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DATE: October 5, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for Final Rescission of  
Antidumping Duty New Shipper Review: Small Diameter  
Graphite Electrodes from the People's Republic of China

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## SUMMARY

We have analyzed the comments of the interested parties in the above-referenced antidumping duty new shipper review of small diameter graphite electrodes from the People's Republic of China (PRC), covering the period of review (POR) February 1, 2014, through August 31, 2014. The company subject to this new shipper review is Xuzhou Jianglong Carbon Products Co., Ltd. (Jianglong).<sup>1</sup> Based on our analysis of the comments we received, we recommend that you approve the positions in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this review for which we received comments and rebuttal comments by parties:

*Comment 1: Rescission of the New Shipper Review*

*Comment 2: The Bona Fides of the U.S. Sale*

*Comment 3: Surrogate Value for Coal Gas*

## BACKGROUND

On May 28, 2015, we published our *Preliminary Rescission*.<sup>2</sup> On July 8, 2015, the petitioners (SGL Carbon LLC and Superior Graphite Co.) submitted their case brief and on July 9, 2015, Jianglong submitted its case brief. In their case brief, the petitioners stated that they agreed with

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<sup>1</sup> See Jianglong's new shipper request (August 29, 2014).

<sup>2</sup> See *Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review; 2014*, 80 FR 30438 (May 28, 2015) (*Preliminary Rescission*) and accompanying Preliminary Decision Memorandum (Prelim Decision Memo).



the Department of Commerce's (the Department) *Preliminary Rescission* decision and that the Department should immediately revoke Jianglong's bonding privilege upon a final rescission of this new shipper review. On July 13, 2015, the petitioners submitted their rebuttal brief. Pursuant to a request from Jianglong, we held a public hearing on August 5, 2015.<sup>3</sup> We extended the due date for the final results of review to October 5, 2015.<sup>4</sup> Based on our analysis of the comments received, we have not revised our decision in the *Preliminary Rescission* to rescind this new shipper review. Our findings and conclusions in the *Preliminary Rescission* are hereby incorporated by reference. However, we will also address specific issues raised by the parties below.

## **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 8545.11.0010<sup>5</sup> and 3801.10.<sup>6</sup> The HTSUS numbers are provided for convenience and customs purposes, but the written description of the scope is dispositive.

## **DISCUSSION OF THE ISSUES**

### *Comment 1: Rescission of the New Shipper Review*

In its case brief, Jianglong concedes its affiliation with Shanghai Carbon International Trade Co., Ltd. (Shanghai Carbon) and the fact that Shanghai Carbon was confirmed as part of the PRC-wide Entity in the final results of the 2012/2013 administrative review.<sup>7</sup> Jianglong argues,

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<sup>3</sup> See Public Hearing Transcript concerning the New Shipper Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China (August 5, 2015).

<sup>4</sup> See memorandum entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty New Shipper Review; 02/01/2014 – 08/31/2014" (August 6, 2015).

<sup>5</sup> The scope described in the order refers to the HTSUS subheading 8545.11.0000. We point out 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.

<sup>6</sup> 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).

<sup>7</sup> See *Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2012-2013*, 79 FR 15944 (March 24, 2014) (2012-2013 Preliminary Results), unchanged in *Small Diameter Graphite Electrodes from the People's Republic of*

however, that the Department improperly rescinded its new shipper review by incorrectly concluding that a company affiliated with Jianglong had previously entered subject merchandise into the United States.<sup>8</sup> According to Jianglong, since its affiliate Shanghai Carbon never exported subject merchandise to the United States, it neither applied for, nor was entitled to, separate rate status for any segment under this antidumping duty order. Jianglong contends that, in the absence of separate rate status, Shanghai Carbon has been part of the PRC-wide Entity since the initial investigation under this order. Jianglong points out that had its affiliate Shanghai Carbon, in fact, exported or entered subject merchandise into the United States more than one year prior to Jianglong's new shipper request, Jianglong would not qualify for a new shipper review.<sup>9</sup>

According to Jianglong, the administrative record establishes that Shanghai Carbon had no entries of subject merchandise into the United States during the 2012/2013 review and that Shanghai Carbon was not affiliated with any other entity that was considered part of the PRC-wide Entity in the 2012/2013 administrative review. Jianglong thus argues that the Department's attribution of entries made by the PRC-wide Entity during the 2012/2013 POR to Shanghai Carbon, solely on the basis of Shanghai Carbon's inclusion within the PRC-wide Entity, is untenable. Jianglong argues further that Shanghai Carbon's inclusion in the PRC-wide Entity does not provide the Department with any factual or legal basis to conclude that Shanghai Carbon or Jianglong had "entered subject merchandise into the United States more than one year prior to Jianglong's request for a new shipper review."<sup>10</sup>

Jianglong contends that contrary to the Department's assertion that the PRC-wide Entity had "multiple entries under the PRC Entity rate" during the 2012/2013 review, information on the record establishes that no entries of subject merchandise were made by the PRC-wide Entity during that period.<sup>11</sup> Consequently, according to Jianglong, there is no factual basis for the Department to attribute exports by the PRC-wide Entity to Shanghai Carbon and thus to Jianglong, due to its affiliation.<sup>12</sup>

Jianglong asserts that the Department's explanation in the *Preliminary Rescission* as to how Shanghai Carbon became part of the PRC-wide Entity was factually incorrect. Jianglong asserts that, in the 2012/2013 review, the Department determined that Shanghai Carbon was part of the PRC-wide Entity as it did not have a separate rate from a prior proceeding segment under this antidumping duty order. Thus, according to Jianglong, in the 2012/2013 review, Shanghai Carbon was deemed part of the PRC-wide Entity because it did not have a separate rate from a prior segment, not on the basis that it did not demonstrate in the 2012/2013 review that it is entitled to a separate rate.<sup>13</sup>

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*China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014) (2012-2013 Final Results).

<sup>8</sup> See Jianglong's case brief at 2-3 (July 8, 2015).

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 3-4.

Jianglong contends that, although Shanghai Carbon was part of the PRC-wide Entity for a reason other than the explanation set forth in the *Preliminary Rescission*, the distinction is of the utmost relevance in this proceeding. According to Jianglong, in the *Preliminary Rescission* the Department asserted that Shanghai Carbon had an affirmative duty to establish that it had no shipments during the 2012/2013 review, a duty that the Department determined Shanghai Carbon did not meet. Jianglong states that Shanghai Carbon's purported failure to affirmatively establish that it had no shipments of subject merchandise during the 2012/2013 review thus served as the justification for the Department's determination to rescind the new shipper review. Jianglong contends that Shanghai Carbon's status as part of the PRC-wide Entity in the 2012/2013 administrative review had nothing to do with it not having submitted a statement of no shipments in the 2012/2013 administrative review, but was dependent upon Shanghai Carbon not having separate status and the fact that the petitioners had withdrawn their own review request on behalf of Shanghai Carbon.<sup>14</sup>

Jianglong asserts that had Shanghai Carbon sought separate rate status in the 2012/2013 review, the Department would have rejected such an application on the basis that Shanghai Carbon had no exports of subject merchandise during the 2012/2013 review. According to Jianglong, statements of "no shipments" are normally filed by companies with separate rate status who did not ship during the relevant POR. Jianglong argues that in such cases, a valid statement of no shipments would preserve their separate rate status during the POR in which they had no shipments. Jianglong asserts that since Shanghai Carbon was not facing such circumstances, it had no reason or incentive to file a statement of no shipments.<sup>15</sup>

Jianglong argues that even if the Department continues to determine in the final results of the new shipper review that the PRC-wide Entity had shipments of subject merchandise to the United States during the 2012/2013 POR, attributing any such exports to Shanghai Carbon would be contrary to the information contained in the administrative record, which establishes that Shanghai Carbon had no shipments to the United States during the 2012/2013 POR.<sup>16</sup>

Jianglong argues that attributing any sale that may have been made by a company within the PRC-wide Entity to Shanghai Carbon, when the administrative record establishes that Shanghai Carbon did not have any sales, exports, or entries of subject merchandise into the United States during the 2012/2013 POR, is directly contrary to record evidence, and cannot be sustained. Jianglong argues further that the administrative record establishes that no company within the Jianglong group, including Shanghai Carbon, had any other affiliations with companies involved in the sale or production of the merchandise under consideration.<sup>17</sup>

Jianglong asserts that the Department's rescission of a new shipper review on the basis that an affiliate of a company was part of the PRC-wide Entity is unprecedented. Jianglong asserts further that the *Preliminary Rescission* did not cite to any other instance in which the Department treated sales by third companies that were part of the PRC-wide Entity as sales of the respondent in a new shipper review when there was no affiliation between the PRC-wide Entity exporters

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<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 5-6

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 9-10.

and the respondent. Jianglong contends that the Department's action in this case goes far beyond the normal and appropriate treatment of sales by one affiliate to another affiliate. In this case, according to Jianglong, the Department in the *Preliminary Rescission* has attributed sales to Shanghai Carbon (and to its affiliate Jianglong), not on the basis of any finding of affiliation of Shanghai Carbon with other companies within the PRC-wide Entity, but solely on the basis of Shanghai Carbon's status of being a part of the PRC-wide Entity. Jianglong argues that the Department has effectively added a new category to the statutory definition of "affiliated persons," by adding to the list of persons that may be found as affiliates, companies in non-market economy cases that are within the country-wide entity. Jianglong argues further that the Department does not have the authority to alter unilaterally statutory definitions by administrative fiat. Jianglong claims that there is simply no legal or factual basis for the Department to attribute sales of companies within the PRC-wide Entity to Shanghai Carbon, solely on the basis of Shanghai Carbon's status as a company within the PRC-wide Entity.<sup>18</sup>

Jianglong requests that for the reasons outlined above, the Department should abandon its position in the *Preliminary Rescission* of rescinding Jianglong's new shipper review and determine a margin for Jianglong based upon the sales, cost, and surrogate value information submitted by Jianglong during the course of this new shipper review.

The petitioners argue that Jianglong concedes that it is affiliated with Shanghai Carbon, and that Shanghai Carbon was part of the PRC-wide Entity in the final results of the 2012/2013 POR in this proceeding. Thus, according to the petitioners, Jianglong's only relevant challenge to the Department's preliminary decision in this review is whether shipments made by Shanghai Carbon in the 2012/2013 review period disqualify Jianglong from a new shipper review pursuant to 19 CFR 315.214 by virtue of Jianglong not certifying to its first U.S. sale within the time required by the Department's regulations.<sup>19</sup> Citing *Initiation FR Notice 2012/2013*,<sup>20</sup> the petitioners maintain that Jianglong's arguments on this point are without merit because the Department was legally and factually correct in concluding that Shanghai Carbon made shipments during the 2012/2013 POR.<sup>21</sup> The petitioners argue that, in contrast to Jianglong's assertion that a "no shipments" certification is optional, the Department's *Initiation FR Notice 2012/2013* clearly stated that, "{i}f a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify the Department within 60 days of publication of this notice in the Federal Register."<sup>22</sup> Citing *Fresh Garlic from PRC*,<sup>23</sup> the petitioners argue further that, Shanghai Carbon was named in the *Initiation FR Notice 2012/2013*, and therefore, had an affirmative obligation to submit a "no shipment" certification to the Department within the allotted time period, which it failed to do.<sup>24</sup>

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<sup>18</sup> *Id.* at 10-13.

<sup>19</sup> See the petitioners' rebuttal brief at 1-2 (July 13, 2015).

<sup>20</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78, FR 19197 (March 29, 2013) (*Initiation FR Notice 2012/2013*).

<sup>21</sup> See the petitioners' rebuttal brief at 2-3.

<sup>22</sup> *Id.*

<sup>23</sup> See *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 13<sup>th</sup> Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 29174 (June 19, 2009), and accompanying Issues and Decision Memorandum at Comment 11 (June 8, 2009) (*Fresh Garlic from the PRC*).

<sup>24</sup> See the petitioners' rebuttal brief at 2-3.

The petitioners assert that Shanghai Carbon’s failure to certify that it had no shipments of subject merchandise during the 2012/2013 POR not only gave the Department a legal basis for concluding that it did make shipments, but also deprived the Department of record grounds for factually concluding otherwise.<sup>25</sup>

The petitioners comment that Jianglong erroneously relies on the 2012/2013 Customs and Border Protection (CBP) data placed on the record by the Department to assert that Shanghai Carbon did not have any U.S. entries in the 2012/2013 review period. The petitioners comment further that the CBP data do not prove that Shanghai Carbon did not have any entries. The petitioners argue that Jianglong’s reliance on the CBP data to prove that no exports of subject merchandise entered the United States during the 2012/2013 POR from the Chinese exporters subject to the PRC-wide rate is untenable because CBP did not verify the accuracy of a “no-shipment” certification from Shanghai Carbon because Shanghai Carbon did not submit such a certification. Citing *Fresh Garlic from PRC*, the petitioners argue that, contrary to Jianglong’s assertion that the Department’s determination is “unprecedented,” the Department has, in a prior proceeding of a different case, declined to rescind the review of an exporter subject to the PRC-wide rate due to its failure to meet its affirmative obligations during the preliminary administrative review proceedings.<sup>26</sup>

The petitioners argue that because Shanghai Carbon did not submit either a no-shipments certification or separate rate application, it did not permit the Department to treat Shanghai Carbon in any way other than as an exporter that is part of the PRC-wide Entity and subject to that rate.<sup>27</sup>

With regard to Jianglong’s argument that the Department erred in preliminarily rescinding its new shipper review on the basis of affiliation with a company that was part of the PRC-wide Entity, the petitioners argue that the Department’s regulations make clear that an exporter or producer is not eligible for a new shipper review if affiliated with a company that exported subject merchandise to the U.S. during the period of investigation (POI), including those not individually examined during the investigation. Therefore, according to the petitioners, the Department was correct in presuming that Shanghai Carbon made U.S. entries of subject merchandise during the 2012/2013 POR.<sup>28</sup>

Department’s Position: In our *Preliminary Rescission*, we determined that Jianglong did not meet the statutory and regulatory requirements to qualify for a new shipper review. Specifically, our analysis of record evidence indicated that Jianglong is affiliated with Shanghai Carbon, a company that in a prior administrative review was determined to be part of the PRC-wide Entity, and that entered subject merchandise into the United States more than one year prior to Jianglong’s request for a new shipper review. We, thus, preliminarily determined that Jianglong failed to certify to its first U.S. shipment and its first U.S. sale, as required by 19 CFR 351.214(b)(2)(iv)(A) and (C), and to request a new shipper review within the timeline required

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 3-4.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.*

by 19 CFR 351.214(c).<sup>29</sup> Thus, because Jianglong’s request does not satisfy the regulatory requirements for a new shipper review, we preliminarily determined that it was appropriate to rescind the new shipper review for Jianglong.

### *Statutory and Regulatory Framework*

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and as outlined in 19 CFR 351.214, applications for new shipper reviews require that the entity making a request for a new shipper review document and certify, among other things: (A) the date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which the exporter or producer first shipped the merchandise for export to the United States; (B) the volume of that and subsequent shipments; and (C) the date of the first sale to an unaffiliated customer in the United States.<sup>30</sup> Further, an exporter or producer must request a new shipper review within one year of the date of the first entry (or if appropriate, first shipment for export to the United States).<sup>31</sup> If these requirements, among others, are met, the Department will initiate a new shipper review to determine whether the new shipper is eligible for an individual weighted-average dumping margin.<sup>32</sup>

### *Analysis*

Consistent with our regulations and practice, the Department denies new shipper status to any company that is affiliated with a company that had shipments of subject merchandise to the United States more than one year prior to the requesting company’s request for a new shipper review.<sup>33</sup> As we explain below, record evidence demonstrates that Jianglong is affiliated with an entity that had prior shipments of subject merchandise for consumption to the United States. Accordingly, Jianglong did not certify to its first U.S. entry or shipment and U.S. sale, as required under 19 CFR 351.214(b)(2)(iv)(A) and (C), respectively. Additionally, Jianglong did not request a new shipper review within one year of its first U.S. entry or shipment, failing to satisfy the requirement of 19 CFR 351.214(c). Because Jianglong’s request does not satisfy the regulatory requirements for a new shipper review, we continue to determine that it is appropriate to rescind the new shipper review for Jianglong.

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<sup>29</sup> See *Preliminary Rescission*.

<sup>30</sup> See 19 CFR 351.214(b)(2)(iv)(A)-(C).

<sup>31</sup> See 19 CFR 351.214(c) (referring to the date in 19 CFR 351.214(b)(2)(iv)(A)).

<sup>32</sup> See generally 19 CFR 351.214(b)(2).

<sup>33</sup> See, e.g., *Wooden Bedroom Furniture From the People’s Republic of China: Final Rescission of Antidumping Duty New Shipper Review*, 77 FR 21536 (April 10, 2012) (*Wooden Bedroom Furniture from the PRC*) and accompanying Issues and Decision Memorandum at Comment 1; see also, *Garlic from the PRC* and accompanying Issues and Decision Memorandum at Comment 1; see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Rescission of Antidumping Duty New Shipper Review*, 76 FR 43262 (July 20, 2011) and Memorandum to the File, from Wendy J. Frankel, Director, through Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Intent to Rescind the New Shipper Review of Xiang Yang Automobile Bearing Co., Ltd. (“ZXY”)(June 17, 2011) (We note that the memorandum to the file (June 17, 2011), contains all of the analysis regarding our decision to preliminarily rescind this new shipper review. No comments were received based on our preliminary results in that proceeding).

In its case brief, Jianglong concedes that it is affiliated with Shanghai Carbon. It also concedes that Shanghai Carbon is part of the PRC-wide Entity. Jianglong also acknowledges the fact that its affiliate, Shanghai Carbon, never certified that it had no shipments during the 2012/2013 POR.<sup>34</sup> Jianglong's argument that Shanghai Carbon did not have an affirmative obligation to file a "no shipment" certification during the 2012/2013 POR because it presumed that "no shipment" certifications are normally filed by companies with separate rate status who did not ship during the relevant POR is unpersuasive. In this context, Jianglong argues that because Shanghai Carbon was not in operation under such circumstances, it had no reason or incentive to file a "no shipment" certification during the 2012/2013 POR. This reasoning lacks proper foundation.

In the *Initiation FR Notice 2012/2013*, we indicated that "{i}f a producer or exporter named in this notice of initiation had no exports, sales or entries during the period of review ("POR"), it must notify the Department within 60 days of publication of this notice in the Federal Register." (emphasis added). We further stated that, "Such submissions are subject to verification in accordance with section 782(i) of the Act."<sup>35</sup> Shanghai Carbon was identified in the *Initiation FR Notice 2012/2013* as a company for which an administrative review was requested and therefore had notice of its affirmative obligation to submit a "no shipment" certification if it had no exports, sales or entries during the POR. Although Jianglong is correct in noting that the petitioners eventually withdrew their request of Shanghai Carbon in the 2012/2013 administrative review, as stated in the *Preliminary Rescission*, because Shanghai Carbon did not establish eligibility for a separate rate, it remained subject to the review as part of the PRC-wide Entity.<sup>36</sup> Because Shanghai Carbon did not file a "no shipment" certification during the 2012/2013 POR, we were prevented from verifying the accuracy of such certification, which is our normal practice.<sup>37</sup> Thus, we find that the absence of a "no shipment" certification combined with the CBP entry data indicating that the PRC-wide Entity had entries subject to the PRC-wide Entity rate during the 2012/2013 POR makes it reasonable and appropriate for the Department to conclude that Shanghai Carbon entered subject merchandise into the United States more than one year prior to Jianglong's request for a new shipper review.

In addition, our established practice recognizes that, while the statute requires the requesting company not be affiliated with any company that shipped subject merchandise during the POI, our regulations expand upon that framework and additionally require a requesting company to identify and certify to the date of its *first* U.S. entry or shipment and its *first* U.S. sale.<sup>38</sup> As such, we initially looked at the 2012/2013 administrative review because that was the review in which Shanghai Carbon first participated. In the 2012/2013 administrative review, we affirmed that Shanghai Carbon was part of the PRC-wide Entity—and as Jianglong asserts, always has been since the POI. Assuming we limited our inquiry only to the prior review, that would suggest that "a company could request as many new shipper reviews as it chose so long as it was not affiliated with an entity that shipped during the period of the original investigation. Our

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<sup>34</sup> See Jianglong's case brief at 2-3, (July 8, 2015).

<sup>35</sup> See *Initiation FR Notice 2012/2013* at 19197.

<sup>36</sup> See Prelim Decision Memo at 3-4.

<sup>37</sup> See *2012-2013 Final Results*.

<sup>38</sup> See 19 CFR 351.214(b)(2)(iv)(A) and (C).

certification requirements thus limit new shipper reviews to those exporters that can certify that their request for a new shipper review is made within one year of their first entry or shipment.”<sup>39</sup>

With regard to Jianglong’s claim that record information establishes that no entries of subject merchandise were made by any PRC-wide Entity during that period, we disagree. In our *Preliminary Rescission*, we stated that we placed CBP entry data for the 2012/2013 administrative review period on the record of this review, which indicated that there were multiple entries under the PRC-wide Entity rate.<sup>40</sup> We stated further that since Shanghai Carbon did not provide us with a “no shipment” certification in the 2012/2013 administrative review, consistent with the presumption of government control, we determined that the PRC-wide Entity, which includes Shanghai Carbon, made shipments of subject merchandise, which were entered for consumption during the 2012/2013 POR.<sup>41</sup> Contrary to Jianglong’s assertion, we continue to find that the PRC-wide Entity in the 2012/2013 administrative review, which includes Shanghai Carbon, made shipments of subject merchandise to the United States for consumption during the 2012/2013 POR. For example, in the *2012-2013 Final Results*, we determined that a company that had applied for separate rate status did not qualify for a separate rate, thus, we deemed this company to be part of the PRC-wide Entity and, therefore, its entries were subject to the PRC-wide Entity rate.<sup>42</sup> In addition, the CBP entry data for the 2012/2013 administrative review that we placed on the record of this new shipper review indicate that the company in question subject to the PRC-wide Entity rate had entries during the 2012/2013 POR.<sup>43</sup> Thus, we disagree with Jianglong’s assertion that the PRC-wide Entity had no entries of subject merchandise during the 2012/2013 POR. Based on this evidence, we find Jianglong’s argument unpersuasive.

We disagree with Jianglong’s assertion that the Department’s determination in the *Preliminary Rescission* is “unprecedented,” as the Department has in a prior proceeding, declined to rescind the review of an exporter subject to the PRC-wide rate due to its failure to meet its affirmative obligations concerning the certification of no shipments during the preliminary administrative review proceedings.<sup>44</sup> Moreover, the Department’s actions here are consistent with its longstanding practice in non-market economy (NME) antidumping duty proceedings recognizing a presumption of state control over export activities in an NME country, under which all exporters receive a single NME country rate, or country-wide rate, unless an exporter can affirmatively demonstrate its entitlement to a separate rate by showing independence from government control of its export activities.<sup>45</sup> Accordingly, Shanghai Carbon, along with all other

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<sup>39</sup> See *Glycine From the People’s Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review; 2012*, 78 FR 52501 (August 23, 2013) and accompanying Preliminary Decision Memorandum at 3-4, unchanged in *Glycine From the People’s Republic of China: Final Rescission of Antidumping Duty New Shipper Review; 2012*, 78 FR 73837 (December 9, 2013) and accompanying Issues and Decision Memorandum at Comment 1 (*Glycine From the PRC*).

<sup>40</sup> See *Preliminary Rescission*.

<sup>41</sup> See *Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; 79 FR 806* (January 7, 2014), and accompanying Preliminary Decision Memorandum at 16.

<sup>42</sup> See *2012-2013 Final Results at 57509*.

<sup>43</sup> See the April 9, 2015, memo to the file placing on the record CBP data documenting U.S imports of the subject merchandise from the PRC during the 201/2013 administrative review.

<sup>44</sup> See *Fresh Garlic from the PRC*.

<sup>45</sup> See, e.g., *2012-2013 Preliminary Results*, unchanged in *2012-2013 Final Results*.

exporters found to be part of the PRC-wide Entity, are presumed to be part of a single entity over which the government controls export activities.<sup>46</sup>

With regard to Jianglong's argument that the CBP data placed on the record of this review support Jianglong's claim that its affiliate, Shanghai Carbon, did not have any shipments during the 2012/2013 POR, we disagree. The CBP data that the Department placed on the record of this review were utilized as a basis in the 2012/2013 administrative review on which to rank exporters for purposes of respondent selection, but not to definitively determine whether or not a given exporter has or has not made a shipment during that POR. These are separate factual determinations. As Shanghai Carbon was subject to the review, it was incumbent on Shanghai Carbon, as we indicated in the *Initiation FR Notice 2012/2013*, to inform the Department on a timely basis that it did not have any shipments during the 2012/2013 administrative review.<sup>47</sup> It did not do so.

With regard to Jianglong's claim that the Department's explanation in the *Preliminary Rescission* as to how Shanghai Carbon became part of the PRC-wide Entity was factually incorrect, we clarify for the record that Shanghai Carbon in 2012/2013 review was one of 146 companies that did not have a separate rate from a prior segment of the proceeding and was already considered part of the PRC-wide Entity.<sup>48</sup> Accordingly, Shanghai Carbon did not become part of the PRC-wide Entity because it did not demonstrate its entitlement to a separate rate, as indicated in the *Preliminary Rescission*. However, prior to the petitioners' withdrawal of their review request, Shanghai Carbon had an opportunity to submit a separate rate application in the 2012/2013 administrative review, but did not avail itself of that opportunity.<sup>49</sup> Regardless, we find, that for present purposes, there is no dispute that Shanghai Carbon is part of the PRC-wide Entity and thus, this clarification does not alter our analysis or findings with regard to Jianglong's eligibility for a new shipper review.

For the reasons outlined above, we continue to find that Jianglong's request did not satisfy the regulatory requirements for a new shipper review, and thus, for the final results of this new shipper review, we continue to determine that it is appropriate to rescind the new shipper review for Jianglong on this basis.

#### *Comment 2: The Bona Fides of the U.S. Sale*

Jianglong states that should the Department reverse its decision in the *Preliminary Rescission* for the final results, the Department will be required for the final results to examine whether Jianglong's sale is *bona fide*. Jianglong argues that there is nothing distortive or unusual about the timing of the sale as the sale took place on June 30, 2014, a full month prior to the completion of the POR.

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<sup>46</sup> See *Transcom, Inc. v. United States*, 294 F.3d 1371, 1373 (Fed. Cir. 2002) (upholding the Department's presumption of state control of export activities in NME countries absent a demonstration of *de jure* and *de facto* independence from state control by the exporter); *Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997) (same).

<sup>47</sup> *Id.*

<sup>48</sup> See 2012-2013 *Final Results* at Appendix II.

<sup>49</sup> See, e.g., 2012-2013 *Preliminary Results*, unchanged in 2012-2013 *Final Results*.

Jianglong argues that under the Department's normal practice, sales and quantities will be found to reflect *bona fide* transactions if they are within the range of import quantities and sales value during the relevant period. Jianglong claims that the quantities it sold during the POR are within the range of import quantities reflected in the CBP data for new shipper reviews. Jianglong claims further that its sales price when compared to sale prices from 2012/2013 reflect that the sale is *bona fide* because Jianglong's sale price is within the range of sales prices from that review.

Jianglong asserts that there is no evidence that there were any unusual expenses associated with the Jianglong sale to the United States. According to Jianglong, the sale was made freight on board Qindao and the only expenses incurred were typical movement expenses associated with a sale from China. Jianglong contends that the administrative record demonstrates that its unaffiliated U.S. customer re-sold the merchandise purchased from Jianglong at a profit, further reinforcing the evidence that the sale made by Jianglong was *bona fide*. Jianglong argues that there is no evidence on the record that indicates that the transaction between Jianglong and its unaffiliated U.S. customer was not made at arm's length.

The petitioners argue that contrary to Jianglong's urging, the Department is first required to conduct a separate rate analysis before analyzing whether its U.S. sale is a *bona fide* sale. The petitioners argue further that Jianglong has not asserted in its case brief that it is eligible for a separate rate. Citing 19 CFR 351.309(c)(2), the petitioners argue that the Department's regulations dictate that a party's case brief must present all arguments that continue in the submitter's view to be relevant to the Department's final determination or final results. The petitioners assert that in the absence of a preliminary separate rate determination by the Department, Jianglong's failure to address its separate rate eligibility in its case brief effectively waives its right to seek a final determination on the issue now. Finally, according to the petitioners, the record of this new shipper review does not support a finding of Jianglong's separate rate eligibility. The petitioners, therefore, contend that Jiangong is not entitled to a separate rate, and that the Department should make a final determination to rescind this review. The petitioners argue that even if the Department analyzes whether Jianglong's U.S. sale was *bona fide*, the record of this administrative review indicates that the sale was not *bona fide* and therefore, Jianglong is not eligible for a new shipper review.

Department's Position: As we explain in Comment 1, we have found that Jianglong does not qualify as a new shipper and, therefore, we are rescinding its new shipper review. Because we are rescinding the new shipper review of Jianglong, issues regarding whether Jianglong's U.S. sale is *bona fide* are moot.

### *Comment 3: Surrogate Value for Coal Gas*

Jianglong argues that the coal gas import statistics from Ukraine are aberrational due to the small volume of POR imports upon which the sample is based. As such, Jianglong argues that for purposes of the final results, the Department should value Jianglong's reported factors of production of coal gas using the Global Trade Atlas import data from Bulgaria, which it placed on the record of this new shipper review.

The petitioners argue that because the Department preliminarily determined to rescind the new shipper review, it did not provide any discussion and analysis regarding surrogate country or surrogate value selection on which interested parties could comment for these final results. The petitioners argue further that issuing a final margin for Jianglong in the final results based on surrogate values not discussed in any preliminary results would deprive interested parties in this review of both the substantive basis of such results and the required opportunity for notice and comment. Therefore, according to the petitioners, Jianglong's argument is moot, and the Department should disregard it in favor of a final decision rescinding the new shipper review.

Department's Position: As we explain in Comments 1 and 2, we have found that Jianglong does not qualify as a new shipper and, therefore, we are rescinding its new shipper review. Because we are rescinding the new shipper review of Jianglong, issues regarding surrogate values are moot.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final rescission in the *Federal Register*.

✓  
Agree

\_\_\_\_\_  
Disagree

  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

5 OCTOBER 2015  
(Date)