note that Thailand's global exports are not insignificant, and its export quantity is large compared to other exporters of comparable merchandise as reflected in the GTA data.[151]

Commerce 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 Commerce's regulations are

[146] *See* section 773(c)(4)(B) of the Act; *see also* Policy Bulletin 04.1.
[147] *See Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006).
[148] *See Kangtai* at *11; *see also, e.g. Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016) and accompanying IDM at Comment 1.C.
[149] *Id.*
[150] As noted above, the data identifies 27 countries, however for the year ending March 2014, three countries, Australia, Chile and Nicaragua, do not report exports of activated carbon. *See* Prelim SV Memorandum at Attachment 1.
[151] *See* Prelim SV Memorandum at Attachment 1.

silent in defining "significant producer" of comparable merchandise.[152] *Policy Bulletin 04.1* 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."[153]

Jacobi and the SR Companies insist on ranking the global exporters identified in the GTA data and comparing the Thai export quantity with the top five activated carbon exporters while simultaneously criticizing Commerce's analysis for not establishing the extent of Thailand's impact on the global activated carbon trade and for ranking the global exporters to conduct the global impact analysis contemplated by the Court. Jacobi and the SR Companies cannot have it both ways. The position advocated by the SR Companies' appears to be based on the premise that comparisons of the GTA data are an appropriate method for determining a country's impact on global trade. However, if we were to determine a country's impact on global trade using only the GTA export data, no country would appear to have had an impact on global trade, because every country identified in the data has maintained its relative export position over the past three years covered by the GTA export data on the record, thereby demonstrating that the rankings of the various countries has no significance in terms of its effect on global trade.[154] Instead, we are using the GTA export data *and* Thailand's reported net exports as a means to compare Thailand's export and net export quantities with the export and net export quantities of other countries on the record to determine whether Thailand's exports constitute a noticeably or measurably large amount. However, as the GTA export data are the only information on the

[152] *See Policy Bulletin 04.1*; section 773(c)(4) of the Act.
[153] *See Policy Bulletin 04.1.*
[154] *Id. See also Jacobi AR7 I*, 222 F. Supp. 3d at 1182 (*citing Fresh Garlic Prod. Assoc. v. United States*, 180 F. Supp. 3d 1233, 1243 (CIT 2016) (highlighting the court's concern regarding "the significance of that ranking in terms of its effect on global trade").

record to complete the "global impact" analysis contemplated by the Court, we have, as discussed above, found Thailand to be among the top exporting countries in the world, and to have maintained its relative position over a three-year period. While Thailand is not as large an exporter as the top five countries, Thailand's 7.8 million kg is a measurably large amount compared to nearly all the other countries reported in the GTA data, and therefore we find that Thailand qualifies as a significant producer of identical merchandise.

Although the SR Companies argue that Thailand's net exports are smaller than either Indonesia's or the Philippine's net exports, we agree with the SR Companies that net exports are a logical measure of significant production. As we note above, when a country is a net exporter, it can be assumed that it produces more than it imports and consumes. *Policy Bulletin 04.1*, which describes Commerce's NME surrogate country selection process, explains that, though no one particular method of determining significant production is required by the statute, a demonstration that a country is a net exporter satisfies the statutory requirement.[155] Moreover, with respect to the SR Companies' contention that Thailand is not a net exporter based on value, we prefer to consider quantity, rather than value, in determining whether a country is a significant producer. This is because quantities are expressed in constant units of measurement and are not subject to influence from outside variables, such as currency fluctuations and inflation (which may influence value, for example), among other external pressures.[156]

Jacobi argues we should address Thailand's data quality with respect to surrogate country selection, arguing that Thailand is not an appropriate primary surrogate country because

[155] *See Policy Bulletin 04.1* (explaining that "'significant producer' could mean a country that is a net exporter, even though the selected surrogate country may not be one of the world's top producers").
[156] *See, e.g., 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.

Carbokarn's and Gigantic's financial statements contain countervailable subsidies. Commerce has a strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[157] We have evaluated the availability of SV data from the potential primary surrogate country (Thailand) and find that SV data are available to value all of the respondent's FOPs. We have addressed the selection of surrogate financial statements below, in Issue 2.[158]

Therefore, the record evidence – the significant quantity of Thai exports compared to global exports of activated carbon; the fact that Thailand is the largest exporter among the countries which fall within the surrogate country GNI band of potentially-comparable countries; and the fact that Thailand exports more activated carbon than it imports (*i.e.*, is a net exporter) – suggests that Thailand bears an influence on the global trade in activated carbon. Accordingly, with this record evidence as support, we continue to find that Thailand is a significant producer of identical merchandise.

Issue 2: Surrogate Financial Statements

Jacobi's and the SR Companies' Comments[159]

- Gigantic's 2013 financial statements do not represent the best available information on the record, because, as Commerce has previously found, Gigantic's financial statements contain evidence of countervailable subsidies. While Commerce prefers to value FOPs in a single country unless data from the primary surrogate country are unavailable or unreliable, this is a

[157] *See Jiaxing Brother Fastener Co. v. United States*, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014) (*Jiaxing Brother*), quoting *Sodium Hexametaphosphate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012) (*Sodium Hex*) and accompanying IDM at Comment I.
[158] *See also Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 25669 (May 5, 2015) and accompanying Preliminary Decision Memorandum at 16-17; unchanged in *AR7 Final Results*.
[159] *See* Jacobi's Comments at 11-15 and SR Companies' Comments at 5-11.

clear instance of unreliable data in the form of financial statements which contain countervailable subsidies.

- It has been Commerce's longstanding practice not to rely on financial statements that contain evidence of countervailable subsidy for surrogate financial ratios. While the statute permits agency discretion, in *Jacobi AR7 II*, the Court noted that the Department must explain why it decided not to follow its normal practice of rejecting the use of financial statements that are distorted by subsidies; the Draft Remand Results contains no such explanation.
- In several China cases, Commerce has resorted to using a subsidized statement only when all statements on the record were subsidized or were not producers of comparable merchandise.[160] Further, Commerce has used financial statements from countries off the surrogate country list because the financial statement from the primary surrogate country did not produce comparable merchandise.[161] The Court upheld this position and Commerce should do so here. The financial statements from Indonesia and the Philippines fulfill all the surrogate financial criteria except one, that they are not from countries on the surrogate country list.
- Commerce could place the 2013 Romanian Romcarbon S.A. financial statements on the record that were used in the AR8 Remand because they are contemporaneous to the AR7 POR and meet the criteria for a useable financial statement.
- In *Calgon*, the Court ruled that preference to value FOPs in a single surrogate country carries the day only when it is used to "support a choice of data as the best available information where the other available data 'upon a fair comparison, are otherwise seen to be fairly

[160] *See* SR Companies at 7-8.
[161] *See* SR Companies at 8 (citing *Diamond Sawblades Mfrs. Coal. v. United States*, 219 F. Supp. 3d 1368, 1383 (CIT 2017)).

equal."[162] The Draft Remand Results fail to explain why relying on the preference of using financial statements from the primary surrogate country, while ignoring the preference for subsidy-free financial statements and the preference for using multiple financial statements, constitutes selection of the best available information.

- Evidence suggests that Gigantic received a countervailable subsidy and did not pay income tax, and therefore Commerce must also reject these financial statements consistent with its stated practice of not relying on financial statements that are not exclusive of taxes.
- Additionally, the financial statement indicates that Gigantic's financing cost is distorted by the long-term loans that the company received from related parties at below-market rates.
- In addition to receiving subsidies, Gigantic's overhead ratio is aberrational because it is three times higher than the six-year average of overhead ratios in this case, three times higher than the Philippines average ratio and 35 times higher than the Indonesian ratio.

Commerce's Position: Commerce continues to find that the 2013 Gigantic financial statements are the best available information to calculate surrogate financial ratios. As explained above, Commerce has a strong preference, reflected in 19 CFR 351.408(c)(2) and upheld by this Court,[163] to value all FOPs in a single surrogate country and "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable," and then preferably, to find data from countries on the surrogate country list.[164] This preference is consistent with Commerce's duty to calculate accurate dumping margins because

[162] *See* Jacobi's Comments at 12 (citing *Calgon Carbon Corp. v. United States*, 145 F. Supp. 3d 1312, 1326-27 (CIT 2016)).
[163] *See, e.g.*, *Clearon Corp. v. United States*, 2013 CIT LEXIS 27, Slip Op. 13-22, Ct. No. 08-00364 (February 20, 2013) (*Clearon*), at 12.
[164] *See Jiaxing Brother*, 11 F. Supp. 3d at 1332-33 quoting *Sodium Hex,* 77 FR 59375, and accompanying IDM at Comment I; *see also Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014) (*Aluminum Extrusions*) and accompanying IDM at Comment 1.

deriving surrogate data from one surrogate country limits the amount of distortion introduced into the calculations because a domestic producer would be more likely to purchase a product available in the single domestic market (and the data from the single surrogate country stands in for that single domestic market). More specifically, in this case, Commerce has selected Thailand as the primary surrogate country and thus is attempting to determine what a Thai producer would pay for the FOPs. The Thai producer would pay prices available in Thailand or for imports into Thailand. A Thai producer generally has access only to prices in its own country (Thailand) and would not have access to prices in secondary surrogate countries, such as Indonesia or the Philippines. Thus, resorting to secondary surrogate country data to obtain a factor value actually undermines and makes less accurate Commerce's determination of what a Thai producer would pay for factors used to produce the subject merchandise. The Court has held that our preference for valuing all FOPs in a single surrogate country with information from a single surrogate country is reasonable.[165] Because Commerce continues to determine that Thailand is the primary surrogate country (a country that is at the same level of economic development as China and a significant producer of identical merchandise), and there are available and usable statements on the record from this country, we have determined not to use the financial statements from the companies within Indonesia and the Philippines, which come from companies operating in countries that have not been found to be at the same level of economic development or within the GNI range of the countries on the surrogate country list.

We disagree with Jacobi that Gigantic's statements in this instance are not the best available information. While Jacobi points to the evidence that Gigantic has received countervailable subsidies as a reason to reject the statements outright, we refer Jacobi back to the

[165] *See Clearon*, at 12-14.

Act, which provides Commerce with the *discretion* to reject statements under such circumstances, but does not mandate it.[166] The relevant section, entitled "DISCRETION TO DISREGARD CERTAIN PRICE OR COST VALUES," provides that "{Commerce} *may* disregard price or cost values without further investigation if {Commerce} has determined that…particular instances of subsidization occurred with respect to those price or cost values."[167] Here, we find, as explained above, that using statements that are from the primary surrogate country, even if they have evidence of subsidization, limit the potential to introduce distortion into the dumping calculation, whereas incorporation of secondary surrogate country data from countries outside the GNI range (*i.e.*, either Indonesian or Philippine statements) increases the possibility of introducing distortion. Thus, because the 2013 Gigantic financial statements are from the primary surrogate country, are contemporaneous with the POR, and are usable, notwithstanding that the statements contain evidence of countervailable subsidies, we find these statements to be the best available information with which to value the financial ratios.

We disagree with Jacobi that we must reject Gigantic's financial statements because it did not accrue or pay income tax. We have already acknowledged that Gigantic has received countervailable subsidies and two of these subsidies indicate corporate income tax exemptions.[168] Thus, while Gigantic's financial statements indicate that did not accrue or pay income tax, this is not necessarily evidence that the financial statements are not tax exclusive. Further, when calculating the profit ratio, Commerce uses the surrogate company's after tax net

[166] Section 773(c)(5) of the Act (emphasis added).
[167] *Id*.
[168] *See* Petitioners' SV Submission, dated April 1, 2015, at Attachment 3.

profit. Gigantic's income statement reports a net profit, which we used in the calculation of the surrogate financial ratios in accordance with Commerce's practice.[169]

Jacobi also contends that we should reject the Gigantic financial statements because Gigantic's financing costs are purportedly distorted due to interest-free long-term loans. We disagree. As we noted above, we find that the fact that the Gigantic statements are from the primary surrogate country outweighs any distortions introduced by these interest-free loans because the alternative – using financial statements from countries not on the surrogate country list and that have not been found to be at the same level of economic development or within the GNI range of the countries on the surrogate country list – potentially introduces greater distortion into the dumping calculation.

We further disagree with Jacobi that we are required to use multiple financial statements to value financial ratios. Jacobi cites several cases where Commerce either used or was directed to explain its non-use of multiple financial statements but has not cited to any statutory provision or regulation requiring Commerce to use multiple financial statements, nor has Jacobi pointed to any support for using multiple statements from countries both on and off the surrogate country list. While we agree that Commerce has a preference for using multiple financial statements when available, such a preference applies when we have multiple usable financial statements from the same surrogate country, not across multiple countries, let alone at varying levels of economic comparability.[170] We reiterate that in this case there is only one usable statement on the record from the primary surrogate country. The other statements on the record are not from

[169] *See* Petitioners' SV Submission, dated April 1, 2015, at Attachment 3 and Memorandum, re: "Second Remand Redetermination Results Analysis Memorandum for Jacobi Carbons AB (Jacobi) in the Seventh Administrative Review of Certain Activated Carbon from the People's Republic of China," dated July 31, 2018, at Attachment I.
[170] *See e.g.*, *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014) (*AR6 Carbon*) and accompanying IDM at Comment 5 and 6.

the primary surrogate country, nor are they from countries that are at the same level of economic development as China. Commerce is directed to "utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are…at a level of economic development comparable to that of the non-market economy country, and…significant producers of comparable merchandise."[171] Our preference to favor information from the primary surrogate country, coupled with our discretion to use financial statements whether they contain evidence of a countervailable subsidy or not, supports our use of the 2013 Gigantic financial statements to value the financial ratios.

We further disagree that Gigantic's 2013 overhead ratio is aberrational. While it is greater than the overhead ratio calculated in previous administrative reviews, a comparison of overhead ratios from review to review or to an average of overhead ratios merely demonstrates that the ratios are different. A difference is to be expected between surrogate financial companies within the primary surrogate country when each company reports overhead items in different ways, has different production efficiencies, and different expenses. Although Jacobi asserts that Gigantic's 2013 overhead ratio is aberrational because it is three times greater than the average of the ratios used in the past six years, this variation is consistent with the variation seen between overheard ratios in past segments, as demonstrated by the very data that Jacobi cites.[172] A difference is also to be expected between companies in the primary surrogate country and other countries, for the reasons noted above, as differences in the domestic market of those countries. Further, Jacobi has provided no specific evidence or rationale why it believes Gigantic's overhead ratio is aberrational. In addition, a claim that a factory overhead ratio is

[171] Section 773(c)(4) of the Act.
[172] *See* Jacobi's Comments at 22. Jacobi's chart notes that that the overhead ratio for the sixth period of review was 20.04%, which is 3.4 times larger than the overhead ratio of 5.83% for the third period of review.

"high" does not necessarily indicate that the ratio is unreliable absent specific evidence supporting such a finding.[173]

Finally, we disagree with the SR Companies that we should place the 2013 Romcarbon SA's (Romcarbon) financial statements used in the AR8 Draft Remand Redetermination on the record of this administrative review because we have useable financial statements from the primary surrogate country with which to derive financial ratios. Additionally, we note that Romania was identified as a potential surrogate country at the *Preliminary Results* and interested parties were given the opportunity to provide additional SV information 20 days after the *Preliminary Results*.[174] Interested parties thus had the opportunity to place the 2013 Romcarbon financial statements on the record after the *Preliminary Results* but did not do so at that time. It is not Commerce's responsibility to develop the record,[175] nor are remand proceedings a venue for interested parties to seek to expand the administrative record after the applicable deadlines have passed. Thus, we conclude that Commerce is under no obligation to add the 2013 Romcarbon financial statements here.

[173] *See e.g., Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 28560 (May 21, 2010) and accompanying IDM at Comment 1. *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) and accompanying IDM at Comment 6.
[174] *See Preliminary Results* and accompanying PDM at 14; *see also* Prelim SV Memorandum at Attachment 2.
[175] *See Zenith Electronics Corp. v. United States*, 988 F. 2d 1573, 1583 (Fed. Cir. 1993); *see also Tianjin Mach. Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) ("The burden of creating an adequate record lies with respondents and not with Commerce").

Issue 3: Carbonized Materials

Jacobi's and the SR Companies' Comments[176]

- Commerce fails to recognize that the Thai GTA import data "of Coconut Shell" are not specific to the types of inputs used by Jacobi and that Commerce has consistently found that *Cocommunity* data are the best alternative for coal-based carbonized materials.[177]
- Commerce did not explain the appropriate benchmark from which to evaluate different SVs. Commerce has not explained why the Thai GTA SV is many times higher than SV used in prior reviews nor has Commerce addressed the Court's concerns regarding the USTR and Fed-Ex Country Reports concerning Thai import value manipulation.
- Commerce's reliance on the Fish Fillets Remand and *Vinh Hoan* case[178] are inapposite because the values in question in those cases are not from Thailand and are not subject to the same USTR reports finding of systemic manipulation by Thai Customs.
- Commerce's price analysis does not consider the common-sense business nature of these proceedings in that a raw material price that is two or three times higher has a significant impact on the price of production. The Court has found that SVs are aberrant without such extremes and Commerce should pick a surrogate country analogous to the NME country in question.[179]
- Commerce must address the full breadth of the Court's remand with regard to the USTR reports and not just declare that the Thai import price is not aberrant and thereby the best available information.

[176] *See* Jacobi's Comments at 15-19 and SR Companies' Comments at 11-14.
[177] *Id.* at 17 & n.46 (citing Commerce's determinations in the fifth and sixth administrative reviews).
[178] The Fish Fillets Remands in *Vinh Hoan* and *Catfish* found SVs not to be aberrational when they are three or thirty times higher than benchmark prices.
[179] *See* SR Companies submission at 11-12 (citing *Peer Bearing* and *Itochu Bldg. Prods. Co. v. United States*, 2017 LEXIS 74, *20-23 (CIT June 22, 2017) (*Itochu*)).

Commerce's Position: We disagree with parties that the Philippine *Cocommunity* coconut shell charcoal data are more specific than the Thai GTA import data "of Coconut Shell." While in previous reviews we found that the *Cocommunity* value was the best alternative SV for coal-based carbonized materials, these determinations are not informative or relevant to this administrative review. In the fifth administrative review (2011-2012 POR), Commerce selected the Philippines as the primary surrogate country,[180] and evaluated whether to value carbonized material using *Cocommunity* SV data and GTA Philippine import data.[181] Similarly, in the sixth administrative review (2012-2013) POR, Commerce selected the Philippines as the primary surrogate country,[182] and again evaluated whether to value carbonized material using *Cocommunity* SV data and GTA Philippine import data.[183] Our evaluation in this administrative review is not comparable. Here we have selected Thailand as the primary surrogate country, and the interested parties argue that Commerce should use Philippine SV data – which is from a country other than the primary surrogate country, and which has not been found to be at the same level of economic development or within the GNI range of the countries on the surrogate country list – rather than Thai GTA data. The use of *Cocommunity* data to value carbonized material would be inconsistent with our preference, discussed above, for valuing FOPs using surrogate value data from a single surrogate country. Moreover, there is no information on the record of

[180] *See Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013) and accompanying PDM at 15, unchanged in *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013) (*AR5 Carbon*) and accompanying IDM.
[181] *See AR5 Carbon* and accompanying IDM at Comment 6 (determining based on the description of the relevant Philippine HTS categories that the Philippine import data under subchapter 4402 did not contain imports of coconut shell charcoal and selecting the *Cocommunity* data as the best available SV information).
[182] *See Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 29419 (May 22, 2014), and accompanying PDM at 16-17, unchanged in *AR6 Carbon* and accompanying IDM (determining based on the description of the relevant Philippine HTS categories that the Philippine import data under subchapter 4402 did not contain usable imports of coconut shell charcoal, and selecting the *Cocommunity* data as the best available SV information).
[183] *See AR6 Carbon* and accompanying IDM at Comment 11.

this administrative review which would lead to the conclusion that the *Cocommunity* SV data are more specific than the description of the Thai GTA data "of Coconut Shell." Jacobi points to no record evidence which demonstrates that the Thai GTA import data under HS 4402.90.1000 "of Coconut Shell" is a basket category which includes different kinds of coconut charcoals, or that it is any less specific than the types and grades of coconut shell charcoal reported in *Cocommunity*. Neither source references grades or types of coconut shell charcoal, as both SV sources apparently simply reflect data for coconut shell charcoal. Accordingly, we do not find that the Philippine *Cocommunity* coconut shell charcoal data are more specific than the Thai GTA import data under HS 4402.90.1000 "of Coconut Shell."

We disagree with parties that we have not adequately explained our benchmarks to evaluate the Thai GTA import data "of Coconut Shell." When determining whether prices are aberrational, Commerce has found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus it is not a sufficient basis upon which to exclude a particular SV.[184] Rather, interested parties must provide specific evidence to demonstrate that the value is aberrational.[185] In testing the reliability of SVs alleged to be aberrational, Commerce's practice is to examine GTA import data for potential surrogate countries for a given case, to the extent such import data are available.[186] Above, we have, at the request of the Court, compared the Thai SV used to value carbonized materials with other values for coconut shell charcoal on the record and found the Thai SV is only 1.18 times higher than the

[184] *See Hangers from the PRC* and accompanying IDM at Comment 5 (*citing 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 12).
[185] *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring*) and accompanying IDM at Comment 14
[186] *See Hangers from the PRC* and accompanying IDM at Comment 5 (citing *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012) and IDM at Comment 1).

contemporaneous Indonesian import price. The SR Companies consider 1.18 times higher to be an extreme difference such that finding it aberrant would be in line with the Court's rulings in *Peer Bearing* and *Itochu*.[187] However, the Thai SV is neither 60% higher than, as in *Peer Bearing*, nor double the Indonesian SV, as in *Itochu*, which is the highest price in the $0.34 USD/kg to $0.97 USD/kg range used for this exercise. In this review, the Thai coconut shell charcoal value is 18% higher than the next highest value, and there is no information on the record which demonstrates that the Thai imports under HS 4402.90.1000 "of Coconut Shell" are not coconut shell charcoal or that the Thai value itself has demonstrated any radical price fluctuations.

Further, with respect to the USTR or Fed-Ex Country Reports on the record, we note that these reports speak in general terms regarding the lack of transparency in the Thai customs regime, but these documents do not point to any specific evidence which demonstrates that the specific SVs relied on by Commerce in this administrative review are the result of the alleged Thai Customs practices and thus unreliable. Therefore, with no specific evidence to the contrary and given our findings that the Thai SV is not aberrational, is from the primary surrogate country, and otherwise meets our SV criteria, we find that the Thai GTA data for coconut shell charcoal are reliable and continue to represent the best available information to value carbonized materials.

[187] *See Peer Bearing*, 752 F. Supp. 2d at 1372 and *Itochu*, 2017 LEXIS 74 at *20-23.

Issue 4: VAT

Jacobi's Comments[188]

- Commerce's revised reasoning still fails to satisfy the statutory requirement for an adjustment under section 772(c)(2)(B) of the Act and also fails to comply with the Court's explicit question regarding Jacobi's ability to offset paid input VAT against the output VAT due.
- Commerce's reasoning for dismissing Jacobi's net output VAT calculation is inapposite because it ignores the very nature of the Chinese VAT system, *i.e.*, credit and offset. Jacobi only pays the Chinese government the "net" VAT amount, which is the result of the offset between output VAT and input VAT.
- Commerce has not shown how 17 percent VAT is included in the U.S. price. Specifically, the invoice between Jacobi Tianjin and Jacobi US does not include VAT.
- Commerce has ignored the relevance of the *Aristocraft* opinion in explaining the relationship between input and output VAT and the resulting net burden.

Commerce's Position: We disagree with Jacobi that we have not complied with the Court's order. The Court found that Commerce must "address {record} evidence suggesting Jacobi's ability to offset input VAT against output VAT collected from foreign customers, suggesting that the input VAT is not, in fact, irrecoverable."[189] As explained above, we acknowledged that the record evidence indicates that input VAT paid by Jacobi does not constitute irrecoverable VAT, but instead is output VAT that constitutes an "export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States," for which

[188] *See* Jacobi's Comments at 19-24. SR Companies adopt Jacobi's objections to Commerce's treatment of VAT in antidumping duty calculations.
[189] *See Jacobi AR7 II* at 58.

Commerce must make a downward adjustment to the U.S. price by the percentage of output VAT collected on export sales of activated carbon.[190] Despite Jacobi's contention to the contrary, Commerce 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, *i.e.* its net VAT payable burden, is irrelevant in Commerce's margin calculation and is not the basis for our adjustment to U.S. price in the margin calculation program for Jacobi. Rather, per section 772 (c)(2)(B) of the Act we are concerned with deducting the amount of *output* VAT *which was actually included in the selling price of activated carbon to the United States*, as Jacobi itself reported.

Despite its statements, and evidence on the record of the underlying administrative review, Jacobi would now have the Court believe that it collects output VAT from all its foreign customers *except* U.S. customers.[191] As explained above, Jacobi reported that "as a seller/exporter, when {it} resells to domestic or foreign buyers, the products are subject to 17 {percent} VAT (output VAT)."[192] Further, Jacobi provided documentation reporting the output VAT it collected during the POR.[193] Given that Jacobi Carbons, Inc. (JCI), the U.S. affiliate, purchased the subject merchandise from its Chinese affiliate Jacobi Carbons Industry (Tianjin) Company Limited (JCC), JCC must, in accordance with Chinese law, collect 17 percent output VAT on its sales to JCI.[194] If Jacobi is now claiming that it does not collect output VAT from its U.S. customers, it would appear to be acting in contravention of Chinese VAT law, which requires the collection of the 17 percent output VAT on the sale of activated carbon to foreign customers. Surely this cannot be its representation to this Court. Further, if it was truly the case

[190] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483 (June 19, 2012) *(Methodological Change)*.
[191] *See* Jacobi's Comments at 21-22.
[192] *See* Jacobi's SCQR at 30 and Exhibit SC-56 (emphasis added).
[193] *Id.* at Exhibit SC-58.
[194] *See* Jacobi's Section A Questionnaire Response, dated July 24, 2014, at Exhibit A-16.

that Jacobi was not required to collect the 17 percent output VAT on its U.S. sales, Jacobi would not have reported a VAT expense in its sales database and instead, provided the Chinese laws, as instructed in Commerce's supplemental questionnaire, indicating that it was eligible for a 100 percent VAT rebate of its export sales.[195] Jacobi has not provided any such laws. Further, if Jacobi was not collecting output VAT from its U.S. customers, one wonders how it would then have been able to offset its VAT burden to arrive at any "net" VAT amount owed. Accordingly, Jacobi's contention that it does not collect 17 percent output VAT on its exports to the United States is unconvincing, and, more importantly, is unsupported by record evidence.

Jacobi further claims that Commerce has failed to comply with the Court's *Jacobi AR7 II* order and the *August 22, 2018 Order*, or address the issues raised in the *Aristocraft* opinion, by failing to explain the relationship between input VAT and output VAT and by failing to explain how Jacobi's VAT offset amounts factor into Commerce's analysis. We disagree. To the contrary, we have carefully explained the relationship between input and output VAT above, as supported by Chinese law and with specific examples, as well as the rationale, as supported by Chinese law, as to why any offset of input and output VAT remains irrelevant to our adjustment for irrecoverable VAT or, as in the case of activated carbon, output VAT collected on sales to the United States where there is no input VAT rebate.[196] This explanation addresses this Court's concerns regarding such relationships, as well as those raised in *Aristocraft*. Moreover, Jacobi's contention that we cannot have fully addressed the issue of any offset of input and output VAT without having requested a full reconciliation from Jacobi falls short, as demonstrated by our explanation of why the offset is irrelevant. Commerce does not need to request the reconciliation

[195] *See* Commerce's Supplemental Section C Questionnaire, dated September 25, 2014, at 14-15.
[196] *See infra*, 22-26.

for calculations which are not relevant to its adjustment for the 17 percent output VAT included in the sale of activated carbon to the United States.

Therefore, we continue to find that it is appropriate to continue deducting the 17 percent output 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 *Jacobi AR7 II* remand and the August 22, 2018 *Order*, we have: 1) addressed and clarified the issue of significant production; 2) addressed the issues arising from our selection of the Carbokarn 2011 financial statements and selected different financial statements to calculate the surrogate financial ratios; 3) addressed and clarified the carbonized material SV; 4) addressed and clarified the inclusion of the irrecoverable VAT adjustment in Jacobi's margin calculation, and also revised the calculation methodology for that adjustment; and 5) addressed, to the extent possible, the issues relating to VAT raised in *Aristocraft*. Based on the foregoing explanations, we have made changes to the margin calculations for the mandatory respondent, Jacobi,[197] from the *AR7 Final Results*, resulting in a revised margin of $1.76/kg.[198]

Additionally, for these final results of remand redetermination, we are recalculating the margin for those separate rate companies, the entries of which are subject to this litigation, in the

[197] In the third administrative review of the *Order*, Commerce found that Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) are a single entity and, because there were no changes to the facts which supported that decision since that determination was made, we continued to find that these companies are part of a single entity for this administrative review. *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review*, 76 FR 67142 (October 31, 2011); *Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337, 67338 (November 9, 2012); *AR5 Carbon*, 78 FR at 70535; *AR6 Carbon*, 79 FR at 70165.

[198] *See* Jacobi Second Remand Analysis Memo.

same manner in which we calculated the margin for these companies in the *AR7 Final Results*. In the *AR7 Final Results*, and consistent with our practice,[199] we used the rate calculated for Jacobi, because only Jacobi has an estimated weighted-average dumping margin which is not zero, *de minimis* or based entirely on facts available. We also note that no parties commented on this methodology for calculating the separate rate in the underlying *AR7 Final Results*.[200]

Thus, consistent with the methodology used in the *AR7 Final Results* for calculating a margin for the separate rate companies, we will use the rate calculated for Jacobi, which is $1.76/kg, as the rate for the non-individually examined respondents that qualified for a separate rate who are parties to the litigation. The companies receiving this revised separate rate are: 1) Beijing Pacific Activated Carbon Products Co., Ltd.; 2) Carbon Activated Tianjin Co., Ltd.; 3) Datong Municipal Yunguang Activated Carbon Co., Ltd.; 4) Jilin Bright Future Chemicals Co., Ltd.; 5) Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.; 6) Ningxia Huahui Activated Carbon Co., Ltd.; 7) Ningxia Mineral and Chemical Ltd.; 8) Shanxi DMD Corp.; 9) Shanxi Industry Technology Trading Co., Ltd.; 10) Shanxi Sincere Industrial Co., Ltd.; 11) Tancarb Activated Carbon Co., Ltd.; and 12) Tianjin Maijin Industries Co., Ltd.

10/23/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

[199] *See AR7 Final Results*, 80 FR at 61174.
[200] *Id*.