



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-929
AR: 02/01/11 – 01/31/12
Public Document
AD/CVD 1: DV

March 4, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Small Diameter Graphite Electrodes
from the People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting this administrative review of the antidumping duty order on small diameter graphite electrodes (graphite electrodes) from the People's Republic of China (PRC), covering the period February 1, 2011, through January 31, 2012. The Department has preliminarily determined that during the period of review (POR) certain manufacturers/exporters covered by this review have not made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results. We intend to issue our final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

The Department is also rescinding this review for those exporters for which requests for review were timely withdrawn and which had a separate rate.¹ For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposits of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption. Exporters for which requests for review were timely withdrawn that did not have a separate rate will remain part of the PRC-wide entity. Furthermore, we determine that four companies, for which a review was requested, have not demonstrated entitlement to a separate

¹ See the accompanying *Federal Register* notice.



rate.² As a result, we have preliminarily determined that they are part of the PRC-wide entity, and are subject to the PRC-wide entity rate.³

BACKGROUND

On February 26, 2009, we published in the *Federal Register* the antidumping duty order on graphite electrodes from the PRC.⁴ On February 1, 2012, we published a notice of opportunity to request an administrative review of this order.⁵ On February 29, 2012, we received timely review requests in accordance with 19 CFR 351.213(b) from Fushun Jinly Petrochemical Carbon Co., Ltd. (Fushun Jinly), Xinghe County Muzi Carbon Co., Ltd. (Muzi Carbon), Sichuan Guanghan Shida Carbon Co., Ltd. (Shida Carbon), and Beijing Fangda Carbon Tech Co., Ltd., Chengdu Rongguang Carbon Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., and Hefei Carbon Co., Ltd. (collectively, the Fangda Group⁶). On February 29, 2012, the Department also received a timely request for an administrative review of 161 companies from SGL Carbon LLC and Superior Graphite Co. (the petitioners). On March 30, 2012, we initiated an administrative review of the antidumping duty order on graphite electrodes from the PRC with respect to 161 companies.⁷

On April 2 and April 13, 2012, we released to interested parties U.S. Customs and Border Protection data covering POR imports of graphite electrodes from the PRC and invited comments on the Department's selection of respondents for individual examination.⁸ On May 1, 2012, we selected the Fangda Group and Fushun Jinly for individual examination in this review.⁹

² See "Separate Rates" section below.

³ See "PRC-Wide Entity" section below.

⁴ See *Antidumping Duty Order: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 8775 (February 26, 2009).

⁵ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 77 FR 4990 (February 1, 2012).

⁶ We refer to the Fangda Group as a single entity pursuant to 19 CFR 351.401(f)(1). See *Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part*, 73 FR 49408, 49411-12 (August 21, 2008) (where we collapsed the individual members of the Fangda Group), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049 (January 14, 2009).

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, and Deferral of Administrative Review*, 77 FR 19179 (March 30, 2012) (*Initiation Notice*).

⁸ See the Department's memoranda to "All Interested Parties," dated April 2, 2012, and April 13, 2012.

⁹ See the Department's memorandum entitled "Small Diameter Graphite Electrodes from the People's Republic of China: Selection of Respondents for Individual Examination," dated May 1, 2012 (*Respondent Selection Memo*).

On May 8, 2012, we sent the antidumping duty questionnaire to the Fangda Group and Fushun Jinly. On May 29, 2012, we received a separate-rate certification from Muzi Carbon.¹⁰ On May 30, 2012, we received a separate-rate application from Jilin Carbon Import and Export Company.

On June 6, 2012, the petitioners timely withdrew their review requests and asked the Department to rescind the review with respect to 149 of the 161 companies for which the Department initiated a review.¹¹ Between June 11, 2012, and February 22, 2013, the Fangda Group and Fushun Jinly responded to the Department's original and supplemental questionnaires.

We extended the time limit for the preliminary results of review to March 4, 2013, pursuant to section 751(a)(3)(A) of the Act.¹²

On January 15, 2013, the petitioners submitted targeted dumping allegations with respect to Fushun Jinly and the Fangda Group.

SCOPE OF THE ORDER

The merchandise covered by the order includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. The merchandise covered by the order also includes graphite pin joining systems for small diameter graphite electrodes, of any length, whether or not finished, of a kind used in furnaces, and whether or not the graphite pin joining system is attached to, sold with, or sold separately from, the small diameter graphite electrode. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8545.11.0010¹³ and 3801.10.¹⁴ The HTSUS numbers are provided for convenience and customs purposes, but the written description of the scope is dispositive.

¹⁰ See "Separate Rates" section below.

¹¹ See "Partial Rescission of the Administrative Review" section of the accompanying *Federal Register* notice.

¹² See memorandum entitled "Small Diameter Graphite Electrodes From the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated October 24, 2012, and memorandum entitled "Small Diameter Graphite Electrodes From the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated December 7, 2012.

¹³ The scope described in the order refers to the HTSUS subheading 8545.11.0000. We note that, starting in 2010, imports of small diameter graphite electrodes are classified in the HTSUS under subheading 8545.11.0010 and imports of large diameter graphite electrodes are classified under subheading 8545.11.0020.

¹⁴ See *Small Diameter Graphite Electrodes From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012).

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (“NME”) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority.¹⁵ None of the parties to this proceeding has contested NME treatment for the PRC. Therefore, for the preliminary results of this review, we have treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

Separate Rates

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.¹⁶ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹⁷ It is the Department’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,¹⁸ as amplified by *Silicon Carbide*.¹⁹ However, if the Department determines that a company is wholly foreign-owned or located in a market economy (ME), then a separate rate analysis is not necessary to determine whether it is independent from government control.²⁰

¹⁵ See *Brake Rotors From the People’s Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review*, 71 FR 26736 (May 8, 2006), unchanged in *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).

¹⁶ 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, 53082 (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).

¹⁷ See *Initiation Notice*, 76 FR at 82269.

¹⁸ See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

¹⁹ See *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*).

²⁰ 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).

In this administrative review, of the five companies²¹ not selected for individual examination²² and for which the review has not been rescinded or for which the Department does not intend to rescind the review, only one company, Muzi Carbon, submitted separate-rate information. The remaining four companies under review provided neither a separate rate application nor a separate rate certification, as applicable. Therefore, the Department preliminarily determines that there were exports of merchandise under review from four PRC exporters that did not demonstrate their eligibility for separate rate status. As a result, the Department is treating these four PRC exporters as part of the PRC-wide entity, subject to the PRC-wide rate.²³ Additionally, we received a complete response to Section A of the NME antidumping questionnaire from the Fangda Group and Fushun Jinly, which contained information pertaining to these companies' eligibility for a separate rate.²⁴

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) other formal measures by the government decentralizing control of companies.²⁵

The evidence provided by the Fangda Group, Fushun Jinly, and Muzi Carbon 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 the companies.²⁶

²¹ In 2010-2011 administrative review we determined that Sichuan Guanghan Shida Carbon Co., Ltd., and Guanghan Shida Carbon Co., Ltd., were the same company. *See Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 77 FR 40854, 40856 (July 11, 2012) (*Graphite Electrodes 10/11 Final*) at FN 3.

²² These companies are Dechang Shida Carbon Co., Ltd., Shida Carbon Group, Sichuan Shida Trading Co., Ltd., Sichuan Guanghan Shida Carbon Co., Ltd., and Muzi Carbon.

²³ *See* "PRC-Wide Entity" section below.

²⁴ *See* Fushun Jinly's Section A questionnaire response, dated June 12, 2012; *see* the Fangda Group's Section A questionnaire response, dated June 11, 2012, and a supplemental Section A questionnaire response, dated September 17, 2012.

²⁵ *See Sparklers*, 56 FR at 20589.

²⁶ *See* Fushun Jinly's Section A questionnaire response, dated June 12, 2012; the Fangda Group's Section A questionnaire response, dated June 11, 2012, and a supplemental Section A questionnaire response, dated September 17, 2012; and Muzi Carbon's separate rate certification, dated May 29, 2012.

Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* 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.²⁷

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 over export activities which would preclude the Department from assigning separate rates. For the Fangda Group, Fushun Jinly, and Muzi Carbon we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing that each respondent: (1) sets its own export prices independent of the government and without the approval of a government authority; (2) retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management.²⁸

In summary, the evidence placed on the record of this review by the Fangda Group, Fushun Jinly, and Muzi Carbon demonstrates an absence of *de jure* and *de facto* government control with respect to each company's respective exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we are preliminarily granting the Fangda Group, Fushun Jinly, and Muzi Carbon each a separate rate.

Rate for Non-Selected Companies

In accordance with section 777A(c)(2)(B) of the Act, the Department selected Fushun Jinly and the Fangda Group as mandatory respondents in this review as it did not have the resources to examine all companies for which a review was requested.²⁹ As discussed above, Muzi Carbon is an exporter of graphite electrodes from the PRC which demonstrated its eligibility for a separate rate, but which was not selected for individual examination in this review. The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department has limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which

²⁷ 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).

²⁸ See Fushun Jinly's Section A questionnaire response, dated June 12, 2012; the Fangda Group's Section A questionnaire response, dated June 11, 2012, and a supplemental Section A questionnaire response, dated September 17, 2012; and Muzi Carbon's separate rate certification, dated May 29, 2012.

²⁹ See Respondent Selection Memo.

provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies excluding zero, *de minimis*, and rates based entirely on facts available.³⁰

Section 735(c)(5)(B) of the Act also provides that, where all margins are zero rates, *de minimis* rates, or rates based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents. In this review, we have calculated zero or *de minimis* weighted-average dumping margins for both companies selected as mandatory respondents. In previous cases, the Department has determined that a "reasonable method" to use when, as here, the rates of the respondents selected for individual examination are zero or *de minimis* is to apply to those companies not selected for individual examination the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available (which may be from a prior review or new shipper review).³¹ If any such non-selected company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department has applied such individual rate to the non-selected company in the review in question, including when that rate is zero or *de minimis*.³² However, all prior rates for this proceeding were calculated using the methodology the Department abandoned in its *Final Modification for Reviews*³³ pursuant to section 123 of the Uruguay Round Agreements Act. Therein, the Department has stated that it will not use the zeroing methodology found to be WTO-inconsistent in administrative reviews with preliminary determinations issued after April 16, 2012. Therefore, we will not apply any rates calculated in prior reviews to the non-selected company in this review. Based on this, and in accordance with the statute, we determine that a reasonable method for determining the weighted-average dumping margin for Muzi Carbon in this review is to average the weighted-average dumping margins calculated for the Fangda Group and Fushun Jinly in this review.

PRC-Wide Entity

In the *Initiation Notice*, the Department stated that if one of the companies for which this review was initiated "does not qualify for a separate rate, all other exporters of small diameter graphite electrodes from the PRC who have not qualified for a separate rate are deemed to be

³⁰ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

³¹ See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

³² See *id.*

³³ See *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

covered by this review as part of the single PRC entity of which the named exporters are a part.”³⁴ As explained above, we limited the number of companies individually reviewed. Non-selected companies were able to avail themselves of the requirements set forth in either the separate rate application or the separate rate certification, which were posted on the Import Administration’s website.³⁵ Because certain parties for which a review was requested did not apply for separate rate status, they did not demonstrate eligibility for a separate rate and remain part of the PRC-wide entity, which is, accordingly, under review.³⁶ As such, we have preliminarily determined that four companies for which a review was requested did not demonstrate their eligibility for a separate rate and are properly considered part of the PRC-wide entity.³⁷ In addition, 130 companies that did not have a separate rate, for which the request for review was timely withdrawn, are also part of the PRC-wide entity. See Appendix III of the accompanying *Federal Register* notice. For these preliminary results, we have assigned the PRC-wide entity a rate of 159.64%, the only rate ever determined for the PRC-wide entity in this proceeding.³⁸

Surrogate Country

When the Department conducts an antidumping duty administrative review of imports from an NME country, section 773(c)(1) of the Act directs the Department to base NV, in most cases, on the NME producer’s factors of production (FOP), valued in a surrogate ME country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOPs using “to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise.”³⁹ Once the Department has identified the countries that are economically comparable to the PRC, it identifies those countries that are significant producers of comparable merchandise. From the countries which are found to be both economically comparable to the PRC and significant producers of comparable or identical merchandise, the Department will then select a primary surrogate country based upon whether the data for valuing FOPs are available and reliable.

In the instant review, the Department has identified Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine as countries that are at a level of economic development

³⁴ See *Initiation Notice*, 77 FR at 19189, at FN 9.

³⁵ See *Initiation Notice*.

³⁶ See, e.g., *Honey From the People's Republic of China: Preliminary Results of Review*, 77 FR 46699, 46700 (August 6, 2012); *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 64930, 64933 (November 6, 2006).

³⁷ These companies are Dechang Shida Carbon Co., Ltd., Shida Carbon Group, Sichuan Shida Trading Co., Ltd., and Sichuan Guanghan Shida Carbon Co., Ltd.

³⁸ See, e.g., *Graphite Electrodes 10/11 Final*, 77 FR at 40856.

³⁹ See the Department’s Policy Bulletin No. 04.1, regarding, “Non-Market Economy Surrogate Country Selection Process,” (March 1, 2004), available on the Department’s website at <http://ia.ita.doc.gov/policy/bull04-1.html>.

comparable to the PRC.⁴⁰ Therefore, we consider all seven of these countries as having satisfied the first prong of the surrogate country selection criteria of section 773(c)(4) of the Act.

With respect to the Department's selection of a surrogate country, the petitioners commented that Ukraine is the appropriate surrogate country from which to derive surrogate factor values for the PRC because Ukraine is a significant producer of graphite electrodes and publicly available financial statements for a graphite electrode producer in the Ukraine are available.⁴¹ The petitioners suggested we use the 2011 publicly available financial statements for JSC Ukrainsky Grafit, a major Ukrainian producer of graphite electrodes, in order to derive surrogate financial ratios and placed such financial statements on the record. The petitioners also comment that Ukraine is a major importer of the primary inputs consumed in the production of graphite electrodes and placed the relevant POR Ukrainian import statistics on the record.

Fushun Jinly and the Fangda Group commented that, consistent with the Department's determination in the 2010-2011 administrative review, Ukraine should be selected as the surrogate country.⁴²

We relied on export data as a proxy for overall production data in this review. From the countries that we identified to be economically comparable to the PRC, only South Africa and Ukraine exported significant quantities of graphite electrodes during the POR based on Global Trade Atlas (GTA) data for exports under HTS 8545.11.00.⁴³ As such, we find that South Africa and Ukraine meet the "significant producer" requirement of section 773(c)(4) of the Act.

Like the PRC, Ukraine has a broad and diverse production base, and we have reliable data from Ukraine that we can use to value the FOPs and derive surrogate financial ratios.⁴⁴ In contrast, the record does not contain financial statements from producers of graphite electrodes in South Africa or other data we use to, *e.g.*, value certain freight expenses or electricity. Therefore, we preliminarily determine that it is appropriate to rely on Ukraine as the primary surrogate country in accordance with 19 CFR 351.408(c)(2).

Fair Value Comparisons

To determine whether Fushun Jinly's and the Fangda Group's sales of subject merchandise were made at less than NV, we compared, respectively for each company, the NV to weighted-average

⁴⁰ See the Department's memorandum entitled "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes ("SDGE") from the People's Republic of China ("China")," dated August 29, 2012.

⁴¹ See the petitioners' submission, dated September 26, 2012.

⁴² See Fushun Jinly and the Fangda Group's submission, dated September 27, 2012.

⁴³ See the Department's memorandum entitled "Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Selection of Surrogate Values," dated concurrently with this notice (Factor Valuation Memorandum), at Exhibit 1.

⁴⁴ See Factor Valuation Memorandum.

net export prices in accordance with section 777A(d)(2) of the Act. See “Export Price” and “Normal Value” sections of this notice, below.

Export Price

In accordance with section 772(a) of the Act, export price is “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. For Fushun Jinly and the Fangda Group, we used export price methodology, because the first sale to an unaffiliated purchaser in the United States occurred prior to importation and the use of constructed export price was not otherwise indicated.

We based export price on the price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling. We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods from Ukraine. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport from Ukraine as reported in World Bank Group’s *Doing Business 2012 – Ukraine; Trading Across Borders*.⁴⁵

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) 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 these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. To calculate NV, we multiplied the per-unit factor-consumption rates reported by Fushun Jinly and the Fangda Group for the POR by publicly available surrogate values (SVs) as discussed below.

Factor Valuations

On August 30, 2012, we invited all interested parties to submit publicly available information to value FOPs. We received submissions from the petitioners and the mandatory respondents, Fushun Jinly and the Fangda Group, on September 26 and September 27, 2012, respectively.

Section 773(c)(1) of the Act directs the Department to value NME producers’ FOPs using the best available information. In determining what constitutes the best available information, the

⁴⁵See Factor Valuation Memorandum.

Department selects, to the extent practicable, SVs that are product-specific, representative of broad market averages, publicly available, contemporaneous with the POR, and exclusive of duties and taxes.⁴⁶ The record shows that data in the Ukrainian import statistics, as well as those from the other Ukrainian sources, are generally contemporaneous with the POR, product-specific, and tax-exclusive.⁴⁷ In those instances where we could not obtain publicly available information contemporaneous to the POR, we adjusted the SVs using, as appropriate, the Ukrainian Wholesale Price Index (WPI) or Consumer Price Index (CPI), as published in the International Monetary Fund's *International Financial Statistics*.⁴⁸

We adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, we added to import SVs surrogate freight costs 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 Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

Furthermore, with regard to the Ukrainian import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. In particular, we have disregarded import prices from India, Indonesia, and South Korea because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.⁴⁹ Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.⁵⁰ Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.⁵¹

⁴⁶ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

⁴⁷ See Factor Valuation Memorandum.

⁴⁸ See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591, 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 74 FR 36656 (July 24, 2009).

⁴⁹ See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

⁵⁰ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

⁵¹ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); see also *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June

Rather, the Department bases its decision on information that is available to it at the time it makes its determination.

Also, consistent with our practice, we disregarded import prices from NME countries and excluded imports labeled as originating from an “unspecified” country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.⁵²

Finally, Fushun Jinly and the Fangda Group reported that certain of their raw material inputs were sourced from an ME country. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.⁵³ Information reported by the mandatory respondents in this review demonstrates that certain inputs were produced by and sourced from an ME country, paid for in ME currencies, and that such inputs were purchased in significant quantities (*i.e.*, 33 percent or more).⁵⁴ Therefore, the Department has used the mandatory respondents’ actual ME purchase prices to value these inputs.⁵⁵ Where appropriate, we added freight to arrive at delivered prices.

Except as explained below, the Department used Ukrainian import statistics from the GTA or actual ME imports to value the mandatory respondents’ FOPs.⁵⁶

We valued truck freight expenses using a per-unit average rate we calculated from the data we obtained from www.budmo.org, as suggested by the petitioners. This website is an online provider of container shipping, logistics, and freight forwarding services. The website provides freight rates for transporting goods in containers by road from major ports in Ukraine to many large Ukrainian cities.⁵⁷ Because data reported in this source were current as of January 1, 2012, and, thus, not contemporaneous with the POR, we adjusted the value for inland truck freight using the Ukrainian WPI deflator.

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).

⁵² See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People’s Republic of China*, 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China*, 70 FR 24502 (May 10, 2005).

⁵³ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-61718 (October 19, 2006).

⁵⁴ Because the discussion of ME inputs contains business proprietary information, see Factor Valuation Memorandum for details.

⁵⁵ *Id.*

⁵⁶ See Factor Valuation Memorandum for a detailed description of all SVs used in this review.

⁵⁷ See *id.*

We valued rail freight expenses using the rail cargo freight rate information from the website of the State Administration of Railway Transport of Ukraine, publicly accessible at <http://www.uz.gov.ua>. We obtained input-specific rail freight tariffs on a U.S. dollars-per-metric ton basis for transporting merchandise between major rail freight stations in Ukraine. Because the data reported in this source were current as of January 1, 2012, and, thus, not contemporaneous with the POR, we deflated the surrogate value for rail freight using Ukrainian WPI.⁵⁸

We valued electricity using the electricity tariff data for corporate consumers, as published by the National Electricity Regulatory Commission of Ukraine, an administrative body of the Government of Ukraine, at www.nerc.gov.ua. These electricity rates were furnished by major power distribution companies in Ukraine and represent actual, country-wide, publicly-available information on tax-exclusive basis.⁵⁹ We obtained electricity tariffs for each month of the POR and computed a single POR-average rate.⁶⁰

We valued water using information we obtained from certain municipal water and sewage collective enterprises in Ukraine comprising tariff rates established by the National Commission for Regulation of Utilities Market Services of Ukraine. We obtained (or calculated) tariff rates for business consumers in various regions of Ukraine on a value added tax exclusive basis. Because these rates were effective March 1, 2012, we adjusted them to be contemporaneous with the POR.⁶¹

Regarding labor, we could not identify Chapter 6A labor data for Ukraine pertaining to the industry specific to subject merchandise.⁶² In *Labor Methodologies*, the Department explained that, “if there is no industry-specific data available for the surrogate country within the primary data source, *i.e.*, ILO Chapter 6A data, the Department will then look to national data for the surrogate country for calculating the wage rate.”⁶³ The latest year for which ILO Chapter 6A reports national data for Ukraine is 2006. We selected this monthly labor value, converted it to an hourly basis, and inflated it to the POR using the Ukrainian CPI. Because the financial statements used to calculate the surrogate financial ratios do not include itemized detail of labor costs, we did not make adjustments to certain labor costs in the surrogate financial ratios.⁶⁴

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See, e.g., *Wire Decking from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 32905 (June 10, 2010), and accompanying Issues and Decision Memorandum at Comment 3.

⁶¹ See Factor Valuation Memorandum.

⁶² See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

⁶³ *Id.* 76 FR at 36094, FN 11.

⁶⁴ See *id.* 76 FR at 36094.

To value factory overhead, selling, general and administrative expenses and profit, we used the ratios we derived from the 2011 publicly available financial statements for JSC Ukrainsky Grafit, a major Ukrainian producer of graphite electrodes.⁶⁵

Fushun Jinly and the Fangda Group reported that they recovered certain by-products in their production of subject merchandise and successfully demonstrated that these by-products have commercial value. Therefore, we have granted a by-product offset for the quantities of Fushun Jinly's and the Fangda Group's reported by-products, respectively. We valued the by-products using Ukrainian GTA data.⁶⁶

Use of Facts Available

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

During the POR of this review, the Fangda Group used a large number of unaffiliated tollers at certain stages of the production process for the subject merchandise. Given the large number of tollers, the Department limited its request for the FOPs of the Fangda Group's tollers to ten companies.⁶⁷ The Fangda Group reported to the Department that it was unable to obtain the requested information from any of the ten companies.⁶⁸ As a result, we lack necessary FOP data and the application of "facts otherwise available" is warranted.

⁶⁵ See Factor Valuation Memorandum.

⁶⁶ See *id.*

⁶⁷ See the Department's letter, dated August 17, 2012, at 13-14.

⁶⁸ See Fangda Group's response, dated September 24, 2012, at 17.

As discussed above, pursuant to section 776(b) of the Act, the Department may use facts otherwise available with an adverse inference when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. However, we do not find that the Fangda Group has failed to cooperate with respect to obtaining the requested FOPs from its unaffiliated tollers and, accordingly, we are not drawing an adverse inference. The Fangda Group identified its tollers and documented its unsuccessful attempts to obtain the requested FOPs from the tollers identified by the Department.⁶⁹ Moreover, (i) the Fangda Group voluntarily provided FOP information from a certain toller that performed one step in the production process that was outsourced entirely with respect to a certain producing entity within the Fangda Group;⁷⁰ (ii) the FOPs of the non-reporting tollers account for relatively small portion of the total FOPs during the POR;⁷¹ and (iii) there is usable FOP information on the record that can serve as a substitute for the missing FOP information. Therefore, consistent with our practice we are applying neutral facts available.⁷² Specifically, we are using the Fangda Group's own FOPs and, where applicable, the FOPs of the toller that the Fangda Group submitted voluntarily for the production step that was outsourced in its entirety.

Allegations of Targeted Dumping

On January 15, 2013, the petitioners submitted targeted dumping allegations with respect to Fushun Jinly and the Fangda Group. On January 24, 2013, we provided the petitioners with an opportunity to submit revised allegations.⁷³ In our letter replying to the allegations, we explained that the allegations are based on criteria that are contrary to the methodology developed by the Department in *Nails*.⁷⁴ Specifically, we explained that in defining a unique product on a basis of a single product characteristic, *i.e.*, the power level, as the petitioners have done, a finding of difference in U.S. prices may be explained by differences in physical characteristics that affect price, and not necessarily because certain U.S. sales were targeted.⁷⁵ We explained further that, because our margin calculations are performed by taking into account all relevant physical

⁶⁹ See the Fangda Group's response, dated January 7, 2013, at Attachment S3-18.

⁷⁰ See the Fangda Group's response, dated September 24, 2012, at 16.

⁷¹ See memorandum entitled "Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results Analysis Memorandum for the Fangda Group," dated concurrently with this memorandum.

⁷² See, *e.g.*, *Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011) and accompanying Issues and Decision Memorandum at Comment 12; see also *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review*, 76 FR 56397 (September 13, 2011) and accompanying Issue and Decision Memorandum at Comment 9.

⁷³ See the Department's letter, dated January 24, 2013.

⁷⁴ See *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (*Nails*).

⁷⁵ See *id.*

characteristics (*i.e.*, control number), any dumping margin calculations based on the alternative methodology under section 777A(d)(1)(B) of the Act would arguably be inconsistent with how targeted sales are identified, were we to use the methodology that underlies the petitioners' allegations.⁷⁶ For these reasons, we afforded the petitioners with the opportunity to revise the allegations of targeted dumping using the *Nails* methodology. *Id.*

On January 31, 2013, the petitioners submitted calculations under our established *Nails* test criteria, which showed no targeted dumping, and provided further comments urging the Department to reconsider the January 15, 2013, targeted dumping allegations.⁷⁷ Specifically, the petitioners argue that the *Nails* test is inadequate in situations, such as in this review, where there are a limited number of sales in a control number which necessarily results in a negative targeted dumping determination. In such instances, the petitioners contend, the Department must redefine the price comparisons on the basis of identical merchandise that is defined using a limited number of product characteristics. Such a modification, the petitioners comment, will render the targeted dumping analysis meaningful because there will be a sufficient number of sales to test for a pattern of price differences.

The Department has an established practice of using the *Nails* test to identify a pattern of export prices that differ significantly among purchasers, regions, or periods of time, pursuant to section 777A(d)(1)(B)(1) of the Act. While we recognize that certain factual scenarios may impose limits on the effectiveness of the *Nails* test, the petitioners' proposed methodology is unacceptable because it contemplates comparing physically dissimilar products and a pattern of export prices may be identified because of physical differences that the Department has found affect price comparability. In other words, there would be no assurance that price differences found using such a method were price differences among purchasers, regions and periods of time of comparable merchandise. Further, the petitioners did not cite, nor are we aware of, any precedent where the Department altered the standard *Nails* test criteria to accommodate a limited number of sales in a control number. As such, we preliminarily find that it is inappropriate to modify our established *Nails* test.

Consequently, as petitioners' allegation using the appropriate *Nails* test shows no targeted dumping with respect to either Fushun Jinly or the Fangda Group,⁷⁸ we have not conducted our own targeted dumping analysis. Therefore, we relied on the standard comparison methodology for these preliminary results.

Currency Conversion

Where appropriate, we 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.

⁷⁶ *See id.*

⁷⁷ The petitioners did not revise the allegations using the *Nails* methodology.

⁷⁸ *See* the petitioner's January 31, 2013, submission at Exhibit 2.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

4 MARCH 2013
Date