

November 2, 2012

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

FROM: Christian Marsh  
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  
Fourth Antidumping Duty Administrative Review

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## SUMMARY

The Department of Commerce ("the Department") has analyzed the comments submitted by the Petitioners,<sup>1</sup> the mandatory respondents,<sup>2</sup> and certain separate rate companies<sup>3</sup> in the fourth 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. Below is a complete list of issues for which we received comments and rebuttal comments by interested parties.

## BACKGROUND

On May 4, 2012, the Department published the Preliminary Results of this administrative review.<sup>5</sup> The Department extended the deadlines for submission of case and rebuttal briefs twice

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

<sup>2</sup> Datong Juqiang Activated Carbon Co., Ltd. ("DJAC"); Jacobi Carbons AB ("Jacobi"); and Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. ("Cherishmet").

<sup>3</sup> Jilin Bright Future Chemicals Co., Ltd. ("Bright Future"), Ningxia Mineral & Chemical Limited ("Ningxia Mineral"), and Tangshan Solid Carbon Co., Ltd. ("Tangshan Solid"); Carbon Activated Corporation and Car Go Worldwide, Inc. ("CAC"); and Shanxi DMD Corporation ("Shanxi DMD").

<sup>4</sup> See Certain Activated Carbon From the People's Republic of China: Preliminary Results of the Fourth Antidumping Duty Administrative Review, and Intent To Rescind in Part, 77 FR 26496 (May 4, 2012) ("Preliminary Results").

<sup>5</sup> See id.

based on requests from interested parties.<sup>6</sup> On May 24, 2012, interested parties submitted surrogate value (“SV”) comments.<sup>7</sup> On June 13, 2012, CAC,<sup>8</sup> CherishmetJacobi, and the Separate Rate Respondents<sup>9</sup> submitted case briefs.<sup>10</sup> On June 22, 2012, Petitioners<sup>11</sup> and Cherishmet submitted rebuttal briefs.<sup>12</sup> Both Bright Future and CAC incorporate by reference, the arguments raised by Cherishmet, DJAC, and Jacobi on all issues – including surrogate country selection, surrogate values, and company-specific issues – if they may impact the final margin calculated for those respondents and, consequently, the separate rate assigned to Bright Future and CAC.<sup>13</sup> We asked the parties to resubmit these documents without such information. The parties complied with this request. We cite to these documents in this footnote only to establish the procedural history of the proceeding. We did not rely upon these submissions in reaching the final results, but instead considered the arguments raised in the re-submitted case and rebuttal briefs filed on October 9, 2012. As explained below, the respective case and rebuttal briefs filed by Cherishmet and Petitioners referenced untimely new and non-public factual information. On July 19, 2012, the Department fully extended the time limit for completion of the final results of this administrative review.<sup>14</sup>

On September 26, 2012, Jacobi and its counsel met with officials from the Department.<sup>15</sup> On September 28, 2012, Cherishmet and its counsel met with officials from the Department.<sup>16</sup> On October 1, 2012, counsel for Petitioners met with officials from the Department.<sup>17</sup> On October 4, 2012, officials from the Embassy of Sweden met with officials from the Department.<sup>18</sup> Also on October 4, 2012, the Department rejected DJAC’s SV comments, as well as the case and

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<sup>6</sup> See Memorandum for All Interested Parties from Alan Ray, Senior Analyst, Import Administration, dated May 24, 2012; see also Memorandum to the file from Alan Ray, Senior Analyst, Office 9, Import Administration, dated June 14, 2012.

<sup>7</sup> See Jacobi’s Post-Preliminary Surrogate Values Submission, dated May 24, 2012 and Cherishmet’s Post-Preliminary Surrogate Values Submission, dated May 24, 2012.

<sup>8</sup> Carbon Activated Corporation and Car Go Worldwide, Inc., (collectively, “CAC”).

<sup>9</sup> Bright Future; Ningxia Mineral; and Tangshan Solid (collectively, “Separate Rate Respondents”).

<sup>10</sup> See Jacobi’s Case Brief, dated June 13, 2012; see also Cherishmet’s Case Brief, dated June 13, 2012; see also CAC’s Case Brief, dated June 13, 2012; see also the Separate Rate Respondent’s Case Brief, dated June 13, 2012.

<sup>11</sup> Calgon Carbon Corporation and Norit Americas Inc. (collectively, “Petitioners”).

<sup>12</sup> See Petitioners’ Rebuttal Brief, dated June 22, 2012; see also Cherishmet’s Rebuttal Brief, dated June 22, 2012.

<sup>13</sup> See Bright Future Case Brief, dated June 13, 2012, at 2-3; see also CAC Case Brief, dated June 13, 2012, at 3. Bright Future also argues in favor of the Department selecting the Philippines as the primary surrogate country; see also Bright Future Case Brief, dated June 13, 2012, at 3. As explained below, the respective case and rebuttal briefs filed by Cherishmet and Petitioners referenced untimely new and non-public factual information.

<sup>14</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, through James Doyle, Office Director, Office 9, Antidumping and Countervailing Duty Operations, from Emeka Chukwudebe, International Trade Compliance Analyst, Office 9, Antidumping and Countervailing Duty Operations: Certain Activated Carbon from the People’s Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated July 19, 2012.

<sup>15</sup> See Memorandum to the file from Alan Ray, Senior Analyst, office 9, AD/CVD Operations, dated September 27, 2012.

<sup>16</sup> See Memorandum to the file from Alan Ray, Senior Analyst, office 9, AD/CVD Operations, dated October 1, 2012.

<sup>17</sup> See Memorandum to the file from Alan Ray, Senior Analyst, office 9, AD/CVD Operations, dated October 1, 2012.

<sup>18</sup> See Memorandum to the file from Alan Ray, Senior Analyst, office 9, AD/CVD Operations, dated October 4, 2012.

rebuttal briefs referencing those comments, because they contained untimely new and non-public information.<sup>19</sup> The Department provided DJAC and the interested parties who had affirmative or rebuttal comments referencing the untimely new information until October 9, 2012, to resubmit their comments, excluding the untimely new and non-public factual information.<sup>20</sup> On October 9, 2012, Cherishmet and the relevant interested parties resubmitted their case and rebuttal briefs.<sup>21</sup> On October 16, 2012, the Ambassador from Sweden for the United States had a teleconference call with officials from the Department regarding the upcoming final results.<sup>22</sup> On October 16, 2012, the Department released a new labor calculation and provided the opportunity for interested parties to submit comments on the revised calculation.<sup>23</sup> On October 18, 2012, and October 22, 2012, interested parties submitted comments and rebuttal comments regarding the revised labor calculation.<sup>24</sup> As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the final results of this review is now November 2, 2012.<sup>25</sup>

### 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.

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<sup>19</sup> See Letter to DJAC and Petitioners, dated October 4, 2012.

<sup>20</sup> See *id.*

<sup>21</sup> See Petitioners’ Resubmission of Redacted Rebuttal Brief, dated October 9, 2012; see also Cherishmet’s Resubmission of Post-Preliminary Surrogate Value Data and Comments, dated October 9, 2012; see also Cherishmet’s Resubmission of Case Brief, dated October 9, 2012; see also Cherishmet’s Resubmission of Rebuttal Brief, dated October 9, 2012.

<sup>22</sup> See Memorandum to the file, from James Doyle, Office Director, Office 9, Certain Activated Carbon from the People’s Republic of China (“PRC”): *Ex Parte* Meeting with Office of Trade and Economic Affairs of the Embassy of Sweden, dated October 4, 2012,

<sup>23</sup> See Memorandum to the file, through Matthew Renkey, Acting Program Manager, Office 9, from Emeka Chukwudebe, Case Analyst, Office 9: Fourth Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People’s Republic of China: Philippine Wage Rate Data, dated October 16, 2012.

<sup>24</sup> See Jacobi’s Comments on Philippine Labor Surrogate Value Data: Certain Activated Carbon from China, dated October 18, 2012, see also Petitioners’ Fourth Administrative Review of Certain Activated Carbon from the People’s Republic of China – Reply to Jacobi Comments on Philippine Labor Rate Data, dated October 22, 2012.

<sup>25</sup> See Memorandum to the Record from Paul Piquado, AS for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane,” dated October 31, 2012.

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.

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 I: SELECTION OF SURROGATE COUNTRY**

- Because the PRC is being treated as a non-market economy (“NME”), when calculating normal value (“NV”) section 773(c)(4) of the Tariff Act of 1930, as amended (“the Act”),

requires, to the extent possible, that the Department value the factors of production (“FOPs”) in a surrogate country that (A) is at a level of economic development comparable to the PRC and (B) is a significant producer of comparable merchandise.

For the Preliminary Results, the Department selected Thailand as the primary surrogate country for this review because it is economically comparable to the PRC and it is a significant net exporter of identical merchandise.<sup>26</sup>

#### **A. Economic Comparability**

No parties submitted comments disputing the economic comparability of any of the countries that appeared on the Surrogate Country List to the PRC.<sup>27</sup> Therefore, we consider all six countries as having met this prong of the surrogate country selection criteria.

#### **B. Significant Producer of the Comparable Merchandise**

##### *Respondents’ Arguments (DJAC and Cherishmet)*

- The Department took an overly simplistic approach in reaching the determination that Thailand is a significant exporter of identical merchandise in 2010, and it should not be considered a country representative of Chinese industry.
- By value, Thailand imported more activated carbon during the POR than it exported and its exports have declined in several recent years while its imports have increased.
- The Philippines was a net exporter of both coconut shell-based activated carbon and activated carbon based upon other materials, the latter of which is directly representative of the Chinese industry at large.
- In contrast to Thailand, the Philippine activated carbon industry has been growing.
- The Philippines exported 23 times more activated carbon than it imported during the POR.
- There are many more activated carbon producers in the Philippines than in Thailand.

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

- Based on a review of Global Trade Atlas (“GTA”) data concerning shipments classified under Harmonized Tariff Schedule (“HTS”) heading 3802.10, the Department preliminarily found that Thailand is a significant net exporter of merchandise that is identical to the subject merchandise. This finding was correct and appropriate, and the Respondents’ arguments to the contrary should be rejected.
- Cherishmet and DJAC’s argument that the Department should find the “significant producer” prong of the surrogate country analysis based on the value of net exports from a given country runs afoul of the Department’s declaration in Policy Bulletin 04.1 that it will assess the data from potential surrogate countries on a case-by-case basis.
- Thailand exported at least seven million kilograms (“kgs”) of activated carbon in recent years, thus qualifying the country for “significant producer” status.

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<sup>26</sup> See Preliminary Results, 77 FR at 26498-500.

<sup>27</sup> See Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, Import Administration, from Carole Showers, Director, Office of Policy, Import Administration re: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People’s Republic of China (“PRC”), dated July 25, 2011 (“Surrogate Country List”).

- Cherishmet and DJAC's assertion about the declining production signifies an inability to meet domestic demand is speculative and is not relevant under the Department's analytical framework for determining whether a country is a significant producer.
- The number of producers of identical or comparable merchandise in a potential surrogate country is irrelevant.

### **Department's Position:**

According to the Policy Bulletin 04.1:

The extent to which a country is a *significant* producer should not be judged against the NME country's production level or the comparative production of the five or six countries on OP's surrogate country list. Instead, a judgment should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics). Since these characteristics are specific to the merchandise in question, the standard for "significant producer" will vary from case to case. For example, if there are just three producers of comparable merchandise in the world, then arguably any commercially meaningful production is significant. Intermittent production, however, would not be significant . . . In another case there may not be adequate data available from major producing countries. In such a case, "significant producer" could mean a country that is a net exporter, even though the selected surrogate country may not be one of the world's top sproduers.<sup>28</sup>

We note that in this particular case, both Thailand and the Philippines have been consistent producers of activated carbon for several years.<sup>29</sup> No party questions whether the Philippines is a significant producer of activated carbon. However, DJAC and Cherishmet question whether the Department should consider Thailand a significant producer based on the fact that during the POR Thailand was a net importer of activated carbon based on value.

Importantly, the Act does not define the phrase "significant producer."<sup>30</sup> Certain legislative history arguably 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>31</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

<sup>28</sup> See Policy Bulletin 04.1, available at <http://ia.ita.doc.gov/policy/bull04-1.html>.

<sup>29</sup> See Cherishmet's Pre-Preliminary Comments, dated April 2, 2012, ("Cherishmet's Pre-Preliminary Comments") at pages 3-6 and Exhibits 1 and 3.

<sup>30</sup> See section 773(c)(4)(B) of the Act; see also accord Policy Bulletin 04.1, available at <http://ia.ita.doc.gov/policy/bull04-1.html>.

<sup>31</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).

example provided in the legislative history.<sup>32</sup> As a result, this ambiguous provision of the Act does not compel the Department to define “significant producer” in any particular manner.<sup>33</sup>

The Department disagrees with DJAC and Cherismet and finds that for this industry Thailand is a significant producer, based on export quantities. We prefer to consider quantity, rather than value, in determining whether a country is a significant producer. Quantities are expressed in constant units of measurement and are not subject to influence from outside variables, such as currency fluctuations and inflation, among other external pressures. 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, have production of comparable merchandise as evidenced by the financial statements on the record<sup>34</sup>.

Finally, Cherishmet and DJAC’s arguments about declining domestic demand and the number of producers of identical or comparable merchandise in a potential surrogate country are irrelevant to the Department’s selection of a primary surrogate country. The Act does not require the Department to consider these factors in reaching its decision,<sup>35</sup> and we decline to do so in this case.

For the reasons outlined above, we find both the Philippines and Thailand to be significant producers of comparable merchandise.

### **C. Data Considerations**

As discussed above, we have concluded for the final results that both the Philippines and Thailand are economically comparable and significant producers of identical merchandise. Policy Bulletin 04.1 states that, if more than one country satisfies the economically comparable and significant producer criteria for surrogate country selection purposes, “then the country with the best factors data is selected as the primary surrogate country.”<sup>36</sup> Importantly, Policy Bulletin 04.1 explains further that “data quality is a critical consideration affecting surrogate country selection” and that “a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable.”<sup>37</sup>

Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from an appropriate market economy (“ME”) country or a country that the Department considers appropriate. When considering what constitutes the best available

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<sup>32</sup> See *id.*

<sup>33</sup> See Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262, 1274 n.5 (Ct. Int’l Trade 2006).

<sup>34</sup> As interested parties have discussed Thailand and Philippines’ status as net exporters, we note that both are net exporters, although such a finding is not necessary as indicated above.

<sup>35</sup> See section 773(c)(4) of the Act.

<sup>36</sup> Policy Bulletin 04.1, available at <http://ia.ita.doc.gov/policy/bull04-1.html>.

<sup>37</sup> See *id.*

information, the Department considers several criteria, including whether the surrogate value (“SV”) is: publicly available; contemporaneous with the POR; represents a broad market average; from an approved surrogate country; tax and duty exclusive; and specific to the input.<sup>38</sup> The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.<sup>39</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>40</sup> As there is no hierarchy for 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 surrogate value for each input.<sup>41</sup>

We have examined the available Thai and Philippine data on the record to determine which country provides the best available information for surrogate valuation purposes. In this analysis, we examined record data on the primary material inputs used by the three mandatory respondents to produce the subject merchandise in this review (*i.e.*, anthracite coal, bituminous coal, carbonized material, and hydrochloric acid), as well as surrogate labor data and the available financial statements from which to derive financial ratios.<sup>42</sup>

#### **(A) Anthracite Coal**

##### *Respondents’ Arguments (Jacobi, Cherishmet/DJAC)*

- Cherishmet and Jacobi use anthracite coal (HTS 2701.11) in producing activated carbon, and have provided Philippine import data for anthracite coal, having prices that are corroborated by multiple sources and are reflective of world market prices.
- Information placed on the record since the Preliminary Results demonstrate that Thai import data under HTS code 2701.11 are fundamentally different from the coal used by Respondents based on (1) the written HTS description, which includes a variety of anthracite coal types, and (2) an affidavit from an industry expert about additional products included in the HTS 2701.11 data.
- The data that the Department used in the Preliminary Results are not of a broad-market average. Out of 352,411 metric tons (“MTs”) of imports into Thailand, the Department derived the value from only 96 MTs of anthracite imports, after removing imports from NME and subsidy countries.

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<sup>38</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum (“CLPP”) at Comment 3.

<sup>39</sup> See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940, 51943 (August 19, 2011), and accompanying Issues & Decision Memorandum at Comment 2.

<sup>40</sup> See Mushrooms from the PRC, and accompanying Issues and Decision Memorandum at Comment 1; see also 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 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>41</sup> See Mushrooms from the PRC, 71 FR 40477 and accompanying Issues and Decision Memorandum at Comment 1.

<sup>42</sup> These items also were the most contested among the interested parties and are the most important components of the normal value buildup.



- The 96 MTs of anthracite imports come from three countries: Australia, Japan, and the United States. The Thai import data do not match the corresponding export data from those countries and, thus, are unreliable. Japan also does not produce anthracite.
- The prices are much too high and quantities of the merchandise imported are much too low to be imported for the purpose of steel production or activated carbon.
- The 96 MTs of usable Thai import data are a tiny quantity in comparison to the volumes used by Respondents, *i.e.*, several thousand MTs throughout the POR.
- Ukrainian domestic market price data provides a source to value anthracite coal. Ukrainian price data published in CIS Coal News provides the heat value for four varieties of anthracite coal. Ukraine appears in the list of possible surrogate countries.

*Petitioners' Rebuttal Arguments*

- There is no information on the record of this review that establishes how the data from the Philippines for valuing anthracite are more specific to the input used by DJAC. Nowhere does the record demonstrate that the coal used is raw anthracite coal.
- Nowhere on the record is there any description of the physical characteristics of the anthracite coal imports reflected in the Thai import statistics.
- The assertion that the Thai import statistics do not reflect anthracite coal with comparable physical characteristics as the anthracite coal consumed by Chinese producers, based on quantities reflected in the import statistics, is purely speculative.
- The Department is provided discretion in determining the most appropriate source for valuing FOPs. In certain instances the best source comes from a basket category.
- There is no information on the record that Chinese producers consume “run of mine” coal or raw anthracite in the production of activated carbon.
- There is no evidence that the basket category for anthracite coal actually does contain any other products that were imported into Thailand, or to what extent any other products would require further processing.
- Differences in average unit value (“AUV”) between import prices in Thailand and the Philippines do not establish, in and of themselves, that one import statistics set is more specific than another.
- Differences between Australian exports of anthracite and Thai imports from Australia could be explained by first being shipped to a third country and then re-exported to Thailand or being shipped to Thailand and then re-exported to a third country, or any number of other scenarios.
- Differences in AUVs between import prices between Thailand and the Philippines (and other countries) do not establish, in of themselves, that one set of import statistics is more specific.
- Japan does produce bituminous and sub-bituminous coal from domestic mines. Japan also manufactures and exports filtration anthracite, which does not require substantial processing.
- Japan could have imported, processed, and then exported processed anthracite coal.
- There are a number of possible explanations for why the quantities and values of U.S. exports and Thai imports vary. Furthermore, simply because the AUV is higher than other sources on the record does not mean that it is an inappropriate source for valuing coal.

*Cherishmet's Rebuttal Arguments*

- Cherishmet used the same type of anthracite coal as Jacobi's suppliers and, thus, the Department should value the input the same for these two respondents using Philippine data.

**Department's Position:**

First, we will not consider Ukrainian data provided by respondents to value anthracite coal because we continue to find that the Ukraine is not a significant producer of comparable merchandise.<sup>43</sup>

**GTA Import Data from Thailand**

The import data from Thailand on anthracite coal satisfies all of the surrogate value criteria. First, the publicly available data under HTS 2701.11 comes from a country appearing on the Surrogate Country List.<sup>44</sup> Second, the data is specific to the input at issue because the HTS heading from which the data is derived, “Anthracite Coal W/N Pulverized But Not Agglomerated,” is the exact input used by the relevant respondents in the production of the subject merchandise.<sup>45</sup> Third, the data is contemporaneous with the POR.<sup>46</sup> Finally, the Department previously has found that data from the Global Trade Atlas (“GTA”), such as that on the record, is publicly-available, represents a broad market average, and is tax and duty exclusive.<sup>47</sup>

While Respondents raise concerns about the reliability of the Thai GTA import data, those arguments are speculative and fail to impeach the data. For example, Respondents failed to provide evidence that the Thai imports contained anthracite coal any different from that used by producers of activated carbon. While the HTS category for Thailand is a basket category that could include items other than anthracite coal similar to the coal used by producers, no evidence was provided that establishes whether the Thai imports did in fact include other materials, in what quantities those possible other materials may have arrived, or how they might have otherwise distorted the price of the anthracite coal used by producers of activated carbon. Nor is there any evidence on the record of this proceeding concerning how this HTS category of imports for Thailand would be materially different or less specific than the exact same HTS category of imports from the Philippines that Respondents suggest be used.

Respondents argue that the Thai import data quantity is too low to be descriptive of imports of anthracite coal used for industrial purposes, such as producing activated carbon. We find that this argument is speculative and without evidentiary support. The record does not contain specific information concerning the amount of further processed anthracite coal, if any, that is included in this category of Thai GTA import data.<sup>48</sup> The Thai GTA import data pertains generally to the type of anthracite coal used by all Respondents in the production of subject

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<sup>43</sup> See Preliminary Results, 77 FR at 26499.

<sup>44</sup> See id.

<sup>45</sup> See Petitioners' Comments on Surrogate Values for the Preliminary Results' dated November 16, 2011, (“Petitioners' Prelim SV Comments”) at Exhibit 1.

<sup>46</sup> See id.

<sup>47</sup> See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 55808 (September 11, 2012), and accompany Issues and Decision Memorandum at Comment 3 (“Mushrooms 2012”).

<sup>48</sup> See Petitioners' Comments on Surrogate Values for the Preliminary Results' dated November 16, 2011, (“Petitioners' Prelim SV Comments”) at Exhibit 1.

merchandise on a useful heat value (“UHV”) basis.<sup>49</sup> The data does not delineate between unprocessed and further processed anthracite coal.<sup>50</sup> Moreover, we note that 96 MTs of anthracite coal is not necessarily a low volume and that Respondents provided no evidence to support the assertion that because the import quantities are at that level, 96 MTs would not be representative of imports of anthracite coal, similar to that used by Respondents.

Finally, with respect to Respondents’ argument that the Thai import data must be for materials other than unprocessed anthracite coal based on the high AUV, we note that in making a finding as to whether data are aberrational, the Department has found the existence of higher prices alone does not necessarily indicate that the price data are distorted or misrepresentative, and thus is not a sufficient basis upon which to exclude a particular SV.<sup>51</sup> Under the Department’s current practice, interested parties must provide specific evidence showing the value is aberrational.<sup>52</sup> If a party presents sufficient evidence to demonstrate a particular SV is aberrational, and thus not reliable, the Department will assess all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.<sup>53</sup> We note that parties did not provide sufficient evidence to demonstrate that the Thai GTA import SV is aberrational e.g. providing annual GTA import data from Thailand from prior years demonstrating that the value from the POR is aberrational compared to other years). Furthermore, in Steel Wire Rope,<sup>54</sup> the Department stated that it would determine whether unit values are aberrational if they are many times higher than the import values from other countries. Similarly, in Fish from Vietnam,<sup>55</sup> the Department found the SVs for labels to be aberrational where the AUVs varied between 30 and 79 times greater than the average of the rest of the import data. Here, the Thai GTA import data is less than three times greater than the simple average of all of the other anthracite values on the record.<sup>56</sup> Therefore, we do not find that Respondents’ benchmarking arguments discredit the Thai GTA import data simply because it is the highest value on the record. Finally, with regard to the methodology employed to determine whether data is aberrational, Hebei Metals<sup>57</sup> stated that “Commerce need not prove that its methodology was the only way or even the best way to calculate surrogate values for factors of production as long as it was reasonable.” Therefore, we believe the consideration of the Thai

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<sup>49</sup> See id.

<sup>50</sup> See id.

<sup>51</sup> See, e.g., Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 36630 (June 28, 2010) and accompanying Issues and Decision Memorandum at Comments 3 and 4.

<sup>52</sup> See, e.g., id.

<sup>53</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 56158 (September 12, 2011) and accompanying Issues and Decision Memorandum at Comment 2 E.

<sup>54</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From India and the People’s Republic of China; Notice of Final Determinations of Sales at Not Less Than Fair Value: Steel Wire Rope from Malaysia, 66 FR 12759 (February 28, 2001), and accompanying Issues and Decision Memorandum for the People’s Republic of China at Comments 1 and 6 (Steel Wire Rope).

<sup>55</sup> See Final Results of Redetermination Pursuant to *Catfish Farmers of America v. United States*, Consol. Court No. 08-00111, Slip Op. 09-96, (September 14, 2009), dated December 10, 2009, at 4-7.

<sup>56</sup> See Petitioners’ Prelim SV Comments at Exhibit 1.

<sup>57</sup> Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, 28 CIT 1185, 1190 (Ct. Int’l Trade 2004) (quotation marks & citation omitted).

GTA import data as a source for valuing this input is reasonable, as we do not find that AUV to be aberrational based on the above analysis.

### **GTA Import Data from the Philippines**

The Philippine data were not challenged by Petitioners, and we note that these data are equally as specific to the input as the Thai GTA import data, given that it comes from the same six-digit HTS category.<sup>58</sup> Moreover, the data is contemporaneous with the POR.<sup>59</sup> Finally, as noted above, the GTA data is publicly available, representative of broad market averages, and is tax and duty exclusive.<sup>60</sup> Thus, the Philippine data satisfies all of the surrogate value criteria.

Therefore, for this particular material input, we find that Philippine and Thai data for anthracite coal are both viable options and the import data alone do not point us towards selecting one potential surrogate country over the other.

### **(B) Bituminous Coal<sup>61</sup>**

#### *Respondents' Arguments (Jacobi, Cherishmet/DJAC)*

- Since the Preliminary Results, three new sources of information from the Philippines have been placed on the record for valuing bituminous coal. These sources (including the HTS category 2701.19) provide the best options for valuing bituminous coal that is used as a direct material input by only one of the three mandatory respondents, DJAC.
- The Department can value bituminous coal using the AUV of imports into the Philippines under HTS code 2701.19. In the third administrative review, the Department valued bituminous coal using imports into India under this same HTS code.
- The Department can value bituminous coal using the average bituminous coal selling prices by Philippine mining companies of \$48.56 per MT. The prices are publicly available and come from the financial statements of two Philippine mining companies. This coal is specific to the input used by DJAC and represents a broad market average.

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<sup>58</sup> See Jacobi's Additional Surrogate Value Information, dated February 10, 2012, ("Jacobi's Additional SV Information") at Exhibit SV-3.

<sup>59</sup> See *id.*

<sup>60</sup> See, e.g., Mushrooms 2012, at Comment 3.

<sup>61</sup> In their post-preliminary surrogate value submission and originally submitted case and rebuttal briefs, DJAC and Cherishmet included untimely new and non-public information on this input. See Cherishmet's Post-Preliminary Surrogate Value Submission dated, May 24, 2012; see also Cherishmet's Case Brief, dated June 13, 2012; Cherishmet's Rebuttal Brief, dated June 22, 2012. The Department rejected this information on October 4, 2012, and asked all interested parties to resubmit their case and rebuttal briefs without reference to this new information. See Letter from, Matthew Renkey, Acting Program Manager, Office 9, to Petitioners and Cherishmet: Rejection of DJAC's New, Unsolicited, and Untimely Business Proprietary Information ("BPI") (October 4, 2012). All parties complied with this request and submitted their briefs on October 9, 2012. See Cherishmet's Resubmission of Post-Preliminary Surrogate Value Data and Comments, dated October 9, 2012; see also Cherishmet's Resubmission of Redacted Case Brief, dated October 9, 2012; see also Cherishmet's Resubmission of Redacted Rebuttal Brief, dated October 9, 2012; see also Petitioners' Resubmission of Redacted Rebuttal Brief, dated October 9, 2012; Petitioners' Resubmission of Redacted Rebuttal Brief, dated October 9, 2012. In so doing, DJAC and Cherishmet stated their objection to the Department's rejection of the new information. See Letter from Cherishmet to the Department: Response to the Department's October 4, 2012 Rejection of Factual Information (October 9, 2012). The Department responded to DJAC and Cherishmet's objection on October 16, 2012, and will not discuss the issue in this memorandum. See Letter from, Matthew Renkey, Acting Program Manager, Office 9, to Petitioners and Cherishmet: Rejection of Request to Resubmit Comments for the Final Results (October 16, 2012).

- The Department can value bituminous coal using pricing data from a Philippine energy supplier, as published, resulting in an average POR price of \$96.55 per MT. These data are publicly available, represent a broad market average, and are specific to the input.
- The appropriate source for valuing bituminous coal using GTA data is HTS code 2701.19, rather than 2701.12, regardless of whether the Department selects Thailand or the Philippines.
- Should the Department choose to not value bituminous coal using a source from the Philippines, the Department should use Coal Limited India Ltd. to value both bituminous and steam coal.

#### *Petitioners' Rebuttal Arguments*

- The three Philippine sources to value bituminous coal are inferior to the Thai source because (1) 2701.19 is not specific to the input used by DJAC, but would only serve as a proxy; (2) the price quotes from one of the two Philippine mining companies (Semirara) do not indicate clearly the actual quantities and values of domestic and export sales, and Semirara sells lower quality, less-specific coal than what DJAC uses, while the other coal company, PNOC Exploration Corporation ("PNOC"), is largely owned by the government, with most of its non-contemporaneous sales going to the Department of Energy; and (3) there is no evidence that the electricity price charged by the Philippine electricity provider, Bohol I Electric Cooperative, Inc. ("BOHECO") is in fact a "broad-market price."
- Using a source from India to value bituminous coal would be contrary to the Office of Policy's memo stating that the Department does not consider India to be at a comparable level of economic development to the PRC for this proceeding.

#### **Department's Position:**

Since the Preliminary Results, both Petitioners and Respondents placed additional data on the record with respect to these two countries and, significantly, Respondents placed additional information regarding sources for the valuation of bituminous coal as a direct material input. We now have three new sources of data for the valuation of bituminous coal used as a direct material input from the Philippines, as well as previously considered Thai GTA import data under HTS 2701.12 and 2701.19 and Philippine GTA import data under HTS 2701.19. The bituminous coal used as a direct material input by DJAC has a UHV at a certain level of Kcal/kg.<sup>62</sup>

First, because India does not appear on the Surrogate Country List,<sup>63</sup> we will not consider the data from Coal Limited India Ltd. to value bituminous coal as a direct material input.

#### **PNOC Annual Report**

The publicly available data from the PNOC Annual Report relates to a mining company in the Philippines that sold bituminous coal.<sup>64</sup> This coal has a UHV of 6,667 Kcal/kg.<sup>65</sup> These data

<sup>62</sup> See 3rd Supplemental Questionnaire Response of Datong Juqiang Activated Carbon Co., Ltd. in the Fourth Administrative Review of Certain Activated Carbon from People's Republic of China, Case No. A-570-904, dated March 15, 2012, at page 4, for the specific UHV.

<sup>63</sup> See Preliminary Results, 77 FR at 26499.

<sup>64</sup> See Jacobi's Post-Preliminary Surrogate Values, dated May 24, 2012, ("Jacobi's Post Prelim SVS") at Exhibit 4 Part 4 through Part 14.

represent 613,000 kgs of bituminous coal sold in 2009.<sup>66</sup> As such, we note that the data from PNOC's 2009 annual report represent a broad market average because 613 metric tons is sufficiently a large volume to be representative of a broad market average. We note that this volume is greater than the usable data for anthracite coal from Thailand, which, as discussed above, we found to be representative of a broad market average.<sup>67</sup> Moreover, the data is specific to the input in question because it relates to bituminous coal with a UHV that nearly matches that used by DJAC in the production of subject merchandise.<sup>68</sup> However, the data is not contemporaneous with the POR, and PNOC is largely owned by the government and its operating contracts are with various government agencies.<sup>69</sup> Given these concerns, we will not consider the PNOC data for the purposes of valuing bituminous coal, as there are better sources available on the record.

### **Semirara Mining Corporation**

The publicly available data from Semirara Mining Corporation's 2010 consolidated financial statements come from an approved surrogate country (*i.e.*, the Philippines)<sup>70</sup> and is contemporaneous.<sup>71</sup> Moreover, the data (1) is tax and duty exclusive, as the notes to the financial statements make clear at page 48,<sup>72</sup> and (2) represents a broad market average (*i.e.*, 96 percent of domestic production).<sup>73</sup> However, the bituminous coal produced by Semirara has a UHV of 4415-5882 Kcal/kg, which is distinct from that used by DJAC, and the ash content range has little overlap with that used by DJAC. As such, we will not consider the Semirara Mining Corporation data for the purposes of valuing bituminous coal, as this bituminous coal has a UHV different from that used by DJAC.

### **Bohol 1 Electric Cooperative, Inc. ("BOHECO")**

The publicly available data from the BOHECO 2010 purchase agreement is from an approved surrogate country (*i.e.*, the Philippines)<sup>74</sup> and is contemporaneous.<sup>75</sup> Moreover, there is no indication that the coal is inclusive of taxes or duties, and these data represent a broad market average because it is for coal for energy production for 26 municipalities in Bohol province of the Philippines.<sup>76</sup> While we recognize that these are not country-wide data, we note that in other

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<sup>65</sup> See *id.*

<sup>66</sup> See *id.*

<sup>67</sup> See Cherishmet's Pre-Preliminary Comments at pages 3-6 and Exhibits 1 and 3.

<sup>68</sup> See Cherishmet's First Supplemental Section D Response, dated December 14, 2011, at pages 13 and 14 ("Cherishmet's First Supp D"). Importantly, DJAC did not indicate the exact UHV of the bituminous coal that it uses to produce subject merchandise or suggest that it uses only bituminous coal with a specific UHV. Instead, DJAC indicated that it used bituminous coal with a UHV "around" a certain number. See 3rd Supplemental Questionnaire Response of Datong Juqiang Activated Carbon Co., Ltd. in the Fourth Administrative Review of Certain Activated Carbon from People's Republic of China, Case No. A-570-904, dated March 15, 2012, at page 4, for the specific UHV.

<sup>69</sup> See Cherishmet's First Supp D at pages 13 and 14.

<sup>70</sup> See Preliminary Results, 77 FR at 26499.

<sup>71</sup> See Jacobi's Post-Preliminary Surrogate Values, dated May 24, 2012 ("Jacobi's Post Prelim SVS") Exhibit 4.

<sup>72</sup> See Jacobi's Post Prelim SVS Exhibit 4 at 48.

<sup>73</sup> See Jacobi's Post Prelim SVS Exhibit 4.

<sup>74</sup> See *id.*

<sup>75</sup> See *id.*

<sup>76</sup> See *id.*

cases we have valued FOPs using regional data from a single province when the data represent the best information available on the record from a particular country, and BOHECO provides a reasonably broad market average, covering 26 municipalities in Bohol province.<sup>77</sup> Finally, this coal has a UHV of 6,700 Kcal/kg and nearly matches that used by DJAC in the production of subject merchandise.<sup>78</sup> Notably, Petitioners did not challenge whether the data in the BOHECO 2010 purchase agreement were specific to DJAC's direct material input.<sup>79</sup> However, the data from the BOHECO 2010 purchase agreement are not as specific as the Thai data for this input. Thus, the BOHECO data are inferior to the Thai GTA data in that they are regional, rather than national data, and in that they are not quite as specific to the input in question, based on the UHV.

### **Philippine GTA Import Data 2701.19**

We rejected Philippine GTA Import Data in the Preliminary Results as a source for valuing bituminous coal used as a direct material input because it is for bituminous coal that has a UHV that was different from that used by DJAC.<sup>80</sup> For the final results, we continue to find that it is not an appropriate SV source for the bituminous coal used by DJAC.

### **Thailand GTA Import Data 2701.12**

In the Preliminary Results,<sup>81</sup> the Department valued DJAC's bituminous coal using the publicly available Thai HTS heading 2701.12, "Bituminous Coal, Whether Or Not Pulverized, But Not Agglomerated,"<sup>82</sup> as the information on the record reflects that the bituminous coal used by DJAC has a calorific value limit that falls within the range provided in HTS heading 2701.12 and does not fall within the range provided in HTS heading 2701.19.<sup>83</sup> HTS heading 2701.12 encompasses bituminous coal with a UHV which matches that used by DJAC as a direct material input.<sup>84</sup> Moreover, these data come from an approved surrogate country,<sup>85</sup> are contemporaneous,<sup>86</sup> and are tax and duty exclusive and represent a broad market average.<sup>87</sup> Therefore, we continue to find that the Thai GTA data represents the best information for valuing

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<sup>77</sup> See "Valuation of Water" in Memorandum to the File, from Alexis Polovina, through Alex Villanueva, Investigation of Prestressed Concrete Steel Wire Strand from the People's Republic of China ("PRC"): Surrogate Values for the Preliminary Determination, dated December 19, 2009, at 9; "Valuation of Water" in Memorandum to the File, from Matthew Renkey, through Alex Villanueva, Investigation of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Preliminary Determination, dated January 15, 2008, at 7.

<sup>78</sup> See Jacobi's Post Prelim SVS at Exhibit 4.

<sup>79</sup> See Petitioners' Rebuttal Brief, dated June 22, 2012, at 13-14.

<sup>80</sup> See Preliminary Results, 77 FR at 26500.

<sup>81</sup> See Memorandum to the File, from Kathleen Marksberry, through Catherine Bertrand, Fourth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results, dated April 30, 2012.

<sup>82</sup> The HTS description characterizes this bituminous coal as having a UHV above 5883 Kcal/kg.

<sup>83</sup> See DJAC Supplemental Questionnaire Response, dated March 15, 2012, at page 4; see also DJAC Supplemental A, C&D Questionnaire Response, dated November 29, 2011 at Exhibit SD-5.

<sup>84</sup> See Cherishmet's First Supp D at pages 13 and 14.

<sup>85</sup> See Preliminary Results, 77 FR at 26499.

<sup>86</sup> See Petitioners' Prelim SV Comments at Exhibit 1.

<sup>87</sup> See, e.g., Mushrooms 2012, at Comment 3; see also First Supplemental Section D Response of Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.: Administrative Review of the Antidumping Order on Certain Activated Carbon from the People's Republic of China, dated December 14, 2011, at page 8.

bituminous coal used only by DJAC, one of the three mandatory respondents, as a direct material input.

Prior to the Preliminary Results, the record was bereft of a viable option from the Philippines for which to value DJAC's bituminous coal direct material input. The BOHECO data submitted after the Preliminary Results represents a reasonable option, but one that we find would be an inferior match. The Thai import data for HTS 2701.12 continue to be a superior option, given that they are national, rather than regional data, and could include coal of the same UHV used by DJAC. Thus, data considerations for this FOP used solely by DJAC point towards Thailand as having superior data, though the Philippines would provide the Department with a reasonable alternative.

### **(C) Carbonized Material**

#### *Respondents' Arguments (Jacobi)*

- The only Thai surrogate value for carbonized material on the record is HTS code 4402.90, which consist of wood charcoal.
- The scope of the order expressly excludes chemically activated carbon produced using sawdust, wood, and peat.
- It is inappropriate to use HTS code 4402.90 because it consists of wood charcoal, which cannot be used to make the subject merchandise in this review.
- In prior segments of this proceeding, the Department has valued carbonized material consumed by respondents using coconut shell charcoal.
- The Department should use data from the publication *Cocommunity* because it provides domestic prices of coconut charcoal, which purportedly is equivalent to coconut shell charcoal, and because it is more specific to the input, given that producers cannot use wood charcoal in the production of subject merchandise.

#### *Petitioners' Rebuttal Arguments:*

- The Department should reject Jacobi's argument because: (1) the scope of the order explicitly addresses the consumption of wood feedstock to produce the subject merchandise; (2) the source cited by Jacobi does not state that wood cannot be used to produce the subject merchandise; (3) evidence on the use of wood, and not wood charcoal, to produce chemically activated carbon is irrelevant to the use of wood feedstock for producing steam activated carbon; (4) the coconut charcoal valued in *Cocommunity* is not the same input used by respondents to produce activated carbon; and (5) the Department's practice of using coconut charcoal in prior proceedings occurred when no other alternatives were available to value coal-based carbonized material.
- Because Jacobi and its suppliers rely on a coal-based carbonized material, coconut charcoal is not specific to the respondents' input.
- For the final results, the Thai HTS code 4402.90 ("Wood Charcoal") is appropriate to value carbonized material and more specific to the input used because the scope of the order recognizes wood and coconut shells as feedstock in the production of subject merchandise.



## **Department's Position**

### **Thailand GTA Import Data 4402.90.00**

The Thai data satisfies all of the surrogate value criteria to value carbonized material. First, the publicly available import data from Thailand under HTS 4402.90.00 comes from an approved surrogate country.<sup>88</sup> Second, the data comes from the HTS heading described as “Wood Charcoal (including shell or nut charcoal) excluding that of bamboo,” which is specific to the input in question because Jacobi and Cherishmet, the only other mandatory respondent that uses this type of carbonized material, have acknowledged that they consume this input when producing the subject merchandise.<sup>89</sup> Third, the data is contemporaneous with the POR.<sup>90</sup> Finally, the data represents a broad market average and is tax and duty exclusive.<sup>91</sup> Thus, the Thai GTA data satisfies all of the surrogate value criteria.

While Jacobi argues that this carbonized material cannot be used to produce activated carbon, the scope of this order references that feedstock for carbonized material can include wood.<sup>92</sup> Furthermore, while this HTS heading is a basket category, we note that any imports of coconut shell and other carbonized material would be included therein.<sup>93</sup>

### **Philippine GTA Import Data 4402.00.00**

The Philippine data satisfies all of the surrogate value criteria to value carbonized material. First, the publicly available import data from the Philippines under HTS 4402.90.00 comes from an approved surrogate country.<sup>94</sup> Second, the data comes from the HTS described as “Wood Charcoal (including shell, nut charcoal, and bamboo),” which is specific to the input in question because Jacobi and the other mandatory respondents use this type of carbonized material in the production of subject merchandise.<sup>95</sup> Third, the data is contemporaneous with the POR.<sup>96</sup> Finally, the data represents a broad market average and is tax and duty exclusive.<sup>97</sup>

As stated above, this category would include materials that fall within the scope of this order for feedstock of carbonized material.<sup>98</sup> Furthermore, while this HTS category is a basket, we note

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<sup>88</sup> See Preliminary Results, 77 FR at 26499.

<sup>89</sup> See Jacobi's Response to the Department's Supplemental Section D Questionnaire for Ningxia Guangua Activated Carbon Co., Ltd. dated November 17, 2011 at pages 5-6 and Cherishmet's First Supp D at page 8.

<sup>90</sup> See Jacobi's Additional Surrogate Value Information: Certain Activated Carbon from China dated February 10, 2012, at Exhibit SV-1 (“Jacobi's SV Submission”).

<sup>91</sup> See, e.g., Mushrooms 2012, at Comment 3.

<sup>92</sup> See Preliminary Results, 77 FR at 26497-98 (explaining that 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.”).

<sup>93</sup> See Jacobi's SV Submission at Exhibit 1.

<sup>94</sup> See Preliminary Results, 77 FR at 26499.

<sup>95</sup> See Jacobi's Response to the Department's Supplemental Section D Questionnaire for Ningxia Guangua Activated Carbon Co., Ltd. dated November 17, 2011 at pages 5-6 and Cherishmet's First Supp D at page 8.

<sup>96</sup> See Jacobi's SV Submission at Exhibit 1.

<sup>97</sup> See *id.*

<sup>98</sup> See Preliminary Results, 77 FR at 26497-98.

that, like the Thai import data above, any imports of coconut shell carbonized material would be included herein.<sup>99</sup>

### **Cocommunity**

The price listed in the publicly available Cocommunity data is from an approved surrogate country and is contemporaneous with the POR.<sup>100</sup> While Jacobi states that the document contains data on coconut charcoal and that this type of carbonized material is the most specific to what they use, we note that Cherishmet uses both coconut charcoal and other carbonized materials as an input, as does Jacobi.<sup>101</sup> Furthermore, the record lacks any information about whether or not the price listed in Cocommunity is in fact tax and duty exclusive. Finally, the value for coconut charcoal from Cocommunity is region-specific and, thus, is not as representative of broad market averages as GTA data because the latter provides country-wide data on imports into the particular country from all global trading partners.<sup>102</sup> Thus, the Cocommunity document does not provide the best information available on the record.

Therefore, in light of the above analysis, we find that the Thai and Philippine data for carbonized materials are equally viable options and do not point us towards selecting one potential surrogate country over the other based on data considerations for this material input and will continue to make our surrogate country decision based on the totality of the data for the primary FOPs.

### **(D) Hydrochloric Acid (“HCL”)**

#### *Jacobi’s Arguments:*

- Jacobi’s suppliers consume industrial grade hydrochloric acid of 31%-33% purity, commonly purchased in quantities of 150-280 MTs per shipment.
- Total Thai imports of HCL for the entire year amount to 275 MT and include medical grade and other grades of HCL.
- Medical grade and other grades of HCL are more expensive and are sold in lower quantities.
- The average non-Thai import data of HCL is \$348 per MT and is virtually identical to the price of Philippine imports of HCL.
- Although the Indian *Chemical Weekly* data provides a better surrogate value, for the final results, the Department should select the Philippine import data because it is a more accurate and reliable surrogate value.

#### *Petitioners’ Rebuttal Arguments:*

- Jacobi provides no specific information to demonstrate that the Thai import statistics does not include HCL that is comparable to that consumed by its suppliers.
- There is no evidence on the record that differentiates the physical characteristics of the HCL

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<sup>99</sup> See Jacobi’s Response to the Department’s Supplemental Section D Questionnaire for Ningxia Guangua Activated Carbon Co., Ltd. dated November 17, 2011 at pages 5-6 and Cherishmet’s First Supp D at page

<sup>100</sup> See *id.*

<sup>101</sup> See Jacobi’s Response to the Department’s Supplemental Section D Questionnaire for Ningxia Guangua Activated Carbon Co., Ltd. dated November 17, 2011 at pages 5-6; First Supplemental Section D Response of Ningxia Guangua Cherishmet Activated Carbon Co., Ltd.: Administrative Review of the Antidumping Order on Certain Activated Carbon from the People’s Republic of China, dated December 14, 2011, at page 8.

<sup>102</sup> See Memorandum to the File, through Catherine Bertrand, from Kathleen Marksberry, Fourth Administrative Review of Certain Activated Carbon from the People’s Republic of China: Surrogate Values for the Preliminary Results, dated April 30, 2012, at 2.

- imported into Thailand and the HCL consumed by the respondents and their suppliers.
- Reliance on a surrogate value from India is not an appropriate because India is not at a comparable level of economic development to the PRC.
- The Department should therefore reject Jacobi's arguments and, for the final results, continue to use a SV from Thailand.

**Department's Position:  
Thailand GTA Import Data 2806.10**

The Thai data satisfies all of the surrogate value criteria. First, the publicly available import data from Thailand under HTS 2806.10 comes from a country appearing on the Surrogate Country List.<sup>103</sup> Second, the data comes from the HTS heading described as "Hydrogen Chloride (Hydrochloric Acid)", which is specific to the input in question because the inputs used by Respondents would enter within this HTS category.<sup>104</sup> Third, the data is contemporaneous with the POR.<sup>105</sup> Finally, the data represents a broad market average and is tax and duty exclusive.<sup>106</sup>

While Jacobi raises concerns about the reliability of the Thai GTA import data, those arguments are speculative and fail to impeach the data. For example, Jacobi did not provide evidence that the Thai imports contained medical or any other specialized HCL grades that may be differentiated from that used by producers of activated carbon. While the HTS category for Thailand is a basket category that could include items other than the HCL with a level of purity similar to the level used by producers, the record does not contain any evidence as to whether the Thai import data included other specialized grades, in what quantities those possible other materials may have been imported, or how they might have otherwise distorted the price of the HCL. Jacobi also has failed to provide evidence as to how this HTS category of imports from Thailand would be materially different or less specific than the same HTS category of imports from the Philippines. For these reasons, Jacobi's arguments do not undercut the Thai data.

**Philippine GTA Import Data 2806.10**

The Philippine data also satisfies all of the surrogate value criteria. First, the publicly available import data from the Philippines under HTS 2806.10 comes from a country appearing on the Surrogate Country List.<sup>107</sup> Second, the data comes from the HTS heading described as "Hydrogen Chloride (Hydrochloric Acid)", which the Department explained above is specific to the input used by respondents.<sup>108</sup> Third, the data is contemporaneous with the POR.<sup>109</sup> Finally,

<sup>103</sup> See Preliminary Results, 77 FR at 26499.

<sup>104</sup> See Jacobi's Response to the Department's Section D Supplemental Questionnaire of Datong Forward Activated Carbon Co., Ltd, dated September 1, 2011, at Exhibits 7 and 8; see also Cherishmet's First Supplemental Section D Response of Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.: Administrative Review of the Antidumping Order on Certain Activated Carbon from the People's Republic of China, dated December 14, 2011, at Exhibit 16.

<sup>105</sup> See Jacobi's Additional Surrogate Value Information: Certain Activated Carbon from China, dated February 10, 2012, at Exhibit 3.

<sup>106</sup> See, e.g., Mushrooms 2012, at Comment 3.

<sup>107</sup> See Preliminary Results, 77 FR at 26499.

<sup>108</sup> See Jacobi's Post Prelim SVS at Exhibit 3, see also Jacobi's Response to the Department's Section D Supplemental Questionnaire of Datong Forward Activated Carbon Co., Ltd, dated September 1, 2011, at Exhibits 7 and 8; see also Cherishmet's First Supplemental Section D Response of Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.: Administrative Review of the Antidumping Order on Certain Activated Carbon from the People's Republic of China, dated December 14, 2011, at Exhibit 16..

the data represents a broad market average and is tax and duty exclusive.<sup>110</sup> While the Philippine data also is a basket category, we note that imports of HCL similar to that used by Respondents would enter within this HTS category.

In light of the analysis above, we find that these data are equally good sources for the valuation of HCL. Therefore, the Department cannot conclude that the GTA import data from Thailand is “better” than the same from the Philippines and will continue to make our surrogate country decision based on the totality of the data for the primary FOPs.

### **(E) Labor Calculation**

*Jacobi’s Comments:*<sup>111</sup>

- In the Preliminary Results, because Thailand had not reported industry-specific data since 2000, the Department relied on general data for the manufacturing sector as a whole from 2005.
- The 2008 Philippine data is more specific and more contemporaneous with the period of investigation than the 2005 Thai data.
- Because the Department’s preference is for using data that is specific and as contemporaneous as possible, for the final results, the Department should reverse its preliminary determination and use the Philippine data for purposes of the final determination.

*Petitioners’ Rebuttal Comments:*<sup>112</sup>

- The relative specificity of surrogate wage rate data should not be a significant consideration in the Department’s selection of a surrogate country.
- Labor is a very minor input in the production of activated carbon and for the final results, the Department should focus on selecting a surrogate country that provides publicly-available sources of information that will permit it to value all of the direct material inputs, as well as financial ratios.
- If the Department relies on the Philippines as the surrogate country for the final results, the Department would be selecting a country with a slightly more contemporaneous labor rate, but without any reliable and appropriate values for bituminous coal.

### **Department’s Position:**

The Department finds that, for purposes of the SV for labor, the data from the Philippines represents the best information available on the record. Both the Thai and Philippine data come from publicly-available sources and from countries appearing on the Surrogate Country List.<sup>113</sup> In addition, both are representative of broad market averages because the data from the

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<sup>109</sup> See *id.*

<sup>110</sup> See, e.g., Mushrooms 2012, at Comment 3.

<sup>111</sup> See Jacobi’s Comments on Philippine Labor Surrogate Value Data, submitted October 18, 2012.

<sup>112</sup> See Petitioners’ Reply to Jacobi Comments on Philippine Labor Rate Data, submitted October 22, 2012.

<sup>113</sup> See Memorandum to the File, from Emeka Chukwudebe, through Matthew Renkey, Fourth Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People’s Republic of China: Philippine Wage Rate Data, dated October 16, 2012, at Exhibit I-IV; see also Memorandum to the File, through Catherine Bertrand, from Katie Marksberry, Fourth Administrative Review of Certain Activated Carbon from the People’s Republic of China: Surrogate Values for the Preliminary Results, dated May 4, 2012, at Exhibits 5a-5c; see also Preliminary Results, 77 FR at 26499.

International Labor Organization (“ILO”) is country-wide data, and there is no indication that they are inclusive of taxes or duties.<sup>114</sup> However, the Philippine labor data is more contemporaneous (*i.e.*, from 2008) than the Thai record data (*i.e.*, from 2005), representing the latest available data on the Philippines from the ILO.<sup>115</sup> Moreover, the Philippine data is more specific to the activated carbon industry in that it relates to wages in the manufacture of chemicals and chemical products,<sup>116</sup> whereas the Thai data does not represent industry-specific wages, but instead provides general manufacturing wages.<sup>117</sup> Lastly, the Department notes that labor applies to all Respondent companies. Therefore, the Department finds the Philippine data provides the best information available on the record for the SV for labor.

We disagree with Petitioners’ arguments. First, as stated in the Policy Bulletin 04.1 and consistent with the Department’s practice, if multiple countries qualify as economically comparable to the NME at issue and as a significant producer of identical or comparable merchandise, then the Department will consider the quality of the available data in selecting surrogate country,<sup>118</sup> including, *inter alia*, whether the data is specific to the input used by the respondents under review.<sup>119</sup> Moreover, contrary to Petitioners’ claim, labor constitutes a significant portion of the NV build-up.<sup>120</sup> Finally, for the reasons provided above, the record contains reliable data on bituminous coal from the Philippines.

## **(F) Financial Ratios**

### **Thailand**

#### *Respondents’ Comments (Cherishmet/DJAC, Jacobi)*

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<sup>114</sup> See Memorandum to the File, from Emeka Chukwudebe, through Matthew Renkey, Fourth Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People’s Republic of China: Philippine Wage Rate Data, dated October 16, 2012, at Exhibit I-IV (“Philippine Wage Rate Data”).

<sup>115</sup> See Philippine Wage Rate Data at Exhibit I-IV; see also Memorandum to the File, through Catherine Bertrand, from Katie Marksberry, Fourth Administrative Review of Certain Activated Carbon from the People’s Republic of China: Surrogate Values for the Preliminary Results, dated May 4, 2012, at Exhibits 5a-5c.

<sup>116</sup> See Philippine Wage Rate Data, at Exhibits I-IV (providing data from Chapter 24, “Manufacture of Chemicals and Chemical Products”, of the United Nation’s International Standard Industrial Classification of All Economic Activities (“ISIC”)).

<sup>117</sup> See Memorandum to the File, through Catherine Bertrand, from Katie Marksberry, Fourth Administrative Review of Certain Activated Carbon from the People’s Republic of China: Surrogate Values for the Preliminary Results, dated May 4, 2012, at Exhibits 5a-5c.

<sup>118</sup> Policy Bulletin 04.1, available at <http://ia.ita.doc.gov/policy/bull04-1.html>.

<sup>119</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum (“CLPP”) at Comment 3.

<sup>120</sup> See Memorandum to the File, through Matthew Renkey, from Emeka Chukwudebe, Final Results Analysis Memorandum for Jacobi Carbons AB in the Antidumping Duty Administrative Review of Certain Activated Carbon the People’s Republic of China, dated October 31, 2012 (“Jacobi Analysis Memo”), see Memorandum to the File, through Matthew Renkey, from Alan Ray, Final Results Analysis Memorandum for Ningxia Guanghua Cherishmet Activated Carbon Co, Ltd. (“Cherishmet”) in the Antidumping Duty Administrative Review of Certain Activated Carbon the People’s Republic of China, dated October 31, 2012 (“Cherishmet Analysis Memo”), and see Memorandum to the File, through Matthew Renkey, from Javier Barrientos, Final 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 October 31, 2012.

- 50 percent of Carbokarn Co., Ltd. (“Carbokarn”)<sup>121</sup> is owned by its parent, Haycarb, which has an exclusive long-term supply agreement with one of the Petitioners (Calgon), thus raising credibility and independence questions.
- Carbokarn’s statements are incomplete, reflect subsidies, do not adequately separate outward freight expenses in SG&A, and the company’s investment in a regeneration facility should disqualify the statements.

*Petitioners’ Rebuttal Comments*

- Calgon’s fractional business (long-term supply agreement) with a “globally dominant” supplier (Haycarb) confers neither affiliation nor control between the companies, much less between Calgon and Carbokarn. Moreover, sales to other companies constitute the vast majority of its revenue.
- Respondent’s SG&A objection is tantamount to requiring perfection rather than usefulness. The remaining arguments, as stated above, are also without merit.

## **Philippines**

*Respondents’ Comments (Cherishmet/DJAC, Jacobi)*

- The Department has six usable financial statements from Philippine companies listed below: (1) Premium AC Corporation (“Premium AC”),<sup>122</sup> (2) Philippine-Japan Active Carbon Corporation (“PJAC”),<sup>123</sup> (3) Davao Central Chemical Corporation (“Davao Central”),<sup>124</sup> (4) Green Carbon, Inc. (“Green Carbon”),<sup>125</sup> (5) BF Industries,<sup>126</sup> and (6) Cenapro Chemical Corporation (“Cenapro”)<sup>127</sup> (collectively “Philippine Financial Statements”). These financial statements make the Philippine data more representative of broad market averages.
- The transactions with affiliates by two of the companies do not mean they were not at arm’s length, as transactions with affiliates are common practice. Even Carbokarn had transactions with affiliates.
- Each of the six Philippine financial statements: (1) are publicly available; (2) relate to companies that manufacture activated carbon (*i.e.*, identical merchandise); (3) are complete, including all schedules of notes and reports; (4) show no evidence of receiving subsidies; and (5) relate to companies that experienced a profit.
- PJAC’s transactions with its shareholders do not mean that the transactions were not at arm’s length, as these transactions are common practice.
- There is no conflict of interest with Premium AC because the accounts receivable due from a petitioner (Calgon) and respondent (Jacobi) were insignificant (*i.e.*, 1.7% of Total Revenue).

*Petitioners’ Rebuttal Comments*<sup>128</sup>

<sup>121</sup> See Petitioner’s November 28, 2011, submission at Exhibits 5-6 (“Carbokarn Financial Statement”).

<sup>122</sup> See Cherishmet & DJAC’s submission dated October 27, 2011, at Exhibit 3 (“Premium AC Financial Statement”).

<sup>123</sup> See Jacobi’s submission dated November 16, 2011, at Exhibit SV-09 (“PJAC Financial Statement”).

<sup>124</sup> See Jacobi’s submission dated February 10, 2012, at Exhibit SV-4 (“Davao Central Financial Statement”).

<sup>125</sup> See Jacobi’s submission dated February 10, 2012, at Exhibit SV-4 (“Green Carbon Financial Statement”).

<sup>126</sup> See Jacobi’s submission dated February 10, 2012, at Exhibit SV-4 (“BF Industries Financial Statement”).

<sup>127</sup> See Cherishmet & DJAC’s submission dated April 2, 2012, at Exhibit 11 (“Cenapro Financial Statement”).

<sup>128</sup> We note that Petitioners did not provide comments with regard to three of the six suitable surrogate financial companies: Green Carbon Inc., BF Industries, and Cenapro Chemical Corporation.

- Quantity of financial statements does not equal quality, and the Thai industry is dominated by two producers, thus limiting the number of potential surrogate companies.
- Premium AC's financial statement should not be used because transactions with Calgon and Jacobi account for approximately twenty percent of accounts receivable, questioning their independence.
- PJAC's statement reflects a significant amount of non-arm's length transactions (all sales) with its shareholders, in addition to debt and other activities.
- Davao Central and Cenapro Inc. are completely dependent on affiliated parties such that their operations reflect the control of their parents.

### **Department's Position**

When selecting financial statements for purposes of calculating financial ratios, the Department's policy is to use data from market economy ("ME") surrogate companies based on the "specificity, contemporaneity, and quality of the data."<sup>129</sup> 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 profit.<sup>130</sup> Although the regulation does not define what constitutes "comparable merchandise," it is the Department's practice to, where appropriate, apply a three-prong test that considers: (1) physical characteristics; (2) end uses; and (3) production process.<sup>131</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>132</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>133</sup>

The record of this review contains six surrogate financial statements from producers of identical merchandise in the Philippines and one surrogate financial statement from a producer of identical merchandise in Thailand. Notably, no new Thai financial statements were added to the record after the Preliminary Results.

As an initial matter, we note that no party has contested, and we continue to find, that the Philippine surrogate financial statements: (1) are publicly available; (2) are contemporaneous

<sup>129</sup> See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>130</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 Issues and Decision Memorandum at Comment 2.

<sup>131</sup> See, e.g., Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 38459 (July 2, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>132</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 Issues and Decision Memorandum at Comment 13.

<sup>133</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).

with the POR; (3) are from an approved surrogate country; (4) come from companies that produced identical merchandise; (5) show no evidence that the companies received countervailable subsidies; (6) are from companies that were profitable; and (7) are complete.<sup>134</sup> The record contains a seventh financial statement from the Philippines (Cenapro Incorporated). However, it is not clear whether the company to which the statement pertains even produced comparable merchandise, much less identical merchandise.<sup>135</sup>

By the same token, no party has contested, and we continue to find, that the Thai surrogate financial statement: (1) is publicly available; (2) is contemporaneous with the POR; (3) is from an approved surrogate country; (4) is from a company that produced identical merchandise; and (5) is from a company that reported a profit.<sup>136</sup>

With regard to Petitioners' arguments that certain Philippine companies (Premium AC, PJAC, and Davao Central) had transactions with related parties such that the Department must question their independence and reliability, we find these arguments speculative in nature. Petitioners point to no record evidence as to how and to what degree these transactions with affiliates were allegedly distortive. Moreover, as Respondents correctly state, transactions with affiliates are common in the business world, and even the Thai company proffered by Petitioners had transactions with affiliates. Moreover, with respect to Premium AC, the Department in the past has declined to consider a financial statement with few arms'-length transactions only when there is affiliation between the source of the data and the interested party submitting the data under the theory of conflict of interest.<sup>137</sup> Because the record contains no evidence which indicates that Premium AC is affiliated with Jacobi or Calgon, these transactions do not constitute a conflict of interest for the purposes of the selection of surrogate financial statements. Thus, lacking any evidence of allegedly distortive effects as a result of these transactions with affiliates or of affiliation between Premium AC and Jacobi or Calgon, we find that the Philippine Financial Statements are suitable for surrogate valuation purposes.

With regard to Respondents' arguments that the Thai company received countervailable subsidies, nothing in Carbokarn's financial statements indicates that they received any countervailable subsidy. Moreover, the website Respondents point to indicating that the company may have received subsidies (countervailable or not), demonstrates that the programs listed by Respondents expired seven years ago.<sup>138</sup> With regard to Respondents' arguments that the Thai financial statement is incomplete, nothing in the statement or elsewhere on the record indicates that "Director's or Management's Reports" were issued with the Carbokarn's financial

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<sup>134</sup> See Cherishmet & DJAC's submission dated October 27, 2011, at Exhibit 3 ("Premium AC Financial Statement"); Jacobi's submission dated November 16, 2011, at Exhibit SV-09 ("PJAC Financial Statement"); Jacobi's submission dated February 10, 2012, at Exhibit SV-4 ("Davao Central Financial Statement"); Jacobi's submission dated February 10, 2012, at Exhibit SV-4 ("Green Carbon Financial Statement"); Jacobi's submission dated February 10, 2012, at Exhibit SV-4 ("BF Industries Financial Statement"); Cherishmet & DJAC's submission dated April 2, 2012, at Exhibit 11 ("Cenapro Financial Statement").

<sup>135</sup> See Jacobi's submission dated February 10, 2012, at Exhibit SV-4 ("Cenapro Inc. Financial Statement").

<sup>136</sup> See Carbokarn Financial Statement.

<sup>137</sup> See Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005) and the accompanying Issues and Decision Memorandum at 38.

<sup>138</sup> See Petitioner's November 16, 2011, submission at Exhibit 39.



statements.<sup>139</sup> Moreover, the Department has not found the lack of such reports to be a reason to disqualify a financial statement.<sup>140</sup> Thus, we find the Carbokarn statement to be complete.

With regard to Respondents' arguments that the Thai financial statement does not contain detailed SG&A expenses, we note that the manufacturing cost of finished goods is broken down completely by expense category, including energy and consumables.<sup>141</sup> Regarding the packing, freight, and tax issues raised by respondents, the Department has stated that not being able to dissect the financial statements of a surrogate company does not render the statements unusable.<sup>142</sup> Thus, we find the Thai financial statement sufficiently detailed in this regard.

Therefore, we find that the six Philippine financial statements and the lone Thai financial statement all satisfy the Department's criteria and are suitable and reliable for surrogate valuation purposes.

However, we have determined that the use of multiple Philippine surrogate financial statements provides a broader market average for surrogate valuation purposes.<sup>143</sup> Moreover, the Department has described a preference for using multiple financial statements in order to determine surrogate financial ratios.<sup>144</sup> This is because by averaging the factory overhead, SG&A, and profit ratios, we attempt to normalize any potential distortions that may arise from using those of a single producer. Thus, by using the average of multiple surrogate companies, we arrive at a broader-based surrogate valuation that minimizes the particular circumstances of any one producer. This is consistent with section 773(c)(3)(D) of the Act, which stipulates that when calculating NV, the Department should use representative capital costs.<sup>145</sup> Furthermore,

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<sup>139</sup> See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review, 77 FR 15039 (March 14, 2012) and accompany Issues and Decision Memorandum at Comment II.A. (pg. 16); see also Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>140</sup> See *id.*

<sup>141</sup> See Carbokarn's Financial Statement.

<sup>142</sup> See Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part, 76 FR 49729, (August 11, 2011), and accompany Issues and Decision Memorandum at Comment 19.

<sup>143</sup> See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726 (March 17, 2010) and accompanying Issues and Decision Memorandum at Comment 1; see also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision Memorandum at Comment 1; see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part, 75 FR 57449 (September 21, 2010), and accompanying Issues and Decision Memorandum at Comment 6; see also 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 Issues and Decision Memorandum at Comment 13.

<sup>144</sup> See, e.g., 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 Issues and Decision Memorandum at Comment 13.

<sup>145</sup> See Certain Preserved Mushrooms from the People's Republic of China: Final Results of New Shipper Review, 66 FR 45006 (August 27, 2001) and accompanying Issues and Decision Memorandum, at Comment 1; see also

the Department notes that one of the Philippine financial statements fully covers the POR, thus providing more precision in terms of contemporaneity than the sole Thai surrogate company.<sup>146</sup> Lastly, like labor, the Department notes that the surrogate financial ratios apply to all Respondent companies. Therefore, we find that the financial statements from the Philippines constitute a superior source and, the best information on the record for calculating the surrogate financial ratios in this review.

#### **Department's Position for Surrogate Country:**

In the Preliminary Results, the Department stated that the Philippines and Thailand are both: (1) at a level of economic development comparable to the PRC; (2) significant producers of comparable merchandise; and (3) provide contemporaneous publicly available data to value FOPs.<sup>147</sup> However, because the record was missing Philippine data to value a major input for one of the three mandatory respondents (i.e., DJAC) and Thailand had data to value all the major FOPs, the Department selected Thailand as the primary surrogate country.<sup>148</sup>

Subsequent to the Preliminary Results, parties placed significant data on the record, and the record now has Philippine data to value all of the major material inputs. In order to select the primary surrogate country, the Department must now weigh the totality of the data considerations for the major inputs discussed above.

As explained above, the SV data from both Thailand and the Philippines for anthracite coal, carbonized material, and hydrochloric acid are relatively equal in terms of quality and satisfy all of the surrogate value criteria. Additionally, the Department finds that the SV data from Thailand for the bituminous coal used by DJAC as a direct material input are a superior source, though data from the Philippines would provide the Department with a reasonable alternative. For valuing labor, the Philippine data are clearly superior in that they are industry-specific, whereas the Thai data are for the manufacturing sector in general. The Philippine data are also more contemporaneous than the Thai data. Moreover, labor is a significant FOP that applies across the board to all respondents. Additionally, we have determined that the multiple Philippine surrogate financial statements, when averaged together, give a broader market average for surrogate valuation purposes.<sup>149</sup>

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Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>146</sup> See Cenapro Financial Statement; see also Wooden Bedroom Furniture Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) ("WBF AR3 Final Results") and accompanying Issues and Decision Memorandum at Comment 1.

<sup>147</sup> See Preliminary Results, 77 FR at 26498-26499.

<sup>148</sup> See *id.* at 26500.

<sup>149</sup> See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726 (March 17, 2010) and accompanying Issues and Decision Memorandum at Comment 1; see also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision Memorandum at Comment 1; see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part, 75 FR 57449 (September 21, 2010), and accompanying Issues and Decision Memorandum at Comment 6; see also 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

In sum, the Philippines provides superior data for labor and the surrogate financial ratios, and equivalent data for anthracite coal, carbonized material, and hydrochloric acid. In contrast, Thailand only provides superior data for the bituminous coal, has equivalent data for anthracite coal, carbonized material, and hydrochloric acid, but has inferior data for labor and the surrogate financial ratios. Thus, in weighing the totality of the data considerations, for the final results, we have selected the Philippines as the primary surrogate country. The record of this review contains suitable data from the Philippines for all the major inputs, including surrogate financial statements. However, GTA import data from Thailand is superior for bituminous coal. Therefore, we will value all primary FOPs using Philippine data, except for bituminous coal, for which we will continue to use GTA import data from Thailand.

## COMMENT II: CALCULATION OF THE SEPARATE RATE

### *Bright Future's Argument:*

- In the Preliminary Results, the Department calculated the rate for the Separate Rate Respondents by weight-averaging the two mandatory respondents with positive antidumping margins on the basis of their publicly available ranged U.S. sales quantities. The Department should not use a weighted-average based on publicly available ranged U.S. sales quantities because: (1) the public U.S. sales quantities do not reflect actual U.S. sales quantities; (2) differences in company product mixes prevent a reliable basis for weighted averaging and; (3) the Department's previous practice was to use the simple average of the margins calculated for the mandatory respondents.<sup>150</sup>
- For the final results, the Department should use a simple average of the calculated margins to calculate the rate for the Separate Rate Respondents to prevent overstating the separate rate margin.

### *CAC's Argument:*

- The lower of either the simple average margin of Cherishmet and Jacobi, or the weighted average margin of Cherishmet and Jacobi, is the appropriate margin to use for the Separate Rate Respondents because it is more consistent with the experience of the entire industry, given that DJAC received a zero margin in the Preliminary Results.
- A recent decision by the Department indicates that it will use the simple average of calculated margins if that average is more appropriate.<sup>151</sup>
- Although the Act directs the Department to exclude any zero margins from its calculation of the margin for respondents not individually investigated, DJAC's zero margin corroborates the use of the simple average of the margins calculated for Jacobi and Cherishmet.

### *Petitioners' Rebuttal Argument:*

- The Department should continue to use the weighted average margin rate because: (1) there

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Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 13.

<sup>150</sup> See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587, 47591 (August 14, 2008) ("Steel Wire from the PRC"); see also Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 12<sup>th</sup> Administrative Review, 73 FR 34251, 34252 (June 17, 2008) ("Fresh Garlic from the PRC").

<sup>151</sup> See Ball Bearing and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part, 75 FR 53661, 53662 (September 1, 2010).

is no basis for determining that a simple average would be more precise and (2) the Department's current methodology is consistent with its established practice.<sup>152</sup>

### **Department's Position:**

The Department agrees with Petitioners. For the final results, the Department will continue to follow its normal practice and use the ranged, publicly available U.S. sales quantities from the mandatory respondents with positive antidumping margins to calculate a weighted-average margin for the Separate Rate Respondents. The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Consistent with section 735(c)(5)(A) of the Act, the Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to weight-average the rates for the selected companies, excluding zero and de minimis rates and rates based entirely on adverse facts available ("AFA").<sup>153</sup> Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not individually examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or de minimis margins or any margins based on total facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based on total facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents.

The Department disagrees with Bright Future's argument for the Department to revert to a previous practice and CAC's arguments for the Department to use a simple average of the mandatory respondents' rates to calculate the separate rate. In Ball Bearings, the Department stated its change in practice and the appropriate use of its current separate rate calculation methodology in subsequent cases.<sup>154</sup> When the Department makes a decision regarding the calculation of a separate rate, it does not use the reported sales quantity volume as a basis for the decision. Instead, in a context such as this case, it uses the ranged publicly available U.S. sales

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<sup>152</sup> See Preliminary Determination, 77 FR at 26,502 (citing Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 56,158, 56,160 (September 12, 2011); see also Galvanized Steel Wire From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 68,407, 68,415 (November 4, 2011)).

<sup>153</sup> See e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 77 FR 14493 (March 12, 2012) and the accompanying Issues and Decisions Memorandum at Issue 8 ("PTF from the PRC"); see also First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 27994 (May 13, 2011) and the accompanying Issues and Decisions Memorandum at Comment 3 ("Hangers from the PRC").

<sup>154</sup> See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part, 75 FR 53661 (September 1, 2010) and accompanying Issues and Decision Memorandum at Comment 1 ("Ball Bearings") (stating that "this is a change to our practice concerning the margin applicable to companies not selected for individual examination in an administrative review of an antidumping duty order. In situations where we cannot apply our normal methodology for calculating a weighted-average margin due to requests to protect business-proprietary information, we find that the use of this methodology is appropriate as our normal practice from now on.").

quantities from the mandatory respondents with positive antidumping margins to calculate a weighted-average margin for the separate rate respondents. In the Preliminary Results, we followed our practice and found that using the total sales quantities reported by Cherishmet and Jacobi was more appropriate than applying a simple average.<sup>155</sup> Because these total sales quantities were the proprietary information of Cherishmet and Jacobi, the Department used the public-ranged sales quantities in the public versions of their submissions.<sup>156</sup> These publicly available figures provide the basis on which we can calculate a margin, which is the best proxy for the weighted-average margin based on the calculated net U.S. sales values of the mandatory respondents with margins that are not zero, de minimis, or based on AFA. We find that the Department's current approach is more consistent with the intent of section 735(c)(5)(A) of the Act and our use of section 735(c)(5)(A) of the Act as guidance when we establish the rate for respondents not examined individually in an administrative review. Accordingly, the Department finds that the calculation as stated above provides a rate for Bright Future and CAC that is consistent with the guidelines set forth in Ball Bearings.

We disagree with Bright Future's arguments that: (1) the public U.S. sales quantities do not reflect actual U.S. sales quantities; and (2) differences in company product mixes prevent a reliable basis for weighted averaging. Bright Future's first claim ignores the nature of the data used by the Department. The public U.S. sales quantities used to calculate the separate rate were derived from actual U.S. sales quantities made during the POR. For Bright Future to claim otherwise ignores the very nature of the data. Bright Future's second argument is not relevant to the issue at hand, as different product mixes would be present whether the Department used a simple average, a weight-average of the companies' publicly-ranged data, or the actual BPI sales figures; that is the simple nature of the market.

CAC cites to Ball Bearings arguing that a recent decision by the Department indicates that it will use the simple average of calculated margins if that average is more appropriate. However, we note that in the Ball Bearings proceeding, one company selected for individual examination used the indexing method permitted under 19 CFR 351.304(c) in the public version of its response to the Department's request for information concerning the quantity and value of U.S. sales during the period of review.<sup>157</sup> That is not the case in this review where public, ranged data are available for all of the companies that were selected for individual examination.

We also do not agree with CAC's argument that DJAC's zero margin in the Preliminary Results corroborates the need for a simple average of Jacobi and Cherishmet's margins to calculate the separate rate. As an initial matter, we note that preliminary margins are preliminary in nature and are subject to change as the Department assesses all data submitted to the record after the Preliminary Results. Moreover, the Department calculates a dumping margin for a particular respondent based upon the data submitted. The margin for each respondent will depend upon, among other things, the pricing behavior of that respondent during the relevant POR. That the Department preliminarily determined that DJAC did not sell subject merchandise at less than fair

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<sup>155</sup> See Memorandum to the File from Bob Palmer, International Trade Specialist, Office 9, Re: Calculation of Separate Rate, dated May 4, 2012.

<sup>156</sup> See id.

<sup>157</sup> See Ball Bearings, 75 FR at 53661, 53662.

value during the POR has no relation to the pricing behavior of Jacobi or Cherishmet, let alone the prices at which the separate rate companies sold subject merchandise to the United States during the POR. Therefore, we find that CAC's arguments are without merit.

For the reasons stated above, for the final results, the Department will continue to assign the weighted-average of the dumping margins for the mandatory respondents with margins that are not zero or de minimis using their publicly-ranged sales quantities as the rate for Bright Future, CAC, and the remaining Separate Rate Respondents.

### **COMMENT III: Miscellaneous Surrogate Values**

As noted above in Comment I, for the final results of this review, we have selected the Philippines as the primary surrogate country. It is the Department's practice to rely upon the primary surrogate country for all SVs whenever possible.<sup>158</sup> The record of this review contains data from the Philippines.<sup>159</sup> Therefore, because Philippine data is on the record for all of the mandatory Respondents' primary FOPs, we will only value FOPs using data outside the Philippines when the data for the Philippines is demonstrably inferior or unusable comparatively to the data on the record from other countries appearing on the Surrogate Country List. Below are parties' comments on certain other SVs, as well as the Department's position for each.

#### **A. Electricity**

##### *Respondent's Arguments (Jacobi):*

- For the final results, the Department should not value electricity using data from Thailand because: (1) the data from the Electricity Generating Authority of Thailand are incomplete and not accurate; (2) the data from the Philippines are more specific to the electricity consumed by Jacobi than the Thai data; and (3) the data from Thailand do not indicate whether the electricity prices are tax exclusive.
- Instead, the Department should select Philippine data from either Manila Electric Company ("MERALCO") or BOHECO I, two complete, specific, contemporaneous, and tax exclusive values.<sup>160</sup>

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

- Jacobi provides no citation that demonstrates that MERALCO's electricity prices are reflective of "country-wide" prices.
- The BOHECO I data are not reflective of country-wide prices, but rather a pricing in a number of municipalities in a single province within the Philippines.
- There is no evidence that surrogate value information for electricity data from the Philippines is more specific to the electricity consumed by Jacobi.

##### *Cherishmet's Rebuttal Arguments:*

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<sup>158</sup> See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010) ("NSR5 Final Results"), and accompanying Issues and Decision Memorandum at Comment 2B; see also Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004) ("Furniture from China"), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>159</sup> See Jacobi's Additional Surrogate Value Information: Certain Activated Carbon from China dated February 10, 2012, at Exhibit SV-1 ("Jacobi's SV Submission").

<sup>160</sup> These values are: (1) a combination of tariff rates from MERALCO and (2) a price value from BOHECO I, as published in the Energy Regularity Commission Order Case Number 2010-095 RC.

- Cherishmet has the same electricity supplier as Jacobi. For the final results, the Department should use the same surrogate value to value electricity for Jacobi and Cherishmet.

### **Department's Position:**

We agree with Jacobi and Cherishmet in part. In this review, we have concluded that data from the Philippines is the best available information on the record for purposes of valuing electricity because it is from the primary surrogate country and satisfies the Department's surrogate value selection criteria. First, the publicly-available data from both MERALCO and BOHECO I come from a country appearing on the Surrogate Country List.<sup>161</sup> Second, the data is specific to the input at issue because the relevant respondents use electricity in the production of subject merchandise.<sup>162</sup> With respect to contemporaneity, however, we note that the data from BOHECO I, as provided from the CEDC,<sup>163</sup> is not contemporaneous with this review.<sup>164</sup> Thus, consistent with our practice of ignoring non-contemporaneous surrogate value data when the record contains a more suitable source, we will not be using the CEDC data for the final results.

We further note that Jacobi provided the Department with data from the National Power Corporation ("NPC").<sup>165</sup> We note that the NPC data cover the first two months of the POR and, thus, is contemporaneous with the POR.<sup>166</sup> We further note that the NPC data can be found on the Internet and, thus, is publicly-available.<sup>167</sup> Moreover, the data is specific to the input at issue because the relevant respondents use electricity in the production of subject merchandise.<sup>168</sup> Finally, there is no record evidence that the NPC data is inclusive of taxes and duties, and it is representative of broad market averages because the company provides electricity nationally to multiple suppliers in the Philippines. Therefore, for the final results, we have valued electricity using data from the NPC rates.

### **B. Salt**

#### *Respondent's Arguments (Jacobi):*

- In the Preliminary Results, the Department used HTS 2501.00.490.90 "Other Salt."
- The Department's practice is to use a broader category from Indian Import Statistics, 2501.00, which includes both rock salt, common salt, and other salt.
- HTS code 2501.00 is the most appropriate surrogate value for the type of salt used by Jacobi's suppliers.
- Therefore, for the final results, the Department should continue its past practice and value salt using HTS code 2501.00.

#### *Petitioners' Rebuttal Arguments:*

- HTS sub-categories from different countries may provide more accurate evaluation.

<sup>161</sup> See *Preliminary Results*, 77 FR at 26499.

<sup>162</sup> See Jacobi's Response to the Department's Original Sections C and D Questionnaire, dated September 1, 2011 at pages D13 through D17 and Cherishmet's First Supplemental Section D, dated December 14, 2011 pages 14-30.

<sup>163</sup> See Ceba Energy Development Corporation ("CEDC").

<sup>164</sup> See Jacobi's Post Prelim SVS at Exhibit 4 Part 14.

<sup>165</sup> See *id.*

<sup>166</sup> See *id.*

<sup>167</sup> See *id.*

<sup>168</sup> See Jacobi's Response to the Department's Original Sections C and D Questionnaire, dated September 1, 2011 at pages D13 through D17 and Cherishmet's First Supplemental Section D, dated December 14, 2011 pages 14-30.

- There is no evidence that salt used to process activated carbon should include HTS sub-categories incorporated into HTS 2501.
- For the final results, the Department should continue to use HTS sub-heading, 2501.00.490.90 that the Department relied on in the Preliminary Results.

*Cherishmet's Rebuttal Arguments:*

- The record does not contain evidence that the consumption of salt used in activated carbon production is properly classified in HTS sub-heading, 2501.00.490.90.
- For the final results, the Department should continue its past practice and value salt using HTS code 2501.00.

**Department's Position:**

We agree with Jacobi and Cherishmet. In this review, we have determined that Philippine data from HTS, 2501.00 is the best available information for valuing salt because it satisfies all of the surrogate value selection criteria. First, the publicly available data comes from a country appearing on the Surrogate Country List.<sup>169</sup> Second, it is specific to the input at issue because it includes all types of salt at the four-digit level and, contrary to Petitioners' argument, the type of salt used to produce subject merchandise would enter under this HTS heading.<sup>170</sup> Third, the data is contemporaneous with the POR.<sup>171</sup> Finally, the Department previously has found that data from the GTA, such as that on the record, represents a broad market average and is tax and duty exclusive.<sup>172</sup> Therefore, for the final results, we have valued salt using Philippine HTS sub-heading, 2501.00.

**C. Buckles**

*Jacobi's Arguments:*

- The Department's has used HTS 7211.19.9900 in all prior segments of this review including the review where the Department conducted a verification of Jacobi.
- For the final results, the Department should continue with its past practice and value buckle using HTS code 7211.19.9900.

*Petitioners' Rebuttal Arguments:*

- Jacobi improperly argues that the Department should use the HTS classification for metal pieces, rather than the HTS classification for buckles, to value buckles.
- The current HTS classification is the only appropriate surrogate value for any company that purchases, and does not self-produce, buckles to strap activated carbon bags.
- Therefore, for the final results, the Department should continue to use HTS sub-heading 8308.90.9002 which was used in the Preliminary Results.

**Department's Position:**

We agree with Jacobi. In this review, we have found that Philippine GTA import data provide the best available information for valuing buckles because these data come from the primary surrogate country. Additionally, the Philippine GTA import data satisfy all of the surrogate value criteria. First, the publicly available data come from a country appearing on the Surrogate

<sup>169</sup> See Preliminary Results, 77 FR at 26499.

<sup>170</sup> See Jacobi's SV Submission at Exhibit 1.

<sup>171</sup> See *id.*

<sup>172</sup> See, e.g., Mushrooms 2012, at Comment 3.



Country List.<sup>173</sup> Second, although we recognize that this HTS category is listed as “other,” we find that the data are specific to the input at issue because the type of buckle used in the production of subject merchandise would enter under this subheading.<sup>174</sup> Third, the data are contemporaneous with the POR.<sup>175</sup> Finally, the Department previously has found that data from the GTA, such as that on the record, represent a broad market average and is tax and duty exclusive.<sup>176</sup> Therefore, for the final results, we have valued buckle using Philippine HTS subheading, 7211.19.9900.

#### **COMMENT IV: PER UNIT ASSESSMENT/DUTY ABSORPTION**

##### *Shanxi DMD’s Arguments*

- The Department’s assignment of a dollar per kilogram preliminary antidumping duty rate for assessment and cash deposit rate purposes was contrary to law as there was no allegation of duty absorption against any party, much less Shanxi DMD in this POR.
- The statute requires that the Department conduct a duty absorption inquiry, based upon a properly filed request by Petitioners, to assign assessment and cash deposit rates on a per unit basis.
- Because no duty absorption was conducted, the dollar per kilogram method must terminate and the Department must assess separate rate applicants based on the ad valorem margin established from the mandatory respondents.
- The Department has drawn an unlawful adverse inference against Shanxi DMD in this review by assuming, without record facts, that an affiliated importer of Shanxi DMD absorbed antidumping duties.

##### *Petitioner’s Rebuttal Arguments*

- Shanxi DMD mischaracterizes the Department’s basis for applying per-unit assessment and cash deposit rates in the second administrative review of the order and in all future reviews.
- The Department based its decision to use per-unit rates on the fact that Jacobi improperly reported low values for its imports of subject merchandise, thereby justifying the application of per-unit assessment and cash deposit rates going forward.

#### **Department’s Position**

In assigning assessment and cash deposit rates, the relevant provision of the Act requires the Department to direct “customs officers to assess an antidumping duty equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise . . . .”<sup>177</sup> The Act does not require the Department to impose assessment and cash deposit rates in a particular manner.<sup>178</sup>

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<sup>173</sup> See Preliminary Results, 77 FR at 26499.

<sup>174</sup> See Jacobi’s SV Submission at Exhibit 1.

<sup>175</sup> See *id.*

<sup>176</sup> See, e.g., Mushrooms 2012, at Comment 3.

<sup>177</sup> See section 736(a)(1) of the Act; see also section 751(a)(2)(C) of the Act (explaining that the amount by which normal value exceeds the United States price “shall be the basis for the assessment of . . . antidumping duties on entries of merchandise”).

<sup>178</sup> See Torrington Co. v. United States, 44 F.3d 1572, 1578 (Fed. Cir. 1995) (holding that “the statute merely requires that . . . the difference between foreign market value and United States price serve as the basis for both assessed duties and cash deposits of estimated duties”); see also accord Koyo Seiko Co. v. United States, 258 F.3d

In implementing the Act, the Department's regulation explains that the agency "normally will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes."<sup>179</sup> The regulation, however, does not proscribe the Department from resorting to other methods of calculating and assigning assessment and cash deposit rates, and the agency does so in certain circumstances.<sup>180</sup> In so doing, the Department may deviate from its normal practice in the absence of explicit requirements imposed by statute or regulation as long as it "explains the reason for its departure."<sup>181</sup>

In the second administrative review of this order, the Department changed the cash deposit and assessment methodology from an ad valorem to a per-unit basis because the application of an ad valorem rate based on net U.S. price would yield an under-collection of duties due to Jacobi's undervaluing of its United States sales.<sup>182</sup> As a result of Jacobi's undervaluing, the Department decided to assign per unit rates in all future reviews because (1) it would be extremely burdensome to determine whether to apply an ad valorem rate or a per-unit rate on a company-specific basis and (2) the use of per unit rates will not negatively impact the separate rate companies because the total duties due will not change.<sup>183</sup>

Turning to the current review, the Department properly has decided to continue to assign assessment and cash deposit rates on a per unit basis in these final results. Neither the statute nor the regulation required the calculation of assessment and cash deposit rates in a particular manner. Moreover, the Department has used quantity-based rates in past proceedings,<sup>184</sup> and the United States Court of Appeals for the Federal Circuit ("Federal Circuit") and the Court of International Trade repeatedly have upheld the Department's departure from the ad valorem methodology under certain circumstances.<sup>185</sup> In the absence of any evidence on the types and

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1340, 1346 (Fed. Cir. 2001); see also Wuhan Bee Healthy Co. v. United States, No. 05-00438, 2008 WL 2217466, at \*5 (Ct. Int'l Trade May 29, 2008).

<sup>179</sup> See 19 C.F.R. § 351.212(b)(1).

<sup>180</sup> See, e.g., Fujian Lianfu Forestry Co. v. United States, 638 F. Supp. 2d 1325, 1355 (Ct. Int'l Trade 2009); Wuhan Bee Healthy Co., 2008 WL 2217466 at \*5.

<sup>181</sup> See Allegheny Ludlum Corp. v. United States, 346 F.3d 1368, 1373 (Fed. Cir. 2003) (citing Atchinson, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade, 412 U.S. 800, 808 (1973)).

<sup>182</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 Issues and Decision Memorandum at 12.

<sup>183</sup> See *id.*

<sup>184</sup> See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review, 76 FR 15941, 15944 (March 22, 2011); see also Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082, 34086 (June 13, 2005).

<sup>185</sup> See Thai Pineapple Canning Indus. Corp. v. United States, 273 F.3d 1077, 1084-85 (Fed. Cir. 2001); Wuhan Bee Healthy Co., 2008 WL 2217466 at \*5; see also Seattle Marine Fishing Supply Co. v. United States, 12 CIT 60, 76, 679 F.Supp. 1119, 1131 (1988) (quoting Hercules Inc. v. United States, 673 F.Supp. 454, 488 (Ct. Int'l Trade 1987)) ("[a]n administrative agency endowed with the authority to promulgate regulations is given broad discretion in the exercise of its expertise to interpret and implement those regulations"); see also accord SeAH Steel Corp. v. United States, 704 F. Supp. 2d 1353, 1376 (Ct. Int'l Trade 2010) (holding that, inherent in the Department's authority to interpret and implement regulations "is the ability to determine whether or not the 'normal' situation applies in any given circumstance").

prices of products sold by Shanxi DMD during the POR, given that Shanxi DMD did not submit such data, Shanxi DMD has failed demonstrate that the per-unit cash deposit rates and assessment rates are not suitable for this review such that the Department would have adequate justification for departing from its established practice in this proceeding.<sup>186</sup>

Shanxi DMD erroneously contends that the Department must first find duty absorption between Shanxi DMD and an affiliate before it may impose rates on a per unit basis. The relevant provision of the Act and the Department's regulation place no such condition on the Department before it may deviate from the ad valorem methodology or limit the contexts in which the Department may apply other methodologies, such as rates on a per unit basis.<sup>187</sup> Moreover, notwithstanding Shanxi DMD's contention to the contrary, neither the Court of International Trade in Wuhan Bee Healthy Co.,<sup>188</sup> nor the Federal Circuit has limited Commerce's use of per unit rates to particular factual circumstances.<sup>189</sup> Similarly, for these reasons and contrary to Shanxi DMD's claims, the Department did not apply an adverse inference under section 776 of the Act. Thus, the plain language of the Act and the regulation, as well as precedent from the Federal Circuit, belies Shanxi DMD's claims.

### **Company Specific Issues**

#### **COMMENT V: VALUATION OF JACOBI'S CONSUMPTION OF BITUMINOUS COAL FOR HEATING**

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

- In the Preliminary Results, the Department stated that it would value bituminous coal using Thai HTS 2701.19 "Coal, Other Than Anthracite Or Bituminous, Whether Or Not Pulverized, But Not Agglomerated."
- However, the Department inadvertently used HTS 2701.12, instead of HTS 2701.19.
- For the final results, the Department should update Jacobi's margin calculation to use the correct HTS code, 2701.19.

No other party commented on this issue.

##### **Department's Position:**

We agree with Jacobi and, for the final results, we have updated the margin calculation for Jacobi's input to use Philippine HTS code 2701.19 to value bituminous coal.<sup>190</sup>

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<sup>186</sup> See Kaiyuan Grp. Corp. v. United States, 343 F. Supp. 2d 1289, 1312 (Ct. Int'l Trade 2004) (providing that respondents bear burden of creating record).

<sup>187</sup> See section 736(a)(1) of the Act; 19 CFR 351.212(b)(1).

<sup>188</sup> See 2008 WL 2217466 at \*5.

<sup>189</sup> See, e.g., Thai Pineapple Canning Indus. Corp., 273 F.3d at 1084-85.

<sup>190</sup> See Jacobi Analysis Memo.

## **COMMENT VI: VALUATION OF JACOBI'S CONSUMPTION OF STEAM COAL INPUT**

### *Jacobi's Arguments:*

- In the Preliminary Results, the Department erred in its calculation of STEAMCOAL1 and STEAMCOAL2 by not including the surrogate value and surrogate freight cost.
- For the final results, the Department should modify its calculation to include the surrogate value and surrogate freight cost for STEAMCOAL1 and STEAMCOAL2.

No other party commented on this issue.

### **Department's Position:**

We agree with Jacobi and, for the final results, we have updated the margin calculation for Jacobi's input to include the surrogate value and surrogate freight cost for STEAMCOAL1 and STEAMCOAL2.<sup>191</sup>

## **COMMENT VII: CALCULATION OF FREIGHT FOR CERTAIN PACKING INPUTS**

### *Jacobi's Arguments:*

- In the Preliminary Results, the Department erred in its calculation of the freight cost for PALLET, STRAP, BUCKLE, FIBERBOARD, FILM, DRUM, and PPROBAG by not converting the truck freight surrogate value (denominated in tons) into a unit of measure consistent with each of these packing inputs before calculating the freight cost.
- For the final results, the Department should modify its calculation to convert the surrogate freight cost for the above packing materials from metric tons to metric kg.

No other party commented on this issue.

### **Department's Position:**

We disagree with Jacobi. The Department reviewed its calculations regarding Jacobi's packing inputs in response to this comment. In doing so, the Department noticed that the packing materials were being calculated on a per kg basis, whereas overall NV was being expressed in dollars per MT. In correcting the calculation for the packing material inputs, we have multiplied their usage rates to convert them from a kg to a MT basis. Thus, no adjustment to the freight rate, which is expressed on a MT basis in the calculations, needs to be made.<sup>192</sup>

## **COMMENT VIII: CALCULATION OF JACOBI'S TRANSPORT BAGS IN NORMAL VALUE**

### *Jacobi's Arguments:*

- The Department incorrectly classified "Transport Bags" as a direct material expense.
- Transport bags are used to transport the subject merchandise and therefore should be classified as a packing expense.

No other party commented on this issue.

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<sup>191</sup> See id.

<sup>192</sup> See id.

**Department's Position:**

We agree with Jacobi and, for the final results, and have classified "DTRANSPORT\_BAGS" as a packing material expense for Jacobi's input.<sup>193</sup>

**COMMENT IX: DO NOT USE AN ADJUSTMENT FOR DIRECT LABOR AND ELECTRICITY FOR CHERISHMET**

*Cherishmet's Arguments:*

- The Department erred in applying an adjustment to one of the company's factors of production ("FOP") databases for direct labor and electricity to account for yield loss.
- Accounting for the yield loss is appropriate for some inputs, but not for direct labor or electricity.
- The reporting of direct labor and electricity already accounts for yield loss.

No other party commented on this issue.

**Department's Position:**

We agree with Cherishmet that we should not have applied an adjustment to one of the company's databases for direct labor and electricity for yield loss, as yield loss is already accounted for in the calculation of these inputs.<sup>194</sup> Accordingly, we will not include an adjustment for these factors of production for Cherishmet in the final results.

**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\_\_\_\_\_

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date

<sup>193</sup> See id.

<sup>194</sup> See Cherishmet Analysis Memo.