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Jacobi Carbons AB et al. v. United States

Consol. Court No. 16-00185, Slip Op. 18-47 (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. 16-00185, Slip Op. 18-47 (CIT April 19, 2018) (*Second Remand Order*) and the Court's August 22, 2018 *Order* amending its *Second Remand Order*.[1] These finals remand results concern *Certain Activated Carbon from the People's Republic of the China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016) (*AR8 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 order granting Commerce's request for a remand.[2] In the *Second Remand Order*, the Court remanded six issues to Commerce: 1) to further explain or reconsider Commerce's determination that Thailand is a significant producer of activated carbon;[3] 2) to reconsider or further explain Commerce's position with respect to whether the proposed carbonized material surrogate value (SV)

[1] *See* Order, *Jacobi Carbons AB et al v. United States et al.*, Ct. No. 16-00185, ECF No. 120 (August 22, 2018 *Order*) (amending *Second Remand Order*).
[2] *See* Order, *Jacobi Carbons AB et al v. United States et al.*, Consol. Court No. 16-00185, ECF No. 77 (June 20, 2017) (*Jacobi AR8 I*).
[3] *See Second Remand Order* at 23-24.

represents commercial quantities and, if appropriate, to reconsider its carbonized material SV selection;[4] 3) to reconsider or further explain Commerce's position with respect to proposed hydrochloric acid (HCl) benchmarks and, if appropriate, to reconsider its HCl SV selection;[5] 4) to reconsider or further explain Commerce's position with respect to proposed coal tar benchmarks and, if appropriate, to reconsider its coal tar SV selection;[6] 5) to further explain or reconsider Commerce's determination that 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;[7] and 6) 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 reported free-on-board (FOB) value, and the evidence supporting the rejection of the calculation methodology proposed by Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang).[8] 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.[9] Further, in its August 22, 2018 *Order*, ECF No. 120, the Court also directed Commerce to consider Slip Opinion No. 18-97 entered in *Aristocraft of America LLC v. United States*, CIT

[4] *Id.* at 29-31.
[5] *Id.* at 36.
[6] *Id.* at 42-44.
[7] *Id.* at 47-48.
[8] *Id.* at 50-51.
[9] *Id.* at 52.

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 the *Second Remand Order*, we have further explained our determination that Thailand is a significant producer of activated carbon and our carbonized material and HCl SV selections. Additionally, in accordance with the *Second Remand Order* and the August 22, 2018 *Order*, we have reconsidered our selection of surrogate financial statements, the coal tar SV, 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 to the margin calculations for the separate rate companies, the entries of which are subject to this litigation.[10]

B. REMANDED ISSUES

1. Thailand as Significant Producer

Background

In *Jacobi AR8 I*, Commerce requested that the Court grant a remand to further consider and clarify the significant producer factor of Commerce's surrogate country selection methodology. The Court granted this request and remanded the *AR8 Final Results.*[11] Based on the Court's order, Commerce explained that the financial statements of Carbokarn Co., Ltd. (Carbokarn)[12] 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.[13] Additionally, we explained that Thailand's exports demonstrate that it is also a

[10] *See* Memorandum to the File, re: "Second Remand Redetermination Calculation 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.
[11] *See Jacobi AR8 I*.
[12] *See* Jacobi's SV Submission, dated January 4, 2016, at Exhibit SV2-19.
[13] *See* First Remand Redetermination at 20-21.

significant producer of activated carbon, although this did not form the basis of our finding that Thailand is a significant producer.[14]

In the *Second Remand Order*, the Court, as it did in *Jacobi (AR7) II*,[15] held that, with respect to using domestic production as evidence for finding Thailand is a significant producer, Commerce did not explain whether, or why, Carbokarn's sales are significant.[16] Further, the Court found that reliance on record evidence of domestic production in the form of financial statements, absent any discussion of its significance, failed to adequately substantiate Commerce's finding that Thailand is a significant producer.[17] The Court remanded the issue to Commerce for further reconsideration.[18]

Analysis

In accordance with the *Second Remand Order*, and for the reasons set forth below, Commerce continues to find that Thailand is a significant producer of comparable merchandise. As previously stated, section 773(c)(4)(B) of the Tariff Act of 1930 (as amended) (the Act) requires Commerce to value factors of production (FOPs), to the extent possible, in a surrogate country that is a significant producer of comparable merchandise. However, the statute and Commerce's regulations are silent in defining "significant producer" of comparable merchandise.[19] Given the absence of any definition in the statute or regulations, Commerce looks to other guidance, such as the *Policy Bulletin 04.1*, which states that "the meaning of

[14] *Id.* at 19-20.
[15] *See 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*).
[16] *See Second Remand Order* at 22-23.
[17] *Id*.
[18] *Id.* at 23-24, 52.
[19] *See* section 773(c)(4) of the Act; *see also Import Admin., U.S. Dep't of Commerce, Non–Market Economy Surrogate Country Selection Process*, *Policy Bulletin 04.1* (*Policy Bulletin 04.1*), available at http://enforcement.trade.gov/policy/bull04-1.html.

'significant producer' can differ significantly from case to case," and that "fixed standards such as 'one of the top five producers' have not been adopted" in Commerce's surrogate country selection process.[20] The statute grants Commerce discretion to examine various data sources for determining the best available information.[21] This ambiguous provision of the Act also does not preclude Commerce's reliance on additional or alternative metrics, including comparison of the import and export volumes, to determine which countries might be included as significant producers.[22] 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.[23] However, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter," it also does not preclude reliance on additional or alternative metrics.[24]

We find that, without further evidence, on this record, Carbokarn's financial statements do not contain enough information for us to evaluate whether the statements may serve as evidence of Thailand's status as a significant producer of activated carbon. Therefore, we will not rely on these financial statements in this instance as a basis of significant production for this remand redetermination.

There is no world production data of activated carbon available on the record with which Commerce can identify producers of identical merchandise. Therefore, absent world production data on this record, we are comparing data for comparable merchandise to establish whether any

[20] *See Policy Bulletin 04.1*.
[21] *See* section 773(c)(1)(B) of the Act; *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011-2012*, 78 FR 39708 (July 2, 2013), and accompanying IDM at Comment 1(B) (*Fish Fillets 2013*).
[22] *Id.*; *see also Dorbest Ltd. v. United States,* 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006) (*Dorbest 2006).*
[23] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623 (1988).
[24] *Id.*

country that is at the same level of economic development as People's Republic of China (China) was: a) a significant net exporter; or b) a major exporter to the United States.[25] The record contains POR Global Trade Atlas (GTA) import and export data for all of the countries deemed to be at the same level of economic development as China, *i.e.*, on the surrogate country list, (Bulgaria, Ecuador, Mexico, Romania, South Africa, Thailand),[26] as well as two other countries, Malaysia[27] and the Philippines.[28] The record also contains UNCOMTRADE 2014 export data, identifying 65 countries which have exported activated carbon.[29] The POR GTA data demonstrate that none of the countries identified on the surrogate country list (Bulgaria, Ecuador, Mexico, Romania, South Africa, Thailand) were net exporters. However, Malaysia and the Philippines, countries which are not at the same level of economic development as China, are net exporters of activated carbon based on the POR GTA data, and could be considered significant producers of activated carbon.[30]

The Court has suggested that significant production means production "having or likely to have influence or effect" on world trade.[31] However, Commerce instead interprets "significant" to mean a noticeably or measurably large amount. The 2014 UNCOMTRADE export data indicate that Thailand exported 9,281,469 kilograms (kg) of activated carbon, while the GTA export data report Thailand exported 9,605,424 kg during the POR.[32] Among the

[25] *See Yantai Oriental Juice Co. v. United States*, 27 CIT 477, 481 (CIT 2003).
[26] *See* Memorandum on the Record, re: "Eighth Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated August 7, 2015, at Attachment I (Surrogate Country List);
[27] *See* Calgon Carbon Corporation and Cabot Norit Americas Inc. (collectively, petitioners) Surrogate Country Submission, dated August 31, 2015, at 4 and Attachment 4.
[28] *See* Datong Juqiang's Surrogate Country Comments, dated August 31, 2015, at Exhibit 1.
[29] *See* Jacobi's Surrogate Country Comments, dated July 20, 2015, at Attachment E.
[30] *See* Datong Juqiang's Surrogate Country Comments, dated August 31, 2015, at Exhibit 1.
[31] *See Second Remand Order* at 22-23 (citing *Garlic Remand Redetermination* and *Fresh Garlic Producers Ass'n v. United States*, 121 F. Supp. 3d 1313, 1338 (2015)).
[32] *See* Jacobi's Surrogate Country Comments, dated July 20, 2015, at Attachment E and Petitioners' Surrogate Country Comments, dated August 31, 2015, at Attachment 4.

countries identified in the 2014 UNCOMTRADE export data, Thailand is identified as the 14th largest (or 13th largest if China's massive exports are excluded) global exporter of activated carbon.[33] While Mexico and South Africa (GTA export quantities 8,382,552 kg and 2,484,890 kg, respectively) could also be considered to have significant production based on export quantity, Thailand is the largest exporter of activated carbon among the countries identified as being at the same level of economic development as China. Therefore, because Thailand's export quantity is a noticeably or measurably large amount and is among the top global exporters of activated carbon, we continue to find Thailand to be a significant producer of activated carbon.

2. Carbonized Material SV Quantities

Background

In the *AR8 Final Results*, we valued carbonized material using Thai imports of coconut shell charcoal classified under HS category 4402.90.10000 "of Coconut Shell" because this SV 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.[34] Further, because evidence on the record demonstrated that French imports of "carbonized material" into Thailand are not specific to the input in question, we excluded the French imports from the carbonized material SV calculation for the final results.[35]

In the Court's *Second Remand Order*, the Court found that representativeness is important if Commerce is to fulfill its statutory mandate of calculating dumping margins as

[33] *See* Jacobi's Surrogate Country Comments, dated July 20, 2015, at Attachment E.
[34] *See AR8 Final Results* and accompanying IDM at Comment 5.
[35] *Id.*

accurately as possible.[36] For this reason, the court has remanded agency determinations that failed to adequately address the commercial significance of the quantities underlying its selected surrogate.[37] The Court stated that Commerce's assertion regarding the significance of the imports into Thailand fails to address why 122 metric tons is sufficiently significant to yield a representative price in light of the respondents' production experience and therefore, requested we reconsider the selection of the Thai HS code 4402.90.10000 "of Coconut Shell" import data to value carbonized material or further explain the commercial significance thereof.[38]

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 surrogate values (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.[39] Moreover, it is Commerce's well-established practice to rely upon the primary surrogate country for all SVs, whenever possible, and to resort to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.[40] When determining whether prices are aberrational, Commerce has found that the existence of higher prices alone does not necessarily

[36] *See Second Remand Order* at 28.
[37] *Id.* at 28-29.
[38] *Id.* at 29, 31.
[39] *See, e.g., Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (*Fuwei Films*) (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) (*OTR Tires* 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) (*Manganese Dioxide*) and accompanying IDM at Comment 2.
[40] *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, 66909 (October 28, 2011) (*Hangers from China 2009-2010 Prelim*); 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) (*Hangers from China 2009-2010 Final*); *see also Clearon Corp. v. United States*, 2013 Ct. Int'l Trade LEXIS 27 (CIT 2013) (*Clearon*), at *19-21.

indicate that the prices are distorted or misrepresentative, and thus, it is not a sufficient basis upon which to exclude a particular SV.[41] Rather, interested parties must provide specific evidence showing the value is aberrational. 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.[42]

In considering the reliability of SVs based on import statistics alleged to be aberrational, our practice is to examine GTA import data from the same HTS number for: (a) the same surrogate country over multiple years to determine if the current data appear aberrational compared to historical values; and/or (b) POR-specific data for other potential surrogate countries for a given case.[43] In order to evaluate whether a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.[44] In *Xanthan Gum*, Commerce stated that "having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value."[45] Further, Commerce

[41] *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 China 2012-2013*) 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).
[42] *Id.* (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) (*OCTG 2010-2012*) and accompanying IDM at Comment 1).
[43] *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.
[44] *See*, *e.g.*, *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) (*MLWF LTFV*) and accompanying IDM at Comment 14.
[45] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum*) and accompanying IDM at Comment 16.A.

undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[46]

As an initial matter, the Court contends that a Thai producer of activated carbon would likely source carbonized material domestically rather than from imports, citing Jacobi's SV submission, which notes that Thailand's coconut shell charcoal industry produced 1,380,980 metric tons in 2009.[47] The record evidence does not address from where Thai producers source carbonized material, and so we are unable to make a finding in that regard. However, the same report in which the Court finds the preceding facts also notes that coconut shell production in Thailand has declined since 2009 and that the domestic price has climbed.[48] Other than evidence that Thai coconut shell production has declined and that prices have risen, there is no record evidence that explains specifically why Thai companies might import carbonized material.

With respect to the commercial significance of the volume of imports under consideration, we note that 122 MT would fill 6 - 20,000-pound shipping containers. While this quantity is not at the same level of the quantities consumed by the Chinese manufacturers of activated carbon under review, there is no record evidence indicating that that 122 MT is not a commercial quantity, nor does this commercial quantity suggest that there would necessarily be higher prices. With respect to the potential impact of the quantity of the Thai imports on the value, we look to the other import data on the record as a comparison. The record contains Mexican GTA import data for HS category 4402.90 "Wood Charcoal (Including Shell or Nut

[46] *See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005) (*Glycine*) and accompanying IDM at Comment 1.
[47] *See Second Remand Order* at 30, citing Jacobi's SV Submission, dated January 4, 2016, at Exhibit SV2-17.
[48] *See* Jacobi's SV Submission, dated January 4, 2016, at Exhibit SV2-17.

Charcoal), Excluding That Of Bamboo" ($0.54 USD/kg ($/kg), import quantity 829,562 kg),[49] Malaysian GTA import data for HS category 4402.90 "Wood Charcoal (Including Shell Or Nut Charcoal), Excluding That Of Bamboo" ($0.63 USD/kg, import quantity 211,816 kg),[50] and South African GTA import data HS category 4402.90.00 (no description given) ($0.12 USD/kg, import quantity 84,686,172kg).[51] The Thai SV used in the *AR8 Final Results* is $0.53 USD/kg, with an adjusted quantity of 122,000kg.[52] The value of the Thai SV is similar to the value of the Mexican carbonized material SV despite the Mexican SV having a greater reported import quantity; and the Thai SV import quantity and value are not dissimilar from the Malaysian SV import quantity and value.[53] This comparison indicates that the Thai SV used in the *AR8 Final Results* is based on commercial quantities similar to those of the other importing countries, and that the value derived from these quantities do not make the price unreasonable to an importer or consumer of the input.

Therefore, because the Thai SV used in the *AR8 Final Results* to value carbonized material has import quantities and values similar to those of other countries which import carbonized material, and there is no information on the record which suggests that 122,000 kg of carbonized material is not a commercial quantity, we find that the Thai SV is based on commercial quantities and have continued to rely on it for our calculations on remand.

[49] *See* Petitioner's Mexico SV Submission, dated September 24, 2015, at Attachment Mex-1-A. Additionally, we note we converted the value from Mexican Pesos to USD using the exchange rate found at Mex-1-D.
[50] *See* Petitioner's Malaysia SV Submission, dated September 24, 2015, at Attachment Malaysia-1. Additionally, we note we converted the value from Malaysian Riggat to USD using the exchange rates found in Petitioners' Submission of New Factual Information, dated January 19, 2016, at Exhibit 9.
[51] *See* Jacobi's SV Submission, dated September 24, 2015, at Exhibit SV-6. We converted the value from South African Rand to USD using the exchange rates found at Exhibit SV-11.
[52] This is the remaining quantity after the French imports were removed. *See AR8 Final Results* and accompanying IDM at Comment 5.
[53] We did not compare the Thai SV used in the *AR8 Final Results* with the *Cocommunity* data on the record because the *Cocommunity* data do not have production quantities.

3. Hydrochloric Acid Surrogate Value

Background

In the *AR8 Final Results*, we valued HCl acid using Thai GTA HCl import data under the HS subheading 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W" because this SV is based on a broad-market average, tax-free, from the primary surrogate country and specific to the input used by the respondents.[54]

In the *Second Remand Order*, the Court held that Commerce's failure to address the stark differences in HCl import quantities and average prices rendered the Court unable to conclude that Commerce's SV selection is supported by substantial evidence and reasoned explanation.[55] The Court instructed Commerce to reconsider or further explain its selection of Thai import data in light of the alternatives, to reconsider or further explain Commerce's position with respect to the proposed benchmarks and, if appropriate, to reconsider its SV selection in light of the proposed benchmark data.[56]

Analysis

As explained above, 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 surrogate values 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.[57] Moreover, it is Commerce's well-established practice, which has been affirmed by the Court, to rely upon the primary surrogate country for all SVs, whenever possible, and to resort to a

[54] *See AR8 Final Results* and accompanying IDM at Comment 6.
[55] *See Second Remand Order* at 34.
[56] *Id.* at 36.
[57] *See, e.g., Fuwei Films*, 837 F. Supp. 2d at 1350-51 (citing *OTR Tires* and accompanying IDM at Comment 10); *see also Manganese Dioxide* and accompanying IDM at Comment 2.

secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.[58] 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.[59] Rather, interested parties must provide specific evidence showing the value is aberrational. 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.[60]

In considering the reliability of SVs based on import statistics alleged to be aberrational, our practice is to examine GTA import data from the same HTS number for: (a) the same surrogate country over multiple years to determine if the current data appear aberrational compared to historical values; and/or (b) POR-specific data for other potential surrogate countries for a given case.[61] In order to evaluate whether a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.[62] In *Xanthan Gum*, Commerce stated that "having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value."[63] Further, Commerce

[58] *See* 19 CFR 351.408(c)(2); *see also Hangers from China 2009-2010 Prelim*, 76 FR at 66909, unchanged in *Hangers from China 2009-2010 Final*; *see also Clearon*, 2013 Ct. Int'l Trade LEXIS 27, at *19-21.
[59] *See Hangers from China 2012-2013* 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).
[60] *Id.* (citing *OCTG 2010-2012* and accompanying IDM at Comment 1).
[61] *See CVP 23 from the PRC* and accompanying IDM at Comment 6.
[62] *See*, *e.g.*, *MLWF LTFV* and accompanying IDM at Comment 14.
[63] *See Xanthan Gum* and accompanying IDM at Comment 16.A.

undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[64]

As an initial matter, we note that the Thai HS category used to value HCl in the *AR8 Final Results* is 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W" which has a value of $2.38 USD/kg.[65] We find this HS category to be specific to the input used by the mandatory respondent because both Datong Juqiang and Jacobi report that the concentration of HCl identified in the description is in the same range as the concentration of the HCl input used in production.[66] GTA HS category 2806.10 "Hydrochloric Acid" reported by Romania ($0.06 USD/kg (8,935 MT)),[67] Bulgaria ($0.08 USD /kg (22,037MT)),[68] Malaysia ($0.41 USD/kg (6,557MT)),[69] Mexico ($0.80 USD /kg (1,093MT)),[70] Philippines ($0.52 USD /kg (847MT)),[71] Thailand ($3.03 USD /kg (22MT)),[72] and South Africa ($3.11 USD /kg (78MT))[73] is not as specific as the input used by the mandatory respondents because the description of this HS category does not indicate a concentration range. Nevertheless, when the Thai SV used in the *AR8 Final Results* ($2.38 USD/kg (61MT))[74] is compared to the range of benchmarks above, the specific Thai HCl SV is not the highest reported figure, as both figures reported for the Thai and South African GTA HS 2806.10 category, *i.e.*, the less specific category, are greater in value

[64] *See Glycine* and accompanying IDM at Comment 1.
[65] *See* Datong Juqiang's SV Submission, dated January 4, 2016, at Exhibit 2. Additionally, we note we converted the value from Thai Baht to USD using exchange rates on the record.
[66] *See* Datong Juqiang's Supplemental Section D Response, dated October 21, 2015, at Exhibit SD-28 and Jacobi's Section D Questionnaire Response for Ningxia Guanghua Activated Carbon Co., Ltd. (NXGH), dated August 14, 2015, at Exhibit NXGH D-8; *see also AR8 Final Results* at Comment 6.
[67] *See* Datong Juqiang SV Submission, dated January 4, 2016, at Exhibit 3B.
[68] *Id.*
[69] *See* Petitioners' Malaysia SV Submission, dated September 24, 2015, at Attachment Malaysia-1
[70] *See* Petitioners' Mexico SV Submission, dated September 24, 2015, at Attachment MEX-1-A.
[71] *See* Jacobi's SV Submission, dated September 24, 2015, at Exhibit SV-14.
[72] *See* Datong Juqiang SV Submission, dated January 4, 2016, at Exhibit 3B.
[73] *See* Jacobi's SV Submission, dated September 24, 2015, at Exhibit SV-6.
[74] *See* Datong Juqiang SV Submission, dated January 4, 2016, at Exhibit 2. Additionally, we note we converted the value from Thai Baht to USD using exchange rates on the record.

than the more specific HCl SV used in the *AR8 Final Results*. Commerce has consistently found that small import quantities alone are not inherently distortive.[75] In this instance, the import quantities for the South African and Thai GTA HS 2806.10 category, the less specific category, are similar to the input-specific Thai HCl SV, while resulting in a higher average value. Moreover, large import quantities are not necessarily indicative of low average values. As indicated above, the values of both the Malaysia and Mexico non-specific HCl SVs have relatively large import quantities and the average value for both those countries are nearly 10 times the average value of the Bulgarian and Romanian non-specific HCl SVs.

After conducting a comparison with the other benchmarks on the record, we continue find the Thai GTA data under HS subheading 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W" are the best available information from which to value Jacobi's HCl input. Further, the CIT held that product specificity must be the primary consideration in determining the best available information when considering SV selection.[76] Therefore, because the Thai value reported for HS category 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W" is specific to the input used by the respondent's suppliers, a broad market average, from the primary surrogate country, and within the range of values and quantities of other countries which report imports under HS category 2806.10 "Hydrochloric Acid", we have continued to value the

[75] *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 82 FR 18115 (April 17, 2017) (*Hangers from China 2014-2015*) and accompanying IDM at Comment 3.
[76] *See Taian Ziyang Food Company Ltd., v. United States*, 783 F. Supp. 2d 1292, 1300, 1330 (CIT 2011) (*Taian*).

hydrochloric acid input using the Thai GTA data for HS category 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W."

4. Coal Tar Surrogate Value

Background

In the *AR8 Final Results*, we valued coal tar using Thai GTA import data under HS code 2706 "Mineral Tars, Including Reconstituted Tars" because it represented the best available information on the record.[77]

In the *Second Remand Order*, the Court held that Commerce did not adequately address the differences in import quantities and average prices of available benchmark data on the record and failed to substantiate the specificity of the SV it used in the *AR8 Final Results*.[78] The Court could not conclude that Commerce's determinations that the Thai coal tar import value is reliable, specific, and therefore, the "best available" to value Jacobi's coal tar were supported by substantial evidence.[79]

Analysis

As noted above, our practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available and contemporaneous with the POR, and tax and duty exclusive.[80] Commerce undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[81] While there is no hierarchy for applying the SV

[77] *See AR8 Final Results* and accompanying IDM at Comment 8.
[78] *See Second Remand Order* at 41.
[79] *Id.* at 43-44.
[80] *See, e.g., First Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010), and accompanying IDM at Comment 1.
[81] *See Glycine* and accompanying IDM at Comment 1.

selection criteria, Commerce "must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' SV is for each input."[82] Additionally, the CIT held that product specificity must be the primary consideration in determining the best available information when considering SV selection.[83]

Information on the record indicates that Thai GTA import data under HS category 2706.00 "Mineral Tars, Including Reconstituted Tars" is a basket category comprised of HTS numbers 2706.00.00000, 2706.00.00002, and 2706.00.00090.[84] HTS number 2706.00.00000 "Tar Distilled From Coal, From Lignite Or From Peat, And Other Mineral Tars, Whether Or Not Dehydrated Or Partially Distilled, Including Reconstituted Tars" only contains import data for China and India, countries we exclude from our SV calculation.[85] The HTS number 2706.00.00002 "Tar Distilled From Coal, From Lignite Or From Peat, And Other Mineral Tars, Whether Or Not Dehydrated Or Partial" contains no data.[86] The HTS number 2706.00.00090 "Other" is a basket category; based on the description of this category, we cannot determine whether this category is specific or similar to the input used by the respondents.[87] Therefore, we determine that the underlying information for Thai HS category 2706.00 "Mineral Tars, Including Reconstituted Tars" demonstrates that Thai imports under this HS category are not specific to the input used by the respondents, or are from countries which we exclude from our

[82] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Administrative Review, and Final Partial Recession of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying IDM at Comment 2.
[83] *See Taian*, 783 F. Supp. 2d at 1330.
[84] *See* Jacobi's SV Submission, dated January 4, 2016, at Exhibit SV2-18.
[85] It is Commerce's normal practice to exclude non-market economies and countries with broadly available subsidies from our SV calculations. *See Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 11513 (March 4, 2016) and accompanying Preliminary Decision Memorandum; *unchanged* in *AR8 Final Results*.
[86] *See* Jacobi's SV Submission, dated January 4, 2016, at Exhibit SV2-18.
[87] *Id.*

SV calculations. Accordingly, we find it inappropriate to use the Thai GTA data for HS category 2706.00 to value coal tar given the fact that there are other usable coal tar values on the record.

The record contains GTA import data for coal tar values for Malaysia, Mexico, the Philippines, and South Africa for HS category 2706.00.[88] Because the record contains usable values from countries at the same level of economic development at China (*i.e.*, Mexico and South Africa), we have not considered the SVs from Malaysia or the Philippines to value the coal tar input.[89] We find that the contemporaneous coal tar SVs from Mexico and South Africa, both countries on the surrogate country list, under HS category 2706.00 "Mineral Tars, Including Reconstituted Tars" are of equal reliability for valuing Jacobi's coal tar input.[90] Additionally, there is no information on the record which would cause us to question the reliability of the HS description of the Mexican and South African SV data as discussed above with respect to the Thai SV data. When confronted with SVs which are not from the primary surrogate country, and are otherwise equally comparable SV sources, Commerce has used import quantities as a tie breaking methodology.[91] The data on the record show that the imports of mineral tar into South Africa (508,580/kg) are so much larger than those into Mexico (40,074/kg)[92] that they

[88] *See* Petitioners' Malaysia SV Submission, dated September 24, 2015, at Attachment Malaysia-1; Petitioners' Mexico SV Submission, dated September 24, 2015, at Attachment MEX-1-A; Datong Juqiang's SV Submission, dated September 24, 2015, at Exhibit 2; and Jacobi's SV Submission, dated September 24, 2015, at Exhibit SV-6, respectively.
[89] *See Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1329, 1335 (CIT 2014), aff'd 822 F.3d 1289, 1293 (Fed. Cir. 2016) ("India therefore could never be a reasonable choice because at least one country, the Philippines, satisfies the statutory criterion of economic comparability, whereas India does not. {Jiaxing's} argument about the qualitative superiority of Indian data compared to Thai data ultimately concentrates on a false choice.")
[90] Petitioners converted the Mexican SV reported in liters to kg. *See* Petitioners' Mexico SV Submission, dated September 24, 2015, at Attachment MEX-1-A.
[91] *See Calgon Carbon Corp. v. United States*, 2013 Ct. Int'l Trade LEXIS 4 (CIT 2017); *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1167 (January 11, 2016) and accompanying IDM at 6-7; *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4539 (January 28, 2015) and accompanying IDM at 9.
[92] *Id.*

demonstrate a much broader market average for this input.[93] Thus, among the countries which are economically comparable to China, we determine for this final remand redetermination that the South African SV reported under HS category 2706.00 constitutes the "best available information" for valuing coal tar, consistent with our statutory obligation at section 773(c)(1)(B) of the Act, and we have modified our calculations accordingly.

5. Financial Ratios

Background

In the *AR8 Final Results*, we used Carbokarn's 2011 financial statements because we determined 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 (while acknowledging that the statements were not contemporaneous with the POR).[94]

In its *Second Remand Order*, 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*,[95] the Court cannot "ascertain whether Commerce reasonably exercised its discretion" in finding that Carbokarn's 2011 financial statements do not contain countervailable subsidies.[96] The Court

[93] This approach is consistent with our approach in the *AR8 Final Results* in valuing anthracite coal. *See AR8 Final Results* and accompanying IDM at Comment 3 ("In this administrative review, we ranked the alternate surrogate countries (Mexico, Romania, and South Africa) by volume of imports of anthracite coal. We found that Romanian imports of anthracite coal exceed that of Mexico and South Africa. The data on the record show that the imports of anthracite coal into Romania are so much larger than those into Mexico and South Africa that it demonstrates a much broader market average for this input. We have, accordingly, placed a greater weight on this consideration than on competing considerations, such as the relatively smaller export volumes of activated carbon").
[94] *See AR8 Final Results* and accompanying IDM at Comment 10.
[95] *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.
[96] *See Second Remand Order* at 47.

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."[97]

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 country, to value manufacturing overhead, general expenses, and profit.[98] 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.[99] 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."[100]

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.[101] Additionally, Commerce has a strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR

[97] *Id.* at 48.
[98] *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.
[99] *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.
[100] *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).
[101] *See, e.g., Fuwei Films*, 837 F. Supp. 2d at, 1350-51 (citing *OTR Tires* and accompanying IDM at Comment 10); *see also Manganese Dioxide* and accompanying IDM at Comment 2.

351.408(c)(2),[102] as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[103] The courts have recognized Commerce's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[104] Moreover, when selecting among the available surrogate financial 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."[105]

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...."[106] 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."[107] In determining whether a financial statement contains evidence of countervailable subsidies,

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[102] *See also Clearon*, 2013 Ct. Int'l Trade LEXIS 27, at *19-21.
[103] *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.
[104] *See, e.g., FMC Corp. v. United States*, 27 CIT 240, 251 (CIT 2003) (holding that Commerce can exercise discretion in choosing between reasonable alternatives), *aff'd FMC Corp. v. United States*, 87 F. App'x 753 (Fed. Cir. 2004).
[105] *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) and accompanying IDM at Comment 9.
[106] *See* section 773(c)(1) of the Act.
[107] *See* H.R. Rep. No. 100-576 at 590, 1988 U.S.C.C.A.N. at 1623; *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) and accompanying IDM 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)).

Commerce will first determine whether an alleged subsidy has been found countervailable in a prior countervailing duty proceeding.[108]

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.*[109] In *Thai Shrimp*, we determined that the purpose of the program "Tax Coupons for Exported Goods" is to refund import duties paid for the imported raw material and other inputs used in the production of exported goods and found the program to be a countervailable subsidy program[110] Carbokarn's financial statements identify the line item "tax coupon receivables" under note 5: Trade and other receivables.[111] 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.[112] We therefore have reason to believe or suspect that the "tax coupon receivables" in Carbokarn's financial statements have previously been 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

[108] *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"); *Clearon Corp. v. United States*, 800 F. Supp. 2d 1355, 1359 (CIT 2011) (citing *Final Results of the 3rd New Shipper Reviews: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 74 FR 29473 (June 15, 2009) and accompanying IDM at 4-5).
[109] *See Thai Shrimp* and accompanying IDM at IV.A.1.
[110] *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).
[111] *See* Datong Juqiang's SV Submission, dated January 4, 2016, at Exhibit 8B.
[112] *Id.*

enough information to calculation surrogate financial ratios.[113] Additionally, the statements are not contemporaneous with the POR, as previously discussed.[114]

The record also contains 2013 financial statements from the Philippines,[115] 2014 financial statements from Malaysia,[116] 2014 financial statements of Mexichem S.A.B. de C.V. (Mexichem, a Mexican chemical company),[117] and the 2013 financial statements of Romanian Romcarbon SA (Romcarbon, a Romanian manufacturer of polyethylene, polypropylene, and polyvinyl chloride products).[118] We continue to find that the financial statements from the companies within Malaysia and the Philippines are not the best available information because these financial statements are from companies operating in countries that have not been found to be at the same level of economic development as China and the record contains potentially usable financial statements from a country found to be at the same level of economic development as China, *i.e.*, Romania.

With respect to Mexichem's financial statements, the evidence on the record indicates that Mexichem does not produce activated carbon, and instead produces fluorine products, vinyl, and plastic fluent products.[119] Accordingly, because the record demonstrates that Mexichem is not a producer of identical or comparable merchandise, we find Mexichem is not appropriate as a

[113] *Id.*
[114] *Id.*; *see also AR8 Final Results* and accompanying IDM at Comment 10.
[115] *See* Jacobi's SV Submission, dated September 24, 2015, at Exhibit SV-20.
[116] *See* Petitioners' Malaysia SV Submission, dated September 24, 2015, at Attachment MLY-5.
[117] *See* Petitioners' Mexico SV Submission, dated September 24, 2015, at Attachment MEX-5.
[118] *See* Datong Juqiang's SV Submission, dated January4, 2016, at Exhibit 8A.
[119] *See* Petitioners' Mexico SV Submission, dated September 24, 2015, at Attachment MEX-5.

surrogate financial company, nor are its financial statements preferable to the statements from Romcarbon for the reasons explained below.

With respect to the Romanian 2013 Romcarbon financial statements, record evidence suggests Romcarbon produces some activated carbon, despite its principal manufacturing activities being the production of polyethylene, polypropylene, polyvinyl chloride, polystyrene processing, filters and protective materials.[120] However, because the Romcarbon statements are the only remaining financial statements from a country at the same level of economic development as China which are audited, complete, publicly available, and include evidence of at least some production of identical merchandise, Romcarbon's financial statements are the best available information on the record from which to calculate surrogate financial ratios. We have therefore used the Romcarbon financial statements to calculate surrogate financial ratios for this final remand.

6. Value-Added Tax (VAT)

Background

In the *AR8 Final Results*, Commerce noted its 2012 change of methodology with respect to the calculation of export price (EP) or constructed export price (CEP) to include an adjustment for any VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[121] In this announcement, Commerce stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise,

[120] *See* Datong Juqiang's SV Submission, dated January 4, 2016, at Exhibit 8A.
[121] *See AR8 Final Results* and IDM at Comment 1, citing to *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (June 19, 2012) (*Methodological Change*).

from which the respondent was not exempted, Commerce will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.[122]

In the *Second Remand Order*, the Court held that evidence submitted on the record of this segment of the proceeding persuaded it that Commerce's adjustment suffers from the same concerns the court identified in *Jacobi (AR7) I*;[123] thus, the Court ordered Commerce to reconsider or further explain its irrecoverable VAT adjustment in accordance with *Jacobi (AR7) I* and *Jacobi (AR7) II*.[124]

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.[125] The Court further held that Commerce must: 1) reconcile the inconsistencies between the *AR7 Final Results* and the AR7 First Remand Redetermination;[126] 2) address the evidence that Jacobi recovers the input VAT it incurs by the offset it takes collecting output VAT, suggesting that the input VAT is not irrecoverable;[127] and 3) explain why the

[122] *See Methodological Change*, 77 FR at 36483; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) (*Chlorinated Isos 2012*) and accompanying IDM at Comment 5.
[123] *Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159 (CIT 2017) (*Jacobi AR7 I*).
[124] *See Jacobi (AR7) II.*
[125] *See Jacobi (AR7) II* at 56.
[126] *Id.* at 57 (citing *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*)); *see also* Remand Redetermination in *Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159 (CIT 2017) (AR7 First Remand Redetermination), available at https://enforcement.trade.gov/remands/17-39.pdf.
[127] *See Jacobi (AR7) II* at 56.

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.[128,129]

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).[130]

Finally, in its August 22, 2018 *Order,* the Court directed Commerce to address the VAT-related questions raised in *Aristocraft*.

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 "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.[131] Commerce continues, as it did in the *AR8 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 those 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

[128] *Id.*
[129] Additionally, the Court instructed that if we continue to disregard Jacobi's FOB values, it 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.
[130] *See Jacobi (AR7) II* at 60.
[131] *Id.* at 56.

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.[132] As result, the firm bears no "VAT burden (cost)": the firm through the credit is refunded or recovers all of the $60 million in input VAT it paid, and the $40 million remittance to the government is simply a transfer to the government of VAT paid by (collected from) the buyer with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer of the good, not on the firm.

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

[132] The credit if not exhausted in the current period can be carried forward.

Taxation on VAT and Consumption Tax Policies for Exported Goods and Labor Services ("*2012 VAT Notice*"):[133]

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 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

[133] *See Notice of the Ministry of Finance and the State Administration of Taxation on VAT and Consumption Tax Policies for Exported Goods and Labor Services*, Article 5 (Ministry of Finance, State Administration of Taxation, 2012 No. 39, issued May 25, 2012).

recorded as a cost of exported goods.[134] 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.[135]

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

The VAT treatment under Chinese law of exports of goods described above concerns only export sales that are *not* subject to output VAT, the situation where the firm collects no VAT from the buyer, which applies to most exports from China. However, the *2012 VAT Notice* provides for a limited exception in which export sales of certain goods are, under Chinese law,

[134] 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."
[135] 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.

deemed domestic sales for tax purposes and, thus, *are* subject to output VAT at the full rate.[136] 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.[137] Commerce must, therefore, deduct this tax from U.S. price[138] under section 772(c) of the Act to ensure tax-neutral dumping margin calculations.[139]

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.[140] Activated carbon is among the goods for which exports are deemed domestic sales.[141] Sales of activated carbon are subject to an output VAT at a rate of 17 percent.[142] This means that export sales of activated carbon are *not* subject to an "irrecoverable VAT" as previously understood, nor are sales of activated carbon subject to a reduction in, of offset to, creditable input VAT by adjusting for "irrecoverable VAT."[143] 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

[136] *See 2012 VAT Notice*. For these goods, the VAT refund rate on export is zero.
[137] *See 2012 VAT Notice*, Article 7.2(1).
[138] Commerce will divide the VAT-inclusive export price by (1 + T), where T is the applicable VAT rate.
[139] 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.
[140] *See* Jacobi's August 14, 2015 Section C Questionnaire Response (SCQR) at Exhibit SC-18.
[141] *Id.* at Exhibit SC-18; *see also* Article 7 of the *2012 VAT Notice*.
[142] The output VAT is collected by exporters of activated carbon from foreign buyers of activated carbon.
[143] *See* Jacobi's SCQR at Exhibit SC-18.

of any "export tax, duty, or other charge" in the case of activated carbon.[144] 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. [145] 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.[146]

In its August 22, 2018 *Order*, ECF No. 120, this Court provided Commerce with an opportunity to consider the *Aristocraft* opinion as it relates to Chinese irrecoverable VAT.[147] 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 "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

[144] *Id.*
[145] *Id.* at Exhibit SC-18, 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).
[146] *See also Methodological Change*, 77 FR at 36483.
[147] August 22, 2018 *Order*.

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.[148]

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 offset to, creditable input VAT ("irrecoverable VAT") as explained above.[149] 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,

[148] *See Aristocraft*, 2018 WL 3816781 at *5.
[149] *See* Article 7 of the *2012 VAT Notice* and *No. 102*.

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 *Second Remand Order*, this Court remanded the VAT issue for Commerce "to reconsider or further explain its irrecoverable VAT adjustment in accordance with *Jacobi (AR7) I* and *Jacobi (AR7) II*."[150] In *Jacobi (AR7) II*, 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."[151] 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 as having collected, from its customers.[152] It is this 17 percent output VAT imposed on the export sale of activated carbon, and not irrecoverable input VAT which Commerce adjusts the U.S. price.

As noted in the AR7 First Remand Redetermination, the record demonstrates that Jacobi pays 17 percent input VAT on products it purchases from its suppliers[153] and further

[150] *See Second Remand Order* at 51.
[151] *See Jacobi (AR7) II* at 58.
[152] *See* Article 7 of the *2012 VAT Notice* and *Notice 102*.
[153] *See* Jacobi's SCQR at 39 and Exhibit SC-18; *see also AR7 First Remand Redetermination* at 40. Jacobi also reported that as a buyer from Chinese suppliers of activated carbon, "Jacobi's purchase price includes 17% VAT (input VAT)." *See* Jacobi's SCQR at 40.

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).[154] 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)…."[155] This is consistent with *Notice 102*, Section I and I(1):[156]

> "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;"[157]

Thus, as noted above, export sales of activated carbon are not subject to a 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,[158] and this amount is not rebated upon export, the 17 percent output VAT functions as an export tax imposed by the Chinese 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, [159] 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.

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[154] *Id.*, and Exhibit SC-18.
[155] *Id.* at 40 (emphasis added).
[156] *See* Article 7 of the *2012 VAT Notice*.
[157] *Id.* at Exhibit SC-18 (emphasis added).
[158] *Id.*
[159] *Id.*

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.[160] As noted above, because sales of activated carbon are deemed domestic sales under Chinese law, the export sales of 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"[161] (*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 incurred 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 to include costs arising as a result of export sales as a deduction from export price.[162] 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.[163]

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

[160] *See Methodological Change*, 77 FR at 36483.
[161] *See* Article 5 of the *2012 VAT Notice.*
[162] *See Juancheng Kangtai Chemical Co., Ltd. v. United States,* 41 CIT ___, 2017 WL 218910 (2017), at *11.
[163] *See* section 772(c)(2)(B) of the Act.

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 upon Jacobi's foreign 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.[164] Jacobi explains that its reported entered values are the FOB China port values used in the Chinese tax authorities' output VAT calculations.[165] Therefore, because Commerce is required to calculate antidumping duty margins "as accurately as possible, and to use the best information available to do so,"[166] we find that using Jacobi's reported FOB values[167] 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 was calculated by the Chinese tax authorities. Accordingly, we have revised our calculation methodology to use 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*,[168] (*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.[169]

This Court also held that Commerce must "explain why the VAT adjustment is properly

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[164] *See* Jacobi's SCQR at Exhibit SC-18; *see also 2012 VAT Notice*.
[165] *See* Jacobi's SCQR at 42.
[166] *See Lasko Metal Products Inc. v. United States*, 43 F.3d 1442, 1443 (Fed. Cir. 1994).
[167] 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.
[168] *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*).
[169] 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 value from Chinese RMB to U.S dollar. *See* Jacobi's SCQR at Exhibit SC-1 and Exhibit SC-11.

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."[170] 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 parties for comment on September 13, 2018.[171] On September 25, 2018, Jacobi and the SR Companies[172] commented on the issue of significant production, the carbonized material and HCl SV issues, and VAT. The petitioners submitted comments on the Draft Remand Results requesting that Commerce modify the results of the differential pricing analysis conducted in Jacobi's remand margin program.[173]

As explained below, we have not made changes to the determinations we made in the Draft Remand Results, except we have modified our differential pricing analysis to correct a clerical error in our preliminary calculation. We address each of the parties' comments and provide our analysis in turn.

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[170] *See Jacobi (AR7) II* at 59-60.
[171] *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).
[172] 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).
[173] *See* Petitioners' Comments, dated September 25, 2018, at 2.

Issue 1: Significant Production

SR Companies' Comments:[174]

- Commerce's decision that Thailand is a significant producer is not reasonable because aberrant, unavailable, or unreliable surrogate values for coal tar, financial ratios, carbonized material, and HCl further support the record evidence that Thailand is not a significant producer of comparable merchandise.
- Commerce did not resolve the Court's issue that "Commerce's analysis fails to give meaning to the term "significant" or otherwise explain its conclusion ... Without that explanation, the court lacks the means to ensure that Commerce's redetermination is not arbitrary."[175]
- Thailand had only a very small net export quantity of activated carbon, and it had a negative net export value. While the Department need not select the most significant producer of comparable merchandise, it must meaningfully define significant production and consider the relative significance of production to fulfill its statutory mandate in a reasonable way.

Commerce's Position: Commerce continues to find that Thailand is a significant producer of activated carbon, based on the 2014 UNCOMTRADE export data on the record, because Thailand's export quantity is a noticeably or measurably large amount and is among the top global exporters of activated carbon.

We disagree that we did not resolve the Court's issue that "Commerce's analysis fails to give meaning to the term 'significant' or otherwise explain its conclusion .... Without that explanation, the court lacks the means to ensure that Commerce's redetermination is not

[174] *See* Letter from SR Companies, re: "Comment on Second Draft Remand Determination," dated September 25, 2018 (SR Companies' Comments) at 2-3.
[175] *See* SR Companies' Comments at 2 (citing *Jacobi (AR7) II* at 23-24).

arbitrary."[176] As explained above, we note that Commerce has interpreted "significant" to mean, in general terms, a noticeably or measurably large amount, and have done so in several cases.[177] The 2014 UNCOMTRADE data indicate that Thailand exported 9,281,469 kg of activated carbon during 2014, while the GTA export data report Thailand exported 9,605,424 kg during the POR.[178] When Thailand's export quantity is compared to the other countries in the UNCOMTRADE export data, there are 13 countries which exported greater quantities, the Philippines included. However, the UNCOMTRADE data also demonstrate that there are 51 countries which exported less than Thailand, and 38 countries which exported less than one million kg.[179] Compared to these 51 countries, in particular the 38 countries with exports less than one million kg, Thailand's export quantity of 9,281,469 kg is a noticeably large amount. Further, the UNCOMTRADE data place Thailand in the top 15 exporters of activated carbon globally, which supports our finding that Thailand is exporting a noticeably large, and therefore significant, amount.

We disagree with the contention that Thailand's quantity of data demonstrates that Thailand is not a significant producer. As an initial matter, we disagree with SR Companies' characterization that Thailand has aberrant, unavailable, or unreliable SV data, which it does not,[180] or that imports are indicative that there is not significant production. Moreover, the parties have provided no evidence demonstrating the link between Thailand's quantity of imports and its exports of activated carbon. Instead, we find that Thailand is a significant producer of

[176] *See* SR Companies' Comments at 2 (citing *Jacobi (AR7) II* at 23-24).
[177] *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.
[178] *See* Jacobi's Surrogate Country Comments, dated July 20, 2015, at Attachment E and Petitioners' Surrogate Country Comments, dated August 31, 2015, at Attachment 4.
[179] *See* Jacobi's Surrogate Country Comments, dated July 20, 2015, at Attachment E.
[180] In this remand redetermination, we have reconsidered our SV for coal tar.

activated carbon, based on the fact that its export quantity consists of a noticeably or measurably large amount. Furthermore, quality of data (*i.e.,* missing SV data) is not a consideration in determining whether a country is a significant producer, or not, of comparable merchandise. Instead, it is relevant to the sequential methodology of selecting a primary surrogate country. Specifically, *Policy Bulletin 04.1* states that first we consider economic comparability, then we identify which countries produce comparable merchandise, and then we determine which countries are significant producers.[181] After these steps are taken, the final step in the surrogate country selection process is data considerations (*i.e.*, quality of data), meaning that Commerce will determine whether a country is a significant producer before taking into account considerations such as missing SVs. This court has previously found Commerce's sequential surrogate country selection method to be a reasonable means of implementing our surrogate country selection criteria.[182] Therefore, the SR Companies' argument (that Thailand cannot be found to be a significant producer of activated carbon because it provides aberrant, unavailable, or unreliable surrogate values for coal tar, financial ratios, carbonized material, and HCl) is inapposite and inconsistent with Commerce's sequential surrogate country selection methodology, which contemplates determining the significance of a given country's production prior to contemplating its data quality.[183] In any event, we have evaluated the availability of SV data from the primary surrogate country (Thailand) as part of our overall analysis and find that SV data are available to value all of the respondent's FOPs, except for coal tar and the surrogate financial statements. We have addressed the selection of SVs for carbonized material and HCl

[181] *See Policy Bulletin 04.1.*
[182] *Jacobi (AR8) I*, 313 F.Supp.3d at 1353-54, n.18, citing *Jacobi (AR7) I*, 222 F.Supp.3d at 1171-75.
[183] *Id.*

below (*see* Issues 2 and 3), as well as coal tar, financial ratios, and carbonized material (*see* above, in our discussion of remanded issues).

Issue 2: Carbonized Material SV

Jacobi's and SR Companies' Comments:[184]

- While Commerce claims that 122 MT is a commercial quantity because it would fill six shipping containers, six shipping containers over the course of a year is not a commercial quantity, nor has Commerce supported its shipping container statement with substantial evidence.
- Jacobi's suppliers consume over 7000 MT of CARBMAT; while Commerce is not required to perfectly match a respondent's own production experience, the goal of the "best available information" is to locate a value as analogous to the NME market as is feasible. Commerce cannot reasonably support the notion that quantities statistically insignificant compared to the respondents' commercial purchases are commercial quantities.
- Thailand is a large producer of coconut shell charcoal. It is unreasonable to assume that a Thai activated carbon producer would purchase expensive, imported coconut shell charcoal.
- Commerce's comparison of Thai GTA prices with Malaysian and Mexican GTA prices is misguided because the Malaysian and Mexican GTA prices are for "Wood Charcoal" not "of Coconut Shell" and therefore not comparable.

[184] *See* Letter from Jacobi, re: "Comment on POR8 Draft Second Remand Redetermination," dated September 25, 2018 (Jacobi's Comments) at 2-7; *see also* SR Companies' Comments at 3-6.

- Commerce should value CARBMAT using the *Cocommunity* values, because this source, unlike the Thai GTA data, represents domestic coconut shell charcoal prices and in quantities like those used by Jacobi's suppliers.

Commerce's Position: Commerce continues to find that the Thai import quantity of 122 MT of coconut shell charcoal is a sufficient commercial quantity from which to determine a SV for the carbonized material FOP.

With respect to parties' disagreement with our remark that 122 MT of coconut shell charcoal would fit in six cargo containers, we note that this point was simply to illustrate that the quantity in question is not small and is a commercial quantity. Our statement was based on record evidence that a 20-foot container will hold roughly 20,000 kg, or 20 MT,[185] and was not intended to imply that this quantity arrived in one large shipment. Rather, as noted by SR Companies, this quantity was imported throughout the POR.[186]

Jacobi and the SR Companies argue that the import quantity of Thai coconut shell charcoal is commercially insignificant compared to the production/purchase quantity of Jacobi's suppliers. As an initial matter, we note that our SV selection criteria does not require that we select SVs with quantities that are representative of production or purchase quantities of respondent companies. Instead, our SV selection criteria requires us 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.[187] Further, as noted above, there is no record evidence indicating that 122 MT is not a commercial quantity, nor is there evidence to suggest that this quantity is small compared to the relative consumption

[185] *See* DJAC's SV Comments, dated September 24, 2015, at Exhibit 8.
[186] *See* Prelim SV Memo at Attachment 1, tab Attach2a.
[187] *See, e.g., Fuwei Films*, 837 F. Supp. 2d at 1350-51 (citing *OTR Tires* and accompanying IDM at Comment 10); *see also Manganese Dioxide* and accompanying IDM at Comment 2).

of coconut shell charcoal in Thailand. The SR Companies' argument that the selected SV does not approximate the respondent company's production experience demonstrated by the record evidence is unconvincing, as Commerce is not required to approximate that experience to the exclusion of the other criteria that are part of our analysis. Rather, although Commerce may consider comparability with the respondent's experience[188] (but need not duplicate that experience),[189] it is required to select SVs in accordance with the factors laid out above. Further, Commerce has consistently found that small import quantities alone are not inherently distortive.[190]

Additionally, we disagree with Jacobi that it is inappropriate to compare the Thai SV with the Mexican and Malaysian SVs. Both Mexico and Malaysia's HS description under 4402.90 is "Wood Charcoal (Including Shell or Nut Charcoal), Excluding That Of Bamboo."[191] This description indicates that coconut shell charcoal is included in the HS category. Further, as noted above, the Mexican and Malaysian value and quantity ($0.54 USD/kg, 829,562 kg, and $0.63 USD/kg, 211,816 kg, respectively) for this HS category are similar to the Thai SV used to value coconut shell charcoal in the *AR8 Final Results*.

While parties contend that it is unreasonable to assume that a Thai activated carbon producer would purchase expensive, imported coconut shell charcoal, we have previously noted that there is no record evidence that explains specifically why Thai companies might import carbonized material. Parties have provided no evidence as to the purpose or circumstances for these imports, or evidence demonstrating that these imports are unreasonable. The evidence on

[188] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 3.
[189] *See Second Remand Order* at 28.
[190] *See*, *e.g.*, *Hangers from Chia 2014-2015* and accompanying IDM at Comment 3.
[191] *See* Petitioner's Mexico SV Submission, dated September 24, 2015, at Attachment Mex-1-A and Petitioner's Malaysia SV Submission, dated September 24, 2015, at Attachment Malaysia-1.

the record demonstrates that coconut shell charcoal was imported into Thailand during the POR at commercial prices and quantities. With no evidence on the record demonstrating that these were not commercial imports or that these data are aberrational, we continue to find that the Thai SV used in the *AR8 Final Results* to value carbonized material 1) reflects import quantities and values similar to those of other countries which import carbonized material, and 2) there is no information on the record which suggests that 122,000 kg of carbonized material is not a commercial quantity. Therefore, we find that the Thai SV is based on commercial quantities and have continued to rely on it for our calculations in this final remand redetermination.

Issue 3: HCl SV

Jacobi's and SR Companies' Comments:[192]

- While the Thai SV is specific, specificity does not overcome aberrance. Commerce should address that the Thai HCL SV is many times higher than the HCL SV used in past reviews. Commerce should also address that both South Africa and Thailand have high SVs with low import quantities, while Bulgaria and Romania have low SVs and high import quantities.
- Commerce has not considered HCl SVs used in previous administrative reviews, as instructed by the Court. Further, Commerce failed to compare the Thai SV to the ICIS HCl benchmark prices of similar concentration.
- The Court has criticized Commerce for selecting CARBMAT SVs with volumes too small to be representative of the respondents' consumption. The Thai HCL SV suffers from the same flaw.

[192] *See* Jacobi's Comments at 7-10 and SR Companies' Comments at 6-7.

- Commerce has not offered any valid reason for rejecting alternative data from Bulgaria and Romania or other sources, as suggested by the Court, and should do so here.

Commerce's Position: As explained above, it is Commerce's well-established practice, which has been affirmed by the Court, to rely upon the primary surrogate country for all SVs, whenever possible, and to resort to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.[193] 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.[194] Rather, interested parties must provide specific evidence showing the value is aberrational. 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.[195] In considering the reliability of SVs based on import statistics alleged to be aberrational, our practice is to examine GTA import data from the same HTS number for: (a) the same surrogate country over multiple years to determine if the current data appear aberrational compared to historical values; and/or (b) POR-specific data for other potential surrogate countries for a given case.[196] In order to evaluate whether a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.[197]

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[193] *See* 19 CFR 351.408(c)(2); *see also Hangers from China 2009-2010 Prelim*, 76 FR at 66909, 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); *see also Clearon*, 2013 Ct. Int'l Trade LEXIS 27, *19-21.
[194] *See Hangers from China 2012-2013* 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).
[195] *Id.* (citing *OCTG 2010-2012* and accompanying IDM at Comment 1).
[196] *See CVP 23 from the PRC* and accompanying IDM at Comment 6.
[197] *See*, *e.g.*, *MLWF LTFV* and accompanying IDM at Comment 14.

We disagree that non-contemporaneous global benchmark prices or benchmark prices from economies which are not at the same level of economic development as China are appropriate benchmarks for price comparison purposes. Nevertheless, record evidence demonstrates that the HCl benchmarks from the previous administrative reviews (*e.g.,* SVs from the Philippines) and Germany, Belgium, France, and the United States, all fall within the $0.06 USD/kg to $3.11 USD/kg range described above.[198] Further, we note that the HCl value we relied on in this review is only a 29 percent increase from the 1.85 kg/USD average value over all eight review periods[199] and is not the highest, but rather the third-highest value for HCl, after South Africa and Thai HS category 2806.10, available on the record. Additionally, we note that Jacobi itself submitted on the record the Thai import value that it now claims is aberrational.[200]

Jacobi argues that the Thai import price for HS category 2806.10 ($3.03 USD/kg) and South African import price for HS category 2806.10 ($3.11 USD/kg) are also flawed because they are based on small quantities (22MT and 78MT, respectively). However, there is no evidence on the record, nor does Jacobi point to any specific evidence, demonstrating that these quantities are not commercial quantities or that each country's relative import quantities are distortive compared to the domestic consumption of Thailand and South Africa. Further, we note that the South African import quantity is larger than the Thai import quantity and has a higher average unit value, which is indicative that Thailand's relatively small import quantities are not distortive.[201]

[198] *See* Datong Juqiang's SV Comments, dated January 4, 2016, at Exhibit 3C.
[199] *See* Jacobi's SV Comments, dated January 4, 2016, at Exhibit SV2-4 and Jacobi's Amended SV Comments, dated January 25, 2016, at Exhibit SV3-3.
[200] *See* Jacobi's SV Comments, dated January 4, 2016, at Exhibit SV2-8 and SV2-9.
[201] *See*, *e.g.*, *Hangers from China 2012-2013* and accompanying IDM at Comment 5.

We continue find the Thai GTA data under HS subheading 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W" are the best available information from which to value Jacobi's HCl input. The CIT has held that product specificity must be the primary consideration in determining the best available information when considering SV selection.[202] This directly contradicts the SR Companies' contention that specificity does not overcome other aspects of a SV in determining the merit of a potential SV. Therefore, because the Thai value reported for HS category 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W" is specific to the input used by the respondent's suppliers, a broad market average, from the primary surrogate country, and within the range of values and quantities of other countries which report imports under HS category 2806.10 "Hydrochloric Acid", we have continued to value the HCl input using the Thai GTA data for HS category 2806.10.000102 "Hydrochloric Acid 15% W/W To 36% W/W."

Issue 4: VAT

Jacobi's Comments:[203]

- 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.

[202] *See Taian*, 783 F. Supp. 2d at 1300, 1330.
[203] *See* Jacobi's Comments at 10-15. SR Companies adopt Jacobi's objections to Commerce's treatment of VAT in antidumping duty calculations.

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.

Department's Position: We disagree with Jacobi that we have not complied with the Court's orders. 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."[204] As explained above, we acknowledged that such record evidence indicates that input VAT paid by Jacobi is not irrecoverable, 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 Commerce must make a downward adjustment to the U.S. price by the percentage of output VAT collected on export sales of activated carbon.[205] Additionally, 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 of the U.S. price in the margin calculation program for Jacobi. Rather, per section 772 (c)(2)(B) of the Act, Commerce is 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.

[204] *See Jacobi AR8 I* at 1373, citing *Jacobi (AR7) I and Jacobi (AR7) II* for the court's rationale for its remand.
[205] *See Methodological Chang*, 77 FR at 36483.

Despite its statements and evidence on the record, Jacobi would now have the Court believe that it collects output VAT from all of its foreign customers *except* U.S. customers.[206] 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)" (emphasis added).[207] Further, Jacobi provided documentation reporting the output VAT it collected during the POR.[208] 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.[209] 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 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.[210] 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.

[206] *See* Jacobi's Comments at 12-13.
[207] *See* Jacobi's SCQR at 40 and Exhibit SC-18.
[208] *Id.* at Exhibit SC-18.
[209] *See* Jacobi's Section A Questionnaire Response, dated July 15, 2015, at Exhibit A-17.
[210] *See* Commerce's NME Questionnaire, dated June 17, 2015, at C-28.

Jacobi further claims that Commerce has failed to comply with the Court's *Jacobi AR7 II* order and the *August 22, 2018 Order*, as well as the implications of 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 U.S. where there is no input VAT rebate.[211] This explanation addresses this Court's concerns regarding such relationships, as well as those of the *Aristocraft* court. 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 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.

FINAL RESULTS OF REMAND REDETERMINATION

Consistent with the *Second Remand Order* and the August 22, 2018, *Order*, we have: 1) addressed and clarified the issue of significant production; 2) addressed and clarified the reasoning underlying our selection of the carbonized material SV; 3) addressed and clarified the

[211] *See infra*, 26-31.

issue of the HCl SV; 4) addressed and revised the selection of the coal tar SV; 5) addressed and revised the selection of the financial statements used to calculate the surrogate financial ratios; 6) addressed and clarified the inclusion of the irrecoverable VAT adjustment in Jacobi's margin calculation, and revised the calculation methodology for that adjustment; and 7) 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[212] for the mandatory respondent, Jacobi,[213] from the *AR8 Final Results*, resulting in a revised margin of $0.44/kg.[214]

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 same manner in which we calculated the margin for these companies in the *AR8 Final Results*. In the *AR8 Final Results*, and consistent with our practice,[215] we determined that using the ranged total sales values reported by the mandatory respondents from the public versions of their

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[212] The petitioners' provided comments stating that we made a clerical error with respect to Jacobi's differential pricing analysis in the Draft Remand Results. We agree with petitioners that we inadvertently used the mixed alternative results (*i.e.,* the results of the application of the average-to-transaction comparison method to sales those sales identified as passing the Cohen's *d* test and the average-to-average comparison method for those sales identified as not passing the Cohen's *d* test), rather than the average- to-transaction comparison method, and have corrected this clerical error for the final remand redetermination. *See* Memorandum, re: "Second Remand Redetermination Calculation 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.

[213] In the third administrative review of the *Order*, the Department 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; 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); *Certain Activated Carbon from the People's Republic of China; 2011–2012; Final Results of Antidumping Duty Administrative Review*, 78 FR 70533, 70535 (November 26, 2013); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 70163, 70165* (November 25, 2014). and *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).

[214] *See* Memorandum, re: "Second Remand Redetermination Calculation 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.

[215] *See AR8 Final Results*, 81 FR at 62089.

submissions to calculate a weighted-average margin is more appropriate than calculating a simple-average margin.[216] These publicly available figures provide the basis upon which we can calculate a margin, which is the best proxy for the weighted-average margin based on the calculated net U.S. sales values of the mandatory respondents without the possibility of disclosing any business proprietary information. We find that this approach is more consistent with the intent of section 735(c)(5)(A) of the Act and our use of that statutory provision as guidance when we establish the rate for respondents not examined individually in an administrative review.[217] We add that no parties commented on this methodology for calculating the separate rate in the underlying *AR8 Final Results*.[218]

Thus, consistent with the methodology used in the *AR8 Final Results* for calculating a margin for the separate rate companies, we calculated a weighted-average margin of $0.34/kg based on the publicly-ranged U.S. sales values of the mandatory respondents.[219] The separate rate companies receiving this revised separate rate are: 1) Beijing Pacific Activated Carbon Products Co., Ltd.; 2) Datong Municipal Yunguang Activated Carbon Co., Ltd.; 3) Jilin Bright Future Chemicals Co., Ltd.; 4) Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.; 5) Ningxia Huahui Activated Carbon Co., Ltd.; 6) Ningxia Mineral and Chemical Limited; 7) Shanxi DMD Corp.; 8) Shanxi Industry Technology Trading Co., Ltd.; 9) Shanxi Sincere

[216] *See* Memorandum, re, "Calculation of Separate Rate," dated concurrently with this draft remand redetermination.
[217] *See, e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158, 56160 (September 12, 2011).
[218] *See AR8 Final Results*, 81 FR at 62089.
[219] For further discussion regarding this issue, *see* Memorandum, re: "Calculation of Separate Rate," dated concurrently with this notice.

Industrial Co., Ltd.; 10) Tianjin Channel Filters Co., Ltd., and; 11) Tianjin Maijin Industries Co., Ltd.

10/23/2018

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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