

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND
Certain Activated Carbon from the People's Republic of China
Calgon Carbon Corporation et al. v. United States
Consol. Court No. 18-00232, Slip Op. 20-65 (CIT May 13, 2020)

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) in *Calgon Carbon Corporation et al. v. United States*, Consol. Court No. 18-00232 (CIT May 13, 2020) (*Remand Order*). These final remand results concern the *AR10 Final Results*.¹ The CIT directed Commerce to reconsider Commerce's choice of surrogate value for carbonized materials and Commerce's adjustments to the surrogate financial ratios.²

As set forth in detail below, pursuant to the CIT's *Remand Order*, we have further explained, and reconsidered, in part, our determination regarding Commerce's choice of surrogate value for carbonized materials and Commerce's adjustments to the surrogate financial ratios. Consequently, for the purposes of these final results of redetermination on remand, Commerce has made certain changes to the mandatory respondents' margin calculations,³ and consequently, to the rate of Ningxia Guanghua Cherishmet (GHC).⁴

¹ See *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).

² See *Remand Order* at 4.

³ The mandatory respondents in this administrative review are Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) and Carbon Activated Tianjin Co., Ltd. (Carbon Activated).

⁴ GHC was not selected for individual examination during the review. However, it qualifies for a separate rate and is participating in the litigation.

B. REMANDED ISSUES

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

Background

In *AR10 Final Results*, Commerce valued carbonized material using Thai import data under HTS subheading 4402.90.10000, with an average unit value (AUV) of 32.22 Baht/kilogram (kg) (\$916.92 USD/metric ton (MT)). The Thai import data under HTS subheading 4402.90.10000 includes, among other countries, imports from France (\$1,270.37 USD/MT) and Japan (\$25,923.71 USD/MT).⁵ In the *AR10 Final Results*, Commerce rejected Carbon Activated's and Datong Juqiang's arguments that Commerce should exclude from the Thai import data, imports from France (French imports) and Japan (Japanese imports). In particular, with respect to the French imports, Commerce stated that:

{t}he administrative record lacks information that demonstrates that French imports under HTS 4402.90.1000 were indeed wood-based charcoal.⁶...{T}he record evidence only contains email correspondence and Thai import data from France that cover a part of the POR (April 2016-July 2016), which goes through March 2017.⁷

With respect to the Japanese imports, Commerce rejected the respondents' argument that Commerce should exclude the Japanese imports from the Thai import data under HTS subheading 4402.90.10000 because they represent a small quantity (*i.e.*, 16

⁵ 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 (Preliminary Results SV Memorandum), and accompanying Excel SV sheet (Tab: "Calculated_SV_Data") at Attachment 1 (SV for carbonized material using Thai import data under HTS subheading 4402.90.10000), unchanged in *AR10 Final Results*). We note that the quantities and values comprising the POR Thai import data under HTS subheading 4402.90.10000 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).

⁶ See *AR10 Final Results* IDM at 15.

⁷ *Id.* (citing First Surrogate Value Comments by DJAC and CA Tianjin, dated Sept. 15, 2017 (Respondents' SV Comments) at Exhibit 4A).

kg) with a substantially higher AUV, stating, “{m}erely appearing on the low or high end of the range of values is not enough to find such data aberrational.”⁸

In litigation, Carbon Activated, Datong Juqiang, and Ningxia Guanghua Cherishmet (GHC) (collectively, the respondents) challenged Commerce’s valuation of carbonized material, arguing that Commerce should exclude the French and Japanese imports from the Thai import data. The United States argued that the record lacks evidence to support the argument that the French and Japanese import data underlying the Thai carbonized material surrogate value are aberrational.⁹ In the *Remand Order*, the CIT held that in the *AR10 Final Results* Commerce had not sufficiently explained its reasoning for including the French and Japanese data in the Thai surrogate value and remanded the issue for further explanation and reconsideration.¹⁰

Analysis

In light of the CIT’s *Remand Order*, Commerce has reconsidered and provided further explanation regarding its determination to value carbonized material using the Thai GTA import data under HTS subheading 4402.90.10000 that includes the French and Japanese import data. Based on the following analysis, Commerce has determined to continue to include the French import data and exclude the Japanese import data in using the Thai GTA import data under HTS subheading 4402.90.10000.

Commerce has a practice of not disaggregating data to avoid “cherry-picked import data in a{ }{surrogate value} calculation.”¹¹ Further, it is a long-standing Commerce practice that a party arguing that data are aberrational must provide sufficient evidence to support its

⁸ *Id.* at 16.

⁹ See *Remand Order* at 25.

¹⁰ *Id.* at 27.

¹¹ 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.

argument.¹² When there is insufficient evidence to find certain data aberrational, Commerce does not discard the data.¹³ Also, Commerce may evaluate 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 can be demonstrated by the commercial data.¹⁴

a. French import data

The respondents argue that the Thai GTA data for carbonized material are aberrant because they include data for imports from France that are based on more expensive wood-based charcoal, which is used in animal feed and not for the production of activated carbon.¹⁵ 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 covers 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 has exported from France to Thailand; data on Thai imports from France under HTS code 4402.9010 up to August 2016; and data on French exports to Thailand under HTS 4402.9000

¹² 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; see also *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) (*Polyethylene Retail Carrier Bags*), and accompanying IDM at Comment 6 (“{w}e find that the burden is on the respondents to demonstrate that the Indian import statistics are in fact aberrational”).

¹³ See *Carbazole Violet Pigment* IDM at Comment 6.

¹⁴ 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), and accompanying IDM at Comment 2.

¹⁵ See *Remand Order* at 24-25.

(i.e., unspecified charcoal) up to July 2016.¹⁶ While these data indicate that some of the exports from France to Thailand during the period of review (POR) were comprised of wood-based charcoal, the data fail to fully account for the entire quantity of French imports under HTS 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, Commerce is unable to conclude based on the record evidence that the entirety of the French imports into Thailand under HTS subheading 4402.90.10000 during the POR were wood-based charcoal. Because the parties failed to provide sufficient evidence demonstrating that the French import data in the Thai carbonized material surrogate value are aberrational, 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 are distortive. Therefore, we continue to include the French import data in using the Thai import data under HTS subheading 4402.90.10000.

b. *Japanese import data*

The respondents argue that Commerce should exclude the Japanese imports from the Thai import data under HTS subheading 4402.90.10000 because they represent a small quantity (16 kg) with a substantially higher AUV (25923.71 USD/MT), which is several times higher than the AUVs for imports from other countries comprising the Thai import data, thus undermining Commerce's conclusion in *AR10 Final Results* that the data are not aberrational.¹⁷ The CIT has directed Commerce to reconsider or clarify its decision to include Japanese imports in the Thai

¹⁶ See Respondents' SV Comments at Exhibit 4A.

¹⁷ See *Remand Order* at 25; see also GDLSK Plaintiffs' Mot. for Judgment on the Agency Record Pursuant to Rule 56.2, *Calgon Carbon Corporation et al. v. United States*, Consol. Court No. 18-00232 (CIT) filed on June 21, 2019 (*Respondents' Motion*) at 49.

import data under HTS subheading 4402.90.10000, in light of such imports representing a small quantity with a substantially higher AUV.¹⁸

The underlying import statistics indicate that the quantity of Thai imports of carbonized material from Japan is 16 kg, accounting for 0.0059 percent of the total volume of Thai import data (270,570 kg), and 0.17 percent of the total value of Thai imports during the POR (8,718,524 Baht).¹⁹ Also, the AUV of imports of carbonized material from Japan into Thailand (\$25,923.71 USD/MT) is more than 28 times greater than the AUV of all other carbonized material imports into Thailand (\$915.53 USD/MT). The Japanese AUV appears to diverge significantly from other imports comprising the Thai import data, which are \$1,270.37 USD/MT (imports from France), and \$528.47 USD/MT (imports from Laos). In addition, the Japanese import volume (16 kg) only accounts for 0.0059 percent of the total volume of Thai import data (270,570 kg). Although Commerce does not normally conclude that a data point is an outlier just because it is at the high or low end of a range,²⁰ there is no other information on the record of this review that we can use as a benchmark, such as historical data on Japanese imports into Thailand under the HTS code we used to value carbonized material. Absent other information or context on the record of this review, we find that the relatively low quantity and high value of the Japanese imports is a sufficient reason in this instance to exclude the data from the surrogate value calculation. In this instance, the small amount of imports, paired with the relatively high AUV compared to the AUV from other countries, can be considered to diverge so significantly from other import data that we can conclude that they are aberrational. Therefore, for this final

¹⁸ See *Remand Order* at 27.

¹⁹ See Preliminary Results SV Memorandum, and accompanying Excel SV sheet (Tab: “Calculated SV Data”) at Attachment 1 (SV for carbonized material using Thai import data under HTS subheading 4402.90.10000 unchanged in *AR10 Final Results*).

²⁰ See, e.g., *Multilayered Wood Flooring from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 26712 (May 9, 2014), and accompanying IDM at Comment 6. (“Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier.”).

remand redetermination, Commerce has removed the Japanese import quantity and value data from our computation of the surrogate value for carbonized material.

2. Commerce’s Accounting Adjustments in Romcarbon’s Financial Ratio Calculations

Background

In the *AR10 Final Results*, Commerce valued financial ratios using the 2016 financial statements from the Romanian company, Romcarbon SA (Romcarbon), a change from the *AR10 Carbon Prelim*, for which Commerce relied on the 2011 financial statements of Carbokarn Co., Ltd., a Thai producer of identical merchandise.²¹ In the litigation, the respondents argued that Commerce’s allocation of certain line items in Romcarbon’s financial statements are not in accordance with Commerce’s practice and not supported by substantial evidence. Specifically, the respondents argued that (1) “Social contributions” and “meal tickets” should be allocated under “labor” instead of Selling, General, and Administrative (SG&A) expenses in order to avoid double counting because the Thai 2012 National Statistical Office (NSO) Industrial Census data under code 20299 “Manufacture of Other Chemical Products, n.e.c.” used to value labor cost already includes both of these indirect labor cost components; (2) “Expenses with transport and logistics” should be excluded from the financial ratio calculations, instead of being allocated as SG&A expenses, because Commerce deducted both of these expenses from gross U.S. price in obtaining a net U.S. price; (3) “Income from penalties charged”, instead of being excluded, should offset SG&A expenses because penalties are treated as a SG&A expense; (4) “Gain/(Loss) on sale of noncurrent assets” should offset the SG&A expenses instead of being excluded, because it accrues mostly from the sale of “property, plant & equipment,” and thus

²¹ See *Certain Activated Carbon from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 23254 (May 18, 2018) (*AR10 Carbon Prelim*), and accompanying Preliminary Decision Memorandum; see also Preliminary Results SV Memorandum.

occurs in the course of Romcarbon’s general operations; (5) “Other gains” should offset SG&A expenses instead of being excluded, because this line item is treated as part of a company’s general operations; and (6) “Gain/(Loss) on adjustment of investment property at fair value,” “Gain/(Loss) on disposal of investment property,” and “Gain/(Loss) on disposal of financial investments” should offset the reported “profit before tax” instead of being excluded, because all of these gains accrue from activities outside of Romcarbon’s general business, *i.e.*, manufacturing of goods.²² Commerce argued that the respondents failed to exhaust their administrative remedies because they failed to raise any arguments regarding adjustments to the Romanian financial statements in their administrative case brief notwithstanding being aware that the Romanian financial statements were under consideration. In the *Remand Order*, the CIT directed Commerce to consider the respondents’ arguments in the first instance because the respondents did not have an opportunity to address any objections to Commerce’s adjustments in Romcarbon’s financial ratio calculations before the agency, and Commerce did not have the opportunity to consider those objections.²³

Analysis

In light of the CIT’s *Remand Order*, Commerce has reconsidered the allocation of the expenses at issue as follows below.

Social Contributions and Meal Tickets

In the *AR10 Final Results*, we categorized “Social Contributions” and “Meal Tickets” under SG&A expenses.²⁴ The 2012 Thai NSO Industrial Census data we used to value labor cost

²² See *Respondents’ Motion* at 1-2, and 8-16.

²³ See *Remand Order* at 34-35.

²⁴ See Memorandum, “Tenth Administrative Review of Certain Activated Carbon from the People’s Republic of China: Surrogate Values for the Final Results,” dated October 16, 2018, and accompanying Excel SV sheet at Tab: “Romcarbon” () at Attachment 1.

in *AR10 Final Results* (2012 Thai NSO data) includes indirect labor expenses such as both employer's contribution to social security and fringe benefits.²⁵ Commerce considered the underlying elements of this data source (*i.e.*, 2012 Thai NSO Data) in the final results of the prior review, finding that the 2012 Thai NSO data are "fully loaded" labor costs and noting that the 2012 Thai NSO Data include wages, salaries, overtime, bonuses, medical care, and employer's contribution to social security.²⁶ In the prior review (*AR9 Final Results*), Commerce further noted that "{w}hile the NSO Industrial Census data reports 'Fringe Benefits: Others' rather than specific items such as housing and clothing, considering the values associated with 'Fringe Benefits: Others' {Commerce} can make the reasonable assumption that such items are included in this field."²⁷ Therefore, for purposes of this final remand redetermination, we are making the reasonable assumption that the 2012 Thai NSO Industrial Census labor cost data are inclusive of indirect labor costs, such as both employer's contribution to social security and meal expenses, and consequently, Commerce's normal value build up already includes the cost of employer's contribution to social security and meal expenses. Thus, in *AR10 Final Results*, by allocating these two items to SG&A, we double counted these expenses. Therefore, for this final remand redetermination we have re-classified the "meal tickets" and "social contribution" line items as labor expenses and recalculated the financial ratios accordingly.

Expenses with transport and logistics

In the *AR10 Final Results*, we categorized "Expenses with transport and logistics" as SG&A expenses.²⁸ In deriving appropriate surrogate values for SG&A, factory overhead and

²⁵ See Respondents' SV Comments at Exhibit 8.

²⁶ See *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51607 (Nov. 7, 2017) (*AR9 Final Results*), and accompanying IDM at Comment 7.

²⁷ *Id.*

²⁸ See *AR10 Final SV Memorandum* at Attachment 1.

profit, Commerce typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to materials, labor, and energy (MLE), overhead, SG&A, and profit, and excludes certain expenses (*e.g.*, movement expenses) consistent with Commerce’s practice of accounting for these latter expenses elsewhere.²⁹ It is Commerce’s well-established practice to exclude the cost of transport and logistics (including brokerage and handling charges) from financial ratio computations in order to avoid double counting because these two movement expenses are also applied as offsets to the U.S. gross sale price in order to obtain the U.S. net sale price.³⁰ For the *AR10 Final Results*, in the margins calculations for both mandatory respondents, Commerce deducted truck freight and brokerage and handling charges from the U.S. sale price.³¹ Thus, in the *AR10 Final Results*, by allocating “expenses with transport and logistics” to SG&A, these expenses were inadvertently double counted. For this final remand redetermination, we have excluded from SG&A expenses the “expenses with transport and logistics” and recalculated the financial ratios accordingly.

Gain/(Loss) on adjustment of investment property at fair value, Gain/(Loss) on disposal of investment property, Gain/(Loss) on disposal of finance investments

In the *AR10 Final Results*, Commerce excluded “Gain/(Loss) on adjustment of investment property at fair value,” “Gain/(Loss) on disposal of investment property,” and “Gain/(Loss) on disposal of finance investments” from the calculation of financial ratios.³² Commerce’s established practice is to deduct income from investment property from a manufacturing entity’s reported profit before tax, as the income from investment does not pertain

²⁹ See *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 6.

³⁰ *Id.*

³¹ See Memorandum, “Final Results Margin Calculation for Datong Juqiang Activated Carbon Co., Ltd.,” dated October 16, 2018, at Attachment 1 at Margin Calculation Log line nos. 1135, 1242; *see also* Memorandum, “Final Results Margin Calculation for Carbon Activated Tianjin Co., Ltd.,” dated October 16, 2018 at Attachment 1 (Margin Calculation Log line nos. 1189 and 1280).

³² See AR10 Final SV Memorandum at Attachment 1.

to the company's general business activity (*i.e.*, manufacturing of goods).³³ Because Romcarbon included the line items "Gain/(Loss) on adjustment of investment property at fair value," "Gain/(Loss) on disposal of investment property," and "Gain/(Loss) on disposal of finance investments" in the revenue build-up, these three line items contribute to and are included in its reported "profit before tax." Because Romcarbon's general business activity is the manufacture of goods,³⁴ these three line-items are extrinsic to Romcarbon's ordinary business operation. Therefore, for this final remand redetermination we have offset Romcarbon's reported "profit before tax" with the amounts under these three line items, and recalculated the profit ratio accordingly.

Income from Penalties Charged, Gain/(Loss) on Sale of Noncurrent Assets, and Other Gains

In the *AR10 Final Results*, Commerce excluded "Income from penalties charged," "Gain/(Loss) on sale of noncurrent assets," and "*Other Gains*" from its computation of financial ratios.³⁵ It is Commerce's practice to calculate the General and Administrative expense (G&A) ratio to include only items that relate to the general operation of the company as a whole.³⁶ In determining whether it is appropriate to include in or exclude from the SG&A calculation particular income or expense items, Commerce reviews the nature of the item and its relation to the general operations of the company.³⁷ Commerce's practice is to treat incomes accrued from

³³ See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143, 11146 (February 15, 2013), and accompanying IDM at Comment 16.

³⁴ See Respondents' SV Comments at Exhibit 9.

³⁵ See AR10 Final SV Memorandum at Attachment 1.

³⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (Dec. 23, 2004), and accompanying IDM at Comment 2.

³⁷ *Id.*

miscellaneous activities as a part of the general operations of the company unless the financial statements explicitly indicate otherwise.³⁸

In this case, there is no indication in the financial statements that the amount under the line item “Income from Penalties Charged” does not pertain to the general operations of the company. Therefore, for this final remand redetermination we have treated the corresponding revenue under this line item as accruing in the course of Romcarbon’s general business operations and have included “Income from Penalties Charged” in the computation of the financial ratios to offset SG&A.

With respect to the amount under “Gain/(Loss) on Sale of Noncurrent Assets,” Romcarbon’s financial statements indicate that non-current assets are comprised of “property, plant and equipment,” “investment property,” “intangible assets,” and “financial assets.”³⁹ Because gain/losses from investment property and financial assets are separately itemized under Note 5-“Other Gains and Losses,” it can be inferred that “Gain/(Loss) on Sale of Noncurrent Assets” only pertain to gain/loss from the sale of property, plant and equipment, and intangible assets, which is part of Romcarbon’s general operations. Therefore, for this final remand redetermination we have treated the corresponding revenue under this line item as accruing in the course of Romcarbon’s general business operations and have included “Gain/(Loss) on Sale of Noncurrent Assets” in the computation of financial ratios to offset SG&A.

With respect to “Other Gains,” Commerce’s practice is to treat incomes accrued from miscellaneous activities as a part of the general operations of the company unless the financial

³⁸ See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008) (*PET Film Investigation*), and accompanying IDM at Comment 3.

³⁹ See Respondents’ SV Comments at Exhibit 9, page 17.

statement explicitly indicates otherwise.⁴⁰ Because there is no indication on the record that the amount under the line item “Other Gains” does not pertain to the general operations of the company, for this final remand redetermination we have offset Romcarbon’s reported SG&A with the amounts under “Other Gains,” and recalculated the financial ratios accordingly.

C. SUMMARY AND ANALYSIS OF RESPONDENTS’ COMMENTS ON DRAFT REMAND RESULTS

Commerce released the Draft Remand Results to parties for comment on July 1, 2020.⁴¹ The respondents filed comments on the Draft Remand Results on July 13, 2020.⁴² No other parties filed comments on the Draft Remand Results. As explained below, we continue to reach the same conclusions that we reached in the Draft Remand Results. We address each of the respondents’ comments and provide our analysis in turn.

Issue 1: Inclusion of Imports from France in the Thai Import Data for Carbonized Material Surrogate Value

*Respondents’ Comments*⁴³

- Commerce’s inclusion of imports from France in the Thai import data for carbonized material surrogate value (SV) does not comport with the CIT’s instruction and remains unsupported by substantial evidence.⁴⁴
- In the *Remand Order*, the CIT ordered Commerce to further explain and reconsider Commerce’s decision to include the imports from France in the Thai surrogate value, stating,

⁴⁰ See *PET Film Investigation*, and accompanying IDM at Comment 3.

⁴¹ See Draft Results of Redetermination Pursuant to Court Remand, *Calgon Carbon Corporation et al. v. United States*, Consol. Court No. 18-00232, dated July 1, 2020 (Draft Remand Results).

⁴² 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 July 13, 2020 (Respondents’ Comments).

⁴³ See Respondents’ Comments at 3.

⁴⁴ *Id.*

“Commerce failed to explain why the fact that the French imports do not cover the entire POR is a basis for not excluding them as otherwise aberrational or distortive.” Commerce on remand ignored this CIT instruction, by simply restating its previous findings.

- Commerce’s proffered three rationales for the inclusion of the French import data in the Thai surrogate value are contrary to substantial record evidence and not in accordance with law, precedent, and agency practice.
- First, Commerce cites to *Crystalline Silicon AR3*,⁴⁵ where Commerce stated “Commerce has a practice of not disaggregating the data to avoid ‘cherry-picked import data in a {}...{surrogate value} calculation.”⁴⁶ 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 a surrogate value based on the “best available information,” which compels the exclusion of potentially anomalous, distorted, and unreliable data.
- Moreover, in a recent decision on the preceding review of *Crystalline Silicon* (*i.e.*, *Crystalline Silicon ARI CAFC Decision*),⁴⁷ the U.S. Court of Appeals for the Federal Circuit (CAFC) “cherry-picked” the U.S. data reported in the Thai import data and based on its inconsistency with the corresponding U.S. International Trade Commission (ITC) export data – held the U.S. import data were unreliable, thereby invalidating Commerce’s reliance on *Crystalline Silicon AR3* with regard to the issue of whether Commerce can “cherry-pick” certain import data within an AUV to hold import data from a certain country unreliable.
- Second, Commerce cites to *Carbazole Violet Pigment* to establish a general proposition that

⁴⁵ *Id.* (citing Draft Remand Results at 4, and *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 AR3*)).

⁴⁶ *Id.* at 6.

⁴⁷ *Id.* at 5 (citing *SolarWorld Americas, Inc. v. United States*, 962 F.3d 1351 (June 24, 2020) (*Crystalline Silicon ARI CAFC Decision*)).

“when there is insufficient evidence to find certain data aberrational, Commerce does not discard the data.”⁴⁸ However, in *Carbazole Violet Pigment*, of the three factors considered by Commerce to evaluate the aberrancy of a 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. 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.⁴⁹

- Also, in the immediately preceding review, Commerce, in rejecting the French data comprised of wood-based charcoal reported in Thai HTS 4402.90.1000 import data, already determined that French imports reported from April 2016 to August 2016 (*i.e.*, the first five months of the POR) were distorted and unreliable. In view of Commerce’s own findings confirming the distorted nature of April 2016-August 2016 French imports, the Draft Remand Results’ reliance on *Carbazole Violet Pigment* is unavailing.
- Third, Commerce cites to a three-part test from *TRBs from China* to explain its evidentiary rationale for not excluding the French import data from the Thai GTA data for carbonized material.⁵⁰ However, in *TRBs from China*, Commerce rejected as a corroboration tool the use of India Infodrive data that provided entry-wise detailed particulars of imports reported

⁴⁸ *Id.* at 8 (citing Draft Remand Results at 4; and *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*)).

⁴⁹ *Id.* at 9.

⁵⁰ *Id.* at 10 (citing Draft Remand Results at 4 (“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 *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), and accompanying IDM at Comment 2).

in World Trade Atlas (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 HTS 4402.9000 and Thai French imports data under HTS 4401.9010, during April-August 2016, in the immediately preceding review (*i.e.*, *AR9*).⁵¹ Further, two affidavits on the record in *AR9*, including one from the concerned Thai importer of French goods, confirmed that the imported goods were wood-based charcoal for use in animal feed.

- However, in spite of this recognition in *AR9*, in the Draft Remand Results, Commerce decided that because the evidence of distortion of French imports into Thailand for carbonized material on the record for *AR10 Final Results* did not cover the entire POR, the evidence on the record was insufficient “to conclude that Thai GTA import data for the entire POR {are} aberrational.”
- In the Draft Remand Results, Commerce has accepted that Thai French imports are demonstrably distorted during a part of the POR, totaling 100,800 kg (out of total French imports of 141,330 kg), and accounting for 71.3 percent of the total French import quantity into Thailand.⁵² Since such distorted imports account for a substantial proportion of total imports from France under Thai HTS 4402.90.1000, they impeach the entire Thai French import dataset per settled Commerce and judicial precedent.
- The CIT, in the *ARI litigation*, opined, “when data is placed on the record to impeach as

⁵¹ *Id.* at 11 (citing *AR9 Final Results*, and accompanying IDM at 25).

⁵² *Id.* at 12.

opposed to corroborate Commerce's determination, a lower threshold may exist."⁵³ Because the French HTS 4402.9000 export data was put on the record to impeach, instead of to support the reliability of the GTA Thai HTS 4402.90.10000 import data, it cannot be rejected simply because it does not account for the entirety of the French imports.

- In sum, in its final remand redetermination, Commerce should value carbonized materials in one of the following to manners, in addition to excluding the entire Japanese imports into Thailand: (1) by excluding the entire French imports reported in Thai imports; or, as a second best alternative, (2) by excluding the April-August 2016 portion of Thai imports from France.

Commerce's Position: Commerce disagrees with the respondents' contention that Commerce's inclusion of imports from France in the computation of the Thai carbonized material surrogate value is unsupported by substantial evidence, and contradicts the statutory mandate to determine a surrogate value based on the "best available information."

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, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax- and duty-exclusive.⁵⁴ 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.⁵⁵

⁵³ *Id.* at 13 (citing *Calgon Carbon Corp. v. United States*, 35 C.I.T. 235, 346 (2011) (*ARI Litigation*)).

⁵⁴ 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.

⁵⁵ See *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.

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 a surrogate value based on the “best available information,” which compels the exclusion of potentially anomalous, distorted, and unreliable data.⁵⁶ 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 a SV calculation.”⁵⁷ However, in the cases cited by the respondents, no parties argue for Commerce to selectively disregard import data from particular countries within a SV. Further, in the cases cited by the respondents, no parties argue for Commerce to selectively disregard import data from particular countries within a SV for only a part of the POR, or to selectively disregard the import data for the entire POR from particular countries based on record evidence that only covers a part of the POR. Rather, in those cases, the surrogate values were first compared to other benchmark data on the record, and where it was decided that the surrogate values were significantly higher (*i.e.*, aberrant) than the benchmark data, then the aberrancy of the underlying import data within the surrogate value were further examined to evaluate whether the SV used to value the input was the best available information.⁵⁸ In those instances, elimination of aberrational values has been held to be a “reasonable means for compensating for flaws in a data set.”⁵⁹ Notably, when the elimination of import data reported from particular countries into the primary surrogate country was considered to cure aberrancy of

⁵⁶ See Respondents’ Comments at 5 (citing 19 U.S.C. § 1677b(c)(1)).

⁵⁷ *Id.* at 3-12. (citing *Crystalline Silicon ARI CAFC Decision*; and *Guangdong Chems. Imp. & Exp. Corp. v. United States*, 460 F. Supp. 2d 1365, 1367-73 (CIT 2006)).

⁵⁸ See *Crystalline Silicon ARI CAFC Decision* at 1362; see also *Guangdong Chems* at 1368-1369.

⁵⁹ See *Guangdong Chems* at 1370; see also *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 28 CIT 1185 (July 19, 2004) (*Hebei Metals*); see also *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*), accompanying IDM at Comment 1.

an surrogate value, the import data from the particular countries under review were several times higher than the import data for the other countries whose products were imported into the primary surrogate country.⁶⁰ These cases, therefore, are more relevant to the analysis performed by Commerce in determining whether to exclude the Japanese data from the dataset under consideration, as discussed above. However, the respondents' reliance on these precedents is inapposite to the concerns presented with respect to the French data, in that: (1) the aberrancy of the Thai surrogate value used to value carbonized material in comparison to other benchmark data was not established; and (2) the aberrancy of the French import data in comparison to the import data for other countries whose products were imported into Thailand was not established.

Instead of comparing the value of French imports into Thailand with the import value data for other countries whose products were imported into Thailand, to support its claim that the French import value within the Thai surrogate value is unusable, the respondents request that Commerce base its determination to exclude the data on the difference between the nature of the input used for the production of subject merchandise, and the nature of the imports from France into Thailand under HTS 4402.90.1000 during the POR. To that end, the respondents argue that the record evidence demonstrates that 100,800 kg of the exports unspecified charcoal from France to Thailand during the POR (out of total French imports of 141,330 kg) were wood-based charcoal. The respondents further argue that since such misrepresentative imports account for a

⁶⁰ See *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), and accompanying 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,"); *Guangdong Chems* at 1370, footnote 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.); and Issue 2: Exclusion of Imports from Japan in the Thai Import Data for Carbonized Material Surrogate Value in this Final Results of Redetermination.

substantial proportion (*i.e.*, 71.3 percent) of total imports from France under Thai HTS 4402.90.1000, they impeach the entire French imports into Thailand dataset, opining that per a CIT decision in the *ARI Litigation*, 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 imports from France under Thai HS 4402.90.1000.

However, the respondents' reliance on the *ARI litigation* to request Commerce to rely on the record evidence that covers only a part of the POR to discard the entirety of imports from France under Thai HS 4402.90.1000 is unavailing. The dispute in the *ARI litigation* was on whether the use of a certain tariff heading was appropriate, and the discussion was on the sufficiency of a record evidence that covers fifty percent of imports under a tariff heading within India. Although the CIT in the *ARI litigation* opined that Commerce must consider the data put on the record if it covers a definite and substantial percentage of overall imports, the CIT's order applies to the evaluation of whether a surrogate value generally can be used, not to the consideration of reliability of import data reported from particular countries within a surrogate value. As previously noted, it is a long-standing Commerce practice that a party arguing that data are unusable must provide evidence to support its argument.⁶¹ The burden is on the respondents to demonstrate via sufficient record evidence that the French import value within the Thai surrogate value is entirely unusable and that there exists a better useable value on the record. It is Commerce's practice that when there is insufficient evidence to find certain data distorted or misrepresentative, Commerce does not discard the data.⁶²

⁶¹ See, *e.g.*, *Carbazole Violet Pigment* IDM at Comment 4.

⁶² See *Carbazole Violet Pigment* IDM at Comment 6.

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 were wood-based charcoal.⁶³ Therefore, the record evidence fails to fully account for the entire quantity of French imports into Thailand under HTS 4402.90.1000 during the POR. Because there is insufficient evidence to conclude that the entirety of the French imports in the Thai surrogate value are not the kind of carbonized material used in the production of subject merchandise, Commerce cannot discard the entire data. Nor have parties suggested that another, more suitable, value exists on the record. Requiring Commerce to consider record evidence that does not account for the entirety of imports from particular countries within a surrogate value 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 surrogate value selection process un-administrable. Commerce cannot affirmatively question the accuracy of each underlying value that contributes to an average surrogate value, and has required that 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. 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,⁶⁴ and we find

⁶³ See Respondents' SV Comments at Exhibit 4A on pdf page 53 (Export quantities on the 2016 sales summary from the French exporter for wood-based charcoal, matches the data on French exports to Thailand under HTS 4402.9000 (*i.e.*, unspecified charcoal), which in turn, matches Thai import quantities from France under HTS code 4402.9010 up to August 2016.).

⁶⁴ See *Polyethylene Retail Carrier Bags* IDM at Comment 6.

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.

Therefore, for these final results of redetermination, Commerce finds that the Thai surrogate value, exclusive of Japanese import quantity and value data, is the best available information on the record with which to value the carbonized material input, and continues to include the French import quantity and value data in our computation of the Thai surrogate value for carbonized material.

Issue 2: Exclusion of Imports from Japan in the Thai Import Data for Carbonized Material Surrogate Value

*Respondents' Comments*⁶⁵

- In the Draft Remand Results, Commerce preliminarily excluded imports from Japan in the Thai import data for carbonized material surrogate value. As Commerce's conclusion that these data are aberrational is supported by substantial evidence and in accordance with law, the respondents request that Commerce finalize the exclusion of the imports from Japan in the valuation of carbonized material for use in the respondents' margin calculation in the final remand redetermination.

Commerce's Position: Commerce agrees with the comments from the respondents that the exclusion of the imports from Japan in the calculation of Thai import data for carbonized material is in accordance with law, for the reasons explained above. Therefore, for these final results of redetermination, Commerce has removed the Japanese import quantity and value data from our computation of the Thai surrogate value for carbonized material.

⁶⁵ See Respondents' Comments at 2-3.

Issue 3: Adjustments in Romcarbon’s Financial Ratio Calculations

*Respondents’ Comments*⁶⁶

- In the Draft Remand Results, Commerce preliminarily adjusted the allocation and classification of certain expenses and recalculated the surrogate financial ratios using the 2016 financial statements of the Romanian company, Romcarbon. As these adjustments are supported by substantial evidence and in accordance with law, the respondents request that Commerce finalize its preliminarily calculated surrogate financial ratios for use in calculating the respondents’ margins in the final remand redetermination.

Commerce’s Position: Commerce agrees with the comments from the respondents that the adjustments of expenses in the Draft Remand Results are supported by substantial evidence and in accordance with law, for the reasons explained above. Therefore, for this final remand redetermination, Commerce has finalized the adjustments of allocation and classification of the expenses for “Social Contributions”; “Meal Tickets”; “Expenses with transport and logistics”; “Gain/(Loss) on adjustment of investment property at fair value, Gain/(Loss) on disposal of investment property, Gain/(Loss) on disposal of finance investments”; and “Income from Penalties Charged, Gain/(Loss) on Sale of Noncurrent Assets, and Other Gains.”

FINAL RESULTS OF REMAND REDETERMINATION

Consistent with the *Remand Order*, we reconsidered our calculation of the surrogate value for carbonized material and adjustments in financial ratios and have addressed and clarified both issues in this final redetermination. Based on the foregoing explanations, we made certain changes to our determinations regarding the aberrancy of the Japanese import data included in the Thai import data used as the surrogate value for carbonized material, and the


⁶⁶ See Respondents’ Comments at 2.

adjustments to our calculation of financial ratios based on Romcarbon's financial statements. Accordingly, we revised the margin calculations for the mandatory respondents, Carbon Activated and Datong Juqiang, from the *AR10 Final Results*. 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.⁶⁷ Based on these changes, the estimated weighted-average dumping margins for Carbon Activated, Datong Juqiang, and GHC for the POR, April 1, 2016 through March 1, 2017, for certain activated carbon from China are listed in the chart below.

⁶⁷ See *AR10 Final Results*, 83 FR 53214-15 (explaining method for determining rate for non-examined separate rate respondents); see also 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 July 1, 2020. For this final redetermination, we calculated a rate only for Carbon Activated that was not zero, *de minimis*, or based entirely on facts available. 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), the weighted-average rate calculated for Carbon Activated.

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

8/4/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance