

*Calgon Carbon Corporation et al. v. United States*  
Consol. Court No. 18-00232, Slip Op. 20-187 (CIT December 21, 2020)

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**  
**Certain Activated Carbon from the People’s Republic of China**

**I. 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) in *Calgon Carbon Corporation et al. v. United States*, Consol. Court No. 18-00232 (CIT December 21, 2020) (*Second Remand Order*). These second final remand results concern *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 53214 (October 22, 2018) (*AR10 Final Results*), and the accompanying Issues and Decision Memorandum (IDM), and Commerce’s first remand redetermination (First Remand Redetermination), ECF No. 75-1,<sup>1</sup> issued in accordance with the CIT’s prior decision.<sup>2</sup>

In the *Second Remand Order*, the CIT directed Commerce to reconsider Commerce’s determination to continue to include the imports from France in the Thai surrogate value (SV) for carbonized material.<sup>3</sup> The CIT stated that evidence in this current review (*i.e.*, AR10)

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<sup>1</sup> See “Final Results of Redetermination Pursuant to Court Remand,” dated August 4, 2020, available at <https://enforcement.trade.gov/remands/20-65.pdf>; see also “Final Results of Redetermination Pursuant to Court Remand,” dated August 4, 2020 (Access barcode 4010933-01).

<sup>2</sup> See *Calgon Carbon Corp. v. United States*, 443 F. Supp. 3d 1334 (2020) (*Calgon AR10 I*).

<sup>3</sup> See *Second Remand Order* at 5.

combined with Commerce's finding in the two immediately preceding reviews (*i.e.*, AR8<sup>4</sup> and AR9)<sup>5</sup> create a reasonable inference that all Thai imports of carbonized material from France were wood-based charcoal, a material dissimilar from the input used by the mandatory respondents in the production of the subject merchandise, and thus Commerce's decision to use Thai data inclusive of imports from France was not supported by substantial evidence.<sup>6</sup>

As set forth in detail below, pursuant to the CIT's *Second Remand Order*, we have, under respectful protest,<sup>7</sup> removed the data pertaining to the imports from France in the Thai SV for carbonized material. Consequently, for the purpose of these final results of redetermination on remand, Commerce has made certain changes to the mandatory respondents' margin calculations,<sup>8</sup> and consequently, to the rate of Ningxia Guanhua Cherishmet (GHC).<sup>9</sup>

## II. REMANDED ISSUE

### **Inclusion of Imports from France in the Thai Import Data for Carbonized Material Surrogate Value**

#### **Background**

In *AR10 Final Results*, Commerce valued carbonized material using Thai import data under harmonized schedule (HS) subheading 4402.90.1000, with an average unit value (AUV) of 32.22 Baht/kilogram (kg) (\$916.92 U.S. dollars (USD)/metric ton (MT)). The Thai import data under HS subheading 4402.90.1000 include, among other countries, imports from France

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<sup>4</sup> See *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 62088 (September 8, 2016) (AR8), and accompanying IDM.

<sup>5</sup> See *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 51607 (November 7, 2017) (AR9), and accompanying IDM.

<sup>6</sup> See *Second Remand Order* at 12.

<sup>7</sup> See *Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003) (*Viraj*).

<sup>8</sup> The mandatory respondents in this administrative review are: Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) and Carbon Activated Tianjin Co., Ltd. (Carbon Activated).

<sup>9</sup> GHC was not selected for individual examination during the review, but qualified for a separate rate, and is participating in the litigation.

(\$1,270.37 USD/MT) and Japan (\$25,923.71 USD/MT).<sup>10</sup> In *Calgon AR10 I*, the CIT held that in the *AR10 Final Results*, Commerce had not sufficiently explained its reasoning for including the imports from France and Japan in the Thai SV for carbonized material and remanded the issue for further explanation and reconsideration.<sup>11</sup>

Based on the CIT's order, in the First Remand Redetermination, Commerce removed the imports from Japan from the Thai SV for carbonized material.<sup>12</sup> However, regarding the imports from France, Commerce explained that while the evidence placed on the record by the mandatory respondents indicates that some of the exports from France to Thailand during the period of review (POR) were wood-based charcoal, the evidence fails to fully account for the entire quantity of those Thai imports under HS 4402.90.1000 during the POR because it only covers a part of the POR (April 2016 – July 2016).<sup>13</sup> Therefore, Commerce explained that, because it is unable to conclude, based on the record evidence, that the entirety of the Thai imports of carbonized material from France under HS subheading 4402.90.1000 during the POR were not the kind of carbonized material used in the production of subject merchandise, Commerce cannot discard the data.<sup>14</sup>

In the *Second Remand Order*, the CIT sustained Commerce's removal of the Thai imports from Japan from the Thai carbonized material SV, but held that evidence in this current review (*i.e.*, AR10) combined with Commerce's findings in *AR8* and *AR9* create a reasonable

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<sup>10</sup> See Memorandum, "Tenth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results," dated May 3, 2018, and accompanying Excel SV sheet (Tab: "Calculated\_SV\_Data") at Attachment 1 (SV for carbonized material using Thai import data under HS subheading 4402.90.1000), unchanged in *AR10 Final Results*. We note that the quantities and values comprising the POR Thai import data under HS subheading 4402.90.1000 are as follows: France: 141,130 kg (6,300,491 Baht); Laos: 129,424 kg (2,403,256 Baht); Japan: 16 kg (14,525 Baht); Germany: 0 kg (202 Baht).

<sup>11</sup> See *Calgon AR10 I* at 1349-50.

<sup>12</sup> See First Remand Redetermination at 22.

<sup>13</sup> *Id.* at 5 and 21-22.

<sup>14</sup> *Id.* at 20-21.

inference that all imports of carbonized material from France into Thailand during the POR of the instant review (*i.e.*, AR10) were wood-based charcoal, a type of charcoal that is not specific to the input used by the mandatory respondents in the production of activated carbon.<sup>15</sup> The CIT further held that Commerce failed to cite any evidence rebutting that inference, and thus failed to provide a reasonable explanation for its decision to use the Thai data inclusive of the imports from France.<sup>16</sup> The CIT also held that the record does not provide any affirmative evidence that anything had changed with respect to the Thai imports from France to suggest that it was reasonable for Commerce to find that, after more than two years of shipping only wood-based charcoal to Thailand, France was suddenly shipping anything other than wood-based charcoal.<sup>17</sup> Therefore, the CIT held that Commerce's inclusion of the imports from France is not supported by substantial evidence, and thus, unlawful.<sup>18</sup> Accordingly, the issue was remanded to Commerce for further explanation and reconsideration.<sup>19</sup>

## **Analysis**

In light of the CIT's *Second Remand Order*, Commerce has reconsidered its determination to continue to include imports from France in the Thai GTA import data under HS subheading 4402.90.1000 used to value carbonized material. Commerce respectfully disagrees with the CIT's holding in the *Second Remand Order* regarding Commerce's inclusion of the French import data in the Thai SV for carbonized material, and believes that the rationale laid out in the First Remand Redetermination is sufficient for finding that there is an insufficient basis, given the evidence on the current record, for Commerce to reasonably conclude that the

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<sup>15</sup> See *Second Remand Order* at 11-12.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 12-13.

French import data are distortive. However, in light of the CIT's *Second Remand Order*, and based on the following analysis, under respectful protest,<sup>20</sup> Commerce has determined to exclude French imports from the Thai GTA import data under HS subheading 4402.90.1000 used to value carbonized material. We explain in detail below.

Commerce has a practice of not disaggregating the data to avoid “cherry-picked import data in a { } {surrogate value} calculation.”<sup>21</sup> Further, it is a long-standing Commerce practice that a party arguing that data are aberrational must provide evidence to support its argument.<sup>22</sup> When there is insufficient evidence to find certain data aberrational, Commerce does not discard the data.<sup>23</sup> Also, Commerce evaluates import data using other commercial data on the record, provided: (1) there is direct and substantial evidence reflecting the imports from a particular country in the commercial data; (2) a significant portion of the overall imports under the relevant HS category is represented by the commercial data; and (3) distortions of the AUV in question should be able to be demonstrated by the commercial data.<sup>24</sup> Also, each administrative review is a separate exercise of Commerce's authority and allows for different conclusions based on different facts on the record.<sup>25</sup>

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<sup>20</sup> See *Viraj*, 343 F.3d at 1376.

<sup>21</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China*, 82 FR 29033 (June 27, 2017) (*Crystalline Silicon*), and accompanying IDM at 54.

<sup>22</sup> See, e.g., *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) (*Carbazole Violet Pigment*), and accompanying IDM at Comment 4; *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005), and accompanying IDM at Comment 2 (“We reviewed the allegations regarding surrogate values as presented by the interested parties and decided whether the parties had provided sufficient evidence to merit further consideration.”); and *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 73 FR 14216 (March 17, 2008), and accompanying IDM at Comment 6 (*Polyethylene Retail Carrier Bags*) (“{w}e find that the burden is on the respondents to demonstrate that the Indian import statistics are in fact aberrational”).

<sup>23</sup> See *Carbazole Violet Pigment* IDM at Comment 6.

<sup>24</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) (*TRBs from China*), and accompanying IDM at Comment 2.

<sup>25</sup> See *Jiaying Brother Faster Co. v. United States*, 822 F.3d 1289, 1299 (April 21, 2016) (*Jiaying Brother*); see also *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1387 (September 10, 2014).

The evidence placed on the record by the mandatory respondents contains sales summaries from the French affiliate of Jacobi Carbons, AB, a participant in previous administrative reviews, that cover the period of December 2015 to November 2016; an email from the French affiliate of Jacobi Carbons, AB, stating that the sales summaries represent the quantities of wood charcoal that it exported from France to Thailand; data on Thai imports from France under HS code 4402.9010 up to August 2016; and data on French exports to Thailand under HS 4402.9000 (*i.e.*, unspecified charcoal) up to July 2016.<sup>26</sup> We note that this is the public version of the same evidence provided by the mandatory respondents in the immediately preceding segment (*AR9*) in business proprietary version. While these data indicate that certain of the exports from France to Thailand during the POR were wood-based charcoal, the data fail to fully account for the entire quantity of the Thai imports from France under HS 4402.90.1000 during the POR because the French sales data placed on the record by the mandatory respondents only cover a part of the POR (April 2016-July 2016). Therefore, as Commerce stated in the First Remand Redetermination, Commerce is unable to conclude, based on the record evidence, that the entirety of the French imports into Thailand under HS subheading 4402.90.1000 during the POR were wood-based charcoal.<sup>27</sup> As stated above, when there is insufficient evidence to find certain data aberrational, Commerce does not discard the data.<sup>28</sup>

However, in *Second Remand Order*, the CIT held that the evidence in this review, combined with Commerce's findings in *AR8* and *AR9*, creates a reasonable inference that all

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<sup>26</sup> See First Surrogate Value Comments by Datong Juqiang and Carbon Activated, dated September 15, 2017 (Respondents' SV Comments) at Exhibit 4A.

<sup>27</sup> See First Remand Redetermination at 21.

<sup>28</sup> See *Carbazole Violet Pigment* IDM at Comment 6.

Thai imports of carbonized material from France were wood-based charcoal.<sup>29</sup> The CIT further held that Commerce failed to cite any evidence rebutting that inference.<sup>30</sup>

As stated above, each administrative review is a separate exercise of Commerce's authority and allows for different conclusions based on different facts on the record.<sup>31</sup> In this review, the mandatory respondents put on the record the same evidence that they put on the record for *AR9*. In *AR9*, Commerce was able to find based on this evidence, that all Thai imports from France during the POR in *AR9* consisted of wood-based charcoal, as the evidence accounted for the entirety of the *AR9* POR. However, as this same evidence does not cover the entirety of the POR for the instant review (*i.e.*, from April 1, 2016 to March 31, 2017), the evidence fails to support the mandatory respondents' contention that the entirety of the Thai imports from France during this POR are wood-based charcoal.<sup>32</sup>

As we stated in our decision in the First Remand Redetermination, requiring Commerce to consider record evidence that does not account for the entirety of imports from particular countries within an SV for the elimination of such imports, or even for the elimination of a part of such imports, would open the doors for parties to challenge the viability of underlying import data, on not only a country-specific basis, but also, for example, on a month-by-month or shipment-by-shipment basis, based only on partial evidence, which would introduce a tremendous additional administrative burden on Commerce and would render the SV selection process un-administrable.<sup>33</sup> Commerce cannot affirmatively question the accuracy of each underlying value that contributes to an average SV for a particular country, and has required that

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<sup>29</sup> See *Second Remand Order* at 12.

<sup>30</sup> *Id.*

<sup>31</sup> See *Jiaying Brother* at 1299.

<sup>32</sup> See Respondents' SV Comments at Exhibit 4A.

<sup>33</sup> See *First Remand Redetermination* at 21.

parties provide complete evidence, covering the entire period under consideration, so that it can focus its resources on addressing situations where the evidence is compelling and complete.<sup>34</sup> For this reason, the burden must be on the party arguing that data are unreliable to demonstrate that all of the data under consideration are unreliable.<sup>35</sup>

We note that we have previously considered commercial data that cover a part of the POR to find distortion of an SV. In *ARI Litigation*, citing *Globe Metallurgical*, the CIT held that Commerce must consider whether the commercial data on the record covers a definite and substantial percentage of overall imports in order to consider an SV distorted.<sup>36</sup> In response to the CIT's holding in *ARI Litigation*, Commerce found that half (*i.e.*, 50 percent) of the imports under the Indian tariff heading at issue did not relate to the merchandise that was identified under that tariff heading, and thus this finding was sufficient to impeach the SV.<sup>37</sup> However, as we noted in the First Remand Redetermination, the CIT's order in that case applied to the evaluation of whether an SV generally can be used, not to the consideration of reliability of import data reported from particular countries within an SV.<sup>38</sup> The dispute in the *ARI Litigation* was whether the use of a certain tariff heading was appropriate, and the discussion was on the sufficiency of record evidence that covers 50 percent of imports under an Indian tariff heading, the SV the respondents were attempting to impeach. Here, the CIT requests that Commerce consider record evidence which does not account for the entirety of Thai imports from France

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.* (citing *Polyethylene Retail Carrier Bags* IDM at Comment 6).

<sup>36</sup> See *Calgon Carbon Corp. v. United States*, 35 C.I.T. 235 (2011) (*ARI Litigation*) at 246 (citing *Globe Metallurgical, Inc. v. United States*, 33 CIT 435 (May 5, 2009) (*Globe Metallurgical*)).

<sup>37</sup> See "Final Results of Redetermination Pursuant to Court Remand," dated July 25, 2011, available at: <https://enforcement.trade.gov/remands/11-21.pdf>.

<sup>38</sup> *Id.* at 20.

within the Thai carbonized material SV, in order to eliminate such imports, which is the kind of disaggregation of data and cherry-picking within data that Commerce tries to avoid.<sup>39</sup>

Because the parties failed to provide sufficient evidence demonstrating that the entirety of the French import data should not be included in the calculation of the Thai SV for carbonized material, consistent with Commerce's practice, we continue to find that there is an insufficient basis for Commerce to reasonably conclude that the French import data within the Thai SV for carbonized material should be excluded. However, because the CIT concluded that "evidence in this current review combined with Commerce's finding in *AR8* and *AR9* create a reasonable inference that all French imports into Thailand during the POR for this instant review (*i.e.*, *AR10*) were wood-based charcoal, the type of coal not specific to the input used by the mandatory respondents{, }"<sup>40</sup> we have, under respectful protest, excluded the French imports from the Thai SV for carbonized material.

This determination under protest is limited to the circumstances in the *AR10 Final Results*. The evidence put on the record for *AR10* is the same evidence put on the record for *AR9*, where we found that the entirety of carbonized material imports from France into Thailand during the POR in *AR9* consisted entirely of wood-based charcoal.<sup>41</sup> Further, in *AR8* we found that the entirety of carbonized material imports from France into Thailand during the POR consisted of wood-based charcoal.<sup>42</sup> Because of these specific circumstances limited to the facts of this case, the CIT concluded it is possible to infer that the imports from France were wood-based charcoal.

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<sup>39</sup> See *Crystalline Silicon IDM* at 54.

<sup>40</sup> See *Second Remand Order* at 11-12.

<sup>41</sup> See *AR9 IDM* at Comment 5.

<sup>42</sup> See *AR8 IDM* at Comment 5.

Therefore, for this final remand redetermination, in accordance with the CIT's *Second Remand Order*, and under respectful protest,<sup>43</sup> we have removed the French import quantity and value from the Thai import data under HS subheading 4402.90.1000 in our computation of the SV for carbonized material.

### **III. SUMMARY AND ANALYSIS OF RESPONDENTS' COMMENTS ON DRAFT REMAND RESULTS**

Commerce released the Draft Remand Results to parties for comment on January 26, 2021.<sup>44</sup> Carbon Activated, Datong Juqiang, and GHC (collectively, the respondents) filed comments on the Draft Remand Results on February 1, 2021.<sup>45</sup> No other parties filed comments on the Draft Remand Results. As explained below, we made certain corrections for minor errors in Datong Juqiang's margin calculation memorandum, and continue to reach the same conclusions that we reached in the Draft Remand Results. We address each of the respondents' comments and provide our analysis in turn.

#### **1. Inclusion of Imports from France in the Thai Import Data for Carbonized Material Surrogate Value**

##### *Respondents' Comments*<sup>46</sup>

- The respondents support Commerce's preliminary exclusion of imports from France from the Thai import data for the carbonized material SV, and request that Commerce finalize this decision in the final remand.<sup>47</sup>
- However, the respondents do not support Commerce's intention to limit this determination to

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<sup>43</sup> See *Viraj*, 343 F.3d at 1376.

<sup>44</sup> See *Draft Results of Redetermination Pursuant to Court Remand, Calgon Carbon Corporation et al. v. United States*, Consol. Court No. 18-00232, dated January 26, 2021 (Draft Remand Results).

<sup>45</sup> See Respondents' Letter, "Respondents' Comments on Draft Remand Redetermination Pursuant to Court Order for the Tenth Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China," dated February 1, 2021 (Respondents' Comments).

<sup>46</sup> See Respondents' Comments at 2.

<sup>47</sup> *Id.*

the unique set of facts underlying this proceeding, as the well-established law unambiguously compels a conclusion to exclude the entire French import quantity from the Thai SV for carbonized material.<sup>48</sup>

- To support its intention to limit this determination to the unique set of facts underlying this proceeding, Commerce first proffers the rationale that “Commerce has a practice of not disaggregating the data to avoid ‘cherry-picked import data in a { }... {surrogate value} calculation.”<sup>49</sup> To support this proposition, Commerce points to *Crystalline Silicon*,<sup>50</sup> where Commerce declined to exclude the allegedly anomalous U.S. data reported in the Thai SV.
- In *Crystalline Silicon*, Commerce articulated a preference for using the entire import dataset in order to fully adhere to the criterion of the broadest market average. However, such adherence to a single criterion at the expense of the overall reliability of the underlying data directly contradicts the statutory mandate to determine an SV based on the “best available information,” which compels the exclusion of potentially anomalous, distorted, and unreliable data.<sup>51</sup>
- Commerce’s claimed prohibition against “cherry picking” country-specific data reported in a surrogate country’s import database is belied by the agency’s well-established and longstanding “aberrational outlier policy,” through which Commerce eliminates any aberrational or outlier data in order to cure an imperfect import dataset, and thereafter uses the remaining data to obtain a more accurate SV.<sup>52</sup> This Commerce policy has been affirmed

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 4 (citing Draft Remand Results at 5).

<sup>50</sup> *Id.* at 4-6 (citing Draft Remand Results at 5 and n.21 and *Crystalline Silicon* IDM at 54).

<sup>51</sup> *Id.* at 5.

<sup>52</sup> *Id.* at 6-7 (citing *Notice of Final Determinations of Sales at Less Than Fair Value: Steel Wire Rope from India and the People’s Republic of China*, 66 FR 12759 (February 28, 2001) (*Steel Wire Rope*); *Chlorinated Isocyanurates from the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 24502 (May 10, 2005) (*Chlorinated Isocyanurates*), and accompanying IDM).

in various CIT and U.S. Court of Appeals for the Federal Circuit (CAFC) precedents.<sup>53</sup>

- Extensive agency and judicial precedent confirm Commerce’s well-established practice to exclude aberrational price data from a dataset to obtain a usable SV. Contrary to the position advanced in the Draft Remand Results, Commerce does not follow an “all or nothing” policy, but rather, Commerce endeavors to salvage an otherwise usable dataset by purging the portion that is demonstrably aberrational or unreliable.<sup>54</sup>
- Second, Commerce cites to *Carbazole Violet Pigment* to establish a general proposition that “when there is insufficient evidence to find certain data aberrational, Commerce does not discard the data.”<sup>55</sup> However, in *Carbazole Violet Pigment*, of the three factors considered by Commerce to evaluate the aberrancy of data (*i.e.*, two other benchmark data and overall Indian World Trade Atlas (WTA) import volume), none of them constituted direct evidence demonstrating the distortive or aberrant character of the underlying WTA Indian import data.<sup>56</sup> By contrast, the record in this case contains direct evidence establishing that the French imports during April 2016 to August 2016 were wood-based charcoal to be used in animal feed, the kind not used in the production of the subject merchandise.<sup>57</sup>
- Third, Commerce cites to a three-part test from *TRBs from China* to explain its evidentiary rationale.<sup>58</sup> However, in *TRBs from China*, Commerce rejected as a corroboration tool the

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<sup>53</sup> *Id.* at 5-7 (citing *SolarWorld Americas, Inc. v. United States*, 962 F.3d 1351 (June 24, 2020); *see also Guangdong Chems. Imp. & Exp. Corp. v. United States*, 460 F. Supp. 2d 1365, 1367-73 (CIT 2006) (*Guangdong Chems*); *see also Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 28 CIT 1185 (July 19, 2004) (*Hebei Metals*)).

<sup>54</sup> *Id.* at 8.

<sup>55</sup> *Id.* (citing Draft Remand Results at 5 and *Carbazole Violet Pigment*).

<sup>56</sup> *Id.* (citing *Carbazole Violet Pigment* IDM at Comment 4).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 9-10 (citing Draft Remand Results at 5 (“Commerce evaluates import data using other “commercial data on the record, provided: (1) there is direct and substantial evidence reflecting the imports from a particular country in the commercial data; (2) a significant portion of the overall imports under the relevant HTS category is represented by the commercial data; and (3) distortions of the AUV in question should be able to be demonstrated by the commercial data.”); and *TRBs from China*, and accompanying IDM at Comment 2).

use of India Infodrive data pertaining to the imports reported in the WTA data, because the India Infodrive data for specific countries were discrepant with regard to the value, quantity, and AUV reported in the WTA data. On the other hand, in the record for *AR10 Final Results*, there are no such discrepancies in the corroborative French export data, in that Commerce has already established a direct quantitative correlation between French exports to Thailand under HS 4402.9000 and Thai imports from France under HS 4401.9010, during April-August 2016.<sup>59</sup> Commerce's findings confirm the non-scope and non-comparable nature of goods imported from France under Thai HS 4401.90.1000, and explain the reason for a 140% higher AUV distortion in the French import data as compared to the AUV of remaining imports from the other countries (\$1270.37/MT as compared to the remaining imports valued at \$528.47/MT). Therefore, *TRBs from China* is distinguishable and does not support Commerce's assertion that there is an insufficient basis for Commerce to reasonably conclude that the French import data within the Thai SV for carbonized material should be excluded.<sup>60</sup>

- Further, Commerce should not hedge its remand determination in AR10 to any other considerations such as historical evidence from AR8 or AR9.<sup>61</sup> In *ARI Litigation*, the CIT opined, "when data is placed on the record to impeach as opposed to corroborate Commerce's determination, a lower threshold may exist."<sup>62</sup> Therefore, this established judicial precedent informs that a substantial proportion (*i.e.*, more than 50 percent of total import quantity) of detracting evidence from within AR10 itself is sufficient to undermine the reliability of the entire quantity of the Thai imports from France in AR10. Because the

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<sup>59</sup> *Id.* (citing Draft Remand Results at 6).

<sup>60</sup> *Id.* at 11.

<sup>61</sup> *Id.* at 13.

<sup>62</sup> *Id.* at 16-17 (citing *ARI Litigation*).

French export data were placed on the record to impeach, it cannot be rejected simply because it does not account for the entirety of the French imports.<sup>63</sup>

- In consideration of the CIT's guidelines in the above cases, Commerce is not allowed to burden the respondents to unambiguously establish that the remaining 48 percent of the data is distorted as well.<sup>64</sup> Therefore, in the final remand redetermination, Commerce should modify its findings in the Draft Remand Redetermination and exclude the entirety of French import data within the Thai SV based on the evidence solely from AR10.

**Commerce's Position:** Commerce disagrees with the respondents' contention that the stand-alone AR10 evidence is sufficient to undermine the reliability of the entire French import data within the Thai SV.

Commerce's practice, when selecting the best available information for valuing factors of production (FOPs), in accordance with section 773(c)(1) of the Tariff Act of 1930, as amended, (the Act), is to select, to the extent practicable, SVs which are input-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax – and duty-exclusive.<sup>65</sup> Further, 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 and available record evidence.<sup>66</sup>

The respondents contend that Commerce's preference for using the entire import dataset in order to fully adhere to the criterion of the broadest market average contradicts the statutory mandate to determine an SV based on the "best available information," which compels the

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<sup>63</sup> *Id.* at 11.

<sup>64</sup> *Id.* at 12.

<sup>65</sup> 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.

<sup>66</sup> See, e.g., *Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying IDM at Comment 1.

exclusion of potentially anomalous, distorted, and unreliable data.<sup>67</sup> The respondents then cite to various CAFC, CIT, and Commerce decisions, and assert that these decisions refute Commerce’s preference to not disaggregate the data to avoid “cherry-picked import data in an SV calculation.”<sup>68</sup> However, in the cases cited by the respondents, the dispute regarding the subset of data within the SV was on the numerical aberrance of the value of the subset of data. Therefore, elimination of aberrational values has been held to be a “reasonable means for compensating for flaws in a data set.”<sup>69</sup> Notably, when the elimination of import data reported from certain countries into the primary surrogate country was considered to cure aberrancy of an SV, the import data that was removed was several times higher than the import data for the other countries whose products were imported into the primary surrogate country.<sup>70</sup>

In contrast, in this review, the dispute regarding the subset of data within the SV is not numerical aberrance of the value of the French imports, but “input-specificity”—i.e., whether all the imports from France consist of wood-based charcoal. Therefore, the respondents’ reliance on these cases to support their assertions that Commerce has previously eliminated data in order to cure an imperfect import dataset is inapposite.

In addition, contrary to the respondents’ assertion that *TRBs from China* does not support Commerce’s view that there is an insufficient basis to reasonably conclude the French import data within the Thai SV for carbonized material should be excluded, Commerce in *TRBs from*

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<sup>67</sup> See Respondents’ Comments at 5-7.

<sup>68</sup> *Id.*

<sup>69</sup> See *Guangdong Chems* at 1370; see also *Hebei Metals*; see also *Steel Wire Rope IDM* at Comment 1.

<sup>70</sup> See *Chlorinated Isocyanurates IDM* at 49-50 (“the price of Belgian imports into India was 10 times higher than the import data for the three other countries whose products were imported into India.”); see also *Hebei Metals* at 1199 (“The price for Swedish steel tube imports, 1,134% greater than the average price from all other countries and representing a fraction of the quantity of total imports, increased the overall average value by 24%.”); *Steel Wire Rope IDM* at Comment 1 (“the unit values of Malaysian imports in the Indian Import Statistics for the period in question are aberrational, as they are many times higher than the import values from other countries,”); and *Guangdong Chems* at 1370, n.5 (“Commerce excluded imports from the United States, the price of which was ten-times greater than the price of imports from other countries during the POR.”).

*China* stated that it will consider Infodrive data (*i.e.*, commercial data put on the record by the respondent in *TRBs from China*) to further evaluate import data provided, “a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive data.”<sup>71</sup>

In the instant case, a significant portion of the Thai SV for carbonized material is not represented by the evidence presented by the respondents.<sup>72</sup>

Further, citing the CIT decision in *ARI Litigation*, the respondents argue that record evidence that covers less than a hundred percent of total imports from France under Thai HS 4402.90.1000 may be enough to impeach the whole import quantity from France.<sup>73</sup> However, in contrast to the situation in *ARI Litigation* where the CIT decided a lower threshold may exist to impeach an overall SV, the respondents are not seeking to impeach the entire Thai SV, but only to impeach a subset of data within it. Further, unlike in *ARI Litigation* where the CIT found that evidence covering 52 percent of the overall quantity of an SV was sufficient to impeach the entire SV,<sup>74</sup> the evidence in this case covers only 42.8 percent of the French import quantity within the Thai SV.<sup>75</sup> Therefore, the respondents’ reliance on the CIT decision in *ARI Litigation* to argue that record evidence that covers less than a hundred percent of a subset of data within the entire Thai SV is enough to impeach the entirety of the subset data, is unavailing.

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<sup>71</sup> See *TRBs from China* IDM at Comment 2

<sup>72</sup> See Respondents’ SV Comments at Exhibit 4A; see also Memorandum, “Draft Second Remand Redetermination Results in the Tenth Administrative Review of Certain Activated Carbon from the People’s Republic of China: Surrogate Values for the Draft Remand Redetermination,” dated January 25, 2021 at Attachment 1 Excel worksheet Tab, “Remand Carbmatt.”

<sup>73</sup> See Respondents’ Comments at 11.

<sup>74</sup> See *ARI Litigation* at 246.

<sup>75</sup> Commerce notes that with evidence placed on the record by the mandatory respondents we can only determine that 60,480 kg of French imports into Thailand during the POR (out of a total of 141,130 kg of imports from France) were wood-based charcoal. (See Respondents’ SV Comments at Exhibit 4A on pdf page 53 (Export quantities on the 2016 sales summary from the French exporter of wood-based charcoal match the data on French exports to Thailand under HTS 4402.9000 (*i.e.*, unspecified charcoal) which, in turn, match the Thai import quantities from France under HTS code 4402.9010 up to August 2016.)).

By requiring Commerce to consider record evidence that does not account for the entire import quantity from specific countries within an SV in order to eliminate such imports, the CIT ruling will open the door for parties to challenge the viability of the underlying import data based only on partial evidence, which would introduce a tremendous additional administrative burden on Commerce and would render the SV selection process un-administrable. For this reason, the burden must be on the party arguing that data are unreliable to demonstrate that all of the data under consideration are unreliable,<sup>76</sup> and we find that the respondents have not fulfilled their obligation to meet the burden because they have not provided data on French imports into Thailand covering the entirety of the POR.

However, as noted above, the evidence put on the record for AR10 is the same evidence put on the record for AR9, where we found that the entirety of carbonized material imports from France into Thailand during the POR in AR9 consisted of wood-based charcoal.<sup>77</sup> Further, in AR8 we found that the entirety of carbonized material imports from France into Thailand during the POR consisted of wood-based charcoal.<sup>78</sup> Because of these specific circumstances limited to the facts of this case, and despite the fact that the evidence in AR10 fails to fully account for the entire quantity of the Thai imports from France under HS 4402.90.1000 during the POR, the CIT concluded that it is possible to infer that the entirety of imports from France during the POR in AR10 was wood-based charcoal. Therefore, for this final remand redetermination, although we find that there is insufficient record evidence to conclude that the entirety of the French import data within the Thai SV for carbonized material is not input-specific, in accordance with the CIT's *Second Remand Order*, and under respectful protest,<sup>79</sup> we have removed the French import

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<sup>76</sup> See *Polyethylene Retail Carrier Bags* IDM at Comment 6.

<sup>77</sup> See Respondents' SV Comments at Exhibit 4A; see also AR9 IDM at Comment 5.

<sup>78</sup> See AR8 IDM at Comment 5.

<sup>79</sup> See *Viraj*, 343 F.3d at 1376.

quantity and value from the Thai import data under HS subheading 4402.90.1000 in our computation of the SV for carbonized material. As noted above, this determination under protest is limited to the circumstances in the *AR10 Final Results* because of its specific factual circumstances.

## **2. Correction of Minor Errors in Datong Juqiang's Margin Calculation**

### *Respondents' Comments*<sup>80</sup>

- In Datong Juqiang's Calculation Memorandum, Commerce incorrectly stated the total amount of dumping using the wrong comparison method (*i.e.*, Average-to-Transaction), where it should have stated the total amount of dumping using the Average-to-Average (A-to-A) comparison method, as zero percent of Datong Juqiang's U.S. sales pass the Cohen's *d* test.<sup>81</sup> Therefore, Commerce should correct the total amount of dumping and the comparison method identified in Datong Juqiang's Calculation Memorandum for the final remand redetermination.

**Commerce's Position:** Commerce agrees with the respondents that in Datong Juqiang's Calculation Memorandum, Commerce identified the total amount of dumping using the wrong comparison method and stated the incorrect comparison method. Therefore, for the final remand redetermination, Commerce has corrected these minor errors and clarifies that Datong Juqiang's total amount of dumping during the POR is zero dollars.<sup>82</sup>

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<sup>80</sup> See Respondents' Comments at 13.

<sup>81</sup> See Memorandum, "Draft Second Remand Redetermination Results Calculation Memorandum for Datong Juqiang Activated Carbon Co., Ltd. in the Tenth Administrative Review of Certain Activated Carbon from the People's Republic of China," dated January 25, 2021 (Datong Juqiang's Calculation Memorandum).

<sup>82</sup> See Memorandum, "Final Second Remand Redetermination Results Calculation Memorandum for Datong Juqiang Activated Carbon Co., Ltd. in the Tenth Administrative Review of Certain Activated Carbon from the People's Republic of China," dated concurrently with this final remand redetermination.

#### IV. RESULTS OF FINAL REDETERMINATION

Consistent with the *Second Remand Order*, we have, under respectful protest, reconsidered our inclusion of French imports in the Thai SV for carbonized material and have addressed this issue in this final remand redetermination. Based on the foregoing explanations, we excluded imports from France from the Thai import data used to calculate the SV for carbonized material. Accordingly, we revised the margin calculations for the mandatory respondents, Carbon Activated and Datong Juqiang, from the First Remand Redetermination, and calculated a rate that is zero percent for each respondent. Thus, we also revised the separate rate margin for GHC, the non-individually examined respondent that qualified for a separate rate and participated in the litigation, and also assigned it a rate of zero percent.<sup>83</sup> Further, we corrected certain minor errors in Datong Juqiang’s calculation memorandum. Based on these changes, the estimated weighted-average dumping margins for Carbon Activated, Datong

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<sup>83</sup> See *AR10 Final Results*, 83 FR 53214-15 (explaining method for determining rate for non-examined separate rate respondents), *unchanged in Certain Activated Carbon from the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 58229 (November 19, 2018); see also First Remand Redetermination; Draft Redetermination Results Calculation Memorandum for Carbon Activated Tianjin Co., Ltd. in the Tenth Administrative Review of Certain Activated Carbon from the People’s Republic of China, dated January 25, 2021; Draft Redetermination Results Calculation Memorandum for Datong Juqiang Activated Carbon Co., Ltd. in the Tenth Administrative Review of Certain Activated Carbon from the People’s Republic of China, dated January 25, 2021. For the Draft Remand Results, unchanged in this final redetermination, we calculated a rate that is zero percent for both mandatory respondents (*i.e.*, Datong Juqiang and Carbon Activated). When the weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act permits Commerce to “use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.” The Statement of Administrative Action explains that “[t]he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.” See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 873. Therefore, for this final redetermination, we assigned to the company that has not been individually examined but qualified for a separate rate and participated in the litigation (*i.e.*, GHC), a rate equal to the weighted average of the rate calculated for Datong Juqiang and the rate calculated for Carbon Activated. See *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016). Accordingly, for this final redetermination, we are assigning a dumping margin of zero percent to GHC.

Juqiang, and GHC for the POR, April 1, 2016, through March 31, 2017, are listed in the chart below.

<b>Exporter or Producer</b>	<b>Weighted-Average Dumping Margin from <i>AR10 Final Results</i> (USD/kg)</b>	<b>Weighted-Average Dumping Margin for the First Remand Redetermination (USD/kg)</b>	<b>Weighted-Average Dumping Margin for Second Remand Redetermination (USD/kg)</b>
Datong Juqiang Activated Carbon Co., Ltd.	0	0	0
Carbon Activated Tianjin Co., Ltd.	0.23	0.13	0
Ningxia Guanghua Cherishmet	0.23	0.13	0

3/15/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance