

Jacobi Carbons AB et al. v. United States
Consol. Court No. 16-00185, Slip Op. 19-160 (CIT December 17, 2019)

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 (the Court) in *Jacobi Carbons AB et al. v. United States et al.*, Consol. Court No. 16-00185, Slip Op. 19-160 (CIT December 17, 2019) (*Fourth Remand Order*). These final results of redetermination concern *Certain Activated Carbon from the People's Republic of the PRC: 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), ECF No. 78-1, second remand redetermination (Second Remand Redetermination), ECF No. 124-1, and third remand redetermination (Third Remand Redetermination), ECF No. 139-1, issued in accordance with the Court's order granting Commerce's request for a voluntary remand,¹ and its prior decisions.²

In the *Fourth Remand Order*, the Court remanded to Commerce its Third Remand Redetermination to reconsider or further address the inconsistencies between its statements in the

¹ See Order, *Jacobi Carbons AB et al. v. United States et al.*, Consol. Court No. 16-00185 (June 20, 2017), ECF 77 (*Jacobi AR8 I*).

² See *Jacobi Carbons AB et al. v. United States et al.*, 313 F.Supp.3d 1344 (CIT 2018) (*Jacobi AR8 II*); *Jacobi Carbons AB et al. v. United States et al.*, 365 F.Supp.3d 1344 (CIT 2018) (*Jacobi AR8 III*).

third draft results of redetermination and those in its final third results of redetermination regarding the viability of the various carbonized material data sources on the record.³ The Court ordered Commerce to more fully address claims that it did not directly or fully analyze the commercial significance of the Malaysian import quantity or account for Commerce's preference for selecting surrogate values (SVs) from a single surrogate country and address arguments made by parties based on *Luoyang Bearing*.⁴

As set forth in detail below, pursuant to the *Fourth Remand Order*, we have reconciled the inconsistencies between the third draft and final results of redetermination regarding our selection of the carbonized materials SV. We have not made any changes to our Third Remand Redetermination as a result of this further analysis.

B. REMANDED ISSUE

Carbonized Materials

Background

In the Third Remand Redetermination, Commerce, under respectful protest,⁵ selected Malaysia as the primary surrogate country over the Philippines because the Malaysia SV data, unlike the Philippine SV data, contained SV data for anthracite coal, a major input used by Jacobi in the production of the subject merchandise.⁶ Specifically, in the Third Remand Redetermination we stated, “we find that Malaysia offers the best available information to value Jacobi’s {factors of production} FOPs, including carbonized materials.”⁷ Further, Commerce found that because both Malaysia and the Philippines offered equally viable carbonized material

³ See *Fourth Remand Order* at 10.

⁴ *Id.*; see also *Luoyang Bearing Corp. (Grp.) v. United States*, 358 F. Supp. 2d 1296 (CIT 2005) (*Luoyang Bearing*).

⁵ See *Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (CAFC 2003) (*Viraj*).

⁶ See Third Remand Redetermination at 10-11.

⁷ *Id.* at 12.

SVs, the selection of Malaysia or the Philippines as a surrogate country was not affected by this consideration.⁸ However, in addressing litigants' comments on the draft results of redetermination, Commerce reconsidered its selection of the Malaysian carbonized material SV and instead chose to use the Philippine trade publication *Cocommunity* as the source of the SV for Jacobi's carbonized material input.⁹

Analysis

In its *Fourth Remand Order*, the Court held that Commerce must more fully address claims that it did not directly or fully analyze the commercial significance of the Malaysian import quantity or account for Commerce's preference for selecting SVs from a single surrogate country and address arguments made by parties based on *Luoyang Bearing*.¹⁰ We continue to find coconut shell charcoal prices in the Philippine publication *Cocommunity* the best available information to value Jacobi's carbonized material input. We explain in detail below.

Also, the Court found there is a discrepancy between the draft and final results of the Third Remand Redetermination. In the draft results of redetermination released for comment we stated, "Malaysia offers the best available information to value Jacobi's FOPs, including carbonized materials,"¹¹ while in the final results of redetermination filed with the Court, we found that the *Cocommunity* price is based on a commercially significant quantity because it represents an average of actual market prices.¹² In the draft of the Third Remand Redetermination, Commerce did not fully analyze the significance of the 11 metric ton (MT) Malaysian import quantity under Harmonized Tariff Schedule (HTS) 4402.90.1000 "O/T

⁸ *Id.* at 11.

⁹ *Id.* at 15-16.

¹⁰ See *Fourth Remand Order* at 10.

¹¹ See Third Remand Redetermination at 12

¹² *Id.* at 16.

Bamboo: Of Coconut Shell.” In so doing, Commerce did not take into consideration this import quantity when determining the viability of the available sources for the carbonized material SV. However, it is important to note that the selection of the carbonized material SV was not Commerce’s determining factor in selecting Malaysia as the primary surrogate country.¹³

While it is Commerce’s long-standing preference to value inputs using SVs from a single, primary surrogate country,¹⁴ in certain circumstances, Commerce will use SV data from another country, preferably at the same level of economic development as the non-market economy country.¹⁵ In *Luoyang Bearing*, to account for insignificant import quantities, Commerce made adjustments to the Indian imports of steel bar and wooden cases. Specifically, Commerce excluded “imports from a country when the total amount imported from that country is small and the per-unit value of those imports is substantially different from the per-unit values of larger-quantity imports of that product from other countries.”¹⁶ After making these adjustments, Commerce was able to use the remaining import data to calculate an appropriate SV.

Here, such an exercise is not possible with respect to Malaysian imports under HTS 4402.90.1000. The Malaysian import data under HTS 4402.90.1000 indicate that Malaysia imported coconut shell carbonized materials from Indonesia, Myanmar, and Thailand.¹⁷ After excluding imports from countries with widely available export subsidies, (*i.e.*, in this instance Indonesia and Thailand),¹⁸ the remaining import quantity of 11 MT consists solely of imports

¹³ *Id.* at 10-11, “...there are Philippine SV data for nearly every one of Jacobi’s FOPs, except for anthracite coal, a significant input for production of the subject merchandise...”

¹⁴ See *Luoyang Bearing*, 358 F. Supp. 2d at 1299.

¹⁵ See, e.g., *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51604 (November 7, 2017) and accompanying IDM at Comment 4 (where Commerce used Brazilian SV data to value coal tar rather than the SV from the primary surrogate country).

¹⁶ See *Luoyang Bearing*, 358 F. Supp. 2d at 1299.

¹⁷ See Petitioners’ Letter, “Petitioners’ Submission of Malaysian Surrogate Values,” dated September 24, 2015 (Malaysian SVs) at Attachment Malaysia-1.

¹⁸ *Id.*

from Myanmar, which are far smaller than the import quantities from Indonesia and Thailand at 2,351 MT and 4,804 MT, respectively. Had Commerce attempted to conduct the exercise contemplated in *Luoyang Bearing* on this record, Commerce would have removed the imports from Myanmar from the Global Trade Atlas (GTA) data because the Myanmar average unit value (AUV) is 125 percent and 221 percent greater than the Thai and Indonesian AUVs, respectively.¹⁹ Put another way, Commerce could have excluded Myanmar from the Malaysian imports under HTS 4402.90.1000 because the “the total amount imported from that country is small and the per-unit value of those imports is substantially different from the per-unit values of larger-quantity imports of that product from other countries that exported to the surrogate country.”²⁰ However, having already removed the Indonesian and Thai values from the GTA data, removing the Myanmar value, the only remaining value in the dataset, in accordance with *Luoyang Bearing* would have resulted in a null set. Therefore, it is not possible to adjust Malaysian imports under HTS 4402.90.1000 to account for insignificant import quantities and still arrive at a commercially significant quantity viable for use as an SV, as we did in the results at issue in *Luoyang Bearing*.

In a previous opinion, this Court determined that Commerce had not provided an adequate explanation for its finding that the previously-relied upon Thai import quantity of 122 MT was commercially significant.²¹ Further, the Court has observed that Commerce “appears to regularly use import volume as a tie-breaking methodology when faced with equally comparable

¹⁹ *Id.*

²⁰ See *Luoyang Bearing*, 358 F. Supp. 2d at 1300.

²¹ See *Jacobi AR8 II*, 313 F. Supp. 3d at 1361-62 (“Commerce’s conclusory assertion regarding the significance of the imports into Thailand fails to apprise the {C}ourt why 122 metric tons is sufficiently significant to yield a representative price in light of respondents’ production experience.”).

SV sources.”²² For its final results in the Third Remand Redetermination, Commerce considered whether an acceptable alternative to the Malaysian data was available on the record, in light of the respondents’ production experience.

The Philippine trade publication *Cocommunity* was used in previous administrative reviews of the antidumping duty order of activated carbon from China to value carbonized materials because the prices found in *Cocommunity* are representative of a broad market average, publicly available and contemporaneous with the period of review (POR), tax and duty exclusive and specific to carbonized materials used in the production of the subject merchandise.²³ Moreover, while Commerce typically does not rely on export quantities when evaluating SVs, in this instance, and based on record evidence, we can use Philippine export quantities of coconut shell charcoal to substantiate the reliability of the coconut shell charcoal prices found in *Cocommunity*. Specifically, we determine that the coconut shell charcoal prices found in *Cocommunity* are, in part, reflective of the large export quantity and demand for coconut shell charcoal from the Philippines.²⁴ Additionally, while the 11 MT Malaysian import quantity from Myanmar could represent a single shipment of one full transport container, it is unclear from the record whether this amount was reflective of a single shipment or several shipments over the course of the POR. Further, record evidence indicates that the quantities of carbonized materials

²² See *Calgon Carbon Corp. v. United States*, Slip Op. 16–107, 2016 WL 6819732 (Nov. 18, 2016) (*Calgon II*) at 24-31 (citing *Peer Bearing Co.-Changshan v. United States*, Slip Op. 13-11, 2013 Ct. Intl. Trade LEXIS 119, at *12 (CIT August 30, 2013), vacated and remanded on other grounds, 766 F.3d 1396 (Fed. Cir. 2014); *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).

²³ See, e.g., *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014) and accompanying IDM at Comment 11.

²⁴ In the Third Remand Redetermination, we noted the Philippine export quantity of coconut shell charcoal was 60,990 MT from March to December 2014. The April 2015 edition of *Cocommunity*, at Table 2, reports Philippine exports of 69,347 MT between January and December 2014. See Jacobi’s Letter, “Jacobi’s Surrogate Value Comments,” dated September 24, 2015 (Jacobi’s SVs) at Exhibit SV-3.

consumed in the production of the subject merchandise far exceed a single container.²⁵ For other industries, small shipments of one or two MT may be considered a commercial quantity; however, with respect to the production of activated carbon, which requires more than one MT of carbonized materials to produce a single MT of the subject merchandise,²⁶ we determine that 11 MT is not representative of a commercial quantity of carbonized material and, therefore, do not consider it a viable data source from which to determine a SV for this input.

Finally, we note that the petitioners contend that “the Malaysian data is more representative of the type of carbonized material that Jacobi’s suppliers consume (*i.e.*, coconut shell charcoal).”²⁷ This argument is unconvincing. As an initial matter, Commerce has long held that coal-based carbonized materials and coconut shell carbonized materials share similar properties.²⁸ The Malaysian import data, HTS 4402.90.1000 “O/T Bamboo: Of Coconut Shell,” is a sub-heading of Malaysian HTS 4402.90 “Wood Charcoal (including Shell of Nut Charcoal), Excluding That of Bamboo,”²⁹ which makes clear that HTS 4402.90.1000 “O/T Bamboo: Of Coconut Shell” is charcoal from coconut shells. The Philippine publication *Cocommunity* identifies the input as “coconut shell charcoal.”³⁰ The descriptions of the SV in the Malaysian import data and in the *Cocommunity* data both identify the input as being of coconut shell charcoal, which, as Commerce has already established, shares similar characteristics as coal-based charcoal. Accordingly, because there is no information on the record of this administrative

²⁵ See Jacobi’s Letter, “Jacobi’s Response to the Department’s Supplemental Section D Response for Datong Forward Activated Carbon Co., Ltd.,” dated November 23, 2015, at Exhibit DTFW SD-4.

²⁶ *Id.*; see also Datong Juqiang Activated Carbon Co., Ltd.’s (DJAC) Letter, “DJAC Sections C&D Response,” dated August 17, 2015, at Exhibit D-6.

²⁷ See *Fourth Remand Order* at 9.

²⁸ See *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People’s Republic of China*, 72 FR 9508, 9508 (March 2, 2007) and accompanying IDM at Comment 16; see also *Calgon Carbon Corp. v. United States*, consol. court no. 09-00524, slip op. 11-21, “*Final Results of Redetermination Pursuant to Court Remand*,” dated July 25, 2011, at 10-11, available at <http://enforcement.trade.gov/remands/11-21.pdf>.

²⁹ See Malaysian SVs at Attachment Malaysia-1.

³⁰ See Jacobi’s SVs at Exhibit SV-3.

review which demonstrates that imports under Malaysian HTS 4402.90.1000 “O/T Bamboo: Of Coconut Shell” are more similar to coal-based carbonized materials or that the coconut shell charcoal described in *Cocommunity* does not share similar characteristics as the coal-based carbonized materials used by Jacobi’s suppliers, we determine that the descriptions provided, “O/T Bamboo: Of Coconut Shell” and coconut shell charcoal, are equally representative of the input used by Jacobi’s suppliers.

Therefore, for these final results of redetermination, we have further clarified our selection of the Philippine publication *Cocommunity* as the best available information with which to value Jacobi’s carbonized material input.

FINAL RESULTS OF REDETERMINATION

Commerce released the Draft Remand Results to parties for comment on February 12, 2020.³¹ On February 19, 2020, Jacobi timely submitted comments supporting the Draft Remand Results.³² No other parties submitted comments on the Draft Remand Results.

Consistent with the *Fourth Remand Order*, we have clarified our reasoning with respect to our selection of the Philippine *Cocommunity* data to value carbonized materials. Based on the foregoing explanations, we have made no changes to the margin calculations for the mandatory

³¹ See Draft Results of Redetermination Pursuant to Court Remand, *Jacobi Carbons AB et al. v. United States*, Consol Court No. 16-00185, dated February 12, 2020 (Draft Remand Results).

³² See Jacobi’s Letter, “Jacobi’s Comment on the Commerce Department’s Draft 4th Remand Redetermination,” February 19, 2020.

respondent, Jacobi,³³ from the *Third Remand Redetermination*, and thus, we have made no changes to the margins for the non-individually examined respondents that qualified for a separate rate.

3/10/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

³³ In the third administrative review, Commerce found that Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) are a single entity. Because there were no relevant changes to the facts supporting that decision since it 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); *see also 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); *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).