Dated: May 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Second Antidumping Duty Administrative Review, and Preliminary Rescission in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is conducting the second administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC") for the period April 1, 2008, through March 31, 2009. The Department has preliminarily determined that sales have been made below normal value ("NV") by the respondents examined in this administrative review. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the period of review.

DATES: *Effective Date:* May 13, 2010.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Kathleen Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–9068 or (202) 482–7906, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests by Petitioners [1] and certain PRC and other companies, in accordance with 19 CFR 351.213(b), during the anniversary month of April, to conduct a review of certain activated carbon producers and/or exporters from the PRC. On May 29, 2009, the Department initiated this review with respect to all requested companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 74 FR 25711 (May 29, 2009) ("*Initiation Notice*").

On June 18, 2009, Petitioners withdrew the request for review with respect to 155 of the 187 originally requested companies. On July 2, 2009, the Department published a notice of rescission in the **Federal Register** for those 155 companies for which the request for review was withdrawn. *See Certain Activated Carbon From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 31690 (July 2, 2009) ("*First Rescission*"). On August 21, 2009, Petitioners withdrew the request for review with respect to an additional thirteen companies. On September 16, 2009, the Department published a second notice of rescission in the **Federal Register** for those thirteen companies. *See Certain Activated Carbon from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47558 (September 16, 2009) ("*Second Rescission*"). Following the two partial rescissions, nineteen companies remained subject to this review.[2] On September 11, 2009, Ningxia Lingzhou Foreign Trade Co., Ltd. ("Lingzhou") submitted a letter certifying it had no shipments during the period of review ("POR").[3]

On March 4, 2010, nine months after the publication of the *Initiation Notice,* United Manufacturing International (Beijing) Ltd. ("UMI") requested permission to file a late separate rate certification, because UMI asserted that it was not properly served notice of this review at the time that the request was made by Petitioners. The Department fully considered UMI's request in light of UMI not being properly served with Petitioners' request. However, it is the Department's practice that the *Initiation Notice* constitutes public notice to all potential separate rate applicants of the initiation of an investigation or review and the deadline for providing separate rate information. Based upon this practice, the Department concludes that because UMI did not file a separate rate certification in a timely manner or request an extension within the time period for filing a separate rate certification, we are not now granting additional time for UMI to file a separate rate certification in this review.[4]

On November 24, 2009, the Department published a notice extending the time period for issuing the preliminary results by 120 days to April 30, 2009. *See Certain Activated Carbon from the People's Republic of China: Extension of Time Limits for Preliminary Results of the Antidumping Duty Administrative Review,* 74 FR 61330 (November 24, 2009). Additionally, as explained in the memorandum from the Deputy 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 February 5, through February 12, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. Pursuant to that memorandum, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now May 7, 2010.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise.[5] However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in the review.

On May 29, 2009, the Department released CBP data for entries of the subject merchandise during the period of review ("POR") under administrative protective order ("APO") to all interested parties having access to materials released under APO inviting comments regarding the CBP data and respondent selection. On June 4, 2009,

[1] Norit Americas Inc. and Calgon Carbon Corporation.

[2] *These companies are:* Datong Municipal Yunguang Activated Carbon Co., Ltd.; Datong Yunguang Chemicals Plant; Datong Juqiang Activated Carbon Co., Ltd.; Cherishment Inc.; Hebei Foreign Trade Advertisement Company; Ningxia Huahui Activated Carbon Co., Ltd.; Ningxia Lingzhou Foreign Trade Co., Ltd.; Ningxia Mineral & Chemical Limited.; Tangshan Solid Carbon Co., Ltd.; Jilin Bright Future Chemicals Company, Ltd.; Jacobi Carbons AB; Tianjin Jacobi International Trading Co., Ltd.; Ningxia Guanghua Cherishment Activated Carbon Co., Ltd.; Beijing Pacific Activated Carbon Products Co., Ltd.; Shanxi Qixian Foreign Trade Corporation; Shanxi Newtime Co., Ltd.; Shanxi DMD Corporation; Shanxi Industry Technology Trading Co., Ltd.; and United Manufacturing International (Beijing) Ltd.

[3] Companies have the opportunity to submit statements certifying that they did not ship the subject merchandise to the United States during the POR.

[4] *See* Letter from the Department to United Manufacturing International (Beijing) Ltd. dated April 5, 2010.

[5] *See also* 19 CFR 351.204(c) regarding respondent selection, in general.

the Department extended the deadline for comments regarding the CBP data.[6] The Department received comments and rebuttal comments between June 15, 2009 and July 21, 2009.

On August 10, 2009, the Department issued its respondent selection memorandum after assessing its resources, considering the number of individual producers and/or exporters of activated carbon for which a review had been requested, and determining that it could reasonably examine two exporters subject to this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Jacobi Carbons AB ("Jacobi") and Calgon Carbon (Tianjin) Co. Ltd. ("CCT") as mandatory respondents.[7] The Department sent its antidumping questionnaire to CCT and Jacobi on August 10, 2009. On August 19, 2009, CCT withdrew its request for review, and on August 21, 2009, Petitioners withdrew their request for review of CCT. Since both withdrawal requests were timely, and no other party requested a review of CCT, in accordance with section 351.213(d)(1) of the Department's regulations, the Department rescinded the administrative review with respect to CCT. *See Second Rescission.* Consequently, on September 18, 2009, in accordance with section 777A(c)(2) of the Act and because the Department determined it could review two mandatory respondents, the Department selected Ningxia Huahui Activated Carbon Co., Ltd. ("Huahui") for individual examination in this review because Huahui was the next largest exporter by volume during the POR, based on CBP data of U.S. imports.[8]

Treatment of Shanxi DMD Corporation ("Shanxi DMD")

On June 19, 2009, in comments regarding the CBP data placed on the record for respondent selection, Shanxi DMD argued that the CBP data used in respondent selection overstated the total volume of its POR entries of subject merchandise. Additionally, Shanxi DMD claimed that it had sales of non-subject merchandise during the POR which fell under the same Harmonized Tariff Schedule subheading as the subject merchandise. On July 13, 2009, the Department issued a supplemental questionnaire to Shanxi DMD requesting that Shanxi DMD provide sales and shipment data for the POR and for a period of two months preceding the POR to estimate entries made during the POR.[9] On July 20, 2009, the Department received a response from Shanxi DMD containing sales and shipment data for the POR and the two months preceding the POR. Based upon Shanxi DMD's response to our questionnaire, the Department selected Jacobi and Huahui as mandatory respondents in this administrative review. The Department requested from CBP entry documentation for all entries made by Shanxi DMD and on December 1, 2009, placed that entry documentation on the record and requested comments from interested parties.[10] The POR entry data the Department received from CBP differed from the data provided by Shanxi DMD. Parties submitted comments and rebuttal comments on the CBP entry documentation between December 11, 2009 and December 28, 2009.

Shanxi DMD explains that it provided POR quantity and value data by purchase order and invoice date because these dates are normally used to establish the legal date of sale, and that date of sale is used to determine the sales universe for any respondent in any investigation or review. Additionally, Shanxi DMD contends that its invoice date is the correct date of sale and that Shanxi DMD provided to the Department a table with shipment dates and invoice dates of invoices dating backwards 60 days prior to the POR. Shanxi DMD contends that there is nothing in the December 1, 2009 CBP release that contradicts the earlier data submissions of Shanxi DMD.

Petitioners argue the Department should apply total adverse facts available ("AFA") to Shanxi DMD because CBP entry documentation demonstrates that Shanxi DMD underreported its total POR entry volume, and Petitioners contend that Shanxi DMD was attempting to manipulate the respondent selection process. Petitioners argue that the Department's selection of mandatory respondents is dependent on the volume of subject merchandise sold by the respondents that entered the United States during the POR. Instead, Petitioners argue, Shanxi DMD limited its reporting to only sales that were invoiced during the POR in order to avoid selection as a mandatory respondent. Therefore, Petitioners conclude that the Department should apply the PRC-wide rate to Shanxi DMD as AFA because Shanxi DMD did not address certain entry documents that indicate that it underreported its POR exports to the United States.

In the Respondent Selection Memo, the Department determined to use Shanxi DMD's submitted sales and shipment data, based on the data available at the time, because the Department determined the data to be a more accurate approximation of Shanxi DMD's entries during the POR.[11] After receiving CBP entry documentation, it became clear that Shanxi DMD's claims about the inaccuracy of CBP data at the time of respondent selection were unfounded. However, Shanxi DMD did provide the Department with all the information requested and in a timely manner. Therefore, because Shanxi DMD cooperated with the Department in providing all the requested information, application of total AFA would be inappropriate and contrary to the Act. Accordingly, we are not applying the PRC-wide rate to Shanxi DMD as total adverse facts available.

Per-Unit Assessment

On December 22, 2009, Petitioners requested the Department calculate specific, per-kilogram cash deposit and importer-specific assessment rates for all respondents in this review, because Petitioners allege parties are selling the subject merchandise (or importing it) at prices significantly below prevailing market prices to evade assessment of antidumping duties. *See* Petitioners' Request for Establishment of Specific Rates, dated December 22, 2009 at 2. Petitioners state that because the Department calculates antidumping duty margins on a U.S. price that is different from the entered value, this results in an under collection of duties if the importer reports an improperly low entered value. Petitioners argue that per-unit assessment rates do not

[6] *See* letter to All Interested Parties from Catherine Bertrand, Program Manager, Office IX, dated June 4, 2009.

[7] *See* Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Katie Marksberry, International Trade Compliance Analyst, Office 9; Antidumping Duty Administrative Review of Certain Activated Carbon From the PRC: Selection of Respondents for Individual Review, dated August 10, 2009 ("Respondent Selection Memo").

[8] *See* Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, through Catherine Bertrand, Program Manager, Office 9, from Katie Marksberry, International Trade Compliance Analyst, Office 9; Administrative Review of Certain Activated Carbon From the PRC: Selection of Additional Mandatory Respondent, dated September 18, 2009 ("Additional Respondent Selection Memo").

[9] *See* Letter from the Department to Shanxi DMD Corporation, regarding Second Administrative Review of Certain Activated Carbon From the People's Republic of China: Respondent Selection Comments (July 13, 2009); *see also* Letter From the Department to Jacobi, regarding Second Administrative Review of Certain Activated Carbon From the People's Republic of China: Respondent Selection Comments (July 13, 2009).

[10] *See* Memorandum to the File, from Katie Marksberry, Case Analyst Office IX, re: Shanxi DMD U.S. Customs and Border Protection ("CBP") Entry Documentation, dated December 1, 2009.

[11] *See* Respondent Selection Memo at 8–9.

prejudice respondents in anyway and that the per-unit assessment rate prevents the potential for abuse. Petitioners used the Global Trade Information Services, Inc. ("World Trade Atlas" or "WTA") average unit value ("AUV") of U.S. imports of activated carbon from the PRC to determine if the per-unit price of sales made by respondents indicates that those respondents are undervaluing their shipments to lower the antidumping duty deposits at the U.S. port of entry.[12]

The Department has analyzed the information on the record of this review submitted by Jacobi, the only respondent who submitted the entered value of its U.S. sales. Based on this analysis, the Department has not found that there is a substantial difference between the average U.S. sales price for activated carbon and the average entered value reported to CBP for Jacobi. *See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review,* 70 FR 38873 (July 6, 2005) ("*Honey 2005*") and accompanying Issues and Decisions Memorandum at Comment 7. Normally, the difference between entered value and the U.S. prices is relatively small, as in this case. *See id.* With regard Huahui, who did not report entered value because its sales were made on an EP basis, the Department finds that a comparison of its gross unit price and the WTA data [13] for U.S. imports of activated carbon from the PRC, which Petitioners provided, is not appropriate. This is because that HTS category is a basket category that includes non-subject merchandise and Petitioners could not provide evidence that the non-subject merchandise was removed. Therefore, a comparison would not be on an apples-to-apples basis.

Therefore, because there is insufficient evidence on the record to warrant a change to a per-unit importer-specific assessment and cash deposit rate, the Department preliminarily determines that it will continue to calculate *ad valorem* cash deposit and importer-specific assessment rates as in the past review.

Questionnaires

On August 10, 2009, the Department issued its initial non-market economy ("NME") antidumping duty questionnaire to the mandatory respondent Jacobi. On September 21, 2009, the Department issued its initial NME antidumping duty questionnaire to the mandatory respondent Huahui. Huahui and Jacobi timely responded to the Department's initial and subsequent supplemental questionnaires between September 2009 and April 2010.

Period of Review

The POR is April 1, 2008, through March 31, 2009.

Scope of the Order

The merchandise subject to this 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_2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of this order covers all forms of activated carbon that are activated by steam or CO_2, 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 this 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_2 gas) activated carbons are within this scope, and those containing more than 50 percent chemically activated carbons are outside this 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 this 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 this order is dispositive.

Preliminary Partial Rescission

As discussed in the "Background" section above, Lingzhou filed a no shipment certification indicating that it did not export subject merchandise to the United States during the POR. In order to examine this claim, we reviewed the CBP data used for respondent selection and found no discrepancies with the statement made by Lingzhou. Additionally, we sent an inquiry to CBP asking if any CBP office had any information contrary to the no shipments claim, and to alert the Department within ten days of receiving our inquiry. CBP received our inquiry on September 30, 2009. We have not received a response from CBP with regard to our inquiry which indicates that CBP did not have information that was contrary to the claim of Lingzhou. Therefore, because the record indicates that Lingzhou did not export subject merchandise to the United States during the POR, we are preliminarily rescinding this administrative review with respect to this company. *See, e.g., Certain Frozen Fish Fillets From the*

[12] *See* Petitioners' Request for Establishment of Specific Rates, dated December 22, 2009 at Attachment I.

[13] Published by Global Trade Information Services, Inc.

Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 72 FR 53527, 53530 (September 19, 2007), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479, 15480 (March 24, 2008) ("*Third Fish Fillets Review*").

Non-Market Economy ("NME") Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, the Department continues to treat the PRC as an NME and calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV, pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(1), the Department determines NV on the basis of the factors of production ("FOP") utilized in producing the merchandise. Section 773(c)(4) of the Act directs the Department to value an NME producer's FOPs, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. Pursuant to this statutory directive, the Department determined that India, Indonesia, Philippines, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development.[14]

On September 30, 2009, the Department sent interested parties a letter inviting comments on surrogate country selection and information regarding valuing factors of production.[15] On February 24, 2010, the Department received information to value FOPs from Huahui, Jacobi, and Petitioners. On March 8, 2010, Huahui and Petitioners filed rebuttal surrogate value comments. All the surrogate values placed on the record were obtained from sources in India. No parties provided comments with respect to selection of a surrogate country.

Based on publicly available information placed on the record (*e.g.,* production data), the Department determines India to be a reliable source for surrogate values because India is at a comparable level of economic development to the PRC pursuant to section 773(c)(4) of the Act, is a significant producer of subject merchandise, and has publicly available and reliable data for which to value the respondents' FOPs. Accordingly, the Department has selected India as the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate country selection.

Duty Absorption

On June 29, 2009, Petitioners requested that the Department determine whether antidumping duties had been absorbed for U.S. sales of certain activated carbon made during the POR by the respondents selected for review. If a duty absorption inquiry is requested, section 751(a)(4) of the Act directs the Department to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because the antidumping duty order underlying this review was issued in 2007, and this review was initiated in 2009, the request for the Department to conduct a duty absorption inquiry is timely requested. Therefore, we are conducting a duty absorption inquiry for this segment of the proceeding pursuant to the Petitioners request.

Petitioners requested that the Department investigate whether Jacobi Carbons AB, Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., a separate rate company in this review, and any other separate rate company with affiliated U.S. importers had absorbed duties. As discussed above and pursuant to section 777A(c)(2)(B), because of the large number of companies subject to this review, the Department selected two companies as mandatory respondents and thus only issued its complete questionnaire to these two companies. In determining whether antidumping duties have been absorbed, the Department requires certain specific data (*i.e.,* U.S. sales data) to ascertain whether those sales have been made at less than NV. Since U.S. sales data are only obtained from the complete questionnaire (*i.e.,* only mandatory respondents submit U.S. sales data), and no other companies were required to provide U.S. sales data, we do not have the information necessary to assess whether any other companies absorbed duties. Accordingly, for those companies not selected as mandatory respondents, we cannot make duty absorption determinations with respect to those companies. Therefore, between Jacobi and Huahui, Jacobi is the only mandatory respondent with an affiliated importer in the United States, as required by section 751(a)(4) of the Act.

In determining whether the respondent has absorbed antidumping duties, we make a rebuttable presumption that the duties will be absorbed for constructed export price ("CEP") sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.,* an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. *See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 70 FR 39735, 39737 (July 11, 2005); unchanged in *Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan,* 70 FR 73727 (December 13, 2005).

On January 28, 2010, the Department sent Jacobi a letter requesting Jacobi to provide evidence to demonstrate that its unaffiliated purchasers will ultimately pay any antidumping duties assessed on entries during the POR. Jacobi did not provide any such evidence as it did not submit a response to our request. Because Jacobi did not rebut the duty absorption presumption with evidence that the unaffiliated U.S. purchaser will pay the full duty ultimately assessed on the subject merchandise, we preliminarily find that Jacobi has absorbed antidumping duties on all U.S.

[14] *See* the Department's Letter to All Interested Parties; Second Administrative Review of Certain Activated Carbon from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments, dated September 30, 2009, at Attachment I ("*Surrogate Country List*").

[15] *See* the Department's Letter to All Interested Parties; Second Administrative Review of Certain Activated Carbon from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments, dated September 30, 2009.

sales made through its affiliated importer of record.

Facts Available

Sections 776(a)(1) and 776(a)(2) of the Act provide that, if necessary information is not available on the record, or if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department; and (5) the information can be used without undue difficulties.

However, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act,* H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (*SAA*), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *Id.* An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

Jacobi's Excluded Producers

On August 24, 2009, Jacobi requested to be excused from reporting FOP data for certain Chinese producers. On September 2, 2009, Jacobi provided detailed information regarding its producers and production quantities. On September 17, 2009, the Department notified Jacobi that due to the large number of producers that supplied Jacobi during the POR, Jacobi would be excused from reporting certain FOP data. *See* the Department's Letter to Jacobi dated September 17, 2009. Specifically, the Department did not require Jacobi to report FOP data for its five smallest producers. Additionally, the Department notified Jacobi that it was not required to report FOP data for products that were purchased and not produced by Jacobi's suppliers, as indicated in Jacobi's August 24, 2009 letter. Thus, the Department determined that upon Jacobi's acceptance of the exclusion terms, the Department would determine the appropriate facts available to apply, in lieu of the actual FOP data, to the corresponding U.S. sales of subject merchandise.

In accordance with section 776(a)(1) of the Act, the Department is applying facts available to determine the NV for the sales corresponding to the FOP data that Jacobi was excused from reporting. Due to the proprietary nature of the factual information concerning these producers, these issues are addressed in a separate business proprietary memorandum where a detailed explanation of the facts available calculation is provided. *See* Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Katie Marksberry, Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for Jacobi Carbons AB in the Antidumping Duty Administrative Review of Certain Activated Carbon From the People's Republic of China, dated May 7, 2010 ("Jacobi Prelim Analysis Memo").

Assignment of Jacobi Carbons AB's Antidumping Duty Rate

We note that in the less-than-fair-value investigation of this antidumping duty order, we stated that "where Jacobi Tianjin acted as an export facilitator for Jacobi AB, those exports are also eligible for Jacobi AB's antidumping duty cash deposit rate."[16] In this review Jacobi stated that only Jacobi Carbons AB made exports of subject merchandise to the United States during the POR.[17] Additionally, Jacobi stated that during the POR, both Tianjin Jacobi International Trading Co. Ltd. ("Tianjin Jacobi") and Jacobi Carbons Industry (Tianjin) ("JCC") "acted to facilitate exports to the United States."[18] In its April 30, 2010, supplemental questionnaire response, Jacobi submitted a selling functions chart which indicates that Tianjin Jacobi and JCC perform the same functions. Therefore, for these preliminary results, we find that JCC and Tianjin Jacobi both act as export facilitators for Jacobi Carbons AB. Additionally, we find it appropriate for Jacobi Carbons AB, Tianjin Jacobi and JCC to receive the antidumping duty rate assigned to Jacobi Carbons AB.

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(c)(i) of the Act. In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus

[16] *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Activated Carbon From the People's Republic of China,* 71 FR 59721 (October 11, 2006); unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China,* 72 FR 9508 (March 2, 2007).

[17] *See* Jacobi's Response to the Department's Supplemental A and C Questionnaire, dated December 14, 2009 at 2.

[18] *See* Jacobi's Response to the Department's Supplemental Questionnaire Regarding Jacobi's Antidumping Duty Rate, dated April 20, 2010, at 1.

should be assessed a single antidumping duty rate. *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, 53080 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews. *See Initiation Notice.* It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can affirmatively demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *Id.* Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

Excluding the companies selected for individual review, the Department received separate rate applications or certifications from the following companies: Beijing Pacific Activated Carbon Products Co., Ltd.; Datong Juqiang Activated Carbon Co., Ltd.; Datong Municipal Yunguang Activated Carbon Co., Ltd.; Jilin Bright Future Chemicals Company, Ltd.; Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.; Ningxia Mineral & Chemical Limited; Shanxi DMD Corporation; Shanxi Industry Technology Trading Co., Ltd.; Shanxi Qixian Foreign Trade Corporation; and Tangshan Solid Carbon Co., Ltd.

Additionally, the Department received completed responses to the Section A portion of the NME questionnaire from Huahui and Jacobi, which contained information pertaining to the companies' eligibility for a separate rate. However, Datong Yunguang Chemicals Plant, Hebei Foreign Trade and Advertising Corporation, Shanxi Newtime Co., Ltd., and United Manufacturing International (Beijing) Ltd., companies upon which the Department initiated administrative reviews that have not been rescinded, did not submit either a separate-rate application or certification in a timely manner.[19] Therefore, because Datong Yunguang Chemicals Plant, Hebei Foreign Trade and Advertising Corporation, Shanxi Newtime Co., Ltd., and United Manufacturing International (Beijing) Ltd. did not demonstrate their eligibility for separate rate status in a timely manner, we have determined it is appropriate to consider these companies as part of the PRC-wide entity.

Separate Rate Recipients

1. Wholly Foreign-Owned

Jacobi reported that it is wholly owned by a company located in a market-economy country, Sweden. *See* Jacobi's Section A Questionnaire Response dated September 10, 2008, at page 3. Therefore, there is no PRC ownership of Jacobi, and because the Department has no evidence indicating that Jacobi is under the control of the PRC, a separate rates analysis is not necessary to determine whether it is independent from government control.[20] Additionally, one of the exporters under review not selected for individual review, Tangshan Solid Carbon Co., Ltd., reported in its separate-rate certification that it is 100 percent foreign owned. *See* Tangshan Solid Carbon Co. Ltd.'s Separate Rate Certification dated June 29, 2010, at 4. Accordingly, the Department has preliminarily granted separate rate status to Jacobi and Tangshan Solid Carbon Co. Ltd.

2. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Huahui[21] and nine[22] of the separate rate applicants in this administrative review stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies. In accordance with its practice, the Department has analyzed whether the separate-rate applicants have demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589. The evidence provided by Huahui and nine separate rate applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. *See, e.g.,* Huahui's Section A Questionnaire Response dated October 21, 2009, at pages 2–6; Beijing Pacific Activated Carbon Products Co., Ltd.'s Separate Rate Certification dated June 29, 2009, at 5; Shanxi Industry Technology Trading Co., Ltd.'s Separate Rate Certification dated June 25, 2009, at 5–6.

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto*

[19] For a full discussion of United Manufacturing International (Beijing) Ltd.'s separate rate status, see *supra* at p 2–3.

[20] *See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review,* 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review,* 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104 (December 20, 1999).

[21] *See* Huahui's Section A Questionnaire Response dated October 21, 2009, at pages 2–6.

[22] These companies are: Beijing Pacific Activated Carbon Products Co., Ltd.; Datong Juqiang Activated Carbon Co., Ltd.; Datong Municipal Yunguang Activated Carbon Co., Ltd.; Jilin Bright Future Chemicals Company, Ltd.; Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.; Ningxia Mineral & Chemical Limited; Shanxi DMD Corporation; Shanxi Industry Technology Trading Co., Ltd.; and Shanxi Qixian Foreign Trade Corporation.

government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Huahui and nine separate rate applicants supports a preliminary finding of *de facto* absence of government control based on the following: (1) The companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue. *See, e.g.,* Huahui's Section A Questionnaire Response dated October 21, 2009, at pages 2–6; and Datong Municipal Yunguang Activated Carbon Co., Ltd. dated July 23, 2009, at 7. Therefore, the Department preliminarily finds that Huahui and nine separate-rate applicants have established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

Separate Rate Calculation

As stated previously, this review covers nineteen companies. Of those, the Department selected two exporters, Huahui and Jacobi (including affiliates), as mandatory respondents in this review. As stated above, four companies, Datong Yunguang Chemicals Plant, Hebei Foreign Trade and Advertising Corporation, Shanxi Newtime Co., Ltd., and United Manufacturing International (Beijing) Ltd. are part of the PRC–Wide entity, and thus, are not entitled to a separate rate. Additionally, we are preliminarily rescinding the review with respect to Ningxia Lingzhou Foreign Trade Co., Ltd. because we determined that it had no shipments of subject merchandise to the United States during the POR. The remaining nine companies submitted timely information as requested by the Department and remain subject to this review as cooperative separate rate respondents.

For the exporters subject to this review that were determined to be eligible for separate rate status, but were not selected as mandatory respondents, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, *de minimis,* or based entirely on FA.[23] Consequently, because the Department has calculated positive margins for both mandatory respondents, Huahui and Jacobi, in these preliminary results, and consistent with our practice, we have preliminarily established a margin for the separate rate respondents based on a simple average of the rates we calculated for the two mandatory respondents. Because there are only two respondents for which a company-specific margin was calculated in this review, the Department has calculated a simple average margin to ensure that the total import quantity and value for each company is not inadvertently revealed.[24] The rate established for the separate rate respondents is 27.28 percent. Entities receiving this rate are identified by name in the "Preliminary Results of Review" section of this notice.

Date of Sale

Huahui and Jacobi reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date. In accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale,[25] the Department preliminarily determines that the invoice date is the most appropriate date to use as Huahui's and Jacobi's date of sale.

Fair Value Comparisons

To determine whether sales of certain activated carbon to the United States by Huahui and Jacobi were made at less than fair value, the Department compared either export price ("EP") or constructed export price ("CEP") to NV, as described in the "U.S. Price," and "Normal Value" sections below.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated the EP for Huahui's sales to the United State because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, the Department deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, the Department based the deduction of these movement charges on surrogate values. Additionally, for international freight provided by a market economy provider and paid in U.S. dollars, the Department used the actual cost per kilogram of the freight. *See* Memorandum to the File through Catherine Bertrand, Program Manager, Office IX, from Bob Palmer, Analyst, re; Second Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results dated May 7, 2010 ("Prelim Surrogate Value Memo") for details regarding the surrogate values for movement expenses.

Constructed Export Price

For all of Jacobi's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Chinese-based companies by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the

[23] *See, e.g.,* Wooden *Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273, 8279 (February 13, 2008) (unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008)).

[24] *See* Memorandum to the File, Re: Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Preliminary Results Simple-Average Margin for Separate Rate Respondents, dated May 7, 2010.

[25] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. For those expenses that were provided by a market economy provider and paid for in a market economy currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, *see* the company specific analysis memorandums, dated May 7, 2010.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

FOP Reporting Exclusions

As stated above, the Department granted exclusions for certain nominal producers to be excused from providing FOP data for Jacobi. As the corresponding U.S. sales of the subject merchandise supplied by the excused producers were reported in the U.S. sales listing, the Department has applied the calculated average normal value of the subject merchandise produced by Jacobi, as facts available, to those sales observations associated with the excluded producers. *See* Jacobi Prelim Analysis Memo.

Factor Valuations

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a market economy country and pays for it in a market economy currency, the Department may value the factor using the actual price paid for the input.[26] During the POR, Jacobi reported that it purchased certain inputs from a market economy supplier and paid for the inputs in a market economy currency. *See* Jacobi's Section D Questionnaire Response dated October 15, 2009, at 5 and Exhibit 2. The Department has a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–18 (October 19, 2006) ("*Antidumping Methodologies*"). In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the market economy purchase price with an appropriate surrogate value ("SV") according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. *See Antidumping Methodologies.* When a firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide,* or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33-percent threshold. *See Antidumping Methodologies.*

The Department used the Indian Import Statistics to value the raw material and packing material inputs that Huahui and Jacobi used to produce the subject merchandise under review during the POR, except where listed below.[27] With regard to both the Indian import-based surrogate values and the market economy input values, the Department has disregarded prices that the Department has reason to believe or suspect may be subsidized. The Department has reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. The Department has found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[28] The Department is also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30763 n.6 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008). Therefore, the Department has not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, the Department

[26] *See Lasko Metal Products* v. *United States,* 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs).

[27] Indian import data in the World Trade Atlas began identifying the original reporting currency for India as the U.S. Dollar. *See* Memorandum to the File, through Bob Palmer, Case Analyst, Office IX, re: Memorandum to the File from Edward Yang, Senior Executive Coordinator, AD/CVD Operations, China/NME Unit from Jennifer Moats, Senior Special Assistant, AD/CVD Operations, China/NME Unit, regarding Indian Import Statistics Currency Denomination in the World Trade Atlas, dated May 7, 2010.

[28] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 54007, 54011 (September 13, 2005), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review,* 71 FR 14170 (March 21, 2006); *China National Machinery Import & Export Corporation v. United States,* 293 F. Supp. 2d 1334 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004).

disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, as the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *See id.*

In accordance with section 773(c) of the Act, for subject merchandise produced by Huahui and Jacobi, the Department calculated NV based on the FOPs reported by Huahui and Jacobi for the POR. The Department used data from the Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for Huahui and Jacobi FOPs (direct materials, energy, and packing materials) and certain movement expenses. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as noted below). The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties. *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

As appropriate, the Department adjusted input prices by including freight costs to render the prices delivered prices. Specifically, the Department added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for Huahui and Jacobi, *see* Prelim Surrogate Value Memo.

In those instances where the Department could not obtain publicly available information contemporaneous to the POR with which to value factors, the Department adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the International Financial Statistics of the International Monetary Fund, a printout of which is attached to the Prelim Surrogate Value Memo at Exhibit 2. Where necessary, the Department adjusted surrogate values for inflation, exchange rates, and taxes, and the Department converted all applicable items to a per-kilogram or per-metric ton basis.

For bituminous coal used as a feedstock in the production of the subject merchandise, the Department used Indian import prices for coking coal, because certain respondents reported using low-ash content bituminous coal as a feedstock in the production of the subject merchandise and Coal India Limited ("CIL") data does not provide price data for low-ash content bituminous coal. *See* Prelim Surrogate Value Memo. The Department used CIL data to value steam coal and bituminous coal used as an energy source, where the manufacturers provided Useful Heat Values ("UHV") of their bituminous energy coal and steam coal. However, where manufactures of the subject merchandise indicate they do not track UHV and were unable to report this information, the Department used the Indian import prices for steam coal. The Department finds that CIL data has specific grades of non-coking energy coal, measured in UHV, which correspond to the types of steam and bituminous coal used by the respondents as energy coals, therefore, CIL is more specific to the reported input. The Department used CIL's prices dated from December 12, 2007, effective throughout the POR. For further details regarding the Department's use of CIL data, *see* Prelim Surrogate Value Memo.

The Department notes that Petitioners have argued that Jacobi's unaffiliated suppliers should report the transport bags that are used to transport subject merchandise from the affiliates to Jacobi Tianjin for further packing prior to being exported to the United States.[29] Jacobi argues that its bags are reused and therefore should be considered an overhead expense and not included as a packing input.[30] In past cases we have determined that certain consumables that were regularly replaced and required in the production process should be considered FOPs, even if they are considered to be an overhead expense in the company's normal course of business.[31] Therefore, because Jacobi regularly replaces these bags and they are necessary to Jacobi's production process, we have determined that the transport bags used by Jacobi's affiliates should be included as packing FOPs based on the reported useful life of the bags. Accordingly, we are including Jacobi's transport bags as an FOP for the preliminary results of review.[32]

The Department valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India ("CEA") in its publication titled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided. *See* Prelim Surrogate Value Memo.

Because water is essential to the production process of the subject merchandise, the Department is considering water to be a direct material input, and not as overhead, and valued water with a surrogate value according to our practice. *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003) and accompanying Issue and Decision Memorandum at Comment 11. The Department valued water using data from the Maharashtra Industrial Development Corporation (*www.midcindia.org*) as it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from April 2009 through June 2009, of which 193 for the "inside industrial areas" usage category and 193 for the "outside industrial areas" usage category. Because the value was not contemporaneous with the POR, we deflated the surrogate value. *See* Prelim Surrogate Value Memo.

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor, using the most recently calculated regression-based wage rate, which relies

[29] *See* Letter from Kelley Drye to the Department, regarding Second Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China: Petitioner's Comments on Supplemental Questionnaire Responses of Jacobi Carbons AB, dated January 11, 2010.

[30] *See* Jacobi's Supplemental Section D Questionnaire Response for Jacobi Tianjin, dated March 29, 2010.

[31] *See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587, August 14, 2008; and accompanying Issues and Decision Memorandum at Comment 2.

[32] *See* Memorandum to the File, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office IX, from Katie Marksberry, Case Analyst, AD/CVD Operations, Office IX: Preliminary Results Analysis Memorandum for Jacobi Carbons AB in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China ("Jacobi's Prelim Analysis Memo"), dated May 7, 2010.

on 2007 data. This wage rate can currently be found on the Department's Web site on Import Administration's home page, Reference Material, Expected Wages of Selected NME Countries, revised in December 2009, *http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html.* The source of these wage-rate data on the Import Administration's Web site is the 2006 and 2007 data in Chapter 5B of the International Labour Statistics. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by the respondents. *See* Prelim Surrogate Value Memo.

The Department calculated the surrogate value for purchased steam based upon the April 2008–March 2009 financial statement of Hindalco Industries Limited ("Hindalco"). *See* Jacobi's Surrogate Value Comments: Certain Activated Carbon form China, dated February 24, 2010 at Exhibit SV–7. For a detailed explanation of our reasons for using Hindalco's financial statements as the source of the surrogate value for purchased steam, *see* Prelim Surrogate Value Memo.

The Department valued truck freight expenses using a per-unit average rate calculated from data on the Infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities. *See* Prelim Surrogate Value Memo at Attachment 8.

To value brokerage and handling, the Department calculated a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases.[33] Specifically, the Department averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. The Department inflated the brokerage and handling rate using the appropriate WPI inflator. *See* Prelim Surrogate Value Memo.

To value factory overhead, selling, general, and administrative ("SG&A") expenses, and profit, the Department used the average of the audited financial statements of two Indian activated carbon producing companies; those being, Kalpalka Chemicals Ltd. for FY 2006–2007 ("Kalpalka") and Quantum Active Carbon Pvt. Ltd. ("Quantum") for 2007–2008.[34]

Petitioners submitted the 2007–2008 financial statements of Core Carbons Private Limited ("Core Carbons") and Jacobi submitted the 2008–2009 financial statements of Indo-German Carbon Ltd. ("Indo-German") for the Department's use in calculating surrogate financial ratios. We have determined not to rely on the 2007–2008 financial statements of Core Carbons and the 2008–2009 financial statements Indo-German because both sets of financial statements indicate that they received a "packing credit" *i.e.*, Pre-Shipment and Post-Shipment Export Financing. Core Carbons' financial statements indicate they received "working capital from SBI, Cbe Packing Credit" under Schedule C.[35] Indo-German's financial statements indicate they received "Packing Credit/Letter of Credit/Cash Credit-State Bank of India."[36] India's packing credit, Pre-Shipment and Post-Shipment Export Financing has been found by the Department as a countervailable subsidy.[37] Consistent with the Department's practice, we prefer not to use financial statements of a company we have reason to believe or suspect may have received subsidies, because financial ratios derived from that company's financial statements may not constitute the best available information with which to value financial ratios. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative Review and New Shipper Reviews,* 72 FR 19174 (April 17, 2007) and accompanying Issues and Decisions Memorandum at Comment 1. Therefore, pursuant to 19 CFR 351.408(c), the Department preliminarily determines that the 2007–2008 financial statements of Quantum and the 2006–2007 financial statements of Kalpalka provide the best available information with which to calculate surrogate financial ratios, because they are complete and publicly available. Additionally, both of these companies produce comparable merchandise and use an integrated carbonization production process which closely mirrors that of both respondents. While the Department recognizes Quantum and Kalpalka's financial statements both pre-date the POR, we prefer to use more than one financial statement where possible to replicate the experience of producers of certain activated carbon in the surrogate country. *See Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007) and accompanying Issues and Decisions Memorandum at Comment 1. Moreover, we find that neither company's financial statements pre-date the POR so significantly as not to be useful. *See Hebei Metals v. United States*, 366 F. Supp. 2d 1264, 1275 (Ct. Int'l Trade 2005). Therefore, the Department has used these financial statements to value factory overhead, SG&A, and profit, for these preliminary results.

Currency Conversion

Where appropriate, the Department made currency conversions into 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.

[33] *See* Letter from Troutman Sander, Certain Activated Carbon form the People's Republic of China: Second Administrative Review; Submission of Publicly Available Information to Value Factors of Production, dated February 24, 2010 at Exhibit 15; *see also Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 17149 (April 14, 2009); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Review*, 73 FR 31961 (June 5, 2008); and *Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 72 FR 5268 (February 5, 2007).

[34] The FY 07–08 financial statements for Quantum were submitted by Huahui on February 24, 2010 and the FY 06–07 financial statements for Kalpalka Chemicals Ltd. were placed on the record by the Department. *See Prelim Surrogate Value Memo.*

[35] *See* Annual Report Core Carbons Private Limited 2007–2008, at 17 contained in Petitioners' February 24, 2010 Surrogate Value comments at Exhibit 49.

[36] *See* Annual Report of Indo-German 2008–2009 contained in Petitioners' March 8, 2010 Surrogate Value Rebuttal comments at Exhibit 7.

[37] *See Commodity Matchbooks from India: Final Affirmative Countervailing Duty Determination,* 74 FR 54547 (October 22, 2009) and accompanying Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Commodity Matchbooks from India at IV.A.3; *see also*, *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010) and accompanying Issues and Decision Memorandum at III.A.1.

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Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

CERTAIN ACTIVATED CARBON FROM THE PEOPLE'S REPUBLIC OF CHINA

Manufacturer/exporter	Weighted average margin (percent)
Jacobi Carbons AB [38]	3.23
Ningxia Huahui Activated Carbon Co., Ltd	51.33
Datong Juqiang Activated Carbon Co., Ltd	27.28
Datong Municipal Yunguang Activated Carbon Co., Ltd	27.28
Jilin Bright Future Chemicals Company, Ltd	27.28
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd [39]	27.28
Ningxia Mineral & Chemical Limited	27.28
Shanxi DMD Corporation	27.28
Shanxi Industry Technology Trading Co., Ltd	27.28
Shanxi Qixian Foreign Trade Corporation	27.28
Tangshan Solid Carbon Co., Ltd	27.28
PRC-Wide Rate [40]	228.11

[38] The Department is assigning this rate to Jacobi Carbons AB and Tianjin Jacobi International Trading Co. Ltd.

[39] In the previous administrative review, the Department found Beijing Pacific Activated Carbon Products Co., Ltd., Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., and their U.S. affiliate, Cherishmet Inc. as a single entity and because there were no changes from the previous review, we will assign this rate to the companies in the single entity. *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 21319, (May 7, 2009), unchanged in *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).

[40] The PRC-Wide entity includes Datong Yunguang Chemicals Plant, Hebei Foreign Trade and Advertising Corporation, Shanxi Newtime Co., Ltd., and United Manufacturing International (Beijing) Ltd.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments may be filed no later than five days after the deadline for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c) and (d).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1117, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review excluding any reported sales that entered during the gap period. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific ad valorem rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem ratios based on the estimated entered value. Where an importer (or customer)-specific ad valorem rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, we will calculate an assessment rate based on the simple

average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act.

For those companies for which this review has been preliminarily rescinded, the Department intends to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2), if the review is rescinded for these companies. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 228.11 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: May 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Vacancies on the U.S. Section of the U.S.-Iraq Business Dialogue

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The U.S. Secretary of Commerce and the Iraq Minister of Trade established the U.S.-Iraq Business Dialogue (Business Dialogue or Dialogue) in July 2006. This notice announces ten open membership opportunities for representatives of American industry to join the U.S. section of the Dialogue.

DATES: Applications must be received no later than May 31, 2010; 5 p.m. EST.

ADDRESSES: Please send requests for consideration to Valerie Dees, Acting Director, Iraq Investment and Reconstruction Task Force, U.S. Department of Commerce, either by fax on 202–482–0980 or by mail to U.S. Department of Commerce, 14th and Constitution Avenue, NW., Mail Stop 3868, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Kevin M. Reichelt, Office of the Middle East, U.S. Department of Commerce, Room 2029–B, Washington, DC 20230. Phone: 202–482–2896.

SUPPLEMENTARY INFORMATION: The U.S. Secretary of Commerce and the Iraqi Minister of Trade established the Dialogue as a bilateral forum to facilitate private sector business growth in Iraq and to strengthen trade and investment ties between the United States and Iraq. During Former Secretary of Commerce Carlos M. Gutierrez's visit to Iraq in July 2006, he joined Iraq's former Minister of Trade Dr. Abd-al-Falah al-Sudani in signing the Joint Statement on Commercial Cooperation, which formally established the Dialogue.

The U.S. Secretary of Commerce and the Iraqi Minister of Trade co-chair the Dialogue. The Dialogue consists of a U.S. Section and an Iraqi Section. Each Section consists of members from the private sector, representing the views and interests of the private sector business community. Each Party appoints the members to its respective Section. The Sections provide policy advice and counsel to the U.S. Secretary of Commerce and to Iraq's Minister of Trade that reflect private sector views, needs, and concerns regarding private sector business development in Iraq and enhanced bilateral commercial ties that would form the basis for expanded trade between the United States and Iraq. The Dialogue will exchange information and encourage bilateral discussions that address the following areas:

—Factors that affect the growth of private sector business in Iraq, including disincentives to trade and investment and regulatory obstacles to job creation and investment growth;

—Initiatives that the Government of Iraq might take, such as enacting, amending, enforcing, or repealing laws and regulations, to promote private sector business growth in Iraq;

—Promotion of business opportunities in both Iraq and the United States, and identification of opportunities for U.S. and Iraqi firms to work together; and

—Attracting U.S. businesses to opportunities in Iraq and serving as a catalyst for Iraqi private sector growth.

Applications to represent any sector will be considered. The U.S. section will represent a cross-section of American businesses.

Members serve in a representative capacity representing the views and interests of their particular industries. Members are not special government employees, and receive no compensation for their participation in Dialogue activities. Only appointed members may participate in Dialogue meetings; substitutes and alternates will not be permitted. Section members serve for three-year terms, but may be reappointed. U.S. Section members serve at the discretion of the Secretary of Commerce.

The U.S. Department of Commerce is currently seeking candidates for ten membership positions on the U.S. Section of the Dialogue. Candidates will be evaluated based on: their interest in the Iraqi market; export/investment experience; contribution to diversity based on size of company, geographic location, and sector; and ability to initiate and be responsible for activities in which the Business Dialogue will be active.

In order to be eligible for membership in the U.S. section, potential candidates shall be: