Calgon Carbon Corporation, and Norit Americas Inc. v. United States, and Jacobi Carbons AB, Jacobi Carbons, Inc., Cherishmet Inc., Beijing Pacific Activated Carbon Products Co., Ltd., Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., Datong Yunguang Chemicals Plant, and Datong Yunguang Municipal Activated Carbon Co., Ltd.
Consol. Court No. 09-00524,[1] Slip Op. 11-21 (CIT February 17, 2011).

FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce ("Department") has prepared these final results of redetermination pursuant to the remand order of the Court of International Trade ("CIT" or "Court") in Calgon Carbon Corporation, et al., v. United States, et al., Consol. Court No. 09-00518[2] (February 17, 2011) ("Remand Opinion and Order").

The CIT's Remand Opinion and Order concerns the First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) and accompanying Issues and Decisions Memorandum ("IDM") and Certain Activated Carbon from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review, 74 FR 66952 (December 17, 2009) ("collectively AR1 Final Results"). As set forth in detail below, pursuant to the CIT's Remand Opinion and Order, we have: 1) explained 19 CFR 351.303(g)(1) as it applies to the certifier of factual information submitted to the Department and reinstated Hebei Foreign Trade and Advertising Corporation's ("Hebei Foreign") separate rate; 2) provided

[1] On July 22, 2011, the Court ordered that the claims brought by Calgon Carbon Corporation, and Norit Americas Inc. filed in Court No. 09-00518 are severed and final judgment is ordered with respect to those claims in accordance with Slip Op. 11-21.
[2] In accordance with the Court's July 22, 2011 judgment and order severing claims brought by Calgon Carbon Corporation, and Norit Americas Inc. filed in Court No. 09-00518, the issues addressed in this remand are consolidated as Consol. Court No. 09-00524.

Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., and its affiliate[3] an opportunity to place on the record the purity data of its hydrochloric acid ("HCL") and revised its surrogate value ("SV") for Cherishmet's HCL input; 3) revised the SV selected to value Cherishmet's carbonized material input; 4) provided Cherishmet the opportunity to provide the data regarding its bituminous coal raw material input, and explained the Department's choice of SV for Cherishmet's bituminous coal raw material input; and 5) recalculated the labor cost rate in accordance with Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies") and Dorbest Ltd. v. United States, 604 F.3d 1363 (Fed. Cir. 2010) ("Dorbest") in compliance with section 773(c)(3) of the Tariff Act of 1930, as amended ("the Act").

As discussed fully below, the Department has revised, as appropriate, the remand components of the margin calculations challenged in the litigant's complaint. Specifically, the Department has changed the SVs for carbonized materials, HCL, and the surrogate labor rate, and has applied these changes to the margin calculated for Cherishmet as appropriate.[4]

B. REMANDED ISSUES

1. Hebei Foreign Separate Rate

Background

In AR1 Final Results, the Department did not grant Hebei Foreign a separate rate, stating that record evidence demonstrated that Hebei Foreign's separate rate company certification was certified by Mr. Wang Kezhang, who was not employed by Hebei Foreign, and, therefore, the

[3] The Department found Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. and Beijing Pacific Activated Carbon Products Co., Ltd. (hereinafter referred to as "Cherishmet") to be affiliated and a single entity in AR1 Final Results at 74 FR 57998.

[4] See Memorandum to the File, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Bob Palmer, Case Analyst, AD/CVD Operations, Office 9, re: Wage Revision for the Second Draft Remand Redetermination Analysis Memorandum for Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. in the Antidumping Duty Review of Certain Activated Carbon from the People's Republic of China, dated July 12, 2011 ("Cherishmet Remand Memo").

Department could not consider the separate rates certification to have been properly certified on behalf of the company in accordance with the filing requirements of 19 CFR 351.303(g)(1).[5] In its Remand Opinion and Order, the Court instructed the Department to explain 19 CFR 351.303(g)(1) "in the context of Chinese corporations and determine whether or not Mr. Wang was in a position to certify the facts" but was not an employee in the sense required by our regulation.[6] Additionally, the Court ordered the Department to permit Hebei Foreign to attempt to find someone who fulfills the Department's regulatory requirements regarding certifications if the Department determines that Mr. Wang was in a position to know the facts, but was not an employee in the sense required by the Department's certification regulation.[7]

In accordance with the Court's Remand Opinion and Order, the Department reopened the evidentiary record to obtain information from Hebei Foreign to determine whether Mr. Wang was an employee in the sense required by the Department for purposes of certifying the company's separate rate submissions.[8] On March 16, 2011, the Department provided Hebei Foreign a definition of the phrase "currently employed by," as contained in 19 CFR 351.303(g)(1).[9] Additionally, in accordance with this Court's Remand Opinion and Order, the Department's March 16, 2011, request for information provided Hebei Foreign the opportunity to attempt to provide the necessary certifications from someone who fulfills the Department's definition of "currently employed by" as provided to Hebei Foreign.[10]

[5] See AR1 Final Results IDM at Comment 22.
[6] See Remand Opinion and Order at 9.
[7] See id.
[8] For Hebei Foreign's separate rate submissions, see Hebei Foreign Separate Rate Certification received by the Department on September 15, 2008, and Hebei Foreign Supplemental Response to the Department's Separate Rate Certification Questionnaire received by the Department on September 23, 2008.
[9] See Letter from the Department titled, "Remand Determination: First Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China" dated March 16, 2011 at 1.
[10] See Remand Opinion and Order at 9; see also Letter from the Department titled, "Remand Determination: First Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China" dated March 16, 2011 at 3.

On March 23, 2011, Hebei Foreign responded to the Department's request for information and claimed that, in light of the Department's definition of "currently employed by," Mr. Wang was an employee of Hebei Foreign. Further, Hebei Foreign also provided new certifications, signed by another person who participated in the preparation of the separate rate responses who fulfills our definition, as revised by the Department below, for its separate rate submissions.[11]

On April 4, 2011, the Department received comments from Norit Americas, Inc. and Calgon Carbon Corporation (collectively "Petitioners") regarding Hebei Foreign's March 23, 2011, submission to the Department.[12] Petitioners argue the Department should continue to deny Hebei Foreign a separate rate because the record shows that submissions from Hebei Foreign demonstrate its efforts to deceive the Department.[13] Petitioners assert that in Hebei Foreign's response to the Department, Hebei Foreign did not fully address the Department's definition of "currently employed by." Specifically, while Hebei Foreign focused on the Department's definition of "employee," Petitioners contend that Hebei Foreign did not address whether Mr. Wang was "an independent contractor(s) or agent(s)."[14] Petitioners note that independent contractor(s) or agent(s) are specifically excluded by the Department's definition. Petitioners contend that Mr. Wang's declaration submitted in Hebei Foreign's March 23, 2011, response continues to demonstrate that Mr. Wang was never an employee of Hebei Foreign and only acted as an agent for that company.[15] Further, Petitioners argue that the Department should continue to deny Hebei Foreign a separate rate because Hebei Foreign has re-certified the contradictory

[11] See Letter from Hebei Foreign titled "Certain Activated Carbon From the People's Republic of China," dated March 23, 2011 ("Hebei Response") at 2-3 and Exhibit 1-2.
[12] See Letter from Petitioners titled "Petitioners' Comments on Hebei Foreign Trade's Response to Department's Remand Questionnaire," dated April 1, 2011.
[13] See id. at 2.
[14] See id. at 3.
[15] See id. at 4.

statements it made on the record with regard to Mr. Wang's employment status.[16] Additionally, Petitioners assert that, although Hebei Foreign provided new certifications, the Department should continue to deny Hebei Foreign a separate rate because it has not demonstrated what work Ms. Liu Furong, who signed new certifications, performed in connection with the filings submitted to the Department,[17] nor should the Department rely on the other new certifications signed by Mr. Liu Guozhang as he was not employed by Hebei Foreign when Hebei Foreign's submissions were made to the Department.[18]

Analysis

In light of the response received from Hebei Foreign, we further clarify our definition of "currently employed by" as contained in 19 CFR 351.303(g)(1) as follows:

> Whenever a party (e.g., a company or a government) submits factual information in an AD/CVD proceeding, the law requires that the person(s) officially responsible for presentation of the factual information provide a certification with the submission. The certifier(s) of that factual submission must be "currently employed by" the party submitting the factual information. For purposes of this certification requirement, the Department defines "employed by" as performing work under an employer-employee relationship. An "employee" is a person in the service of another where the employer has the power or right to control and direct the employee with respect to what work will be done and the details of how it will be done, and the employee receives payment for services from the employer. In this regard, an "employee" of the party submitting factual information is to be distinguished from an independent contractor(s) or agent(s) of the party. The certifier(s) must be employed by the party submitting the factual information at the time the submission is made to the Department and the certifier(s) must have prepared or supervised the preparation of the submission. The Department may require proof of employment from the employer.

Although the Department's preliminary definition of "currently employed by" provided to Hebei Foreign did not specifically indicate that an employee must receive payment from the company, the Department now finds that this is an important aspect in determining whether the company could control the individual. Accordingly, we have revised our definition to include,

[16] See id. at 7-10.
[17] See id. at 10-12.
[18] See id. at 12.

"and the employee receives payment for services from the employer" and "the Department may require proof of employment from the employer" because adding these elements to the definition will provide clarity as to whether an individual is actually in an employee relationship with the company

Hebei Foreign's supplemental response provides a declaration from Mr. Wang and Mr. Liu Guozhang, Chief of Hebei Foreign, demonstrating that Mr. Wang was authorized to sell activated carbon to the United States on behalf of Hebei Foreign. Hebei Foreign informed the Department that Mr. Wang was under the control of Mr. Liu Guozhang in an employee relationship. Although Hebei Foreign explained that "at the time of the submission Mr. Wang was not formally on the payroll of Hebei Foreign," Hebei Foreign argues that Mr. Liu Guozhang exercised control and power over Mr. Wang in his activities supervising and preparing the submissions to the Department.[19] Hebei Foreign asserted that Mr. Wang was under the control and direction of Mr. Liu Guozhang and that Mr. Wang was under the authority and supervision of Mr. Liu Guozhang to prepare and submit Hebei Foreign's separate rate documentation. However, it is still unclear as to whether Mr. Wang was an employee of Hebei Foreign or acted as an independent contractor or a selling agent for Hebei Foreign, because Hebei Foreign stated in its March 23, 2011, submission that, at the time Mr. Wang certified the submissions in question, he was not formally on the payroll of Hebei Foreign. Therefore, it remains unclear as to what authority Mr. Liu Guozhang had to exercise control and power over Mr. Wang. However, Hebei Foreign provided additional company certifications from Mr. Liu Guozhang and Ms. Liu Furong, which stated they prepared or supervised the preparation of the responses in question. We disagree with Petitioners that we should reject the additional company certifications as Hebei Foreign provided documentary evidence establishing the employment

[19] See id. at 3.

status of the individuals who signed the additional company certifications.[20] With regards to company certification executed by Mr. Liu Guozhang, we note the declaration provided by Mr. Liu Guozhang indicates that he acted as the Chief of Hebei Foreign and that one of his tasks was to oversee closing Hebei Foreign and transferring its operations to Hebei Shenglun Advertising and Exhibition Co., Ltd.[21] Further, Hebei Foreign provided documentation that Mr. Liu Guozhang was a legal officer of Hebei Foreign at the time of its submissions.[22] Therefore, the Department considers Mr. Liu Guozhang "employed by" Hebei Foreign because Mr. Liu Guozhang retained the authority to direct and control Hebei Foreign at the time its submissions were made to the Department.

Further, we disagree with Petitioners that we cannot rely on the company certification executed by Ms. Liu Furong. We note that, neither 19 CFR 351.303(g) nor the Department's definition of the phrase "employed by," stipulate that a company must provide evidence of the work performed on a submission by the person executing the company certification. Further, Hebei Foreign provided payroll documentation which indicates that Ms. Liu Furong meets the Department's definition of "employed by."[23]

Therefore, as the Department accepts these additional company certifications, we are granting Hebei Foreign a separate rate for this review period. The separate rate for this review period , calculated from the simple average of the period of review's ("POR") two selected mandatory respondents, Calgon Carbon (Tianjin) Co., Ltd. and Jacobi Carbons AB ("Jacobi"), is 16.35 percent.[24]

[20] See Hebei Response at 5-6 and Exhibit 6-8.
[21] See Hebei's Response at 5 and Exhibit 2.
[22] See id. at 5 and Exhibit 2 and 6.
[23] See id. at 6 and Exhibit 8.
[24] See AR1 Final Results at 66953.

2. HCL Surrogate Value

Background

In AR1 Final Results, the Department valued Cherishmet's HCL using World Trade Atlas ("WTA") data. The Department declined to use the Chemical Weekly HCL price as an SV for Cherishmet because Cherishmet did not provide the purity level of the HCL used in its production of the subject merchandise whereas, Jacobi, another mandatory respondent, had provided the purity levels of its HCL input at the verification of its suppliers.[25] Instead of Chemical Weekly data, the Department used WTA data for Indian Harmonized Tariff Schedule ("HTS") number 2806.10 "Hydrogen Chloride (Hydrochloric Acid)" to value Cherishmet's HCL. In its Remand Opinion and Order, the Court found that once the Department accepted Jacobi's HCL purity level at verification, the Department was obligated to ask Cherishmet to place its HCL purity level on the record.[26] The Court ordered the Department "to give Cherishmet the opportunity to place HCL purity data on the record, or reach some other fair result."[27]

In accordance with the Court's Remand Opinion and Order, the Department provided Cherishmet with the opportunity to place its HCL purity level on the record. On March 4, 2011, the Department issued a letter to Cherishmet, requesting the purity level of its HCL input. On March 14, 2011, Cherishmet responded to the Department's request and supplied its HCL purity level.[28] Petitioner did not comment on Cherishmet's submission.

[25] See AR1 Final Results IDM at Comment 3d.
[26] See Remand Opinion and Order at 13-15.
[27] See id. at 15.
[28] See Letter from Cherishmet titled "Submission of Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. in the Court Remand of 2006-2008 Administrative Review of the Antidumping Order on Certain Activated Carbon from the People's Republic of China, Case No. A-570-904," dated March 11, 2011 ("March Cherishmet Letter"), at 1 and Exhibit 1-2.

Analysis

After analyzing Cherishmet's purity level for its HCL input, we are now using data from Chemical Weekly to value Cherishmet's HCL input because it is more specific to the input used by Cherishmet which is consistent with the Department's preference to select SVs that are specific to the input in question.[29]

3. Carbonized Materials Surrogate Value

Background

In AR1 Final Results, the Department valued carbonized materials used by Cherishmet with publicly available prices from WTA data under Indian HTS number 2704.00.90 "Other Cokes of Coal" rather than Indian HTS number 4402.00.10 "Coconut Shell Charcoal" as requested by Cherishmet.[30] In the Remand Opinion and Order, the Court disagreed with the Department's selection of SV finding that "Commerce's determination that imports under the tariff heading constituted the best available information is not substantially supported because approximately 50% of the imports under this heading are not product-specific and Commerce's reasons for rejecting data contrary to its selection are flawed."[31] The Court ordered the Department to address the argument that imports under Indian HTS 2704.00.90 "Other Cokes of Coal" are not product-specific and "to select the best method for valuation of the input as possible."[32]

[29] See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009) ("Glycine 2009") and accompanying IDM at Comment 3. Moreover, because Cherishmet's HCL purity is within the specific ranges of the HCL purity reported in Chemical Weekly we do not need to make any adjustments to the Chemical Weekly data in order to make the prices specific to the purity levels used by Cherishmet.
[30] See AR1 Final Results IDM at Comment 3e.
[31] See Remand Opinion and Order at 19.
[32] See id. at 19.

Analysis

In accordance with this Court's Remand Opinion and Order, and for the reasons set forth below, the Department has changed the carbonized materials surrogate value to Indian HTS 4402.00.10 "Coconut Shell Charcoal" for Cherishmet.

The Department reviews SV information on a case-by-case basis and, in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the factors of production. With regard to the Infodrive India data, the Court held that 50% of the volume of the Indian HTS category for "Other Cokes of Coal" is not "product-specific."[33] For this volume, there is little on the record except this category's title, "Other Cokes of Coal." The record provides no substantial information on coke that would support finding that the Indian HTS category "Other Cokes of Coal" is a comparable match to the input in question.

After reconsidering the available information on the record, the Department concludes that Indian HTS 4402.00.10 "Coconut Shell Charcoal" constitutes the best available information on the record to value coal-based carbonized materials. Despite our initial concerns regarding the valuation of carbonized material,[34] our re-examination of the record indicates that coconut shell charcoal shares similar properties with carbonized material and that those similar properties are essential in the production of activated carbon. The expert's report found that coal-based carbonized materials used by Cherishmet and coconut shell charcoal are similar in porosity[35] and adsorption,[36] which are both properties essential in the production of activated carbon.[37] Thus, in

[33] See Remand Opinion and Order at 19.
[34] See AR1 Final Results and accompanying IDM at Comment 3e.
[35] Porosity is necessary as it is a measure of internal surface area, which is the functional area that provides opportunity for adsorption to take place. See Similarities and Differences of Coal Based Carbonized Materials, Coconut Shell Based Charcoal and Low Ash Metallurgical Coke, by Lee S. Rigsby, President, Vanguard Solutions, Inc. (July 17, 2009) ("Expert's Report") at 3/7; attached as Exhibit 2-1 to Cherishmet's July 20, 2009, Surrogate Value submission, at 3/7.
[36] Adsorption is a measure of how efficiently the carbon removes undesirable contaminants from desirable gases or liquids. See id.

this instance, between the two alternative Indian HTS categories, "Other Cokes of Coal" and "Coconut Shell Charcoal," the Department determines that Indian HTS number 4402.00.10 "Coconut Shell Charcoal" results in a better, input-specific price for coal-based carbonized materials. Therefore, the Department will use Indian HTS number 4402.00.10 "Coconut Shell Charcoal" to calculate the SV for Cherishmet's carbonized material input.

4. Bituminous Coal Surrogate Value

Background

In AR1 Final Results, the Department valued Cherishmet's bituminous coal used as a raw material input for the production of activated carbon using WTA import data under Indian HTS number 2701.19.10 "Coking Coal."[38] While the Department determined that Cherishmet provided sufficient information, such as the useful heat value ("UHV"), for its steam coal that satisfied the Department's criteria for using Coal India Limited ("CIL") data to value it, the Department declined to use CIL data to value Cherishmet's bituminous coal input used as a raw material input for the production of activated carbon because Cherishmet did not provide any specific information for that bituminous coal input.[39] Instead, the Department used Indian HTS number 2701.19.10 "Coking Coal" to value Cherishmet's bituminous coal input. In its Remand Opinion and Order, the Court found that the Department failed to explain the relationship between coking coal and bituminous coal, or explain why a less expensive domestic product would be rejected for a more expensive imported product, and remanded the issue to the Department "for further explanation or consideration."[40]

[37] See id. at 5/7.
[38] See AR1 Final Results and accompanying IDM at Comment 3c.
[39] See id.
[40] See Remand Opinion and Order at 19-21.

In accordance with the Court's Remand Opinion and Order, the Department has revisited its determination regarding which SV constitutes the best available information on the record for valuing bituminous coal used as a raw material input in the production of certain activated carbon. In determining which SV constitutes the best available information on the record for valuing bituminous coal used as a raw material input, the Department requested further information from Cherishmet regarding this input. On March 4, 2011, the Department issued a letter to Cherishmet, requesting the UHV and ash content of the bituminous coal it used as a raw material input in the production of certain activated carbon. On March 11, 2011, Cherishmet responded to the Department's request and supplied its bituminous coal UHV and ash content data. Cherishmet reported that the UHV of its bituminous coal input is 5887.46 kilocalories/kilogram ("kcal/kg") with an ash content of 9.83 percent.[41]

Analysis

When we compared Cherishmet's reported UHV and ash content to the Coal India Limited and Tata Energy Research Institute ("TERI") UHV and ash content ranges, none of the CIL grade-specific coal in the UHV range reported by Cherishmet had similar ash content.[42] While the UHV of Cherishmet's bituminous coal input falls within the UHV range of grade B non-coking coal, the ash content of Cherishmet's bituminous coal does not, by a significant degree.[43] Specifically, CIL grade B non-coking coal has an ash content range of 13.56% to 17.94%, whereas Cherishmet reported its bituminous coal ash content is 9.83%. Therefore, Cherishmet's bituminous coal raw material input is significantly different from the domestic

[41] See March Cherishmet, at 2 and Exhibit 3.
[42] See id.; see also Arch Chemicals Inc. v. United States, Slip Op. 09-71 (CIT 2009) (where the Court upheld the Department's use of TERI data, which are based upon CIL data).
[43] See Letter from Petitioners to the Department, re: Proposed Surrogate Values, dated February 13, 2009 ("Petitioners' Prelim SV Memo") at Exhibit 2D; see also Letter from Cherishmet titled "Surrogate Value Submission 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 February 13, 2008 ("Cherishmet Response") at Exhibit 15.

sources of coal based upon the ash content, which supports finding that the type of coal used by Cherishmet is not covered by the CIL grades of coal.

In accordance with the Court's Remand Opinion and Order and based upon information on the record, the Department determines that coking coal, as entered under Indian HTS number 2701.19.10, is more specific to the bituminous coal input reported by Cherishmet.[44] We note that Cherishmet claims that coking coal is used in metallurgical and steel industries and cannot be used to value bituminous coal.[45] With respect to Cherishmet's argument, we note that low-ash metallurgical bituminous coal is used in the production of the subject merchandise, which the Department has recognized since the investigation.[46] As describe below, coking coal is another name for low-ash bituminous coal.[47]

We used the ash content of bituminous coals to differentiate between metallurgical grade bituminous coal, or coking coal, and non-metallurgical grade bituminous coal in this antidumping duty proceeding.[48] Information on the record indicates that coking coals have low ash contents; sources on the record place the range of coking coal ash content between 8-9%.[49] This is contrasted with non-metallurgical bituminous coals, which have ash contents between 13-49%.[50] As explained above, Cherishmet's reported ash content is 9.83%, falling near the range of coking coal ash content. Moreover, coking coal is much less abundant than non-metallurgical bituminous coal, which accounts for the relatively higher cost of coking coal (import prices) over

[44] Coking coal is another name for metallurgical bituminous coal. See Cherishmet Remand Memo at Attachment IV.
[45] See Remand Opinion and Order at 20.
[46] See Petitioners' Prelim SV Memo at Exhibit 3, re: Memorandum to the File, through James C. Doyle, Office Director, AD/CVD Operations, Office 9 and Carrie Blozy, Program Manager, AD/CVD Operations, Office 9, from Anya Naschak, Senior Case Analyst, AD/CVD Operations, Office 9, re: Antidumping Duty Investigation of Certain Activated from the People's Republic of China, Surrogate Values for the Preliminary Determination, dated October 4, 2006 at 6.
[47] See Cherishmet Remand Memo at Attachment IV.
[48] See Petitioners' Prelim SV Memo at Exhibit 2C and 2D, and 3B.
[49] See id.
[50] See Petitioners' Prelim SV Memo at Exhibit 2C and 2D; see also Expert's Report at 4/7.

thermal coal (domestic prices).[51] Thus, in this instance, Indian import data under HTS category "Coking Coal" are most appropriate for valuing low ash metallurgical bituminous coal, like the kind used to produce activated carbon. Based on the record information and the ash content provided by Cherishmet, the Department determines that Cherishmet's bituminous coal raw material input is more similar to coking coal because the reported input matches more closely to the ash content of coking coal. Accordingly, we have continued to value Cherishmet's bituminous coal input using Indian import data under the Indian HTS category for "Coking Coal," which is consistent with the Department's preference to select SVs that are specific to the input in question.[52]

5. Labor Surrogate Value

Background

In AR1 Final Results, the Department calculated a surrogate wage value in accordance with the regression-based methodology set forth in 19 C.F.R. 351.408(c)(3). In its court challenge, Cherishmet argued that the Department's wage rate regression methodology does not comport with the statutory requirement to use SVs from a country that is both economically comparable to the non-market economy ("NME") country, and significant producers of the subject merchandise. See section 773(c)(4) of the Act.

In Dorbest, the U.S. Court of Appeals for the Federal Circuit ("CAFC") held that the Department's "{regression-based} method for calculating wage rates {as stipulated by 19 C.F.R. 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (i.e. 19 U.S.C. § 1677b(c))}."[53] Specifically, the CAFC interpreted section 773(c) of the Act to require the use of data from market economy countries that are both economically

[51] See Expert's Report at 4/7.
[52] See Glycine 2009 and accompanying IDM at Comment 3.
[53] See Dorbest, 604 F.3d at 1372.

comparable to the NME at issue and significant producers of the subject merchandise, unless such data are unavailable. Because the Department's regulation requires the Department to use data from economically dissimilar countries and from countries that do not produce comparable merchandise, the CAFC invalidated the Department's labor regulation (19 C.F.R. 351.408(c)(3)). In light of Dorbest, the CIT granted the Department requested a voluntary remand for its wage rate calculations for Cherishmet in the AR1 Final Results with instructions that the labor wage value be recalculated without reliance on the invalidated labor regulation.[54]

On June 21, 2011, the Department revised its labor calculation methodology for valuing an NME respondent's cost of labor in NME antidumping proceedings.[55] In Labor Methodologies, the Department found that the best methodology for valuing the NME respondent's cost of labor is to use the industry-specific labor rate from the surrogate country. Additionally, the Department found that the best data source for calculating the industry-specific labor rate for the surrogate country is the data reported under "Chapter 6A: Labor Cost in Manufacturing" from the ILO Yearbook of Labor Statistics.[56] Accordingly, the Department changed its surrogate value selection for labor in this remand redetermination. Further, as discussed in detail below, the facts and information on the record warranted adjustments to the surrogate financial ratios. Specifically, the financial statements included disaggregated overhead ("OH") and selling, general and administrative ("SG&A") items that are already included in the

[54] In the Draft Remand Results, the Department used its interim methodology to value the surrogate value for labor using industry-specific ILO Chapter 5 wages and earnings data reported by countries that the Department determined were significant producers of activated carbon. See Letter from to the Department to Interested Parties, re: Draft Remand Redetermination in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China, dated April 20, 2011 ("Draft Remand Results"); see also, Memorandum to the File, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Bob Palmer, Case Analyst, AD/CVD Operations, Office 9, re: Remand Redetermination in the Antidumping Duty Review of Certain Activated Carbon from the People's Republic of China: Industry-Specific Wage Rate Selection, dated April 20, 2011 ("Wage Rate Memo").

[55] Cherishmet's comments regarding labor in the Draft Remand Results are moot, because the Department is now relying on a new methodology to calculate the surrogate value for labor. Cherishmet did not submit any comments on this new methodology.

[56] See Labor Methodologies at 39063.

ILO's definition of Chapter 6A data.[57] Accordingly, the Department made adjustments to ensure that labor costs are not overstated – those adjustments are detailed below.

On June 21, 2011, the Department released its Second Draft Remand Results recalculating the surrogate wage rate in accordance with Labor Methodologies and Dorbest.[58] On June 29, 2011, the Department released a Revised Second Draft Remand Results, explaining revisions to the surrogate labor cost rate methodology with respect to the categorization of labor-related line items with the surrogate financial statements and how they should be treated in the calculation of the surrogate financial ratios.[59] On July 12, 2011, the Department released a further revision to the Second Draft Remand Results, explaining a revision to the surrogate labor cost rate methodology with regard to the conversion of the inflation-adjusted hourly wage rate, denominated in Indian Rupees, to U.S. dollars.[60] No parties provided comments regarding the Department's labor methodology.

[57] See Labor Methodologies at 39063.
[58] See Letter from the Department to Interested Parties, re: Draft Remand Redetermination in the Antidumping Duty Administrative Review of Certain Activated Carbon From the People's Republic of China, dated June 21, 2011 ("Second Draft Remand Results").
[59] See "Memorandum to the File, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Irene Gorelik, Senior Analyst, AD/CVD Operations, Office 9, re: Revised Second Draft Remand Redetermination Memorandum for Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. in the Antidumping Duty Review of Certain Activated Carbon from the People's Republic of China, dated June 29, 2011 ("Revised Second Draft Remand Results").
[60] See "Memorandum to the File, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Bob Palmer, Case Analyst, AD/CVD Operations, Office 9, re; Wage Rate Revision for the Second Draft Remand Redetermination Memorandum for Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. in the Antidumping Duty Review of Certain Activated Carbon from the People's Republic of China," dated July 12, 2011 ("Wage Revision of Second Draft").

Analysis

a. Revised Labor Rate

On June 21, 2011, the Department determined that it will base labor cost on ILO Chapter 6A data applicable to the primary surrogate country, rather than the Chapter 5B data it previously used in all NME cases.[61]

Due to the variability in wage rates among economically comparable market economies, the Department included wage data from as many countries as possible that were also economically comparable to the NME and significant producers of comparable merchandise, within the meaning of section 773(c)(4) of the Act. Following the Federal Circuit's decision in Dorbest, the Department attempted to balance its desire for multiple data points with the statutory requirements that FOP data be from countries that are both economically comparable and significant producers. See sections 773(c)(4)(A) and (B) of the Act. While the amount of available data was more constrained following Dorbest, the Department determined that the industry-specific interim methodology still provided the best available wage rate because it allowed for multiple data points, and adhered to the constraints set forth in the statute. Under this methodology, the Department considered countries that exported comparable merchandise to be "significant producers." However, in Shandong Rongxin, the CIT found the Department's sole reliance on exports alone to define "significant producers" was unsupported by substantial evidence.[62]

The Department has carefully considered the "significant producer" prong of section 773(c)(4)(B) of the Act, in light of the CIT's decision in Shandong Rongxin. The Department concludes that this decision imposed an even further restriction on the "significant producer"

[61] See Labor Methodologies at 39063.
[62] See Shandong Rongxin Import & Export Co., Ltd. v. United States, Slip Op. 11-45 (April 21, 2011) ("Shandong Rongxin") at 17-19..

definition. Upon our careful examination of our options in light of Shandong Rongxin, we consider that any alternative definition for "significant producer" that would also be compliant with the court's decision would unduly restrict the number of countries from which the Department could source wage data. We therefore find that the basket for an average wage calculation would be so limited that there would be little, if any, benefit to relying on an average of wages from multiple countries for purposes of minimizing the variability that occurs in wages across countries. Therefore, in light of both the Federal Circuit's decision in Dorbest, and the CIT's recent decision in Shandong Rongxin, we find that relying on multiple countries to calculate the wage rate is no longer the best approach for calculating the labor value. We have altered our labor methodology to rely on labor cost data from the primary surrogate country in any given proceeding.

Accordingly, the Department finds that using the data on industry-specific labor cost data from the surrogate country in this proceeding is the best approach for valuing the labor input. It is fully consistent with how the Department values all other FOPs, and results in the use of a uniform basis for FOP valuation – a single surrogate country.

Data Relied Upon In This Remand Proceeding

In the AR1 Final Results, the Department had selected India as the surrogate country, because it is at a comparable level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data.[63] Therefore, for this remand redetermination, the Department will use industry-specific labor cost data from India to calculate the surrogate labor rate.

[63] See Certain Activated Carbon from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results, 74 FR 21317, 21319 (May 7, 2009) ("Prelim Results") unchanged in AR1 Final Results.

Although the Department allowed parties to submit new information to the record in order to carry out the remand directives with respect to the issue of Hebei Foreign's separate rate status and Cherishmet's surrogate value for bituminous coal, hydrochloric acid and carbonized material, the Department finds that it is appropriate to rely only on labor cost data that would have been available to the Department at the time it conducted the administrative review. See Dorbest v. United States, Slip Op. 11-14 *17-23 (Feb. 9, 2011) (affirming as reasonable, the Department's decision to rely solely on data available during the original investigation). To consider information available subsequent to the publication of AR1 Final Results on remand would also give incentive to parties to challenge the Department's decisions and rely on evidence not available until after the time the administrative record had closed. Moreover, the information the Department requested from Hebei Foreign and Cherishmet was available at the time the Department conducted the administrative review – the difference being that we did not ask for it until this remand.

The relevant POR covers October 11, 2006, through March 31, 2008. The Department conducted its administrative review of this period between June 4, 2008, and December 10, 2009. Due to the reporting practices of our data sources, there is normally a two-year interval between the year for which data are reported and the current year. Accordingly, for this remand redetermination, the Department is relying on 2008 ILO data because these data were available at the time the Department conducted the review.[64]

In order to calculate a new labor rate in conformity with the labor methodology set forth in Labor Methodologies, we are using labor cost data from the surrogate country, India, reported in the ILO Chapter 6A data. The Department selected India as the surrogate country in this

[64] See Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 554-555 (1978) ("Administrative consideration of evidence . . . always creates a gap between the time the record is closed and the time the administrative decision is promulgated [and, we might add, the time the decision is judicially reviewed]…")

proceeding based upon the finding that India was both economically comparable to the PRC and a significant producer of comparable merchandise.[65] Accordingly, the Department needed to place additional labor cost data on the record in order to determine the surrogate labor rate derived from Indian labor cost data.[66]

Re-Valuation of the Labor Rate

We used the most recent Chapter 6A labor cost data that would have been available at the time of this administrative review (2004-2008), and adjusted those values to the 2006-2008 POR using the relevant Consumer Price Index ("CPI").[67] Next, we converted the inflation-adjusted hourly labor cost data, which were denominated in Indian Rupees, to U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.[68]

Specifically, the Department has relied on the industry-specific data that includes activated carbon (provided to the ILO under Sub-Classification 24 "Manufacture of chemicals and chemical products" of the ISIC-Revision 3 standard). Industry-specific data (i.e., data from Sub-Classification 24 of the ISIC-Revision 3) is available for India.[69]

b. Adjustments to the Surrogate Financial Ratios

In AR1 Final Results, we used an average of four surrogate financial statements, Core Carbons Private Limited ("Core Carbons"), Indo German Carbons Limited (Indo German"),

[65] See Prelim Results at 21319; unchanged in AR1 Final Results.
[66] See Second Draft Remand Results at Attachment I-V.
[67] Under the Department's regression analysis, the Department limited the years of data it would analyze to a two year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the single country now being considered in the Department's calculation, the pool of wage rates from which we could draw from two years-worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the CPI. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). See also, Second Draft Remand Results at 8 and Attachment II-III.
[68] See Wage Revision of Second Draft at 3; see also, Cherishmet Remand Memo.
[69] See Second Draft Remand Results at 8 and Attachment I and II.

Kalpalka Chemicals Pvt. Ltd. ("Kalpalka"), and Quantum Active Carbon Pvt. Ltd. ("Quantum") to derive the surrogate financial ratios used to calculate normal value.[70]

The Department's previous surrogate wage rate methodologies used ILO Chapter 5B "wages and earnings." The ILO defines Chapter 5B data to include two types of compensation: (1) direct wages and salaries ("wages"), as well as (2) earnings data, which includes wages plus bonuses and gratuities ("earnings").

The ILO defines Chapter 5B earnings data to include:

> Remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers' contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay.[71]

Previously, where warranted, individually identifiable labor costs in the surrogate financial statements, which were not included in wages or earnings in direct labor, were categorized as OH or SG&A expenses for purposes of the Department's calculation of surrogate financial ratios.[72]

In contrast, the ILO defines Chapter 6A data to include:

> "The cost incurred by the employer in the employment of labor. The statistical concept of labor cost comprises remuneration for work performed, payments in respect of time

[70] See Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, Import Administration, from Blaine Wiltse, International Trade Analyst, Import Administration, re: First Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Final Results, dated November 3, 2009 ("AR1Final SV Memo") at 5 and Attachment 7.

[71] See Second Draft Remand Results at 10

[72] See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("OTR Tires") and accompanying IDM at Comment 18.G; see also, Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying IDM at Comment 10. See also, Memorandum to the File, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Blaine Wiltse, International Trade Analyst, AD/CVD Operations, Office 9, re: First Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results, dated April 30, 2009 ("AR1Prelim SV Memo") at 13-14 and Attachment 10.

> paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labor cost..."
>
> "…compensation of employees comprising {sic} all payments of producers of wages and salaries to their employees, in kind as well as in cash, and of contributions in respect of their employees to social security and to private pension, casualty insurance, life insurance and similar schemes…"[73]

In order to ensure that Chapter 6A labor costs, included in the ILO defined "Labor cost" and "Compensation of employees," are accounted for only once in the calculation of normal value, it is best to adjust, where possible, the surrogate financial ratios employed by the Department to value OH expenses, SG&A expenses, and profit.[74] We note that, when financial statements identify and classify labor costs as either manufacturing related labor costs or administrative and selling related labor costs, we should rely on those classifications unless there is good reason to believe the classifications are not accurate.

In this case, only Kalpalka's and Quantum's financial statements segregate all costs incurred by the companies between product and period costs. Product costs (also known as manufacturing costs) are those costs that, when incurred, are initially allocated and capitalized as inventory and are subsequently expensed in the form of "cost of goods sold" when the units in inventory are sold. Product costs typically include direct materials, direct labor, and manufacturing or factory overhead costs. It is expected that the manufacturing costs allocated to each product include all factory related labor cost including benefits, because, in accordance with the matching principal of accounting, the product costs should be expensed only when the products are sold to ensure an accurate matching of costs to the sales revenue that occurs in any

[73] See Second Draft Remand Results at 11.
[74] See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006) ("Antidumping Methodologies Notice"); see also, OTR Tires at Comment 18.G.

given period. The manufacturing costs incurred to produce each product are tracked and assigned to that product as it enters into the inventory. It is only when specific products are sold that they become expenses in the current period, as part of the cost of goods sold.[75]

Period costs (typically classified as administrative and selling expenses) are expensed in full in the period in which these costs are incurred. Period costs do not relate to the production of any specific product and are not capitalized, nor do they go through inventory. In this case, we consider it reasonable to assume that the direct labor cost included in the cost of manufacturing, inventory, and ultimately in the cost of goods sold, includes all components of labor compensation related to the factory workers, including any bonuses paid, payroll taxes, welfare and other benefits, etc. Specifically, these direct labor costs associated with manufacturing, inventory and the cost of goods sold reflect all labor costs associated with the factory workers that produced the products that were sold. Likewise, it is reasonable to assume that the labor cost elements included as period costs (i.e., in the selling or administrative cost section of the income statement) have nothing to do with the factory workers, but rather relate to the selling and administrative staff of the company. This is precisely why these costs are recognized as incurred during the year, and are not associated with the production of any specific products that were initially inventoried and subsequently sold.

Accordingly, we categorized all individually identifiable direct labor costs included in the ILO's definition Chapter 6A "Labor cost" and "Compensation of employees" as direct labor in the surrogate financial ratio calculations where the financial statements separately identify and classify manufacturing related labor costs. Such adjustments to the surrogate financial ratios are

[75] See Charles T. Horngren, George Foster, and Srikant M. Datar, Cost Accounting: A Managerial Emphasis at Chapter 2 (Prentice Hall, Seventh Edition, 1991).

fact-specific in nature and subject to available information on the record.[76] Specifically, where warranted, individually identifiable labor costs, which are separately identified and classified as manufacturing related labor costs in the surrogate financial statements, and are included in Chapter 6A "Labor cost" and "Compensation of employees" are now categorized as direct labor expenses for purposes of the Department's calculation of surrogate financial ratios. Accordingly, we removed the following items from OH and SGA and moved them to direct labor in the surrogate financial ratio calculations:

Core Carbons:
No changes.[77]

Indo German:
1) Contribution to PF and other funds (reported under Schedule 16: Manufacturing, Administrative & Selling Expenses);
2) Bonus (reported under Schedule 16: Manufacturing, Administrative & Selling Expenses);
3) Gratuity (reported under Schedule 16: Manufacturing, Administrative & Selling Expenses);
4) Leave Encashment (reported under Schedule 16: Manufacturing, Administrative & Selling Expenses); and
5) Staff Welfare Expenses (reported under Schedule 16: Manufacturing, Administrative & Selling Expenses).[78]

Kalpalka:
1) Stipend (Allowance) (reported under Schedule C: Manufacturing and Other Operative Expenses).[79]

Additionally, in accordance with the methodology described above, we removed the following item from Quantum's "direct labor" column and moved it to SG&A in the surrogate financial ratio calculation:

Quantum:
Salary (reported under Schedule 12: Administrative Expenses).[80]

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[76] See id.
[77] See Letter from the Norit Americas, Inc. and Calgon Carbon Corporation (collectively "Petitioners"), re: Certain Activated Carbon from the People's Republic of China: Proposed Surrogate Values, dated February 13, 2009 at Exhibit 51.
[78] See Letter to the Department from Jacobi, re: Jacobi's Surrogate Value Comments: Certain Activated Carbon from China, dated February 13, 2009 at Exhibit SV-8.
[79] See id.; Revised Second Draft Remand Results at 7.

Based on the foregoing methodology, the revised surrogate financial ratios applied to Cherishmet in this remand redetermination are as follows: 1) Overhead, 11.45%; 2) SG&A, 17.37%; and, 3) Profit, 10.87%.[81]

Summary and Analysis of Litigants' Comments on Draft Remand Results[82]

On April 20, 2011, the Department released its Draft Remand Results. Petitioners and Cherishmet filed comments on April 27, 2011. Petitioners commented on the Department's decision to grant Hebei Foreign a separate rate, which we address below. Cherishmet filed comments with regard to the Department's labor surrogate value. Because we have released a second draft remand on labor, we do not address Cherishmet's comments here because they are now moot. No other parties filed comments to the Draft Remand Results. On June 21, 2011, the Department released its Second Draft Remand Results on the surrogate value for labor. No parties filed comments on the Second Draft Remand Results.

Issue 1: Separate Rate Status of Hebei Foreign

Petitioners argue that, the Department should revise its draft redetermination and find that, because Hebei Foreign's responses to the Department are not reliable and because the company has not submitted company certifications that meet the requirements of 19 CFR 351.303(g)(1), Hebei Foreign is not entitled a separate rate.

Petitioners reiterate that the record demonstrates that Hebei Foreign's separate rate submissions are not reliable because of the company's efforts to deceive the Department. Petitioners state that the Department must address the issue of whether Hebei Foreign's

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[80] See Letter to the Department from Cherishmet, re: Post-Preliminary Surrogate Value Submission 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 July 20, 2009 at Exhibit 1; see also, Revised Second Draft Remand Results at 7.

[81] Revised Second Draft Remand Results at 7.

[82] The Department released its Second Draft Remand Results on June 21, 2011.

submissions are reliable and support its separate rate status. Petitioners argue that Hebei Foreign's statements demonstrate that Mr. Wang was never an employee of Hebei Foreign and that he used Hebei Foreign as his export agent on behalf of another entity.[83] Moreover, Petitioners reiterate that Hebei Foreign has re-certified the contradictory statements it made on the record with regard to Mr. Wang's employment status.[84] Additionally, Petitioners continue to assert that, although Hebei Foreign provided new certifications, the Department should continue to deny Hebei Foreign a separate rate because it has not demonstrated what work Ms. Liu Furong, who signed new certifications, performed in connection with the filings submitted to the Department,[85] nor should the Department rely on the other new certifications signed by Mr. Liu Guozhang as he was not employed by Hebei Foreign when Hebei Foreign's submissions were made to the Department.[86]

Petitioners argue that the Department is entitled to find that Hebei Foreign's statements and submissions are inherently contradictory and amount to a deliberate false statement and that, to the extent the Court disagrees with the Department's interpretation of the evidence, the Court must nonetheless affirm the Department's findings as based on substantial evidence.[87]

Department's Position:

The Department agrees that Hebei Foreign has made inconsistent statements regarding Mr. Wang's employment status with that company. However, we disagree with Petitioners that Hebei Foreign should be denied a separate rate.

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[83] See Letter from Petitioners titled "Petitioners' Comments on Draft Remand Redetermination in the First Administrative Review of Certain Activated Carbon from the People's Republic of China," dated April 27, 2001 ("Petitioners' Draft Remand Comments") at 4.
[84] See id. at 4-6.
[85] See id. at 9-11.
[86] See id. at 9.
[87] See id. at 7. Petitioners cite to Mitsubishi Heavy Industry, arguing that to extent that evidence before the Department "could be open to multiple interpretations, its argument does not require, or even allow, reversal." See Mitsubishi Heavy Industries, Ltd. v. United States, 275 F.3d 1056, 1062 (December 28, 2001) ("Mitsubishi Heavy Industry") citing Matsushita Elec. Indus. Co., Ltd. v. United States, 750 F.2d 927, 933 (December 13, 1984).

In the Court's Remand Opinion and Order, the Court ordered the Department to find someone who fulfills our regulatory requirement concerning the company certification and Hebei Foreign has provided a new certification for Hebei Foreign's separate rate submissions.[88] We find that, because Hebei Foreign provided a new company certification that meets the Department's company certification requirements, per the Court's Remand Opinion and Order, the issue of Mr. Wang's employment status is not relevant in determining Hebei Foreign's separate rate status in this case. Additionally, we find that Mitsubishi Heavy Industry is not instructive in this instance because the only evidence open to interpretation is Mr. Wang's employment status and the Department has determined, as stated above, that Mr. Wang's employment status with Hebei Foreign remains unclear and instead is relying on the certifications of other individuals. For all these reasons, we find that Hebei Foreign's separate rate submissions are complete and reliable.

As we already stated in our position above under the section "Hebei Foreign Separate Rate," we disagree with Petitioners that we should reject the additional company certifications provided by Hebei Foreign. With regards to company certification executed by Mr. Liu Guozhang, we note the declaration provided by Mr. Liu Guozhang indicates that he acted as the Chief of Hebei Foreign and that one of his tasks was to oversee closing Hebei Foreign and transferring its operations to Hebei Shenglun Advertising and Exhibition Co., Ltd.[89] Further, Hebei Foreign provided documentation that Mr. Liu Guozhang was a legal officer of Hebei Foreign at the time of its submissions.[90] Therefore, the Department considers Mr. Liu Guozhang "employed by" Hebei Foreign because Mr. Liu Guozhang retained the authority to direct and control Hebei Foreign at the time its submissions were made to the Department.

[88] See Remand Opinion and Order at 9; see also Hebei's Response at Exhibit 4.
[89] See Hebei's Response at 5 and Exhibit 2.
[90] See id. at 5 and Exhibit 2 and 6.

Further, we disagree with Petitioners that we cannot rely on the company certification executed by Ms. Liu Furong. We note that neither 19 CFR 351.303(g) nor the Department's definition of the phrase "employed by" stipulate that a company must provide evidence of the work performed on a submission by the person executing the company certification. Further, Hebei Foreign provided payroll documentation which indicates that Ms. Liu Furong meets the Department's definition of "employed by."[91] Therefore, as stated above under the section "Hebei Foreign Separate Rate," because Hebei Foreign has provided documentation establishing the employment status of the individuals who signed the additional company certifications, the Department accepts these additional company certifications and will grant Hebei Foreign a separate rate for this review period.

Therefore, as stated above, we will continue to grant Hebei Foreign a separate rate, because the additional company certifications provided by Hebei Foreign meet the Department's definition of "employed by" and are otherwise reliable.

RESULTS OF REDETERMINATION

Pursuant to the Remand Opinion and Order, we have revised the surrogate wage rate calculation to comply with the Labor Methodologies and the Federal Circuit's interpretation of section 773 of the Act and have recalculated Cherishmet's carbonized materials SV using Indian import data under the HTS category for coconut shell charcoal and the HCL SV using Chemical Weekly. Accordingly, Cherishmet's final margin has been revised to 2.95 percent. Additionally, pursuant to the Court's Remand Opinion and Order, we have accepted Hebei Foreign's re-certified separate rate certification and have applied the 16.35 percent separate rate calculated

[91] See id. at 6 and Exhibit 8.

from the simple average of the POR's two selected mandatory respondents, Calgon Carbon (Tianjin) Co., Ltd. and Jacobi.[92]

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date

[92] See AR1 Final Results at 74 FR at 66953.