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October 2, 2015

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Activated Carbon from the People's Republic of China:  
Issues and Decision Memorandum for the Final Results of the  
Seventh Antidumping Duty Administrative Review

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## SUMMARY

The Department of Commerce (the "Department") analyzed the comments submitted by Petitioners,<sup>1</sup> mandatory respondents,<sup>2</sup> and a separate rate company<sup>3</sup> in this, the seventh administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC"). Following the Preliminary Results<sup>4</sup> and the analysis of the comments received, we have made changes to the margin calculations for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

## BACKGROUND

On May 5, 2015, the Department published the Preliminary Results of this administrative review. In the Preliminary Results, the Department provided parties the opportunity to submit post-Preliminary Results comments on surrogate country lists as well as new surrogate value ("SV") information.<sup>5</sup> On May 19, 2015, Petitioners, Jacobi, Juqiang, and Carbon Activated submitted post-Preliminary Results surrogate country comments. On June 2, 2015, Petitioners, Jacobi,

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<sup>1</sup> Calgon Carbon Corporation and Cabot Norit Americas ("Petitioners").

<sup>2</sup> Jacobi Carbons AB and its affiliates (collectively, "Jacobi") and Datong Juqiang Activated Carbon Co., Ltd. ("Juqiang") collectively ("mandatory respondents").

<sup>3</sup> Carbon Activated Tianjin Co., Ltd. ("Carbon Activated").

<sup>4</sup> See Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 25669 (May 5, 2015) ("Preliminary Results").

<sup>5</sup> See Preliminary Results and accompanying Decision Memorandum ("Prelim Decision Memo") at 14.



Juqiang, and Carbon Activated submitted new SV information.<sup>6</sup> The Department extended the deadlines for submission of case and rebuttal briefs three times based on requests from interested parties.<sup>7</sup> On June 22, 2015, Carbon Activated, Juqiang, Jacobi, and Petitioners submitted case briefs. On July 2, 2015, Carbon Activated, Juqiang, Jacobi, and Petitioners submitted rebuttal briefs. On June 26, 2015, pursuant to 19 CFR 351.302(d), we rejected Petitioners' case brief because it contained untimely filed new factual information, and instructed Petitioners to resubmit a redacted case brief, which they submitted on June 30, 2015. On July 31, 2015, the Department held a public hearing limited to issues raised in case and rebuttal briefs.

## SCOPE OF THE ORDER

The merchandise subject to the order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by "activating" with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas ("CO<sub>2</sub>") in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO<sub>2</sub> gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of the order covers all forms of activated carbon that are activated by steam or CO<sub>2</sub>, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of the order covers all physical forms of certain activated carbon, including powdered activated carbon ("PAC"), granular activated carbon ("GAC"), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride, sulfuric acid or potassium hydroxide that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

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<sup>6</sup> At the Preliminary Results, the Department placed surrogate country lists from other proceedings that utilized 2013 per capita gross national income ("GNI") data on the record. In this review, we permitted interested parties to comment on the 2013 surrogate country lists and provide SV data for consideration. See Prelim Decision Memo at 14.

<sup>7</sup> See Memorandum to the File, from Frances Veith, Senior International Trade Compliance Analyst, Enforcement and Compliance, dated May 26, 2015; see also Memorandum to the File, from Frances Veith, Senior International Trade Compliance Analyst, Enforcement and Compliance, dated June 15, 2015; see also Memorandum to the File, from Frances Veith, Senior International Trade Compliance Analyst, Enforcement and Compliance, dated June 24, 2015.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO<sub>2</sub> gas) activated carbons are within the scope, and those containing more than 50 percent chemically activated carbons are outside the scope. This exclusion language regarding blended material applies only to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within the scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

## **DISCUSSION OF THE ISSUES:**

### **General Issues**

#### **Comment 1: Surrogate Country**

##### ***Jacobi’s Arguments***

- The Department should select the Philippines as the primary surrogate country because:
  - based on 2013 gross national income (“GNI”) data, it is as economically comparable to the PRC as it was in prior reviews when the Department found the Philippines to be economically comparable to the PRC;
  - it is a significant producer of identical merchandise (the Philippines is the largest producer of activated carbon, with production nearly nine times greater than that of Thailand); and
  - the record contains reliable SV data, including surrogate financial statements from seven Philippine producers. There is Philippine SV data for ten of the eleven raw material inputs consumed by Jacobi’s suppliers.
- The Department should not disregard the Philippines as the primary surrogate country merely because there are other countries whose per-capita GNI more closely resembles that of the PRC.
- Thailand is not a significant producer of activated carbon, as required by section 773(c)(4)(B) of the Tariff Act of 1930, as amended (“the Act”).
- Data considerations favor selecting the Philippines as the surrogate country. There are multiple financial statements from the Philippines on the record, whereas there is only a single Thai financial statement. Further, the Thai 2010 Carbokarn Co., Ltd (“Carbokarn”)

financial statements on the record are not suitable for calculating financial ratios because these statements indicate that activated carbon accounts for a minority of the Thai producer's production and sales, and the financial statements appear to include significant non-subject merchandise production from a subsidiary. Also, it appears that Carbokarn received subsidies.

- The 2010 Carbokarn financial statements used in the Preliminary Results are also not contemporaneous with the POR.

### *Juqiang's Arguments*

- The Philippines is a suitable surrogate country choice because:
  - Based on the 2013 GNI data, it is economically comparable to the PRC. This is consistent with Department findings in every prior segment;
  - It is a significant producer of comparable merchandise and is a net exporter of the subject merchandise in terms of quantity and value. Also, the Philippines' level of exports is eight times that of Thailand; and
  - The Philippine SV data meets the criteria for selection of the best SVs.

### *Carbon Activated's Arguments*

- The Department should select the Philippines as the primary surrogate country even though it was not found economically comparable in the Preliminary Results because it is the most significant producer of comparable merchandise, exporting nearly ten times more activated carbon than Thailand, and the record contains high quality Philippine SV data, including multiple contemporaneous Philippine financial statements.
- Additionally, the Philippines provide the best available information for carbonized material, the most critical input, which the Department relied on in previous segments of this proceeding.
- The Department should not have stopped consideration of the Philippines as the primary surrogate country just because it determined the country was not economically comparable. In Pure Magnesium,<sup>8</sup> the Department said that countries with a GNI outside the range of GNI represented by countries on the list are still considered economically comparable, just less so. The Department has previously considered countries outside of the GNI band in conjunction with countries that were within the GNI band, such as in Fish Fillets, and doing so is consistent with applicable U.S. Court of International Trade ("CIT") cases.<sup>9</sup>
- Thai import data is unreliable in its entirety because record evidence shows the Thai Customs authority manipulates the entered values of imported merchandise. The U.S. government (including the Department) and U.S. companies have expressed concern

<sup>8</sup> See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 34646 (June 10, 2013) ("Pure Magnesium").

<sup>9</sup> See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 78 FR 55676 (September 11, 2013) and accompanying Decision Memo at 13-14; unchanged in Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 79 FR 19053 (April 7, 2014) ("Fish Fillets AR12") and accompanying Issues and Decision Memorandum ("IDM") at Comment 1; Ad Hoc Shrimp Trade Action Comm. v. United States, 882 F. Supp. 2d 1366, 1374 (CIT 2012); Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368 (CIT 2009).

about the lack of transparency and significant discretionary authority built into the Thai customs regime. Just as the Department disregards Thai *export* values when calculating import average unit values in a given surrogate country, the Department should disregard Thai *import* data because there is reason to suspect or believe such data are distorted. It is arbitrary for the Department to require a higher burden of proof for import data, and the CIT<sup>10</sup> has found that government intervention that increases potential SVs is relevant to the Department's analysis and can be equally distortive.

- Additionally, the Thai financial statement relied on by the Department is three years outside the POR.
- It is unreasonable to assume that NME respondents would select the most expensive markets from which to acquire their inputs.

### *Petitioners' Rebuttal Arguments*

- The Department should not depart from the 2013 Office of Policy ("OP") list and should continue to rely on Thailand - the only suitable country on the 2013 OP list because it is at the same level of economic development as the PRC; it is a significant producer of comparable merchandise; and it is a source of high-quality and non-aberrant SV data.
- Jacobi incorrectly asserts the record does not demonstrate that Thailand is a significant producer of activated carbon. To the contrary, the record contains not only information on significant exports of activated carbon from Thailand during the POR, but also includes copies of the 2013 financial statements of two Thai entities that are significant producers of activated carbon, *i.e.*, C. Gigantic Carbon Co., Ltd. ("Gigantic") and Carbokarn.
- The Department should continue to find that the Philippines is not at the same level of economic development as the PRC, as the 2013 GNI difference between the Philippines and the PRC is comparatively larger than the differences between the PRC and other countries on OP's list in this review.

**Department Position:** In the Preliminary Results, we selected Thailand as the surrogate country. As detailed below, we continue to find that Thailand is the appropriate surrogate country in this review.

### *Economic Comparability*

We agree with Petitioners that the Philippines is not at the same level of economic development as the PRC. As stated in the Preliminary Results, the Philippines GNI falls outside the range of GNI data represented by the countries on the surrogate country lists and is therefore not at the same level of economic development as the PRC.<sup>11</sup>

The Department selects the primary surrogate country for each segment of a proceeding based on the record facts of that individual segment, regardless of whether the potential surrogate

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<sup>10</sup> See Yantai Oriental Juice Co. v. United States, 27 CIT 477 (2003).

<sup>11</sup> Id., at 15.

countries under consideration have been previously selected as the primary surrogate country.<sup>12</sup> In other words, each segment of an antidumping proceeding is an independent segment with separate records which lead to independent determinations.<sup>13</sup> As a result, we have not considered decisions in past segments of this case in considering whether the Philippines is at a level of economic development comparable to the PRC in this review because those decisions were based on different record evidence.

In the Preliminary Results, we stated that, “in light of the CIT’s holding in Dupont Teijin<sup>14</sup> and evidence of more contemporaneous GNI data on the record, the Department preliminarily determines that Bulgaria, Ecuador, Romania, South Africa, Thailand, and Ukraine are countries that are at the same level of economic development as the PRC based on 2013 GNI data.”<sup>15</sup> Further, the Department previously applied this practice in Furniture 2010, where we “relied on the most recent GNI per capita data available for this proceeding at the time that economic comparability was determined for this case.”<sup>16</sup> Thus, our selection of Thailand as the primary surrogate country based on 2013 data is consistent with both administrative and judicial precedent. Our selection of Thailand is also consistent with section 773(c)(4) of the Act because, based on the 2013 GNI data, we determine that Thailand is at the same level of economic development as the PRC.<sup>17</sup> In contrast, none of the surrogate country lists issued by the Department based on 2013 GNI data that are on the record of this review list the Philippines as being at the same level of economic development as the PRC.<sup>18</sup> As we stated in the Preliminary Results, unless it is determined that none of these countries considered at the same level of economic development based upon updated 2013 GNI data are unusable because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons, we

<sup>12</sup> See Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) (“Plywood”) and accompanying IDM at Comment 7 (“The surrogate country selection criteria do not include or consider whether countries have been selected in previous and unrelated proceedings. The Department selects the primary surrogate country for each proceeding based on the facts of that individual proceeding, regardless of whether the potential surrogate countries under consideration have been previously selected as surrogate countries.”).

<sup>13</sup> See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47551 (September 16, 2009) and accompanying IDM at Comment 8.

<sup>14</sup> See Dupont Teijin Films v. United States, 931 F. Supp. 2d 1297, 1300 (CIT 2013) (“Dupont Teijin”) (“Because Commerce did not provide a reasoned explanation for disregarding the 2009 GNI data and because the 2009 GNI data indicated that India and the PRC were not economically comparable during the POR, the court concluded that Commerce’s selection of India as the surrogate country was not supported by substantial evidence.” (citing Dupont Teijin Films v. United States, 896 F. Supp. 2d 1302, 1309 (CIT 2013))); see also Dupont Teijin Films v. United States, 997 F. Supp. 2d 1338 (CIT 2014).

<sup>15</sup> See Prelim Decision Memo at 14-15.

<sup>16</sup> See Wooden Bedroom Furniture From the People’s Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010) (“Furniture 2010”) and accompanying IDM at Comment 34.

<sup>17</sup> See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Frances Veith, Senior Trade Analyst, re: “Seventh Administrative Review of Certain Activated Carbon from the People’s Republic of China: Surrogate Values for the Preliminary Results,” dated April 29, 2015 (“Prelim SV Memo”) at Attachment 2.

<sup>18</sup> See Prelim Decision Memo at 14; see also Prelim SV Memo at Attachment 2.

will rely on data from one of these countries.<sup>19</sup> As set forth below, because Thailand fulfills these selection criteria, there is no need to resort to countries that are at a less comparable level of economic development, such as Indonesia or the Philippines as suggested by Carbon Activated.

### *Significant Producer*

Although Jacobi, Juqiang, and Carbon Activated note that the Philippines exports a greater quantity of activated carbon than Thailand, the statute does not require that the surrogate country be the most significant producer. Section 773(c)(4)(B) of the Act requires the Department to value factors of production (“FOPs”), to the extent possible, in a surrogate country that is a significant producer of comparable merchandise. Importantly, the Act does not define the phrase “significant producer.”<sup>20</sup> Certain legislative history suggests that the Department may consider a country to qualify as a “significant producer” if, among other things, it is a “net exporter” of identical or comparable merchandise.<sup>21</sup> However, that text does not define the phrase “net exporter” or explain whether a potential surrogate country must constitute a net exporter in terms of quantity, value, or both to fit the example provided in the legislative history.<sup>22</sup> As a result, this ambiguous provision of the Act does not compel the Department to define “significant producer” in any particular manner.<sup>23</sup>

The Department finds that for this industry Thailand is a significant producer, based on export quantities.<sup>24</sup> We prefer to consider quantity, rather than value, in determining whether a country is a significant producer.<sup>25</sup> Moreover, as noted above, the fact that a country is not a net exporter of a particular product, in value terms, does not necessarily mean that the country is not a significant producer of that good, given that the country could import more higher-valued products than it exports. Therefore, both the Philippines and Thailand are significant producers because, in quantity terms, they are exporters of goods identical to the subject merchandise and have production of comparable merchandise as evidenced by the financial statements on the

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<sup>19</sup> See Prelim Decision Memo at 12; see also Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011–2012, 79 FR 31298 (June 2, 2014) and accompanying IDM at Comment 1 (“{U}nless we find that all of the countries determined to be at the same level of economic development as the PRC are not significant producers of comparable merchandise, are not reliable sources of publicly-available SV data, are not suitable for use based on other reasons, or we find that another country not on the surrogate country list is at a comparable level of economic development and is an appropriate surrogate, we will rely on data from one of these countries.”)

<sup>20</sup> See section 773(c)(4)(B) of the Act; see also Policy Bulletin 04.1, available at <http://enforcement.trade.gov/policy/bull04-1.html>.

<sup>21</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590, 1988 U.S.C.C.A.N. 1547, 1623 (1988).

<sup>22</sup> Id.

<sup>23</sup> See Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006).

<sup>24</sup> See Prelim SV Memo at Attachment 1.

<sup>25</sup> See Certain Activated Carbon from the People’s Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review, 77 FR 67337 (November 9, 2012) (“AR4 Carbon”) and accompanying IDM at Comment I.B.

record.<sup>26</sup> For the reasons outlined above, we find Thailand to be significant producer of comparable merchandise.

### *Data Availability*

Parties have raised arguments related to the reliability and representativeness of Thai import data and the Thai financial statements on the record. However, we find these arguments to be unconvincing.

Initially, we do not agree with Carbon Activated's contention that Thai import data in their entirety are unreliable. As noted by Carbon Activated, in two recent cases, Xanthan Gum and Certain Steel Threaded Rod from the PRC, the Department determined that the reports from the U.S. Trade Representative ("USTR") and the FedEx Country Report do not make Thai import data unreliable or inferior to Philippine data, and we declined to conclude that all Thai import data should be rejected due to the reports.<sup>27</sup> Further, other than these reports remarking on the general state of Thai Customs practices, Carbon Activated has pointed to no evidence on the record which demonstrates that the specific SVs relied on by the Department in this administrative review are the result of the alleged Thai Customs practices and thus unreliable.

Carbon Activated also contends that, in light of these reports, the Department should apply its "reason to suspect or believe" standard to Thai import data in the same manner it does with Thai exports for purposes of calculating SVs. Carbon Activated is specifically referencing the Department's longstanding practice of disregarding export prices from countries, like Thailand, which the Department has reason to believe or suspect maintain generally available non-industry specific export subsidies. This practice was recently codified with the passage of the TPEA, which amended section 773(c)(5) of the Act to accord the Department discretion to "disregard certain price or cost values without further investigation if the {Department} has determined that broadly available export subsidies existed or particular instances of subsidization occurred with respect to those price or cost values or if those price or cost values were subject to an antidumping order."<sup>28</sup> But unlike with regard to *export* subsidies, the Department has not previously found that broadly available *import* subsidies in Thailand exist that would distort Thai import prices. Further, despite Carbon Activated's contention that manipulation of entered values occurs in Thailand, as noted, Carbon Activated provides no specific evidence that the SV used here are the result of any such distortive practices.

<sup>26</sup> See Letter from Petitioners, dated November 12, 2014, at page 3; see also, Letter from Juqiang, dated November 12, 2014, at Exhibit 1.

<sup>27</sup> See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) ("Xanthan Gum from the PRC") and accompanying IDM at Comment 1; Certain Steel Threaded Rod from the People's Republic of China, 79 FR 71743 (December 3, 2014) ("Certain Steel Threaded Rod from the PRC"), and accompanying IDM at Comment 1.

<sup>28</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015).

As for Jacobi's claim that Carbokarn's financial statements contain evidence of countervailable subsidies and thus cannot be used, this argument is based purely on speculation. The fact that the Department has found the existence of countervailable subsidy programs in other investigations and reviews involving Thailand does not mean, as Jacobi suggests, that the surrogate producer in question is receiving countervailable subsidies. To the extent that Jacobi draws a parallel to our practice of disregarding import prices from Thailand when selecting SVs due to the existence of broadly available non-industry-specific export subsidies (which we have detailed above), the Department notes that this decision typically pertains to import-based SVs, not the calculation of surrogate financial ratios.<sup>29</sup> Imports into a surrogate country from an exporting country that has broadly available export subsidies may reflect such subsidies in their prices, as these are broad price averages. Thus, the Department avoids using such import prices. In contrast, the Department's calculation of surrogate financial ratios is based on a specific company's costs and sales experience within the surrogate country.

Further, though the Department does have discretion to avoid using prices if it has determined that subsidization occurred with respect to those price or cost values,<sup>30</sup> there is no basis for doing so here. Where the Department has reason to believe that a company received subsidies, based on information in the company's financial statements, the Department may find that the financial ratios derived from that company's financial statements are less representative of the financial experience of the company or the relevant industry compared to ratios derived from financial statements that do not contain evidence of subsidies.<sup>31</sup> However, it is our practice not to reject financial statements based on the grounds that the company received export subsidies unless we have previously found the specific export subsidy program to be countervailable.<sup>32</sup> Here, Jacobi does not cite or identify any specific subsidy program related to the financial statements which the Department has previously found to be countervailable.<sup>33</sup> Moreover, the 2011 financial statements of Carbokarn, upon which the Department is now relying for these final results (see Comment 2), contain no evidence of countervailable subsidies.<sup>34</sup> Therefore, the Department continues to find that Carbokarn's financial statements are suitable for use in the calculation of

<sup>29</sup> See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying IDM at Comment 7 (referring to "market-economy purchases from Indonesia, Korea, and Thailand").

<sup>30</sup> See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988).

<sup>31</sup> See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007) and accompanying IDM at Comment 1.

<sup>32</sup> See, e.g., Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 16379 (March 23, 2011) and accompanying IDM at Comment 3; see also Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 1592 (January 12, 2010) and accompanying IDM at Comment 4; see also Certain Steel Threaded Rod From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 68400 (November 4, 2011) and accompanying IDM at Comment 5.

<sup>33</sup> See Jacobi's Case Brief at 18-19.

<sup>34</sup> See Juqiang's Surrogate Value Submission, dated June 2, 2015, ("Juqiang's June 2 SV Submission") at Exhibits 1-3.

surrogate financial ratios. For further discussion on financial statements for the final results, see Comment 2.

With regard to Carbon Activated's contention that it is unreasonable to assume respondents would select the most expensive market to acquire inputs (in this case, Thailand) and Carbon Activated's claims about the unpredictability of the Department's surrogate country selection, as we stated above, Department selects the primary surrogate country for each segment of a proceeding based on the record facts of that individual segment, regardless of whether the potential surrogate countries under consideration have been previously selected as the primary surrogate country. Further, the Department's reliance on per capita GNI provides a predictable selection process, but it does not mean that the Department will rely on a single country for the life of the order. Rather, consistent with the statute, the Department selects the country that best meets the statute's requirements in each segment in order to establish normal value relevant to the period at hand. The Department's surrogate country selection criteria does not take into account input *costs*, but as noted above and in the Preliminary Results, the Department relies on per capita GNI, whether the potential surrogate country is a significant producer of comparable merchandise and data availability in selecting the appropriate surrogate country.

Finally, the circumstances cited by Carbon Activated in Fish Fillets and Pure Magnesium that justified the Department's departure from the surrogate country list in that review are not present in this case. In Fish Fillets, the Department selected Indonesia as the primary surrogate country because of unique data concerns related to the primary input, *i.e.*, whole, live fish input. In Pure Magnesium, while the Department indicated that the omission of India from the surrogate country list did not preclude the use of Indian data to value FOPs, the Department did not use FOP data from India because the necessary FOP data was available from a surrogate country identified on the surrogate country list of that case. In the instant case, none of the circumstances in Fish Fillets apply because Thailand is listed as one of the potential primary surrogate countries based on 2013 GNI data, is a significant producer of comparable merchandise, and, as in Pure Magnesium, the record contains reliable Thai SV data for all inputs.

For all the reasons stated above, we determine that Thailand is at the same level of economic development as the PRC, a significant producer of comparable merchandise, and has reliable data with which to value the mandatory respondents' FOPs. Accordingly, we will continue to use Thailand as the surrogate country in this administrative review.

## **Comment 2: Financial Statements**

### ***Jacobi's Arguments***

- The 2010 Carbokarn financial statements are not suitable for calculating financial ratios because these statements indicate that activated carbon accounts for a minority of the Thai producer's production and sales, and the financial statements appear to include significant non-subject merchandise production from a subsidiary.
- If the Department relies on financial statements from the Philippines, the Department should not use the 2013 financial statements of BF Industries Inc. ("BFI") or the 2013 financial statements of Davao Central Chemical Corp. ("Davao") to calculate surrogate financial ratios. Financial statements from both companies show non-interest bearing

transactions with related parties. Department practice demands that any financial statements with evidence of non-interest bearing loans be rejected.<sup>35</sup> BFI's financial ratios are outliers, suggesting an abnormal year that is not reflective of the broader market.

### *Juqiang's Arguments*

- Even though the Philippines was not found to be economically comparable in the Preliminary Results, Department precedent supports the use of superior SV data regardless of comparability.<sup>36</sup> For that reason, if the Philippines is not selected as the primary surrogate country in the final results, the four Philippine financial statements should be used to calculate surrogate financial ratios because they are qualitatively superior to the Thai statement and the Department has consistently relied on Philippine statements in prior proceedings.
- The Department should not use the 2010 financial statements of Carbokarn, a Thai producer of activated carbon, to calculate the surrogate financial ratios because these statements are not fully translated, including portions of the Auditor's report and the "Notes to Accounts." It is the Department's practice to reject financial statements that are not fully translated into English.<sup>37</sup>
- Additionally, the 2010 and 2011 Thai statements of Carbokarn are less detailed than the Philippine statements and are non-contemporaneous by more than two years, whereas three of the Philippine financial statements are fully contemporaneous.
- Alternatively, if the Department prefers a Thai financial statement, consistent with its practice, it should use the 2011 Carbokarn statements, because they are more contemporaneous than the 2010 statements.<sup>38</sup>
- However, if the Department continues to use Carbokarn's 2010 financial statements in the final results, it should treat revenue from dividend as an offset to profit.<sup>39</sup>

### *Petitioners' Rebuttal Arguments*

- If the Department relies on Philippine financial statement in the final results, it should use the financial statements of Philippine producers BF Industries and Davao. Also, if the Department disqualified Davao because of non-interest bearing trade accounts payable, it should also disqualify the Philippine statements of Premium AC.

**Department's Position:** In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and

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<sup>35</sup> See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 79 FR 26712 (May 9, 2014) ("Wood Flooring 2014") and accompanying IDM at Comment 2.

<sup>36</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat from the People's Republic of China, 62 FR 41347, 41354 (August 1, 1997).

<sup>37</sup> See Xanthan Gum from the PRC.

<sup>38</sup> See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 56341, 56342 (September 19, 2014).

<sup>39</sup> See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 28801 (May 16, 2013).

profit.<sup>40</sup> Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.<sup>41</sup> However, the Department is not required to "duplicate the exact production experience of" an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."<sup>42</sup> Additionally, the Department has a strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."<sup>43</sup> Further, courts have recognized the Department's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.<sup>44</sup>

The record contains 2013 financial statements from Indonesia and the Philippines. The record also contains the 2010, 2011, and 2013 financial statements of Carbokarn and the 2013 financial statements of Gigantic, both Thai activated carbon companies. Because, as noted in Comment 1 above, the Department continues to select Thailand as the primary surrogate country in this review, we have determined not to use the financial statements from the companies within Indonesia and the Philippines because these financial statements come from companies operating in countries that have not been found to be at the same level of economic development and the statements are not from the primary surrogate country. As noted above, the Department has a strong preference, reflected in 19 CFR 351.408(c)(2), to value all FOPs in a single surrogate country and to "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."<sup>45</sup> Because we do not find that surrogate financial data from Thailand, our primary surrogate country, are unavailable or unreliable, the Department does not consider the financial statements from the Philippines and Indonesia to be better SV sources than the financial statements from Thailand.

With respect to the 2013 financial statements for Carbokarn, we continue not to use these financial statements because we find them unusable as they do not provide sufficient detail on expenses to allow the Department to calculate accurate surrogate financial ratios.<sup>46</sup> For example, the statements do not detail the company's cost of goods sold, selling, general and administrative expenses, or labor expense. Additionally, as in the Preliminary Results, we will not use

<sup>40</sup> See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) and accompanying IDM at Comment 2.

<sup>41</sup> See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010) and accompanying IDM at Comment 13.

<sup>42</sup> See Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999); see also Magnesium Corp. of Am. v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).

<sup>43</sup> See Jiaying Brother Fastener Co. v. United States, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014) ("Jiaying Brother") quoting Sodium Hexametaphosphate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 59375 (September 27, 2012) ("Sodium Hex") and accompanying IDM at Comment I.

<sup>44</sup> See, e.g., FMC Corp. v. United States, 27 CIT 240, 251 (CIT 2003) (holding that the Department can exercise discretion in choosing between reasonable alternatives), aff'd FMC Corp. v. United States, 87 F. App'x 753 (Fed. Cir. 2004).

<sup>45</sup> See Jiaying Brother quoting Sodium Hex and accompanying IDM at Comment I.

<sup>46</sup> See Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12, 79 FR 96 (January 2, 2014) and accompanying IDM at Comment I.

Gigantic's financial statements, because there is evidence that they received countervailable subsidies.<sup>47</sup> For the Preliminary Results, we relied on Carbokarn's 2010 financial statements.<sup>48</sup> However, since the Preliminary Results, parties placed Carbokarn's fully translated 2011 financial statements on the record.<sup>49</sup> While these financial statements are not contemporaneous with the POR, they are more contemporaneous than the 2010 Carbokarn financial statements used in the Preliminary Results and are from the primary surrogate country.

Jacobi contends that we should not rely on Carbokarn's financial statements because evidence on the record indicates that only a small part of its revenue is earned from the production of activated carbon.<sup>50</sup> However, the Department has long found that disparate production volume alone does not render unreasonable data from a surrogate producer.<sup>51</sup> Evidence on the record demonstrates that Carbokarn is a manufacturer of identical merchandise.<sup>52</sup> Further, while Jacobi alleges that Carbokarn has a comparatively small production volume of steam activated carbon, it has presented no evidence that the alleged small production volume affects the calculation of Carbokarn's 2011 surrogate financial ratios. Further, Jacobi's claims that Carbokarn's financial statements include significant amounts of non-comparable merchandise are unconvincing. As evidence that Carbokarn steam activated carbon represents only a minority of its total production and sales, Jacobi points to evidence that Carbokarn's subsidiary, CK Regen Co., Ltd. ("CK Regen"), produces regenerated activated carbon and that the majority of dividends Haycarb PLC, Carbokarn's parent company, received from Carbokarn are from CK Regen. However, Jacobi provides no evidence or explanation for the proposition that distribution of dividends is necessarily proportionate with production volume. Moreover, Jacobi points to no evidence on the record which demonstrates that CK Regen exclusively regenerates activated carbon nor is there evidence on the record which indicates that the dividends received by Haycarb are a result of only activated carbon regeneration services performed by CK Regen.

Accordingly, for the final results, we will use Carbokarn's 2011 financial statements, because they are complete, audited, publicly available, and from the primary surrogate country and are otherwise suitable for calculating the surrogate financial ratios.<sup>53</sup>

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<sup>47</sup> See Preliminary Results and accompanying Prelim Decision Memo at 27.

<sup>48</sup> Id.

<sup>49</sup> See Juqiang's June 2 SV Submission at Exhibits 1-3.

<sup>50</sup> See Jacobi's Case Brief at 17.

<sup>51</sup> See, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 68030 (December 5, 2003) and accompanying IDM at Comment 1 ("Simply because the production process of the surrogate producer results in smaller production volumes does not render it unfit as a surrogate."); see also Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000) and accompanying IDM at Comment 4 ("Regarding the petitioner's arguments about capacity, we do not believe that size or capacity of the surrogate producer always poses a necessary consideration.").

<sup>52</sup> See Juqiang's June 2 SV submission at Exhibit 1.

<sup>53</sup> See the Department's final surrogate value memorandum dated concurrently with this memorandum ("Final SV Memo").

### **Comment 3: Value Added Tax (“VAT”) and Entered Value**

#### ***Jacobi’s Arguments***

- The Department has no legal or factual basis to reduce Jacobi’s constructed export price (“CEP”) by a fictitious VAT amount.
- The VAT tax in the PRC does not meet the statutory definition of an “export tax, duty, or other charge,” which requires that it be “imposed by the exporting country on the exportation of the subject merchandise.”<sup>54</sup> A tax that is imposed only on domestic transactions (like the Chinese VAT) cannot be imposed upon exportation.
- The Department’s methodology for calculating the VAT deduction ignores the fact that Jacobi did not pay VAT on any of its export sales, save for the cost of raw material purchases (input VAT). The Department also overstates the amount of the VAT deduction by including international freight and profit, even though the VAT incurred was based on the free on board (“FOB”) cost of the raw material input.

#### ***Juqiang’s Arguments***

- The Department should not deduct VAT from U.S. price because the VAT is not an export tax, as defined by statute.

#### ***Petitioners’ Arguments***

- Due to unreliable entered value data reported by both Jacobi and Juqiang in this segment, the Department should revise its application of the unrebated VAT adjustment by calculating a price base to which to apply the VAT percentage whenever the value reported under entered value falls below the estimated customs value. The customs value is defined as the U.S. net price plus foreign movement charges in the PRC.
- Petitioners maintain that comparing Jacobi’s and Juqiang’s reported entered values to an estimated customs value, as described above, and to the margin program’s ex-factory U.S. net price (a benchmark that is lower than true customs value, as it strips out foreign movement charges in the PRC) demonstrates that the entered values are not reliable because, for both respondents, a significant number of entered values are below both the ex-factory U.S. net price and Petitioners’ estimated customs value.

#### ***Jacobi’s Rebuttal Arguments***

- If the Department continues to apply the VAT adjustment in the final results, the Department should not change its methodology as Petitioners have requested.
- Jacobi argues that its reported entered values were derived from the same information reported to U.S. Customs and Border Protection (“CBP”) on its entry forms, and Jacobi provided a certified response that these values represented FOB China port values. Citing to Steel Wire Rod from Mexico,<sup>55</sup> Jacobi argues that it is the Department’s practice to accept as true a mandatory respondent’s data accompanied by a complete and accurate questionnaire response that the Department chooses not to verify.

<sup>54</sup> See section 772(c)(2)(B) of the Act.

<sup>55</sup> See, e.g., Carbon and Certain Alloy Steel Wire Rod from Mexico, 70 FR 25809 (May 16, 2005), and accompanying IDM for the Final Results of the First Antidumping Administrative Review, at 15-16 (“Steel Wire Rod from Mexico”).

- Jacobi asserts that the Department cannot disregard these certified values based solely (1) on a finding from the second administrative review and (2) a “significant difference” between Jacobi’s net U.S. sales price to Jacobi’s reported entered value. A finding from the second review cannot trump certified data from this review. Further, it makes no business sense to expect Jacobi’s sales prices to end-use customers in the U.S. (Jacobi’s reported U.S. net prices) to be the same as or similar to internal transactions between Jacobi’s Chinese affiliate, Jacobi Carbons Industry (Tianjin) Company Limited and its U.S. affiliate, Jacobi Carbons Inc. (Jacobi’s reported entered values).
- The Department should summarily reject Petitioners’ argument to modify the calculation of the VAT adjustment because certain adjustments (i.e., foreign movement expenses and CEP profit) in Petitioners’ estimated customs value are derived from Thai SVs.
- Moreover, without satisfying the statutory prerequisites, the law does not permit the Department to throw out Jacobi’s certified entered values and replace them with an artificial calculated value comprised of facts available. The application of Petitioners’ suggestion would constitute an unlawful application of adverse facts available (“AFA”) because the Department may not apply AFA where none of the prerequisites for the use of AFA are met.

#### ***Juqiang’s Rebuttal Arguments***

- In the event that we decide to deduct VAT from U.S. price, the Department should not compute VAT based on Petitioners’ methodology because Petitioners’ computation for entered value is seriously flawed. Petitioners’ calculation rests on an impermissible circular methodology that involves computation of the VAT amount by applying a base that already includes the VAT amount.
- Moreover, Petitioners’ argument is based on the incorrect assumption that Juqiang’s entered value is equal to the landed price of good and therefore its price should be lower than U.S. net price or customs value.
- Consistent with its established policy, the Department should compute the VAT amount by applying it to Juqiang’s FOB price data, which it reported in its sales database as either gross unit price or entered value. As support, Juqiang cites to Wood Flooring where we calculated the VAT adjustment in accordance with the PRC Circular 7, Irrecoverable VAT, using the FOB value as the base.
- Further, because the VAT was paid at the time of export, this amount is included in the FOB value of export goods. This fact is established by the PRC Government in its Circular titled “Notice from the State Administration of Taxation of the People’s Republic of China Concerning the Refund (Exemption) of Tax on Exported Commodities,” dated July 12, 2006.<sup>56</sup>

#### ***Petitioners’ Rebuttal Arguments***

- In rebuttal, Petitioners argue that we have properly adjusted respondents’ reported U.S. prices within the meaning of section 772(c)(2)(B) of the Act and that we should continue to do so in the final results. The Department’s methodology explicitly recognizes that

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<sup>56</sup> See Jacobi’s Supplemental Section C Response, dated October 20, 2014, at Exhibit SC-56.

VAT is not paid on export sales, but rather is a cost that is imposed in connection with the export of goods.

**Department's Position:** For the reasons explained below, we continue to apply the un-refunded (i.e., irrecoverable) VAT adjustment that we used in the Preliminary Results. We find that for certain sales where the reported entered values are unreliable, the substitution of an alternative customs value is appropriate.

In 2012, we announced a change of methodology with respect to the calculation of export price ("EP") or CEP to include an adjustment of any (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.<sup>57</sup> In this announcement, the Department stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.<sup>58</sup>

In a typical VAT system, companies do not incur VAT expense for exports; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports ("input VAT"), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.<sup>59</sup> That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.<sup>60</sup> This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales, and thus we disagree with respondents' assertions that irrecoverable VAT should not be deducted from their U.S. prices. Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.<sup>61</sup>

In response to Jacobi's claim that the Department does not have the authority under the statute to adjust for VAT, we note that section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Although Jacobi argues that it pays no VAT upon export, it misstates what is at issue. The issue is the irrecoverable VAT on inputs, not VAT per se. Irrecoverable VAT, as defined in PRC law, is a

<sup>57</sup> See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings, 77 FR 36481, 36482 ("Methodological Change").

<sup>58</sup> Id., at 77 FR 36483; see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 4875 (January 30, 2014) ("Chlorinated Isos 2012") and accompanying IDM at Comment 5.

<sup>59</sup> See, e.g., explanations in Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014) ("Diamond Sawblades") and accompanying IDM at Comment 6; see also Wood Flooring 2014 and accompanying IDM at Comment 3; see also Methodological Change, 77 FR at 36483.

<sup>60</sup> See Methodological Change, 77 FR 36483.

<sup>61</sup> Id.

net VAT burden that arises solely from, and is specific to, exports.<sup>62</sup> It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.<sup>63</sup> Irrecoverable VAT is, therefore, an “export tax, duty, or other charge imposed” on exportation of the subject merchandise to the United States.<sup>64</sup> The statute does not define the term(s) “export tax, duty, or other charge imposed” on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.<sup>65</sup> Additionally, it is set forth in PRC law, and, therefore, can be considered to be “imposed” by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT falls under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax neutral net price received by the seller. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.<sup>66</sup>

19 CFR 351.401(c) requires that the Department rely on price adjustments that are “reasonably attributable to the subject merchandise.” The PRC’s VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. Consistent with the PRC VAT regime and our regulation, we note that our methodology, as applied in this review, consists of performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Irrecoverable VAT is (1) the FOB value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods. The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulations.<sup>67</sup>

In this review, in step one, we determined the irrecoverable VAT on subject merchandise by first determining the amount of tax levied on inputs and raw materials (used in the production of exports). Here, VAT is levied on inputs at a rate of 17 percent, and for activated carbon there is no VAT rebate.<sup>68</sup> Consequently, the irrecoverable rate is equal to the full VAT percentage, *i.e.*, 17 percent (17 percent less rebate rate of zero percent). Because the PRC does not provide a refund of VAT paid for inputs upon exportation of activated carbon, we find that the entire input VAT is a cost that arises as a result of export sales. Our analysis is consistent with our current irrecoverable VAT policy and our treatment of irrecoverable VAT in recently completed NME

<sup>62</sup> See Small Diameter Graphite Electrodes from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 57508 (September 25, 2014) and accompanying IDM at Comment 7.

<sup>63</sup> Id.

<sup>64</sup> See Frontseating Service Valves From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 71385 (December 2, 2014) and accompanying IDM at Comment 5.

<sup>65</sup> Id.

<sup>66</sup> See Methodological Change, 77 FR 36483, and Antidumping Duties; Countervailing Duties, 62 FR 27296, 27369 (May 19, 1997) (citing the SAA at 827).

<sup>67</sup> See Jacobi’s Supplemental Section C Response, dated October 20, 2014, at Exhibit SC-54-SC-56.

<sup>68</sup> See Jacobi’s supplemental section C submission dated October 21, 2014, at 28-30; see also Juqiang’s section C response, dated September 2, 2014, at C-30.

cases. Therefore, we have not altered our irrecoverable VAT adjustment methodology for these final results.

Furthermore, with respect to Jacobi's and Juqiang's entered values, we agree with Petitioners that, for both mandatory respondents, certain entered values are not reliable for purposes of determining irrevocable VAT. As noted above, the Department uses the FOB value of an exported good as the base upon which irrevocable VAT is calculated. Entered values reported by respondents are a reasonable reflection of the FOB value of the exported goods, and generally a reflection of the commercial value of the exported merchandise. However, here, Petitioners have argued that certain entered values are not representative of commercial export values when compared to an ex-factory net U.S. price and/or an estimated customs value (defined as ex-factory net U.S. price plus foreign movement expense). As set forth below, we agree with Petitioners that reliance upon the entered values as reported by Jacobi and Juqiang results in an inappropriately low VAT adjustment. Accordingly, we find that it is appropriate in certain instances to rely on an estimated customs value as the best proxy for an FOB China port value upon which to base the VAT adjustment.

To summarize at the outset, in the second administrative review of this proceeding, we analyzed the difference between Jacobi's entered values and its estimated customs values.<sup>69</sup> In that segment, we found substantial differences between Jacobi's estimated customs values for its entries of certain activated carbon and the entered values reported to CBP.<sup>70</sup> We determined that the entered values of CEP sales made by Jacobi were being systematically understated, which we also determined would result in the under-collection of antidumping duties by CBP.<sup>71</sup> Accordingly, we made a determination to switch to per-unit assessment and cash deposit rates in that and subsequent reviews.<sup>72</sup>

We performed a similar comparison in this review, comparing Jacobi's entered values to the estimated customs values. Normally, the difference between entered value and ex-factory net U.S. price plus foreign movement expense (i.e., estimated customs value) is relatively small. This is because the net U.S. price calculated in the Department's margin program has been stripped of various expenses so it reflects an approximation of an ex-factory price.<sup>73</sup> Once foreign movement expenses are added back to U.S. net price, the resulting value approximates a FOB foreign port value. Similarly, the entered values reported to CBP on CEP sales are also on an FOB foreign port value basis. Although these values should be similar, using the estimated customs values, in this review, we found that a significant percentage of Jacobi's entered values

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<sup>69</sup> See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208 (November 17, 2010) and accompanying IDM at Comment 3.

<sup>70</sup> Id.

<sup>71</sup> Id.

<sup>72</sup> Id.

<sup>73</sup> Specifically, the Department's margin program starts with a respondent's gross unit price and we remove all expenses associated with selling the product in the United States, as well as an amount for international movement expenses and profit to arrive at an ex-factory net U.S. price. See also Florida Citrus Mut. v. United States, 515 F. Supp. 2d 1324 (CIT 2007) ("Constructed export price is an approximation of an ex-factory price.").

are less than the estimated customs values.<sup>74</sup> For Juqiang, we only analyzed those sales that have a reported entered value. Applying the same analysis methodology to those sales, we also found a significant percentage of Juqiang's reported entered values are less than the estimated customs values.<sup>75</sup>

Because there is a gap between some declared entered values and the corresponding estimated customs value, if entered value is used to calculate the VAT adjustment in those instances, there will be an inappropriately low VAT adjustment. Consistent with our practice, when we determine that reported entered values do not represent commercial values for export,<sup>76</sup> we find that an alternate customs value is a more appropriate basis for an FOB China port value. We find that this methodology, which is derived from information already on the record of this review, results in the most reliable base values upon which to calculate the VAT adjustment. Therefore, where reported entered values are less than the estimated customs value, we will use the estimated customs value to calculate the VAT adjustment.

Regarding Jacobi's argument that we are replacing its reported entered values with an artificial calculated value based upon AFA, Jacobi acknowledges that a prerequisite to the use of AFA is a finding under 776(a) of the Act that there is a need to resort to facts otherwise available in making a determination. But in relying upon estimated customs values in certain instances, the Department has not determined that necessary information is missing from the record, nor has it found that Jacobi withheld information, failed to provide information in the appropriate form or manner, significantly impeded the proceeding, or provided unverifiable information.<sup>77</sup> Accordingly, the provisions of section 776 of the Act have not been triggered. Rather, the Department has made a determination, based on the record evidence before it, about the appropriate base for the VAT adjustment. That the Department weighed the available evidence in a manner with which Jacobi disagrees does not mean that our determination is based on AFA.

We also disagree with Jacobi's implication that Steel Wire Rod from Mexico requires the Department to accept in all instances a mandatory respondent's data because we chose not to verify that data. The Department's determinations are made on a case-by-case basis, and

<sup>74</sup> See Memorandum to the File through Catherine Bertrand, Program Manager, Office V, from Frances Veith, Senior International Trade Analyst, Office V, "Final Results Analysis Memorandum for Jacobi Carbons AB; Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China" dated concurrently with this memorandum ("Jacobi's Final Analysis Memo").

<sup>75</sup> See Memorandum to the File through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Senior Trade Analyst, Office V, "Final Results Analysis Memorandum for Datong Juqiang Activated Carbon Co., Ltd. in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China" dated concurrently with this memorandum ("Juqiang's Final Analysis Memo").

<sup>76</sup> See e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546, 19549 (April 22, 2002) ("Crawfish 2002") and accompanying IDM; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 66 FR 36551, 36554 (July 12, 2001); see also Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 70 FR 38872, 38880 (July 6, 2005) and accompanying IDM at Comment 7; and Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082, 34086 (June 13, 2005).

<sup>77</sup> See section 776(a) of the Act.

dependent upon the particular facts of each case. In Steel Wire Rod from Mexico, we determined that a respondent, SICARTSA, responded completely and accurately to the Department's questionnaire. The Department did not state that because we did not verify certain information, we would accept SICARTSA's complete response as true.<sup>78</sup> In fact, in Steel Wire Rod from Mexico, after examining record information, we stated that we can rely on the net interest expense as reported by SICARTSA.<sup>79</sup> In this case, after examining the record and conducting an analysis of record information, we determined that certain of respondents' reported entered values are unreliable.

Finally, we disagree with Juqiang's proposed calculation modification based on the PRC circular entitled "Notice from the State Administration of Taxation of the People's Republic of China Concerning the Refund (Exemption) of Tax on Exported Commodities." As an initial matter, as noted above, irrecoverable VAT adjustment does not entail deducting VAT paid on the sale of activated carbon, but rather the portion of VAT paid on inputs to produce activated carbon that is not rebated by the PRC Government. Juqiang has proposed a calculation methodology that is used to calculate a VAT paid on the sale of its product, not a VAT rebate on inputs.<sup>80</sup> Jacobi provided the PRC law that describes when this VAT payable calculation is applied.<sup>81</sup> Specifically, the calculation is a VAT payable for those companies that are not eligible for a VAT rebate upon exportation.<sup>82</sup> Jacobi reported that PRC law considers sales that are not eligible for a VAT rebate as domestic sales, rather than an export sale.<sup>83</sup> As a consequence, both respondents incur a form of sales tax corresponding to their sales to the United States. We find that Juqiang's proposed calculation is not applicable to VAT rebate for inputs used in the production of subject merchandise but rather a sales tax on the sale of its finished goods. Therefore, we will not consider this alternative methodology for calculating irrecoverable VAT on inputs in the final results.

#### **Comment 4: Application of the Differential Pricing Analysis**

We reviewed a number of comments on our differential pricing methodology which are moot because the Department has used the standard average-to-average method to calculate Jacobi's and Juqiang's weighted-average dumping margins. Therefore, we are not addressing the comments regarding the use of an alternative comparison method based on the average-to-transaction method.

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<sup>78</sup> See Steel Wire Rod from Mexico and accompanying IDM at Comment 12.

<sup>79</sup> Id.

<sup>80</sup> See Jacobi's Supplemental Section C Response, dated October 20, 2014, at Exhibit SC-56.

<sup>81</sup> Id.

<sup>82</sup> Id.

<sup>83</sup> See Jacobi's supplemental section C submission dated October 21, 2014, at 28-30.

## Surrogate Values

### Comment 5: Anthracite Coal Surrogate Value

#### *Jacobi's Arguments*

- The statute mandates the selection of SVs comparable to the FOPs as consumed by the producer.<sup>84</sup> The record in this review reflects that Jacobi's suppliers only consumed raw, bulk anthracite coal.
- The Department should use either inflated Philippine Import data from the fifth administrative review ("AR5") or U.S. Government Energy Information Agency ("EIA") to value Jacobi's suppliers' anthracite coal. The Department previously determined that Philippine coal was of the specific type used by Jacobi's suppliers and evidence on the record shows that the coal used is "virtually identical" to the coal produced by U.S. anthracite mines. No such specificity evidence exists for the remaining SVs on the record. Moreover, the U.S. and Philippines AR5 numbers better reflect market economy prices for anthracite coal because current Philippine and Indonesian prices are much higher than the range of prices used in the last six reviews, and there is no evidence to suggest a corresponding price spike.
- In Taian, the CIT rejected the Department's use of a SV derived from a broad basket Harmonized Schedule ("HS") category where more specific information was available and held that product specificity must be the primary consideration by the Department in determining the "best available information."<sup>85</sup>

#### *Petitioners' Rebuttal Arguments*

- Jacobi failed to demonstrate that the current data are not specific insofar as it includes materials other than anthracite coal or significant quantities of varieties of anthracite coal that cannot be used in producing subject merchandise. Instead, Jacobi focused its arguments on establishing that two of the SVs *are* specific.
- In claiming that the price relied on by the Department is high due to its lack of specificity, Jacobi focuses its analysis on the past two administrative reviews, for which prices were historically low.
- Average EIA prices are immaterial because the U.S. is not economically comparable to the PRC.
- Thai imports represent a valuation that is close to the average price across all six countries on the 2013 surrogate country list.

**Department's Position:** We agree with Petitioners that the Department's use of Thai import statistics as reported by GTA under HS code 2701.11 "Anthracite Coal, Not Agglomerated" is the best available information for determining the SV for anthracite coal. When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is the Department's practice to select SVs which, to the extent practicable, are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR,

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<sup>84</sup> See section 773 of the Act.

<sup>85</sup> Jacobi cites Taian Ziyang Food Company Ltd., v. United States, 783 F. Supp. 2d 1292, 1300-40 (CIT 2011) ("Taian").

and exclusive of taxes and duties.<sup>86</sup> Moreover, it is the Department's well-established practice to rely upon the primary surrogate country for all SVs, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.<sup>87</sup>

Parties have placed five SVs for anthracite coal on the record: (1) GTA data for Thai Harmonized Schedule ("HS") category 2701.11; (2) GTA data for Philippine HS 2701.11; (3) GTA data for Philippine HS 2701.11 from AR5, which the Department used in the sixth administrative review ("AR6") as well after adjusting it for inflation; (4) GTA data for Indonesian HS 2701.11; and (5) U.S. government data published by the EIA. As noted above in Comment 1, we have not considered anthracite coal data from either the Philippines, Indonesia, or the United States, because they do not come from the primary surrogate country, or a country found to be at the same level of economic development as the PRC, and we have useable SV data from the primary surrogate country that satisfies the breadth of our SV selection criteria.

The Department disagrees with Jacobi that we should rely on anthracite coal data provided by the U.S. EIA. We note that the United States is not at the same level of economic development as the PRC.<sup>88</sup> Specifically, the 2013 GNI for the United States is 53,670 U.S. Dollars ("USD") and the PRC's 2013 GNI is 6,560 USD.<sup>89</sup> Further, the Department relies on SV data from countries whose GNI is not at the same level of economic development as the NME country, but still at a level comparable to that of the NME country, only when we have been unable to obtain SVs from any other source that is at the same level of economic development as the NME country.<sup>90</sup> In this and previous administrative reviews, we have found suitable information from the primary surrogate country under the most specific HS number, which is HS number 2701.11: "Anthracite Coal, Not Agglomerated," from which to value respondents' anthracite coal inputs; we need not find or rely on SV information from countries with GNIs that far exceed the PRC's GNI.<sup>91</sup> While the record contains information that U.S. anthracite is similar to PRC anthracite,<sup>92</sup>

<sup>86</sup> See, e.g., Fuwei Films (Shandong) Co. v. United States, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 10; Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008) and accompanying IDM at Comment 2).

<sup>87</sup> See 19 CFR 351.408(c)(2); see also Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review, 76 FR 66903 (October 28, 2011); unchanged in Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review, 77 FR 12553 (March 1, 2012).

<sup>88</sup> See Jacobi's Surrogate Country Comments, dated November 12, 2014, at Attachment C.

<sup>89</sup> Id.

<sup>90</sup> See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 79 FR 19053 (April 7, 2014) and accompanying IDM at Comment IA (where the Department sought SV information from Indonesia whose GNI was greater than Vietnam's because the significant producer and data quality considerations outweighed the fact that Indonesia was not at the same level of economic development as the NME country in question).

<sup>91</sup> See, e.g., AR4 Carbon and accompanying IDM at Comment IC(A) (finding HTS 2701.11 for both Thailand and the Philippines "viable options" for valuing anthracite coal).

anthracite is not unique to the PRC nor is there any information on the record which would suggest that only U.S. anthracite could be used as a suitable valuation source for Jacobi's suppliers' anthracite.

Additionally, although Jacobi argues for the use of Philippine GTA data from AR5, we note those data are not from the primary surrogate country, nor is it contemporaneous with the POR. As noted above in Comment 1, the Department continues to determine that Thailand is the most appropriate surrogate country in this administrative review. The Department has a strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."<sup>93</sup> Additionally, Jacobi argues that the AR5 Philippine GTA data for anthracite coal is more specific to the anthracite coal used by Jacobi's suppliers than the contemporaneous GTA data from other potential surrogate countries, because the Department determined in AR5 and AR6 that Philippine GTA data for anthracite coal reflected imports that were similar to the input used by Jacobi's suppliers. While it is true that the Department used AR5 Philippine GTA data under HS 2701.11 to value anthracite coal in those administrative reviews,<sup>94</sup> in this administrative review, unlike AR6, there is no evidence on the record which suggests that the Thai GTA import data under HS 2701.11 "Anthracite Coal, Not Agglomerated" are not specific to the anthracite coal used by Jacobi's suppliers. Rather, the Thai GTA import data under HS 2701.11 "Anthracite Coal, Not Agglomerated" is, as noted by Jacobi, the same HS category the Department has found specific to respondents' anthracite coal input in previous administrative reviews of this Order.<sup>95</sup>

Further, while Jacobi contends that the AR5 Philippine GTA import data for anthracite coal and the EIA anthracite coal data represent a better market price, its argument rests primarily on what it perceives as the high prices of anthracite coal found in the GTA import data for Indonesia and the Philippines in this review, rather than demonstrating the contemporaneous Thai GTA import data for anthracite coal is in some manner unusable or aberrational.

Accordingly, without evidence that the Thai GTA import data under HS 2701.11 are not specific to the input used by Jacobi's suppliers, or that the Thai value is otherwise unusable, we will continue to value anthracite coal used by Jacobi's suppliers using Thai GTA import data under HS 2701.11 "Anthracite Coal, Not Agglomerated." We find that such data are from the primary surrogate country, tax- and duty-exclusive, representative of broad market averages, publicly available, contemporaneous, and come from the same HS category for anthracite coal that Jacobi

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<sup>92</sup> See Jacobi's SV Submission, dated November 18, 2014, at Exhibit SV-3.

<sup>93</sup> See Jiaxing Brother quoting Sodium Hex and accompanying IDM at Comment I.

<sup>94</sup> We used HS 2701.11 "Anthracite Coal, Not Agglomerated" in AR5 because the Philippines was the primary surrogate country and no party contested this value. In AR6, the Department determined, based on record evidence in that review, that the Philippine imports under HS 2701.11 were not anthracite coal, but rather finished product made from anthracite coal and therefore not the type of anthracite coal used by Jacobi's suppliers. See Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 26748 (May 8, 2013) and accompanying Prelim Decision Memo at 25, unchanged in AR5 Carbon and Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 70163 (November 25, 2014) ("AR6 Carbon") and accompanying IDM at Comment 4.

<sup>95</sup> See Jacobi's Case Brief at 37, and Jacobi's SV Submission, dated November 18, 2014 at Exhibit SVR-5.

itself advocates as specific to its input. As such, we find them to be the best available information in this review for valuing anthracite coal.

### **Comment 6: Carbonized Material Surrogate Value**

#### ***Jacobi's Arguments***

- The Department should value carbonized materials using the average Philippine domestic prices from Cocommunity.
- The record currently before the Department indicates that none of Jacobi's suppliers utilized wood or wood charcoal in producing the subject merchandise; rather, Jacobi's suppliers only used carbonized materials that are coal-based.
- The Department has found the Cocommunity data represent the best available information in two prior reviews.
- The SV used in the Preliminary Results is non-specific because it is based on HS code 4402.90.90090, which does not encompass similarities to the coal-based materials used by Jacobi's suppliers. Coconut shell charcoal has its own subheading, HS 4402.90.10000.
- However, the average unit value ("AUV") of coconut shell imports to Thailand is starkly higher than the SVs used in prior reviews and is thus aberrational.
- The evidence on the record demonstrates that Cocommunity data contain broad market averages from the surrogate country, are contemporaneous, and are tax and duty exclusive.

#### ***Petitioners' Arguments***

- The Department should value carbonized material based on Thai imports of coconut shell charcoal classified under HS code 4402.90.10000, as it has relied on surrogate information for coconut shell charcoal in several prior reviews.
- The HS code used by the Department in the Preliminary Results, 4402.90.90090, does not pertain to coconut charcoal and is thus not product specific.

#### ***Jacobi and Carbon Activated's Rebuttal Arguments***

- The Department should not value carbonized material based on Thai imports of coconut shell charcoal, because the Thai data are aberrational. This value represents a 300% increase from the last two reviews. Thailand's imports of coconut shell charcoal are not commercially or statistically significant. Over half of Thailand's imports are from France, which have an extremely high AUV.

#### ***Petitioners' Rebuttal Arguments***

- Jacobi is incorrect in its claim that Thai imports under HS code 4402.90.10000 are inappropriate as a SV because the imports under this HS code are specific to coconut shell charcoal. Although Jacobi argues that this HS code is aberrational because it is three times higher than other values, this is inconsistent with Jacobi's other argument for an anthracite coal SV that is three times lower.
- The Department should not use coconut shell charcoal values published in Cocommunity for the Philippines, a country the agency has not found to be at the same level of

economic development as the PRC, particularly when a country-wide, tax-free value for significant volumes of Thai imports of coconut shell charcoal is readily available.

**Department's Position:** The Department agrees with Petitioners that we should value carbonized materials using Thai imports of coconut shell charcoal classified under HS code 4402.90.10000 "of Coconut Shell."<sup>96</sup> In the Preliminary Results, the Department valued carbonized material inputs using Thai import data from GTA reported under HS code 4402.90.90090: "Wood Charcoal (Including Shell Or Nut Charcoal), Excluding That Of Bamboo: Other."

As noted above, the Department's practice, when selecting the best available information, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available and contemporaneous with the POR, and tax and duty exclusive. Further, the Department 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.<sup>97</sup> While there is no hierarchy for applying the SV selection criteria, "the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' SV is for each input."<sup>98</sup>

The record contains five possible SVs to value carbonized materials: (1) GTA data for Thai HS 4402.90.10000 "of Coconut Shell"; (2) GTA data for Thai HS 4402.90.90090 "Wood Charcoal (Including Shell Or Nut Charcoal), Excluding That Of Bamboo: Other"; (3) Cocommunity coconut shell charcoal price data from the Philippines; (4) Cocommunity coconut shell charcoal price data from Indonesia; (5) GTA data for Indonesian HS 4402.90.9000.

As an initial matter, we have not considered the Cocommunity data from either the Philippines or Indonesia, or the Indonesian GTA import data, because this information does not come from the primary surrogate country, or a country found to be at the same level of economic development as the PRC, and we have useable SV data from the primary surrogate country.

With respect to the two remaining Thai values, the record demonstrates that Jacobi has not sold subject merchandise produced from wood-based charcoals.<sup>99</sup> As stated above, the Department undertakes to select the SV using the best available information that is on the record in light of our established SV analytical criteria. We find that the SV used in the Preliminary Results (GTA data for Thai HS 4402.90.90090) and the SV based on Thai HS code 4402.90.10000 are both publicly available, exclusive of taxes and duties, broad market averages, and contemporaneous with the POR. However, we do not find both SVs to be equally specific to respondents' inputs.

<sup>96</sup> See Juqiang's SV Submission, dated March 31, 2015, at Exhibit 2A.

<sup>97</sup> 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.

<sup>98</sup> See, e.g., PET Film 2008 and accompanying IDM at Comment 2; see also Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Administrative Review, and Final Partial Recession of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) ("Crawfish 2002") and accompanying IDM at Comment 2.

<sup>99</sup> See Jacobi's section D response, dated September 8, 2014, at Attachment C at 4.

In past decisions and on remand, the Department has found coconut shell charcoal is the best available information with which to value respondents' coal-based carbonized materials, based on the product specifications.<sup>100</sup> The SV from the Preliminary Results was based on an HS code that includes wood charcoal, including nut and shell charcoals.<sup>101</sup> We have not previously found, nor does anyone argue, that wood charcoal bears physical similarities to the coal-based carbonized materials consumed by respondents. By contrast, HS code 4402.90.10000, is specifically limited to charcoal "of Coconut Shell," and thus includes only materials we have expressly found to be similar to respondents' carbonized materials. No party has placed information on the record demonstrating a change with respect to this product similarity conclusion. As such, we find HS code 4402.90.10000 is more specific to the input being valued than the HS code that we used in the Preliminary Results.

Although Jacobi and Carbon Activated argue that the Thai data for HS 4402.90.10000 are aberrational, their arguments rest mainly on the fact that the Thai values for coconut shell charcoal are higher than the values used in previous reviews. When presented with sufficient evidence to demonstrate a particular SV is aberrational, and therefore unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question. With respect to benchmarking, the Department examines historical import data for the potential surrogate countries for a given case, to the extent such import data is available, and/or examines data from the same HS category for the primary surrogate country over multiple years to determine if the current data appear aberrational compared to historical values.<sup>102</sup> Merely appearing on the low or high end of a range of values is not enough to make data aberrational.<sup>103</sup>

Here, the record does not contain historical data for GTA HS code 4402.90.10000 from any of the countries we consider to be at the same level of economic development as the PRC, which would permit us to evaluate whether the GTA data under HS code 4402.90.10000 are aberrational. While parties argue that the Thai coconut shell HS value is aberrational when compared to prices found in the Cocommunity data from the Philippines or Indonesia, or the Indonesian GTA import data, as noted above, the Department's current practice is to examine GTA import data for potential surrogate countries for a given case, to the extent such import data is available.<sup>104</sup> The Department does not find the values from Indonesia or the Philippines (including Philippine data relied upon in prior reviews) to be proper comparisons in deciding

<sup>100</sup> See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508, 9508 (March 2, 2007) and accompanying IDM at Comment 16; see also "Final Results of Redetermination Pursuant to Court Remand," dated July 25, 2011, Carbon Remand, Slip Op. 11-21, at 10-11.

<sup>101</sup> See Prelim Decision Memo at Attachment 3a.

<sup>102</sup> See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 36630 (June 28, 2010) ("Carbazole Violet") and accompanying IDM at Comment 6; see also 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 62597 (October 20, 2014) ("Tetrafluoroethane") and accompanying IDM at Comment 10.

<sup>103</sup> See, e.g., Wood Flooring 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.").

<sup>104</sup> See Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 74644 (December 17, 2012) and accompanying IDM at Comment 1.

whether the Thai HS value is aberrational because, for purposes of this review, these countries are not as economically comparable to the PRC.

With respect to Carbon Activated's and Jacobi's contention that French value of coconut shell charcoal under Thai HS code 4402.90.10000 is aberrationally high or is not coconut shell charcoal, we note this argument is speculative and there is no information on the record which demonstrates that the French imports are not coconut shell charcoal. With respect to the value of the French coconut shell charcoal, as stated above, merely appearing on the high end of a range of values is not enough to make data aberrational.<sup>105</sup> Accordingly, with no evidence on the record which demonstrates that French imports into Thailand are some other product than coconut shell charcoal, we will continue to include those data in our SV calculation of Thai HS code 4402.90.10000.

Additionally, there is no evidence to support the claim that the Thai import volume is not commercially significant; there is no evidence on the record showing that the Thai imports are unrepresentative of normal commercial activity in Thailand, or that they are not "statistically and commercially significant."<sup>106</sup> Therefore, for the final results, the Department is valuing carbonized materials using Thai GTA import data under HS code 4402.90.10000, "of Coconut Shell," because these data are the most comparable to the input used by the respondents and represent the best available information.

#### **Comment 7: Coal Tar Surrogate Value**

##### ***Jacobi's Arguments***

- The Department must, if it continues to determine that Thailand is the surrogate country, value Jacobi's consumption of coal tar with HS code 2706.00,<sup>107</sup> which the Department utilized in every prior AR of this Order.<sup>108</sup>
- The HS code 2707.99<sup>109</sup> used by the Department in the Preliminary Results, while possible to utilize as an SV, is less specific than HS code 2706.00. Further, the SV is significantly higher than the data for HS code 2706.00, even though there is no corresponding record evidence suggesting a spike in the prices of coal tar on the market.

##### ***Petitioners Rebuttal Argument***

- The Department should continue to value coal tar as it did in the Preliminary Results. The fact that the value preliminarily relied on by the Department to value coal tar is 33 percent higher than the average value from prior segments does not support a conclusion that it is an aberrationally high value.

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<sup>105</sup> See Wood Flooring 2014 and accompanying IDM at Comment 6.

<sup>106</sup> See High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 26739 (May 7, 2012) and accompanying IDM at Comment 1.

<sup>107</sup> The commodity description for the Thai HS code 2706.00 is "Mineral Tars, Including Reconstituted Tars."

<sup>108</sup> See Jacobi's Rebuttal Surrogate Value Submission at Exhibit SVR-5 dated December 9, 2014, in which Jacobi provided the SV summary worksheets for AR1 through AR6.

<sup>109</sup> The commodity description for the Thai HS code 2707.99 is "Oils And Products Of The Distillation Of High Temperature Coal Tar, Nesoi; Similar Products Which Have A Predominate (Wt.) Aromatic Constituent, Nesoi."

**Department's Position:** We agree with Jacobi that the commodity description for products entered under HS code 2706.00 is more specific to its input. In a supplemental questionnaire response, Jacobi provided a testing report for the coal tar used by its supplier, which contains business proprietary information,<sup>110</sup> which also describes the contents of the input.<sup>111</sup> In our review of the testing report, we found that the composition of this input closely resembles the description of HS code 2706.00 and not that of HS code 2707.99. Based on this information, and consistent with our prior determinations, the Department finds that the available information and record evidence indicates that HS code 2706.00 is the best information for valuing Jacobi's coal tar input because it is more specific to the input. Thus, for the final results we are valuing Jacobi's coal tar input using the Thai HS code 2706.00.

### **Comment 8: Buckle Surrogate Value**

#### *Jacobi's Arguments*

- HS code 7211.19<sup>112</sup> is the best information available to value Jacobi's "buckle" input because the description for HS code 8308.90.90002 (Buckles and Clasps), which was used in the Preliminary Results, indicates it is only appropriate for clothing. HS code 8308 refers to "clasps, frames with clasps, buckles, buckle clasps, hooks, eyes, eyelet and the like and parts thereof, of base metal, of a kind used for clothing, footwear, awnings, handbags, travel goods or other made up articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal."

#### *Petitioners Rebuttal Argument*

- The Department should continue to value buckle as it did in the Preliminary Results because the Thai imports classified under HS code 8308.90.90002 captures buckles as fasteners - in other words, objects produced to act as a fastening device.
- The HS code proposed by Jacobi is reflective of the category of steel from which metal buckles are made - not of buckles themselves. Jacobi cites to no information on the record to establish that its buckles are not purchased as fasteners from a supplier of buckles, but rather are manufactured from raw steel.

**Department's Position:** We agree with Petitioners and continue to find that Thai import statistics as reported by GTA under HS code 8308.90.90002 "Buckles and Clasps" are the best available information for determining the SV for Jacobi's packing input, buckle. In the Preliminary Results, we valued Jacobi's buckle packing input using an HS code that is specific to "buckles and clasps" (i.e., 8308.90.90002). While Jacobi argues that this HS code refers to "clasps, frames with clasps, buckles, buckle clasps, hooks, eyes, eyelet and the like and parts thereof, of base metal, of a kind used for clothing, footwear, awnings, handbags, travel goods or other made up articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal"<sup>113</sup> and cites to Petitioners' November SV submission, we note that the source Jacobi cites

<sup>110</sup> See Jacobi's Final Analysis Memo.

<sup>111</sup> See Jacobi's supplemental section D response, dated October 27, 2014, at Exhibit SD-5.

<sup>112</sup> The commodity description for the Thai HS code 2707.99 is "Flat-Rolled High-Strength Nonalloy Steel Products Nesoi, Under 600 Mm Wide, Hot-Rolled, Not Clad, Plated Or Coated, Under 4.75 Mm Thick."

<sup>113</sup> See Jacobi's Case Brief at 52, citing Petitioners' SV Submission, dated November 18, 2014 at Attachment 2.

is an Indonesian HS code and not a Thai HS code. The description for Thai GTA import data for HS code 8308.90.90002 is “Buckles and Buckle Clasps” without reference to specific uses.<sup>114</sup> Accordingly, there is no record information to support moving away from this HS code specific to the input to an HS code that not only is not specific to the input but is for an intermediate product generally used to produce items such as buckles.

Furthermore, in a supplemental questionnaire response, we instructed Jacobi to provide product specifications that describe the buckle input it used during the POR, Jacobi provided no specific description of the input, instead it described the input as “No Specific Standards.”<sup>115</sup> Based on this information, the Department finds that the available information and record evidence indicates that HS code 8308.90.90002 is the best information for valuing the buckle Jacobi used to package certain products for shipping. Thus, for the final results we will continue to use HS code 8308.90.90002 to value Jacobi’s buckle input.

### **Comment 9: Paperboard Surrogate Value**

#### ***Jacobi’s Arguments***

- HS code 4819.10<sup>116</sup> is the best information available to value Jacobi’s “paperboard” input because HS code 4823.20,<sup>117</sup> which was used in the Preliminary Results, refers to “filter paper and paperboard,” and Jacobi does not use “filter paper and paperboard” as packing material. HS code 4819.10 refers to “Cartons, Boxes and Cases of Corrugated Paper and Paperboard Used in Offices, Shops, Or The Like,” and this is consistent with the photograph of Jacobi’s paperboard submitted to the Department.

#### ***Petitioners Rebuttal Argument***

- The Department should not value paperboard with the HS code recommended by Jacobi, as that subheading refers to finished products that are different from the input consumed.

**Department’s Position:** We disagree with Jacobi that the Department’s use of Thai import statistics as reported by GTA under HS code 4823.20 “Paper, Paperboard, Cellulose Wadding And Webs, Cut To Size Or Shape Nesoi; Articles Of Paper Pulp, Paper, Paperboard, Cellulose Wadding Or Webs Nesoi; Filter Paper And Paperboard, Cut To Size Or Shape” is inappropriate as a SV for its packing input, paperboard. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the input.<sup>118</sup> The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.<sup>119</sup>

<sup>114</sup> See Prelim SV Memo at Attachments 1, SV summary sheet and 3a, GTA download.

<sup>115</sup> See Jacobi’s supplemental D response, dated December 30, 2015, at 11.

<sup>116</sup> HS code 4819.10 is described as “Cartons, Bags And Other Packing Containers Of Paper, Paperboard, Cellulose Wadding Etc.; Office Box Files, Letter Trays, Etc. Of Paper Or Paperboard; Cartons, Boxes And Cases Of Corrugated Paper And Paperboard Used In Offices, Shops, Or The Like.”

<sup>117</sup> HS code 4823.20 is described as “Paper, Paperboard, Cellulose Wadding And Webs, Cut To Size Or Shape Nesoi; Articles Of Paper Pulp, Paper, Paperboard, Cellulose Wadding Or Webs Nesoi; Filter Paper And Paperboard, Cut To Size Or Shape.”

<sup>118</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical

The Thai HS category that Jacobi recommends using to value its input, Thai HS 4819.10, covers “Cartons, Boxes And Cases of Corrugated Paper and Paperboard Used in Offices, Shops, or the Like.”<sup>120</sup> But because record evidence demonstrates that Jacobi uses sized paperboard of specific dimensions in producing subject merchandise, and not paperboard containers, the HS code Jacobi recommends we use to value its input does not reflect the input reported by Jacobi. Specifically, in a supplemental questionnaire response, Jacobi stated that it used “three different sizes” of paperboard, “which are 1m{eter} {(“m”)} by 1.2m, 1m by 2.4m, and 1.2m by 2.4m” and provided an FOP summary worksheet for its packing inputs in which Jacobi reported the various packing styles including those that used paperboard.<sup>121</sup> None of the packing styles indicated that a packing container made of paperboard was used.<sup>122</sup> Additionally, Jacobi provided a picture of one of the packing styles that used the paperboard input and it is clear from the picture that Jacobi did not use a paperboard packing container to contain its product for shipment to the United States.<sup>123</sup>

Based on this information, the Department finds that the record evidence indicates that the data for Thai HS code 4823.20 are the best available information for valuing Jacobi’s paperboard input because the HS code description clearly indicates that paperboard commodities entered under this HS code are cut to size, like the input consumed by Jacobi. In this case, while both HS codes include materials in addition to paperboard, the descriptions of the commodities within both HS categories clearly indicate that only one contains sized paperboard (*i.e.*, HS code 4823.20), and thus this HS category is most specific to Jacobi’s input. Therefore, for the final results, we will continue to use HS code 4823.20 to value Jacobi’s paperboard input because we find this HS code best describes the paperboard input used by Jacobi.

## **Comment 10: Hydrochloric Acid Surrogate Value**

### ***Jacobi’s Arguments***

- The Department must change its SV for hydrochloric acid (“HCL”), as it has led to a nearly 400 percent increase in value that is inconsistent with the market price. The record shows that the HCL used by Jacobi is concentrated around a 30 percent weight-per-weight (“W/W”) solution, which is consistent with Thai HS code 2806.10.00102’s description of “Hydrochloric Acid 15% W/W to 36% W/W.” However, this Thai HS code is also aberrantly high, so the Department should use Philippine import data instead for HS 2806.10.

### ***Petitioners’ Rebuttal Arguments***

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Circumstances, In Part: Certain Lined Paper Products from the People’s Republic of China, 71 FR 53079 (September 8, 2006) and accompanying IDM at Comment 3.

<sup>119</sup> See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012) and accompanying IDM at Comment 2.

<sup>120</sup> See Jacobi’s post preliminary SV submission dated June 2, 2015 at Exhibit 4.

<sup>121</sup> See Jacobi’s supplemental D response, dated December 30, 2015, at Exhibit JCC-SD-2.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*, at JCC-SD-6.

- The Philippine SV suggested by Jacobi is no more specific than that used by the Department in the Preliminary Results, as both come from the same HS category. The percentage increase in value is not high enough for the Department to disregard, and is in line with the average price after accounting for the first, second, and third administrative reviews ignored by Jacobi.

**Department's Position:** We agree with Jacobi, in part. Specifically, we agree that the Thai import statistics as reported by GTA under HS code 2806.10.00102 "Hydrochloric Acid 15% W/W to 36% W/W" are more specific to the input being valued and are the best available information for determining the SV for its raw material input, HCL. In our Preliminary Results, consistent with every prior segment of this proceeding, we used a six digit Thai HS code 2806.10 ("Hydrogen Chloride (Hydrochloric Acid)") to value Jacobi's HCL input, which is also the HS code Jacobi recommended we use. However, in a post-prelim SV response, Jacobi provided an eleven digit Thai HS code (i.e., HS code 2806.10.00102 "Hydrochloric Acid 15% W/W to 36% W/W") that it contends is more specific to its input.<sup>124</sup> In our review of the record, we found that Jacobi's supplier used an HCL that concentrated around a 30% W/W solution.<sup>125</sup> Based on this information, the Department finds that record evidence indicates that HS code 2806.10.00102 is the best information for valuing Jacobi's HCL input because it is specific to HCL that Jacobi's suppliers used in its production of activated carbon. By contrast, we do not find Philippine GTA data, which represents a less specific HS category<sup>126</sup> and comes from a country other than the primary surrogate country, to be a better SV source.

Moreover, we disagree with Jacobi's contention that the value for Thai HS code 2806.10.00102 is aberrantly high. As noted above, to evaluate whether a value is unusable, the Department will evaluate the appropriate benchmark data.<sup>127</sup> Merely appearing on the low or high end of a range of values is not enough to make data aberrational.<sup>128</sup> Here, the record does not contain historical data for HS code 2806.10.00102 from any of the countries we consider to be at the same level of economic development as the PRC, which would permit us to evaluate whether the this data are aberrational. Thus, for the final results we valued Jacobi's HCL input using the Thai HS code 2806.10.00102.

## Comment 11: Labor Surrogate Value

### *Juqiang's Arguments*

- The Department should value labor using the 2012 Census of the Thai National Statistics Office ("NSO") because it provides industry specific labor rate information for 464 distinct manufacturing industries in 2011. The Department has preferred industry-specific labor costs in other antidumping proceedings.

<sup>124</sup> See Jacobi's post preliminary SV submission dated June 2, 2015 at Exhibit 2.

<sup>125</sup> See Jacobi's supplemental section D response, dated October 27, 2014, at Exhibit SD-5, in which Jacobi provided product testing reports, which included HCL.

<sup>126</sup> Thai HS category 2806.10 "Hydrogen Chloride (Hydrochloric Acid)."

<sup>127</sup> See Carbazole Violet and accompanying IDM at Comment 6; see also Tetrafluoroethane and accompanying IDM at Comment 10.

<sup>128</sup> See, e.g., Wood Flooring 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.").

- In particular, the Department should use labor cost data for industrial Code 20299 (“Manufacture of Other Chemical Products, n.e.c.”), a sub-classification of industry category 2029 that specifically includes manufacturing establishments engaged in the production of subject merchandise.
- The 2012 Census data is also superior in that it includes the cost of “Employer’s contribution to Social Security System” unlike the general manufacturing labor cost data used in the Preliminary Results.

### ***Carbon Activated Arguments***

- If the Department continues to rely on Thailand, it must use the 2012 Census of the Thai NSO to value labor, because it provides industry specific labor rate information for 2011. This is consistent with prior Department practice, in that the Department previously relied on 2006 labor data from the 2007 Census of the Thai NSO.
- Additionally, the hourly rate must be based on the hours upon which the rate is based (which are provided in the NSO data), not on the basis used by the Department (i.e., 24 working days a month and 8 working hours each day).

### ***Petitioners’ Rebuttal Arguments***

- The Department should value labor using 2011 Thai labor costs for subcategory 20299, as reported in the 2012 Census of the Thai NSO, allocated over 192 hours (24 days per month \* 8 hours per day), and inflate from 2011 to the POR.
- While Juqiang’s proposed calculation is generally correct, except that it does not properly account for inflation, Carbon Activated’s labor calculation incorrectly deviates from the 192 work hours per month used by the Department and instead uses a calculation which assumes that all types of establishments surveyed pertain to production of activated carbon. Further, the Department’s 192 hours per month is based on a non-exploitative use of labor.

**Department’s Position:** In the Preliminary Results, the Department valued labor using the Thai NSO manufacturing –sector labor data from the quarterly-specific POR data (second through fourth quarter of 2013 and first quarter of 2014).<sup>129</sup> For the final results, we will value the mandatory respondents’ reported labor using 2012 Thai NSO labor statistics, which are based on 2011 labor data that is specific to the activated carbon industry.<sup>130</sup>

In Labor Methodologies, the Department stated that using the data on industry-specific wages from the primary surrogate country is the best approach for valuing the labor input in NME AD proceedings, and that ILO Yearbook Chapter 6A is the preferred labor source as it accounts for all direct and indirect labor costs.<sup>131</sup> The Department does not, however, preclude other sources

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<sup>129</sup> See Prelim SV Memo at 5-6 and Attachment V.

<sup>130</sup> See Final SV Memo.

<sup>131</sup> See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

for evaluating labor costs.<sup>132</sup> The CIT found the current methodology for valuing labor using industry-specific data from the primary surrogate country is reasonable because it is consistent with how the Department values all other FOPs.<sup>133</sup>

We agree with Petitioners, Carbon Activated, and Juqiang that the 2012 Thai NSO labor statistics are the appropriate source to value the mandatory respondent's labor input. In the Preliminary Results, the Department valued labor using the general labor category "Manufacturing," which is a basket category of manufacturing labor costs in Thailand.<sup>134</sup> The 2012 Thai NSO labor statistics report labor data for industry category "2029—Manufacture of other chemical products, n.e.c.," which, according to United Nations' International Standard Classification of All Economic Activities ("ISIC") Rev.4 code 2029, includes the manufacture of activated carbon.<sup>135</sup> Further, the Thai data indicates that sub-category "20299—Manufacture of other chemical product, n.e.c" is the appropriate sub-category to value labor, because the other sub-categories identified under 2029 are specific to the manufacture of explosives, glues, gelatins, essential oils, or photographic chemicals.<sup>136</sup> Therefore, because the Department has a preference to use industry-specific labor data, we will value the mandatory respondents' labor FOP using the 2012 Thai NSO labor statistics under sub-category "20299—Manufacture of other chemical product, n.e.c."<sup>137</sup>

Additionally, we disagree with Carbon Activated's contention that we should calculate the hourly labor rate based on the number of working days per week and working hours per day found in Table 5 of the 2012 Thai NSO labor statistics. The Department's methodology to determine an hourly labor from an annual labor rate is to divide the annual per person labor rate by 12 month, 24 days, eight hours.<sup>138</sup> Carbon Activated contends that Table 5 of the 2012 Thai NSO labor statistics provides the actual hours and days worked that directly corresponds to the labor rate.<sup>139</sup> Table 5 identifies the number of establishments with laborers that work less than five days per week and laborers which work up to seven days per week, as well as the number of establishments that have laborers who work less than eight hours per day, between eight and ten hours per day, and between eleven and twelve hours per day.<sup>140</sup> Based on the information in Table 5, Carbon Activated provides a calculation which it believes indicates that laborers in the activated carbon industry work an average of 52 weeks per year, work 5.97 days per week, and work 8.99 hours per day.<sup>141</sup> However, Carbon Activated's calculation suffers from a number of flaws. First, this table does not report the wages earned by the laborers for each work schedule

<sup>132</sup> See Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 65616 (November 5, 2014); unchanged in Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 13332 (March 13, 2015).

<sup>133</sup> See Taian Ziyang Food Company, Ltd. v. United States, 918 F. Supp 2d 1345, 1357 (CIT 2013).

<sup>134</sup> See Prelim SV Memo at 5-6 and Attachment V.

<sup>135</sup> See Juqiang's SV Submission, dated March 31, 2015, at Exhibit-7; see also Carbon Activated's SV Submission, at Exhibit SV-1.

<sup>136</sup> Id.

<sup>137</sup> See Final SV Memo.

<sup>138</sup> See Labor Methodologies.

<sup>139</sup> See Carbon Activated's Case Brief at 25-26; see also, Carbon Activated's SV Submission at Exhibit SV-3.

<sup>140</sup> Id.

<sup>141</sup> See Carbon Activated's SV Submission at Exhibit SV-2.

type. Additionally, Carbon Activated's labor calculation is not based on the number of hours worked by the laborer, but the number of work hours of the firm. Moreover, using Carbon Activated's labor calculation to derive a per hour wage rate of 52.16 Thai Baht does not produce the total labor value reported in Table 6 for industry category "20299—Manufacture of other chemical product, n.e.c." In other words, Carbon Activated's per hour labor cost calculation does not increase the accuracy of the labor SV and will undervalue labor reported by the mandatory respondents.

Therefore, for the final results, we will continue to use the Department's preferred methodology for calculating a labor rate per hour, which in this instance is dividing the annual per person labor rate by 12 month, 24 days, eight hours.

### **Comment 12: Brokerage and Handling ("B&H") Surrogate Value**

#### *Juqiang's Arguments*

- The Department based its valuation of B&H charges in the Preliminary Results on an assumed cargo weight of 10,000 kilograms ("kgs") for a twenty foot full container load, but evidence from multiple sources indicates a standard twenty foot container carries over 20,000 Kgs.<sup>142</sup>
- The Department should adjust the B&H charges to exclude the cost of obtaining a letter of credit, as this was not incurred by Juqiang. Recent Department decisions support removing the cost of obtaining a letter of credit from B&H charges when there is no evidence it has been incurred.<sup>143</sup>

#### *Carbon Activated's Arguments*

- If the Department continues to rely on Thailand in the final results, it must disregard World Bank's ("WB") report "2015 Doing Business in Thailand" ("Doing Business") as a source for B&H, because this cost is the result of a quote for a single city in Thailand, is not country-wide or a broad market average, and the underlying surveys from which the cost data are derived are not available to the public. Instead, the Department should use publicly ranged B&H costs incurred by Thai companies. The experience of these companies is similar to respondents' shipping experience because they are significant, experienced commercial entities and thus reflect commercial activity.
- The Department should not use the Doing Business report because its purpose is to highlight the need for policy reform in the regulatory environment.
- If the Department continues to use the Doing Business report, the Department must deduct export letter of credit fees, consistent with past Department practice.<sup>144</sup>
- Further, while the Department should continue to use the container costs for the

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<sup>142</sup> See Juqiang's SV Submission, dated November 18, 2014, at Exhibit 8.

<sup>143</sup> See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2012, 79 FR 51954, 51956 (September 2, 2014) ("Wooden Bedroom Furniture 2014").

<sup>144</sup> See Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 18816, 18822 (April 8, 2015) ("Steel Nails").

numerator, it must adjust its B&H calculations from the 10,000 kgs weight denominator used by the WB to the maximum cargo load of the container, which is more reflective of shipping reality.

- The CIT has found that the Department cannot rest on the presumption that the per-container World Bank costs bear some relationship to the weight of the product inside.<sup>145</sup>

### ***Petitioners' Rebuttal Arguments***

- The Department should continue to rely on the data provided by Doing Business, which conducts its survey in the economy's largest business city (i.e., Bangkok), reflecting maximum economies of scale, and thus provides a conservative valuation. Record evidence regarding the geographic distribution of businesses shows that a significant proportion of Thai businesses are in or around the Bangkok area.
- The data provided by Carbon Activated are company specific and not reflective of a broad market average.
- The Department should not remove the cost of obtaining an export letter of credit. Although Juqiang did not pay for a letter of credit, it incurred a cost by carrying the risk on export of the value of good shipped, and this credit risk should be included in total B&H cost.
- The Department should continue to use 10,000 kgs as the denominator because that is the unitary basis used by respondents reporting to the World Bank in Doing Business in order to provide a universal basis of measure.

**Department Position:** As an initial matter, we continue to find that rates from Doing Business represent a broad market average, as they are based on the economy's largest business city and are thus commercially representative. Moreover, the data are publicly available and contemporaneous with the POR. Additionally, the Department has relied on Doing Business data in prior segments of this proceeding.<sup>146</sup> By contrast, the data offered by Carbon Activated are company-specific, from only a handful of companies, and in no way constitute a broad market average.<sup>147</sup> Therefore, we continue to find that Doing Business data are the best available data on the record for valuing B&H.

Regarding Carbon Activated's argument related to the purpose for which WB publishes its Doing Business report, we do not disagree that one of the purposes of the WB's Doing Business report may include policy reform in a regulatory environment. However, we find that the data within the report are relevant and reliable information for use as SVs to value respondent's inputs, regardless of the WB's target market for the report. The Department has found the Doing Business data to be a reliable source for valuing B&H in numerous cases including Wooden Bedroom Furniture 2014 and Steel Nails. There is nothing on the record of this review that indicates otherwise. Therefore, as set forth in the preceding paragraph, we continue to find that the Doing Business report is the best available source for valuing B&H because the data contained therein best meet the criteria for selection of the best SVs.

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<sup>145</sup> Carbon Activated cites Since Hardware (Guangzhou) Co. v. United States, 977 F. Supp. 2d 1347 (CIT 2014).

<sup>146</sup> Id.

<sup>147</sup> See Carbon Activated's SV Submission at Exhibit SV-9.

Additionally, the Department disagrees with Juqiang's and Carbon Activated's assertion that the denominator of the surrogate B&H calculation should be revised. For the final results, the Department has continued calculating the per-unit SV for B&H by dividing the B&H costs identified in Doing Business by 10,000 kg. The Department has determined that 10,000 kg should continue to be used in the calculation because this is the weight of the shipment for a 20-foot container for which participants in the Doing Business survey reported brokerage and handling costs.<sup>148</sup> Specifically, the B&H costs used to calculate the SV were based upon the assumption that a 20-foot container contained 10,000 kg of product.<sup>149</sup> If the Department were to use a container load of any weight other than 10,000 kg, the Department would be using a weight not related to the costs reported in the Doing Business survey. Specifically, as stated above, given that the Doing Business B&H costs are calculated based upon a container load of 10,000 kg, it would be inconsistent and distortive to use an alternative quantity such as the container weights experienced by Respondents to calculate the B&H SV. Therefore, the Department has determined that continuing to use 10,000 kg to calculate the SV for B&H maintains the internal consistency of the calculation (i.e., the numerator and the denominator of the calculation are dependent upon one another and are from the same source). In addition, this methodology is consistent with the Department's past practice.<sup>150</sup>

We find Carbon Activated's reliance on Since Hardware to invalidate the calculation of the B&H SV inapposite. In Since Hardware, using information from that record, the Department attempted to create a B&H SV by blending information found in Doing Business and the respondent's own container weights.<sup>151</sup> However, the CIT remanded the case because, by using the respondent's estimated 20-foot container weight that the Department converted from a reported 40-foot container weight, the Department "forced an unexplained increase into Foshan Shunde's B&H SV."<sup>152</sup> The CIT held that "by using Foshan Shunde's estimated 20-foot container weight, Commerce implicitly relies upon a relationship between B&H costs and container weight that, as Foshan Shunde argues, does not appear to find support in the record."<sup>153</sup> Unlike the facts in Since Hardware, and despite its argument to the contrary, Carbon Activated has pointed to no information on this record demonstrating that the respondents accrued documentation preparation and customs clearance costs on a per-container basis or provided any information which demonstrates that B&H fees do not increase proportionally with the weight of the container, which makes this review similar to Dongguan Sunrise.<sup>154</sup> In Dongguan Sunrise, the CIT sustained the Department's conversion of the Doing Business data to a 40-foot container because the respondent "ha{d} not presented evidence that brokerage costs are based on value, not volume, and do not increase proportionally with the number of cubic feet."<sup>155</sup> Therefore,

<sup>148</sup> See Prelim SV Memo at Exhibit 8.

<sup>149</sup> Id.

<sup>150</sup> See, e.g., AR6 Carbon and accompanying IDM at Comment 12; see also Certain Polyester Staple Fiber From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013, 80 FR 4542 (January 28, 2015) and accompanying IDM at Comment 4.

<sup>151</sup> See Since Hardware, 977 F. Supp. 2d at 1361-62.

<sup>152</sup> Id., at 1362.

<sup>153</sup> Id., at 1362 (citing Since Hardware (Guangzhou) Co., Ltd. v. United States, 911 F. Supp. 2d 1362, 1380-81 (CIT 2013)).

<sup>154</sup> See Dongguan Sunrise Furniture Co., Ltd. v. United States, 865 F. Supp. 2d 1216, 1247 (CIT 2012).

<sup>155</sup> Id.

absent such evidence in this review, for these final results, we continue to use the 10,000 kg standard container weight for calculating B&H expenses, which we find avoids introducing inaccuracies in calculating the B&H SV.

Finally, regarding the arguments related to letters of credit, we agree that the cost of obtaining letters of credit should be excluded from the total B&H costs reported in the 2015 Doing Business report. Carbon Activated provided evidence from the World Bank indicating that the cost of obtaining letters of credit is included in the costs of B&H,<sup>156</sup> and Petitioners did not dispute this. Specifically, Carbon Activated obtained information from the World Bank indicating that the total cost of B&H in Thailand provided in the 2015 Doing Business report includes an average cost of \$60.00 for obtaining a letter of credit.<sup>157</sup> Additionally, we found no evidence to suggest that mandatory respondents obtained letters of credit in the process of exporting merchandise under consideration, nor was this argued in Petitioners' rebuttal brief. The Department's practice is to exclude the cost of obtaining letters of credit from the total B&H cost in Doing Business reports when record evidence supporting the exclusion can be linked to the specific report used as a SV.<sup>158</sup> In this review, the record evidence regarding the letter of credit costs is specific to the 2015 edition of the Doing Business report.<sup>159</sup> Accordingly, for purposes of the final results, we revised the calculation of B&H for both respondents by deducting the cost of \$60.00 for obtaining a letter of credit from the total cost of B&H provided in Doing Business.<sup>160</sup>

### Comment 13: Truck Freight Surrogate Value

#### *Juqiang's Arguments*

- The Department should value truck freight charges based on data from Dxplace (a Thai logistics marketplace) instead of data from Doing Business, because Dxplace data represent a broader market average and are more specific than the Doing Business data. Doing Business data are based on only one route and lack information regarding the type of truck used for transporting goods. By contrast, Dxplace data include price statistics for road transportation of cargo to different cities from across Thailand that have been collected from several freight forwarders and that represent three types of trucks from multiple companies.
- Doing Business is a qualitatively inferior data source as compared to Dxplace. The Doing Business data contain no information as to actual distances traveled and required the Department to use secondary sources to determine this. Moreover, the Doing Business report was based on a hypothetical full container load weight of 10,000 Kgs,

<sup>156</sup> See Carbon Activated's SV Submission at Exhibit SV-14.

<sup>157</sup> Id.

<sup>158</sup> See, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712 (May 9, 2014) and accompanying IDM at Comment 4. Cf. Monosodium Glutamate from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 58326 (September 29, 2014) and accompanying IDM at Comment VII.2 (continuing to include letter of credit costs because record evidence was not linked to the specific report of the B&H source data).

<sup>159</sup> See Carbon Activated's SV Submission at Exhibit SV-14.

<sup>160</sup> See Final SV Memo.

which is significantly lower than the actual weight of commercial loads.

- Alternatively, when using the Doing Business data, the Department should apply the correct full container load factor in its freight calculation in accordance with its precedent.

### *Carbon Activated's Arguments*

- As with B&H, if the Department continues to use Doing Business in Thailand data, it must adjust its freight calculations to reflect shipping reality by using the maximum cargo load of the container.

### *Petitioners' Rebuttal Arguments*

- The Department should not replace the Doing Business data with information from Dxplace.
- The Dxplace data is from 2010, a period more than three years prior to the POR. This period saw volatile energy prices and increased demand for freight service in Thailand, impacting freight costs.
- The Doing Business information is superior in that it reflects the business experience of many different freight forwarders, shipping lines, customs brokers, port officials, and banks. This contrasts with the freight rates provided by Dxplace, which are based on discounted rates for space in trucks that would otherwise be empty. Moreover, they are not widely-available, published rates.
- The freight load weights provided by Juqiang are not connected to the Dxplace information and are instead extrapolations from trucks used for hauling soil, which are unlikely to have the same freight content as trucks used for commercial merchandise.

**Department Position:** For the final results, we continue to use data from Doing Business as the SV for valuing truck freight and have not changed the preliminary calculation of this SV. The value for truck freight in Doing Business is publicly available and contemporaneous with the POR.<sup>161</sup> In selecting SVs for inputs, section 773(c)(1) of the Act directs us to use “the best available information” from an appropriate market-economy country to value FOPs. Pursuant to 19 CFR 351.408(c)(2), the Department normally values all FOPs in a single surrogate country. In determining the “best available information,” it is our practice to consider the following five factors: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.<sup>162</sup> The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.<sup>163</sup> Moreover, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.<sup>164</sup> As there is no hierarchy for

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<sup>161</sup> See Carbon Activated SV submission dated June 2, 2015, at Exhibit C-2, which notes that the World Bank collected “data in the time period from June 1, 2013, to May 31, 2014” for its Doing Business report.

<sup>162</sup> See, e.g., Fresh Garlic from the People’s Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order, 77 FR 34346 (June 11, 2012), and the accompanying IDM at Comment 4.

<sup>163</sup> Id.

<sup>164</sup> See Certain Preserved Mushrooms from the PRC: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), (“Mushrooms from the PRC”) and accompanying IDM at Comment 1; see also Crawfish 2002 and accompanying IDM at Comment 2.

applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available SV for each input.<sup>165</sup>

In this review, we selected the Doing Business report for valuing respondents’ truck freight because we find this data to be a broad market average of truck freight expenses charged in Thailand, specific to the input being valued, publicly available and contemporaneous with the POR. Additionally, the Department has relied on the WB’s Doing Business data in prior segments of this proceeding.<sup>166</sup> We prefer to value factors using prices that are broad market averages because “a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country.”<sup>167</sup>

Although Juqiang argues that the Doing Business data is not representative of a broad market average because it is based on “one route only,” the record indicates otherwise. First, the Doing Business data represents information on inland transportation and handling “collected from local freight forwarders, shipping lines, customs brokers, port officials, and banks” in Bangkok, Thailand.<sup>168</sup> Multiple companies transporting goods from within Bangkok to the Bangkok Port indicates the use of more than one route. Moreover, in a SV submission, Juqiang provided a listing of nine industrial zones/parks for five provinces within Bangkok where the distance to the port ranged from 93 kilometers (“km”) to 183 km, which we used to convert the freight cost from a U.S. dollar per kilogram (“USD/kg”) to a USD/kg/km, which further supports that there is more than one possible route within Bangkok to the Bangkok Port thereby negating Juqiang’s argument of only one route.<sup>169</sup> Based on these facts, we continue to find that the Doing Business data represents broad market averages representing multiple data points within Bangkok.

We do not find the Dxplace data to be the best available information because, although the Dxplace data appear to provide multiple freight rates from multiple locations in Thailand, these data: (1) come from June 2010, well before the POR and thus is not contemporaneous with the POR and (2) it is unclear if the prices are six-month averages or a snapshot in time.<sup>170</sup> Absent evidence indicating whether this resource provides historical price data, we cannot consider this resource more reliable than Doing Business.<sup>171</sup>

The Department also disagrees with Juqiang and Carbon Activated’s arguments regarding the correct container load weight. Specifically, as stated above, given that the Doing Business

<sup>165</sup> See Mushrooms from the PRC and accompanying IDM at Comment 1.

<sup>166</sup> See AR6 Carbon and accompanying IDM at Comment 12.

<sup>167</sup> See Honey from the People’s Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Order Administrative Review, 71 FR 34893 (June 16, 2006).

<sup>168</sup> See the Department’s Memorandum titled “Seventh Administrative Review of Certain Activated Carbon from the People’s Republic of China: Surrogate Values for the Preliminary Results,” (April 29, 2015) at Exhibit 8.

<sup>169</sup> See the Department’s Memorandum titled “Seventh Administrative Review of Certain Activated Carbon from the People’s Republic of China: Surrogate Values for the Preliminary Results,” (April 29, 2015) at Exhibit 8.

<sup>170</sup> See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People’s Republic of China, 79 FR 25572 (May 5, 2014), and the accompanying IDM at Comment 4.

<sup>171</sup> Id. We note that the CIT recently affirmed our selection of the Doing Business data over the Dxplace data based upon the same considerations identified above. See CP Kelco US, Inc. v. United States, Slip. Op. 15-27 (CIT March 31, 2015).

export costs are calculated based upon a container load of 10,000 kg, it would be inconsistent to use an alternative quantity to calculate the truck freight SV. Therefore, the Department determines that continuing to use 10,000 kg to calculate the SV for truck freight maintains the internal consistency of the calculation (*i.e.*, the numerator and the denominator of the calculation are dependent upon one another and are from the same source).

### **Company Specific Issues**

#### **Comment 14: Whether the Department Correctly Converted Jacobi's Indirect Selling Expense From Pounds to Metric Tons in Its Margin Program**

##### ***Petitioners' Argument***

- The Department should correct the clerical error in its programming language that is preventing the proper calculation of Jacobi U.S. indirect selling expenses.
- Specifically, the indirect selling expense variable (*i.e.*, "INIDIRSU") used in the programming language to convert Jacobi's reported selling expense from a per-pound basis to a per-metric ton basis includes a miscellaneous "I" and as a result an incorrect value is used in the CEP selling expenses (CEPSELLU) calculation. The correct variable name is "INDIRSU."

**No other party commented on this issue.**

**Department's Position:** We agree with Petitioners that we inadvertently included a miscellaneous "I" in the variable name for Jacobi's indirect selling expenses. We have revised the variable name for indirect selling expense in the Department's final margin calculation for Jacobi from INIDIRSU to INDIRSU.<sup>172</sup>

#### **Comment 15: Juqiang's Margin Program**

##### **A. FOP File**

##### ***Juqiang's Arguments***

- The Department should use the most updated FOP file, *i.e.*, DJACCONFOP05, in its margin program for Juqiang in the final results.

##### ***Petitioners' Rebuttal***

- The Department should decline to use Juqiang's most recent FOP database, because Juqiang does not add omitted packing labor hours as instructed by the Department, but instead reclassifies direct labor hours as packing labor hours for certain products. If the Department does use this database, it should eliminate the erroneous labor hour reductions.

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<sup>172</sup> See Jacobi's Final Analysis Memo.

**Department's Position:** We agree with Juqiang that in the Department's final margin calculation for Juqiang, it is appropriate to use Juqiang's FOP file titled "DJACCONFOP05." In the Preliminary Results, we inadvertently used the fourth version of Juqiang's consolidated FOP file (i.e., DJACCONFOP04) in the Department's preliminary margin program for Juqiang and not the most updated version, i.e., DJACCONFOP05.<sup>173</sup>

Further, we disagree with Petitioners that we should decline to use Juqiang's most updated FOP database because, per our instructions, Juqiang provided this revised database. As an initial matter, the burden rests on respondent companies to provide the necessary information needed to accurately calculate the appropriate consumption in calculating normal value. If the accounting information collected and recorded by a respondent captures the production costs that are specifically tied to the production and/or packing factor, we require that they report each factor separately.<sup>174</sup> In our review of Juqiang's consumption for its labor factor, we found that Juqiang had overstated its reported consumption for direct labor because it reported two factors' consumption as one input in its FOP database, i.e., direct and packing labor.<sup>175</sup> In a supplemental questionnaire, we instructed Juqiang to report direct labor and packing labor as separate inputs and to also provide a revised FOP database.<sup>176</sup> On March 31, 2015, Juqiang complied with the Department's instructions.<sup>177</sup>

Therefore, because we requested this revised database from Juqiang and the record supports the revision, for the final results, we will use Juqiang's most updated consolidated FOP database (i.e., DJACCONFOP05) in the Department's final margin program for Juqiang.<sup>178</sup>

## **B. Programming Language for Net U.S. Price VAT Adjustment**

### ***Petitioners' Arguments***

- The Department should correct the clerical error in its programming language that is preventing the application of the unrebated VAT adjustment to Juqiang's net U.S. price.

**No other party commented on this issue.**

**Department's Position:** We agree with Petitioners that an inadvertent error in our programming language prevented the application of the unrebated VAT adjustment in the net U.S. price calculation in the Department's margin program for Juqiang. In the Preliminary Results, in our margin program's net U.S. price calculation, we assigned the variable name VETAXU to the U.S. price VAT adjustment. However, in our VAT adjustment calculation, we inadvertently

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<sup>173</sup> See Memorandum to the File through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Senior International Trade Analyst, "Preliminary Results Analysis Memorandum for Datong Juqiang Activated Carbon Co., Ltd. in the Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China," dated April 29, 2015 ("Juqiang's Preliminary Analysis Memo") at 1.

<sup>174</sup> See Letter from the Department to Juqiang, dated June 26, 2014, re: questionnaire, Section D.

<sup>175</sup> See Letter from the Department to Juqiang, re: Certain Activated Carbon from the People's Republic of China," dated March 10, 2015, at 4.

<sup>176</sup> See Juqiang's supplemental section D response, dated January 20, 2015, at 31 and Exhibit SD-47-48.

<sup>177</sup> See Juqiang's supplemental section D response, dated March 31, 2015, at 2 and Exhibit 3.

<sup>178</sup> See Juqiang's Final Analysis Memo.

dropped the "U" in the variable name. As a result, the VAT adjustment was not included in the net U.S. price calculation. For the final results, we will revise the variable name in the unrebated VAT adjustment calculation (VETAX) to that used in the net U.S. price calculation, i.e., VETAXU.<sup>179</sup>

**RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

AGREE  DISAGREE

Ronald K Lorentzen  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

October 2, 2015  
Date

<sup>179</sup> See Juqiang's Final Analysis Memo.